DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

45 CFR Parts 98 and 99

RIN 0970–AB74

Child Care and Development Fund

AGENCY: Administration for Children and Families (ACF), HHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Administration for Children and Families (ACF) proposes to amend the Child Care and Development Block Grant (CCDBG) regulations at 45 CFR Part 98. In large part, the proposed amendments respond to the amendments made to the CCDBG Act and the Social Security Act by the Personal Responsibility and Work Opportunity Reconciliation Act (PRWORA) of 1996 (Pub. L. 104–193). This proposed rule additionally includes certain selected amendments and preamble clarifications originally proposed for the CCDBG regulations on May 11, 1994 (59 FR 24510–24527) but never issued as a final rule due to the welfare reform initiative that resulted in PRWORA.

DATES: Interested persons and agencies are invited to submit written comments concerning these proposed regulations no later than September 22, 1997.

ADDRESSES: An electronic version of this proposed rule can be found at http://www.acf.dhhs.gov/programs/ccb/policy/nprm.htm for your review. Comments on the regulation can be submitted electronically following the directions at the site, and will be posted according to those directions. Comments received from State Lead Agencies for child care will also be posted on the web site as a service to the public, regardless of the method of submission. Printed copies of the electronic comments will be added to the file of written comments and be available for public review during the hours described below.

Comments may also be mailed (facsimile transmissions will not be accepted) to the Assistant Secretary for Children and Families, Attention: Child Care Bureau, Hubert Humphrey Building, Room 320F, 200 Independence Avenue, SW, Washington, DC 20201 or delivered to that address between 8 a.m. and 4:30 p.m on regular business days. Comments received may be inspected during the same hours by making arrangements with the contact person shown below.

FOR FURTHER INFORMATION CONTACT: Barbara Binker, Director, Policy Division, Child Care Bureau, Hubert Humphrey Building, Room 320F, 200 Independence Avenue, SW, Washington, DC 20201, telephone (202) 401–5145. Deaf and hearing-impaired individuals may call the Federal Dual Party Relay Service at 1–800–877–8339 between 8 a.m. and 7 p.m. Eastern time.

SUPPLEMENTARY INFORMATION:

Background

Section 103(c) of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA) repealed the child care programs authorized under title IV–A of the Social Security Act—AFDC Child Care, Transitional Child Care and At-Risk Child Care. In addition, PRWORA amended section 418 of the Social Security Act to provide new Federal child care funds and transfer them to the Lead Agency under the amended Child Care and Development Block Grant Act. The funding under section 418 is now subject to the CCDBG Act. PRWORA also amended the CCDBG Act.

PRWORA also reformed the Federal welfare program, replacing the Aid to Families with Dependent Children (AFDC) program with the Temporary Assistance for Needy Families (TANF) program. Under TANF, States have great flexibility to design programs that promote work, responsibility and self-sufficiency, and strengthen families.

In preparing to draft this proposed rule, ACF consulted extensively with grantees and with organizations interested in child care. In these early, pre-drafting consultations we met with representatives of State-level organizations, such as the National Governors' Association and the American Public Welfare Association. We also met with representatives of national organizations of local governments such as the National Association of Counties, and with national organizations such as the Children's Defense Fund and the National Association of Child Care Resource and Referral Agencies. We held a national teleconference with State child care administrators, and held extensive discussions regarding the new statute at ACF's national child care conference held in September 1996. We consulted with two on-going Child Care Bureau work groups composed of State and tribal child care administrators, held 10 regional conference calls with our tribal grantees, and conducted two workshops on tribal child care issues at ACF's Tribal Welfare Reform Conference, held in Seattle, Washington, in October 1996. We also received a number of letters touching on possible regulatory approaches to implementing the child care provisions of PRWORA.

The PRWORA provides several child care funds to support low-income families, transfers these funds to the CCDBG Lead Agency, and amended the CCDBG Act to ensure the consistent quality of child care services provided with these Federal funds. Therefore, consistent with the intent of the statute, we have named the combined funds the Child Care and Development Fund (CCDF). In this proposed rule, references to the CCDBG have been revised to refer to the CCDF.

Goals and Purpose of the Proposed Rule

In developing this proposed rule, our primary goals were to:

—amend the CCDBG regulations in light of the child care amendments under title VI of PRWORA,
—achieve a balance between program flexibility and accountability,
—assure the health and safety of children in child care,
—recognize that child care is a key support for work, as envisioned in TANF, and
—clarify, streamline, simplify, and unify the Federal child care program.

Our specific efforts toward achieving these primary goals include: assuring that States have adequate information upon which to base their child care payments; promoting public involvement in the Plan process; strengthening health and safety in child care by requiring children receiving CCDF subsidies to be age-appropriately immunized; requiring coordination between child care Lead Agencies and agencies administering TANF, health, education and employment programs; streamlining the CCDF application and Plan; and providing clarifications based on experience operating both the CCDBG program and the now-repealed title IV–A programs.

We believe that our proposed regulatory changes respond to the statutory changes and also represent a balancing of viewpoints in cases where there were multiple views on a single issue. For example, in our consultations we asked for information on how the statutory amendments around payment rates and the concept of ''equal access'' should be implemented. In the responses we received, there was a central tension between the desire for complete flexibility by States to establish child care subsidy payment

rates and the need to assure that the established rates promoted both work and parental choice. To achieve balance on the issue, we propose to give Lead Agencies the flexibility to set payments, but to require that the rates be based on a market survey conducted no earlier than two years prior to the effective date of the currently approved CCDF Plan. Using this approach, we assure that Lead Agencies have an appropriate frame of reference for establishing payments that meet the needs of work and family.

Another issue on which we heard opposing views was the amended public hearing requirements concerning the CCDF Plan. States and their organizations desired complete flexibility, i.e., no further regulation beyond the requirements that the hearing be announced with sufficient time and statewide notice. Others with whom we consulted wanted regulations that specified both the timing and the manner of the notice, as well as details on the locations of the hearing. Our proposed rule contains basic requirements on the timing of the notice and the hearing, but we provided flexibility regarding the number, location(s), and other details of the hearings. Here we believe we have established a balance between the flexibility of Lead Agencies to take into account such considerations as variations in geography and the calendars of State legislatures, and the statute's strengthening of the basic accountability of Lead Agencies to the public during the child care planning process.

We continue to believe in the need for immunization of children in child care as an essential part of health and safety. Immunization is a critical part of what we consider to be a natural connection between child care and healthy children, and we again propose, as we did in 1994, that children in subsidized care be age-appropriately immunized. Since there is a natural connection between child care and healthy children, we also are proposing a specific requirement that Lead Agencies for child care coordinate with public health agencies, including those responsible for immunization.

We also propose specifically to require coordination between child care Lead Agencies and other entities that we believe are crucial to supporting a strong child care program. Since the relationship between the CCDF and the TANF program is especially important, we would be requiring coordination between the CCDF agency and the TANF agency. We also propose to require that child care consumer information provided by the CCDF Lead Agency include information regarding the TANF agency's implementation of the TANF exception to sanctioning a single custodial parent with a child under age six who refuses to work due to lack of appropriate, accessible, or affordable child care.

In addition to our proposed requirements regarding coordination with TANF, our proposed rules include specific requirements relating to coordination between CCDF Lead Agencies and public education, employment, and public health agencies, including those agencies responsible for immunizations. There are numerous opportunities for linkages between child care and these agencies. We believe that the connections between child care programs and these agencies are pivotal in promoting family self-sufficiency and general well-being. It is important, for example, that such coordination support the linkage of families to a system of continuous, accessible health care.

Our goals in developing these proposed amendments included clarification, simplification, and streamlining to support the strong, unified child care system that PRWORA provides. Further, since the changes under PRWORA necessitated Plan revisions, we chose to use this as an additional opportunity to reorganize and simplify the application and CCDF Plan document, and to create a separate Plan document specifically for Tribes. We have aimed for clarity in this regulation on a number of points. In the regulations at subparts F, Use of Child Care and Development Funds, and G, Financial Management, we clarified new statutory provisions regarding such areas as administrative costs, quality, matching (including the use of pre-kindergarten funds as match), maintenance-of-effort, and reallotment.

Finally, we are again proposing certain changes and clarifications that were contained in an earlier proposed rule (59 FR 24510–24527, May 11, 1994). The 1994 proposed rule was published in response to requests from States, child care providers, and organizations for certain amendments to promote the health and safety of children receiving subsidized care and to enable the improved coordination between the now repealed title IV–A child care programs and the Child Care and Development Block Grant. The enactment of the child care provisions of PRWORA provided even greater opportunities for unifying the Federal child care programs and made many of those proposed child care amendments unnecessary. However, we are carrying over into this proposed rule the changes to the CCDBG health and safety standards included in the earlier proposed rule, and we also include the clarification contained in the preamble to the 1994 proposed rule regarding the availability of child care certificates. We have again offered the clarification contained in the 1994 proposed rule regarding inclusion of foster care in the definition of protective services and have added clarifications regarding respite care and parental choice in protective services cases, which we felt were necessary based on our experience with the CCDBG program. Also, as we did in 1994, we propose to give Lead Agencies additional flexibility in offering in-home child care.

The rules and clarifications that we proposed in 1994 and repeated in this proposed rule received public support at the time they were originally proposed. In view of this support, the changes had been planned for publication as final rule. However, our plans for publication were overtaken by the welfare reform legislative agenda that culminated in the passage of PRWORA. Since over two years have passed from the date of these original proposals, however, ACF is again soliciting comments on the amendments and clarifications that we carried over from our 1994 proposed rule.

Statutory Authority

Section 658E of the Child Care and Development Block Grant Act of 1990 requires that the Secretary shall by rule establish the information needed in the Block Grant Plan.

Regulatory Impact Analysis

This proposed rule has been reviewed by the Office of Management and Budget (OMB) pursuant to Executive Order 12866. Executive Order 12866 requires that regulations be reviewed to ensure that they are consistent with the priorities and principles set forth in the Executive Order. The Department has determined that this rule is consistent with these priorities and principles. An assessment of the costs and benefits of available regulatory alternatives (including not regulating) demonstrated that the approach taken is the most cost-effective and least burdensome while still achieving the regulatory objectives.

For the most part, the proposed regulations are required by PRWORA and represent changes to the existing regulations or deletions from the existing regulations.

As in 1994, we are again proposing a requirement that children be immunized in order to receive services under the Child Care and Development

Fund and clarifying that such immunizations be age-appropriate. The CCDBG health and safety regulations currently require grantees to include provisions about immunizations in their CCDBG Plans and to provide assurances that requirements with respect to immunizations are in place. In addition, most States already include immunizations in their child care standards.

We do not anticipate that our proposal will have a significant negative impact on either grantees or families, since grantees will not be required to provide immunizations directly. The Vaccines for Children Program, an important component of the Childhood Immunization Initiative (CII), provides immunizations to eligible children, including those without insurance coverage, those eligible for Medicaid, and American Indians and Alaskan Natives. In addition, every State receives grant funds for immunization activities, including hiring nurses, expanding clinic hours, assessing coverage levels, and conducting outreach. Immunization levels of children 19–35 months of age are measured by the National Immunization Survey, the first ever survey conducted throughout the U.S. that provides comparable State vaccination coverage estimates.

The immunization provision was considered the most cost-effective and least burdensome approach because: (1) it helps ensure that vulnerable young children are age-appropriately immunized; (2) immunization of such children is highly cost-effective; and (3) it provides flexibility to grantees in determining how to implement the provision.

Regulatory Flexibility Analysis

The Regulatory Flexibility Act (Pub. L. 96–354) requires the Federal government to anticipate and reduce the impact of rules and paperwork requirements on small businesses and other small entities. The primary impact of these proposed rules is on State, tribal and territorial governments. To a lesser extent the regulation could affect individuals and small businesses. However, the number of small businesses affected should be limited, and the expected economic impact on these businesses would not be so significant that a full regulatory flexibility analysis is indicated.

- First, the regulations retain many provisions designed to ensure broad participation by small businesses in the program. The regulations still require that parents have a choice among a variety of providers including family day care providers. These and other provisions in the current rules will help ensure that States exercise restraint in imposing any additional requirements on small entities providing child care.
- The proposed rule contains a number of provisions that could result in some decrease in the regulatory and economic burdens on providers that are small businesses. Most importantly, because States will be required to operate their programs under a more consistent set of program rules, participating providers will face a simpler and more streamlined set of Federal regulatory requirements.
- The providers who would potentially be most affected by this rule are in-home providers. These providers are generally not operating as small businesses, but as domestic employees; thus, any impact on them need not be specifically addressed under this Act.
- The regulation could ultimately result in some additional State or tribal regulatory requirements or health and safety standards for other providers, such as family day care providers that are small businesses. However, the impacts on small businesses, if any, would not be directly attributable to this regulation. With the possible exception of the immunization provision, the regulation does not direct any expansion of Federal, State or tribal regulatory requirements or health and safety standards for providers; thus, any impacts on providers should arise only as the result of independent State and/or local decisions to impose additional requirements.

State, local and tribal governments already have authority to set general regulatory requirements and health and safety standards for child care providers. If States (or other grantees) believe that there was a substantial need for additional requirements (to protect the well-being of children in care), we would have expected them to act under this general authority.

While States generally have immunization requirements for children in child care, the proposed immunization provision might result in some additional children being subject to immunization requirements or stronger requirements for some children. However, States have flexibility in deciding how immunization requirements are to be implemented. Our proposal does not dictate that States impose requirements on providers; rather, States can choose to impose them on eligible families. Thus, the immunization provision in this proposed rule does not necessarily affect small businesses. Further, where States do choose to impose additional requirements on providers related to the immunization provision, such requirements would be basically administrative in nature (e.g., documentation); we expect the costs of immunization to be covered through other funding sources. Thus, this provision would not have a significant economic impact on providers.

Thus, the number of entities affected, and the net economic impact on them, should not be significant.

Paperwork Reduction Act

Sections 98.16 and 98.81 contain the Lead Agency Plan information requirements of the ACF–118 and ACF–118–A respectively. Sections 98.70 and 98.71 contain the information required by both the ACF–800 and ACF–801 child care data collections. As required by the Paperwork Reduction Act of 1995 (44 U.S.C. 3507 (d)), the Administration for Children and Families has submitted a copy of these sections to the Office of Management and Budget (OMB) for its review.

Title: State/Territorial Plan Pre-Print (ACF–118) and Tribal Plan Pre-print (ACF–118–A) for the Child Care and Development Fund (Child Care and Development Block Grant).

Description: These legislatively-mandated plans serve as the agreement between the Lead Agency and the Federal Government as to how CCDF programs will be administered in conformance with legislative requirements, pertinent Federal regulations, and other applicable instructions and guidelines issued by ACF. This information will be used for Federal oversight of the Child Care and Development Fund.

Respondents: State governments and territories, Tribal organizations

ANNUAL BURDEN ESTIMATES

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
ACF–118	56	.5	30	840
ACF–118	240	.5	30	3,600
Estimated Total Annual Burden Hours				4,440

Title: Child Care Biannual Aggregate Report—ACF–800.

Description: This legislatively mandated report collects program and participant data on all children and families receiving direct CCDF services. Aggregate data will be collected and will be used to determine the scope, type, and methods of child care delivery, and to provide a report to Congress.

Respondents: State governments, Guam, Virgin Islands, Puerto Rico and the District of Columbia.

ANNUAL BURDEN ESTIMATES

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
ACF–800	54	2	40	4,320
Estimated Total Annual Burden Hours				4,320

Title: Child Care Quarterly Unit Report, ACF–801

Description: This legislatively-mandated report collects program and participant data on children and families receiving direct CCDF services. Disaggregate data will be collected and will be used to determine the participant and program characteristics as well as cost and level of child care services. The data will be used to provide a report to Congress. Form ACF 801 represents the data elements to be collected and reported to ACF.

Respondents will be asked to sample the population of families receiving benefits on a monthly basis and submit the three most current monthly samples to ACF quarterly. Each monthly sample is drawn independent of the other samples and retained for submission within a quarterly report. ACF is not issuing specifications on how respondents compile overall database(s) from which samples are drawn. ACF will provide to the respondents a sampling plan which will specify minimum sample size. It is expected to be a monthly sample of approximately 150 cases for large States with smaller samples based on population size adjustments for smaller respondents.

Respondents: States, D.C., Guam, Virgin Islands and Puerto Rico

ANNUAL BURDEN ESTIMATES

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
ACF–801	54	4	20	4,320
Estimated Total Annual Burden Hours:				4,320

The Administration for Children and Families will consider comments by the public on these proposed collections of information in:

—Evaluating whether the proposed collections are necessary for the proper performance of the functions of ACF, including whether the information will have practical utility;

—Evaluating the accuracy of the ACF's estimate of the burden of the proposed collections of information, including the validity of the methodology and assumptions used;

—Enhancing the quality, usefulness, and clarity of the information to be collected; and

—Minimizing the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technology, e.g., permitting electronic submission of response.

OMB is required to make a decision concerning the collections of information in these proposed regulations between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment is best assured of having its full effect if OMB receives it within 30 days of publication. This does not affect the deadline for the public to comment to the Department on the proposed regulations. Written comments to OMB for the proposed information collection should be sent directly to the following: Office of Management and Budget, Paperwork Reduction Project, 725 17th Street, N.W., Washington, D.C. 20503, *Attn:* Laura Oliven.

Proposed Amended Regulations, 45 CFR Part 98

We have chosen to present the proposed amendments by publishing a proposal to completely revise 45 CFR Part 98. We believe that the publication of the whole text of Part 98 will facilitate understanding of the impact of the amendments on the regulations that are retained. The preamble discussion

in this proposed rule primarily discusses the changed regulations. It also contains certain clarifications based on ACF's experience in implementing the prior final rule. Where regulations are retained, the preamble explanation and interpretation of those regulations published with the prior final rule (57 FR 34352–413, August 4, 1992) is also retained unless specifically modified in the preamble to this proposed rule. The following table describes in detail the substantive changes to the amended sections. In addition, we made a number of other minor editorial changes throughout the regulations to enhance clarity, to reflect the change of program name from the Child Care and Development Block Grant (CCDBG) to the Child Care and Development Fund (CCDF), and to reflect the change from ''Grantee'' to ''Lead Agency'' for reasons explained in this preamble at § 98.2.

We have made the following changes to the regulations.

Title/heading: Part 98; Subparts—A, E and F; Sections—98.1, 98.13, 98.15, 98.43, 98.45, 98.51, 98.52, 98.53, 98.61, 98.62, 98.63, 98.64, 98.65, 98.70, 98.71, and 98.81.

Definitions: § 98.2 is now an alphabetical listing.

Removed: (e), (f), (n), (o), (s), (gg), (nn) and (oo).

Added: Child Care and Development Fund (CCDF), Construction, Discretionary Fund, Facility, Major Renovation, Mandatory Funds, Matching Funds, Modular unit, Real property, and Tribal Mandatory Funds.

Assurances and Certifications: § 98.15 has been reorganized to reflect the statute intent that states ''assure'' they meet certain requirements and ''certify'' that they meet others.

Tribes: We have consolidated tribal regulations from §§ 98.16(b), 98.17(b) and 98.60(g) into Subpart I.

The following distribution table summarizes what has been added, removed, revised and redesignated in 45 CFR Part 98.

Existing section	Action	New section
	Added	98.1(a)
98.1 (a) and (b)	Redesignated	98.1 (b) and (c)
98.1(b)(7)	Removed	
98.1(b)(8)	Redesignated	98.1(c)(7)
98.2(a), (j), (q), (mm)	Revised	98.2—Alphabetical
98.10 (b) and (e)	Revised	98.10 (b) and (e)
98.11(a) and (b)(8)	Revised	98.11 (a) and (b)(8)
98.12 (a) and (c)	Revised	98.12 (a) and (c)
	Added	98.12 Introductory text
98.13(a)	Revised	98.13 (a) and (b)
98.13 (b) and (c)	Removed	
98.13(a)(10)	Redesignated	98.13(c)
98.13(a)(11)	Redesignated	98.13(d)
98.14 (a)–(c)	Revised	98.14(a)–(c)
98.15	See note above	
98.16(a)	Redesignated	98.16 Introductory text
98.16(a) (1)–(12)	Revised	98.16 (a)–(l)
98.16(a) (13)–(16)	Removed	
	Added	98.16 (m)–(q)
98.16(a)(17)	Redesignated	98.16(r)
98.17(a)	Revised	98.17(a)
98.17(c)	Redesignated	98.17(b)
98.20(a)	Revised	98.20(a)
98.21	Removed	
	Added	98.30(c)(3)
98.30(c) (3)–(5)	Redesignated	98.30(c) (4)–(6)
98.30(d)	Removed	
98.30 (e)–(g)	Redesignated	98.30 (d)–(f)
98.31	Revised	98.31
	Added	98.32(c)
98.33	Revised	98.33
98.40(a)	Revised	98.40(a)
98.41(a)(1)	Revised	98.41(a)(1)
98.41 (c) and (d)	Removed	
98.41 (e)–(g)	Redesignated	98.41 (c)–(e)
98.42(d)	Removed	
98.43 (a) and (b)	Revised	98.43 (a) and (b)
	Added	98.43(c)
98.43 (c) and (d)	Redesignated	98.43 (d) and (e)
98.43 (e) and (f)	Removed	
98.45	Revised	98.45
98.50 (a) and (c)	Revised	98.50 (a) and (c)
98.50(d)	Removed	
	Added	98.50 (d)–(f)
98.51 (a) and (b)	Revised	98.51(a)
98.51 (c)–(f)	Removed	
98.51(g)	Redesignated	98.51(b)
	Added	98.51(c)
98.52 (a) and (b)	Revised	98.52(a)
98.52(c)	Revised	98.52(c)
98.53	Revised	98.53
98.54(a)	Revised	98.54(a)
	Added	98.54(b)(3)

Existing section	Action	New section
98.60 (a), (d) and (f)	Revised	98.60 (a), (c) and (e)
98.60(b)	Removed	
98.60 (c)–(f)	Redesignated	98.60 (b)–(e)
98.60 (h)–(j)	Redesignated	98.60 (g)–(i)
98.61 (a) and (b)	Revised	98.61(a)
98.62(a)–(c)	Redesignated	98.61 (b)–(d)
	Added	98.61(e)
	Added	98.62 (a) and (b)
98.63 (a) and (b)	Redesignated	98.64(b)
	Added	98.63 (a)–(c)
98.64 (a)–(d)	Removed	
	Added	98.64 (a), (c) and (d)
	Added	98.65 (f) and (g)
98.67(c)	Revised	98.67(c)
98.70	Revised	98.70
98.71	Revised	98.71
98.80 Introductory text	Revised	98.80 Introductory text
98.80 (b) and (f)	Revised	98.80 (b) and (f)
98.81(a)	Revised	98.81(a)
	Added	98.81(b)
98.81(b)	Redesignated	98.81(c)
98.82 Introductory text	Revised	98.82 Introductory text
98.83 (c)–(f)	Revised	98.83 (c)–(f)
98.83 (g) and (h)	Removed	
98.83(i)	Redesignated	98.83(g)
	Added	98.84
98.90(e)	Revised	98.90(e)
98.92(a)	Revised	98.92(a)
98.92(b)	Removed	
98.92(c)	Revised	98.92(b)
98.92 (d) and (e)	Redesignated	98.92 (c) and (d)
	Added	98.92(e)

Subpart A—Goals, Purposes and Definitions

Goals and Purposes (Section 98.1)

This section of the regulations has been modified to incorporate the goals for the Child Care and Development Fund (CCDF) contained in section 658A of the amended CCDBG Act. We incorporated the goals as § 98.1(a), and we retained but moved the subparagraphs on the purpose of the CCDF program and the regulations to § 98.1 (b) and (c), respectively.

In subparagraph (c), we eliminated the items relating to non-supplantation and administrative costs. The PRWORA amendments eliminated the non-supplantation requirement and, for the first time, placed statutory limits on administrative costs. The new regulations relating to the statutory limits on administrative costs are proposed at § 98.52.

Definitions (Section 98.2)

The amendments proposed for this section are related to changes necessitated by the new statute, including additions and deletions. We have made the following changes: updated the definition of the Child Care and Development Block Grant Act to reflect it as amended; amended the definition of a child care certificate to reflect the new statutory language allowing the use of a certificate as a required deposit for child care services; and amended the definition of relative child care provider to reflect the statutory addition of great grandparents and siblings (if living in a separate residence) as relative providers.

Since the new statute created a multi-part child care fund subject to the provisions of the Act, we have substituted the term ''Child Care and Development Fund (CCDF)'' for ''Block Grant.'' Use of the term ''CCDF'' reflects the multiple sources of monies with a shared purpose. We have also defined the constituent parts of the CCDF: Mandatory Funds, Matching Funds, Discretionary Funds, and Tribal Mandatory Funds.

The new section 658O(c)(6) of the Act provides for Tribes to use CCDF funds for construction and renovation of child care facilities, with the Secretary's approval. Therefore, we have proposed definition of several new terms related to this provision: construction, facility, major renovation, modular unit, and real property. ACF especially seeks comments on this proposed terminology, which is a first step towards developing program instructions on tribal applications for use of CCDF funds for construction and renovation.

The amended Act deleted the terms ''elementary school'' and ''secondary school'' formerly found at sections 658P(3) and (10). Therefore, we have also deleted these terms from our regulatory definitions. In so doing, we want to emphasize that child care services to school-aged children are still allowable under the CCDF, and we strongly encourage Lead Agencies to continue providing such services. Although the definitions of these terms have been removed as unnecessary, the Lead Agency has the flexibility to retain these very necessary services.

We have replaced separate terms for ''Grantee'' and ''Lead Agency'' with the single term ''Lead Agency.'' We did this for a number of reasons. First, there was not a meaningful difference between those terms. Second, we wished to remove any ambiguity that could result from the use of two different terms. Third, we wanted to emphasize the streamlined administration of all child care programs in a State that resulted from PRWORA. We believe that use of the term ''Lead Agency'' conveyed that sense of unified and expanded responsibility better than the term ''Grantee.'' Lastly, we wanted to avoid any confusion that could arise when the State uses subgrantees in implementing the CCDF. We have replaced the specific term ''Grantee,'' as formerly defined,

with ''Lead Agency'' throughout these regulations, although there remain some instances where the word ''grantee'' appears in its common usage.

Finally, we have eliminated the numbering to conform with **Federal Register** style which requires only alphabetical order for definitions. This will simplify any future additions or deletions to this section.

Subpart B—General Application Procedures

Lead Agency Responsibilities (Section 98.10)

The new statute did not change the responsibilities of the Lead Agency. The amended statute at section 658D(b)(1)(A), however, expands the CCDF Lead Agency's ability to administer the CCDF program through other agencies. This change broadens the ability of the Lead Agency to administer the CCDF program through governmental or non-governmental entities, not just ''other State agencies'' as provided in the original CCDBG Act. These entities could include local governmental agencies and private organizations. The new statute and the Conference Agreement report (H.R. Rep. No. 725, 104th Cong., 2d Sess. (1996)) are silent regarding whether the non-governmental agencies cited in this statutory change must be non-profit organizations, so ACF has not regulated on the characteristics of the agencies through which the Lead Agency may administer the program.

Administration Under Contracts and Agreements (Section 98.11)

Under the latest statutory amendments, the Lead Agency remains the single point of contact and retains overall responsibility for the administration of the CCDF program. We have amended this section, however, to reflect the statutory change discussed at § 98.10 regarding the Lead Agency's additional flexibility to administer the program through other governmental or non-governmental agencies.

Further, since we made revisions corresponding to the added administrative flexibility granted to the Lead Agency, we also wanted to align the wording of this section more closely with the statute concerning the overall, lead responsibility of the Lead Agency. Thus, we have re-worded the paragraphs in this section that suggested that the Lead Agency ''shares'' administration of the program with other entities, because the relationship between the Lead Agency and other entities through which it administers the CCDF is not co-equal.

Coordination and Consultation (Section 98.12)

Section 658D(b)(1)(D) of the Act requires the Lead Agency to coordinate the provision of CCDF child care services with other Federal, State, and local child care and early childhood development programs. Coordination is crucial to the successful implementation of child care programs and quality improvement activities. Therefore, we propose at § 98.12(a) to require the Lead Agency to coordinate its child care services with the specific entities required at § 98.14(a) to be involved in the CCDF Plan development process: Temporary Assistance for Needy Families (TANF), public health, employment services, and public education.

The statutory changes under PRWORA significantly heighten the need for enhanced coordination between TANF and child care. The new temporary assistance program, TANF, imposes increased work requirements both regarding the number of TANF families participating in work and the number of hours they must work. At the same time, the guarantee of child care for families who are in work or approved education and training and the guarantee of Transitional Child Care program assistance were eliminated when PRWORA repealed the title IV–A child care programs.

Moreover, the new statute provides new child care funding and gives the CCDF Lead Agency administrative oversight over the new funds in addition to the funds authorized under the amended Child Care and Development Block Grant Act. The law requires that States dedicate 70 percent of these new funds to the child care needs of families who are receiving assistance under a State program under Part A of title IV of the Social Security Act, families who are attempting through work activities to transition from such assistance, and families who are at risk of becoming eligible for such assistance. Under the new law, Tribes also receive additional child care funding and have the option to operate TANF programs. Tribes that operated tribal programs under the now-repealed Job Opportunities and Basic Skills Training (JOBS) program, may continue to operate work programs. Considered together, these changes present both an opportunity and a challenge for Lead Agencies to serve the child care needs of TANF families.

It is extremely important that children and their families be linked to a system of continuous and accessible health care services, and there are numerous opportunities for linkages between health and child care programs. Overall coordination between child care programs and agencies responsible for children's health is key to supporting the healthy development of children. An ongoing Departmental initiative encourages the linkage between child care and health care. In May 1995, Secretary Shalala initiated the Healthy Child Care America Campaign, which encourages States and localities to forge linkages between the health and child care communities. Recognizing their mutually beneficial roles, we propose to require that the Lead Agency, as part of its health and safety provisions, assure that children in subsidized care be age-appropriately immunized. We believe that children will benefit substantially from this enhanced linkage we are making between child care and health services.

Employment is the goal of most TANF families and employment services are critical to the low-income working families served by the CCDF. Therefore, we believe that it is only prudent that the Lead Agency coordinate with those State agencies that are responsible for providing employment and employment-related services. But child care is also emerging as an important workforce development issue for the entire population. As such, we believe that Lead Agencies should also undertake policies that support and encourage public-private partnerships that promote high quality child care.

Linkages with education agencies are crucial for leveraging additional services and enhancing child development. One important aspect of this linkage is the role played by public schools as a critical on-site resource for child care. Although PRWORA repealed section 658H of the Child Care and Development Block Grant Act, which directly addressed before- and after-school child care, in the fiscal year 1997 budget Congress nevertheless set aside $19 million specifically to use for before- and after-school child care activities and child care resource and referral. We, therefore, believe that the repeal of section 658H should not result in a lessening of coordination with before- and after-school programs. We have included requirements to coordinate with public education agencies, both for the purpose of child care planning and development, as well as for more general coordination initiatives.

Aside from proposing to require Lead Agency coordination with specific entities discussed above, we also

strongly encourage coordination with other agencies with potential impact on child care, including: Head Start collaborative offices, child support, child protective services (especially when the Lead Agency chooses to include children receiving protective services among the families eligible for CCDF subsidies), transportation, National Service, and housing.

The Head Start comprehensive model of health, parent involvement, family support and education, when linked with child care, can provide parents and children with quality comprehensive full day/full year services. Promising models that fund Head Start-eligible children in community-based child care provided in child care centers and homes are emerging across the country, and we encourage Lead Agencies to explore and support such efforts.

Partnerships with National Service programs present promising opportunities for collaborations that can expand and enhance child care for both young children and school-aged children. National Service programs have developed several effective and replicable models for providing the tools and skills necessary to build the capacity and sustainability of local child care programs, involving parents and community volunteers in child care activities, and enlisting private sector participation in meeting community needs, including child care.

The availability of transportation is key to enabling families to access child care services and, ultimately, work. Coordination with transportation agencies and planning groups can ensure that child care facilities are located near major transportation modes for easier access and that systems of public transportation support travel patterns of low-income workers. Alleviating transportation difficulties for child care cuts down on travel time and stress, and allows parents to focus on achieving self-sufficiency through work and education.

Child care and child support enforcement programs serve many of the same families and have a shared mission—to promote self-sufficiency of families and the well-being of children. As a result, we encourage collaborative outreach initiatives between these programs. For example, child care programs can disseminate information to parents about paternity establishment and child support enforcement. We also encourage the two programs to coordinate on policy issues. For example, the programs have a common interest in assuring that the State guidelines used to calculate child support awards adequately consider the cost of child care.

Coordinating with housing agencies is crucial for the millions of TANF recipients and low-income workers who receive child care subsidies and reside in public housing. Locating child care facilities in or near public housing makes services more accessible, and can provide parents with a more stable and familiar environment for their children's care. Lead Agencies can work with public housing authorities to identify opportunities where co-located housing and child care can serve as an employment or entrepreneurial strategy, and a support service for residents.

We also wish to highlight that the regulation at § 98.12(c), which requires States to coordinate, to the maximum extent feasible, with any Indian Tribes that receive CCDF funds has new meaning in the context of the changes made by PRWORA. As we have noted above, Tribes are eligible to directly receive additional child care funding, and to operate TANF as well as continue to operate work programs if they operated a JOBS program. Nonetheless, the new law did not amend section 6580(c)(5), which specifically provides tribal children with dual eligibility for both tribal and State child care programs funded under CCDF. A broad range of options for implementing and designing programs is available to both States and Tribes. States and Tribes, therefore, have a mutual responsibility to undertake meaningful coordination in designing child care services for Indian families.

Applying for Funds (Section 98.13)

We are proposing to simplify the application process in order to reduce the administrative burdens of duplicative information requests and to provide budget information in the CCDF Plan, which is a public document. The current regulations require an annual ''application,'' separate from the Plan. This separate application must indicate the amount of funds requested, broken down by proposed use (e.g., direct services, administration, quality activities, etc.). A Plan that describes the entire child care program in detail is also required, but only once every two years. The Plan currently does not provide a ''fiscal context'' for the program, since it does not include budgetary information.

In the past, the separate application requested extensive budget information, largely due to the requirements related to the now-discontinued 25 percent setaside of funds for quality and supply building. Because we knew that the budget data was preliminary, we had not required its inclusion in the Plan or made it subject to the compliance process. More importantly, the budget information was not subject to the public hearing process.

We believe that the Lead Agency, in setting the goals and objectives of the program and in determining how to achieve them, must consider the allocation of funds, as well as the program and administrative activities that will be undertaken. We also believe that public knowledge of how funds might be allocated among activities and eligible populations is critical to the planning process. Therefore, we are requiring the Lead Agency to include in its Plan an estimate of the percent or amount of funds that it will allocate to direct services, quality activities, and administration. These estimates are for the public's consideration in the hearing process; they will not be used to award funds. The ACF 696, when approved by OMB, will be the formal vehicle for providing estimates to ACF for the purpose of awarding funds.

These Plan estimates will be macro-level estimates. That is, the Plan will reflect an estimated amount (or percentage) of funds that the Lead Agency proposes to use for: all direct services, for all quality activities and for administration. We will not ask that these estimates be broken down into subcategories as we had in the separate application. We wish to reiterate that we recognize that these are estimates and, as such, will not be subject to compliance actions. Nor will approval of a Plan be withheld based on the Lead Agency's allocation of funds among activities, unless the Plan indicates that the requirements for administrative cost or quality expenditures will be violated.

It is because of our strong belief in full public participation in the planning process for CCDF-funded child care services that we make this requirement. We remind Lead Agencies that, pursuant to section 658K of the Act, they must provide information on the actual use and distribution of funds at the end of the program period to ACF.

At § 98.13(a) we have retained the requirement that the Lead Agency apply for funds. We intend to use the financial form ACF–696 to fulfill this requirement, so that the need for a separate application is obviated.

We continue to request the various certifications and assurances that are required by other statutes or regulations and that apply to all applicants for Federal financial assistance, specifically:

- Pursuant to 45 CFR part 93, Standard Form LLL (SF–LLL), which assures that the funds will not be used

for lobbying purposes. (Tribal applicants are not required to submit this form.)

- Pursuant to 45 CFR 76.600, an assurance (including any required forms) that the grantee provides a drug-free workplace.
- Pursuant to 45 CFR 76.500, certification that no principals have been debarred.
- Assurances that the grantee will comply with the applicable provisions regarding nondiscrimination at 45 CFR part 80 (implementing title VI of the Civil Rights Act of 1964, as amended), 45 CFR part 84 (implementing section 504 of the Rehabilitation Act of 1973, as amended), 45 CFR part 86 (implementing title IX of the Education Amendments of 1972, as amended) and 45 CFR part 91 (implementing the Age Discrimination Act of 1975, as amended).

We have retained but sightly modified the requirement at § 98.13 to provide that the Lead Agency, not the Chief Executive Officer, must supply the requested information. While the Chief Executive Officer designates the Lead Agency, we feel that it is unnecessary for the Chief Executive Officer to thereafter apply for funding each year. This proposed change gives grantees the flexibility to simplify the application process further.

In summary, the proposed CCDF application process for States and Territories consists of the two-year CCDF Plan as required in § 98.17 and such other information as may be specified by the Secretary. For the second year of the Plan, the Lead Agency will use financial reporting forms to provide ACF with its estimates of funds needed quarterly—there is no longer a separate ''application'' needed from States and Territories in the second year of the Plan period. Accordingly, we have changed the title of this section from ''Application Content and Procedures'' to ''Applying for Funds.''

The requirements for Tribes have been moved to Subpart I and are discussed there. We have separated the tribal requirements in order that the discussion of tribal requirements may be more focused and coherent.

Plan Process (Section 98.14)

Section 658D(b) of the Act requires the Lead Agency in developing the Plan to: (1) coordinate the provision of services with Federal, State and local child care and early childhood development programs; (2) consult with appropriate representatives of local governments; and (3) hold at least one hearing in the State with sufficient time and statewide notification to provide an opportunity for the public to comment on the provision of child care services.

In amending the CCDBG Act to require that the Lead Agency provide ''sufficient time and Statewide distribution'' of the notice of hearing, Congress established a higher standard for public comment than previously existed in the Act. Affording the public a meaningful opportunity to comment on the provision of child care services advances public participation, Lead Agency accountability and the overall goals of welfare reform. Accordingly, we have established a minimum 20-day notice-of-hearing requirement at § 98.14(c). That is, the Lead Agency must allow a minimum of 20 days from the date of the statewide distribution of the notice of the hearing before holding the hearing. Many Lead Agencies have ongoing planning processes with broad community involvement that convene regularly during the year. We applaud such broad participatory approaches as they are especially responsive to changing needs and these approaches may fulfil the requirements of § 98.16.

In the interest of State flexibility, we have established only a minimum amount of time that the public should be notified of the hearing. However, we encourage Lead Agencies to consider providing longer lead times that would allow the public more time to prepare for hearings, especially when only a single hearing is held in the State. Although the Act requires the Lead Agency to hold only one public hearing, the Lead Agency may, of course, hold additional public hearings.

We considered establishing regulations around the newly added statutory language that requires ''statewide distribution of the notice of hearing.'' Clearly, the expanded Child Care and Development Fund potentially impacts a much wider segment of the population than may have been the case under the CCDBG. In light of the stronger statutory language about public hearings, we considered, for example, a regulation to require the Lead Agency to employ specific media in publicizing its hearing or to ensure that specific portions of the population be potentially exposed to the hearing notice.

We rejected these and other alternatives as restricting State flexibility. Nevertheless, we remain concerned that some Lead Agencies may not respond to the heightened statutory requirement. We, therefore, expect the Lead Agency to describe how it achieved statewide distribution of the notice of hearing in its description of the hearing process required in the Plan by § 98.16(e). Although we decline to propose a prescriptive rule in this matter at this time, we specifically reserve the authority to regulate further if Lead Agency Plans or actions indicate a less than ''statewide distribution of the notice of hearing'' as exemplified above.

Similarly, we have not established a specific requirement concerning written comments from the public. We believe, however, that a meaningful public comment process must consider written comments from persons or organizations, especially those who are unable to attend a hearing.

At § 98.14(c)(2) we have proposed that the hearing be held before the Plan is submitted to ACF, but no earlier than nine months prior to the effective date of a Plan. We recognize that States may have established public comment mechanisms that coincide with their budgetary cycle but not with our usual time frames for public hearings and Plan submittal. Therefore, we wish to clarify our intention in this area.

It is our expectation that the Lead Agency will submit at least a draft of the Plan for public comment through a hearing. We believe that, in some instances, the CCDF Plan may be the only public document that summarizes the child care policy of the State. As such, the Plan is an important part of the effort to keep the public well informed of State policies and programs.

ACF does not believe that the public hearing is held for the purposes of ''approving'' the Plan as it will be submitted, but rather to solicit public comment and input into the services that will be provided through the CCDF. For this reason, we are proposing a flexible process that does not create an undue burden on Lead Agencies, yet insures that the statutorily required public input is obtained.

The Plan that is submitted to ACF must reflect the program that will be conducted and must incorporate any changes to the program that the Lead Agency chooses to adopt as a result of the input received during the public hearing. We advise the Lead Agency to retain a copy of the draft Plan that it made available for public comment in fulfillment of this requirement. We also remind Lead Agencies that substantive changes in their programs, after their Plans are submitted to ACF, must be reflected by amending the Plan per § 98.18(b).

The potential impact of PRWORA on the child care programs in every State cannot be underestimated. We believe the public should be involved in creating the flexible child care systems allowed by PRWORA. Therefore, the Plan to be submitted to ACF for the Federal Fiscal Year beginning October 1,

1997, is subject to the amended statutory hearing requirement. All Lead Agencies must conduct a new public hearing before submitting the Plan to ACF.

As discussed above at § 98.12, we believe that ongoing coordination and consultation processes are vital to the design of a successful program. Therefore, at § 98.14(a) we have included a minimum list of State agencies with which the Lead Agency must coordinate the provision of services under the CCDF. The results of the coordination with these State agencies must be reflected in each biennial Plan submitted to ACF.

Both the public hearing and the coordination and consultation processes must be undertaken each time the entire Plan is required to be submitted. Although an amendment to the Plan is not subject to the regulatory hearing requirement, State rules may require a hearing or public comment period.

Assurances and Certifications (Section 98.15)

The PRWORA amendments made a number of changes to the assurances under the CCDBG. In several instances the term ''assure'' was replaced by the term ''certify.'' Also, as described below, the amendments changed the content of two of the former assurances and some assurances were eliminated.

While ACF believes that there is no practical difference between an assurance or certification, when both are given in writing, the proposed amendments have grouped the assurances together at § 98.15(a) and the certifications together at § 98.15(b).

Regarding specific substantive changes, the new section 658E(c)(2)(D) of the Act replaces the former assurance regarding consumer education. The proposed corresponding regulatory amendment at § 98.15(b)(3) uses the statutory language requiring the Lead Agency to certify it ''will collect and disseminate to parents of eligible children and the general public, consumer education information that will promote informed child care choices.''

The new section 658E(c)(2)(E) does not contain prior language requiring Lead Agencies to have in place a registration process for unregulated care providers that provided care to children receiving subsidized care under the CCDBG Act. We, therefore, removed the assurance formerly found at § 98.15(i). We note, however, that the Lead Agency has the flexibility to continue to maintain a registration process for providers if it chooses. This process has enabled States to maintain an efficient payment system. In addition it has provided a means to transmit relevant information, such as health and safety requirements and training opportunities, to providers who might otherwise be difficult to reach.

The Act also revises the requirement that providers meet all licensing and regulatory requirements applicable under State and local law. The revised requirement proposed at § 98.15(b)(4) mirrors the new statutory language that there be ''in effect licensing requirements applicable to child care services provided within the State.''

For tribal programs, the amendments specifically provide that, ''in lieu of any licensing and regulatory requirements applicable under State and local law, the Secretary, in consultation with Indian tribes and tribal organizations, shall develop minimum child care standards (that appropriately reflect tribal needs and available resources) that shall be applicable to Indian tribes and tribal organizations receiving assistance under this subchapter'' (section 658E(c)(2)(E)(ii)). ACF is in the process of arranging those consultations.

The PRWORA deleted requirements formerly found in the statute at section 658E(c)(2)(H), (I), and (J). These provisions, which related to reporting reductions in standards, reviewing State licensing and regulatory requirements, and non-supplantation would therefore be deleted by this proposed revised rule.

Finally, we propose at § 98.15(a)(6) that States provide an assurance that they have not reduced their level of effort in full-day/full-year services if they use pre-K expenditures to meet the MOE requirement, as discussed further at § 98.53.

Plan Provisions (Section 98.16)

We have amended § 98.16 to reflect changes in the Plan resulting from PRWORA. For example, we have deleted the language on registration and the calculation of base-year level-of-effort previously found at § 98.16(a)(13), (14) and (16). We substituted for them the statutory requirements for the Lead Agency to provide detailed descriptions of its parental complaints process at § 98.16(m) and its procedures for parental access at § 98.16(n). Similarly, we have modified some language to reflect new statutory language. For example, § 98.16(h) now discusses the additional purposes for which funds may be used, and § 98.16(l) now requests the summary of facts upon which payment rates were determined, including the conduct of a market rate survey. Section 98.16(c) has been expanded to include the entities designated to receive private donated funds pursuant to § 98.53(f). We have also modified the language at § 98.16(g)(2) to reflect broader flexibility concerning the use of in-home care. This change is addressed more fully under our discussion of parental choice later in this Preamble. The other changes in Plan provisions are more fully discussed in the related sections that follow.

We take this opportunity to correct the wording of § 98.16(j), formerly § 98.16(a)(10), concerning health and safety requirements. We have removed the word ''minimum'' here since the legislation contains no such qualification, nor do our regulations limit the flexibility to establish such requirements. We note that § 98.41 remains unaffected by this correction since that section did not include the use of the word ''minimum.''

We have also proposed to add § 98.16(p), which would require the Lead Agency to include in the CCDF Plan the definitions or criteria used to implement the exception to TANF work requirement penalties that applies when a single custodial parent with a child under age six has demonstrated an inability to locate needed child care. Among others, the definitions or criteria would include ''appropriate child care,'' and ''affordable child care arrangements.'' We elaborate on this requirement in the discussion of consumer education at § 98.33.

Finally, we propose to add § 98.16(q), which provides that the Lead Agency describe State efforts to ensure that pre-Kindergarten programs, for which Federal matching funds are claimed, meet the needs of working parents. This requirement is discussed at § 98.53.

Period Covered by Plan (Section 98.17)

The statute was amended at section 658E(b) to eliminate the three-year initial period for State Plans. We therefore made corresponding amendments in this proposed rule to provide that all Lead Agencies for States, Territories, and Tribes must submit new Plans every two years. This process begins with the Plans to be submitted in summer 1997 for approval for implementation on October 1, 1997. Those Plans, when approved, will be applicable for Federal Fiscal Years 1998 and 1999. All current Lead Agencies must submit new Plans if they wish to receive the CCDF funds that become available on October 1, 1997.

Subpart C—Eligibility for Services

A Child's Eligibility for Child Care Services (Section 98.20)

General eligibility. The amended statute at 658P(4)(B) expands the definition of ''eligible child'' to include families whose income does not exceed 85 percent of the State median income for a family of the same size, instead of the 75 percent level previously stipulated. Therefore, § 98.20(a)(2) is amended to reflect that change.

We amended the regulation at § 98.20(a)(1)(ii) regarding the option to serve dependent children age 13 and over who are physically or mentally incapacitated or under court supervision. We retained the State option to serve older children. However, our amendment removes the reference to the definition of ''dependent child'' in the State plan under title IV–A of the Social Security Act, since the amended title IV–A of the Social Security Act no longer requires a State to adopt a single definition of ''dependent child.'' We are proposing instead that States may elect to serve children age 13 or older who are physically or mentally incapacitated or under court supervision up to age 19, if they include the age limit in the eligibility and priority terminology section of their CCDF Plan.

Additionally, the statute eliminates the requirement for States to reserve a specific portion of their funds for activities designed to establish or expand and conduct early childhood development or before- and after-school care programs. Therefore, the regulations providing additional conditions for eligibility for before- and after-school and early childhood development services at § 98.21 are deleted. ACF believes that the setaside enabled many States to develop and expand such services. Further, the FY 1997 Appropriations Bill included $19 million in Discretionary funds which, according to the Conference Report, H.Rpt. 104–863 (1996), were targeted specifically for resource and referral activities and for school-age child care activities. This action acknowledges the important role that school-age child care plays in the lives of families. With the added flexibility under the amended CCDBG Act States can continue to provide child care services to all eligible children, including these targeted populations, without a requirement that specific portions must go to any particular program.

Foster Care and Protective Services

We are clarifying that grantees have the flexibility to include foster care in their definition of protective services in their Plan and thus provide child care services to children in foster care in the same manner in which they provide services to children in protective services.

We previously distinguished between children in protective services and children in foster care by allowing child care subsidies for foster care only when the foster parent is working, in education or in training. The distinction was made only in the preamble language; the regulatory and statutory language provides for child protective services as a separate eligibility criterion but is silent about foster care. Therefore, this change in interpretation does not require a regulatory change.

Under the existing regulations, a child in a family that is receiving, or needs to receive, protective intervention is eligible for child care subsidies if he or she remains in his or her own home even if the parent is not working, in education or in training. In these instances, child care serves the child's needs as much or more than the parent's needs. In many States, Territories and Tribes, however, foster care is an integral part of the protective services system. Some grantees do not differentiate between protective services for families who remain intact and for those children who are in a foster placement.

Lead Agencies electing to include foster care in their definition of protective services are required to state so in their CCDF Plan. If Lead Agencies do not include foster care in their definition of protective services, they must tie eligibility for CCDF child care of children in foster care to the status of the foster parent's work, education or training.

We also wish to clarify the type of CCDF-funded child care services allowable for families who also receive protective services. In the preamble to the current regulations (57 FR 34360, Aug 4, 1992), we gave Lead Agencies the option to allow child care for more than 24 consecutive hours when it is due to the nature of the parent's work, and as long as the care is actually child care, not ''institutional'' services. Thus, child care normally covers a less than 24-hour period except in instances where the work schedule of the parent(s) requires longer periods of care.

Regarding respite child care, we said in the preamble (57 FR 34368, Aug. 4, 1992), ''Grantees have the flexibility to allow a child receiving, or in need of, protective services, to receive respite child care.'' We wish to clarify that respite child care is allowable for only brief, occasional periods in excess of the normal ''less than 24 hour period'' in instances where protective services parent(s)—including foster parents where the Lead Agency has defined protective service families to include foster care—need relief from caretaking responsibilities. For example, a child care arrangement by someone other than the custodial parent for one weekend a month to give relief to the custodial parent(s) that are protective service families is acceptable. We believe that this kind of respite child care, if necessary for support to families with children in protective services, would be an acceptable use of CCDF funds.

If a State or Tribe uses CCDF funds to provide respite child care service, i.e., for more than 24 consecutive hours, to families receiving protective services (including foster families when defined as protective services families), the CCDF Plan must include a statement to that effect in the definition of protective services. We note this definition of ''respite child care'' may differ from how States or Tribes define it for other purposes (e.g., child welfare). Thus, respite child care must be specified in the Lead Agency's Plan if it is to be considered an allowable expenditure under CCDF.

Finally, we have reconsidered our position concerning the selection of providers in child protective services (CPS) cases. In the preamble at 57 FR 34369, Aug. 4, 1992 we suggested that the CPS caseworker could question, but only on a case-by-case basis, a parent's choice of provider and could determine that the choice of provider is not in the best interest of the child.

The children and families who receive, or who need to receive, protective services are obviously in crisis. The CPS system must respond quickly and appropriately, yet sensitively, to the needs of such families—the need to protect the child should be foremost.

To meet these needs, some States have higher licensing standards for, or established networks of, specially trained child care providers to be used in CPS cases. In such instances, we believe that the State's obligation to protect the child would best be accomplished by allowing the State to require the use of such providers as the norm in CPS cases, if the State so chooses. The parent could, nevertheless, request another provider, which the CPS caseworker would consider on a case-by-case basis. Because our policy was originally only stated in preamble, no change to the regulations is required.

Subpart D—Program Operations (Child Care Services)—Parental Rights and Responsibilities

Parental Choice (Section 98.30)

Cash as a certificate. Since welfare reform has raised issues about methods of paying for child care, we wish to provide clarification with respect to child care certificates provided in the form of cash. In defining the term ''certificate,'' the statute at 658P(2) says, ''The term 'child care certificate' means a certificate (that may be a check or other disbursement) that is issued by a State or local government * * * directly to a parent who may use such certificate only as payment for child care services or as a deposit for child care services if such a deposit is required of other children being cared for by the provider.''

With a certificate or two-party check, the Lead Agency can ensure that money is paid to a provider who meets applicable health and safety requirements. This is not the case when a Lead Agency provides cash to a parent. We strongly discourage a cash system, because providers must meet health and safety standards, and we believe that the use of cash can severely curtail the Lead Agency's ability to conform with this statutory requirement.

If, nevertheless, a Lead Agency chooses to provide cash, it must be able to demonstrate that: (1) CCDF funds provided to parents are spent in conformity with the goals of the child care program as stated at section 658A of the Act, i.e., that the money is used for child care; and (2) that child care providers meet all applicable licensing and health and safety standards, as required by section 658E(c)(2) (E) and (F) of the Act. Lead Agencies, therefore, may wish to consider having parents who receive cash attest that the funds were used for child care and to identify the provider. Such a statement would help assure that the funds were expended as intended by the statute and lessen the possibilities for fraud. Finally, Lead Agencies are reminded that they must establish procedures to ensure that all providers, including those receiving cash payments from parents, meet applicable health and safety standards.

Availability of certificates. Section 658E(c)(2)(A) of the Act requires States to provide assurances that parents of each eligible child who receives or is offered CCDF child care services are given the option of (1) enrolling their children with a provider who has a grant or contract to provide services; or (2) receiving a child care certificate. The Act also requires that children who are to be enrolled in contracted slots must be placed with the provider of their parents' choice whenever possible. This statutory requirement is reflected in the regulations at § 98.30(a). The requirement basically is repeated at § 98.30(d) (formerly § 98.30(e)).

Based on our experience administering the CCDBG program, we have found that the duplication of the certificate option in the regulations has created some misunderstanding that the CCDBG Act gives preeminence to certificates. We wish to clarify that repetition of the provision should not be interpreted as giving preeminence to certificates. Both the statute and the regulations promote parental choice, not a specific method for achieving choice. Neither the statute nor the regulation can be interpreted accurately as giving a preference to certificates or to contracted slots.

If a choice of providers is denied to parents to whom services are offered, the complaints process set forth in § 98.93 provides an appropriate mechanism for redress. The Administration for Children and Families will respond to all complaints filed through this process.

We want to clarify that, although certificates must be an option for parents whenever services are offered, it may not be necessary to offer certificates whenever services are being used. For example, a local program might not offer new child care services during some portion of the program year because all available funds have been assigned to participating eligible children and are being used or ''reserved'' for those specific children. Availability of funding will continue to determine when child care subsidies are to be offered.

We want to emphasize that Lead Agencies are not precluded from entering into grants or contracts for child care services. Depending upon the child care needs of the eligible population in discrete geographic markets, grants and contracts may be necessary to ensure a stable supply of child care services. In essence, the Lead Agency must make a good faith effort to balance the funding for grants or contracts and certificates to ensure that parents have optimum choice among quality child care options as stipulated in the legislation and reinforced in the existing regulation.

In conducting on-site program reviews, we have found that Lead Agencies are operating certificate programs that provide for parental choice. While some offer only certificates, others commit funds on a proportional basis between certificates and contracts based on the particular needs of individual areas or populations. Some Lead Agencies, for example, have found that stable child care is more difficult to find in rural or inner-city areas, for infants, or for children with special needs and have therefore contracted with competent providers to address these specific shortages.

In planning the distribution of funds for grants or contracts and certificates, Lead Agencies should ensure that parents who choose certificates are not placed on a waiting list while substantial numbers of contracted slots in the same area remain unutilized.

Child care administrators have told us that there are areas where the need for subsidized low-income child care exceeds the available resources. Thus, if certificate funds are fully reserved for children who are already enrolled, and no subsidized slots are available, it may be necessary to begin a waiting list for certificates. Similarly, because many Lead Agencies allocate funds on a locality-by-locality basis, there may be waiting lists in some areas, while services are still available in others.

In addition to a certificate's being used for child care services, the statute at amended section 658P(2) stipulates that a certificate can also serve as a deposit for child care services, if such a deposit is required of other children being served by the provider. We have added regulations at § 98.30(c)(3) to reflect this new provision.

The amendments eliminated language at section 658E(c)(2)(A)(iii) requiring a certificate program to be in place by October 1, 1992, since all Lead Agencies must now have a certificate program in place, except for Tribes that are exempt under § 98.83(f). We have amended § 98.30 of the regulations accordingly.

We have also amended § 98.30 to reflect that section 658E(c)(2)(E) of the Act no longer requires registration of providers. For further discussion about registration, see the preamble at § 98.45.

In-home care. In-home child care is still a required category of care; however, since this care is provided in the child's own home it has unique characteristics that deserve special attention. First, in-home care is affected by interaction with other laws and regulations. For example, in-home providers are classified as domestic service workers under the Fair Labor Standards Act (FLSA) (29 U.S.C. Section 206(a)) and are therefore covered under minimum wage. As employees, in-home child care providers are also subject to tax requirements. In highlighting these special considerations, we also note that

whenever the FLSA and other worker protections apply, ACF is committed to maintaining the integrity of these protections. A strong commitment to work, and therefore to worker protections, is critical to welfare reform.

Second, child care administrators have faced a number of special challenges in monitoring the quality of care and the appropriateness of payments to in-home providers. For that reason, we propose to give Lead Agencies greater latitude to impose conditions and restrictions on in-home care. We have revised § 98.16(g)(2) to require that Lead Agencies, in their CCDF Plans, specify any limitations on in-home care and the rationale for those limitations.

We are mindful that in-home care plays a valid and important role in meeting the needs of working parents, and that many participants in subsidized care programs rely on such care to meet their family needs. Access to care that meets the needs of individual families is critically important to parents and children, to schools and the workplace, and to other community institutions that interface with the family. While in-home care represents only a small proportion of all available care in most communities, it may be the best or only option for some families and may prove valuable, necessary and cost-effective when compared to other options. There are a number of situations in which in-home care may be the most practical solution to a family's child care needs. For example, the child's own home may be the only practical setting in rural areas or in areas where transportation is particularly difficult. Employees who work nights, swing shifts, rotating shifts, weekends or other non-standard hours may experience considerable difficulty in locating and maintaining satisfactory center-based or family day care arrangements. Part-time employees often find it more difficult to make child care arrangements than do those who work full-time. Similarly, families with more than one child or children of very different ages might be faced with multiple child care arrangements if in-home care were unavailable. Many families also believe that very young children are often best served in their own homes. Given the general scarcity of school-age child care in many communities, in-home care may enable some families to avoid latchkey situations before school, after school, and when school is not in session. For many families, in-home care by relatives also reflects important cultural values and may promote stability, cohesion and self-sufficiency in nuclear and extended families.

We urge child care administrators to consider the capacity of local child care markets to meet existing demand and the role that in-home care may play in the ability of parents to manage work and family life. Although in-home care does not represent a large share of the national supply, it fills an important niche in the structure and functioning of local child care markets by extending the ability of parents to care for children within their own families, closing gaps in the supply of community facilities, and creating a bridge between adult care and self- or sibling-care as children near adolescence.

Some Lead Agencies may choose to limit in-home care because of cost factors. For example, a State might determine that minimum wage requirements result in payments for in-home care serving only one or two children that are much higher than the payments for other categories of care. Therefore, the Lead Agency could elect to limit in-home care to families in which three or more children require care. The payment to the in-home provider would then be similar to the payment for care of the three children in other settings. This ability to limit in-home care allows Lead Agencies to recognize the same cost restraints that families whose care is unsubsidized must face.

However, since in-home care has proven to be an important resource, we expect Lead Agencies to consider family and community circumstances carefully before limiting its availability. For that reason, we are proposing that CCDF Plans specify any limitations placed on in-home care and the rationale for those limitations.

ACF recognizes that giving Lead Agencies greater latitude to impose conditions and restrictions on in-home care may affect parents' ability to make satisfactory child care arrangements and thus their ability to participate in work, education or training. We also recognize the challenges of implementing health and safety requirements in the child's own home, monitoring in-home providers, and complying with Federal wage and tax laws governing domestic workers. Therefore, we are seeking focused comments on our regulatory proposals for in-home care and would especially appreciate suggestions on how to balance parental choice, cost effectiveness, and adherence to other Federal and State provisions, such as the FLSA, that are unique to in-home settings.

Parental Access (Section 98.31)

We have amended the regulations at §§ 98.31 and 98.16(n) to reflect the new statutory requirement at section § 658E(c)(2)(B) that Lead Agencies have in effect procedures to ensure unlimited parental access and to provide a detailed description of those procedures. We have also amended § 98.15(b)(1) to reflect the statutory change to certify rather than assure that procedures are in effect to ensure unlimited access.

Parental Complaints (Section 98.32)

We have added paragraph (c) to the regulations at § 98.32 and amended § 98.16 by adding paragraph (m) to reflect the new statutory requirements at § 658E(c)(2)(C) on parental complaints. Under the changes, Lead Agencies must provide a detailed description of how a record of substantiated parental complaints is maintained and made available to the public on request. We have also amended the regulation at § 98.15(b)(2) to reflect the requirement of the statute at 658E(c)(2)(C) that a Lead Agency ''certify'' rather than ''assure'' that it will maintain a record of substantiated parental complaints.

Consumer Education (Section 98.33)

We have amended the regulation at §§ 98.33 and 98.15(b)(3) to reflect the statutory requirement at section 658E(c)(2)(D) that the Lead Agency ''certify'' that it ''will collect and disseminate to parents of eligible children and the general public, consumer education information that will promote informed child care choices.'' It is important to emphasize that the use of the words ''collect and disseminate'' is more proactive and forceful than the former requirement that consumer education ''be made available'' to parents and the public. We also believe that by changing the wording, Congress wished to emphasize the importance of consumer education as a service to be provided by Lead Agencies. This emphasis is also stressed by the third goal of the CCDF, listed at section 658A(b) of the amended statute, ''to encourage States to provide consumer education information to help parents make informed choices about child care.'' Moreover, the amendment to the reporting requirements at section 658K(a)(2)(D)—reflected in the revised regulations at § 98.71(b)(3)—requires Lead Agencies to report twice a year on the manner in which consumer education information was provided to parents and the number of parents that received such information.

The statute previously specified the type of consumer education information that the Lead Agency had to provide: ''licensing and regulatory requirements, complaint procedures, and policies and practices relative to child care services within the State.'' The statute now is less prescriptive. Consumer education information is defined as that which ''will promote informed child care choices.'' Thus, the statute leaves it up to the Lead Agency to determine the type of information that will help the public and parents make informed child care choices.

While Lead Agencies have flexibility in providing consumer education, ACF strongly encourages Lead Agencies to promote informed child care choices by offering information about: the various categories of care; the freedom of parents to choose the type of care that best meets their needs; the Lead Agency's certificate system; the rates for the various categories of care; the sliding fee scale; a checklist of what to look for in choosing quality care; providers with whom the Lead Agency has contracts for care; the basic health and safety regulations that all providers must meet; the Lead Agency's policy regarding its file of substantiated complaints by parents that is available upon request as required by § 98.32; and local resource and referral agencies that can assist parents in choosing appropriate child care.

The best child care arrangements are developed in one-on-one consultation with trained or experienced counselors. Professional help with locating child care is time-and cost-efficient for both families and Lead Agencies. Thus, it may be in the Lead Agency's interest to invest in strategies such as co-location of child care resource and referral counselors in work development offices or agencies. Economists make the argument that good consumer information is critical to making the child care market function more like other markets. Moreover, experience has shown that printed materials alone may not always be a sufficient information source, particularly if parents have low literacy rates.

Exception to Individual Penalties in the TANF Work Requirement

Title I of the PRWORA amends Title IV–A of the Social Security Act and replaces the Aid to Dependent Children (AFDC) with a new block grant program entitled Temporary Assistance for Needy Families, or TANF. The new section 407(e)(2) addresses an exception to the work requirement in the TANF program and provides that a State may not reduce or terminate TANF assistance to a single custodial parent who refuses to work when she demonstrates an inability to obtain needed child care for a child under six, because of one or more of the following reasons:

(1) Unavailability of appropriate child care within a reasonable distance from the individual's home or work site;

(2) Unavailability or unsuitability of informal child care by a relative or under other arrangements;

(3) Unavailability of appropriate and affordable formal child care arrangements.

The TANF penalty exception underscores the pivotal role of child care in supporting work and also recognizes that the unavailability of appropriate, affordable child care can create unacceptable hardships on children and families. Since Congress provided that the new Mandatory and Matching child care funding be transferred to the Lead Agency under the CCDF and also provided that at least 70 percent of the new funding must be spent on families receiving temporary assistance, in transition from public assistance, or at risk of becoming eligible for public assistance, the Lead Agencies will be playing a dominant role in providing the child care necessary to support the strong work provisions found in TANF. It is critical, therefore, that CCDF Lead Agencies help disseminate information about the TANF exception. Knowledge of this exception on the part of parents also will be very important in promoting informed child care choices.

Therefore, we propose to require that Lead Agencies include information about it in their consumer education programs. This responsibility entails informing parents that: (1) TANF benefits cannot be reduced or terminated for parents who meet the conditions as specified in the statute and as defined by the TANF agency; and (2) the time during which an eligible parent receives the exception will count toward the time limit on benefits stipulated by the statute at section 408(a)(7).

In order for a Lead Agency to comply with this requirement, it will need to understand how the TANF agency defines and applies the terms of the statute to determine that the parent has a demonstrated inability to obtain needed child care. The elements that require definition consist of: ''appropriate child care,'' ''reasonable distance,'' ''unsuitability of informal care,'' and ''affordable child care arrangements.''

In our pre-regulatory consultations, some groups urged us not only to ensure that the CCDF agency disseminates information about the TANF penalty exception but to regulate the content of the definitions or criteria used to determine if a family is unable to obtain needed child care. The approach we have taken in this proposed rule provides flexibility and strikes an appropriate balance between the roles of the CCDF and TANF agencies. We recognize the flexibility of the TANF program to define the terms established by the statute. However, we strongly encourage TANF agencies to define ''appropriate care,'' at a minimum, as care that meets the health and safety standards of the CCDF program, specified at § 98.41. The definition should also take into account the results of many studies that show the value of quality child care for low-income children and the benefits to many of these children from more enriched child care.

We are requiring, under § 98.12 of the regulations, that Lead Agencies coordinate with TANF programs to ensure, pursuant to § 98.33(b), that case workers, eligibility workers, and others who work with TANF recipients in both the TANF and the CCDF programs will inform families with young children of their right not to be sanctioned if they meet the criteria set forth in the statute and plan. As part of this coordination, at § 98.16(p) we are requiring that the Lead Agency include in its plan the definitions or criteria the TANF program has adopted in implementing this exception to the work requirement.

The new section 409(a)(11) of the SSA specifies that if the TANF program sanctions parents who are eligible for this exception to the individual penalties associated with the TANF work requirements, it may incur a penalty of up to five percent of its grant. Therefore, coordination between the Lead Agency and the TANF program in this matter will serve the best interests both of the recipients of TANF benefits and the service agencies themselves. ACF will issue proposed rules on the TANF penalty provisions later this year.

Subpart E—Program Operations (Child Care Services)—Lead Agency and Provider Requirements

Compliance with Applicable State and Local Regulatory Requirements (Section 98.40)

We have amended the regulations at § 98.40(a) to reflect a change in Section 658E(c)(2)(E)(i) of the Act. The amendment requires Lead Agencies to certify that they have in effect licensing requirements applicable to child care services, and to provide a detailed description of those requirements and of how they are effectively enforced. This

change is also reflected in §§ 98.15 and 98.16. The statute notes, however, that these licensing requirements need not be applied to specific types of providers of child care services.

Because amendments to section 658P(5)(B) have eliminated the requirement for registration of unlicensed providers serving families receiving subsidized child care, we have deleted the former regulation § 98.40(a)(2) requiring registration. This change, however, does not prevent Lead Agencies from continuing to register unlicensed or unregulated providers, and we encourage them to do so. Those Lead Agencies that choose not to have a registration process will be required to maintain a list of providers. We discuss this in more detail at § 98.45.

Health and Safety Requirements (Section 98.41)

Section 658E(c)(2)(F), as amended, requires a Lead Agency to certify, rather than assure, that health and safety regulations applicable to child care providers are in place. We have amended the regulations at §§ 98.41(a) and 98.15(b)(5) to conform with the amended statute.

We propose to amend the regulation at § 98.41(a)(1) to require that States and Territories incorporate in their health and safety provisions (by reference or otherwise) the latest recommendations for childhood immunizations of their respective State or territorial public health agency. While many State and territorial public health agencies adopt the recommendations of the Advisory Committee on Immunization Practices (ACIP) of the Centers for Disease Control and Prevention (CDC), we wish to emphasize that this proposed new requirement does not impose Federal standards for immunization but allows for decision of the individual State or Territory regarding immunization requirements.

The proposed new immunization requirements at § 98.41(a)(1) apply only to States and Territories. While tribal Lead Agencies must meet health and safety requirements that address the prevention and control of infectious diseases (including immunizations), they do not have to meet the specific immunization requirements that apply to States and Territories. In the proposed rule published May 11, 1994 (59 FR 24510), which was never finalized, ACF proposed specific immunization requirements for Tribes. However, consistent with the amendments in PRWORA, we have not included those specific requirements in this proposed rule. We anticipate that tribal immunization requirements will be addressed in the minimum child care standards that are being developed by ACF in consultation with Indian Tribes and tribal organizations. New section 658E(c)(2)(E)(ii) of the CCDBG Act requires the development of minimum child care standards for Indian Tribes and tribal organizations.

Our youngest and most vulnerable children remain at risk for vaccine-preventable diseases. The measles epidemic of 1989–1991 resulted in more than 55,000 reported cases of the disease, 11,000 hospitalizations, and more than 130 deaths. Half of those who died were infants. Although immunization rates for two-year-olds are now at an all-time high of 76 percent, and vaccine-preventable diseases are at an all-time low, more than one million two-year-olds still are not adequately protected. Childhood vaccines protect young children against infectious diseases that could lead to serious illness and deaths. Data reveal that by age two, when children should have received most of their vaccines, more than 24 percent of American children are not adequately protected against childhood diseases. Over one million children need at least one dose of polio vaccine; 640,000 children require a dose of MMR (measles/mumps/rubella); and about 530,000 children have not received all their pertussis shots.

Since a large percentage of children receiving child care assistance are under five years of age, we believe that the immunization requirement will have a positive impact in reducing the incidence of infectious diseases among preschool age children. Vaccines are the most cost-effective way to prevent childhood diseases. Nationally, approximately $10.00 are saved in direct medical costs for every dollar spent on the measles/mumps/and rubella (MMR) vaccine, $6.00 are saved for every dollar spent on the diphtheria/tetanus/pertussis (DTP) vaccine, and $3.00 are saved for every dollar spent on the oral polio vaccine (OPV). For every dollar spent on immunization, as much as $29.00 can be saved in direct and indirect medical costs.

In requiring children to be age-appropriately immunized, we considered that parents may not always be able to access immunizations easily. However, a number of national initiatives are under way to promote immunizations for all children. In response to disturbing gaps in the immunization rates for young children in America, a comprehensive Childhood Immunization Initiative (CII) was developed. CII addresses five areas:

—Improving immunization services for needy families, especially in public health clinics;
—Reducing vaccine costs for lower-income and uninsured families, especially for vaccines provided in private physician offices;
—Building community networks to reach out to families and ensure that young children are vaccinated as needed;
—Improving systems for monitoring diseases and vaccinations; and
—Improving vaccines and vaccine use.

The CDC and its partners in the public and private sectors are working to build a comprehensive vaccination delivery system. The goals of the CII are to ensure that at least 90 percent of all two-year-olds receive each of the initial and most critical doses, to reduce diseases preventable by childhood vaccination to zero, and put in place a system to sustain high immunization coverage. Since 1994, the National Immunization Survey (NIS) has been used to provide immunization coverage estimates for all 50 States and 28 large urban areas.

As part of the efforts in the CII, immunization programs on the State and local level are collaborating with WIC programs (Special Supplemental Food Program for Women, Infants, and Children) to focus on children's immunization. For example, local WIC clinics check the immunization records of WIC participants, assist families to find a primary health care provider, and provide immunization information. On-site immunization services are sometimes also provided at local WIC clinics.

On September 30, 1996, the CDC awarded funds ranging from $130,000 to $250,000, to education agencies in four States (New York, South Dakota, West Virginia, and Wisconsin) to deliver immunization services to preschool-aged children in health centers at elementary schools. Over the past four years, welfare reform waivers were granted to 18 States to allow them to require parents to immunize their children as a condition of receiving assistance.

Surveys of licensed child care facilities indicate that the majority of States require some proof of immunizations for children enrolled in licensed or regulated child care centers and family day care homes. However, individual States differ in their specific requirements and regulatory approaches, and requirements for the immunization of children in child care settings that are exempt from licensure or other regulatory provisions vary widely.

Lead Agencies have the flexibility to determine the method they will use to implement the immunization requirement. For example, they may require parents to provide proof of immunization as part of the initial eligibility determination and again at redetermination, or they may require child care providers to maintain proof of immunization for children enrolled in their care. The requirements established by the Lead Agency will generally be applicable to all children receiving CCDF assistance and in all child care settings. However, States have the option to exempt the following groups:

- Children who are cared for by relatives (defined as grandparents, great grandparents, siblings—if living in a separate residence—aunts and uncles);
- Children who receive care in their own homes;
- Children whose parents object on religious grounds; and
- Children whose medical condition contraindicates immunization.

While families are taking the necessary actions to comply with the immunization requirements, Lead Agencies must establish a grace period during which children can continue to receive child care services.

Finally, we encourage all Lead Agencies to consider requirements that provide for documenting regular updates of a child's immunizations.

Section 98.30(f) (2) and (3) prohibit any health and safety requirements from having the effect of limiting parental access or choice of providers, or of excluding a significant number of providers. We do not think these new immunization requirements will have such an effect. Rather, we are convinced that, when applied to all providers, they will have the effect of enhancing parental choice of providers, since all providers will have the same requirements. More importantly, however, the requirements will promote better health for children, their families, and the public.

Other revisions. Based on former statutory provisions, § 98.41(c) of the 1992 regulations required a Lead Agency to include in its annual report a rationale for any reduction it might have made in standards applicable to child care, and paragraph (d) required each Lead Agency to review the licensing requirements of each licensing agency in the area served by the Lead Agency and report its findings in its first or second annual report. We have deleted both these requirements because of changes in the statute at section 658E(c)(2) (H) and (I).

Pursuant to section 658P(5)(B) of the amended statute, we have added ''great grandparents, and siblings (if such providers live in a separate residence)'' to the list of relatives who, at State option, may be exempted from the health and safety requirements at § 98.41(e) and to the definition of ''eligible child care provider'' at § 98.2.

Sliding Fee Scales (Section 98.42)

We have simplified § 98.42 of the regulations by removing separate references to services under §§ 98.50 and 98.51.

For a further discussion of copayments, see § 98.43.

Equal Access (Section 98.43)

We have changed the title of this section to ''Equal Access,'' from ''Payment Rates,'' because the amended CCDBG Act now focuses on equal access for families receiving subsidies to child care services. Under the amendments, Lead Agencies are required to certify that payment rates are sufficient to provide access to child care services for eligible families that are comparable to those provided to ineligible families. The amended section 658E(c)(4)(A) also requires the Lead Agency to provide a summary of the facts relied on to determine that its payment rates are sufficient to ensure equal access.

The proposed regulation at § 98.43(b) requires a Lead Agency to show that it considered the following three key elements in determining that its child care program provides equal access for eligible families to child care services:

1. Choice of the full range of categories and types of providers, e.g., the categories of center-based, group, family, in-home care, and types of providers such as for-profit and non-profit providers, sectarian providers, and relative providers as already required by § 98.30.
2. Adequate payment rates, based on a local market survey conducted no earlier than two years prior to the effective date of the current Plan; and
3. Affordable copayments. These elements must be addressed in the summary of facts submitted in a Lead Agency's biennial Plan, pursuant to § 98.16(l).

1. Full range of providers. All working parents, regardless of income, need a full range of categories and types of providers from which they may choose their child care services, because their child care needs vary considerably according to the child's age and special needs, the parents' work schedule, provider proximity, cultural values and expectations. Therefore, we believe that the statutory requirement of equal access means that low-income working parents receiving CCDF-subsidized care must have a full range of the categories and types of providers from which to choose care that they believe best meets their needs and those of their children. The parental choice requirements at § 98.30 already require that parents who receive certificates be afforded such variety.

2. Adequate payment rates. The statute at section 658E(c)(4)(A) eliminated the requirement that, in establishing payment rates, the Lead Agency take into account variations in the cost of providing care in different categories of care, to different age groups, and to children with special needs. We have amended § 98.43 to conform with the statute. However, while eliminating the requirement for different payment rates for different categories of care, Congress added a requirement that Lead Agencies provide ''a summary of the facts relied on by the State to determine that such rates are sufficient to ensure such [equal] access.''

The statute suggests that if families receiving child care subsidies under the CCDF are to have equal access to child care, the payment rates established by a Lead Agency should be comparable to those paid by families who are not eligible for subsidies. In other words, the payment rates should reflect the child care market. Although the statute has changed, the reality remains that the market reflects differences along several dimensions, and we do not believe that Congress expected Lead Agencies to establish a single payment rate for all types of child care.

Child care is often the major factor in whether families are able to work—and access to a variety of child care arrangements is necessary both to support today's increasingly diverse workforce and workplace demands, and to ensure that the healthy development of children is not compromised. The focus of PRWORA on work further highlights the need for CCDF Lead Agencies, which now are required by statute to administer the new Mandatory and Matching Funds, to establish payment rates that support work as well as enable the developmental needs of children to be met.

The major variable in the cost of child care is the age of the child, especially the added expense of caring for infants and very young children. Under PRWORA, many more families with infants and pre-school-aged children will be required to participate in work activities for longer hours per week. Payments that do not reflect the expense of caring for very young children will frustrate the ability of families to work. In providing the exception to the

individual penalties under TANF for single custodial parents with a child under age six who cannot obtain needed child care, Congress recognized the special difficulties of locating care for young children. We have proposed a consumer education provision at § 98.33 that recognizes the relationship between the TANF provision and the responsibilities of the CCDF Lead Agency. Consequently, we also expect Lead Agencies to ensure that their payment rates reflect the market rate variations in the cost of providing child care to different age groups as well as the additional costs of providing care to children with special needs. We anticipate that market rate surveys will also show variations in rates among categories of care, and we expect any significant variations to be reflected in the Lead Agency's payments.

A system of child care payments that does not reflect the demands of the market makes it economically infeasible for many providers to serve low-income children. This undermines the statutory and regulatory requirements of equal access and parental choice. Experience with the now-repealed title IV–A child care programs and the CCDBG suggests that providers limit their enrollment of children with subsidies because the subsidy payments were too low. Similarly, failing to compensate providers timely or not reimbursing them for days when children are absent also causes providers to refuse care to children with subsidies.

At § 98.43(c) we have added a provision prohibiting different payment rates based on a family's eligibility status or circumstances. This provision means that the Lead Agency may not establish payments for TANF families that differ from the payments for the families of the working poor, or for families in education or training, for example. We believe that multiple payment rates based on an eligibility status precludes the statutorily-required equal access to child care for families receiving CCDF subsidies. Additionally, such multiple payment rates would frustrate one of the main intents in amending the Act—to have a unified child care system with only a single set of rules. This purpose would be undercut if different payment rates based on eligibility criterion were permitted.

With the exception of payments for children with special needs, who sometimes require services on a highly individualized basis, we believe that a survey of market rates is the only methodologically sound way for Lead Agencies to gather the facts necessary to establish payments that are realistic and thus provide the required equal access for low income families. Implementation of this provision should not be a burden to States, which were required to conduct local market surveys in implementing the now-repealed title IV–A child care programs. We also know from comparing State plans for the two programs, that the great majority of States used the IV–A payment rates for subsidies provided under the Child Care and Development Block Grant. Thus, States have had a number of years' experience with the survey process. States retain the flexibility to design such surveys; we have not proposed a survey methodology.

We propose that Lead Agencies conduct such a survey biennially to ensure that their payments reflect reasonably current market conditions. We have amended the regulations at §§ 98.43(b)(2) and 98.16(l) to include this proposed requirement. Lead Agencies must provide evidence in the biennial Plan to show that a local market rate survey was conducted no earlier than two years prior to the effective date of the currently approved Plan, together with an explanation of how the survey was conducted.

We have not established specific requirements for the payments established by Lead Agencies. Lead Agencies have the flexibility to establish payments, based on a biennial survey, which provide CCDF-subsidized families with equal access to the full range of care in their areas. We would consider parents to have equal access, however, if payments are established at least at the 75th percentile of the rate in the child care market. States and families have both recognized that the 75th percentile, which we required in the now-repealed title IV–A child care programs, generally provided families receiving subsidies with a range of care that was adequate to support their work schedules and the needs of their children.

Since the requirement to conduct a market survey biennially is intended to ensure that payments reflect reasonably current market conditions, lengthy delays between the survey and basing the payments on that survey would undermine the intent of the requirement. Therefore, we propose that a Lead Agency conduct its survey no earlier than two years prior to the effective date of the currently approved Plan; and payments derived from that survey must be in place no later than the beginning of the second year of the Plan for which the survey was conducted. The survey will be the basis for payments for only two years.

We propose to revise §§ 98.43 and 98.16 to remove the ten percent limit on payment differences within a category of care. We also propose to remove the reference to limits on payment differences in § 98.16. This revision recognizes the change in focus of the statute to a factual basis for the establishment of payments and the elimination of the requirement to establish payment rates by category of care. It will also provide Lead Agencies the flexibility to recognize and compensate higher quality child care facilities and providers, including those that have obtained nationally recognized accreditation or special credentials. This will also give the Lead Agency the flexibility to address possible shortages of certain types of care—for example, care during non-traditional hours or on weekends—when the survey results for this care are incomplete, not obtainable, or contradict the agency's experience in providing such care.

3. Affordable copayments. The third essential element of equal access is that any copayment or fee paid by the parent is affordable for the family and sliding fee scales should not be designed in a way that limits parental choice. We wish to emphasize that Lead Agencies have flexibility in establishing their sliding fee scales. However, in our view, copayment scales that require a low-income family to pay no more than ten percent of its income for child care, no matter how many children are in care, will help ensure equal access.

Recent reports by the Census Bureau indicate that families with income below the poverty level pay a disproportionate share of their income—18 percent—for child care; whereas families above the poverty level pay only seven percent of their income for child care. The size of the fee paid by a low-income working parent can be crucial in determining whether she and her family become, and remain, self-sufficient. When devising the fee scale Lead Agencies should try to ensure that small wage increases do not trigger large increases in copayments, lest continuation on the path to self-sufficiency be jeopardized for any family. The size of a fee increase is an especially important consideration because recent changes in the Food Stamp, housing assistance, Medicaid, SSI, and the Earned Income Credit programs may also affect the resources now available to a low-income working family.

Sliding fee scales must continue to be based on family size and income, as currently required at § 98.42(b). While Lead Agencies have flexibility to take

additional elements into consideration when designing their fee scales, basing fees on the cost or category of care could violate the statutory requirements of equal access and parental choice. Similarly, multiple fee scales based on factors such as a family's eligibility status would be precluded.

List of Providers (Section 98.45)

We have renamed this section ''List of Providers'' because the amendments to section 658(E)(c)(2)(E) of the Act eliminated the language on the registration of unlicensed or unregulated providers. We have also deleted the requirement at § 98.16 to describe the registration process in the biennial Plan.

At § 98.45, however, we propose to require any Lead Agency not having a registration process to maintain a list of the names and addresses of all unregulated providers. It is essential that Lead Agencies have some simple, standardized system to record the names and addresses of unlicensed providers in order to pay them and to provide them with pertinent information about health and safety regulations and training.

The regulations would no longer specifically require Lead Agencies to have a registration process for providers not licensed or regulated under State or local law before paying them for child care services. However, Lead Agencies should note that they may continue such a system, and we strongly encourage them to do so.

Subpart F—Use of Block Grant Funds

Child Care Services (Section 98.50)

The 70 percent requirement. Section 418(b)(2) of the PRWORA specifically requires the State to ensure that not less than 70 percent of the funds received by the State are used to provide child care assistance to families who are receiving assistance under a State program under Part A of title IV of the Social Security Act, families who are attempting through work activities to transition off of such assistance program and families that are at risk of becoming dependent on such assistance program. We wish to clarify that the 70 percent requirement applies only to the Mandatory and Matching Funds. Further, the amended statute at 658E(c)(2)(H) requires the State to demonstrate in its CCDF plan the manner in which the State will meet the specific child care needs of these families.

States have great flexibility in designing a single comprehensive program to serve families. The need to coordinate and consult closely with the TANF program has been discussed at length in Subpart A of the preamble. In our consultation process we heard concerns that further regulations regarding the 70 percent requirement could hamper the State's ability to coordinate and develop a comprehensive program. We therefore will not regulate beyond the statutory language of this provision but have amended the regulation by adding the statutory provisions at § 98.50 (e) and (f).

Serving other low-income working families. Section 658E(c)(3)(D) as amended directs the State to ensure that a ''substantial portion'' of the amounts available (after a State has complied with the 70 percent requirement discussed above) is used to provide assistance to low-income working families other than those who are receiving assistance, transitioning off assistance or at risk of becoming dependent on assistance under Part A of title IV of the Social Security Act.

Since the income level for eligible children is increased in the statute to 85 percent of the State median income, it is clear that Congress intended for child care assistance to be available to more low-income working families than were previously eligible. We believe, however, that families whose income is less than 85 percent of the State median income may well be at risk of becoming dependent on assistance. Thus the two populations overlap.

The regulation at § 98.50(e) now provides the statutory description of the families who are to be served under the 70 percent provision. In addition § 98.50(f) is added to require the State, pursuant to the statute, to specify in its plan how the State will meet the needs of these families. We believe, based on our consultations, that the circumstances of low-income working families (whose income is below 85 percent of the State median income) are no different than the families specifically mentioned in those regulations and thus would expect that they would be treated similarly.

Since States are required to collect and report data concerning family income, including the number of families who are receiving temporary assistance under title IV of the Social Security Act, ACF will have the opportunity to monitor such reports to determine whether States are serving both welfare and at-risk families as the statute intends. Additionally, ACF will have the CCDF Plan, which includes the manner in which the State will meet the needs of families receiving assistance, transitioning off assistance or at risk of becoming dependent on assistance under Part A of title IV of the Social Security Act.

We therefore do not plan to require additional definitions of these populations. However, if the State elects to have a specific description of at-risk families, it could, for example, be included when defining very low income or in providing additional terminology related to conditions of eligibility or priority in the CCDF plan.

Activities to Improve the Quality of Child Care (Section 98.51)

Not less than four percent. Section 658G of the CCDBG Act was amended to direct that a State that receives CCDF funds shall use not less than four percent of the amount of such funds for activities to improve the quality of child care and availability of child care (such as resource and referral services). Section 98.51(a) provides that the not less than four percent requirement for quality applies to the aggregate amount of expenditures (i.e., Discretionary, Mandatory, and both the Federal and State share of Matching funds); it need not be applied individually to each of the component funds. Section 98.51(a) also provides that the four percent requirement applies to the funds expended, rather than the total of funds that are available but may not be used. Lead Agencies, however, have the flexibility to spend more than four percent on quality activities. Section 98.51(c) provides that the quality expenditure requirement does not apply to the maintenance-of-effort expenditures required by § 98.53(c) in order to claim from the Matching Fund.

The statute details specific activities that may be undertaken: activities designed to provide consumer education to parents and the public; activities that increase parental choice; and activities designed to improve the overall quality and availability of child care. ACF believes that activities that provide parents and the public with information about child care options will help to improve the quality of child care. As the public learns more about the need for and benefits of quality child care, we expect that the availability of quality child care will also expand, creating increased choices for parents.

The statute formerly provided five examples of activities to improve the quality of child care. These included resource and referral programs (cited in the amended statute), grants or loans to assist in meeting state and local standards, monitoring of compliance with licensing and regulatory requirements, training, and compensation. These activities continue

to be allowable quality activities under this minimum four percent requirement.

Lead Agencies have used these activities over the years to improve the quality of child care and we believe that they can continue to be used successfully. We also want to provide Lead Agencies with increased flexibility to develop other successful strategies by not restricting their options. We have added, therefore, regulations at § 98.51(a) based on the broad statutory language, while retaining the former options for specific activities. We will continue to collect, in the plan, descriptions of activities to improve the quality of child care services. We encourage Lead Agencies to evaluate the success of their efforts to improve quality and will disseminate promising practices.

States will need flexibility to design a child care delivery system that is customized to the needs of their families and that includes flexibility in the choice of activities that will improve the quality of child care. Since the requirement is expressed as a baseline it is clear that quality activities are important and must be included in developing a comprehensive plan.

Administrative Costs (Section 98.52)

Section 658E(c)(3)(C) of the amended Act limits the amount of funds available for the administrative costs of the CCDF program to ''not more than five percent of the aggregate amount of funds available to the State.'' Section 98.52(a) provides that the five percent limitation on administrative costs applies to the funds expended, rather than to the total of funds that are available but which may not be granted or used. Thus, Lead Agencies may not use five percent of the total funds available to them for administrative costs unless they use all the available funds including Matching Funds.

This provision also makes clear that the five percent limitation applies to the total Child Care and Development Fund. The five percent limitation need not be applied individually to each of the component funds—the Discretionary, Mandatory, and Matching (including the State share) Funds. We believe this flexibility will streamline the overall administration of the Fund. The limitation does not apply to the maintenance-of-effort expenditures required by § 98.53(c) in order to claim from the Matching Fund.

Section 98.52(a) lists administrative activities and is derived from the current regulations as modified by the PRWORA amendments and the Conference Agreement (H.R. Rep. 104–725 at 411). While the statute does not define administrative costs, it does preclude ''the costs of providing direct services'' from any definition of administrative costs.

The Conference Agreement specifies that the following activities ''should not be considered administrative costs'':

(1) Eligibility determination and redetermination;

(2) Preparation and participation in judicial hearings;

(3) Child care placement;

(4) The recruitment, licensing, inspection, reviews and supervision of child care placements;

(5) Rate setting;

(6) Resource and referral services;

(7) Training [of child care staff]; and

(8) The establishment and maintenance of computerized child care information systems.

Therefore, we have deleted from the current regulation's list of administrative activities at § 98.52(a) three activities: determining eligibility, establishing and operating a certificate program, and developing systems (formerly § 98.52(b)(1) (i), (iii), and (vi) respectively). We deleted ''establishing and operating a certificate program'' as an administrative activity, even though it was not listed in the Conference Agreement, because it appears that most of the components of a certificate program would not be considered to be administrative costs per the Conference Agreement. For example, certificate programs must determine and redetermine eligibility, provide the public with information about the program, develop and maintain computer systems, place children, offer resource and referral services, etc. Although we believe that many of the costs of a certificate program are not administrative, Lead Agencies must examine their certificate programs and ascribe to administrative cost those activities that are clearly administrative per § 98.52(a). Lead Agencies may wish to examine the components of other activities in this manner to ensure that they are correctly considering administrative costs in accordance with § 98.52(a) and the Conference Agreement.

While these proposed regulations reflect the Conference Agreement language, we are nevertheless concerned that States will misinterpret the intent of the change and re-direct a disproportionate amount of expenditures on these redesignated activities rather than on direct services to children. We wish to emphasize that services to children is the purpose for which the CCDF was created. Therefore, we would not expect a large increase in costs to activities that are not direct services to children. We will closely monitor such expenditures to determine if States are overspending for such activities at the expense of services. As one method of monitoring, we intend to require that the proposed CCDF financial reporting forms separately collect the amounts that are expended on developing systems and other kinds of non-direct service activities. If we determine that there are problems, we reserve the right to re-visit the policy and regulate in the future. Nevertheless, States should know that any administrative components of the activities that have been re-designated as non-administrative in nature are subject to the CCDF administrative cost cap.

Lastly, we clarify in § 98.52(c) that the non-Federal expenditures required of the State in order to meet its maintenance-of-effort threshold for receiving matching funds are not subject to the five percent limitation on administrative costs. Nevertheless, audits of State reports of maintenance-of-effort expenditures should indicate that administrative expenditures included in those MOE amounts are reasonable, necessary for carrying out the services provided, and consistent with other provisions of law.

Administrative costs for Tribes. We have specifically noted at § 98.52(b) that Tribes, and tribal organizations are exempt from the five percent cap on administrative costs as it applies only to the entities defined as ''States.'' Tribes and tribal organizations are not currently subject to the administrative cost limitation at § 98.50(d) and we wanted to codify this existing exemption. Tribes, however, are subject to the requirements at § 98.83(g) regarding limits on administrative expenditures.

Matching Fund Requirements (Section 98.53)

Section 98.53 used to describe non-supplantation requirements. As those have been repealed by the PRWORA amendments, we are now using this section to discuss the Matching Fund requirements.

Terminology and general requirements. In this section we have used the phrase ''expenditures in the State'' to encompass not only local expenditures on child care but also private, donated funds that meet the requirements at § 98.53(e)(2), as explained below. Whenever the term ''State funds,'' ''State expenditures'' or ''non-Federal expenditures'' is used it should be understood to include State, local or permissible private donated funds that meet these requirements and

are expended for allowable child care purposes.

Section 418(a)(2)(C) of the Social Security Act creates a two-part matching requirement. First, a State must expend an amount that at least equals its allowable expenditures for the title IV–A child care programs during 1994 or 1995, whichever is greater. We refer to this amount as the ''maintenance-of-effort'' (MOE) threshold.

State expenditures in excess of its MOE threshold, up to a maximum determined by the statute, are matched at the 1995 Federal medical assistance rate. The total amount that can be matched rises each year and is equal to the sum appropriated for that year, less the amounts of the Mandatory Fund, the tribal allocation and the allocation for technical assistance. The maximum to be matched for each State is its share of that total based upon the proportion of the State's children under age 13 in 1995 to the national total of children under age 13 in 1995.

Section 98.53(c) lists the requirements that States must meet if they wish to claim Federal Matching Funds. In summary, this section requires that the State obligate all of its Mandatory Funds by the end of the fiscal year (FY) they are granted. Mandatory Funds need not be obligated before Matching Funds are claimed, provided that all Mandatory Funds will be obligated by the end of that FY. Second, they must expend State-only dollars in an amount that equals the State's MOE threshold described at § 98.53(c)(1). And third, they must obligate the Federal and State share of the Matching Fund by the end of the FY.

Section 98.53(b)(1) provides that all costs are matched at the Federal Medical Assistance Percentage (FMAP) for FY 1995, irrespective of the year of expenditure as directed by the statute. The FMAP rate pertains to both child care services and administrative expenditures.

State expenditures allowable for MOE and Federal Matching Funds. State expenditures on any activities or services that meet the goals of the CCDBG Act and that are described in the approved CCDF Plan, if appropriate, may be used to meet the MOE requirement or may be claimed for Federal Matching Funds (proposed §§ 98.53(c)(2) and (b)(2)). For MOE, these proposed regulations offer greater flexibility than we offered in our interim guidance provided in our Program Instruction, ACYF–PI–CC–96–17, dated October 30, 1996. However, as provided at § 98.53(d), the same expenditure still may not be counted for both MOE and match purposes.

Under the regulations we propose, States will have flexibility to define child care services, so long as those services meet the requirements of the statute. For example, State expenditures for child care for those populations previously served by the title IV–A or CCDBG child care programs would be eligible for Federal match. Similarly, State investments in child care through the use of State funds to expand Head Start programs or to otherwise enhance the quality or comprehensiveness of full-day/full-year child care would also be eligible for Federal Matching funds since these activities meet the goals of the Act.

Sections 98.53(e) and (f) contain additional qualifications on what constitutes an expenditure in the State for purposes of this Part. These qualifications are the same that generally apply to Federal programs that provide for matching State expenditures, with two important clarifications.

First, the proposed § 98.53(e)(1)(i) would allow public agencies, other than the Lead Agency, to certify their expenditures as eligible for Federal match. This provision allows States, for example, to use pre-kindergarten (pre-K) expenditures to meet the MOE requirement (when the regulatory provisions for use of pre-K funds are met) and/or receive Federal Matching funds. The second clarification, proposed at § 98.53(f), concerns the treatment of private donated funds. It provides greater flexibility than previously offered as interim guidance under ACF Program Instruction, ACYF–PI–CC–96–17, dated October 30, 1996.

In our consultations we were asked several questions about the relationship between the child care and certain TANF requirements. Regarding the MOE requirements, the same State expenditure may be used to meet both the child care and TANF MOE requirements provided the expenditure meets the requirements of both programs. However, pursuant to section 409(a)(7)(B)(iv) of PRWORA, expenditures which States make as a condition of receiving Federal funds under other programs (e.g., expenditures for which the State receives CCDF Matching Funds) may not be included as part of the State MOE for TANF. ACF's Office of Family Assistance issued preliminary guidance concerning these questions in their policy announcement dated January 31, 1997 (TANF–ACF–PA–97–1). Since these questions relate to the TANF provisions of PRWORA no regulations are proposed for Parts 98 or 99.

Use of private agencies to receive donated funds. Historically, private donations to State-level programs have been very limited; locally controlled donations have been somewhat more prevalent. Frequently cited reasons for this lack of public support for seemingly worthwhile programs have included suspicion of government, in general, especially government outside the immediate community, coupled with regulations that appeared to limit the State's ability to assure the donor that the donated funds will be used in a specific area or for the donor's intended purpose.

At a time when child care programs face increased demands, and State budgets face constraints, we realize that we must reexamine prior ACF policies on donated funds. We have tried to respond to the issues that we were told have inhibited private donations in the past by proposing to include in the definition of State expenditures donated funds that meet the qualifications at § 98.53(e)(2) even though they are not under direct State control. At § 98.53(f) we have added that private donated funds need not be transferred to or under the administrative control of the Lead Agency to be eligible for Federal match. Instead they may be donated to an entity designated by the State to receive donated funds. Both the Lead Agency and the donor must, however, certify that the donated funds are available and eligible for Federal match. In addition to this dual certification requirement, we want to ensure Lead Agency accountability for funds that may not be under its direct control. Therefore, we also propose that the Lead Agency separately report the amount of private donated funds it claims as match. And finally, Lead Agencies should be aware that private donated funds claimed as match are also subject to the audit requirements at § 98.65.

This proposed rule will allow Lead Agencies to cooperate more closely with various organizations, foundations, and associations that already support high quality child care and related activities. It will also allow the Lead Agency to leverage private funds in order to serve more families, while working within State and Federal budget restrictions.

We also take this opportunity to clarify the regulation at § 98.53(e)(2)(i) which requires that private funds be donated without restriction on their use for a specified individual, organization, facility or institution. Under this clarification a donor could designate a specific geographic location for the receipt of funds. Such a geographic specification can be broad, such as within the limits of a specific city, or

extremely narrow, such as a single neighborhood. Such geographic specification is possible whenever funds are donated, whether the funds are donated to the Lead Agency or to an entity specially designated to receive private donations.

Lead Agencies will be asked to identify those entities that are designated to receive private donated funds and the purposes for which those donated funds are expended in their Plan, pursuant to § 98.16(c)(2).

Claims for pre-K expenditures for MOE and match purposes. Many States fund pre-K programs for young children. These are important early childhood services that contribute to school readiness. Expenditures for State-funded public pre-K services to children from families who meet the CCDF eligibility criteria (as outlined in the Plan) may meet the requirements for allowable child care services expenditures for MOE and match purposes. The pre-K program must meet each of the following four conditions:

- Attendance in the pre-K program must not be mandatory.
- The pre-K program must meet applicable standards of State, local or tribal law.
- The pre-K program must allow parental access.
- The pre-K program must not be Federally funded (unless funded with ''exempt'' Federal funds for matching purposes), and its State funding may not be used as basis for claiming other Federal funding.

In addition, the pre-K program must serve families who are at or below 85 percent of the State median income (SMI) (or lower SMI established as the CCDF eligibility criterion by the Lead Agency) and who meet other State eligibility criteria.

During our consultations we heard the full range of issues around allowing States to use their pre-K expenditures to meet the matching and MOE requirements of the CCDF. We came away from those consultations with some reservations about the use of pre-K expenditures, but we also came away with increased respect for the importance of these programs.

A chief concern to working parents is that many pre-K services are only part-day and or part-year and such programs may not serve the family's real needs. Some have expressed concerns that an excessively broad approach to counting pre-K expenditures might result in a real reduction in full-day child care services to potentially eligible working families. The potential exists for a State with a sufficiently large pre-K program to divert all state funds away from other child care programs and fulfill its MOE and Matching requirements solely through pre-K expenditures. On the other hand, allowing pre-K expenditures to be counted toward MOE or match could provide a critical incentive for States to more closely link their pre-K and child care systems. This could result in a coordinated system that would better meet the needs of working families for full-day/full-year services that prepare children to enter school ready to learn. We struggled with these issues and considered various alternative approaches to counting pre-K expenditures in the CCDF.

In the end, we decided on a policy that attempts to balance concerns about the use of pre-K expenditures in meeting CCDF requirements. At § 98.53(h) (3) and (4) we have addressed our concerns about balance by proposing a maximum amount of State expenditures for pre-K services that can be claimed for match or MOE. Expenditures for pre-K programs may constitute no more than 20% of the State's expenditures which are matched. Similarly, expenditures for pre-K programs may constitute no more than 20% of the State's expenditures counted in fulfilling the MOE requirement. However, if a State intends to exceed 10% of either its MOE or matching requirements with pre-K expenditures, its CCDF plan, which is subject to approval, must reflect that intent. Additionally, if a State intends to exceed 10% of either MOE or matching with pre-K expenditures, the CCDF plan must describe how the State will coordinate its pre-K and child care services to expand the availability of child care. We propose the 20% limits because they approximate the proportion of pre-school age children nationwide currently receiving services under the CCDBG. (This level also approximates the average monthly proportion of pre-school age children of JOBS participants who received child care assistance in the past.)

States may count only those pre-K expenditures that meet the criteria as allowable child care services explained above (i.e., attendance is not mandatory, the program meets applicable standards, allows parental access, serves CCDF eligible families as provided in the Plan, etc.). We also intend to require the Lead Agency, using financial forms to be proposed later, to separately report the amount of pre-K expenditures it claims as match or uses to meet the MOE requirement.

In addition, for MOE purposes, we propose at § 98.53(h)(1) that States cannot reduce their level of effort in full-day/full-year child care services if they use pre-K expenditures to meet the MOE requirement. And, States will be required to provide an assurance of this, pursuant to § 98.15(a)(6). Our proposal reflects the fact that although the statute eliminated the non-supplantation requirement formerly found at section 658E(c)(2)(J) of the CCDBG Act, another non-supplantation requirement was created by section 418(a)(2)(C) of the Social Security Act. That non-supplantation requirement—the MOE requirement—requires States to continue to spend at least the same amount on child care services that they spent on the repealed title IV–A child care programs, in order to receive the new Matching Fund. Such a provision would be meaningless if States used MOE expenditures for services that were not responsive to the real child care needs of working families that the CCDF was intended to assist, i.e., the State ''buys out'' with pre-K expenditures the full-day/full year child care services it previously provided under title IV–A. In the interest of State flexibility we have not otherwise regulated on the types of services that may be counted in meeting the MOE requirement and, as discussed below, have eased the burden on the State in calculating the amount of pre-K expenditures that may be used to meet the MOE and matching requirements.

In contrast, we have not proposed a similar requirement if pre-K expenditures are claimed for match. We view the Matching Fund, since it is ''new money,'' as not subject to the same requirements as expenditures that are used to meet a non-supplantation requirement. However, we are proposing at §§ 98.53(h)(2) and 98.16(q) that States describe in their CCDF Plan any efforts they will undertake to ensure that pre-K programs meet the needs of working parents if pre-K expenditures are claimed for match. Our different treatment of pre-K expenditures in the MOE and matching requirements, then, reflects a balance between the principles of non-supplantation and state flexibility.

Furthermore, ACF will permit States to use a different method for calculating the amount of pre-K services claimed for both MOE and matching purposes than was required under the former title IV–A child care programs. Under the now repealed title IV–A child care programs, ACF required States wishing to claim Federal match for their pre-K expenditures to base their claim on the number of title IV–A-eligible (or potentially eligible) children who actually participated in the pre-K program. As many school districts did not have the information to identify

whether pre-K participants were members of IV–A-eligible families, it was difficult for States to claim Federal matching funds for these programs. In fact, only a handful of States claimed Federal Match under title IV–A for their pre-K expenditures. In our consultations we were asked to loosen this child-by-child approach to counting pre-K expenditures.

In the interest of easing administrative burdens on the Lead Agency, we will adopt the following policy toward calculating pre-K expenditures for purposes of claiming MOE and Matching funds. For pre-K expenditures to be claimed, States must ensure that children receiving pre-K services meet the eligibility requirements established in the CCDF plan. In cases where States do not have exact information, however, they must develop a sound methodology for estimating the percentage of children served in the pre-K program who are CCDF-eligible. Expenditure claims must reflect these estimates.

Although the methodology should be documented, we will not require that the methodology be submitted to ACF for prior review or approval. In documenting their methodology, Lead Agencies are reminded of the requirement at § 98.67(c), which provides that fiscal control and accounting procedures must be sufficient to permit the tracing of funds to a level of expenditure adequate to establish that such funds have not been used in violation of the Act or regulations.

We specifically request comments on the amounts of pre-K expenditures that may be counted in meeting CCDF requirements and the basis for placing limits on such expenditures. While we have eased policies regarding calculating the amounts of pre-K funds used for MOE and matching, we have also capped the amounts that can be used for each purpose. We have no historical base for predicting the impact that the relaxed calculation requirements will have on the availability of child care services. Therefore we are soliciting broad public comment on our proposed approach to striking a balance of child care services that are used for CCDF MOE and match. We especially want comments on: (1) The 20% maximum on both funds; (2) the interplay between the relaxation of the methodology for calculating the amounts and the cap; (3) the impact of the proposed pre-K policy on both parental choice and the overall goals and purposes of the CCDF; and (4) the proposed requirement for notification in the CCDF plan if a State intends to use pre-K expenditures in excess of 10%.

Family fees and the Matching Fund. Section 98.53(g)(2) clarifies that family contributions to the cost of care as required by § 98.42 are not considered eligible State expenditures under this subpart. This policy is based on the fact that family fees are not State expenditures.

Restrictions on Use of Funds (Section 98.54)

Section 103(c) of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA) repealed the three title IV–A child care programs—the AFDC child care program, the Transitional Child Care program and the At-Risk Child Care program. However, in appropriating new child care funds under section 418 of the Social Security Act, the PRWORA provides that these funds must be spent in accordance with the provisions of the Child Care and Development Block Grant Act as amended. This requirement is incorporated into § 98.54(a). This section also provides that TANF funds that are transferred to the Lead Agency under the provision of the new section 404(d) of the Social Security Act are treated as Discretionary Funds for the purposes of § 98.60.

Other Federal funds expended for child care, unless transferred to the Lead Agency, are not required to be spent in accordance with the amended CCDBG Act. This means, for example, that child care provided with title XX funds or TANF funds that are not transferred to the Lead Agency might be subject to different requirements. However, ACF cautions States about the administrative and policy problems associated with operating a variety of Federally-funded child care programs, e.g., one program subject to CCDBG requirements and others not. The amendments to the CCDBG Act contained in the PRWORA are intended to create a single child care program with consistent standards and requirements and to counteract the fragmentation and conflicting requirements that had arisen under prior law.

We have also added a new section at § 98.54(b)(3) which clarifies the special provisions on use of funds for construction that apply to Tribes and tribal organizations under the PRWORA amendments.

Subpart G—Financial Management

Availability of Funds (Section 98.60)

Section 418 of the Social Security Act, which was added by PRWORA, requires that all Federal child care funds appropriated therein be spent in accordance with the provisions of the amended Child Care and Development Block Grant. In consolidating the Federal child care programs under a single set of eligibility requirements, Congress nevertheless instituted three funding sources. We have chosen to refer to the combined funding as the Child Care and Development Fund—CCDF. This term recognizes the different sources of Federal monies flowing into child care but the common purposes for which they may be expended.

Section 418 of the Social Security Act appropriates Federal funds for the 50 States, the District of Columbia and Indian Tribes in the form of formula grants which we refer to as the Mandatory Fund. A specified amount of Federal funds is also made available under a different formula to the 50 States and the District of Columbia to match their allowable child care expenditures. We refer to this amount as the Matching Fund. Section 658B of the Child Care and Development Block Grant (CCDBG) Act authorizes funds to States, Tribes and Territories according to a third formula. We refer to the funds authorized under the CCDBG Act as Discretionary Funds. The formulas for allocating each of the Funds and requirements unique to each Fund are discussed at §§ 98.61, 98.62 and 98.63.

Both the Mandatory and Discretionary Funds are 100 percent Federal Funds—no match is required to use these Funds. Section 418(a)(2)(C) of the Social Security Act, however, makes the availability of Matching Funds contingent on a State's child care expenditures.

We have deleted the regulation formerly at § 98.60(g) concerning start-up planning costs associated with the initial implementation of the CCDBG and have redesignated the remaining regulations. All of the States began operating a CCDBG program in FY 1991, therefore the regulation at § 98.60(g) is obsolete since the time frames for obligating and expending start-up funds have passed. We recognize that there still may be Tribes that wish to begin a CCDF program and for which the question of start-up funds still applies. Accordingly, we have addressed the availability of funds for planning purposes for new tribal Lead Agencies at § 98.83(h) in subpart I.

We have also clarified the wording of § 98.60(f) to indicate that 31 CFR part 205 applies only to State Lead Agencies.

Obligation period/liquidation periods. The following table shows the obligation and liquidation periods for the various Funds and the maintenance-of-effort (MOE) requirements.

These funds	Must be obligated by the end of the	And, must be liquidated by the end of the
Discretionary	2nd FY	3rd FY.
Mandatory (State)	1st FY—only if Matching is requested	NA, no limit.
Mandatory (Tribes)	2nd FY	3rd FY.
Matching	1st FY	2nd FY.
MOE	1st FY, and expended in that FY	NA, must be liquidated in 1st FY

The PRWORA amended the CCDBG Act to require States and Territories to obligate their Discretionary allotments in the fiscal year in which they are received, or in the succeeding fiscal year. These amendments return the statutory language to its status before the Juvenile Justice and Delinquency Prevention Amendments of 1992 (Pub. L. 102–586). Since the final regulations which would have incorporated the changes from the Juvenile Justice and Delinquency Prevention Amendments of 1992 were never published, no change is needed in the regulatory language.

The FY 1997 Health and Human Services appropriation (Pub. L. 104–208) changed the date that the CCDF Discretionary Funds will become available from September 30 of the fiscal year in which the funds are appropriated to October 1 of the following fiscal year. As a result, when existing regulatory language is applied, States and Territories have two full fiscal years to obligate their CCDF Discretionary Funds, instead of the year and a day which resulted under earlier appropriations. States and Territories continue to have until the end of the third fiscal year to liquidate these funds.

Section 418(b)(1) of the Social Security Act provides that the Mandatory Fund is available without fiscal year limitation. However, section 418(a)(2)(C) of the Social Security Act, which describes the conditions for receiving Matching Funds, indicates they are paid to a State for expenditures that exceed the State's Mandatory grant and MOE level, and are only available on an annual basis. Moreover, section 418(a)(2)(D) of the Social Security Act requires that Matching Funds that are not used in the fiscal year be made available for redistribution in the following fiscal year. Therefore, we propose that a State wishing to claim Matching Funds must obligate its Mandatory Funds before the end of the fiscal year for which the Mandatory Funds are awarded. States not wishing to claim Federal Matching Funds have no obligation or liquidation deadline for their Mandatory Funds.

Also, the amount of a State's MOE requirement must be obligated and liquidated before the end of the fiscal year for which Matching Funds are awarded. Non-Federal expenditures (exceeding the MOE threshold) for which the State wishes to claim monies from the Matching Fund must also be obligated before the end of the fiscal year for which they are awarded.

For the tribal funds, we have proposed the same obligation and liquidation periods that apply to the State Discretionary Funds. While the FY 1997 appropriation changed the date Discretionary Funds become available, under the revision Tribes will continue to have two full years to obligate the child care funds they receive. Further, under these proposed changes, Tribes will receive an additional year to liquidate these Funds. Retaining current regulations would have had the consequence of providing three full years to obligate and liquidate tribal child care grants.

The amendments to the Discretionary Fund under PRWORA for the first time provide that tribal funds are subject to reallotment. The two-year approach to obligation will encourage Tribes to plan for the timely commitment of funds and, at the same time, make uncommitted funds available on a timely basis to those Tribes that are in need of additional child care monies.

Section 98.60(d)(3) lists the obligation and liquidation periods for States that receive Matching Funds. In order to accommodate the redistribution required by section 418(a)(2)(D) of the Social Security Act, the regulation requires that Matching Funds must be obligated in the fiscal year in which they are granted and liquidated within two years.

Returned funds. We propose to amend the regulation formerly at § 98.60(h)—now (g)—concerning the treatment of returned funds. As a result of the changes made by PRWORA and the change in the date of availability of the CCDF Discretionary Funds made by the FY 1997 HHS appropriation, we are proposing that funds returned to the Lead Agency after the end of the applicable obligation period must be returned to the Federal government. Under this proposed revision, however, and as previous regulations permitted, funds returned during the obligation period may be re-obligated for activities specified in the Plan, provided they are obligated by the end of the obligation period. The re-obligation of funds will not result in any extension of the obligation period.

The initial CCDBG regulations allowed States to follow State or local law or procedures regarding funds returned after the end of the obligation period. The provision was applicable only to what now are the Discretionary Funds part of the CCDF. It recognized that although section 685J(c) of the Act provided for a two-year obligation period for those funds, the Departments of Labor, Health and Human Services and Related Agencies Appropriations Act, 1991 (Pub. Law 101–517) provided that FY 1991 funds became available on September 7, 1991. The impact of that appropriation was that CCDBG funds (now called Discretionary Funds) were available for obligation only for barely over a year, instead of for two full years. The provision regarding returned funds at former § 98.60(h) reflected ACF's desire that States not be put in the position of having to make premature decisions regarding obligations in a new program due to a truncated obligation period. Also, our reasoning for the former provision included the consideration that, even though the Act contained a reallotment provision for these funds, there appeared to be little likelihood that the States would return them for redistribution since they were 100 percent Federal funds.

The FY 1992 HHS appropriation (Pub. Law 102–170) moved the availability of CCDBG funds to the last day of the fiscal year, and the CCDBG funds continued to be paid on the last day of the fiscal year in subsequent years, until the Departments of Labor, Health and Human Services and Related Agencies Appropriations Act, 1997 (Pub. L. 104–208) again changed the date of the availability of these funds. The 1997 appropriation provides that, starting with the FY 1998 Discretionary Funds, Discretionary Funds will be made available on the first day of each fiscal year. The result of this change is that there now will be two full years to obligate Discretionary Funds.

Further, the regulations at the former § 98.60(h) would have been inappropriate to the new Mandatory and

Matching Funds provided under PRWORA. The law, at section 418 of the Social Security Act, requires redistribution of the Matching Funds to other States, if the State to which they were granted does not use them in the fiscal year in which they are granted. Also, the Secretary must determine the amount of Matching Funds available for redistribution by the end of the first quarter of the fiscal year following the year the grant was awarded. The law links use of Matching Funds to use of the Mandatory Funds—and, as provided in the regulations at § 98.60, Mandatory Funds must be obligated in the year in which they are granted if a State requests Matching Funds. Unlike the Discretionary and Mandatory Funds, the Matching Funds are not 100 percent Federal funds, and there seems to be a greater possibility that some of these funds would be returned for redistribution. Thus, the former returned funds regulations would not have been workable for these funds.

Allotments From the Discretionary Fund (Section 98.61)

The allotment formulas for the CCDBG, which we now refer to as the Discretionary Fund, are essentially unchanged. We made only minor wording changes to the regulations to reflect the existence of other funding sources. We also deleted the Trust Territory of the Pacific Islands (Palau) from the formula for allotting funds to the Territories, to reflect an amendment to section 658P(13) of the CCDBG Act.

In response to an amendment to section 658P(14) of the CCDBG Act, we have added a provision allowing for Discretionary Fund grants to a Native Hawaiian Organization and to a private nonprofit organization established for the purpose of serving Indian or Native Hawaiian youth. This provision is discussed below.

ACF has also reconsidered its policy regarding the data sources for allotting Discretionary Funds to Tribes. This policy also impacts the allocation of Tribal Mandatory Funds; and we discuss that policy below.

Data sources. On October 25, 1996 (51 FR 55305), ACF proposed a self-certification process for tribal child counts used to calculate tribal allotments under the Child Care and Development Block Grant. The purpose of utilizing a self-certification process for tribal grantees is to assist ACF in fulfilling its mandate to serve low-income Indian children through the CCDF.

The CCDBG statute requires the Secretary to obtain the most recent data and information necessary, from each appropriate Federal agency, to determine State funding allotments. There is no similar statutory requirement for determining tribal allotments.

The preamble to the current regulations for the CCDBG program stated that the BIA Indian Service Population and Labor Force Estimates Report, published biennially, was determined to be the most suitable, available data source for CCDBG purposes. However, problems have developed in its use. For example, the fiscal year (FY) 1997 CCDF Tribal Mandatory Fund allotments were based on 1993 data since the scheduled 1995 Report had not yet been published.

In addition, the BIA Report is limited because it does not include Alaska-specific data. Consequently, ACF uses Census data to determine CCDBG allotments for Alaskan tribal grantees. Thus, for purposes of CCDBG allocations, child count data are currently collected from two separate data sources which are not compatible with respect to timing or types of information collected.

After a thorough review of the available data options, ACF has determined that it would be in the best interest of the Tribes, as well as ACF, to utilize a self-certification process since this would afford Tribes the opportunity to select a data source, or utilize a method for counting tribal children, which most accurately reflects its child population.

Further, through a tribal self-certification process, the child count data will be available with minimal lag time and will more accurately reflect the natural fluctuations in child population. With current national sources, it can take 2 to 3 years for changes in population (such as reaching a child population of 50) to be reflected.

This approach supports the President's April 29, 1994, mandate to Federal agencies reaffirming the government-to-government relationship between Tribes and the Federal government and directing agencies to design solutions and tailor Federal programs, in appropriate circumstances, to address specific or unique needs of tribal communities.

ACF will issue instructions for Tribes to follow in submitting their self-certified child counts. Each tribal grantee and each Tribe participating in a consortium will be required to submit a declaration signed by the governing body of the Tribe or an individual authorized to act on behalf of the applicant Tribe or organization. For FY 1998 funds the declaration must certify the number of Indian children under age 16 who reside on or near the reservation or other tribal service area in the Tribe's most recent count. Beginning with funding that becomes available in FY 1999, tribal child count declarations will include only children under age 13, in accordance with the CCDBG statute. We have allowed self-certified counts for FY 1998 to be based on the number of children under age 16 since previous data sources included children under age 16. This allows a one-year transitional period for tribal Lead Agencies to plan for a self-certified child count of children under age 13.

Grants to a Native Hawaiian Organization and a Private Nonprofit Organization Serving Indian or Native Hawaiian Youth

Section 658P(14) of the amended CCDBG Act adds the following second definition to the term ''tribal organization'' which are potentially eligible for Discretionary Funds:

> Other organizations—Such term includes a Native Hawaiian Organization, as defined in section 4009(4) of the Augustus F. Hawkins-Robert T. Stafford Elementary and Secondary School Improvement Amendments of 1988 and a private nonprofit organization established for the purpose of serving youth who are Indians or Native Hawaiians.

Section 4009(4) of the Augustus F. Hawkins-Robert T. Stafford Elementary and Secondary School Improvement Amendments of 1988 defines a Native Hawaiian Organization as:

> A private nonprofit organization that serves the interests of Native Hawaiians, and is recognized by the Governor of Hawaii for the purpose of planning, conducting, or administering programs (or parts of programs) for the benefit of Native Hawaiians.

No other changes were made in the Act with respect to Native Hawaiians or Native Hawaiian Organizations (NHOs) or private nonprofit organizations (PNOs) established for the purpose of serving youth who are Indians or Native Hawaiians; nor is the Conference Agreement instructive as to Congressional intent. However, given the statutory language, we propose at § 98.61(e) that only a single NHO and a single PNO will be funded.

Several options were considered for allocating funds in accordance with this expanded definition of tribal organization. We considered, for example, treating NHOs and PNOs in the same manner for allocation purposes as other tribal organizations (i.e., a base amount plus a per child amount, or only a per child amount).

Based on an analysis of the statute, however, we believe the Congress intended for a NHO and a PNO to be

treated differently from Indian Tribes and tribal organizations which are eligible to receive CCDF funding. CCDF funds are awarded on a formula basis to all eligible Tribes and consortia. However, only a single NHO and a single PNO are to be awarded grants. Determination of those entities requires a discretionary grant process rather than the formula basis used for Indian Tribes and tribal consortia.

Eligible NHOs and PNOs, as well as the States, are reminded that under § 98.80(d), Indian children continue to have dual eligibility to receive services funded by CCDF. Indian children and Native Hawaiian children will continue to be eligible for services provided under a grant awarded to a NHO or PNO and from the State of Hawaii (or other State in the case of a PNO awarded to a grantee not located in Hawaii).

Therefore, through a grant award to a NHO and a PNO, additional child care services (from the Discretionary Fund) will be made available to children who are currently eligible to be served under a State CCDF program. A more detailed explanation of dual eligibility is provided in the Preamble at Subpart I.

For these reasons, up to $2 million will be reserved from the total amount reserved for Tribes under the Discretionary Fund for two grants. We believe that such an amount is substantial enough to meaningfully serve populations that may have been under-served in the past, without jeopardizing existing tribal programs. In choosing to award these grants on a competitive basis, we are seeking comments about the selection criteria that the Secretary should establish pursuant to § 98.61(e) and the funding amounts which should be reserved for this purpose.

Allotments From the Mandatory Fund (Section 98.62)

Section 418(a) of the Social Security Act creates a capped entitlement for the 50 States and the District of Columbia. The amounts allotted to each State and the District are based on the Federal share of expenditures for child care under prior programs under title IV–A of the Social Security Act (i.e., the AFDC/JOBS, Transitional and At-Risk Child Care programs) in FY 1994, FY 1995, or the average of FY 1992–1994, whichever is greatest. Before funds are allocated to the individual States, one-quarter of one percent of the total is reserved for the provision of technical assistance and up to two percent is reserved for grants to Tribes.

For Indian Tribes and tribal organizations we have chosen to allocate Mandatory Funds solely according to the number of children in each Tribe. That is, unlike the Discretionary Fund, there is no base amount provided to Tribes under the Mandatory Fund.

We propose this approach in response to tribal arguments for increased funding for direct services. We agree that tribal child care programs would especially benefit from additional service funds, and we did not wish to divert any new funds into non-service activities. Tribes have the flexibility to expend their base amount on administration or direct services, including quality activities. However, we are concerned that many large consortia already receive substantial sums of base amount monies. According to the program reports from those consortia, it appears that these large base amounts often do not translate into direct child care services for tribal children. We do not believe that tribal children would benefit from augmenting the existing base amount in lieu of direct child care services.

Lastly, we listed the 13 entities in Alaska that are eligible to receive Mandatory Funds pursuant to the amended section 419(4)(B) of the Social Security Act. We listed those eligible entities in this section of the regulation rather than have two different definitions of Tribes at § 98.2.

Allotments From the Matching Fund (Section 98.63)

As provided in the statute, allotments to each of the 50 States and the District of Columbia are based on the formula used to distribute funds under the now-repealed At-Risk child care program. The Matching Fund consists of the amount remaining from a fiscal year's appropriation under section 418(a)(3) of the Social Security Act after reserving amounts for technical assistance and for Tribes and awarding Mandatory Funds.

Reallotment and Redistribution of Funds (Section 98.64 of the Proposed Regulations)

This section formerly addressed financial reporting requirements. We have deleted those requirements since they refer to forms, the SF 269 and SF 269A, which ACF has proposed to replace. The proposed replacement form, the ACF 696, will better reflect the unique nature of the CCDF. Financial reporting instructions for the new form will be issued separately following approval by OMB. A general financial reporting requirement has been reincorporated as a new § 98.65(g).

Section 418(a)(2)(D) of the Social Security Act provides for the redistribution of Federal Matching Funds which are granted to a State, but not used. This provision is added to the regulations at § 98.64(c)(1). We have adopted the statutory term ''redistribute'' when discussing the Matching Fund in the regulation. However, we believe that the term is comparable to the ''reallotment'' term used for redistribution of the Discretionary Funds and have therefore adopted a comparable process. For example, at § 98.64(c)(3) we have applied the language from the reallotment process at § 98.64(b)(2) to describe the same limits on the amounts of unobligated Matching grants that will be redistributed to other States that currently apply to the Discretionary Fund. That is, no redistribution will be made if the total to be redistributed is less than $25,000. Nor will any grant be made to an individual State if it would be less than $500. As provided in the statute, redistribution of the Matching Funds will be based on a formula similar to that used for the original allotments to the 50 States and the District of Columbia.

At § 98.64(c)(1) we have proposed that Matching Funds granted to a State, but not obligated by the end of that fiscal year, be redistributed to the other States which did obligate all of the Matching Funds allocated to them. Unused Matching Funds, then, would be made available only to those States which demonstrated their ability to use the entire amount already granted to them. According to the statute, such States must request the redistributed funds; the Funds will not automatically be redistributed to all qualifying States. We considered redistributing unused Matching Funds among each of the 50 States and the District of Columbia, including the States that returned the money being reallotted. We rejected that approach since it raised the possibility that States which were unable to use all of their funds in one year would again be unable to use them in the following year. This would result in funds reverting to the Federal Treasury rather than being used to assist families.

The regulation at § 98.64(c)(2) restates the statutory language that funds which are not granted to a State are not redistributed. That is, if a State applies for only a portion of its allotment of the Matching Fund only that amount will be granted. The difference between the amount granted to that State and the State's allotment reverts to the Treasury and is not redistributed. As discussed above, it is the difference between the amount of the State's grant of Matching Funds—not the amount allotted for it—and the amount that is not obligated within the required time frame, that will

be redistributed to the other States. This regulation is based on the statutory language that provides that it is the amounts that remain unused ''under any grant awarded'' that are redistributed, not the amounts that might be available to the State but are not awarded.

We have also proposed a simplified process by which States notify us of any unobligated Matching Funds available for redistribution. Similarly, although we decided not to automatically redistribute Matching Funds among all eligible States, we propose a simple process for them to request redistributed Matching Funds. At § 98.64(c) (3) and (4) we propose that States use the regular financial reporting form, rather than requiring a separate, additional notification from the State.

Section 98.64(c)(6) reflects the statutory language that redistributed Matching Funds are to be considered as part of the grant for the fiscal year in which the redistribution occurs, not as a part of the grant for the year in which the funds were first awarded. This is in contrast to reallotment of Discretionary Funds; for Discretionary Funds the obligation period is based on the award year and is not extended.

An amendment to section 658O of the Act provides for the reallotment of tribal Discretionary Funds. That amendment, at 658O(e)(4), requires the Secretary to reallot any portion of a tribal grant that she determines ''is not being used in a manner consistent with the provision of [the Act].''

Although the statutory language seems to suggest that the Secretary may make a determination which is separate and apart from the usual audit practice on the manner of use of funds by Tribes, there is no discussion in the Conference Agreement to indicate such an interpretation. Furthermore, we believe that Congress would have been more explicit if it desired the Secretary to create a separate audit or investigatory process. Therefore, we have proposed at § 98.64(d) a reallotment process that exactly parallels the State process. That is, we will determine the amounts to be reallotted based upon reports submitted by the Tribes, pursuant to paragraph (d)(1) of this section. Each Tribe must submit a report to the Secretary indicating either the amount of funds from the previous year's grant it will be unable to obligate timely pursuant to § 98.64(d), or that it will obligate all funds in a timely manner. These reallotment reports, which must be submitted by April 1 of each year, may be in the form of a letter. We chose the April 1st deadline to allow the Secretary the necessary time to reallot the funds and to allow Tribes the necessary time to obligate such funds on a timely basis.

We will reallot funds that Tribes indicate are available for reallotment to the other Tribes, in proportion to their original allotment, if the total amount available for reallotment is $25,000 or more. If the total amount is less than $25,000, we will not reallot these funds; instead, they will revert to the Federal treasury. It is administratively impractical for the Department to issue small awards. Likewise, the Secretary will not award any reallotted funds to a Tribe if its individual grant award is less than $500, as it is administratively impractical to do so. These are the same thresholds that apply to the States.

If a Tribe does not submit a reallotment report by the deadline for report submittal, we will determine that the Lead Agency does not have any funds available for purposes of the reallotment. If a report is postmarked after April 1, we will not reallot the amount of funds reported to be available for reallotment; instead, such funds will revert to the Federal treasury. As previously discussed, late reports do not allow the Secretary sufficient time to reallot the funds nor do they allow the Tribes sufficient time to obligate such funds timely as required by § 98.64(d). We anticipate the Secretary will reallot funds made available for reallotment by May 1. Reallotted funds must meet the same programmatic and financial requirements as funds made available to Tribes in their initial allotments.

The statute, and hence the regulations, remain unchanged regarding the reallotment of Discretionary Funds to the Territories. That is, there is no reallotment of Territorial Discretionary Funds.

Audits and Financial Reporting (Section 98.65)

At § 98.65(a) we have clarified that the Single Audit Act, as well as OMB Circular A–128, provide the basis for the required audits.

We also added a new § 98.65(f) to the requirements for audits. Audits must now be conducted by an agency that is independent of the State, Territory or Tribe as required by the amended section 658K of the CCDBG Act.

We recognize that in the past some States may have used a State audit agency that is independent of the Lead Agency. Such audit agencies do not meet the new requirement because they are, nevertheless, part of State government. The Lead Agency is reminded that the costs of audits are an allowable administrative expense.

Although we could not envision another regulatory approach that would give meaning to the change Congress made in the Act, we still welcome focused comments on this provision.

Finally, we reincorporated from the former § 98.64 a general financial reporting requirement. This provision is at § 98.65(g). Accordingly we have renamed this section to ''Audits and Financial Reporting.''

Subpart H—Program Reporting Requirements

Reporting Requirements (98.70 of the Regulations)

Section 658K(a) of the amended Act requires each State receiving Child Care and Development Fund funding to submit two reports: quarterly disaggregate data for family units and biannual aggregate data. Territories are considered States for reporting purposes. The first biannual aggregate report must be submitted by December 31, 1997, and every six months thereafter.

Section 658L of the Act requires the Secretary to summarize biennially for Congress the data and information required at section 658K of the Act and § 98.71 of the regulation.

Section 658O(c)(2)(C) of the Act specifies that Tribes will report on programs and activities under CCDF. We require Tribes to submit annual aggregate data appropriate to tribal programs as they have previously in the CCDBG program.

Principles for data reporting. The amended Act significantly revised the reporting requirements for all child care services. As a result, ACF developed principles to guide the implementation of reporting requirements. ACF, in concert with the Lead Agencies, will:

1. Meet the statutory mandate for data reporting;
2. Streamline data collection and reporting procedures from the previous four programs into a single integrated program;
3. Build on data collection systems from the former four child care programs;
4. Apply flexibility in phasing in the implementation of the data collection requirements;
5. Apply flexibility in meeting data needs outside the Federal requirements;
6. Provide technical assistance to Lead Agencies in the design of new or revised data collection systems and reporting processes, encouraging linkages to TANF information systems and to other relevant Federal reporting systems;
7. Provide sampling specifications to Lead Agencies as part of the data collection process;

8. Provide technical assistance to Lead Agencies in the design and use of data for the development of program performance measures; and

9. Commit to making the data useful for Lead Agencies.

Content of the Reports (Section 98.71)

For States and Territories. Consistent with the requirements of section 658K of the amended Act, we require States to collect monthly samples of family unit disaggregated data which are reported to ACF quarterly. In order to provide for adequate time for the approval process for sampling plans, we are proposing at § 98.70(a)(3) that States be required to submit their sampling plan to ACF for approval 60 days prior to the submission of the first quarterly report. States are not precluded from submitting disaggregate data for the entire population of children served under the CCDF. Specific aggregate information is required in the biannual report.

We are proposing to use the Social Security Number of the head of the family unit receiving child care assistance as the case identifier. This would facilitate the use of the data for research tied to TANF, employment, and other family- and child-related programs. Public comment on this issue is specifically invited.

Although the statute requires that cost of care information be provided in both the disaggregate and aggregate reports (658K(a)(1)(B)(ix) and 658K(a)(2)(B)), we will collect this information through the disaggregate report only and we will compile the information into the aggregate. This will eliminate duplicative reporting for the biannual aggregate report. Public comment on this issue is specifically invited.

The statute at 658K(a)(1)(B)(x) requires collection of the average hours per week of care. In consultation with the States, we learned that it would be less burdensome to report the total hours of service per month. We therefore propose to collect the total hours of care per month in lieu of the average hours per week. We will be able to calculate the average hours of service per week based on this number.

We propose to continue a data element concerning the reasons care was provided. In previous CCDBG data reports, ACF collected the reasons for care, i.e. working, education/training, and protective services. This is valuable information for State and Federal planning efforts.

The statute at 658K(a)(2)(C) requires that the number of payments made through various methods by type of provider be reported biannually. Most States pay providers monthly; a few pay more frequently. If the statutory language is strictly interpreted, States would be required to report as many as 12–24 payments or more for each subsidized child throughout the year. Because this information would be of limited value, we are proposing at § 98.71(b)(2) that the Lead Agency's report reflect the number of children served by payment method and primary type of provider during the final month of the report period only (or for the last month of service for those children leaving the program before the end of the report period). Changes in payment method or primary provider type over the report period should be ignored and only the last arrangement reported.

Information concerning child care disregards is required by the statute at 658K(a)(2)(C); however, disregards, if used, would be provided under the TANF programs, not child care programs. As a result, information on the use of the disregard will be collected through TANF reporting procedures, since TANF agencies can collect this information more reliably.

To have a complete picture of child care services in the States, quarterly disaggregate and biannual aggregate information will be collected on all funds of the Child Care and Development Fund, including Federal Discretionary Funds (which includes any funds transferred from the TANF Block Grant), Mandatory, and Matching Funds and State Matching and MOE Funds. For States that choose to pool CCDF funds with non-CCDF funds (e.g. title XX, or State or local funds not part of the CCDF MOE) we will allow reporting and/or sampling on all children served by the pooled funds, but will require States to indicate percentages of CCDF and non-CCDF funds in the pool of funds. Detailed instructions on how to construct sampling frames for States which pool funds will be included in the sampling specifications developed by ACF. Technical assistance will be provided to States regarding collecting data across funding streams.

Additionally, States have indicated a desire to compare data which are not a part of the mandatory reporting requirements. To meet this need and to make the available child care data more useful to State planning efforts, the Department will collaborate with States regarding a set of standardized optional data elements. The reporting of these data elements will not be required of any grantee.

We will send additional information to Lead Agencies concerning specific reporting requirements, sampling specifications for the quarterly disaggregate report, and the submission process. We will issue detailed instructions in the future, including approved data definitions and reporting formats. Before we issue such instructions, however, we will solicit additional comments and secure necessary OMB approval.

For Tribes. Tribes are neither required to submit the new aggregate biannual report nor the new disaggregate quarterly report. Instead, Tribes will continue to annually submit the ACF–700 which is currently in use. They will include information on all children served under the Discretionary and Tribal Mandatory funds. As of fiscal year 2000, Tribes will no longer be required to submit the second page of the ACF–700 (fiscal programmatic data), as fiscal information for Tribes will be collected on a separate tribal financial reporting form.

Subpart I—Indian Tribes

Subpart I addresses requirements and procedures for Indian Tribes and tribal organizations applying for or receiving CCDF funds. In light of unique tribal circumstances, Subpart I balances flexibility for Tribes with the need to ensure accountability and quality child care for children.

Subpart I specifies the extent to which general regulatory requirements apply to Tribes. In accordance with § 98.80(a), a Tribe shall be subject to all regulatory requirements in Parts 98 and 99, unless otherwise indicated. Subpart I lists general regulatory requirements that apply to Tribes. It also identifies requirements that do not apply to Tribes.

Most programmatic issues that apply to Tribes are consolidated in Subpart I. However, financial management issues that apply to Tribes, including the allotment formulas and underlying data sources, are addressed separately in Subpart G—Financial Management.

Tribes have the option to consolidate their CCDF funds under a plan authorized by the Indian Employment, Training and Related Services Demonstration Act of 1992 (Pub. L. 102–477). This law permits tribal governments to integrate a number of their federally funded employment, training, and related services programs into a single, coordinated comprehensive program.

Since Senate Committee Report language for that Act prohibits the creation of new regulations for tribal programs operating under the 102–477 initiative (S. Rep. No. 188, 102 Cong. 2d Sess. (1992)), ACF does not propose any additional regulations for the Indian

Employment, Training and Related Services application and plan process. Instead, ACF publishes annual program instructions for Tribes wishing to consolidate CCDF funds under an Indian Employment, Training and Related Services plan. The Bureau of Indian Affairs, Department of the Interior, has lead responsibility for administration of Public Law 102–477 programs.

General Procedures and Requirements (Section 98.80)

Demonstrations from consortia. The regulation at § 98.80(c)(1) continues to provide that a consortium must adequately demonstrate that each participating Tribe authorizes the consortium to receive CCDF funds on its behalf. This demonstration would normally be required once every two years through the two-year tribal CCDF Plan. However, it is the responsibility of each consortium to inform ACF, through an amendment to its Plan, of any changes in membership.

Consortia can demonstrate members' agreement to participate in a number of ways. A resolution is acceptable. We will also accept an agreement signed by the tribal leader or evidence that a tribal leader participated in a vote adopting such an agreement.

Special requirements for Alaska Native grantees. By statute (section 419 of the Social Security Act), only specified Alaska Native entities may receive Tribal Mandatory Funds. The Metlakatla Indian Community of the Annette Islands Reserve and the 12 Alaska Native Regional Nonprofit Corporations are eligible to receive Tribal Mandatory Funds. The law provides that Discretionary Funds, however, will continue to be available to all the eligible Alaska Native entities that could apply under old CCDBG rules.

For purposes of Discretionary funding, Alaska Native Regional Nonprofit Corporations, which are eligible to apply on behalf of their constituent villages, would need to demonstrate agreement from each constituent village.

In the absence of such demonstration of agreement from a constituent village, the Corporation would not receive the per-child amount or the base amount associated with that village. This changes the policy stated in the preamble to the final rule issued August 4, 1992 (57 FR 34406). The former policy permitted Alaska Native Regional Nonprofit Corporations to receive the per-child amount (but not the base amount) for a constituent village in the absence of a demonstrated agreement from the village that the Corporation was applying for funding on its behalf. Since all other tribal consortia are required to demonstrate agreement from their member Tribes in order to receive Discretionary funding, this change makes the funding requirements consistent for all consortia grantees.

For purposes of Tribal Mandatory Funds, since the statute specifically cited the 12 Alaska Native Regional Nonprofit Corporations as eligible entities, demonstrations are not required by member villages for these entities to be funded.

Since the law provides that only designated Alaska Native entities may receive the Tribal Mandatory Funds, there is a difference between which Alaska Native entities can be direct grantees for the two tribal parts of the CCDF. Our analysis indicates, however, that each of the Alaska tribal entities that are eligible to receive Discretionary Funds are served by one of the 12 Alaska Native Regional Nonprofit Corporations that by law can be direct grantees for the Tribal Mandatory Funds. In instances where there are different Alaska Native grantees for the two parts of the fund, we strongly encourage grantees to work together to ensure a coordinated tribal child care system in Alaska.

Dual Eligibility. Under § 98.80(d), Indian children continue to have dual eligibility to receive child care services funded by CCDF. Section 658O(c)(5) of the Act asserts 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. To receive services under a program, the child must still meet the other specific eligibility criteria of that program.

This provision was in the original Act, and it was not affected by the recent PRWORA amendments. Regulations at § 98.20(b)(1) continue to provide that Lead Agencies may establish eligibility requirements, in addition to Federal eligibility requirements, so long as they do not ''discriminate against children on the basis of race, national origin, ethnic background, sex, religious affiliation, or disability.'' As a result, States cannot have a blanket policy of refusing to provide child care services to Indian children.

At the same time, tribal CCDF programs are a valuable source of child care for Indian children, including children whose families receive TANF assistance. In particular, a Tribe that operates its own TANF or work program (or both) will have an important role in promoting self-sufficiency for its low-income families, including the provision of adequate child care. However, Indian children have dual eligibility for CCDF child care services regardless of whether a Tribe operates its own TANF or work program. Therefore, we encourage States and Tribes to work closely together in planning for child care services. Coordination of child care resources will be needed to ensure adequate child care for eligible Indian children.

Eligibility. Under § 98.80(f), tribal Lead Agencies continue to have the option of using either the State's median income or the tribal median income in determining eligibility for services. However, ''75 percent of median income'' has been replaced with ''85 percent of median income'' to reflect the change to the Act at section 658P(4)(B). As a result, in determining eligibility for services pursuant to § 98.20(a)(2), a tribal program may use either: (1) up to 85 percent of the State median income for a family of the same size; or (2) up to 85 percent of the median income for a family of the same size residing in the area served by the tribal grantee.

Application and Plan Procedures (Section 98.81)

Section 98.81 contains application and Plan requirements for Tribes and tribal consortia. In accordance with § 98.81(a), Tribes must apply for funds pursuant to § 98.13, except that the requirement at § 98.13(b)(2) does not apply.

A tribal Lead Agency must submit a CCDF Plan, as described at § 98.16, with the additions and exceptions described in § 98.81(b).

At § 98.81(b)(1), we have proposed a new requirement that Tribes include a tribal resolution or similar demonstration which identifies the tribal Lead Agency. In the past there have been instances where a Tribe has left a consortium and requested direct funding. It was unclear to us whether the request for direct funding was legitimate since the Tribe's resolution to join the consortium was not rescinded. The consortium claimed to represent the Tribe, but the Tribe claimed it did not. Similarly, some tribal members have voiced concerns that an organization could apply for and receive funds on behalf of a Tribe without the Tribe's being aware that funds had been requested.

The proposed requirement is parallel to the requirement that a State's chief executive officer must identify the State Lead Agency. Requiring a tribal resolution to identify the Lead Agency is not burdensome. To the contrary, it raises the profile and importance of

child care services to the Tribe and offers both ACF and the Tribes a measure of protection from erroneous disbursements that does not now exist. We invite comments on this proposed requirement.

Section 98.81(b)(3) requires definitions of ''Indian child'' and ''Indian reservation or tribal service area'' for purposes of determining eligibility.

Section 98.81(b)(5) requires information necessary for determining the number of children for fund allocation purposes and grant eligibility requirements (i.e., the requirement that a Tribe must have at least 50 children under 13 years of age in order to directly apply for funding). The preamble discussion to Subpart G summarizes the data sources used to determine tribal allotments.

Other changes in Plan provisions are more fully discussed in related sections under Subpart I.

Coordination (Section 98.82)

Requirements regarding coordination at § 98.82 remain unchanged except for a proposed clarification that tribal Lead Agencies must also meet coordination requirements at §§ 98.12 and 98.14.

In addition to coordinating with other agencies and programs, tribal Lead Agencies must also meet planning requirements at § 98.14—including the public hearing requirement at § 98.14(c). A Tribe must distribute notice of the hearing throughout its service area (rather than statewide).

Requirements for Tribal Programs (Section 98.83)

In recognition of the unique social and economic circumstances of many tribal communities, we are proposing to exempt tribal Lead Agencies from a number of the CCDF requirements which apply to State Lead Agencies.

Administrative costs. Based on input from several tribal organizations and tribal representatives, we are providing greater flexibility for tribal Lead Agencies by exempting them from the five percent State administrative cost cap at § 98.52(a). Because of the varying infrastructural capabilities of many Indian Tribes, we are proposing to permit tribal Lead Agencies to use up to 15 percent of their total CCDF per child amount (including funds used for construction or major renovation in accordance with § 98.84) for administrative costs. A 15 percent administrative limit for tribal Lead Agencies was recommended by several tribal organizations during the course of our pre-drafting consultations.

Section 98.52(a) provides a list of administrative activities which are subject to the 15 percent cost limitation. The preamble discussion of section 98.52(a) provides an additional list of activities which are not considered administrative activities for purposes of the 15 percent cost cap.

We recognize that many Federal programs permit Indian Tribes and tribal organizations to include an indirect cost rate in their grant awards. This rate is arrived at through negotiation between an Indian Tribe or tribal organization and the appropriate Federal agency. Through the list of activities which are not considered administrative costs, the exemption from the five percent State administrative cost cap, and the base amount under the Discretionary Fund, tribal Lead Agencies will have sufficient flexibility in determining their administrative and/or indirect costs to run effective CCDF programs.

Exempt Tribes. We also realize that many smaller tribal grantees do not have the infrastructure in place to support certain requirements. As a result, we are exempting Lead Agencies of smaller Tribes and tribal organizations (with total CCDF allocations less than an amount established by the Secretary) from certain requirements specified at § 98.83(f). Exempt tribal grantees are not required to comply with the four percent quality requirement at § 98.51(a) or to run a certificate program. Non-exempt tribal grantees are required to comply with these requirements.

The dollar threshold for determining which Tribes are exempt will be established by the Secretary. The threshold will be set to include as non-exempt all Tribes which were non-exempt prior to PRWORA. Some Tribes which were previously exempt may move into the non-exempt category due to the allocation of Tribal Mandatory funding, which does not include a base amount but rather is calculated solely on a per-child basis. Under interim procedures which are in effect until final regulations are issued, all Tribes that were previously exempt (prior to PRWORA) continue to be exempt. However, if the threshold had been set for FY 1997 in accordance with the parameters described above, the amount would have been approximately $460,000 (i.e., tribal Lead Agencies with total CCDF allocations below $460,000 would have been exempt). The threshold for future fiscal years will likely be somewhat different because of changes in the CCDF appropriation. We welcome comments on the criteria for setting the exempt/non-exempt threshold.

Although in the proposed rule we are keeping the existing ''exempt'' and ''non-exempt'' categories, we are requesting comments on whether to eliminate this distinction and have one set of requirements for all tribal Lead Agencies. Under such an approach, all tribal Lead Agencies would be exempt from: the assurance of giving parents the option of enrolling their child with a contracted provider or receiving a certificate (at § 98.15(a)(2); the requirement for certificates (at § 98.30(a) and (d)); and the requirement for minimum quality expenditures at § 98.51(a).

By exempting all Tribes from these requirements, Tribes would be afforded greater flexibility in implementing their CCDF programs. Tribes would have the opportunity to determine their own needs and design program services which more appropriately reflect their unique circumstances.

We strongly encourage Tribes to consider operating certificate programs, as appropriate, since it promotes parental choice. Many exempt Tribes currently operate certificate programs, as well as expend funds for quality activities, even though they are not required to do so by Federal regulation.

70 percent requirement. The new section 418(b)(2) of the Social Security Act provides that States ensure that not less than 70 percent of the total amount of the State Mandatory and Matching funds received in a fiscal year be used to provide child care assistance to families receiving assistance under a State program under Part A of title IV of the Social Security Act, families who are attempting through work activities to transition from such assistance, and families at risk of becoming dependent such assistance. The provision at section 418(b)(2) does not apply to tribal Lead Agencies. Nonetheless, Tribes have a responsibility to ensure that their child care services provide a balance in meeting the needs of families listed in section 418(b)(2) and the child care needs of the working poor.

Tribes that apply for grants from the new Tribal Mandatory Fund will have new direct child care resources for providing services, since they will receive substantially increased grants. Also, as we pointed out in our discussion on dual eligibility of tribal children, Tribes now have the option under title IV of the Social Security Act to operate their own TANF programs. Additionally, Tribes that operated a tribal Job Opportunities and Basic Skills Training (JOBS) program in 1994 may choose to continue a tribal work program. Whatever the mixture of child care, TANF, and work services a Tribe

chooses to administer, child care services should be designed to ensure that all eligible families receive a fair share of services within the tribal service area.

Base amount. A base amount is included in tribal grant awards under the Discretionary Fund. As referenced at § 98.83(e), the base amount of any tribal grant is not subject to the administrative costs limitation at § 98.83(g) or the quality expenditure requirement at § 98.51(a).

The base amount for each tribal grant may be used for any activity consistent with the purposes of the CCDF, including the administrative costs of implementing a child care program. For examples of administrative costs, refer to § 98.52(a). While we encourage exempt tribal Lead Agencies to expend CCDF funds on quality activities, they are not required to meet this provision.

Lead agency. Tribal grantees, like States, must designate a Lead Agency to administer the CCDF. If a tribal grantee applies for both Tribal Mandatory Funds and Discretionary funds, the programs must be integrated and administered by the same Lead Agency.

Consortia. If a Tribe participating in a consortium arrangement elects to receive only part of the CCDF (e.g., Discretionary Funds), it may not join a different consortium to receive the other part of the CCDF (Tribal Mandatory Funds), or apply as a direct grantee to receive the other part of the fund. In this situation, individual tribal consortium members must remain with the consortium they have selected for the fiscal year in which they are receiving any part of CCDF funds. (However, an Alaska Native village that must receive Tribal Mandatory Funds indirectly through an Alaska Native Regional Nonprofit Corporation may still apply directly for Discretionary Funds).

We have added language in § 98.83(c) to require that a tribal consortium include in its two-year CCDF Plan a brief description of the direct child care services being provided for each of its participating Tribes. We have included this provision for three reasons: (1) It helps ensure that services are being delivered to the member Tribes; (2) since in some cases consortia receive sizeable base amounts, it will provide documentation of the actual services being delivered to member Tribes through consortia arrangements; and (3) it provides the opportunity for public comment, as part of the public hearing process required by § 98.14(c), on the services provided to member Tribes.

Child care standards. A new section of the Act (section 658E(c)(2)(E)(ii)) requires the development of minimum child care standards for Indian Tribes and tribal organizations. Based on input from tribal leaders and tribal child care administrators, we are developing a process for Tribes to establish minimum child care standards that appropriately reflect tribal needs and available resources. Until the minimum standards are developed, Tribes must have in effect tribal and/or State licensing requirements applicable to child care services pursuant to § 98.40. Tribes must also have in place requirements designed to protect the health and safety of children (in accordance with § 98.41 of the regulations), including, but not limited to: (1) The prevention and control of infectious diseases (including immunization); (2) building and physical premises safety; and (3) minimum health and safety training appropriate to the provider setting.

Planning costs for initial plan. Former § 98.60(g) regarding planning costs associated with the submission of an initial CCDF Plan has been revised and moved to § 98.83(h). This provision provides that CCDF funds are available for costs incurred by a tribal Lead Agency only after the funds are made available by Congress for Federal obligation unless costs are incurred for planning activities related to the submission of an initial CCDF Plan. Federal obligation of funds for planning costs is subject to the actual availability of the appropriation.

We propose to move this provision from Subpart G (Financial Management) to Subpart I (Indian Tribes) because it applies only to Tribes. All States and eligible Territories are currently CCDF grantees, but some Tribes are not current grantees and are eligible to submit initial CCDF Plans.

Construction and Renovation (Section 98.84)

Upon requesting and receiving approval from the Secretary of the Department of Health and Human Services, a tribal Lead Agency may use amounts from its CCDF allocation for construction and major renovation of child care facilities (pursuant to new section 6580(c)(6) of the Act and proposed regulations at § 98.84(a)).

Under the proposed rule, these payments could cover costs of amortizing the principal and paying interest on loans for construction and major renovation. This policy is consistent with Head Start procedures for construction and renovation—which allow use of funds to pay for principal and interest on loans. Loans are an essential part of many construction and renovation projects.

Proposed § 98.84(b) reflects the statutory requirement that, to be approved by the Secretary, a request to use CCDF funds for construction or major renovation must be made in accordance with uniform procedures developed by the Secretary. These uniform procedures will be provided to tribal Lead Agencies via program instructions.

By statute (and proposed § 98.84(b)), such requests must demonstrate that: (1) Adequate facilities are not otherwise available to enable the tribal Lead Agency to carry out child care programs; (2) the lack of such facilities will inhibit the operation of child care programs in the future; and (3) the use of funds for construction or major renovation will not result in a decrease in the level of child care services provided by the tribal Lead Agency as compared to the level of services provided by the tribal Lead Agency in the preceding fiscal year. In light of the requirement that a Tribe cannot reduce the level of child care services, a tribal Lead Agency should plan in advance for anticipated construction and renovation costs.

Proposed § 98.84(c) allows tribal Lead Agencies to use CCDF funds for reasonable and necessary planning costs associated with assessing the need for construction or renovation or for preparing a request, in accordance with the uniform procedures established by program instruction, to spend CCDF funds on construction or major renovation. However, a tribal Lead Agency may not use CCDF funds to pay for the costs of an architect, engineer, or other consultant until its request is approved by the Secretary.

Proposed § 98.84(d) requires tribal Lead Agencies which receive approval from the Secretary to use CCDF funds for construction or major renovation to comply with specified requirements in 45 CFR Part 92 and any additional requirements established by program instruction. Title 45 CFR Part 92 does not generally apply to the Child Care and Development Fund. However, we are proposing to make specified sections applicable for purposes of construction and renovation only.

The ACF has an interest in property that is constructed or renovated with CCDF funds. This interest takes the form of restrictions on use and disposition of the property. The Federal interest also is manifested in the requirement that ACF receive a share of the proceeds from any sale of property. These requirements regarding Federal share and the use and disposition of property are found at 45 CFR 92.31 (b) and (c).

Title requirements at 45 CFR 92.31(a) provide that title to a facility

constructed or renovated with CCDF funds vests with the grantee upon acquisition.

Title 45 CFR 92.22 concerns cost principles and allowable cost requirements. Consistent with these cost principles, reasonable fees and costs associated with and necessary to the construction or renovation of a facility are payable with CCDF funds, but require prior, written approval from ACF.

Title 45 CFR 92.25 governs program income. Program income derived from real property constructed or renovated with CCDF funds must be deducted from the total allowable costs of the budget period in which it was produced.

All facility construction and renovation transactions must comply with the procurement procedures in 45 CFR 92.36, and must be conducted in a manner to provide, to the maximum extent practicable, open and free competition.

Tribal Lead Agencies must also comply with any additional requirements established by program instruction. These requirements may include, but are not limited to, requirements concerning: The recording of a Notice of Federal Interest in property; rights and responsibilities in the event of a grantee's default on a mortgage; insurance and maintenance; submission of plans, specifications, inspection reports, and other legal documents; and modular units.

The proposed definition of ''facility'' at § 98.2 would allow tribal Lead Agencies to use CCDF funds for the construction or renovation of modular units as well as real property. Proposed regulations at § 98.2 would define ''construction'' as the building of a facility that does not currently exist. The proposed rule would define ''major renovation'' as: (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. The proposed definitions of ''facility,'' ''construction,'' and ''major renovation'' are the same definitions used in Head Start construction and renovation procedures.

Section 98.84(e) proposes that, in lieu of obligation and liquidation requirements at § 98.60(e), tribal Lead Agencies must liquidate CCDF funds used for construction or major renovation by the end of the second fiscal year following the fiscal year for which the grant is awarded. This will give tribal Lead Agencies three years to liquidate funds approved by the Secretary for use on construction or major renovation with no separate obligation period. We are proposing these requirements to allow sufficient time for construction and renovation projects. We invite comments on this proposal.

While a tribal Lead Agency must request approval from the Secretary before spending CCDF funds on construction or major renovation, approval is not necessary for minor renovation pursuant to section 658F(b) of the Act and proposed regulations at § 98.84(f). For tribal Lead Agencies, minor renovation includes all renovation other than major renovation or construction.

Amounts used for construction and major renovation are not considered administrative costs for the purpose of the 15 percent administrative cost limit under proposed § 98.83(g). We do not believe that Congress intended for us to unnecessarily limit a tribal Lead Agency's ability to use CCDF funds on construction and renovation projects which meet the requirements necessary for Secretarial approval.

Finally, the new statutory provision allowing tribal construction with CCDF funds provides an opportunity for tribal grantees to leverage resources for quality facilities and services by coordinating with their Tribe's Head Start program.

Subpart J—Monitoring, Non-Compliance and Complaints

Penalties and Sanctions (Section 98.92)

We have amended paragraphs (1) and (2) of § 98.92(a), because the statutory amendments changed the penalty for a Lead Agency found to have failed to substantially comply with the statute, the regulations, or its own Plan. We also have deleted the former § 98.92(b) as redundant due to the statutory amendments. In keeping with prior statutory language, the former regulations authorized the withholding of further payments to a grantee as a penalty for non-compliance. The amendments at section 658I(b)(2)(A)(ii) give the Secretary the option to disallow improperly expended funds or to deduct an amount equal to or less than an improperly expended amount from the administrative portion of the Lead Agency's allotment for the following fiscal year. The Secretary can also impose a penalty that is a combination of these two options.

Paragraph (c), concerning other penalties has been revised and redesignated as paragraph (b) in light of the amended statute. We also propose a new regulation at paragraph (b)(2) to establish a penalty on the Lead Agency for: (1) a failure to implement any part of the CCDF program in accordance with the Act or regulations or its Plan; or (2) a violation of the Act or regulations. Such penalty would be invoked when a failure or violation by the Lead Agency does not result in an clearly identifiable amount of improperly expended funds. For example, the failure to provide the reports required under subpart H or the inappropriate limitation of access to a particular type of provider in violation of the parental choice provisions of Subpart D do not result in a clearly identifiable amount of improperly expended funds. Hence, the penalties at paragraph (a) could not be applied. However, our stewardship of the program since its creation indicates the need for a more effective means of ensuring conformity with the statute and regulations than is offered by the existing regulations. Section 658I(b)(2)(B) of the CCDBG Act provides for an ''additional sanction'' if the Secretary finds there has been non-compliance with the plan or any requirement of the program.

Because a failure or violation which would cause the penalty under (b)(2) to be imposed may not have an amount of improperly expended funds associated with it, we needed to determine what amount of penalty should be imposed. We considered the range of TANF penalties found at section 409 of the Social Security Act and decided to use the TANF penalty provisions for failure to report at section 409(a)(2) of the Social Security Act as guidance. Accordingly, our proposed § 98.92(b)(2) provides that a penalty equal to four percent of the annual Discretionary allotment will be withheld no earlier than the second full quarter following the quarter in which the Lead Agency was notified of the proposed penalty.

Since the TANF penalties provisions include provisions for good cause and corrective action, we have proposed to include similar provisions in § 98.92(b)(2). The penalty will not be applied if the Lead Agency corrects the failure or violation before the penalty is to be applied or if it submits a plan for corrective action that is accepted by the Secretary. Waiting at least one full quarter before applying the penalty provides sufficient time to remedy the situations which we envision would cause the penalty to be invoked. The Lead Agency may, during that time, show cause to the Secretary why the amount of the penalty, if imposed, should be reduced. We are especially

seeking comments on the penalty option proposed at § 98.92(b)(2).

The paragraphs formerly located at § 98.92 (d) and (e) are relocated at § 98.92 (c) and (d), respectively. We have added a new § 98.92(e) providing that it is at the Secretary's sole discretion to choose the penalty to be imposed.

List of Subjects

45 CFR Part 98

Child care, Grant program—social programs, Parental choice, Reporting and record keeping requirements.

45 CFR Part 99

Administrative practice and procedure, Child care, Grant program—social programs.

(Catalog of Federal Domestic Assistance Programs: 93.037, Child Care and Development Block Grant; 93.596, Child Care Mandatory and Matching Funds)

Dated: March 7, 1997.

Olivia A. Golden,

Principal Deputy Assistant Secretary for Children and Families.

Approved: April 21, 1997.

Donna E. Shalala,

Secretary, Department of Health and Human Services.

For the reasons set forth in the preamble, Parts 98 and 99 of Subtitle A of Title 45 of the Code of Federal Regulations are proposed to be amended as follows:

PART 98—CHILD CARE AND DEVELOPMENT FUND

1. Part 98 is proposed to be revised as follows:

Subpart A—Goals, Purposes and Definitions

Sec.

Subpart B—General Application Procedures

Subpart C—Eligibility for Services

Subpart D—Program Operations (Child Care Services)—Parental Rights and Responsibilities

Subpart E—Program Operations (Child Care Services)—Lead Agency and Provider Requirements

Subpart F—Use of Child Care and Development Funds

Subpart G—Financial Management

Subpart H—Program Reporting Requirements

Subpart I—Indian Tribes

Subpart J—Monitoring, Non-Compliance and Complaints

Authority: 42 U.S.C. 618, 9858.

Subpart A—Goals, Purposes and Definitions

§ 98.1 Goals and purposes.

(a) The goals of the CCDF are to:

(1) Allow each State maximum flexibility in developing child care programs and policies that best suit the needs of children and parents within the State;

(2) Promote parental choice to empower working parents to make their own decisions on the child care that best suits their family's needs;

(3) Encourage States to provide consumer education information to help parents make informed choices about child care;

(4) Assist States to provide child care to parents trying to achieve independence from public assistance; and

(5) Assist States in implementing the health, safety, licensing, and registration standards established in State regulations.

(b) The purpose of the CCDF is to increase the availability, affordability, and quality of child care services. The program offers Federal funding to States, Territories, Indian Tribes, and tribal organizations in order to:

(1) Provide low-income families with the financial resources to find and afford quality child care for their children;

(2) Enhance the quality and increase the supply of child care for all families, including those who receive no direct assistance under the CCDF;

(3) Provide parents with a broad range of options in addressing their child care needs;

(4) Strengthen the role of the family;

(5) Improve the quality of, and coordination among, child care programs and early childhood development programs; and

(6) Increase the availability of early childhood development and before- and after-school care services.

(c) The purpose of these regulations is to provide the basis for administration of the Fund. These regulations provide that Lead Agencies:

(1) Maximize parental choice through the use of certificates and through grants and contracts;

(2) Include in their programs a broad range of child care providers, including center-based care, family child care, in-home care, care provided by relatives and sectarian child care providers;

(3) Provide quality child care that meets applicable requirements;

(4) Coordinate planning and delivery of services at all levels;

(5) Design flexible programs that provide for the changing needs of recipient families;

(6) Administer the CCDF responsibly to ensure that statutory requirements are met and that adequate information regarding the use of public funds is provided; and

(7) Design programs that provide uninterrupted service to families and providers, to the extent statutorily possible.

§ 98.2 Definitions.

For the purpose of this part and part 99:

The Act refers to the Child Care and Development Block Grant Act of 1990, section 5082 of the Omnibus Budget Reconciliation Act of 1990, Pub. L. 101–508, as amended and codified at 42 U.S.C. 9858 et seq.

ACF means the Administration for Children and Families;

Application is a request for funding that includes the information required at § 98.13;

Assistant Secretary means the Assistant Secretary for Children and Families, Department of Health and Human Services;

Caregiver means an individual who provides child care services directly to an eligible child on a person-to-person basis;

Categories of care means center-based child care, group home child care, family child care and in-home care;

Center-based child care provider means a provider licensed or otherwise authorized to provide child care services for fewer than 24 hours per day per child in a non-residential setting, unless care in excess of 24 hours is due to the nature of the parent(s)' work;

Child care certificate means a certificate (that may be a check, or other disbursement) that is issued by a grantee directly to a parent who may use such certificate only as payment for child care services or as a deposit for child care services if such a deposit is required of other children being cared for by the provider, pursuant to § 98.30. Nothing in this part shall preclude the use of such certificate for sectarian child care services if freely chosen by the parent. For the purposes of this part, a child care certificate is assistance to the parent, not assistance to the provider;

Child Care and Development Fund (CCDF) means the child care programs conducted under the provisions of the Child Care and Development Block Grant Act, as amended. The Fund consists of Discretionary Funds authorized under section 658B of the amended Act, and Mandatory and Matching Funds appropriated under section 418 of the Social Security Act;

Child care provider that receives assistance means a child care provider that receives Federal funds under the CCDF pursuant to grants, contracts, or loans, but does not include a child care provider to whom Federal funds under the CCDF are directed only through the operation of a certificate program;

Child care services, for the purposes of § 98.50, means the care given to an eligible child by an eligible child care provider;

Construction means the erection of a facility that does not currently exist;

The Department means the Department of Health and Human Services;

Discretionary funds means the funds authorized under section 658B of the Child Care and Development Block Grant Act. The Discretionary funds were formerly referred to as the Child Care and Development Block Grant;

Eligible child means an individual who meets the requirements of § 98.20;

Eligible child care provider means:

(1) A center-based child care provider, a group home child care provider, a family child care provider, an in-home child care provider, or other provider of child care services for compensation that—

(i) Is licensed, regulated, or registered under applicable State or local law as described in § 98.40; and

(ii) Satisfies State and local requirements, including those referred to in § 98.41 applicable to the child care services it provides; or

(2) A child care provider who is 18 years of age or older who provides child care services only to eligible children who are, by marriage, blood relationship, or court decree, the grandchild, great grandchild, sibling (if such provider lives in separate residence), niece, or nephew of such provider, and complies with any applicable requirements that govern child care provided by the relative involved;

Facility means real property or modular unit appropriate for use by a grantee to carry out a child care program;

Family child care provider means one individual who provides child care services for fewer than 24 hours per day per child, as the sole caregiver, in a private residence other than the child's residence, unless care in excess of 24 hours is due to the nature of the parent(s)' work;

Group home child care provider means two or more individuals who provide child care services for fewer than 24 hours per day per child, in a private residence other than the child's residence, unless care in excess of 24 hours is due to the nature of the parent(s)' work;

Indian Tribe means any Indian Tribe, band, nation, or other organized group or community, including any Alaska Native village or regional or village corporation as defined in or established pursuant to the Alaska Native Claims Settlement Act (43 U.S.C. 1601 et seq) that is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians;

In-home child care provider means an individual who provides child care services in the child's own home;

Lead agency means the State, territorial or tribal entity designated under §§ 98.10 and 98.16(a) to which a grant is awarded and that is accountable for the use of the funds provided;

Licensing or regulatory requirements means requirements necessary for a provider to legally provide child care services in a State or locality, including registration requirements established under State, local or tribal law;

Liquidation period means the applicable time period during which a fiscal year's grant shall be liquidated pursuant to the requirements at § 98.60.;

Major renovation means: (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;

Mandatory funds means the general entitlement child care funds described at section 418(a)(1) of the Social Security Act;

Matching funds means the remainder of the general entitlement child care funds that are described at section 418(a)(2) of the Social Security Act;

Modular unit means a portable structure made at another location and moved to a site for use by a grantee to carry out a child care program;

Obligation period means the time period during which a fiscal year's grant shall be obligated pursuant to § 98.60;

Parent means a parent by blood, marriage or adoption and also means a legal guardian, or other person standing *in loco parentis;*

The Plan means the Plan for the implementation of programs under the CCDF;

Program period means the time period for using a fiscal year's grant and does not extend beyond the last day to liquidate funds;

Programs refers generically to all activities under the CCDF, including child care services and other activities pursuant to § 98.50 as well as quality

and availability activities pursuant to § 98.51;

Provider means the entity providing child care services;

Real property means land, including land improvements, structures and appurtenances thereto, excluding movable machinery and equipment;

The regulation refers to the actual regulatory text contained in parts 98 and 99 of this chapter;

Secretary means the Secretary of the Department of Health and Human Services;

Sectarian organization or sectarian child care provider means religious organizations or religious providers generally. The terms embrace any organization or provider that engages in religious conduct or activity or that seeks to maintain a religious identity in some or all of its functions. There is no requirement that a sectarian organization or provider be managed by clergy or have any particular degree of religious management, control, or content;

Sectarian purposes and activities means any religious purpose or activity, including but not limited to religious worship or instruction;

Services for which assistance is provided means all child care services funded under the CCDF, either as assistance directly to child care providers through grants, contracts, or loans, or indirectly as assistance to parents through child care certificates;

Sliding fee scale means a system of cost sharing by a family based on income and size of the family, in accordance with § 98.42;

State means any of the States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands of the United States, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, and includes Tribes unless otherwise specified;

Tribal Mandatory funds means the child care funds set aside at section 418(a)(4) of the Social Security Act. The funds consist of between one and two percent of the aggregate Mandatory and Matching child care funds reserved by the Secretary in each fiscal year for payments to Indian Tribes and tribal organizations; and

Types of providers means the different classes of providers under each category of care. For the purposes of the CCDF, types of providers include non-profit providers, for-profit providers, sectarian providers and relatives who provide care.

§ 98.3 Effect on State law.

(a) Nothing in the Act or this part shall be construed to supersede or modify any provision of a State constitution or State law that prohibits the expenditure of public funds in or by sectarian organizations, except that no provision of a State constitution or State law shall be construed to prohibit the expenditure in or by sectarian institutions of any Federal funds provided under this part.

(b) If a State law or constitution would prevent CCDF funds from being expended for the purposes provided in the Act, without limitation, then States shall segregate State and Federal funds.

Subpart B—General Application Procedures

§ 98.10 Lead Agency responsibilities.

The Lead Agency, as designated by the chief executive officer of the State (or by the appropriate Tribal leader or applicant), shall:

(a) Administer the CCDF program, directly or through other governmental or non-governmental agencies, in accordance with § 98.11;

(b) Apply for funding under this part, pursuant to § 98.13;

(c) Consult with appropriate representatives of local government in developing a Plan to be submitted to the Secretary pursuant to § 98.14(b);

(d) Hold at least one public hearing in accordance with § 98.14(c); and

(e) Coordinate CCDF services pursuant to § 98.12.

§ 98.11 Administration under contracts and agreements.

(a) The Lead Agency has broad authority to administer the program through other governmental or non-governmental agencies. In addition, the Lead Agency can use other public or private local agencies to implement the program; however:

(1) The Lead Agency shall retain overall responsibility for the administration of the program, as defined in paragraph (b) of this section;

(2) The Lead Agency shall serve as the single point of contact for issues involving the administration of the grantee's CCDF program; and

(3) Administrative and implementation responsibilities undertaken by agencies other than the Lead Agency shall be governed by written agreements that specify the mutual roles and responsibilities of the Lead Agency and the other agencies in meeting the requirements of this part.

(b) In retaining overall responsibility for the administration of the program, the Lead Agency shall:

(1) Determine the basic usage and priorities for the expenditure of CCDF funds;

(2) Promulgate all rules and regulations governing overall administration of the Plan;

(3) Submit all reports required by the Secretary;

(4) Ensure that the program complies with the approved Plan and all Federal requirements;

(5) Oversee the expenditure of funds by subgrantees and contractors;

(6) Monitor programs and services;

(7) Fulfill the responsibilities of any sub-grantee in any: disallowance under subpart G; complaint or compliance action under subpart J; or hearing or appeal action under part 99 of this chapter; and

(8) Ensure that all State and local or non-governmental agencies through which State administers the program, including agencies and contractors that determine individual eligibility, operate according to the rules established for the program.

§ 98.12 Coordination and consultation.

The Lead Agency shall:

(a) Coordinate the provision of services for which assistance is provided under this part with the agencies listed in § 98.14(a).

(b) Consult, in accordance with § 98.14(b), with representatives of general purpose local government during the development of the Plan; and

(c) Coordinate, to the maximum extent feasible, with any Indian Tribes in the State receiving CCDF funds in accordance with subpart I of this part.

§ 98.13 Applying for funds.

The Lead Agency of a State or Territory shall apply for Child Care and Development funds by providing the following:

(a) The amount of funds requested at such time and in such manner as prescribed by the Secretary.

(b) The following assurances or certifications:

(1) An assurance that the Lead Agency will comply with the requirements of the Act and this part;

(2) A lobbying certification that assures that the funds will not be used for the purpose of influencing pursuant to 45 CFR part 93, and, if necessary, a Standard Form LLL (SF–LLL) that discloses lobbying payments;

(3) An assurance that the Lead Agency provides a drug-free workplace pursuant to 45 CFR 76.600, or a statement that such an assurance has already been submitted for all HHS grants;

(4) A certification that no principals have been debarred pursuant to 45 CFR 76.500;

(5) Assurances that the Lead Agency will comply with the applicable provisions regarding nondiscrimination at 45 CFR part 80 (implementing title VI of the Civil Rights Act of 1964, as amended), 45 CFR part 84 (implementing section 504 of the Rehabilitation Act of 1973, as amended), 45 CFR part 86 (implementing title IX of the Education Amendments of 1972, as amended) and 45 CFR part 91 (implementing the Age Discrimination Act of 1975, as amended), and;

(6) Assurances that the Lead Agency will comply with the applicable provisions of Public Law 103–277, Part C—Environmental Tobacco Smoke, also known as the Pro-Children Act of 1994, regarding prohibitions on smoking.

(c) The Child Care and Development Fund Plan, at times and in such manner as required in § 98.17; and

(d) Such other information as specified by the Secretary.

§ 98.14 Plan process.

In the development of each Plan, as required pursuant to § 98.17, the Lead Agency shall:

(a) Coordinate the provision of services funded under this Part with other Federal, State, and local child care and early childhood development programs, including such programs for the benefit of Indian children. At a minimum, the Lead Agency shall coordinate with the State, and if applicable, tribal agencies responsible for:

(1) Public health, including the agency responsible for immunizations;

(2) Employment services/workforce development;

(3) Public education; and

(4) Providing Temporary Assistance for Needy Families, and provide a description of the results of the coordination with each of these agencies in the CCDF Plan.

(b) Consult with appropriate representatives of local governments;

(c)(1) Hold at least one hearing in the State, after at least 20 days of statewide public notice, to provide to the public an opportunity to comment on the provision of child care services under the Plan.

(2) The hearing required by paragraph (c)(1) shall be held before the Plan is submitted to ACF, but no earlier than nine months before the Plan becomes effective.

§ 98.15 Assurances and certifications.

(a) The Lead Agency shall include the following assurances in its CCDF Plan:

(1) Upon approval, it will have in effect a program that complies with the provisions of the CCDF Plan, and that is administered in accordance with the Child Care and Development Block Grant Act of 1990, as amended, section 418 of the Social Security Act, and all other applicable Federal laws and regulations;

(2) The parent(s) of each eligible child within the area served by the Lead Agency who receives or is offered child care services for which financial assistance is provided is given the option either:

(i) To enroll such child with a child care provider that has a grant or contract for the provision of the service; or

(ii) To receive a child care certificate as defined in § 98.2;

(3) In cases in which the parent(s), pursuant to § 98.30, elects to enroll their 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;

(4) In accordance with § 98.30, 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;

(5) 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 CCDF will not significantly restrict parental choice from among categories of care or types of providers, pursuant to § 98.30(g).

(6) That if expenditures for pre-Kindergarten services are used to meet the maintenance-of-effort requirement, the State has not reduced its level of effort in full-day/full-year services, pursuant to § 98.53(h)(1).

(b) The Lead Agency shall include the following certifications in its CCDF Plan:

(1) In accordance with § 98.31, it has procedures in place to ensure that providers of child care services for which assistance is provided under the CCDF, afford parents unlimited access to their children and to the providers caring for their children, during the normal hours of operations and whenever such children are in the care of such providers;

(2) As required by § 98.32, it maintains a record of substantiated parental complaints and makes information regarding such complaints available to the public on request;

(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, as required by § 98.33;

(4) There are in effect licensing requirements applicable to child care services provided within the State (or area served by tribal Lead Agency), pursuant to § 98.40;

(5) There are in effect within the State (or other area served by the Lead Agency), under State or local (or tribal) law, requirements designed to protect the health and safety of children that are applicable to child care providers that provide services for which assistance is made available under the CCDF, pursuant to § 98.41;

(6) In accordance with § 98.41, procedures are in effect to ensure that child care providers of services for which assistance is provided under the CCDF comply with all applicable State or local (or tribal) health and safety requirements; and

(7) Payment rates for the provision of child care services, in accordance with § 98.43, are sufficient to ensure equal access for eligible children to comparable child care services in the State or sub-State 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.

§ 98.16 Plan provisions.

A CCDF Plan shall contain the following:

(a) Specification of the Lead Agency whose duties and responsibilities are delineated in § 98.10;

(b) The assurances and certifications listed under § 98.15;

(c)(1) A description of how the CCDF program will be administered and implemented, if the Lead Agency does not directly administer and implement the program;

(2) Identification of the entities designated to receive private donated funds and the purposes for which such funds will be expended, pursuant to § 98.53(f);

(d) A description of the coordination and consultation processes involved in the development of the Plan, including a description of public-private partnership activities that promote business involvement in meeting child care needs pursuant to § 98.14 (a) and (b);

(e) A description of the public hearing process, pursuant to § 98.14(c);

(f) Definitions of the following terms for purposes of determining eligibility, pursuant to §§ 98.20(a) and 98.44:

(1) Special needs child;

(2) Physical or mental incapacity (if applicable);

(3) Attending (a job training or educational program);

(4) Job training and educational program;
(5) Residing with;
(6) Working;
(7) Protective services (if applicable);
(8) Very low income; and
(9) *in loco parentis.*

(g) For child care services pursuant to § 98.50:
(1) A description of such services and activities;
(2) Any limits established for the provision of in-home care and the justification of such limits pursuant to § 98.30(e)(1)(iv);
(3) A list of political subdivisions in which such services and activities are offered, if such services and activities are not available throughout the entire service area;
(4) A description of how the Lead Agency will meet the needs of certain families specified at § 98.50(e).
(5) Any additional eligibility criteria, priority rules and definitions established pursuant to § 98.20(b);
(h) A description of the activities to improve the quality and availability of child care, to provide comprehensive consumer education, and to increase parental choice, pursuant to § 98.51;
(i) A description of the sliding fee scale(s) (including any factors other than income and family size used in establishing the fee scale(s)) that provide(s) for cost sharing by the families that receive child care services for which assistance is provided under the CCDF, pursuant to § 98.42;
(j) A description of the health and safety requirements, applicable to all providers of child care services for which assistance is provided under the CCDF, in effect pursuant to § 98.41;
(k) A description of the child care certificate payment system(s), including the form or forms of the child care certificate, pursuant to § 98.30(c);
(l) Payment rates and a summary of the facts, including a biennial local market rate survey, relied upon to determine that the rates provided are sufficient to ensure equal access pursuant to § 98.43;
(m) A detailed description of how the Lead Agency maintains a record of substantiated parental complaints and how it makes information regarding those complaints available to the public on request, pursuant to § 98.32;
(n) A detailed description of the procedures in effect for affording parents unlimited access to their children whenever their children are in the care of the provider, pursuant to § 98.31;
(o) A detailed description of the licensing requirements applicable to child care services provided, and a description of how such licensing requirements are effectively enforced, pursuant to § 98.40;
(p) Pursuant to § 98.33(b), the definitions or criteria used to implement the exception, provided in section 407(e)(2) of the Social Security Act, to individual penalties in the TANF work requirement applicable to a single custodial parent caring for a child under age six;
(q) A description of the efforts to ensure that pre-Kindergarten programs, for which funds under § 98.53(b) are claimed, meet the needs of working parents; and
(r) Such other information as specified by the Secretary.

§ 98.17 Period covered by Plan.

(a) For States, Territories, and Indian Tribes the Plan shall cover a period of two years.
(b) The Lead Agency shall submit a new Plan prior to the expiration of the time period specified in paragraph (a) of this section, at such time as required by the Secretary in written instructions.

§ 98.18 Approval and disapproval of Plans and Plan amendments.

(a) *Plan approval.* The Assistant Secretary will approve a Plan that satisfies the requirements of the Act and this part. Plans will be approved not later than the 90th day following the date on which the Plan submittal is received, unless a written agreement to extend that period has been secured.
(b) *Plan amendments.* Approved Plans shall be amended whenever a substantial change in the program occurs. A Plan amendment shall be submitted within 60 days of the effective date of the change. Plan amendments will be approved not later than the 90th day following the date on which the amendment is received, unless a written agreement to extend that period has been secured.
(c) *Appeal of disapproval of a Plan or Plan amendment.*
(1) An applicant or Lead Agency dissatisfied with a determination of the Assistant Secretary pursuant to paragraphs (a) or (b) of this section with respect to any Plan or amendment may, within 60 days after the date of receipt of notification of such determination, file a petition with the Assistant Secretary asking for reconsideration of the issue of whether such Plan or amendment conforms to the requirements for approval under the Act and pertinent Federal regulations.
(2) Within 30 days after receipt of such petition, the Assistant Secretary shall notify the applicant or Lead Agency of the time and place at which the hearing for the purpose of reconsidering such issue will be held.
(3) Such hearing shall be held not less than 30 days, nor more than 90 days, after the notification is furnished to the applicant or Lead Agency, unless the Assistant Secretary and the applicant or Lead Agency agree in writing on another time.
(4) Action pursuant to an initial determination by the Assistant Secretary described in paragraphs (a) and (b) of this section that a Plan or amendment is not approvable shall not be stayed pending the reconsideration, but in the event that the Assistant Secretary subsequently determines that the original decision was incorrect, the Assistant Secretary shall certify restitution forthwith in a lump sum of any funds incorrectly withheld or otherwise denied. The hearing procedures are described in part 99 of this chapter.

Subpart C—Eligibility for Services

§ 98.20 A child's eligibility for child care services.

(a) In order to be eligible for services under § 98.50, a child shall:
(1)(i) Be under 13 years of age; or,
(ii) At the option of the Lead Agency, be under age 19 and physically or mentally incapable of caring for himself or herself, or under court supervision;
(2) Reside with a family whose income does not exceed 85 percent of the State's median income for a family of the same size; and
(3)(i) Reside with a parent or parents (as defined in § 98.2) who are working or attending a job training or educational program; or
(ii) Receive, or need to receive, protective services and reside with a parent or parents (as defined in § 98.2) other than the parent(s) described in paragraph (a)(3)(i) of this section. At grantee option, the requirements in paragraph (a)(2) of this section and in § 98.42(c) may be waived for families eligible for child care pursuant to this paragraph, if determined to be necessary on a case-by-case basis by, or in consultation with, an appropriate protective services worker.
(b) Pursuant to § 98.16(g)(5), a grantee or other administering agency may establish eligibility conditions or priority rules in addition to those specified in this section and § 98.44 so long as they do not:
(1) Discriminate against children on the basis of race, national origin, ethnic background, sex, religious affiliation, or disability;
(2) Limit parental rights provided under Subpart D; or

(3) Violate the provisions of this section, § 98.44, or the Plan. In particular, such conditions or priority rules may not be based on a parent's preference for a category of care or type of provider. In addition, such additional conditions or rules may not be based on a parent's choice of a child care certificate.

Subpart D—Program Operations (Child Care Services)—Parental Rights and Responsibilities

§ 98.30 Parental choice.

(a)(1) The parent or parents of an eligible child who receives or is offered child care services shall be offered a choice:

(i) To enroll the child with an eligible child care provider that has a grant or contract for the provision of such services, if such services are available; or

(ii) To receive a child care certificate as defined in § 98.2.

(2) Such choice shall be offered any time that child care services are made available to a parent.

(b) When a parent elects to enroll the child with a provider that has a grant or contract for the provision of child care services, the child will be enrolled with the provider selected by the parent to the maximum extent practicable.

(c) In cases in which a parent elects to use a child care certificate, such certificate:

(1) Will be issued directly to the parent;

(2) Shall be of a value commensurate with the subsidy value of the child care services provided under paragraph (a)(1) of this section;

(3) May be used as a deposit for child care services if such a deposit is required of other children being cared for by the provider;

(4) May be used for child care services provided by a sectarian organization or agency, including those that engage in religious activities, if those services are chosen by the parent;

(5) May be expended by providers for any sectarian purpose or activity that is part of the child care services, including sectarian worship or instruction;

(6) Shall not be considered a grant or contract to a provider but shall be considered assistance to the parent.

(d) Child care certificates shall be made available to any parents offered child care services.

(e)(1) For child care services, certificates under paragraph (a)(1)(ii) of this section shall permit parents to choose from a variety of child care categories, including:

(i) Center-based child care;

(ii) Group home child care;

(iii) Family child care; and

(iv) In-home child care, with limitations, if any, imposed by the Lead Agency and described in its plan at § 98.16(g)(2).

(2) Under each of the categories in paragraph (e)(1) of this section, care by a sectarian provider may not be limited or excluded.

(3) Lead Agencies shall provide information regarding the range of provider options under paragraph (e)(1) of this section, including care by sectarian providers and relatives, to families offered child care services.

(f) With respect to State and local regulatory requirements under § 98.40, health and safety requirements under § 98.41, and payment rates under § 98.43, CCDF funds will not be available to a Lead Agency if State or local rules, procedures or other requirements promulgated for purposes of the CCDF significantly restrict parental choice by:

(1) Expressly or effectively excluding:

(i) Any category of care or type of provider, as defined in § 98.2; or

(ii) Any type of provider within a category of care; or

(2) Having the effect of limiting parental access to or choice from among such categories of care or types of providers, as defined in § 98.2; or

(3) Excluding a significant number of providers in any category of care or of any type as defined in § 98.2.

§ 98.31 Parental access.

Lead Agencies shall have in effect procedures to ensure that providers of child care services for which assistance is provided afford parents unlimited access to their children, and to the providers caring for their children, during normal hours of provider operation and whenever the children are in the care of the provider. Lead Agencies shall provide a detailed description of such procedures.

§ 98.32 Parental complaints.

Lead Agencies shall:

(a) Maintain a record of substantiated parental complaints;

(b) Make information regarding such parental complaints available to the public on request; and

(c) Provide a detailed description of how such record is maintained and is made available.

§ 98.33 Consumer education.

Lead Agencies shall:

(a) Certify that they will collect and disseminate to parents and the general public consumer education information that will promote informed child care choices;

(b) Inform parents about the requirement at section 407(e)(2) of the Social Security Act that the TANF agency make an 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 six years of age. The information provided shall include:

(1) The procedures the TANF agency uses to determine if the parent has a demonstrated inability to obtain needed child care;

(2) The criteria or definitions applied by the TANF agency to determine the whether the parent has a demonstrated inability to obtain needed child care, including:

(i) ''Appropriate child care'';

(ii) ''Reasonable distance'';

(iii) ''Unsuitability of informal child care'';

(iv) ''Affordable child care arrangements'';

(3) The clarification that the time during which an eligible parent receives the exception referred to in paragraph (b) will count toward the time limit on benefits required at section 408(a)(7) of the Social Security Act.

(c) Include in the biennial plan the definitions or criteria the TANF agency uses in implementing the exception to the work requirement specified in paragraph (b).

§ 98.34 Parental rights and responsibilities.

Nothing under this part shall be construed or applied in any manner to infringe on or usurp the moral and legal rights and responsibilities of parents or legal guardians.

Subpart E—Program Operations (Child Care Services)—Lead Agency and Provider Requirements

§ 98.40 Compliance with applicable State and local regulatory requirements.

(a) Lead Agencies shall:

(1) Certify that they have in effect licensing requirements applicable to child care services provided within the area served by the Lead Agency;

(2) Provide a detailed description of the requirements under paragraph (a) (1) of this section and of how they are effectively enforced.

(b)(1) This section does not prohibit a Lead Agency from imposing more stringent standards and licensing or regulatory requirements on child care providers of services for which assistance is provided under the CCDF than the standards or requirements imposed on other child care providers.

(2) Any such additional requirements shall be consistent with the safeguards for parental choice in § 98.30(f).

§ 98.41 Health and safety requirements.

(a) Although the Act specifically states it does not require the establishment of any new or additional requirements if existing requirements comply with the requirements of the statute, each Lead Agency shall certify that there are in effect, within the State (or other area served by the Lead Agency), under State, local or tribal law, requirements designed to protect the health and safety of children that are applicable to child care providers of services for which assistance is provided under this part. Such requirements shall include:

(1) The prevention and control of infectious diseases (including immunizations) as follows:

(i) States and Territories shall establish immunization requirements as part of their health and safety provisions that assure that children receiving services under the CCDF are age-appropriately immunized. Health and safety provisions shall incorporate (by reference or otherwise) the latest recommendation for childhood immunizations of the respective State or territorial public health agency.

(ii) Notwithstanding paragraph (a)(1)(i) of this section, Lead Agencies may exempt:

(A) Children who are cared for by relatives (defined as grandparents, great grandparents, siblings [if living in a separate residence], aunts, and uncles);

(B) Children who receive care in their own homes;

(C) Children whose parents object to immunization on religious grounds; and

(D) Children whose medical condition contraindicates immunization;

(iii) Lead Agencies shall establish a grace period in which children can receive services while families are taking the necessary actions to comply with the immunization requirements;

(2) Building and physical premises safety; and

(3) Minimum health and safety training appropriate to the provider setting.

(b) Lead Agencies may not set health and safety standards and requirements under paragraph (a) of this section that are inconsistent with the parental choice safeguards in § 98.30(f).

(c) The requirements in paragraph (a) of this section shall apply to all providers of child care services for which assistance is provided under this part, within the area served by the Lead Agency, except the relatives specified in paragraph (e) of this section.

(d) Each Lead Agency shall certify that procedures are in effect to ensure that child care providers of services for which assistance is provided under this part, within the area served by the Lead Agency, comply with all applicable State, local, or tribal health and safety requirements described in paragraph (a) of this section.

(e) For the purposes of this section, the term ''child care providers'' does not include grandparents, great grandparents, siblings (if such providers live in a separate residence), aunts, or uncles, pursuant to § 98.2.

§ 98.42 Sliding fee scales.

(a) Lead Agencies shall establish, and periodically revise, by rule, a sliding fee scale(s) that provides for cost sharing by families that receive CCDF child care services.

(b) A sliding fee scale(s) shall be based on income and the size of the family and may be based on other factors as appropriate.

(c) Lead Agencies may waive contributions from families whose incomes are at or below the poverty level for a family of the same size.

§ 98.43 Equal access.

(a) The Lead Agency shall certify that the payment rates for the provision of child care services under this part 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 programs.

(b) The Lead Agency shall provide a summary of the facts relied on to determine that its payment rates ensure equal access. At a minimum, the summary shall include those facts that show:

(1) How a choice of the full range of providers, e.g., center, group, family, and in-home care, is made available;

(2) 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;

(3) How copayments based on a sliding fee scale are affordable, as stipulated at § 98.42.

(c) A Lead Agency may not establish different payment rates based on a family's eligibility status or circumstances.

(d) Payment rates under paragraph (a) of this section shall be consistent with the parental choice requirements in § 98.30.

(e) Nothing in this section shall be construed to create a private right of action.

§ 98.44 Priority for child care services.

Lead Agencies shall give priority for services provided under § 98.50(a) to:

(a) Children of families with very low family income (considering family size); and

(b) Children with special needs.

§ 98.45 List of providers.

If a Lead Agency does not have a registration process for child care providers who are unlicensed or unregulated under State, local, or tribal law, it is required to maintain a list of the names and addresses of unlicensed or unregulated providers of child care services for which assistance is provided under this part.

§ 98.46 Nondiscrimination in admissions on the basis of religion.

(a) Child care providers (other than family child care providers, as defined in § 98.2) that receive assistance through grants and contracts under the CCDF shall not discriminate in admissions against any child on the basis of religion.

(b) Paragraph (a) of this section does not prohibit a child care provider from selecting children for child care slots that are not funded directly (i.e., through grants or contracts to providers) with assistance provided under the CCDF because such children or their family members participate on a regular basis in other activities of the organization that owns or operates such provider.

(c) Notwithstanding paragraph (b) of this section, if 80 percent or more of the operating budget of a child care provider comes from Federal or State funds, including direct or indirect assistance under the CCDF, the Lead Agency shall assure that before any further CCDF assistance is given to the provider,

(1) The grant or contract relating to the assistance, or

(2) The admission policies of the provider specifically provide that no person with responsibilities in the operation of the child care program, project, or activity will discriminate, on the basis of religion, in the admission of any child.

§ 98.47 Nondiscrimination in employment on the basis of religion.

(a) In general, except as provided in paragraph (b) of this section, nothing in this part modifies or affects the provision of any other applicable Federal law and regulation relating to

discrimination in employment on the basis of religion.

(1) Child care providers that receive assistance through grants or contracts under the CCDF shall not discriminate, on the basis of religion, in the employment of caregivers as defined in § 98.2.

(2) If two or more prospective employees are qualified for any position with a child care provider, this section shall not prohibit the provider from employing a prospective employee who is already participating on a regular basis in other activities of the organization that owns or operates the provider.

(3) Paragraphs (a) (1) and (2) of this section shall not apply to employees of child care providers if such employees were employed with the provider on November 5, 1990.

(b) Notwithstanding paragraph (a) of this section, a sectarian organization may require that employees adhere to the religious tenets and teachings of such organization and to rules forbidding the use of drugs or alcohol.

(c) Notwithstanding paragraph (b) of this section, if 80 percent or more of the operating budget of a child care provider comes from Federal and State funds, including direct and indirect assistance under the CCDF, the Lead Agency shall assure that, before any further CCDF assistance is given to the provider,

(1) The grant or contract relating to the assistance, or

(2) The employment policies of the provider specifically provide that no person with responsibilities in the operation of the child care program will discriminate, on the basis of religion, in the employment of any individual as a caregiver, as defined in § 98.2.

Subpart F—Use of Child Care and Development Funds

§ 98.50 Child care services.

(a) Of the funds remaining after applying the provisions of § 98.50 (c), (d) and (e) the Lead Agency shall spend a substantial portion to provide child care services to low-income working families.

(b) Child care services shall be provided:

(1) To eligible children, as described in § 98.20;

(2) Using a sliding fee scale, as described in § 98.42;

(3) Using funding methods provided for in § 98.30; and

(4) Based on the priorities in § 98.44.

(c) Of the aggregate amount of funds expended (i.e., Discretionary, Mandatory, and Federal and State share of Matching Funds), no less than four percent shall be used for activities to improve the quality of child care as described at § 98.51.

(d) Of the aggregate amount of funds awarded (i.e., Discretionary, Mandatory, and Federal and State share of Matching Funds), no more than five percent may be used for administrative activities as described at § 98.52.

(e) Not less than 70 percent of the Mandatory and Matching Funds shall be used to meet the child care needs of families who:

(1) Are receiving assistance under a State program under Part A of title IV of the Social Security Act,

(2) Are attempting through work activities to transition off such assistance program, and

(3) Are at risk of becoming dependent on such assistance program.

(f) Pursuant to § 98.16(g)(4), the Plan shall specify how the State will meet the child care needs of families described in paragraph (e) of this section.

§ 98.51 Activities to improve the quality of child care.

(a) No less than four percent of the aggregate funds expended by the Lead Agency for a fiscal year, and including the amounts expended in the State pursuant to § 98.53(b), shall be expended for quality activities.

(1) These activities may include but are not limited to:

(i) Activities designed to provide comprehensive consumer education to parents and the public;

(ii) Activities that increase parental choice; and

(iii) Activities designed to improve the quality and availability of child care, including, but not limited to those described in paragraph (a)(2) of this section.

(2) Activities to improve the quality of child care services may include, but are not limited to:

(i) Operating directly or providing financial assistance to organizations (including private non-profit organizations, public organizations, and units of general purpose local government) for the development, establishment, expansion, operation, and coordination of resource and referral programs specifically related to child care;

(ii) Making grants or providing loans to child care providers to assist such providers in meeting applicable State, local, and tribal child care standards, including applicable health and safety requirements, pursuant to §§ 98.40 and 98.41;

(iii) Improving the monitoring of compliance with, and enforcement of, applicable State, local, and tribal requirements pursuant to §§ 98.40 and 98.41;

(iv) Providing training and technical assistance in areas appropriate to the provision of child care services, such as training in health and safety, nutrition, first aid, the recognition of communicable diseases, child abuse detection and prevention, and care of children with special needs;

(v) Improving salaries and other compensation (such as fringe benefits) for full- and part-time staff who provide child care services for which assistance is provided under this part; and

(vi) Any other activities that are consistent with the intent of this section.

(b) Pursuant to § 98.16(h), the Lead Agency shall describe in its Plan the activities it will fund under this section.

(c) Non-Federal expenditures required by § 98.53(c) (i.e., the maintenance-of-effort amount) are not subject to the requirement at paragraph (a) of this section.

§ 98.52 Administrative costs.

(a) Not more than five percent of the aggregate funds expended by the Lead Agency for a fiscal year, and including the amounts expended in the State pursuant to § 98.53(b), shall be expended for administrative activities. These activities may include but are not limited to:

(1) Salaries and related costs of the staff of the Lead Agency or other agencies engaged in the administration and implementation of the program pursuant to § 98.11. Program administration and implementation include the following types of activities:

(i) Planning, developing, and designing the Child Care and Development Fund program;

(ii) Providing local officials and the public with information about the program, including the conduct of public hearings;

(iii) Preparing the application and Plan;

(iv) Developing agreements with administering agencies in order to carry out program activities;

(v) Monitoring program activities for compliance with program requirements;

(vi) Preparing reports and other documents related to the program for submission to the Secretary;

(vii) Maintaining substantiated complaint files in accordance with the requirements of § 98.32;

(viii) Coordinating the provision of Child Care and Development Fund services with other Federal, State, and local child care, early childhood development programs, and before- and after-school care programs;

(ix) Coordinating the resolution of audit and monitoring findings;

(x) Evaluating program results; and

(xi) Managing or supervising persons with responsibilities described in paragraphs (a)(1)(i) through (x) of this section;

(2) Travel costs incurred for official business in carrying out the program;

(3) Administrative services, including such services as accounting services, performed by grantees or subgrantees or under agreements with third parties;

(4) Audit services as required at § 98.65;

(5) Other costs for goods and services required for the administration of the program, including rental or purchase of equipment, utilities, and office supplies; and

(6) Indirect costs as determined by an indirect cost agreement or cost allocation plan pursuant to § 98.55.

(b) The five percent limitation at paragraph (a) of this section applies only to the States and Territories. The amount of the limitation at paragraph (a) of this section does not apply to Tribes or tribal organizations.

(c) Non-Federal expenditures required by § 98.53(c) (i.e., the maintenance-of-effort amount) are not subject to the five percent limitation at paragraph (a) of this section.

§ 98.53 Matching Fund requirements

(a) Federal matching funds are available for expenditures in a State based upon the formula specified at § 98.63(a).

(b) Expenditures in a State under paragraph (a) of this section will be matched:

(1) At the Federal medical assistance rate for the fiscal year 1995 irrespective of the fiscal year in which the funds are available; and

(2) If they are for allowable activities, as described in the approved State Plan, that meet the goals and purposes of the Act.

(c) In order to receive Federal matching funds for a fiscal year under paragraph (a) of this section:

(1) States shall also expend an amount of non-Federal funds for child care activities in the State that is at least equal to the State's share of expenditures for fiscal year 1994 or 1995 (whichever is greater) under sections 402 (g) and (i) of the Social Security Act as these sections were in effect before October 1, 1995; and

(2) The expenditures shall be for allowable services or activities, as described in the approved State Plan if appropriate, that meet the goals and purposes of the Act.

(3) All Mandatory Funds are obligated in accordance with § 98.60(d)(2)(i).

(d) The same expenditure may not be used to meet the requirements under both paragraphs (b) and (c) of this section in a fiscal year.

(e) An expenditure in the State for purposes of this subpart may be:

(1) Public funds when the funds are:

(i) Appropriated directly to the Lead Agency specified at § 98.10, or transferred from another public agency to that Lead Agency and under its administrative control, or certified by the contributing public agency as representing expenditures eligible for Federal match;

(ii) Not used to match other Federal funds; and

(iii) Not Federal funds, or are Federal funds authorized by Federal law to be used to match other Federal funds; or

(2) Donated from private sources when the donated funds:

(i) Are donated without any restriction that would require their use for a specific individual, organization, facility or institution;

(ii) Do not revert to the donor's facility or use; and

(iii) Are not used to match other Federal funds;

(iv) Shall be certified both by the donor and by the Lead Agency as available and representing expenditures eligible for Federal match; and

(v) Shall be subject to the audit requirements in § 98.65 of these regulations.

(f) Donated funds need not be transferred to or under the administrative control of the Lead Agency in order to qualify as an expenditure eligible to receive Federal match under this section. They may be given to an entity designated by the State to receive donated funds pursuant to § 98.16(c)(2).

(g) The following are not counted as an eligible State expenditure under this Part:

(1) In-kind contributions; and

(2) Family contributions to the cost of care as required by § 98.42.

(h) Public pre-kindergarten (pre-K) expenditures:

(1) May be used to meet the maintenance-of-effort requirement only if the State has not reduced its expenditures for full-day/full-year child care services; and

(2) May be eligible for Federal match if the State includes in its Plan, as provided in § 98.16(q), a description of the efforts it will undertake to ensure that pre-K programs meet the needs of working parents.

(3) In any fiscal year, a State may use public pre-K funds for up to 20% of the funds serving as maintenance-of-effort under this subsection. In any fiscal year, a State may use other public pre-K funds for up to 20% of the expenditures serving as the State's matching funds under this subsection.

(4) If applicable, the CCDF plan shall reflect the State's intent to use public pre-K funds in excess of 10%, but not for more than 20%, of either its maintenance-of-effort or State matching funds in a fiscal year. Also, the plan shall describe how the State will coordinate its pre-K and child care services to expand the availability of child care.

(i) Matching funds are subject to the obligation and liquidation requirements at § 98.60(d)(3).

§ 98.54 Restrictions on the use of funds.

(a) *General.* (1) Funds authorized under section 418 of the Social Security Act and section 658B of the Child Care and Development Block Grant Act, and all funds transferred to the Lead Agency pursuant to section 404(d) of the Social Security Act, shall be expended consistent with these regulations. Funds transferred pursuant to section 404(d) of the Social Security Act shall be treated as Discretionary Funds;

(2) Funds shall be expended in accordance with applicable State and local laws, except as superseded by § 98.3.

(b) *Construction.* (1) For State and local agencies and nonsectarian agencies or organizations, no funds shall be expended for the purchase or improvement of land, or for the purchase, construction, or permanent improvement of any building or facility. However, funds may be expended 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.

(2) For sectarian agencies or organizations, the prohibitions in paragraph (b)(1) of this section apply; however, funds may be expended for minor remodeling only if necessary to bring the facility into compliance with the health and safety requirements established pursuant to § 98.41.

(3) Tribes and tribal organizations are subject to the requirements at § 98.84 regarding construction.

(c) *Tuition.* Funds may not be expended for students enrolled in grades 1 through 12 for:

(1) Any service provided to such students during the regular school day;

(2) Any service for which such students receive academic credit toward graduation; or

(3) Any instructional services that supplant or duplicate the academic program of any public or private school.

(d) *Sectarian Purposes and Activities.* Funds provided under grants or contracts to providers may not be expended for any sectarian purpose or activity, including sectarian worship or instruction. Pursuant to § 98.2, assistance provided to parents through certificates is not a grant or contract. Funds provided through child care certificates may be expended for sectarian purposes or activities, including sectarian worship or instruction when provided as part of the child care services.

(e) The CCDF may not be used as the non-Federal share for other Federal grant programs.

§ 98.55 Cost allocation.

(a) The Lead Agency and subgrantees shall keep on file cost allocation plans or indirect cost agreements, as appropriate, that have been amended to include costs allocated to the CCDF.

(b) Subgrantees that do not already have a negotiated indirect rate with the Federal government should prepare and keep on file cost allocation plans or indirect cost agreements, as appropriate.

(c) Approval of the cost allocation plans or indirect cost agreements is not specifically required by these regulations, but these plans and agreements are subject to review.

Subpart G—Financial Management

§ 98.60 Availability of funds.

(a) The CCDF is available, subject to the availability of appropriations, in accordance with the apportionment of funds from the Office of Management and Budget as follows:

(1) Discretionary Funds are available to States, Territories, and Tribes,

(2) Mandatory and Matching Funds are available to States;

(3) Tribal Mandatory Funds are available to Tribes.

(b) Subject to the availability of appropriations, in accordance with the apportionment of funds from the Office of Management and Budget, the Secretary:

(1) May withhold no more than one-quarter of one percent of the CCDF funds made available for a fiscal year for the provision of technical assistance; and

(2) Will award the remaining CCDF funds to grantees that have an approved application and Plan.

(c) The Secretary may make payments in installments, and in advance or by way of reimbursement, with necessary adjustments due to overpayments or underpayments.

(d) The following obligation and liquidation provisions apply to States and Territories:

(1) Discretionary Fund allotments shall be obligated the fiscal year in which funds are awarded or in the succeeding fiscal year. Unliquidated obligations as of the end of the succeeding fiscal year shall be liquidated within one year.

(2)(i) Mandatory Funds for States requesting Matching Funds per § 98.53 shall be obligated in the fiscal year in which the funds are granted and are available until expended.

(ii) Mandatory Funds for States that do not request Matching Funds are available until expended.

(3) Both the Federal and non-Federal share of the Matching Fund shall be obligated in the fiscal year in which the funds are granted and liquidated no later than the end of the succeeding fiscal year.

(4) Except for paragraph (d)(5) of this section, determination of whether funds have been obligated and liquidated will be based on:

(i) State or local law; or,

(ii) If there is no applicable State or local law, the regulation at 45 CFR 92.3, Obligations and Outlays (expenditures).

(5) Obligations may include subgrants or contracts that require the payment of funds to a third party (e.g., subgrantee or contractor). However, the following are not considered third party subgrantees or contractors:

(i) A local office of the Lead Agency;

(ii) Another entity at the same level of government as the Lead Agency; or

(iii) A local office of another entity at the same level of government as the Lead Agency.

(6) For purposes of the CCDF, funds for child care services provided through a child care certificate will be considered obligated when a child care certificate is issued to a family in writing that indicates:

(i) The amount of funds that will be paid to a child care provider or family, and

(ii) The specific length of time covered by the certificate, which is limited to the date established for redetermination of the family's eligibility, but shall be no later than the end of the liquidation period.

(7) Any funds not obligated during the obligation period specified in paragraph (d) of this section will revert to the Federal government. Any funds not liquidated by the end of the applicable liquidation period specified in paragraph (d) of this section will also revert to the Federal government.

(e) The following obligation and liquidation provisions apply to Tribal Discretionary and Tribal Mandatory Funds:

(1) Tribal grantees shall obligate all funds by the end of the fiscal year following the fiscal year for which the grant is awarded. Any funds not obligated during this period will revert to the Federal government.

(2) Obligations that remain unliquidated at the end of the succeeding fiscal year shall be liquidated within the next fiscal year. Any tribal funds that remain unliquidated by the end of this period will also revert to the Federal government.

(f) Cash advances shall be limited to the minimum amounts needed and shall be timed to be in accord with the actual, immediate cash requirements of the State Lead Agency, its subgrantee or contractor in carrying out the purpose of the program in accordance with 31 CFR part 205.

(g) Funds that are returned (e.g., loan repayments, funds deobligated by cancellation of a child care certificate, unused subgrantee funds) as well as program income (e.g., contributions made by families directly to the Lead Agency or subgrantee for the cost of care where the Lead Agency or subgrantee has made a full payment to the child care provider) shall, if received after the end of the applicable obligation period described at paragraphs (d) and (e), be returned to the Federal government.

(h) Repayment of loans, pursuant to § 98.51(a)(2)(ii), may be made in cash or in services provided in-kind. Payment provided in-kind shall be based on fair market value. All loans shall be fully repaid.

(i) Lead Agencies shall recover child care payments that are the result of fraud. These payments shall be recovered from the party responsible for committing the fraud.

§ 98.61 Allotments from the Discretionary Fund.

(a) To the 50 States, the District of Columbia, and the Commonwealth of Puerto Rico an amount equal to the funds appropriated for the Child Care and Development Block Grant, less amounts reserved for technical assistance and amounts reserved for the Territories and Tribes, pursuant to §§ 98.60(b) and 98.61 (b) and (c), shall be allotted based upon the formula specified in section 658O(b) of the Act.

(b) For the U.S. Territories of Guam, American Samoa, the Virgin Islands of the United States, and the Commonwealth of the Northern Mariana Islands an amount up to one-half of one percent of the amount appropriated for the Child Care and Development Block Grant shall be reserved.

(1) Funds shall be allotted to these Territories based upon the following factors:

(i) A Young Child factor—the ratio of the number of children in the Territory under five years of age to the number of such children in all Territories; and

(ii) An Allotment Proportion factor—determined by dividing the per capita income of all individuals in all the Territories by the per capita income of all individuals in the Territory.

(A) Per capita income shall be:

(*1*) Equal to the average of the annual per capita incomes for the most recent period of three consecutive years for which satisfactory data are available at the time such determination is made; and

(*2*) Determined every two years.

(B) Per capita income determined, pursuant to paragraph (b)(1)(ii)(A) of this section, will be applied in establishing the allotment for the fiscal year for which it is determined and for the following fiscal year.

(C) If the Allotment Proportion factor determined at paragraph (b)(1)(ii) of this section:

(*1*) Exceeds 1.2, then the Allotment Proportion factor of the Territory shall be considered to be 1.2; or

(*2*) Is less than 0.8, then the Allotment Proportion factor of the Territory shall be considered to be 0.8.

(2) The formula used in calculating a Territory's allotment is as follows:

$$\frac{YCF_t \times APF_t}{\sum(YCF_t \times APF_t)} \times \text{amount reserved for Territories at paragraph (a) of this section.}$$

(ii) For purposes of the formula specified at paragraph (b)(2)(i) of this section, the term ''YCF_t'' means the Territory's Young Child factor as defined at paragraph (b)(1)(i) of this section.

(iii) For purposes of the formula specified at paragraph (b)(2)(i) of this section, the term ''APF_t'' means the Territory's Allotment Proportion factor as defined at paragraph (b)(1)(ii) of this section.

(c) For Indian Tribes and tribal organizations, including any Alaskan Native Village or regional or village corporation as defined in or established pursuant to the Alaska Native Claims Settlement Act (43 U.S.C. 1601 et seq) an amount up to two percent of the amount appropriated for the Child Care and Development Block Grant shall be reserved.

(1) Except as specified in paragraph (c)(2) of this section, grants to individual tribal grantees will be equal to the sum of:

(i) A base amount as set by the Secretary; and

(ii) An additional amount per Indian child under age 13 (or such similar age as determined by the Secretary from the best available data), which is determined by dividing the amount of funds available, less amounts set aside for eligible Tribes, pursuant to paragraph (c)(1)(i) of this section, by the number of all Indian children living on or near tribal reservations or other appropriate area served by the tribal grantee, pursuant to § 98.80(e).

(2) Grants to Tribes with fewer than 50 Indian children that apply as part of a consortium, pursuant to § 98.80(b)(1), are equal to the sum of:

(i) A portion of the base amount, pursuant to paragraph (c)(1)(i) of this section, that bears the same ratio as the number of Indian children in the Tribe living on or near the reservation, or other appropriate area served by the tribal grantee, pursuant to § 98.80(e), does to 50; and

(ii) An additional amount per Indian child, pursuant to paragraph (c)(1)(ii) of this section.

(3) Tribal consortia will receive grants that are equal to the sum of the individual grants of their members.

(d) All funds reserved for Territories at paragraph (b) of this section will be allotted to Territories, and all funds reserved for Tribes at paragraph (c) of this section will be allotted to tribal grantees. Any funds that are returned by the Territories after they have been allotted will revert to the Federal government.

(e) For other organizations, up to $2,000,000 may be reserved from the tribal funds reserved at § 98.61(c). From this amount the Secretary may award a grant to a Native Hawaiian Organization, as defined in section 4009(4) of the Augustus F. Hawkins-Robert T. Stafford Elementary and Secondary School Improvement Amendments of 1988 (20 U.S.C. 4909(4)) and to a private non-profit organization established for the purpose of serving youth who are Indians or Native Hawaiians. The Secretary will establish selection criteria and procedures for the award of grants under this subsection by notice in the **Federal Register**.

§ 98.62 Allotments from the Mandatory Fund.

(a) Each of the 50 States and the District of Columbia will be allocated from the funds appropriated under section 418(a)(3) of the Social Security Act, less the amounts reserved for technical assistance pursuant to § 98.60(b)(1) and the amount reserved for Tribes pursuant to paragraph (b), an amount of funds equal to the greater of:

(1) the Federal share of its child care expenditures under sections 402 (g) and (i) for fiscal year 1994 or 1995 (whichever is greater); or

(2) the average of the Federal share of its child care expenditures under sections 402 (g) and (i) for fiscal years 1992 through 1994.

(b) For Indian Tribes and tribal organizations up to 2 percent of the amount appropriated under section 418(a)(3) of the Social Security Act, less the amounts reserved for technical assistance pursuant to § 98.60(b)(1), shall be allocated according to the formula at paragraph (c). In Alaska, only the following 13 entities shall receive allocations under this subpart, in accordance with the formula at paragraph (c):

(1) The Metlakatla Indian Community of the Annette Islands Reserve:

(2) Arctic Slope Native Association;

(3) Kawerak, Inc.;

(4) Maniilaq Association;

(5) Association of Village Council Presidents;

(6) Tanana Chiefs Conference;

(7) Cook Inlet Tribal Council;

(8) Bristol Bay Native Association;

(9) Aleutian and Pribilof Islands Association;

(10) Chugachmuit;

(11) Tlingit and Haida Central Council;

(12) Kodiak Area Native Association; and

(13) Copper River Native Association.

(c)(1) Grants to individual Tribes with 50 or more Indian children, and to Tribes with fewer than 50 Indian children that apply as part of a consortium pursuant to § 98.80(b)(1), will be equal to an amount per Indian child under age 13 (or such similar age as determined by the Secretary from the best available data), which is determined by dividing the amount of funds available, by the number of all Indian children living on or near tribal reservations or other appropriate area served by the tribal grantee, pursuant to § 98.80(e).

(2) Tribal consortia will receive grants that are equal to the sum of the individual grants of their members.

§ 98.63 Allotments from the Matching Fund.

(a) To each of the 50 States and the District of Columbia there is allocated an amount equal to its share of the total available under section 418(a)(3) of the Social Security Act. That amount is based on the same ratio as the number of children under age 13 residing in the State bears to the national total of children under age 13. The number of children under 13 is derived from the best data available to the Secretary for the second preceding fiscal year.

(b) For purposes of this subsection, the amounts available under section 418(a)(3) of the Social Security Act excludes the amounts reserved and allocated under § 98.60(b)(1) for technical assistance and under § 98.62 (a) and (b) for the Mandatory Fund.

(c) Amounts under this subsection are available pursuant to the requirements at § 98.53(c).

§ 98.64 Reallotment and redistribution of funds.

(a) According to the provisions of this section State and Tribal Discretionary Funds are subject to reallotment, and State Matching Funds are subject to redistribution. State funds are reallotted or redistributed only to States as defined for the original allocation. Tribal funds are reallotted only to Tribes. Funds granted to the Territories are not subject to reallotment. Any funds granted to the Territories that are returned after they have been allotted will revert to the Federal government.

(b) Any portion of a State's Discretionary Fund allotment that is not required to carry out its Plan, in the period for which the allotment is made available, shall be reallotted to other States in proportion to the original allotments. For purposes of this paragraph the term ''State'' means the 50 States, the District of Columbia, and the Commonwealth of Puerto Rico. The other Territories and the Tribes may not receive reallotted State Discretionary Funds.

(1) Each year, the State shall report to the Secretary either the dollar amount from the previous year's grant that it will be unable to obligate by the end of the obligation period or that all funds will be obligated during such time. Such report shall be postmarked by April 1st.

(2) Based upon the reallotment reports submitted by States, the Secretary will reallot funds.

(i) If the total amount available for reallotment is $25,000 or more, funds will be reallotted to States in proportion to each State's allotment for the applicable fiscal year's funds, pursuant to § 98.61(a).

(ii) If the amount available for reallotment is less than $25,000, the Secretary will not reallot any funds, and such funds will revert to the Federal government.

(iii) If an individual reallotment amount to a State is less than $500, the Secretary will not issue the award, and such funds will revert to the Federal government.

(iv) If a State does not accept its share of the reallotted funds, those funds will be returned to the Federal government.

(3) If a State does not submit a reallotment report by the deadline for report submittal, either:

(i) The Secretary will determine that the State does not have any funds available for reallotment; or

(ii) In the case of a report postmarked after April 1st, any funds reported to be available for reallotment shall revert to the Federal government.

(4) States receiving reallotted funds shall obligate and expend these funds in accordance with § 98.60. The reallotment of funds does not extend the obligation period or the program period for expenditure of such funds.

(c)(1) Any portion of the Matching Fund granted to a State that is not obligated in the period for which the grant is made shall be redistributed. Funds, if any, will be redistributed on the request of, and only to, those other States that have met the requirements of § 98.53(c) in the period for which the grant was first made. For purposes of this paragraph the term ''State'' means the 50 States and the District of Columbia. Territorial and tribal grantees may not receive redistributed Matching Funds.

(2) Matching Funds allotted to a State under § 98.63(a), but not granted, revert to the Federal government.

(3) The amount of Matching Funds granted to a State that will be made available for redistribution will be based on the State's financial report to ACF for the Child Care and Development Fund (ACF–696) and is subject to the monetary limits at paragraph (b)(2).

(4) A State eligible to receive redistributed Matching Funds will also use the ACF–696 to request its share of the redistributed funds, if any.

(5) A State's share of redistributed Matching Funds is based on the same ratio as the number of children under 13 residing in the State to the number of children residing in all States eligible to receive and that request the redistributed Matching Funds.

(6) Redistributed funds are considered part of the grant for the fiscal year in which the redistribution occurs.

(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. States and Territories may not receive reallotted tribal funds.

(1) Each year, the Tribe shall report to the Secretary either the dollar amount from the previous year's grant that it will be unable to obligate by the end of the obligation period or that all funds will be obligated during such time. Such report shall be postmarked by April 1st.

(2) Based upon the reallotment reports submitted by Tribes, the Secretary will reallot Tribal Discretionary Funds among the other Tribes.

(i) If the total amount available for reallotment is $25,000 or more, funds will be reallotted to other tribal grantees in proportion to each Tribe's original allotment for the applicable fiscal year pursuant to § 98.62(c).

(ii) If the total amount available for reallotment is less than $25,000, the Secretary will not reallot any funds, and such funds will revert to the Federal government.

(iii) If an individual reallotment amount to an applicant Tribe is less than $500, the Secretary will not issue the award, and such funds will revert to the Federal government.

(3) If a Tribe does not submit a reallotment report by the deadline for report submittal, either:

(i) The Secretary will determine that Tribe does not have any funds available for reallotment; or

(ii) In the case of a report received after April 1st, any funds reported to be available for reallotment shall revert to the Federal government.

(4) Tribes receiving reallotted funds shall obligate and expend these funds in accordance with § 98.60. The reallotment of funds does not extend the obligation period or the program period for expenditure of such funds.

§ 98.65 Audits and financial reporting.

(a) Each Lead Agency shall have an audit conducted after the close of each program period in accordance with OMB Circular A–128 and the Single Audit Act.

(b) Lead Agencies are responsible for ensuring that subgrantees are audited in accordance with appropriate audit requirements.

(c) Not later than 30 days after the completion of the audit, Lead Agencies shall submit a copy of their audit report to the legislature of the State or, if applicable, to the Tribal Council(s). Lead Agencies shall also submit a copy of their audit report to the HHS Inspector General for Audit Services, as well as to their cognizant agency, if applicable.

(d) Any amounts determined through an audit not to have been expended in accordance with these statutory or regulatory provisions, or with the Plan, and that are subsequently disallowed by the Department shall be repaid to the Federal Government, or the Secretary will offset such amounts against any other CCDF funds to which the Lead Agency is or may be entitled.

(e) Lead Agencies shall provide access to appropriate books, documents, papers and records to allow the Secretary to verify that CCDF funds have been expended in accordance with the statutory and regulatory requirements of the program, and with the Plan.

(f) The audit required in paragraph (a) shall be conducted by an agency that is independent of the State, Territory or Tribe.

(g) The Secretary shall require financial reports as necessary.

§ 98.66 Disallowance procedures.

(a) Any expenditures not made in accordance with the Act, the implementing regulations, or the approved Plan, will be subject to disallowance.

(b) If the Department, as the result of an audit or a review, finds that expenditures should be disallowed, the Department will notify the Lead Agency of this decision in writing.

(c)(1) If the Lead Agency agrees with the finding that amounts were not expended in accordance with the Act, these regulations, or the Plan, the Lead Agency shall fulfill the provisions of the disallowance notice and repay any amounts improperly expended; or

(2) The Lead Agency may appeal the finding:

(i) By requesting reconsideration from the Assistant Secretary, pursuant to paragraph (f) of this section; or

(ii) By following the procedure in paragraph (d) of this section.

(d) A Lead Agency may appeal the disallowance decision to the Departmental Appeals Board in accordance with 45 CFR part 16.

(e) The Lead Agency may appeal a disallowance of costs that the Department has determined to be unallowable under an award. A grantee may not appeal the determination of award amounts or disposition of unobligated balances.

(f) The Lead Agency's request for reconsideration in (c)(2)(i) of this section shall be postmarked no later than 30 days after the receipt of the disallowance notice. A Lead Agency may request an extension within the 30-day time frame. The request for reconsideration, pursuant to (c)(2)(i) of this section, need not follow any prescribed form, but it shall contain:

(1) The amount of the disallowance;

(2) The Lead Agency's reasons for believing that the disallowance was improper; and

(3) A copy of the disallowance decision issued pursuant to paragraph (b) of this section.

(g)(1) Upon receipt of a request for reconsideration, pursuant to (c)(2)(i) of this section, the Assistant Secretary or the Assistant Secretary's designee will inform the Lead Agency that the request is under review.

(2) The Assistant Secretary or the designee will review any material submitted by the Lead Agency and any other necessary materials.

(3) If the reconsideration decision is adverse to the Lead Agency's position, the response will include a notification of the Lead Agency's right to appeal to the Departmental Appeals Board, pursuant to paragraph (d) of this section.

(h) If a Lead Agency refuses to repay amounts after a final decision has been made, the amounts will be offset against future payments to the Lead Agency.

(i) The appeals process in this section is not applicable if the disallowance is part of a compliance review, pursuant to § 98.90, the findings of which have been appealed by the Lead Agency.

(j) Disallowances under the CCDF program are subject to interest regulations at 45 CFR part 30. Interest will begin to accrue from the date of notification.

§ 98.67 Fiscal requirements.

(a) Lead Agencies shall expend and account for CCDF funds in accordance with their own laws and procedures for expending and accounting for their own funds.

(b) Unless otherwise specified in this part, contracts that entail the expenditure of CCDF funds shall comply with the laws and procedures generally applicable to expenditures by the contracting agency of its own funds.

(c) Fiscal control and accounting procedures shall be sufficient to permit:

(1) Preparation of reports required by the Secretary under this subpart and under subpart H; and

(2) The tracing of funds to a level of expenditure adequate to establish that such funds have not been used in violation of the provisions of this part.

Subpart H—Program Reporting Requirements

§ 98.70 Reporting requirements.

(a) Quarterly Disaggregate Report—

(1) State and territorial Lead Agencies that receive assistance under the CCDF shall prepare and submit to the Department, in a manner specified by the Secretary, a quarterly disaggregate report of monthly family unit data. Data shall be collected monthly and submitted quarterly.

(2) The information shall be reported for the three-month federal fiscal period preceding the required report. The first report shall be submitted no later than February 15, 1998, and quarterly thereafter. The first report shall include data from the first quarter of FFY 1998 (October 1997 through December 1997).

(3) State and territorial Lead Agencies choosing to submit data based on a sample shall submit a sampling plan to ACF for approval 60 days prior to the submission of the first quarterly report. States are not prohibited from submitting disaggregate data for the entire population receiving CCDF services.

(4) Quarterly disaggregate family unit reports to the Secretary shall include the information listed in § 98.71(a).

(b) Biannual Report—

(1) State and territorial Lead Agencies that receive assistance under CCDF shall prepare and submit to the Secretary a biannual report. The report shall be submitted, in a manner specified by the Secretary, by June 30 and December 31 of each year and shall cover the most recent six-month federal fiscal period (October through March or April through September, as appropriate).

(2) The first biannual aggregate report shall be submitted no later than December 31, 1997, and every six months thereafter.

(3) Biannual reports to the Secretary shall include the information listed in § 98.71(b).

(c) Tribal Annual Report

(1) Tribal Lead Agencies that receive assistance under CCDF shall prepare and submit to the Secretary an annual report.

(2) The report shall be submitted in the manner specified by the Secretary by December 31 of each year and shall cover services for children and families served with CCDF funds during the preceding Federal Fiscal Year.

(3) Annual reports to the Secretary shall include the information listed in § 98.71(c).

§ 98.71 Content of reports.

(a) At a minimum, a State or territorial Lead Agency's quarterly disaggregate report to the Secretary, as required in § 98.70, shall include the following information on services provided under CCDF grant funds, including Federal Discretionary (which includes any funds transferred from the TANF Block Grant), Mandatory, and Matching Funds; and State Matching and Maintenance-of-Effort (MOE) Funds:

(1) family income;

(2) county of residence;

(3) gender and month/year of birth of children;

(4) race of children;

(5) whether the family includes only one parent;

(6) the sources of family income, including the amount obtained from

employment (including self-employment), cash or other assistance under Part A of title IV of the Social Security Act, housing assistance, assistance under the Food Stamp Act of 1977; child support payments, and other assistance programs;

(7) the number of months the family has received benefits;

(8) the type(s) of child care in which the child was enrolled (such as family child care, in-home care, or center-based child care);

(9) whether the child care provider involved was a relative;

(10) the cost of child care for such families;

(11) the total expected dollar amount per month to be received by the provider for each child;

(12) the total hours per month of such care;

(13) Social Security Number of the head of the family unit receiving child care assistance;

(14) reasons for receiving care; and

(15) any additional information that the Secretary shall require.

(b) At a minimum, a State or territorial Lead Agency's biannual aggregate report to the Secretary, as required in § 98.70(b), shall include the following information on services provided through all CCDF grant funds, including Federal Discretionary (which includes any funds transferred from the TANF Block Grant), Mandatory, and Matching Funds; and State Matching and MOE Funds:

(1) the number of child care providers that received funding under CCDF as separately identified based on the types of providers listed in section 658P(5) of the amended Child Care and Development Block Grant Act;

(2) the number of children served by payments through certificates or vouchers, contracts or grants, and cash under public benefit programs, listed by the primary type of child care services provided during the last month of the report period (or the last month of service for those children leaving the program before the end of the report period);

(3) the manner in which consumer education information was provided to parents and the number of parents to whom such information was provided;

(4) the total number (without duplication) of children and families served under CCDF; and

(5) any additional information that the Secretary shall require.

(c) At a minimum, a tribal Lead Agency's annual report to the Secretary, as required in § 98.70(c), shall include the following information on services provided through all CCDF tribal grant awards:

(1) unduplicated number of families and children receiving services;

(2) children served by age;

(3) children served by reason for care;

(4) children served by payment method (certificate/voucher or contract/grants);

(5) average number of hours of care provided per week;

(6) average hourly amount paid for care;

(7) children served by level of family income; and

(8) children served by type of child care providers.

Subpart I—Indian Tribes

§ 98.80 General procedures and requirements.

An Indian Tribe or tribal organization (as described in Subpart G of these regulations) may be awarded grants to plan and carry out programs for the purpose of increasing the availability, affordability, and quality of child care and childhood development programs subject to the following conditions:

(a) An Indian Tribe applying for or receiving CCDF funds shall be subject to all the requirements under this part, unless otherwise indicated.

(b) An Indian Tribe applying for or receiving CCDF funds shall:

(1) Have at least 50 children under 13 years of age (or such similar age, as determined by the Secretary from the best available data) in order to be eligible to operate a CCDF program. This limitation does not preclude an Indian Tribe with fewer than 50 children under 13 years of age from participating in a consortium that receives CCDF funds; and

(2) Demonstrate its current service delivery capability, including skills, personnel, resources, community support, and other necessary components to satisfactorily carry out the proposed program.

(c) A consortium representing more than one Indian Tribe may be eligible to receive CCDF funds on behalf of a particular Tribe if:

(1) The consortium adequately demonstrates that each participating Tribe authorizes the consortium to receive CCDF funds on behalf of each Tribe or tribal organization in the consortium; and

(2) The consortium consists of Tribes that each meet the eligibility requirements for the CCDF program as defined in this part, or that would otherwise meet the eligibility requirements if the Tribe or tribal organization had at least 50 children under 13 years of age; and

(3) All the participating consortium members are in geographic proximity to one another (including operation in a multi-State area) or have an existing consortium arrangement; and

(4) The consortium demonstrates that it has the managerial, technical and administrative staff with the ability to administer government funds, manage a CCDF program and comply with the provisions of the Act and of this part.

(d) The awarding of a grant under this section shall not affect the eligibility of any Indian child to receive CCDF services provided by the State or States in which the Indian Tribe is located.

(e) For purposes of the CCDF, the determination of the number of children in the Tribe, pursuant to paragraph (b)(1) of this section, shall include Indian children living on or near reservations, with the exception of Tribes in Alaska, California and Oklahoma.

(f) In determining eligibility for services pursuant to § 98.20(a)(2), a tribal program may use either:

(1) 85 percent of the State median income for a family of the same size; or

(2) 85 percent of the median income for a family of the same size residing in the area served by the tribal Lead Agency.

§ 98.81 Application and Plan procedures.

(a) In order to receive CCDF funds, a tribal Lead Agency shall apply for funds pursuant to § 98.13, except that the requirement at § 98.13(b)(2) does not apply.

(b) A tribal Lead Agency shall submit a CCDF Plan, as described at § 98.16, with the following additions and exceptions:

(1) The Plan shall be accompanied by a tribal resolution identifying the Lead Agency, pursuant to § 98.83(a).

(2) The Plan shall include the basis for determining family eligibility pursuant to § 98.80(f).

(3) For purposes of determining eligibility, the following terms shall also be defined:

(i) Indian child; and

(ii) Indian reservation or tribal service area.

(4) The tribal Lead Agency shall also assure that:

(i) The applicant shall coordinate, to the maximum extent feasible, with the Lead Agency in the State in which the applicant shall carry out CCDF programs or activities, pursuant to § 98.82; and

(ii) In the case of an applicant located in a State other than Alaska, California, or Oklahoma, CCDF programs and activities shall be carried out on an Indian reservation for the benefit of Indian children, pursuant to § 98.83(b).

(5) The Plan shall include any information, as prescribed by the

Secretary, necessary for determining the number of children in accordance with §§ 98.61(c), 98.62(c), and 98.80(b)(1).

(6) Plans for those Tribes specified at § 98.83(f) (i.e., Tribes with small grants) are not subject to the requirements in § 98.16(g)(2) or § 98.16(k) unless the Tribe chooses to include such services, and, therefore, the associated requirements, in its program.

(7) The Plan is not subject to requirements in § 98.16(f)(8) or § 98.16(g)(4).

(8) In its initial Plan, an Indian Tribe shall describe its current service delivery capability pursuant to § 98.80(b)(2).

(9) A consortium shall also provide the following:

(i) A list of participating or constituent members, including demonstrations from these members pursuant to § 98.80(c)(1);

(ii) A description of how the consortium is coordinating services on behalf of its members, pursuant to § 98.83(c)(1); and

(iii) As part of its initial Plan, the additional information required at § 98.80(c)(4).

(c) When initially applying under paragraph (a) of this section, a tribal Lead Agency shall include a Plan that meets the provisions of this part and shall be for a two-year period, pursuant to § 98.17(a).

§ 98.82 Coordination.

Tribal applicants shall coordinate as required by §§ 98.12 and 98.14 and:

(a) To the maximum extent feasible, with the Lead Agency in the State or States in which the applicant will carry out the CCDF program; and

(b) With other Federal, State, local, and tribal child care and childhood development programs.

§ 98.83 Requirements for tribal programs.

(a) The grantee shall designate an agency, department, or unit to act as the tribal Lead Agency to administer the CCDF program.

(b) With the exception of Alaska, California, and Oklahoma, programs and activities shall be carried out on an Indian reservation for the benefit of Indian children.

(c) In the case of a tribal grantee that is a consortium:

(1) A brief description of the direct child care services funded by CCDF for each of their participating Tribes shall be provided by the consortium in their two-year CCDF Plan; and

(2) Variations in CCDF programs or requirements and in child care licensing, regulatory and health and safety requirements shall be specified in written agreements between the consortium and the Tribe.

(d) Tribal Lead Agencies shall not be subject to the requirements at §§ 98.41(a)(1)(i), 98.44(a), 98.50(e) 98.52(a), 98.53 and 98.63.

(e) The base amount of any tribal grant is not subject to the administrative cost limitation at paragraph (g) of this section or the quality expenditure requirement § 98.51(a). The base amount may be expended for any costs consistent with the purposes and requirements of the CCDF.

(f) Tribal Lead Agencies whose total CCDF allotment pursuant to §§ 98.61(c) and 98.62(b) is less than an amount established by the Secretary shall not be subject to the following requirements:

(1) The assurance at § 98.15(a)(2);

(2) The requirement for certificates at § 98.30(a) and § 98.30(d); and

(3) The requirements for quality expenditures § 98.51(a).

(g) A tribal Lead Agency may use up to 15 percent of its total CCDF per child amount provided under §§ 98.61(c) and 98.62(b) (including funds used for construction or major renovation in accordance with § 98.84) for administrative costs. Amounts used for construction and major renovation in accordance with § 98.84 are not considered administrative costs.

(h)(1) CCDF funds are available for costs incurred by the tribal Lead Agency only after the funds are made available by Congress for Federal obligation unless costs are incurred for planning activities related to the submission of an initial CCDF Plan.

(2) Federal obligation of funds for planning costs, pursuant to paragraph (h)(1) of this section is subject to the actual availability of the appropriation.

§ 98.84 Construction and renovation of child care facilities.

(a) Upon requesting and receiving approval from the Secretary, tribal Lead Agencies may use amounts provided under §§ 98.61(c) and 98.62(b) to make payments for construction or major renovation of child care facilities (including paying the cost of amortizing the principal and paying interest on loans).

(b) To be approved by the Secretary, a request shall be made in accordance with uniform procedures established by program instruction and, in addition, shall demonstrate that:

(1) Adequate facilities are not otherwise available to enable the tribal Lead Agency to carry out child care programs;

(2) The lack of such facilities will inhibit the operation of child care programs in the future; and

(3) The use of funds for construction or major renovation will not result in a decrease in the level of child care services provided by the tribal Lead Agency as compared to the level of services provided by the tribal Lead Agency in the preceding fiscal year.

(c)(1) Tribal Lead Agencies may use CCDF funds for reasonable and necessary planning costs associated with assessing the need for construction or renovation or for preparing a request, in accordance with the uniform procedures established by program instruction, to spend CCDF funds on construction or major renovation.

(2) A tribal Lead Agency may not use CCDF funds to pay for the costs of an architect, engineer, or other consultant before its request is approved by the Secretary.

(d) Tribal Lead Agencies that receive approval from the Secretary to use CCDF funds for construction or major renovation shall comply with the following:

(1) Federal share requirements and use of property requirements at 45 CFR 92.31;

(2) Transfer and disposition of property requirements at 45 CFR 92.31(c);

(3) Title requirements at 45 CFR 92.31(a);

(4) Cost principles and allowable cost requirements at 45 CFR 92.22;

(5) Program income requirements at 45 CFR 92.25;

(6) Procurement procedures at 45 CFR 92.36; and;

(7) Any additional requirements established by program instruction, including requirements concerning:

(i) The recording of a Notice of Federal Interest in the property;

(ii) Rights and responsibilities in the event of a grantee's default on a mortgage;

(iii) Insurance and maintenance;

(iv) Submission of plans, specifications, inspection reports, and other legal documents; and

(v) Modular units.

(e) In lieu of obligation and liquidation requirements at § 98.60(e), tribal Lead Agencies shall liquidate CCDF funds used for construction or major renovation by the end of the second fiscal year following the fiscal year for which the grant is awarded.

(f) Tribal Lead Agencies may expend funds, without requesting approval pursuant to paragraph (a), for minor renovation.

Subpart J—Monitoring, Non-Compliance and Complaints

§ 98.90 Monitoring.

(a) The Secretary will monitor programs funded under the CCDF for compliance with:

(1) The Act;

(2) The provisions of this part; and

(3) The provisions and requirements set forth in the CCDF Plan approved under § 98.18;

(b) If a review or investigation reveals evidence that the Lead Agency, or an entity providing services under contract or agreement with the Lead Agency, has failed to substantially comply with the Plan or with one or more provisions of the Act or implementing regulations, the Secretary will issue a preliminary notice to the Lead Agency of possible non-compliance. The Secretary shall consider comments received from the Lead Agency within 60 days (or such longer period as may be agreed upon between the Lead Agency and the Secretary).

(c) Pursuant to an investigation conducted under paragraph (a) of this section, a Lead Agency shall make appropriate books, documents, papers, manuals, instructions, and records available to the Secretary, or any duly authorized representatives, for examination or copying on or off the premises of the appropriate entity, including subgrantees and contractors, upon reasonable request.

(d)(1) Lead Agencies and subgrantees shall retain all CCDF records, as specified in paragraph (c) of this section, and any other records of Lead Agencies and subgrantees that are needed to substantiate compliance with CCDF requirements, for the period of time specified in paragraph (e) of this section.

(2) Lead Agencies and subgrantees shall provide through an appropriate provision in their contracts that their contractors will retain and permit access to any books, documents, papers, and records of the contractor that are directly pertinent to that specific contract.

(e) *Length of retention period.* (1) Except as provided in paragraph (e)(2) of this section, records specified in paragraph (c) of this section shall be retained for three years from the day the Lead Agency or subgrantee submits the Financial Reports required by the Secretary, pursuant to § 98.65(g), for the program period.

(2) If any litigation, claim, negotiation, audit, disallowance action, or other action involving the records has been started before the expiration of the three-year retention period, the records shall be retained until completion of the action and resolution of all issues that arise from it, or until the end of the regular three-year period, whichever is later.

§ 98.91 Non-compliance.

(a) If after reasonable notice to a Lead Agency, pursuant to §§ 98.90 or 98.93, a final determination is made that:

(1) There has been a failure by the Lead Agency, or by an entity providing services under contract or agreement with the Lead Agency, to comply substantially with any provision or requirement set forth in the Plan approved under § 98.16; or

(2) If in the operation of any program for which funding is provided under the CCDF, there is a failure by the Lead Agency, or by an entity providing services under contract or agreement with the Lead Agency, to comply substantially with any provision of the Act or this part, the Secretary will provide to the Lead Agency a written notice of a finding of non-compliance. This notice will be issued within 60 days of the preliminary notification in § 98.90(b), or within 60 days of the receipt of additional comments from the Lead Agency, whichever is later, and will provide the opportunity for a hearing, pursuant to part 99.

(b) The notice in paragraph (a) of this section will include all relevant findings, as well as any penalties or sanctions to be applied, pursuant to § 98.92.

(c) Issues subject to review at the hearing include the finding of non-compliance, as well as any penalties or sanctions to be imposed pursuant to § 98.92.

§ 98.92 Penalties and sanctions.

(a) Upon a final determination that the Lead Agency has failed to substantially comply with the Act, the implementing regulations, or the Plan, one of the following penalties will be applied:

(1) The Secretary will disallow the improperly expended funds;

(2) An amount equal to or less than the improperly expended funds will be deducted from the administrative portion of the State allotment for the following fiscal year; or

(3) A combination of the above options will be applied.

(b) In addition to imposing the penalties described in paragraph (a) of this section, the Secretary may impose other appropriate sanctions, including:

(1) Disqualification of the Lead Agency from the receipt of further funding under the CCDF; or

(2)(i) A penalty of not more than four percent of the funds allotted under § 98.61 (i.e., the Discretionary Funds) for a Fiscal Year shall be withheld if the Secretary determines that the Lead Agency has failed to properly implement a provision of the Act, these regulations, or the Plan required under § 98.16;

(ii) This penalty will be withheld no earlier than the second full quarter following the quarter in which the Lead Agency was notified of the proposed penalty;

(iii) This penalty will not be applied if the Lead Agency corrects the failure or violation before the penalty is to be applied or if it submits a plan for corrective action that is acceptable to the Secretary; and

(iv) The Lead Agency may show cause to the Secretary why the amount of the penalty, if applied, should be reduced.

(c) If a Lead Agency is subject to additional sanctions as provided under paragraph (b) of this section, specific identification of any additional sanctions being imposed will be provided in the notice provided pursuant to § 98.91.

(d) Nothing in this section, or in §§ 98.90 or 98.91, will preclude the Lead Agency and the Department from informally resolving a possible compliance issue without following all of the steps described in §§ 98.90, 98.91 and 98.92. Penalties and/or sanctions, as described in paragraphs (a) and (b) of this section, may nevertheless be applied, even though the issue is resolved informally.

(e) It is at the Secretary's sole discretion to choose the penalty to be imposed under paragraphs (a) and (b).

§ 98.93 Complaints.

(a) This section applies to any complaint (other than a complaint alleging violation of the nondiscrimination provisions) that a Lead Agency has failed to use its allotment in accordance with the terms of the Act, the implementing regulations, or the Plan. The Secretary is not required to consider a complaint unless it is submitted as required by this section. Complaints with respect to discrimination should be referred to the Office of Civil Rights of the Department.

(b) Complaints with respect to the CCDF shall be submitted in writing to the Assistant Secretary for Children and Families, 370 L'Enfant Promenade, S.W., Washington, D.C. 20447. The complaint shall identify the provision of the Plan, the Act, or this part that was allegedly violated, specify the basis for alleging the violation(s), and include all relevant information known to the person submitting it.

(c) The Department shall promptly furnish a copy of any complaint to the affected Lead Agency. Any comments received from the Lead Agency within 60 days (or such longer period as may be agreed upon between the Lead Agency and Department) shall be considered by the Department in responding to the complaint. The Department will conduct an investigation of complaints, where appropriate.

(d) The Department will provide a written response to complaints within 180 days after receipt. If a final resolution cannot be provided at that time, the response will state the reasons why additional time is necessary.

(e) Complaints that are not satisfactorily resolved through communication with the Lead Agency will be pursued through the process described in § 98.90.

PART 99—PROCEDURE FOR HEARINGS FOR THE CHILD CARE AND DEVELOPMENT FUND

2. The heading of part 99 is revised to read as set forth above.

3. The authority citation for part 99 is revised to read as follows:

Authority: 42 U.S.C. 618, 9858

PART 99—[AMENDED]

4. In part 99 make the following changes:

a. Remove the words ''Child Care and Development Block Grant'' and add in their place, wherever they appear, the words ''Child Care and Development Fund.''

b. Remove the word ''Grantees'' and add in its place, wherever it appears, the words ''Lead Agencies.''

c. Remove the word ''Grantee'' and add in its place, wherever it appears, the words ''Lead Agency.''

d. Remove the words ''Block Grant Plan'' and add in their place, wherever they appear, the words ''CCDF Plan.''

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