

# ACF

Administration  
for Children  
and Families

U.S. DEPARTMENT OF HEALTH AND HUMAN SERVICES

**1. Log No:** CCDF-ACF-PI-2009-02

**2. Issuance Date:** January 16, 2009

**3. Originating Office:** Child Care Bureau, Office of Family Assistance

**4. Key Words:** Child Care and Development Fund (CCDF): Market Rate Survey for States, Territories and Tribal Lead Agencies

## PROGRAM INSTRUCTION

**To:** Lead Agencies administering child care programs under the Child Care and Development Block Grant (CCDBG) Act of 1990, as amended and other interested parties.

**References:** Section 658E of the Child Care and Development Block Grant (CCDBG) Act of 1990, as amended; 45 CFR 98.16(1); 45 CFR 98.43(b)(2).

**Subject:** This Program Instruction clarifies certain provisions of the Child Care and Development Fund (CCDF) regulation regarding local market rate surveys. Specifically, this Program Instruction addresses:

- The deadline for State, Territorial and Tribal Lead Agencies to complete market rate surveys.
- The conditions under which Tribal and Territorial Lead agencies may provide alternative documentation in lieu of conducting or using a market rate survey.
- Conditions under which a Tribal Lead Agency may base its payment rates on the State market rate survey rather than conducting its own survey.
- State-Tribal coordination around market rate surveys.

**Background:** In odd-numbered years, Lead Agencies must submit biennial CCDF Plans for Administration for Children and Families (ACF) review by July 1. ACF will approve plans that satisfy the requirements of the CCDBG Act and regulations at 45 CFR Parts 98 and 99 no later than 90 days following the date on which the Plan is received (45 CFR 98.18(a)). When approved by ACF, Plans become effective on October 1. A Tribal Lead Agency consolidating CCDF under Public Law 102-477 may be subject to different deadlines, based on the Tribe's specific plan period.

Federal regulations at 45 CFR 98.16(1) and 98.43(b)(2) require a Lead Agency to provide, as part of its CCDF Plan, a summary of the facts that were relied on to determine that its payment rates ensure equal access to child care services. At a minimum, Lead Agencies are required to show how payment rates are adequate based on a local market rate survey conducted no earlier than two years prior to the effective date of the currently approved Plan.

Policy:

Deadline for Completing Market Rate Surveys

State, Territorial, and Tribal Lead Agencies must complete and analyze market rate surveys prior to the July 1 Plan submission date. This deadline allows Lead Agencies to use market rate survey results to respond to Plan questions addressing equal access requirements at 45 CFR 98.43, and allows sufficient time for ACF review and approval within the 90 day allotted timeframe. (As noted above, P.L. 102-477 Tribes may be subject to different deadlines).

Conditions Under Which Alternative Documentation May be Acceptable

ACF recognizes that market rate surveys may not be feasible under certain limited circumstances, particularly for some Tribal or Territorial Lead Agencies. Therefore, these Tribal and Territorial Lead Agencies may provide alternative documentation in lieu of a market rate survey if at least one of the following criteria is met:

1. A Tribal or Territorial Lead Agency has documented that it funds CCDF direct services solely in settings outside the scope of a market rate survey, including:
  - a. An exempt Tribal Lead Agency provides CCDF direct services solely in tribally-operated facility(ies) and does not provide services through certificates/vouchers, grants, or contracts. Under 45 CFR 98.83(f), an exempt Tribal Lead Agency is one that receives CCDF funding below a specified threshold (currently \$500,000) and is therefore exempt from operating a certificate program.
  - b. A Tribal or Territorial Lead Agency funds CCDF direct services solely in unregulated home-based settings such as in-home care (i.e., care in the child's home) or family, friend and neighbor care, and does not fund any CCDF services in centers, regulated family child care homes or regulated group homes. [Note: Territories and non-exempt Tribes (receiving at least \$500,000) must operate certificate programs that provide parental choice of any legally-operating provider].
2. A Tribal or Territorial Lead Agency has documented that all child care providers in the service area that would potentially be included in a market rate survey:
  - a. Serve only children receiving CCDF subsidies, and
  - b. Serve no private-pay children.

A Tribal or Territorial Lead Agency that meets one of the two criteria (above) and chooses to submit alternative documentation in lieu of a market rate survey must submit the following in section 3.2 of its CCDF Plan:

- A. A written assurance specifying that the Lead Agency meets one of the above criteria.
- B. In the case of criterion 1 (above), documentation or description indicating

that the Lead Agency funds CCDF services solely in tribally-operated facility(ies) and does not provide services through certificates/vouchers, grants, or contracts; or provides direct services solely in unregulated home-based settings and does not provide any services through centers or regulated child care or regulated group home settings.

- C. In the case of criterion 2 (above), a description of how the Lead Agency determined that all providers serve only children receiving CCDF subsidies and serve no private-pay children, including a description of all relevant provider types (e.g., centers, family child care homes, etc) that were examined.
- D. A description of how the Lead Agency determined its payment rates in the absence of a market rate survey.

Regardless of whether the Lead Agency uses a market rate survey or provides alternative documentation, the Lead Agency in its Plan must provide a summary of the facts relied on to determine that its payment rates ensure equal access. Except in limited circumstances described above, the market rate survey is still required and remains the primary methodologically-sound way for Lead Agencies to ascertain whether the payment rates they establish provide equal access.

#### Conditions Under Which a Tribe May Use State Survey Results

If a Tribe does not meet the limited exceptions to the market rate survey requirement (described above), it may be able to use the State's market rate survey rather than conducting its own. As indicated in the preamble to the 1998 CCDF Final Rule at 63 FR 39977, a Tribal Lead Agency may base its payment rates on State's market rate survey rather than conducting its own survey if the Tribe's service area is included in the State survey. If a Tribal Lead Agency elects to use the State's survey, it must indicate in its CCDF Plan which State and the date (including year) of the survey. For Tribes whose service area falls into more than one State, the Tribal Lead Agency must indicate each State and year.

This Program Instruction further clarifies that in order for a Tribe to use a State's survey, the State survey must include relevant providers in the tribal service area, including providers that Indian families could potentially access, in order to be representative of the child care market for Tribal families. Further, the State survey must provide survey results in a manner relevant to the Tribe's service area. If a State's survey only provides statewide results, it may not represent characteristics of the Tribe's service area. Finally, in instances where the Tribe uses State survey results to set its rates, the Tribe should not simply adopt the State's CCDF payment rate schedule, but rather should use the results from the State's survey of market prices as part of the summary of facts relied upon for ensuring equal access.

#### State and Tribal Collaboration

ACF strongly encourages States and Tribes to collaborate regarding market rate surveys. As discussed above, under certain circumstances Tribes may use State

survey results to set rates. Because States also provide CCDF assistance to Indian children, States benefit by including in their market rate surveys tribal service areas and providers serving Indian children. Under Federal statute and rules [6580(c)(5) of the CCDBG Act and 45 CFR 98.80(d)], Indian children have dual eligibility to receive CCDF services from either the Tribe or the State.

State and Tribal coordination may be helpful in the following areas:

- Planning the market rate survey: Tribes may be able to provide lists of providers in the priced child care market for potential inclusion in the State's market rate survey. Tribes can also provide input in defining the geographic area in relation to the Tribe's service area.
- Analyzing results: We encourage States to provide Tribes with results from State market rate surveys in a manner and format that is useful to Tribes. For example, States may separately delineate results of market rate surveys for each tribal service area for analytical purposes. In turn, Tribes may be able to help States better understand survey results for tribal service areas based on unique circumstances of local child care markets.

Effective Date: This Program Instruction is effective upon issuance.

Resources: ACF recently funded a research project on conducting valid child care market rate surveys, including State, Territory, and Tribal market rate survey practices and policies. Materials from the project are available at [www.researchconnections.org](http://www.researchconnections.org)

Questions: Direct all inquiries to the Child Care Program Manager in the appropriate ACF Regional Office.

/s/

---

Sidonie Squier  
Director  
Office of Family Assistance

## Child Care Bureau Regional Program Managers

**Region I** Shireen Riley  
HHS/ACF  
John F. Kennedy Federal Building  
20th Floor, Suite 2025  
15 New Sudbury Street  
Boston, MA 02203  
Phone: (617) 565-1152  
Fax: (617) 565-1578  
E-mail: shireen.riley@acf.hhs.gov

**Region VI** Gwendolyn Jones  
HHS/ACF  
1301 Young Street  
Suite 914  
Dallas, TX 75202  
Phone: (214) 767-3849  
Fax: (214) 767-8890  
E-mail: gwendolyn.jones@acf.hhs.gov

**Region II** Nitza Lopez-Munoz  
HHS/ACF  
26 Federal Plaza  
Room 4114  
New York, NY 10278  
Phone: (212) 264-2890 X182  
Fax: (212) 264-4881  
E-mail: nitza.lopezmunoz@acf.hhs.gov

**Region VII** Betty Lammle  
HHS/ACF  
Federal Office Building  
Room 276  
601 East 12th Street  
Kansas City, MO 64106  
Phone: (816) 426-2264  
Fax: (816) 426-2888  
E-mail: betty.lammle@acf.hhs.gov

**Region III** Jennifer McGraw  
HHS/ACF  
150 S. Independence Mall, West  
Public Ledger Building, Suite 864  
Philadelphia, PA 19106-3499  
Telephone: (215) 861-4053  
Fax: (215) 861-4070  
E-mail: Jennifer.McGraw@acf.hhs.gov

**Region VIII** Karen Knoll-Moran  
HHS/ACF  
Federal Office Building  
1961 Stout Street  
9th Floor  
Denver, CO 80294-3538  
Phone: (303) 844-1164  
Fax: (303) 844-3642  
E-mail: karen.knollmoran@acf.hhs.gov

**Region IV** Kimberly J. Pope  
HHS/ACF  
61 Forsyth Street  
Suite 4M60  
Atlanta, GA 30303-8909  
Phone: (404) 562-2905  
Fax: (404) 562-2984  
E-mail: kpope@acf.hhs.gov

**Region IX** Robert Garcia  
HHS/ACF  
90 7th Street, Ninth Floor  
San Francisco, CA 94103-6710  
Phone: (415) 437-8439  
Fax: (415) 437-8444  
E-mail: robert.garcia@acf.hhs.gov

**Region V** Kathleen Penak  
HHS/ACF  
233 N. Michigan Ave.  
Suite 400  
Chicago, IL 60601  
Phone: (312) 353-3270  
Fax: (312) 353-2629  
E-mail: kathleen.penak@acf.hhs.gov

**Region X** Paul Noski  
HHS/ACF Blanchard Plaza  
2201 Sixth Avenue  
Room 300-MS 74  
Seattle, WA 98121  
Phone: (206) 615-2609  
Fax: (206) 615-2574  
E-mail: paul.noski@acf.hhs.gov