



Guidance to States, Territories, and Tribes for Requesting Waivers and Waiver Renewals for Child Care and Development Block Grant (CCDBG) Act Requirements Not Met Due to Coronavirus Disease of 2019 (COVID-19)

Overview/Background

The Child Care and Development Fund (CCDF) Plan is the application states, territories, and tribes use to apply for their block grant funding by providing a description of, and assurances about, the lead agency’s CCDF program and services. Jurisdictions are required by law to submit Plans every 3 years. The CCDF Plan serves as a planning document and is developed in collaboration with numerous partners and stakeholders to ensure that the CCDF program, over the 3-year Plan period, addresses the needs of families, providers, and communities. The FY 2019-2021 CCDF Plans were the first in which states¹ and territories were expected to be in full compliance with the new requirements in the Child Care and Development Block Grant (CCDBG) Act of 2014 and the associated final rule.

States not meeting CCDF requirements as of October 1, 2018 had their Plans conditionally approved and were placed on a corrective action plan (CAP) for one year (through September 30, 2019) to come into compliance. States were able to apply for, and receive, waivers through September 30, 2020 for specific background check requirements if certain milestones were met as of October 1, 2018. In April 2019, the Office of Child Care (OCC) sent preliminary notices of non-compliance and notifications of possible penalty to any state with instances of non-compliance. Throughout fiscal year (FY) 2019, OCC provided technical assistance to aid states and territories in meeting the requirements. During this time, states remained subject to this notice of non-compliance until the state demonstrated compliance with requirements by submitting a Plan Amendment to be approved by OCC. Any state or territory that did not meet Plan requirements by September 30, 2019 is now subject to possible penalty.

Final notices of non-compliance were to be sent to states in the second quarter of FY 2020, with applicable penalties to be taken in the fourth quarter of FY 2020 for states which had not met any criminal background check requirements, including the FBI check, and the fourth quarter of FY 2021 for states not meeting other requirements (including those for criminal background check CAPs). However, the Coronavirus Disease 2019 (COVID-19) pandemic began to unfold in early 2020 as OCC was preparing to issue these notices. As a result, OCC did not issue any final notices to any State during this unprecedented pandemic. Since March 2020, states, territories,

¹ Throughout this document, the term “states” refers to the 50 states and DC.

and tribes have had the opportunity to request temporary waivers for extraordinary circumstances in response to COVID-19 (in accordance with 45 CFR § 98.19). When approved, these waivers temporarily exempt jurisdictions from meeting CCDF requirements, including certain background check requirements.

The CCDBG Act of 2014 allows the Secretary the option to temporarily waive requirements in certain circumstances. With respect to extraordinary circumstances (e.g., natural disaster or financial crisis), lead agencies may apply for waivers for no more than two years, as applicable to the temporary circumstance or situation as specified at 45 CFR § 98.19. The CCDF final rule set out specific administrative requirements at 45 CFR § 98.19 for the requests for relief; the types of waivers allowed (including waivers for extraordinary circumstances); the contents of the waiver requests; the timeline within which the OCC needs to respond to waiver requests; the grounds on which a request might be terminated; the waiver renewal process; and the restrictions on what can be waived.

This document provides guidance to states (or states, territories, and tribes) for requesting new waivers, or waiver renewals, due to extraordinary circumstances based on ongoing COVID-19 challenges. These waivers allow for extension of the compliance deadlines as outline below. OCC recommends that states, territories, and tribes communicate with their Regional Office to discuss questions and timeframes about these waiver flexibilities. Lead agencies have the option for these waivers but shall consider their capacity to carry out the required background check and market rate survey (MRS) activities. Where possible, states are strongly encouraged to implement the full set of background checks as soon as possible, with focus on child safety. States are also encouraged to complete MRS activities, provided that they have confidence in the longer-term representativeness of the data, given the rapidly evolving child care market.

OCC has developed a process to review and approve waivers related to a variety of circumstances. Table 1 presents current and future scenarios for which waivers may be requested along with deadlines for submission and for which jurisdictions the waiver applies. The remainder of this document describes the processes for requesting these waivers.

Table 1

Scenarios for Requesting Waivers	Deadline	Jurisdiction Applicable	Process
Background Check Waivers for Extraordinary Circumstances for States Granted Transitional Waivers Expiring September 30, 2020	September 30, 2020	States (including DC)	Apply for a new waiver for extraordinary circumstances using an update to the ACF-118 system (Appendix A).

Scenarios for Requesting Waivers	Deadline	Jurisdiction Applicable	Process
Waivers for Extraordinary Circumstances for Non-Compliant Requirements	September 30, 2020	States (including DC)	Submit a waiver request for extraordinary circumstances using existing process. ²
Renewals for Current Waivers for Extraordinary Circumstances	January 28, 2021	States, territories, and tribes	Submit a renewal request to OCC Regional Office by email.
Waivers for Extraordinary Circumstances for FY2022-2024 CCDF Plan Period Market Rate Survey, Alternative Methodology, and Narrow Cost Analysis	July 1, 2021	States and territories	Apply for waiver by completing applicable sections in FY2022-2024 CCDF State and Territory Plan. ³

Requesting Waivers for Extraordinary Circumstances for Previously Met Requirements

Since March 12, 2020, OCC has been receiving waiver requests for extraordinary circumstances for CCDBG Act of 2014 and CCDF final rule requirements for provisions that were previously met. In order to request a such a waiver for extraordinary circumstances, the lead agency must email a written request to the OCC Regional Program Manager (RPM) that is addressed to the OCC Director.

According to the CCDBG Act and final rule, waiver requests for extraordinary circumstances must contain the following information:

- The reason why the lead agency is requesting the waiver, including a description of the extraordinary circumstances.
- Sufficient detail on the provision(s) from which the lead agency is seeking temporary relief and how relief from the sanction or the provision, by itself, will improve the delivery of child care services for children and families.
- Certification and description of how the health, safety, and well-being of children served through CCDF will not be compromised as a result of the waiver.
- Preferred start date (which may be retroactive to the time the extraordinary circumstances occurred) and the duration of the waiver.

² See “Tip Sheet for States and Territories: Using CCDF Amendments and Waiver Flexibilities to Meet the Child Care Needs as a Result of COVID-19” issued April 2020 for how to submit a waiver for extraordinary circumstances request: https://www.acf.hhs.gov/sites/default/files/occ/tipsheet_statesterritories4_24_2020.pdf

³ The FY2022-2024 CCDF State and Territory Plan Preprint is currently under development.

Requesting Background Check Waivers for Extraordinary Circumstances for States Granted Transitional Waivers Expiring September 30, 2020

In recognition of the significant challenges to implementing the CCDBG Act comprehensive background check requirements, OCC granted time-limited transitional waivers of up to 2 years, in one-year increments (through September 30, 2020), once significant milestones for background check requirements were met. These time-limited transitional waivers that states have already been granted are not subject to extension.

Due to widespread disruptions caused by COVID-19, OCC anticipates that many states will remain non-compliant with the background check requirements when transitional waivers expire on September 30, 2020. ***Therefore, OCC has determined that states will have the option to request a waiver for extraordinary circumstances for background check components that were previously waived. Any such waiver requests must include a justification linked to the COVID-19 pandemic.***

In order to request a waiver for extraordinary circumstances for a previously waived requirement, the state lead agency must email the OCC RPM to request access to the CCDF Plan for modification. Once the Regional Office “releases” the Plan for modification, the state lead agency must submit a waiver request using the “Appendix A: Background Check Waiver Request Form” on the ACF-118 submission site by **September 30, 2020**. The lead agency should not submit a separate waiver request letter. Note: In order to enter information in Appendix A, please refer to the “ACF-118 Submission Site State/Territory User Guide.”

The information entered in Appendix A must contain the following elements for each background check component (A.1 through A.13) with respect to which the state is seeking relief:

- The provision from which the state seeks relief and the reason why the lead agency is requesting the waiver for extraordinary circumstances for the previously waived requirement, including a description of the extraordinary circumstances and how it has impacted the implementation of the requirement.
- Sufficient detail on the provision(s) previously waived and how continued relief from the sanction or the provision, by itself, will improve the delivery of child care services for children and families.
- Certification and description of how the health, safety, and well-being of children served through CCDF will not be compromised as a result of a new waiver.

Lead agencies can update the existing information under these required elements in Appendix A to link to the COVID-19 extraordinary circumstances.

Pending approval, waivers for extraordinary circumstances will be granted with an expiration of September 30, 2021, the end of the current 2019-2021 CCDF State and Territory Plan period. NOTE: These waiver request timeframes and processes due to COVID-19 delays are also applicable to those states which received notice of a possible penalty in April 2019 due to unmet background check requirements. Upon approval of a waiver request, lead agencies have 60 days

to submit a CCDF Plan amendment to correspond with the provision(s) in the waiver request, specifically that a waiver for extraordinary circumstances was granted and any other relevant change to the previously waived policy.

Territories and Tribes - Because territory and tribal CCDF programs have different implementation timelines for coming into compliance with the CCDBG Act and the associated final rule, this section is not applicable to territories and tribes.

Requesting Waivers for Extraordinary Circumstances for Non-Compliant Requirements

Full implementation of all provisions in the CCDBG Act of 2014 and the CCDF final rule was required no later than September 30, 2018. States not meeting CCDF Plan requirements as of October 1, 2018 were placed on a CAP. Any state that did not meet CCDF Plan requirements by September 30, 2019 is now subject to a possible penalty and were to be sent final notices of non-compliance in early 2020. However, these letters were never sent due to the COVID-19 emergency.

Initial waiver guidance issued to states in April 2020 explained that non-compliant provisions were ineligible for a waiver, but that OCC would reevaluate that decision as the COVID-19 situation evolved. ***Due to the ongoing uncertainties of COVID-19, the OCC has determined that states may now request waivers due to extraordinary circumstances on requirements currently implicated in outstanding non-compliances. However, states not compliant with these requirements at the time any such waiver ends will be subject to penalty.***

States interested in exercising this option must do so **no later than September 30, 2020**. The process for requesting these new waivers for extraordinary circumstances is the same as for prior waivers for extraordinary circumstances. See “Requesting Waivers for Extraordinary Circumstances for Previously Met Requirements” above and the OCC website for the “Tip Sheet for States and Territories: Using CCDF Amendments and Waiver Flexibilities to Meet the Child Care Needs as a Result of COVID-19” for review of the process for requesting waivers.⁴

Pending approval, these requests will be granted with an expiration of September 30, 2021, the end of the current 2019-2021 CCDF State and Territory Plan period. Upon approval of a waiver request, lead agencies have 60 days to submit a CCDF Plan amendment to correspond with the provision(s) in the waiver request, specifically that a waiver for extraordinary circumstances was granted (i.e., that they have received an approved waiver and are working to implement by September 30, 2021 due to COVID-19) and any other relevant change to the non-compliant policy.

Territories and Tribes - Because territory and tribal CCDF programs have different implementation timelines for coming into compliance with full implementation of the CCDBG Act and the associated final rule, this section is not applicable to territories and tribes.

⁴ https://www.acf.hhs.gov/sites/default/files/occ/tipsheet_stateterritories4_24_2020.pdf

Requesting Renewals for Current Waivers for Extraordinary Circumstances

Currently, approved waivers for extraordinary circumstances for requirements impacted by COVID-19 for states, territories, and tribes have a one-year duration, expiring a year from the jurisdiction-requested effective date. ***Due to the ongoing uncertainties of COVID-19 and in an effort to align waiver durations, the OCC has determined that states, territories, and tribes will have the option to request renewals for their current waivers for extraordinary circumstances.***

States, territories, and tribes interested in exercising this option must do so **after September 30, 2020, but no later than January 28, 2021**. In order to request this renewal, the lead agency must email a written request to the OCC RPM that is addressed to the OCC Director. This request must contain the following information:

- The reason why the lead agency is requesting the extension, including an explanation of the need for additional time related to the extraordinary circumstances.
- Sufficient detail on the provision(s) previously waived and how continued relief from the sanction or the provision, by itself, will improve the delivery of child care services for children and families.
- Certification and description of how the health, safety, and well-being of children served through CCDF will not be compromised as a result of the extension.

Pending approval, these extension requests will be granted with an expiration date of September 30, 2021. For states and territories, this will align with the end of the current 2019-2020 CCDF Plan period; for tribes, this will not align with their plan period. Upon approval of a renewal, lead agencies have 60 days to submit a CCDF Plan amendment to update the waiver language in the Plan (i.e., the expiration date of the waiver).

Requesting Waivers for Extraordinary Circumstances for FY2022-2024 CCDF State and Territory Plan Period Market Rate Survey, Alternative Methodology, and Narrow Cost Analysis

Currently, lead agencies have the option to conduct a statistically valid and reliable (1) market rate survey (MRS) reflecting variations in the price to parents of child care services by geographic area, type of provider, and age of child, and/or (2) an ACF pre-approved alternative methodology, such as a cost estimation model (Section 658E(c)(4)(B) of the Act). If submitting only an alternative methodology, the lead agency must provide a description of its proposed approach to its ACF Regional Child Care Program Office for pre-approval in advance of the Plan submittal. Both of these approaches must be developed and conducted no earlier than 2 years before the date of submission of the Plan (Section 658E(c)(4)(B)(i) of the Act; 45 C.F.R. § 98.45 (c)). Along with either option, lead agencies must analyze the cost of providing child services, known as the narrow cost analysis, that meet basic health, safety, quality and staffing requirements (base level care) (45 C.F.R. § 98.45(b)(3), (f)(1)(ii)(A) and (f)(2)(ii)) and higher quality care at each level of quality, as defined by the lead agency (45 C.F.R. § 98.45(b)(4), (f)(1)(ii)(B), and (f)(2)(iii)).

Due to the COVID-19 pandemic, lead agencies may request a waiver for extraordinary

circumstances for up to one additional year (until July 1, 2022) to complete the required MRS and/or an ACF pre-approved alternative methodology. Lead agencies may also request the required narrow cost analysis be waived for one year (until July 1, 2022). These waiver requests must include a justification linked to the COVID-19 pandemic.

These waivers must be submitted through the FY 2022-2024 CCDF State and Territory Plan that is currently under development. ***States and territories needing additional time to complete their MRS, an alternative methodology, and/or narrow cost analysis will fill out the appropriate items in Section 4.2 and Appendix A of the 2022-2024 CCDF State and Territory Plan due July 1, 2021.***

Section 4.2 will ask states and territories to identify the lead agency's planned methodology(ies) to assess child care prices and/or costs (i.e., MRS, ACF pre-approved alternative methodology, or both; and narrow cost analysis or estimated cost of care) and the status of the lead agency's implementation of their planned approach(es). If a waiver is requested, states and territories must describe the status of their planned methodology(ies).

In Appendix A, waiver requests for extraordinary circumstances must contain the following information:

- The reason why the lead agency is requesting the waiver, including a description of the extraordinary circumstances directly related to the inability to conduct an MRS, alternative methodology, and/or narrow cost analysis or estimated cost of care within normal timeframes.
- Progress made towards conducting MRS, an alternative methodology, and/or narrow cost analysis or estimated cost of care and how relief from the sanction or the provision, by itself, will improve the delivery of child care services for children and families.
- Certification and description of how the health, safety, and well-being of children served through CCDF will not be compromised as a result of the waiver.

Pending approval, these requests will be granted for a one-year extension of the MRS/alternative methodology and narrow cost analysis deadlines, until July 1, 2022. States and territories which have already conducted MRS and/or an alternative methodology and a narrow cost analysis may not need additional time. The FY 2022-2024 CCDF State and Territory Plan Preprint will accommodate states and territories which want to request additional time and those which do not.

All states and territories wishing to apply for this waiver for extraordinary circumstances may do so regardless of their compliance status under the FY 2019-2021 CCDF Plan. States and territories requesting this waiver for extraordinary circumstances will still be expected to describe their rates and how they were established (e.g., either based on most recent MRS or other circumstance) in the FY 2022-2024 CCDF Plan. Upon completion of the preferred analysis approach, lead agencies have 60 days to submit a CCDF Plan amendment to update their policies.

Tribes – Because tribes are not required to conduct a MRS or an alternative methodology, this section is not applicable to tribes.