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**INFORMATION MEMORANDUM  
ARP ACT CCDF DISCRETIONARY SUPPLEMENTAL FUNDS**

- To:** State, Territory, and Tribal Lead Agencies administering the Child Care and Development Fund (CCDF) program, as amended, and other interested parties.
- Subject:** Supplemental Child Care and Development Fund (CCDF) Discretionary Funds Appropriated in the American Rescue Plan (ARP) Act of 2021 (Public Law 117-2) signed into law March 11, 2021.
- References:** The Child Care and Development Block Grant (CCDBG) Act (42 U.S.C. 9857 *et seq.*); 45 CFR Parts 98 and 99; The American Rescue Plan (ARP) Act of 2021 (Public Law 117-2).
- Purpose:** To provide an overview and guidance on the supplemental CCDF Discretionary funds made available through the ARP Act.
- Background:** The ARP Act appropriated funding for child care through three funding streams. These include:
- Section 2201. \$14,990,000,000 for supplemental CCDF Discretionary Funds, available until September 30, 2024.
  - Section 2202. \$23,975,000,000 for child care stabilization grants, available until September 30, 2023.
  - Section 9801. \$3,550,000,000 in Mandatory and Matching funding for CCDF, a permanent annual appropriation.

Each funding stream has unique requirements. Therefore, the Office of Child Care (OCC) will be issuing three separate guidance Information Memoranda (IM).<sup>1</sup> The information in each IM is only applicable to the funding stream discussed in the IM, unless otherwise noted.

<sup>1</sup> Guidance IMs are available on the OCC COVID-19 page at <https://www.acf.hhs.gov/occ/training-technical-assistance/office-child-care-covid-19-resources>.

**Guidance:** Section 2201 of the ARP Act provides supplemental discretionary resources to states, territories, and tribes to implement the CCDF program.<sup>2</sup> This IM is designed to help states, territories, and tribes understand the specific requirements included in this section of the ARP Act to identify opportunities for lead agencies to leverage these resources to build a better child care system and help more families afford child care over the next three years. It also reminds lead agencies of their legal obligations under federal civil rights laws to provide equal access to child care programs, services, and activities. The guidance included in this IM only applies to Section 2201 of the ARP Act and does not extend to the other child care funding streams included in the ARP Act. While the guidance aims to cover the range of topics necessary for lead agencies to begin administering the funds, it is not exhaustive. OCC will issue supplemental guidance and frequently asked questions throughout the life of the grant.

### Overview

Child care is essential to our children, our families, and our communities. Yet, chronic underfunding has led to a child care system of uneven quality that is unaffordable and inaccessible for many families. The COVID-19 public health emergency highlighted and exacerbated the fragility of the child care system and the urgent need for resources and reforms. Even before the pandemic, child care businesses typically operated at very slim profit margins. Most parents can't afford the true cost of care so child care businesses can only operate by paying low wages to staff. As a result, there is not enough child care available for families in many communities and child care workers are among the [most underpaid workers in the country](#).

Low payment rates and compensation for child care providers undermines every aspect of the child care sector and fosters large inequities within the system, making it particularly difficult for families of color and parents with low-incomes to have equal access to child care options, as required by the CCDBG Act. Low rates make it difficult to recruit and retain a skilled workforce. They lead to higher staff turnover, which lessens the quality of care, increases business expenses, and means the majority of child care providers do not earn enough to make a living wage. It also perpetuates sex and racial inequities in the workforce, given that child care workers are disproportionately women of color. It is difficult for child care providers to operate in many communities where parents are paid low wages. Limited financial resources undercut the stability of the child care sector, which is overwhelmingly small businesses owned by women and disproportionately owned by women of color.

One in six child care jobs have been lost during the pandemic, and even before the pandemic, annual turnover rates for child care workers were high – at around 30 percent ([Porter 2012](#); [Caven, et al. 2021](#)). The inability of providers to recruit

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<sup>2</sup> Throughout this guidance, the funds provided at 2201 of the ARP Act are referred to either as ARP CCDF Discretionary funds or the “supplemental” funds.

and retain a high-quality workforce disrupts the stable relationships between children and providers that is important to child development and wellbeing. For example, the quality of the classroom environment and interactions between teachers and students are linked to children's school readiness skills ([Hatfield et al, 2016](#)), and higher compensation for the child care workforce is associated with better quality literacy environments ([Phillips et al. 2003](#)). Moreover, [nearly half](#) of child care workers rely on public income supports, and child care workers experiencing economic stress have a more difficult time fully engaging with children and offering a quality learning experience ([Schlieber and McLean 2020](#)).

The lack of child care options costs the U.S. economy billions of dollars each year in lost earnings, productivity, and revenue. In response to the urgent need to address meaningfully these system failures exacerbated by the COVID-19 public health emergency, the ARP Act included nearly \$15 billion in supplemental CCDF Discretionary funds. Together with the ARP Act stabilization grants, this is an important opportunity for states, territories, and tribes to address the child care crisis and rebuild toward a stronger system that allows parents equal access to high quality child care, supports the developmental and learning needs of children, meets parents' employment needs and child care preferences, and supports a professionalized workforce that is fairly and appropriately compensated for the essential skilled work that they do. OCC strongly recommends that lead agencies focus resources to invest in child care in ways that strengthen the child care system and ensure that families have equal access to quality, affordable child care to support them during and after the pandemic.

OCC strongly recommends that lead agencies prioritize increasing provider payment rates and workforce compensation so that child care providers can retain a skilled workforce and deliver higher-quality care to children receiving subsidies. Using these funds to increase compensation will improve care quality, give parents a wider range of options from which to choose, boost wages for a chronically underpaid workforce, and better support the small businesses that comprise the child care sector. Many lead agencies will need to make progress to meet equal access requirements in the CCDBG Act. Secondly, lead agencies should implement policies that will build the supply of child care in low-income communities, especially for historically underserved populations and provide child care assistance to families who have lost employment or income during the pandemic.

The ARP Act requires lead agencies to use these supplemental funds to carry out the program authorized under section 658C of the CCDBG Act (42 U.S.C. 9858a). Lead agencies have until September 30, 2023 to obligate the funds. These funds are not subject to the minimum quality set-asides required under the CCDBG Act and are not subject to the requirement in section 658E(c)(3)(E)(ii) (42 U.S.C. 9858c(c)(3)(E)(ii)) in regard to the percentage that must be spent on

direct services. In addition, there is a limited exception that allows funds to be used to support child care assistance for children of workers deemed essential during the response to the pandemic, regardless of income.

The supplemental CCDF Discretionary grant funding in the ARP Act is in addition to the Fiscal Year (FY) 2021 appropriations levels and is meant to supplement, not supplant, other federal, state, and local public funds expended to provide child care services for eligible individuals. The ARP CCDF Discretionary funds were awarded to CCDF lead agencies, as defined in the CCDBG Act, using the formula used to award CCDF Discretionary funding. Lead agencies did not have to apply for these funds.

*States:* The ARP CCDF Discretionary grants to states were allocated in the same manner as CCDF Discretionary funds are allocated to states, including the District of Columbia and Puerto Rico, based on a statutory formula that considers three factors: the number of children under age 5, the number of children qualifying for school lunch programs, and per capita income. States received \$14,465,350,000 for supplemental grants under the ARP Act on April 15, 2021.

*Territories:* The CCDBG Act establishes the allocation for territories at up to ½ of 1 percent of the Discretionary allocation. Territories include American Samoa, the Commonwealth of the Northern Mariana Islands, Guam, and the U.S. Virgin Islands. In the same manner as CCDF Discretionary funds are allocated to territories, funding for ARP Discretionary grants was allocated among the territories based on a formula that considers the number of children under age 5 and per capita income. Territories received \$74,950,000 for supplemental grants under the ARP Act on April 15, 2021.

*Tribes:* The CCDBG Act sets a statutory funding level of at least 2 percent of Discretionary funds for tribal lead agencies. The Secretary has flexibility to set a higher level provided certain conditions are met. The Secretary has set the tribal set-aside for Discretionary funds appropriated under the ARP Act at 3 percent. In the same manner as CCDF Discretionary funds are allocated to tribes, funding for supplemental grants was allocated among tribal lead agencies based on child counts. Tribal lead agencies were appropriated \$449,700,000 for ARP CCDF Discretionary grants under the ARP Act on April 15, 2021.

### **Exemptions from Requirements on the Proportion of Funds Spent on Quality Activities and Direct Services**

Supplemental CCDF Discretionary grant funds appropriated under the ARP Act are exempt from certain spending requirements contained in the CCDBG Act. First, these CCDF supplemental funds do not require the quality improvement set aside (9 percent for states and territories, 8 percent for tribes, and an additional 3 percent targeting infants and toddlers (section 658G, 42 U.S.C.

9858e, 45 CFR 98.83(g)). Second, the ARP Act does not require lead agencies to use at least 70 percent of the remaining funds after quality and administration for direct services (section 658E(c)(3)(E), 42 U.S.C. 9858c(c)(3)(E)).

This means lead agencies have full discretion to determine how much of the supplemental funds will be spent on quality activities and how much will be spent on direct services. While these exemptions change the requirement to spend a minimum percentage of total expenditures on quality activities and direct services, they do not change the allowable uses of funds for each spending category. States, territories, and tribes that opt to use less than the minimum percentages required by the CCDBG Act are not required to submit an amendment to their approved CCDF Plan or request a CCDBG waiver.

### **Allowable CCDF Activities and Administrative Cost Cap**

The supplemental funds in the ARP Act are an unprecedented opportunity to expand access to high-quality child care and move toward a more equitable child care system. The system should meet the developmental needs of children, provide parents with true choice and equal access to child care services that best suits their family's needs, appropriately compensate an essential and skilled workforce, and facilitate a robust child care sector. Lead agencies are strongly encouraged to use funds in a manner that will work toward each of these goals and thereby build stronger and more equitable high-quality child care systems for America's families.

Lead agencies may use supplemental funds for any activities allowable under the CCDBG Act and CCDF regulations. These activities are not restricted to responding to the COVID-19 public health emergency. Funds must be spent to carry out the program authorized under section 658C of the CCDBG Act (42 U.S.C. 9858a). The regular CCDF administrative cost cap (5 percent for states and territories and 15 percent for tribes) does apply but applies to the aggregate amount of CCDF funds, including these supplemental funds (section 658E(c)(3)(C), 42 U.S.C. 9858c(c)(3)(C), 45 CFR 98.83(i)). In this summary, the allowable uses of funds for the supplemental grant are the same as for regular CCDF funds, except that: (1) there is no minimum spending requirement for quality activities; (2) there is no minimum spending requirements for direct services; (3) there is a limited income eligibility exemption for workers deemed essential during the response to coronavirus by public officials (described elsewhere in this guidance); and, (4) the administrative cost limit still applies to the aggregate amount of both regular and ARP Act CCDF Discretionary supplemental funds.

### **Expanding Access to High-Quality Child Care**

Lead agencies are strongly encouraged to use these funds together with annual CCDF funds to provide child care assistance in a manner that is strategically

designed to support a system of high-quality child care. Improving access to high-quality child care is vital to children's development and wellbeing, and it cannot be accomplished without addressing provider payment rates and workforce compensation. Therefore, lead agencies are strongly encouraged to prioritize expenditures for:

- Increasing provider payments;
- Improving payment policies;
- Increasing wages for early educators and family child care providers; and
- Building the supply of child care for underserved populations.

#### *Increasing Provider Payments*

Most lead agencies are not paying providers a rate that covers the true cost of quality care. To address low subsidy rates, OCC strongly recommends that lead agencies use these funds in combination with annual CCDF funding to take two critical steps:

First, lead agencies should significantly increase provider payment rates as measured by their market rate survey (or approved alternative methodology) and informed by additional information on provider operating costs. It will be difficult for most lead agencies to meet the equal access requirement of the CCDBG Act without significant increases to payment rates. Though the need to provide subsidies to more families is great, lead agencies with low payment rates are strongly encouraged to prioritize increasing rates. As of September 2020, the vast majority of states had provider payment rates that fell below the 75<sup>th</sup> percentile of their market rate survey. Lead agencies are reminded the CCDBG Act requires that payment rates are sufficient to ensure equal access for eligible children to child care services comparable to those provided to children whose parents are not eligible to receive assistance under the Act. Lead agencies are further reminded that the CCDF state plan that is due in July 2021 will require a summary of the data and facts relied on to determine that its payment rates ensure equal access. OCC intends to carefully consider whether the lead agency's CCDF state plan includes sufficient clarity and data on how it intends to meet this statutory requirement.

Second, lead agencies are encouraged to use funds to conduct cost of quality studies and use cost information (which may be based on the narrow cost analysis) as part of their overall strategy to set payment rates at the levels necessary to cover the actual cost of operating a quality child care program. Market rates are more reflective of what parents can afford to pay than what it costs to deliver high-quality care. As a result, the historic approach of using market rates as the sole basis for subsidy payments reduces parent choice and access to care, undermines program quality important to child development, leads to an insufficient supply of care, produces an underpaid workforce, creates an unstable sector, and undercuts the employment of working parents. Thus, lead agencies are strongly encouraged to use these funds to implement policies

that move away from the current market rate structure and toward payment policies that reflect the cost of providing care. Lead agencies may use the [Provider Cost of Quality Calculator](#) or similar model to help estimate these costs. Lead agencies are reminded that advance approval from the Administration for Children and Families (ACF) is required in order to conduct an alternative methodology instead of a market rate study.

#### *Improving Payment Policies*

OCC encourages lead agencies to use these supplemental funds to expand their use of grants or contracts to provide direct child care services. This funding structure stabilizes child care providers, improves quality, and reduces bureaucracy for small businesses. Grants and contracts for direct services go directly to the child care provider and may fund a few slots or even an entire classroom. Grants or contracts provide a more predictable funding stream for child care providers and help build the supply of child care in underserved areas or for underserved populations, such as infants and toddlers, children in rural areas or low-income neighborhoods, dual language learners, children with disabilities, and children who need child care during non-traditional hours.

OCC also recommends that lead agencies adopt policies to stabilize child care providers by paying based on enrollment and delinking provider subsidy payments from a child's absence or from a provider's closure due to COVID-19. Staffing and facilities are fixed costs of running a child care program and are based on expected enrollment not daily attendance. Lead agencies are encouraged to use these funds in a manner that aligns with the true cost of providing care. 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(l)(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.

#### *Increasing Wages for Child Care Providers*

Raising wages for child care workers has a broad range of benefits—advancing equity for women, particularly women of color, lifting families out of poverty, boosting the broader economy, increasing women's labor force participation, and improving outcomes for children. Despite their critical role in the well-being of children and the strength of our economy, child care workers are among the lowest paid, with [half of workers](#) earning below the poverty line for a family of four and unable to [make ends meet](#) in their states. Low wages in the sector are [often cited](#) as a cause of stress and economic insecurity among providers and the reason for high staff turnover. This high turnover can have a direct impact on access for parents. When child care is inaccessible and/or unaffordable it leads to a [decrease in labor force participation rates](#) of women.

High staff turnover rates also pose a major challenge to a provider's ability to create a high quality child care environment. High turnover at child care programs interferes with children's learning and their ability to form strong attachment bonds with their child care staff, impacting their behavior and development. Losing skilled child care staff to better paying jobs in other sectors is a common challenge for providers that undermines their business operations.

OCC encourages lead agencies to increase compensation for the workforce to improve the quality of care, reduce turnover, increase professionalization, and promote a fairer wage for an underpaid and undervalued workforce. Lead agencies are encouraged to develop a wage ladder that sets a floor for a living wage of at least \$15 per hour with increasing pay for additional experience and credentials. In addition, lead agencies are encouraged to improve access to benefits such as health insurance.

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 higher salaries and wages. Lead agencies can also provide bonuses or wage supplements directly to the early childhood workforce. Efforts to increase wages for the child care sector should include family child care providers who are often among the lowest paid child care providers.

To further support the workforce, lead agencies may also want to allocate funds for scholarships or the direct provision of additional training or credentials, including apprenticeships and on-the-job coaching, which research has shown to have positive effects on the quality of child care.

#### *Building the Supply of Child Care for Underserved Populations*

Lead agencies are strongly encouraged to use supplemental funds in ways that will build the supply of licensed child care for underserved populations. Even before the pandemic, many communities lacked licensed child care centers and family child care homes. Since the onset of the COVID-19 public health emergency, many child care providers have had to close their doors. OCC recommends that lead agencies allocate a portion of the supplemental funds to rebuilding the supply of child care, focusing particularly on low-income communities with an undersupply of child care. Even in areas with a relatively higher child care supply, infant and toddler child care and care during non-traditional work hours can be sparse and warrants particular attention.

There are several strategies that lead agencies can take to build the supply of licensed child care (including family child care). These strategies include: funding staffed family child care networks, providing grants to cover the startup costs for new child care providers, using grants and contracts to provide a stable source of funding for operating costs, providing bonuses for providers in underserved areas, and supporting unlicensed child care providers to become

licensed. Lead agencies may also use supplemental funds to do outreach to providers who closed due to COVID-19 and help those providers with the costs associated with reopening.

In addition, lead agencies should examine opportunities to build the supply of child care for historically-underserved populations such as infants and toddlers, families with non-traditional work hours, rural communities, dual language learners, and children with disabilities. Family child care providers can often address families' needs in several areas, such as more flexible schedules and providing culturally and linguistically responsive care. Lead agencies should consider strategies to support the expansion of family child care and additional support for family child care providers as lead agencies build child care supply in underserved areas.

Some lead agencies do not license all types of child care, including small family child care homes and school-age programs in school facilities. These programs may be high-quality and play a critical role in meeting the needs of working families. Lead agencies should ensure that any legally-operating license-exempt programs are supported to meet health and safety and quality standards and are encouraged to expand licensing opportunities with the supplemental funds.

Many essential workers require child care during non-traditional hours. Lead agencies are encouraged to use supplemental funds in ways that will increase the child care options for parents that work non-traditional hours and/or have varying work schedules. Many families 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 these types of scheduling needs can be extremely difficult. Parents must often rely on multiple child care arrangements that can be unstable and a significant burden to continually rearrange. As employment situations change during the pandemic, even more parents may need care during these non-traditional or extended hours. Lead agencies are encouraged to implement policies that will increase parents' access to these types of care such as expanding the use of contracts with child care providers that meet this need, payment structures that reflect the true cost of care, and providing financial incentives.

Parents of children with disabilities often report difficulty finding child care. Child care settings should be inclusive of children with disabilities and family members with disabilities. This includes ensuring that the child care program is physically accessible to children with disabilities, as well as accommodating other needs of children with disabilities so that they may fully participate in child care programs. Lead agencies are encouraged to use supplemental funds to support child care providers in making programs accessible, including minor renovations like installing railings and ramps to improve physical accessibility, and training staff and family child care providers on best practices for supporting children and family members with disabilities.

Lead agencies are also encouraged to use funds in ways that specifically improve access to licensed infant and toddler child care. The gap between payment rates and cost of providing care for infants and toddlers is particularly problematic and is part of the reason infant and toddler care is so difficult for parents to access. Lead agencies are encouraged to specifically increase payment rates for infant and toddler care so that providers are more able to offer the care and parents are better able to access it.

### **Expanding Access to Child Care Assistance**

The COVID-19 public health emergency and economic downturn have impacted families and children across the country, with many parents facing loss of income due to reduced hours or job loss, making it difficult to cover the high cost of the child care they need to find or maintain employment. ARP CCDF Discretionary supplemental funds are available to serve additional children and families with child care assistance. During the COVID-19 public health emergency, many families have experienced unemployment or left the workforce due to child care needs. Offering child care assistance to more families is critical to finding employment and rejoining the labor force. Lead agencies are encouraged to expand access to child care assistance by supporting families struggling to afford child care, providing subsidies for essential workers, and investing in data systems to ensure parents have up-to-date information about child care in their area. OCC recommends that lead agencies satisfy the equal access provision, ensuring that child care providers are paid at rates that increase access to child care while maximizing quality of available care. All lead agencies should ensure that they meet the equal access provision in CCDBG, and lead agencies with low payment rates must prioritize steps to address equal access.

#### *Supporting Families Struggling to Afford Child Care or Facing Job Interruptions or Income Loss*

Lead agencies are encouraged to use the supplemental funds to support families that may have lost employment or incomes due to COVID-19. Recommended strategies to support families that have been financially impacted by the COVID-19 pandemic are described below.

#### Waiving or reducing parent copayments

Lead agencies may adjust copayment amounts for families experiencing temporary or non-temporary job or income loss. Lead agencies may also use supplemental funds to waive and cover the cost of copays for a subpopulation of families, defined by the lead agency, without the need for a CCDBG waiver. However, lead agencies that elect to waive copayments for additional families will need to submit a CCDF Plan amendment if the new subpopulation is not included in their approved CCDF Plan. 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 supplemental funds to cover the portion of the child care cost ordinarily covered by copayments for sub-populations of affected families. As a reminder, lead agencies may use funds appropriated in the Coronavirus Response and Relief Supplemental Appropriations (CRRSA) Act (Public Law 116-260) to cover the portion of the child care cost ordinarily covered by copayments for all families without the need for a CCDBG waiver. See CCDF-ACF-IM-2021-01 for more information <https://www.acf.hhs.gov/occ/policy-guidance/ccdf-discretionary-funds-appropriated-crrsa-act-public-law-116-260-signed-law>.

#### Broadening the definition of qualifying activities

Lead agencies are also encouraged to consider whether broadening their definition of qualifying activities would improve the ability for parents to enter the workforce and remain gainfully employed. Strict definitions of qualifying activities imposed by lead agencies can lead to families losing access to child care assistance even though care is needed to maintain employment or job training. For example, lead agencies are encouraged to define employment to include a period of job search and account for fluctuations in work schedules as businesses open and close due to disruptions related to COVID-19 and the economy. Information on how to submit a CCDF Plan amendment is discussed below.

#### Broadening the income eligibility threshold

The high price of care is a significant financial burden to most families, and many families cannot afford it without assistance. Most lead agencies have set income eligibility well below the federal threshold of 85 percent of state median income (SMI) allowed by the CCDBG Act and yet are still unable to provide child care assistance to all families eligible based on the lower lead agency threshold because of insufficient resources. These supplemental funds help address this issue and should be used to assist more families. Lead agencies who have set their income eligibility requirements lower than 85 percent of SMI are also encouraged to consider expanding their income eligibility threshold.

OCC reminds lead agencies that families receiving a child care subsidy are eligible to receive a child care subsidy for at least 12 months, regardless of temporary changes in employment, and the co-payment cannot increase during this timeframe (45 CFR 98.21(a)). In addition, OCC recommends that lead agencies establish or revisit their approach to income eligibility policies to ensure that families do not lose child care assistance altogether when they experience fluctuations in employment or wage increases that do not result in a permanent increase in income to above the 85% SMI threshold. Lead agencies are reminded that income is allowed to temporarily go above 85 percent SMI without affecting the family's eligibility. The pandemic has introduced even more uncertainty into wages and schedules for workers paid a low wage, warranting a re-examination of policies that take a graduated approach to income thresholds and copayments to avoid the so-called "child care cliff."

### Updating policies to reflect modern labor force conditions

OCC strongly recommends that lead agencies consider the working conditions that characterize low wage work and current conditions for unemployed workers when determining subsidy policies. Policies that may be more responsive to these needs include allowing workers to qualify for child care assistance and enroll while they search for employment, facilitating part-time child care options (without financially penalizing child care providers who often incur the same costs whether the child is enrolled on a part-time or full-time basis), and aligning the income verification process with other programs. Many workers have lost their jobs in the last year or are experiencing fluctuations in work hours as businesses are closed or operating on a reduced schedule. Eligibility policies must recognize and account for this reality so that families do not face barriers to securing child care assistance.

### *Child Care Assistance for Essential Workers*

The ARP Act creates a limited exception to the definition of eligible child for the purposes of the supplemental grant funds. Lead agencies are allowed to use the supplemental grant funds to provide child care assistance to health care sector employees, emergency responders, sanitation workers, and other workers deemed essential during the response to coronavirus by public officials, without regard to the income eligibility requirements in section 658P(4)(B) of the CCDBG Act (42 U.S.C. 9858n(4)(B)). Lead agencies have the discretion to determine which essential workers are deemed essential for the purposes of this income exemption and may provide CCDF subsidies to essential workers whose income exceeds 85 percent of SMI. This flexibility is not limited to only during the official public health emergency declaration. Therefore, lead agencies may provide CCDF subsidies to essential workers whose income exceeds 85 percent of SMI throughout the grant period. However, lead agencies should prioritize child care assistance for income-eligible essential workers.

Lead agencies should consider policies to support essential workers, such as provisions to build the supply of child care during non-traditional hours described above. Many essential workers must report to work in the evenings and on weekends when child care is scarce.

The ARP Act does not waive the 12-month minimum eligibility determination or the family asset limit required by section 658P(4)(b) of the CCDBG Act, so this requirement remains in effect. OCC strongly encourages lead agencies to target resources to essential workers with low- or middle-incomes. Lead agencies 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 of SMI. Information on how to submit a CCDF Plan amendment is discussed below.

### *Data Systems to Support Equitable Access to Child Care*

Expanding access to child care also means making information on child care more readily available to families and collecting the data needed to assess equitable access to child care. Modernizing and maintaining systems are allowable uses of the ARP supplemental funds, and do not count against the limit on administrative expenditures. Lead agencies should strongly consider technology upgrades and data governance improvements to provide more transparent and updated information to parents, such as the location and type of child care providers near them, availability and cost of child care slots, and how to access child care assistance. Accurate data collection can also inform lead agency policies and practices, including analysis to determine whether policies result in an equitable distribution of resources for families and child care providers. Outdated data collection can impede the collection of timely and accurate information from providers and families and children served. Lead agencies with such systems are strongly encouraged to upgrade with the objective of engaging providers and families in real-time.

### **Mental Health Supports**

During the COVID-19 public health emergency, child care staff and family child care providers, families, and children have experienced trauma and stress that impacts mental health. Some children will return to child care centers or family child care homes after an extended period at home and will need support to acclimate to a new environment. Lead agencies are encouraged to invest in mental health supports for child care providers and children, including resources providers can use to help parents support their child's mental and behavioral health. This can include supporting Infant and Early Childhood Mental Health Consultants, connecting families with mental health resources, training early educators, and family child care providers on trauma-informed care, trainings for child care providers and parents to establish joint approaches to mental and behavioral health, and providing onsite services for children and staff. OCC has resources to support social and emotional wellness of children available at <https://childcareta.acf.hhs.gov/resource-guide-developing-integrated-strategies-support-social-and-emotional-wellness-children>.

### **Outreach on the Availability of Child Care Assistance**

The ARP Act supplemental funds provide an opportunity to assist many families and providers who have not previously participated in the child care subsidy system. Therefore, lead agencies are strongly encouraged to use some of these funds for outreach activities, including those required at 45 CFR 98.33, as well as publicizing stabilization subgrants, bonuses and scholarships, and other financial supports for child care providers. To accomplish this outreach, the funds may also be used to fund partners and organizations trusted by families and child care providers, including professional organizations, family child care networks, culturally relevant organizations, unions, and child care resource and

referral agencies. Lead agencies should pay particular attention in their outreach to providers representing and working with underserved constituencies. Lead agencies should make sure any outreach materials are widely available in multiple languages, accessible to persons with disabilities, and written in plain language. Additional resources on using plain language are available at <https://www.plainlanguage.gov/>.

### **Supporting Vaccination**

Parents may need additional hours of child care during the time they are receiving or recovering from a COVID-19 vaccine. Lead agencies may use the supplemental funds to provide bonuses or other financial incentives to child care providers who choose to stay open extra hours or provide care on the weekends so that parents can be vaccinated.

The ARP Act supplemental funds may also be used to support child care providers in accessing COVID-19 vaccines. For example, lead agencies may provide stipends to child care providers to cover the cost of transportation to vaccine sites and paid time off to receive the vaccine and recovery from any side effects.

Some child care businesses may qualify for tax credits to support paid sick leave while they receive a vaccine and recover from any side effects. Additional information is available at: <https://www.irs.gov/coronavirus/employer-tax-credits>.

### **Non-Supplantation Requirement**

The ARP Act requires these supplemental funds be used to supplement, not supplant, federal, state, and local public funds expended to provide child care services for eligible individuals. The non-supplantation requirement also applies to territorial and tribal grantees. As this provision applies to federal funds, lead agencies may not supplant Temporary Assistance for Needy Families (TANF) funding used to pay for child care services, either directly or transferred to CCDF, or Social Services Block Grant (SSBG) funds used for child care. This means that lead agencies that spent TANF (either directly or transferred to CCDF) and SSBG for direct child care services in FY 2020 must spend the same amount in FY 2021-2024, unless a lead agency submits an accepted explanation for why a decrease in spending may not be supplantation. 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 federal, state, or local funds

expended to provide child care services for eligible individuals 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 ARP Act (March 11, 2021). If federal, state, or local 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 ARP Act (e.g., states that made legislative or policy changes prior to the enactment of the ARP Act, but implemented these changes after March 11, 2021 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, including instances where TANF and SSBG spending declined, should submit a detailed justification in writing via email to the OCC regional program manager.

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

Because ARP CCDF Discretionary funds are supplemental CCDF Discretionary funds, lead agencies must follow CCDF rules associated with CCDF Plan amendments. When considering changes to CCDF policies and program requirements related to implementing section 2201 of the ARP Act, CCDF lead agencies making changes to state, territory, or tribal program policies may need to amend their approved CCDF Plan. A CCDF 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 section 2201 of the ARP Act that may require a CCDF Plan amendment if not already part of the approved CCDF Plan include serving essential workers with incomes about 85 percent SMI. 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.

As a reminder, states and territories that choose to make CCDF programmatic changes that are effective prior to October 1, 2021 will need to file an amendment to their approved FY 2019-2021 CCDF Plan. For policies that will be in effect after October 1, 2021, states and territories should include the new programmatic changes in their CCDF Plans due on July 1, 2021.

Lead agencies are reminded that current approved waivers for extraordinary circumstances expire on September 30, 2021.

CCDF Plan amendments approved prior to receiving the ARP Act funds remain in effect and apply to the supplemental funds. Therefore, new amendments are not required.

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

### **Important Dates for Obligating and Liquidating Funds**

The ARP Act provides this supplemental funding to states for the purposes of carrying out the program authorized under section 658C of the CCDBG Act (42 U.S.C. 9858a), with the three spending exemptions noted in this guidance. Given the urgent need to expand access to child care assistance to more income-eligible families and improve the quality and availability of child care through increased wages and benefits to child care providers and other policies, lead agencies are strongly encouraged to obligate and liquidate these funds in a timely manner while also being deliberate with distribution to ensure funds are used in a manner that will improve the lives of children and families.

#### *Key Dates for ARP CCDF Discretionary funds:*

- April 1, 2023 – Notify ACF of the amount of any ARP CCDF Discretionary funds that cannot be obligated by September 30, 2023. Identified funds will be recaptured by ACF and reallocated to other lead agencies.
- September 30, 2023 - All supplemental funds must be obligated by states, territories, and tribes.
- September 30, 2024 – All supplemental funds must be liquidated by states, territories, and tribes.

Section 2201(a) of the ARP Act requires CCDF Discretionary supplemental funds to be obligated in FY 2021 or the succeeding two fiscal years. In other words, lead agencies must obligate supplemental funds by September 30, 2023. The ARP Act is silent on liquidation deadlines for the child care supplemental funds. Therefore, CCDF Discretionary liquidation periods at 45 CFR 98.60(d)(1) apply. Lead agencies have until September 30, 2024, to liquidate the funds.

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/>).

#### *Reallotment of Supplemental Funds*

State and tribal lead agencies must notify ACF by April 1, 2023, if they will be unable to obligate any part of their ARP CCDF Discretionary Supplemental

Funding allotment by September 30, 2023.<sup>3</sup> In accordance with 45 CFR 98.64, in most cases, 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.<sup>4</sup> To be eligible to receive reallocated funds, states must indicate their interest on their ACF-696 quarterly report due April 30, 2023 and tribes must indicate their interest on their ACF-696T annual report due December 29, 2022.

### **Reporting and Monitoring**

Although ARP CCDF Discretionary funding is supplemental to 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 section 2201 of the ARP Act.

OCC is still determining reporting requirements around the supplemental funds.<sup>5</sup> As with other funding streams, lead agencies should track spending of these funds separately and be prepared to report on obligations and liquidations and spending direct services, quality activities, and administrative costs through the ACF-696 or ACF-696T (45 CFR 98.65(g) and (i)).

OCC may seek approval to request more frequent information from lead agencies, such as estimates of the number of children served and progress toward goals. Lead agencies should be tracking and prepared to share this information.

### **Nondiscrimination Requirements**

All recipients of U.S. Department of Health and Human Services federal financial assistance and state and local government entities must comply with their legal obligation under federal nondiscrimination laws and regulations to provide equal access to child care programs, services, and activities. These laws protect individuals from unlawful discrimination on the basis of race, color, national origin, disability, age, and, in some circumstances, religion, sex, or sexual orientation.

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<sup>3</sup> The CCDBG Act at section 658(O)(f) defines "state" for the purposes of reallocation as "only the 50 states, District of Columbia, and the Commonwealth of Puerto Rico." (42 U.S.C. 9858m(f)). Therefore, territories are not eligible for reallocation of the ARP CCDF Discretionary funds.

<sup>4</sup> 45 C.F.R. 98.64(b)(2)(ii) says that funds will not be reallocated (but will instead revert to the federal government) if the amount available for reallocation is less than \$25,000.

<sup>5</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 0970-0510); and, ACF-800 CCDF Annual Aggregate Report (OMB Control Number 0970-0150).

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

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