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6 **UNITED STATES DISTRICT COURT**
7 **WESTERN DISTRICT OF WASHINGTON**
8 **AT SEATTLE**

9 AMERICAN FEDERATION OF
10 STATE, COUNTY AND MUNICIPAL
11 EMPLOYEES, AFL-CIO, *et al.*,

12 *Plaintiffs,*

13 v.

14 UNITED STATES DEPARTMENT OF
15 HEALTH AND HUMAN SERVICES,
16 *et al.*,

17 *Defendants.*
18
19
20
21

Case No. 2:26-cv-02282-TL

**PLAINTIFFS' MOTION FOR
SUMMARY JUDGMENT**

NOTE ON MOTION
CALENDAR:
December 4, 2026

ORAL ARGUMENT
REQUESTED

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INTRODUCTION

For decades, families across the United States have struggled to find and afford childcare. Congress created the Child Care and Development Fund (“CCDF”) to help fix that problem. The CCDF program entrusts states, territories, and tribes with billions in federal funds each year to give low-income families equal access to affordable childcare. Almost one million families rely on the program, and over 200,000 childcare providers—mostly small businesses strained by high costs and razor-thin margins—use it as a lifeline to keep their doors open to the families they serve.

Despite the program’s importance to American families and to the national economy, families using CCDF still find childcare scarce and unaffordable, even with subsidies. In 2024, the Administration for Children and Families (“ACF”), the component of the Department of Health and Human Services (“HHS”) that runs the CCDF program, identified three problems with the program and issued a regulation to address them. *Improving Child Care Access, Affordability, and Stability in the Child Care and Development Fund (CCDF)*, 89 Fed. Reg. 15366 (Mar. 1, 2024) (“2024 Rule”).

1. *The Copay Cap.* First, due to high copayments, many families who use CCDF subsidies still pay a higher share of their paycheck for childcare than the average family, which pays 7% of its income. As a result, many families cannot afford to access childcare through the CCDF system. ACF

1 found that these high copays created an impermissible “barrier” for families,
2 in violation of the CCDF statute, 42 U.S.C. § 9858c(c)(5), and undermined the
3 “equal access” to care the statute was designed to achieve, *id.* § 9858c(c)(4)(A).
4 To lower that barrier, ACF capped copays at 7% of a family’s income.

5 **2. *Payment Practice Requirements.*** Second, state payment practices
6 regularly diverge from the way the market typically pays providers. In the
7 private market, parents pay providers like they pay schools: in advance and
8 based on enrollment—for the spot the child fills. But in the CCDF program,
9 many states pay providers retroactively, delaying payment for weeks, and
10 based on a child’s actual attendance, reducing pay when a child is absent. ACF
11 found that both these practices violated the statutory requirement that states
12 use payment practices that are “generally accepted” in the market. 42 U.S.C.
13 § 9858c(c)(2)(S)(i). In doing so, those practices undermined childcare providers’
14 financial stability, drove them away from the CCDF program, and shrunk the
15 options available to parents. To help fix those problems, the 2024 Rule required
16 states to pay providers (a) prospectively and (b) based on enrollment.

17 **3. *Grants and Contracts Requirement.*** Third, parents of infants and
18 toddlers, children with disabilities, and children in underserved geographic
19 areas often cannot find care that meets their child’s needs. When it
20 reauthorized CCDF in 2014, Congress recognized that states could grow
21 childcare supply for underserved populations by offering grants and contracts

1 to providers who serve them. To that end, the statute requires states to give
2 parents the opportunity to enroll their child in a program with a grant or
3 contract. 42 U.S.C. § 9858c(c)(2)(A)(i). But many states still do not use CCDF
4 funds to offer any grants or contracts. In the 2024 Rule, therefore, ACF
5 required states to deliver some services through grants or contracts, including
6 for infants and toddlers, children with disabilities, and in underserved areas.

7 Years of research and data showed that each of these changes would
8 lower childcare costs, encourage providers to serve families who use CCDF
9 subsidies, and expand childcare supply for low-income parents.

10 Only two years later, though, the Trump-Vance administration reversed
11 course. The new head of ACF promised a “bonfire” of childcare regulations. The
12 2024 Rule’s key provisions were promptly swept into the blaze. *See Restoring*
13 *Flexibility in the Child Care and Development Fund (CCDF)*, 91 Fed. Reg.
14 25796 (May 12, 2026) (“2026 Rule”). In repealing the 2024 Rule’s evidence-
15 backed requirements, ACF did not address the reasons behind them. It did not
16 cite a single study. And it did not grapple with the objections raised by the
17 providers, families, and experts who commented.

18 The repeal will cost providers and families millions of dollars and shrink
19 the already strained market for affordable childcare. Without the copay cap,
20 many families will be unable to afford childcare even with CCDF assistance.
21 Without enrollment-based payments, small childcare providers on shoestring

1 budgets will lose critical income when children are absent. Without prospective
 2 payments, these providers will have to rely on savings or credit (if they can
 3 access it) to pay rent, utilities, salaries, and the other fixed costs of providing
 4 childcare while they await payment for weeks. And absent the grants and
 5 contracts requirement, the parents of underserved children will find it harder
 6 to access care. The members of the three labor union plaintiffs—including tens
 7 of thousands of childcare providers—are among the many harmed.

8 The 2026 Rule is as harmful as it is unlawful. Because it ignored multiple
 9 statutory requirements and failed to analyze the problems the 2024 Rule
 10 aimed to address, the 2026 Rule is arbitrary, capricious, and contrary to the
 11 CCDF statute, and the Court should vacate it.

12 BACKGROUND

13 I. The Child Care and Development Fund

14 As ACF recognized in 2024, childcare in America is a “fundamentally
 15 broken system.” 2024 Rule, 89 Fed. Reg. at 15367. In almost every state, the
 16 average cost of daycare exceeds the average cost of rent, mortgage payments,
 17 and public college tuition. Child Care Aware of America, *Child Care in*
 18 *America: 2024 Price & Supply* (May 2025), <https://perma.cc/MQM6-D667>, cited
 19 in Ex. 1, AFSCME Comment at 5 (ACF_004960). Even as the costs of housing,
 20 food, and healthcare rise, childcare eats up 20–36% of the average low-income
 21 family’s pay. 2024 Rule, 89 Fed. Reg. at 15366. The financial burden puts

1 parents in a catch-22: They need childcare to work, but they do not make
2 enough to cover the cost of care and other necessities like food and rent. *Id.*
3 This drives parents—especially mothers—to leave the workforce entirely. *Id.*

4 Congress passed the Child Care and Development Block Grant Act, as
5 amended (the “Act”), to “help working families with low incomes access child
6 care that best meets their needs.” 2026 Rule, 91 Fed. Reg. at 25797; 42 U.S.C.
7 § 9857(b). It establishes a cooperative federal-state program that channels
8 subsidies to states, territories, and tribal agencies to fund childcare for low-
9 income families. State agencies use the funds to assist eligible children through
10 two mechanisms: (1) grants and contracts with childcare providers and (2)
11 “child care certificates,” or vouchers, that families use to purchase childcare
12 from a qualifying provider of their choice. 42 U.S.C. § 9858c(c)(2)(A).

13 Although Congress aimed to ensure states retained “maximum flexibility
14 in developing child care programs and policies,” the Act requires state agencies
15 to follow detailed parameters to ensure that states use the funds to accomplish
16 the program’s primary goals, including “to promote parental choice” by
17 “maximiz[ing] parents’ options” and to “increase the number and percentage of
18 low-income children in high-quality child care settings.” 42 U.S.C. § 9857(b).

19 To participate, states and territories (deemed “States” under the Act)
20 must submit a plan that meets detailed requirements set forth in the Act and
21 HHS regulations. *Id.* § 9858c(a). Three sets of requirements are relevant here.

1 ***Copayments must not be a “barrier” to access.*** First, although States
 2 may require parents to pay a share of the cost of childcare as a copayment
 3 (called “cost sharing”), they must establish and “periodically revise” a “sliding
 4 fee scale” that sets copays based on income and family size. 42 U.S.C. §
 5 9858c(c)(5); *see also id.* § 9858n(13). States may not set copays so high that
 6 they erect a “barrier” to childcare access. *Id.* § 9858c(c)(5).

7 ***Payment practices must align with the market.*** Second, to “provide
 8 stability of funding and encourage more child care providers to serve children”
 9 who receive CCDF assistance, States must pay providers using payment
 10 practices that “reflect generally accepted payment practices” for children who
 11 do not receive subsidies. *Id.* § 9858c(c)(2)(S)(i). States must also “provide for
 12 timely payment,” *id.* § 9858c(c)(4)(B)(iv), and, “to the extent practicable,”
 13 “support the fixed costs of providing child care services by delinking provider
 14 reimbursement rates” from “occasional absences due to holidays or
 15 unforeseen circumstances such as illness,” *id.* § 9858c(c)(2)(S)(ii).

16 ***States must offer grants or contracts to providers.*** Third, States
 17 must assure that parents are “given the option” to “either” (1) enroll their child
 18 with a childcare provider that “has a grant or contract” with the State or (2)
 19 receive a voucher. 42 U.S.C. § 9858c(c)(2)(A)(i). Grants and contracts are
 20 agreements by which providers agree to hold slots for certain CCDF-eligible
 21 children in exchange for funds. 2024 Rule, 89 Fed. Reg. at 15370. Congress

1 recognized that they “are particularly helpful in meeting the needs of specific
 2 populations of children and are well-suited to provide services in specific
 3 geographical areas.” S. Rep. No. 113-138, at 12 (2014). The Act specifically
 4 directs States to “develop and implement strategies,” “which may include ...
 5 the provision of direct contracts or grants to community-based organizations,”
 6 “to increase the supply and improve the quality of child care services” for
 7 “children in underserved areas,” “infants and toddlers,” and “children with
 8 disabilities.” 42 U.S.C. § 9858c(c)(2)(M).

9 Since 1992, HHS has promulgated regulations that interpret these
 10 requirements and impose additional ones. The regulations have consistently
 11 sought to advance the program’s primary goal: to provide parents affordable
 12 access to the “widest possible variety of child care options.” *Child Care and*
 13 *Development Block Grant*, 57 Fed. Reg. 34352, 34370 (Aug. 4, 1992).
 14 “[A]lthough [States] enjoy great flexibility in program administration,” “such
 15 discretion may not be exercised at the expense of parental choice.” *Id.*

16 II. The 2024 Rule

17 In 2024, ACF concluded that most American families still “struggle to
 18 find or afford high-quality child care that meets their needs,” even when they
 19 receive CCDF subsidies. 2024 Rule, 89 Fed. Reg. at 15367. ACF identified three
 20 problems that make childcare scarce and unaffordable. First, many parents
 21 pay high copayments that put “significant and destabilizing financial strain on

1 family budgets.” *Id.* Second, many States pay providers less, and later, than
 2 private-paying clients, discouraging participation in CCDF and shrinking
 3 childcare options for participating parents. *Id.* Third, States underuse key
 4 tools—grants and contracts—that would expand access to childcare for
 5 underserved populations. *Id.* at 15369–70.

6 These three issues warranted four main changes to CCDF regulations.

7 **A. Family Copayment Cap**

8 First, to make childcare more affordable, the 2024 Rule capped
 9 copayments at 7% of the family’s income. 45 C.F.R. § 98.45(l)(3) (2024).

10 Since 2016, HHS regulations had set a copay equal to 7% of a family’s
 11 income as the “benchmark” for affordable copayments. 89 Fed. Reg. at 15368.
 12 Yet, 20 States allowed copayments over the benchmark, 16 lacked clear
 13 restrictions on copayments, and average copays in 11 States exceeded the
 14 benchmark. *Id.* In States that did not cap copayments, copays rose as high as
 15 27% of family income. *Id.* at 15388.

16 In the 2024 rulemaking, ACF found that copays over 7% of a family’s
 17 income create an impermissible “barrier to child care access in the CCDF
 18 program.” *Id.* at 15368. Studies showed that “even very low co-payments[]
 19 remain a barrier for some families to make ends meet, especially families
 20 struggling to afford housing costs.” *Id.* at 15368, 15388. Commenters reinforced
 21 that many low-income families could not afford to pay 7% of their income on

1 childcare. *Id.* at 15388. And if families cannot afford their copay, they are more
 2 likely to “patch together informal, unregulated care” that may be “less
 3 expensive” but is also “less reliable” and “less likely to meet [their] children’s
 4 developmental needs.” *Id.* at 15368; *see id.* at 15407 (“[R]esearch shows that
 5 higher out-of-pocket child care expenses (which may include co-payments)
 6 reduce families’ child care use and parental (particularly maternal)
 7 employment.”). A copay cap would ensure that the subsidies serve their
 8 purpose—to make quality care affordable.

9 ACF also concluded that the copay cap would help ensure “equal” access
 10 to childcare for low-income families, one of the goals of the Act. 89 Fed. Reg. at
 11 15387–88. According to U.S. Census data, the average family spends 7% of
 12 income on childcare, but low-income families spend four times the share of
 13 income that wealthier families do. *Id.* at 15368. Families with low incomes
 14 (below \$25,000 per year) pay from 9–31% of their income, while those with high
 15 incomes (above \$150,000) pay around 7% (*i.e.*, 6–8%). *Id.* at 15387–88. Because
 16 CCDF assistance is supposed to “offset the disproportionate share of income
 17 that families with low incomes pay for child care,” ACF reasoned that “families
 18 participating in CCDF should not be required to pay a greater share of their
 19 income than higher income families.” *Id.* The copay cap would ensure that low-
 20 income families who use CCDF subsidies would not pay a higher share than
 21 the average family. *See id.*

B. Payment Practice Requirements

Second, the 2024 Rule required States to align their payment practices “with generally accepted payment practices in the private sector,” 89 Fed. Reg. at 15369, by paying providers (1) prospectively (“in advance of or at the beginning of the delivery of child care services”) and (2) based on “a child’s authorized enrollment,” rather than attendance, 45 C.F.R. § 98.45(m) (2024).¹

ACF found these two changes were needed to comply with the Act’s requirement that CCDF payment practices “reflect generally accepted payment practices” in the private market. 42 U.S.C. § 9858c(c)(2)(S). Just like schools charge tuition upfront, most childcare providers charge private clients a “set fee” based on “a child’s enrollment” that is “paid in advance of when services are provided.” 2024 Rule, 89 Fed. Reg. at 15369. Childcare providers charge based on enrollment because they operate on thin profit margins (usually less than 1%) with high “fixed costs,” “including staff wages, rent, and utilities,” that “do not decrease when a child is absent.” *Id.* And they “need to

¹ The rule allowed two exceptions to these payment practice requirements. A State could exempt a particular “type of child care setting” from prospective or enrollment-based payments if it “demonstrate[d] that such practices are not generally-accepted” for that setting. 2024 Rule, 89 Fed. Reg. at 15415. And a State could adopt an “alternative approach” to enrollment-based payment if it showed that enrollment-based payments were “not practicable” and the alternative would “not undermine the stability” of childcare programs. *Id.*

1 receive payment before services are delivered to meet payroll and pay rent,”
2 which “must be paid at the beginning of the month.” *Id.* at 15391–92.

3 Many states do not follow these market practices in the CCDF program.
4 89 Fed. Reg. at 15369. And studies showed that retroactive and attendance-
5 based payments discouraged providers from serving children who pay with
6 subsidies, which “limits parent choices.” *Id.* In one survey, many providers
7 cited “delayed payments and their destabilizing effect on child care operations
8 as a key reason why they do not participate in the CCDF program.” *Id.* In
9 another, 80% responded that they would “be more likely to serve families using
10 subsidies if the State paid based on enrollment rather than attendance, and 73
11 percent said they would be more likely if the State paid prospectively.” *Id.*
12 Commenters confirmed that retroactive and attendance-based payments “have
13 led some child care providers to choose not to participate in the subsidy
14 program or to limit the number of children receiving subsidies that they will
15 serve at any given time.” *Id.* at 15392.

16 Based on this evidence, ACF concluded that a requirement that states
17 pay providers prospectively and based on enrollment would “increase parents’
18 options, make it easier for providers to accept subsidies, improve stability
19 among child care providers serving children participating in CCDF, and align[]
20 with generally accepted payment practices for private pay families.” *Id.*
21

C. Grants and Contracts Requirement

Finally, to “increase parent choice,” the 2024 Rule required States to “provid[e] some portion of the delivery of direct services via grants or contracts,” 45 C.F.R. § 98.30(b)(1) (2024). This requirement tracks a provision of the Act, which requires States to give parents the option to enroll their child with a provider that has a grant or contract for childcare services. 42 U.S.C. § 9858c(c)(2)(A). The 2024 Rule specifically required States to use grants or contracts “at a minimum” for three underserved populations: “children in underserved geographic areas, infants and toddlers, and children with disabilities.” 45 C.F.R. § 98.30(b)(1) (2024).

“Finding care for infants and toddlers and children with disabilities is particularly difficult for parents.” 89 Fed. Reg. at 15370. Caring for those populations requires “[h]igher operational costs per child,” “specialized training,” and more “physical space,” which all demand “additional funding and planning.” *Id.* At the same time, these populations make up a large proportion of CCDF participants. About one third are infants and toddlers, and about 17% have developmental disabilities. *Id.* An analysis of 19 states and the District of Columbia found that in 80% of counties studied, infants and toddlers outnumbered licensed childcare slots for children their age by a factor of three to one. *Id.* More than a third of parents with children with disabilities reported having difficulty finding childcare. *Id.* This lack of supply “greatly limits

1 parents' choices in child care arrangements." *Id.* at 15382.

2 Aware of the issues facing these populations, Congress required States
3 to adopt strategies "to increase the supply and improve the quality of child care
4 services" for them. 42 U.S.C. § 9858c(c)(2)(M). It listed "[d]irect contracts or
5 grants" as one such strategy. *Id.* Nonetheless, only 10 States reported "using
6 any grants and contracts for direct services," and "approximately twenty states
7 report[ed] serving no children with disabilities" through the CCDF program.
8 2024 Rule, 89 Fed. Reg. at 15370.

9 ACF found that requiring "some use" of grants or contracts for
10 underserved populations would "help more parents find the child care they
11 need." *Id.* at 15382. By guaranteeing payment for providers who hold open
12 spots for those groups, grants and contracts "are an important tool for building
13 child care supply" for these populations. *Id.* at 15370, 15381. Again, ACF cited
14 studies to support that conclusion. In a survey, 80% of childcare providers
15 indicated that they would be interested in applying for grants or contracts to
16 serve the identified populations. *Id.* at 15370. Analyses of programs in two
17 different states—Pennsylvania and Georgia—showed that the use of grants
18 and contracts increased providers' financial stability, improved quality of care,
19 and led to more stable or increased enrollment for infants and toddlers. *Id.*
20 Commenters "strongly supported" the new provision. *Id.* at 15381.

21 ***

1 Together, ACF found, the 2024 Rule’s requirements would “lower
 2 families’ costs for childcare,” “encourage more providers to accept subsidies,”
 3 and “expand available child care options” for low-income parents participating
 4 in CCDF. 89 Fed. Reg. at 15367, 15369. The rule took effect on April 30, 2024.
 5 *Id.* at 15366. To give States time to implement it, ACF allowed States
 6 to “request a temporary waiver for an extension of up to two years if needed to
 7 come into compliance” with the new requirements. *Id.*

8 III. The 2026 Rule

9 When President Trump took office, he directed that “for each new
 10 regulation issued, at least 10 prior regulations be identified for elimination.”
 11 Ex. 2, Exec. Order No. 14192, 90 Fed. Reg. 9065, 9065 (Jan. 31, 2025)
 12 (ACF_000075). The new head of ACF promised a “bonfire” of childcare
 13 regulations. C. Davenport, *Trump’s Top Child Care Official Wants a ‘Bonfire*
 14 *of Regulations,’* N.Y. Times (Apr. 28, 2026), <https://perma.cc/CG3X-CTNT>.
 15 “We’re going to barbecue a lot of sacred cows,” he said. *Id.*

16 Five days into the new year, on January 5, 2026, ACF noticed a proposed
 17 rulemaking to repeal the four key provisions of the 2024 Rule. *Restoring*
 18 *Flexibility in the Child Care and Development Fund (CCDF)*, 91 Fed. Reg. 207
 19 (Jan. 5, 2026). Comments poured in, including from plaintiffs AFSCME and
 20 SEIU. Of the nearly 1,000 comments, most opposed the rescission. 2026 Rule,
 21 91 Fed. Reg. at 25799. Childcare providers, families, and experts explained

1 that the proposal would push providers out of the CCDF program and make
2 care costlier and harder to find, especially for underserved populations.

3 ACF went ahead with its bonfire anyway, rescinding the 2024 Rule’s core
4 requirements. 2026 Rule, 91 Fed. Reg. at 25797. In the 2026 Rule’s preamble,
5 ACF generally opined that the rescission would save money and give States
6 more “flexibility” over how to implement the CCDF program. *Id.* at 25797–98.
7 But it did not address the reasons that ACF adopted the 2024 Rule in the first
8 place. It did not discuss the Act’s relevant requirements—that copayments
9 may not be a barrier to access, that payment practices must align with the
10 market, or that States must offer grants and contracts. And it did not analyze
11 the data that supported the 2024 Rule.

12 The 2026 Rule took effect on July 13, 2026. 91 Fed. Reg. at 25796.

13 ARGUMENT

14 I. The plaintiffs have standing.

15 A union has standing to sue on behalf of its members when “(1) at least
16 one member would have standing to sue individually, (2) the interests it seeks
17 to protect are germane to its purpose, and (3) neither the claim nor relief
18 requires the participation of individual members in the lawsuit.” *L.A. Press*
19 *Club v. Noem*, 171 F.4th 1179, 1188 (9th Cir. 2026) (quotation marks omitted).
20 To meet the first requirement, at least one of the union’s members must have
21

1 “an injury in fact” that is “fairly traceable to the challenged [rule] and likely to
2 be redressed by the lawsuit.” *Biden v. Nebraska*, 600 U.S. 477, 489 (2023).

3 The plaintiff unions—the American Federation of State, County and
4 Municipal Employees (“AFSCME”), the Service Employees International
5 Union (“SEIU”), and SEIU Local 925—meet each requirement here.

6 **A. The unions’ members have suffered injuries-in-fact.**

7 The 2026 Rule causes the unions’ members economic harm, a classic
8 injury-in-fact. *See Van v. LLR, Inc.*, 61 F.4th 1053, 1064 (9th Cir. 2023) (“Any
9 monetary loss,” even “a fraction of a cent, is sufficient to support standing.”).

10 **Copay Cap.** First, the rescission of the copay cap harms the unions’
11 provider members. As an SEIU member explained, when parents cannot afford
12 their copays, the providers must either “allow them not to pay or ask them to
13 find another provider.” Ex. 3, SEIU Healthcare Illinois Indiana Missouri
14 Kansas’ Child Care and Early Learning Division Comment at 3 (ACF_005509).
15 The providers “lose money either way it goes.” *Id.*; accord Ex. 4, Vasquez Decl.
16 ¶ 14; Ex. 5, Horton Decl. ¶ 27; Ex. 6, Godbolt Decl. ¶ 9. In Ohio, which charges
17 copays up to 27% of family income (Ex. 7, ACF State Compliance Summary at
18 2 (ACF_001127)), an AFSCME provider member has lost clients because they
19 cannot afford the copay. Ex. 8, Thompson Decl. ¶ 21. “If the 2024 rule capping
20 family copays at 7% of income had gone into effect, more families would be able
21 to enroll in [her] program,” and she would earn more money. *Id.*

1 ***Payment Practices.*** The unions also have thousands of members who
 2 provide childcare in states that use the payment practices barred by the 2024
 3 Rule and authorized by the challenged rule. Ex. 9, Sforza Decl. ¶ 8; Ex. 10,
 4 Peterson Decl. ¶¶ 19, 23; Ex. 5, Horton Decl. ¶¶ 4, 18–20. Because their states
 5 pay based on attendance, rather than enrollment, the providers lose money
 6 when children are absent for more than a few days. Ex. 8, Thompson Decl. ¶¶
 7 12–15; Ex. 11, Rodriguez Decl. ¶¶ 14–16; Ex. 6, Godbolt Decl. ¶ 14; Ex. 12,
 8 Good Decl. ¶ 11. And because their states reimburse providers retroactively,
 9 they receive payment weeks after they must front costs to deliver services,
 10 forcing them to keep more money in reserve and use savings or personal funds
 11 to pay the bills due at the start of each month. Ex. 11, Rodriguez Decl. ¶¶ 9–
 12 13; Ex. 12, Good Decl. ¶ 10; Ex. 4, Vasquez Decl. ¶ 10; Ex. 8, Thompson Decl.
 13 ¶¶ 10–11; Ex. 13, Guadalupe Suárez Decl. ¶¶ 22–23. Being paid less, and later,
 14 inflicts economic harm. *Biden*, 600 U.S. at 490; *see SEC v. Barry*, 146 F.4th
 15 1242, 1263 (9th Cir. 2025) (because “money is worth more today than the same
 16 nominal amount in the future,” even a brief delay in payment does “pecuniary
 17 harm”); *accord Van*, 61 F.4th at 1063.

18 Attendance-based reimbursements also impose higher administrative
 19 burdens on the plaintiffs’ members, who must spend time keeping the detailed
 20 attendance records required to receive payment. *See* 2024 Rule, 89 Fed. Reg.
 21 at 15393 (“Because Lead Agencies will not have to closely align attendance

records with payments, we expect a decrease in administrative burden for ... child care providers.”); Ex. 13, Guadalupe Suárez Decl. ¶¶ 19–20. These “increased operational costs” are also cognizable harms. *City & Cnty. of San Francisco v. USCIS*, 944 F.3d 773, 785, 787 (9th Cir. 2019); *see Wilbur v. Locke*, 423 F.3d 1101, 1107 (9th Cir. 2005) (compliance costs are cognizable injuries).

Grants and Contracts. The 2026 Rule also harms the unions’ provider members by repealing the 2024 Rule’s grants-and-contracts requirement. Many members’ states do not offer grants or contracts covering children with disabilities, infants and toddlers, or kids in underserved areas, as the 2024 Rule required. Ex. 7, ACF State Compliance Summary at 5–7 (ACF_001130–32). Many members would have applied for those grants or contracts if they were available, but under the 2026 Rule, they will not have the chance. Ex. 8, Thompson Decl. ¶¶ 19–20; Ex. 12, Good Decl. ¶ 18; Ex. 6, Godbolt Decl. ¶ 19. The lost “opportunity to compete” for these benefits is a cognizable injury. *Bullfrog Films, Inc. v. Wick*, 847 F.2d 502, 514 (9th Cir. 1988); *CC Distribs., Inc. v. United States*, 883 F.2d 146, 148 (D.C. Cir. 1989).

B. The injuries are traceable to the rule and redressable.

Those economic injuries are traceable to the challenged rule and redressable by the Court. When a federal rule “authorizes” previously unlawful state action that causes harm, the harm is traceable to the rule and redressable by its vacatur. *Orangeburg, S.C. v. FERC*, 862 F.3d 1071, 1080 (D.C. Cir. 2017).

1 In *Beno v. Shalala*, for example, when a federal agency allowed a state agency
 2 to cut benefits under a federally funded program, the beneficiaries had
 3 standing to challenge the federal rule. 30 F.3d 1057, 1064 (9th Cir. 1994).

4 So too here. The 2026 Rule allows States to adopt the payment practices
 5 and copays that harm the plaintiffs—practices that “would ... be illegal” under
 6 the 2024 Rule. *Orangeburg*, 862 F.3d at 1083 (citation omitted). It also permits
 7 States not to offer the grants or contracts that the 2024 Rule required. By
 8 vacating the 2026 Rule, the Court would restore the 2024 Rule’s requirements,
 9 avoiding the financial harms that flow from their repeal.

10 Thus, the unions’ members meet all three elements of standing.

11 **C. The unions may sue on behalf of their members.**

12 To sue on behalf of their members, the unions must satisfy two
 13 remaining requirements: The lawsuit must be “germane” to their purposes,
 14 and the claims for relief must not require the individual participation of their
 15 members. *L.A. Press Club*, 171 F.4th at 1188. The unions’ claims are certainly
 16 germane to their purposes, which include achieving better pay for their
 17 provider members and expanding members’ access to childcare so that they
 18 can remain in the workforce. Ex. 9, Sforza Decl. ¶¶ 4–5; Ex. 10, Peterson Decl.
 19 ¶¶ 8–11; Ex. 5, Horton Decl. ¶¶ 9–11; see *Cal. Rural Legal Assistance, Inc. v.*
 20 *Legal Servs. Corp.*, 917 F.2d 1171, 1174 (9th Cir. 1990). And there is no need
 21 for individual members to participate in this facial challenge to a generally

1 applicable rule. *See United Food & Com. Workers Union Loc. 751 v. Brown*
 2 *Grp., Inc.*, 517 U.S. 544, 553–54 (1996).

3 The unions thus have standing to challenge the 2026 Rule.

4 **II. The 2026 Rule violates the APA.**

5 The Administrative Procedure Act (“APA”) directs a court to “hold
 6 unlawful and set aside” agency actions that are (A) “arbitrary” or “capricious”
 7 or (B) contrary to law. 5 U.S.C. § 706(2)(A). The 2026 Rule fails on both counts.

8 **A. The 2026 Rule is arbitrary and capricious.**

9 An agency action qualifies as “arbitrary” or “capricious” if it is not
 10 “reasonable and reasonably explained.” *Ohio v. EPA*, 603 U.S. 279, 292 (2024)
 11 (citation omitted). To meet that standard, the agency “must examine the
 12 relevant data and articulate a satisfactory explanation for its action including
 13 a rational connection between the facts found and the choice made.” *Motor*
 14 *Vehicle Mfrs. Ass’n of the U.S., Inc. v. State Farm Mut. Auto. Ins. Co.*, 463 U.S.
 15 29, 43 (1983) (citation modified). Its decision must rest “on a consideration of
 16 the relevant factors,” *id.* (citation omitted), including both “the advantages *and*
 17 the disadvantages” of its decision. *Michigan v. EPA*, 576 U.S. 743, 753 (2015)
 18 (emphasis in original). A decision fails APA review if the agency “failed to
 19 consider an important aspect of the problem,” did not “examine the relevant
 20 data,” or “offered an explanation for its decision that runs counter to the
 21 evidence before” it. *State Farm*, 463 U.S. at 43.

When an agency repeals an existing policy, it must also provide “a reasoned explanation ... for disregarding facts and circumstances that underlay or were engendered by the prior policy.” *FCC v. Fox Television Stations, Inc.*, 556 U.S. 502, 516 (2009). A policy change violates the APA “if the agency ignores or countermands its earlier factual findings without reasoned explanation for doing so.” *Organized Vill. of Kake v. USDA*, 795 F.3d 956, 966 (9th Cir. 2015) (en banc) (quoting *Fox*, 556 U.S. at 537 (Kennedy, J., concurring)). An “[u]nexplained inconsistency between agency actions” makes the change “arbitrary and capricious.” *Id.* (citation omitted).

The 2026 Rule flunks that test several times over. For each of the 2024 Rule’s requirements, ACF argued that the rescission would give States more discretion to adopt their own policies. But ACF failed to engage with the reasons the 2024 Rule imposed those requirements in the first place: because without them, many States would continue to use practices that the 2024 Rule found violated the Act and frustrated the goals of the program. And at every turn, ACF failed to address the Act’s pertinent requirements and ignored the “relevant data” that supported the 2024 Rule. *State Farm*, 463 U.S. at 43.

1. Family Copayment Cap

To justify rescinding the copay cap, ACF said the rescission would give States “flexibility” to balance the “trade-offs between reducing child care costs for families participating in CCDF and serving additional families with higher

co-payments.” 2026 Rule, 91 Fed. Reg. at 25798, 25801. But as explained above, Congress limited the extent to which States may require families to pay higher copayments: States may not set copays so high that they raise a “barrier [for] families receiving assistance.” 42 U.S.C. § 9858c(c)(5). The 2024 Rule found that copays over 7% of a family’s income raised such an “impermissible barrier” and deprived participants of the “equal access” to childcare that Congress aimed to achieve. 89 Fed. Reg. at 15387–88. The 2026 Rule repealed the cap without considering either of these core rationales for it.

First, ACF did not address its prior conclusion that copays over 7% create a barrier to childcare access for the low-income families that CCDF serves. The 2024 Rule based that conclusion on studies showing that “even very low co-payments[] remain a barrier for some families to make ends meet.” 89 Fed. Reg. at 15368, 15388.² The comments to the 2026 proposed rule supported that conclusion. One organization relayed reports from “[h]undreds of California families” that before California implemented the 7% cap,

² See, e.g., Ellen Scott et al., *Assessing the Impacts of Oregon’s 2007 Changes to Child-Care Subsidy Policy*, Univ. of Oregon 8 (2011), <https://perma.cc/2YDF-V7HT> (Oregon “parents experienced substantial financial burden in meeting their portion of the child-care costs, even when paying very low copays”); Gina Adams et al., *Assessing Child Care Subsidies through an Equity Lens: A Review of Policies and Practices in the Child Care and Development Fund* 40–41 (2021), <https://perma.cc/UTG2-HM2E> (high copays can make parents “unable to afford to participate in the subsidy system and force them to opt out for cheaper care that they can afford but that may not meet their other needs”).

“copayments were a major barrier to finding and maintaining child care.” Ex. 14, Child Care Law Center Comment at 3 (ACF_006226). “[F]amilies were often forced to choose between child care or basic necessities such as rent, gas, and food,” and some “disenrolled from publicly funded child care because they simply could not afford the co-payments.” *Id.*; accord Ex. 15, Cal. Family Child Care Network Comment at 2 (ACF_005972) (before California implemented the cap, many families “could not take advantage of subsidized child care” because “they could not afford to pay more than 7 percent of their annual income”). Other comments presented both qualitative and quantitative data showing that copays over 7% of income “present a ‘barrier for families receiving’ CCDF assistance” and can make it unaffordable to participate in the program. Ex. 16, Urban Institute Comment at 7 (ACF_006048).³

³ See also, e.g., Ex. 1, AFSCME Comment at 5 & n.15 (ACF_004960) (citing evidence “not only that higher co-payments are a barrier for more families the higher they are, but also that state policy actions to reduce co-payments increase CCDF accessibility”), citing U.S. Gov’t Accountability Off., GAO-23-106073, *Subsidy Eligibility and Use in Fiscal Year 2019 and State Program Changes during the Pandemic* 8 (2023), <https://perma.cc/KV7J-HN9V> (“[S]ome families limited the amount of care they used for their children or did not accept a subsidy at all due to an inability to pay their family co-payment.”); Ex. 17, Center for American Progress Comment at 2 (ACF_006033) (“The families that most need subsidies often cannot afford to participate in the subsidy system specifically because of this cost burden [of rising copays].”); Deana Grobe et al., *Struggling to Pay the Bills: Using Mixed-Methods to Understand Families’ Financial Stress and Child Care Cost* at 22–26, 39, published in 6 Contemporary Perspectives in Family Research 93–121 (2012), <https://perma.cc/XA3A-SUE9> (outlining hardships imposed by high copays).

1 The 2026 Rule did not discuss that data. And it cited no evidence that
 2 families in *any* state can afford copays over 7%. Indeed, the 2026 Rule did not
 3 analyze whether copays over 7% created a barrier to access. In failing to do so,
 4 ACF ignored an “important aspect of the problem,” “the relevant data,” *State*
 5 *Farm*, 463 U.S. at 43, and the “earlier factual findings” that underlay the copay
 6 cap. *Organized Vill. of Kake*, 795 F.3d at 966 (citation omitted).

7 **Second**, ACF said nothing to address the other rationale for the
 8 copayment cap: that copays over 7% place a *disproportionate* burden on low-
 9 income families and undermine the *equality* of access to childcare that the Act
 10 seeks to ensure. As explained above, the Act requires States to set payment
 11 rates to ensure that children in the CCDF program have “equal access” to
 12 childcare relative to children whose families pay privately. 42 U.S.C.
 13 § 9858c(c)(4)(A). As ACF found in 2024, the average family spends 7% of its
 14 income on childcare, with low-income families paying a far higher share than
 15 high-income families. 89 Fed. Reg. at 15368. Therefore, parents who pay more
 16 than 7% of their paycheck as a copay pay a higher share than families who do
 17 not receive assistance. *See id.* ACF concluded that this disparity undermined
 18 the goal of the program to ensure equal access to childcare for the low-income
 19 families who receive CCDF assistance. *See id.* at 15388.

1 In ignoring both rationales for the 7% copay cap, the 2026 Rule
 2 overlooked two “important aspect[s] of the problem.” *State Farm*, 463 U.S. at
 3 43. The decision to rescind the cap was therefore arbitrary and capricious.

4 **2. Payment Practice Requirements**

5 ACF explained the decision to rescind the prospective and enrollment-
 6 based payment requirements with the same refrain—that their repeal would
 7 give States more “flexibility.” 2026 Rule, 91 Fed. Reg. at 25802. But again, ACF
 8 ignored the reasons it imposed those requirements: because without them,
 9 many States would continue to use different payment practices (retroactive
 10 and attendance-based payments) that are not “generally accepted” in the
 11 private market, 42 U.S.C. § 9858c(c)(2)(S), do not support the “fixed costs” of
 12 childcare, and discourage providers from serving children in the CCDF
 13 program. 2024 Rule, 89 Fed. Reg. at 15369, 15391–92.

14 **First**, ACF failed to consider market practices. The 2024 Rule rested on
 15 ACF’s finding that “[g]enerally accepted payment practices for parents who do
 16 not receive subsidies (which are most parents) require a set fee, are based on
 17 a child’s enrollment, and are paid in advance of when services are provided.”
 18 2024 Rule, 89 Fed. Reg. at 15369. Both the 2024 Rule and the 2026 comments
 19 cited studies that confirmed that attendance-based reimbursements are not
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 21

1 “the norm” in the private market. *Id.* at 15391–92.⁴ The Act itself makes the
 2 market a key aspect of the problem: It directs that State payment practices
 3 must be “generally accepted” in the private market in order “to provide
 4 stability of funding and encourage more child care providers to serve children”
 5 in the CCDF program. 42 U.S.C. § 9858c(c)(2)(S).

6 In authorizing retroactive and attendance-based payments, though, ACF
 7 did not analyze the private market at all. And it ignored its prior findings that
 8 those practices deviated from the market, in violation of the statute. Like the
 9 rescission of the copay cap, the decision to repeal the payment practice
 10 requirements thus unlawfully “failed to consider an important aspect of the
 11 problem,” failed to “examine the relevant data,” *State Farm*, 463 U.S. at 43,
 12 and failed to “address its prior factual findings” that underlay the repealed
 13 requirements. *Organized Vill. of Kake*, 795 F.3d at 966–67 (citation omitted).

14 **Second**, ACF ignored its prior conclusion that retroactive, attendance-
 15 based payments are insufficient to cover “the fixed costs of child care” and
 16 create financial instability for providers. 2024 Rule, 89 Fed. Reg. at 15369.

17 The 2024 Rule found that enrollment-based payments were necessary to
 18 meet the requirement that States “support the fixed costs of providing child
 19

20 ⁴ See, e.g., Ex. 18, Nat’l Ass’n for Educ. of Young Children Comment at 3–4
 21 (ACF_006553–54) (survey: 77% of program directors require prospective
 payments and 80% charge private pay families based on enrollment).

1 care services by delinking provider reimbursement rates from an eligible
2 child's occasional absences" "to the extent practicable." 42 U.S.C.
3 § 9858c(c)(2)(S)(ii); 2024 Rule, 89 Fed. Reg. at 15391. In the 2026 Rule, ACF
4 suggested that States could meet that requirement with attendance-based
5 alternatives: they could "provide full payment to providers as long as a child is
6 absent for five or fewer days in a four week period or attends for 85 percent of
7 the authorized time." 2026 Rule, 91 Fed. Reg. at 25803. But the rule does not
8 require States to adopt either of those alternatives. *See id.* at 25802 (States
9 may establish any "alternative approach justified in the CCDF Plan"). And in
10 2024, ACF specifically rejected both of those alternatives because "[n]either" of
11 them "reflect the norm for families paying privately" or "supported a provider's
12 fixed operational costs." 2024 Rule, 89 Fed. Reg. at 15392. The 2026 Rule did
13 not address those prior conclusions or explain why they no longer justified an
14 enrollment-based payment requirement.

15 In doing so, ACF ignored data showing that attendance-based payment
16 models do not support providers' fixed costs. The 2024 Rule itself cited studies
17 showing that the 85% attendance rule did not support those fixed costs because
18 a significant percentage of children tend to be absent more than 15% of the
19 time. *See, e.g.*, 2024 Rule, 89 Fed. Reg. at 15402–03 (in Washington, D.C.'s
20 Head Start program, 7% of children missed at least 20% of enrolled days).

1 The comments to the 2026 proposed rule reinforced the same conclusion.
 2 One cited medical studies finding that the average child under three years old
 3 is sick from 50 to 84 days per year—“far greater than what most states
 4 currently cover” in the CCDF program. Ex. 19, Early Care and Educ.
 5 Consortium Comment at 7 (ACF_006129). In an illustrative case study, when
 6 a provider’s state changed to attendance-based payments, “the program
 7 experienced immediate revenue instability”:

8 Routine child absences due to illness resulted in income losses of
 9 approximately 20–30 percent in some weeks, while operating costs
 10 remained unchanged. After several consecutive months of
 11 operating at a deficit despite stable enrollment and full
 12 compliance, this provider made the economically rational decision
 13 to discontinue serving CCDF subsidized infants and toddlers.

14 Ex. 20, Dr. Victoria Long-Coleman Comment at 3 (ACF_005494). As another
 15 provider attested, “During cold and flu season, if childcare providers were only
 16 paid based on attendance rather than enrollment, many of us simply would not
 17 survive the winter.” Ex. 18, Nat’l Ass’n for Educ. of Young Children Comment
 18 at 6 (ACF_006556) (collecting similar statements from providers). Other
 19 comments provided nationwide data showing that attendance-based payments
 20
 21

1 created financial instability for childcare providers.⁵ The 2026 Rule entirely
 2 failed to “examine” that “relevant data.” *State Farm*, 463 U.S. at 43.

3 Similarly, the 2024 Rule found that “providers need to receive payment
 4 before services are delivered to meet payroll and pay rent.” 89 Fed. Reg. at
 5 15391. The 2026 comments reinforced that finding, too, citing studies showing
 6 that making “[p]ayments to child care centers only after services are delivered
 7 creates revenue instability, contributes to high staff turnover, and undermines
 8 program quality, ultimately disrupting continuity of care and productive
 9 learning environments for children.” Ex. 21, Society for Research in Child
 10 Development Comment at 5 (ACF_006448). But the 2026 Rule did not grapple
 11 with it or the evidence behind it. *See* 91 Fed. Reg. at 25802–03.

12 ***Third***, ACF failed to consider its prior conclusions that attendance-
 13 based reimbursements depress provider participation in the CCDF program
 14 and shrink the range of options available to eligible families. As explained
 15 above, the goal of the Act’s payment practice provisions is to “encourage more
 16 child care providers to serve children who receive [CCDF] assistance.” 42
 17 U.S.C. § 9858c(c)(2)(S). But in 2024, ACF found that retroactive and
 18 attendance-based payments cause providers to “choose not to participate in the

19
 20 ⁵ *See, e.g.*, Ex. 22, Ga. Child Care Ass’n Comment at 1–2 (ACF_005136–37); Ex.
 21 23, Liminality Consulting Comment at 1–2 (ACF_005224–25); Ex. 24, Catholic
 Charities Comment at 3–4 (ACF_005582–83).

1 subsidy program or to limit the number of children receiving subsidies that
 2 they will serve at any given time,” 2024 Rule, 89 Fed. Reg. at 15392, which
 3 “limits parent choices,” *id.* at 15369. Conversely, the 2024 Rule cited evidence
 4 that enrollment-based prospective payments would “encourage more providers
 5 to accept subsidies” and “expand available child care options to parents
 6 participating in CCDF so they can find child care that meets their families’
 7 needs.” *Id.* (describing August 2023 survey showing that 73–80% of providers
 8 would “be more likely to serve families using subsidies” if states paid by
 9 enrollment or in advance). The 2026 comments bolstered that conclusion.⁶

10 In the 2026 Rule, however, ACF did not discuss its previous factual
 11 findings or the data behind them. Indeed, ACF did not assess the 2026 Rule’s
 12 likely impact on provider participation in the CCDF program at all.

13 3. Grants and Contracts Requirement

14 In repealing the grants and contracts requirement, ACF opined that
 15 vouchers allow for more “parental choice” because they “allow[] families to
 16 choose from a wider range of child care providers than just those with which

17
 18 ⁶ See, e.g., Ex. 24, Catholic Charities Comment at 2 (ACF_005581) (prospective
 19 and enrollment-based payments “are associated with greater participation in
 20 subsidy programs and improved access for families,” and “[p]roviders
 21 frequently cite unpredictable payments and attendance-based reimbursement
 as reasons for limiting or declining participation in subsidy systems”); *accord*
 Ex. 25, Advance Illinois Comment at 5 & n.12 (ACF_006461); Ex. 1, AFSCME
 Comment at 2 (ACF_004957).

1 the [State] may have direct service grants or contracts.” 2026 Rule, 91 Fed.
 2 Reg. at 25800. But the 2024 Rule already allowed families to use vouchers; it
 3 just required States to offer direct-service grants and contracts *in addition* to
 4 vouchers. Once again, the 2026 Rule ignored the reasons ACF imposed this
 5 requirement: grants and contracts “are required by the Act and can be one of
 6 the most effective tools to build supply in underserved geographic areas and
 7 for underserved populations.” 2024 Rule, 89 Fed. Reg. at 15381.

8 As explained above, the Act requires States to assure that parents have
 9 the “option” to enroll their children with a provider that has a “grant or
 10 contract” for childcare services. 42 U.S.C. § 9858c(c)(2)(A)(i). As ACF explained
 11 in 2024, many parents could not find suitable care even if they had vouchers.
 12 2024 Rule, 89 Fed. Reg. at 15370, 15382. By guaranteeing providers a stable
 13 funding source and requiring them to allocate slots for underserved
 14 populations, grants and contracts increase supply. *Id.* In doing so, they
 15 “increase parent choice” by giving parents options. *Id.* at 15413; *see id.* at 15381
 16 (the Act “identifies the use of grants or contracts as a key element of parental
 17 choice of child care providers”). The Act’s legislative history recognizes that
 18 grants and contracts are “particularly helpful in meeting the needs of specific
 19 populations of children and are well-suited to provide services in specific
 20 geographical areas.” S. Rep. No. 113-138, at 12 (2014). The 2026 comments also
 21

reinforced that grants and contracts grow childcare supply for underserved populations.⁷

Nonetheless, ACF failed to consider this rationale for the 2024 Rule's grants and contracts requirement or any of the evidence that supports it. Indeed, it did not assess the 2026 Rule's impact on the supply of childcare.

ACF acknowledged that commenters raised some of these issues. 2026 Rule, 91 Fed. Reg. at 25802–03. When commenters raise a reasonable concern, though, the agency must do more than simply acknowledge the concern; it must offer a “reasoned response.” *Ohio*, 603 U.S. at 293–95. Here, ACF responded to the above issues with the refrain that States could still adopt copay caps, prospective and enrollment-based payments, or grants and contracts if they wanted to. 2026 Rule, 91 Fed. Reg. at 25802–03. But that ignores the reason for the nationwide requirements: many States did not and

⁷ See, e.g., Ex. 16, Urban Institute Comment at 6 (ACF_006047) (citing research showing that grants and contracts increase investment in suitable care for children with disabilities and other underserved populations and encourage providers to serve those populations); Ex. 23, Liminality Consulting Comment at 2 (ACF_005225) (explaining that 32% of children in rural areas do not have childcare because of lack of supply, and removing the grants and contracts requirement would “remove a reliable source of funding for these providers” and thereby depress supply); Ex. 18, Nat’l Ass’n for Educ. of Young Children Comment at 5 (ACF_006555) (73% of providers would be more willing to accept families with subsidies if they could receive grants and contracts to serve infants and toddlers and children with disabilities).

1 would not adopt those practices voluntarily. *See* 2024 Rule, 89 Fed. Reg. at
 2 15368–70 (at least 20 States charged copays over 7%, only 8 States paid
 3 providers prospectively, only 36 paid providers based on enrollment, and only
 4 10 used any grants and contracts for direct services). ACF did not explain why
 5 it should authorize those States to charge copays that create barriers to access,
 6 use payment practices that do not align with the market, or refuse to offer
 7 grants and contracts to providers, in conflict with the text and goals of the
 8 statute and the rationales behind the 2024 Rule.

9 In sum, ACF “did not address” the concerns raised in the 2024 Rule and
 10 the 2026 comments “so much as sidestep” them. *Ohio*, 603 U.S. at 295. Its lack
 11 of analysis makes the rule arbitrary and capricious. *See id.*

12 **B. The 2026 Rule is contrary to the CCDF statute.**

13 The 2026 Rule is also contrary to the Act. As explained above, the statute
 14 provides that copays may not be “a barrier to families receiving assistance”
 15 under CCDF, 42 U.S.C. § 9858c(c)(5), and that payment practices must be
 16 “generally accepted” in the private market, *id.* § 9858c(c)(2)(S). In the 2024
 17 Rule, ACF found that copays over 7% of family income raised an impermissible
 18 “barrier” to childcare access and that retroactive and attendance-based
 19 payment practices were not “generally accepted” in the private market. 2024
 20 Rule, 89 Fed. Reg. at 15369, 15387–88, 15391–92. Without disputing those
 21

1 conclusions, the 2026 Rule authorized the very practices that ACF previously
 2 found to violate the statute.

3 The Act also requires States to assure that the parent of “each eligible
 4 child” is “given the option” to enroll their child with a provider that has a “grant
 5 or contract for the provision of [childcare] services” or to receive a voucher. 42
 6 U.S.C. § 9858c(c)(2)(A)(i). Since parents must be able to “select[]” one of those
 7 choices, both must be available. *Id.* § 9858c(c)(2)(A)(ii), (iii). “[E]ven though
 8 [grants and contracts] are required by the Act,” the 2024 Rule found that “only
 9 10 States and Territories report using any grants and contracts for direct
 10 services” 89 Fed. Reg. at 15381. Again, the 2026 Rule did not dispute this
 11 fact. But it completely removed the requirement for States to offer any grants
 12 and contracts at all. 2026 Rule, 91 Fed. Reg. at 25800. In permitting States not
 13 to use any grants or contracts to provide direct services, it authorizes them to
 14 violate the Act’s requirement to provide parents the option to enroll their
 15 children with a provider that has such a grant or contract.

16 Because the 2026 Rule authorizes States to violate the Act, it is “not in
 17 accordance with law.” *Protect Our Communities Found. v. LaCounte*, 939 F.3d
 18 1029, 1043 (9th Cir. 2019) (“agency action that sanction[s] unlawful conduct by
 19 third parties” is contrary to law under 5 U.S.C. § 706(2)).

III. The Court should vacate the 2026 Rule.

When an agency rule violates the APA, the statute directs the Court to “hold unlawful and set aside” the rule. 5 U.S.C. § 706. Thus, “vacatur and remand is the default remedy under the APA” *Natural Grocers v. Rollins*, 157 F.4th 1143, 1170 (9th Cir. 2025). Because the 2026 Rule is arbitrary and capricious, contrary to the Act, and leaves heavy financial burdens on small childcare providers and low-income families, the Court should vacate it.

CONCLUSION

The Court should vacate the 2026 Rule.

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Respectfully submitted,

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WORD COUNT CERTIFICATION

Per Local Rule 7(e)(6), I certify that this memorandum contains 8,378 words excluding the caption, table of contents, table of authorities, and signature block, in compliance with the Local Civil Rules.

/s/ Sean Ouellette
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