

# HOW THE NEW CHILD CARE AND DEVELOPMENT (CCDF) FINAL RULE IMPACTS TRIBES

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## Background

The Child Care and Development Block Grant (CCDBG) Act of 2014 provided opportunities to offer flexibility to Tribes in certain areas where there are unique needs. This final rule balances the CCDF dual goals of promoting families' financial stability and fostering healthy child development, while providing flexibility for Tribal communities. The requirements in this final rule focus on the importance of health and safety and high-quality child care. The final rule is the result of several months of consultation on the new law and on the Notice of Proposed Rulemaking (NPRM) with Tribes, as well as past consultations and Tribal listening sessions.

## Phased-In Implementation of the Final Rule

ACF will determine compliance with provisions in this final rule through review and approval of the FY 2020-2022 Tribal CCDF Plans that become effective October 1, 2019. Using the next Plan cycle to gauge compliance will give Tribes approximately three years (or close to 36 months) to implement the new provisions in the final rule.

## Additional Tribal Lead Agency Flexibility

**Tiered Requirements:** Tribes are subject to the CCDF requirements based on the size of their CCDF allocation. CCDF Tribal allocations vary from approximately \$25,000 to over \$14 million. We recognize that Tribes receiving smaller CCDF grants may not have sufficient resources or infrastructure to effectively operate a program that complies with all CCDF requirements. Therefore, in the final rule, there are now three categories of CCDF Tribal grants: large allocations, medium allocations, and small allocations. Each category is paired with different levels of CCDF requirements, with those Tribes receiving the largest allocations expected to meet most CCDF requirements. Tribes receiving smaller allocations are exempt from specific provisions in order to account for the size of the grant awards.

***Tribal Lead Agencies Receiving Small Allocations:*** The final rule exempts Tribes receiving small allocations (less than \$250,000 – 153 Tribes in FY 2016) from the majority of the CCDF requirements to give these Tribes more flexibility in how they spend their CCDF funds and to focus these funds on health and safety and quality spending. These Tribes must spend their CCDF funds in alignment with the goals and purposes of CCDF and comply with the health and safety requirements, monitoring requirements, background checks requirements, and quality spending requirements. To align with these limited CCDF requirements, Tribes with small allocations will also complete an abbreviated Plan. This approach balances increased flexibility with accountability and allows Tribes with small allocations the flexibility to spend their CCDF funds in ways that would most benefit their communities.

<b>Large Allocations</b> (over \$1,000,000) 34 Tribes in FY 2016	<b>Medium Allocations</b> (\$1,000,000 to \$250,000) 72 Tribes in FY 2016	<b>Small Allocations</b> (under \$250,000) 153 Tribes in FY 2016
<ul style="list-style-type: none"> <li>• Subject to the majority of CCDF requirements</li> <li>• Exempt from some requirements, including, but not limited to: consumer education website, the requirement to have licensing for child care services, market rate survey or alternative methodology (but still required to have rates that support quality), and the training and professional development framework</li> <li>• Subject to the monitoring requirements, but allowed the flexibility to propose an alternative monitoring methodology in their Plans</li> <li>• Subject to the background check requirements, but allowed to propose an alternative background check approach in their Plans</li> </ul>	<ul style="list-style-type: none"> <li>• Allowed the same exemptions as the large allocation category</li> <li>• Exempt from operating a certificate program</li> </ul>	<ul style="list-style-type: none"> <li>• Exempt from the majority of CCDF requirements, including those exemptions for large and medium allocation categories</li> <li>• Must spend their funds in alignment with CCDF goals and purposes</li> <li>• Only subject to: <ul style="list-style-type: none"> <li>• The health and safety requirements;</li> <li>• The monitoring requirements;</li> <li>• The background check requirements;</li> <li>• Quality spending requirements (except the infant/toddler quality);</li> <li>• Eligibility definitions of Indian child and Indian reservation/service area;</li> <li>• The 15% admin cap;</li> <li>• Fiscal, audit, and reporting requirements; and</li> <li>• Any other requirement defined by the Secretary.</li> </ul> </li> <li>• Submit an abbreviated Plan</li> </ul>

**Tribal Child Eligibility:** Tribal Lead Agencies that receive large or medium allocations have the flexibility to consider any Indian child in the Tribe’s service area to be eligible to receive CCDF funds, regardless of the family’s income, work, or training status, as long as their Tribal Median Income is below 85% of State Median Income in the State in which the Tribe is located. The final rule requires Tribes that take this option for categorical eligibility to ensure that provision for services still goes to those with the highest need. Tribal Lead Agencies will describe in their Plans how they are ensuring those families with the greatest need are receiving CCDF services. We believe that this flexibility allows Tribes to create opportunities to align CCDF programs with other Tribal early childhood programs, including Tribal home visiting, Early Head Start, and Head Start.

**Provisions for All Tribal CCDF Lead Agencies**

The final rule focuses on the importance of ensuring the health and safety of children in child care and promoting quality to support child development. Therefore, all Tribal Lead Agencies would be subject to:

**Protecting the health and safety of children in child care:** All Tribes, regardless of whether they are providing direct services, need to ensure that any child care program receiving CCDF dollar meets the health and safety requirements in the final rule, including, but not limited to requirements around a list

of health and safety topics; health and safety training; setting group size limits and ratios; and compliance with child abuse reporting requirements.

Tribal Lead Agencies would also be subject to the annual monitoring and comprehensive background check requirements. However, Tribal Lead Agencies may propose an alternative monitoring strategy or an alternative approach to the full background check requirements in their Plans.

**Enhancing the quality of child care:** The final rule requires all Tribes to spend a percentage of their total CCDF expenditures on quality improvement activities. Starting in FY 2017, Tribal Lead Agencies will spend increasing minimum amounts on quality activities, reaching nine percent in 2022. Tribal Lead Agencies are given a phase-in period to allow time to plan for the quality increases each year. Starting in FY 2019, Tribes receiving large and medium allocations are also subject to the three percent infant and toddler quality spending requirement. (Tribes with small allocations are exempt.)

There are a wide range of quality improvement activities that Tribes have the flexibility to implement, including training for child care providers, small grants to improve health and safety, or investing in curricula that incorporates native language. OCC plans to provide technical assistance to help Tribes determine which current activities may count towards meeting the quality requirements, as well as identify new opportunities to invest in the quality of the program.

### **Provisions for Tribes with Large and Medium Allocations**

With some exceptions, Tribal Lead Agencies with large and medium CCDF allocations are generally subject to the other new and revised provisions in the final rule including, but not limited to:

**Helping parents make informed consumer choices and access information to support child development:** Tribes with large and medium allocations are required to meet many of the provisions in the final rule related to consumer education, including, but not limited to the parental complaint hotline; the dissemination of information to parents, providers, and the general public on child care services and other assistance programs; making available provider-specific monitoring reports/results in a consumer-friendly and easily accessible format; and making a provider-specific consumer education statement that includes a summary of the Tribe's health and safety policies available to CCDF families.

**Provide equal access to stable, high-quality child care for low-income children:** Tribal Lead Agencies with large and medium allocations are also required to meet the provisions in the final rule that protect and lengthen eligibility periods so families have more time to become financially stable. This includes, but is not limited to: establishing minimum twelve month eligibility periods; establishing a graduated phaseout for families who, at redetermination, exceed initial Tribal income thresholds; offering a minimum of three months of continued assistance if choosing to terminate assistance for a family's non-temporary cessation in job, training, or education; and building the supply and quality of care for priority and vulnerable populations.

### **Tribal Exemptions for All Tribal Lead Agencies**

There are a number of exemptions for all Tribal Lead Agencies, including, but not limited to:

**Exemption from Consumer Education Website:** All Tribes are exempt from the requirement for a consumer education website due to the administrative cost of building a website, as well as the lack of reliable high-speed internet in some Tribal areas.

**Exemption from Market Rate Survey or Alternative Methodology:** All Tribes are also exempt from conducting a market rate survey or alternative methodology and all of the related requirements. Many Tribal communities are located in rural, isolated areas and conducting a market rate survey or alternative methodology is difficult. However, Tribes receiving large or medium allocations are still required to have payment rates that support quality.

**Exemption from Increasing Access to High-quality in Concentrations of Poverty:** Given the poverty that exists on many Tribal reservations and service areas, the final rule exempts Tribal Lead Agencies from the requirement to prioritize increasing access to high quality child care and development services for children and families in areas that have significant concentrations of poverty. Although Tribes are exempt from this requirement, Tribes receiving large and medium allocations are subject to the requirements to give priority for services to children with special needs, which may include any vulnerable populations as defined by the Lead Agency, and to children experiencing homelessness.

### **Tribal Exemptions for Tribal Lead Agencies with Medium and Small Allocations**

**Certificate Programs:** Tribes receiving CCDF allocations of \$1 million or less (medium and small allocations – a total of 225 Tribes in FY 2016) are exempt from operating a certificate program, and therefore, not required to offer the full range of child care services. Under the previous requirements, any Tribe receiving less than \$500,000 was exempt from operating a certificate program. The final rule effectively raises this threshold and gives these Tribes more flexibility in how they spend their CCDF funds.

### **P.L. 102-477 Tribes**

**102-477 Program:** Tribes continue to have the option to combine their CCDF funds with other employment and training related Federal grant funds under a plan authorized by the Indian Employment, Training and Related Services Demonstration Act of 1992 (Public Law 102-477). P.L. 102-477 programs are required to follow the CCDF regulations, with the exception of OCC reporting requirements, and are subject to the new and revised provisions in the final rule. 102-477 grantees may seek waivers from CCDF requirements.