

Comments On Proposed Regulations for the Child Care and Development Fund
Docket number ACF–2023–0003 / RIN number 0970–AD02
August 28, 2023

SchoolHouse Connection and the Child Welfare League of America submit these comments on behalf of the 20 organizations listed on pages 8-9 in response to the Notice of Proposed Rulemaking (NPRM) issued on July 13, 2023 by the U.S. Department of Health and Human Services: Improving Child Care Access, Affordability, and the Child Care and Development Fund (CCDF).

Driven by an affordable housing crisis, addiction crisis, mental health crisis, immigration crisis, and climate change, homelessness is at record levels in many communities. Over 1 million children under the age six are estimated to experience homelessness in the United States; in addition, approximately 1.2 million children and youth experiencing homelessness were identified by public schools in the 2021-2022 school year.¹ Children and families often come to the attention of the child welfare system because of these same crises. Over 391,000 children and youth are in foster care, with 41% under the age of five.² Children of color and children with disabilities are significantly over-represented in both populations.³

Children who experience homelessness or foster care face a host of traumatic challenges over and above poverty that threaten their health, development, and ability to succeed. Homelessness is associated with delays in language, literacy, and social-emotional development, putting children at risk for later academic problems.⁴ The younger and longer a child experiences homelessness, the greater the cumulative toll of negative health outcomes, which can have lifelong effects on the child, the family, and the community.⁵ Similarly, children removed from their home due to abuse or neglect are at increased risk for long-term emotional, behavioral and physical health problems.

High quality child care can change the trajectory of these children's lives, while supporting parents' efforts to pursue the education and employment that they need to be economically independent and to permanently escape homelessness. It is also a protective factor for families, reducing instances of child abuse and neglect and reducing involvement in the child welfare system.⁶ Research has also demonstrated that for children in foster care, the receipt of child care

¹ [Child and Youth Homelessness in the United States: Data Profiles](#) (Poverty Solutions at the University of Michigan & SchoolHouse Connection, 2022)

² [Children in Foster Care by Age Group](#) (KIDS COUNT Data Center, Annie E. Casey Foundation, 2023)

³ [State of Babies Yearbook](#) (Zero to Three, 2022); [Child and Youth Homelessness in the United States: Data Profiles](#) (Poverty Solutions at the University of Michigan & SchoolHouse Connection, 2022)

⁴ Ziol Guest, K. M., & McKenna, C. C. (2014). "Early childhood housing instability and school readiness". *Child Development*, 85(1), 103–113

⁵ Sandel M, Sheward R, Ettinger de Cuba S, et al. Timing and Duration of Pre- and Postnatal Homelessness and the Health of Young Children. *Pediatrics*. 2018;142(4): e20174254 Retrieved from <http://pediatrics.aappublications.org/content/pediatrics/early/2018/08/30/peds.2017-4254.full.pdf>

⁶ Yang, M. Y., Maguire-Jack, K., Showalter, K., Kim, Y. K., & Slack, K. S. (2019). Child care subsidy and child maltreatment. *Child & Family Social Work*, 24(4), 547-554. <https://doi.org/10.1111/cfs.12635>

assistance can reduce placement disruption over time, especially for children who enter foster care as preschoolers.⁷ Yet homelessness and involvement in the child welfare system create unique barriers to accessing child care, including high rates of mobility, extreme poverty, lack of required documentation, and lack of transportation.

A number of federal laws, including the McKinney-Vento Act, the Every Student Succeeds Act, the Head Start Act, the Individuals with Disabilities Education Act, and the Child Care and Development Block Grant (CCDBG), address these barriers. The 2014 CCDBG amendments and 2016 Child Care and Development Fund (CCDF) regulations include specific requirements for lead agencies related to outreach, enrollment, prioritization and training to support enrollment and services for children and families experiencing homelessness. While these policies are critical, there has been very little oversight and monitoring of states and districts to ensure that the day-to-day experiences of families reflect the intent of these policies. Additional support and oversight are needed to ensure that systems are collaborating effectively to serve children and families.

Despite these requirements, children experiencing homelessness and those involved in child welfare or at risk of child welfare involvement remain largely disconnected from high-quality early childhood development opportunities, even when supports such as subsidies are available. According to CCDF data, 21 states report serving zero children experiencing homelessness through CCDF, demonstrating that additional strategies are necessary to ensure lead agencies provide services to these underserved populations⁸. Further, a 2022 analysis of data across twenty states showed that over 300,000 infants and toddlers experienced homelessness, yet only 7% were enrolled in an early childhood development program (Early Head Start, Home Visiting, or child care). Child care providers in particular reported significantly low rates of enrollment of infants and toddlers experiencing homelessness, serving only 2.5%.⁹

We are deeply grateful for the proposed changes in the Notice of Proposed Rulemaking (NPRM) and believe these new policies will improve access to child care assistance for children experiencing homelessness and children with child welfare involvement, including children in families receiving prevention services through the Family First Prevention Services Act, children in out-of-home care, and children that have achieved permanency through reunification, adoption, or guardianship. We also acknowledge that in the absence of sufficient funding, it will be extremely challenging for states and territories to fully and faithfully implement the changes in the proposed rule without tradeoffs.

⁷ Meloy, M. E., & Phillips, D. A. (2012). Foster children and placement stability: The role of child care assistance. *Journal of Applied Developmental Psychology*, 33(5), 252-259.

<https://www.sciencedirect.com/science/article/abs/pii/S0193397312000457?via%3Dihub>

⁸ FY 2020 Preliminary Data Table 19 - Average Monthly Percentage of Families by Homeless Status (Administration of Children and Families, 2022).

⁹ Infants and Toddlers Experiencing Homelessness: Prevalence and Access to Early Learning across Twenty States (SchoolHouse Connection, 2022)

In addition to the NPRM, we acknowledge the Department has opened a simultaneous comment period on the FY 2025-2027 CCDF plan preprint. It is our recommendation that the proposed rules, once final, be included in a revised version of the FY 2025-2027 CCDF plan.

We provide specific comments on the proposed regulations below. Our comments focus solely on the proposals and modifications in the NPRM and do not include broader recommendations related to the need for greater oversight and implementation of existing CCDF requirements on homelessness and child welfare involvement. We hope that there will be a further opportunity to help develop monitoring processes to ensure that new and existing regulations are fully implemented.

P. 45023, Second Column, § 98.30(b)(1) - Building Supply with Grants and Contracts

- § 98.30(b)(1) 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 support requiring states and territories to use some grants and contracts for child care services for infants and toddlers, children with disabilities, and nontraditional-hour care. However, we strongly recommend that the proposed rule also include children experiencing homelessness and children with child welfare involvement as required populations for whom grants and contracts must be used as a strategy to increase the supply and quality of child care. Without explicit requirements for states to use grants and contracts for these populations, infants and toddlers experiencing homelessness or child welfare involvement, and children with disabilities who are homeless or involved with child welfare, are unlikely to benefit from this proposed requirement. We believe the addition of these populations is justified because 1) There are extreme barriers to accessing child care for these populations; as noted above, a national study of 20 states found that only 2.5% of infants and toddlers experiencing homelessness were enrolled in CCDF. Using grants and contracts to increase the supply of child care for children experiencing homelessness and children with child welfare involvement care could help remedy these barriers; and 2) children experiencing homelessness and those involved with child welfare have disproportionately high rates of developmental delays and other disabilities, but are unlikely to be evaluated and receive services because of their high rates of mobility.

Using grants and contracts to increase the supply of child care would increase the likelihood that children experiencing homelessness are screened and evaluated earlier — or at all. For these reasons, we also strongly recommend that children experiencing homelessness and children with child welfare involvement be added to 98.16(x) and 98.16(y), which require Lead agencies to describe the supply of child care for infants and toddlers and children with disabilities, and describe strategies to increase and improve supply for infants and toddlers and children.

P. 45022, First Column, § 98.45(m)(2) - Strengthening Payment Practices

- § 98.45(m)(2) Require states to pay based on enrollment not attendance, or some alternative proposed by the Lead Agency and approved by the OCC.

We are very supportive of the requirement to pay providers based on enrollment, not attendance. As noted in the NPRM, “Prevalent payment practices in use in CCDF today can be destabilizing to providers and can disincentivize them from enrolling children who receive subsidies”. We have heard from providers that the current payment system is a disincentive to serving families experiencing homelessness or children involved with child welfare, who might have more difficulty with regular attendance, therefore jeopardizing the payment that providers receive.

However, we also request clarifying parameters regarding lack of payment for absentee days. We are concerned that if strict parameters are set and providers are penalized when children miss a certain number of days, providers would be penalized for serving children experiencing homelessness and children involved with child welfare. We therefore request that policies for payment based on enrollment take into account the number or percentage of children experiencing homelessness and involved with child welfare served, and exempt providers from financial penalty when those children are absent.

P. 45022, First Column, § 98.45(l)(3) - Lowering Families Costs’ for Child Care

- § 98.45(l)(3) Provides for affordable family copayments 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;

We support the proposal to lower families’ cost for child care, which is especially burdensome for families on the brink of or already experiencing homelessness. Many families experiencing homelessness are forced to choose between out-of-pocket expenses for child care (even after receiving maximum subsidy assistance) or paying for a few nights in a motel. As noted in the NPRM, “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.” This is especially true for families experiencing homelessness. For example, in New Hampshire, a single mother experiencing homelessness who qualified for the maximum subsidy assistance amount would still have to pay at least \$350 per week in child care expenses. Lowering families’ cost for child care will also promote successful, sustained reunification for children who return to their families from foster care by reducing the financial burden on their caregivers.

P. 45022, First Column, § 98.45(l)(4) - Allowing Lead Agencies to Waive Copayments

- § 98.45(l)(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, or that meet other criteria established by the Lead Agency.

While we applaud the encouragement for states to waive copayments for the eligible families named in the proposed rule, we strongly recommend that the proposed rule specifically include children experiencing homelessness and children involved with child welfare as additional populations for whom states are encouraged to waive co-payments. To date, only 28 states waive copayments for families experiencing homelessness, despite their extreme poverty and needs.¹⁰ Calling out these populations, for whom even nominal co-payments can be prohibitive or prolong their homelessness, will bring greater visibility to their unique needs and help states exercise this option. We also note that children with disabilities who experience homelessness and child welfare involvement also will benefit from this proposed change.

P. 45037, First Column, §98.71(a)(11)

- 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 request that ACF keep the requirement for Lead Agencies to report any amount charged by a child care provider to a family receiving CCDF subsidy that is more than the co-payment amount set by the Lead Agency. The practice of charging more than the co-pay amount set by the lead agency creates significant barriers for families experiencing homelessness, who have little to no income. Therefore, eliminating the requirement to collect and report data on costs that are passed down to families could significantly undermine their access to child care, as well as curtail the benefits of capping family costs at seven percent of income. Without this data, we cannot know if there is an impact in certain states. We are sensitive to the reporting burden states are facing, but gathering this information is critical for supporting access for families experiencing homelessness.

P. 45023, Second Column, § 98.33(a)(8) - Consumer Education

- § 98.33(a)(8) Require Lead Agencies to post current information about their process for setting the sliding fee scale and for policies related to waiving copayments and estimated payment amounts for families.

We are supportive of the requirement of Lead Agencies to post current information about their process for setting the sliding fee scale for parent copayments and other related policies. For families experiencing homelessness and families with child welfare involvement, having information about copayments, and the circumstances in which they are waived, is crucial to accessing child care services. As for specific information that should be included in posts on consumer education websites, the Department should request that Lead Agencies post information about copayment waivers and automatic subsidy eligibility for families experiencing homelessness, as defined by the education subtitle of the McKinney-Vento Act (this is the

¹⁰ Identify how the Lead Agency will Prioritize or Target Child Care Services for Children and Families Experiencing Homelessness (Child Care Services Association, 2023)

definition of homelessness that, per CCDF regulations at §98.2, lead agencies must use). Many families who are experiencing homelessness may not be not aware that their living situation qualifies them for certain benefits. This is especially true for families experiencing homelessness who stay temporarily with others, which is included in the McKinney-Vento Act's definition. Therefore, Lead Agencies should post information that clearly specifies what families experiencing homelessness qualify for, and what qualifies as homeless under the education subtitle of the McKinney-Vento Act.

P. 45022, Third Column, § 98.21(e) - Reducing Bureaucracy

- § 98.21 At a Lead Agency's option, a child may be considered presumptively eligible for up to three months and begin to receive child care subsidy prior to full documentation and eligibility determination.

We support the proposal on the use of presumptive eligibility for children while their eligibility for subsidies is being fully determined. This will allow providers to be compensated for immediately enrolling children experiencing homelessness and children with child welfare involvement.

We also support the three-month time frame as it accounts for the necessary processing time, while also addressing the immediate needs of families seeking child care services. We support that the proposed rule ensures that providers are paid for services rendered, regardless of eligibility determination. Specifying that payments to providers will not be deemed improper payments 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—is a significant step toward ensuring that providers are supported, and states can utilize the necessary resources to create a presumptive eligibility policy. The requirement for Lead Agencies to track and assess the numbers of presumptively eligible children who turn out to be ineligible further demonstrates a commitment to accountability and continuous improvement in the eligibility determination process.

P. 45023 - First Column - § 98.21(g)(1) and (2) - Eligibility Verification

- § 98.21(g)(1) and (2) 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 for CCDF.

We appreciate that the Department clarified § 98.21(g)(1) and (2) to permit Lead Agencies to examine the eligibility criteria of other public benefit programs in their jurisdictions to predetermine which benefits programs have eligibility criteria aligned with CCDF. Additionally, we support that if the eligibility criteria for other benefit programs within the Lead Agency's jurisdiction are completely aligned with CCDF requirements, this can satisfy CCDF eligibility requirements in full for those families or establish CCDF eligibility policies using the criteria of other public benefits programs. Eligibility policies such as these are especially useful in reducing the administrative burden for families navigating multiple eligibility processes by reducing the amount of information gathering and application processes families must complete.

P. 45023 - First Column - § 98.21(f)(1) - Application Processes

- § 98.21(f)(1) The Lead Agency shall establish procedures and policies for eligibility that minimize disruptions to employment, education, or training, including the use of online applications and other measures, to the extent practicable; and ensure that parents are not required to unduly disrupt their education, training, or employment in order to complete the eligibility determination or redetermination process.

We urge the Department to require that all Lead Agencies offer both paper and online applications, and provide accommodations for families, including those experiencing homelessness, who might not have reliable, consistent access to an internet-connected device. We encourage the Department to expand this requirement to explicitly include applications that are designed for mobile use, as many families experiencing homelessness only access the internet through mobile devices.

The Department should also encourage states to reduce any undue burden placed on families when seeking assistance by revising their policies and procedures. For example, when Georgia moved to an online consolidated application for public assistance, family wait time for subsidy access was months long. As a workaround, the state flagged homelessness in their consolidated application system, thereby reducing family wait time for subsidy to 7-10 days. For families experiencing homelessness, lack of access to subsidy and child care means inability to acquire or maintain consistent employment, which directly impacts their access to stable housing.

One challenge facing many families experiencing homelessness is lack of knowledge that they are eligible for certain child care assistance, from automatic subsidy eligibility to documentation waivers and extensions. We are glad to see this encouragement related to offering screening tools: “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.” We urge the Department to require Lead Agencies make information about homelessness — the definition and services available — clear and prominently posted for families to see and understand. This will increase the number of families experiencing homelessness, particularly those staying temporarily with others, who apply for subsidy and other assistance.

P. 45023 - Third Column - § 98.21(d) - Additional Children

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

We support the effort to clarify that the minimum 12-month eligibility requirement applies when children are newly added to the case of a family already participating in the subsidy program.

This provision is particularly important for families experiencing homelessness and families involved with child welfare, as it will limit the number of times they have to interact with the system to maintain their eligibility, as well as the amount of paperwork they have to provide. Codifying this requirement will help to make sure there is consistent implementation of the policy and will help reduce confusion among Lead Agencies, families, providers.

Categorical Eligibility for Children Experiencing Homelessness and Children in Foster Care

While not part of the proposed rule, we strongly encourage ACF to expand eligibility for children experiencing homelessness. Only eight states include children experiencing homelessness in their definition of receiving, or needing to receive protective services, and 34 states include children in foster care in this definition.¹¹ Yet children experiencing homelessness and children with child welfare involvement, including children in families receiving prevention services through the Family First Prevention Services Act, children in out-of-home care, and children that have achieved permanency through reunification, adoption, or guardianship, would benefit greatly from categorical eligibility for child care. Children experiencing homelessness and children in foster care are categorically eligible for Head Start. Moreover, under the recently enacted Debt Ceiling Reduction Act, people experiencing homelessness and youth who aged out of foster care are exempt from work requirements for the Supplemental Nutrition Assistance Program. Aligning CCDF with these federal policies will remove barriers to child care for some of our nation's most vulnerable families and help ensure that they get the support they need to achieve economic independence and stability.

Conclusion

Again, we appreciate the Department's efforts to address issues facing families, children, and providers in child care systems across the country and the opportunity to share comments and feedback. Thank you for your consideration of these comments for the proposed rulemaking. If you have any questions, please contact Erin Patterson, Director of Education Initiatives, at erin@schoolhouseconnection.org.

Alliance for Early Success
Center for Law and Social Policy (CLASP)
Child Welfare League of America
Children's Action Alliance
Children's Defense Fund
Children's Institute - Oregon
Coalition on Human Needs
Dave Thomas Foundation for Adoption
Education Reform Now
Family Centered Treatment Foundation
Family Focused Treatment Association

¹¹ [FY2022-2024 CCDF State Plans — Supporting Families Experiencing Homelessness](#), Child Care Services Association (2022).

First Focus on Children
National Association of Counsel for Children
National Health Care for the Homeless Council
National Network for Youth
SchoolHouse Connection
TEAM for WV Children
VOICES for Alabama's Children
Western Regional Advocacy Project
ZERO TO THREE