

# ACF

## Administration for Children and Families

U.S. DEPARTMENT OF HEALTH AND HUMAN SERVICES  
Administration on Children, Youth and Families

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and Renovation Procedures for Indian Tribes

### CHILD CARE AND DEVELOPMENT FUND POLICY INTERPRETATION QUESTION

**TO:** Tribal Child Care and Development Fund (CCDF) Lead Agencies  
**SUBJECT:** Construction and Renovation of Child Care Facilities

**LEGAL AND  
RELATED  
REFERENCES:** Section 6580(c)(6) of the Child Care and Development Block Grant (CCDBG)  
Act of 1990 (P.L. 101-508) as amended by P.L. 102-401, P.L. 102-586, P.L. 103-  
171, P.L. 104-193, and P.L. 105-33. ACYF-CC-PI-05, dated August 18, 1997 and  
ACYF-PI-CC-97-06, dated November 4, 1997. 45 CFR 98.2 and 98.84. Preamble  
to final rule published July 24, 1998 at 63 FR 39978.

**BACKGROUND:** The Personal Responsibility and Work Opportunity Reconciliation Act of 1996  
(P.L. 104-193) amended the CCDBG Act to allow Tribal Lead Agencies to use  
CCDF funds for construction or renovation of child care facilities. A tribal Lead  
Agency must first request and receive approval from the Administration for  
Children and Families (ACF) before using CCDF funds for construction or major  
renovation. Requests must follow uniform procedures (45 CFR 98.84; ACYF-CC-  
PI-05, dated August 18, 1997; and ACYF-PI-CC-97-06, dated November 4,  
1997).

A number of questions have arisen concerning these procedures. This document  
lists those questions and provides answers.

Note: The term "renovation" as used in this document refers to major renovation  
(as defined at 45 CFR 98.2).

**TOPICS:** Assessing Need, Planning, & Developing an Application  
Rental/Lease Issues  
Cost Allocation  
Procurement Procedures  
Separate Grant Award  
Other Issues

**INQUIRIES:** Direct all inquiries to the appropriate ACF Regional Administrator (see  
Attachment A).

\_\_\_\_\_/s/\_\_\_\_\_  
Patricia Montoya  
Commissioner  
Administration on Children, Youth  
and Families



## Assessing Need, Planning, and Developing an Application

1. **Question:** According to the tribal construction and renovation procedures (ACYF-CC-PI-05; dated August 18, 1997, pp. 3-4), a Tribal Lead Agency should conduct a community needs assessment to determine the need for construction or renovation. What does this mean?

**Answer:** ACF has not prescribed a specific format or content for the needs assessment. However, the assessment should be designed to determine if there is a need to construct or renovate a child care facility and, if so, how the facility can be developed in a manner that best meets community needs. This process might involve:

- assessing the condition and adequacy of existing facilities;
- examining the current need for child care in the community (including population demographics; what type of child care meets the needs of the community);
- projecting whether the need for child care is likely to continue or change in the future;
- determining the best location and evaluating the site for the proposed facility;
- determining the size of the facility based on community needs and available resources; and
- estimating start-up and operating costs for the facility and evaluating whether adequate resources exist to meet these costs.

2. **Question:** Does a Tribal Lead Agency need to obtain ACF approval before spending CCDF funds for planning costs necessary for a construction or renovation project?

**Answer:** No. A Tribal Lead Agency may, without prior ACF approval, use CCDF funds for reasonable and necessary planning and consultant costs associated with assessing the need for construction or renovation or for preparing an application to spend CCDF funds on construction or renovation. Such costs could include the costs of hiring an architect to develop plans and specifications.

If funds have already been transferred to the separate grant award for construction or renovation, these funds can be used to pay for the planning or consultant costs. If funds have not yet been transferred to the separate award, the Tribal Lead Agency may use CCDF funds from its general Tribal Mandatory or Discretionary grant award for planning or consultant costs; however, once ACF approves the application, a retroactive adjustment must be made to charge these costs to the separate construction and renovation grant award.

A Tribal Lead Agency may only use CCDF funds to pay for the costs of an architect, engineer, or other consultant for a project that is subsequently approved by ACF. If the project later fails to gain ACF approval, the Tribal Lead Agency must pay for the architectural, engineering or consultant costs using non-CCDF funds and must make a retroactive adjustment to its CCDF grant claims. Disapproval of a project is unlikely if the Tribe follows the application procedures and Federal requirements and works closely with its ACF Regional Office as it develops the project. A Tribe is encouraged to contact its ACF Regional Office for guidance before undertaking the initial planning process for a construction or renovation project.

## Rental/Lease Issues

3. **Question:** Can a Tribe charge rent to its Tribal Child Care Lead Agency (that is conducting direct child care services) for use of a tribally-owned child care facility?

**Answer:** If the facility was built solely using CCDF funds, the Tribe cannot charge rent to its Tribal Child Care Lead Agency. Because CCDF funds were already used to build the facility, use of CCDF funds to subsequently pay rent on the facility would be a duplicate payment of CCDF funds. A duplicate payment is an unnecessary and unallowable cost.

If the facility was built partially using CCDF funds (in combination with other funding sources), the guiding principle remains that there should not be a duplicate payment of CCDF funds. Therefore, the Tribal Child Care Lead Agency can pay rent only on that portion of the facility that CCDF did not fund. For example, if CCDF paid for one-third of the construction costs, the Tribal Child Care Lead Agency should use at least one-third of the building without paying rent.

If the tribally-owned facility was built without any CCDF funds, the Tribe could charge rent to the Tribal Child Care Lead Agency. However, consistent with 45 CFR 98.67, the lease would be subject to any restrictions in the Tribe's laws or procedures regarding "less-than-arms-length leases" (e.g., leases between two parties where one has influence or control over the other, or both parties are part of the same governmental unit). If the Tribe does not have its own policy regarding "less-than-arms-length leases", the amount of rent must be reasonable, reflecting the actual costs of ownership (such as mortgage payment, taxes, and insurance) with no unallowable profit for the Tribe.

Regardless of whether CCDF funds were used to pay for construction costs, CCDF funds may be used to pay the ongoing operating costs of the facility (e.g., electricity, water, janitorial services). Such costs are sometimes included in rent. Using CCDF funds to pay for the fair market costs of such ongoing operating costs would be allowable, even if the payment is called a rental agreement.

4. Question: In accordance with section 658F(b)(1) of the CCDBG Act, a Tribal Lead Agency cannot use CCDF funds to purchase an existing building or facility. Is a lease with an option to buy considered a "purchase"?

Answer: Yes. If payments made on the lease from CCDF funds are applied to the purchase and if the intent of the Lead Agency is to purchase a facility for child care, the lease with option to buy would be considered a purchase and therefore would be an unallowable use of CCDF funds.

## **Cost Allocation**

5. Question: Item 10 of the application procedures (ACYF-CC-PI-05; dated August 18, 1997, p.6) requires that, if a facility is to be used for purposes in addition to the operation of the CCDF program, costs must be allocated in accordance with applicable cost principles. What cost allocation principles apply?

Answer: Office of Management and Budget (OMB) Circular No. A-87 contains cost principles for Indian Tribal Governments. The Department of Health and Human Services has issued an implementation guide for OMB Circular A-87 (ASMB C-10). Both documents can be found on the World Wide Web at <http://www.hhs.gov/progorg/oarcp/tanf/index.htm>.

In addition, regulations at 45 CFR 98.55 provide that the Lead Agency and subgrantees keep on file cost allocation plans, as appropriate, that include costs allocated to the CCDF. Finally, the other program that will be using the facility may have cost allocation rules.

6. Question: Can tribal CCDF funds pay in whole or in part for the construction or renovation of a facility or portion of a facility that will be used partially by CCDF and partially by another program (e.g., in the case of a Head Start and child care collaboration)?

Answer: Yes, CCDF funds can be used to pay for all or part of the costs, depending on the circumstances of the collaboration. In fact, ACF encourages collaboration between child care and other programs that serve children and families. Regarding Head Start in particular, item 15 of the construction/renovation application procedures (ACYF-CC-PI-05; dated August 18, 1997, p.7) require the applicant to demonstrate child care/Head Start collaboration if there is a Head Start program in the service area.

However, any space (e.g., room, facility) constructed or renovated with CCDF funds must be used at least partially by the CCDF program. Furthermore, the other program (e.g., Head Start) that will use a CCDF-constructed or -renovated facility must pay for its use of the space, for example, by paying for its share of the construction or renovation costs or by paying rent under a lease agreement. If the other program pays

for its use of the space through a lease, rent must be paid on an ongoing basis (for as long as the other program uses the facility). If the other program pays rent on a facility that is constructed or renovated solely with CCDF funds, the rent must be treated as program income to the CCDF program.

In addition, the Tribal Lead Agency should demonstrate in its construction/ renovation application that a multiple-use facility is the best and most efficient way to provide CCDF services.

7. Question: If space constructed or renovated with CCDF funds will be used partially by CCDF and partially by another program (e.g., Head Start), can the other program pay for its use of the space by making in-kind contributions (e.g., equipment or property) or by paying for operating or staff costs for the facility?

Answer: Yes. If the other program pays for its use of the space at the time the facility is constructed or renovated by making in-kind donations of equipment or property that are used in the construction/renovation of the facility, the market value of the donation (at the time of donation) may be counted as cost-sharing of the construction/renovation costs in accordance with cost allocation principles.

If on the other hand, the other program pays for its use of the space by making contributions (operating costs, staff costs, or in-kind donations) after the facility is operational, the costs must be paid on an ongoing basis (for as long as the other program uses the facility), and the amount of the contributions must be equivalent to fair market rent.

In any case, grantees have the burden to maintain proper documentation that verifies the other program paid for operating/staff costs or made in-kind donations, shows the dollar value of those costs or donations, and indicates how the value was derived.

8. Question: Can CCDF pay for the construction or renovation of a facility or part of a facility (e.g., room) that will be used exclusively by another program (e.g., Head Start or child welfare)?

Answer: No. Under section 6580(c)(6) of the Child Care and Development Block Grant Act, a Tribe that applies and receives approval may use CCDF funds to make payments for the construction or renovation of facilities that will be used to carry out CCDF programs. The ACF cannot approve the use of CCDF funds for construction or renovation of space that is not necessary for CCDF purposes.

9. Question: Is allocation of construction/renovation costs always necessary? For example, is cost allocation required if a community group wants to use the child care center in the evening for a monthly meeting?

Answer: Allocation of construction/renovation costs is not necessary in limited circumstances where use of the facility for non-CCDF purposes is an incidental function (rather than an "intended function") that does not rise to the level of or compete with child care activities. More specifically, cost allocation is generally not required if non-CCDF use of the facility: (1) is limited to an occasional basis (e.g., for a few hours once a month); and (2) is outside the normal child care hours. However, even in such circumstances where allocation of construction/renovation costs is not required, it may be appropriate for the non-CCDF entity that is using a CCDF-constructed or -renovated facility to help to defray operating costs (such as electricity, water, janitorial services, etc.).

## **Procurement Procedures**

10. Question: Regulations at 45 CFR 98.84(d)(6) and the application procedures (ACYF-CC-PI-05; dated August 18, 1997, p.14) require that all facility construction and renovation transactions comply with the procurement procedures in 45 CFR 92.36, and must be conducted in a manner to provide, to the maximum extent practicable, open and free competition. Does this requirement prohibit a Tribe from serving as its own contractor (e.g., general contractor) on the project, rather than hiring an outside contractor?

Answer: No. If the Tribe is choosing to act as its own contractor, regulations at 45 CFR 92.36 (which establish requirements for procurements with contractors) are not relevant since the Tribe is choosing not to procure a contractor but to serve as the contractor itself.

However, if a Tribe proposes to act as its own contractor, the Tribe must demonstrate in its application the Tribe's experience and ability, for example by describing previous projects where the Tribe served as contractor. Furthermore, the Tribe cannot charge more than the market rate for a contractor in that locality.

11. Question: Do the Davis-Bacon Act (40 U.S.C. 276a) labor standards and prevailing wage rate requirements apply to CCDF construction and renovation projects?

Answer: No. The U.S. Department of Labor has found no basis for application of the Davis-Bacon prevailing wage rates to construction and renovation projects funded by CCDF. The Child Care and Development Block Grant Act does not impose Davis-Bacon requirements. However, Davis-Bacon requirements may still apply if a project is partly funded by another program that is subject to the Davis-Bacon Act. In such circumstances, a Tribe should contact the other program with any questions regarding the applicability of Davis-Bacon.

## **Separate Grant Award**

12. Question: ACF will transfer CCDF funds to be used for construction and renovation to a separate grant award with a separate grant document number.

How will a Tribal Lead Agency indicate the amount of CCDF funds that it would like to transfer to the separate grant award for construction and renovation?

Answer: The Tribal Lead Agency must indicate in its construction/renovation application the amount of CCDF funds that it wants to use for construction or renovation. Item 13 of the application procedures (ACYF-CC-PI-05; dated August 18, 1997; page 7) requires a statement of the amount of construction or renovation costs that will be paid with CCDF funds listed separately by the Federal fiscal year in which the CCDF funds become available. In its response to item 13, the Tribal Lead Agency should indicate if construction/renovation funds will be transferred from Tribal Mandatory or from Discretionary funds (or both).

In order to use CCDF funds awarded in a given fiscal year on construction or renovation, a Tribal Lead Agency must submit a construction/renovation application prior to July 1 of that fiscal year (see ACYF-CC-PI-05; dated August 18, 1997, p.3). This procedure allows time for ACF to transfer CCDF funds to the separate construction and renovation grant award prior to the end of the fiscal year.

For example, if a Tribe wants to use FY 1999 funds for construction or renovation, it must submit a construction/renovation application prior to July 1, 1999. This application must indicate (in item 13) the amount of FY 1999 funds that the Tribe wants to transfer to the separate grant award for construction and renovation.

13. Question: What should a Tribal Lead Agency do if it is unable to submit all the information required for an application prior to the July 1 deadline?

Answer: The Tribal Lead Agency should submit as much information as possible prior to the July 1 deadline. At an absolute minimum, the Tribe must provide complete responses to:

- item 1 -- lead agency information,
- item 2 -- contact information, and
- item 13 -- amount of CCDF funds. In item 13, the Tribe should indicate if the funds should be transferred from Tribal Mandatory or from Discretionary Funds (or both).

See pages 4 through 9 of ACYF-CC-PI-05 for the description of the 21 application items.

While complete responses are required for items 1, 2, and 13, the Tribal Lead Agency should provide as much information as possible for all 21 items in the application that is submitted prior to July 1. If information for one or more of the items is currently unavailable, the application should indicate the approximate date when the information will likely become available, and the Tribe should submit the additional information to the Regional Office as soon as the information is obtained.

Based on the Tribal Lead Agency's complete responses to items 1, 2, and 13, and any additional information available for the remaining items, ACF will transfer the amount of funds requested in item 13 to the separate grant award for construction and renovation. **However, transfer of CCDF funds to the separate grant award does not automatically allow the Tribe to spend the funds for construction or renovation.** CCDF funds cannot be used for construction or renovation (other than planning and consultant costs; see question 2 on page 3) until the Tribe submits, and ACF approves, a complete construction/renovation application. The ACF Regional Office cannot approve an application until necessary information for all of the application items is submitted.

Tribes should move expeditiously in completing their applications, and upon receiving ACF approval, finishing construction/renovation projects. Any funds not liquidated within the three-year liquidation period will revert to the Federal government. The liquidation time frame begins with the date that funds are originally awarded--not the date that funds are transferred to the separate grant award for construction and renovation.

14. Question: Regulations at 98.84(h) indicate that a construction and renovation project that requires and receives the approval of the Secretary must include as construction and renovation costs the following: (1) allowable planning costs; (2) labor, materials and services necessary for the functioning of the facility; and (3) initial equipment (defined as items which are tangible, non-expendable personal property having a useful life of more than five years). Is the Tribal Lead Agency required to use the same contractor for all of these costs?

Answer: No, although equipment and other costs that are part of a larger construction or renovation project must be treated as construction and renovation costs, the Tribal Lead Agency is not required to use the same contractor or vendor for all procurements related to a construction or renovation project. For example, the Tribe can separately purchase equipment from vendors who are not associated with the contractor who is responsible for the construction/renovation work.

15. Question: Should operating costs such as insurance premiums, maintenance costs and property taxes be paid for by using funds from the separate grant award for construction and renovation?

Answer: No. Operating costs must not come from the separate grant award for construction or renovation (although other CCDF funds from the Tribal Mandatory or Discretionary grant awards could be used for allowable operating costs). The separate grant award must only be used for one-time construction and renovation costs (or mortgage and interest payments if the project is financed through a loan).

Item 12 of the construction and renovation procedures (ACYF-CC-PI-05; dated August 18, 1997; pages 6-7) asks for an estimate of ongoing costs, but the procedures do not indicate that ongoing costs should be paid using funds from the separate grant award. This item is designed to ensure that the applicant has considered ongoing costs and has sufficient funds to cover these costs and operate the facility after the construction or renovation is completed.

## **Other Issues**

16. Question: Can a Tribal Lead Agency use CCDF funds to meet a matching requirement on a construction or renovation grant funded by another program (e.g., the Department of Housing and Urban Development)?

Answer: The use of Federal funds (e.g., CCDF funds) to satisfy another Federal program's matching requirement is prohibited unless allowed by specific statutory authority. The Child Care and Development

Block Grant Act does not contain this authority. Therefore, the other Federal program's statute would have to contain the necessary authority to allow the use of CCDF funds to meet a matching requirement. At this time, ACF is not aware of any programs with this authority.

CCDF funds, however, when approved by the ACF, can be used for construction or renovation projects that are partially funded by other sources (if the CCDF funds are not used to satisfy another program's matching requirement). In fact, ACF encourages Tribes to leverage funds from multiple sources, where possible.

17. Question: Can a Tribe serve non-CCDF-eligible children (i.e., children who are not eligible to receive CCDF services) in child care facilities that are constructed or renovated with CCDF funds?

Answer: A child care facility constructed or renovated with CCDF funds must be used primarily to serve CCDF-eligible children, and eligible children must receive priority over non-eligible children if only a limited number of the children needing services can be served. This policy is consistent with section 6580(c)(6) of the Child Care and Development Block Grant Act that says CCDF construction/ renovation funds are for facilities that will be used to carry out CCDF programs. However, there is no prohibition against serving some non-eligible children in the facility. (Note: CCDF-eligible children may or may not actually be receiving CCDF subsidies depending on the availability of funding and other factors).

18. Question: Do fees paid by parents for the cost of child care count as program income?

Answer: For CCDF programs where facility and operating costs are paid solely with CCDF funds and parent fees, fees paid by parents to the Tribal Lead Agency for the cost of child care must be counted as program income and reinvested in the child care program. If facility or operating costs are partially paid from non-CCDF sources (e.g., the Department of Housing and Urban Development), the treatment of program income depends on the specific circumstances. It is possible that under the particular facts, all or none of the income would be CCDF program income.

19. Question: Construction and renovation application procedures require a facility constructed or renovated with CCDF funds to be supported by a title insurance policy which insures the fee interest in the facility (ACYF-CC-PI-05; dated August 18, 1997; page 13). Is the title insurance required for a facility that is constructed or renovated on tribal lands held in trust by the U.S. government?

Answer: No. Since there is no fee interest in tribal lands that are held in trust by the U.S. government, title insurance is not required. "Fee interest" means clear, unconditional ownership interest. From a practical standpoint, title insurance is unnecessary because the Bureau of Indian Affairs thoroughly researches the title to ensure that it is free and clear before land is placed in trust. Title insurance, however, is required when a facility is constructed on privately-owned land, even if the land is within the boundaries of a reservation.