



August 5, 2013

Submitted via www.regulations.gov.

Office of Child Care
Attn: Cheryl Vincent
370 L'Enfant Promenade SW
Washington DC 20024

Re ACF-2013-0001: NPRM on the Child Care and Development Fund (CCDF) Program (78 Fed Reg 29442 [May 20, 2013])

Dear Ms. Vincent:

The Institutional Religious Freedom Alliance works with a multi-faith group of faith-based organizations involved in a wide range of types of services, taking initiatives to preserve a public square in which the organizations are free to make their *uncommon* contributions to the common good.

We are concerned that the proposed regulations, whatever the *intent*, will have the *effect* of diminishing the place of faith-based providers within the array of child care providers that are supported by federal CCDF funds. Such an outcome will be harmful not only to the faith-based providers but also to the families and children who count on their services. And it will diminish our diverse civil society.

As a general concern: it appears that the proposed regulations will change the major purpose of federal funding of child care *from* providing government *support for families* that need child care but cannot afford it (and who may have a wide range of views about how babies and young children can best be prepared for life) *to* government *support for professionalized child rearing* that is likely to be secular in conception and impact.

In addition, we note the following six specific areas of concern:

1. The push to improve the quality of child care is likely to impose collateral damage on faith-based providers.

A major stress of the proposed regulations is to increase quality by improving staff training and by pushing a stronger focus on early childhood education (ECE) into child care. Faith-based providers themselves favor quality care. And yet there are religious dimensions to quality

improvement that are not noted at all in the NPRM and that may well be suppressed as the quality changes are implemented.

For example, many parents may regard the presence of religious activities and the employment of staff members who display religious virtues to be baseline requirements when evaluating the suitability of a child care provider, and yet the standards promoted in the NPRM ignore such critical concerns. Worse: professional standards and curricula for child care and ECE are likely to be antithetical to the deep convictions of many faith-based providers and the parents who count on them (e.g., in dealing with sensitive matters such as marriage and family). If states impose such standards and curricula via licensing changes, or if they advantage such standards and curricula by increasing the payment rate to providers whose staff are so qualified, then faith-based providers and staff will wrongly become marginalized in the government-funded child care system.

The proposed rule discusses many dimensions of quality but not the religious dimension, which—absent specific attention—may just be ignored, with new standards and quality-improvement subsidies being keyed to secular standards that exclude or are opposed to religious concerns. The NPRM notes, for example, that “States may want to create credentials tailored to specific categories of practitioners”—but the categories ignore the need for a specific faith-based credential if the various regular credentials presume secularized standards (78 Fed Reg 29478).

2. The requirement that states expend more of their federal funding via grants and contracts rather than certificates (vouchers) narrows the scope for participation by faith-based providers.

The NPRM proposes to require states to “use grants and contracts to address shortages in the supply of high quality child care” (78 Fed Reg 29451, also 29458f, 29475f). But funding that comes to a child care provider via grants or contracts includes restrictions on religious activities and religious hiring that do not exist when the funding is via certificates (see 45 CFR 98.54(d)—restrictions on religious activities; 45 CFR 98.47—restrictions on religious hiring). Such restrictions will exclude many faith-based providers from grant and contract funding. A funding mechanism that is biased in that way ought not to be used. Moreover, it is troubling that the NPRM presumes that faith-based providers are not among the pool of providers of “high quality child care” (so their exclusion due to the funding mechanism can be ignored) and that the criteria for assessing “high quality” do not include the dimension of religion in the provision and atmosphere of child care.

Furthermore, the idea that grants and contracts—which involve extensive government control—need to be employed in order to increase the supply of high quality child care goes against the current presumption that the child care information and referral agencies that are funded by the child care block grant can and do serve to balance the supply and demand of child care in localities—while maintaining certificates as the major funding mechanism. Rather than resort to additional grants and contracts, the new regulations should specify that states must require the referral agencies to more aggressively reach out to faith-based providers and faith communities as part of the push to expand high quality child care.

The discussion of the use of grants and contracts to increase high quality child care shows some sensitivity to parental choice and the importance of certificate funding to enable such choice (78 Fed Reg 29458) but the NPRM does not include a clear commitment to ensuring that faith-based providers can continue to play a robust role in federally funded child care.

3. In the push to give parents more information about child care providers to improve their ability to make appropriate choices, there is no effort to inform parents positively about faith-based options.

The discussion of the proposed rules stresses quality indicators and giving parents information about problems that different providers may have had, etc. (78 Fed Reg 29460ff). These are important changes but they leave unchanged one of the current major information gaps.

Even though many parents do care about whether a provider is faith-based or not (and even, what that faith is), the current referral systems do little to help parents learn about that characteristic of the providers (the Maryland system, for example, appears to provide no information on whether a provider is faith-based). The proposed regulations will do little or nothing to improve this aspect of transparency and informed parental choice.

The discussion in the NPRM does mention that information might be given about “voluntary quality standards” met by a provider and whether a provider holds any “private accreditation”—either of these could be important if the professional standards are secular so that faith-based providers have to resort to unofficial accrediting and training resources. The discussion says that profiles of providers should note the “type of care”—this might mean “type of provider,” which is defined in the current regulations as including information on whether a provider is a “sectarian” provider (45 CFR 98.2. Definitions)—and thus be helpful to parents who seek faith-based care. But much better than these (possible) hints would be a specific and clear requirement that child care information systems inform parents whether a child care provider is religious or secular. The providers themselves could be asked to describe briefly the religious or secular character of their organization and services.

The NPRM requires states to ensure that the information provided to parents indicate whether a provider is exempt from licensing requirements and what such an exemption means. Question: Will exempt providers be able to ensure that such explanations are fair to faith-based providers that are exempt for church-state reasons? Will the explanation note that such providers may well be subject to non-governmental accountability systems (private accreditation or denominational or church control)?

4. The federal requirement that states ramp up their oversight of child care providers may bring about new state rules and practices that do collateral damage to faith-based services.

States will be required to more extensively regulate providers—new background checks of workers, expanded health and safety requirements and increased monitoring of providers, revisiting exemptions to licensing requirements, etc. (78 Fed Reg 29452). These may all be positive moves; however, the requirement that states reconsider and redesign regulatory standards, monitoring processes, and licensing exemptions may open the door to new restrictions

on faith-based providers in our current era in which, in general, government is less accommodating than in the past to the distinctive characteristics of faith-based services and has a less robust view of religious freedom. Any new regulations should take care to detail how new requirements must be implemented in such a way as not to hamper participation by faith-based providers.

President Obama's Executive Order 13559 (Nov. 17, 2010) gives extensive guidance on federal partnerships with faith-based and other private organizations. This guidance applies also when states use federal funding. The White House Office of Faith-Based and Neighborhood Partnerships could be asked to propose regulatory language to ensure that changes to the CCDF regulations do not inadvertently restrict the participation of faith-based providers.

5. The push to improve coordination of federally funded benefits may do collateral damage to faith-based services.

For the sake of continuity of services for parents and for continuity and quality of care for the children, the proposed regulations press Lead Agencies to work to coordinate the government funded child care system with other systems, including Head Start and state pre-K systems. However, faith-based organizations may be excluded from some of these other systems (e.g., an organization that hires by religion cannot take part in Head Start, and state pre-K systems are not necessarily inclusive of faith-based providers). If so, these other systems may not be particularly attuned to working with faith-based organizations and may be reluctant to coordinate with them or may try to impose on them secularizing requirements. The new regulations ought to propose ways to avoid these harms.

6. The requirement that states consult and coordinate more widely in developing and overseeing its child care program does not seem to explicitly take account of the fact that many of the relevant organizations are faith-based.

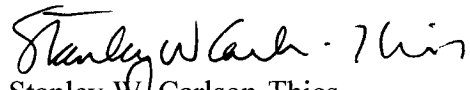
The NPRM usefully asks states to coordinate with a wider set of organizations in developing and overseeing its child care program (Discussion of Plan Process, Sec. 98.14: 78 Fed Reg 29448). But it does not take specific note that many of the relevant organizations are faith-based—e.g., faith-based pre-K programs that are not state-funded and organizations that represent faith-based child care providers. The revised regulations should specify that states be inclusive of faith-based and other private interests in ECE and child care.

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When the original Child Care and Development Block Grant program was designed in the late 1980s and when the program was reauthorized in connection with federal welfare reform in the mid-1990s, lawmakers took great care to design the program so that it would not exclude faith-based providers. That is why its funding is biased toward certificates or vouchers rather than grants or contracts and why there are specific provisions to protect religious hiring and religious activities. The point was not to favor faith-based over secular providers but rather to honor the wishes of many parents to have access to faith-based child care while ensuring a level playing field. It would be a grave mistake if, in the name of improving quality, the opportunity

for faith-based providers to take part is restricted. These proposed new regulations need a rigorous review to avoid that wrongful result.

Thank you for considering these comments.

A handwritten signature in black ink that reads "Stanley W. Carlson-Thies". The signature is written in a cursive style with a large, stylized initial 'S'.

Stanley W. Carlson-Thies
President and Founder