December 4, 2020

The Hon. Alex Azar, Secretary
U.S. Department of Health and Human Services
200 Independence Avenue SW
Washington, DC 20201

Submitted electronically

Re: Proposed Rule: Securing Updated and Necessary Statutory Evaluations Timely RIN 0991–AC24

Dear Secretary Azar:

YWCA USA submits these comments on the proposed rule published at 85 FR 70096 (November 4, 2020), RIN 0991–AC24, with the title “Securing Updated and Necessary Statutory Evaluations Timely” (the “Proposed Rule” or “Rule”). The Proposed Rule would retroactively impose an expiration provision on most Department of Health and Human Services (HHS) regulations and establish “assessment” and “review” procedures to determine which, if any, regulations should be retained or revised.

Based on our extensive subject matter expertise in the areas of child care, housing, and domestic and sexual violence, and informed by our direct observations of the impact of the current COVID-19 crisis across our nationwide network, **YWCA USA urges HHS to immediately withdraw the Rule in its entirety.**

Founded more than 160 years ago, YWCA is one of the oldest and largest women’s organizations in the United States and is dedicated to eliminating racism, empowering women, and promoting peace, justice, freedom and dignity for all. Today, we serve more than 2 million women, girls, and their families through a network of more than 200 local YWCA associations in over 1,300 communities across 45 states and the District of Columbia, by combining programming and advocacy to generate institutional change in the areas of racial justice and civil rights, empowerment and economic advancement of women and girls, and health and safety of women and girls.

YWCA’s comments on the Proposed Rule are informed by our significant expertise in working with women, children, and survivors of domestic and sexual violence. Each year, across our vibrant network, we are proud to provide:
• 535,000 women, children and families with gender-based violence support services that are trauma-informed, and which include domestic violence and sexual assault programs and services (e.g., emergency shelter, crisis hotlines, counseling and court assistance, and other community safety programs)

• 170,000+ children and parents with child care, teen and parenting programs, which include child care programs that specifically integrate trauma-informed practices to meet the needs of homeless children, and children who have witnessed and experienced domestic violence and other trauma

• 145,000 women, children and families with housing, food assistance and immigrant assistance programs

In addition to YWCA’s expertise in these areas, our comments are also informed by our direct interactions with, and data collection from, local YWCAs across the nation who have been impacted by the COVID-19 pandemic. In response COVID-19 crisis, YWCA USA is regularly collecting survey data from our network. The following results are based on survey feedback from **144 local YWCAs covering 43 states and the District of Columbia** from March 2020 through August 2020.

• 75 of the 76 YWCAs who operate **domestic violence hotlines** responded to our surveys and of those, **76% reported an increase in demand for services**.

• 92 of the 96 YWCAs who provide **domestic violence housing** services (either emergency shelter or transitional housing) responded to our surveys, and of those, **62% reported an increase in demand for domestic violence shelter**.

• 122 out of 122 YWCAs who provide **childcare services** (Head Start, Infant/Toddler, Pre-Kindergarten, Kindergarten, or School-Age: Before/After care) responded to our surveys. Of those: **69% reported having to close a childcare program, 38% reported an increase in staffing costs, and 52% reported a decrease in childcare funding/revenue**. As of August 31, **only 65% of YWCA childcare providers who have had to close reported that they were able to re-open**.

As detailed more fully below, by retroactively imposing an expiration provision on most HHS regulations and establishing new assessment and review procedures to determine which, if any regulations should be retained or revised, the Proposed Rule would create a tremendous administrative burden
for HHS, would create uncertainty across a broad range of regulated programs and entities from the Administration for Children & Families (ACF) to the Centers for Medicare and Medicaid Services to the Food and Drug Administration (FDA) to the Centers for Disease Control and Prevention (CDC), among others, in addition to related state programs; and would interfere with the planning and administration of HHS programs, significantly harming women, children and families; communities of color; and domestic and sexual violence survivors. We also strongly object to the truncated 30-day comment period, which is insufficient for a rule of this broad scope with potentially harmful effects.

### The Proposed Rule would create tremendous administrative burden for HHS and stakeholders

Although HHS asserts that the Proposed Rule will promote “accountability, administrative simplification [and] transparency,” it is more likely to create a significant administrative burden that would divert resources from critical work, including efforts to address the COVID-19 pandemic. HHS itself estimates that the Proposed Rule would cost nearly $26 million dollars over 10 years, needing 90 full-time staff positions to undertake the required reviews. Within the first two years, HHS estimates the need to assess at least 12,400 regulations that are over 10 years old. However, these estimates likely underestimate the time and money involved in the review process, and do not accurately account for complications that may arise. Particularly during crisis situations like COVID-19, it is critically important that HHS have the flexibility and bandwidth to shift focus and respond quickly to immediate needs.

The Proposed Rule would adversely affect HHS’s ability to focus on the administration of current programs, to issue new regulations, and to appropriately review current regulations that need modifications. For instance, several regulations implementing parts of the Affordable Care Act are approaching their ten-year anniversary, such as the Medicaid cost-sharing rule and rules outlining requirements for Medicaid enrollment and renewal. Allowing these rules to expire would create chaos among state agencies who rely on them to determine how to implement cost-sharing amounts, and how and by what means they must process Medicaid applications and renewals.

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3. 85 Fed. Reg. 70112. To be specific, HHS states that “because the Department estimates that roughly five regulations on average are part of the same rulemaking, the number of Assessments to perform in the first two years is estimated to be roughly 2,480.”
Medicaid is filling a crucial need during the COVID-19 pandemic by providing health coverage to millions of people who would otherwise be uninsured, either because they work in low wage jobs without health benefits or because they have become unemployed due to the economic downturn. The capacity of HHS should be focused on how to maintain and enhance Medicaid to serve as an even greater safety net during the COVID-19 pandemic. The proposed rule would have the opposite effect, diverting the agency’s time and attention away from proactive work to ensuring that damage is not done.

The Proposed Rule would create uncertainty for related federal and state programs

Regulations play an important role in implementing HHS policies and programs, including safety net programs such as the Child Care and Development Fund (CCDF), Head Start, and Early Head Start Programs; the Family Violence Prevention and Services (FVPSA) Program; Medicaid and the Children’s Health Insurance Program (CHIP); and TANF, which help families meet their basic needs, including paying for child care and providing access to shelter, cash assistance, and access to health care. Rules that implement HHS policies and programs—like CCDF, FVPSA, Medicaid, CHIP, and TANF—provide states with the clarity they need to design state processes and run these programs on a day-to-day basis; providers understand what their obligations are and beneficiaries can understand what they are eligible to receive. States are making extensive efforts to maintain the administration of these programs during unprecedented challenges brought on by the COVID-19 pandemic. Creating any sort of federal uncertainty about the rules governing these programs will potentially have unintended consequences at the state level, jeopardizing benefits for eligible families during a critical time.

The bigger danger posed by the Regulations Rule is that important regulations may be arbitrarily rescinded because there are simply not enough HHS staff or resources to undertake such a sweeping review process. Regulations that do not complete the complicated and time-consuming review process would summarily expire, potentially leaving vast, gaping holes in the regulatory framework implementing HHS programs and policies.

For example, regulations governing the Child Care and Development Fund (CCDF) regarding state matching expenditures are more than 10 years old. These regulations added additional flexibility to state funding of child care, enabling states to more easily meet their matching requirements and ensure they are drawing down all available funds to serve families. In 2018,
approximately 1.32 million children and 813,200 low-income working families received assistance from the Child Care and Development Fund Program each month. More than 120 YWCAs across the nation provide child care and early learning services to thousands of children annually, the majority of whom rely upon funding from HHS, in conjunction with state and local funding, to provide these services. Arbitrarily rescinding these regulations on CCDF will likely reduce the number of families served, which is especially harmful at a time when state, provider, and family budgets are stretched as they are during COVID-19.

Further, multiple insurance affordability programs including Medicaid and CHIP rely on regulations at 42 C.F.R. § 435.603 to determine financial eligibility using Modified Adjusted Gross Income (MAGI) methodologies. If this regulation were to simply disappear, programs would be free to redefine MAGI household and income counting rules, with no standards, consistency, or accountability. States would still be subject to the statutory penalties for failure to operate their TANF programs appropriately, but would be left without guidance as to how HHS would make this determination, or how they could qualify for penalty reduction based on either the extent of failure or external factors, such as the pandemic. Arbitrarily rescinding large swaths of regulations would wreak havoc in HHS programs, leading to untold harm to the millions of people who rely on those programs.

Certain groups would be particularly disadvantaged if financial eligibility rules were rescinded or called into question. The most recent data indicates that Medicaid covers approximately 25 million women, including 17% of nonelderly women in the United States, but coverage rates are much higher among certain groups, including minority women, single mothers, low-income women, and women who have not completed a high school education; however these rates have undoubtedly increased during the COVID-19 pandemic.

Sexism and systemic racism has also resulted in many women of color, particularly Black and Latinx women, being stuck in low-wage jobs where employer-based coverage is unavailable and where safety-net programs are a necessity. For instance, of the more than 26 million people working in low-

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wage jobs (typically paying less than $11 per hour), nearly six in ten are women—and women are close to seven in ten workers in the lowest-wage occupations that typically pay less than $10 per hour.\(^6\) Further, nearly half (48%) of women in the low-wage workforce are women of color: 17.6% are Black, 22.8% are Latinx, 6.7% are Asian or Pacific Islander, and 1.3% are American Indian/Alaska Native.\(^7\) Many low-wage jobs that are primarily held by women—such as cashiers, maids and housekeepers, personal and home care aides, and restaurant servers—have work schedules that are often unpredictable, unstable, and inflexible.\(^8\) And women in low-wage jobs are especially likely to face discrimination and harassment at work, which can result in lost hours or voluntary or involuntary job loss.\(^9\)

Further, victims of domestic violence and sexual assault often face particular barriers to work that lead to job loss, including ongoing abuse or harassment by the perpetrator, needing to take time off work to attend court hearings, and otherwise recovering from the short- and long-term impacts of the violence. Uncertainty or rescission of the income counting rules would harm these groups in particular.

**The proposed rule is unnecessary, and HHS does not have the authority to propose automatic expiration dates on almost all regulations.**

The Proposed Rule claims that automatic expiration dates give HHS the incentive necessary to conduct regular assessments of existing regulations and comply with the Regulatory Flexibility Act (RFA). First, HHS agencies already commonly update regulations when needed. For example, in 2016 HHS revised the regulations governing CCDF to implement the changes made by the 2014 Child Care and Development Block Grant reauthorization. The rulemaking process took nearly two years and incorporated input from a wide variety of stakeholders including state officials and members of Congress. The regulation was deemed necessary by HHS to support state implementation of


sweeping changes in the federal law designed to protect the health and safety of children in child care; help parents make informed consumer choices and access information to support child development; provide equal access to stable, high-quality child care for low-income children; and enhance the quality of child care and the early childhood workforce. Without these regulations, states would have less guidance to meet the goals of the reauthorization. HHS also revised the regulations governing the child support program in 2016, not as the result of a specific statutory change, but in order to make programs more flexible, effective and efficient.\textsuperscript{10} \textsuperscript{11}

Further, the RFA requires each agency to publish “a plan for the periodic review of the rules issued by the agency which have or will have a significant economic impact upon a substantial number of small entities.”\textsuperscript{12} However, nothing in this forty year-old law authorizes agencies to retroactively impose a blanket expiration date to rescind duly promulgated regulations.

**Conclusion**

To address these and other concerns, YWCA strongly urges the Department to withdraw the Proposed Rule in its entirety and to reject any proposal that would cause more harm to women, families, and service providers, particularly during this crisis period caused by COVID-19.

YWCA appreciates the opportunity to share our views with you. If you have any questions, please contact YWCA USA Vice President of Public Policy and Advocacy Catherine Beane, at cbeane@ywca.org or 202-835-2354.

Sincerely,

Alejandra Y. Castillo, CEO YWCA USA

\textsuperscript{10} 81 Fed. Reg. 93492
\textsuperscript{11} 85 Fed. Reg. 70099, 70106.
\textsuperscript{12} 5 U.S.C. 610(a) (in the case of the RFA, periodically is defined as 10 years, unless such review is not feasible, in which case the review can be extended another 5 years).