

Office of Children and Family Services

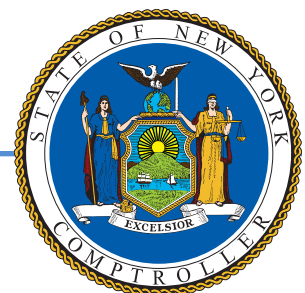
Child Care Stabilization Grants

Report 2022-S-44 | November 2024

OFFICE OF THE NEW YORK STATE COMPTROLLER

Thomas P. DiNapoli, State Comptroller

Division of State Government Accountability



Audit Highlights

Objective

To determine whether the Office of Children and Family Services has established and maintained adequate internal controls to enable it to oversee and monitor child care stabilization grantees to ensure proper use of child care stabilization grant funds; and to determine whether the grants met their intended purpose to stabilize child care operations to maintain care. The audit covered the period from January 2020 through November 2023.

About the Program

The COVID-19 public health emergency put a spotlight on the critical role child care plays in supporting children, families, businesses, and the economy as a whole. It also highlighted the fragility of the child care system. Child care is essential for our communities to thrive but, according to the New York State Child Care Availability Task Force, the system's current structure means many families cannot access or afford high-quality care, and the workforce is largely underpaid for skilled and valuable work. In response to the urgent need in the child care sector, the American Rescue Plan Act (ARPA) included approximately \$24 billion for child care stabilization grants.

The Office of Children and Family Services' (OCFS) mission is to serve New York's public by promoting the safety, permanency, and well-being of our children, families, and communities. As part of its mission, OCFS administers several child care grant programs including child care workforce retention and child care stabilization. Between May and June 2021, OCFS received \$1.8 billion from ARPA and an additional \$469 million from the Coronavirus Response and Relief Supplemental Appropriations Act. OCFS used the money to fund several COVID-19 response programs, including over \$1.4 billion to fund child care stabilization grant programs. OCFS awarded these grant programs in two separate rounds. The first round (Stabilization 1.0) focused primarily on stabilizing the child care sector. The second round (Stabilization 2.0) focused on stabilizing the child care workforce.

Key Findings

OCFS didn't sufficiently monitor grantee expenses claimed under the programs to provide assurance that funds were used for allowable expenses. OCFS did not, as a practice, request or review receipts (even on a sample basis) to support expenses claimed. Instead, OCFS relied primarily on attestations from providers and expense report claims to support payments. Of the \$2.6 million in expenses we reviewed from 39 non-special education providers, \$373,182 (14%) reported to OCFS by 20 providers was either inadequately supported or not supported at all. This included, for example:

- \$90,916 for which five providers did not maintain support, for various reasons. One provider stated on their expense report that \$13,700 was used for bonuses, retirement contributions, tuition reimbursement, mental health supports, and health care contributions. However, during our site visit, the provider stated their employees declined all these benefits but could provide no further explanation on how the funds were spent.
- \$51,517 in expenses claimed by two providers that did not meet Stabilization 1.0 criteria of serving children by October 31, 2021 or within 60 days of application, whichever is later. One provider had not had children in care since 2016 and received Stabilization 1.0 funds totaling \$4,217.

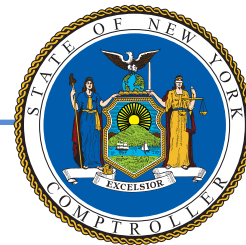
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- \$33,350 in expenses from four providers that was claimed on the expense report but that, during our visit, providers stated hadn't been spent and, consequently, no support was available.

While federal guidelines allowed OCFS latitude in developing a grant funding methodology, we found obtaining additional information (from providers or other State entities) that better represents providers' operating conditions and enrollment might have been useful when calculating grant amounts. We found stark differences between the licensed capacity information OCFS used to determine grant awards and child care providers' actual enrollment, which showed grant awards were not necessarily reflective of the providers' operations currently or historically. This was especially glaring for special education providers. For the 16 special education providers we reviewed, award amounts would have been \$1.09 million (18%) less had the State Education Department's (SED) capacity information been used.

We question whether providers used all grant funds in alignment with the goals of the program. For example, although Stabilization 2.0 focused on supporting the child care workforce—which, according to the New York State Child Care Availability Task Force, has been historically underpaid—of the expenses reviewed, we found four providers used \$73,036 in Stabilization 2.0 funds for health care contributions, retirement contributions, and bonuses (totaling over \$14,000) for executive staff.

Key Recommendations

- Develop and implement enhanced controls and monitoring practices for child care grants administered by OCFS. This may include, but not be limited to, reviewing supporting documentation for grant expenditures using a risk-based approach.
- Continue efforts to identify and recover unspent or inappropriately spent grant funds from providers.
- Align providers' grant awards to best meet the goals of the program, which may include, but not be limited to:
 - Obtaining additional information and increasing communication with providers.
 - Coordinating and sharing information with SED regarding special education providers.
 - Evaluating whether additional factors should be considered when awarding grants.



Office of the New York State Comptroller Division of State Government Accountability

November 7, 2024

DaMia Harris-Madden, Ed.D.
Commissioner
Office of Children and Family Services
52 Washington Street
Rensselaer, NY 12144

Dear Commissioner Harris-Madden:

The Office of the State Comptroller is committed to helping State agencies, public authorities, and local government agencies manage their resources efficiently and effectively. By so doing, it provides accountability for the tax dollars spent to support government operations. The Comptroller oversees the fiscal affairs of State agencies, public authorities, and local government agencies, as well as their compliance with relevant statutes and their observance of good business practices. This fiscal oversight is accomplished, in part, through our audits, which identify opportunities for improving operations. Audits can also identify strategies for reducing costs and strengthening controls that are intended to safeguard assets.

Following is a report of our audit entitled *Child Care Stabilization Grants*. This audit was performed pursuant to the State Comptroller's authority under Article V, Section 1 of the State Constitution and Article II, Section 8 of the State Finance Law.

This audit's results and recommendations are resources for you to use in effectively managing your operations and in meeting the expectations of taxpayers. If you have any questions about this report, please feel free to contact us.

Respectfully submitted,

Division of State Government Accountability

Contents

- Glossary of Terms** **5**
- Background** **6**
- Audit Findings and Recommendations** **10**
 - Grant Expenses **10**
 - Grant Award Methodology **12**
 - Recommendations **14**
- Audit Scope, Objective, and Methodology** **16**
- Statutory Requirements** **18**
 - Authority **18**
 - Reporting Requirements **18**
- Agency and State Comptroller’s Comments** **19**
- Contributors to Report** **27**

Glossary of Terms

Term	Description	Identifier
OCFS	Office of Children and Family Services	<i>Auditee</i>
ARPA	American Rescue Plan Act	<i>Key Term</i>
DOHMH	New York City Department of Health and Mental Hygiene	<i>New York City Agency</i>
SED	State Education Department	<i>State Agency</i>
Stabilization 1.0	First award round of child care stabilization grants	<i>Key Term</i>
Stabilization 2.0	Second award round of child care stabilization grants	<i>Key Term</i>

Background

The COVID-19 public health emergency put a spotlight on the critical role child care plays in supporting children, families, businesses, and the economy as a whole. It also highlighted the fragility of the child care system. Child care is essential for our communities to thrive, but the system's current structure means many families cannot access or afford high-quality care, and the workforce, according to the Child Care Availability Task Force,¹ is underpaid for skilled and valuable work.

In response to the urgent need to support the child care sector, the American Rescue Plan Act (ARPA) included approximately \$24 billion for child care stabilization grants, representing an important opportunity to stabilize the child care sector and to do so in a way that rebuilds a stronger child care system that supports the developmental and learning needs of children, meets parents' needs and preferences with equal access to high-quality child care, and supports a professionalized workforce that is fairly and appropriately compensated for the essential skilled work they perform.

The Office of Children and Family Services' (OCFS) mission is to serve New York's public by promoting the safety, permanency, and well-being of our children, families, and communities. As part of its mission, OCFS administers several child care grant programs, including child care workforce retention, child care deserts (refers to areas with low child care capacity), and child care stabilization. Between May and June 2021, OCFS received \$1.1 billion and \$702 million from Section 2202 and 2201 of ARPA, respectively, and an additional \$469 million from the Coronavirus Response and Relief Supplemental Appropriations Act. OCFS used the money to fund several COVID-19 response programs, including over \$1.4 billion to fund child care stabilization grant programs.

OCFS awarded child care stabilization grant programs in two separate rounds. The first round (Stabilization 1.0) focused primarily on stabilizing the child care sector. The second round (Stabilization 2.0) focused on stabilizing the child care workforce.

Stabilization 1.0 funds could be used for purposes under federal guidelines including:

- Personnel costs, including payroll, salaries, and similar employee compensation; employee benefits and retirement costs; educational costs; child care costs; and supporting staff with expenses related to accessing COVID-19 vaccines
- Rent (including under a lease agreement) or payment of a mortgage obligation, utilities, insurance, and late fees or charges
- Facilities maintenance or improvements, defined as minor renovations including outdoor learning spaces/playgrounds and minor improvements to address COVID-19 concerns
- Personal protective equipment, cleaning and sanitation supplies, and services or training and professional development related to safety practices
- Purchases of or updates to equipment and supplies in response to COVID-19
- Goods and services necessary to maintain or resume child care services

¹ <https://ocfs.ny.gov/reports/childcare/Child-Care-Availability-Task-Force-Report-2024.pdf>

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- Mental health supports for children and employees
 - Health and safety training for staff, including, but not limited to, first aid and medication administration

Stabilization 2.0 funding uses were slightly more restrictive. A maximum of 25% was allowed to be used for the same purposes as Stabilization 1.0; however, the remaining 75% was required to be used to support the workforce and assist with recruitment and retention efforts including:

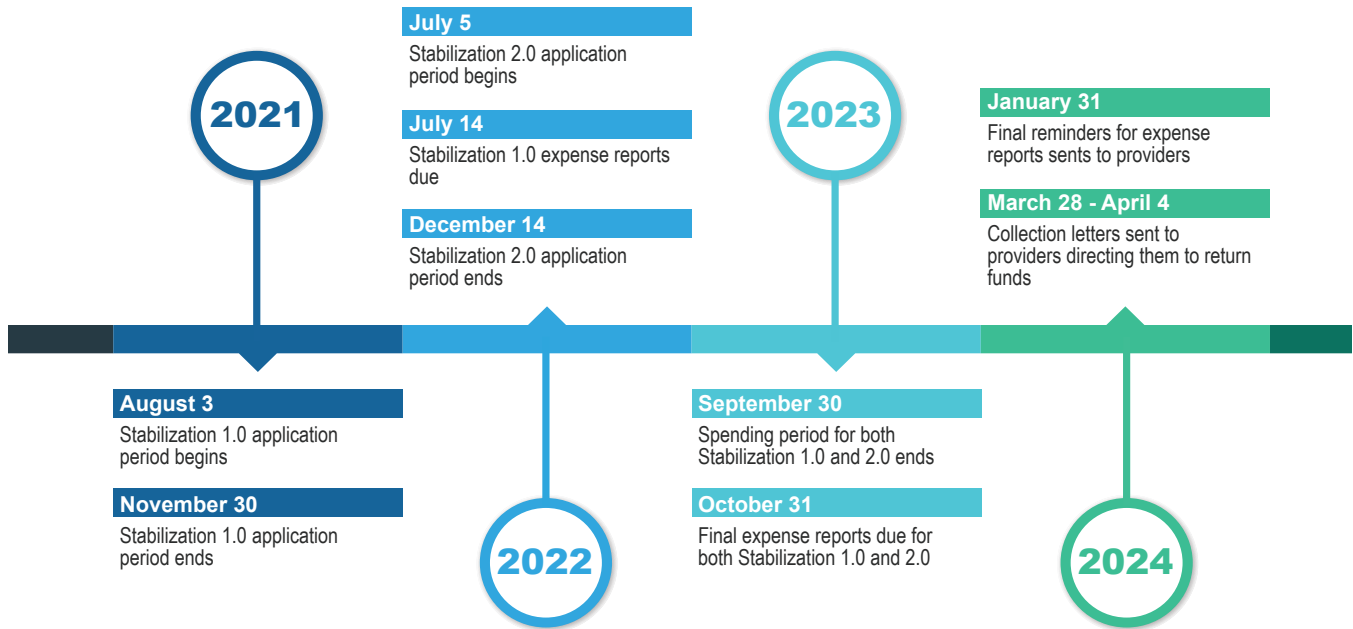
- Bonuses or increases in wages
- Contributions toward health insurance costs that reduce such costs for staff
- Contributions to staff retirement plans that supplement any employer contributions
- Supplemental educational advancement or tuition reimbursement
- Mental health support and services for staff

OCFS also required providers that received grant funding for both rounds to attest, in part, that they:

- Agree to provide information or records for verification, if asked, including receipts and proof of how grant funding was used
- Agree that they cannot use child care stabilization funds to pay for expenses expressly covered by another external source (e.g., the Paycheck Protection Program) or to supplant other federal or State funds
- Will not reduce salary or benefits to employees of the child care program for the duration of the grant payment term
- Agree to provide, for audit purposes, access to documentation related to the application and use of funds and retain supporting documentation for a period of 5 years

To supply guidance for providers, OCFS issued solicitations of interest for both grant programs and created a series of documents describing documentation requirements and how funding could be used for each category of spending. Further, federal regulations require certain purchases using federal grant monies be supported by a system of internal controls, providing reasonable assurance that charges are accurate, allowable, and properly documented.

For Stabilization 1.0, OCFS did not require providers to submit supporting documentation with the expense report. OCFS required only a written statement of what the funds were used for by category and the amount spent on each item. To receive Stabilization 2.0 funding, providers must have submitted at least one expense report for Stabilization 1.0. OCFS sent several reminders to providers to submit expense reports after October 31, 2023 (when they were due) and, between March and April 2024, sent collection letters to providers that hadn't submitted final expense reports by January 31, 2024. See the following timeline of the implementation for both rounds of the grant program.



OCFS categorizes providers by the type of day care they operate, which includes:

- Child Care Centers (day care centers) that provide care for children outside of a personal residence for more than 3 hours per day
- Group Family Day Care Homes (group family) that provide care for seven to 12 children at a time in a residence and as many as four school-age children
- Family Day Care Homes (family day cares) that provide care for three to six children at a time in a residence and may add one or two school-age children
- School-Age Child Care Programs (school-age) that provide care for more than six children from kindergarten through age 12
- Group Child Care (group child care), which are New York City programs, permitted by the City’s Department of Health and Mental Hygiene (DOHMH), that provide child care to three or more children under the age of 6 for 5 or more hours per week, for more than 30 days in a 12-month period, primarily operating in a non-residential space

To receive Stabilization 1.0 grant funding, providers must have been, as of March 11, 2021—or January 1, 2022 for Stabilization 2.0—in good standing and an OCFS-licensed/registered program or a permitted group child care provider or enrolled as a legally exempt provider.

Federal guidelines provided OCFS latitude in developing a grant funding methodology. The funding methodology OCFS used to determine grant awards took into consideration modality, geographic region, and maximum licensed, registered, or permitted capacity or, for legally-exempt providers, the number of subsidized children in care. OCFS or DOHMH determines provider capacity during its registration or permitting process. OCFS evaluates the provider’s space and requires a minimum

of 35 square feet per child with additional space for sleeping as established by State regulation. Similarly, New York City Health Code requires group day care providers permitted by DOHMH to have a minimum of 30 square feet per child.

OCFS awarded \$893 million in Stabilization 1.0 funds as of February 2023 and \$263 million in Stabilization 2.0 funds as of April 2023. For more information on funding awards by geographic region and regional capacity, see our interactive map (click image below to access).



Photo Source: SurfUpVector/iStock/Getty Images Plus via Getty Images

Audit Findings and Recommendations

OCFS didn't sufficiently monitor grantee expenses claimed under the program to provide assurance that grant funds were used for allowable expenses. Of the \$2.6 million in expenses we reviewed from 39 non-special education providers, \$373,182 (14%) reported to OCFS by 20 providers was either inadequately supported or not supported at all. Although OCFS did make guidance available to providers on how to maintain adequate support for expenses and what expenses were allowable, OCFS did not, as a practice, request or review receipts (even on a sample basis) to support expenses claimed. Instead, OCFS relied primarily on attestations from providers and expense report claims to support payments.

Also, while federal guidelines allowed OCFS latitude in developing a grant funding methodology, we found that obtaining additional information (from providers or other State entities) that better represents providers' operating conditions and enrollment might have been useful when calculating grant amounts. We found stark differences between the capacity information OCFS used to determine grant awards and actual enrollment of children served by providers, noting that the information used was not necessarily reflective of the providers' operations currently or historically. This was especially glaring for special education providers. For the 16 special education providers we reviewed, use of different capacity information would have resulted in \$1.09 million (18%) less in funding awards.

Grant Expenses

Support for Expenses

We selected a sample of 39 non-special education providers that received Stabilization 1.0 and/or 2.0 grant awards totaling approximately \$3.6 million, for which providers had submitted expense reports for \$2.6 million (72%) as of February 2023 for Stabilization 1.0 and April 2023 for Stabilization 2.0. We found 20 providers (51%) with \$373,182 (14%) in expenses reported to OCFS that were either inadequately supported or not supported at all. Also, as of March 2024, providers had not submitted final expense reports detailing how funding was spent for 1,947 grant awards totaling \$42.4 million. Through collection efforts and communication with providers, either OCFS received an expense report or providers returned funds for 466 grants (24%). About \$1.4 million was recovered while the remaining 1,481 grants (76%) totaling \$31.6 million (75%) were still unresolved as of June 2024.

Of the 39 providers, 17 (44%) had no support available for \$243,378 in expenses claimed including:

- \$90,916 for which five providers did not maintain support, for various reasons. For example, one provider stated on their expense report that \$13,700 was used for bonuses, retirement contributions, tuition reimbursement, mental health supports, and health care contributions. However, during our site visit, the provider stated their employees declined all these benefits and could provide no further explanation on how the funds were spent. Some providers were unavailable when we arrived for our scheduled site visit.

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- \$33,350 in expenses from four providers that was claimed on the expense report, but, during our visit, providers stated hadn't been spent, and, consequently, no support was available.²
 - \$51,517 in expenses claimed by two providers that did not meet Stabilization 1.0 criteria of serving children by October 31, 2021 or within 60 days of application, whichever is later. One provider had not had children in care since 2016 and received Stabilization 1.0 funds totaling \$4,217, after which OCFS withheld the remaining award for failure to meet the eligibility criteria (being open and serving children). Notably, the provider applied for Stabilization 2.0 funds, which OCFS approved and paid the provider \$8,800. The provider then applied for the child care Workforce Retention Grant (a separate but similar grant program for child care providers) for \$5,230, which OCFS also approved.
 - \$35,783 for three providers that were not available for our scheduled visit and therefore did not provide support for expenses claimed on the expense report. OCFS staff subsequently requested support from these providers, and it was still not provided.
 - \$31,812 for three other providers that stated they were unprepared for our visit and unable to readily support the expenses claimed.

Seven providers (18%) in our sample had inadequate support for \$129,804 in expenses including:

- \$63,713 for three providers that paid employees using cash, bank transfers, or Venmo, which were not verified as received by the payee and for which no payroll taxes were deducted.
- \$40,853 claimed by two providers for rent for which the only support was self-created invoices of the claimed rental expense not verified by the recipient.
- \$20,138 claimed by two providers for payments to contractors for which, again, only self-created invoices for cash payments were provided and not verified by the recipient.
- \$5,100 that two providers used to purchase gift cards they stated were given to employees as bonuses; however, we could not verify that they were given to the employees.

In response to our preliminary findings, OCFS noted that many child care businesses are small (often one-person) organizations without a significant business background. For this reason, OCFS made available to the providers Child Care Resource and Referral Agencies' guidance regarding documentation requirements. (Child Care Resource and Referral Agencies provide services to parents and day care providers in every county of New York State.) However, OCFS did not, as a practice, request or review receipts (even on a sample basis) to support expenses claimed, instead relying primarily on attestations from providers and expense report claims to support payments. OCFS did issue a request for proposal for a contractor

² Providers had until November 2023 to spend funds. Our site visits were conducted between May 2023 and September 2023 for these providers.

to review expenses in September 2023 and December 2023. While a contractor has been selected, it had not reviewed any expenses as of July 2024. We recommend OCFS improve monitoring activities for future grant programs to provide assurance that grant funds are used appropriately and for allowable purposes.

Other Matters

We question whether providers used all grant funds in alignment with the goals of the program. For example, although Stabilization 2.0 focused on supporting the child care workforce, which is largely underpaid for the valuable service they provide, we found several providers used Stabilization 2.0 funds to primarily support the provider's executive staff. Of the expenses we reviewed, we found four providers used \$73,036 in Stabilization 2.0 funds for health care contributions, retirement contributions, and bonuses (totaling over \$14,000) for executive staff.

While these expenses are allowable under State and federal guidelines, we recommend OCFS work with providers and Child Care Resource and Referral Agencies to stress the importance of using child care grant funds for their intended purpose, especially if that intention is to support direct child care workers. OCFS, in response to our findings, stated that executive staff may serve dual roles in providing child care and administrative functions. However, position titles for some of these employees did not support that they served both administratively and as a child care worker.

Lastly, due to the lack of or quality of support for expenses, we could not determine whether providers used child care stabilization to pay for expenses expressly covered by another external source (e.g., the Paycheck Protection Program) or to supplant other federal or State funds. We did, however, note that 23 of the 39 grantees (59%) for 2021 and 24 of the 39 grantees (62%) for 2022 overall netted surpluses totaling \$112 million in 2021 and \$127 million in 2022.

Grant Award Methodology

The methodology adopted to allocate grant funds is crucial to ensuring funding is distributed fairly and reasonably. OCFS relied heavily on providers' established capacity to determine the amount of grant funding awarded to providers. While federal guidelines allowed OCFS latitude in developing a grant funding methodology, we found, when calculating grant amounts, OCFS could have obtained—from providers or other State entities—better information more aligned with current operating conditions and enrollment. OCFS officials stated enrollment is often fluid and circumstances may change how many children the provider cares for at any given time. However, we found stark differences between the capacity information OCFS used and actual enrollment of children served by providers, and it was not necessarily reflective of the providers' operations currently or historically. This was especially glaring for special education providers. Generally, higher grant amounts were awarded to providers using OCFS' methodology than would have been awarded using a different method.

Special Education Providers

Special education providers primarily provide education services to children and, therefore, must receive approval from the State Education Department (SED) to operate education programs and meet OCFS or DOHMH requirements regarding the number of children they can serve. OCFS, DOHMH, and SED requirements for capacity vary significantly.

To meet SED's requirements, providers' classrooms must be sized to allow at a minimum 50 square feet per student (compared to the 35- or 30-square-foot requirement, respectively, for OCFS or DOHMH). SED's space requirements for school-age special education programs have square footage requirements based on classroom ratios and are generally between 64 to 68 square feet per student. Consequently, SED's preschool per-student square footage requirements are about 43% higher than OCFS' and 67% higher than DOHMH's using SED's lowest square footage requirement per student of 50 square feet.

We visited 16 special education providers operating from multiple locations resulting in the providers receiving 73 grant awards totaling \$5,962,900 for Stabilization 1.0 and/or 2.0. We compared SED's capacity to OCFS' and found that, had SED's capacity been used to establish grant awards, 45 grants would have been awarded \$1.09 million (18%) less. For 25 of the 73 grant awards, the SED capacity did not result in a change to the amount awarded.

For the remaining three grants, we found SED's capacity calculation was greater than OCFS'. Had SED's capacity been used to calculate the grant award amount, the awards would have been \$95,600 more. However, as SED's capacity is based on higher square footage requirements, it is likely that there is an error either in SED's or OCFS' stated capacity.

Coordination and information sharing with SED regarding these providers would have given OCFS information more aligned with the operations and enrollment of the provider; however, SED and OCFS did not coordinate, for the purposes of this grant program, to establish award methodology.

Further, although special education providers were eligible to receive stabilization grants, and they provide valuable educational services to children, unique circumstances regarding these providers cause us to question whether allocating day care stabilization grants to them was in line with the primary purpose of these grants: to stabilize the child care sector and workforce. Generally, day care-related services within special education providers' locations include before- and after-school care for only a small population of children served by their education programs. Further, analysis of the 16 providers we visited found that 10 of the 16 (63%) do not operate day care programs of any kind in addition to their special education programs. The remaining six operated day care programs that served only children enrolled in special education for the hours before and after their special education program.

In addition to providing limited day care services, special education programs did not experience the same disruption in funding from the pandemic that other providers did. Although the Executive issued an order closing all schools in March 2020, special education providers were instructed by SED to continue billing tuition rates for enrolled students even if their program was closed or providing distance learning during the pandemic.

Other Providers

As with special education providers, we found the capacity used by OCFS to establish grant awards was not reflective of the providers' operations or enrollment currently or historically. Improved communication with providers could provide OCFS with better information to determine grant awards.

We obtained enrollment data for 27 of the 39 providers in our original sample and found 10 operating at less than 50% of their established capacity. Further, after meeting with providers, we found that they never intended serving children near the capacity established by OCFS for a variety of factors. For example, we visited a provider awarded \$19,300 in Stabilization 1.0 and \$6,700 in Stabilization 2.0 funds based on a capacity of eight children. However, OCFS staff stated that the provider was visited in February 2023 and there was only one child in care, the provider's nephew. The provider was also contacted in June 2023 and stated they were considering surrendering their license although this hadn't happened as of August 2, 2023. Another provider was awarded \$50,600 in Stabilization 1.0 and \$8,750 in Stabilization 2.0 funds based on an established capacity of 16 children but only three children were in their care and none on a full-time basis. This provider also did not intend to serve more children due to personal circumstances.

We acknowledge, as OCFS officials stated in their response to our preliminary findings, that enrollment may fluctuate for a variety of reasons including location, operating hours, staffing, and demand for child care, which have nothing to do with the intention of the provider. However, we recommend, especially when administering a program of the stabilization grant's magnitude, that OCFS establish controls to award grants using the most relevant information obtainable to mitigate possible fraud or abuse. Working with providers to obtain better information on current operations and enrollment could have improved how funding amounts were determined. We also note that it may be helpful to incorporate other factors into the methodology. For example, when administering its child care stabilization grants, California issued stipends based on enrollment and licensed capacity.

Recommendations

1. Develop and implement enhanced controls and monitoring practices for child care grants administered by OCFS. This may include, but not be limited to, reviewing supporting documentation for grant expenditures using a risk-based approach.

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2. Continue efforts to identify and recover unspent or inappropriately spent grant funds from providers.
 3. Align providers' grant awards to best meet the goals of the program, which may include, but not be limited to:
 - Obtaining additional information and increasing communication with providers.
 - Coordinating and sharing information with SED regarding special education providers.
 - Evaluating whether additional factors should be considered when awarding grants.

Audit Scope, Objective, and Methodology

The objective of our audit was to determine whether OCFS has established and maintained adequate internal controls to enable it to oversee and monitor child care stabilization grantees to ensure proper use of child care stabilization grant funds; and to determine whether the grants met their intended purpose to stabilize child care operations to maintain care. The audit covered the period from January 2020 through November 2023.

To accomplish our objective and assess related internal controls, we reviewed State and federal laws, regulations, and guidelines and OCFS policies and procedures related to child care stabilization grants. We also obtained special education providers' SED approval letters in effect at the time of our review to determine SED's approved capacity. We interviewed OCFS officials and regional Child Care Resource and Referral Agencies staff to better understand stabilization grant policies and procedures and day care providers. Additionally, we visited a sample of providers located in the OCFS regions of Albany, Buffalo, Long Island, New York City, and Rochester. We obtained their enrollment information and reviewed supporting documentation to determine if grant expenses were supported, appropriate, and reasonable.

We used a non-statistical sampling approach to provide conclusions on our audit objective and to test internal controls and compliance. We selected a judgmental sample. However, because we used a non-statistical sampling approach for our tests, we cannot project the results to the respective populations, even for the samples. Our samples, which are discussed in the body of our report, include:

- A judgmental sample of five out of seven regional offices was selected based on regions OCFS identified as being child care deserts (in need of child care) as well as regions with high populations.
- A judgmental sample of 39 non-special education day care providers awarded 73 grants (38 Stabilization 1.0 and 35 Stabilization 2.0 grants) totaling about \$3.6 million out of the 27,611 grant awards totaling about \$1.2 billion. The sample was selected based on OCFS regions, provider type, prior audits, and OCFS regional and Child Care Resource and Referral Agencies' referrals. Regions visited, and the number of providers visited, that include both special education and non-special education providers were: Albany (12), Buffalo (12), Long Island (10), New York City (11), and Rochester (10).
- A judgmental sample of 16 special education providers awarded 73 grants (38 Stabilization 1.0 grants totaling \$4,443,700 and 35 Stabilization 2.0 grants totaling \$1,519,200) totaling \$5,962,900 out of the 27,611 grant awards totaling \$1.2 billion. The sample was selected based on location and prior audits.

OCFS provided us with a data extract of all providers that received Stabilization 1.0 child care stabilization funding. We assessed the reliability of OCFS' data by comparing it to the Statewide Financial System and other public data sources such as the State's Open Data website. There were no original documents we could use to verify the completeness of the data; however, based on our audit work, we were able to determine that the data was sufficiently reliable for selecting samples for this audit.

As part of our audit procedures, we used Geographic Information System software for geographic analysis and imported the results of this analysis into Tableau to create visualizations (an interactive dashboard) to enhance understanding of the childcare environment. To increase ease of use, we made minor locational changes to these visualizations. These changes do not materially affect the accuracy or interpretation of underlying data or visualizations.

Statutory Requirements

Authority

The audit was performed pursuant to the State Comptroller's authority as set forth in Article V, Section 1 of the State Constitution and Article II, Section 8 of the State Finance Law.

We conducted our 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 objective. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objective.

In addition to being the State Auditor, the Comptroller performs certain other constitutionally and statutorily mandated duties as the chief fiscal officer of New York State. These include operating the State's accounting system; preparing the State's financial statements; and approving State contracts, refunds, and other payments. These duties could be considered management functions for purposes of evaluating organizational independence under generally accepted government auditing standards. In our professional judgment, these duties do not affect our ability to conduct this independent performance audit of OCFS oversight and administration of child care stabilization grants.

Reporting Requirements

We provided a draft copy of this report to OCFS for its review and formal written comment. We considered OCFS' response in preparing this final report and have included it in its entirety at the end of the report. In their response, OCFS officials generally agreed with our recommendations and described actions that are already underway or are planned to address them.

Within 180 days after final release of this report, as required by Section 170 of the Executive Law, the Commissioner of the Office of Children and Family Services shall report to the Governor, the State Comptroller, and the leaders of the Legislature and fiscal committees, advising what steps were taken to implement the recommendations contained herein, and where recommendations were not implemented, the reasons why.

Agency and State Comptroller's Comments



Office of Children and Family Services

KATHY HOCHUL
Governor

DAMIA HARRIS-MADDEN, Ed.D., MBA, M.S.
Commissioner

September 27, 2024

Heather Pratt, CFE
Audit Program Director
Office of the State Comptroller
Division of State Government Accountability
110 State Street, 11th Floor
Albany, NY 12236

Re: Audit 2022-S-44 Response to Draft Report

Dear Ms. Pratt,

The New York State Office of Children and Family Services (OCFS) has prepared this letter in response to the Office of the State Comptroller's (OSC) August 2024 Draft Report. OSC's stated objective was to determine whether OCFS established and maintained adequate internal controls to oversee and monitor child care stabilization grantees to ensure proper use of child care stabilization grant funds and to determine whether the grants met their intended purpose to stabilize child care operations for the period of January 2020 through November 2023.

OCFS appreciates the opportunity to review OSC's draft audit results and recommendations. As reflected in OSC's report, the American Rescue Plan (ARP) provided \$1.1B to NYS for the Child Care Stabilization Program. OCFS issued Phase 1 Child Care Stabilization Grants to over 15,000 child care programs, totaling over \$1 billion dollars. Federal guidance describes the purpose of the grant as follows:

CCDF-ACF-IM-2021-02: *In response to the urgent need to stabilize the child care sector, the ARP Act included approximately \$24 billion for child care stabilization grants, representing an important opportunity for states, territories, and tribes to stabilize the child care sector and to do so in a way that rebuilds a stronger child care system that supports the developmental and learning needs of children, meets parents' needs and preferences with equal access to high-quality child care, and supports a professionalized workforce that is fairly and appropriately compensated for the essential skilled work that they do. This funding, together with other CCDF funding and flexibility included in the ARP Act, gives states, territories, and tribes the resources and opportunity to address the financial burdens faced by child care providers during and after the COVID-19 public health emergency and the instability of the child care market as a whole.*

OCFS's stabilization program helped NYS child care providers with funds for operational costs like wages, rent, and supplies. These funds were critical for child care programs to remain open, continue to pay their employees, and allow parents to return to work. Recognizing states' autonomy and varying child care system configurations, the federal government provided states the discretion to establish grant programs that would supply providers with necessary funding as expeditiously as possible. NYS was able to quickly stand up an electronic portal to disburse funding to programs and begin to stabilize the industry. Working diligently through the global pandemic,

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OCFS provided stabilization funds to providers in every county and fund 100% of eligible applications, impacting up to 676,000 children.

OSC Key Finding #1: OCFS didn't sufficiently monitor grantee expenses claimed under the programs to provide assurance that funds were used for allowable expenses. OCFS did not, as a practice, request or review receipts (even on a sample basis) to support expenses claimed. Instead, OCFS relied primarily on attestations from providers and expense report claims to support payments. Of the \$2.6 million in expenses we reviewed from 39 non-special education providers, \$380,965 (15%) reported to OCFS by 20 providers was either inadequately supported or not supported at all.

OCFS Response: While OCFS did not, as a practice, request receipts from all 15,000 providers who received grant funding, OCFS implemented a robust series of internal controls as part of the application process, payment process and expense reporting requirements.

State Comptroller's Comment 1 – We disagree. The controls OCFS references in its response are largely related to oversight of eligibility—not whether grantees spent funds on allowable expenses, which our audit found to be the primary issue with the program.

Throughout the grant application process, OCFS provided clear, consistent and regular communication to assist programs with grant compliance, including details on proper expenditures, record-keeping, and reporting. The grant application informed providers that their estimated Grant Award Amount would be based on information provided by the program at the time of application and that any changes in information, including capacity or status, may impact final grant award amount and/or monthly award payment amounts. As part of the application, OCFS required programs to complete an attestation to confirm their understanding and agree to notify OCFS of any changes that could impact their award¹.

The payment process included internal controls to monitor proper expenditures. OCFS paid out the total grant amount over six monthly payments. Prior to each monthly payment, OCFS completed a verification against our system of record for each grantee to confirm that there were no changes to the program's status. OCFS acted in hundreds of instances where there were changes to program status, including stopping payment on programs that closed, or holding payment for programs that were not operating in an eligible status. These system verifications to monitor the program status were both built into the application system and also confirmed manually for each payment batch. Additionally, OCFS ran a weekly payment validation process to check disbursements before they were issued. OCFS reviewed any discrepancies before approving the payment. OCFS also contracted with a consultant to compile monthly monitoring reports to summarize the relevant application, recertification, and payment activities that were reviewed each month to confirm that the payment batches and monitoring had taken place.

For expense reporting, OCFS required all stabilization grant recipients to report on their use of the stabilization funds. Each awardee received a letter detailing their awarded grant and instructing them to log into the grant portal and complete the required expense report. OCFS also required this reporting to receive any future grant payments or for any future grant eligibility. OCFS sent reminders to programs to submit their expense report and posted step-by-step instructions and tip sheets on the public website to help awardees with completing their expense reports. This information was provided to OSC and can be found on the OCFS website: <https://ocfs.ny.gov/main/contracts/funding/COVID-relief/childcare-stabilization/>.

¹<https://ocfs.ny.gov/main/contracts/funding/COVID-relief/childcare-stabilization/Childcare-Stabilization-Grant-Provider-Attestation.en.es.pdf>

State Comptroller's Comment 2 – As stated on page 11 of our report, the expense reports submitted by providers were attestations (self-reported), which OCFS did not verify. Upon our review, we found the expense reports did not always match expenses claimed by providers. Moreover, federal guidance for managing fraud risk states that management should incorporate validation processes for self-reported information. Further, verification processes are also supported by the State's internal control standards.

In addition to direct funding to providers, OCFS also funded 35 Child Care Resource and Referral (CCR&R) organizations, covering every county in the state. Each CCR&R employed a Business Support Specialist whose responsibility was to confirm with each Stabilization Grant recipient that they knew of the eligible expenses for the stabilization grant and confirmed the expense tracking forms the provider would use to record and document all payments. These organizations produced and delivered trainings in English and Spanish on tracking expenses as well as the OCFS monitoring process.

OCFS maintains that these processes, outlined here and detailed to OSC, were sufficient to ensure that expenses under the grant were allowable, considering the volume of funding required to be disbursed and the urgent need for expeditious disbursements to the field. Nonetheless, OCFS is already engaging with an outside resource to conduct additional monitoring.

State Comptroller's Comment 3 – As reported, we found 51% of the providers we sampled could provide no support or inadequate support for expenses they claimed—including those that couldn't explain what funds were spent on and those that had not had children in care since 2016. Additionally, OCFS' response states that it was necessary to recover almost \$10 million from providers, and collection efforts remain ongoing, further supporting that grant awards may have been used on ineligible expenses or not used at all by providers. These recoupments also don't include any additional recoupments OCFS' hired consultant may find upon review of providers' support.

OSC Key Recommendation #1: Develop and implement enhanced controls and monitoring practices for child care grants administered by OCFS. This may include, but not be limited to, reviewing supporting documentation for grant expenditures using a risk-based approach.

OCFS Response: Since the initial grant planning, OCFS has planned to include an external audit of providers to ensure that any misuse of funds not captured through internal controls can be identified, and OCFS can gather information to inform future grant planning. As such, OCFS released an Invitation for Bids (IFB) to perform a grant compliance review of childcare providers' expenditures for funds they received from the Child Care Stabilization Grants.

Once completed, approximately 750 providers will have received a grant compliance review. The purpose of performing these reviews is to monitor providers' use of the Stabilization 1.0 funds. OCFS plans to include both a random sample and a risk-based sample in the compliance review process. The risk-based sample will focus on vendors who received Stabilization 1.0 funds, have not submitted expense reports and meet a specified dollar threshold. Using these risk factors, OCFS aims to ensure that compliance risks are accurately identified, thereby improving oversight and promoting a stronger monitoring environment. The contract was approved on August 13, 2024.

OSC Key Recommendation #2: Continue efforts to identify and recover unspent or inappropriately spent grant funds from providers.

OCFS Response: OCFS has identified grant recipients that should return unspent funds and implemented a recoupment process for those funds, which is ongoing. Approximately \$9,900,000 has been returned to date. For any providers OSC visited and reported that expenses were not properly

documented, OCFS has initiated an investigation and recoupment of those dollars, where appropriate.

For any programs that have not yet completed their expense reports, OCFS sent notifications via email on 12/14/2023, 1/24/2024, and again on 1/31/2024 alerting these programs they have not completed their final expense report. The notifications further stated that the expense report is a requirement of the grant(s) and programs must complete them by 1/31/2024.

Each notification reminded programs that they agreed, as part of the grant requirements, to report the use of funds and that to date they had failed to do so. The letters also stated that continued failure to report would result in a recoupment of those unreported funds and that they will not be eligible for the additional grant funding until reporting requirements have been satisfied.

Simultaneously, OCFS worked in collaboration with multiple stakeholders to contact programs directly to remind them of the outstanding grant requirement and offer assistance on completing the expense reports. OCFS directed the Early Care and Learning Council (ECLC) to conduct outreach statewide to all programs needing to complete an expense report. Our union partners, UFT and CSEA, also conducted outreach and provided assistance to programs in completing the report, often in person. Lastly, OCFS regional office staff conducted additional outreach and provided assistance in completing the reports.

After the 1/31/2024 deadline, OCFS sent a recoupment letter to notify each program with an outstanding expense report that they must either return the unreported funds or complete the report within 30 calendar days. The letters stated that failure to submit payment will result in the program being placed on a Fiscal Sanction list preventing any future business between OCFS and the child care program and they will not be eligible to participate in future New York State financial grant programs—including the additional Workforce Retention Grant (WRG) funding—until they have either completed the final expense report or repaid the amount.

OSC Key Finding #2: While federal guidelines allowed OCFS latitude in developing a grant funding methodology, we found obtaining additional information (from providers or other State entities) that better represents providers' operating conditions and enrollment might have been useful when calculating grant amounts. We found stark differences between the licensed capacity information OCFS used to determine grant awards and child care providers' actual enrollment, which showed grant awards were not necessarily reflective of the providers' operations currently or historically. This was especially glaring for special education providers. For the 16 special education providers we reviewed, award amounts would have been \$1.09 million (18%) less had the State Education Department's (SED) capacity information been used.

OCFS Response: Program capacity is only one of several factors used to determine grant awards and is an appropriate measure when considering funding award amounts.

OCFS provided OSC with documentation related to the eligibility criteria for the stabilization grants. As noted, eligible providers must be OCFS licensed or registered child care programs, NYC permitted group day cares (Article 47), or enrolled legally exempt group child care programs (enrolled with an enrollment agency). All programs had to be open and providing in-person care and in good standing with OCFS and/or NYC Department of Health and Mental Hygiene (DOHMH) and must have agreed to follow all regulations (including pandemic-related) from OCFS and DOHMH and adhere to all reporting requirements in order to be approved for payment.

OSC expressed concern with the use of program capacity in calculating program funding awards. As evidenced by the funding methodology in the Solicitation of Interest (SOI), OCFS calculated grants using a formula that took several factors into account. OCFS issued payments to each eligible child care program based on its modality, geographic region, and maximum licensed/registered/permitted capacity,

or, for legally-exempt groups, the number of subsidized children in care. Additionally, for center-based programs, OCFS also weighted award amounts based on program size to account for the disproportionate impact of reduced enrollment for smaller programs, and the ability of larger programs to scale costs. As enrollment can differ day-to-day, the purpose of this grant was to keep all seats available up to the capacity of the program.

OSC also questioned whether OCFS has current information and an accurate understanding of the maximum capacity of providers. Capacity is specified on the child day care center license and is defined in NYS regulation, 18 NYCRR 413.2(b)(1)(ii) as the maximum number of children authorized to be present at any one time as specified on the child day care center license. There is an established OCFS licensing process for child day care centers to request an increase or decrease in their capacity and a criterion by which OCFS reviews the request and subsequently decides to approve or deny the request.

It is important to note that any discrepancy between the program capacity determined for licensing and the actual number of children in care may be related to a host of reasons, including fluctuations in enrollment as a direct result of the pandemic. Several factors can impact the ability to reach capacity, including physical location, operating hours, staffing, and demand for child care. Importantly, federal guidance granted the states wide discretion on how to formulate grant amounts, including for programs that are temporarily *closed* at the time of operation and not serving any children. That guidance specifically permits states to use licensed capacity for these purposes and prohibits the use of attendance for the same. (See, e.g., Office of Child Care, “American Rescue Plan (ARP) Act Child Care Stabilization Funds Frequently Asked Questions (FAQs)” available at https://www.acf.hhs.gov/sites/default/files/documents/occ/American_Rescue_Plan_Act%20Child_Care_Stabilization_Funds_FAQs.pdf).

State Comptroller’s Comment 4 – We understand and acknowledge on page 12 of our report that federal guidelines allowed OCFS discretion in establishing grant award methodology. While capacity is an allowable factor on which to base awards, we maintain that OCFS should also consider incorporating enrollment into its methodology, as it is better aligned with the providers’ current operating conditions. While capacity is a more stable factor, it fails to align current operating conditions for purposes of grant awards—as evident in our findings (e.g., 37% of providers operating at less than 50% of their capacity).

OSC questioned the disparities between SED capacity and OCFS capacity for programs that are regulated by both entities. Approved NYS preschool special education programs that are licensed/registered by OCFS or Article 47-day care centers permitted by the NYC Department of Mental Hygiene (DOHMH) were eligible to apply for the grant. As such, these programs are required to follow the OCFS capacity limits, as it applies to the child care portions of the services they provide, rather than SED’s established capacity for their educational programming.

Preschool special education programs did experience a disruption in funding during the pandemic. First, while tuition billing continued, revenue was impacted as tuition is billed per student and preschool special education program enrollment declined due to a decrease in preschool referrals, evaluations, and transition from early intervention. Additionally, preschool special education programs experienced staff shortages and workforce recruitment and retention issues during the pandemic and the stabilization funds prevented and mitigated impact of loss of early childhood learning and denial of a free appropriate public education. Finally, most significantly, because NYSED treated stabilization funds as offsetting revenue in the calculation of tuition rates, preschool special education programs received no duplicative funding.

It is also important to note that some childcare businesses can operate an SED program within their OCFS program, or a special education program can operate a child care program, such as those programs providing before school or after school programs. Licensed and approved programs are required to follow both OCFS and SED program rules, with SED monitoring implementation compliance with their own program capacity. When both OCFS and SED have oversight of the same program, programs must follow the more stringent requirements.

[State Comptroller's Comment 5](#) – While we understand that special education providers may have experienced some disruption in operations similar to those that child care providers did, with the option to provide distance learning (not available for child care providers) and continued revenues from SED, these disruptions were mitigated to some effect. As our report recognizes, while it is possible for these providers to offer child care services in addition to providing education, our audit found a majority of those we sampled did not operate any child care and others offered only limited child care and only to their enrolled students. We did not question the expenses submitted by these providers, but rather the methodology of the grant awards. We maintain that better coordination and information sharing with SED regarding these providers would have given OCFS information more aligned with the operations for establishing grant awards.

Programs must follow the regulations that apply to each setting, including maximum capacity, when the child is within each setting. SED regulations that apply to special education instruction do not carry over to the child care program in which the special education program is situated. These are two different standards based on the very different nature of the programs. A program's special education setting must comply with the SED-certified capacity for those SED-certified instructional activities; however, the child care program as a whole must adhere to the capacity limits on their OCFS license.

[OSC Key Recommendation #3](#): Align providers' grant awards to best meet the goals of the program, which may include, but not be limited to:

- Obtaining additional information and increasing communication with providers.
- Coordinating and sharing information with SED regarding special education providers.
- Evaluating whether additional factors should be considered when awarding grants.

[OCFS Response](#): OCFS aligned the grant awards to best meet the goals of providing stabilizing funding to the child care sector, to assist with both operations and workforce supports. We appreciate OSC's recommendation to work with providers to obtain more precise information on current operations and enrollment. As previously provided to OSC, OCFS maintains child care data for licensed, registered, and enrolled legal exempt providers, and NYC DOHMH maintains child care data for permitted child care centers located in NYC. OCFS strives to continuously improve our data and reporting systems and will take this recommendation into consideration for future grant opportunities.

OCFS coordinated with SED regarding grant eligibility for special education providers. As previously mentioned, approved NYS preschool special education programs that are licensed/registered by OCFS or Article 47-day care centers permitted by the NYC Department of Mental Hygiene (DOHMH) were eligible to apply for the grant.

- OSC questions whether allowing grants to child care programs which were also special education providers was in line with the purpose of the grant and discussed whether the funds were used appropriately by the programs. However, OCFS worked closely with SED to ensure that such programs were apprised of the guidelines and proper expenses.

[State Comptroller's Comment 6](#) – See [State Comptroller's Comment 5](#).

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- OCFS worked with SED to clearly communicate the grant applicability to child care programs that were also approved NYS preschool special education programs. To this end, SED issued a memo in November 2021 that clearly stated that the Child Care Stabilization Grant was not intended to cover expenses funded either through authorized tuition rates or other third-party revenue sources. Rather, the grant is intended to cover expenses that revenue from authorized tuition rates do not fully fund, provided that the expense is eligible under the Child Care Stabilization Grant requirements. OCFS provided OSC with a copy of SED’s guidance [Child Care Stabilization Grant Memo \(nysed.gov\)](#) as part of OSC’s information requests.
 - As SED identified in their guidance, SED’s approved preschool special education programs (also known as “4410 programs”), are part of the mixed service delivery framework of early learning opportunities in NYS serving students with and without identified special education needs. As such, these programs are required to have a child care license and are subject to the child care regulations; exempting them from grant eligibility would not be appropriate as it could be considered discrimination based on disability of the population served.

OCFS will evaluate whether additional factors should be considered when awarding any future grants. Throughout this grant review OSC identified instances where they questioned the allowability of the use of funds based on their interpretation rather than what was deemed allowable according to federal and state guidance.

[State Comptroller’s Comment 7 – We based our findings on the criteria established by both federal guidelines and those promulgated by OCFS—not on interpretation. As reported, we found 51% of the providers we sampled could provide no support or inadequate support for expenses they claimed, despite OCFS and federal guidance. Other recommendations in our report refer to eligibility, which federally allows for discretion by the State and which we maintain could be improved. Again, as OCFS responded, in addition to the findings in our audit, it identified almost \\$10 million in funding that OCFS recovered from providers, and collection efforts remain ongoing, supporting that grant awards may have been used on ineligible expenses or not used at all by providers and, therefore, did not support stabilization efforts as intended.](#)

The federal government noted in their own Stabilization Grant reporting that the grant was both to “stabilize the industry and address pre-existing challenges in the market,” including deficiencies in workforce, business fragility and increased child care costs to families.” [American Rescue Plan’s Child Care Stabilization Funds Stabilized the Industry While Helping Mothers Return to Work | CEA | The White House](#). Further, the federal guidance provided the following:²

CCDF-ACF-IM-2021-02: Subgrant funds were designed to be made available to qualified child care providers regardless of a provider’s previous receipt of other federal assistance, such as funding through CCDF; the Coronavirus Aid, Relief, and Economic Security (CARES) Act (Public Law 116-136); the Coronavirus Response and Relief Supplemental Appropriations (CRRSA) Act (Public Law 116-260); the Paycheck Protection Program (PPP); and the Child and Adult Food Care Program (CACFP).

Conclusion:

The allowable uses of the child care stabilization funding under the Federal guidelines illustrate the broad goals of the program, which extended into 2023. The SOI explained:

Child care providers incurred substantial financial losses in order to continue to provide services during the pandemic. Therefore, under the American Rescue Plan Act authority, providers are able to use Stabilization funds for costs that were incurred after January 31, 2020, as long as those uses were made in response to the COVID-19 public health emergency, in any of the categories above, provided those expenses were not previously reimbursed by other funding or programs including NYS CARES child care grants.

OCFS was able to quickly develop an online portal and issue stabilization grants in accordance with federal requirements. All eligible programs who applied for stabilization funding received a grant award. By funding over 15,000 programs, OCFS was able to prevent further closures and destabilization of the child care market as a whole and did so in a way that rebuilt a stronger child care system in NYS.

Sincerely,



Dr. DaMia Harris-Madden, MBA, M.S.
Commissioner

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