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INFORMATION MEMORANDUM

To: State, Territorial and Tribal Lead Agencies administering child care programs under the Child Care and Development Block Grant Act (CCDBG) Act as amended, and other interested parties.

Subject: Increase in Child Care and Development Fund (CCDF) Discretionary Funds in the Consolidated Appropriations Act of 2018 (Public Law 115-141).

References: The CCDBG Act (42 U.S.C. 9857 *et seq.*); section 418 of the Social Security Act (42 U.S.C. 618); 45 CFR Parts 98 and 99; Consolidated Appropriations Act of 2018 (Public Law 115-141).

Purpose: To provide an overview and guidance on the increased CCDF Discretionary funds made available through the Consolidated Appropriations Act of 2018.

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.

CCDF consists of two separate funding streams: 1) Discretionary funding authorized by the Child Care and Development Block Grant Act, subject to annual appropriations; and 2) Mandatory and Matching funds made available under Section 418 of the Social Security Act. In fiscal year 2017, CCDF made \$5.8 billion available to States, Territories, and Tribes. The Consolidated Appropriations Act of 2018 increased the Discretionary amount of CCDF funding by \$2.37 billion for fiscal year 2018, which includes a \$157 million increase (above the pre-existing set-aside) for Tribes, for a total Discretionary amount of almost \$5.23 billion.

Guidance: This Information Memorandum provides an overview and guidance related to the increased funding and additional provisions included in the Consolidated Appropriations Act of 2018, which became law on March 23, 2018.

Overview

The Consolidated Appropriations Act of 2018 included a \$2.37 billion increase in CCDF Discretionary funds over the 2017 appropriations levels. This brings the total Federal funding for CCDF in FY 2018 to \$8.143 billion (\$5.226 billion Discretionary and \$2.917 billion Mandatory/Matching). This funding level has been made available for FY 2018 while future discretionary funding levels are subject to the same annual appropriations process.

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: children under age five, number qualifying for school lunch program, and per capita income. In FY 2017, \$5.58 billion in total CCDF funding (Discretionary, Mandatory, and Matching) was awarded to States. States will receive \$7.69 billion in FY 2018, an increase of about 38 percent.

Territories: The CCDBG Act establishes the allocation for Territories at up to ½ of 1 percent of the Discretionary allocation. The FY 2018 funding levels increases the Territory funding from \$14.3 million in FY 2017 to \$26.1 million in FY 2018, an increase of about 83 percent. Territories include American Samoa, Northern Marianas Islands (CNMI), Guam, and the U.S. Virgin Islands.

Tribes: The CCDBG Act sets a statutory funding level of at least 2% of Discretionary Funds for Tribal grantees. The Secretary has flexibility to set a higher level provided certain conditions are met. The Discretionary tribal set-aside was 2.75% for FY 2017 and will remain at the same level for FY 2018. Furthermore, the Consolidated Appropriations Act of 2018 included an additional allocation of \$157 million for Tribes. In FY 2017, \$137 million in total CCDF funding (Discretionary and Mandatory) was awarded to Tribal grantees. Tribal grantees will receive \$359 million in FY 2018, an increase of about 162%. Funding can be used for all allowable activities, including construction and major renovation activities approved by ACF (see tribal construction and renovation application procedures at: CCDF-ACF-PI-2016-05)¹.

Tribes are required to comply with the CCDF Final Rule no later than October 1, 2019. OCC will use the FY 2016 allocation amounts to determine whether a Tribe will be required to meet CCDF requirements applicable to small allocation Tribes, medium allocation Tribes, or large allocation Tribes. This designation will last for the 3-year FY2020-2022 Plan cycle.

¹ <https://www.acf.hhs.gov/occ/resource/ccdf-acf-pi-2016-05>).

With one exception (described below under *Prohibition on Use of Funds: Serious Injuries or Deaths*), there were no programmatic changes or new parameters about how States will use the increased funds, though language in the House Appropriations Committee’s Joint Explanatory Statement provides additional context about Congressional Intent (see below)².

Additionally, since the increase is in Discretionary funds, there is no Match/Maintenance of Effort (MOE) associated with the increase.

Important Dates for Obligating and Liquidating Funds

The significant increase in the FY 2018 CCDF Discretionary appropriation will provide increased allocations for States, Territories, and Tribes to administer the CCDF program. Because they are Discretionary funds, CCDF Lead Agencies have until September 30, 2019, to obligate funds and September 30, 2020, to liquidate funds.

Lead Agencies are required to notify ACF by April 1, 2019, if they will be unable to obligate any portion of their FY 2018 CCDF Discretionary Funds allotment by September 30, 2019. In accordance with 45 CFR 98.64, any unobligated State funds identified by the April 1 deadline will be reallocated to other States in proportion to their original allotments, and any unobligated Tribal funds will be reallocated to other Tribes.

Prohibition on Use of Funds: Serious Injuries or Deaths

The appropriations law included a provision stating that no funds made available in the FY 2018 appropriations “may be provided to any child care provider if a list of providers (as mentioned in part 98 of title 45 of the Code of Federal Regulations, applicable to the Department of Health and Human services, Administration for Children and Families, and in the final rule published in the Federal Register, Vol. 81, No. 190, on Sept. 30, 2016) indicates that a serious injury or death occurred at the provider due to a substantiated health or safety violation.” The appropriations law references a list of providers mandated by the CCDF regulation. Although such a list is not explicitly required by the CCDF regulation, States, Territories, and Tribes should take necessary steps to meet the intent of the appropriations law by ensuring that prohibited providers (where a substantiated health and safety violation resulted in the serious injury or death of a child) do not receive FY2018 CCDF Discretionary funds.

ACF oversight of this requirement will be consistent with monitoring, non-compliance, and complaint policies outlined in Subpart J of CCDF regulations. Additionally, States, Territories, and Tribes are subject to audit requirements at 45 CFR 98.65 of CCDF regulations.

² <https://www.congress.gov/crec/2018/03/22/CREC-2018-03-22-bk3.pdf>

This requirement applies to the FY 2018 CCDF Discretionary appropriations. Therefore this limit does not apply to CCDF Mandatory or Matching funds or to older CCDF Discretionary funds that States, Territories, or Tribes may still be spending (*i.e.*, FY 2016 and FY 2017).

States, Territories, and Tribes have flexibility to define “serious injury” and “substantiated health and safety violation.” When determining the definition of serious injury, States, Territories, and Tribes should consider the consequences of being overly broad. An overly broad definition for revoking funds may discourage transparency and providers’ willingness to report deaths and serious injuries, while not targeting the most egregious situations.

Additional Impact on CCDF Grantees

Non-Supplantation Requirement: As has been the case for many years, the Consolidated Appropriations Act of 2018 requires that CCDF Discretionary funds made available under the law must be used to supplement, not supplant, State general revenue funds for child care assistance to low-income families. Using the same oversight mechanisms as the prohibition on use of funds mentioned above, ACF oversight of this requirement will be consistent with monitoring, non-compliance, and complaint policies outlined in Subpart J of CCDF regulations. Additionally, States are subject to audit requirements at 45 CFR 98.65 of CCDF regulations. The non-supplantation requirement also applies to Territorial and Tribal grantees.

ACF will consider a State to have satisfied the “supplement not supplant” requirement if the State 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 the State would have spent under State law and policies in place on the date of enactment of the Consolidated Appropriations Act of 2018 (March 23, 2018). If State general revenue funds for child care assistance fall below this amount, ACF will presume that such decrease constitutes supplantation, unless the State can demonstrate that the reduction was unrelated to the availability of additional Federal funds included in the Consolidated Appropriations Act of 2018. (*E.g.*, States that made legislative or policy changes prior to the enactment of the Consolidated Appropriations Act of 2018, but implemented these changes after the date of enactment are not considered to have violated the non-supplantation requirement.) States 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.

Quality & Infant-Toddler Set-Asides: In FY 2018, States and Territories must spend at least 8 percent of total expenditures on activities to improve the quality of child care and at least 3 percent of total expenditures on activities to improve the supply and quality of child care for infants and toddlers. Tribes must spend 7

percent of total expenditures on quality activities. These set-asides apply to all CCDF program expenditures, including the increased Discretionary funds.

Administrative Activities: State and Territories may not spend more than 5 percent of total expenditures on administrative activities. States and Territories currently spend about 3% of their total CCDF expenditures on administrative activities.³ Only 11 States currently spend the allowable 5% on administrative activities. Tribes may spend up to 15% of total expenditures on administrative activities. CCDF regulations include a detailed list of what can be considered administrative activities at 45 CFR 98.54(a) as well as a list of activities that do not count as administrative expenditures at 45 CFR 98.54(b).

Use of Funds for CCDF-related Travel: As reflected in the terms and conditions for the CCDF grant award, the CCDF Administrator, or designee from the CCDF Lead Agency, must attend and participate in ACF-sponsored national or regional in-person meetings and trainings, as directed by the Office of Child Care. Lead Agencies may use CCDF Discretionary funds for allowable costs associated with travel, lodging, per diem, and other related expenses associated with the grantee meetings and trainings. These funds would be considered administrative costs.

Direct Services: The FY 2014 CCDF Reauthorization included a new minimum of how much of the Discretionary awards that States and Territories must spend on direct services. After the Lead Agency sets aside the minimum amount for quality expenditures, the minimum amount for infant and toddler expenditures, and funds for administrative expenses, the Lead Agency must spend at least 70 percent of *the remaining amount* on direct services.

Priorities and Potential Investments for Increased CCDF Funding

While there are not new requirements for the increased Discretionary funding (with the exception of the requirement described above under *Prohibition on Use of Funds: Serious Injuries or Deaths*), the accompanying House Appropriations Committee's Joint Explanatory Summary⁴ included expectations for the funds. This document indicates that the funds are intended to increase access to affordable, high-quality child care to more low-income working families. The report also directs HHS to work with CCDF Lead Agencies to do the following:

- Support the full implementation of the CCDBG Act of 2014, including:
 - activities to improve the quality and safety of child care programs;
 - increase provider reimbursement rates; and
 - ensure that health and safety standards are met.

³ <https://www.acf.hhs.gov/occ/resource/summary-of-child-care-and-development-fund-ccdf-fy2016-expenditure-data>

⁴ <https://www.congress.gov/crec/2018/03/22/CREC-2018-03-22-bk3.pdf>

- Ensure the CCDF Lead Agencies are fully in compliance with the CCDBG Act.
- Make sure that CCDF Lead Agencies are aware of the availability of funds to make minor improvements to bring facilities into compliance with health and safety requirements and to improve professional development for the child care workforce.
- Ensure they are meeting the needs of families with nontraditional work hours.

Lead Agencies will retain flexibility on how they invest their funds to best meet the needs of their State, Territory, or Tribe, but should remain mindful of Congressional priorities.

The increased funding levels have been made available for FY 2018. Future discretionary funding levels are subject to the same appropriations process. With this in mind, Lead Agencies should be thoughtful about balancing long term investments and short term investments. Some investments for Lead Agencies to consider as they proceed with the funding levels made available through the Consolidated Appropriations Act of 2018 include:

- *Compliance with Reauthorization:* Lead Agencies should use increased funding levels to ensure they are in compliance with all the requirements of CCDF Reauthorization (e.g., implementing 12 month eligibility, health and safety [background checks, trainings, inspections] etc.). While many Lead Agencies are already in compliance or on a path to compliance with many of these requirements, Congress' Joint Statement makes clear that the additional funding is expected to alleviate some of the concerns around the funding necessary to meet the new standards. Lead Agency compliance with requirements will be determined in part through the CCDF State and Territory Plans, which are due on August 31, 2018. These plans should show compliance with CCDF requirements by October 1, 2018 (except for a portion of the background check requirements, for which States may receive time-limited waiver extensions).

As mentioned in the Joint Statement, CCDF law and regulations allow funds to be used to make minor improvements to bring facilities into compliance with health and safety requirements. (45 CFR 98.54(b) To the extent that providers are currently in need of such minor improvements or remediation, the Lead Agency can allow such expenditures so child care can be provided in healthy and safe child care environments.

Improvements or upgrades to a facility which are not specified under the definitions of construction or major renovation may be considered minor remodeling and are, therefore, not prohibited. For the purposes of CCDF, these terms are defined at 45 CFR 98.2 as follows:

- Construction is the erection of a facility that does not currently exist, and

- Major renovation is (1) structural changes to the foundation, roof, floor, exterior or load-bearing walls of a facility, or the extension of a facility to increase its floor area; or (2) extensive alteration of a facility such as to significantly change its function and purpose, even if such renovation does not include any structural change.
- *Systems-building and Infrastructure:* The increase in funding presents an opportunity for larger investments that will increase the capacity to meet requirements in a more timely and efficient manner. This could include:
 - Fingerprinting equipment and other IT investments to meet background check requirements;
 - Completing user-friendly consumer education websites;
 - Funding Quality Rating and Improvement Systems (QRIS) and incorporating quality data into the consumer education website; and
 - Increasing the capacity for data collection (e.g. improving quality of data, including additional data elements, and sharing data with other programs).
- *Investing in Home-based and Non-Traditional Hour Care:* Parents have a wide range of child care needs, particularly those whose work schedules may fluctuate or occur mostly during non-traditional work hours. Home based care and informal care options are often critical to meeting the needs of this workforce. Lead Agencies should consider whether supports for their provider community are sufficient to promote parental choice. For example, informal or license-exempt child care options may currently be excluded from, or underrepresented in, quality improvement efforts such as quality rating and improvement systems and professional development. Ensuring that such investments include targeted efforts tailored to home-based and informal care options strengthen the child care system by offering parents viable choices for meeting diverse child care needs.
- *Increasing Access:* Prior to the new appropriations levels, CCDF and other federal sources were only able to serve approximately 16% of federally-eligible children and 26% of children eligible based on Lead Agency-defined criteria.⁵ Increased funding levels provide Lead Agencies with the opportunity to examine policies to determine how they can serve more eligible children and families.
- *Provider Payment Rates and Equal Access:* While not all Lead Agencies will need to raise their payment rates, increased funding levels provide Lead Agencies with the opportunity to reexamine whether their rates are sufficient to ensure equal access to the child care market.

⁵ <https://aspe.hhs.gov/system/files/pdf/258491/ChildCareSubsidyEligibility.pdf>

- *Smoothing Out Cliff Effect:* The purpose of the graduated phase-out provision is to promote continuity of care by addressing the impact that the cliff effect has on family stability. The cliff effect occurs when a family's modest gains in income are offset by a larger loss of benefits. The unintended consequence is that this adverse effect creates a disincentive to work advancement. Mitigating this dynamic will allow families to truly work towards financial independence and transition off subsidy-based child care assistance. When implementing graduated phase-out and family co-payment policies, Lead Agencies must make a number of decisions including where to set initial and second tiers of income eligibility, and whether there are sufficient resources to continue enrolling new subsidy recipients. The increase in funding should help Lead Agencies balance some of these priorities.

- *Prioritizing Populations and Addressing Gaps to Serve Children from All Age Groups:* Federal requirements allow CCDF to serve children up to age 13 (or at Lead Agency option, up to age 19 for children with special needs). While all Lead Agencies prioritize differently, Lead Agencies should take this opportunity to examine the needs of families within the State and evaluate existing policies to see if the State can better serve all age groups. , while still complying with service prioritization requirements (45 CFR 98.46) to give priority to:
 - children of families with very low family income (considering family size);
 - children with special needs, which may include any vulnerable populations as defined by the Lead Agency; and
 - children experiencing homelessness..

- *Training and Professional Development:* We encourage Lead Agencies to use the increased funding, including its required quality spending, to ensure a strong supply of qualified child care providers. For example, we encourage Lead Agencies to engage training, professional development, and education providers in developing the framework required at 45 CFR 98.44(a). We also encourage Lead Agencies to consider how to appropriately incorporate home-based and informal providers into the required training and professional development framework so that these providers have the support they need to care for children in safe and nurturing environments. .

- *Increasing Effectiveness and Efficiencies through Shared Services Initiatives:* When looking to build capacity within the child care provider community, Lead Agencies should consider shared services models such as family child care networks. Such strategies can leverage resources and take advantage of economies of scale to help providers collectively meet their needs.

- *Strengthening CCDF Administrative Capacity of Lead Agency:* As mentioned above, Lead Agencies on average spend less than the allowable amount for administrative activities (5% of total expenditures for States and Territories, 15% for Tribes). While maximizing spending for direct services and quality activities is a laudable goal, Lead Agencies should consider whether additional investments in their administration, such as IT and staffing (including dedicated staff for data and research), would increase the capacity to serve children and families more efficiently and effectively. Note that IT investments and certain other expenditures (e.g. investing in licensing and inspections, training) do not count against the administrative cost cap (45 CFR 98.54(b)).
- *Research and Evaluation:* The CCDBG Act specifically lists the following as an allowable quality activity: “Evaluating and assessing the quality and effectiveness of child care programs and services offered in the State, including evaluating how such programs positively impact children.” (42 U.S.C. 9858e(b)(7)) Lead Agencies can consider how increased funding can be used for research and evaluation purposes to better inform their understanding of the child care needs of families and providers in their system and how to improve services for children, such as through understanding supply of care and the current demand for child care (including what types of care families are looking for to meet their needs).

Resources: Lead Agencies should regularly visit the Child Care Technical Assistance website (<https://childcareta.acf.hhs.gov/>) for updated resources and supports in these areas.

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

/s/

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