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### INFORMATION MEMORANDUM

- To:** State, Territory and Tribal Lead Agencies administering child care programs under the Child Care and Development Block Grant (CCDBG) Act as amended, and other interested parties.
- Subject:** Child Care and Development Fund (CCDF) Discretionary Funds Appropriated in the Coronavirus Aid, Relief, and Economic Security Act (CARES Act) (Public Law 116-136) passed into law on March 27, 2020.
- References:** The CCDBG Act (42 U.S.C. 9857 *et seq.*); 45 CFR Parts 98 and 99; CARES Act (Public Law 116-136).
- Purpose:** To provide an overview and guidance on the supplemental CCDF Discretionary funds made available through the CARES Act.
- Background:** CCDF is the primary federal funding source for child care subsidies to help eligible low-income working families access child care and to improve the quality of child care for all children. The CARES Act appropriated an additional \$3.5 billion in supplemental CCDF Discretionary funds. This funding provides Lead Agencies with additional funds to prevent, prepare for, and respond to the Coronavirus Disease 2019 (COVID-19), and expanded flexibility to provide child care assistance to families and children.
- Guidance:** This Information Memorandum is intended to be a reference for Lead Agencies to use in implementing the funding and additional provisions included in the CARES Act, which became law on March 27, 2020. This guidance reviews important areas of flexibility in the use of funds provided through the CARES Act and offers examples of services, supports, and related resources that Lead Agencies may want to consider. Specifically this guidance covers the following areas:
- Allowable CCDF activities;
  - Supporting providers during closures or decreased enrollment;

- Supporting child care services for essential workers;
- Exemptions from quality and direct service activities spending requirements;
- Important dates for obligating and liquidating funds;
- Making changes to CCDF Plans and policies; and
- Monitoring.

## Overview

The CARES Act included a \$3.5 billion increase in CCDF Discretionary funding. This funding is in addition to the Fiscal Year (FY) 2020 appropriations levels and is meant to supplement, not supplant, State, Territory, and Tribal general revenue funds for child care assistance for low-income families. The supplemental funding must be used for activities authorized under the CCDBG Act that prevent, prepare for, and respond to COVID-19. CCDF Lead Agencies do not need to apply for the funds, and have been awarded the funds automatically on a formula basis. CARES Act funds are subject to all CCDF Discretionary requirements, except as noted.

The CCDF statute and regulations already provide options that allow States, Territories, and Tribes affected by emergency situations to continue providing child care services despite disruptions to families and providers (see <https://www.acf.hhs.gov/occ/resource/occ-covid-19-resources> for a detailed description of existing flexibilities for CCDF funds in emergency situations and other resources). The CARES Act provides some additional flexibilities, as well as additional resources, to respond to the current COVID-19 public health emergency. Lead Agencies should consider flexibilities and funds within CCDF and the CARES Act in relation to other policies and funding streams when deciding how best to support children, families, and child care providers during this public health emergency.

*States:* CCDF Discretionary funds are allocated to States, including the District of Columbia and Puerto Rico, based on a statutory formula that considers three factors: the number of children under age five, the number of children qualifying for school lunch programs, and per capita income. States received \$3,376,138,000 under the CARES Act.

*Territories:* The CCDBG Act establishes the allocation for Territories at up to ½ of 1 percent of the Discretionary allocation. Territories include American Samoa, Northern Mariana Islands, Guam, and the U.S. Virgin Islands. Funding is allocated among the Territories based on a formula that considers the number of children under age five and per capita income. Territories received \$17,500,000 under the CARES Act.

*Tribes:* The CCDBG Act sets a statutory funding level of at least 2 percent of Discretionary funds for Tribal Lead Agencies. The Secretary has flexibility to set

a higher level provided certain conditions are met. The Discretionary Tribal set-aside was 2.75 percent for FY 2020 and will remain at the same level for funds allocated in the CARES Act. Funding is allocated among Tribal Lead Agencies based on child counts. Tribal Lead Agencies received \$96,250,000.

*Federal Administrative Expenses:* The CARES Act provides federal administrative expenses related to preventing, preparing for, and responding to the COVID-19. Under the CARES Act, \$10,112,000 has been allocated for federal administrative expenses.

### **Allowable CCDF Activities**

CCDF provides financial assistance to low-income families to access child care so they can work or attend a job training or educational program (“direct services”), and improves the quality and supply of providers caring for all children (“quality/supply building”). CCDF Lead Agencies can use quality dollars for a wide range of activities for the broader child care market (whether or not providers serve families receiving CCDF assistance). Examples include financial incentives to offer care for special populations, implementation of higher quality standards, and training and professional development of child care staff.

Building on existing efforts, the CARES Act supplemental funds may be used for:

- Continued payments and assistance to child care providers in the case of decreased enrollment or closures, and to assure the providers are able to remain open or to reopen.
- Cleaning and sanitation, and other activities necessary to maintain or resume the operation of programs due to COVID-19—funds under this activity are available to child care providers, even if such providers were not previously receiving CCDF assistance.
- Providing child care assistance to health care sector employees, emergency responders, sanitation workers, and other workers deemed essential during the response to COVID-19, *without regard to the income eligibility requirements*.
- Any other allowable CCDF uses.

### **Supporting Providers during Closures or Decreased Enrollment**

While each State, Territory, and Tribe is making decisions regarding the closures of child care or continuing of child care operations based on its needs and circumstances during this crisis period, we recognize that it is critical that child care providers are operational when the general workforce is ready and able to return to work. The CARES Act allows Lead Agencies to maintain the supply of child care by funding child care providers (including those funded by CCDF and/or private payments from parents) to pay, and ultimately retain, their staff during the public health crisis even if those programs have closed. Child care providers with staff in reserve will be able to quickly reopen and serve parents

returning to work after the COVID-19 pandemic subsides. The CARES Act explicitly recommends Lead Agencies to place conditions on payments to providers. Such payment conditions are to ensure that child care providers use a portion of funds received to continue to pay the salaries and wages of staff. Lead Agencies may use CARES Act funds to support child care providers who have not previously received CCDF funds.

#### *Activities Using Direct Service Funds*

Direct service funds provide child care subsidies to eligible children, which can be delivered through certificates (or vouchers) or through grants or contracts to providers. Under existing CCDF regulations, Lead Agencies may pay CCDF subsidies based on a child's enrollment rather than attendance (45 CFR 98.45(l)(2)(i)). The statutory requirement at section 658E(c)(2)(S)(ii) of the CCDBG Act requires Lead Agencies to support the fixed costs of providing child care services by delinking subsidy payments from an eligible child's occasional absences due to holidays or unforeseen circumstances such as illness, to the extent practicable.

The CARES Act expands this flexibility to continue payments and assistance to child care providers in the case of decreased enrollment or closures related to COVID-19, and to assure that providers are able to remain open or to reopen. Lead Agencies can use CARES Act funds to pay subsidies for a child that is (1) unable to attend child care because of closure or health and safety concerns and/or (2) attending child care, including with an emergency provider. Whereas Lead Agencies are restricted from using regular CCDF funds—i.e., CCDF funding other than CARES Act funding—to pay subsidies to two different providers for the same child for the same time of service, CARES Act funds are not restricted in this same way—e.g., there is no bar on paying for both a child's regular provider that is closed and a temporary or emergency replacement provider.

#### *Quality/Supply Building Activities*

Lead Agencies may provide CARES Act funds for the purposes of cleaning and sanitation (including cleaning supplies or deep cleaning services), other supplies, equipment (such as personal protective equipment or PPE), virtual professional development opportunities, staffing, and other activities necessary to maintain or resume the operation of programs. Lead Agencies may also provide temporary grants to impacted providers to retain the child care supply during periods of closures. While the CARES Act indicates that funds will be available to eligible child care providers for activities necessary to maintain or resume the operation of child care programs, nothing in the law prevents Lead Agencies from also using CCDF quality dollars to benefit all child care providers, regardless of whether they are eligible to serve, or are currently serving, children receiving CCDF subsidies.

### **Supporting Child Care Services for Essential Workers**

During the COVID-19 public health emergency, health care sector employees, emergency responders, sanitation workers, and other essential workers must continue to report for their jobs every day. When these essential workers are parents of young or school-age children, they may need child care to be able to work.

*Activities Using Direct Service Funds*

Under existing CCDF laws and regulations, in emergencies, Lead Agencies have the option of defining certain impacted children—such as children of health care, emergency, or other essential workers—to be in need of protective services, and therefore certain CCDF eligibility requirements (e.g., income threshold, on a case-by-case basis) would not apply. Children do not need to be formally involved with child protective services or the child welfare system in order to be considered eligible for CCDF assistance under this category. The CCDBG Act includes at-risk and vulnerable children (as defined by the Lead Agency) as needing protective services for the purposes of CCDF eligibility. In addition, Lead Agencies may broaden or loosen any State-, Territory-, or Tribal-specific income eligibility requirements for CCDF subsidies up to the Federal maximum allowed. Lead Agencies may also waive family copayments for specific populations—such as essential workers.

Building on these existing options, the CARES Act provides additional flexibility for providing direct child care services to essential workers. Lead Agencies may use CARES Act funds to provide child care assistance to health care sector employees, emergency responders, sanitation workers, and other workers deemed essential by public officials during the response to COVID-19, *without regard to the income eligibility requirements*. Therefore, Lead Agencies may provide CCDF subsidies to essential workers whose income exceeds 85 percent of State median income.

Lead Agencies have the flexibility to define which workers are essential, in accordance with any relevant State, Territorial, and Tribal laws or policies. Lead Agencies should consult with their jurisdiction's chief executive, and may want to consider:

- Health care and public health workers
- Law enforcement, public safety, and first responders
- Child protective services workers, those who provide services in the child welfare system, and other critical social services workers
- Food and agriculture workers (including grocery store and restaurant workers and food truck delivery drivers)
- Child care workers
- Utility employees
- Water and waste water employees
- Transportation and logistics workers
- Public works employees
- Communications and information technology workers

- Other community-based government operations and essential function employees
- Critical manufacturing workers
- Hazardous materials workers
- Financial services employees
- Chemical workers
- Defense industrial base employees

As mentioned above, direct services funding paid to a provider under the CARES Act allows Lead Agencies to maintain a child's slot with a child care provider that has closed by paying fees/tuition that would otherwise be paid by parents, while simultaneously funding emergency child care services for the same child.

#### *Quality/Supply Building Activities*

Under the CARES Act, grants may be provided to child care providers for emergency child care services. Lead Agencies may target quality improvement or supply-building grants (e.g., for start-up costs, equipment, supplies) specifically to child care providers who are serving health care sector employees, emergency responders, sanitation workers, and other essential workers. Lead Agencies can use quality dollars for any provider, regardless of whether they are eligible to serve, or currently serving, children receiving CCDF subsidies.

#### **Non-Supplantation Requirement**

The CARES Act requires that the supplemental funds made available under the law must be used to supplement, not supplant, State, Territory, or Tribal general revenue funds for child care assistance to low-income families. ACF oversight of this requirement will be consistent with monitoring, noncompliance, and complaint policies outlined in Subpart J of CCDF regulations. Additionally, Lead Agencies are subject to audit requirements at 45 CFR 98.65 of CCDF regulations.

ACF will consider a State, Territory, or Tribe to have satisfied the "supplement not supplant" requirement if the State, Territory, or Tribe has not made administrative or legislative changes to reduce the amount of general revenue funds for child care assistance to low-income families below the amount that would have been spent under State, Territory, or Tribal law and policies in place on the date of enactment of the CARES Act (March 27, 2020). If State, Territory, or Tribal general revenue funds for child care assistance fall below this amount, ACF will presume that such decrease constitutes supplantation, unless the State, Territory, or Tribe can demonstrate that the reduction was unrelated to the availability of additional Federal funds included in the CARES Act (e.g., States that made legislative or policy changes prior to the enactment of the CARES Act, but implemented these changes after the date of enactment are not considered to have violated the non-supplantation requirement). States, Territories, or Tribes wishing to propose an alternative rationale demonstrating compliance with the

non-supplantation requirement should submit a detailed justification in writing to the ACF Office of Child Care.

### **Exemptions from Quality and Direct Services Spending Requirements**

Funds from the CARES Act are exempt from certain spending requirements required by the CCDBG Act. The CCDBG Act requires a significant portion of Lead Agency spending to be used for assistance for certain families (section 658E(c)(3)(D)), 70 percent of the remaining funds (after quality and administration) to be used for direct services (section 658E(c)(3)(E)), and certain percentages (9 percent for States and Territories, 8 percent for Tribes, and an additional 3 percent targeting infants and toddlers) to be used on quality improvement activities (section 658G). These requirements do not apply to the CARES Act funds.

The administrative costs maximum, described at 45 CFR 98.54 (5 percent for States and Territories and 15 percent for Tribes), continues to apply to all CCDF expenditures in the aggregate, which includes CARES Act funding.

### **Important Dates for Obligating and Liquidating Funds**

The CARES Act provides Discretionary funds for Lead Agencies to prevent, prepare for, and respond to COVID-19. Lead Agencies have until September 30, 2022, to obligate the CARES Act funds. Lead Agencies have until September 30, 2023, to liquidate the funds.

In addition, Lead Agencies may use CARES Act funds to reimburse costs incurred to prevent, prepare for, and respond to COVID-19 prior to the enactment of the CARES Act (March 27, 2020).

### **Making Changes to CCDF Plans and Policies**

When considering changes to policies and program requirements, including changes as a result of the CARES Act, CCDF Lead Agencies have two main options for such changes: (1) *Amend CCDF Program Requirements, through a Plan Amendment*, and (2) *Apply for a Waiver for Extraordinary Circumstances, with subsequent Amendment if needed*. Lead Agencies are reminded that they may submit CCDF Plan amendments within 60 days *after* implementing an authority from either the CCDBG Act or the CARES Act.

1. *Amend CCDF Program Requirements, through a Plan Amendment*: If Lead Agencies need to revise some program policies, but would otherwise still be in compliance with federal requirements, they can do so without a waiver (e.g., expanding definition of protective services to accommodate impacted families; waiving family copays for a portion of the caseload, etc.). A Plan amendment is required for any substantial program change (e.g., change in

eligibility, rates, copays, etc.). Changes based on the additional flexibilities allowed by the CARES Act require an amendment, but not a waiver. A Plan amendment is required within 60 days of the effective date of the requirement; Lead Agencies may proceed with implementing the program change, and subsequently submit the amendment up to 60 days following the effective date.

2. *Apply for a Waiver for Extraordinary Circumstances:* If the Lead Agency needs relief from specific CCDF requirements (e.g., a reduction in 12-month eligibility for impacted families) due to the COVID-19 situation, the Lead Agency may apply for a waiver for extraordinary circumstances. A waiver for extraordinary circumstances is only necessary if the change would not comply with federal CCDF requirements; otherwise, changes can be made through Plan amendments. Examples of changes that would require a waiver include exempting providers from some or all health and safety standards, health and safety training requirements, or background check components; suspending annual inspections of providers; changing income eligibility to be higher than 85% of state median income (except in the case of essential workers as described in the CARES Act, which can be changed through an amendment); or changing the subsidy eligibility period to be less than 12 months. Exemptions to the direct spending and quality activities spending requirements as allowed by the CARES Act do not require a waiver. Upon approval of the waiver, the Lead Agency has 60 days from the date of approval to submit any associated amendments for the waiver.

Lead Agencies can access additional information about submitting Plan amendments and waivers in response to the COVID-19 emergency at the OCC website for COVID-19 resources: <https://www.acf.hhs.gov/occ/resource/occ-covid-19-resources>.

## **Reporting and Monitoring**

Although the CARES Act funding is supplemental to Lead Agencies' regular FY 2020 CCDF funding, it should be tracked and accounted for separately to ensure compliance with specific requirements and authorities provided by the CARES Act. Additional guidance on reporting will be forthcoming.

ACF will monitor the Lead Agencies' compliance with applicable statutory and regulatory requirements for these funds by reviewing Plans and expenditure reports. Additionally, ACF may conduct on-site and/or desk review monitoring to assure compliance.

## **Resources**

OCC has been assisting State, Territory, and Tribal Lead Agencies to understand existing CCDF flexibilities through a series of webinars and by posting information on the OCC website: <https://www.acf.hhs.gov/occ/resource/occ-covid-19-resources>.

Additional information relevant for other ACF programs can be found at the ACF COVID-19 Response and Responses website: <https://www.acf.hhs.gov/coronavirus>.

The OCC website has additional information about obligation and liquidation periods for regular CCDF funds: <https://www.acf.hhs.gov/occ/resource/ccdf-funding-allocations-and-periods-of-availability>.

Questions: Direct inquiries to the Child Care Program Manager in the appropriate Office of Child Care Regional Office. Contact information for Regional Offices can be found at <https://www.acf.hhs.gov/occ/resource/regional-child-care-program-managers>.

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