



Child Development
Education Alliance, Inc.
A Voice for Quality in Christian Settings
www.CDEAlliance.org

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Office of Child Care
Administration for Children and Families
330 C Street, SW
Washington, DC 20201

Re Notice of Proposed Rulemaking, Child Care and Development (CCDF) Program
Docket ID ACF-2015-0011
RIN 0970-AC67

These comments are submitted by the Institutional Religious Freedom Alliance and the Child Development Education Alliance. IRFA works with a multi-faith and multi-sector network of faith-based organizations and associations, and with religious freedom advocates and First Amendment lawyers, to protect and advance the religious freedom that faith-based organizations need in order to make their distinctive and best contributions to the common good. CDEA is a Florida-based alliance that is a voice for quality in Christian Early Childhood programs and that promotes the highest standards of educational excellence for directors and their staff through membership, curriculum, and training.

Some IRFA and CDEA members and allies will be directly and negatively affected by the proposed regulations if they are implemented without change. IRFA and CDEA are concerned as well with the negative precedent that will be set concerning the full and equal participation of faith-based organizations in federally funded programs, if the proposed regulations are not changed in specific ways before being implemented.

Remove the requirement that states must use grants and contracts in addition to certificates

Proposed regulation §98.50(a)(3) requires states to include “some use of grants or contracts for the provision of direct services.” We strongly urge that this subsection be deleted and that this requirement not be imposed on states.

From its beginning, the federal child care funding program has been designed to maximize parental choice, important because parents are entrusting their children to the care of others. To maximize parental choice, the program features certificates (vouchers) given to parents, that the parents can use at a wide range of providers of child care, rather than the typical funding mechanisms of grants or contracts awarded to a limited set of government-chosen day care providers.

Not incidentally, the maximal use of certificates also facilitates parent choice by fostering the inclusion of faith-based providers that, because of this “indirect” funding mechanism, may offer a program that includes a specifically religious dimension and elements and also may ensure that their staff are religiously compatible.

States are currently free to use only certificates, but they may also choose to use grants and contracts to fund some services; interestingly, according to the NPRM, the overwhelming majority of child care funded by CCDF funding is paid for via certificates, and far less than half of states and territories use grants or contracts at all (p. 80518).

The NPRM proposes that grants or contracts can be an essential funding mechanism as states seek to improve the quality and diversity of day care options (p. 80518). But note that states are already permitted to use grants and contracts, along with certificates. Even more important, note that many faith-based providers—because of their religious employment practices and/or because of the religious aspects of their child care services—would be simply precluded from the grant and contract awards, as if they are unable to contribute to the higher quality and wider range of service options that are a goal. Whatever expanded parental choice that grants and contracts supposedly make possible (p. 80518), their use would actually decrease the availability of faith-based options, because any CCDF dollars expended via grants and contracts cannot be awarded to parents via certificates.

But there is another and determinative reason why this grant/contract requirement must be deleted from the final regulations: it violates an express provision of the CCDF program. In 2013, HHS issued an NPRM for this program (78 Fed Reg 29442, May 20, 2013) which also proposed that states “must include some use of grants or contracts for the provision of direct services” (§98.50(b)(3); p. 29495). When reauthorizing the CCDF program in 2014, Congress took note of this proposed new requirement and specifically rejected it. The Child Care and Development Block Grant Act of 2014 specifically states that “[n]othing in this [act] is to be construed in a manner—(1) to favor or promote the use of grants and contracts for the receipt of child care services . . . over the use of child care certificates; or (2) to disfavor or discourage the use of such certificates for the purchase of child care services, including those services provided by private or nonprofit entities, such as faith-based providers.” And this provision was included notwithstanding that the 2014 law, just as the 2013 NPRM and now the current NPRM, has as a goal the expansion of types of child care and improvements in quality.

Congress specifically directed that state use of contracts and grants not be incentivized over the use of certificates. Proposed §98.50(a)(3) must be discarded.

For all of the above reasons, proposed §98.16(i)(1)—that a state’s CCDF Plan shall contain a description of “how the Lead Agency will address supply shortages through the use of grants and contracts”—must also be deleted.

Encourage the whole range of voices and approaches in quality improvement efforts

The 2014 law and these proposed regulations aim to improve the quality of CCDF-funded child care through a wide variety of measures: promoting better education of staff, encouraging better coordination among providers and training and education programs, careful design and deployment of quality assurance indicators and systems, improved planning by Lead Agencies, and so on. Yet, while the NPRM in various places specifically notes that child care and early childhood education can be provided via a variety of distinctive approaches—there is a reference, e.g., to the distinctiveness of child care offered in a “faith-based setting” and in other “settings that offer a distinctive approach to early childhood development,” p. 80520—the draft regulations do not promote as well as they should the recognition and incorporation of these distinctive views and approaches by states. Representatives of distinctive approaches—faith-based, Montessori, Waldorf—should be invited to sit on coordinating, planning, and quality-improvement committees and teams; accreditation standards and systems should be inclusive of such distinctive approaches; outreach to education and training programs to ensure appropriate training for child care workers should include faith-based and other specialized institutions; and so on.

In a comment submitted in response to this NPRM on February 19, 2016, the Council for American Private Education (CAPE), an educational association well-familiar with these alternative modalities—faith-based, Montessori, and Waldorf—has systematically identified those subsections of the proposed regulations that should be improved by the addition of phrasing such as “including those with distinctive approaches to early childhood education and care, such as faith-based, Montessori, and Waldorf programs.” We concur fully with all of these recommended changes and additions.

It is, in our view, essential that quality improvements not be (mis)understood in a way that excludes the insights and variations offered by these faith-based and philosophical alternative approaches. This is important for the sake of parental choice. And it is important in light of the obligation of government not to arbitrarily exclude legitimate diversity within the services it funds. The regulations ought to systematically encourage states to be inclusive of these alternatives in all of the ways proposed in the CAPE comment on this NPRM. We strongly urge that all of CAPE’s recommended changes in these matters be adopted.

Develop data elements promoting parental choice by more clearly identifying distinctive approaches in parent information systems

Child care and early childhood education are provided in a variety of distinctive ways, including faith-based settings where religious elements are present and the distinctive philosophical approaches of Waldorf and Montessori programs. The existence of such distinctive ways provides an important element of choice for parents. Thus it is entirely fitting that the NPRM encourages states to include information about this dimension of choice in the resource and referral systems they fund: lead agencies may use CCDF funds to support an information and referral system, and if they do so, they may direct that such a system “Provide parents . . . with consumer education information . . . concerning the full range of child care options (including faith-based and community-based child care providers), analyzed by provider . . . §98.52(b)(1) (p. 80576).

We suggest considering whether parental choice and information would be further improved by further refining §98.30: Parental choice. The NPRM proposes a change to the list in subsection

(e)(1) of the “variety of child care categories” available to parents with certificates (the change is to delete “group home child care”—see p. 80489). This subsection would continue to state, “Under each of the above categories, care by a sectarian provider may not be limited or excluded.” Thus this important “parental choice” section of the regulations will continue specifically to identify different *functional* types of care (center-based, family, in-home) and explicitly to require that faith-based *varieties* of these types of care not be excluded—but not specifically to require that the “variety” be clearly identified to parents who are seeking to make the best choice.

The NPRM encourages states, via the child care information and referral systems they fund, to identify to parents these varieties or distinctive approaches to care. One way to further encourage such transparency and full information might be explicitly to include this dimension of variety or distinctive approach (faith-based, Montessori, Waldorf) along with the currently specified dimension of functional type of care in this key regulation, §98.30: Parental choice.

Thank you for the opportunity to submit these comments.

On behalf of the Child Development Education Alliance and the Institutional Religious Freedom Alliance,



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