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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 (CCDBG) as amended and other interested parties.

Subject: Flexibility in spending Child Care and Development Fund (CCDF) Funds in response to federal or state declared emergency situations. This Information Memorandum (IM) supersedes previously issued IM ACYF-IM-CC-05-03.[1]

References: The CCDBG Act as amended (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.

Purpose: This IM provides guidance to state, territorial, and tribal Child Care and Development Fund (CCDF) Lead Agencies regarding the flexibility in spending CCDF funds in response to federal or state declared emergency situations.

Background: States, territories, and tribes have flexibility to operate the CCDF program within the parameters of federal requirements. Because funds are awarded to states, territories, and tribes on a formula basis, there are no additional CCDF funds available for distribution in the event of a federal or state declared emergency. However, the federal CCDF statute and rules enable states, territories, and tribes affected by such emergency situations with options to continue providing child care services despite disruptions to families and providers. Some of these options (described below) would require the CCDF Lead Agency to submit a CCDF State Plan amendment or waiver request to the Administration for Children and Families. Under 45 CFR 98.18(b), the Lead Agency has up to 60 days after the effective date of a change to submit a plan amendment. Therefore, Lead Agencies desiring to take advantage of options afforded by CCDF statute and regulations should act immediately. We note that these options for using CCDF funds are not limited to states, territories, and tribes directly affected by emergencies, but are also available to states, territories, and tribes coming to the aid of other jurisdictions affected by emergency situations.

[1] Flexibility in Spending CCDF Funds in Response to Federal or State Declared Emergency Situations, Sept. 6, 2005, Information Memorandum: ACYF-IM-CC-05-03. https://www.acf.hhs.gov/occ/resource/im-cc-05-03.

Guidance: The following is a list of options available to states, territories, and tribes for using CCDF funds in response to federal or state declared emergency situations. This list is not exhaustive. Lead Agencies are encouraged to consider their own emergency preparedness and response options, rather than waiting until an emergency situation unfolds. Lead Agencies are also encouraged to consult with their Regional Offices concerning other options that may be available in emergency situations.

<u>Option A: Use quality dollars to provide immediate assistance to displaced families.</u>
Section 658G of the CCDBG Act[2] directs states to spend no less than seven percent in fiscal years 2016 and 2017, eight percent in fiscal years 2018 and 2019, and nine percent in fiscal year 2020 and each succeeding fiscal year for activities designed to improve the quality of child care services and increase parental options. In addition, the quality activities should enable families to access high-quality child care as described at 45 CFR 98.53. In the short-term, CCDF quality dollars may be used to provide emergency child care of the highest quality that is reasonably practicable given the particular circumstance of displaced families, particularly in areas where existing child care facilities are not operating or have been rendered unsafe.

<u>Option B: Change the CCDF Lead Agency's eligibility or priority criteria to permit uninterrupted child care.</u>

- The Lead Agency can examine its eligibility conditions or priority rules and broaden them if necessary. Under 45 CFR 98.16(g) and 98.20(a), Lead Agencies have flexibility to define "working" to include families seeking employment, participating in community service, or a similar activity.
- Lead Agencies are free to add additional eligibility conditions or priority rules, as a method of targeting their programs, as long as the Federal eligibility criteria at 45 CFR 98.20 are met [e.g., family income is under the income limit, parent(s) are working (as defined by the Lead Agency) or are in a training or education program]. Furthermore, the additional conditions or rules may not discriminate, limit parental rights, or violate CCDF rules or the Lead Agency's CCDF Plan. Lead Agencies must give priority for child care services to children experiencing homelessness, children with special needs, and families with very low incomes. In addition, Lead Agencies are required to have procedures for allowing children experiencing homelessness to be determined eligible and enroll prior to completion of all required documentation in accordance with section 658E(c)(3)(B)(i) of the Act and 45 CFR 98.51(a).
- Lead Agency discretion could result in different eligibility conditions or priority rules in effect in different parts of the State, Territory, or tribal service area (e.g., to target resources to areas most affected by a federal or state declared emergency). There is no "statewide" requirement for eligibility or priority criteria in the law.

<u>Option C: Broaden the Lead Agency's definition of protective services to permit emergency eligibility.</u>
Lead Agencies have the option to waive the income eligibility requirements for children who receive or need to receive protective services, if determined to be necessary, on a case-by-case basis. Furthermore, a child in a family that is receiving, or needs to receive, protective intervention is eligible for child care subsidies even if the parent is not working or in education or training. In emergency situations, Lead Agencies have the option of

[2] 42 U.S.C. § 9858e.

deeming children affected by a federal or state declared emergency to be in need of protective services and therefore, the eligibility requirements (e.g., income threshold, work/training requirement) could be waived. These provisions, at Lead Agency option, could also apply to children in foster care.

<u>Option D: Examine the Lead Agency's income eligibility threshold and what the Lead Agency counts as income</u>.
Lead Agencies have the flexibility to define income and to set the income threshold for purposes of CCDF eligibility. For example, the Lead Agency could exclude disaster relief or other forms of temporary assistance from counting as income.

<u>Option E: Waive co-payments for displaced families.</u>
Under 45 CFR 98.45(k)(4), Lead Agencies have the option to waive family co-payment requirements for families that meet criteria established by the Lead Agency—which may include, for example, families impacted by federal or state declared emergency situations. Lead Agencies could use this option to ensure equal access for certain populations such as homeless families or families impacted by disasters.

<u>Option F: Use quality dollars to provide supply-building grants to providers.</u>
Lead Agencies may use existing quality improvement dollars to provide supply-building grants or contracts to providers for equipment, supplies, professional development and staffing, or other costs. The state, territory, or tribe may use this flexibility to target providers that experience a disruption in subsidy receipt due to an emergency. This could provide ongoing financial assistance for child care providers while they are rebuilding. In addition, as noted below, CCDF funds may be used for minor repair or remodeling, particularly if necessary to meet applicable standards for healthy and safety.

Section 658F(b) of the CCDBG Act[3] specifies that CCDF funds cannot be expended for the purchase or improvement of land, or for the purchase, construction, or permanent improvement (other than minor remodeling) of any building or facility (except for tribes, which may apply to use a portion of their CCDF funds for construction or major renovation). However, the implementing federal regulations (at 45 CFR 98.2 and 98.56) provide additional guidance regarding the use of CCDF funds for renovation. Specifically, CCDF funds cannot be used for major renovation, but can be used for minor remodeling, and for upgrading child care facilities to assure that providers meet state and local child care standards, including applicable health and safety standards. Major renovation is defined as: (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. Any improvement or upgrade to a facility that is not specified under the definition of major renovation, may be considered a minor renovation and may be allowable under applicable regulations and cost principles. For sectarian agencies and organizations, in addition to the requirements described above, funds may be expended for minor remodeling only if necessary to bring the facility into compliance with health and safety requirements.

[3] 42 U.S.C. § 9858d(b).

Option G: Increase resources available to CCDF families (e.g., transferring Temporary Assistance for Needy Families (TANF) dollars).

States have the flexibility to transfer a portion of TANF dollars to CCDF, or to use TANF funds directly for child care services. States may also increase their use of state funds in response to an emergency or disaster. Some child care businesses may also be eligible for assistance made available through federal emergency relief.

Option H: Use the federal early childhood training and technical assistance system [https://childcareta.acf.hhs.gov].

Lead Agencies can tap into the resources of the training and technical assistance centers. These centers develop and disseminate high-quality, evidence-based resources and practices, and provide training and technical assistance on CCDF subsidy and emergency preparedness and can assist Lead Agencies in event of emergency situations.

Option I: Request Temporary Waivers for Extraordinary Circumstances

In addition to the options described above, states may apply for temporary waivers for extraordinary circumstances in response to emergency situations in accordance with 45 CFR 98.19. If approved, these waivers may temporarily exempt Lead Agencies from meeting specific requirements in the CCDBG Act and the final rule. In order to request temporary waivers for extraordinary circumstances in response to emergency situations, the Lead Agency must submit a written request to the Office of Child Care (OCC) Director (with a copy to the OCC Regional Program Manager), indicating the reason why the Lead Agency is requesting the waiver including a description of the extraordinary circumstances. The request must also provide sufficient detail on the provision(s) from which the Lead Agency is seeking temporary relief and how relief from the sanction or provision, by itself, will improve the delivery of child care services for children and families. The request must also certify and describe how the health, safety, and well-being of children served through CCDF will not be compromised as a result of the waiver.

The waiver request must include the preferred start date (which may be retroactive to the time the emergency occurred) and the duration of the waiver. The request is limited to an initial period of no more than two years from the date of approval, and at most, an additional one-year renewal from the date of approval of the extension. Upon approval of a waiver request, Lead Agencies have 60 days to submit a CCDF Plan amendment to correspond with the provision(s) in the waiver request.

Questions: Inquiries should be directed to the appropriate ACF Regional Office.

/s/

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