August 28, 2023

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

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: Tribal Construction

Dear Director Freidman:

The National Children's Facilities Network (NCFN) thanks you for 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 of major renovation, and § 98.84(e) which focuses on Tribal construction.**

Too often, the condition, quality, and availability of child care facilities is not factored into the formulation of policies and strategies to build the supply of quality child care.[1] NCFN is pleased that the current CCDF facilities guidance is being modified to improve clarity and utilization of resources and hopes that the new guidance will incentivize leveraging existing CCDF funding for physical infrastructure needs. We applaud ACF for taking steps to improve regulatory language outlining what constitutes major renovation and are encouraged by the Agency's acknowledgement of the challenges faced by Tribal Nations undertaking major renovation projects and new child care facility construction. The recommendations included in this comment letter reflect the consensus of NCFN members that:

- ACF amending the definition of major renovation to be based on cost as opposed to a description of structural change will help simplify and clarify processes for lead Agencies and providers;
- The proposed major renovation cost threshold should be raised to $350,000 for centers and $50,000 for family child care homes to account for cost variations across markets and other factors associated with facilities improvements and related financing;
- Lengthening the liquidation period for Tribal construction and major renovation funds aligns with the current facilities financing and renovation realities; and
- Guidelines for repurposing Tribal facilities funds should be as flexible as possible and developed in consultation with Tribal Nations and stakeholders.

About NCFN

[1] Grunewald, R. (2020, April 22).COVID-19 Challenges the Child Care Market. https://www.minneapolisfed.org/article/2020/covid-19-challenges-the-child-care-market

NCFN is a coalition of more than 70 nonprofit financial and technical assistance intermediaries and other interested stakeholders involved in planning, developing, and financing for high-quality early childhood care and education (ECE) facilities and business models particularly in areas that have the least access to high-quality ECE and the highest concentrations of poverty. Network members increase supply and help improve the quality of ECE by providing technical assistance and financing to address capital needs. NCFN also works to generate public, private, and philanthropic resources that support the development and improvement of early childhood facilities in underserved communities nationwide and collaborates with other children's advocacy leaders concerned with addressing the supply and quality of early childhood facilities across the country.

§ 98.2, Pages 45034 – 45035: Implementing Technical and Other Changes for Improved Clarity
NCFN Comment: NCFN supports changing the definition of "major renovation" to reflect cost instead of activities that constitute a structural change, and urges ACF to raise the proposed major renovation threshold to $350,000 for centers and $50,000 for family child care homes.

Child care providers, particularly the vast majority of providers who are small businesses, face unique financial challenges. Programs serving low-income communities are highly dependent on unpredictable public funding streams for operations and lack a consistent and effective financing system or capital subsidies for facilities.[2] As a result, most providers are unable to access traditional financial supports necessary to address infrastructure challenges. Despite the well-known importance of the role that physical spaces play in supporting program quality, health, and safety, there is currently no dedicated source of federal funding for the acquisition, construction and renovation of ECE facilities, and very few states and localities have established dedicated funding streams. States and localities require child care facilities to meet rigorous and often expensive health and safety standards. These standards are integral to maintaining quality environments for our youngest children, but also make setting up or expanding a child care business expensive.[3] The ongoing upkeep and maintenance costs for child care facilities are a perennial challenge and can lead to facility issues that impact the health and safety of the children and staff. Furthermore, facilities financing struggles impede child care providers from expanding to meet family and employer demand for additional child care capacity. The lack of child care provider access to other forms of capital for physical infrastructure heightens the importance of the role of CCDF funds in improving the condition, quality, and availability of child care facilities.

Major Renovation Threshold

Several NCFN members serve as intermediaries for states that are deploying ACF administered American Rescue Plan Act (ARPA) child care resources. Across the states, our members found that demand for facilities resources for minor renovation activities is substantial, if not overwhelming. They also had direct experience with establishing systems to deploy CCDF COVID-relief resources and found that the current renovation guidance made creating processes to deploy the funding time consuming, confusing and cumbersome. **NCFN welcomes the adoption of a cost threshold definition for major renovation with an annual inflation adjustment. We recommend increasing the cost thresholds for both center and home**

[2] Birken, B. (2020). Dollars and Sense: Affordability of Childcare. Federal Reserve Bank of Atlanta. https://www.atlantafed.org/community-development/publications/partners-update/2020/covid-19-publications/200604-dollars-and-sense-affordability-of-childcare

[3] Rosch, J., Monaco -Vavrik, M., Goldstein, I., Reeves, K. (2022, January). Capitalizing Child Care The National Landscape of Grants, Loans, and Community Development Capital in Early Childhood Education. https://www.ncfn.org/capitalizing-child-care

based renovations to $350,000 and $50,000 respectively, as these increased limits align better with observed renovation costs across diverse geographies.[4] Geography, program size, and facility size all contribute to cost variations for renovation activities. Our members observed that renovations for centers ranged from $250,000 -$400,000, and overwhelmingly indicated that the minor renovation costs for home based programs were well above the proposed $25,000 threshold – landing somewhere between $35,000 - $75,000 depending on geography. For example, in a CA program, the established threshold for minor repairs and renovations of home based facilities is capped at $75,000, while in the Midwest, allocations for home based programs to address facility concerns related to child care range from $35,000 -$50,000. We encourage ACF to build upon the progress stimulated by the infusion of ARPA resources, and set thresholds commensurate with recent funding experience across the nation.

Collective Renovation

While ACF's articulation of what constitutes collective renovation is sound, applying the proposed renovation thresholds to collective renovation activities requires a more nuanced approach. Often, facilities projects can occur in phases – planning, design, construction/renovation, operation and management, etc.[5] Phasing out activities over time is an encouraged and common practice that allows providers to prioritize activities in a manner that supports their highest program priorities while minimizing disruptions to care. The established thresholds should support instances where renovation activities are spread out and split into phases over time, and renovation activities that contribute to meaningful health, safety and/or quality improvements – regardless of whether the total cost of the collective activities exceed the established thresholds. CCDF funds should support collective renovation activities up to the threshold amounts, allowing for additional funding sources to complete the project as needed.

§ 98.84(e): Tribal Construction

It is well documented that Tribal Nations face multiple challenges due to historical discriminatory policies, insufficient resources, and inefficient federal program delivery to Indigenous communities.[6] While the perspective of NCFN members accurately reflects a wealth of community development and ECE financing expertise, we feel it important to emphasize that 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. The feedback offered below is 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 Indigenous communities.

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[4] Stright, B. (2023, March). Stressed out supply chains: Elevated freight and labor costs still an issue. Supply Chain Management Review.
https://www.scmr.com/article/supply_chains_elevated_freight_and_labor_costs_still_an_issue

[5] Messner, J. (2022). Introduction to the Building Industry.
https://psu.pb.unizin.org/introductiontothebuildingindustry/chapter/lifecycle/

[6] United States Commission on Civil Rights. (2018, December). BROKEN PROMISES: Continuing Federal Funding Shortfall for Native Americans. https://www.usccr.gov/files/pubs/2018/12-20-Broken-Promises.pdf

In non-Tribal communities, child care major renovation and new construction projects typically take between 3 – 5 years to complete, and can take longer if there are complicated project circumstances. The complex interplay of assembling adequate financing sources to cover total development costs, underdeveloped physical infrastructure in communities, and construction labor and procurement difficulties all contribute to longer construction timetables.[7] These factors are likely experienced more profoundly in Tribal communities, and we surmise that it may take longer to fully spend down construction capital.[8]

NCFN supports lengthening the liquidation period for tribal construction and major renovation funds beyond two years post grant award. We encourage the Agency to provide Tribal Nations with maximum flexibility to liquidate funding by establishing a liquidation period of *at least* four years post grant award in order to give lead agencies sufficient time to carry out construction and major renovation projects.

Tribal Construction Repurposing Guardrails

Providing Tribal Nations with the flexibility to repurpose ACF approved construction funds for other allowable CCDF purposes is a smart policy approach given widespread infrastructure challenges in Tribal communities and bureaucratic barriers that Tribal Nations face with the trust land. We understand that ACF has an obligation to ensure that federal resources are used appropriately, and hope that the Agency collaborates with Tribal stakeholders to ensure that guardrails established are fair, effective, reasonable, and non punitive. NCFN encourages ACF to allow maximum flexibility to Tribal Nations and lead agencies in repurposing CCDF construction or renovation funds for other acceptable purposes.

Conclusion

NCFN is committed to developing and improving equitable access to quality child care in communities around the country, and fully supports ACF's efforts to achieve this goal. In proposing the adoption of new rules that reinforce the role of physical spaces in expanding access to affordable, high quality child care, the Agency is taking meaningful steps toward eliminating an ECE system child care facilities blind spot. We are eager to see the adoption of policies and guidelines that improve the alignment of federal child care resources with family and community needs. Please use the Network as a resource on child care facilities and related financing issues. For questions about NCFN or our work, please contact: Nicole Barcliff NCFN Co-Chair LISC Senior Policy Director nbarcliff@lisc.org (202) 739-9296, or Angie Garling NCFN Co-chair LIIF Vice President, Early Care & Education Programs agarling@liifund.org (415) 489-6116 Ext 316.

Sincerely,

The National Children's Facilities Network (NCFN)

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[7] Total Development Cost is the sum of all costs incurred or to be incurred by the project in acquiring, constructing, rehabilitating, and financing the facility. TDC is site acquisition + predevelopment + hard cost construction (labor and materials associated with: building envelope, structural skeleton, systems, plumbing, electrical, fit-out) + soft cost (incl. financing and legal) + technical assistance + furniture, fixtures and equipment (post-occupancy)

[8] Martinchek, K. Carther, A. (2021, February 25).Native Communities Face Sustained Challenges to Building Financial Resilience. Urban Wire. https://www.urban.org/urban-wire/native-communities-face-sustained-challenges-building-financial-resilience