



NATIONAL CONFERENCE *of* STATE LEGISLATURES

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February 22, 2016

Administration for Children and Families  
Attention: Office of Child Care Policy Division  
330 C Street, S.W.  
Washington, DC 20201  
Federal Rulemaking Portal: <http://www.regulation.gov>

**Curtis Bramble**  
*Senate President Pro Tempore*  
*Utah*  
*President, NCSL*

**Karl Aro**  
*Director of Administration*  
*Department of Legislative Services*  
*Maryland*  
*Staff Chair, NCSL*

**William T. Pound**  
*Executive Director*

Re: Notice of Proposed Rulemaking,  
Office of Child Care, Administration for Children and Families,  
Department of Health and Human Services  
Child Care and Development Fund  
*Docket Number: ACF-2015-0011*

Dear OCC Policy Division:

The National Conference of State Legislatures (NCSL) appreciates the opportunity to comment on the Notice of Proposed Rulemaking (NPRM) on the Child Care and Development Fund issued on December 24, 2015, by the Office of Child Care/Administration for Children and Families within the U.S. Department of Health and Human Services.

The recent reauthorization of the Child Care and Development Fund (CCDF) is an important step toward building a child care infrastructure that provides safe, high quality care for working families. The Congress established very high standards for state child care programs in the new law. We urge you to scale back the level of additional requirements added in the NPRM and to provide state and local governments the flexibility to build on their existing infrastructures and to maximize available funding and other existing resources. The law also provides options for states to seek additional time to make necessary changes to state laws. The NPRM proposes to reduce the amount of time that is provided. NCSL opposes the change and urges you to implement that statutory provision as written. Finally, while there is broad support for implementing criminal background checks for child care workers, the provisions in the propose rule are confusing. NCSL recommends that you convene a workgroup of state and federal officials, including law enforcement agency officials to develop a workable solution.

NCSL looks forward to working with you to implement the revised law and hopes that you will find our comments useful and constructive. I can be reached by e-mail at [Joy.Wilson@ncsl.org](mailto:Joy.Wilson@ncsl.org) or by phone at 202-624-8689 if you have any questions or need additional information.

Sincerely,

Joy Johnson Wilson  
Director, Health and Human Services Policy

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<b>Comments on ACF Proposed Rule – Child Care Development Fund</b> <b>Docket #ACF-2015-0011</b> <b>RIN #0907-AC67</b>		
<b>Page, Column Paragraph/Section</b>	<b>Topic</b>	<b>Comment</b>
pp. 80567-80568 Section 98.19	Requests for “Waivers for Extraordinary Circumstances and Temporary Relief from Requirements	<p><b><u>NCSL Supports the “Waiver for Extraordinary Circumstances” and the “Request for Relief” provisions in the CCDF Statute in lieu of similar, but less flexible provisions in the NPRM on pp 80567-80568 (Section 98.19).</u></b></p> <p><b><u>Explanation</u></b></p> <p>NCSL believes that many of the provisions in the NPRM will require state legislative action and states will need a final rule to guide that process. It is likely that states will need additional time to comply.</p> <p><b>The Child Care Development Fund statute (P.L. 113-186) provides for a “ one-year waiver for extraordinary circumstances” and authorizes the HHS Secretary to “waive for a period of not more than three years any provision” as noted in the language below. <b>The NPRM at Section 98.19</b> combines the two provisions, but <b>reduces the potential length of the waiver under the “Request for Relief” provision from three years to two years.</b> Given the complexity of many of the provisions of the law and the likely timing of a final rule, NCSL urges you to abide by the statutory provisions in the final rule to assure states that they will have ample time to make any state law changes necessary to implement the provisions that are ultimately agreed to in a final rule.</b></p> <p><b><u>Preferred Language</u></b></p> <p><b>“Waiver for Extraordinary Circumstances” at Sec. 5 (b)(3) (III) “</b>  <b>(III) WAIVER FOR EXTRAORDINARY CIRCUMSTANCES.—</b>Notwithstanding subclause (II) the Secretary <b>may grant a waiver to a State for one year</b> to the penalty applied in subclause (II) if the Secretary determines there are extraordinary circumstances, such as a natural disaster, that prevent the State from complying with clause (i). If the Secretary does grant a waiver to a State under this section, the Secretary shall, within 30 days of granting such waiver, submit a report to the appropriate congressional committees on the circumstances of the</p>

		<p>waiver including the stated reason from the State on the need for a waiver, the expected impact of the waiver on children served under this program, and any such other relevant information the Secretary deems necessary.</p> <p><b>(b) REQUEST FOR RELIEF.</b>—Section 658I of the Child Care and Development Block Grant Act of 1990 (42 U.S.C. 9858g), as amended by subsection (a), is further amended by adding at the end of the following: “</p> <p><b>(c) REQUEST FOR RELIEF.</b>— “(1) IN GENERAL.— The Secretary <b>may waive for a period of not more than three years</b> any provision under this subchapter or sanctions imposed upon a State in accordance with subsection (b)(2) upon the State’s request for such a waiver if the Secretary finds that— “(A) the request describes one or more conflicting or duplicative requirements preventing the effective delivery of child care services to justify a waiver, extraordinary circumstances, such as natural disaster or financial crisis, or an extended period of time for a State legislature to enact legislation to implement the provisions of this subchapter; “(B) such circumstances included in the request prevent the State from complying with any statutory or regulatory requirements of this subchapter; “(C) the waiver will, by itself, contribute to or enhance the State’s ability to carry out the purposes of this subchapter; and, “(D) the waiver will not contribute to inconsistency with the objectives of this law.</p>
<p>pp. 80572-80573                  Section 98.43</p>	<p>Background Checks</p>	<p>There is broad support for background checks, including fingerprint background checks, but there is no uniform system to implement this requirement. NCSL urges the administration to establish a workgroup composed of state and federal officials to develop a cost effective process that all states can use.</p>