LISC LOCAL INITIATIVES SUPPORT CORPORATION

Date: August 28, 2023

To: Ruth Friedman, Ph.D.
Director
Office of Child Care (OCC)
Administration for Children and Families (ACF)
Department of Health and Human Services (HHS)

From: Local Initiatives Support Corporation (LISC)
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Re: 88 FR 45022: Notice of Proposed Rulemaking (NPRM) on Improving Child Care Access, Affordability, and Stability in the Child Care and Development Fund (CCDF)
Docket Number ACF–2023–0003; RIN number 0970–AD02; § 98.2, Pages 45034 – 45035: Implementing Technical and Other Changes for Improved Clarity; § 98.84(e), Page 45038, 2nd column: Tribal Construction; § 98.21, Page 45031: Reducing Bureaucracy for Better Implementation

Attn: Megan Campbell, OCC

Dear Director Friedman:

Local Initiatives Support Corporation (LISC) appreciates the opportunity to submit written comments on the Notice of Proposed Rulemaking (NPRM) on Improving Child Care Access, Affordability, and Stability in the Child Care and Development Fund (CCDF) (Docket Number ACF–2023–0003; RIN number 0970–AD02). Specifically, we are pleased to offer feedback on § 98.2, which is focused on technical changes to regulatory definitions in Child Care Development Block Grant Act (CCDBG) that prescribe the allowable uses of CCDF resources for the renovation of child care facilities, § 98.84(e) which focuses on Tribal construction, and § 98.21: Reducing Bureaucracy for Better Implementation.

We applaud the Agency for taking steps to improve the clarity of what constitutes "major renovation" of child care facilities in order to decrease confusion among child care providers and CCDF Lead Agencies, and support critical infrastructure needs of child care providers and local communities. Paramount among the recommendations and observations included in our comments is a **request that ACF raise the major renovation cost threshold to $350,000 for centers and $50,000 for family child care homes to better reflect cost variations across markets and other factors associated with facilities improvements and related financing**.

We hope that you find our observations and recommendations informative. If you have any additional questions about our comments, or we can serve as a resource to you on child care and early learning facilities issues, please contact Nicole Barcliff, LISC Sr. Policy Director at (202) 739-9296 or nbarcliff@lisc.org, or Bevin Parker-Cerkez, LISC National Director of Child Care and Early Learning at (212) 455-1610 or bparkercerkez@lisc.org.

About LISC

Established in 1979, LISC is a non-profit and community development financial institution (CDFI) committed to forging resilient and inclusive communities of opportunity across America – great places to live, work, visit, do business and raise families. With offices in 38 cities throughout the country, and a rural network encompassing more than 140 partners across 49 different states, LISC's work supports a wide range of activities, including affordable housing, economic development, family income and wealth building, child care and early learning, community safety and justice, and community health. In 2022, LISC invested approximately $2.8 billion in local communities, which leveraged an additional $7.2 billion.

Quality child care and early learning programs are essential for healthy children and families, and for robust local economies – now and in the future. Across the nation, there is need for more equitable access to affordable child care and early learning options, offered in facilities that support health, safety, growth and development. Through our signature Child Care & Early Learning Program, LISC has invested more than $125 million in developing or improving more than 782 facilities serving 30,000 children annually in urban and rural neighborhoods across the country. That investment has leveraged an additional $518 million in public and private resources for these early learning spaces.

LISC Feedback on the Definition of "Major Renovation"
§ 98.2, Pages 45034 – 45035: Implementing Technical and Other Changes for Improved Clarity
Access to developmentally appropriate home and center-based child care facilities is a significant obstacle to making quality care available and accessible, but is often not ranked alongside much needed industry investments in worker compensation and subsidies for families in need.[i] In fact, despite data indicating that physical environments directly influence the availability and effectiveness of child care and early learning programs, there are no dedicated, stand-alone federal resources to support the acquisition, construction or renovation of child care facilities. CCDF is an important and familiar resource for providers seeking to improve the condition, quality, and availability of child care spaces despite restrictive statutory language that prohibits the utilization of CCDF funds for major renovation and new construction. **LISC applauds ACF for taking steps to clarify, simplify, update, and improve the definition of major renovation as prescribed by the 1998 CCDF rule, and fully supports basing the definition on the cost of renovations for better clarity and consistent implementation.** We offer the following recommendations based upon our experience providing direct facilities financing, and technical assistance, and capacity building services to child care providers, states, and localities.

Recommendation 1: Increase the Cost of Thresholds for Center and Home-Based Renovations (p. 4305, column 1)
ACF identifies cost variation due to child care program size as an influencing factor in proposing that the allowable renovation cost thresholds be $250,000 for child care centers and $25,000 for family child care homes. **LISC proposes raising the cost thresholds to $350,000 for child care centers and $50,000 for family child care homes due to multiple factors that influence renovation costs. We support the annual adjustment of the threshold to reflect inflationary growth.** In addition to program size, influencing factors include:

- **Cost Increases for Materials Used in Renovations and Repairs–** The hard and soft costs for making improvements to spaces have skyrocketed in recent years with the cost of facilities materials 37% higher than before the beginning of the pandemic.[ii] Persistent supply chain disruptions, skilled labor shortages and the logistics challenges associated with getting materials to where they are needed have all contributed to increased material scarcity.[iii] Soft costs are fluctuating wildly due to things like compliance with new energy efficiency & sustainability regulations, updated building code regulations, and the cost of financing (which is often correlated to interest rates).[iv] Most often, soft costs are incurred before, during, and after renovations or repairs are complete, and can change depending on unforeseen circumstances that spring up in the midst of completing a project.[v] Given the increase in hard and soft costs and their relation to the total development cost (TDC) of a project, we believe that the $250,000 and $25,000 thresholds for center and homed-based facilities do not accurately reflect the reasonable costs of activities below a "major renovation" threshold. The justifies an increase in the major renovation thresholds for home and center-based projects, and makes it more likely that the federal investment can be leveraged to attract other forms of financing to cover TDC.

NOTE: Total Development Cost (TDC) refers to the total of all costs in a facilities improvement project and includes both hard and soft costs – the fees associated with acquiring, constructing, renovating, repairing, rehabilitating, and financing the facility. Even projects that do not have what ACF would consider a "major renovation" component (under the 1998 regulations and the new proposal) have a TDC. Hard costs include things like materials and labor, and soft costs include other expenses involved in a construction or renovation project such as engineering, permits, marketing and project management expenses.

- **Regional Cost Differences –** Facilities renovation and repair costs are driven by local nuance and development needs due to the variability of both labor and material costs. Since the beginning of the pandemic, certain parts of the country have been especially hard hit by the skilled labor shortage and the costs associated with procuring building materials. An Associated Builders and Contractors analysis of the U.S. Bureau of Labor Statistics' Producer Price Index Q1 2023 data indicates declines in the cost of building materials over the last six months. However, all inputs to industries and commodities have risen substantially since February 2020 across all geographic markets.[vi] One can infer that this means there is a higher demand and greater competition for materials. These factors impact densely populated urban areas, small rural communities, and Tribal communities more dramatically. The major renovation threshold should be increased in order to better reflect the reality facing child care providers who operate in high need, high cost facility geographies.

Recommendation 2: Allow Maximum Flexibility to use CCDF resources for Renovation Activities Below the Major Renovation Cost Threshold (p. 4305 column 1)

The NPRM proposes that any individual renovation or collective renovations exceeding the threshold amounts be considered major renovations, and further clarifies that renovation activities that are intended to occur concurrently or consecutively, or altogether address a specific part or feature of a facility, are considered a "collective group of renovation activities". While the application of major renovation cost thresholds for individual activities is reasonable in the context of facilities financing, the application of the same thresholds for collective renovations overreaches. **We recommend that ACF allow providers maximum flexibility to use CCDF resources to cover renovation activities that fall below the major renovation thresholds regardless of whether the activities are part of collective renovations whose costs may exceed the threshold amounts**. Funding for renovation activities within the established thresholds should not be prohibited if the activities happen to be part of collective activities meant to improve the condition, quality, or availability of care settings.

We fear that linking the major renovation threshold to the intended outcome of collective activities in facilities projects may have the unintended consequence of restricting CCDF utilization beyond what is allowed by the legislative statute. While Section 658F(b) of the CCDBG Act (42 U.S.C. 9858d(b)) prohibits using CCDF funds for the purchase or improvement of land, or for the purchase, construction, or permanent improvement (other than minor remodeling) of any building or facility, it does not prohibit CCDF resources from being used as part of a broader plan to create high performing spaces. For example, if a provider has developed a plan to address the deferred maintenance– i.e., necessary repairs, replacements, and general maintenance that has been put on hold for a future time (often as a form of cost savings)– and the TDC of the deferred maintenance activities exceeds the major renovation threshold, allowing CCDF resources to cover any activities whose costs are under the major renovation threshold while identifying other resources to cover TDC is reasonable and does not run afoul of the allowable uses outlined in the underlying statute.

Applying maximum thresholds to collective renovation activities also has the potential to undermine recommended business and real estate development and financial planning and tactics – practices that financial intermediaries and other key stakeholders promote to the child care sector in order to bring more stability to their business operating models. States, localities, and providers are often encouraged to assess child care facilities needs in order to develop a financial plan of action to address the condition, quality, and availability of indoor and outdoor spaces. Providers with multiple needs may then be coached to address their needs in phases over a discrete period of time. While we recognize that infrastructure projects can occur in response to an emergency, or as non-emergency disparate, discrete individual activities, we believe that the Federal Government can play an important role in underscoring the utility of proactive physical infrastructure planning. The goal of planning is to be more intentional about directing resources to support facilities because they are a critical component of child care quality and supply building. As written, the proposed approach inadvertently reinforces the facilities blind spot that currently exists in polices related to supply building and improving program quality.

Finally, one of the most effective uses of federal resources is their ability to leverage capital from other sectors to meet infrastructure financing needs. Most often, providers cobble together multiple funding sources to address facilities challenges. Limiting the application of CCDF resources to projects whose entire TDC is at or below the proposed cost threshold would undercut the ability of providers to attract private, philanthropic, and other public sector funding streams.

LISC Feedback on § 98.84(e), p. 45038: Tribal Construction

Recommendation 1: Consult Tribal Nations, Tribal Stakeholders, and Tribal CDFIs re: Best Practices

Tribal Nations and Indigenous stakeholders are the undisputed authorities on approaches, policies, practices and financing strategies that are most beneficial to their communities. It is our sincere hope that the open process that the Agency is undertaking to inform updating CCDF regulations includes direct outreach to Tribal Nations, Tribal stakeholder organizations, and Tribal CDFIs in addition to the NPRM and request for public comments published in the Federal Register. LISC's feedback and recommendations are based upon our understanding of how ECE operating models and related facilities financing practices are affected by challenging geographies with underdeveloped infrastructures. It does not reflect how the decision-making processes and governance practices of Tribal Nations affect the timing of infrastructure projects in Tribal communities.

Recommendation 2: Support Maximum Flexibility in Developing Construction Liquidation & Repurposing Guidelines

Tribal Nations face significant barriers to economic and social stability due to generations of policies that have undermined their sovereignty, wealth, and power.[vii] For many Tribal communities, lack of physical infrastructure – which directly impacts quality child care and early learning facility access and availability – is one such impediment.[viii] As previously noted, supply chain and skilled labor shortages can affect rural and Tribal areas more acutely, lengthening the amount of time that it takes to plan and execute the acquisition, construction and renovation of child care facilities. As such, Tribal Nations and Lead Agencies likely require very specialized, flexible approaches to addressing child care facility acquisition, construction, and renovation activities.

We applaud ACF for acknowledging that the existing Tribal Construction and Major Renovation Liquidation Period does not sufficiently support realistic timetables for construction and major renovation projects, and fully support lengthening the liquidation timetable from two years post grant award to *at least four years* post grant award. We encourage ACF to engage with Tribal communities, Lead Agencies, and stakeholders to establish a reasonable, flexible process for repurposing construction and major renovation funds for other allowable CCDF purposes if plans for a construction or major renovation project fall through.

LISC Feedback on § 98.21, p. 45031: Reducing Bureaucracy for Better Implementation
The proposed rule changes related to "Reducing Bureaucracy for Better Implementation" focuses on presumptive eligibility, eligibility verification application processes, and additional children in families already receiving subsidies. Federal award recipient funding deployment models are not explored in this NPRM, but also a core component of implementation. We encourage ACF to consider lessons learned from states using intermediaries to swiftly and efficiently administer of COVID relief resources to the child care sector when thinking about improving implementation and reducing bureaucracy in the administration of federal funding.

LISC's Role as a Child Care Financing Intermediary
In an effort to most effectively serve the child care sector through the provision of federal funding made available through American Rescue Plan Act (ARPA), several states partnered with intermediaries to equitably allocate resources according to funding guidance. States contracted with intermediaries (including CDFIs) to provide funding implementation, deployment, monitoring and ongoing compliance. LISC is currently serving as a federal grant subrecipient channeling financial awards to child care beneficiaries across several geographies. Many of the awards are allowing states to systemically direct ACF funding for minor physical infrastructure needs of child care providers. Administering ARPA resources led us to better understand how federal awardee categories – e.g., prime recipient, subrecipients, beneficiary, etc.— impact the ability of child care providers to draw down much needed funding.

Problematic Reiumbursement Structures
We learned that the designation of child care operators and program awardees as "beneficiaries" of grant funding supports equitable resource allocation and that reimbursement structures create barriers to accessing capital funds, and processes that are difficult to navigate. Operating on a reimbursement basis – where qualifying projects and child care grantees are required to expend their own funds and submit back-up documentation that supports expenditures in order to access funding - is particularly problematic in the child care field, as many operators do not have sufficient cash flow to front project expenses. Administering program funding on a reimbursement-only basis also severely impacts the ability to reach historically under-resourced, and often BIPOC-owned/led organizations. In particular, smaller-scale operations like home-based child care and small independent centers overwhelmingly

serve low-wealth communities of color and are the organizations most often operating at razor-thin profit margins.

The “beneficiary” designation enables intermediaries to disburse funding based upon submission of an “obligation to pay” as opposed to “proof of expenditure”. This designation along with increased liquidation timelines (at least two years) supports our ability to effectively and efficiently deliver project related technical assistance and support a high volume of renovation projects that can be successfully completed and closed out. Following guidance on “beneficiary” relationships has enabled us to increase our reach and ability to equitably disburse money to providers with limited to no cash flow and ensure we are reaching those historically under-resourced operators and improving conditions for the workforce, families and children they serve.

As ACF seeks to improve implementation guidance for utilization of CCDF funds for facilities purposes, we recommend that you explore whether award deployment structures are best aligned with the capacity of providers.

Other Considerations: LISC Feedback on Supporting Home-Based Providers
While the is no particular portion of the NPRM focused on ensuring that regulatory policy adequately supports both home and center-based providers, we would like to encourage ACF to adopt regulatory approaches that to incentivize states to better support the unique needs of home-based child care providers and families with a preference for child care provided in home settings. Home-based child care providers are fundamental to our nation’s child care and early learning infrastructure. Oftentimes, family child care (FCC) providers or family, friend, and neighbor (FFN) caregivers are the most accessible, approachable, and affordable child care option available. It’s no surprise many parents prefer the familiarity, flexibility, and friendliness that home-based child care offers.

Market failures that have resulted in increased home prices, rent expenses, and interest rates, and stagnant or shrinking household incomes continue to be disastrous for our nation’s home-based caregivers. Additionally, traditional public sector child care and small business supports most often miss the mark in meeting the needs of FCC and FFN microenterprises, which has meant that there is no clear government-backed safety net for providers who need financial support.[ix] These financial sector inadequacies heighten the importance of CCDF resources to FCC and FFN providers. LISC will continue to push for the community development and finance sectors to improve their practices as they relate to this portion of the child care sector. We encourage ACF to use this and other processes to elevate, clearly articulate and reinforce ways that CCDF can support FCC and FFN.

Conclusion
In the fields of early childhood facility policy, financing, and practice, LISC has been an advocate, thought leader and resource for more than two decades. We are not attempting to fix every piece of the complex early care and education puzzle, but we are uniquely positioned to help place an essential piece of that puzzle: developing and financing quality physical spaces and building the capacity of child care providers. These actions are essential to building a robust quality child care system and thriving local communities. We are eager to use our experience to promote systems-level change and be a resource to the Agency.

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