

ACF

Administration
For Children
And Families

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CHILD CARE AND DEVELOPMENT FUND PROGRAM INSTRUCTION

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

Purpose: This Program Instruction (PI) informs Tribes and Tribal Organizations of the process for obtaining Fiscal Year (FY) 2011 Child Care and Development Fund (CCDF) Tribal Mandatory and Discretionary Funds.

References: The Child Care and Development Block Grant Act of 1990 (CCDBG), as amended; section 418 of the Social Security Act; 45 CFR Parts 98 and 99.

Background: Federal regulations at 45 CFR 98.81 require Tribal Lead Agencies to apply for CCDF funds. For years in which the Tribal Lead Agency submits a biennial CCDF Plan, the Plan itself serves as the application. However, in non-Plan years, the Tribal Lead Agency must apply for funds in accordance with the guidance in this Program Instruction.

The CCDF is comprised of two funding sources:

- Discretionary Funds – funding that is provided to eligible Tribes and Tribal organizations under the CCDBG Act of 1990, as amended; and
- Tribal Mandatory Funds – funding that is provided to eligible Tribes and Tribal organizations under Section 418 of the Social Security Act.

CCDF Eligibility: Pursuant to 45 CFR 98.62, 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 or Tribal organization had

at least 50 children under age 13; and

- Adequately demonstrate it has authorization from each participating Tribe to receive CCDF funds on behalf of the Tribe.

Special Rule for Indian Tribes in Alaska - 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. New Tribal applicants in Alaska should contact the Administration for Children and Families (ACF) Region X (Attachment A) with questions about this Special Rule.

Application Process:

Current Tribal CCDF Grantees – Tribal Lead Agencies that received FY 2010 funds must submit a new Child Count Declaration (Attachment C). By submitting a signed, completed Child Count Declaration, the Tribal Lead Agency is thereby making an application for FY 2011 CCDF funds.

By applying for FY 2011 CCDF funds, the Tribal Lead Agency: 1) agrees to follow the provisions of the CCDBG Act of 1990, as amended, and applicable regulations at 45 CFR Parts 98 and 99; and 2) continues to be subject to the assurances and certifications provided in the CCDF Plan for the remainder of the FY 2010-2011 Plan period.

New Tribal CCDF Applicants – Tribes that did not receive FY 2010 CCDF funds must submit a CCDF Biennial Plan. If approved, the new CCDF plan will cover a one-year period of October 1, 2010 to September 30, 2011 (consistent with the current plan period for all CCDF tribal plans, which extends through September 30, 2011). Please contact your ACF Regional Office (Attachment A) to obtain a copy of the CCDF plan document.

Tribal Child Counts:

For funds that become available in FY 2011, ACF will calculate grant awards based on the number of children **under age 13**. A Tribe must submit a self-certified Child Count Declaration for children under age 13 (not age 13 and under), in order to receive FY 2011 CCDF funds. Because the definitions for “Indian child” and “reservation/service area” help determine the Tribal grant award amounts, please keep in mind the following information as you prepare annual Tribal child counts for CCDF funds:

- While Tribal Lead Agencies have some flexibility in defining “Indian Child,” the definition must be limited to children from Federally recognized Indian Tribes, consistent with the Child Care and Development Block Grant Act’s definition of Indian Tribe.
- “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.

The Child Count Declaration must certify the number of Indian children (as defined by a Tribal Lead Agency in Appendix 2, #2 of the Plan), under age 13, who reside on or near the reservation or service area (as defined by a Tribal Lead Agency in Appendix 2, #3 of the Plan). The Child Count Declaration must be signed by the

governing body of the Tribe or a person authorized to act for the applicant Tribe or organization.

An application submitted without a Child Count Declaration will be treated as an incomplete application. Therefore, to facilitate the approval process, a signed, completed Child Count Declaration must be submitted to the ACF Regional Office (Attachment A) by July 1, 2010.

PLEASE BE ADVISED: The Tribal Lead Agency may not count any children who are 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.

Tribal Lead Agencies are also advised that ACF will not accept declarations based on child counts that were conducted prior to July 1 of the previous year. For FY 2011 funding, the child count of children under age 13 must be completed no later than June 30, 2010, and no earlier than July 1, 2009.

**Special
Instructions
For Tribal
Consortia:**

Individual Child Counts Required - A tribal consortium must submit an individual Child Count Declaration, signed by an individual authorized to act for the Tribe, for each tribal member in a tribal consortium. A tribal consortium must also provide a summary section listing each tribal member's name and child count, and the total child count for all members.

Because of the statutory "Special Rule for Indian Tribes in Alaska" under Tribal Mandatory Funding, some Alaska Native Regional Nonprofit Corporations will have to 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, which applies directly for Discretionary Funding. 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.

Membership Changes – It is the responsibility of a tribal consortium to notify ACF of any changes in its membership for CCDF funding purposes during the approved plan period (October 1, 2009 – September 30, 2011). For example, if a new Tribe joins a tribal consortium to receive CCDF funds, or if a current tribal consortium member elects not to receive CCDF funds through that tribal consortium -- these changes must be conveyed to ACF in writing by the tribal consortium.

**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)).

Tribal Lead Agencies with CCDF allocations equal to or greater than \$500,000 for a fiscal year are considered non-exempt grantees; therefore: 1) no less than four percent of the aggregate CCDF funds expended for a fiscal year must be used for quality activities; and 2) the Tribal Lead Agency must 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).

Transition Period Moving into Non-Exempt Status

A Tribal Lead Agency that moves from the exempt to non-exempt category has a phase-in period of **up to one year** to meet the CCDF non-exempt requirements. The one year 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. A non-exempt Tribal Lead Agency must describe how it is meeting non-exempt requirements in its FY 2010-2011 CCDF plan, including Plan sections 1.4 (quality funds), 3.1 (descriptions of child care services), 3.2 (payment rates), 3.6 (certificate payment system), and 5.1-5.2 (activities and services to improve the quality of child care).

Funding Estimates and Allocation Formulas:

ACF estimates that \$132,881,620 in FY 2011 CCDF funds will be available for tribal grantees starting October 1, 2010 (\$58,541,620 in Discretionary Funds and \$74,340,000 in Tribal Mandatory Funds). Grants from Discretionary Funds will include a base amount of \$20,000 plus a per child amount (approximately \$80 per child) for each Tribe or tribal consortium with a minimum of 50 children. Grants from Tribal Mandatory Funds are calculated solely on a per child basis (approximately \$120 per child) and do not include a base amount.

Since the per child amount for both Discretionary and Tribal Mandatory Funds depends upon the total number of children in all participating Tribes, ACF cannot calculate in advance the exact per child amount. However, Tribes and tribal organizations may use the FY 2011 Tribal Estimates Chart (See Attachment B) as a guide. A new applicant should use the base amount plus approximately \$80 per child to estimate its allotment for Discretionary funding, and should use approximately \$120 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 \$20,000, or \$19,600. The per child amount is then multiplied by 49 and added to the \$19,600 base amount.

Important Note: These amounts are provided for the purpose of estimating the allotments that will become available beginning October 1, 2011, and may increase or decrease when updated data become available before the final grant awards are issued. The estimates reflect the Administration's FY 2011 budget request.

Discretionary Targeted Funds:

The Administration's FY 2011 budget request includes targeted funds for school-age care and resource and referral activities. The FY 2011 Tribal Estimates Chart (Attachment B) shows the estimated targeted funds requirement for FY 2011. The column labeled Discretionary Targeted Funds shows the estimated amount that must be spent on resource and referral activities and/or school-age care. The column labeled Discretionary Excluding Targeted Funds is the amount of Discretionary Funds remaining (other than targeted funds) that can be spent on any allowable CCDF activities (assuming quality expenditure, administrative cost and other Federal requirements are met). The amount of targeted funds for resource and referral activities and school-age care is based on a \$500 amount per Tribe plus a per child amount. All amounts in the FY 2011 Tribal Estimates Chart (Attachment B) are estimates that may increase or decrease when final grant awards are issued.

Note to Non-Exempt Tribal Lead Agencies: The targeted funds are to be used in addition to the “not less than four percent” required to be spent on activities that improve the quality and availability of child care.

- Administrative Costs:** Tribal Lead Agencies are reminded that no more than 15 percent of the aggregate CCDF funds expended from each year’s allotment may be used for administrative costs. Tribal Lead Agencies are advised to review the CCDF regulations at 45 CFR 98.52 for a discussion of administrative costs.
Note: the Discretionary Funds base amount is neither subject to the 15 percent limitation, nor included in the calculation for the 15 percent limitation.
- Construction and Renovation:** In order to use CCDF funds for construction or major renovation projects, all Tribes receiving CCDF funds are required to follow ACF's construction and renovation application procedures (Program Instruction CCDF-ACF-PI-2010-03, dated April 7,2010). This Program Instruction is available on the Child Care Bureau’s website at: http://www.acf.hhs.gov/programs/ccb/law/tribal_topic_construction.htm.

Early in the planning process, Tribes are advised to contact their appropriate ACF Regional Office (Attachment A). If a Tribe constructs or renovates more than one facility, it must seek ACF approval for each project (even if the projects use identical plans and specifications).
- Obligation and Liquidation Periods:** Tribal Lead Agencies must obligate FY 2011 Tribal Mandatory and Discretionary Funds by September 30, 2012, and liquidate all funds by September 30, 2013. FY 2011 CCDF Funds that are approved by ACF to be used for a construction or major renovation project must be liquidated by September 30, 2013.
- Reallotted Discretionary Funds** Tribal Lead Agencies are required to notify ACF by April 1, 2011 if they will be unable to obligate any portion of their FY 2010 CCDF Discretionary Funds allotment by September 30, 2011. In accordance with 45 CFR 98.64(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 reallotted to other tribal grantees in proportion to their original allotments. Tribal Lead Agencies indicate their interest in receiving their proportional share of reallotted Discretionary Funds that **may** become available in the second fiscal year of a given grant period on their annual ACF-696T CCDF financial expenditure report.
- Deadlines:** FY 2011 CCDF Funding Applications must be received by ACF no later than July 1, 2010.
- Electronic Format:** The required Child Count Declaration is available in electronic format from the ACF Regional Offices (see Attachment A) and on the Child Care Bureau’s website : http://www.acf.hhs.gov/programs/ccb/law/tribal_topic_application.htm.
- Submitting the Application:** Submit copies of the application as follows:
One (1) copy to: ACF Regional Office
Attn: Child Care Program Manager
(see Attachment A)
One (1) copy to: TriTAC
c/o Native American Management Services, Inc.
re: CCDF FY 2011 Tribal Applications
12110 Sunset Hills Road
Suite 450
Reston, VA 20190

Note: ACF's Tribal Child Care Technical Assistance Center (TriTAC) is only serving as a receipt point for applications. ACF will conduct the review and approval of Tribal FY 2011 CCDF funding applications.

- Public Law 102-477 Option:** The "Indian Employment, Training and Related Services Demonstration Act of 1992" (P.L. 102-477) permits tribal governments to consolidate a number of Federal programs to integrate their Federally funded employment, training and related services programs into a single, coordinated comprehensive program. CCDF is one of the programs that may be consolidated under P.L. 102-477. This Program Instruction (i.e., for FY 2011 CCDF Funds) does not apply to those Tribes and Tribal organizations that consolidate CCDF funds under P.L. 102-477. A separate Program Instruction contains P.L. 102-477 application and plan requirements and is also available on the Child Care Bureau's website at: http://www.acf.dhhs.gov/programs/ccb/law/tribal_topic_application.htm.
- Reporting Requirements:** By the end of December 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 Program Instructions are also available on the Child Care Bureau's website at: http://www.acf.dhhs.gov/programs/ccb/law/tribal_topic_data.htm and http://www.acf.dhhs.gov/programs/ccb/law/tribal_topic_financial.htm.
- Audits:** Tribes must follow the audit requirements established in OMB Circular A-133 "Audits of States, Local Governments and Non-Profit Organizations," pursuant to the Single Audit Act Amendments of 1996.
- Paperwork Reduction Act:** An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The information collection required under this Program Instruction is approved under OMB Number 0970-0198, which expires September 30, 2011.
- Inquiries:** Direct all inquiries to the ACF Regional Offices (see Attachment A)

Ann Barbagallo
Acting Director
Office of Family Assistance

Attachments:

- Attachment A - ACF Regional Child Care Program Managers List
- Attachment B - FY 2011 Estimated Tribal Allocation Table
- Attachment C - Child Count Declaration
- Attachment D - Assurances and Certifications

Attachment C

CHILD COUNT DECLARATION

Name of Tribal Lead Agency: _____

This certifies that the number of Indian children under age 13 (as defined in Appendix 2, #2) who reside on or near the reservation or service area (as defined in Appendix 2, #3) is: _____ (number)

This count shows the number of Indian children under age 13 as of (date) _____

Signature of Individual Authorized to
Act for the Tribe

Attachment D

Assurances and Certifications

The applicant Tribe or tribal consortium assures that:

- (1) Upon approval, it will have in effect a program that complies with the provisions of the Plan printed herein, and is administered in accordance with the Child Care and Development Block Grant Act of 1990, as amended (the Act), Section 418 of the Social Security Act, and all other applicable Federal laws and regulations. (658D(b) of the Act, 658E(a) of the Act, 45 C.F.R. 98.15(a)(1))
- (2) The parent(s) of each eligible child within the Tribe or tribal service area who receives or is offered child care services for which financial assistance is provided is given the option either to enroll such child with a child care provider that has a grant or contract for the provision of the service or to receive a child care certificate. (658E(c)(2)(A)(i) of the Act, 45 C.F.R. 98.2, 45 C.F.R. 98.30, 45 C.F.R. 98.15(a)(2)) **[Exempt Tribal Lead Agencies are not required to operate certificate programs.]**
- (3) In cases in which the parent(s) elect(s) to enroll the 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. (658E(c)(2)(A)(ii) of the Act, 45 C.F.R. 98.15(a)(3), 45 C.F.R. 98.30)
- (4) 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. (658E(c)(2)(A)(iii) of the Act, 45 C.F.R. 98.15(a)(4), 45 C.F.R. 98.30) **[Exempt Tribal Lead Agencies are not required to operate certificate programs.]**
- (5) The Tribe, or tribal consortium, will coordinate, to the maximum extent feasible, with the Lead Agency(ies) in the State(s) in which the child care programs or activities will be carried out. (45 C.F.R. 98.12, 45 C.F.R. 98.14(a)&(b), 45 C.F.R. 98.81(b)(3)(i), 45 C.F.R. 98.82)
- (6) Tribal Child Care and Development Fund programs and activities will be carried out for the benefit of Indian children on an Indian reservation (except for Programs located in Alaska, California, or Oklahoma). (45 C.F.R. 98.81(b)((3)(ii), 45 C.F.R. 98.83(b))
- (7) 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 Child Care and Development Fund will not significantly restrict parental choice from among categories of care or types of providers. ((658E(c)(2)(A) of the Act, 45 C.F.R. 98.15(a)(5), 45 C.F.R. 98.15(p), 45 C.F.R. 98.30(e)&(f), 45 C.F.R. 98.40(b)(2), 45 C.F.R. 98.41(b), 45 C.F.R. 98.43(d), 45 C.F.R. 98.45(d))

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The applicant Tribe or tribal consortium also certifies that:

- (1) It has procedures in place to ensure that providers of child care services for which assistance is provided under the Child Care and Development Fund afford parents unlimited access to their children and to the providers caring for their children during the normal hours of operation and whenever such children are in the care of such providers. (658E(c)(2)(B) of the Act, 45 C.F.R. 98.15(b)(1), 45 C.F.R. 98.31)
- (2) It maintains a record of substantiated parental complaints and makes information regarding such complaints available to the public on request. (658E(c)(2)(C) of the Act, 45 C.F.R. 98.15(b)(2), 45 C.F.R. 98.32)
- (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. (658E(c)(2)(D) of the Act, 45 C.F.R. 98.15(b)(3), 45 C.F.R. 98.33)
- (4) There are in effect licensing requirements applicable to child care services provided within the State (or area served by the tribal Lead Agency), pursuant to 45 C.F.R. 98.40. (45 C.F.R. 98.15(b)(4), 45 C.F.R. 98.40)
- (5) There are in effect, under tribal, local or State law, requirements 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 Child Care and Development Fund. (658E(c)(2)(F) of the Act, 45 C.F.R. 98.15(b)(5), 45 C.F.R. 98.41)
- (6) Procedures are in effect to ensure that child care providers that provide services for which assistance is provided under the Child Care and Development Fund comply with all applicable health and safety requirements. (658E(c)(2)(G) of the Act, 45 C.F.R. 98.15(b)(6), 45 C.F.R. 98.41)
- (7) Payment rates under the Child Care and Development Fund for the provision of child care services will be sufficient to ensure equal access for eligible children to comparable child care services in the Tribe or tribal service 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. (658E(c)(4)(A) of the Act, 45 C.F.R. 98.15(b)(7), 45 C.F.R. 98.43)
- (8) By the end of each three-year funding period (expenditure period for each Federal fiscal year's grant funding), the Tribe must have expenditures that are equal to grant funds received for that Fiscal Year. (45 C.F.R. 98.67(c))