***Assessment of Public Comment related to the Notice of Proposed Rule Making to Amend Parts 404 & 415 as published on August 4, 2021. This rule implements statutory requirements pursuant to the federal Child Care and Development Block Grant Act (CCDBG) of 2014 and the New York 2022 Fiscal Year Enacted Budget.***

Comments were received from four sources; CSEA/VOICE which is the union representing child care programs outside of New York City, combined comments from three New York City agencies including the Administration for Children's Services (ACS), the Department of Education (DOE), and the Department of Social Services (DSS) (hereinafter referred to collectively as NYC), The Schuyler Center for Analysis and Advocacy (SCAA), and the Federation of Protestant Welfare Agencies (FPWA).

**Regarding changes to the required number of work hours at §415.1(o)(1):**
NYC, CSEA/VOICE, the SCAA, and FPWA all support the proposal to amend the definition of engaged in work. NYC requested flexibility that the number of hours be at local district discretion rather than established by the Office. Although the SCAA and FPWA comments both support the change, they highlight that there is no federal requirement for a minimum number of hours and the comments from SCAA request that the hours be measured on a monthly rather than weekly basis. Both the existing and proposed regulations consider the number of hours worked “on average” which OCFS believes grants OCFS sufficient flexibility to allow for the intent of the SCAA comment to be met, and will be addressed by OCFS policy upon adoption of this rule. The SCAA comments also request that the number of hours be set as low as possible. This is a policy issue that does not require regulatory action, and will be further clarified by OCFS policy upon adoption of this rule.

NYC and the SCAA both requested that OCFS amend §415.1(o)(1)(i) and (ii) to eliminate the requirement to earn wages at a level equal to or greater than the minimum amount required under Federal and State Labor Law for the type of employment. Comments related to the request to provide additional amendments to §415.1(o)(1)(i) and (ii) to eliminate the requirement to earn wages at a level equal to or greater than the minimum amount required under Federal and State Labor Law for the type of employment are outside the scope of this regulatory package.

NYC is seeking clarification on the applicability of 415.1(o)(1). To clarify, this provision applies to families not in receipt of public assistance.

The proposed changes to §415.1(o)(1) will be adopted as published.

**Regarding changes related to breaks in activities at §415.2(c):**

NYC expressed concern that the repeal of §415.2(c) as it relates to breaks in activities will prevent the continuation of care for an older child while a parent or guardian is home during a break in

activity and specifically uses the example of staying home with a newborn child. The changes to §415.4(c)(3) allow for temporary break in activity; care must continue unless there is a non-temporary cessation of work or attendance in a required activity.

The proposed changes to §415.2(c) will be adopted as published.

**Regarding changes to the definition of very low income at §415.2(d)(1)(i)(a):**
NYC, FPWA, and CSEA/VOICE support the proposal to change the definition of very low income. Comments from the FPWA advocate that this level may not be sufficiently high and request that the concept of income adequacy be considered.
Comments from NYC recommended that OCFS support statutory changes necessary to raise the income to the federal ceiling of 85% of the State Median Income (SMI). As statutory change is required to raise the income threshold further, no action is possible in relation to these recommendations.

The proposed changes to §415.2(d)(1)(i)(a) will be adopted as published.

**Regarding changes to establishing local priorities at §415.2(d)(1)(ii):**
NYC identified an issue with limiting local priorities for Title XX funding to provide child care assistance for eligible families between 200% and 275% of the State Income Standard (SIS). The City recommended amending §415.2(b) to specify that local priorities for families with an income level up to 200% SIS cannot be based solely on income level.

The proposed regulatory change was not intended to limit the establishment of local priorities funded by Title XX, which can go up to 275% SIS. The Office will amend the regulation to clarify priorities funded under Title XX are not impacted .

The proposed regulations will be revised to clarify this point.

**Regarding changes supporting 12-month eligibility as §415.2(d)(3) and (4):**
NYC, CSEA/VOICE, and FPWA all expressed support for the proposal to provide continued eligibility for a period of 12 months.

FPWA commented that this change will reduce administrative burden which will benefit families.

NYC requested that the 12-month eligibility period begin at the time the cash assistance case closes or supportive services end; that the amount of authorized care not be reduced when a parent/caretaker is no longer engaged in an activity; that the 12-month eligibility period be reset when the family's reason for care changes; that 12-month eligibility be provided for a family that is programmatically eligible without regard to income; and that a child who turns 13 (or 18 or 19,

as applicable) remain eligible for the duration of the 12-month eligibility period. Federal law and regulation provide that a child who receives assistance under the block grant will be considered to meet all eligibility requirements for such assistance and will receive such assistance, for not less than 12 months before eligibility is redetermined, regardless of a temporary change in the ongoing status of the child's parent as working or attending a job training or educational program or a change in family income for the child's family, if that family income does not exceed 85% SMI for a family of the same size. As such, the 12-month eligibility period begins when the child care assistance, funded by the block grant, begins. Such assistance cannot be terminated or reduced, including a change in family share to the detriment of the family, earlier than 12-months unless otherwise permitted by agency regulation 415.2(d). Federal regulation provides that the benefit is to remain at least at the same level during the eligibility period. As such, the amount of the assistance provided can increase to the benefit of the family during the eligibility period, however the amount of assistance cannot decrease and the required family share cannot be increased during the 12-month eligibility period.

NYC requested that a family share not be imposed until the certification for low-income child care assistance is completed. Federal law and regulation, as well as state law, provide that child care assistance funded by the block grant is to be based on a sliding fee scale based on a family's ability to pay. As such, a family receiving assistance funded by the block grant must contribute to the cost of child care, except as exempt from such contribution pursuant to 415.3(e).

NYC requested clarification on which social services district is responsible for services when a family relocates within the state. Pursuant to 415.4(d), the responsible district varies depending upon the category of child care assistance being provided.

NYC identified systems related challenges to implementing 12-month eligibility and indicated that additional time would be necessary for NYC to successfully implement required changes. This implementation concern will be addressed through the implementation process.

The proposed changes to §415.2(d)(3) and (4) will be adopted as published.

**Regarding the provision to allow for electronic submission of an application at §415.3(a):**
NYC supported this amendment.

The proposed changes to §415.3(a) will be adopted as published.

**Regarding the provision to exempt additional families from family share at §415.3(e)(1):**
NYC expressed support to add families in receipt of preventive and protective services to the list of families exempt from paying a fee.

NYC suggested amendments to §404.6(a) to reflect the fee exemption for all categories identified in §415.3(e)(1). §404.6(a) does not require a district to assess a family share unless is its required by §415.3(e). Therefore, modifications to §404.6(a) are not necessary to achieve the intent of this rule.

NYC suggested further amendment to 404.6(a) to include language that the fee need not be assessed to allow families who are eligible without regard to income to enroll more expediently by eliminating income documentation from the process. NYC also urged the State allow for waiver of fee assessment for families with very low incomes as permitted by federal regulations.OCFS does waive family share for families in receipt of public assistance, however waiving family share for all eligible families is not permissible under federal rules.

The proposed changes to §415.3(e)(1) will be adopted as published.

**Regarding discontinuance due to non-temporary cessation of work activity at §415.4(c)(3):**
NYC requested OCFS exercise the federal option to continue child care assistance when there is a non-temporary change in the parents work activity. OCFS considered this, but determined to proceed as proposed to encourage continued work participation. The proposed changes to §415.4(c)(3) will be adopted as published.

**Regarding initial eligibility and reporting changes to income at §415.4(a)(1)(iv):**
NYC expressed support for the amendment which only requires that households receiving child care services report increases in income if it puts the family over 85% SMI. However, NYC stated that this is inconsistent with public assistance reporting requirements. The proposed regulatory change is necessary for compliance with federal rules.

NYC requested that OCFS allow for an additional 12-month eligibility at the time a client fails to engage in a required activity, or as an alternative that OCFS establish a definition for non-temporary but not apply such a definition until the time that supportive services end. The request to authorize services for a family that does not meet programmatic eligibility requirements is inconsistent with the administration of the subsidy program.

SCAA and FPWA expressed support for raising the exit threshold to 85% SMI. However, both also raised concerns about the requirement that the family immediately notify the district of changes; specifically the time frame of “immediately” and how a family would know they exceed 85% SMI. The responsibility of the family to immediately notify the district of changes in financial circumstances pre-existed this regulatory change and is necessary for compliance with federal rules. The proposed change reduces the required notifications to when family income may exceed 85% SMI. No regulatory change is needed to address the comments from both organizations that families may not know when they exceed 85% SMI. This concern will be addressed through policy upon adoption of this rule.

The proposed changes to §415.4(a)(1)(iv) will be adopted as published.

**Regarding payment for absences at §415.6(b):**
NYC and CSEA/VOICE support the proposal to provide reimbursement for an increased number of absences. Additionally, CSEA/VOICE requested that future consideration be given to raising the required number of absences. OCFS will consider for future regulatory revisions.

NYC also commented that additional time will be necessary to implement changes to their computer systems to support these regulatory changes. This implementation concern will be addressed through the implementation process.

The proposed changes to §415.6(b) will be adopted as published.

**Regarding the requirement for e-mail address at §415.13(i)(2):**
NYC expressed strong support for this regulatory change.

The proposed changes to §415.13(i)(2) will be adopted as published.

**Regarding the additional requirements for enrollment of legally-exempt providers at 415.13(i):**
CSEA/VOICE supports the proposal torequire that documentation for legally-exempt programs be submitted within a 30-day time frame as it will contribute to safer child care environments.

The proposed changes to §415.13(i) will be adopted as published.

**Other:**
CSEA supports the revision to cap family share at 10%. This revision was part of a regulatory package adopted on October 13, 2021.