

ACF

Administration
for Children
and Families

U.S. DEPARTMENT OF HEALTH AND HUMAN SERVICES

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PROGRAM INSTRUCTION

- To:** State, Territorial and Tribal Lead Agencies administering child care programs under the Child Care and Development Block Grant Act of 1990, as amended (the CCDBG Act), and other interested parties.
- Subject:** Wage Rate and Buy American Requirements for American Recovery and Reinvestment Act (ARRA) of 2009 grant awards.
- References:** The CCDBG Act (42 U.S.C. § 9858 et seq.); Section 418 of the Social Security Act (42 U.S.C. § 618); Sections 1605 and 1606 of the American Recovery and Reinvestment Act of 2009 (P.L.111-5); Child Care and Development Fund (CCDF) Regulations (45 C.F.R. Parts 98 and 99).
- Purpose:** This Program Instruction is intended to provide guidance on two specific requirements applicable to ARRA funds which have not previously been applied to CCDF funds. These provisions include wage rate requirements and domestic content requirements applicable to the use of ARRA funds for construction, alteration, maintenance, or repair. The provisions were included in the HHS Standard Terms and Conditions for ARRA funds (attached).
- Background:** In the ARRA, Congress appropriated \$2 billion in supplemental funding for the CCDF Discretionary fund. Supplemental funds provided through the ARRA are subject to the existing statutory and regulatory requirements governing the CCDF program. Section 658F(b)(1) of the CCDBG Act (42 U.S.C. § 9858d(b)(1)) prohibits use of CCDF funds for the purchase, construction, or permanent improvement of any building or facility. CCDF regulations at 45 C.F.R. § 98.54(b) provide that no CCDF funds may be expended for the purchase or improvement of land, or for the purchase, construction, or permanent improvement of any building or facility. However, this prohibition does not apply to Tribal Lead Agencies. The CCDBG Act at section 658O(c)(6) allows Tribal Lead Agencies to request approval to use CCDF funds for construction and renovation of facilities. No Tribes applied to use supplemental CCDF ARRA funds for construction or major renovation.

Despite the prohibition on construction or major renovation, States, Territories, Tribes, and local agencies, and non sectarian agencies or organizations may expend CCDF funds 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. Sectarian agencies or organizations may expend CCDF funds for minor remodeling only if necessary to bring the facility into compliance with health and safety requirements.

As noted by the preamble to the CCDF Final Rule, States may assume that an improvement or upgrade to a facility which is not specified under the definition of major renovation at 45 CFR 98.2 would be considered minor renovation and, therefore, allowable (63 Fed. Reg. 39936, 39940-41 (July 24, 1998)). 45 CFR 98.2 defines “major renovation” to mean “(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.” In other words, CCDF may be spent on interior renovations such as painting, carpeting, and other activities that neither add to the permanent value of the property nor significantly alter the function or purpose of the facility.

Lead Agencies that intend to use ARRA CCDF funds for minor remodeling or upgrading of child care facilities must comply with the guidance provided below concerning the Davis-Bacon and Buy-American provisions of the ARRA. This includes instances in which Lead Agencies provide grants or sub-awards to other entities or enters into contracts for the above stated purposes. Lead Agencies should note that these requirements are only applicable to CCDF ARRA funds and do not apply to the use of “regular” or non-ARRA CCDF funds for these activities.

Guidance:

Davis-Bacon Provision

Section 1606 of the ARRA requires that all laborers and mechanics employed by contractors and subcontractors on projects funded directly by or assisted in whole or in part by and through the Federal government pursuant to the Recovery Act must be paid at least prevailing wages as determined by the Department of Labor. A memorandum from the Department of Labor issued May 29, 2009, indicates that the Davis-Bacon Act applies to use of funds for alteration and repairs including painting and decorating on contracts in excess of \$2,000 (attached) Thus, the requirements of the Davis-Bacon Act, and all related regulations and guidance issued by the Department of Labor, are applicable to CCDF Lead Agencies that use ARRA CCDF funds for purposes of minor remodeling of child care facilities or homes, whether funds are provided directly or to a sub-grantee or contractor that will be used for this purpose.

The Wage and Hour Division at the Department of Labor has established a special ARRA website which provides important links and other information regarding application of Davis-Bacon labor standards. This site can be accessed at: <http://www.dol.gov/whd/recovery/index.htm>

Buy American Provision

Section 1605 of the ARRA provides that none of the funds appropriated or made available by the Act may be used for a project for the construction, alteration, maintenance, or repair of a public building or public work unless all of the iron, steel, and manufactured goods used in the project are produced in the United States. Thus, to the extent that CCDF ARRA funds are used for these purposes, they must comply with the Buy-American provisions.

The Office of Management and Budget (OMB) has issued guidance for implementing the Davis-Bacon and Buy American Provisions of the ARRA (attached).

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

Ann H. Barbagallo
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Attachments:

- HHS Standard Terms and Conditions American Recovery and Reinvestment Act of 2009 Division A Funds
- U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division. Memorandum No. 207, (05/29/2009)
- Office of Management and Budget, Requirements for Implementing Sections 1512, 1605, and 1606 of the ARRA for Financial Assistance Awards, 74 Fed. Reg. 18449 (Apr. 23, 2009)