ACSI OFFICE OF GOVERNMENT AFFAIRS

ASSOCIATION OF CHRISTIAN SCHOOLS INTERNATIONAL

Strengthening Christian Schools
Equipping Christian Educators
Worldwide

February 22, 2016

(Submitted via Federal eRulemaking Portal)

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

Re: Notice of Proposed Rulemaking (NPRM), Child Care and Development Fund (CCDF)
Docket ID AFC–2015–0011

The Association of Christian Schools International (ACSI) offers the following public comment to the "Notice of Proposed Rulemaking" (NPRM) for the Child Care and Development Fund (CCDF) to implement provisions in the Child Care and Development Block Grant Act of 2014. The NPRM was published in Vol. 80, No. 247, of the Federal Register on December 24, 2015, starting at 80 FR 80454.

ACSI is a nonprofit, non-denominational, religious association providing support services to nearly 24,000 Christian schools in over 100 countries. As the world's largest association of Protestant schools, ACSI serves 3,000 Christian preschools, elementary, and secondary schools and 90 post-secondary institutions in the United States alone. We are a leader in strengthening Christian schools and equipping Christian educators worldwide. 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.

General Concerns. We would like to begin by noting ACSI's agreement with the Public Comment submitted February 16, 2016, by the Council for American Private Education (CAPE) of which ACSI is a member-association. CAPE has recommended that the regulations add specific language where necessary to ensure inclusion of faith-based early education and to delete language which conflicts with the reauthorization statute.

Grants/Contracts. ACSI expresses its concern over the unwarranted attempt by the proposed regulations to mandate the use of grants and contracts. Section 98.50(a)(3) states "funding methods provided for in §98.30 … must include some use of grants or contracts for the provision of direct services." However, the Child Care and Development Block Grant Act of 2014 (CCDBG) states that nothing in the act shall be construed in a manner "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 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" (42 USC §9858o(b)). To require that funding methods "must include" grants or contracts clearly violates Congressional intent and the plain language of the statute.

It is hard to conceive that the NPRM accidentally includes proposed regulatory language which so clearly violates the statute. First, the NPRM discusses the very statutory text quoted above, but dismisses it. Let us be clear: nothing in the statute mandates the use of grants or contracts – they are an option. On the contrary, the statute specifically forbids promoting grants/contracts or disfavoring or discouraging the use of certificates. Certainly, to mandate grants/contracts favors their use and disfavors or discourages the use of certificates. This is not appropriate. Nor is it appropriate for the NPRM to refer to this as "a straightforward interpretation of language in the CCDBG statute" (pg. 80518).

Secondly, the 2013 NPRM included the same problematic language. ACSI objected to it at the time and Congress ultimately responded by adding the statutory language quoted above. As ACSI noted in our August 13, 2013 public comment: "…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." [Emphasis original]. The present NPRM repeats this error in its headlong rush to mandate the use of grants/contracts. It may be that there are no barriers to the use of grants/contracts to eliminate.

In addition, the current NPRM repeats an error of the 2013 NPRM by arguing the importance of maintaining the income-flow of providers whether or not parents "vote" for the grantee/contractor (by using their certificates). Mandating the use of grants/contracts is a clear case of government coming down on the side of only one type of provider and against parents who obviously prefer *other* providers. The CCDBG program is not about giving government-funded providers "a more predicable funding source than vouchers or certificates" (pg. 80518). By no means does the statute require predictable or "stable" government funding for government-funded providers. It is about parental choice.

The NPRM also asserts that "faith-based or religious organizations may be funded through a grant or contract, although they may not use the funding for religious purposes" (pg. 80518). In other words, a faith-based or religious organization may be funded through a grant or contract *as long as it is not faith-based or religious.* The NPRM goes on to state explicitly that "funds provided through grants or contracts to providers may not be expended for any sectarian purpose or activity, including sectarian worship or instruction. These provisions are designed to promote[!] the participation of faith-based organizations in the CCDF in a manner consistent with applicable Federal statutes" (pg. 80518). This is simply Orwellian: An unnecessary regulation stating that faith-based institutions may not act in a faith-based manner is not "designed to promote" their participation.

The very popularity of certificates (which the current NPRM is compelled to acknowledge) is itself an argument suggesting that greater use of certificates is *more likely* "to build the supply of high quality care" than the use of apparently unpopular and certainly restrictive grants/contracts which exclude faith-based providers. The NPRM notes that 90% of children in FY 2013 made use of certificates and that only 20 states or territories made use of grants/contracts (pg. 80518). But the NPRM reached exactly the wrong conclusion from this data when it claims that parents have no choice other than certificates in a majority of states/territories. On the contrary, thanks to their certificates, parents in the majority of states/territories have the choice that gives them not only the *most* choices, but also the most *diverse* choices possible. It may well be that the public, parents, and the states/territories dislike the use of restrictive grants/contracts precisely because they restrict options and specifically *exclude* diverse options such as faith-based providers.

Finally, the NPRM argues that it seeks to mandate the use of grants/contracts "in order to build the supply of high quality care" (pg. 80468), but provides no evidence that this will be the result. The NPRM also asserts, again without evidence, that "demand-side mechanisms like certificates are only fully effective when there is an adequate supply of child care. Grants or contracts can play a role in building the supply and availability of child care…" (pg. 80518). Again, on the contrary, the evidence suggests that restrictive tools like grants/contracts are ineffective at building supply. If shortages could be met more effectively by grants/contracts than by other means, they would be significantly more popular than they are and their use would surely have grown precisely to meet supply shortages over the many decades the CCDBG program has been in place. That has not happened. And, alas, the NPRM seeks to force that to happen the only way it apparently can be made to happen: by fiat. But, worse: by fiat that is contrary to the plain language of the statute which in turn was put there specifically because the *previous* NPRM sought to impose this same mandate.

A second point needs to be raised about supply. In addition to the unpopularity of grants/contracts in and of themselves, the supply argument is questionable. For example, in its Draft State Plan submitted for public comment earlier this year, the Commonwealth of Pennsylvania planned to tell the Administration for Children and Families (ACF) that it would begin discussions about implementing a grants/contracts regime, clearly responding to pressure from ACF. ACSI submitted public comment in Pennsylvania in which we pointed out Pennsylvania's own admission – in the same document – that "We [Pennsylvania state agencies] have not experienced any difficulty with finding quality child care for subsidy families" and further that the principal state agency "receives constant feedback from families on the availability of care." If the state of Pennsylvania receives constant feedback about the availability of care and if it has *no difficulty* in finding quality child care, then clearly even a conversation about imposing the use of grants/contracts is a distraction from the mission.

In short, the mandate to use grants/contracts should be deleted from throughout the final rule. The final rule should reflect the statute as written.

ACSI reiterates its concerns as expressed in its August 5, 2013, public comment on the previous NPRM prior to passage of the CCDBG statute:

> *Here is a case in which the emphasis on grants/contracts will serve to reduce parental decision-making. … 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.*
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> *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 … 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.*

Furthermore, ACSI offered a conclusion in its January 4, 2016 public comment to the Commonwealth of Pennsylvania that is appropriate here:

In short, the … discussion about a potential move away from certificates will impact significantly the ability of faith-based providers to participate, and as such limit the quality choices available to families who need options which reflect their priorities and values.

Other Concerns. The NPRM in Sections 98.20 and 98.21 seeks to prevent successful families from leaving the CCDF by delaying redetermination to 12 months and by declining to require documentation. A family that is able to – but that does not – help pay for services limits access for families in need. This should be reconsidered before a final rule is issued. The NPRM discussion acknowledges that "we expect that longer eligibility periods, and the related policies in the Act and this rule, will increase the average length of time that participating families receive child care subsidies" (pg. 80558). That, in turn, "may result in a decrease in the total number of families served over the course of a given year" (pg. 80558). This result contradicts the NPRM's discussion about the putative need to increase the supply of child care services. Regulatory changes surely should not be allowed to reduce the number of families currently served by the CCDF.

In conclusion, we wish to express our thanks for your consideration of our concerns, particularly as they relate to grants/contracts.

Respectfully submitted,

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