

ACF

Administration
for Children
and Families

U.S. DEPARTMENT OF HEALTH AND HUMAN SERVICES

1. Log No: CCDF-ACF-PIQ-2018-01

2. Issuance Date: August 15, 2018

3. Originating Office: Office of Child Care (OCC)

4. Key Words: Child Care and Development Fund (CCDF); Child Care and Development Block Grant (CCDBG) Act

To: Lead Agencies administering the Child Care and Development Fund (CCDF) program, as amended, and other interested parties.

Subject: State-Tribal Coordination Regarding the CCDF Requirements

References: The CCDBG Act (42 U.S.C. § 9857 *et seq.*), as amended; section 418 of the Social Security Act (42 U.S.C. § 618); 45 CFR Parts 98 and 99; CCDF-ACF-PI-2015-03; and ACYF-PIQ-CC-97-01.

Background: OCC has received questions relating to how states and tribes need to coordinate to ensure that child care providers receiving CCDF funds meet the CCDF requirements.

Questions: Please direct inquiries to the Child Care Program Manager in the appropriate ACF Regional Office

/s/

Shannon Christian
Director
Office of Child Care

Question: Where do the CCDBG Act and the regulations require state and tribal coordination for CCDF services?

Answer: As outlined in the [CCDF-ACF-PI-2015-03](#), the Act includes several provisions that specifically address state and tribal coordination:

- Sec. 658D(b)(1)(E): At the option of the tribe, State Lead Agencies must consult, collaborate, and coordinate with the tribes in a timely manner in the development of the State Plan. 42 U.S.C. §9858b(b)(1)(E); *see also* 45 CFR 98.10(f).

States must be proactive and timely in reaching out to the tribal officials for collaboration and are required to describe how they consulted, collaborated, and coordinated with tribes in their State Plans (81 FR 67540). The CCDF regulations recognize the need for states to conduct formal, structured consultation with tribal governments, including tribal leadership (81 FR 67448). Many states and tribes have consultation policies and procedures in place.

- Sec. 658E(c)(2)(O)(i): State Lead Agencies must describe in their Plans how they coordinate services with tribal early childhood programs in order to expand accessibility and continuity of care. 42 U.S.C. 9858c(c)(2)(O)(i); *see also* 45 CFR 98.14(a)(1).
- Sec. 658E(c)(2)(P): State Lead Agencies must demonstrate how they are encouraging partnerships with tribes and tribal organizations to leverage existing service delivery systems for child care and development services and to increase the supply and quality of child care services. 42 U.S.C. §9858c(c)(2)(P); *see also* 45 CFR 98.14(a)(4).
- Sec. 658E(c)(2)(G): State Lead Agencies must have training and professional development in place designed to enable child care providers to promote the social, emotional, physical, and cognitive development of children and to improve the knowledge and skills of the child care workforce. This training and professional development must also be accessible to CCDF child care providers supported through Indian tribes or tribal organizations. The training and professional development should also, to the extent practicable, be appropriate for Native Americans. 42 U.S.C. § 9858c(c)(2)(G); *see also* 45 CFR 98.44(b)(2)(iv) and (vi).

Although tribes are not required to meet the statutory and regulatory requirements for having a training and professional development framework, we strongly encourage tribes to work with states to ensure that state training and professional development opportunities are accessible to Tribal CCDF child care providers. Tribal CCDF programs should also coordinate with other childhood development programs located in the

tribal service area, including any programs that support the preservation and maintenance of Native languages (81 FR 67540).

- Sec. 658O(c)(5): The Act mandates that, for child care services funded by CCDF, the eligibility of Indian children for a tribal program does not affect their eligibility for a state program. 42 U.S.C. § 9858m(c)(5); *see also* 45 CFR 98.80(d).

Census data indicates over 60 percent of American Indian and Alaskan Native families do not reside on reservations or other Native lands; therefore, significant numbers of eligible Indian children and families are served by State Lead Agencies. Eligible Indian children who reside in tribal service areas continue to have dual eligibility to receive child care services from either the state or tribal CCDF program (81 FR 67534). (Dual eligibility is further discussed in [ACYF-PIQ-CC-97-01](#).)

In addition, there are similar requirements on tribes to coordinate with the State Lead Agencies, to the maximum extent feasible. Sec. 658O(c)(2)(A), 42 U.S.C. § 9858m(c)(2)(A) and 45 CFR 98.82 require Tribal Lead Agencies to coordinate with state CCDF programs and with other federal, state, local, and tribal child care and child development programs.

Question: When a state uses its CCDF funds to support child care providers on tribal reservations or service areas, how do the CCDF health and safety requirements apply? Does the state need to ensure that those child care providers are meeting the state's requirements?

Answer: All child care providers who receive CCDF funds are subject to the health and safety requirements in the CCDBG Act, including the monitoring and background check requirements. State Lead Agencies have the option to develop written agreements with tribes, who will ensure that the health and safety requirements are met.

The Final Rule clarified that all tribes receiving CCDF funds are required to meet the health and safety requirements at § 98.41(a), which include requirements around a list of health and safety topics; health and safety training; setting group size limits and ratios; and compliance with child abuse reporting requirements (81 FR 67538). In addition, all tribes are required to meet the monitoring requirements at § 98.42 and the background check requirements at § 98.43. However, at § 98.83(d)(2) and (3), the Final Rule allows Tribal Lead Agencies to describe an alternative monitoring approach and/or an alternative background check approach in their Tribal Plans. These provisions give Tribal Lead Agencies some flexibility in determining which monitoring and background check requirements should apply to child care providers. Tribes cannot use this flexibility to bypass these requirements altogether, but may introduce strategies that are more culturally appropriate or more financially feasible for their communities. These alternative approaches are subject to ACF approval.

A tribe's CCDF health and safety requirements may be somewhat different than the state's requirements. A state may use CCDF funds to support child care providers on tribal reservations or service areas that are meeting the tribe's CCDF health and safety requirements. It is not necessary for the state to require those child care providers receiving both State CCDF and Tribal CCDF funds to meet additional or duplicative state requirements (although a state may require state standards at its option).

In instances in which a tribe is using its CCDF funds to support a child care provider that is licensed by the state or meeting State CCDF requirements, the same is true. It is not necessary for the tribe to require additional or duplicative requirements. Although not required, states and tribes have the option of developing a written agreement that formally outlines the mutually agreed upon requirements.

As part of this written agreement, the state and tribe may establish procedures for the tribe to provide documentation or assurances to the state indicating that the CCDF requirements have been met by a particular provider. Self-certification by the provider would not be sufficient to demonstrate compliance with health and safety requirements.

Question: When a state uses its CCDF funds to support child care providers on tribal reservations or service areas that also receive Tribal CCDF funds, how do the CCDF eligibility requirements apply? Specifically, which eligibility requirements apply, the tribe's CCDF policies or the state's CCDF policies?

Answer: The CCDF Final Rule gave tribes additional flexibility around the eligibility requirements. Tribal Lead Agencies receiving large or medium allocations are subject to the new and revised provisions around eligibility for services— including, but not limited to, changes regarding: the 12-month re-determination periods; the continued assistance provisions; and graduated phase-out. However, at 45 CFR 98.81(b)(1)(i), the regulations allow a tribe, if its Tribal Median Income is below 85% of State Median Income, the option of considering any Indian child in the tribe's service area to be eligible to receive CCDF funds, regardless of the family's income, work, or training status, provided that provision for services still goes to those with the highest need.

In addition, tribes receiving small allocations are exempt from the majority of the CCDF eligibility requirements and have flexibility to set their own eligibility requirements. If those small allocation tribes are providing direct services, they do need to describe their eligibility criteria in their Tribal Plans.

Because of this additional flexibility, Tribal Lead Agencies may have eligibility requirements that differ significantly from the state's requirements. For tribal child care providers that receive funding from both the tribal and state CCDF programs, it is not necessary for the state to require the provider to meet additional or duplicative state requirements. Again, State Lead Agencies have the option to develop written agreements with tribes, who will ensure that their tribal eligibility requirements are met.

Question: If a state must implement new CCDF requirements by October 1, 2018 and a tribe must implement the new CCDF requirements by October 1, 2019, must a tribe meet the new requirement sooner than October 1, 2019 in order for its Tribal CCDF program and/or providers to receive CCDF from the state?

Answer: No. ACF will continue to determine compliance for states with provisions in this final rule through review and approval of the FY 2019 – 2021 CCDF Plans that become effective October 1, 2018. For Tribal Lead Agencies, ACF will determine compliance through review and approval of the FY 2020 - 2022 Tribal CCDF Plans that become effective October 1, 2019.

When a state uses their CCDF funds to support a tribe's CCDF program and/or providers, it is not necessary for the tribe or provider to meet the state's compliance date. Tribes will continue to have until October 1, 2019 to implement the new CCDF requirements outlined in the Final Rule.