

**DEPARTMENT OF HEALTH & HUMAN SERVICES**  
**ADMINISTRATION FOR CHILDREN AND FAMILIES**  
Administration on Children, Youth and Families  
330 C Street, S.W.  
Washington, D.C. 20201  
[www.acf.dhhs.gov/programs/acyf](http://www.acf.dhhs.gov/programs/acyf)

February 12, 1999

Dear CCDF 102-477 Grantee:

Enclosed for your information is Program Instruction (PI) ACYF-PI-CC-99-01, dated January 19, 1999. This PI provides guidance to CCDF Tribal Lead Agencies regarding the Child Care and Development Fund (CCDF) Final Rule, dated July 24, 1998. Section I of this PI was written specifically for tribal grantees that apply directly to the Administration for Children and Families/Child Care Bureau for CCDF funds. Therefore, Section I **does not apply** to 102-477 grantees.

Since 102-477 CCDF grantees follow a different application and plan process, I wanted to highlight a new regulatory item that **will be required** in 102-477 plans. In accordance with the CCDF Final Rule, current 102-477 grantees with plans approved beyond FY 2000 will be required to submit plan amendments by July 1, 1999 to demonstrate how they are addressing the requirement for Coordination of Services at Section 98.14(a).

Section II of the enclosed PI discusses the new regulatory requirement for coordination of services. Please note, this new requirement **will not be waived** under a 102-477 plan. This Spring, ACF will issue a Program Instruction on the application and plan process to consolidate CCDF funds under a 102-477 plan. In this Program Instruction, coordination of services will be included as a new requirement under the section "General Plan Requirements."

In addition to a discussion of coordination of services, Section II of the enclosed PI also provides new information regarding: public hearings; child counts; market rate surveys; exempt/non-exempt status; TANF definitions; and affordable copayments.

This information pertains to 102-477 grantees, as follows:

- **Public Hearings** – public hearings must be held prior to a new plan period for 102-477 grantees. Thus, current 102-477 grantees with approved plan periods beyond FY 2000 are not required to conduct public hearings at this point.
- **Child Counts** - all Tribes receiving CCDF funds, including 102-477 grantees, must provide updated child counts, **for children under age 13**, with each annual funding application.
- **Market Rate Surveys** – Non-102-477 grantees must comply with the market rate survey requirement at Section 98.43(b)(2). 102-477 grantees may meet the statutory requirement at Section 98.43(a) by certifying that the payment rates for the provision of child care services are sufficient to ensure equal access, for eligible families in the area served by the Lead Agency, to child care services comparable to those provided to families not eligible to receive CCDF assistance or child care assistance under any other Federal, State, or tribal program.
- **Exempt/Non-Exempt Status** – all Tribes receiving CCDF funds, including 102-477 grantees, must observe the exempt/non-exempt rules.
- **TANF Definitions** – all Tribes receiving CCDF funds must comply with Section 98.33(b). However, 102-477 grantees are not required to include this information in their 102-477 plan.
- **Affordable Copayments** – Non-102-477 grantees must comply with the affordable copayments requirement at Section 98.43(b)(3). While 102-477 grantees are not required to include information on affordable copayments in their 102-477 plan, they should note that the preamble to the CCDF Final Rule suggests that copayments that are no more than 10 percent of the family income would be considered "affordable."

As a reminder, Tribes that elect to consolidate their CCDF funds under a 102-477 plan are still required to operate comprehensive CCDF programs. By applying for CCDF funds, a Tribe agrees to follow the provisions of the Child Care and Development Block Grant Act of 1990, as amended, and applicable regulations at 45 CFR 98 and 99. However, in contrast to the required CCDF application and plan

process, Tribes that consolidate CCDF funds under a 102-477 plan are permitted to submit abbreviated applications and plans for CCDF funding.

If you have any questions about this information, please contact Ginny Gorman at (202) 401-7260.

Sincerely,

/s/

Carmen R. Nazario  
Associate Commissioner, ACYF  
for Child Care

cc:

Lynn Forcia,  
Bureau of Indian Affairs

<h1>ACF</h1> <p>Administration For Children And Families</p>	U.S. DEPARTMENT OF HEALTH AND HUMAN SERVICES Administration on Children, Youth and Families	
	1. Log No: ACYF-PI-CC-99-01	2. Issuance Date: 1/19/99
	3. Originating Office: Child Care Bureau	
	4. Key Word: Child Care and Development Fund; Indian Tribes and Tribal Organizations, Plan, Preprint, Amendment,	

**CHILD CARE AND DEVELOPMENT FUND**

**PROGRAM INSTRUCTION**

**To:** CCDF TRIBAL LEAD AGENCIES, AND OTHER INTERESTED PARTIES

**Purpose:** This Program Instruction provides guidance to Tribal Lead Agencies regarding:

- Immediate action required by the Child Care and Development Fund (CCDF) Final Rule (dated July 24, 1998); and
- Upcoming CCDF plan preprint submission.

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

**Background:** On July 24, 1998, ACF issued a final rule implementing amendments to the CCDBG Act and title IV-A of the Social Security Act. In light of these new regulations, Tribes, under certain circumstances, must immediately submit specified amendments to their existing, approved plan preprint. These amendments regarding in-home care and foster care/respice care are discussed below in section I of the Program Instruction.

Furthermore, in the spring of 1999, ACF will issue a revised tribal plan preprint, which reflects the recently-issued regulations. All Tribal Lead Agencies must complete and submit the revised preprint by July 1, 1999. This revised plan preprint will be effective for a two-year period beginning October 1, 1999.

As a result, while the recently-issued regulations were effective August 23, 1998, Tribal Lead Agencies have until July 1, 1999 – the plan preprint due date – to describe how they are implementing requirements of the amended regulations (other than in-home care and foster care/respice care which require immediate plan amendments under certain circumstances, discussed in Section I). ACF believes this is a reasonable approach that will provide flexibility and sufficient lead time for Tribal Lead Agencies to revise their plans, in accordance with the CCDF final rule. Section II of this Program Instruction provides guidance to help Tribal Lead Agencies prepare for the preprint submittal that is due by July 1.

**SECTION I. IMMEDIATE ACTION -- REQUIRED PLAN AMENDMENTS**

Plan amendments are required if the Tribal Lead Agency fits within the specific circumstances regarding the provision of in-home care, or foster care and respite care, as follows:

#### In-Home Care

Previously, in-home care could only be limited to those situations in which payment for such care was reasonably similar to payments for other categories of care. The amended regulations provide additional flexibility for limiting in-home care. If a non-exempt Tribal Lead Agency elects to limit in-home care in a way which is not reflected in its current plan, the Tribal Lead Agency must submit a plan amendment now for section 3.1.2 which describes the limits on in-home care and the reasons for these limits.

To submit an amendment, draw a line through the sentence in plan section 3.1.2 that begins “The Lead Agency must allow for in-home care but may limit...” and describe the limits on in-home care in the blank space next to this section.

#### Foster Care and Respite Care

In the current plan, Tribal Lead Agencies were asked to include foster care and respite care in their definition of protective services if the Tribal Lead Agency proposed to provide CCDF-funded protective services child care in those circumstances. CCDF child care can be provided in two circumstances: for children of parents who are working or in education and training; or for children in protective services. There are some differences in the requirements for each type of care, such as respite care being allowable only for children in protective services. We believe that many Tribal Lead Agencies have overlooked the requirement to list respite care in the plan if they wanted to offer it and to indicate foster care was included in protective services if the Tribal Lead Agency wanted to follow the protective services requirements in providing child care for foster care children. The revised plan preprint will include direct questions concerning the provision of CCDF-funded care for children in foster care.

In the meantime, if a Tribal Lead Agency is providing CCDF-funded child care to children in foster care using the protective services rules, or respite care to children in protective services -- but has not included these services in their definition of protective services -- the Tribal Lead Agency must submit a plan amendment now to reflect these services under the definition of protective services in Appendix 2 of the Plan preprint.

#### **Deadlines**

Based on the information provided in this Program Instruction regarding in-home care, or foster care and respite care, if a Tribal Lead Agency is required to submit an amendment to its current, approved plan, it must be submitted to ACF for review by **February 26, 1999**. To facilitate transition to the amended regulations, the Tribal Lead Agency may choose October 1, 1998 – as the effective date of the amendment, rather than the effective date of the regulations (August 23, 1998).

#### **Submitting Plan Amendments**

Submit copies of any plan amendments, accompanied by the completed “Amendments Log,” as explained in Program Instruction ACYF-CC-PI-97-03, dated May 13, 1997, as follows:

**1 copy to:**

ACF Regional Administrator  
(see attached list)

**1 copy to:**

Child Care Bureau  
330 C Street, S.W.  
Room 2046  
Washington, D.C. 20447

Plan amendments may be submitted electronically. Contact your ACF Regional Office for details.

## **SECTION II. UPCOMING CCDF PLAN PREPRINT SUBMISSION**

The following is guidance regarding regulatory changes that will be reflected in the revised preprint issued this Spring, as they pertain to Tribal Lead Agencies. For a description of all regulatory changes see the actual regulations at 63 FR 39936-39998. We encourage Tribal Lead Agencies to begin planning now for the plan preprints that must be submitted to ACF by July 1, 1999.

### **Public Hearings**

All Tribal Lead Agencies are required to conduct public hearings before the revised tribal plan preprint is submitted to ACF by July 1, 1999, but no earlier than January 1, 1999. The hearings are meant to solicit public comment and input into the services that will be provided through the CCDF. Tribal Lead Agencies must provide public notice of the hearing at least 20 days prior to the hearing. The notice must be made available across the reservation or service area. Tribal Lead Agencies shall make the contents of the plan available to the public in advance of the hearing. ACF encourages Tribal Lead Agencies to plan now for public hearings by consulting with partners, collecting necessary information, and identifying potential improvements to their child care programs.

### **Child Counts**

Beginning in 1999, self-certified child count declarations will be for children **under age 13** (rather than under age 16, as in the past). Tribal Lead Agencies are advised that ACF will not accept declarations based on child counts that were conducted prior to July 1 of the previous year. For the CCDF plan that is due by July 1, 1999, the child count of children under age 13 must be completed no later than June 30, 1999 and no earlier than July 1, 1998. **IMPORTANT NOTE:** If a child count for children under age 13 is not included as an attachment to the CCDF plan, ACF will adjust the previous child count to reflect the change in counting children under age 16 to only counting children under age 13. ACF will calculate the adjusted child count by deducting 1/5 of the Tribal Lead Agency's child count that was used to award FY 1998 CCDF funds. **This proposed adjustment process is pending any comments received during the 60-day public comment period for the Child Care and Development Fund Plan Preprint (63 FR 70777).**

The declaration will certify the number of Indian children (as defined in Appendix 2, #2 in the Tribal Lead Agency's CCDF Plan), under age 13, who reside on or near the reservation or service area (as defined in Appendix 2, #3 in the Tribal Lead Agency's CCDF Plan).

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 should confer with any other Tribal Lead Agency that has an overlapping or neighboring service area.

### Market Rate Surveys

Section 98.43(b)(2) now requires that the Lead Agency provide a summary of the facts relied on to determine that its payment rates ensure equal access to comparable child care services provided to children whose parents are not eligible to receive child care assistance under the CCDF and other governmental programs. The payment rates must be based on a local market rate survey “conducted no earlier than 2 years prior to the effective date of the currently approved plan.” For plans due by July 1, 1999, surveys must have been conducted no earlier than October 1, 1997.

At a minimum, the following information must be provided in the plan that is due by July 1, 1999:

- the date of the local market rate survey;
- a description of how the payment rates are adequate to ensure equal access based on the results of the required survey; and
- For Non-Exempt Tribes Only: an explanation of how the choice of providers is made available to parents if the payment rates do not reflect individual rates for the full range of providers (i.e., center based, group home, family and in-home care).

ACF recognizes that to efficiently conduct an effective survey that accurately reflects the most current market realities, Tribal Lead Agencies will need time to design and conduct the survey or have sufficient time to contract for such services. ACF recommends that Tribal Lead Agencies begin planning for or conducting the required survey as early as possible in order to meet this requirement for the plan due by July 1, 1999.

A Tribal Lead Agency may base its payment rates on the State’s market rate survey rather than conducting its own survey if the Tribe’s reservation or tribal service area is included in the State’s survey. While we are providing additional flexibility for Tribal Lead Agencies regarding the market rate survey requirement, we strongly encourage Tribal Lead Agencies to survey their local providers in order to establish a payment rate which is an accurate reflection of the child care market in their area – especially if their respective State survey(s) do not reflect local market rates or conditions.

### Exempt/Non-Exempt Status

Tribal Lead Agencies with FY 1999 CCDF allocations equal to or greater than \$500,000 are considered non-exempt grantees; therefore, they must meet the 4 percent quality requirement and operate a certificate program. As a result of the amended regulations, which established the \$500,000 threshold, several CCDF Tribal Lead Agencies that were formerly exempt have moved into the non-exempt category.

In the revised preprint (due by July 1, 1999 and effective October 1, 1999), new non-exempt Tribal Lead Agencies must indicate that they meet the requirement for the establishment of a certificate program which offers parental choice from a full range of providers (i.e., center-based, group home, family and in-home care). Consequently, new non-exempt Tribal Lead Agencies that have not administered certificate programs in past years are strongly encouraged to begin the necessary planning in order to have a certificate program operating by the October 1, 1999 plan effective date.

The 15 percent administrative cost limit -- for all Tribal Lead Agencies --and the 4 percent quality expenditure requirement (for non-exempt Tribal Lead Agencies only) are effective for FY 1999 funds.

#### TANF Definitions

The regulations at Section 98.33(b) require the Tribal Lead Agency to inform parents who receive TANF benefits about the exception to the individual penalties associated with the work requirement for any single custodial parent who has a demonstrated inability to obtain needed child care for a child under 6 years of age.

To fulfill this requirement in the plan due by July 1, 1999, Tribal Lead Agencies will need to provide the following criteria or definitions which are used by the TANF agency (which includes both the Tribal TANF agency and the State TANF agency if both provide TANF to tribal members) to determine whether the parent has a demonstrated inability to obtain needed child care:

- appropriate child care;
- reasonable distance;
- unsuitability of informal child care; and
- affordable child care arrangements.

Tribal Lead Agencies will also be required to identify the TANF agency/agencies responsible for these criteria or definitions. To ensure that this requirement is satisfied in the plan due July 1, 1999, ACF strongly recommends that Tribal Lead Agencies begin their coordination efforts with the Tribe's TANF agency, and/or the State TANF agency, as early as possible.

NOTE: The regulations do not establish, nor has ACF suggested any criterion or standard against which the requested TANF definitions may be judged.

#### Coordination of Services

Currently, Tribal Lead Agencies are required to describe how they are coordinating the delivery of CCDF-funded child care services with other tribal, Federal, State and local child care, early childhood development programs, and before- and after-school care services. In the plan which is due by July 1, 1999, Tribal Lead Agencies must also coordinate CCDF activities with tribal agencies responsible for health education, employment services or workforce development, and the State and/or Tribal TANF agency -- if the Tribe is operating its own TANF program. In the plan that is due by July 1, 1999, a description must be provided of the results of the Tribal Lead Agency's coordination activities with each of these agencies.

#### Affordable Copayments

The preamble to the final rule suggests that copayments that are no more than 10 percent of family income would be considered "affordable." It should be noted, however, that the regulations do not establish this or any other criterion or standard that copayments must meet. In the plan, which is due by July 1, 1999, the Tribal Lead Agency will be asked for an explanation of how its required copayments are affordable. At a

minimum, the Tribal Lead Agency will be asked to explain the percent of family income that typically would be used to meet its copayment requirement.

**Inquiries**

All inquiries should be directed to the ACF Regional Administrator.

---

Patricia Montoya  
Commissioner  
Administration on Children, Youth  
and Families