Department of Health and Human Services

OFFICE OF
INSPECTOR GENERAL

TEXAS IMPROPERLY CLAIMED SOME CHILD CARE AND DEVELOPMENT TARGETED FUNDS

Inquiries about this report may be addressed to the Office of Public Affairs at Public.Affairs@oig.hhs.gov.

Gloria L. Jarmon
Deputy Inspector General
for Audit Services

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A-06-13-00038

Office of Inspector General

https://oig.hhs.gov

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EXECUTIVE SUMMARY

Texas did not comply with Federal requirements for the use of almost $15 million in Child Care and Development Fund targeted funds for fiscal year 2010.

WHY WE DID THIS REVIEW

The Child Care and Development Fund (CCDF) provides discretionary funding for three targeted funds known as the Infant and Toddler, Quality, and School Age Resource and Referral funds. These targeted funds are used for activities that improve the availability, quality, and affordability of childcare and to support the administration of these activities. The Federal Government provides 100 percent of these funds. Previous Office of Inspector General reviews found that other States did not always comply with Federal requirements when claiming targeted funds for reimbursement.

The objective of this review was to determine whether the Texas Workforce Commission (State agency) complied with Federal requirements for the use of CCDF targeted funds for Federal reimbursement for Federal fiscal year (FY) 2010.

BACKGROUND

Under the CCDF program, States have considerable latitude in administering and implementing their childcare programs. Each State must develop, and submit to the Administration for Children and Families (ACF) for approval, a State plan that identifies the purposes for which CCDF funds will be expended for two grant periods (i.e., 2 FYs). Program requirements state that a State agency has 2 FYs to obligate CCDF funds and a third FY to liquidate those funds.

The State plan includes payment incentives of at least 5 percent (enhanced portion) above the daily maximum reimbursement rates that are offered to childcare providers to encourage a higher quality of childcare. Only the activities associated with the enhanced portion that have met quality requirements qualify as activities to improve the quality of childcare and may be claimed for reimbursement. States report expenditures of targeted funds on the quarterly Child Care and Development ACF-696 Financial Report (ACF-696 report).

In addition, the State plan must designate a lead agency responsible for administering childcare programs. In Texas, the State agency is the lead agency and is required to oversee the expenditure of funds by contractors, grantees, and other Texas government agencies to ensure that the funds are expended in accordance with Federal requirements.

The State agency claimed CCDF targeted funds totaling $31,777,216 on its ACF-696 report for FY 2010. We reviewed all of the targeted fund expenditures that the State agency claimed.

WHAT WE FOUND

Of the $31,777,216 that we reviewed, the State agency complied with Federal requirements for the use of $16,810,087 in CCDF targeted funds for FY 2010. However, the State agency did not comply with Federal requirements for the use of the remaining $14,967,129. Specifically, the State agency (1) improperly claimed $14,909,333 of expenditures that included nontargeted fund activities, (2) improperly claimed $32,666 in expenditures that were incurred before the start of the funding period, and (3) did not refund $25,130 to the Federal Government that remained unliquidated after the liquidation period had ended. These errors occurred because the State agency did not have policies and procedures in place to ensure that only expenditures that improve the quality of childcare are reported and to adequately oversee the obligation and liquidation of the targeted funds.

WHAT WE RECOMMEND

We recommend that the State agency:

- refund to the Federal Government $14,909,333 for expenditures that were not for targeted fund activities or work with ACF to determine whether any of the $14,909,333 was allowable,

- refund to the Federal Government $32,666 for targeted funds that were incurred before the start of the funding period,

- refund to the Federal Government $25,130 for targeted funds that were not liquidated in the required timeframe, and

- develop policies and procedures to (1) ensure that it claims only the enhanced portion of payments made to providers that have exceeded licensing standards and (2) strengthen monitoring of CCDF targeted funds to ensure that expenditures are properly obligated and liquidated.

STATE AGENCY COMMENTS AND OUR RESPONSE

In written comments on our draft report, the State agency agreed with our recommendations to refund $32,666 for targeted funds that were incurred before the start of the funding period and $25,130 for targeted funds that were not liquidated in the required timeframe, stating that it had already refunded the money. The State agency disagreed with our recommendation to refund the $14,909,333 for expenditures that were not for targeted fund activities but agreed to work with ACF to determine whether the expenditures were allowable. The State agency agreed to strengthen monitoring of CCDF targeted funds but did not agree with the recommendation to develop policies and procedures to ensure that it claims only the enhanced portion of payments to providers that have exceeded licensing standards. Nothing in the State agency's comments caused us to change our findings or recommendations.

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INTRODUCTION

WHY WE DID THIS REVIEW

The Child Care and Development Fund (CCDF) provides discretionary funding for three targeted funds that are administered at the Federal level by the U.S. Department of Health and Human Services, Administration for Children and Families (ACF), and that are known as the Infant and Toddler, Quality, and School Age Resource and Referral funds. These targeted funds are used for activities that improve the availability, quality, and affordability of childcare and to support the administration of these activities. The Federal Government provides 100 percent of these funds. Previous Office of Inspector General reviews found that other States did not always comply with Federal requirements when claiming targeted funds for reimbursement. Appendix A contains a list of Office of Inspector General reports related to targeted funds.

OBJECTIVE

Our objective was to determine whether the Texas Workforce Commission (State agency) complied with Federal requirements for the use of CCDF targeted funds for Federal reimbursement for Federal fiscal year (FY) 2010.

BACKGROUND

Under the CCDF program, States have considerable latitude in implementing and administering their childcare programs. Each State must develop, and submit to ACF for approval, a State plan that identifies the purposes for which CCDF funds will be expended for two grant periods (i.e., 2 FYs). Program requirements state that a State agency has 2 FYs to obligate CCDF funds and a third FY to liquidate those funds. The following table shows the obligation and liquidation periods for the FY covered by our review.

Table: Obligation and Liquidation Periods

FY	Obligation Period Start Date	Obligation Period End Date	Liquidation Period End Date
2010	10/01/09	9/30/11	9/30/12

In addition, the State plan must designate a lead agency responsible for administering childcare programs. In Texas, the State agency is the lead agency and is required to oversee the expenditure of funds by contractors, grantees, and other Texas government agencies to ensure that the funds are expended in accordance with Federal requirements. The State agency contracts with these entities and considers the funds obligated when the contracts are signed.

States are required to report expenditures of targeted funds on the quarterly Child Care and Development ACF-696 Financial Report (ACF-696 report), which is a cumulative report for the FY.

HOW WE CONDUCTED THIS REVIEW

The State agency claimed CCDF targeted funds totaling $31,777,216 on its ACF-696 report for FY 2010. We reviewed all of the targeted fund expenditures that the State agency claimed.

We conducted this performance audit in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

Appendix B contains details of our audit scope and methodology, and Appendix C contains details on the Federal and State requirements related to the CCDF targeted funds.

FINDINGS

Of the $31,777,216 that we reviewed, the State agency complied with Federal requirements for the use of $16,810,087 in CCDF targeted funds for FY 2010. However, the State agency did not comply with Federal requirements for the use of the remaining $14,967,129. Specifically, the State agency (1) improperly claimed $14,909,333 of expenditures that included nontargeted fund activities, (2) improperly claimed $32,666 in expenditures that were incurred before the start of the funding period, and (3) did not refund $25,130 to the Federal Government that remained unliquidated after the liquidation period had ended. These errors occurred because the State agency did not have policies and procedures in place to ensure that only expenditures that improve the quality of childcare are reported and to adequately oversee the obligation and liquidation of the targeted funds.

THE STATE AGENCY IMPROPERLY CLAIMED NONTARGETED FUND EXPENDITURES

The State agency must describe how it will use the targeted funds, and the targeted funds must be used to improve the quality of childcare (45 CFR § 98.16(h)). The State agency identified these activities in the ACF-approved CCDF State plan. The CCDF State plan allowed targeted funds to be used for payment incentives of at least 5 percent (enhanced portion) above the daily maximum reimbursement rates that were offered to providers that voluntarily exceeded the State's minimum licensing standards for childcare facilities. Therefore, only the enhanced portion qualifies to be reported in the correct category of funding for Infants and Toddlers (line 1(c)), Quality Expansion (line 1(d)), and School Age Resource and Referral (line 1(e)) of the ACF-696.

The State agency claimed $14,909,333 in expenditures for nontargeted fund activities.[1] Specifically, for providers approved to receive enhanced payments, the State agency claimed targeted funds for total direct care expenditures rather than the enhanced portion. This occurred because the State agency believed that the total payment made to providers paid at enhanced

[1] Nontargeted fund activity expenditures are for direct care; they do not include the enhanced portion.

rates was allowable as a targeted fund expenditure; therefore, it did not implement a system that enabled it to calculate the enhanced portion of the payment. When informed that only the enhanced portion could be claimed, the State agency was unable to calculate that portion. As a result, the State agency improperly reported expenditures of $10,941,769 on line 1(c), $2,035,048 on line 1(d), and $1,932,516 on line 1(e).

THE STATE AGENCY IMPROPERLY CLAIMED EXPENDITURES INCURRED BEFORE THE START OF THE FUNDING PERIOD

Federal regulations specify that CCDF funds must be obligated in the FY in which the funds were awarded or in the succeeding FY and that any funds not obligated during this period will revert to the Federal Government (45 CFR §§ 98.60(d)(1) and (7)). Further, CCDF discretionary funds must be used to carry out the State plan in the period for which the funds are made available (45 CFR § 98.64(b)).

The State agency contracted with the Texas Department of Family Protective Services (DFPS) to provide quality improvement activities, including the licensing, monitoring, and regulation of childcare facilities. The State agency claimed $14,640,441 in targeted fund expenditures for these services for FY 2010. However, the amount claimed included an expenditure of $32,666 that DFPS incurred in September 2009. During our review, DFPS stated that it had incorrectly identified the expenditures for FY 2010.

THE STATE AGENCY DID NOT REFUND UNLIQUIDATED TARGETED FUNDS

CCDF funds not liquidated within 1 year of the end of the 2-year obligation period will revert to the Federal Government (45 CFR §§ 98.60(d)(1) and (7)).

For FY 2010, the State agency entered into a $1 million contract with the Texas Health and Human Services Commission (HHSC) to provide childcare and education resource and referral services statewide. Although the State agency properly obligated contract funds, it did not liquidate $25,130 of targeted funds in the required timeframe.

THE STATE AGENCY DID NOT HAVE POLICIES AND PROCEDURES IN PLACE

The State agency did not have policies and procedures in place to calculate and claim only the enhanced portion of payments made to providers that exceeded the State's minimum licensing standards for childcare facilities. In addition, the State agency did not have policies and procedures in place to adequately monitor the obligation and liquidation of the targeted funds. In the absence of necessary policies and procedures, the State agency could not determine whether contractors liquidated all grant-year funds or improperly included prior-year expenditures. Better monitoring would have helped ensure that the targeted funds were being obligated and liquidated according to the timeframes specified in Federal requirements.

RECOMMENDATIONS

We recommend that the State agency:

- refund to the Federal Government $14,909,333 for expenditures that were not for targeted fund activities or work with ACF to determine whether any of the $14,909,333 was allowable,

- refund to the Federal Government $32,666 for targeted funds that were incurred before the start of the funding period,

- refund to the Federal Government $25,130 for targeted funds that were not liquidated in the required timeframe, and

- develop policies and procedures to (1) ensure that it claims only the enhanced portion of payments made to providers that have exceeded the State's minimum licensing standards for childcare facilities and (2) strengthen monitoring of CCDF targeted funds to ensure that expenditures are properly obligated and liquidated.

STATE AGENCY COMMENTS AND OFFICE OF INSPECTOR GENERAL RESPONSE

STATE AGENCY COMMENTS

In written comments on our draft report, the State agency agreed with our recommendations to refund $32,666 for targeted funds that were incurred before the start of the funding period and $25,130 for targeted funds that were not liquidated in the required timeframe, stating that it had already refunded the money. The State agency disagreed with our recommendation to refund the $14,909,333 for expenditures that were not for targeted fund activities but agreed to work with ACF to determine whether the expenditures were allowable. The State agency said that all direct care expenditures paid to providers qualified for enhanced payments. To support its contention, the State agency cited examples in which ACF has stated that targeted funds may be used for higher reimbursement for the care of children and toddlers. In addition, the State agency said that it has historically claimed all direct care expenditures for quality providers and that ACF has not taken exception. While the State admitted that there is a differential in rates for designated child care vendors and those that are not designated, the State said that there is no "enhanced portion" of their rates or their reimbursements, making the calculation of such an amount "a hypothetical exercise."

The State agency agreed to strengthen monitoring of CCDF targeted funds but did not agree with the recommendation to develop policies and procedures to ensure that it claims only the enhanced portion of payments to providers that have exceeded licensing standards. However, the State agency said that it would work with ACF on this issue.

The State agency's comments are included in their entirety as Appendix D.

OFFICE OF INSPECTOR GENERAL RESPONSE

After reviewing the State agency's comments, we maintain that our findings and recommendations are valid. The Texas CCDF State plan allowed targeted funds to be used to encourage providers to obtain quality certifications by offering incentives. The plan described incentives “such as purchasing materials, scholarships, technical assistance, mentoring, and training” and “enhanced reimbursement rates” that by law “must be 5% above the daily maximum reimbursement rates.” We disagree with the State’s interpretation that the entire amount of direct child care services paid to providers who achieved a quality certification in a Statewide program are allowable as targeted fund activities. As a general matter, these targeted funds are not intended to provide direct child care services. Rather, as stated in section 658G of the Child Care and Development Block Grant Act of 1990, as amended, and incorporated by reference in the FY 2010 CCDF appropriation, these funds are available for specified “activities designed to improve the quality and availability of child care (such as resource and referral services).” The CCDF regulation at 45 CFR § 98.51(a) gives examples of quality activities. One of the activities to improve the quality of childcare services is “improving salaries and other compensation (such as fringe benefits) for full- and part-time staff ....” Targeted funds are to be used for quality incentives, such as an increase in the hourly rate, a bonus, additional training, or other fringe benefits. Therefore, targeted funds may be used only for the enhanced portion of the provider rate that can be attributed to meeting higher quality reimbursements.

APPENDIX A: RELATED OFFICE OF INSPECTOR GENERAL REPORTS

Report Title	Report Number	Date Issued
South Carolina Properly Obligated and Liquidated Targeted Funds Under the Child Care and Development Fund Program	A-04-13-01021	4/25/14
Arizona Improperly Claimed Some Child Care and Development Targeted Funds	A-09-12-01004	4/2/14
Virginia Properly Obligated and Liquidated Most Targeted Funds Under the Child Care and Development Fund Program	A-03-12-00251	10/17/13
Louisiana Improperly Claimed Some Child Care and Development Fund Targeted Funds	A-06-12-00057	9/30/13
Michigan Properly Obligated and Liquidated Targeted Funds Under the Child Care and Development Fund Program	A-05-12-00062	4/26/13
Nebraska Improperly Claimed Some Child Care and Development Targeted Funds	A-07-12-03175	4/30/13
Ohio Properly Obligated and Liquidated Targeted Funds Under the Child Care and Development Fund Program	A-05-12-00061	4/26/13
Connecticut Properly Obligated and Liquidated Targeted Funds Under the Child Care and Development Fund Program	A-01-12-02505	2/21/13
Iowa Improperly Claimed Some Child Care and Development Targeted Funds	A-07-11-03163	3/28/12
Review of Unexpended Infant and Toddler Targeted Funds and Quality Targeted Funds Claimed by the Iowa Department of Human Services for Fiscal Years 1998–2003	A-07-07-00231	8/21/08

APPENDIX B: AUDIT SCOPE AND METHODOLOGY

SCOPE

We reviewed all of the $31,777,216 in CCDF targeted fund expenditures the State agency claimed on its ACF-696 reports for FY 2010, which included $16,505,752 of targeted fund expenditures that the State agency disbursed to DFPS, the Texas Education Agency, and HHSC. We did not perform a detailed review of the State agency's internal controls because our objective did not require us to do so. We limited our review to the controls related to the obligation and liquidation of the targeted funds.

We conducted fieldwork at the State agency, DFPS, and two local workforce development boards in Austin, Texas, from June through October 2013.

METHODOLOGY

To accomplish our objective, we:

- reviewed applicable Federal laws, regulations, and program guidance, as well as State laws and the approved Texas CCDF State plan;

- reviewed the ACF-696 report for FY 2010 to determine the amount of targeted funds that the State agency claimed;

- interviewed State agency staff responsible for preparing the ACF-696 reports to obtain an understanding of how the reports were prepared, how the targeted funds were reported, and what documentation was maintained to support expenditures on the reports;

- reviewed the State agency's contracts with contractors, grantees, and other Texas government agencies to determine whether the dates on which the contracts were signed complied with the obligation requirements of the targeted funds for FY 2010;

- reviewed the dates of State agency payments to contractors, grantees, and other Texas government agencies to determine whether they complied with liquidation requirements of the targeted funds for FY 2010;

- reviewed the documentation the State agency used to prepare the ACF-696 reports;

- compared the accounting documentation the State agency maintained with expenditures of targeted funds for direct childcare services;

- reviewed documentation that contractors submitted to the State agency in support of the expenditure of targeted funds; and

- discussed the results of our review with State agency officials on October 31, 2013.

We conducted this performance audit in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

APPENDIX C: FEDERAL REQUIREMENTS RELATED TO CHILD CARE AND DEVELOPMENT FUND TARGETED FUNDS

FEDERAL LAWS

Discretionary funding for the Child Care and Development Fund is authorized by the Child Care and Development Block Grant Act of 1990, as amended (CCDBG). Section 658G of the CCDBG (42 USC § 9858e) provides that States must use certain discretionary funds for "activities designed to improve the quality and availability of child care (such as resource and referral services)."

Discretionary child care funds are annually appropriated, and the Consolidated Appropriations Act, 2010, P.L. No. 111-117, Div. D, Title II, 123 Stat. 3250 (December 16, 2009), appropriated targeted childcare funds as follows: "Provided further, That, in addition to the amounts required to be reserved by the States under section 658G, $271,401,000 shall be reserved by the States for activities authorized under section 658G, of which $99,534,000 shall be for activities that improve the quality of infant and toddler care."

FUND OBLIGATION REGULATIONS

Federal regulations (45 CFR § 98.60(d)(1)) state: "Discretionary Fund allotments shall be obligated in the fiscal year in which funds are awarded or in the succeeding fiscal year. Unliquidated obligations as of the end of the succeeding fiscal year shall be liquidated within one year."

Federal regulations (45 CFR § 98.60(d)(7)) state: "Any funds not obligated during the obligation period specified in paragraph (d) of this section will revert to the Federal government. Any funds not liquidated by the end of the applicable liquidation period specified in paragraph (d) of this section will also revert to the Federal government."

ACTIVITY REGULATIONS AND STATE PLAN PROVISIONS

Federal regulations (45 CFR § 98.16(h)) require that the approved CCDF State plan include "[a] description of the activities to provide comprehensive consumer education, to increase parental choice, and to improve the quality and availability of child care, pursuant to [45 CFR] § 98.51."

Relevant passages from the State agency's CCDF State plan for FY 2010 state:

> Part 1 Section 5.1
>
> The ... [State agency] contracts with each of the state's 28 Local Workforce Development Boards (Boards) … to administer CCDF services. State law prohibits Boards from directly delivering services. Boards competitively procure child care contractors to:

- determine eligibility for CCDF services for families not receiving Temporary Assistance for Needy Families (TANF), Child Protective Services (CPS), or Supplemental Nutrition Assistance Program Employment and Training (SNAP E&T) services;

- provide information to assist parents in making informed choices related to their children's care;

- authorize child care subsidies with the provider each parent chooses; and

- implement services to improve the quality and availability of child care.

Part 3 Section 2.5

[The State agency] does not establish statewide reimbursement rates. [The State agency] rules require that Boards establish maximum reimbursement rates based on local factors, including, but not limited to, the Market Rate Survey provided by [the State agency]. Each Board has a full-day rate and a part-day rate for each of the four age groups (infants, toddlers, preschool, and school-age) in each of the three regulated (licensed child care centers, licensed child care homes, and registered child care homes) and one unregulated (relative) provider facility types.

Part 3 Section 2.8

[The State agency] maintains the Texas Rising Star Provider (TRSP) Certification system. TRSP-certified facilities voluntarily exceed the state's regulatory standards for health and safety, group size, child-to-caregiver ratio, caregiver training, and age-appropriate curricula. State law requires that TRS facilities receive at least a 5% higher reimbursement rate than the rates for non-TRS facilities for the same category of care.

Part 5 Section 1.6

Boards have established enhanced reimbursement rates for those providers participating in the TRS program. By law, enhanced rates must be 5% above the daily maximum reimbursement rates. In addition, Boards provide additional incentives to those facilities that are certified, such as purchasing materials, scholarships, technical assistance, mentoring, and training.

APPENDIX D: STATE AGENCY COMMENTS

Texas Workforce Commission

A Member of Texas Workforce Solutions

May 28, 2014

Ms. Patricia Wheeler
Regional Inspector General for Audit Services
Office of Audit Services, Region VI
Office of Inspector General
U.S. Department of Health and Human Services
1100 Commerce Street, Room 632
Dallas, TX 75242

Re: Draft Report Number A-06-13-00038

Dear Ms. Wheeler:

Texas Workforce Commission (TWC) responses to draft report (A-06-13-00038) prepared by the U.S. Department of Health and Human Services, Office of Inspector General (OIG) are enclosed.

We disagree with the recommendation to refund $14.9 million. However, we do agree with the recommendation to work with the Administration for Children and Families (ACF) to verify TWC's reported expenditures are allowable for targeted child care quality activities. The enclosed responses provide the necessary details supporting why the reported targeted child care expenditures are appropriate. We request that OIG not finalize its draft report until TWC has the opportunity to work with ACF to resolve this matter.

We agree with the two recommendations to refund $32,666 incurred before the start of the funding period, and $25,130 not liquidated in the required timeframe. These amounts have already been refunded as of August 26, 2013. We also agree with the recommendation to strengthening monitoring of CCDF targeted funds, particularly when contracting CCDF grant funds with another state agency.

We are confident that any and all issues included in OIG's recommendations will be satisfactorily resolved between TWC and ACF. If we can provide any additional information to your staff, please let us know.

Sincerely,

Larry E. Temple
Executive Director

Enclosure

cc: Leon R. McCowan, Regional Administrator, Region VI (Dallas)

Texas Workforce Commission (TWC) responses to the Office of Inspector General (OIG), U.S. Department of Health and Human Services Recommendations

Report Number A-06-13-00038

OIG has recommended that TWC refund to the Federal Government $14,909,333 or work with the Administration for Children and Families (ACF) to determine whether any of these expenditures were allowable. We do not concur with OIG that these expenditures were not for targeted fund activities, and we will work with ACF to verify that these reported expenditures are allowable for these targeted quality activities. <u>We request that OIG not finalize its draft report until TWC has the opportunity to work with ACF to resolve this matter</u>.

OIG has recommended that TWC refund to the Federal Government $32,666 for targeted funds that were incurred before the start of the funding period. We concur with this recommendation. These funds were refunded August 26, 2013. The Texas Department of Family and Protective Services (the agency with whom TWC contracted this funding) reports that it has updated (beginning September 2013) its procedures to include a process which identifies "September Months of Service". This additional reconciliation process is completed on a quarterly basis to insure all expenses for "September" month of service are paid using the correct Federal Grant year funding or State General Revenue.

OIG has recommended that TWC refund to the Federal Government $25,130 for targeted funds that were not liquidated in the required timeframe. We concur with this recommendation. These funds were refunded August 26, 2013. The Texas Health and Human Services Commission (the agency with whom TWC had contracted this funding) reports that it has strengthened processes to identify and refund grant awards when the total amount is not expended after the grant period ends.

OIG has recommended that TWC develop policies and procedures to (1) ensure that it claims only the enhanced portion of payments made to providers that have exceeded licensing standards, and (2) strengthen monitoring of Child Care and Development Fund (CCDF) targeted funds to ensure that expenditures are properly obligated and liquidated. We do not concur with OIG that policies and procedures should be developed relating to claims dealing with any "enhanced portion" that you reference, and we will work with ACF on this. With respect to strengthening monitoring of CCDF targeted funds, we concur with this recommendation. To better ensure that CCDF targeted fund expenditures are properly obligated and expended, particularly when contracting CCDF grant funds with another state agency at the same level of government as outlined in 45 CFR § 98.60(d)(5)(ii), TWC plans to use contract periods in future contracts that are more closely aligned with the availability (obligation and liquidation periods) of the CCDF Funding source as required by 45 CFR §98.60, including CCDF Discretionary Funding for targeted funds.

We provide the following information to support the reasonableness of TWC working with ACF to determine the reported expenditures are allowable for targeted child care quality activities:

1. **<u>CCDF Quality Activities are: "Activities designed to improve the quality and availability of child care."</u>**

   Since before FY 2000, annual appropriations law has required the use of specified amounts of CCDF funds for targeted purposes (i.e., quality, infant and toddler care, school-age care and resource and referral). ACF has not proposed regulations for these provisions during the first 15 years that the CCDF Discretionary targeted earmarks for quality, infant and toddler care, school-age care, and resource and referral have been appropriated funds by Congress. TWC assumes that ACF had not proposed regulations in order to provide states with maximum flexibility and latitude in implementing their child care programs, and in achieving the objectives specified in Federal CCDF regulations at 45 CFR §98.51 Activities to Improve the Quality of Child Care. These regulations provide in subsection (a)(1)(iii) that amounts expended for quality activities may include (but are not limited to): "Activities designed to improve the quality and availability of child care..."

ACF Child Care and Development Fund Program Instruction ACYF-PI-CC-99-05 dated May 19, 1999, includes an attached Fact Sheet, entitled "Additional Funds for Resource and Referral, School-Age Activities and Activities to Increase the Supply of Quality Care for Infants and Toddlers". The Fact Sheet provides: "Suggested Activities: Increasing the Supply of Quality Infant/Toddler Care -- Because activities to increase the supply of quality child care for infants and toddlers are required for the first time this FY, we have included two attachments which list suggested activities..." The List of Suggestions includes several possible activities, prominently including: "...Set higher reimbursement rates for providers caring for infants and toddlers".

- The Texas Rising Star Provider certification system is available to child care providers that exceed the state's minimum child care licensing standards, and provides levels of certification criteria to reward and encourage providers to attain progressively higher certification requirements leading to a four-star level. The establishment and expansion of this certification system has been a key element in improving child care quality in Texas. Designated child care vendors achieving quality standards in Texas (principally including Texas Rising Star Providers, also called "enhanced providers") must receive (pursuant to state law) enhanced reimbursement rates at least five percent greater than the maximum rate for non-designated vendors for the same category of child care.

- Over the period of 2000-2010, the TWC practice of working with Texas workforce boards to report CCDF Discretionary targeted funds for infant and toddler child care in enhanced-provider child care has largely been responsible for an increase of 32.6 percent in the number of infants and toddlers in higher-quality child care funded with CCDF funds in Texas (an increase from $24.9 million in FY 2000 to $40.2 million in FY 2010). It is clear that TWC's efforts in investing CCDF Discretionary targeted funds for infant and toddler care in enhanced provider child care has resulted in a significant expansion of and improvement in the quality and availability of infant and toddler child care funded with CCDF funds in Texas.

- TWC's practice of working with Texas workforce boards to encourage enhanced-provider child care for all categories of children has been a cogent factor leading to an increase of 33.7 percent in the number of children in all categories in higher-quality CCDF-funded child care in Texas (an increase from $63.8 million in FY 2000 to $99.7 million in FY 2010), strong evidence of a major improvement in the quality and availability of subsidized child care in Texas.

2. **OIG's reference to the "enhanced portion" of child care payments to enhanced-quality child care providers has no basis in statute, regulation, or any program guidance.**

OIG determined to recommend that $14.9 million in FY 2010 CCDF Discretionary targeted (quality earmark) funds for Texas were not expended in a way that complied with federal requirements and should be refunded. This amount was reported by TWC in the ACF-696 Report as Texas Rising Star (TRS) enhanced- quality child care.

- While designated child care vendors achieving quality standards in Texas must receive enhanced reimbursement rates at least five percent greater than the maximum rate for non-designated vendors for the same category of child care, there is no "enhanced portion" of their payments (nor is there an "unenhanced portion"). One might conceptualize a mathematical or financial difference in payments between designated child care vendors and child care vendors that are not designated vendors, but this is nothing more than a hypothetical exercise. There is a differential in rates for designated child care vendors and those that are not designated child care vendors, but there is no "enhanced portion" of their rates or their reimbursements.

- TWC staff took issue, in a conference call with OIG on October 31, 2013, the OIG assertion that "only the enhanced portion of the payment made to providers that have met quality requirements qualifies as an activity to improve the quality of child care", which was characterized by OIG staff as the result of an OIG General Counsel determination.

- In our DHS-OIG Preliminary Exit Conference November 19, 2013, we again questioned OIG's reference to an "enhanced portion" of payments to child care providers which have achieved child care quality standards.

- OIG's April 29, 2014 letter repeatedly mentions the "enhanced portion" of payments to child care providers, without ever qualifying or defining its reference, explaining its reasoning, or providing any pertinent linkage to any ACF statutory or regulatory provision, or any other program guidance. This remains as OIG's *assertion only*, and has no basis in statute, regulation, or any program guidance.

- For child care providers that have met enhanced quality benchmarks, 100 percent of the direct care payment to them is for quality care.

3. **<u>ACF provided specific guidance to TWC that it is an acceptable practice that Texas include 100 percent of payments of enhanced provider child care (i.e., "direct care") as expenditures to improve the quality and availability of child care.</u>**

   - TWC Finance staff discussed this question with ACF Region VI staff in March 2005, and following their conferring with ACF policy staff in the national office, the Region VI staff replied that 100% of such enhanced-provider infant/toddler direct care would be acceptable as a qualifying earmark expenditure (i.e., generally on the basis that direct care was not excluded in the published instructions to states).

   - It is cogent and pertinent that 45 CFR §98.51 Activities to Improve the Quality of Child Care provides in subsection (a)(1)(iii) that amounts expended for quality activities may include (but are not limited to): "Activities designed to improve the quality and availability of child care...". Texas' use of CCDF quality targeted funds largely to support Texas Rising Star certified child care for infants and toddler care and other categories of targeted child care has constituted a major contribution to improve reimbursement for quality child care providers, increasing parental choice, improving the compensation and training of child care staff, and contributing to prepare children in enhanced child care for later life.

4. **<u>ACF has had abundant opportunities to inform TWC that its practice of including 100 percent of payments of enhanced provider child care as expenditures to improve the quality and availability of child care could have been unacceptable to them, but this has not occurred.</u>**

   - The Texas Child Care and Development (CCDF) State Plan has since FY 2002 noted that enhanced provider "direct care" child care would be included in activities (quality earmark) targeted at improving the accessibility, availability, and quality of child care. These State Plans have been reviewed and approved by ACF. The State Plan for Texas for FFY 2010-2011 provided in Part 5: Activities & Services to Improve the Quality and Availability of Child Care, Table 5.1.5 Activities to Improve the Availability and Quality of Child Care, a listing and subsequent description of Activities to support a Quality Rating System-- consisting of a description of the tiered reimbursement rate system called the Texas Rising Star Provider certification system ("...a process for improving the quality of child care services provided in Texas..."), and enhanced reimbursement rates for these providers. Also included in this Part is the stated goal of increasing the number of Texas Rising Star Provider certifications each year, and the intention of providing comprehensive consumer education to families on the full range of regulated child care facilities available in the community, including those achieving Texas Rising Star Provider certification. Attachment 5.1.6, in re-stating the Section 809.16(a) Quality Improvement Activities Rules, provides in subsection (d)(3) that in funding quality improvement activities allowable under this section, a workforce board may give priority to child care facilities participating in Texas Rising Star Provider Certification.

- In the Narrative for Targeted Funds submitted by TWC in the fourth quarter reporting period as an attachment to the ACF-696 report, pertaining to all of FY 2010 (and during all years from FY 2004 through the current period), it is specified that the State of Texas used CCDF targeted funds for each of the quality earmark categories: "... The remainder of (school age and resource and referral targeted) funds... provided direct care subsidies for school age children enrolled with Texas Rising Star (TRS) providers whose facilities and programs meet quality criteria... to support the expansion of services to school age children;" "The infant and toddler targeted funds were expended on direct care subsidies for infants and toddlers enrolled with TRS providers and for the expansion of infant/toddler capacity;" and "...quality expansion targeted funds were spent for ...direct care subsidies for children enrolled with TRS providers".

5. **ACF recognizes that utilizing higher child care reimbursement rates is an effective method to achieve higher-quality child care.**

- ACF reported that Texas was among thirty-two states and two territories which use a "tiered/differential rate" for higher child care quality. ["Child Care and Development Fund; Report of State and Territory Plans, FY 2010-2011," U. S. Department of Health and Human Services, Administration for Children and Families, Child Care Bureau, 2011, ERIC Number ED533821, p. 23].

- In May 20, 2013 CCDF Proposed Rules, ACF states their policy preference for higher quality care and Lead Agencies providing financial incentives as the way to achieve higher quality: "We recommend that Lead Agencies pay higher subsidy rates for higher quality care...By paying more for quality, Lead Agencies provide a financial incentive for providers to increase the quality of care. The higher rates also help give providers the necessary resources to pay for higher levels of compensation for child care professionals, as well as other components of quality care...". ACF then provides an even more significant observation: "Linking enhanced subsidy rates to higher quality is an important component of promoting quality when implemented in conjunction with other ongoing financial supports, assistance, and incentives. In the FY 2012-2013 CCDF Plans, thirty-two States and Territories indicated that they provide tiered or differential rates for higher quality."[Federal Register, Vol. 78, No. 97, 29474].

6. **<u>ACF provides unequivocally that states utilize CCDF targeted quality funds to pay higher reimbursement rates for infant and toddler child care.</u>**

In describing CCDF targeted quality funds ACF states: "Supporting Quality in Child Care for Infants and Toddlers—Use of Targeted Funds by States and Territories (in FY 2006-2007): ... Highlights of current activities include... higher reimbursement for the care of infants and toddlers..." ["Planning for the Child Care and Development Fund: Targeted Funds for Infants and Toddlers," U.S. Department of Health and Human Services, Administration for Children and Families, Office of Family Assistance, Child Care Bureau, 2007, p4].

7. **<u>ACF has told Congress that higher provider reimbursement rates is a key feature of states' efforts to achieve and sustain higher quality child care and increase the supply of child care for children from priority categories.</u>**

- "Provider Reimbursement: ... A growing number of States create incentives for quality improvements and increased supply by paying higher provider rates for meeting quality benchmarks...A large number of States... encourage improved caregiver training and program quality through tiered reimbursement; that is, payment systems that pay more for higher quality care... States are implementing quality rating and improvement systems. Research confirms that higher quality in child care leads to greater cognitive, language and social skills, which are key measures of children's school readiness... Thirty States pay higher child care subsidy reimbursement rates to child care programs that meet quality standards above minimum licensing requirements". ["Child Care and Development Fund (CCDF) Report to Congress for FY 2006 and FY 2007, HHS, ACF, p. 7-9].

- Under "Examples of Quality Activities" ACF notes that: "Over half the States have implemented some form of tiered reimbursement to pay higher rates for child care centers and family child care providers that achieve one or more levels of quality beyond the basic licensing requirements." Later in this Report to Congress, ACF provides that: "Thirty States and one Territory implemented a tiered reimbursement system whereby providers are paid more if they can demonstrate that they offer higher quality care or as an incentive for serving children from priority categories". ["Child Care and Development Fund (CCDF) Report to Congress for FY 2006 and FY 2007, HHS, ACF, p. 18, p. 39].

8. **<u>ACF and GAO have told Congress that States use CCDF targeted quality funds to increase the supply of quality child care for infants and toddlers.</u>**

- In its February 2001 Report to Congressional Requesters, GAO explained that: "Of the amounts earmarked for quality-related activities, HHS has set aside $50 million for states to use to increase the supply of quality care for infants and toddlers." ["Child Care: States Increased Spending on Low-Income Families," Report to Congressional Requesters, U.S. General Accounting Office, February 2001, GAO-01-293, p. 8].

- ACF described the purpose of CCDF targeted quality funds to Congressional Appropriations Committees: "Since 2000, states have been required by CCDBG appropriations language to spend funds on the following three targeted quality activities, including: ... <u>Infant and</u> <u>Toddler Care</u> – States and territories are required to spend a specified amount of funds ($99 million in FY 2010) on activities to improve the quality of child care provided to infants and toddlers. States may use this funding to provide specialized training, technical assistance, and/or expand the supply of child care programs serving infants and toddlers". ["Justification of Estimates for Appropriations

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Committees, Fiscal Year 2012," Department of Health and Human Services, Administration for Children and Families, p. 50].

In Conclusion:

TWC has striven to develop and manage (with the 28 workforce boards across Texas) an effective program to improve the quality and availability of infant and toddler care, child care resource and referral and school-aged child care activities, and quality expansion activities funded with CCDF Discretionary targeted (quality earmark) funds. TWC administers with the 28 workforce boards a large, creditable, and successful CCDF child care and development program. CCDF Discretionary targeted funds have been administered properly and effectively since inception of these appropriations, and the results of these efforts reflect a significant increase in the availability and quality of infant and toddler child care (as well as other categories of child care) funded with CCDF funds in Texas. TWC has expended and reported these expenditures accurately, pursuant to instructions (as available). TWC received some guidance from ACF in agreement with including 100% of direct care payments to enhanced-quality child care providers as CCDF targeted (quality earmark) expenditures. And, ACF has approved Texas CCDF State Plans describing these expenditures and has received and accepted TWC's ACF-696 reports identifying these expenditures.

It is well to note that ACF recognizes the crucial role of paying higher rates for enhanced child care for infants and toddlers and children from other priority categories. ACF has described that CCDF targeted quality funds are used by states to pay higher reimbursement rates for infant and toddler care, and that a growing number of states create incentives for quality improvements and increased supply by paying higher provider rates for meeting quality benchmarks. The Texas Rising Star provider certification system has been crucial in this state for facilitating the improvement of the quality and availability of subsidized child care, and the use of CCDF targeted (quality earmark) expenditures has been crucial to the growth and expansion of the Texas Rising Star provider certification system.

TWC has followed this practice scrupulously and in good faith, and we look forward to working further with ACF to verify that our reported expenditures are allowable for these targeted quality activities.