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Child Care and Development Fund

Program Instruction

To: Federally Recognized Tribes, Tribal Consortia, and Tribal Lead Agencies (TLAs) administering child care programs under the Child Care and Development Fund (CCDF) program, as amended, and other interested parties.

Subject: This Program Instruction (PI) transmits guidance for completing and submitting the CCDF Tribal Plan Preprint (ACF-118-A) (*Attachment A*) for the Child Care and Development Fund (CCDF) program Fiscal Year (FY) 2017-2019 triennial Section 658E of the Child Care and Development Block Grant (CCDBG) Act relevant to Tribes. **Please Note:** The deadline for the submission of the FY 2017-2019 triennial Plan has been extended until August 1, 2016.

References: The CCDBG Act of 1990 (42 U.S.C. § 9858 et seq.), as amended by the CCDBG Act of 2014 (Pub. L. 113-186); Section 418 of the Social Security Act (42 U.S.C. § 618); 45 CFR Parts 98 and 99.

Background: The CCDF Tribal Plan Preprint (Plan) serves as the Tribe's application for CCDF funds by providing a description of its child care program and services available to eligible families. The Plan contains specific assurances and certifications required by CCDBG statute. The Plan provides information about the overall management of CCDF services, including information regarding income eligibility guidelines, provider payment rates, service priorities, parental rights and responsibilities, program integrity and accountability, and quality improvement activities. The Plan also presents an opportunity for TLAs to demonstrate the many activities and services they are providing to meet the needs of low-income children and families.

New and improved in the Tribal Plan Preprint is Section 8 an optional abbreviated Plan that Tribes or Tribal Consortia receiving annual CCDF

allocations of less than \$250,000 may choose to complete and submit. Tribes that select this option are not required to complete Sections 1-7 of the Plan. However, Tribes with allocations of less than \$250,000 can choose to complete Sections 1-7 and in doing so will be required to complete all parts/sections unless specifically exempted as noted in the instructions.

The Plan has been revised to incorporate the changes made in the CCDBG Act of 2014, which was signed into law by President Obama on November 19, 2014. The Act made expansive changes to protect the health and safety of children in child care, promote continuity of access to subsidy for low-income families, better inform parents and the general public about the child care choices available to them, and improve the overall quality of early learning and afterschool programs. However, the law did not explicitly indicate the extent to which many of the new requirements apply to Tribes. This will be determined through the rulemaking process and a proposed rule was published in December 2015. Pending issuance of a new final rule, Tribes will continue to be subject to the existing CCDF program requirements at 45 CFR Part 98 and Part 99.

The questions that incorporate elements from the CCDBG Act of 2014 do not represent new requirements for Tribal Lead Agencies and were added for “informational purposes only.” A red delta sign (▲) has been inserted to specifically identify those questions related to the new law. Answers to the delta questions related to the CCDBG Act of 2014 will provide ACF with baseline information on Tribal practices and technical assistance needs.

**Tribal Eligibility
for CCDF Funds:**

Pursuant to 45 CFR 98.80, a Tribe is eligible to receive CCDF funds if the Tribe is federally recognized and the tribal population includes at least 50 children under age 13.

A Tribe with fewer than 50 children under age 13 may participate in a consortium of eligible Tribes. In order to be eligible to receive CCDF funds on behalf of its member Tribes, a consortium must:

- Consist of Tribes that meet the eligibility requirements for the CCDF program or that would meet the eligibility requirements if the Tribe had at least 50 children under age 13; and
- Demonstrate it has current authorization from each participating Tribe to receive CCDF funds on behalf of the Tribe.

Membership Changes – It is the responsibility of a tribal consortium to notify the Administration for Children and Families (ACF) of any changes in its membership for CCDF funding purposes during the approved Plan

period. For example, if a new Tribe joins a tribal consortium to receive FY 2018 CCDF funds, or if a current tribal consortium member elects not to receive FY 2018 CCDF funds through that tribal consortium, these changes must be conveyed to ACF in writing by the tribal consortium.

**Triennial Child
Count and
Declaration Form**

ACF calculates grant awards based on a self-certified Child Count Declaration for the number of children under age 13 (i.e., up through age 12) who reside on or near the reservation or service area. Please keep in mind the following information as you prepare tribal child counts for CCDF funds:

- Tribes have flexibility in defining “Indian child,” and may include children from other Tribes, if such Tribes are federally recognized, consistent with the CCDBG Act’s definition of Indian Tribe; and
- “Service area” must be “on or near the reservation,” and therefore must be within a reasonably close geographic proximity to the delineated borders of a Tribe’s reservation (with the exception of Tribes in Alaska, California, and Oklahoma). Tribes that do not have reservations must establish service areas within reasonably close geographic proximity to the area where the Tribe’s population resides. ACF will not approve an entire State as a Tribe’s service area.

Unduplicated Child Counts: The Tribal Lead Agency may not count any child who is included in the child count of another CCDF Tribal Lead Agency.

To ensure unduplicated child counts, a Tribal Lead Agency is required to confer with all other CCDF Tribal Lead Agencies that have overlapping or neighboring service areas.

For the FY 2017 – FY 2019 Plan period, the child count of children under age 13 must be completed no later than June 30, 2016 and no earlier than July 1, 2015. Effective with this plan period, the Child Count Declaration will no longer be submitted annually, it will now be submitted every three years with the triennial Plan. The Child Count Declaration must be submitted this year by July 1, 2016. The tribal count will be effective October 1, 2016 - September 30, 2019. The child counts shall be valid for 3 years unless in the case of a Tribal Consortia, the Consortia gains or losses one of its member organizations then the adjustments will be made accordingly.

Special Instructions for Tribal Consortia:

- Individual Child Counts Required - A Tribal consortium must submit an

individual Child Count Declaration for each participating Tribe. An individual authorized to act for the participating Tribe must sign each individual Child Count Declaration.

- Comprehensive Tribal List - A Tribal consortium must also provide a summary section listing the name of each participating Tribe, individual account associated with that Tribe, and the total child count for the entire consortium.

- “Special Rule for Indian Tribes in Alaska”
 1. Only the Metlakatla Indian Community of the Annette Islands Reserve and the 12 Alaska Native Regional Nonprofit Corporations are eligible to receive Tribal Mandatory Funds. Alaska Native Regional Nonprofit Corporations must provide a separate child count certification for Discretionary Funding purposes. This count will consist of its self-certified Tribal Mandatory Funding count, minus the child count number for any Alaska tribal grantee in its Region that applies directly for Discretionary Funding.

 2. In instances where a Regional Corporation has separate child counts for Discretionary and Tribal Mandatory Funds, both counts may be reported on the Child Count Declaration (*Appendix 1*).

Exempt vs. Non-Exempt Grantee Status

ACF recognizes that a number of small CCDF grantees do not have the necessary infrastructure to support certain CCDF requirements, such as a certificate program. Similarly, in many small rural communities child care options are often limited. Consequently, additional flexibility has been provided for smaller Tribes and tribal organizations by “exempting” them from certain CCDF requirements (see 45 CFR 98.83(f)).

Exempt Tribes: Tribal Lead Agencies with CCDF allocation less than \$500,000 are not required to:

1. Operate a certificate program that offers parental choice from a full range of providers (i.e., center-based, group home, family, in-home care) unless the Tribe chooses to include such services and associated requirements (see 45 CFR 98.83(f)); and

2. Are not required to spend at least 4 percent on quality activities. However, ACF encourages all Tribes to invest in quality activities to improve the health and safety of child care in tribal communities.

Non-Exempt Tribes: Tribal Lead Agencies with CCDF allocations equal to or greater than \$500,000 for a fiscal year are non-exempt. Non-exempt Tribal Lead Agencies must:

1. Operate a certificate program that offers parental choice from a full range of providers (i.e., center-based, group home, family, and in-

home care); and

2. Use at least 4 percent of the aggregate CCDF funds expended for a fiscal year for quality activities.

A Tribal Lead Agency that moves from the exempt to non-exempt category has a phase-in period of 12 months to meet the CCDF non-exempt requirements. The 12-month period begins with the issuance date of the grant award letter indicating that a Tribe's final allocation is equal to or greater than \$500,000. The Tribal Lead Agency must describe how it is meeting the new non-exempt requirements.

**Funding
Estimates and
Allocation
Formulas:**

The CCDF is comprised of two funding sources:

- Discretionary Funds – funding provided under the Child Care and Development Block Grant (CCDBG) Act, as amended. The Discretionary Funds will include a base amount of \$30,000 plus a per child amount for each Tribe or tribal consortium with a maximum of 50 children.
- Tribal Mandatory Funds – funding provided to eligible Tribes and tribal organizations under Section 418 of the Social Security Act. Tribal Mandatory Funds are calculated solely on a per child basis and do not include a base amount.

The per child amount for both Discretionary and Tribal Mandatory Funds depends upon the total number of children in all participating Tribes. Therefore, ACF is unable to calculate in advance the exact per child amount until all child counts have been submitted and the FY 2017 budget becomes available.

For planning purposes, current CCDF Tribal grantees should use their funding amounts from the FY 2016 as an estimate. A new Tribe should use the base amount of \$30,000 plus approximately \$85 per child to estimate its allotment for Discretionary Funding, and should use approximately \$85 per child to estimate its allotment for Tribal Mandatory Funding.

A tribal consortium should estimate its allotment for Discretionary Funding for each of its members by calculating a portion of the base amount that is equivalent to the ratio of the number of children in each member Tribe to 50, plus the additional per child amount. For example, a Tribe with 49 children is allotted 49/50ths of \$30,000, or \$29,400. The per child amount is then multiplied by 49 and added to the \$29,400 base amount.

Important Note: These amounts are provided for the purpose of estimating the FY 2017 allotments that will become available on October 1, 2016. Before final grant awards are issued, allotments may increase or decrease once actual funding appropriations are known and updated data become

available.

Discretionary Targeted Funds: Unlike prior fiscal years, FY 2016 does not include targeted funds for school-age/resource and referral.

Administrative Costs: No more than 15 percent of the aggregate CCDF funds expended from each fiscal year's allotment may be used for administrative costs. Tribal Lead Agencies should review the CCDF regulations at 45 CFR 98.52 for a discussion of administrative costs.

Note: The Discretionary Funds base amount is not subject to the 15 percent limitation, nor is it included in the calculation of the 15 percent limitation.

Construction and Renovation: In order to use CCDF funds for construction or major renovation projects, all Tribal Lead Agencies are required to follow ACF's construction and renovation application procedures. A separate application must be submitted for approval in accordance with a different Program Instruction (PI). The PI can be found at: <http://www.acf.hhs.gov/programs/occ/resource/pi2013-01> .

- If a Tribal Lead Agency desires to construct or renovate more than one facility, it must seek ACF approval for each facility (even if the facilities use identical plans and specifications). Early in the planning process, Tribal Lead Agencies are advised to contact their appropriate ACF Regional Office (*Attachment B*).

As under the previous statute, Tribes may not use CCDF funds for construction or renovation if it will result in a decrease in the level of child care services. However, the new law allows the Secretary to grant a waiver to this requirement if:

1. The decrease in the level of child care services is temporary; and
2. The Tribe submits a plan that demonstrates that after the construction or renovation is completed the level of child care services will increase or the quality of child care services will improve (Section 658(c)(6)(C)).

Tribal Lead Agencies must submit a request to the Secretary, in accordance with uniform procedures, to use funds for construction and renovation purposes.

- Funds may not be used for construction or major renovation of child care facilities until the Tribe's 102-477 scope of work has been modified to allow for construction or major renovation. (658O(c)(6) of the Act, 45 C.F.R. 98.84(a)&(b))

The CCDF PI on Construction and Renovation Procedures for Indians Tribes contains the procedures for requesting the use of CCDF funds for

construction or major renovation of child care facilities.

Local Market Rate Survey

ACF has clarified certain provisions of the CCDF regulation regarding local market rate surveys to address:

1. How the payment rates are adequate to ensure equal access based on the results of the Market Rate Survey (MRS);
2. The conditions under which a Tribal Lead Agency conducts its own MRS;
3. Conditions under which a Tribal Lead Agency may base its payment rates on the State's MRS rather than conducting its own survey;
4. State/Tribal coordination around MRS; and
5. Local MRS completion deadlines.

For additional information, see Program Instruction CCDF-ACF-PI-2009-02, which is available on the OCC website at:

<http://www.acf.hhs.gov/programs/occ/resource/pi-2009-02>

Family Co-Payments

Each Tribal Lead Agency must describe and attach a sliding fee scale that provides for cost sharing (co-payment) by families; based on income and family size.

- A Tribal Lead Agency may waive contributions from families whose incomes are at or below the poverty level for a family of the same size.

Note: A Tribal Lead Agency cannot use federal CCDF dollars to pay the co-payment on behalf of an Indian family who is receiving a CCDF subsidy from a State and/or Tribe.

Health and Safety Requirements

Section 98.41 states each Tribal Lead Agency is certifying there are requirements in effect under tribal, local, or State law, designed to protect the health and safety of children. These requirements are applicable to child care providers that provide services for which assistance is made available under the CCDF. Such requirements shall include:

- Prevention and control of infectious diseases (including immunizations);
- Building and physical premises safety; and
- Health and safety training.

To ensure that children are being cared for in healthy and safe child care facilities, TLAs are encouraged to partner with local health agencies, including the Indian Health Service (IHS), which conduct environmental

health surveys, and reflect these partnerships identified in the Plan, as appropriate.

Minimum Tribal Child Care Standards are voluntary guidelines that represent a baseline from which Tribes should operate to ensure that children are cared for in healthy and safe environments and that their basic needs are being met. These voluntary guidelines identify minimum standards for health and safety in child care and are not intended to supersede any existing Federal, State, tribal, or local laws or regulations. An updated (May 2008) copy of this resource document is available on the Office of Child Care's website at:

<http://www.acf.hhs.gov/programs/ccb/ta/pubs/ms/ms1.htm>.

Obligation and Liquidation Periods:

Tribal Lead Agencies must obligate FY 2017 Tribal Mandatory and Discretionary Funds by September 30, 2018, and liquidate all funds by September 30, 2019.

Note: Any FY 2017 CCDF funds approved by ACF for construction and major renovation must be obligated and liquidated by September 30, 2019.

- The liquidation period begins with the date that funds are originally awarded, not the date that funds are transferred to the separate grant award for construction and major renovation; and
- There is no separate obligation period for construction and major renovation funds.

Deadlines and Effective Dates:

FY 2017 CCDF Funding Applications must be submitted to ACF no later than August 1, 2016. Faxes will not be accepted.

Word Format

The Plan is available as a Microsoft Word document to make it easier to complete and to make edits as needed. The completed application will be emailed to OCC as an attachment. The Tribal Plan Preprint is also available on the OCC website at: <http://www.acf.hhs.gov/programs/occ>.

Submitting the Tribal Plan:

Tribes are required to submit a complete Plan for the FY 2017-2019 triennium including all appendices and attachments. The Plan will be effective for a three-year period beginning October 1, 2016 through September 30, 2019. Email the completed Plan to the appropriate ACF Regional Program Manager (*Attachment B*) on or before the August 1, 2016 deadline.

The email must include the following items:

1. A Cover Letter that acknowledges this is the official submission of the Tribe's FY 2017-2019 CCDF Plan and signed by the submitting Tribe

or Tribal Consortium; and

2. The completed FY 2017-2019 CCDF Tribal Plan and all attachments.

OCC no longer requires Tribes to submit copies of the Plan to the Tribal Contractor.

All other correspondence with the Office of Child Care (OCC) should be addressed to:

Office of Child Care
Administration for Children and Families
330 C Street, SW
Washington, D.C. 20201

**Plan
Amendments:**

Any substantive change to the CCDF program requires an amendment to the approved Plan (45 CFR 98.18(b)).

Determining whether a given change is “substantial” (and therefore requires a plan amendment) requires examination of the specific circumstances as well as the content of the existing approved plan. However, substantial changes in a Tribal Lead Agency’s plan generally include instances when the grantee:

- Adds a significant additional program activity;
- Eliminates a significant program activity;
- Changes its basic plan for the use of funds, including payment rates, eligibility thresholds, family co-payments, or quality initiatives’
- Changes the Lead Agency responsible for administering the program;

To amend a Plan, TLAs will enter amendment information on the Amendment Log located in *Appendix 4* of the Plan and submit the Log and amendment to their ACF Regional Office within 60 days of the effective date of the change.

ACF will make determinations on amendments no later than 90 days following the date on which the amendment was received, unless a written agreement to extend that period has been secured (45 CFR 98.18(b)). ACF Program Instruction CCDF-ACF-PI-2009-01 provides additional clarification regarding CCDF Plan amendments. This PI is available on the OCC website at: <http://www.acf.hhs.gov/programs/occ/resource/pi-2009-01>

**Public Law 102-
477 Options:**

Tribes that consolidated their CCDF funds under the Indian Employment, Training, and Related Services Demonstration Act (Pub. L. 102-477) will continue to be subject to their existing 102-477 Plans. The 102-477 Demonstration allows Tribes to streamline a number of tribal

services funded through the Department of the Interior, the Department of Labor, and the Department of Health and Human Services. Tribes participating in the 102-477 Demonstration will continue to follow regular timelines.

All Tribes, including those under a 102-477 Plan, shall submit triennial Child Count Declaration by the designated due date of August 1, 2016. The effect date will be October 1, 2016 to September 30, 2019.

This Program Instruction (i.e., for the Tribal Plan) does not apply to those Tribes and tribal organizations that consolidate CCDF funds under Pub. L. 102-477. A separate PI containing the 102-477 application and plan requirements is available on the OCC website at: <http://www.acf.hhs.gov/programs/ccb/law/index.htm>.

Reporting Requirements:

By the end of December of each year, Tribal Lead Agencies are required to report CCDF aggregate program data on the ACF-700 report form, and CCDF financial expenditures on the ACF-696T report. Separate Program Instructions are issued each year providing information on the ACF-700 and ACF-696T reporting requirements. These PIs are available on the OCC website at: <http://www.acf.hhs.gov/programs/ccb/law/index.htm>.

Reallotted Discretionary funds:

Tribal Lead Agencies are required to notify ACF by April 1, 2016, if they will be unable to obligate any portion of their FY 2016 CCDF Discretionary Funds allotment by September 30, 2016. In accordance with 45 CFR 98.64(d), any portion of a Tribe's allotment of Discretionary Funds, which is not required to carry out its plan in the period for which the allotment is made available, shall be reallotted to other tribal grantees in proportion to their original allotments.

- If the total amount available for reallotment from all tribal CCDF grantees is \$25,000 or more, funds will be reallotted to other tribal grantees;
- If the total available is less than \$25,000, no reallotment will take place, and funds will revert to the Federal Government;
- If an individual reallotment amount to a Tribe is less than \$500, a reallotment award will not be issued to that Tribe;
- If a tribal CCDF grantee does not submit a reallotment report by the April deadline, a determination will be made that no funds are available for reallotment. Any funds reported to be available for reallotment after the April deadline shall revert to the Federal Government.

Audits:

Audits must be conducted in accordance with: 2 CFR Part 2 Subpart F and 45 CFR Part 75 Subpart F, Audit Requirements. This Subpart replaces

OMB Circular A-133.

**Technical
Assistance
Training**

During May and June 2016, the OCC sponsored the Tribal Plan Training in ACF Regional Office cities to provide Tribal Lead Agency Administrators with a thorough review of the Tribal CCDF Plan sections, including requirements for: coordination, family eligibility, payment rates/family co-payments, parental choice, and health and safety. For additional information about the regional Tribal Plan Trainings or for questions in completing the Tribal CCDF Plan, please contact your Regional Office (Attachment B).

Inquiries:

Direct all inquiries to the appropriate ACF Regional Office (Attachment B).

Rachel Schumacher
Director
Office of Child Care

Attachments:

A – Tribal Plan Preprint

B – ACF Regional Child Care Program Managers List