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October 17, 2016

The Honorable Lamar Alexander
Chairman
The Honorable Patty Murray
Ranking Member
Committee on Health, Education, Labor, and Pensions
United States Senate

The Honorable John Kline
Chairman
The Honorable Robert C. "Bobby" Scott
Ranking Member
Committee on Education and the Workforce
House of Representatives

Subject: *Department of Health and Human Services, Administration for Children and Families: Child Care and Development Fund (CCDF) Program*

Pursuant to section 801(a)(2)(A) of title 5, United States Code, this is our report on a major rule promulgated by the Department of Health and Human Services, Administration for Children and Families (ACF) entitled "Administration for Children and Families: Child Care and Development Fund (CCDF) Program" (RIN: 0970-AC67). We received the rule on September 23, 2016. It was published in the *Federal Register* as a final rule on September 30, 2016, with a stated effective date of November 29, 2016. 81 Fed. Reg. 67,438.

The final rule makes changes to the Child Care and Development Fund (CCDF) intended to strengthen requirements to protect the health and safety of children in child care; help parents make informed consumer choices and access information to support child development; provide equal access to stable, high-quality child care for low-income children; and enhance the quality of child care and the early childhood workforce.

Enclosed is our assessment of ACF's compliance with the procedural steps required by section 801(a)(1)(B)(i) through (iv) of title 5 with respect to the rule. Our review of the procedural steps taken indicates that ACF complied with the applicable requirements.

If you have any questions about this report or wish to contact GAO officials responsible for the evaluation work relating to the subject matter of the rule, please contact Shirley A. Jones, Assistant General Counsel, at (202) 512-8156.

signed

Robert J. Cramer
Managing Associate General Counsel

Enclosure

cc: Vanessa Jones
Deputy Director, ODRM
Department of Health and Human Services

REPORT UNDER 5 U.S.C. § 801(a)(2)(A) ON A MAJOR RULE
ISSUED BY THE
DEPARTMENT OF HEALTH AND HUMAN SERVICES,
ADMINISTRATION FOR CHILDREN AND FAMILIES
ENTITLED
“CHILD CARE AND DEVELOPMENT FUND (CCDF) PROGRAM”
(RIN: 0970-AC67)

(i) Cost-benefit analysis

The Administration for Children and Families (ACF) analyzed the costs and benefits of this final rule. ACF estimated that, overall, annualized costs associated with this rule averaged over a 10-year window, will be \$235.2 million (plus an additional \$59.2 million in opportunity costs) and the annualized amount of transfers is approximately \$839.1 million (all estimated using a 3 percent discount rate), which amounts to a total annualized impact on states, territories, and tribes of approximately \$1.16 billion. Of that amount, ACF determined that approximately \$1.15 billion is directly attributable to the statute, with only an annualized cost of approximately \$4 million (or approximately 0.3 percent of the total estimated impact) directly attributable to the discretionary provision of the rule that extends the background check requirement.

ACF identified three primary beneficiaries: children in care funded by Child Care and Development Fund (CCDF) (currently approximately 1.4 million), their families who need the assistance to work, pursue education or to go to school or training, and the roughly 415,000 child care providers that care for and educate these children. ACF also noted that the effect of these changes will go far beyond those children who directly participate in CCDF and will accrue benefits to children, families, and society at large. ACF stated that many providers who serve children receiving CCDF subsidies also serve private-paying families, and all children in the care of these providers will be safer because of the new CCDF health and safety requirements. ACF stated further that the requirements for background checks extend beyond just CCDF providers and the public at large also benefits in cost savings due to greater family work stability when there is stable, high quality child care; lower rates of child morbidity and injury; fewer special education placements and less need for remedial education; reduced juvenile delinquency; and higher school completion rates. A CF also noted that it did not have a strong basis for estimating the magnitude of the benefits in dollar amounts.

(ii) Agency actions relevant to the Regulatory Flexibility Act (RFA), 5 U.S.C. §§ 603-605, 607, and 609

ACF determined that this final rule will not result in a significant economic impact on a substantial number of small entities.

(iii) Agency actions relevant to sections 202-205 of the Unfunded Mandates Reform Act of 1995, 2 U.S.C. §§ 1532-1535

ACF stated that it ensured that the rule is based on statutory provisions and provided for state agency flexibility in many areas to limit burden and allow for cost-effective implementation of the statutory requirements. In addition, ACF noted that states, territories, and tribes receive over \$5 billion annually in federal funding to implement the program.

(iv) Other relevant information or requirements under acts and executive orders

Administrative Procedure Act, 5 U.S.C. §§ 551 et seq.

On December 24, 2015, ACF published a proposed rule. 80 Fed. Reg. 80,466. ACF received 150 comments on the proposed rule, including comments from state human services and education agencies, national advocacy groups, state and local early childhood organizations, child care resource and referral agencies, faith-based organizations, provider associations, tribes and tribal organizations, labor unions, child care providers, parents, individual members of the public, and a joint letter by two Members of Congress. ACF responded to comments in the final rule.

Paperwork Reduction Act (PRA), 44 U.S.C. §§ 3501-3520

ACF determined that a number of sections in this final rule refer to collections of information which are subject to the Act. In six instances, the collections of information for the relevant sections of this final rule have been previously approved under a series of Office of Management and Budget (OMB) control numbers (0970-0114, 0970-0150, 0970-0167, 0970-0323, 0970-0241, and 0970-0195). In four other instances, the final rule modified several previously approved information collections. ACF estimated that the total burden for these four requirements would be 14,309 hours. ACF also determined that this final rule contains two new information collection requirements entitled “Consumer Education Website” and “Reporting of Serious Injuries and Death” with respective total burdens of 16,800 and 10,000.

Statutory authorization for the rule

ACF promulgated this final rule under the authority of sections 618 and 9858 of title 42, United States Code.

Executive Order No. 12,866 (Regulatory Planning and Review)

ACF determined that this final rule is a significant regulatory action under the Order as it will have an annual effect on the economy of more than \$100 million.

Executive Order No. 13,132 (Federalism)

ACF described its consultations with state and local officials. ACF described the outreach it conducted to engage with a variety of stakeholders to better understand the implications of its provisions. ACF participated in more than 21 listening sessions with approximately 675 people representing diverse national, state, and local stakeholders, held webinars, and gave presentations at national conferences. Participants included state human services agencies, child care providers, parents with children in child care, child care resource and referral agencies, national and state advocacy groups, national stakeholders including faith-based communities, after-school and school age child care providers, child care researchers, state and local early childhood organizations, provider associations, labor unions, and National Head Start Association members. Furthermore, ACF held five meetings with state and territory CCDF administrators and a series of consultations with tribal leaders to gather input from federal grantees with responsibility for operating the CCDF program.

ACF also described the nature of concerns raised by states, territories, and tribes. According to ACF, state, territorial, and tribal CCDF agencies want to provide family friendly child care

assistance and support increased quality of child care services, but are concerned about costs and need for grantee flexibility. ACF stated that it considered these views in developing the final rule and that it completed a regulatory impact analysis to fully assess costs and benefits of the new requirements. ACF recognized that a number of the new regulatory provisions will require some states, territories, and tribal agencies to re-direct CCDF funds to implement specific provisions. ACF also noted that each fiscal year it provides to states, territories, and tribes \$5.7 billion in annual funding to implement the CCDF program, that this final rule is based on policy practices already implemented by many states, and in several areas, the final rule increases the flexibility available to states, territories, and tribes in administering the program (e.g., waiving family co-payments, defining protective services).