

1 **Child Care Federal Waiver on Child Care Match –**  
2 **Increase to the PreK Match Allowance**  
3 **Discussion Paper**  
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5

6 **Background**

7 Local Workforce Development Boards (Boards) are required to certify local match in order for  
8 Texas to draw down its full allotment of child care matching funds. In Board Contract  
9 Year/Federal Fiscal Year 2020, Boards are required to certify \$41,353,024 in local match, which  
10 will draw down \$82,706,048 in federal child care matching funds. Those federal funds were  
11 initially estimated to support approximately 15,300 average kids per day.

12  
13 Boards derive much of their local match from Independent School Districts and Community  
14 Colleges. Due to the COVID pandemic, many schools closed, and no longer are providing  
15 services that may be certified towards the Board’s child care match requirements.

16  
17 On April 7, 2020 the Texas Workforce Commission approved the submission of a federal waiver  
18 to the federal Administration for Children and Families (ACF) to reduce the state’s federal  
19 matching requirement. [DP – ACF Federal Waiver Request COVID-19 and CC Match](#)  
20

21 **Issue**

22 On June 6, 2020 ACF notified TWC that the local match waiver was denied, as ACF did not  
23 have the authority to reduce a state’s match requirement.

24  
25 In order to address the child care match challenges that Boards are facing due to COVID, Texas  
26 may want to consider other waiver strategies. The initial waiver reduction was based upon the  
27 inability of the Secretary to waive provisions within the Social Security Act. The Secretary may  
28 only waive provisions of the Child Care Development Block Grant (CCDBG Act).  
29

30 States are currently allowed to certify prekindergarten (preK) expenditures for up to 30 percent  
31 of the expenditures required to claim their full allotment of Child Care and Development Federal  
32 (CCDF) matching funds. ACF modified the child care regulations to increase the allowable  
33 preK match from 20 percent to 30 percent in 2007. As noted in preamble of the final rules, these  
34 changes were intended to give states increased flexibility in making the necessary State  
35 expenditures on child care to draw down their full allotment of CCDF matching funds.  
36 [2007 Final Rules on Child Care Match Derived from PreK](#)  
37

38 Texas could consider submitting a waiver to increase the amount of allowable preK match from  
39 30% (\$39,270,016) to 50% (\$54,566,378), an increase of \$15,296,362 over the current preK  
40 match assumption of \$39,270,016. Without this waiver, Texas is in jeopardy of losing access to  
41 approximately \$23.8 million in federal funds.

1 This waiver would provide needed flexibility for the state to identify additional preK state  
2 expenditures to draw down the full allotment of CCDF matching funds during COVID.  
3 Additionally, it also allows the state to demonstrate a continued financial commitment to early  
4 learning activities, which was highlighted as a goal in the 2004 proposed rules.

5 [2004 Proposed Rules on Child Care Match Derived from PreK](#)

6  
7 Texas can illustrate its increased commitment to prek and child care. In 2019, the Texas  
8 legislature implemented full-day prek for eligible four-year olds, and required school districts to  
9 pursue partnerships with community-based child care providers and develop child care/prek  
10 partnerships. TWC and the Texas Education Agency have been collaborating to provide  
11 technical assistance to assist schools and child care providers in the development of preK  
12 partnerships. TWC's [website](#) includes information on preK partnerships, and highlights steps we  
13 are taking in support of stronger preK/child care linkages. These actions help to support TWC's  
14 request for ACF to allow the state to certify additional preK expenditures towards its required  
15 state matching requirement.

16  
17 **Decision Point**

18 Staff seeks the Commission's direction on pursuing a federal waiver from the Administration for  
19 Children and Families of the regulatory provisions in [45 CFR §98.53 \(h\)\(3\)](#) to allow Texas to  
20 certify preK expenditures up to 50% of state expenditures, rather than 30%, in Federal Fiscal  
21 Year 2020 and 2021.

1  
2 Date

3  
4 Shannon Christian, Director  
5 Office of Child Care Administration for Children and Families  
6 Mary E. Switzer Building  
7 330 C ST SW, Room 4502  
8 Washington, DC 20201  
9

10 Dear Ms. Christian,

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12 On Friday, March 13, 2020, President Donald J. Trump issued a proclamation declaring the  
13 COVID-19 outbreak in the United States as a national emergency. In addition, on that date,  
14 Texas Governor Greg Abbott declared a state of disaster in all Texas counties due to COVID-19.  
15

16 On April 15, 2020, the Texas Workforce Commission (TWC) submitted a request to the  
17 Administration for Children and Families (ACF) regarding a waiver for state match. In our  
18 waiver request, we noted challenges that our Local Workforce Development Boards are facing in  
19 certify local match, as much of the local match relies heavily on educational institutions which  
20 have temporarily closed due to COVID-19. Unfortunately, ACF notified Texas of its inability to  
21 approve a waiver for state matching requirements, as the Secretary does not have the authority to  
22 waive provisions of the Social Security Act, including the state match provisions at Title IV,  
23 Section 418(a)(2)(C)). ACF noted that the Secretary's waiver authority only extends to  
24 provisions of the Child Care Development Block Grant Act.  
25

26 In reviewing the Secretary's waiver authority, Texas would like to request an alternate waiver to  
27 assist the state in addressing the challenges Boards are facing in identifying local match, through  
28 a waiver of the prekindergarten (preK) match provisions found at 45 CFR §98.53 (h)(3).  
29 These preK match provisions are not contained in the Social Security Act, rather, they are the  
30 regulatory framework that the Secretary used to implement state match. Texas is not requesting  
31 a waiver of the Social Security Act.  
32

### 33 **Waiver of Prek Match Certification**

34  
35 States are currently allowed to certify prekindergarten (preK) expenditures for up to 30  
36 percent of the expenditures required to claim their full allotment of Child Care and  
37 Development Federal (CCDF) matching funds. The Administration for Children and  
38 Families (ACF) modified the child care regulations to increase the allowable preK match  
39 from 20 percent to 30 percent in 2007. As noted in the preamble of the [2004 Proposed  
40 Rules on Child Care Match Derived from PreK](#), these changes were intended to give  
41 states increased flexibility in making the necessary State expenditures on child care to  
42 draw down their full allotment of CCDF matching funds.  
43

44 This waiver would provide needed flexibility for the state to identify additional preK  
45 state expenditures to draw down the full allotment of CCDF matching funds during  
46 COVID. Additionally, it also allows the state to demonstrate a continued financial

1 commitment to early learning activities, which was highlighted as a goal in the preamble  
2 of the 2004 proposed rules. [2007 Final Rules on Child Care Match Derived from Prek.](#)

3  
4 In 2019, the Texas legislature implemented and funded full-day prek for eligible four-  
5 year olds, and required school districts to pursue partnerships with community-based  
6 child care providers and develop child care/prek partnerships.

7  
8 TWC and the Texas Education Agency have been collaborating to provide technical  
9 assistance to assist schools and child care providers in the development of preK  
10 partnerships. These partnerships help to expand the availability of full-time, year-round  
11 child care to best meet the needs of working families. TWC's [website](#) includes  
12 information on preK partnerships, and highlights steps we are taking in support of  
13 stronger preK/child care linkages. These actions help to support TWC's request for ACF  
14 to allow the state to certify additional preK expenditures towards its required state  
15 matching requirement.

16  
17 To respond to the child care needs of Texas communities, Texas seeks this waiver from the  
18 Health and Human Services (HHS) Administration for Children and Families (ACF). Texas will  
19 submit a State Plan amendment within 60 days of the effective date of these waivers reflecting  
20 all approved policies in place to respond to COVID-19.

21  
22 Respectfully,

23  
24 Edward Serna  
25 Executive Director  
26 Texas Workforce Commission

27  
28 cc: Bryan Daniel, TWC Chairman & Commissioner Representing the Public  
29 Julian Alvarez, TWC Commissioner Representing Labor  
30 Aaron Demerson, TWC Commissioner Representing Employers