



ADMINISTRATION FOR
CHILDREN & FAMILIES

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December 13, 2021

Shelia Poole, Commissioner
Office of Children and Family Services
52 Washington Street
Rensselaer, NY 12144

Dear Commissioner Poole:

The Office of Child Care (OCC) has completed its review of your federal fiscal year (FFY) 2022-2024 Child Care and Development Fund (CCDF) Plan. We appreciate your hard work and partnership, especially as you have had to respond to unprecedented child care challenges as a result of the COVID-19 pandemic.

This letter is to inform you that the New York CCDF Plan for the period of October 1, 2021, through September 30, 2024, has been approved with conditions. A Plan “approved with conditions” is a fully approved Plan with conditions related to requirements that are non-compliant or without a final determination as noted below regarding payment rates. The conditions will be deemed fully compliant once all provisions in the Child Care and Development Block Grant (CCDBG) Act of 2014 and the Final Rule are fully implemented and demonstrated via a Plan amendment. At that time, the New York CCDF Plan will be approved without conditions.

Regarding your requests for a temporary waiver for the market rate survey or Administration for Children and Families (ACF) pre-approved alternative methodology and/or the narrow cost analysis, the following waivers to your CCDF Plan were approved:

- Your request to waive the requirement at 45 CFR §98.45(c), (d)(1), (e), and (f) to complete a statistically valid and reliable market rate survey and/or ACF pre-approved alternative methodology for child care programs impacted by COVID-19 has been approved effective September 30, 2021, through July 1, 2022 (one year following the July 1, 2021 deadline).
- Your request to waive the requirement at 45 CFR §98.45(b)(4) and (f) to complete a narrow cost analysis for child care programs impacted by COVID-19 has been

approved effective September 30, 2021, through July 1, 2022 (one year following the July 1, 2021 deadline).

Due to the number of states and territories who requested waivers to have additional time to complete their data collection and set payment rates, the OCC will not issue compliance decisions on sufficient payment rates (45 CFR §98.45(b)(2), 45 CFR §98.45(b)(3), and 45 CFR §98.45(b)(4)) for any state or territory until after those waivers expire July 1, 2022.

Full implementation of all provisions in the CCDBG Act of 2014 and the Final Rule in your CCDF Plan was required no later than September 30, 2021, unless the state or territory received approval for a waiver specific for the market rate survey or ACF pre-approved alternative methodology and/or the narrow cost analysis as indicated above. Based on the information reviewed in your CCDF Plan, the OCC has determined New York did not fully implement the provisions listed below by the effective date of September 30, 2021. The specific non-compliant requirements are indicated in the attached “Detailed List of Non-Compliant Provisions as of 9/30/2021.”

- 45 CFR §98.21 - Eligibility Determination Processes
- 45 CFR §98.43 - Criminal Background Checks

For each CCDF requirement listed as non-compliant, this letter serves as a preliminary notice of possible non-compliance pursuant to 45 CFR §98.90(b). The OCC will consider any written response that outlines steps toward resolution received from New York to address the non-compliances within 60 days of receipt of this notice (or such longer period if agreed upon) prior to rendering a final determination of compliance. You will be subject to this notice of possible non-compliance until a Plan amendment is approved demonstrating compliance with the CCDF requirements and may be subject to enforcement via a penalty pursuant to 45 CFR §98.92.

While the OCC recognizes that progress toward full implementation of the comprehensive background check (CBC) requirements continues to be delayed due to the complicated statutory requirements and the impacts of the COVID-19 pandemic over the past 18 months, the CCDBG waiver authority is temporary and has now been used for 7 years to support Lead Agencies in meeting the CBC requirements. At this time, we have exhausted our allowable existing waiver authority to provide additional time to implement the background checks requirements. The OCC expects states and territories to continue to work toward coming into compliance using all available resources and technical assistance supports – including such resources as the National Fingerprint File (NFF) and targeted assistance to build out background check policies for all providers. The OCC will not issue final notices of non-compliance for background check requirements prior to September 1, 2022, which means no enforcement action (penalty) for comprehensive background check requirements will be taken prior to FFY 2023.

The CCDF Plan includes questions that encompass all elements as required by regulations at 45 CFR §98.16. However, the Plan does not ask about all aspects of federal requirements.

Recognizing the information in the Plan is not exhaustive, the OCC monitors state compliance through multiple mechanisms. All requirements of the CCDBG Act of 2014 and the Final Rule are subject to the monitoring, compliance, and complaint actions as described in 45 CFR Subpart J, including §98.90, §98.91, and §98.92. Additionally, states and territories are subject to audit requirements at 45 CFR §98.65 of CCDF regulations.

You will receive a separate Notice of Grant Award from the Office of Administration in the ACF. The notice will include the amount of your award and any additional terms and conditions for the receipt of CCDF program funds. During the effective period of this Plan, any substantial changes to your CCDF program must be submitted as a Plan amendment to your Regional Office for approval in accordance with 45 CFR §98.18(b). Lead Agencies are reminded to describe in the Plan amendment if the amended activity is being supported by the increased funding (see Program Instruction for more information about Plan amendments:

<https://www.acf.hhs.gov/occ/policy-guidance/ffy2022-2024-ccdf-plan-preprint-states-and-territories>). Lead Agencies also are reminded that you must post the approved Plan and any amendments on your state or territory website and assure any required links are functional.

We understand that it is essential for CCDF Lead Agencies to have wide-ranging support in the implementation of their CCDF Plans. OCC and the technical assistance network supporting CCDF grantees have worked together to develop a variety of technical assistance options aimed at supporting the implementation of CCDF and full compliance with CCDF policies. Your Regional Office and State Systems Specialist will be reaching out to you to discuss your specific technical assistance needs.

We look forward to working together to promote the early learning and development of children and family economic stability and success. If you have any questions, please contact Shonda Laurel, Regional Program Manager, Office of Child Care, at 646-905-8157 or shonda.laurel@acf.hhs.gov. Thank you for all you do each day for children and families.

Sincerely,

A handwritten signature in blue ink, appearing to read "Ruth Friedman", with a long horizontal flourish extending to the right.

Ruth Friedman, Ph.D.
Director
Office of Child Care

cc: Janice Molnar, Deputy Commissioner, Division of Child Care Services
Shonda Laurel, Regional Program Manager, Office of Child Care, Region II
Francesca Longo, Regional Liaison, Office of Child Care

Encl: Attachment 1: Detailed List of Non-Compliant Provisions as of 9/30/2021

Attachment 1: Detailed List of Non-Compliant Provisions as of 9/30/2021, by Category and Plan Question.

The Office of Child Care has approved the New York FFY 2022-2024 Child Care and Development Fund (CCDF Plan pending full implementation of the unmet requirements of the Child Care and Development Block Grant Act of 2014 and the Final Rule. This document details the specific requirements that are unmet by your CCDF Plan.

CCDF Rule Provision	Category	Plan Question
45 CFR §98.21 - Eligibility Determination Processes	12-Month Eligibility	3.4.1 12-month eligibility.
		3.4.2 Continuing assistance for job search and option to discontinue assistance during the minimum 12-month eligibility period.
	Graduated Phase Out	3.2.5 Graduated phase-out of assistance at redetermination.
45 CFR §98.43 - Criminal Background Checks	Comprehensive Background Checks	5.5.2 Procedures for a provider to request a background check.
		5.5.3 Procedures for the Lead Agency to respond to and complete a background check.