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### INFORMATION MEMORANDUM

- To:** State, territory, and tribal lead agencies administering the Child Care and Development Fund (CCDF) program, as amended, and other interested parties.
- Subject:** Child Care and Development Fund (CCDF) Discretionary Funds Appropriated in the Coronavirus Response and Relief Supplemental Appropriations (CRRSA) Act (Public Law 116-260), signed into law on December 27, 2020.
- References:** The Child Care and Development Block Grant (CCDBG) Act (42 U.S.C. 9857 *et seq.*); 45 CFR Parts 98 and 99; Consolidated Appropriations Act, 2021; and CRRSA Act, 2021 (Public Law 116-260).
- Purpose:** To provide an overview and guidance on the supplemental CCDF discretionary funds made available through the CRRSA Act.
- Background:** The CRRSA Act appropriated \$10 billion in supplemental child care funds, providing states, territories, and tribes participating in CCDF the opportunity and resources necessary to respond to the unprecedented challenges faced by children, families, and child care providers during the novel coronavirus (COVID-19) public health emergency. The law expands flexibility to provide child care assistance to families and children, supports child care providers, and provides lead agencies with additional funds to prevent, prepare for, and respond to COVID-19. CRRSA Act funds are supplemental discretionary CCDF funds. CCDF is the primary federal funding source for child care subsidies to help eligible working families with low incomes access child care and improve the supply and quality of child care for all children
- Guidance:** The CRRSA Act provides resources to address the immediate needs of families struggling to pay for child care and child care providers facing financial uncertainty due to the COVID-19 pandemic. This Information Memorandum is designed to help states, territories, and tribes quickly distribute those funds to communities, given the precarious financial situation of many child care providers. This guidance identifies opportunities for lead agencies to leverage these resources to support children, families, and child care providers using the

flexibility provided by the CRRSA Act. Specifically, this guidance covers the following areas:

- Allowable CCDF activities;
- Relief for families struggling to pay for child care;
- Paying wages and salaries for child care workers;
- Supporting the stability of the child care sector;
- Virus mitigation policies and processes;
- Assistance to providers not participating in the subsidy system prior to the pandemic;
- Administrative and systems investments;
- Non-supplantation requirements;
- Exemptions from quality and direct service activities spending requirements;
- Important dates for obligating and liquidating funds;
- Making changes to CCDF Plans and policies; and
- Reporting and monitoring.

## **Overview**

The COVID-19 public health emergency has put a spotlight on the critical role child care plays in supporting children, families, businesses, and the economy as a whole. It has also shown the fragility of the child care market. Child care providers are critical to working families and economic recovery. However, without immediate financial relief, child care providers will continue to close their doors, reducing the already limited supply of child care and making it harder for parents to work and children to learn.

To respond to these concerns, the CRRSA Act included a \$10 billion increase in CCDF discretionary funding. The additional funding and flexibility included in the CRRSA Act give states, territories, and tribes the resources and opportunity to provide immediate relief to child care providers and families.

The supplemental funding in the CRRSA Act is in addition to the fiscal year (FY) 2021 appropriations levels and is meant to supplement, not supplant, state, territory, and tribal general revenue funds for child care assistance for families with low incomes. In addition to the activities allowed under CCDF, the CRRSA Act offers new flexibility to lead agencies to meet the needs of families and child care providers during the COVID-19 pandemic, such as serving essential workers regardless of income and covering copayments for all eligible families. CCDF lead agencies do not need to apply for the funds, which have been awarded automatically.

The CCDF statute and regulations include flexibilities that allow states, territories, and tribes affected by emergencies to continue providing child care services to families and providers who may have faced disruptions due to the emergency. The CRRSA Act builds on these existing flexibilities. (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.)

*States:* CCDF discretionary funds are allocated to states, including the District of Columbia and Puerto Rico, based on a statutory formula that considers the following three factors: the number of children under age 5, the number of children qualifying for school meal benefits, and per capita income. States received \$9,645,000,000 under the CRRSA Act.

*Territories:* The CCDBG Act establishes the allocation for territories at up to ½ of 1 percent of the discretionary allocation. Territories include the 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 5 and per capita income. Territories received \$50,000,000 under the CRRSA 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 the flexibility to set a higher level provided certain conditions are met. The discretionary tribal set-aside was 2.75 percent for FY 2021 and will remain at the same level for the CRRSA Act funds. Funding is allocated among tribal lead agencies based on child counts. Tribal lead agencies received \$275,000,000.

*Federal Administrative Expenses:* The CRRSA Act provides up to \$15,000,000 for federal administrative expenses related to preventing, preparing for, and responding to the COVID-19. Under the CRRSA Act, \$15,000,000 has been allocated for federal administrative expenses.

*Technical Assistance:* The CCDBG Act authorizes the Secretary to reserve up to ½ of 1 percent of the amount appropriated to provide technical assistance (TA) to states, territories, and tribes. The Office of Child Care (OCC) will apply this provision to the supplemental appropriations included in the CRRSA Act, setting aside \$8,500,000 for TA to support lead agencies in administering the CRRSA Act funds through stabilization grants, enhanced business practices and supports, trauma-informed professional development, implementation of COVID-19 safe-practices, and/or other TA needs identified by lead agencies.

*Research and Evaluation:* The CCDBG Act authorizes the Secretary to reserve up to ½ of 1 percent of the amount appropriated for child care research, demonstration, and evaluation. OCC will apply this provision to the supplemental appropriations included in the CRRSA Act, setting aside \$6,500,000 for research activities directly related to the prevention, preparation for, and response to coronavirus, including a COVID-19 follow-up to the National Survey of Early Childhood Education (NSECE) Study.

## **Prior COVID Supplemental Funding**

The Coronavirus Aid, Relief, and Economic Security (CARES) Act (Public Law 116-136), which was passed in March 2020, included \$3.5 billion in supplemental CCDF discretionary funding to prevent, prepare for, and respond to the COVID-19 pandemic. The CARES Act included certain areas of flexibility for the state, territory, and tribal lead agencies described in the “CCDF Discretionary Funds Appropriated in the CARES Act” Information Memorandum (CCDF-ACF-IM-2020-01), found at <https://www.acf.hhs.gov/occ/policy-guidance/ccdf-discretionary-funds-appropriated-cares-act-public-law-116-136-passed-law>.

The CRRSA Act includes several provisions that are similar to provisions in the CARES Act, including the following:

- Allowing funds to be used to provide assistance to child care providers in the case of decreased enrollment or closures related to COVID-19 and to ensure they are able to remain open or reopen as appropriate and applicable, including for fixed costs and increased operating expenses.
- Encouraging lead agencies to place conditions on payments to child care providers that ensure child care providers use a portion of funds received to continue to pay the salaries and wages of staff.
- Authorizing the use of funds to provide child care assistance to health care sector employees, emergency responders, sanitation workers, farmworkers, and other workers deemed essential during the response to coronavirus by public officials, without regard to income-eligible requirements in the CCDBG Act. The lead agency may define which workers are considered essential in accordance with any relevant state, territorial, and tribal laws or policies.

## **Allowable CCDF Activities**

The CRRSA Act funds can be used for any activities that are allowable under the CCDBG Act and CCDF regulations, *as long as the activities relate to preventing, preparing for, and responding to COVID-19*. CCDF provides financial assistance to families with low incomes to access child care so they can work or attend a job training or educational program. CCDF lead agencies can use funds to support direct child care services, including increased payment rates to providers and expanded eligibility for families. CCDF also improves the quality and supply of providers caring for all children. 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, training and professional development of child care staff, and tools to help support social-emotional health for staff and children.

## **Relief for Families Struggling to Pay for Child Care**

The COVID-19 public health emergency and economic downturn have impacted families and children across the country, making it difficult to cover the high cost of the child care they need to find or maintain employment. The CRRSA Act funds can help lead agencies respond to the financial hit families have taken by covering child care payments, expanding eligibility to subsidies, and meeting the needs of families with variable work schedules.

### *Covering Parent Co-payments and Tuition*

Lead agencies have the option to use CRRSA Act funds to waive and cover the cost of copays for *all* eligible families without the need for a federal waiver (unlike regular CCDF or CARES Act funds, which do not include this provision).

Lead agencies have the opportunity to help families struggling financially by using the CRRSA Act funds to cover child care payments for all federally eligible families, regardless of whether they previously participated in the subsidy system. A federally eligible family is a family that either 1) is defined by the lead agency as an essential worker, 2) has an income below 85 percent of the state median income, or 3) is defined in the state plan as a child in need of protective services. Lead agencies are strongly encouraged to prioritize child care assistance for low- and middle-income essential workers. As copays go directly to child care providers, simply waiving them without paying for the family's share negatively impacts child care providers already operating on razor-thin margins. **Lead agencies are strongly encouraged to use CRRSA Act funds to cover the portion of the child care cost ordinarily covered by co-payments.**

Using CRRSA funds, lead agencies may:

- Eliminate co-payments for families currently receiving subsidies by paying the child care provider for the amount normally covered by the co-payment.
- Cover the difference between the subsidy rate and the private pay rate, which some lead agencies allow child care providers to charge and would normally have been paid for by families receiving a subsidy.
- Cover the costs of tuition for essential workers, which is described further below.

While lead agencies who choose to implement these more flexible copay policies do not have to request a federal waiver, they may have to submit an amendment to their approved CCDF Plan. For example, a lead agency that currently only waives the copay for families with incomes below the federal poverty threshold must submit a CCDF Plan amendment if they choose to waive copays for eligible families regardless of income. Information on how to submit an amendment is discussed below.

If the lead agency is using regular CCDF funds, either instead of or in addition to CRRSA Act funds, families receiving child care assistance through regular CCDF funding are required to make co-payments to child care providers based on a sliding fee schedule set by the CCDF lead agency. Under CCDF rules, lead agencies may:

- Waive co-payments for certain families, including those with incomes below the federal poverty level, but may not waive copays for all families.
- Lead agencies may also use any CCDF funds (including regular CCDF, CARES, or CRRSA) to waive and cover the cost of copays for a sub-population of families without the need for a federal waiver. However, they will need to submit a Plan amendment if the new subpopulation is not included in their approved CCDF Plan.

#### *Increasing Income Eligibility for Direct Services*

Lead agencies can meet the needs of more families and children by changing their child care subsidy eligibility policies. For example, the CRRSA Act authorizes additional flexibility for providing direct child care services to essential workers. This flexibility also applies to supplemental CCDF funding included in the CARES Act. Lead agencies may use CRRSA Act funds to provide child care assistance to health care sector employees, emergency responders, sanitation workers, farmworkers, and other workers deemed essential by public officials during the response to COVID-19, without regard to the income eligibility requirements. Lead agencies have the flexibility to determine which essential workers are included in this provision. Therefore, lead agencies may provide CCDF subsidies to essential workers whose income exceeds 85 percent of state median income (SMI). However, the Office of Child Care strongly encourages states to target resources to essential workers who are low-income or middle-income. Lead agencies do not have to apply for a waiver in order to use CRRSA Act funds to provide subsidies to essential workers with incomes above 85 percent of SMI. However, they must submit a CCDF Plan amendment if they do not currently have one approved related to providing subsidies to essential workers with incomes above 85 percent SMI.

#### *Supporting Parents' Varying Work Schedules*

Many parents and caregivers have work schedules that require them to work evenings, weekends, or overnight, or may have to work extended or multiple shifts. Finding child care that meets their scheduling needs can be difficult. As employment situations change during the pandemic, even more parents may need care during these non-traditional or extended hours. To meet the needs of all families, lead agencies may choose to use CRRSA Act funds to increase options for families by paying bonuses or increasing payment rates to child care providers offering care during non-traditional hours or for extended hours.

## **Paying Wages and Salaries of Child Care Workers**

Like the CARES Act, the CRRSA Act encourages lead agencies to place conditions on payments to child care providers that ensure child care providers use a portion of funds received to continue to pay the salaries and wages of staff. Many child care workers are facing the same worries as the families they serve—uncertain employment and paychecks, health concerns, and unstable care arrangements. Continuing to pay wages and salaries help ensure staff are available to work, and providers can remain open or reopen. To ensure the funds reach child care staff, lead agencies can use the terms and conditions of grants and contracts to require providers to use the funds to pay salaries and wages. Lead agencies could also provide bonuses or increased payments to child care providers to cover the costs of staff.

## **Supporting the Stability of the Child Care Sector**

Child care providers are facing myriad challenges due to the COVID-19 pandemic, including increased operating costs, decreased enrollment, and uncertain demand and staffing. These challenges may exacerbate instability in the market, having a long-term impact on the supply of child care and parents' ability to find the care they need to return to or continue working. **OCC strongly encourages lead agencies to use the CRRSA Act funds to provide immediate direct financial support to child care providers and help stabilize the market.** These investments may go to any child care provider, regardless of whether the provider participates in the child care subsidy system. OCC recommends lead agencies consider meeting the requirement to provide a portion of CRRSA Act funds to providers not participating in the subsidy system (discussed below) by providing direct financial supports similar to those outlined in this section.

Family child care providers are an important part of the early childhood system, and lead agencies are strongly encouraged to proactively engage family child care providers to determine their needs and provide financial support to stabilize these businesses. Lead agencies may use CRRSA Act funds to support family child care networks and shared services, which can support business practices and improve efficiencies for family child care providers during the pandemic.

There are several policy and program changes lead agencies can use to stabilize the market. Lead agencies are encouraged to consider the following types of financial support for child care providers:

1. Direct financial support through stabilization grants;
2. Grants or contracts for direct child care services;
3. Increased subsidy payment rates; and
4. Payments based on enrollment, not attendance.

### Direct Financial Support through Stabilization Grants

The CRRSA Act funds may be used to help the broader child care market by using quality dollars to provide one-time or recurring stabilization grants to child care providers that meet the lead agency's eligibility criteria. These funds may also be used as part of existing stabilization programs many lead agencies have set up with regular CCDF funds or supplemental appropriations provided by the CARES Act. These funds can be used to cover increased operating expenses due to COVID-19. If lead agencies choose to use these funds for stabilization grants, they must publicize the availability of the funds and provide TA to help center-based, family child care, and group home child care providers apply for the funds.

### Grants and Contracts for Direct Services

Lead agencies provide direct child care services through subsidies to eligible children, either through certificates (or vouchers) or through grants or contracts to providers. Most children receive child care assistance through a certificate. However, the portable nature of the certificates means they may not support the stability of the broader child care market.

Grants and contracts for direct services go directly to the child care provider and may fund a few slots or even a whole classroom. The grants or contracts provide a more predictable funding stream for child care providers that is less likely to fluctuate with market changes, like those caused by the public health emergency. Lead agencies may use their CRRSA Act allocations to fund grants and contracts for direct services and provide the stability providers may need to avoid closing permanently and decreasing the total child care supply.

### Increased Subsidy Payment Rates

Subsidy payment rates prior to the COVID-19 pandemic often did not cover the costs of providing high-quality child care, and the higher cost of providing care during the pandemic puts additional strain on these limited payments. Lead agencies may use the CRRSA Act funds to increase payment rates for child care providers to help cover these additional costs and help providers remain open or reopen.

### Payments Based on Enrollment, not Attendance

Another way to support stability in the market is to implement subsidy enrollment and eligibility policies that support the fixed costs of providing child care services, including delinking provider subsidy payments from a child's absence or a provider's closure due to COVID-19. Under existing CCDF regulations, lead agencies may pay CCDF subsidies based on a child's enrollment in a program rather than attendance (45 CFR 98.45(1)(2)(i)). The statutory requirement at section 658E(c)(2)(S)(ii) of the CCDBG Act (42 U.S.C. 9858c(c)(2)(S)(ii)) 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 CRRSA Act funds may be used to cover the costs associated with paying providers based on enrollment, not attendance.

### **Virus Mitigation and Response Policies and Practices**

To ensure the health and safety of child care staff and the families they serve during community transmission of COVID-19, child care providers may need resources and support to implement mitigation strategies recommended in guidance (available at <https://www.cdc.gov/coronavirus/2019-ncov/community/schools-childcare/guidance-for-childcare.html>) from the Centers for Disease Control and Prevention (CDC). All child care providers are encouraged to follow the guidance issued by CDC. The CDC has posted several fact sheets and guides to help child care providers understand and meet the guidelines, including:

- Quick Guide: Help Protect Your Child Care Center From COVID-19 available at [https://www.cdc.gov/coronavirus/2019-ncov/downloads/community/schools-childcare/322883-B\\_COVID-19\\_ChildcareGuidance\\_CENTER\\_infographic\\_v3.pdf](https://www.cdc.gov/coronavirus/2019-ncov/downloads/community/schools-childcare/322883-B_COVID-19_ChildcareGuidance_CENTER_infographic_v3.pdf).
- Quick Guide: Help Protect Your Family Child Care Home from COVID-19 available at [https://www.cdc.gov/coronavirus/2019-ncov/downloads/community/schools-childcare/322883-B\\_COVID-19\\_ChildcareGuidance\\_HOME\\_infographic\\_v7.pdf](https://www.cdc.gov/coronavirus/2019-ncov/downloads/community/schools-childcare/322883-B_COVID-19_ChildcareGuidance_HOME_infographic_v7.pdf).
- Child Care Providers Quick Guide to Symptoms of COVID-19 at Child Care available at <https://www.cdc.gov/coronavirus/2019-ncov/downloads/community/schools-childcare/Childcare-Providers-Quick-Guide-Symptoms-of-COVID-19-at-Child-Care.pdf>.

The CRRSA Act funds may be used to provide TA to providers on how to operationalize this guidance. Child care center and family child care provider environments, resources, and programs vary widely, and some may need assistance in implementing CDC guidance. TA and support can be provided directly by the lead agency or through another entity (e.g., contractor, other agency) and would not count against the administrative spending limit discussed below.

CRRSA Act funds may also be used to pay for cleaning and sanitation (including cleaning supplies), and supplies and equipment (such as personal protective equipment), either through direct purchase, grants, or reimbursements. The funds may also be used to cover the costs of additional staff to support social distancing. These funds could be for future purchases or to reimburse providers for costs incurred between the declaration of the public health emergency in January 2020 and the enactment of the CRRSA Act on December 27, 2020.

CRRSA Act funds may be used to support COVID-19 testing services and additional costs associated with testing for use at child care facilities. However,

ACF strongly recommends that lead agencies first consult with their jurisdiction's public health agency, seek advice on how best to proceed, and coordinate any actions.

In addition, child care staff may need paid time off from work in order to access a COVID-19 vaccine (including time for transportation, waiting in line, etc.) as well as to recover afterwards if they experience side effects. Lead agencies may use CRRSA Act funds to pay for sick leave for these purposes by providing funding to child care providers with accompanying guidance directing the providers to give paid leave to their staff for purposing of obtaining the COVID-19 vaccine. CCDF lead agencies, including tribal lead agencies that directly operate child care facilities, may grant leave to their own staff using CRRSA Act funds to pay for the leave. For family child care providers, CCDF lead agencies may fund substitute pools or other supports to enable these providers to take leave.

### **Assistance to Providers Not Participating in the Subsidy System Prior to the Pandemic**

The COVID-19 pandemic has caused widespread disruption to the child care market, impacting all child care providers regardless of whether they participate in the child care subsidy system. The CRRSA Act requires states, territories, and tribes to use a portion of their allocation to provide assistance to child care providers not receiving CCDF assistance prior to the declaration of the public health emergency on January 31, 2020. **While lead agencies have the flexibility to determine the size of the portion used for this purpose, OCC strongly encourages lead agencies to consider and implement broad supports that reach the full range of licensed, regulated, and registered child care providers under state, territory, or tribal law (including family child care providers who have not previously received CCDF subsidies) and that satisfy the state and local requirements, including health and safety requirements outlined in the CCDBG Act.** In order to receive this funding, providers must be eligible child care providers, as defined in section 658P(6) of the CCDBG Act (42 U.S.C. 9858n(6)).

Eligible child care providers per this definition who did not participate in the CCDF subsidy program (i.e., serve children receiving CCDF) prior to January 31, 2020, but have received CCDF or CARES Act funding in response to the COVID-19 pandemic are also eligible for these funds. OCC recognizes that providers may have participated in the subsidy system prior to this date. Lead agencies have the flexibility to decide how far back to go in determining which providers may be eligible (e.g., providers who have not participated in the subsidy system since January 2019 or another date prior to the pandemic).

These funds may be used for direct financial assistance such as grants that address fixed and increased operating costs, expenses incurred since the

beginning of the pandemic, cleaning and sanitation, and other activities necessary to maintain or resume the operation of programs. The funds may be used for upcoming expenses or to reimburse providers for previous expenditures. Lead agencies have the flexibility to allocate and distribute the funds in a way that best meets the needs of center-based and family child care providers who were not previously participating in the subsidy system. **Lead agencies are strongly encouraged to fund stabilization grants that cover the staff salaries, rent, and other fixed costs and help providers stay open or reopen, and to distribute recurring or one-time grants to all eligible providers to cover the cost of cleaning supplies and PPE.**

Many child care and early childhood educators have become unemployed as a result of the pandemic. CRRSA Act funds can be used to provide online training and scholarships to child care workers to prepare them to return to child care settings.

#### *Flexibility for Tribes and Territories*

Some tribes and territories may not have any eligible child care providers in the lead agency's service area that were not participating in the CCDF subsidy program prior to the pandemic. Tribes and territories unable to meet this requirement because of a lack of eligible child care providers should document their outreach efforts to locate previously nonparticipating, eligible child care providers and notify their OCC regional offices when reasonable efforts have proved fruitless. OCC will not take enforcement actions against tribes or territories that were unable, despite a good faith effort, to meet this requirement due to a lack of eligible child care providers.

#### **Administrative and Systems Investments**

Several of the allowable uses of CRRSA Act funds, including using a portion of funds to support child care providers not participating in the subsidy system prior to COVID-19 and paying based on enrollment, not attendance, may require modifications and upgrades to lead agency information technology systems. Also, many processes that help respond to the immediate information needs of the pandemic, such as real-time data collection and tracking of child care provider enrollment, attendance, and operating status, are allowable uses of the CRRSA Act funds.

Further, efficient and effective use of CRRSA Act funds, including tracking and reporting on their use, may require additional administrative staff and expenses. States and territories may use up to 5 percent of their aggregate CCDF expenditures (including regular CCDF and CRRSA) for administrative expenses, and tribes may use up to 15 percent.<sup>1</sup> In addition, the establishment and

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<sup>1</sup> The administrative spending cap does not apply to disaster funds under the Supplemental Appropriations for Disaster Relief Act of 2019 (Public Law 116-20) that were awarded in Grant Year (GY) 2021.

maintenance of computerized child care information systems do not count against the administrative cost cap (45 CFR 98.52(b)).

### **Non-Supplantation Requirement**

The CRRSA Act requires supplemental funds made available under the law be used to supplement, not supplant, state, territory, or tribal general revenue funds for child care assistance to families with low incomes. This requirement does not apply to federal funds used to provide child care assistance. 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 families with low incomes 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 CRRSA Act (December 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 CRRSA Act (e.g., states that made legislative or policy changes prior to the enactment of the CRRSA Act, but implemented these changes after the date of enactment are not considered to have violated the non-supplantation requirement). In addition, any reduction in drawing down CCDF federal matching funds due to a cut in state spending on Maintenance of Effort (MOE) or state match will trigger a presumption of supplantation. States, territories, or tribes wishing to propose an alternative rationale demonstrating compliance with the non-supplantation requirement should submit a detailed justification in writing via email to the OCC regional program manager.

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

Funds from the CRRSA 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 CRRSA Act funds.

## Important Dates for Obligating and Liquidating Funds

Given the unprecedented challenges facing child care providers and families, lead agencies are strongly encouraged to provide immediate financial relief to child care providers and defray child care costs for families. OCC looks forward to partnering with lead agencies to expedite resources to prevent further child care closures and address the financial needs facing families in line with the President's Executive Order on Supporting the Reopening and Continuing Operation of Schools and Early Childhood Education Providers issued on January 21, 2021 (available at <https://www.whitehouse.gov/briefing-room/presidential-actions/2021/01/21/executive-order-supporting-the-reopening-and-continuing-operation-of-schools-and-early-childhood-education-providers/>).

Lead agencies should not hesitate to make temporary changes to provider payment rates or family co-payments using CRRSA Act funding. These funds are designed to provide relief from the financial pressure on families and child care providers resulting from the dual health and economic crisis. These temporary changes will help families return to work if they have experienced job disruptions.

The CRRSA 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 CRRSA Act funds. Lead agencies have until September 30, 2023, to liquidate the funds. These obligation and liquidation periods do not apply to CRRSA Act funds awarded to tribes who have consolidated their CCDF program into an approved Public Law 102-477 plan.

In addition, lead agencies may use CRRSA Act funds to reimburse costs incurred to prevent, prepare for, and respond to COVID-19 prior to the enactment of the CRRSA Act (December 27, 2020). **Lead agencies are strongly encouraged to reimburse for costs related to the COVID-19 pandemic that occurred prior to enacting the CRRSA Act, given that many child care providers have delayed payments or incurred debt that could threaten their ability to remain open over the long-term.**

State and tribal lead agencies must notify ACF by April 1, 2022, if they will be unable to obligate any part of their CRRSA Act funds allotment by September 30, 2022. 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. To be eligible to receive reallocated funds, states must indicate their interest on their ACF-696 quarterly report due April 30, 2022, and tribes must indicate their interest on their ACF-696T annual report due December 29, 2021. Tribes with approved Public Law 102-477 plans must indicate interest in reallocated funds on their child count declaration form.

Funding provided in the CRRSA Act is meant to support child care providers and the families they serve during the COVID-19 public health emergency. As these are immediate needs, ACF does not intend to approve waivers for the obligation or liquidation deadlines for CRRSA Act funds. Lead agencies concerned with meeting spending requirements may consider using Executive Orders or emergency legislative processes, if available, established for circumstances such as those facing parents and children who lack access to stable child care.

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

Because CRRSA Act funds are supplemental CCDF Discretionary funds, lead agencies must follow CCDF rules associated with Plan amendments and waivers. When considering changes to CCDF policies and program requirements related to implementing the CRRSA Act, CCDF lead agencies (including 102-477 tribes) have the following two main options for such changes: (1) *Amend CCDF Plans due to a change in State, Territory, or Tribal Program Requirements*, 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 CRRSA Act.

1. *Amend CCDF Plans due to a change in State, Territory, or Tribal Program Requirements*: 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, paying providers based on enrollment not attendance, 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 CRRSA Act require an amendment, but not a waiver, including waiving copays for all families. 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 temporary waiver for extraordinary circumstances. A waiver for extraordinary circumstances is only necessary if the change would not comply with federal CCDF requirements or is not allowed under the supplemental CCDF funding (e.g., CARES Act funds, CRRSA Act funds); otherwise, changes can be made through Plan amendments. Examples of changes that would require a waiver include exempting some providers from regular health

and safety requirements, such as standards, training, and/or inspections, to allow for emergency or temporary child care programs to operate; changing income eligibility to be higher than 85 percent of state median income (SMI) (except in the case of essential workers as described in the CRRSA 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 CRRSA Act, do not require a waiver.

Lead agencies are encouraged to contact their regional program office as soon as possible if considering a waiver request. All waiver requests should be submitted to the OCC Director via an email to the OCC regional program manager. As soon as complete waiver requests for allowable activities are received from the lead agency, OCC is completing the review and approval process within 45 days. Upon approval of the waiver, the lead agency has 60 days from the date of waiver approval to submit any associated Plan amendments for the waiver. Waiver requests must be approved prior to the submission of the Plan amendment.

Waivers and Plan amendments approved prior to receiving CRRSA Act funds remain in effect and apply to the CRRSA Act funds. Therefore, new amendments or separate waiver requests are not required.

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

### **Waivers and Amendments for 102-477 Tribes**

*Apply for a Waiver for Extraordinary Circumstances:* Tribes who have consolidated their CCDF program into an approved Public Law 102-477 Plan shall submit their temporary waiver request under the authority of the CCDBG Act. Tribes should first apply for and obtain approval for the temporary waiver through OCC. Once the temporary waiver for CCDF has been approved, the tribe will submit a plan amendment within 60 days of the waiver approval date to the Bureau of Indian Affairs (BIA) incorporating the approved CCDF waiver provision, and OCC will approve the amendment expeditiously.

*How to Submit Amendments to Public Law 102-477 Plans:* A tribe has 60 days following the effective date of the change sought by the waiver to submit their CCDF Plan Amendment (to its approved Public Law 102-477 Plan that integrates CCDF) to BIA. BIA will forward the 477 Plan Amendment to ACF for OCC review.

## Reporting and Monitoring

Although CRRSA Act funding is supplemental to the lead agencies' regular FY 2021 CCDF funding, it must be tracked and accounted for separately to ensure compliance with specific requirements and authorities provided by the CRRSA Act.

ACF will update existing CCDF reporting forms to capture expenditure and administrative data related to the CRRSA funds.<sup>2</sup> Additional details will be forthcoming.

In addition, the CRRSA Act requires two reports from all states, territories, and tribes (including those with approved Public Law 102-477 Plans) receiving CRRSA Act funds. These required reports are, as follows:

- A report to HHS describing how the lead agency plans to spend the CRRSA Act funds. This report was due on February 25, 2021. Guidance on submitting this report is available at <https://www.acf.hhs.gov/occ/policy-guidance/planned-use-child-care-and-development-fund-ccdf-coronavirus-response-and>.
- A report to HHS describing how the lead agency expended their CRRSA Act funds. This report is due by October 31, 2022. Additional guidance 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 helping state, territory, and tribal lead agencies to understand new and existing CCDF flexibilities and funding streams through guidance, webinars, Frequently Asked Questions, and other resources available on the OCC website at <https://www.acf.hhs.gov/occ/resource/occcovid-19-resources>.
- Updated guidance from CDC for child care programs that remain open during the public health emergency is available at <https://www.cdc.gov/coronavirus/2019-ncov/community/schools-childcare/guidance-for-childcare.html>.

### 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

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<sup>2</sup> ACF may seek to update the following information collections: ACF-218 Quality Progress Report (OMB Control Number 0970-0517); ACF-696 CCDF Financial Reporting Form for States and Territories (OMB Control Number 0970-0510); ACF-696T CCDF Financial Reporting Form for Tribes (OMB Control Number 0970-0195); and, ACF-800 CCDF Annual Aggregate Report (OMB Control Number 0970-0150).

found at <https://www.acf.hhs.gov/occ/resource/regional-child-care-programmanagers>.

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Office of Child Care