Sheila Poole, Acting Commissioner
New York State Office of Children and Family Services
52 Washington Street
Rensselaer, New York 12144

Dear Acting Commissioner Poole:

This letter is to inform you that the New York Child Care and Development Fund (CCDF) Plan for the period of October 1, 2018, through September 30, 2021, has been provisionally approved. The “provisionally approved” plan addresses the criminal background check provisions in Section 5.4 of the Plan. Once the Office of Child Care (OCC) completes its review of the remaining provisions of the Plan in November, we will send a separate letter addressing approval of the complete Plan along with any conditions for corrective action as applicable.

New York has failed to demonstrate progress in implementing the background check provisions, and did not meet the required milestones and conditions for a time-limited waiver. As a result, this letter serves as a preliminary notice of non-compliance pursuant to 45 CFR 98.90(b) and notification of ACF OCC’s intent to apply a penalty of five percent of the CCDF Discretionary funds under 45 CFR 98.92(b)(4). If New York State makes additional changes to the provision listed in this letter, please provide a written response to the OCC within 60 days. The OCC will then move forward with making a final determination, and the penalty will be applied during the first full fiscal year following the determination (i.e. FY 2020). The penalty may continue to be applied for each fiscal year that the State remains out of compliance.

The CCDF Plan includes questions that encompass all elements as required by regulations at 45 CFR 98.16. However, the Plan does not ask about all aspects of Federal requirements. For example, for the background check requirements, the Plan does not explicitly ask for the State’s definition of “child care staff members” that are subject to the checks, or whether the State has adopted the federally-mandated list of disqualifying crimes. During our review of the CCDF Plans, for some States we noticed areas of possible non-compliance with CCDF
requirements that are outside the scope of this review for Plan approval. You will still need
to take action to come into compliance with these requirements, and your OCC Regional
Office will follow-up with you on these areas. Recognizing the information in the Plans is
not exhaustive, the OCC will monitor State compliance through multiple mechanisms. All
requirements of the Act and the Rule are subject to the monitoring, compliance, and
complaint actions as described in 45 CFR Subpart J, including 98.90, 98.91, and
98.92. Additionally, States and Territories are subject to audit requirements at 45 CFR
98.65 of CCDF regulations.

Once the Office of Child Care (OCC) completes its review of the remaining provisions of
the Plan in November, we will send a separate letter addressing approval of the complete
Plan along with any conditions for corrective action as applicable. During the effective
period of this plan, any substantial changes to your CCDF program must be submitted as a
plan amendment to your Regional Office for approval in accordance with 45 CFR 98.18(b).

You will receive a Notice of Grant Award in October 2018 from the Office of
Administration in the Administration for Children and Families (ACF). The notice will
include the amount of your award and any additional terms and conditions for the receipt of
CCDF program funds.

We look forward to working together toward full implementation of the CCDBG Act of
2014 and promoting the early learning and development of children along with family
economic stability and success. If you have any questions, please contact Magdamari
Marcano, Child Care Program Manager, Office of Child Care at (212) 264-2890 X120 or
Magdamari.Marcano@acf.hhs.gov. Thank you for all you do each day for children and
families.

Sincerely,

Shannon Christian
Director
Office of Child Care

cc: Janice Molnar, Assistant Commissioner Office of Children and Family Services
    Magdamari Marcano, Regional Program Manager, Office of Child Care Region II