OFFICE OF GOVERNMENT AFFAIRS

ASSOCIATION OF CHRISTIAN SCHOOLS INTERNATIONAL

Strengthening Christian Schools

Equipping Christian Educators

Worldwide

August 5, 2013

Ms. Cheryl Vincent
U.S. Department of Health and Human Services
Administration for Children and Families
Office of Child Care
370 L'Enfant Promenade, SW
Washington, DC 20024

Re: Child Care and Development Fund Program Notice of Proposed Rulemaking, Docket # ACF-2013-0001

Dear Ms. Vincent:

The Association of Christian Schools International (ACSI) submits the following comments related to Docket # ACF-2013-0001.

The Association of Christian Schools International (ACSI) is a nonprofit, non-denominational, religious association providing support services to nearly 24,000 Christian schools in over 100 countries. ACSI serves nearly 3,800 Christian preschools, elementary, and secondary schools and over 100 post-secondary institutions in the United States. We are a leader in strengthening Christian schools and equipping Christian educators worldwide, providing services through a network of 28 regional offices. ACSI accredits Protestant pre-K – 12 schools, provides professional development and teacher certification, and offers its member-schools high-quality curricula, student testing and a wide range of student activities. Member-schools educate some 5.5 million children around the world.

We would like to make the following observations about the proposed regulations:

In General

ACSI commends the Administration for Children and Families (ACF) for its efforts to update the regulations. However, we do wish to express some thoughtful concerns.

Quality and Choice. The regulations assert a desire to promote higher quality and parental choice. It should be noted that faith-based providers play a key role in meeting the need for high quality child care. Parents choose faith-based services because such services are important to them. The certificate system helps to ensure that a family's lack of resources does not prevent that family from securing the faith-based services that are a priority for them. Happily, faith-based services and quality can and do go together, even if both faith-based and secular providers face the same challenges in ensuring high quality services. (Please see below for a discussion of the proposed regulations that would promote the use of grants/contracts at the expense of certificates; such a regime could reduce the faith-based options that parents presently choose over other options since parents can obtain faith-based services only through the use of certificates).

1015 Fifteenth Street, NW Suite 1150, Washington, DC 20005
Phone: 202.558.7040 **Fax:** 202.558.5317 **Web:** www.acsi.org

The proposed regulations discuss the importance of giving parents greater ability to make choices, but one of those choices – the faith-based options – seem to be missing from those discussions. Where faith-based services are exempt from government regulation and licensing, positive mention could be made of the reason for those exemptions and of the availability of faith-based quality evaluations and accreditations that allow for high quality services with a faith-perspective. Private-sector authorities such as ACSI offer objective program standards that respect the faith perspective of a given provider.

An ACSI-accredited early education center must meet stringent quality standards similar to those of any high quality provider *with the addition of* faith-based standards. The former provides the safety and quality any provider should strive towards while the latter provides accountability for providers genuinely to reflect a faith perspective. The goal is to give parents confidence that an accredited provider offers quality faith-based services in more than name only. It goes without saying that ACSI is not the only faith-based accrediting agency; a healthy competition exists which benefits parents whose priority is excellence based in a faith perspective.

It makes sense that the regulations may be concerned first with ensuring that providers over which the state has authority. However, parents have choices that include faith-based providers who are free to offer quality services without state interference precisely because their services are faith-based. Those options should be made clearly evident without disparaging the fact that faith-based options are on a parallel track with secular services. This approach is reasonable in view of the not inconsiderable popularity of faith-based providers as the choice many parents make.

Regulatory Authority. A concern for the Act as written raises questions as to the authority of the Department of Health and Human Services (HHS) to address some key points. Concern for high quality and for safety is by no means misguided; it is commendable and ACSI certainly shares those concerns. In fact, as already noted, we have intensive accreditation standards which member-schools must meet when they pursue accreditation through ACSI. This includes early education centers and even boarding schools, something we find to be a unique service.

Given all that, it must be noted that the 1996 amendments to the Act itself state one of its goals is "to assist States in implementing the health, safety, licensing, and registration standards established in State regulations." (Child Care and Development Block Grant Amendments of 1996, Pub. L. No. 104–193, title VI, § 602(5), 110 Stat. 2279.) Thus, the Act seeks to assist the states in implementing their own regulations, not necessarily to impose its own federal "health, safety, licensing, and registration standards."

As laudable as the proposed health and safety regulations may be, there is a question of whether the Act itself authorizes HHS to impose them. The Act looks to the states to establish those regulations and to the federal government merely to assist the states in implementing them. The proposed regulations, by contrast, are not mere recommendations; they are requirements. The proposed regulations acknowledge that some states already have some of the requirements and others do not. This is the nature of federalism.

It may be wise for HHS to consider whether it is exceeding its authority "to assist" the states with their own health and safety regulations by inadvertently imposing its own, even if possibly worthwhile, regulations. Recent decades seem to have been marked by federal overreach and scandal. It would be worth the possible boost in public confidence in the federal government's commitment to integrity by

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showing the kind of restraint that acknowledges the duties and responsibilities of the States. After all, it is hard to believe that states and territories somehow do *not* want to ensure the health and safety of resident children. At a minimum, it is worth asking the question in the interest of ensuring the health and safety of children while respecting the rule of law; the two are not incompatible.

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

1. The Department seeks comment on whether regulatory changes should include a minimum number of pre-service/ongoing training hours (p. 97).

Child safety is paramount and federal involvement should not hinder that goal. The proposed regulations seek to mandate minimum training hours greater than exist in many jurisdictions. The Department should consider the following concerns with reference to statements on page 97 of the proposed regulations:

- Who would be responsible for paying for the pre-service hours? Will this be left to the early education provider or would funds be available for such training?

- Would teachers with degrees in early childhood education or who have their CDA credential also be required to take the pre-service hours? If so, we question the need for doing so since they would already have training in the specific areas mentioned such as stages of developmental milestones. (We do, however, recognize that CPR and First Aid certification would need to be kept current).

- The regulations should make clear that professional development training is available not only from Lead Agencies but also from other providers for the pre-service and on-going professional development training. Faith-based programs seek training from their own faith-perspective and it is imperative that parents who prefer faith-based services should have those alternatives available to them. Faith-based providers must have access to pre-service and ongoing professional development training beyond what is offered by a Lead Agency.

2. The proposed rule states (p. 9) that "The cost of implementing the changes in this proposed rule will vary depending on a State's specific situation. ACF does not believe the costs of this proposed regulatory action would be economically significant...".

AFC's conclusion strikes us as somewhat optimistic. A tally of potential expenses raises questions about the overall impact. In fact, the proposed regulations in accordance with the law make special provision for Tribes for this very reason. Individual items may be modest, but a large enough number of modest individual expenses can certainly become significant. We suspect it would be wise to give the overall impact a very serious second thought to see if there are other ways to achieve the goals or to prioritize the most important. A partial listing of new proposed regulatory requirements include:

- Development and monitoring of specific pre-service and on-going professional development training
- Monitoring of unannounced visits
- Providing support for training and technical assistance to assist child care programs in meeting child care quality improvement standards (p. 115)

- Developing family-friendly websites
- Verifying any self-certification claims with supporting documentation
- Requiring Lead Agency to investigate complaints related to possible health and safety violations
- Completing a valid market price study (p. 105)
- Paying higher subsidy rates for higher quality care (p. 110)
- Implementing strategies for outreach and consumer education efforts to promote knowledge of child care quality improvement standards to child care programs and to provide parents with provider-specific information about the quality of child care provider options (p. 116)
- Requiring Lead Agencies to certify that procedures are in effect to ensure that child care providers of services for which assistance is provided comply with all applicable State, local health and safety requirements. This would require an increased workforce at the Lead Agency. They are already overloaded and burdened with an abundance of case loads.
- Interagency coordination of federal programs. The goal is to identify areas of overlap in monitoring and coordination in order to leverage combined resources and minimize duplication, however this takes time, money and more resources to monitor. (p. 100 -101)
- Provision of rewards or financial supports to practitioners for participating in and completing education or training and for increased compensation (p. 116)
- Professional development systems (p. 120)

Subpart F – Use of Child Care and Development Funds

The proposed rule seeks to increase the use of grants seemingly at the expense of certificates. Noting that 90% of children who received assistance did so through the use of certificates, the proposed rule worries that this is too great a percentage and seeks to increase the use of grants or contracts. The proposed rule notes that "only 21 States and Territories indicated that they provide child care services through grants or contracts through child care slots. We do not believe the intent of the CCDBG statute was to create a system solely operated through certificates" (p. 58).

In our view, a system in which over 37% of jurisdictions make use of grants is by no means "a system solely operated through certificates." In addition, there is a real question as to what authority the Department may have to regulate the percentage of children whose parents choose certificates over grant/contract providers. The fact that 90% of children make use of certificates to receive services is a testament to parental choice; it is not an argument for restricting that choice because too many made that choice. Moreover, one of goals of the Act is "to promote parental choice to empower working parents to make their own decisions on the child care that best suits their family's needs." (Child Care and Development Block Grant Amendments of 1996, Pub. L. No. 104–193, title VI, § 602(2), 110 Stat. 2279.) The question arises whether increasing the use of grants will lead to fewer available certificates for parents who would otherwise choose them. If so, the proposed rule could inadvertently work against the purposes of the Act.

It does make sense that there are some places where grants *could* be used, but where no one *chooses* to do so. However, there is nothing in the current regulatory regime that prevents or hinders the use of grants; at least, nothing in the proposed rule *eliminates a barrier* to the use of grants. On the contrary, the proposed rule seeks to mandate *some* use of grants where none are currently used. We note that the first goal established in the 1996 Amendment to the Act is "to allow each State maximum flexibility in developing child care programs and policies that best suit the needs of children and parents within such States." (Child Care and Development Block Grant Amendments of 1996, Pub. L. No. 104–193, title

VI, § 602(1), 110 Stat. 2279.) The decision as to grants or certificates should be left to the actors involved: the providers, the states and the consumers. States and territories should certainly have the option, but having an option includes the right to decline to exercise it. Compelling some use of grants or contracts conflicts with this standard.

We noticed that the proposed rule suggests that the Act requires a "balance" of some kind between the use of certificates and the use of grants/contracts when it asserts: "In fact, the statute does not give priority or preference to the use of certificates or vouchers, but reflects a balance between using both certificates and grants or contracts to provide child care assistance." (p. 58, Subpart D – Program Operations (Child Care Services) Parental Rights and Responsibilities, Parental Choice (Section 98.30), *Use of grants or contracts.*) In truth, the Act does not appear to do either. It neither gives preference to certificates nor "reflects a balance" between the use of certificates and the use of grants/contracts. The Act merely presents a choice: you may use A or you may use B. The proposed rule, by contrast, requires "some use" of grants/contracts in an effort to create a balance that the Act does not require: "…this proposed change would *require* Lead Agencies to employ *some use* of grants or contracts to provide child care services" [emphasis added], (p. 112, Child Care Services (Section 98.50)).

The proposed regulations acknowledge that "supply shortages and other relevant factors" may discourage a Lead Agency in the use of grants/contracts. The proposed regulations then offer the Lead Agency the strictly limited ability only "to determine the extent to which grants or contracts are used…" (p. 112). The Lead Agency *must use* grants/contracts, but the proposed regulations would allow it to set only the extent of their use. In short, Lead Agencies will have less flexibility.

A discussion of the benefits of grants/contracts ensues (pp. 112- 113) which struggles to make the case. The argument is based principally upon the stability of funding *for providers* from grants/contracts. In a surprising admission, the proposed regulation specifically notices that certificates allow maximum flexibility *for the parents*, the very people the program is to benefit, whereas grants/contracts tend to operate to the benefit of providers. Thus, the proposed regulations come down forcefully in favor of providers over parents.

The contrast is noticeable. The proposed regulations state (p. 113): "Grants or contracts provide greater financial stability for child care providers by funding a specified number of slots even if individual children leave the program, whereas certificates are portable allowing parents to leave a given provider at any time. Child care providers that receive funding through certificates face a constant threat of losing funding and children." By contrast, one goal of the Act is: "to promote parental choice to empower working parents to make their own decisions on the child care that best suits their family's needs." (Child Care and Development Block Grant Amendments of 1996, Pub. L. No. 104–193, title VI, § 602(2), 110 Stat. 2279.)

Here is a case in which the emphasis on grants/contracts will serve to reduce parental decision-making. The proposed regulation does not explain why a child care provider which does not fill all the slots funded by a grant/contract should keep monies that would otherwise provide actual child care if a parent held the funds by a certificate. Further, the proposed regulation does not seem to appreciate the incentive that the "constant threat of losing funding and children" gives to providers who will want to ensure the greatest possible quality, safety and educational standards for the parents who are empowered to choose another provider at any time.

This is not to say that stable funding for providers is not a good thing; that parents sometimes make poor decisions; or, that individual parents or providers can be unscrupulous. It is only to point out that certificates can be superior to grants/contracts in the process of parental empowerment (one purpose of the law) and quality early education opportunity; that the proposed regulations did not make an entirely convincing case in asserting the benefits of grants/contracts over certificates and thus in proposing regulatory change in favor of grants/contracts.

The proposed rule acknowledges that the law and the current regulations must include *either* grant-provided services *or* a certificate. The proposed rule seeks to modify the language such that services shall be provided using either grants/contracts or certificates but "which *must include* the use of grants or contracts for the provision of direct services…" [emphasis added], (p. 57, Parental Choice (Section 98.30), *Use of grants or contracts.*) The original Act offers far greater flexibility and choice in accord with the law's stated goal. The proposed regulation by contrast seeks to compel the use of grants/contracts. We urge that the changes to this effect be eliminated. Those changes included deleting the words "if such services are available" in reference to grants/contracts and additional language (cited above) requiring the use of some grants/contracts except in certain limited cases.

Conclusion

The proposed regulations may have a laudable motive to improve health, safety and quality. However, we urge a re-evaluation on several points: recognition of the value that parents place on faith-based choices; the question of authority in law to impose federal regulations rather than to assist the states in their own as the law notes; questions about implementation and cost of pre-service and ongoing training; a re-evaluation of the aggregate cost of many individual expenses to Lead Agencies and providers; and, finally, very serious questions about the wisdom and authority of HHS to prefer grants/contracts to the detriment of certificates.

Thank you for your consideration.

Respectfully submitted,

P. George Tryfiates
Director for Government Affairs

Sara Jo Dillard
Director of Early Education Resources

1015 Fifteenth Street, NW Suite 1150, Washington, DC 20005
Phone: 202.558.7040 **Fax:** 202.558.5317 **Web:** www.acsi.org