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: Notice of proposed rulemaking.

SUMMARY: The Department of Health and Human Services, Administration for Children and Families proposes to amend the Child Care and Development Fund (CCDF) regulations. This notice of proposed rulemaking (NPRM) proposes changes to lower families' child care costs, which can be a significant financial strain for families and disincentivize work, training, and education. It proposes changes to improve child care provider payment rates and practices to increase parent choice for child care arrangements and help stabilize operations for participating providers. It also proposes ways for CCDF Lead Agencies to streamline eligibility and enrollment processes so families can receive child care assistance faster and so program bureaucracy is less likely to disrupt parent employment, training, and education and impede access to child care. The NPRM also includes technical and other changes to improve clarity and program implementation.

DATES: In order to be considered, written comments on this proposed rule must be received on or before August 28, 2023.

ADDRESSES: You may submit comments, identified by docket number ACF–2023–0003 and/or RIN number 0970–AD02, to the Federal eRulemaking Portal: *https://www.regulations.gov.* Follow the instructions for submitting comments.

Instructions: All submissions received must include the agency name and docket number or RIN number for this rulemaking. To ensure we can effectively respond to your comment(s), clearly identify the issue(s) on which you are commenting. Provide the page number, identify the column, and cite the relevant paragraph/section from the **Federal Register** document (*e.g.,* On page 10999, second column, § 98.20(a)(1)(i)). All comments received are a part of the public record and will be posted for public viewing on *www.regulations.gov,* without change. That means all personal identifying information (such as name or address) will be publicly accessible. Please do not submit confidential information, or otherwise sensitive or protected information. We accept anonymous comments. If you wish to remain anonymous, enter ''N/A'' in the required fields.

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

SUPPLEMENTARY INFORMATION:

I. Background

The Child Care and Development Block Grant Act, hereafter referred to as the ''Act'' or (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 access 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 employment, training, and education, and improving the economic well-being of participating families. In fiscal year (FY) 2020, the most current available data, more than 900,000 families and 1.5 million children benefited from financial assistance through CCDF each month.[1] At the same time, CCDF funding promotes the quality of child care for the sector: CCDF Lead Agencies must spend at least 12 percent of their CCDF funding each year to increase the quality of child care for all children.

In the years since the 2014 Reauthorization of the Child Care and Development Block Grant (CCDBG) Act and the last CCDF final rule in 2016 (2016 CCDF final rule (81 FR 67438, Sept. 30, 2016)), CCDF Lead Agencies have worked hard to strengthen child care policies and practices, but child care remains a broken system in crisis due to chronic underinvestment: Parents struggle to find affordable high-quality care that meets their needs and the system relies on a very poorly compensated workforce and unaffordable parent fees.[2] 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 propping up the economy. Numerous child care programs closed their doors permanently before sufficient Federal supports arrived in 2021. A national analysis found that from December 2019 to March 2021, 9 percent of licensed child care centers and 10 percent of licensed family child care homes closed.[3] Many providers could not survive higher costs, labor shortages, and unstable enrollment when operating margins are so thin even in the best of times. In a 2022 survey of parents with children under the age of 5, 54 percent

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[1] *https://www.acf.hhs.gov/occ/data/fy-2020-preliminary-data-table-1.*

[2] 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.*

[3] Child Care Aware of America. (March 2022). Demanding Change: Repairing Our Child Care System. Arlington, VA: Child Care Aware of America *https://www.childcareaware.org/demanding-change-repairing-our-child-care-system/#supply.*

of parents reported that child care was unavailable, and 41 percent reported the location of programs was a barrier.[4] Another 2022 national survey of parents with children under age 14 found that 43 percent of parents reported child care was much harder to find compared to 2021,[5] suggesting a growing need to address supply issues and the conditions that make child care unstable. Lead Agencies leveraged significant, one-time investments provided by the American Rescue Plan Act and other COVID–19 relief funding packages to help mitigate the extent of these issues.[6] The FY 2024 President's Budget requested a historic $424 billion over 10 years to further stabilize the child care sector by making high-quality child care more affordable for working families and increasing child care provider pay. As Congress contemplates this proposal, HHS is exercising its regulatory authority to provide additional clarity around key policies that are needed to provide more help for families so they can find child care that meets their families' needs and for the continued stabilization of the child care sector.

Access to affordable high-quality child care has numerous benefits for children, families, and society as a whole, supporting child and family wellbeing in the short-term and across the lifespan in a manner that fuels prosperity and strengthens communities and the economy. It is a necessity for most families with young children and improves parental earnings and employment.[7 8 9] Reliable access to child care supports parents' educational attainment,[10] labor force participation, and full-time employment.[11] Maternal employment increases in response to more available and more affordable child care,[12 13] and conversely, maternal employment rates drop when child care becomes more expensive for families, across income brackets.[14] The positive effects of high-quality child care are especially pronounced for families with low incomes and families experiencing adversity.[15] Children with stably employed parents are far less likely to experience poverty, particularly deep poverty, than children whose parents have less consistent employment.[16] High-quality child care environments can also be important for children's cognitive, behavioral, and socio-emotional development, helping chart a pathway to succeed in school and beyond.[17]

Despite the importance of access to high-quality child care to children, families, communities, and to our country's economic growth, most families struggle to find or afford high-quality child care for their children because of the limited supply—there are not enough programs to serve families who need it, many programs do not offer care the hours or days families require it, and unaffordable costs lead parents to select lower quality care or forego it altogether.[18] Every year, parents, employers, and taxpayers miss out on $122 billion in lost earnings, productivity, and tax revenue because of lack of child care.[19] One in four parents of children under three have been fired from or quit a job because of challenges securing child care, and 41 percent have turned down a new job offer for this reason.[20] Over their lifetime, parents who pause their careers to care for children lose three to four times their annual salary for each year out of the workforce.[21] A parent who remains out of the workforce for five years reduces their overall lifetime earnings by nearly 20 percent.[22] Not only is child care expensive for most families, but 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 (called child care deserts).[23]

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.[24] Families with children under age five and incomes below the Federal poverty line

[4] ParentsAction Together. (March 2022). New Survey Shows Middle and Low Income Parents Struggling to Find Child Care They Can Afford: As a Result, 62% of Respondents Had to Cut Back on Work Hours. Washington, DC: ParentsAction Together. *https://parentstogetheraction.org/2022/03/17/new-survey-shows-middle-and-low-income-parents-struggling-to-find-child-care-they-can-afford-as-a-result-62-of-respondents-had-to-cut-back-on-work-hours/*.

[5] *Care.com*. (June 2022). This is how much child care costs in 2022. *https://www.care.com/c/how-much-does-child-care-cost/*.

[6] U.S. Department of Health and Human Services, Administration for Children and Families. (May 25, 2023). COVID Investments in Child Care: Supporting Children, Families, and Providers. *https://www.acf.hhs.gov/occ/infographic/covid-investments-child-care-supporting-children-families-and-providers*.

[7] Council of Economic Advisors (2014). *The Economics of Early Childhood Investments.* Accessed from *https://obamawhitehouse.archives.gov/sites/default/files/docs/early_childhood_report_update_final_non-embargo.pdf*.

[8] Hartley, R.P., Chaudry, A., Boteach, M., Mitchell, E., & Menefee, K. (2021). A lifetime worth of benefits: The effects of affordable, high-quality child care on family income, the gender earnings gap, and women's retirement security. Washington, DC: National Women's Law Center and New York, NY: Center on Poverty and Social Policy at Columbia University. *https://nwlc.org/resource/a-lifetimes-worth-of-benefits-the-effects-of-affordable-high-quality-child-care-on-family-income-the-gender-earnings-gap-and-womens-retirement-security/*.

[9] Shonkoff, J.P., & Phillips, D.A. (Eds.). (2000). *From neurons to neighborhoods: The science of early childhood development.* National Academy Press.

[10] 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/*.

[11] Landivar, L.C. et al. (2021). Are States Created Equal? Moving to a State with More Expensive Childcare Reduces Mothers' Odds of Employment. *Demography, 58*(2), 451–470. *https://read.dukeupress.edu/demography/article/58/2/451/169632/Are-States-Created-Equal-Moving-to-a-State-With*.

[12] 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*.

[13] 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*.

[14] Landivar, Liana Christin, Nikki L. Graf, and Giorleny Altamirano Rayo. (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*.

[15] See, for example, 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*.

[16] 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*.

[17] Shonkoff, J.P., & Phillips, D.A. (Eds.). (2000). *From neurons to neighborhoods: The science of early childhood development.* National Academy Press.

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

[19] Bishop, Sandra. (2023). $122 Billion: The growing, annual cost of the infant-toddler child care crisis. Washington, DC: ReadyNation. Council for a Strong America. *https://www.strongnation.org/articles/2038-122-billion-the-growing-annual-cost-of-the-infant-toddler-child-care-crisis*.

[20] Bishop, Sandra. (2023). $122 Billion: The growing, annual cost of the infant-toddler child care crisis. Washington, DC: ReadyNation. Council for a Strong America. *https://www.strongnation.org/articles/2038-122-billion-the-growing-annual-cost-of-the-infant-toddler-child-care-crisis*.

[21] Madowitz, M., Rowell, A., and Hamm, K. (2016). Calculating the Hidden Costs 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/*.

[22] Ibid.

[23] 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/*.

[24] 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*.

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.[25] Households with incomes just above the Federal poverty level spend more than 20 percent of their income on child care, on average.[26] The cost of child care can drive families to seek out less expensive care, which may be unlicensed or unregulated and have less rigorous quality or safety standards and be less reliable, or forego child care entirely and exit the workforce.[27] Even when families receive child care subsidies, affordability, in terms of co-payments, often remain a concern and can limit families' access to the child care that best meets their needs.[28 29] Co-payments can be a barrier to parent employment, training, or education and are associated with family financial stress and economic hardship. Research finds that parents receiving subsidies continue to experience substantial financial burden in meeting their portion of child care costs.[30 31] Other research shows that higher out-of-pocket child care expenses, such as co-payments, reduce families' child care use and parental (particularly maternal) employment.[32]

Moreover, an inadequate supply of child care continues to be a significant problem nationally. A 2018 analysis found that 51 percent of families with children under the age of 5 lived in a ''child care desert''—an area where the availability of licensed child care is so low that there are three times as many children under age 5 as there are spaces in licensed settings.[33] A 2019 analysis of supply and demand in 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] In the 2019 National Household Education Survey on Early Childhood Program Participation, parents of children under the age of 6 reported the lack of open child care slots as the second biggest barrier to finding child care, with cost being the first.[35] 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[36] without a complementary increase in center-based programs.[37] As previously noted, the COVID–19 public health emergency put significant additional strains on child care supply.[38 39 40]

A key contributor to this lack of supply is though child care is often unaffordable and inaccessible for many families, child care providers usually operate with profit margins of less than 1 percent.[41] To remain open, child care providers must keep costs low, and because labor is the main business expense, this translates to low wages and minimal benefits for essential and skilled work overwhelmingly done by women and disproportionately by women of color.[42] These working conditions also lead to high turnover, with an estimated 26 to 40 percent of the child care workforce leaving their job each year.[43]

Unfortunately, limited funding and policies that do not adequately support families and child care providers exacerbate systemic problems and interfere with CCDF fully meeting its purposes and goals. Child care subsidies only reach a small proportion of eligible families, with only 16 percent of the 12.5 million eligible children receiving assistance in FY 2019.[44] Average CCDF co-payments in nine states exceed 7 percent of family income, which can be a significant and destabilizing financial strain on family budgets and barrier to

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25 Madowitz 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/*.

26 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*.

27 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.*

28 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*.

29 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.*

30 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*.

31 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. *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.*

32 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.*

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. *https://childcaregap.org/assets/Child%20Care%20in%2035%20States.pdf.*

35 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.*

36 A.R. Datta, C. Milesi, S. Srivastava, C. Zapata-Gietl, (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.*

37 A.R. Datta, Z. Gebhardt, C. Zapata-Gietl, (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.*

38 Child Care Aware of America. (March 2022). Demanding Change: Repairing Our Child Care System. *https://www.childcareaware.org/demanding-change-repairing-our-child-care-system/#supply*.

39 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.*

40 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.*

41 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.*

42 Ibid.

43 Ibid.

44 Chien, Nina. (September 2022). Factsheet: Estimates of Child Care Eligibility & Receipt for Fiscal Year 2019. U.S. Department of Health and Human Services, Office of the Assistant Secretary for Planning & Evaluation. *https://aspe.hhs.gov/sites/default/files/documents/1d276a590ac166214a5415bee430d5e9/cy2019-child-care-subsidy-eligibility.pdf.*

participating in the CCDF program and maintaining employment.[45 46] In addition, current CCDF payment rates and practices used by many States, Territories, and Tribes do not adequately cover the cost of providing high-quality care, particularly in low-income communities, undermining child care availability and parent choice. Some child care providers may find that relying on federally-subsidized child care introduces significant financial instability, which threatens their business viability. This instability may also lead providers to avoid serving families using child care subsidies.

This NPRM puts forth proposals to address some of the programmatic and systemic challenges described here to build toward a better child care system that properly addresses the needs of families across the country. Though significant investments and bold system reform are needed to fully realize this goal, it is clear the status quo is untenable and that more must be done in the interim through this NPRM, to make it easier for parents with low incomes to access affordable high-quality child care that meets their family's needs. First, to make child care more affordable to families participating in CCDF this NPRM proposes to require that Lead Agencies establish co-payment policies that ensure families receiving assistance under CCDF pay no more than 7 percent of their family income for child care. Further, the NPRM provides Lead Agencies increased flexibility to waive co-payments for additional families, in particular for families living at or below 150 percent of the Federal poverty level. Second, this NPRM proposes to improve payment rates and practices to increase the financial stability of child care providers that currently accept CCDF subsidies. This will encourage new providers to participate in the subsidy system, improve the quality of child care, promote continuity of care, and expand parent choice in care arrangements.[47] Third, the proposed revisions in this NPRM encourage Lead Agencies to reduce the burden on families of applying and re-applying for child care subsidies. This NPRM seeks to make presumptive eligibility an easier process for CCDF Lead Agencies and encourages more efficient enrollment and re-enrollment processes. Finally, this NPRM includes technical and other proposals to improve program clarity for Lead Agencies, parents, and providers.

Throughout the period since 2016 when the last CCDF Rule was published, HHS has continued to learn from Lead Agencies, parents, and child care providers; assessed the evolving early care and education landscape; examined the successes and challenges in the Act's implementation; and tracked the impact and implications of the COVID–19 public health emergency on the child care sector. The proposed revisions in this NPRM are designed to build on these lessons, improve on the work of the past, and build a stronger CCDF program that more effectively supports the development of children, the economic wellbeing of families, and the stability of child care providers.

Costs, Benefits, and Transfer Impacts

Changes made by this proposed rule would have the most direct benefit for the over 900,000 families and 1.5 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, expanded and easier access to child care which could improve the ability of families to participate in the labor market, and improved eligibility determination processes. Research has demonstrated that increased access to child care increases maternal labor force participation.[48] In particular, child care subsidies have been found to increase employment among single mothers.[49] International evidence also demonstrates the link between increased early care attendance and maternal employment.[50]

Providers will benefit from payment practices that support their 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.[51] This rule also yields benefits in terms of child development outcomes. The provisions in this rule expand access and some children who might have received subsidized care under the current rule (*e.g.,* those whose parents could not pay the copay) would receive subsidized care under the proposed rule. For these children, they are likely to receive higher quality care than they otherwise would have. Research has demonstrated clear linkages between high quality child care and positive child outcomes, including school readiness, social-emotional outcomes, educational attainment, employment, and earnings.[52 53 54 55]

[45] 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.*

[46] 81 FR 67515 (*https://www.govinfo.gov/content/pkg/FR-2016-09-30/pdf/2016-22986.pdf*).

[47] 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*); Rohacek M., & Adams, G. (2017). Providers in the child care subsidy system. (*https://www.urban.org/sites/default/files/publication/95221/providers-and-subsidies.pdf*). Phillips, D., Mekos, D., Scarr, S., McCartney, K., & Abbott-Shim, M. (2000). Within and beyond the classroom door: Assessing quality in child care centers. (*https://www.sciencedirect.com/science/article/abs/pii/S0885200601000771*). Torquati, J.C., Raikes, H., Hudleston-Casas, C.A. (2007). Teacher education, motivation, compensation, workplace support, and links to quality of center-based child care and teachers' intention to stay in the early childhood profession. (*https://www.sciencedirect.com/science/article/abs/pii/S0885200607000270*). Miller, J.A., & Bogatova, T. (2009). Quality improvements in the early care and education workforce: Outcomes and impact of the T.E.A.C.H early childhood project. (*https://pubmed.ncbi.nlm.nih.gov/19285728/*). Burroughs, N., Graber, C., Colby, A., Winans, N., & Quinn, D. (2020). Policy change effects on subsidy approvals and utilization: Michigan child care policy research partnership. (*https://publicpolicy.com/wp-content/uploads/2021/04/Policy-Change-Effects-on-Child-Care-Subsidy-Approvals-and-Utilization.pdf*); Weber, R.B., Grobe, D., & Davis, E.E. (2014). Does policy matter? The effect of increasing child care subsidy policy generosity on program outcomes. (*https://health.oregonstate.edu/sites/health.oregonstate.edu/files/occrp/pdf/the-effect-of-increasing-child-care-subsid-policy-generosity-on-program-outcomes.pdf*).

[48] 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*

[49] 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.*

[50] Bauernschuster, S, and Schlotter, M. (2015). Public child care and mothers' labor supply—Evidence from two quasi-experiments. Journal of Public Economics, 123: 1–16. *https://doi.org/10.1016/j.jpubeco.2014.12.013.*

[51] 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.*

[52] Deming, David. 2009. ''Early Childhood Intervention and Life-Cycle Skill Development: Evidence from Head Start.'' American Economic Journal: Applied Economics, 1 (3): 111–34.

[53] Duncan, G.J., and Magnuson, K. 2013. ''Investing in Preschool Programs.'' Journal of Economic Perspectives, 27 (2): 109–132

[54] 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*

[55] Weiland, C., Yoshikawa, H. 2013. ''Impacts of a Prekindergarten Program on Children's Mathematics, Language, Literacy, Executive

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The cost of implementing changes made by this proposed 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 the proposed rule, 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 proposed policy change, including reduced co-payments, paying based on enrollment, paying the full subsidy rate, presumptive eligibility, and streamlined eligibility processes. 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 this RIA, we estimate the quantified annual impact of the proposed rule to be about $303 million in transfers, $4.2 million in costs, and $21 million in benefits. Further detail and explanation can be found in the regulatory impact analysis.

Effective Dates.

ACF expects all provisions included in the proposed rule, if finalized, to become effective 60 days from the date of publication of the final rule. Compliance with provisions in the final rule would be determined through ACF review and approval of CCDF Plans, including Plan amendments; through Federal monitoring, including on-site monitoring visits as necessary; and through ongoing Federal oversight.

After the effective date of the final rule, any Lead Agency that does not fully meet the regulatory requirements would need to revise its policies and procedures to come into compliance, and file appropriate Plan amendments related to those changes. We recognize that some of the proposed changes in this NPRM may require action on the part of a Lead Agency's legislature or require State, Territory, or Tribal-level rulemaking to implement these changes. ACF welcomes public comment on specific provisions included in this proposed rule that may warrant a longer phase-in period and will take these comments into consideration when developing the final rule.

Severability.

The provisions of this NPRM, once it becomes final, 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 proposed rules contained herein are central to an overall intent of the proposed rule, nor are any provisions dependent on the validity of other, separate provisions.

II. Statutory Authority

This proposed regulation 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).

III. Discussion of Proposed Changes

The proposed revisions in this NPRM are organized thematically. The four main areas of proposed changes are: lowering families' costs for child care, improving parent choice to access care that meets their needs, strengthening payment practices to child care providers, reducing bureaucracy for better implementation, and implementing technical and other changes for improved clarity.

Lowering Families' Costs for Child Care (§§ 98.45, 98.33)

We propose changes to § 98.45 to make child care more affordable for families receiving child care subsidies under the CCDF program. Section 658E(c)(5) of the Act (42 U.S.C. 9858c(c)(5)) and § 98.45(k) (as currently designated) require CCDF Lead Agencies to implement a system for cost sharing for participating families, commonly referred to as the parent or family co-payment, and the Act requires that such cost sharing cannot be ''a barrier to families receiving assistance,'' and regulations make clear that parent fees are a consideration in the Act's tenet that families participating in CCDF have equal access to child care as families that are not eligible for CCDF. Lowering families' child care costs is central to removing barriers and supporting equal access. High and unaffordable co-payments undermine parental choice in care and the goal of increasing the number and percentage of children in families with low incomes in high-quality child care settings, the very purposes of the Act. As previously noted, co-payments can limit families' access to child care that meets their needs.[56] [57] [58] [59] [60] Before the 2014 CCDBG reauthorization and 2016 CCDF final rule, the average family co-payment increased by a total of 3 percent (after adjusting for inflation) between 2005–2015.[61] Yet, in 2016, the average family co-payment increased by 8 percent (after adjusting for inflation) in just one year, suggesting that Lead Agencies may be transferring some of the cost burden associated with implementing the health, safety, and quality changes associated with the 2016 CCDF final rule to families.[62] From 2016–2021, the average family co-payment continued to increase by a total of 6 percent over those five years (after adjusting for inflation).[63] In sum, CCDF family co-payment amounts increased at a rate higher than inflation between 2005–2021, with an 18 percent increase (after adjusting for inflation) in average family co-payment during this period.[64] Given that co-payments serve as a barrier to CCDF-participating families, as compared to both CCDF-participating families when a co-payment is waived and higher-income families who do not receive CCDF, we propose to make changes to § 98.45 to reduce parent co-payments, as described below.

Function, and Emotional Skills.'' Child Development, 86(6), 2112–2130.

[56] 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.*

[57] 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.*

[58] 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.*

[59] 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. *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.*

[60] Morrissey, Taryn 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.*

[61] 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.

[62] Ibid.

[63] Ibid.

[64] Ibid.

Prohibit Family Co-Payments That Are a Barrier to Child Care Access

First, at § 98.45(b)(5), this NPRM proposes to establish that co-payments over 7 percent of a family's income are an impermissible barrier to a family receiving assistance, and family co-payments must therefore be no more than 7 percent of a family's income. Section 658E(c)(5) of the Act (42 U.S.C. 9858c(c)(5)) establishes that Lead Agencies must not set co-payment policies that are a barrier to families receiving assistance. If a family receives CCDF for multiple children, the family's total co-payment amount would not exceed 7 percent of the family's income.

The preamble (81 FR 67515) of the 2016 CCDF final rule established 7 percent as the Federal benchmark as 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 plans, 14 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. High co-payments may mean that families cannot afford to participate in the CCDF program, and instead have to patch together informal, unregulated care that is less reliable and less expensive, less likely to meet children's developmental needs and leads to families cutting work hours or exiting the workforce entirely. We anticipate this proposed change at paragraph (b)(5) will improve family stability and economic well-being, better support stable parent employment, increase the choices CCDF-eligible families have for child care arrangements, and reduce a barrier to child care access.

It is important to note that this proposal does not decrease the amount paid to the child care provider, but rather, shifts some of the cost from families to Lead Agencies. Lead Agencies must continue to set payment rates at levels that provide equal access to care for families receiving child care subsidies, and OCC expects to closely monitor Lead Agency payment rates to ensure reductions in family co-payments do not lead to funding cuts for providers.

We request comment on whether 7 percent is the correct threshold, including data on child care affordability and the impact high co-payments may have on families' ability to access child care assistance.

Allow Lead Agencies To Waive Co-Payments for Additional Families

Second, we propose to amend § 98.45(l)(4), as redesignated, to explicitly allow Lead Agencies the discretion 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. Current regulations allow Lead Agencies to waive co-payments for families in particular circumstances (*i.e.,* with incomes below the Federal poverty level, families in need of protective services or other factors as determined by the Lead Agency). The proposal would 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 currently have authority to define "other factors"—such as family income between 100–150 percent of the Federal poverty level or having a child with a disability—for waiving copayments and will continue to have additional flexibility to define special populations eligible for waiving co-payments, including families who have incomes higher than 150 percent of the Federal poverty level. Lead Agencies have chosen to use this flexibility to categorically waive co-payments for certain vulnerable populations, including those who benefit from Temporary Assistance for Needy Families (TANF), children enrolled in Head Start, families experiencing homelessness, children in foster care, and teen parents. States' ability to waive co-payments for these children and families, and other factors determined by Lead Agencies, remains.

By proposing to allow Lead Agencies to waive co-payments for families with incomes up to 150 percent of the Federal poverty level, this proposal would make it easier for Lead Agencies to eliminate financial barriers that prevent parents with low incomes from utilizing CCDF to access high-quality child care settings for their children, and in turn support parents' ability to achieve economic well-being through education, training, and work opportunities. Co-payments (even very low co-payments) remain a barrier for some families to make ends meet, especially families struggling to afford housing costs.[65] [66] [67] Recognizing that families with incomes at or below 150 percent of the Federal poverty level are facing particular financial stress, providing this additional co-payment flexibility to Lead Agencies will help advance the purposes of the Act, including child and family well-being. Lead Agencies have acknowledged that families with low incomes in their jurisdictions are still struggling to afford child care, even when they receive child care subsidy.[68]

This policy should not be interpreted as discouraging states from taking steps to significantly reduce co-payments for those families who do not fall within one of the categories that allow for pre-approved waiving of co-payments, including waiving co-payments for families with incomes higher than 150 percent of the Federal poverty level. Lead Agencies may propose a higher threshold for waiving co-payments, at their discretion. While the statute does require that Lead Agencies establish a cost-sharing arrangement for families benefiting from assistance, it does not require more than a de minimis contribution from a family if that is how the state chooses to support eligible families. For instance, two Lead Agencies have co-payment policies in place according to their FFY2022–2024 CCDF State plans that ensure no CCDF family pays more than 2 percent of their income for co-payments. States may continue striving toward significantly reducing CCDF families' financial burden while adhering to the requirements under the law to establish a sliding fee scale. Section 658E(c)(3)(B) of the Act (42 U.S.C. 9858c(c)(3)(B)) requires Lead Agencies to prioritize services for "children with special needs," and the 2014 Reauthorization strengthened this focus by requiring OCC to annually report on whether Lead Agencies use CCDF funds to prioritize serving children with special needs. Available data suggests that CCDF is

[65] 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.*

[66] 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. *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.*

[67] 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*

[68] Rohacek & Adams. (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*

serving a low percentage of children with disabilities. In FY 2020, all states plus the District of Columbia and three territories, reported that only an average of 2 percent of children served by CCDF were children with disabilities.[69] OCC believes this data is a significant underestimate based on findings from the U.S. Department of Education indicating 15 percent of the general population age three to 21 has a disability.[70]

Families with children with disabilities experience unique challenges to accessing appropriate child care options. According to the 2016 Early Childhood Program Participation Survey, 34 percent of parents with children with disabilities have trouble finding care, as compared to 25 percent of families with nondisabled children.[71] The survey data showed that these barriers to finding child care include as program costs, lack of available slots, concerns about safety and quality, and scheduling challenges resulting in need for multiple care arrangements at any one given time.[72] Allowing Lead Agencies to waive co-payments for families with children with disabilities provides Lead Agencies an additional tool to help meet the statutory requirement to prioritize serving children with special needs, which may include children with disabilities, and possibly make it easier for these families to benefit from CCDF. As proposed, the option to waive co-payments for eligible families with a child or children with disabilities would apply to the entire family, not just for the child with a disability.

We also propose to revise §§ 98.81(b)(6)(x) and 98.83(d)(1)(xi) to exempt all Tribal Lead Agencies from the requirement to establish a sliding fee scale and require parents to pay a co-payment as required at proposed redesignated § 98.45(l). Therefore, families served by Tribal Lead Agencies would not be required to pay co-payments. Currently, Tribes with medium and large allocations are subject to the requirements at § 98.45(l) while Tribes with small allocations have the flexibility to exempt all families from co-payments and implement categorical eligibility. Of the 265 Tribes receiving CCDF funds either directly through ACF or through the Bureau of Indian Affairs, 60 percent are tribes with small allocations. Extending this exemption from co-payments to Tribes with medium and large allocations would enable tribes whose traditional practices of caring for children may not include monetary contributions, to align their child care program with their cultural beliefs and supports tribal sovereignty.

We request comment on whether states would benefit from flexibilities providing the option to waive copays for other populations. We also request comments on potential additional categories of families for which co-payments could be waived under this proposed rule.

Consumer Education

Finally, to help ensure families are aware of co-payment policies, we propose to add a new requirement at § 98.33(a)(8) that states and territories must 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 to 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 focus on consumer education in the 2014 reauthorization of the Act, 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 websites still overlook key areas that impact family decisions around child care and applying for child care subsidies. For example, it remains difficult for parents in many communities to learn about co-payment rates and what their family might expect to pay, leaving some families unaware of the co-payment requirements. Therefore, we propose to add a requirement at § 98.33(a)(8) for Lead Agencies to post current information about their process for setting the 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).

We request comment on the types of information related to co-payments that should be included and if there are other eligibility policies that should be added to the consumer education websites to improve access to the information parents need to make informed choices.

Improving Parent Choice in Child Care and Strengthening Payment Practices (§§ 98.16, 98.30, 98.45, 98.50)

As previously discussed, the availability of affordable high-quality child care that meets families' needs continues to lag well behind demand, and this inadequate supply makes it very difficult for families to afford and access high-quality child care that meets their needs, which subsequently harms labor force participation, family economic wellbeing, and healthy child development. Congress recognized the need to increase the supply of high-quality child care and included new requirements in the 2014 reauthorization for Lead Agencies to develop and implement strategies to increase the supply and quality of care for children in underserved communities, infants and toddlers, children with disabilities, and children in need of care during non-traditional hours (section 658E(c)(2)(M), 42 U.S.C. 9858c(c)(2)(M)). Yet Lead Agencies, providers, and parents continue to report significant struggles to find child care, and thin operational margins, low wages, and difficult job conditions remain significant barriers to grow the supply.

This NPRM proposes provisions to improve payment practices to child care providers so more providers will participate in the subsidy program, which in turn will increase parent choice in finding care that meets their needs. Prevalent payment practices in use in CCDF today can be destabilizing to providers and can disincentivize them from enrolling children who receive subsidies. Providers that do accept children who receive subsidies are incentivized to reduce costs further due to low or inconsistent subsidy payments, such as forgoing efforts to maintain or increase quality and enhance staff compensation. Correcting these detrimental payment practices is critical to the financial stability of child care providers and for helping families access high-quality child care that meets their needs.

[69] U.S. Department of Health and Human Services, Administration for Children and Families. (September 2022). Child Care and Development Fund (CCDF) Report on States' and Territories' Priorities for Child Care Services: Fiscal Year 2021. *https://www.acf.hhs.gov/occ/report/priorities-report-2021.https://www.acf.hhs.gov/occ/report/priorities-report-2021.* To some extent, the low percentage reflects data quality issues in the administrative data in some states.

[70] National Center for Education Statistics. (2022) Fast Facts: Students with Disabilities. U.S. Department of Education. *https://nces.ed.gov/fastfacts/display.asp?id=64.*

[71] 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*

[72] Ibid.

The proposed revisions in this section of the NPRM would require Lead Agencies to use grants and contracts to address the acute lack of supply for certain types of care. This section also proposes to support provider stability by requiring Lead Agencies pay providers prospectively and based on enrollment, as is standard practice for families who do not receive subsidies. Additionally, the proposed revisions in this section clarify that Lead Agencies may account for child care cost considerations and pay providers at the CCDF agency established payment rate approved in the Lead Agency's CCDF plan, even if it is above the providers' private pay price. These proposed revisions to payment practices will lead to improved program financial stability, higher-quality care, and increases in the supply of child care, all of which are essential to promoting parent choice in care.[73 74 75]

Building Supply With Grants and Contracts

To help address the far-reaching impact the lack of high-quality child care options has on child development, family well-being, and the economy, this NPRM includes proposals to improve payment rates and practices with the goals of increasing parents' choices in child care, reducing barriers to child care providers participating in the child care subsidy system, and ultimately increasing the supply of child care for families receiving subsidies.

First, we propose to make changes at §§ 98.16(y), 98.30(b), and 98.50(a)(3) as redesignated, to address the lack of supply of child care for underserved communities and populations that Lead Agencies must prioritize pursuant to the directives in the statute (section 658E(c)(2)(M), 42 U.S.C. 9858c(c)(2)(M)). 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, including at a minimum, using some grants or contracts for infants and toddlers, children with disabilities, and nontraditional hour care. We would specifically require some use of contracts for these populations because of the particularly stark supply issues that lead to minimal parent choice, but encourage lead agencies to also consider other populations that may benefit from grants or contracts.

Section 658E (c)(2)(A) of the Act (42 U.S.C. 9858c(c)(2)(A)) requires Lead Agencies to provide parents the option of enrolling with a child care provider that has a grant or contract for the provision of such services or to receive a certificate (also called a voucher). Grants and contracts represent agreements between the subsidy program and child care providers to designate slots for subsidy-eligible children. 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. For example, an evaluation of an infant and toddler contracted slot pilot in Pennsylvania found that participating programs had greater financial stability than providers solely paid through certificates, increased classroom quality, and more stable enrollment for infants and toddlers receiving child care subsidies.[76] They also found evidence that providers had a greater ability 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, and providers reported an increase in enrollment of children from families who would have normally struggled to pay for care because those families could now access the child care subsidy because the program was able to connect the families with contract-funded subsidy.[77] 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.

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 even though they can be one of the most effective tools to build supply in underserved areas and for underserved populations.[78] As discussed later in this NPRM, Tribal Lead Agencies are not subject to this proposal because of differences in their CCDF programs.

Finding child care for infants and toddlers, children with disabilities, and nontraditional hour care is particularly difficult for parents. Higher operational costs per child, the need for specialized training, and physical space needs generally make providing care for these populations more challenging and make supply issues particularly acute. 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 that in 80 percent of the counties analyzed, there were at least three infants and toddlers for every child care slot for children under three.[79] 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 disabilities.[80] About a third of children under the age of 6 live with parents who work nontraditional hours, before 7 a.m. or after 6 p.m. on weekdays or on weekends, though this varies considerably by state.[81] Further, Black or African American and Hispanic or Latino families and families with lower incomes are disproportionately likely to work nontraditional hours.[82] In

[73] Lieberman, A. et al. (2021). Make Child Care More Stable: Pay by Enrollment. Washington, DC: New America. *https://www.newamerica.org/education-policy/briefs/make-child-care-more-stable-pay-by-enrollment/.*

[74] Workman, S. (2020). Grants and Contracts: A Strategy for Building the Supply of Subsidized Infant and Toddler Child Care. Washington, DC: Center for American Progress. *https://www.americanprogress.org/article/grants-contracts-strategy-building-supply-subsidized-infant-toddler-child-care/.*

[75] Greenberg, E. et all (2018). Are Higher Subsidy Payment Rates and Provider-Friendly Payment Policies Associated with Child Care Quality? Washington, DC: Urban Institute. *https://www.urban.org/sites/default/files/publication/96681/are_higher_subsidy_payment_rates_and_provider-friendly_payment_policies_associated_with_child_care_quality_2.pdf.*

[76] Dorn, Chad. (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.*

[77] 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.*

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

[79] The White House (March 2023). Economic Report of the President. *https://www.whitehouse.gov/wp-content/uploads/2023/03/ERP-2023.pdf.*

[80] 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.*

[81] Schilder, D., et al. (August 2021). States Can Pursue Policies to Make Child Care More Accessible during Nontraditional Hours. Washington, DC: Urban Institute. *https://www.urban.org/urban-wire/states-can-pursue-policies-make-child-care-more-accessible-during-nontraditional-hours.*

[82] Adams, G., et al. (January 2021). To Make the Child Care System More Equitable, Expand Options for Parents Working Nontraditional Hours. Washington, DC: Urban Institute. *https://www.urban.org/urban-wire/make-child-care-*

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the nationally-representative 2012 National Survey of Early Care and Education (NSECE) study, only 8 percent of center-based providers and only 34 percent of listed, home-based providers reported offering any type of care during nontraditional hours.[83] A 2020 study of six states found that only 37 percent of child care providers in these states offered care during nontraditional hours, with providers more likely to provide care in the early morning hours (4:30 a.m. to 7 a.m.) than during evening, overnight, or weekend hours.[84] A larger percentage of family child care providers offer nontraditional hour care than center-based programs [85] so the continued decrease in family child care providers may make it even more difficult for parents to find care during nontraditional hours.

Lead Agencies need clear data and strategies to address gaps in the supply of child care. However, current reporting requirements make it difficult to understand supply assessments. Therefore, we also propose to split the provision at § 98.16(x) into two provisions to improve reporting on strategies to meet the statutory requirement for Lead Agencies to take steps to increase the supply and improve the quality of child care services for children in underserved areas, infants and toddlers, children with disabilities, and children who receive care during nontraditional hours. At revised proposed paragraph (x), we continue to require Lead Agencies include in their CCDF plans a description of the supply of care, including identifying shortages in the supply of high-quality providers and a list of the data sources used to identify the shortages. At paragraph (y), we propose to require Lead Agencies to describe their strategies to increase the supply and improve the quality of child care services, which must include how the Lead Agency will use grants and contracts to build supply, whether the Lead Agency plans to use other mechanisms to build supply, such as alternative payment rates, how those mechanisms will address the supply shortage, and the method for tracking progress to increase the supply and support parental choice.

Sustainable Payment Practices

Second, to support child care provider stability, make it easier for providers to serve children with child care subsidies, and increase parent choices in care, we propose to amend § 98.45(m) to require Lead Agencies to implement payment policies that are consistent with the private-pay market. Specifically, we propose to require Lead Agencies to pay child care providers serving CCDF families prospectively and to either pay these child care providers based on a child's enrollment or an alternative equally stabilizing approach proposed by the Lead Agency and approved by the OCC in the Lead Agency's CCDF Plan.

Section 658E6(c)(2)(S) of the Act (42 U.S.C. 9858c(c)(2)(S)) requires Lead Agencies to certify that payment practices for child care providers receiving CCDF funds reflect generally accepted payment practices of child care providers that serve children who do not receive CCDF assistance to support provider stability and encourage more child care providers to serve children receiving assistance from CCDF. The Act also requires the Lead Agency, 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. In addition to payment rates, policies governing provider payments are an important aspect of equal access and support the ability of providers to provide high-quality care. Generally accepted payment practices for parents who pay privately for child care, which is most parents, require a set fee based on a child's enrollment, generally in advance of when services are provided.[86] Payments by parents who pay privately typically are not adjusted due to child absences.

This NPRM amends § 98.45(m)(1), as newly proposed, to require Lead Agencies to ensure timely provider payments by paying prospectively prior to the delivery of services to align with the Act's requirement that Lead Agencies use generally accepted payment practices. Prospective payment is the norm for families paying privately (*e.g.,* payment for child care for the month of February is due February 1st) because providers need to receive payment before services are delivered to meet payroll and pay rent. But according to the FY 2022–2024 CCDF States Plans, only eight states and territories pay providers prospectively. Current CCDF regulations allow lead agencies to pay providers within 21 days of receiving a completed invoice. This practice places an up-front burden on providers in serving CCDF families and makes it difficult for providers to accept child care subsidies; providers often mention delayed payments as a key reason why they do not participate in the CCDF program and that it has a destabilizing effect on child care operations.[87] This proposed change would also increase parent choice, making it easier for providers to accept subsidies and improving stability among child care providers serving children participating in CCDF.

At § 98.45(m)(2), as proposed, the NPRM deletes two of three current payment practice options at paragraph (m)(2)(ii), which allows for full payment if a child attends at least 85 percent of authorized time, and paragraph (m)(2)(iii), which allows for full payment if a child is absent five or fewer days a month, to require that Lead Agencies pay child care providers based on a child's enrollment rather than attendance at paragraph (m)(2)(i). Neither of the two options we propose to delete support a provider's fixed operational costs, continuity of care for children, or reflect the norm for families paying privately. This proposed change would also allow us to meet the Act's requirement to support the fixed costs of providing child care services by delinking provider payment rates from an eligible child's occasional absences due to holidays or unforeseen circumstances such as illness, to the extent practicable. All Lead Agencies would have the option to collect attendance information to ensure children are still enrolled in the program, but this would not impact the provider's payment.

Thirty-six states and territories report they pay based on enrollment not attendance. The fixed costs of providing child care, including staff wages, rent, and utilities, do not decrease if a child is absent, which is why private pay families are generally required to pay for a full week or month, regardless of

system-more-equitable-expand-options-parents-working-nontraditional-hours.

[83] National Survey of Early Care and Education Project Team (2015). Fact Sheet: Provision of Early Care and Education during Non-Standard Hours. (OPRE Report No. 2015–44). Washington, DC: Office of Planning, Research and Evaluation, Administration for Children and Families, U.S. Department of Health and Human Services. Available at *http://www.acf.hhs.gov/programs/opre/research/project/national-survey-of-early-care-andeducation-nsece-2010-2014.*

[84] Child Care Aware of America. (March 2023). Who provides care for nontraditional-hours? Arlington, VA: Child Care Aware of America. *https://info.childcareaware.org/blog/nontraditional childcare.*

[85] Ibid.

[86] 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.*

[87] Ibid.

whether their enrolled child is absent. 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 and limit parent choices.

The Act and 2016 CCDF final rule require Lead Agencies to implement § 98.45(l)(2) ''to the extent practicable'' so in continuing policy set in the preamble of the 2016 CCDF final rule, we interpret this language as setting a limit on the extent to which Lead Agencies must act, rather than providing a justification for not acting at all (81 FR 67517). We propose to revise paragraph (l)(2) to require Lead Agencies who determine they cannot pay based on enrollment, describe their approach in the CCDF Plan, provide evidence that their proposed alternative reflects private pay practices for most child care providers in the state, territory, or tribe and does not undermine the stability of child care providers participating in the CCDF program. OCC expects to approve alternative approaches in only limited cases where a distinct need is shown.

We recognize that Lead Agencies may need additional flexibility in exceptional instances where a child care provider is suspected of fiscal mismanagement so we propose to add at § 98.45(m)(7) 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.

These proposed changes are designed to align with generally accepted payment practices in the private child care market. We request comment on typical payment practices for families not receiving CCDF assistance and if there are other practices that may increase provider participation in the child care subsidy system.

Paying the Established Subsidy Rate

Finally, this NPRM proposes to codify at § 98.45(g) that Lead Agencies should strive to pay eligible child care providers caring for children receiving CCDF subsidies the Lead Agency's established subsidy rate in order 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. This proposal would promote equal access, 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, which is a central purpose of the Act. Lead Agencies may pay amounts above the provider's private pay rate to support quality and may peg a higher payment rate to the provider's cost of doing business at a given level of quality. Payments may exceed private pay rates 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)

CCDF requires Lead Agencies to set child care provider payment rates based on findings from a market rate survey and narrow cost analysis or an 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. 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 rates to meet health, safety, and staffing requirements and meeting these standards relies on child care providers receiving the full payment rate. OCC has strongly encouraged 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 also restated the importance of setting higher payment rates and using the 75th percentile as a benchmark to gauge equal access for Lead Agencies conducting a market rate survey and says ''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)

OCC has prioritized the importance of increasing the percentile on which provider payment rates are based, 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. OCC 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. Increased provider payments are important for equal access, but, as stated above, the market rate survey alone is not enough information to set payment rates. The cost of care must be considered to set payment rates high enough to support high-quality child care for all children.

However, some Lead Agencies dictate the provider be paid less than the Lead Agency's established base payment rate to match the constrained price the provider charges parents paying privately. This policy subverts the CCDF requirement that payment rates promote parent choice and increase the number of children from families with low incomes in high-quality care. Particularly in low-income neighborhoods, private-pay prices are constrained by market rate prices that local families can afford to pay and do not reflect the true cost of care.[88] Because child care providers' *price* for services reflects what parents enrolling in their programs can afford and not necessarily the (higher) *cost* of providing services, the price is artificially constrained by affordability. Therefore, CCDF Lead Agencies may pay their full reimbursement rate when the unsubsidized price is lower.

Paying all CCDF providers at the CCDF agency established rate enables Lead Agencies to pay child care providers a rate that is closer to the true cost of child care, fosters parent choice, increases child care quality, and supports better child care supply. This is existing policy under rules and regulations of CCDF but because of its importance to achieving the main purposes of the Act, this NPRM proposes to codify it in the regulatory language to reduce confusion. OCC will provide additional guidance to Lead Agencies to support the policy.

Reducing Bureaucracy for Better Implementation (§ 98.21)

This NPRM proposes changes to lessen the burden on families seeking child care assistance, making it faster and easier for them to apply for and receive child care subsidies by clarifying ways that Lead Agencies can simplify subsidy eligibility determination, redetermination, and enrollment processes. The proposed revisions encourage strategies for Lead Agencies to expedite families' access to services by facilitating presumptive enrollment and encouraging an online application option. Additionally, the proposed revisions identify

[88] 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.*

opportunities for Lead Agencies to streamline eligibility policies by leveraging eligibility information from other programs and to align family eligibility timelines. These provisions are designed to align with the Act's goal of providing families with continuity of care, which benefits child well-being and family economic security.

Too often, eligible families lose access to child care subsidies due to paperwork issues. This is why eligible families that lose access to child care subsidies often re-enter the program within a few months.[89] Parents with unpredictable work hours or limited control over their schedule are significantly more likely to lose child care subsidies,[90] and parents with low incomes are more likely to have irregular work hours than parents with higher incomes.[91] Further, families who chose to exit the program are three times more likely to do so during their redetermination month than at any other time.[92] These studies suggest that families miss out on benefits because of administrative challenges rather than issues with eligibility. Thus, to limit administrative burden on families, this NPRM proposes to clarify ways that Lead Agencies can simplify subsidy eligibility determination and enrollment processes.

Presumptive Eligibility

This NPRM proposes to amend § 98.21(e) and (h)(5) 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. This will help ensure timely access to reliable child care assistance and reduce burden on families. Presumptive eligibility is currently allowable under CCDF, but this NPRM establishes parameters for Lead Agencies that choose to implement presumptive eligibility with the goal of reducing barriers for Lead Agency uptake. Specifically, the proposal 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 requirement 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.

The proposal further specifies that CCDF payments may be made for presumptively eligible children and those payments 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. However, Lead Agencies would be required to implement a minimum verification process that incorporates criteria that reduces the likelihood of error and fraud. Lead Agencies must track the number of presumptively eligible children who turn out to be ineligible and adjust their presumptive eligibility processes accordingly to ensure funds are safeguarded for eligible children. In addition, Lead Agencies would be required to describe their presumptive eligibility policies and procedures in their CCDF Plans.

The application process can be slow and difficult for families to navigate, delaying or preventing families from accessing high-quality child care;[93] derailing or delaying employment, education, or training; and impeding families' economic wellbeing.[94] 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 begin 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.[95] Some Lead Agencies require multiple weeks or even months of pay stubs to verify employment.[96] For individuals just beginning a new job, this can create a long and untenable delay in accessing affordable child care. Even after submitting the substantial paperwork required to apply for CCDF subsidies, families may wait another month or longer for the Lead Agency to verify and approve eligibility.[97] Barriers to accessing child care assistance leave parents with difficult choices. For example, parents may be forced to choose between delaying the start of a new job, forgoing a job opportunity altogether, or paying for care that is either unaffordable, unregulated, or lower quality. These choices, in turn, may lead to disruptions in parental employment, lost wages, financial risk, or disruptions in the continuity of care essential for supporting young children's development,[98] which is antithetical to the purposes of CCDF.

Presumptive eligibility is an important tool Lead Agencies can use to reduce burden on families and ensure timely access to reliable child care assistance. Lead Agencies already have the flexibility to implement presumptive eligibility policies. However, Lead Agencies may have been dissuaded from implementing presumptive eligibility because of a lack of clarity under current policy leading to concerns that payments made with CCDF funds for any child that is ultimately determined to be ineligible

[89] 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. https://health.oregonstate.edu/sites/health.oregonstate.edu/files/early-learners/pdf/research/why_do_they_leave_-_child_care_subsidy_use_in_oregon_-_published_article.pdf.*

[90] Henly, J. et al. (August 2015). Determinants of Subsidy Stability and Child Care Continuity: Final Report for the Illinois-New York Child Care Research Partnership. Washington, DC: Urban Institute. *https://www.urban.org/sites/default/files/publication/65686/2000350-Determinants-of-Subsidy-Stability-and-Child-Care-Continuity.pdf.*

[91] Golden, Lonnie. (April 2015). Irregular Work Scheduling and Its Consequences. Washington, DC: Economic Policy Institute. *https://www.epi.org/publication/irregular-work-scheduling-and-its-consequences/.*

[92] 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. https://health.oregonstate.edu/sites/health.oregonstate.edu/files/early-learners/pdf/research/why_do_they_leave_-_child_care_subsidy_use_in_oregon_-_published_article.pdf.*

[93] Adams, G., & Matthews, H. (2013). Confronting the child care eligibility maze: Simplifying and Aligning with other work supports. Washington, DC: Center for Law and Social Policy. *https://www.clasp.org/sites/default/files/public/resources-and-publications/publication-1/WSS-CC-Paper.pdf.*

[94] 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.*

[95] 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.*

[96] CCDF Policies Database, 2020 data. *https://ccdf.urban.org/.*

[97] 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.*

[98] Adams, G., Snyder, K., & Banghart, P. (2008). Designing subsidy systems to meet the needs of families: An overview of policy research findings. Urban Institute. *https://www.urban.org/research/publication/designing-subsidy-systems-meet-needs-families.*

for reasons other than fraud or intentional program violations may be considered improper payments.

Evidence suggests presumptive eligibility can be implemented with relatively low levels of financial risk, and the potential benefits for families are substantial. For example, Montana and Delaware have implemented presumptive eligibility in their CCDF programs. Families reported that presumptive eligibility was important for obtaining the required paystub for a job they had just started and that providers were more willing to enroll children because payments were already guaranteed. Notably, pilot tests of Montana's and Delaware's approach to presumptive eligibility for CCDF showed that Lead Agencies can effectively set criteria that minimize the possibility children will later be found ineligible.[99] For example, Delaware grants presumptive eligibility based on available system criteria (*e.g.,* parent work status, income, family size) and any other available documentation that indicates children are likely to be eligible. In addition, both states' systems are designed to automatically close cases at the end of the presumptive eligibility period, if eligibility is not determined, to reduce the likelihood of improper payments—with an added benefit of reducing administrative burden on the Lead Agency.

The proposed change at § 98.21(e) allows Lead Agencies to use presumptive eligibility to provide quicker access to child care assistance for families with urgent needs, while reducing perceived financial risk and administrative burden by clarifying that CCDF funds may be used to cover presumptive eligibility payments if appropriate safeguards are in place. The proposed 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 number of ineligibilities and adjust their presumptive eligibility processes accordingly. We note that the proposed three-month period is a maximum presumptive eligibility period. Lead Agencies are required to end assistance for families once they are determined to be ineligible, even if that determination is completed in under three months. As proposed in § 98.21(e), Lead Agencies must also maintain an improper payment rate that does not exceed the threshold established by the Secretary to implement presumptive eligibility using CCDF funds.

A related change at § 98.21(a)(5)(iv) is proposed to allow Lead Agencies to discontinue assistance prior to the end of the minimum 12-month eligibility period in cases where a period of presumptive eligibility ends with a failure to determine eligibility due to the family not completing required eligibility processes, such as providing required paperwork. Likewise, Lead Agencies have discretion to determine the processes and documentation required for eligibility verification and can consider ways to minimize the time to process applications, thereby reducing the length of the presumptive eligibility.

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

We are requesting comment on whether three months is an appropriate length of time for presumptive eligibility. We welcome data on the average amount of time taken to process applications.

Eligibility Verification

This NPRM proposes to clarify at § 98.21(g) as redesignated, certain options Lead Agencies have to simplify eligibility verification. Families receiving child care assistance are likely to be receiving services from other benefits programs [100] and since research finds that administrative burden reduces uptake and continuation of services,[101] it would be beneficial for states, territories, and tribes to design service-delivery systems in ways that connect families with the programs they need with the least parent and administrative burden possible. 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 FFY2022–2024 CCDF Plan.

This NPRM proposes to clarify in § 98.21(g)(1) and (2), as redesignated, that Lead Agencies have flexibility to use a family's enrollment in other public benefits program or documents or verification used for other benefit programs to verify eligibility for CCDF, where appropriate. As currently allowable under the 2016 CCDF final rule, Lead Agencies can use enrollment in other benefit programs to satisfy specific components of CCDBG eligibility without additional documentation (*e.g.,* income eligibility, work, participation in education or training activities, or residency) or satisfy CCDBG eligibility requirements in full if eligibility criteria for other benefit programs is completely aligned with CCDBG requirements. For example, income eligibility for Temporary Assistance for Needy Families (42 U.S.C. 601 *et seq.*), and Head Start/Early Head Start (42 U.S.C. 9831 *et seq.*) meet 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 variability 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.

Allowing Lead Agencies to use enrollment in other benefit programs to verify CCDF eligibility will reduce duplication of effort on the part of families and streamline the eligibility determination process for Lead Agencies, thereby reducing burden on both sides. The proposal would support the well-being of children by clarifying a policy option Lead Agencies can employ to reduce the amount of time families may have to wait to access child care services while Lead Agencies process eligibility determinations that are redundant to determinations made by other benefit programs. Collaboration and coordination with other benefit programs is one key way to simplify eligibility determinations and ensure families can access all available benefits. This aligns with past OCC information memoranda which have encouraged Lead Agencies to consider cross-enrollment for multiple benefit

[99] Ibid.

[100] Ibid.

[101] Schweitzer, J. (May 2022). How To Address the Administrative Burdens of Accessing the Safety Net. Washington, DC: Center for American Progress. *https://www.americanprogress.org/article/how-to-address-the-administrative-burdens-of-accessing-the-safety-net/*.

programs[102] and streamline eligibility processes through information sharing with other benefit programs.[103]

In § 98.21(g)(2), this NPRM proposes to clarify that Lead Agencies are 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 would 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).

Application Processes

To make it easier for eligible families to access child care services, we propose a change at § 98.21(f)(1), as redesignated, to require Lead Agencies 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 in turn improves access to child care and can improve families' economic wellbeing. Evidence suggests the initial CCDF eligibility determination process remains difficult, confusing, and overly burdensome for some parents and poses a barrier to accessing affordable child care for families with low incomes.[104] Burdensome application processes discourage families from applying for child care assistance, delay access to child care, and can cause substantial stress to parents.[105] 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.[106] Not surprisingly, parents also report that online application options can be more convenient, less stressful, and prove especially useful in reducing the burden of document submission.

Thus, ACF recommends that Lead Agencies implement these strategies to reduce the administrative burden for families and, at a minimum, offer both paper and online applications to implement this important strategy that can ease access to child care and strengthen family economic wellbeing. Currently, 33 states offer online subsidy applications.

However, as Lead Agencies assemble online applications, they must take care to reduce the burden on families in applying for CCDF assistance. Merely converting the paper application process to one that is performed online will not yield benefits for families. As Lead Agencies create online applications, they should adjust their policies and procedures, as necessary, to address any undue burden placed on families in seeking assistance. One method of approaching this is documented in the model application, which includes practices for defining, collecting and verifying eligibility information, that the Office of Child Care developed and released in 2022.[107]

Additionally, as Lead Agencies consider easing the burden on families in seeking assistance under 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.,* TANF or Supplemental Nutrition Assistance Program (SNAP)) and then link directly to applications for these programs.[108]

Additional Children in Families Already Receiving Subsidies

We propose new language at § 98.21(d) to clarify that the minimum twelve-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 proposal does not reflect new policy, as section 658E(c)(2)(N) (42 U.S.C. 9858c(c)(2)(N)) and § 98.21(a) do not provide exceptions to the 12-month minimum eligibility requirement. However, because the existing regulations do not explicitly address this scenario, there has been inconsistent implementation of the requirement in which additional children (*e.g.,* newborn or school age child needing after school care) in the family have not received 12 months of care before redetermination. Therefore, we propose to codify the requirement to address confusion around the policy.

In cases where multiple children in the same family have initial eligibility determined at different points in time, we would 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 can be done by extending the eligibility period for the existing child beyond 12 months. We emphasize that 12 months is a minimum requirement and Lead Agencies can extend eligibility periods longer than 12 months. OCC has recommended extending eligibility periods beyond 12 months in other cases, such as to align re-determination with other benefit programs like the Early Head Start-Child Care partnerships. A conforming change is proposed at § 98.16(h)(4) to require Lead Agencies to describe their policy related to additional children in the CCDF plan. It is not ACF's intention for Lead Agencies to implement a full determination and recommends leveraging existing family eligibility verification about the family and requiring only necessary information (*e.g.,* proof of relationship, provider payment information) to add the additional child to the program.

Implementing Technical and Other Changes for Improved Clarity

Definitions—§ 98.2

We propose three technical changes to definitions at § 98.2 and the addition of two new definitions. In this section, italics indicate defined terms. First, we propose to amend the definition of *major renovation* to be based on cost and not based on a description of structural change. Section 658F(b) of the CCDBG Act (42 U.S.C. 9858d(b)) prohibits states and territories from using CCDF funds for the purchase or improvement of land, or for the purchase, construction, or permanent improvement (other than minor remodeling) of any building or facility, but it does not define major or minor renovations. The current definition for *major renovation* was established in the 1998 CCDF regulation and focuses on

[102] CCDF–ACF–IM–2016–02: 2014 Child Care Reauthorization and Opportunities for TANF and CCDF, *https://www.acf.hhs.gov/sites/default/files/documents/occ/ccdf_acf_im_2016_02.pdf.*

[103] CCDF–ACF–IM–2011–06: Policies and Practices that Promote Continuity of Child Care Services and Enhance Subsidy Systems, *https://www.acf.hhs.gov/sites/default/files/documents/occ/im2011_06.pdf.*

[104] 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.*

[105] 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.*

[106] 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.*

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

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

the type of change, specifically whether it is a structural change or would significantly alter the facility.[109] The preamble to the 1998 final rule notes that the definition mirrored that used by the Head Start program (63 FR 39980) at the time, and Head Start's definition has since been modified to be cost-based. The definition from the 1998 child care rule has led to confusion in the field and inconsistent guidance for Lead Agencies and child care providers. Therefore, we propose changing the definition of *major renovation* to be based on the cost of renovations for better clarity and consistent implementation. Specifically, we propose setting the threshold at $250,000 for centers and $25,000 for family child care homes in recognition that costs will vary based on the size of the child care program, with annual adjustments based on inflation that will be posted on the OCC website. Any individual renovation or collective renovations exceeding these amounts would be considered major renovations. We also propose including language clarifying that 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. This proposed change aligns with changes being proposed to the Head Start Performance Standards. We are specifically seeking comment on whether these are the appropriate thresholds for defining *major renovation* and whether the definition should be annually adjusted to account for inflationary growth. This proposed definition applies to all CCDF Lead Agencies. 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)) The proposed definition will be used to determine which projects are considered major renovation and require approval from ACF in accordance with § 98.84(b).

We also propose to add 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 proposed new definition aims to streamline the CCDF regulations, particularly where Territory funding and allocations are discussed. We propose a conforming change to the definition of *State* to mean ''any of the States and the District of Columbia and includes Territories and Tribes unless otherwise specified''.

We also propose to update definitions associated with changes made to CCDF mandatory and matching funds in the American Rescue Plan (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) and changing the tribal set-aside for mandatory funds from between 1 and 2 percent of funds to a flat $100 million each fiscal year (*see* CCDF–ACF–IM–2021–04). In addition, the ARP Act appropriated CCDF mandatory funds ($75 million) to territories for the first time. To revise the CCDF regulation with the new territory mandatory funding statute, we propose to add 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 revising 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.''

Section 98.13—Applying for Funds

We propose a technical change at § 98.13(b)(4) to change the regulatory citation from 45 CFR 76.500 to 2 CFR 180.300 to accurately reflect current regulations at 2 CFR 180.300 governing grants management.

Section 98.16—Plan Provisions

We propose to revise § 98.16(h) to align with corresponding proposed changes at § 98.21. These proposed changes require lead agencies to describe in their CCDF plans their processes for incorporating additional eligible children in families already receiving subsidies, as proposed at § 98.21(d); their procedures and policies for presumptive eligibility, as proposed at § 98.21(e); and their processes for using eligibility for other programs to verify eligibility for CCDF, as proposed at § 98.21(g). These proposed policy changes are discussed earlier in this preamble.

We also propose a technical change at § 98.16(dd) as redesignated. The current regulatory language incorrectly says, ''verity eligibility.'' This is an error and should read ''verify eligibility.''

Section 98.21—Eligibility Determination Processes

We propose to add the word ''on'' in § 98.21(a)(2)(iii) to correct a grammatical error. The revised language would read, ''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).

Section 98.33—Consumer and Provider Education

We propose a new provision at § 98.33(a)(4)(ii) to clarify which reports Lead Agencies must post on consumer education websites to address Lead Agencies' confusion about existing requirements. 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. Current 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 does not define a ''full monitoring and inspection report.'' This lack of clarity has led to varied implementation of the requirement, 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 critical for parents to understand the full scope of a monitoring inspection, so parents have the information they need to make informed child care decisions. We propose to redesignate § 98.33(a)(4)(ii) through (iv) accordingly without changes.

We also propose to amend paragraph (a)(5) to include the total number of children in care as a required component of the CCDF consumer education website. Current regulations at § 98.33(a)(5) require Lead Agencies to post the 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 also 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/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 a lack of clarity in monitoring Lead Agency compliance. Including the total number of children in care by type of care provides helpful context for parents and the public to understand the aggregate data on serious injuries and fatalities in child care settings. Lead Agencies are already required to include this information on their websites, so we do not expect this

[109] 63 FR 39980 (*https://www.govinfo.gov/content/pkg/FR-1998-07-24/pdf/98-19418.pdf*).

proposed change to the regulatory text to be an additional burden. To ensure clarity, we propose to separate the existing requirements in paragraph (a)(5) into multiple subprovisions but without change.

Criminal Background Checks—§ 98.43

Section 98.43 details CCDF's comprehensive background check requirements, policies, and procedures. We propose three changes to clarify existing requirements regarding criminal background checks. First, we propose a change at § 98.43(a)(1)(i) and (d)(3)(i) to clarify the requirement that employment eligibility decisions must be made based on results of background checks and not after initiating all checks. Second, we propose to clarify at § 98.43(c)(1) it is the role of the State, Territory, Tribe, and Lead Agency to determine a prospective staff member's eligibility for employment, coordinating across relevant public agencies as necessary, such as state child welfare offices and the State Identification Bureau. Currently, some states use procedures that allow child care providers to make employment determinations for some parts of the background check requirements, and this is not allowable under the 2016 CCDF final rule. As proposed, the Lead Agency must provide the results of the background check to the child care provider in a statement that indicates only whether the staff member is eligible or ineligible, without revealing specific disqualifying information.

Third, we propose a change at § 98.43(c)(1)(v) to clarify that all adjudications for child pornography are disqualifying for child care employment. The Act requires Lead Agencies to find individuals ineligible for employment if they have been convicted of a violent misdemeanor committed as an adult against a child, including the following crimes: child abuse, child endangerment, sexual assault, or of a misdemeanor involving child pornography. Some Lead Agencies interpreted this to mean that a misdemeanor charge of child pornography had to be considered ''violent'' to be classified as a mandatory disqualifying offense under the Act. The proposed change clarifies that a standard misdemeanor involving child pornography is considered a disqualifying crime under the Act, whether considered ''violent'' or not.

Child Care Services—§ 98.50

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, so we propose to delete the phase-in schedule for the quality set-aside at § 98.50(b)(1) because it is outdated. This proposal 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.

Similarly, we propose to strike § 98.50(b)(2) because it is outdated. Section 658G(a)(2)(B) of the Act (42 U.S.C. 9858e(a)(2)(B)) 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 date is no longer necessary in the regulatory language, and we propose to delete it. This proposal 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.

We also propose to amend § 98.50(e) to update regulations to align them with policies implemented by ACF in FY 2021 after changes made to section 418 of the Social Security Act (42 U.S.C. 618), as part of the American Rescue Plan Act of 2021 (Pub. L. 117–2). In accordance with Public Law 117–2, Territories received permanent CCDF mandatory funds for the first time in FY 2021. Given statute did not provide Territories with CCDF mandatory funds prior to FY 2021, the current CCDF regulations do not include requirements of how Territories must spend CCDF mandatory funds. We propose 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 [110] 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. This requirement is aligned with statutory requirements and has applied to Territories since they first received mandatory funds in FY 2021. The proposed regulatory change simply codifies the requirement.

Availability of Funds—§ 98.60

To reflect that Territories began receiving annual mandatory funds in FY 2021 due to provisions in the American Rescue Plan (ARP) Act, we propose to make 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.

We also propose a conforming change at paragraph (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 existing provisions at paragraphs (d)(4) through (8) would be renumbered accordingly.

Allotments From the Mandatory Fund—§ 98.62

We propose 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 propose to update the statutory reference to the Social Security Act to specify the provision referenced section 418(a)(3)(A), and we propose to delete 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 and no longer a percent of the total allocated.

Finally, we also propose to add 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 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). We propose to codify that reallotment formula in the regulations. Specifically, we propose that the amount of each Territory's mandatory allocation be based on (1) a Young Child factor—the

[110] 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.*

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 included; 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. Proposed § 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.

Reallotment and Redistribution of Funds—§ 98.64

We propose to update § 98.64(a) to reflect that Territories began receiving mandatory funds in FY2021 due to the ARP Act. We propose to specify Territory mandatory funds are subject to redistribution and that mandatory funds granted to Territories must be redistributed to Territories. We also propose to specify 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. We also propose to add a new paragraph (e) to codify these procedures for redistributing Territory mandatory funds.

Contents of Reports—§ 98.71

This NPRM proposes to delete the data element at § 98.71(a)(11) that requires 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 because it would be unreasonably burdensome on parents and providers. We also propose conforming renumbering changes to existing paragraphs (a)(12) through (22). This reporting requirement 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 elements would create a reporting burden for families and/or providers, and that it would be challenging to collect and report accurate data. Another state indicated that it has legacy systems that would be unable to calculate or report the data. A State argued that the new elements were 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 seek comment on whether this requirement should be removed, including the potential implications of instituting, or removing this reporting requirement.

Subpart I—Indian Tribes

In FY 2023, 265 Tribal Lead Agencies received CCDF grants totaling $557 million.[111] Prior to the 2016 CCDF final rule, Tribal Lead Agencies were divided into two categories: Those with allocations of more than $500,000 that were required to operate a certificate program for direct services, and those with an allocation under $500,000 that were exempt from administering a certificate program. Otherwise, prior to 2016, Tribal Lead Agencies largely operated under the same rules as States and territories. The 2016 CCDF final rule created three categories of Tribal Lead Agencies based on whether they had a small (less than $250,000), medium ($250,000 to $1 million), or large (more than $1 million) allocation. Tribal Lead Agencies with small allocations operate under a more limited number of CCDF requirements, may choose not to provide direct services, and may submit an abbreviated CCDF plan. Tribal Lead Agencies with medium and large allocations must meet more requirements and must provide direct services. There are some CCDF requirements from which all Tribal Lead Agencies are exempt, such as the requirement to have a child care consumer education website.

All the proposed changes in this NPRM would apply to medium and large allocation tribes, with the exception of the requirement to use grants and contracts to build supply, as described below. We propose a change to the liquidation period for major renovation and construction, which is only applicable to Tribal lead agencies because states and territories may only use CCDF funds for minor renovations.

We recognize that some existing regulatory requirements for Tribal lead agencies may not be appropriate for Tribal lead agencies or provide the flexibility necessary for Tribal lead agencies to implement CCDF programs in a way that meets the needs of the children, families, and child care providers in their jurisdiction. We also recognize that any significant changes made to Tribal regulations must be made with input and consultation with the Tribal Nations and organizations that receive CCDF funding. Therefore, we will separately release a Request for Information to begin a consultation with Tribal Lead Agencies and other Tribal stakeholders on areas where more flexibility would help improve implementation of the CCDF program. We will also seek feedback on some of the thresholds that are not regulatory but were set or updated in the preamble to the 2016 CCDF final rule, including the tribal allocation thresholds and discretionary base amounts.

Grants and contracts. As part of this NPRM, we propose to add new requirements at §§ 98.16(y)(1), 98.30(b)(1), and 98.50(a)(3), for states and territories to use grants and contracts for direct services to increase the supply of child care for infants and toddlers, children with disabilities, and children who need care during nontraditional hours, but we propose to exempt all Tribal Lead Agencies from these requirements. Tribal Lead Agencies vary significantly in how they administer the CCDF subsidy program, including with many tribal lead agencies operating their own child care programs with CCDF funds. Therefore, a requirement to use grants and contracts would not be feasible though it remains an option for those Tribal Lead Agencies that would like to use this funding mechanism. Tribal Lead Agencies would still be required to take steps to address and report on supply gaps.

Quality funds. At § 98.83(g), we propose to make two technical changes to delete the phase-in schedule for the quality spending increase at (1) and the infant and toddler spending set-aside at (2) because they are outdated. Current regulations included a phase-in period for Tribes to implement the increased quality set-aside. This phase-in was completed in FFY 2022. Therefore, the phase-in is no longer necessary in the regulations. Going forward, all Tribal Lead Agencies must spend at least 9 percent of their total expenditures, not including state maintenance of effort funds, on quality activities.

Similarly, the 2016 CCDF final rule included a new permanent requirement for Tribal Lead Agencies with large and medium allocations to spend at least 3 percent of total expenditures on activities to improve the quality and supply of child care for infants and toddlers. The 2016 CCDF final rule delayed the effective date of this requirement until FFY 2019. This date is no longer necessary in the regulatory language, and we propose to delete it. These technical changes do not impact

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

the requirement for tribes to meet these spending requirements.

Tribal Construction and Major Renovation Liquidation Period. We propose to revise § 98.84(e) to lengthen the liquidation period for tribal construction and major renovation funds to give tribal lead agencies sufficient time to carry out construction and major renovation projects, which can take many years to plan and execute successfully. The authority to request to use their CCDF funds for construction and major renovation given in section 658O(c)(6)) of the Act (42 U.S.C. 9858m(c)(6)) has been an important Tribal flexibility in the CCDF program. Between FY 2018 and FY 2023, approximately 120 Tribal Lead Agencies set-aside a portion of their CCDF funds to construct or renovate child care facilities in their service area, ultimately improving child care services in tribal communities by building the supply of child care in areas that lacked providers. Tribes have incorporated design features that support the delivery of safe, high-quality care and promote child development, as well as cultural components that reflect each tribe's values and beliefs.

While many tribes have successfully used CCDF funds to build or renovate child care facilities, other tribes have been thwarted by the limited time available to spend the CCDF funds. Current regulations allow tribes to liquidate or spend construction and renovation funds during the year of the award or the two years following the year of award. Unlike CCDF funds spent for purposes other than construction or major renovation, there is no separate requirement to obligate (*i.e.,* legally commit through a contract or other means) the funds within a certain period. The lack of a separate obligation period was intended to give tribes additional time to complete construction and major renovation projects. However, despite the intention to give more flexibility, the existing timeline is insufficient.

Planning and completing successful construction and renovation projects requires many time-consuming steps, including engaging community stakeholders, and hiring architects, engineers, contractors, early learning experts, and other professionals. Project requirements include: conducting a community needs assessment; designing a developmentally appropriate learning environment, a detailed budget, and an environmental assessment; developing plans and specifications; and carrying out the actual construction and renovation work. Tribes have experienced many unexpected delays outside of the control of the Tribal Lead Agency that have impacted the duration of projects, including the COVID–19 pandemic, supply chain shortages, and varying weather conditions based on geographic location. These delays have forced some tribes to adjust the scope of their projects, or to elect to use funds initially set aside for construction and major renovation projects for other CCDF purposes, to meet the liquidation deadline. This leaves much-needed facility projects unfinished, resulting in unmet needs related to availability of child care in tribal communities.

Therefore, we propose to amend the language at § 98.84(e) to allow Tribal Lead Agencies until the end of the fourth year following the year that the grant is awarded to liquidate funds for construction and major renovation (rather than the end of the second year following the year that the grant is awarded, as required by current regulations).

Tribal Lead Agencies currently have the flexibility to request to use construction and major renovation funds for other allowable CCDF purposes if their plans for a construction or major renovation project fall through or are delayed. We would like to establish guardrails to ensure that this flexibility does not result in circumstances where a Tribal Lead Agency inappropriately circumvents the obligation and liquidation requirements for CCDF funds that are not used for construction or major renovation purposes.

We solicit comments on how to best establish these guardrails, such as perhaps establishing a deadline for requesting to use construction or renovation funds for other purposes.

Content of Error Rate Reports—§ 98.102

OCC aims to strengthen oversight and monitoring of program integrity risks by clarifying requirements at § 98.102 for the State Improper Payments Corrective Action Plan (ACF–405). We propose to amend § 98.102(c)(2) to expand the required components of error rate corrective action plans. Specifically, we propose to require 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 proposed 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.* We also propose to separate current (c)(2)(ii) into two provisions, with proposed amended paragraph (c)(2)(iii) to require detailed descriptions of actions to reduce improper payments and the individual responsible for actions being completed and proposed amended paragraph (c)(2)(iv) to require milestones to indicate progress towards action completion and error rate reduction. Additionally, we propose to revise 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.

We also propose to add 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 propose to add 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." As proposed, it will be at OCC's discretion to impose a penalty for not following them "as described."

IV. 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 proposed 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 No.	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 proposed rule would add new requirements which States and Territories will be 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 proposed rule would add new requirements which Tribal lead agencies with medium and large allocations will be required to report in the CCDF plans.
ACF–403, ACF–404, ACF–405 (Error Rate Reporting).	§§ 98.100 and 98.102	0970–0323	01/31/2025	The proposed rule would modify this information collection to add new components to the corrective action plans.
Consumer Education Website and Reports of Serious Injuries and Deaths.	§§ 98.33, 98.42	0970–0473	04/30/2023	The proposed rule would modify 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 proposed 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	Proposed estimated average burden hours per response	Proposed estimated annual burden hours
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–403, ACF–404, ACF–405 (Error Rate Reporting)	52	276	907	43,716	912	43,732
Consumer Education Website	56	1	300	16,800	315	17,640

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 proposes to certify, under 5 U.S.C. 605(b), as enacted by the RFA (Pub. L. 96–354), that this rule would 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 proposed regulation. As described in the preamble to this proposed rule, several of the proposed 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 would 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 proposed 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 NPRM would not have any impact on the autonomy or integrity of the family as an institution.

V. Regulatory Impact Analysis

We have examined the impacts of the proposed 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 have conducted a Regulatory Impact Analysis (RIA) to estimate and describe the expected costs, transfers, and benefits resulting from this 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 have not examined and included Tribal policies in our analysis.

A. Context and Assumptions

All proposed changes in this rule are allowable costs within the CCDF program and we expect activities to be paid for using CCDF funding. Nearly $11.5 billion in Federal funding is allocated to State, Territory, and Tribal CCDF grantees in FY 2023.[112] In addition to the Federal funding, states may contribute their own funds to access additional Federal funds, increasing FY 2023 funding for CCDF to about $13.7 billion. Many states have also been increasing state investment in child care beyond the required levels. Without additional funding, it is possible that lead agencies may make difficult tradeoffs, such as reducing the total number of children served by CCDF. However, Lead agencies have flexibility in how they implement many of the proposed provisions and may adjust other policies to avoid additional costs associated with potential 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.

The calculations in this RIA include a number of assumptions and projections. These are variables where there was not data or research available to support a specific figure. To move forward with cost estimates for these provisions, ACF made what we believe to be reasonable assumptions, including on Lead Agency responses to the NPRM's policies. However, while we do not have data for these items, we welcome input from commenters who may have resources that could inform these assumptions and projections.

1. Baseline

To get an accurate account of the costs, transfers, and benefits of this proposed rule, we first established a baseline for current CCDF States 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 proposed rule was published. The Lead Agency data and policies described in this RIA is gathered primarily from:

- *ACF–801 (2020, preliminary):*[113] this is case-level data that are collected monthly. The preliminary 2020 data are the most recent data available.
- *ACF–118 (State and Territory Plan, 2022–2024):*[114] 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 Plans were the most current data available.
- *CCDF Policies Database (2020):*[115] 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 2020][116]

Average number of families	Average number of children
900,300	1,489,200

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

[113] *https://www.acf.hhs.gov/occ/data/fy-2020-ccdf-data-tables-preliminary.*

[114] *https://www.acf.hhs.gov/occ/report/acf-118-overview-state/territorial-plan-reporting.*

[115] CCDF Policies Database, 2020 data. *https://ccdf.urban.org/.*

[116] *https://www.acf.hhs.gov/occ/data/fy-2020-preliminary-data-table-1.*

TABLE 2—NUMBER OF CHILD CARE PROVIDERS RECEIVING CCDF FUNDS
[FY 2020][117]

Licensed or regulated				Legally operating without regulation							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		
37	47,095	22,555	71,630	15,821	6,649	48,122	14,782	0	0	5,042	231,723

2. Implementation Timeline

ACF expects provisions included in the proposed rule, if finalized, to become effective 60 days from the date of publication of the final rule. Compliance with provisions in the final rule would be determined through ACF 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 proposed rule does not have specific implementation dates for individual provisions, we believe it is reasonable to assume that it will take Lead Agencies some time to implement these policies, particularly since many of these are at the Lead Agency's option and some of the proposed changes in this NPRM may require action on the part of a Lead Agency's legislature or require State, Territory, or Tribal-level rulemaking in order to implement.

For the purposes of this RIA, we are examining a 5-year timeframe and building in one year for Lead Agencies to phase in these provisions. The cost estimate assumes a one year ramp up period of half of the full costs with full implementation in years three, four, and five. The costs, transfers, and benefits in this estimate are phased-in as follows:

Year 1: One half of the full costs/transfers/benefits estimate
Years 2, 3, 4, and 5: Full costs/transfer/benefits estimate

ACF welcomes public comment on specific provisions included in this proposed rule that may warrant a longer phase-in period. These comments will be taken into consideration when assessing the costs, transfers, and benefits of the final rule.

3. Need for Regulatory Action

Congress last authorized the Child Care and Development Block Grant 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, the HHS has carefully explored the successes and challenges in the Act's implementation, learning from the experiences of Lead Agencies, providers, families, and early educators, and assessing the impact and implications of the COVID–19 public health emergency.

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

The policies in this NPRM will help families access high-quality child care and mitigate myriad negative consequences of inadequate access to care. Specifically, the proposed 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.

While ACF has provided guidance on these issues before, several CCDF Lead Agencies have clearly stated that implementing many of these policies with uniformity is not possible without the authority of a regulation. For example, some changes to state-level CCDF policy require state-level legislative action. Further, this regulatory action provides much-needed 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.

Although we acknowledge that there could be potential increases in resource use at the Lead Agency level, for the technical purposes of this regulatory impact analysis, most of the impacts from these provisions are more accurately categorized as transfers. (The flow of these transfers between entities is discussed in more detail later in this regulatory analysis; for example, the estimation of caseload effects shows how the cost side of the transfers might ultimately be borne by families whose children would participate in CCDF in the absence of the proposed rule but would no longer be able to do so upon the rule's issuance.) The exceptions are the administrative costs associated with grants and contracts and the potential administrative costs associated with encouraging an online component to the initial eligibility application process.

We welcome comment on all aspects of the analysis, but throughout the narrative, we specifically request comment in areas where there is uncertainty.

1. Family Co-Payments

To ensure co-payments are not a barrier to accessing care, we propose to clarify that co-payments shall not be greater than 7 percent of family income. The proposed revisions also give Lead Agencies more flexibility to waive co-payments for additional families.

Permissible Co-payments: This policy would declare co-payments above 7 percent of a family's income are an impermissible barrier to child care and would be prohibited. We are categorizing 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 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, how many of the reported co-payments were above that threshold, and by how much. Then we used CCDF data on the number of families to estimate 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

[117] *https://www.acf.hhs.gov/occ/data/fy-2020-preliminary-data-table-7.*

Federal Poverty Line (FPL)).[118] When we apply the current amount of co-pay over 7 percent to these families, we get an annualized transfer amount of $18.8 million. However, it should be noted that 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 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.

Waiving Co-payments for Additional Populations: This policy would allow Lead Agencies to choose more easily to waive co-payments for families with incomes up to 150 percent of FPL and for eligible families with children with disabilities. Lead Agencies are currently allowed this flexibility for families up to 100 percent of FPL and for vulnerable populations. To calculate this proposed policy, we used state-by-state data (ACF–801) to determine how many CCDF families currently have a co-payment. This eliminates families that already have their co-pays waived from the estimate. We then look at the low and high co-pay amounts (as reported in the CCDF State Plans) and apply it to the remaining CCDF families based on the income distribution of CCDF families (ACF–801 data). We did not do separate estimates for children with disabilities because we have limited data on current co-payments for children with disabilities.

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 $9.5 million to implement this policy. We also conducted a supplemental analysis using ACF–801 administrative microdata, which validated this estimate.

TABLE 3—PAYMENT RATES AND PRACTICES, TRANSFERS
[$ in millions)]

Co-pays	Implementation period (year 1)	Ongoing annual average (years 2–5)	Annualized transfer amount (over 5 years)			Total present value (over 5 years)		
			Undiscounted	Discounted		Undiscounted	Discounted	
				3%	7%		3%	7%
7% Co-payment Cap	$10.4	$20.9	$18.8	$18.7	$18.5	$94.0	$88.1	$81.2
Waiving Co-payments	5.3	10.5	9.5	9.4	9.3	47.5	44.5	41.0
Total	15.7	31.4	28.3	28.1	27.9	141.5	132.6	122.2

2. Payment Rates & Practices

The proposed revisions promote provider-friendly payment rates and practices that, if implemented, would increase parent choice in child care, support financial stability for child care providers that currently accept CCDF subsidies, and encourage new providers to participate in the subsidy system. These policies, both with effects categorized as transfers are: Paying Full Rate and Enrollment-based Payment.

Paying Established Payment Rate (Transfer): This policy would codify 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 of the data that are discussed below. Given these limitations we had for this estimate, we used two different methods. The two different approaches were used to validate each other; while the two approaches used very distinct methodologies, they arrived at similar estimates.

• 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 Plans [119] and (2) the Average Subsidy Rate (the government portion of actual payments, excluding parent co-payment) as reported in the ACF–801 data.[120] 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

[118] *https://www.acf.hhs.gov/sites/default/files/documents/occ/Characteristics_of_Families_and_Children_FY2020.pdf.*

[119] *https://www.acf.hhs.gov/occ/report/acf-118-overview-state/territorial-plan-reporting.*

[120] *https://www.acf.hhs.gov/occ/data/fy-2020-ccdf-data-tables-preliminary.*

payment is lower than the base payment rate (including co-payments), such as variation in attendance, for 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 adjusted our figures by a factor of two to simulate 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 $586 million if 25 percent of States adopted this policy and as low as $117 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 $234.7 million.

• *Caseload Microdata (Approach 2):* For this second approach, we used ACF–801 caseload microdata (from FY 2018, which was the most recent publicly available data). This allows us to compare subsidy payments and the state's base rate for each child's provider. Doing so allows us to include co-payments to give a more precise understanding of the difference. Some assumptions that went into this approach:

○ *Children in More than One Setting:* In some of the case level data, the child was associated with more than one setting. For the purposes of this estimate, we used the setting with the higher subsidy payment.

○ *Households with More than One Child:* Co-payments are reported by family, so in households with two or more children receiving care, we divided the co-pay evenly among the children. For example, if a family with two children had a $100 co-pay, we assumed that $50 of co-pay went to each child.

○ *Calculating Weekly Provider Payment:* The provider payment is the subsidy payment + parent co-pay (after the co-pay has been split among siblings) and is reported as a monthly figure. To convert this to a weekly amount, we divided by 4.3.

○ *Setting:* Consistent with Approach 1, we used only Family Child Care Homes (including Group Homes) and Child Care Center settings.

○ *Payments above the Base Rate:* As discussed above, these payments were removed from the sample.

○ *School-age children:* The base rate data used for this analysis was for children who are not yet in school, so we removed school-age children from the microdata sample. Including school-age children would have likely resulted in an overestimate of costs (*i.e.,* an overestimate of the amount by which providers are underpaid by subsidies).

○ *Anticipated Take-up:* To remain consistent with Approach 1, we are assuming that 10 percent of states take up this policy option.

For Approach 2, we had an annual transfer estimate of $222.3 million. Though, as stated above, we examined a range of take-up rates with a transfer estimate as high as $571 million per year if 25 percent of Lead agencies implement this policy and as low as $111 million per year if only 5 percent of Lead Agencies choose to implement. However, for our final estimate, we use a projected take-up rate of 10 percent of Lead agencies and took the average of the costs generated by Approaches 1 and 2, for a final annualized transfer estimate of $228.5 million per year.

Enrollment-based Payment: This policy would require Lead Agencies to pay providers based on enrollment instead of attendance. To estimate the financial impact of this policy, we used data from the CCDF Policy Database and the CCDF State Plans to determine (1) which Lead Agencies would need to change their policy, and (2) how many absence days those Lead Agencies are currently allowing.

According to a 2015 study of DC's Head Start program,[121] 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).[122] 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.[123] Taking the literature into consideration, this estimate makes the assumption 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 $10.6 million.

There is limited data available on absences in child care. Therefore, for this estimate, we relied on data from Head Start and kindergarten to estimate student absences. We are seeking comments on the methodology and assumptions used to develop the estimated transfer cost associated with the payment rates and practices provisions, including any data or evidence that would better quantify the impact of the proposed changes or inform our assumptions on Lead Agency take-up of optional policies.

[121] *https://www.urban.org/sites/default/files/publication/39156/2000082-absenteeism-in-dc-public-schools-early-education-program_0.pdf.*

[122] Ansari, A., and Purtell, K.M. (2018). Absenteeism in Head Start and Children's Academic Learning. Child Development, 89(4): 1088–1098.

[123] Ansari, A (2021). Does the Timing of Kindergarten Absences Matter for Children's Early School Success? School Psychology, 36 (3): 131–141.

TABLE 4—PAYMENT RATES AND PRACTICES, TRANSFERS
[$ in millions]

Payment rates & practices	Implementation period (year 1)	Ongoing annual average (years 2–5)	Annualized transfer amount (over 5 years)			Total present value (over 5 years)		
			Undiscounted	Discounted		Undiscounted	Discounted	
				3%	7%		3%	7%
Paying Full Rate	$114.2	$228.5	$205.6	$204.3	$202.4	$1,028.1	$963.5	$888.1
Enrollment-based Payment	5.9	11.8	10.6	10.5	10.4	52.9	49.6	45.7
Total	120.1	240.3	216.2	214.8	212.8	1,081.0	1,013.1	933.8

*Grants and Contracts (*Costs*):* To address lack of supply for certain types of care, the NPRM also proposes requiring the use of some grants and contracts for direct services. When grants or contracts are funded sufficiently to meet any higher quality standards, they can be one of the most effective tools to build supply in underserved 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 that include items such as: supply analysis, staff to manage grants and contracts (program manager, fiscal office staff, monitoring staff), and travel and administrative costs. 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. 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 proposed requirement.

We averaged these costs over the 5-year window used for this analysis, taking into account the 1-year phase-in period, and came to an estimated annualized amount of $4.2 million to implement this policy.

TABLE 5—PAYMENT RATES AND PRACTICES, COSTS
[$ in millions]

Payment rates and practices (costs)	Implementation period (year 1)	Ongoing annual average (years 2–5)	Annualized cost (over 5 years)			Total present value (over 5 years)		
			Undiscounted	Discounted		Undiscounted	Discounted	
				3%	7%		3%	7%
Grants and Contracts	$2.3	$4.7	$4.2	$4.2	$4.1	$21.1	$19.7	$18.2
Total	2.3	4.7	4.2	4.2	4.1	21.1	19.7	18.2

3. Eligibility and Enrollment

This NPRM proposes changes to eligibility policies that would lessen the burden on families seeking child care assistance, making it faster and easier to apply for and receive child care subsidies. This is done by clarifying ways that Lead Agencies can simplify subsidy eligibility determination and enrollment processes. The policies explored in this RIA relate to presumptive eligibility and additional child eligibility, which are categorized as transfers. The new policy related to applying online, which is described as a benefit, is discussed in the subsequent benefits section.

Presumptive Eligibility: This policy would permit, but 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, via Lead Agencies. More specifically, there is a transfer of resources between certain populations of families because some families who receive presumptive assistance could be found to be ineligible once full documentation is received.

Based on other programs that have used presumptive eligibility, such as Medicaid and the Children's Health Insurance Program (CHIP), we do not anticipate that 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 that 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. There was not data available to support some of the variables in this estimate, so 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. Given the lack of data in this area, we welcome input from commenters who may have resources that could inform these assumptions.
- *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 which Lead Agencies currently use presumptive eligibility for Medicaid and CHIP [124] (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

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

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 [125] on presumptive eligibility found a small number of families receiving presumptive eligibility were eventually found to be ineligible. 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. If commenters have additional information on the rate of families that may eventually be found ineligible, we would encourage that information be submitted during the comment process.

• *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 $7,806 per year [126] (which has been adjusted for inflation to 2023 dollars) to the above assumptions, we calculated an annualized transfer of $20.8 million for this policy.

Additional Child Eligibility: 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 proposal benefits CCDF children because it increases the amount of care they would receive, but for this estimate it 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 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.[127] 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 any data in this area, taking the middle between the maximum and the minimum amount of possible assistance seemed like 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, looking at the cost if 5 percent and 45 percent of Lead Agencies needed to come into compliance. However, for this estimate we calculate that a quarter of Lead Agencies are currently out of compliance, 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 $38.2 million.

TABLE 5—ELIGIBILITY POLICIES, TRANSFERS
[$ in millions]

Eligibility policies (transfers)	Implementation period (year 1)	Ongoing annual average (years 2–5)	Annualized transfer amount (over 5 years)			Total present value (over 5 years)		
			Undiscounted	Discounted		Undiscounted	Discounted	
				3%	7%		3%	7%
Presumptive Eligibility	$11.5	$23.1	$20.8	$20.6	$20.4	$103.8	$97.3	$89.7
Additional Child Eligibility	21.2	42.4	38.2	37.9	37.6	190.8	178.8	164.8
Total	32.7	65.5	58.9	58.5	58.0	294.6	276.1	254.5

C. Analysis of Benefits

The proposed changes made by this NPRM have three primary benefits:

• Lower the cost of care;

• Improve parent choice and strengthen child care payment practices; and

• Streamline the process to access child care subsidies.

Implementation of these policy changes 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 proposed 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 proposed policies, we offer qualitative analysis, and welcome comment on ways to measure the benefit that the proposed rule will

[125] 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.*

[126] *https://www.acf.hhs.gov/occ/data/fy-2020-preliminary-data-table-15.*

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

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.[128] 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.[129] The cost of child care drives parents—particularly women—to exit the workforce. In response, families often seek out less expensive care—which may have less rigorous quality or safety standards—or exit the workforce to forego child care entirely.[130]

Among other purposes, Congress designated the CCDBG 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 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, followed by a lack of open slots.[131]

Receiving child care subsidies alone are not enough for parents to feel secure in making ends meet. Multiple qualitative studies found that parents receiving subsidy continue to experience substantial financial burden in meeting their portion of child care costs.[132] 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.[133] 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 proposes to make changes to § 98.45 to reduce parent co-payments.

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

Increase parent choice and strengthen and stabilize the child care sector: The proposed revisions promote provider-friendly payment rates and practices that, if 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. The proposed revisions in this NPRM would require Lead Agencies to pay providers prospectively based on enrollment. To address lack of supply for certain types of care for populations prioritized in the CCDBG Act, the NPRM also proposes requiring the use of some grants and contracts for direct services. Additionally, the proposed revisions clarify 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[134] and through grants and contracts[135] helped providers remain financially stable during the peak of the COVID–19 public health emergency. The proposed revisions to payment practices and higher subsidy rates are also linked to higher-quality care and increases in the supply of child care.[136] [137] [138]

Streamline the process to access child care subsidies: The proposed revisions in this NPRM 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.[139]

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.[140] 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.[141] Workers with unexpected hours or limited control over their schedule are significantly more likely to lose child care subsidies.[142] Further, families who electively exit the program are three times more likely to do so during their redetermination month than any other time.[143] These studies suggest that these

[128] 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.*

[129] 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.*

[130] 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.*

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

[132] 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.

[133] 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.*

[134] Lieberman, A. et al. (2021). Make Child Care More Stable: Pay by Enrollment. New America.

[135] Workman, S. (2020). Grants and Contracts: A Strategy for Building the Supply of Subsidized Infant and Toddler Child Care. Center for American Progress.

[136] Lieberman, A. et al. (2021). Make Child Care More Stable: Pay by Enrollment. New America.

[137] Workman, S. (2020). Grants and Contracts: A Strategy for Building the Supply of Subsidized Infant and Toddler Child Care. Center for American Progress.

[138] Greenberg, E. et al. (2018). Are Higher Subsidy Payment Rates and Provider-Friendly Payment Policies Associated with Child Care Quality? Urban Institute.

[139] Adams, G. and Compton, J. (2011). Client-Friendly Strategies: What Can CCDF Learn from Research on Other Systems? Urban Institute.

[140] Adams, G., & Rohacek, M. (2010). Child care instability: Definitions, context, and policy implications. Urban Institute.

[141] 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.

[142] Henly, J. et al. (2015). Determinants of Subsidy Stability and Child Care Continuity. Urban Institute.

[143] 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.

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, several families equal to 60 percent of the current caseload is 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 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.'' [144] We start with a measurement of the usual weekly earnings of wage and salary workers of $1,059.[145] 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 $40.1 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 $21.1 million related to this policy. As noted previously, the RIA, including the figures above, include a number of assumptions and projections, for which there was not data or research available to support a specific figure. We welcome input from commenters who have may have resources that could inform these assumptions and projections.

TABLE 6—ELIGIBILITY POLICIES, BENEFITS

[$ in millions]

Eligibility policies (benefits)	Implementation period (year 1)	Ongoing annual average (years 2–5)	Annualized benefit amount (over 5 years)			Total present value (over 5 years)		
			Undiscounted	Discounted		Undiscounted	Discounted	
				3%	7%		3%	7%
Applying Online	$11.7	$23.5	$21.1	$21.0	$20.8	$105.6	$99.0	$91.3
Total	11.7	23.5	21.1	21.0	20.8	105.6	99.0	91.3

Research evidence clearly points to the benefits of access to high-quality child care, including immediate benefits for improved parenting earnings and employment.[146 147 148 149] 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.[150] 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. The provisions in this rule expand access and some children who might not have received subsidized care under the current rule (*e.g.,* those whose parents could not pay the copay) would receive subsidized

[144] 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.*

[145] 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.

[146] 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.*

[147] Shonkoff, J. P., & Phillips, D. A. (Eds.). (2000). *From neurons to neighborhoods: The science of early childhood development.* National Academy Press.

[148] 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.*

[149] 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.*

[150] 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.*

care under the proposed rule. For these children, they are likely to receive higher quality care than they otherwise would have. Research has demonstrated clear linkages between high quality child care and positive child outcomes, including school readiness, social-emotional outcomes, educational attainment, employment, and earnings.[151 152 153 154]

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 NPRM 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 proposed policies.

While the proposed 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.

Similarly, the proposed 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, 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 would decrease available funding for the Lead Agency, and therefore, could result in a decrease in the number of children served. Based on our estimated amount of combined transfers (at full implementation) and the average subsidy payment amount, we estimate that the proposed transfers for these required policies could lead to a reduction in caseload of approximately 4,800 children per year, or about a third of 1 percent of the FY 2020 caseload.

For the eligibility policies, we are not projecting a reduction in slots. 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 current rule, but do not receive subsidies under the proposed rule, it is possible that they would receive unregulated care which tends to be lower quality and less stable. However, as noted in the *Discussion of Proposed Changes* section, we expect that, overall, the policies proposed will improve quality and stability of care for children who continue to participate in CCDF.

E. Analysis of Regulatory Alternatives

In developing this proposed 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 current proposal 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 $15.4 million. When compared to the estimated transfer of $23.1 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. We are seeking comments on the proposed length of the 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 proposed rule.

TABLE 7—QUANTIFIED COSTS, TRANSFERS AND BENEFITS

[$ in millions]

	Implementation period (year 1)	Ongoing annual average (years 2–5)	Annualized cost (over 5 years)			Total present value (over 5 years)		
			Undiscounted	Discounted		Undiscounted	Discounted	
				3%	7%		3%	7%
Transfers ($ in millions)								
Eligibility:								
Presumptive Eligibility[155]	$11.5	$23.1	$20.8	$20.6	$20.4	$103.8	$97.3	$89.7
Additional Child Eligibility[156]	21.2	42.4	38.2	37.9	37.6	190.8	178.8	164.8
Payment Rates & Practices:								
Paying Full Rate[157]	114.2	228.5	205.6	204.3	202.4	1,028.1	963.5	888.1
Enrollment-based Payment[158]	5.9	11.8	10.6	10.5	10.4	52.9	49.6	45.7

[151] Deming, David. 2009. ''Early Childhood Intervention and Life-Cycle Skill Development: Evidence from Head Start.'' American Economic Journal: Applied Economics, 1 (3): 111–34.

[152] Duncan, G. J., and Magnuson, K. 2013. ''Investing in Preschool Programs.'' Journal of Economic Perspectives, 27 (2): 109–132.

[153] 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.*

[154] 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.

TABLE 7—QUANTIFIED COSTS, TRANSFERS AND BENEFITS—Continued
[$ in millions]

	Implementation period (year 1)	Ongoing annual average (years 2–5)	Annualized cost (over 5 years)			Total present value (over 5 years)		
			Undiscounted	Discounted		Undiscounted	Discounted	
				3%	7%		3%	7%
Family Co-payments: [159]								
7% Co-pay Cap	10.4	20.9	18.8	18.7	18.5	94.0	88.1	81.2
Waiving Co-pays	5.2	10.5	9.5	9.4	9.3	47.5	44.5	41.0
Total (Transfers)	168.4	337.1	303.4	301.4	298.8	1,517.1	1,421.8	1,310.5
Costs (in millions)								
Grants and Contracts	2.3	4.7	4.2	4.2	4.1	21.1	19.7	18.2
Total	2.3	4.7	4.2	4.2	4.1	21.1	19.7	18.2
Benefits (in millions)								
Eligibility:								
Applying Online	11.7	23.5	21.1	21.0	20.8	105.6	99.0	91.3
Total (Benefits)	11.7	23.5	21.1	21.0	20.8	105.6	99.0	91.3

F. Impact of Proposed Rule

Based on the calculations in this RIA, we estimate the quantified annual impact of the proposed rule to be about $303 million in transfers, $4.2 million in costs, and $21 million in benefits. However, the RIA only quantifies the estimated impact of the NPRM on the Lead Agencies, parents, and 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.[160]

VI. 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 of subpart I in section III of the preamble serves as the Tribal impact statement. We intend to notify Tribal lead agencies about the opportunity to provide comment on the NPRM no later than the day of publication. Further, shortly after publication of the NPRM, we plan to hold briefing sessions with tribal lead agencies and any other interested tribe on the contents of the NPRM.

January Contreras, Assistant Secretary of the Administration for Children & Families, approved this document on June 30, 2023.

(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.

Dated: June 30, 2023.

Xavier Becerra,

Secretary, Department of Health and Human Services.

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

PART 98—CHILD CARE AND DEVELOPMENT FUND

■ 1. The authority citation for part 98 continues to read as follows:

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. Removing the definition of *Tribal mandatory funds* and adding the definition of *Tribal Mandatory Funds* in its place.

The revisions and additions read as follows:

§ 98.2 Definitions.

* * * * *

Major renovation means any individual or collective renovation that has a cost equal to or exceeding $250,000 for child care centers and $25,000 for family child care homes, which amount shall be adjusted annually for inflation and published on the Office of Child Care website. 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;

* * * * *

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;

[155] Transfer from CCDF-eligible families to non-CCDF eligible families.

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

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

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

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

[160] 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.*

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 paragraphs (h)(4) through (7);

■ b. Adding paragraphs (h)(8) through (10);

■ c. Revising paragraph (k);

■ d. Redesignating paragraphs (x) through (ii) as paragraphs (y) through (jj);

■ e. Adding a new paragraph (x); and

■ f. Revising newly redesignated paragraph (y).

The revisions and addition read as follows:

§ 98.16 Plan provisions.

* * * * *

(h) * * *

(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 who turn out to be ineligible and for adjusting presumptive eligibility processes accordingly to ensure funds are safeguarded for 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, including care for children in underserved areas, infants and toddlers, children with disabilities as defined by the Lead Agency, and children who receive care during nontraditional hours. The description must, at a minimum:

(1) Identify shortages in the supply of high-quality child care providers; and,

(2) List the data sources used to identify shortages;

(y) A description of the Lead Agency's strategies to increase the supply and improve the quality of child care services for children in underserved areas, infants and toddlers, children with disabilities as defined by the Lead Agency, and children who receive care during nontraditional hours based on the information at paragraph (x) of this section. The description must include, at a minimum:

(1) How the Lead Agency will use grants and contracts in supply building;

(2) Whether the Lead Agency plans to use other means for building supply, such as alternative payment rates to child care providers and offering child care certificates;

(3) How supply-building mechanisms will address the needs identified in paragraph (x) of this section; and,

(4) Describe the method of tracking progress to increase supply and support equal access and parental choice;

* * * * *

■ 6. Amend § 98.21 by:

■ a. Revising paragraphs (a)(2)(iii) and (a)(5)(ii) and (iii);

■ b. Adding paragraph (a)(5)(iv);

■ c. Revising paragraph (d);

■ d. Redesignating paragraphs (e) through (g) as paragraphs (h) through (j); and

■ e. Adding new paragraphs (e), (f), and (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 should continue if the parent becomes employed during the job search period.

* * * * *

(5) * * *

(ii) A change in residency outside of the State, Territory, or Tribal services area;

(iii) Substantiated fraud or intentional program violations that invalidate prior determinations of eligibility; or,

(iv) A final determination of ineligibility after an initial determination of presumptive eligibility at paragraph (f)(1) of this section, in accordance with paragraph (e)(2) of this section.

* * * * *

(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, provided the Lead Agency is not currently under a corrective action plan pursuant to § 98.102(c), 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 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 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.

(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.

(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:

(1) For eligibility that minimize disruptions to employment, education, or training, including the use of online applications and other measures, to the extent practicable; and,

(2) Are not required to unduly disrupt their education, training, or employment in order to complete the eligibility determination or re-determination process.

(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, including:

(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.

* * * * *

■ 7. 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 families receiving subsidies who need care for infants and toddlers, children with disabilities, and care during nontraditional hours.

(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.

* * * * *

■ 8. Amend § 98.33 by revising paragraphs (a)(4)(ii) and (a)(5) and adding paragraph (a)(8) to 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 by 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.

* * * * *

■ 9. Amend § 98.43 by revising paragraphs (a)(1)(i), (c)(1) introductory text, (c)(1)(v), and (d)(3)(i) introductory text 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 by child care providers of 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 a misdemeanor involving child pornography.

* * * * *

(d) * * *

(3) * * *

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

* * * * *

■ 10. Amend § 98.45 by:

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

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

■ c. Adding a new paragraph (g);

■ d. Revising newly redesignated paragraphs (l)(3) and (4) and (m)(1) and (2);

■ e. Removing the colon at the end of newly redesignated paragraph (m)(3)(ii) and add a period in its place;

■ f. Revising newly redesignated paragraph (m)(4);

■ g. Removing the semicolon at the end of newly redesignated paragraph (m)(5) and adding a period in its place; and

■ h. Adding paragraph (m)(7).

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 to (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.

* * * * *

(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 not to exceed 7 percent of income for all families, regardless of the number of children in care who may be receiving CCDF assistance, that are not a barrier to families receiving assistance under this part; 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 receive or need to receive protective services, that have children who have a disability as defined at § 98.2, or that meet other criteria established by the Lead Agency.

(m) * * *

(1) Ensure timeliness of payment by paying prospectively prior to the delivery of services.

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

(i) Paying based on a child's enrollment rather than attendance; or

(ii) An alternative approach for which the Lead Agency provides a justification in its Plan that it is not practicable, including evidence that the alternative approach will not undermine the stability of child care programs.

* * * * *

(4) 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 provider payment policies, including rates, schedules, any fees charged to providers, and the dispute resolution process required by paragraph (m)(6) of this section.

* * * * *

(7) May include taking precautionary measures when a provider is suspected of fiscal mismanagement.

■ 11. Amend § 98.50 by revising paragraphs (a)(3), (b)(1) and (2), and (e) introductory text to read as follows:

§ 98.50 Child care services.

(a) * * *

(3) Using funding methods provided for in § 98.30 including grants and contracts for infants and toddlers, children with disabilities, and nontraditional hour care; 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.

* * * * *

(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:

* * * * *

■ 12. Amend § 98.60 by:

■ a. Revising paragraphs (a)(2) and (3);

■ b. Adding paragraph (a)(4); and

■ c. Revising paragraph (d)(3).

The revisions and addition read as follows:

§ 98.60 Availability of funds.

(a) * * *

(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.

* * * * *

■ 13. 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]

■ 14. 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.

§ 98.71 [Amended]

■ 15. Amend § 98.71 by removing paragraph (a)(11).

■ 16. Amend § 98.81 by:

■ a. Removing the word ''and'' at the end of paragraph (b)(6)(viii);

■ b. Revising paragraph (b)(6)(ix); and

■ c. Adding paragraphs (b)(6)(x) and (xi).

The revision and additions read as follows:

§ 98.81 Application and Plan procedures.

* * * * *

(b) * * *

(6) * * *

(ix) The description of how the Lead Agency uses grants and contracts for supply building at § 98.16(y)(1);

(x) The description of the sliding fee scale at § 98.16(k); and,

(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(z).

* * * * *

■ 17. Amend § 98.83 by:

■ a. Redesignating paragraphs (d)(1)(vii) through (x) as paragraphs (d)(1)(x) through (xiii);

■ b. Adding a new paragraph (d)(1)(ix);

■ c. Redesignating paragraphs (d)(1)(v) and (vi) as paragraphs (d)(1)(vii) and (viii);

■ d. Adding a new paragraph (d)(1)(vi);

■ e. Redesignating paragraphs (d)(1)(i) through (iv) as paragraphs (d)(1)(ii) through (v);

■ f. Adding a new paragraph (d)(1)(i); and

■ g. Revising paragraphs (g) introductory text and (g)(1) and (2).

The revisions and additions read as follows:

§ 98.83 Requirements for tribal programs.

* * * * *

(d)(1) * * *

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

* * * * *

(vi) The requirement for a sliding fee scale at § 98.45(l);

* * * * *

(ix) The requirements to use grants and contracts at § 98.50(a)(3);

* * * * *

(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.

* * * * *

■ 18. 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 liquidate CCDF funds used for construction or major renovation by the end of the fourth fiscal year following the fiscal year for which the grant is awarded.

* * * * *

■ 19. Amend § 98.102 by:

■ a. Revising paragraphs (c)(2)(ii) through (iv);

■ b. Adding paragraphs (c)(2)(v) and (vi); and

■ c. Revising paragraphs (c)(3) and (4).

The revisions and additions read as follows:

§ 98.102 Content of Error Rate Reports.

* * * * *

(c) * * *

(2) * * *

(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 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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