

--Proposed CCDF Regulatory Changes--

**TITLE 45--PUBLIC WELFARE AND HUMAN SERVICES
PART 98_CHILD CARE AND DEVELOPMENT FUND**

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Subpart A. Goals, Purposes and Definitions

Sec. 98.1 Goals and purposes

(a) The goals of the CCDF are to:

- (1) Allow each State maximum flexibility in developing child care programs and policies that best suit the needs of children and parents within the State;
- (2) Promote parental choice to empower working parents to make their own decisions on the child care that best suits their family's needs;
- (3) Encourage States to provide consumer education information to help parents make informed choices about child care;
- (4) Assist States to provide child care to parents trying to achieve independence from public assistance; and
- (5) Assist States in implementing the health, safety, licensing, and registration standards established in State regulations.

(b) The purpose of the CCDF is to increase the availability, affordability, and quality of child care services. The program offers Federal funding to States, Territories, Indian Tribes, and tribal organizations in order to:

- (1) Provide low-income families with the financial resources to find and afford high quality child care for their children and serve children in safe, healthy, nurturing child care settings that are highly effective in promoting learning, child development, school readiness and success;
- (2) Enhance the quality and increase the supply of child care and before- and after-school care services for all families, including those who receive no direct assistance under the CCDF, to support children's learning, development, and success in school;
- (3) Provide parents with a broad range of options in addressing their child care needs by expanding high quality choices available to parents across a range of child care settings and providing parents with information about the quality of child care programs;
- ~~(4) Minimize disruptions to children's development and learning by promoting continuity of care;~~
- ~~(5) Ensure program integrity and accountability in the CCDF program;~~
- ~~(6) Strengthen the role of the family and engage families in their children's development, education, and health;~~
- ~~(7) Improve the quality of, and coordination among Federal, State, and local child care programs, before- and after-school programs, and early childhood development programs to support early learning, school readiness, youth development, and academic success; and~~
- ~~(8) Increase the availability of early childhood development and before- and after-school care services.~~

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(c) The purpose of these regulations is to provide the basis for administration of the Fund. These regulations provide that Lead Agencies:

- (1) Maximize parental choice through the use of certificates and through grants and contracts;
- (2) Include in their programs a broad range of child care providers, including center-based care, family child care, in-home care, care provided by relatives and sectarian child care providers;
- (3) Provide quality child care that meets applicable requirements;
- (4) Coordinate planning and delivery of services at all levels;
- (5) Design flexible programs that provide for the changing needs of recipient families;
- (6) Administer the CCDF responsibly to ensure that statutory requirements are met and that adequate information regarding the use of public funds is provided; and
- (7) Design programs that provide uninterrupted service to families and providers, to the extent statutorily possible.

Sec. 98.2 Definitions

For the purpose of this part and part 99:

The Act refers to the Child Care and Development Block Grant Act of 1990, section 5082 of the Omnibus Budget Reconciliation Act of 1990, Pub. L. 101-508, as amended and codified at 42 U.S.C. 9858 et seq.

ACF means the Administration for Children and Families;

Application is a request for funding that includes the information required at § 98.13;

Assistant Secretary means the Assistant Secretary for Children and Families, Department of Health and Human Services;

Caregiver means an individual who provides child care services directly to an eligible child on a person-to-person basis;

Categories of care means center-based child care, family child care and in-home care;

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Center-based child care provider means a provider licensed or otherwise authorized to provide child care services for fewer than 24 hours per day per child in a non-residential setting, unless care in excess of 24 hours is due to the nature of the parent(s)' work;

Child care certificate means a certificate (that may be a check, or other disbursement) that is issued by a grantee directly to a parent who may use such certificate only as payment for child care services or as a deposit for child care services if such a deposit is required of other children being cared for by the provider, pursuant to § 98.30. Nothing in this part shall preclude the use of such certificate for sectarian child care services if freely chosen by the parent. For the purposes of this part, a child care certificate is assistance to the parent, not assistance to the provider;

Child Care and Development Fund (CCDF) means the child care programs conducted under the provisions of the Child Care and Development Block Grant Act, as amended. The Fund consists of Discretionary Funds authorized under section 658B of the amended Act, and Mandatory and Matching Funds appropriated under section 418 of the Social Security Act;

Child care provider that receives assistance means a child care provider that receives Federal funds under the CCDF pursuant to grants, contracts, or loans, but does not include a child care provider to whom Federal funds under the CCDF are directed only through the operation of a certificate program;

Child care services, for the purposes of § 98.50, means the care given to an eligible child by an eligible child care provider;

Construction means the erection of a facility that does not currently exist;

The Department means the Department of Health and Human Services;

Discretionary funds means the funds authorized under section 658B of the Child Care and Development Block Grant Act. The Discretionary funds were formerly referred to as the Child Care and Development Block Grant;

Eligible child means an individual who meets the requirements of § 98.20;

Eligible child care provider means:

- (1) A center-based child care provider, a family child care provider, an in-home child care provider, or other provider of child care services for compensation that--
 - (i) Is licensed, regulated, or registered under applicable State or local law as described in § 98.40; and
 - (ii) Satisfies State and local requirements, including those referred to in § 98.41 applicable to the child care services it provides; or
- (2) A child care provider who is 18 years of age or older who provides child care services only to eligible children who are, by marriage, blood relationship, or court decree, the grandchild, great grandchild, sibling (if such provider lives in separate residence), niece, or nephew of such provider, and complies with any applicable requirements that govern child care provided by the relative involved;

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Facility means real property or modular unit appropriate for use by a grantee to carry out a child care program;

Family child care provider means one or more individual(s) who provide child care services for fewer than 24 hours per day per child, as the sole caregiver, in a private residence other than the child's residence, unless care in excess of 24 hours is due to the nature of the parent(s)' work;

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Indian Tribe means any Indian Tribe, band, nation, or other organized group or community, including any Alaska Native village or regional or village corporation as defined in or established pursuant to the Alaska Native Claims Settlement Act (43 U.S.C. Sec. 1601 et seq.) that is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians;

Deleted: Group home child care provider means two or more individuals who provide child care services for fewer than 24 hours per day per child, in a private residence other than the child's residence, unless care in excess of 24 hours is due to the nature of the parent(s)' work;

In-home child care provider means an individual who provides child care services in the child's own home;

Lead Agency means the State, territorial or tribal entity designated under §§ 98.10 and 98.16(a) to which a grant is awarded and that is accountable for the use of the funds provided. The Lead Agency is the entire legal entity even if only a particular component of the entity is designated in the grant award document.

Licensing or regulatory requirements means requirements necessary for a provider to legally provide child care services in a State or locality, including registration requirements established under State, local or tribal law;

Liquidation period means the applicable time period during which a fiscal year's grant shall be liquidated pursuant to the requirements at § 98.60;

Major renovation means: (1) structural changes to the foundation, roof, floor, exterior or load-bearing walls of a facility, or the extension of a facility to increase its floor area; or (2) extensive alteration of a facility such as to significantly change its function and purpose, even if such renovation does not include any structural change;

Mandatory funds means the general entitlement child care funds described at section 418(a)(1) of the Social Security Act;

Matching funds means the remainder of the general entitlement child care funds that are described at section 418(a)(2) of the Social Security Act;

Modular unit means a portable structure made at another location and moved to a site for use by a grantee to carry out a child care program;

Obligation period means the applicable time period during which a fiscal year's grant shall be obligated pursuant to § 98.60;

Parent means a parent by blood, marriage or adoption and also means a legal guardian, or other person standing in loco parentis;

The Plan means the Plan for the implementation of programs under the CCDF;

Program period means the time period for using a fiscal year's grant and does not extend beyond the last day to liquidate funds;

Programs refers generically to all activities under the CCDF, including child care services and other activities pursuant to § 98.50 as well as quality and availability activities pursuant to § 98.51;

Provider means the entity providing child care services;

The regulation refers to the actual regulatory text contained in parts 98 and 99 of this chapter;

Real property means land, including land improvements, structures and appurtenances thereto, excluding movable machinery and equipment;

Secretary means the Secretary of the Department of Health and Human Services;

Sectarian organization or sectarian child care provider means religious organizations or religious providers generally. The terms embrace any organization or provider that engages in religious conduct or activity or that seeks to maintain a religious identity in some or all of its functions. There is no requirement that a sectarian organization or provider be managed by clergy or have any particular degree of religious management, control, or content;

Sectarian purposes and activities means any religious purpose or activity, including but not limited to religious worship or instruction;

Services for which assistance is provided means all child care services funded under the CCDF, either as assistance directly to child care providers through grants, contracts, or loans, or indirectly as assistance to parents through child care certificates;

Sliding fee scale means a system of cost sharing by a family based on income and size of the family, in accordance with § 98.42;

State means any of the States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands of the United States, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, and includes Tribes unless otherwise specified;

Tribal mandatory funds means the child care funds set aside at section 418(a)(4) of the Social Security Act. The funds consist of between one and two percent of the aggregate Mandatory and Matching child care funds reserved by the Secretary in each fiscal year for payments to Indian Tribes and tribal organizations;

Tribal organization means the recognized governing body of any Indian Tribe, or any legally established organization of Indians, including a consortium, which is controlled, sanctioned, or chartered by such governing body or which is democratically elected by the adult members of the Indian community to be served by such organization and which includes the maximum participation of Indians in all phases of its activities: Provided, that in any case where a contract is let or grant is made to an organization to perform services benefiting more than one Indian Tribe, the approval of each such Indian Tribe shall be a prerequisite to the letting or making of such contract or grant; and

Types of providers means the different classes of providers under each category of care. For the purposes of the CCDF, types of providers include non-profit providers, for-profit providers, sectarian providers and relatives who provide care.

Sec. 98.3 Effect on State law.

(a) Nothing in the Act or this part shall be construed to supersede or modify any provision of a State constitution or State law that prohibits the expenditure of public funds in or by sectarian organizations, except that no provision of a State constitution or State law shall be construed to prohibit the expenditure in or by sectarian institutions of any Federal funds provided under this part.

(b) If a State law or constitution would prevent CCDF funds from being expended for the purposes provided in the Act, without limitation, then States shall segregate State and Federal funds.

Subpart B. General Application Procedures

Sec. 98.10 Lead Agency responsibilities

The Lead Agency, as designated by the chief executive officer of the State (or by the appropriate Tribal leader or applicant), shall:

(a) Administer the CCDF program, directly or through other governmental or non-governmental agencies, in accordance with § 98.11;

(b) Apply for funding under this part, pursuant to § 98.13;

(c) Consult with appropriate representatives of local government in developing a Plan to be submitted to the Secretary pursuant to § 98.14(b);

(d) Hold at least one public hearing in accordance with § 98.14(c);

(e) Coordinate CCDF services pursuant to § 98.12; and

(f) Implement practices and procedures to ensure program integrity and accountability pursuant to § 98.68.

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Sec. 98.11 Administration under contracts and agreements

(a) The Lead Agency has broad authority to administer the program through other governmental or non-governmental agencies. In addition, the Lead Agency can use other public or private local agencies to implement the program; however:

(1) The Lead Agency shall retain overall responsibility for the administration of the program, as defined in paragraph (b) of this section;

(2) The Lead Agency shall serve as the single point of contact for issues involving the administration of the grantee's CCDF program; and

(3) Administrative and implementation responsibilities undertaken by agencies other than the Lead Agency shall be governed by written agreements that specify the mutual roles and responsibilities of the Lead Agency and the other agencies in meeting the requirements of this part. The contents of the written agreement may vary based on the role the entity is asked to assume or the type of project undertaken, but must include, at a minimum, tasks to be performed, a schedule for completing tasks, a budget which itemizes categorical expenditures consistent with CCDF requirements at § 98.65(h), and indicators or measures to assess performance.

(b) In retaining overall responsibility for the administration of the program, the Lead Agency shall:

- (1) Determine the basic usage and priorities for the expenditure of CCDF funds;
- (2) Promulgate all rules and regulations governing overall administration of the Plan;
- (3) Submit all reports required by the Secretary;
- (4) Ensure that the program complies with the approved Plan and all Federal requirements;
- (5) Oversee the expenditure of funds by subgrantees and contractors;
- (6) Monitor programs and services;
- (7) Fulfill the responsibilities of any subgrantee in any: disallowance under subpart G; complaint or compliance action under subpart J; or hearing or appeal action under part 99 of this chapter; and
- (8) Ensure that all State and local or non-governmental agencies through which the State administers the program, including agencies and contractors that determine individual eligibility, operate according to the rules established for the program.

Sec. 98.12 Coordination and consultation

The Lead Agency shall:

- (a) Coordinate the provision of services for which assistance is provided under this part with the agencies listed in § 98.14(a).
- (b) Consult, in accordance with § 98.14 (b), with representatives of general purpose local government during the development of the Plan; and
- (c) Coordinate, to the maximum extent feasible, with any Indian Tribes in the State receiving CCDF funds in accordance with subpart I of this part.

Sec. 98.13 Applying for Funds

The Lead Agency of a State or Territory shall apply for Child Care and Development funds by providing the following:

- (a) The amount of funds requested at such time and in such manner as prescribed by the Secretary.
- (b) The following assurances or certifications:
 - (1) An assurance that the Lead Agency will comply with the requirements of the Act and this part;
 - (2) A lobbying certification that assures that the funds will not be used for the purpose of influencing pursuant to 45 CFR part 93, and, if necessary, a Standard Form LLL (SF-LLL) that discloses lobbying payments;
 - (3) An assurance that the Lead Agency provides a drug-free workplace pursuant to 45 CFR 76.600, or a statement that such an assurance has already been submitted for all HHS grants;
 - (4) A certification that no principals have been debarred pursuant to 45 CFR 76.500;
 - (5) Assurances that the Lead Agency will comply with the applicable provisions regarding nondiscrimination at 45 CFR part 80 (implementing title VI of the Civil Rights Act of 1964, as

amended), 45 CFR part 84 (implementing section 504 of the Rehabilitation Act of 1973, as amended), 45 CFR part 86 (implementing title IX of the Education Amendments of 1972, as amended) and 45 CFR part 91 (implementing the Age Discrimination Act of 1975, as amended), and;

(6) Assurances that the Lead Agency will comply with the applicable provisions of Public Law 103-277, Part C--Environmental Tobacco Smoke, also known as the Pro-Children Act of 1994, regarding prohibitions on smoking.

(c) The Child Care and Development Fund Plan, at times and in such manner as required in § 98.17; and

(d) Such other information as specified by the Secretary.

Sec. 98.14 Plan process

In the development of each Plan, as required pursuant to § 98.17, the Lead Agency shall:

(a)(1) Coordinate the provision of services funded under this Part with other Federal, State, and local child care and early childhood development programs, including such programs for the benefit of Indian children. The Lead Agency shall also coordinate with the State, and if applicable, tribal agencies responsible for:

(A) Public health, including the agency responsible for immunizations;

(B) Employment services/workforce development;

(C) Public education (including agencies responsible for pre-kindergarten services, if applicable, and educational services provided under Part B and C of the Individuals with Disabilities Education Act (20 U.S.C. § 1400));

(D) Providing Temporary Assistance for Needy Families;

(E) Child care licensing;

(F) Head Start collaboration;

(G) State Advisory Council on Early Childhood Education and Care authorized by the Head Start Act (42 U.S.C. 9831 *et seq.*) (if applicable);

(H) Statewide afterschool network or other coordinating entity for out-of-school time care (if applicable); and

(I) Emergency management and response.

(2) Provide a description of the results of the coordination with each of these agencies in the CCDF Plan.

(b) Consult with appropriate representatives of local governments;

(c)(1) Hold at least one hearing in the State, after at least 20 days of statewide public notice, to provide to the public an opportunity to comment on the provision of child care services under the Plan.

(2) The hearing required by paragraph (c)(1) shall be held before the Plan is submitted to ACF, but no earlier than nine months before the Plan becomes effective.

(3) In advance of the hearing required by this section, the Lead Agency shall make available to the public the content of the Plan as described in § 98.16 that it proposes to submit to the Secretary.

(d) Make the Plan and any Plan amendments publicly available.

Sec. 98.15 Assurances and certifications

(a) The Lead Agency shall include the following assurances in its

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CCDF Plan:

(1) Upon approval, it will have in effect a program that complies with the provisions of the CCDF Plan, and that is administered in accordance with the Child Care and Development Block Grant Act of 1990, as amended, section 418 of the Social Security Act, and all other applicable Federal laws and regulations;

(2) The parent(s) of each eligible child within the area served by the Lead Agency who receives or is offered child care services for which financial assistance is provided is given the option either:

(i) To enroll such child with a child care provider that has a grant or contract for the provision of the service; or

(ii) To receive a child care certificate as defined in § 98.2;

(3) In cases in which the parent(s), pursuant to § 98.30, elects to enroll their child with a provider that has a grant or contract with the Lead Agency, the child will be enrolled with the eligible provider selected by the parent to the maximum extent practicable;

(4) In accordance with § 98.30, the child care certificate offered to parents shall be of a value commensurate with the subsidy value of child care services provided under a grant or contract;

(5) With respect to State and local regulatory requirements (or tribal regulatory requirements), health and safety requirements, payment rates, and registration requirements, State or local (or tribal) rules, procedures or other requirements promulgated for the purpose of the CCDF will not significantly restrict parental choice from among categories of care or types of providers, pursuant to § 98.30(f).

(6) That if expenditures for pre-Kindergarten services are used to meet the maintenance-of-effort requirement, the State has not reduced its level of effort in full-day/full-year child care services, pursuant to § 98.53(h)(1).

(b) The Lead Agency shall include the following certifications in its CCDF Plan:

(1) In accordance with § 98.31, it has procedures in place to ensure that providers of child care services for which assistance is provided under the CCDF, afford parents unlimited access to their children and to the providers caring for their children, during the normal hours of operations and whenever such children are in the care of such providers;

(2) As required by § 98.32, the State maintains a record of substantiated parental complaints and makes information regarding such complaints available to the public on request;

(3) It will collect and disseminate to parents of eligible children and the general public, consumer education information that will promote informed child care choices, as required by § 98.33;

(4) There are in effect licensing requirements applicable to child care services provided within the State (or area served by Tribal Lead Agency), pursuant to § 98.40;

(5) There are in effect within the State (or other area served by the Lead Agency), under State or local (or tribal) law, requirements designed to protect the health and safety of children that are applicable to child care providers that provide services for which assistance is made available under the CCDF, pursuant to § 98.41;

(6) In accordance with § 98.41, procedures are in effect to ensure that child care providers of services for which assistance is provided under the CCDF comply with all applicable State or local (or tribal) health and safety requirements; and

(7) Payment rates for the provision of child care services, in accordance with § 98.43, are sufficient to ensure equal access for eligible children to comparable child care services in the State or sub-State area that are provided to children whose parents are not eligible to receive assistance under this program or under any other Federal or State child care assistance programs.

Sec. 98.16 Plan provisions

A CCDF Plan shall contain the following:

(a) Specification of the Lead Agency whose duties and responsibilities are delineated in § 98.10;

(b) A description of processes the Lead Agency will use to monitor administrative and implementation responsibilities undertaken by agencies other than the Lead Agency including descriptions of written agreements, monitoring and auditing procedures, and indicators or measures to assess performance pursuant to § 98.11(a)(3);

(c) The assurances and certifications listed under § 98.15;

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(d)(1) A description of how the CCDF program will be administered and implemented, if the Lead Agency does not directly administer and implement the program;
(2) Identification of the public or private entities designated to receive private donated funds and the purposes for which such funds will be expended, pursuant to § 98.53(f);

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(e) A description of the coordination and consultation processes involved in the development of the Plan, including a description of public-private partnership activities that promote business involvement in meeting child care needs pursuant to § 98.14(a) and (b);

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(f) A description of the public hearing process, pursuant to § 98.14(c);

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(g) Definitions of the following terms for purposes of determining eligibility, pursuant to §§ 98.20(a) and 98.44:

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- (1) Special needs child;
- (2) Physical or mental incapacity (if applicable);
- (3) Attending (a job training or educational program);
- (4) Job training and educational program;
- (5) Residing with;
- (6) Working (which must include some period of job search);
- (7) Protective services (if applicable), including whether children in foster care are considered in protective services for purposes of child care eligibility; and whether respite care is provided to custodial parents of children in protective services.
- (8) Very low income; and
- (9) in loco parentis.

(h) A description of policies to promote continuity of care for children and stability for families receiving services for which assistance is provided under this part, including:
(1) Policies which take into account developmental needs of children when authorizing child care services pursuant to § 98.20(d);
(2) Timely eligibility determination and processing of applications; and
(3) Policies which promote employment and income advancement for parents.

(i) For child care services pursuant to § 98.50:

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- (1) A description of such services and activities, including how the Lead Agency will address supply shortages through the use of grants and contracts. The description should identify shortages in the supply of high quality child care providers, including for specific localities and populations, list the data sources used to identify shortages, and explain how grants or contracts for direct services will be used to address such shortages;
- (2) Any limits established for the provision of in-home care and the reasons for such limits pursuant to §98.30(e)(1)(iv);
- (3) A list of political subdivisions in which such services and activities are offered, if such services and activities are not available throughout the entire service area;

(4) A description of how the Lead Agency will meet the needs of certain families specified at §98.50(e);

(5) Any additional eligibility criteria, priority rules, definitions, and policies, including any requirements for families to report changes in circumstances that may impact eligibility, established pursuant to §98.20(b) and (c);

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(j) A description of the activities to provide comprehensive consumer education, which must include a transparent system of quality indicators, pursuant to § 98.33(b), that provides parents with provider-specific information about the quality of child care providers in their communities; to increase parental choice; and to improve the quality and availability of child care, pursuant to § 98.51;

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(k) A description of the sliding fee scale(s) (including any factors other than income and family size used in establishing the fee scale(s)) that provide(s) for cost sharing by the families that receive child care services for which assistance is provided under the CCDF and how co-payments are affordable for families, pursuant to § 98.42. This shall also include a description of the criteria established by the Lead Agency, if any, for waiving contributions for families;

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(l) A description of the health and safety requirements, applicable to all providers of child care services for which assistance is provided under the CCDF, in effect pursuant to § 98.41, which must include a description of unannounced, on-site monitoring and other enforcement procedures in effect to ensure that providers of child care services for which assistance is provided under the CCDF comply with all applicable health and safety requirements pursuant to § 98.41(d);

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(m) A description of the child care certificate payment system(s), including the form or forms of the child care certificate, pursuant to § 98.30(c);

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(n) Payment rates and a summary of the facts, including a biennial valid local market price study or an alternate approved methodology, relied upon to determine that the rates provided are sufficient to ensure equal access pursuant to § 98.43, which must include a description of how the quality of providers of child care services for which assistance is provided under this part is taken into account when determining payment rates;

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(o) A detailed description of the hotline established or designated by the State for receiving parental complaints of how the State maintains a record of substantiated parental complaints, and how it makes information regarding those complaints available to the public on request, pursuant to § 98.32;

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(p) A detailed description of the procedures in effect for affording parents unlimited access to their children whenever their children are in the care of the provider, pursuant to § 98.31;

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(q) A detailed description of the licensing requirements applicable to child care services provided, any exemptions to licensing requirements and a rationale for such exemptions, and a description of how such licensing requirements are effectively enforced, pursuant to § 98.40;

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(r) Pursuant to § 98.33(d), the definitions or criteria used to implement the exception, provided in section 407(e)(2) of the Social Security Act, to individual penalties in the TANF work requirement applicable to a single custodial parent caring for a child under age six;

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(s)(1) When any Matching funds under § 98.53(b) are claimed, a description of the efforts to ensure that pre-Kindergarten programs meet the needs of working parents;

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(2) When State pre-Kindergarten expenditures are used to meet more than 10% of the amount required at § 98.53(c)(1), or for more than 10% of the funds available at § 98.53(b), or both, a description of how the State will coordinate its pre-Kindergarten and child care services to expand the availability of child care;

(t) A description of payment practices for child care services for which assistance is provided under this part, including timely reimbursement for services, how payment practices support providers' provision of high quality child care services, and practices to promote the participation of child care providers in the subsidy system;

(u) A description of processes in place to investigate and recover fraudulent payments and to impose sanctions on clients or providers in response to fraud, pursuant to § 98.68(d);

(v) An annual quality performance report by the States and Territories to the Secretary, which must be made publicly available and include:

(1) A description of progress related to meeting performance goals through activities to improve the quality of child care pursuant to § 98.51(f); and

(2) A report describing any changes to State regulations, enforcement mechanisms, or other State policies addressing health and safety based on an annual review and assessment of serious injuries or deaths of children occurring in child care (including both regulated and unregulated child care centers and family child care homes);

(w) Such other information as specified by the Secretary.

Sec. 98.17 Period covered by Plan

(a) For States, Territories, and Indian Tribes the Plan shall cover a period of two years.

(b) The Lead Agency shall submit a new Plan prior to the expiration of the time period specified in paragraph (a) of this section, at such time as required by the Secretary in written instructions.

Sec. 98.18 Approval and disapproval of Plans and Plan amendments

(a) Plan approval. The Assistant Secretary will approve a Plan that satisfies the requirements of the Act and this part. Plans will be approved not later than the 90th day following the date on which the Plan submittal is received, unless a written agreement to extend that period has been secured.

(b) Plan amendments.

(1) Approved Plans shall be amended whenever a substantial change in the program occurs. A Plan amendment shall be submitted within 60 days of the effective date of the change. Plan amendments will be approved not later than the 90th day following the date on which the amendment is received, unless a written agreement to extend that period has been secured.

(2) Lead Agencies must provide advanced written notice to affected parties (i.e., parents and child care providers) of substantial changes in the program that adversely affect income eligibility, payment rates, and/or sliding fee scales.

(c) Appeal of disapproval of a Plan or Plan amendment.

(1) An applicant or Lead Agency dissatisfied with a determination of the Assistant Secretary pursuant to paragraphs (a) or (b) of this section with respect to any Plan or amendment may, within 60 days after the date of receipt of notification of such determination, file a petition with the Assistant Secretary asking for reconsideration of the issue of whether such Plan or amendment conforms to the requirements for approval under the Act and pertinent Federal regulations.

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(2) Within 30 days after receipt of such petition, the Assistant Secretary shall notify the applicant or Lead Agency of the time and place at which the hearing for the purpose of reconsidering such issue will be held.

(3) Such hearing shall be held not less than 30 days, nor more than 90 days, after the notification is furnished to the applicant or Lead Agency, unless the Assistant Secretary and the applicant or Lead Agency agree in writing on another time.

(4) Action pursuant to an initial determination by the Assistant Secretary described in paragraphs (a) and (b) of this section that a Plan or amendment is not approvable shall not be stayed pending the reconsideration, but in the event that the Assistant Secretary subsequently determines that the original decision was incorrect, the Assistant Secretary shall certify restitution forthwith in a lump sum of any funds incorrectly withheld or otherwise denied. The hearing procedures are described in part 99 of this chapter.

Subpart C--Eligibility for Services

Sec. 98.20 A child's eligibility for child care services

(a) In order to be eligible for services under § 98.50 a child shall:

(1)(i) Be under 13 years of age; or,

(ii) At the option of the Lead Agency, be under age 19 and physically or mentally incapable of caring for himself or herself, or under court supervision;

(2) Reside with a family whose income does not exceed 85 percent of the State's median income (SMI) for a family of the same size. The SMI used to determine the eligibility threshold level must be based on the most recent SMI data that is published by the Bureau of the Census; and

(3)(i) Reside with a parent or parents (as defined in § 98.2) who are working or attending a job training or educational program; or

(ii) Receive, or need to receive, protective services, which may include specific populations of vulnerable children as identified by the Lead Agency, and reside with a parent or parents (as defined in § 98.2) other than the parent(s) described in paragraph (a)(3)(i) of this section.

(A) At grantee option, the requirements in paragraph (a)(2) of this section and in § 98.42 may be waived for families eligible for child care pursuant to this paragraph, if determined to be necessary on a case-by-case basis.

(B) At grantee option, the provisions in (A) apply to children in foster care when defined in the Plan, pursuant to § 98.16(g)(7).

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(b) A Lead Agency shall re-determine a child's eligibility for child care services no sooner than 12 months following the initial determination or most recent re-determination, subject to the following:

(1) During the period of time between re-determinations a Lead Agency, at its option, may consider a child to be eligible pursuant to some or all of the eligibility requirements specified in paragraph (a), if the child met all of the requirements in paragraph (a) on the date of the most recent eligibility determination or re-determination.

(2) The Lead Agency shall specify in the Plan any requirements for families to report changes in circumstances that may impact eligibility between re-determinations.

(c) Pursuant to § 98.16(i)(5), a grantee or other administering agency may establish eligibility conditions or priority rules in addition to those specified in this section and § 98.44 so long as they do not:

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(1) Discriminate against children on the basis of race, national origin, ethnic background, sex, religious affiliation, or disability;

(2) Limit parental rights provided under Subpart D; or

(3) Violate the provisions of this section, § 98.44, or the Plan. In particular, such conditions or priority rules may not be based on a parent's preference for a category of care or type of provider. In addition, such additional conditions or rules may not be based on a parent's choice of a child care certificate.

(d) Lead Agencies must take into consideration developmental needs of children when authorizing child care services and are not restricted to limiting authorized child care services based on the work, training, or educational schedule of the parent(s).

Subpart D--Program Operations (Child Care Services) Parental Rights and Responsibilities

Sec. 98.30 Parental choice

(a) The parent or parents of each eligible child within the State who receives or is offered child care services for which financial assistance is provided under CCDF, are given the option either:

(1) To enroll such child with an eligible child care provider that has a grant or contract for the provision of such services, in accordance with § 98.50; or

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(2) To receive a child care certificate as defined in § 98.2. Such choice shall be offered any time that child care services are made available to a parent.

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(b) When a parent elects to enroll the child with a provider that has a grant or contract for the provision of child care services, the child will be enrolled with the provider selected by the parent to the maximum extent practicable.

(c) In cases in which a parent elects to use a child care certificate, such certificate:

(1) Will be issued directly to the parent;

(2) Shall be of a value commensurate with the subsidy value of the child care services provided under paragraph (a)(1) of this section;

(3) May be used as a deposit for child care services if such a deposit is required of other children being cared for by the provider;

(4) May be used for child care services provided by a sectarian organization or agency, including those that engage in religious activities, if those services are chosen by the parent;

(5) May be expended by providers for any sectarian purpose or activity that is part of the child care services, including sectarian worship or instruction;

(6) Shall not be considered a grant or contract to a provider but shall be considered assistance to the parent.

(d) Child care certificates shall be made available to any parents offered child care services.

(e)(1) For child care services, certificates under paragraph (a)(2) of this section shall permit parents to choose from a variety of child care categories, including:

(i) Center-based child care;

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(ii) Family child care; and

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(iii) In-home child care, with limitations, if any, imposed by the Lead Agency and described in its Plan at § 98.16(i)(2). Under each of the above categories, care by a sectarian provider may not be limited or excluded.

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(2) Lead Agencies shall provide information regarding the range of provider options, as described in § 98.33, under paragraph (e)(1) of this section, including care by sectarian providers and relatives, to families offered child care services.

(f) With respect to State and local regulatory requirements under § 98.40, health and safety requirements under § 98.41, and payment rates under § 98.43, CCDF funds will not be available

to a Lead Agency if State or local rules, procedures or other requirements promulgated for purposes of the CCDF significantly restrict parental choice by:

(1) Expressly or effectively excluding:

- (i) Any category of care or type of provider, as defined in § 98.2; or
- (ii) Any type of provider within a category of care; or

(2) Having the effect of limiting parental access to or choice from among such categories of care or types of providers, as defined in § 98.2; or

(3) Excluding a significant number of providers in any category of care or of any type as defined in § 98.2.

(g) As long as provisions at paragraph (f) are met, parental choice provisions shall not be construed as prohibiting a Lead Agency from establishing policies that require providers of child care services for which assistance is provided under this part to meet higher standards of quality as identified in a quality improvement system or other transparent system of quality indicators pursuant to § 98.33.

(h) Parental choice provisions shall not be construed as prohibiting a Lead Agency from providing parents with information and incentives that encourage the selection of high quality child care.

Sec. 98.31 Parental access

The Lead Agency shall have in effect procedures to ensure that providers of child care services for which assistance is provided afford parents unlimited access to their children, and to the providers caring for their children, during normal hours of provider operation and whenever the children are in the care of the provider. The Lead Agency shall provide a detailed description of such procedures.

Sec. 98.32 Parental complaints

The State shall:

- (a) Establish or designate a hotline for parents to submit complaints about child care providers;
- (b) Maintain a record of substantiated parental complaints;
- (c) Make information regarding such parental complaints available to the public on request; and
- (d) The Lead Agency shall provide a detailed description of how such record is maintained and is made available.

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Sec. 98.33 Consumer education

The Lead Agency shall:

(a) Certify that it will collect and disseminate to parents and the general public, through a user-friendly, easy-to-understand website and other means identified by the Lead Agency, consumer education information that will promote informed child care choices including, at a minimum, information about:

- (1) The full range of available providers, including:
 - (i) Provider-specific information about any health and safety, licensing or regulatory requirements met by the provider, including the date the provider was last inspected;
 - (ii) Any history of violations of these requirements; and
 - (iii) Any compliance actions taken.
- (2) A description of health and safety requirements and licensing or regulatory requirements for child care providers and processes for ensuring that child care providers meet those requirements. The description must include information about the background check process for providers, and any other individuals in the child care setting (if applicable), and what offenses may preclude a provider from serving children.

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(b) As part of its consumer education activities, implement a transparent system of quality indicators appropriate to the provider setting, such as those reflected in a quality rating and improvement system or other system established by the Lead Agency, to provide parents with a way to differentiate the quality of child care providers available in their communities through a rating or other descriptive method. The system must:

- (1) Include provider-specific information about the quality of child care;
- (2) Describe the standards used to assess the quality of child care providers;
- (3) Take into account teaching staff qualifications and/or competencies, learning environment, curricula and activities; and
- (4) Disseminate provider-specific quality information, if available, through the website described in paragraph (a) of this section, or through an alternate mechanism which the Lead Agency shall describe in the CCDF Plan, which shall include a description of how the mechanism makes the system of quality indicators transparent.

(c) For families that receive assistance under this part, provide information about the child care options available to them as described in paragraphs (a) and (b), and specific information about the child care provider selected by the parent, including health and safety requirements met by the provider described at 98.41(a), any licensing or regulatory requirements met by the provider, any voluntary quality standards met by the provider pursuant to paragraph (b), and any history of violations of health and safety, licensing or regulatory requirements.

(d) Inform parents who receive TANF benefits about the requirement at section 407(e)(2) of the Social Security Act that the TANF agency make an exception to the individual penalties associated with the work requirement for any single custodial parent who has a demonstrated inability to obtain needed child care for a child under six years of age. The information may be provided directly by the Lead Agency, or, pursuant to Sec. 98.11, other entities, and shall include:

- (1) The procedures the TANF agency uses to determine if the parent has a demonstrated inability to obtain needed child care;
- (2) The criteria or definitions applied by the TANF agency to determine whether the parent has a demonstrated inability to obtain needed child care, including:
 - (i) "Appropriate child care";
 - (ii) "Reasonable distance";
 - (iii) "Unsuitability of informal child care";
 - (iv) "Affordable child care arrangements";
- (3) The clarification that assistance received during the time an eligible parent receives the exception referred to in paragraph (b) of this section will count toward the time limit on Federal benefits required at section 408(a)(7) of the Social Security Act.

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(e) Include in the biennial Plan the definitions or criteria the TANF agency uses in implementing the exception to the work requirement specified in paragraph (d) of this section.

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Sec. 98.34 Parental rights and responsibilities

Nothing under this part shall be construed or applied in any manner to infringe on or usurp the moral and legal rights and responsibilities of parents or legal guardians.

Subpart E--Program Operations (Child Care Services) Lead Agency and Provider Requirements

Sec. 98.40 Compliance with applicable State and local regulatory requirements

(a) Lead Agencies shall:

(1) Certify that they have in effect licensing requirements applicable to child care services provided within the area served by the Lead Agency;

~~(2) Any exemptions to licensing requirements and a rationale for such exemptions;~~

~~(3) Provide a detailed description of the requirements under paragraph (a)(1) of this section and of how they are effectively enforced.~~

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(b)(1) This section does not prohibit a Lead Agency from imposing more stringent standards and licensing or regulatory requirements on child care providers of services for which assistance is provided under the CCDF than the standards or requirements imposed on other child care providers.

(2) Any such additional requirements shall be consistent with the safeguards for parental choice in § 98.30(f).

Sec. 98.41 Health and safety requirements

(a) Although the Act specifically states it does not require the establishment of any new or additional requirements if existing requirements comply with the requirements of the statute, each Lead Agency shall certify that there are in effect, within the State (or other area served by the Lead Agency), under State, local or tribal law, requirements designed to protect the health and safety of children that are applicable to child care providers of services for which assistance is provided under this part. Such requirements shall include:

(1) The prevention and control of infectious diseases (including immunizations). With respect to immunizations, the following provisions apply:

(i) As part of their health and safety provisions in this area, Lead Agencies shall assure that children receiving services under the CCDF are age-appropriately immunized. Those health and safety provisions shall incorporate (by reference or otherwise) the latest recommendation for childhood immunizations of the respective State or territorial public health agency.

(ii) Notwithstanding paragraph (a)(1)(i) of this section, Lead Agencies may exempt:

(A) Children who are cared for by relatives (defined as grandparents, great grandparents, siblings (if living in a separate residence), aunts, and uncles).

(B) Children who receive care in their own homes.

(C) Children whose parents object to immunization on religious grounds.

(D) Children whose medical condition contraindicates immunization.

(iii) Lead Agencies shall establish a grace period in which children can receive services while families are taking the necessary actions to comply with the immunization requirements;

(2) Building and physical premises safety, which shall at a minimum include the following:

(i) Comprehensive background checks on child care providers that include use of fingerprints for State checks of criminal history records, use of fingerprints for checks of Federal Bureau of Investigation (FBI) criminal history records, clearance through the child abuse and neglect registry (if available), and clearance through sex offender registries (if available);

(ii) Compliance with applicable State and local fire, health and building codes, which must include ability to evacuate children in the case of an emergency. Compliance must be determined prior to child care providers serving children receiving assistance under this part; and

(iii) Emergency preparedness and response planning, including provisions for evacuation and relocation, shelter-in-place, and family reunification; and

(3) Minimum health and safety training appropriate to the provider setting and age of children served, which shall include, at a minimum, pre-service or orientation training in the following areas:

(i) First-aid and Cardiopulmonary Resuscitation (CPR);

(ii) Medication administration policies and practices;

(iii) Poison prevention and safety;

(iv) Safe sleep practices including Sudden Infant Death Syndrome (SIDS) prevention;

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- (v) Shaken baby syndrome and abusive head trauma prevention;
- (vi) Age-appropriate nutrition, feeding, including support for breastfeeding, and physical activity;
- (vii) Procedures for preventing the spread of infectious disease, including sanitary methods and safe handling of foods;
- (viii) Recognition and reporting of suspected child abuse and neglect;
- (ix) Emergency preparedness planning and response procedures;
- (x) Management of common childhood illnesses, including food intolerances and allergies;
- (xi) Transportation and child passenger safety (if applicable);
- (xii) Caring for children with special health care needs, mental health needs, and developmental disabilities in compliance with the Americans with Disabilities (ADA) Act; and
- (xiii) Child development, including knowledge of stages and milestones of all developmental domains appropriate for the ages of children receiving services.

(b) Lead Agencies may not set health and safety standards and requirements under paragraph (a) of this section that are inconsistent with the parental choice safeguards in § 98.30(f).

(c) The requirements in paragraph (a) of this section shall apply to all providers of child care services for which assistance is provided under this part, within the area served by the Lead Agency, except the relatives specified in paragraph (e) of this section.

(d) Each Lead Agency shall certify that procedures are in effect to ensure that child care providers of services for which assistance is provided under this part, within the area served by the Lead Agency, comply with all applicable State, local, or tribal health and safety requirements, including those described in paragraph (a) of this section. The Lead Agency's procedures:

- (1) Must include unannounced on-site monitoring. All child care providers of services for which assistance is provided under this part must be subject to on-site monitoring, including unannounced visits;
- (2) May not solely rely on child care provider self-certification of compliance with health and safety requirements included in paragraph (a) without documentation or other verification that requirements have been met;
- (3) Must require an unannounced visit in response to the receipt of a complaint pertaining to the health and safety of children in the care of a provider of services for which assistance is provided under this part; and
- (4) Must require child care providers of service for which assistance is provided under this part to report to a designated State, territorial, or tribal entity any serious injuries or deaths of children occurring in child care.

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(e) For the purposes of this section only, the term "child care providers," at the option of the Lead Agency, may not include in-home child care providers, pursuant to § 98.2, and grandparents, great grandparents, siblings (if such providers live in a separate residence), aunts, or uncles, pursuant to § 98.2. If the Lead Agency chooses not to include these providers, the Lead agency shall provide a description and justification in the CCDF Plan, pursuant to § 98.16(l), of requirements, if any, that apply to these providers.

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Sec. 98.42 Sliding fee scales

(a) Lead Agencies shall establish, and periodically revise, by rule, a sliding fee scale(s) that provides for cost sharing by families that receive CCDF child care services.

(b) A sliding fee scale(s) shall be based on income and the size of the family and may be based on other factors as appropriate.

(c) Lead Agencies may waive contributions from families meeting criteria established by the Lead Agency.

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(d) Lead Agencies may not use cost of care or subsidy payment rate as a factor in setting co-payment amounts.

Sec. 98.43 Equal access

(a) The Lead Agency shall certify that the payment rates for the provision of child care services under this part are sufficient to ensure equal access, for eligible families in the area served by the Lead Agency, to child care services comparable to those provided to families not eligible to receive CCDF assistance or child care assistance under any other Federal, State, or tribal programs.

(b) The Lead Agency shall provide a summary of the facts relied on to determine that its payment rates ensure equal access. At a minimum, the summary shall include facts showing:

(1) How a choice of the full range of providers, e.g., center, family, and in-home care, is made available;

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(2) How payment rates are adequate based on either:

(i) a valid, local, market price study conducted no earlier than two years prior to the effective date of the currently approved plan; or

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(ii) an alternative methodology, such as a cost estimation model, that has been proposed by the Lead Agency and approved in advance by the Assistant Secretary;

(3) How copayments based on a sliding fee scale, as stipulated at § 98.42, are affordable; and
(4) Any additional facts the Lead Agency considered in determining that its payment rates ensure equal access, such as information on the cost of providing quality child care.

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(c) The Lead Agency shall take into account the quality of child care when determining payment rates.

(d) A Lead Agency may not establish different payment rates based on a family's eligibility status or circumstances.

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(e) Payment rates under paragraph (a) of this section shall be consistent with the parental choice requirements in § 98.30.

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(f) Nothing in this section shall be construed to create a private right of action.

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Sec. 98.44 Priority for child care services

Lead Agencies shall give priority for services provided under § 98.50(a) to:

- (a) Children of families with very low family income (considering family size); and
- (b) Children with special needs.

Sec. 98.45 List of Providers

If a Lead Agency does not have a registration process for child care providers who are unlicensed or unregulated under State, local, or tribal law, it is required to maintain a list of the names and addresses of unlicensed or unregulated providers of child care services for which assistance is provided under this part.

Sec. 98.46 Nondiscrimination in admissions on the basis of religion

(a) Child care providers (other than family child care providers, as defined in § 98.2) that receive assistance through grants and contracts under the CCDF shall not discriminate in admissions against any child on the basis of religion.

(b) Paragraph (a) of this section does not prohibit a child care provider from selecting children for child care slots that are not funded directly (i.e., through grants or contracts to providers) with assistance provided under the CCDF because such children or their family members participate on a regular basis in other activities of the organization that owns or operates such provider.

(c) Notwithstanding paragraph (b) of this section, if 80 percent or more of the operating budget of a child care provider comes from Federal or State funds, including direct or indirect assistance under the CCDF, the Lead Agency shall assure that before any further CCDF assistance is given to the provider,

(1) The grant or contract relating to the assistance, or

(2) The admission policies of the provider specifically provide that no person with responsibilities in the operation of the child care program, project, or activity will discriminate, on the basis of religion, in the admission of any child.

Sec. 98.47 Nondiscrimination in employment on the basis of religion

(a) In general, except as provided in paragraph (b) of this section, nothing in this part modifies or affects the provision of any other applicable Federal law and regulation relating to discrimination in employment on the basis of religion.

(1) Child care providers that receive assistance through grants or contracts under the CCDF shall not discriminate, on the basis of religion, in the employment of caregivers as defined in § 98.2.

(2) If two or more prospective employees are qualified for any position with a child care provider, this section shall not prohibit the provider from employing a prospective employee who is already participating on a regular basis in other activities of the organization that owns or operates the provider.

(3) Paragraphs (a)(1) and (2) of this section shall not apply to employees of child care providers if such employees were employed with the provider on November 5, 1990.

(b) Notwithstanding paragraph (a) of this section, a sectarian organization may require that employees adhere to the religious tenets and teachings of such organization and to rules forbidding the use of drugs or alcohol.

(c) Notwithstanding paragraph (b) of this section, if 80 percent or more of the operating budget of a child care provider comes from Federal and State funds, including direct and indirect assistance under the CCDF, the Lead Agency shall assure that, before any further CCDF assistance is given to the provider,

(1) The grant or contract relating to the assistance, or

(2) The employment policies of the provider specifically provide that no person with responsibilities in the operation of the child care program will discriminate, on the basis of religion, in the employment of any individual as a caregiver, as defined in § 98.2.

Subpart F--Use of Child Care and Development Funds

Sec. 98.50 Child care services

(a) Of the funds remaining after applying the provisions of paragraphs (c), (d) and (e) of this section the Lead Agency shall spend a substantial portion to provide [direct](#) child care services to low-income working families.

(b) Child care services shall be provided:

(1) To eligible children, as described in § 98.20;

(2) Using a sliding fee scale, as described in § 98.42;

(3) Using funding methods provided for in § 98.30, which must include some use of grants or contracts for the provision of direct services, with the extent of such services determined by the Lead Agency after consideration of supply shortages described in the Plan pursuant to § 98.16(i)(1) and other factors as determined by the Lead Agency; and

(4) Based on the priorities in § 98.44.

(c) Of the aggregate amount of funds expended (i.e., Discretionary, Mandatory, and Federal and State share of Matching Funds), no less than four percent shall be used for activities to improve the quality of child care as described at § 98.51.

(d) Of the aggregate amount of funds expended (i.e., Discretionary, Mandatory, and Federal and State share of Matching Funds), no more than five percent may be used for administrative activities as described at § 98.52.

(e) Not less than 70 percent of the Mandatory and Matching Funds shall be used to meet the child care needs of families who:

- (1) Are receiving assistance under a State program under Part A of title IV of the Social Security Act,
- (2) Are attempting through work activities to transition off such assistance program, and
- (3) Are at risk of becoming dependent on such assistance program.

(f) Pursuant to § 98.16(i)(4), the Plan shall specify how the State will meet the child care needs of families described in paragraph (e) of this section.

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Sec. 98.51 Activities to improve the quality of child care

(a) No less than four percent of the aggregate funds expended by the Lead Agency from each fiscal year's allotment, and including the amounts expended in the State pursuant to § 98.53(b), shall be expended for quality activities.

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(1) These activities may include but are not limited to:

- (i) Activities designed to provide comprehensive consumer education to parents and the public;
- (ii) Activities that increase parental choice; and
- (iii) Activities designed to improve the quality and availability of child care, including, but not limited to those described in paragraph (2) of this section.

(2) Activities to improve the quality of child care services may include, but are not limited to, implementation of a systemic framework for organizing, guiding, and measuring progress of quality improvement activities which includes the following key components:

- (i) Activities to ensure the health and safety of children through licensing and health and safety standards pursuant to §§ 98.40 and 98.41;
- (ii) Establishment and implementation of age-appropriate learning and development guidelines for children of all ages, including infants, toddlers, and school-age children;
- (iii) Implementation of systems of quality improvement to evaluate, improve and communicate the level of quality of child care programs that may contain the following elements:
 - (A) Establishment of program standards that define expectations for quality and indicators of different levels of quality appropriate to the provider setting;
 - (B) Provision of supports, training and technical assistance to assist child care programs in meeting child care quality improvement standards;
 - (C) Provision of financial incentives and monetary supports to assist child care programs in meeting child care quality improvement standards;
 - (D) Provision of quality assurance and monitoring to measure child care program quality over time; and

(E) Implementation of strategies for outreach and consumer education efforts to promote knowledge of child care quality improvement standards to child care programs and to provide parents, including parents receiving assistance under this part, with provider-specific information about the quality of child care provider options available to them, pursuant to § 98.33(b).

(iv) Implementation of professional development systems to ensure a well-qualified child care workforce that may contain the following elements:

(A) Establishment of core knowledge and competencies to define what the workforce should know (content) and be able to do (skills) in their role working with children and their families.

(B) Establishment of career pathways to define options and a sequence of qualifications and ongoing professional development opportunities;

(C) Conducting professional development assessments to build capacity of higher education systems and other training institutions to meet the diverse needs of the child care workforce and address the full range of development and needs of children;

(D) Provision of access to professional development to ensure practitioners are made aware of, and receive supports and assistance to utilize professional development opportunities; and

(E) Provision of rewards or financial support to practitioners for participating in and completing education or training and for increased compensation;

(v) Implementation of an infrastructure of support to build child care provider capacity to promote health through wellness, physical activity and nutrition programs, to serve children with special needs, dual language learners and other vulnerable children (e.g., children in the child welfare system and homeless children), to implement family engagement strategies;

(vi) Assessment and evaluation of the effectiveness of quality improvement activities; and

(vii) Any other activities consistent with the intent of this section.

(b) Pursuant to § 98.16(j), the Lead Agency shall describe in its Plan the activities it will fund under this section.

(c) Non-Federal expenditures required by § 98.53(c) (i.e., the maintenance-of-effort amount) are not subject to the requirement at paragraph (a) of this section.

(d) Activities to improve the quality of child care services are not restricted to activities affecting children meeting eligibility requirements under § 98.20 or to child care providers of services for which assistance is provided under this part.

(e) Unless expressly authorized by law, targeted funds for quality improvement and other activities that may be included in appropriations law may not count towards meeting the four percent minimum requirement in paragraph (a).

(f) The Lead Agency must include in the Plan a description of performance goals associated with expenditure of funds on activities to improve the quality of child care pursuant to the quality performance report described at § 98.16(v).

Sec. 98.52 Administrative costs

(a) Not more than five percent of the aggregate funds expended by the Lead Agency from each fiscal year's allotment, including the amounts expended in the State pursuant to § 98.53(b), shall be expended for administrative activities. These activities may include but are not limited to:

Deleted: (i) Operating directly or providing financial assistance to organizations (including private non-profit organizations, public organizations, and units of general purpose local government) for the development, establishment, expansion, operation, and coordination of resource and referral programs specifically related to child care.¶
(ii) Making grants or providing loans to child care providers to assist such providers in meeting applicable State, local, and tribal child care standards, including applicable health and safety requirements, pursuant to Sec. Sec. 98.40 and 98.41.¶
(iii) Improving the monitoring of compliance with, and enforcement of, applicable State, local, and tribal requirements pursuant to Sec. Sec. 98.40 and 98.41.¶
(iv) Providing training and technical assistance in areas appropriate to the provision of child care services, such as training in health and safety, nutrition, first aid, the recognition of communicable diseases, child abuse detection and prevention, and care of children with special needs.¶
(v) Improving salaries and other compensation (such as fringe benefits) for full-and part-time staff who provide child care services for which assistance is provided under this part; and¶
(vi) Any other activities that are consistent with the intent of this section.¶

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- (1) Salaries and related costs of the staff of the Lead Agency or other agencies engaged in the administration and implementation of the program pursuant to § 98.11. Program administration and implementation include the following types of activities:
- (i) Planning, developing, and designing the Child Care and Development Fund program;
 - (ii) Providing local officials and the public with information about the program, including the conduct of public hearings;
 - (iii) Preparing the application and Plan;
 - (iv) Developing agreements with administering agencies in order to carry out program activities;
 - (v) Monitoring program activities for compliance with program requirements;
 - (vi) Preparing reports and other documents related to the program for submission to the Secretary;
 - (vii) Maintaining substantiated complaint files in accordance with the requirements of § 98.32;
 - (viii) Coordinating the provision of Child Care and Development Fund services with other Federal, State, and local child care, early childhood development programs, and before-and after-school care programs;
 - (ix) Coordinating the resolution of audit and monitoring findings;
 - (x) Evaluating program results; and
 - (xi) Managing or supervising persons with responsibilities described in paragraphs (a)(1)(i) through (x) of this section;
- (2) Travel costs incurred for official business in carrying out the program;
- (3) Administrative services, including such services as accounting services, performed by grantees or subgrantees or under agreements with third parties;
- (4) Audit services as required at § 98.65;
- (5) Other costs for goods and services required for the administration of the program, including rental or purchase of equipment, utilities, and office supplies; and
- (6) Indirect costs as determined by an indirect cost agreement or cost allocation plan pursuant to § 98.55.

(b) The five percent limitation at paragraph (a) of this section applies only to the States and Territories. The amount of the limitation at paragraph (a) of this section does not apply to Tribes or tribal organizations.

(c) Non-Federal expenditures required by § 98.53(c) (i.e., the maintenance-of-effort amount) are not subject to the five percent limitation at paragraph (a) of this section.

(d) The following activities do not count towards the five percent limitation on administrative expenditures in paragraph (a) of this section:

- (1) Establishment and maintenance of computerized child care information systems;
- (2) Establishing and operating a certificate program;
- (3) Eligibility determination;
- (4) Preparation / participation in judicial hearings;
- (5) Child care placement;
- (6) Recruitment, licensing, inspection of child care providers;
- (7) Training for Lead Agency or sub-recipient staff on billing and claims processes associated with the subsidy program;
- (8) Reviews and supervision of child care placements;
- (9) Activities associated with payment rate setting;
- (10) Resource and referral services; and
- (11) Training for child care staff.

(e) If a Lead Agency enters into agreements with sub-recipients for operation of the CCDF program, the amount of the contract or grant attributable to administrative activities as described at § 98.52(a) shall be counted towards the five percent limit.

Sec. 98.53 Matching fund requirements

(a) Federal matching funds are available for expenditures in a State based upon the formula specified at § 98.63(a).

(b) Expenditures in a State under paragraph (a) of this section will be matched at the Federal medical assistance rate for the applicable fiscal year for allowable activities, as described in the approved State Plan, that meet the goals and purposes of the Act.

(c) In order to receive Federal matching funds for a fiscal year under paragraph (a) of this section:
(1) States shall also expend an amount of non-Federal funds for child care activities in the State that is at least equal to the State's share of expenditures for fiscal year 1994 or 1995 (whichever is greater) under sections 402(g) and (i) of the Social Security Act as these sections were in effect before October 1, 1995; and

(2) The expenditures shall be for allowable services or activities, as described in the approved State Plan if appropriate, that meet the goals and purposes of the Act.

(3) All Mandatory Funds are obligated in accordance with § 98.60(d)(2)(i).

(d) The same expenditure may not be used to meet the requirements under both paragraphs (b) and (c) of this section in a fiscal year.

(e) An expenditure in the State for purposes of this subpart may be:

(1) Public funds when the funds are:

(i) Appropriated directly to the Lead Agency specified at § 98.10, or transferred from another public agency to that Lead Agency and under its administrative control, or certified by the contributing public agency as representing expenditures eligible for Federal match;

(ii) Not used to match other Federal funds; and

(iii) Not Federal funds, or are Federal funds authorized by Federal law to be used to match other Federal funds; or

(2) Donated from private sources when the donated funds:

(i) Are donated without any restriction that would require their use for a specific individual, organization, facility or institution;

(ii) Do not revert to the donor's facility or use;

(iii) Are not used to match other Federal funds;

(iv) Shall be certified both by the Lead Agency and by the donor (if funds are donated directly to the Lead Agency) or the Lead Agency and the entity designated by the State to receive donated funds pursuant to § 98.53(f) (if funds are donated directly to the designated entity) as available and representing funds eligible for Federal match; and

(v) Shall be subject to the audit requirements in § 98.65 of these regulations.

(f) Donated funds need not be transferred to or under the administrative control of the Lead Agency in order to qualify as an expenditure eligible to receive Federal match under this subsection. They may be given to the public or private entities designated by the State to implement the child care program in accordance with § 98.11 provided that such entities are identified and designated in the State Plan to receive donated funds in accordance with § 98.16(d)(2).

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(g) The following are not counted as an eligible State expenditure under this Part:

- (1) In-kind contributions; and
- (2) Family contributions to the cost of care as required by § 98.42.

(h) Public pre-kindergarten (pre-K) expenditures:

- (1) May be used to meet the maintenance-of-effort requirement only if the State has not reduced its expenditures for full-day/full-year child care services; and
- (2) May be eligible for Federal match if the State includes in its Plan, as provided in § 98.16(s), a description of the efforts it will undertake to ensure that pre-K programs meet the needs of working parents.
- (3) In any fiscal year, a State may use public pre-K funds for up to 20% of the funds serving as maintenance-of-effort under this subsection. In addition, in any fiscal year, a State may use other public pre-K funds as expenditures serving as State matching funds under this subsection; such public pre-K funds used as State expenditures may not exceed 30% of the amount of a State's expenditures required to draw down the State's full allotment of Federal matching funds available under this subsection.
- (4) If applicable, the CCDF Plan shall reflect the State's intent to use public pre-K funds in excess of 10%, but not for more than 20% of its maintenance-of-effort or 30% of its State matching funds in a fiscal year. Also, the Plan shall describe how the State will coordinate its pre-K and child care services to expand the availability of child care.

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- (i) Matching funds are subject to the obligation and liquidation requirements at § 98.60(d)(3).

Sec. 98.54 Restrictions on the use of funds

- (a) General. (1) Funds authorized under section 418 of the Social Security Act and section 658B of the Child Care and Development Block Grant Act, and all funds transferred to the Lead Agency pursuant to section 404(d) of the Social Security Act, shall be expended consistent with these regulations. Funds transferred pursuant to section 404(d) of the Social Security Act shall be treated as Discretionary Funds;
- (2) Funds shall be expended in accordance with applicable State and local laws, except as superseded by § 98.3.

- (b) Construction. (1) For State and local agencies and nonsectarian agencies or organizations, no funds shall be expended for the purchase or improvement of land, or for the purchase, construction, or permanent improvement of any building or facility. However, funds may be expended for minor remodeling, and for upgrading child care facilities to assure that providers meet State and local child care standards, including applicable health and safety requirements. Improvements or upgrades to a facility which are not specified under the definitions of construction or major renovation at §98.2 may be considered minor remodeling and are, therefore, allowable.

- (2) For sectarian agencies or organizations, the prohibitions in paragraph (b)(1) of this section apply; however, funds may be expended for minor remodeling only if necessary to bring the facility into compliance with the health and safety requirements established pursuant to § 98.41.
- (3) Tribes and tribal organizations are subject to the requirements at § 98.84 regarding construction and renovation.

(c) Tuition. Funds may not be expended for students enrolled in grades 1 through 12 for:

- (1) Any service provided to such students during the regular school day;
- (2) Any service for which such students receive academic credit toward graduation; or
- (3) Any instructional services that supplant or duplicate the academic program of any public or private school.

(d) Sectarian purposes and activities. Funds provided under grants or contracts to providers may not be expended for any sectarian purpose or activity, including sectarian worship or instruction. Pursuant to § 98.2, assistance provided to parents through certificates is not a grant or contract. Funds provided through child care certificates may be expended for sectarian purposes or activities, including sectarian worship or instruction when provided as part of the child care services.

(e) The CCDF may not be used as the non-Federal share for other Federal grant programs.

Sec. 98.55 Cost allocation

- (a) The Lead Agency and subgrantees shall keep on file cost allocation plans or indirect cost agreements, as appropriate, that have been amended to include costs allocated to the CCDF.
- (b) Subgrantees that do not already have a negotiated indirect rate with the Federal government should prepare and keep on file cost allocation plans or indirect cost agreements, as appropriate.
- (c) Approval of the cost allocation plans or indirect cost agreements is not specifically required by these regulations, but these plans and agreements are subject to review.

Subpart G--Financial Management

Sec. 98.60 Availability of funds

(a) The CCDF is available, subject to the availability of appropriations, in accordance with the apportionment of funds from the Office of Management and Budget as follows:

- (1) Discretionary Funds are available to States, Territories, and Tribes,
- (2) Mandatory and Matching Funds are available to States;
- (3) Tribal Mandatory Funds are available to Tribes.

(b) Subject to the availability of appropriations, in accordance with the apportionment of funds from the Office of Management and Budget, the Secretary:

- (1) May withhold up to one half of one percent of the CCDF funds made available for a fiscal year for the provision of technical assistance;
- (2) Will award the remaining CCDF funds to grantees that have an approved application and Plan.

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(c) The Secretary may make payments in installments, and in advance or by way of reimbursement, with necessary adjustments due to overpayments or underpayments.

(d) The following obligation and liquidation provisions apply to States and Territories:

- (1) Discretionary Fund allotments shall be obligated in the fiscal year in which funds are awarded or in the succeeding fiscal year. Unliquidated obligations as of the end of the succeeding fiscal year shall be liquidated within one year.
- (2)(i) Mandatory Funds for States requesting Matching Funds per Sec. 98.53 shall be obligated in the fiscal year in which the funds are granted and are available until expended.
- (ii) Mandatory Funds for States that do not request Matching Funds are available until expended.
- (3) Both the Federal and non-Federal share of the Matching Fund shall be obligated in the fiscal year in which the funds are granted and liquidated no later than the end of the succeeding fiscal year.
- (4) Except for paragraph (d)(5) of this section, determination of whether funds have been obligated and liquidated will be based on:
 - (i) State or local law; or,

(ii) If there is no applicable State or local law, the regulation at 45 CFR 92.3, Obligations and Outlays (expenditures).

(5) Obligations may include subgrants or contracts that require the payment of funds to a third party (e.g., subgrantee or contractor). However, the following are not considered third party subgrantees or contractors:

- (i) A local office of the Lead Agency;
- (ii) Another entity at the same level of government as the Lead Agency; or
- (iii) A local office of another entity at the same level of government as the Lead Agency.

(6) For purposes of the CCDF, funds for child care services provided through a child care certificate will be considered obligated when a child care certificate is issued to a family in writing that indicates:

- (i) The amount of funds that will be paid to a child care provider or family, and
- (ii) The specific length of time covered by the certificate, which is limited to the date established for redetermination of the family's eligibility, but shall be no later than the end of the liquidation period.

(7) In instances where third party agencies issue child care certificates, the obligation of funds occurs upon entering into agreement through a subgrant or contract with such agency, rather than when the third party issues certificates to a family.

(8) Any funds not obligated during the obligation period specified in paragraph (d) of this section will revert to the Federal government. Any funds not liquidated by the end of the applicable liquidation period specified in paragraph (d) of this section will also revert to the Federal government.

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(e) The following obligation and liquidation provisions apply to Tribal Discretionary and Tribal Mandatory Funds:

- (1) Tribal grantees shall obligate all funds by the end of the fiscal year following the fiscal year for which the grant is awarded. Any funds not obligated during this period will revert to the Federal government.
- (2) Obligations that remain unliquidated at the end of the succeeding fiscal year shall be liquidated within the next fiscal year. Any tribal funds that remain unliquidated by the end of this period will also revert to the Federal government.

(f) Cash advances shall be limited to the minimum amounts needed and shall be timed to be in accord with the actual, immediate cash requirements of the State Lead Agency, its subgrantee or contractor in carrying out the purpose of the program in accordance with 31 CFR part 205.

(g) Funds that are returned (e.g., loan repayments, funds deobligated by cancellation of a child care certificate, unused subgrantee funds) as well as program income (e.g., contributions made by families directly to the Lead Agency or subgrantee for the cost of care where the Lead Agency or subgrantee has made a full payment to the child care provider) shall,

- (1) if received by the Lead Agency during the applicable obligation period, described in paragraphs (d) and (e) of this section, be used for activities specified in the Lead Agency's approved plan and must be obligated by the end of the obligation period; or
- (2) if received after the end of the applicable obligation period described at paragraphs (d) and (e) of this section, be returned to the Federal government.

(h) Repayment of loans made to child care providers as part of a quality improvement activity pursuant to § 98.51, may be made in cash or in services provided in-kind. Payment provided in-kind shall be based on fair market value. All loans shall be fully repaid.

Deleted: pursuant to Sec. 98.51(a)(2)(ii).

(i) Lead Agencies shall recover child care payments that are the result of fraud. These payments shall be recovered from the party responsible for committing the fraud.

Sec. 98.61 Allotments from the Discretionary Fund

(a) To the 50 States, the District of Columbia, and the Commonwealth of Puerto Rico an amount equal to the funds appropriated for the Child Care and Development Block Grant, less amounts reserved for technical assistance and amounts reserved for the Territories and Tribes, pursuant to Sec. 98.60(b) and paragraphs (b) and (c) of this section, shall be allotted based upon the formula specified in section 658O(b) of the Act.

(b) For the U.S. Territories of Guam, American Samoa, the Virgin Islands of the United States, and the Commonwealth of the Northern Mariana Islands an amount up to one-half of one percent of the amount appropriated for the Child Care and Development Block Grant shall be reserved.

(1) Funds shall be allotted to these Territories based upon the following factors:

(i) A Young Child factor--the ratio of the number of children in the Territory under five years of age to the number of such children in all Territories; and

(ii) An Allotment Proportion factor--determined by dividing the per capita income of all individuals in all the Territories by the per capita income of all individuals in the Territory.

(A) Per capita income shall be:

(1) Equal to the average of the annual per capita incomes for the most recent period of three consecutive years for which satisfactory data are available at the time such determination is made; and

(2) Determined every two years.

(B) Per capita income determined, pursuant to paragraph (b)(1)(ii)(A) of this section, will be applied in establishing the allotment for the fiscal year for which it is determined and for the following fiscal year.(C) If the Allotment Proportion factor determined at paragraph (b)(1)(ii) of this section:

(1) Exceeds 1.2, then the Allotment Proportion factor of the Territory shall be considered to be 1.2; or

(2) Is less than 0.8, then the Allotment Proportion factor of the Territory shall be considered to be 0.8.

(2) The formula used in calculating a Territory's allotment is as follows:

[GRAPHIC] [TIFF OMITTED]

(ii) For purposes of the formula specified at paragraph (b)(2)(i) of this section, the term "YCF" means the Territory's Young Child factor as defined at paragraph (b)(1)(i) of this section.

(iii) For purposes of the formula specified at paragraph (b)(2)(i) of this section, the term "APF" means the Territory's Allotment Proportion factor as defined at paragraph (b)(1)(ii) of this section.

(c) For Indian Tribes and tribal organizations, including any Alaskan Native Village or regional or village corporation as defined in or established pursuant to the Alaska Native Claims Settlement Act (43 U.S.C. 1601 et seq) an amount up to two percent of the amount appropriated for the Child Care and Development Block Grant shall be reserved.

(1) Except as specified in paragraph (c)(2) of this section, grants to individual tribal grantees will be equal to the sum of:

(i) A base amount as set by the Secretary; and

(ii) An additional amount per Indian child under age 13 (or such similar age as determined by the Secretary from the best available data), which is determined by dividing the amount of funds available, less amounts set aside for eligible Tribes, pursuant to paragraph

- (c)(1)(i) of this section, by the number of all Indian children living on or near tribal reservations or other appropriate area served by the tribal grantee, pursuant to Sec. 98.80(e).
- (2) Grants to Tribes with fewer than 50 Indian children that apply as part of a consortium, pursuant to Sec. 98.80(b)(1), are equal to the sum of:
- (i) A portion of the base amount, pursuant to paragraph (c)(1)(i) of this section, that bears the same ratio as the number of Indian children in the Tribe living on or near the reservation, or other appropriate area served by the tribal grantee, pursuant to Sec. 98.80(e), does to 50; and
 - (ii) An additional amount per Indian child, pursuant to paragraph (c)(1)(ii) of this section.
- (3) Tribal consortia will receive grants that are equal to the sum of the individual grants of their members.
- (d) All funds reserved for Territories at paragraph (b) of this section will be allotted to Territories, and all funds reserved for Tribes at paragraph (c) of this section will be allotted to tribal grantees. Any funds that are returned by the Territories after they have been allotted will revert to the Federal government.
- (e) For other organizations, up to \$2,000,000 may be reserved from the tribal funds reserved at paragraph (c) of this section. From this amount the Secretary may award a grant to a Native Hawaiian Organization, as defined in section 4009(4) of the Augustus F. Hawkins-Robert T. Stafford Elementary and Secondary School Improvement Amendments of 1988 (20 U.S.C. 4909(4)) and to a private non-profit organization established for the purpose of serving youth who are Indians or Native Hawaiians. The Secretary will establish selection criteria and procedures for the award of grants under this subsection by notice in the Federal Register.

(f) Lead Agencies shall expend any funds that may be set-aside for targeted activities pursuant to annual appropriations law as directed by the Secretary.

Sec. 98.62 Allotments from the Mandatory Fund

- (a) Each of the 50 States and the District of Columbia will be allocated from the funds appropriated under section 418(a)(3) of the Social Security Act, less the amounts reserved for technical assistance pursuant to Sec. 98.60(b)(1) and the amount reserved for Tribes pursuant to paragraph (b) of this section, an amount of funds equal to the greater of:
- (1) the Federal share of its child care expenditures under subsections (g) and (i) of section 402 of the Social Security Act (as in effect before October 1, 1995) for fiscal year 1994 or 1995 (whichever is greater); or
 - (2) the average of the Federal share of its child care expenditures under the subsections referred to in subparagraph (a)(1) of this section for fiscal years 1992 through 1994.
- (b) For Indian Tribes and tribal organizations up to 2 percent of the amount appropriated under section 418(a)(3) of the Social Security Act shall be allocated according to the formula at paragraph (c) of this section. In Alaska, only the following 13 entities shall receive allocations under this subpart, in accordance with the formula at paragraph (c) of this section:
- (1) The Metlakatla Indian Community of the Annette Islands Reserve;
 - (2) Arctic Slope Native Association;
 - (3) Kawerak, Inc.;
 - (4) Maniilaq Association;
 - (5) Association of Village Council Presidents;
 - (6) Tanana Chiefs Conference;
 - (7) Cook Inlet Tribal Council;
 - (8) Bristol Bay Native Association;

- (9) Aleutian and Pribilof Islands Association;
- (10) Chugachmuit;
- (11) Tlingit and Haida Central Council;
- (12) Kodiak Area Native Association; and
- (13) Copper River Native Association.

(c)(1) Grants to individual Tribes with 50 or more Indian children, and to Tribes with fewer than 50 Indian children that apply as part of a consortium pursuant to Sec. 98.80(b)(1), will be equal to an amount per Indian child under age 13 (or such similar age as determined by the Secretary from the best available data), which is determined by dividing the amount of funds available, by the number of Indian children in each Tribe's service area pursuant to Sec. 98.80(e).

(2) Tribal consortia will receive grants that are equal to the sum of the individual grants of their members.

Sec. 98.63 Allotments from the Matching Fund

(a) To each of the 50 States and the District of Columbia there is allocated an amount equal to its share of the total available under section 418(a)(3) of the Social Security Act. That amount is based on the same ratio as the number of children under age 13 residing in the State bears to the national total of children under age 13. The number of children under 13 is derived from the best data available to the Secretary for the second preceding fiscal year.

(b) For purposes of this subsection, the amounts available under section 418(a)(3) of the Social Security Act excludes the amounts reserved and allocated under Sec. 98.60(b)(1) for technical assistance and under Sec. 98.62(a) and (b) for the Mandatory Fund.

(c) Amounts under this subsection are available pursuant to the requirements at Sec. 98.53(c).

Sec. 98.64 Reallotment and redistribution of funds

(a) According to the provisions of this section State and Tribal Discretionary Funds are subject to reallotment, and State Matching Funds are subject to redistribution. State funds are reallotted or redistributed only to States as defined for the original allocation. Tribal funds are reallotted only to Tribes. Funds granted to the Territories are not subject to reallotment. Any funds granted to the Territories that are returned after they have been allotted will revert to the Federal government.

(b) Any portion of a State's Discretionary Fund allotment that is not required to carry out its Plan, in the period for which the allotment is made available, shall be reallotted to other States in proportion to the original allotments. For purposes of this paragraph the term "State" means the 50 States, the District of Columbia, and the Commonwealth of Puerto Rico. The other Territories and the Tribes may not receive reallotted State Discretionary Funds.

(1) Each year, the State shall report to the Secretary either the dollar amount from the previous year's grant that it will be unable to obligate by the end of the obligation period or that all funds will be obligated during such time. Such report shall be postmarked by April 1st.

(2) Based upon the reallotment reports submitted by States, the Secretary will reallot funds.

(i) If the total amount available for reallotment is \$25,000 or more, funds will be reallotted to States in proportion to each State's allotment for the applicable fiscal year's funds, pursuant to Sec. 98.61(a).

(ii) If the amount available for reallotment is less than \$25,000, the Secretary will not reallot any funds, and such funds will revert to the Federal government.

(iii) If an individual reallotment amount to a State is less than \$500, the Secretary will not issue the award, and such funds will revert to the Federal government.

(3) If a State does not submit a reallotment report by the deadline for report submittal, either:

(i) The Secretary will determine that the State does not have any funds available for reallotment; or

- (ii) In the case of a report postmarked after April 1st, any funds reported to be available for reallocation shall revert to the Federal government.
 - (4) States receiving reallocated funds shall obligate and expend these funds in accordance with Sec. 98.60. The reallocation of funds does not extend the obligation period or the program period for expenditure of such funds.
- (c)(1) Any portion of the Matching Fund granted to a State that is not obligated in the period for which the grant is made shall be redistributed. Funds, if any, will be redistributed on the request of, and only to, those other States that have met the requirements of Sec. 98.53(c) in the period for which the grant was first made. For purposes of this paragraph the term "State" means the 50 States and the District of Columbia. Territorial and tribal grantees may not receive redistributed Matching Funds.
- (2) Matching Funds allotted to a State under Sec. 98.63(a), but not granted, shall also be redistributed in the manner described in paragraph (1) of this section.
 - (3) The amount of Matching Funds granted to a State that will be made available for redistribution will be based on the State's financial report to ACF for the Child Care and Development Fund (ACF-696) and is subject to the monetary limits at paragraph (b)(2) of this section.
 - (4) A State eligible to receive redistributed Matching Funds shall also use the ACF-696 to request its share of the redistributed funds, if any.
 - (5) A State's share of redistributed Matching Funds is based on the same ratio as the number of children under 13 residing in the State to the number of children residing in all States eligible to receive and that request the redistributed Matching Funds.
 - (6) Redistributed funds are considered part of the grant for the fiscal year in which the redistribution occurs.
- (d) Any portion of a Tribe's allotment of Discretionary Funds that is not required to carry out its Plan, in the period for which the allotment is made available, shall be reallocated to other tribal grantees in proportion to their original allotments. States and Territories may not receive reallocated tribal funds.
- (1) Each year, the Tribe shall report to the Secretary either the dollar amount from the previous year's grant that it will be unable to obligate by the end of the obligation period or that all funds will be obligated during such time. Such report shall be postmarked by a deadline established by the Secretary.
 - (2) Based upon the reallocation reports submitted by Tribes, the Secretary will reallocate Tribal Discretionary Funds among the other Tribes.
 - (i) If the total amount available for reallocation is \$25,000 or more, funds will be reallocated to other tribal grantees in proportion to each Tribe's original allotment for the applicable fiscal year pursuant to Sec. 98.62(c).
 - (ii) If the total amount available for reallocation is less than \$25,000, the Secretary will not reallocate any funds, and such funds will revert to the Federal government.
 - (iii) If an individual reallocation amount to an applicant Tribe is less than \$500, the Secretary will not issue the award, and such funds will revert to the Federal government.
 - (3) If a Tribe does not submit a reallocation report by the deadline for report submittal, either:
 - (i) The Secretary will determine that Tribe does not have any funds available for reallocation; or
 - (ii) In the case of a report received after the deadline established by the Secretary, any funds reported to be available for reallocation shall revert to the Federal government.
 - (4) Tribes receiving reallocated funds shall obligate and expend these funds in accordance with Sec. 98.60. The reallocation of funds does not extend the obligation period or the program period for expenditure of such funds.

Sec. 98.65 Audits and financial reporting

- (a) Each Lead Agency shall have an audit conducted after the close of each program period in accordance with OMB Circular A-133 and the Single Audit Act Amendments of 1996.
- (b) Lead Agencies are responsible for ensuring that subgrantees are audited in accordance with appropriate audit requirements.
- (c) Not later than 30 days after the completion of the audit, Lead Agencies shall submit a copy of their audit report to the legislature of the State or, if applicable, to the Tribal Council(s). Lead Agencies shall also submit a copy of their audit report to the HHS Inspector General for Audit Services, as well as to their cognizant agency, if applicable.
- (d) Any amounts determined through an audit not to have been expended in accordance with these statutory or regulatory provisions, or with the Plan, and that are subsequently disallowed by the Department shall be repaid to the Federal government, or the Secretary will offset such amounts against any other CCDF funds to which the Lead Agency is or may be entitled.
- (e) Lead Agencies shall provide access to appropriate books, documents, papers and records to allow the Secretary to verify that CCDF funds have been expended in accordance with the statutory and regulatory requirements of the program, and with the Plan.
- (f) The audit required in paragraph (a) of this section shall be conducted by an agency that is independent of the State, Territory or Tribe as defined by generally accepted government auditing standards issued by the Comptroller General, or a public accountant who meets such independent standards.
- (g) The Secretary shall require financial reports as necessary. Lead Agencies shall submit financial reports to the Department in a manner specified by the Secretary quarterly for each fiscal year until funds are expended.
- (h) At a minimum, a State or territorial Lead Agency's quarterly report shall include the following information on expenditures under CCDF grant funds, including Discretionary (which includes reallocated funding and any funds transferred from the TANF block grant), Mandatory, and Matching funds (which includes redistributed funding); and State Matching and Maintenance-of-Effort (MOE) funds:
 - (1) Child care administration;
 - (2) Quality activities excluding targeted funds;
 - (3) Targeted funds identified in appropriations law;
 - (4) Direct services;
 - (5) Non-direct services, including:
 - (i) Systems;
 - (ii) Certificate program cost / eligibility determination;
 - (iii) All other non-direct services; and
 - (6) Such other information as specified by the Secretary.
- (i) Tribal Lead Agencies shall submit financial reports annually.

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Sec. 98.66 Disallowance procedures

- (a) Any expenditures not made in accordance with the Act, the implementing regulations, or the approved Plan, will be subject to disallowance.
- (b) If the Department, as the result of an audit or a review, finds that expenditures should be disallowed, the Department will notify the Lead Agency of this decision in writing.
- (c)(1) If the Lead Agency agrees with the finding that amounts were not expended in accordance with the Act, these regulations, or the Plan, the Lead Agency shall fulfill the provisions of the disallowance notice and repay any amounts improperly expended; or
- (2) The Lead Agency may appeal the finding:
 - (i) By requesting reconsideration from the Assistant Secretary, pursuant to paragraph (f) of this section; or

- (ii) By following the procedure in paragraph (d) of this section.
- (d) A Lead Agency may appeal the disallowance decision to the Departmental Appeals Board in accordance with 45 CFR part 16.
- (e) The Lead Agency may appeal a disallowance of costs that the Department has determined to be unallowable under an award. A grantee may not appeal the determination of award amounts or disposition of unobligated balances.
- (f) The Lead Agency's request for reconsideration in (c)(2)(i) of this section shall be postmarked no later than 30 days after the receipt of the disallowance notice. A Lead Agency may request an extension within the 30-day time frame. The request for reconsideration, pursuant to (c)(2)(i) of this section, need not follow any prescribed form, but it shall contain:
 - (1) The amount of the disallowance;
 - (2) The Lead Agency's reasons for believing that the disallowance was improper; and
 - (3) A copy of the disallowance decision issued pursuant to paragraph (b) of this section.
- (g)(1) Upon receipt of a request for reconsideration, pursuant to (c)(2)(i) of this section, the Assistant Secretary or the Assistant Secretary's designee will inform the Lead Agency that the request is under review.
 - (2) The Assistant Secretary or the designee will review any material submitted by the Lead Agency and any other necessary materials.
 - (3) If the reconsideration decision is adverse to the Lead Agency's position, the response will include a notification of the Lead Agency's right to appeal to the Departmental Appeals Board, pursuant to paragraph (d) of this section.
- (h) If a Lead Agency refuses to repay amounts after a final decision has been made, the amounts will be offset against future payments to the Lead Agency.
- (i) The appeals process in this section is not applicable if the disallowance is part of a compliance review, pursuant to Sec. 98.90, the findings of which have been appealed by the Lead Agency.
- (j) Disallowances under the CCDF program are subject to interest regulations at 45 CFR part 30. Interest will begin to accrue from the date of notification.

Sec. 98.67 Fiscal requirements

- (a) Lead Agencies shall expend and account for CCDF funds in accordance with their own laws and procedures for expending and accounting for their own funds.
- (b) Unless otherwise specified in this part, contracts that entail the expenditure of CCDF funds shall comply with the laws and procedures generally applicable to expenditures by the contracting agency of its own funds.
- (c) Fiscal control and accounting procedures shall be sufficient to permit:
 - (1) Preparation of reports required by the Secretary under this subpart and under subpart H; and
 - (2) The tracing of funds to a level of expenditure adequate to establish that such funds have not been used in violation of the provisions of this part.

Sec. 98.68 Program Integrity

- (a) Lead Agencies are required to have effective internal controls in place to ensure integrity and accountability in the CCDF program. These shall include:
 - (1) Processes to ensure sound fiscal management;
 - (2) Processes to identify areas of risk; and
 - (3) Regular evaluation of internal control activities.
- (b) Lead Agencies are required to have processes in place to identify fraud or other program violations, which may include, but are not limited to the following:
 - (1) Record matching and database linkages;

(2) Review of attendance and billing records;

(3) Quality control or quality assurance reviews; and

(4) Staff training on monitoring and audit processes.

(c) Lead Agencies must have procedures in place for documenting and verifying that children receiving assistance under this part meet eligibility criteria at the time of eligibility determination.

(d) Lead Agencies are required to have processes in place to investigate and recover fraudulent payments and to impose sanctions on clients or providers in response to fraud.

Subpart H--Program Reporting Requirements

Sec. 98.70 Reporting requirements

(a) Quarterly Case-level Report--

(1) State and territorial Lead Agencies that receive assistance under the CCDF shall prepare and submit to the Department, in a manner specified by the Secretary, a quarterly case-level report of monthly family case-level data. Data shall be collected monthly and submitted quarterly. States may submit the data monthly if they choose to do so.

(2) The information shall be reported for the three-month federal fiscal period preceding the required report. The first report shall be submitted no later than August 31, 1998, and quarterly thereafter. The first report shall include data from the third quarter of FFY 1998 (April 1998 through June 1998). States and Territorial Lead Agencies which choose to submit case-level data monthly must submit their report for April 1998 no later than July 30, 1998. Following reports must be submitted every thirty days thereafter.

(3) State and territorial Lead Agencies choosing to submit data based on a sample shall submit a sampling plan to ACF for approval 60 days prior to the submission of the first quarterly report. States are not prohibited from submitting case-level data for the entire population receiving CCDF services.

(4) Quarterly family case-level reports to the Secretary shall include the information listed in Sec. 98.71(a).

(b) Annual Report--(1) State and territorial Lead Agencies that receive assistance under CCDF shall prepare and submit to the Secretary an annual report. The report shall be submitted, in a manner specified by the Secretary, by December 31 of each year and shall cover the most recent federal fiscal year (October through September).

(2) The first annual aggregate report shall be submitted no later than December 31, 1997, and every twelve months thereafter.

(3) Biennial reports to Congress by the Secretary shall include the information listed in Sec. 98.71(b).

(c) Tribal Annual Report--

(1) Tribal Lead Agencies that receive assistance under CCDF shall prepare and submit to the Secretary an annual aggregate report.

(2) The report shall be submitted in the manner specified by the Secretary by December 31 of each year and shall cover services for children and families served with CCDF funds during the preceding Federal Fiscal Year.

(3) Biennial reports to Congress by the Secretary shall include the information listed in Sec. 98.71(c).

Sec. 98.71 Content of reports

(a) At a minimum, a State or territorial Lead Agency's quarterly case-level report to the Secretary, as required in Sec. 98.70, shall include the following information on services provided under CCDF grant funds, including Federal Discretionary (which includes any funds transferred from the TANF Block Grant), Mandatory, and Matching Funds; and State Matching and Maintenance-of-Effort (MOE) Funds:

- (1) The total monthly family income for determining eligibility;
- (2) County of residence;
- (3) Gender and month/year of birth of children;
- (4) Ethnicity and race of children;
- (5) Whether the head of the family is a single parent;
- (6) The sources of family income, from employment (including self-employment), cash or other assistance under the Temporary Assistance for Needy Families program under Part A of title IV of the Social Security Act, cash or other assistance under a State program for which State spending is counted toward the maintenance of effort requirement under section 409(a)(7) of the Social Security Act, housing assistance, assistance under the Food Stamp Act of 1977; and other assistance programs;
- (7) The month/year child care assistance to the family started;
- (8) The type(s) of child care in which the child was enrolled (such as family child care, in-home care, or center-based child care);
- (9) Whether the child care provider involved was a relative;
- (10) The total monthly child care copayment by the family;
- (11) The total expected dollar amount per month to be received by the provider for each child;
- (12) The total hours per month of such care;
- (13) Social Security Number of the head of the family unit receiving child care assistance;
- (14) Reasons for receiving care;
- (15) [Indicator of the quality of the child care provider pursuant to § 98.33\(b\); and](#)
- (16) Any additional information that the Secretary shall require.

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(b) At a minimum, a State or territorial Lead Agency's annual aggregate report to the Secretary, as required in Sec. 98.70(b), shall include the following information on services provided through all CCDF grant funds, including Federal Discretionary (which includes any funds transferred from the TANF Block Grant), Mandatory, and Matching Funds; and State Matching and MOE Funds:

- (1) The number of child care providers that received funding under CCDF as separately identified based on the types of providers listed in section 658P(5) of the amended Child Care and Development Block Grant Act;
- (2) The number of children served by payments through certificates or vouchers, contracts or grants, and cash under public benefit programs, listed by the primary type of child care services provided during the last month of the report period (or the last month of service for those children leaving the program before the end of the report period);
- (3) The manner in which consumer education information was provided to parents and the number of parents to whom such information was provided;
- (4) The total number (without duplication) of children and families served under CCDF; and
- (5) Any additional information that the Secretary shall require.

(c) At a minimum, a Tribal Lead Agency's annual report to the Secretary, as required in Sec. 98.70(c), shall include the following information on services provided through all CCDF tribal grant awards:

- (1) Unduplicated number of families and children receiving services;
- (2) Children served by age;
- (3) Children served by reason for care;

- (4) Children served by payment method (certificate/voucher or contract/grants);
- (5) Average number of hours of care provided per week;
- (6) Average hourly amount paid for care;
- (7) Children served by level of family income; and
- (8) Children served by type of child care providers.

Subpart I--Indian Tribes

Sec. 98.80 General procedures and requirements

An Indian Tribe or tribal organization (as described in Subpart G of these regulations) may be awarded grants to plan and carry out programs for the purpose of increasing the availability, affordability, and quality of child care and childhood development programs subject to the following conditions:

- (a) An Indian Tribe applying for or receiving CCDF funds shall be subject to all the requirements under this part, unless otherwise indicated.

- (b) An Indian Tribe applying for or receiving CCDF funds shall:
 - (1) Have at least 50 children under 13 years of age (or such similar age, as determined by the Secretary from the best available data) in order to be eligible to operate a CCDF program. This limitation does not preclude an Indian Tribe with fewer than 50 children under 13 years of age from participating in a consortium that receives CCDF funds; and
 - (2) Demonstrate its current service delivery capability, including skills, personnel, resources, community support, and other necessary components to satisfactorily carry out the proposed program.

- (c) A consortium representing more than one Indian Tribe may be eligible to receive CCDF funds on behalf of a particular Tribe if:
 - (1) The consortium adequately demonstrates that each participating Tribe authorizes the consortium to receive CCDF funds on behalf of each Tribe or tribal organization in the consortium; and
 - (2) The consortium consists of Tribes that each meet the eligibility requirements for the CCDF program as defined in this part, or that would otherwise meet the eligibility requirements if the Tribe or tribal organization had at least 50 children under 13 years of age; and
 - (3) All the participating consortium members are in geographic proximity to one another (including operation in a multi-State area) or have an existing consortium arrangement; and
 - (4) The consortium demonstrates that it has the managerial, technical and administrative staff with the ability to administer government funds, manage a CCDF program and comply with the provisions of the Act and of this part.

- (d) The awarding of a grant under this section shall not affect the eligibility of any Indian child to receive CCDF services provided by the State or States in which the Indian Tribe is located.

- (e) For purposes of the CCDF, the determination of the number of children in the Tribe, pursuant to paragraph (b)(1) of this section, shall include Indian children living on or near reservations, with the exception of Tribes in Alaska, California and Oklahoma.

- (f) In determining eligibility for services pursuant to Sec. 98.20(a)(2), a tribal program may use either:
 - (1) 85 percent of the State median income for a family of the same size; or
 - (2) 85 percent of the median income for a family of the same size residing in the area served by the Tribal Lead Agency.

Sec. 98.81 Application and Plan procedures

(a) In order to receive CCDF funds, a Tribal Lead Agency shall apply for funds pursuant to Sec. 98.13, except that the requirement at Sec. 98.13(b)(2) does not apply.

(b) A Tribal Lead Agency shall submit a CCDF Plan, as described at Sec. 98.16, with the following additions and exceptions:

(1) The Plan shall include the basis for determining family eligibility pursuant to Sec. 98.80(f).

(2) For purposes of determining eligibility, the following terms shall also be defined:

(i) Indian child; and

(ii) Indian reservation or tribal service area.

(3) The Tribal Lead Agency shall also assure that:

(i) The applicant shall coordinate, to the maximum extent feasible, with the Lead Agency in the State in which the applicant shall carry out CCDF programs or activities, pursuant to Sec. 98.82; and

(ii) In the case of an applicant located in a State other than Alaska, California, or Oklahoma, CCDF programs and activities shall be carried out on an Indian reservation for the benefit of Indian children, pursuant to Sec. 98.83(b).

(4) The Plan shall include any information, as prescribed by the Secretary, necessary for determining the number of children in accordance with Sec. Sec. 98.61(c), 98.62(c), and 98.80(b)(1).

(5) Plans for those Tribes specified at Sec. 98.83(f) (i.e., Tribes with small grants) are not subject to the requirements in Sec. 98.16(i)(2) or Sec. 98.16(m) unless the Tribe chooses to include such services, and, therefore, the associated requirements, in its program.

(6) The Plan is not subject to requirements in §§ 98.16(g)(8), (i)(1), or (j)(4).

(7) In its initial Plan, an Indian Tribe shall describe its current service delivery capability pursuant to Sec. 98.80(b)(2).

(8) A consortium shall also provide the following:

(i) A list of participating or constituent members, including demonstrations from these members pursuant to Sec. 98.80(c)(1);

(ii) A description of how the consortium is coordinating services on behalf of its members, pursuant to Sec. 98.83(c)(1); and

(iii) As part of its initial Plan, the additional information required at Sec. 98.80(c)(4).

(c) When initially applying under paragraph (a) of this section, a Tribal Lead Agency shall include a Plan that meets the provisions of this part and shall be for a two-year period, pursuant to Sec. 98.17(a).

Sec. 98.82 Coordination

Tribal applicants shall coordinate as required by Sec. Sec. 98.12 and 98.14 and:

(a) To the maximum extent feasible, with the Lead Agency in the State or States in which the applicant will carry out the CCDF program; and

(b) With other Federal, State, local, and tribal child care and childhood development programs.

Sec. 98.83 Requirements for tribal programs

(a) The grantee shall designate an agency, department, or unit to act as the Tribal Lead Agency to administer the CCDF program.

(b) With the exception of Alaska, California, and Oklahoma, programs and activities shall be carried out on an Indian reservation for the benefit of Indian children.

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(c) In the case of a tribal grantee that is a consortium:

- (1) A brief description of the direct child care services funded by CCDF for each of their participating Tribes shall be provided by the consortium in their two-year CCDF Plan; and
- (2) Variations in CCDF programs or requirements and in child care licensing, regulatory and health and safety requirements shall be specified in written agreements between the consortium and the Tribe.
- (3) If a Tribe elects to participate in a consortium arrangement to receive one part of the CCDF (e.g., Discretionary Funds), it may not join another consortium or apply as a direct grantee to receive the other part of the CCDF (e.g. Tribal Mandatory Funds).
- (4) If a Tribe relinquishes its membership in a consortium at any time during the fiscal year, CCDF funds awarded on behalf of the member Tribe will remain with the tribal consortium to provide direct child care services to other consortium members for that fiscal year.

(d) Tribal Lead Agencies shall not be subject to the requirements at ~~§§ 98.33(a), limited to the website requirement.~~ 98.44(a), ~~98.50(b)(3).~~ 98.50(e), 98.52(a), 98.53 and 98.63.

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(e) The base amount of any tribal grant is not subject to the administrative cost limitation at paragraph (g) of this section or the quality expenditure requirement at Sec. 98.51(a). The base amount may be expended for any costs consistent with the purposes and requirements of the CCDF.

(f) Tribal Lead Agencies whose total CCDF allotment pursuant to Sec. Sec. 98.61(c) and 98.62(b) is less than an amount established by the Secretary shall not be subject to the following requirements:

- (1) The assurance at Sec. 98.15(a)(2); ~~and~~
- (2) The requirement for certificates at Sec. 98.30(a) and (d).

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(g) Not more than 15 percent of the aggregate CCDF funds expended by the Tribal Lead Agency from each fiscal year's (including amounts used for construction and renovation in accordance with Sec. 98.84, but not including the base amount provided under Sec. 98.83(e)) shall be expended for administrative activities. Amounts used for construction and major renovation in accordance with Sec. 98.84 are not considered administrative costs.

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- (h)(1) CCDF funds are available for costs incurred by the Tribal Lead Agency only after the funds are made available by Congress for Federal obligation unless costs are incurred for planning activities related to the submission of an initial CCDF Plan.
- (2) Federal obligation of funds for planning costs, pursuant to paragraph (h)(1) of this section is subject to the actual availability of the appropriation.

Sec. 98.84 Construction and renovation of child care facilities

(a) Upon requesting and receiving approval from the Secretary, Tribal Lead Agencies may use amounts provided under Sec. Sec. 98.61(c) and 98.62(b) to make payments for construction or major renovation of child care facilities (including paying the cost of amortizing the principal and paying interest on loans).

- (b) To be approved by the Secretary, a request shall be made in accordance with uniform procedures established by program instruction and, in addition, shall demonstrate that:
 - (1) Adequate facilities are not otherwise available to enable the Tribal Lead Agency to carry out child care programs;
 - (2) The lack of such facilities will inhibit the operation of child care programs in the future; and

(3) The use of funds for construction or major renovation will not result in a decrease in the level of child care services provided by the Tribal Lead Agency as compared to the level of services provided by the Tribal Lead Agency in the preceding fiscal year.

(c)(1) Tribal Lead Agency may use CCDF funds for reasonable and necessary planning costs associated with assessing the need for construction or renovation or for preparing a request, in accordance with the uniform procedures established by program instruction, to spend CCDF funds on construction or major renovation.

(2) 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 the Secretary. If the project later fails to gain the Secretary's approval, the Tribal Lead Agency must pay for the architectural, engineering or consultant costs using non-CCDF funds.

(d) Tribal Lead Agencies that receive approval from the Secretary to use CCDF funds for construction or major renovation shall comply with the following:

- (1) Federal share requirements and use of property requirements at 45 CFR 92.31;
- (2) Transfer and disposition of property requirements at 45 CFR 92.31(c);
- (3) Title requirements at 45 CFR 92.31(a);
- (4) Cost principles and allowable cost requirements at 45 CFR 92.22;
- (5) Program income requirements at 45 CFR 92.25;
- (6) Procurement procedures at 45 CFR 92.36; and;
- (7) Any additional requirements established by program instruction, including requirements concerning:
 - (i) The recording of a Notice of Federal Interest in the property;
 - (ii) Rights and responsibilities in the event of a grantee's default on a mortgage;
 - (iii) Insurance and maintenance;
 - (iv) Submission of plans, specifications, inspection reports, and other legal documents; and
 - (v) Modular units.

(e) In lieu of obligation and liquidation requirements at Sec. 98.60(e), Tribal Lead Agencies shall liquidate CCDF funds used for construction or major renovation by the end of the second fiscal year following the fiscal year for which the grant is awarded.

(f) Tribal Lead Agencies may expend funds, without requesting approval pursuant to paragraph (a) of this section, for minor renovation.

(g) A new tribal grantee (i.e., one that did not receive CCDF funds the preceding fiscal year) may spend no more than an amount equivalent to its Tribal Mandatory allocation on construction and renovation. A new tribal grantee must spend an amount equivalent to its Discretionary allocation on activities other than construction or renovation (i.e., direct services, quality activities, or administrative costs).

(h) A construction or renovation project that requires and receives approval by the Secretary must include as part of the construction and renovation costs:

- (1) planning costs as allowed at Sec. 98.84(c);
- (2) labor, materials and services necessary for the functioning of the facility; and
- (3) initial equipment for the facility. Equipment means items which are tangible, nonexpendable personal property having a useful life of more than five years.

Subpart J--Monitoring, Non-compliance and Complaints

Sec. 98.90 Monitoring

(a) The Secretary will monitor programs funded under the CCDF for compliance with:

- (1) The Act;
- (2) The provisions of this part; and
- (3) The provisions and requirements set forth in the CCDF Plan approved under Sec. 98.18;

(b) If a review or investigation reveals evidence that the Lead Agency, or an entity providing services under contract or agreement with the Lead Agency, has failed to substantially comply with the Plan or with one or more provisions of the Act or implementing regulations, the Secretary will issue a preliminary notice to the Lead Agency of possible non-compliance. The Secretary shall consider comments received from the Lead Agency within 60 days (or such longer period as may be agreed upon between the Lead Agency and the Secretary).

(c) Pursuant to an investigation conducted under paragraph (a) of this section, a Lead Agency shall make appropriate books, documents, papers, manuals, instructions, and records available to the Secretary, or any duly authorized representatives, for examination or copying on or off the premises of the appropriate entity, including subgrantees and contractors, upon reasonable request.

(d)(1) Lead Agencies and subgrantees shall retain all CCDF records, as specified in paragraph (c) of this section, and any other records of Lead Agencies and subgrantees that are needed to substantiate compliance with CCDF requirements, for the period of time specified in paragraph (e) of this section.

(2) Lead Agencies and subgrantees shall provide through an appropriate provision in their contracts that their contractors will retain and permit access to any books, documents, papers, and records of the contractor that are directly pertinent to that specific contract.

(e) Length of retention period. (1) Except as provided in paragraph (e)(2) of this section, records specified in paragraph (c) of this section shall be retained for three years from the day the Lead Agency or subgrantee submits the Financial Reports required by the Secretary, pursuant to Sec. 98.65(g), for the program period.

(2) If any litigation, claim, negotiation, audit, disallowance action, or other action involving the records has been started before the expiration of the three-year retention period, the records shall be retained until completion of the action and resolution of all issues that arise from it, or until the end of the regular three-year period, whichever is later.

Sec. 98.91 Non-compliance

(a) If after reasonable notice to a Lead Agency, pursuant to Sec. 98.90 or Sec. 98.93, a final determination is made that:

(1) There has been a failure by the Lead Agency, or by an entity providing services under contract or agreement with the Lead Agency, to comply substantially with any provision or requirement set forth in the Plan approved under Sec. 98.16; or

(2) If in the operation of any program for which funding is provided under the CCDF, there is a failure by the Lead Agency, or by an entity providing services under contract or agreement with the Lead Agency, to comply substantially with any provision of the Act or this part, the Secretary will provide to the Lead Agency a written notice of a finding of non-compliance. This notice will be issued within 60 days of the preliminary notification in Sec. 98.90(b), or within 60 days of the receipt of additional comments from the Lead Agency, whichever is later, and will provide the opportunity for a hearing, pursuant to part 99.

(b) The notice in paragraph (a) of this section will include all relevant findings, as well as any penalties or sanctions to be applied, pursuant to Sec. 98.92.

(c) Issues subject to review at the hearing include the finding of non-compliance, as well as any penalties or sanctions to be imposed pursuant to Sec. 98.92.

Sec. 98.92 Penalties and sanctions

- (a) Upon a final determination that the Lead Agency has failed to substantially comply with the Act, the implementing regulations, or the Plan, one of the following penalties will be applied:
- (1) The Secretary will disallow the improperly expended funds;
 - (2) An amount equal to or less than the improperly expended funds will be deducted from the administrative portion of the State allotment for the following fiscal year; or
 - (3) A combination of the above options will be applied.
- (b) In addition to imposing the penalties described in paragraph (a) of this section, the Secretary may impose other appropriate sanctions, including:
- (1) Disqualification of the Lead Agency from the receipt of further funding under the CCDF; or
 - (2)(i) A penalty of not more than four percent of the funds allotted under Sec. 98.61 (i.e., the Discretionary Funds) for a Fiscal Year shall be withheld if the Secretary determines that the Lead Agency has failed to implement a provision of the Act, these regulations, or the Plan required under Sec. 98.16;
 - (ii) This penalty will be withheld no earlier than the second full quarter following the quarter in which the Lead Agency was notified of the proposed penalty;
 - (iii) This penalty will not be applied if the Lead Agency corrects the failure or violation before the penalty is to be applied or if it submits a plan for corrective action that is acceptable to the Secretary; or
 - (iv) The Lead Agency may show cause to the Secretary why the amount of the penalty, if applied, should be reduced.
- (c) If a Lead Agency is subject to additional sanctions as provided under paragraph (b) of this section, specific identification of any additional sanctions being imposed will be provided in the notice provided pursuant to Sec. 98.91.
- (d) Nothing in this section, or in Sec. 98.90 or Sec. 98.91, will preclude the Lead Agency and the Department from informally resolving a possible compliance issue without following all of the steps described in Sec. Sec. 98.90, 98.91 and 98.92. Penalties and/or sanctions, as described in paragraphs (a) and (b) of this section, may nevertheless be applied, even though the issue is resolved informally.
- (e) It is at the Secretary's sole discretion to choose the penalty to be imposed under paragraphs (a) and (b) of this section.

Sec. 98.93 Complaints

- (a) This section applies to any complaint (other than a complaint alleging violation of the nondiscrimination provisions) that a Lead Agency has failed to use its allotment in accordance with the terms of the Act, the implementing regulations, or the Plan. The Secretary is not required to consider a complaint unless it is submitted as required by this section. Complaints with respect to discrimination should be referred to the Office of Civil Rights of the Department.
- (b) Complaints with respect to the CCDF shall be submitted in writing to the Assistant Secretary for Children and Families, 370 L'Enfant Promenade, SW., Washington, DC 20447. The complaint shall identify the provision of the Plan, the Act, or this part that was allegedly violated, specify the basis for alleging the violation(s), and include all relevant information known to the person submitting it.
- (c) The Department shall promptly furnish a copy of any complaint to the affected Lead Agency. Any comments received from the Lead Agency within 60 days (or such longer period as may be agreed upon between the Lead Agency and Department) shall be considered by the Department in responding to the complaint. The Department will conduct an investigation of complaints, where appropriate.

(d) The Department will provide a written response to complaints within 180 days after receipt. If a final resolution cannot be provided at that time, the response will state the reasons why additional time is necessary.

(e) Complaints that are not satisfactorily resolved through communication with the Lead Agency will be pursued through the process described in Sec. 98.90.

Subpart K--Error Rate Reporting

Source: 72 FR 50898, Sept. 5, 2007, unless otherwise noted.

Sec. 98.100 Error Rate Report

(a) Applicability--The requirements of this subpart apply to the fifty States, the District of Columbia and Puerto Rico.

(b) Generally--States, the District of Columbia and Puerto Rico shall calculate, prepare and submit to the Department, a report of errors occurring in the administration of CCDF grant funds, at times and in a manner specified by the Secretary in instructions. States, the District of Columbia and Puerto Rico must use this report to calculate their error rates, which is defined as the percentage of cases with an error (expressed as the total number of cases with an error compared to the total number of cases); the percentage of cases with an improper payment (expressed as the total number of cases with an improper payment compared to the total number of cases); the percentage of improper payments (expressed as the total amount of improper payments in the sample compared to the total dollar amount of payments made in the sample); and the average amount of improper payment. The report also will provide strategies for reducing their error rates and allow States, the District of Columbia and Puerto Rico to set target error rates for the next cycle.

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(c) Error Defined--For purposes of this subpart, an "error" shall mean any violation or misapplication of statutory, contractual, administrative, or other legally applicable requirements governing the administration of CCDF grant funds, regardless of whether such violation results in an improper payment.

(d) Improper Payment Defined--For purposes of this subpart, "improper payment."

(1) Means any payment of CCDF grant funds that should not have been made or that was made in an incorrect amount (including overpayments and underpayments) under statutory, contractual, administrative, or other legally applicable requirements governing the administration of CCDF grant funds; and

(2) Includes any payment of CCDF grant funds to an ineligible recipient, any payment of CCDF grant funds for an ineligible service, any duplicate payment of CCDF grant funds and payments of CCDF grant funds for services not received.

(e) Costs of Preparing the Error Rate Report--Provided the error rate calculations and reports focus on client eligibility, expenses incurred by the States, the District of Columbia and Puerto Rico in complying with this rule, including preparation of required reports, shall be considered a cost of direct service related to eligibility determination and therefore is not subject to the five percent limitation on CCDF administrative costs pursuant to Section 98.52(a).

Sec. 98.101 Case Review Methodology

(a) Case Reviews and Sampling--In preparing the error reports required by this subpart, States, the District of Columbia and Puerto Rico shall conduct comprehensive reviews of case records using a methodology established by the Secretary. For purposes of the case reviews, States, the District of Columbia and Puerto Rico shall select a random sample of case records which is estimated to achieve the calculation of an estimated annual amount of improper payments with a 90 percent confidence interval of ± 5.0 percent.

(b) Methodology and Forms--States, the District of Columbia and Puerto Rico must prepare and submit forms issued by the Secretary, following the accompanying instructions setting forth the methodology to be used in conducting case reviews and calculating the error rates.

(c) Reporting Frequency and Cycle--States, the District of Columbia and Puerto Rico shall conduct case reviews and submit error rate reports to the Department according to a staggered three-year cycle established by the Secretary such that each State, the District of Columbia, and Puerto Rico will be selected once, and only once, in every three years.

(d) Access to Federal Staff--States, the District of Columbia and Puerto Rico must provide access to Federal staff to participate and provide oversight in case reviews and error rate calculations, including access to forms related to determining error rates.

(e) Record Retention--Records pertinent to the case reviews and submission of error rate reports shall be retained for a period of five years from the date of submission of the applicable error rate report or, if the error rate report was revised, from the date of submission of the revision. Records must be made available to Federal staff upon request.

Sec. 98.102 Content of Error Rate Reports

(a) Baseline Submission Report--At a minimum, States, the District of Columbia and Puerto Rico shall submit an initial error rate report to the Department, as required in Sec. 98.100, which includes the following information on errors and resulting improper payments occurring in the administration of CCDF grant funds, including Federal Discretionary Funds (which includes any funds transferred from the TANF Block Grant), Mandatory and Matching Funds and State Matching and Maintenance-of-Effort (MOE Funds):

(1) Percentage of cases with an error (regardless of whether such error resulted in an over or under payment), expressed as the total number of cases in the sample with an error compared to the total number of cases in the sample;

(2) Percentage of cases with an improper payment (both over and under payments), expressed as the total number of cases in the sample with an improper payment compared to the total number of cases in the sample;

(3) Percentage of improper payments (both over and under payments), expressed as the total dollar amount of improper payments in the sample compared to the total dollar amount of payments made in the sample;

(4) Average amount of improper payments (gross over and under payments, divided by the total number of cases in the sample that had an improper payment (both over and under payments));

(5) For each category of data listed above, targets for errors and improper payments in the next reporting cycle;

(6) Summary of methodology used to arrive at estimate, including fieldwork preparation, sample generation, record review and error rate computation processes;

(7) Discussion of the causes of improper payments identified and actions that will be taken to correct those causes in order to reduce the error rates;

(8) Description of the information systems and other infrastructure that assist the State, the District of Columbia and Puerto Rico in identifying and reducing improper payments, or if the State, the District of Columbia or Puerto Rico does not have these tools, a description of actions that will be taken to acquire the necessary information systems and other infrastructure; and

(9) Such other information as specified by the Secretary.

Deleted: (5) Estimated annual amount of improper payments (which is a projection of the results from the sample to the universe of cases statewide during the 12-month review period) calculated by multiplying the percentage of improper payments by the total dollar amount of child care payments that the State, the District of Columbia or Puerto Rico paid during the 12-month review period¶

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(b) Standard Report--At a minimum, the State, the District of Columbia and Puerto Rico shall submit an error rate report to the Department, as required in Sec. 98.100, made subsequent to the baseline submission report as set forth in Sec. 98.102(a) which includes the following information on errors and resulting improper payments occurring in the administration of CCDF grant funds, including Federal Discretionary Funds (which includes any funds transferred from the TANF

Block Grant), Mandatory and Matching Funds and State Matching and Maintenance-of-Effort (MOE Funds):

- (1) All the information reported in the baseline submission, as set forth in Sec. 98.102(a), updated for the current cycle;
- (2) For each category of data listed in Sec. 98.102(a)(1) through (5), States, the District of Columbia and Puerto Rico must include data and targets from the prior cycle in addition to data from the current cycle and targets for the next cycle;
- (3) Description of whether the State, the District of Columbia or Puerto Rico met error rate targets set in the prior cycle and, if not, an explanation of why not;
- (4) Discussion of the causes of improper payments identified in the prior cycle and actions that were taken to correct those causes, in addition to a discussion on the causes of improper payments identified in the current cycle and actions that will be taken to correct those causes in order to reduce the error rates; and
- (5) Such other information as specified by the Secretary.

(c) Any Lead Agency with an improper payment rate that exceeds a threshold established by the Secretary must submit to the Assistant Secretary for approval a comprehensive corrective action plan, as well as subsequent reports describing progress in implementing the plan.

(1) The corrective action plan must be submitted within 60 days of the deadline for submitting the Lead Agency's standard error rate report required by § 98.102(b).

(2) The corrective action plan must include the following:

(i) Identification of a senior accountable official;

(ii) Milestones that clearly identify actions to be taken to reduce improper payments and the individual responsible for completing each action;

(iii) A timeline for completing each action within 1 year of the Assistant Secretary's approval of the plan, and for reducing the improper payment rate below the threshold established by the Secretary; and

(iv) Targets for future improper payment rates.

(3) Subsequent progress reports must be submitted as requested by the Assistant Secretary.

(4) Failure to carry out actions described in the approved corrective action plan will be grounds for a penalty or sanction under § 98.92.