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Child Care and Development Fund (CCDF) Program; Proposed Rule

DEPARTMENT OF HEALTH AND HUMAN SERVICES

45 CFR Part 98

RIN 0970–AC53

Child Care and Development Fund (CCDF) Program

AGENCY: Office of Child Care (OCC), Administration for Children and Families (ACF), Department of Health and Human Services (HHS).

ACTION: Notice of proposed rulemaking.

SUMMARY: The Administration for Children and Families (ACF) proposes to amend the Child Care and Development Fund (CCDF) regulations. This proposed rule makes changes to CCDF regulatory provisions in order to strengthen health and safety requirements for child care providers, reflect current State and local practices to improve the quality of child care, infuse new accountability for Federal tax dollars, and leverage the latest knowledge and research in the field of early care and education to better serve low-income children and families.

DATES: In order to be considered, comments on this proposed rule must be received on or before August 5, 2013.

ADDRESSES: Interested persons are invited to submit comments to the Office of Child Care, 370 L'Enfant Promenade SW., Washington, DC 20024, Attention: Cheryl Vincent, Office of Child Care, or electronically via the Internet at *http://www.regulations.gov.* If you submit a comment, please include your name and address, identify the docket number for this rulemaking (ACF–2013–0001), indicate the specific section of this document to which each comment applies, and give the reason for each comment. You may submit your comments and material by electronic means, mail, or delivery to the address above, but please submit your comments and material by only one means. A copy of this Notice of Proposed Rulemaking may be downloaded from *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Cheryl Vincent, Office of Child Care, 202–205–0750 (not a toll-free call). 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:

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I. Executive Summary

Need for the regulatory action. The Child Care and Development Fund (CCDF) is the primary Federal funding source devoted to providing low-income families with access to child care and improving the quality of child care. It has the twin goals of promoting families' economic self-sufficiency by making child care more affordable, and fostering healthy child development and school success by improving the quality of child care. This proposed regulatory action is needed to improve accountability broadly across many areas of the CCDF program, but is especially focused on ensuring children supported by CCDF funds are in safe, healthy, quality child care, and empowering parents with transparent information about the child care choices available to them.

Last reauthorized in 1996, the CCDF program has not undergone any significant review in more than 15 years, yet it has far-reaching implications for America's poorest children. It provides child care assistance to 1.6 million children from nearly 1 million low-income working families. Half of the children served are living at or below poverty level. In addition, children who receive CCDF are cared for alongside children who do not receive CCDF, by approximately 500,000 participating child care providers, some of whom lack basic assurances needed to ensure children are safe, healthy and learning.

National surveys have demonstrated that most parents logically assume their child care providers have had a background check, had training in child health and safety, and are regularly monitored (National Association of Child Care Resource and Referral Agencies, *National Parent Polling Results,* 2011). However, State policies surrounding the training and oversight of child care providers vary widely and may not include these requirements. In addition, approximately 10 percent of CCDF children are cared for in unregulated centers and homes, meaning there is little to no oversight with respect to compliance with basic standards designed to safeguard children's well-being, such as first-aid and safe sleep practices. This can leave children in unsafe conditions, even as their care is being funded with public dollars. There have been many documented instances of children being injured or even dying in child care, some of which were due to a lack of basic requirements for child care providers. While it is not possible to eliminate all tragic circumstances, this proposed rule focuses on preventing these situations by increasing accountability for protecting the health and safety of children in child care. It would add requirements for child care providers serving children receiving CCDF assistance, including background checks, pre-service training in specific areas of health and safety, and strengthened monitoring of providers.

Yet, compliance with health and safety standards is not enough to ensure that children are getting the quality child care they need to support their healthy development and school success. A growing body of research demonstrates that the first five years of a child's cognitive and emotional development establish the foundation for learning and achievement throughout life. This is especially true for low-income children who face a school readiness and achievement gap and can benefit the most from high quality early learning environments. Children receiving CCDF subsidies come from low-income families and typically start school far behind their peers in key areas such as language development and problem-solving skills. Research shows that the quality and stability of adult, child relationships matter and positive, lasting interactions with caregivers can help foster the development and learning needed to help close those gaps. In light of this research, many States, Territories, and Tribes, working collaboratively with the Federal

government, have taken important steps to make the CCDF program more child-focused and family-friendly; however, implementation of these evidence-informed practices is uneven across the country and critical gaps remain.

Beyond improving health and safety, CCDF can address this in two ways; first by investing in the quality of child care and providing parents with the transparent information they need to find that care, and second by improving the stability of care through implementation of family-friendly policies.

First, parents often lack basic information about child care providers—including whether they have a consistent track record of meeting health and safety standards and information about the quality and qualifications of the caregivers. This proposed rule includes a set of provisions designed to provide greater transparency to parents so they can make more informed choices for their families and to facilitate quality improvement efforts by child care providers. It makes available, for both CCDF parents and the general public, clear, easy-to-understand information about the quality of child care providers in their communities. In addition, it facilitates replication of best practices across the country by directing States, Territories, and Tribes toward making more purposeful investments in child care quality improvement and tracking the progress and success of those investments.

Secondly, this proposed rule includes provisions to make the CCDF program more ''family friendly'' by reducing unnecessary administrative burdens on families (as well as State, Territory, and Tribal agencies administering the program), and by improving coordination with other programs serving low-income families. Currently, most families receiving CCDF-assistance participate in the program for only 3 to 7 months, and many are still eligible when they leave the program. Parents often find it difficult to navigate administrative processes and paperwork required to maintain their eligibility and State policies can be inflexible to changes in a family's circumstances. In some States, if a parent loses their job they also lose their child care assistance right away, making it difficult to look for a new job. If a parent finds a new job they may have to reapply for CCDF and find themselves on a waiting list. This disrupts both the parents' economic stability and the relationship that a child has with his or her caregiver. Research has shown that breaks in the relationship that a child has with a caregiver is detrimental to optimal child development, especially for infants and toddlers. Changes in this proposed rule support a set of policies that will stabilize families' access to child care assistance and in turn, help stabilize their employment and maintain the stability of the child's care arrangement.

Legal authority. This proposed regulation is being issued under the authority granted to the Secretary of Health and Human Services by the CCDBG Act (42 U.S.C. 9858, *et seq.*) and Section 418 of the Social Security Act (42 U.S.C. 618).

Summary of the major provisions of this proposed regulatory action. This proposed rule includes regulatory changes for CCDF in four priority areas: (1) improving health and safety in child care; (2) improving the quality of child care; (3) establishing family-friendly policies; and (4) strengthening program integrity.

The proposed rule would improve health and safety protections for children receiving CCDF assistance by specifying minimum State health and safety standards for their child care providers, including pre-inspections for compliance with State and local fire, health, and building codes, criminal background checks and pre-service training in specific areas, such as first aid and CPR. The proposed rule requires States to take steps to improve the monitoring of child care providers who receive CCDF to care for children by conducting unannounced, on-site visits to CCDF providers.

In addition to establishing a floor of basic health and safety, this proposed rule seeks to improve the quality of child care and provide parents with information about child care providers available to them. It requires that States post information about health, safety and licensing history of child care providers on a user-friendly Web site and establish a hotline for parents to submit complaints about child care providers. The proposal builds on practices adopted by more than half the States by requiring establishment of provider-specific quality indicators, such as through a Quality Rating and Improvement System (QRIS), reflecting teaching staff qualifications, learning environment, and curricula and activities. This makes it easier for parents to compare child care providers and choose a provider that best meets their family's needs. It also encourages States to adopt an organized framework for their quality improvement activities including helping child care providers meet higher standards and helping them improve their education and training. Finally, the proposed rule addresses the lack of supply of high quality care, by asking States to identify areas of the highest need and use grants or contracts directly with child care providers to improve the quality in those places.

To increase stability in the lives of low-income families receiving CCDF, this proposed rule includes family-friendly policies to make it easier for parents to access and maintain their child care assistance. It establishes a 12-month period for re-determining eligibility and allows parents who lose their job to remain eligible for a period of time while they look for a new job. It allows States more flexibility to minimize requirements for families to maintain their eligibility and to waive co-payments for families. These provisions also make it easier for States to align CCDF policies with other programs that may be serving the families, such as the Supplemental Nutrition Assistance Program (SNAP), Medicaid, the Children's Health Insurance Program, and Early Head Start and Head Start.

Finally, this proposed rule improves program integrity by requiring States with high rates of improper payments for the CCDF program to develop a plan for reducing those rates in accordance with the Improper Payments Elimination and Reduction Act. It also adds new provisions requiring States to have in place effective internal controls for sound fiscal management, processes for identifying fraud and other program violations, and procedures for accurately verifying a family's eligibility.

This proposed rule recognizes the importance of State, Territory, and Tribal flexibility in administration of the program. In many areas the proposed rule establishes a clear expectation for States, Territories and Tribes, but allows a range of implementation options to fit their individual circumstances. For example, it allows States, Territories, and Tribes to exempt relatives and caregivers in the child's home from some or all of the CCDF health and safety requirements and to set the period of time they allow for a family to search for a job. The preamble highlights the ways that the proposed rule incorporates practices common in many States and identifies alternative options for implementing new requirements. In many cases, the examples are illustrative and States can identify the best approaches for their jurisdictions. Similarly, we expect especially wide variation in approaches adopted by Tribes. ACF is committed to consulting with Tribal leadership on the provisions of this proposed rule and we

look forward to working with Tribes on practices that are a good fit for Tribal communities.

Cost and benefits. Changes in this proposed rule directly benefit children and parents who use CCDF assistance to pay for child care. The 1.6 million children who are in child care funded by CCDF would have stronger protections for their health and safety, which addresses every parent's paramount concern. But the effect of these changes would go far beyond the children who directly participate in CCDF. Not only children who receive CCDF, but all the children in the care of a participating CCDF provider, will be safer because that provider has had a background check and is more knowledgeable about CPR, first aid, safe sleep for infants, and the safe transportation of children. The consumer education and transparency provisions in this proposed rule will benefit not only CCDF families, but all parents selecting child care by requiring States to post provider-specific information about child care providers on a public Web site with information about health and safety and licensing requirements. Several provisions in this proposed rule benefit child care providers by encouraging States to invest in high quality child care providers and professional development and to take into account quality when they determine child care payment rates. It also places a stronger emphasis on practices States use to reimburse providers, such as ensuring timely payments and paying for absence days which is a common practice in the child care market.

There are a significant number of States, Territories, and Tribes that have already implemented many of these policies and we have been purposeful throughout to note these numbers. The cost of implementing the changes in this proposed rule will vary depending on a State's specific situation. ACF does not believe the costs of this proposed regulatory action would be economically significant and that the tremendous benefits to low-income children justify costs associated with this proposed rule.

II. Background

A. Child Care and Development Fund (CCDF)

The CCDF program is administered by the Office of Child Care (OCC), Administration for Children and Families (ACF) in the Department of Health and Human Services (HHS). CCDF funds are allocated through formula grants to State, Territory, and Tribal Lead Agencies. CCDF provides financial assistance to low-income families to access child care so they can work or attend a job training or educational program. The program also provides funding to improve the quality of child care and increase the supply and availability of child care for all families, including those who receive no direct assistance through CCDF.

Over 12 million young children regularly rely on child care to support their healthy development and school success. Additionally, more than 8 million children participate in a range of school-age programs before- and after-school and during summers and school breaks. CCDF is the primary Federal funding source devoted to providing low-income families with access to child care and before-and after-school care and improving the quality of care. Each year, States, Territories, and Tribes invest $1 billion in CCDF funds to support child care quality improvement activities that are designed to create better learning environments and more effective caregivers in child care centers and family child care homes across the country.

CCDF was created more than 15 years ago, after Congress enacted the Personal Responsibility and Work Opportunity Reconciliation Act (PRWORA) of 1996 (Pub. L. 104–193), a comprehensive welfare reform plan that included new work requirements and provided supports to families moving from welfare to work, including new consolidated funding for child care. This funding, provided under section 418 of the Social Security Act (42 U.S.C. 618), combined with funding from the Child Care and Development Block Grant (CCDBG) Act of 1990 (42 U.S.C 9858 *et seq.*), was designated by HHS as the Child Care and Development Fund. CCDF regulations published in 1998 at 45 CFR parts 98 and 99 implemented the child care provisions of PRWORA and, excepting the addition of a new Subpart K to require Lead Agencies to report improper payments, the regulations have undergone only minor changes since becoming effective.

At the time current CCDF regulations were drafted, policymakers were concentrated on re-positioning an entitlement-based welfare system into one that provided benefits provisionally based on work. The resulting focus of the CCDF regulations was largely dedicated to the goal of enabling low-income mothers to transition from welfare to work. This is evident in a fact sheet developed by HHS shortly after passage of PRWORA which stated that the new welfare law provided an increase in child care funding ''to help more mothers move into jobs.'' (*http://www.acf.hhs.gov/programs/cse/pubs/1996/news/prwora.htm*) CCDF was closely tied to the new Temporary Assistance for Needy Families (TANF) program which focused on assisting needy families through promotion of job preparation and work activities.

In the decade and a half since PRWORA, the focus of the CCDF program has changed as we have learned a remarkable amount about the value of high quality early learning environments for young children. CCDF is a dual purpose Federal program with a two-generational impact. Low-income parents need access to child care in order to work and gain economic independence and low-income children benefit the most from a high quality early learning setting. Traditionally, CCDF has been understood as primarily providing access to child care to support work, with a secondary focus on supporting children's development by improving the quality of child care. We believe these purposes—access and quality—are not competing, but synergetic.

Federal CCDF dollars should provide access to high quality care in recognition of the impact CCDF has on our nation's most disadvantaged and vulnerable children. We do not intend to diminish the importance of CCDF as a work support. Yet, in order to fully leverage the Federal investment, we must be accountable for ensuring that children supported with CCDF funds are placed in safe, healthy, nurturing settings that are effective in promoting learning, child development and school readiness. This dual purpose, two-generational framework envisions the program as an investment supporting the child's long-term development and providing the parent with an opportunity to work or participate in job training or educational activities with peace of mind about their children's safety and learning.

CCDF regulations pre-date much of the current science on brain development in the early years of children's lives. Ten years ago, HHS (in collaboration with other Federal agencies and private partners) funded the National Academies of Science report, *Neurons to Neighborhoods.* (National Research Council and Institute of Medicine, *From Neurons to Neighborhoods: The Science of Early Childhood Development,* 2000) The findings from this report showed that brain development is most rapid during the first five years of life, and that early experiences matter for healthy development. Nurturing and stimulating care given in the early years of life build

optimal brain architecture that allows children to maximize their enormous potential for learning. On the other hand, hardship in the early years of life can lead to later problems. Interventions in the first years of life are capable of helping to shift the odds for those at risk of poor outcomes toward more positive outcomes. A multi-site study conducted by the Frank Porter Graham Child Development Institute found that, ''. . . children who experienced higher quality care are more likely to have more advanced language, academic, and social skills. Moreover, the study found that quality child care matters more for at-risk children.'' (University of North Carolina, *The Children of the Cost, Quality, and Outcomes Study Go to School: Executive Summary,* 1999)

Evidence continues to mount regarding the influence children's earliest experiences have on their later success and the role child care can play in shaping those experiences. The most recent findings from the National Institute of Child Health and Human Development (NICHD) found that the quality of child care children received in their preschool years had small but detectable effects on their academic success and behavior all the way into adolescence. (U.S. Department of Health and Human Services, National Institutes of Health, *Study of Early Child Care and Youth Development,* 2010) A recent follow-up study to the well known Abecedarian Project, which began in 1972 and has followed participants from early childhood through adolescence and young adulthood, found that adults who participated in a high quality early childhood education program are still benefiting from their early experiences. According to the study, Abecedarian Project participants had significantly more years of education than peers and were four times more likely to earn college degrees. (Frank Porter Graham Child Development Institute, *Developmental Psychology,* 2012)

In addition, millions of school-age children participate in before-and after-school programs that support their learning and development. Participation in high quality out-of-school time programs is correlated with positive outcomes for youth, including improved academic performance, work habits and study skills. (Vandell, D., et al., *The Study of Promising After-School Programs,* Wisconsin Center for Education Research, 2005) An analysis of over 70 after-school program evaluations found that evidence-based programs designed to promote personal and social skills were successful in improving children's behavior and school performance. (Durlak, J. and Weissberg, R., *The Impact of Afterschool Programs that Seek to Promote Personal and Social Skills,* Collaborative for the Advancement of Social and Emotional Learning, 2007)

After-school programs also promote youth safety and family stability by providing supervised settings during hours when children are not in school. Parents with school-aged children in unsupervised arrangements face greater stress that can impact the family's well-being and successful participation in the workforce. (Barnett and Gareis, *Parental After-School Stress and Psychological Well-Being,* Journal of Marriage and the Family, 2006) CCDF plays a critical role in providing access to school-age care and improving the quality of programs, with over a third of children receiving CCDF subsidies being aged 6 to 12.

Because of the strong relationship between early experience and later success, investments in improving the quality of early childhood and before-and after-school programs can pay large dividends. Nurturing and responsive relationships with parents and caregivers and engaging learning environments in early care and education settings can provide young children with the capacity for tremendous growth. Children attending high quality school-age programs are more likely to succeed in school and have stronger social and inter-personal skills. In short, high quality early education is a linchpin to creating an educational system that is internationally competitive and vital to the country's workforce development, economic security, and global competitiveness.

As a block grant, CCDF offers a great deal of flexibility to State, Territory, and Tribal Lead Agencies administering the program. The first goal listed at section 658A of the CCDBG Act is ''to allow each State maximum flexibility in developing child care programs and policies that best suit the needs of children and parents within such State.'' This structure has allowed many States to test and experiment with subsidy policies that are child-focused, family-friendly and fair to child care providers, as well as to implement sophisticated quality improvement systems that aim to increase the number of low-income children in high quality child care. Many States also have made significant progress in shaping and developing coordinated systems of early learning and have pioneered professional development systems that offer child care providers opportunities to move towards professional advancement in their careers.

CCDF is a core component of the early care and education spectrum and often operates in conjunction with other programs including Head Start, Early Head Start, State pre-kindergarten, and before-and after-school programs. States have flexibility to use CCDF to provide children enrolled in these programs full-day, full-year care, which is essential to supporting low-income working parents. CCDF also provides the funding for quality improvements impacting children in all types of settings, not just those children receiving subsidies. CCDF has helped lay the groundwork for development of early learning systems, investments that are leveraged by the Race to the Top Early Learning Challenge (RTT–ELC), a grant competition administered jointly by the Department of Education and HHS. RTT–ELC provides incentives and supports to selected States to build a coordinated system of early learning and development to ensure more children from low-income families have access to high quality early learning programs and are able to start school with a strong foundation for future learning. RTT–ELC is a vehicle for States to demonstrate ways to integrate and align resources and policies across the spectrum of early care and education programs. Much of the existing early learning systems and quality investments already in place and supported by CCDF parallel many of the goals and priorities of RTT–ELC, resulting in a complementary national strategy to improve the quality of early learning programs across the country.

Finally, ACF recently overhauled and reorganized the structure and required content of the CCDF Plan (ACF–118). States, Territories, and Tribes must submit their CCDF Plans every two years. The Plan serves as the application for CCDF funds and provides a description of the Lead Agency's child care program and services available to eligible families. Changes were made to the CCDF Plan to enhance the health and safety and quality improvement sections with a focus on building systems for child care quality improvement.

This proposed rule is driven by the same priorities and vision for child care reform reflected in the changes made to the CCDF Plan and follows many of the same principles for improvements in early care and education supported by Congress through creation of RTT–ELC. It is informed by the many documented tragedies of child injuries and deaths in child care, it recognizes what has been learned from early childhood development research, supports replication of best practices across the

country, and infuses new accountability for Federal dollars to leverage the full impact of the CCDF dual investment for both parents and children.

B. Discussion of Changes Made in This Proposed Rule

The changes included in this proposed rule cover four priority areas: (1) Improving health and safety in child care; (2) improving the quality of child care; (3) establishing family-friendly policies; and (4) strengthening program integrity.

First, we know that health and safety is the foundation for building a high quality early learning environment. Research shows that licensing and regulatory requirements for child care affect the quality of care and child development. (Adams, G., Tout, K., Zaslow, M., *Early care and education for children in low-income families: Patterns of use, quality, and potential policy implications,* Urban Institute, 2007) All States receiving CCDF funds are required to have child care licensing systems in place and must ensure child care providers serving children receiving subsidies meet certain health and safety requirements. In this rule, we propose changes that strengthen health and safety requirements and monitoring of compliance with these requirements for child care providers serving children receiving CCDF assistance.

Second, improving the quality of child care is essential to support low-income children's early learning and parents need more transparent information about the quality of child care choices available to them. States administering the CCDF program have already begun building quality improvement systems which make strategic investments to provide pathways for providers to reach higher quality standards. More than half the States have implemented Quality Rating and Improvement Systems (QRIS) and the majority of the remaining States are piloting or planning for implementation of such systems. Our priority for quality improvement would incorporate a systemic organizational framework for improving the quality of child care into CCDF regulations, and provide a consumer education mechanism that helps parents better understand the health, safety and quality standards met by child care providers.

Third, we have prioritized establishing family-friendly policies in order to improve continuity of services for parents and stability of child care arrangements for children. Continuity of services contributes to improved job stability and is important to a family's financial health. One of the goals of the CCDF program is to help families achieve independence from public assistance. This goal can be undermined by policies that result in unnecessary disruptions to receipt of a subsidy due to administrative barriers or other processes that make it difficult for parents to maintain their eligibility and thus fully benefit from the support it offers. Continuity also is of vital importance to the healthy development of young children, particularly the most vulnerable. Unnecessary disruptions in services can stunt or delay socio-emotional and cognitive development because safe, stable environments allow young children the opportunity to develop the relationships and trust necessary to comfortably explore and learn from their surroundings. Research has also demonstrated a relationship between child care stability and social competence, behavior outcomes, cognitive outcomes, language development, school adjustment, and overall child well-being. (Adams, G., Rohacek, M., & Danzinger, A. *Child Care Instability,* The Urban Institute, 2010) This priority area includes a number of proposed changes including requirements for determining a child's eligibility for services and administrative processes for interactions with families and child care providers.

Fourth, we have prioritized strengthening program integrity by proposing changes that address policies for internal controls, fiscal management, documenting and verifying eligibility, and processes for identifying fraud and improper payments. In November 2009, the President issued Executive Order 13520, which underscored the importance of reducing improper payments and eliminating waste in Federal programs (74 FR 62201). Program integrity efforts can help ensure that limited program dollars are going to low-income eligible families for which assistance is intended. The proposed changes seek to strengthen accountability while continuing to preserve access for eligible children and families.

In large part, the changes in this proposed rule articulate a set of expectations for how Lead Agencies are to satisfy certain requirements in the CCDBG Act, which the current regulations either only minimally address or where they remain altogether silent. In some places, such as § 98.41 regarding health and safety standards for providers serving subsidized children, the current regulations are silent as to specific standards providers are expected to meet. The lack of specificity in regulation effectively undermines the requirement since there is no clear guidance on what the requirements mean or the manner in which Lead Agencies should implement them. In other areas of the regulations, we have proposed changes to better balance the dual purposes of the program by adding provisions to ensure that healthy, successful child development is a consideration when Lead Agencies establish policies for the child care program. For example, authorization of child care services for eligible families should take into consideration the value of preserving continuity in child care arrangements so that young children have stability in their caregivers.

Finally, we have proposed other changes to the regulations that do not impose new requirements on Lead Agencies, but rather formalize Federal support for certain best practices and policies. This can be seen in the proposed changes to § 98.51 of the regulations which require Lead Agencies to spend a minimum of four percent on child care quality improvement activities. We have added regulatory language to this section describing a formal framework for quality spending that is focused on helping Lead Agencies organize, guide, and measure progress of quality improvement activities, but we are not requiring Lead Agencies to adopt that framework.

In developing this proposed rule, we were mindful of the Administration's emphasis on flexibility as a guiding principle when considering ways to better accomplish statutory goals. Accordingly, we have sought to retain much of the flexibility that is afforded to Lead Agencies inherent within the CCDF block grant. In many areas where we have added new requirements we are deferring to Lead Agencies to decide how they will implement the provision and have provided examples of alternate ways in which the requirement could be met. In other areas we have added more flexibility to allow Lead Agencies to align eligibility and other requirements across programs and to tailor policies that better meet the needs of the low-income families they serve. For example, we are providing more flexibility for Lead Agencies to determine when it is appropriate to waive a family's co-pay requirement.

We do not anticipate that these proposed changes will place significant new burden on States, Territories or Tribes because many Lead Agencies have already implemented these practices through their child care licensing systems and by using the flexibility in the CCDF program provided under current law. We have

made it a point throughout this rule to include information about the number of States and Territories that have already adopted the changes we are proposing. In addition, a number of Tribes have undertaken improvements in many of these areas, including health and safety requirements. This proposed rule at once embraces the progress and benefits that have resulted from devolving significant program authority to States, Territories, and Tribes while also identifying specific areas where new Federal standards and regulation will most benefit the core principles and goals of the CCDF program.

ACF expects provisions included in a Final Rule to become effective 30 days from the date of publication of the Final Rule. Compliance with provisions in the Final Rule would be determined through ACF review and approval of CCDF Plans and through the use of Federal monitoring in accordance with § 98.90, including on-site monitoring visits as necessary. ACF expects that provisions included in a Final Rule would be incorporated into the review of FY 2016–2017 CCDF Plans that would become effective October 1, 2015. We recognize that some of the proposed changes may require action on the part of a State's legislature or require rulemaking in order to implement. It is our desire to work with Lead Agencies to ensure that adoption of any new requirements included a Final Rule is done in a thoughtful and comprehensive manner. ACF welcomes public comment on specific provisions included in this proposed rule that may warrant a longer phase-in period and will take these comments into consideration when developing the Final Rule.

In this proposed rule, we have generally maintained the structure and organization of the current CCDF regulations. The preamble in this proposed rule discusses the changes to current regulations and contains certain clarifications based on ACF's experience in implementing the prior final rules. Where language of existing regulations remains unchanged, the preamble explanation and interpretation of that language published with all prior final rules also is retained unless specifically modified in the preamble to this proposed rule. (*See* 57 FR 34352–34413, August 4, 1992; 63 FR 39936–39981, July 24, 1998; 72 FR 27972–27980, May 18, 2007; 72 FR 50889–50900. September 5, 2007)

III. Statutory Authority

This proposed regulation is being issued under the authority granted to the Secretary of Health and Human Services by the CCDBG Act (42 U.S.C. 9858, *et seq.*) and Section 418 of the Social Security Act (42 U.S.C. 618).

IV. Provisions of Proposed Rule

Subpart A—Goals, Purposes and Definitions

Goals and Purposes (Section 98.1)

We are proposing changes to enhance the regulatory language describing purposes of the CCDF program to reflect the priorities of improving health and safety in child care, improving the quality of child care, establishing family-friendly policies, and strengthening program integrity. The first part of the regulations at § 98.1(a) defines the goals of CCDF and mirrors the statutory language describing goals of the CCDBG Act. We are proposing no changes in this section. The second part at § 98.1(b) uses regulatory authority to define purposes for the CCDF program which are based on purposes included in the conference report accompanying original passage of the CCDBG Act in 1990. We propose to revise the purposes described at § 98.1(b).

We have retained all of the language in the original purposes with some enhancements and added two new purposes (proposed changes are represented in italics). Specifically, we propose to revise paragraph (b) to read: (1) Provide low-income families with the financial resources to find and afford *high* quality child care for their children *and serve children in safe, healthy, nurturing child care settings that are highly effective in promoting learning, child development, school readiness and success;* (2) Enhance the quality and increase the supply of child care *and before-and after-school care services* for all families, including those who receive no direct assistance under the CCDF, *to support children's learning, development, and success in school;* (3) Provide parents with a broad range of options in addressing their child care needs *by expanding high quality choices available to parents across a range of child care settings and providing parents with information about the quality of child care programs; (4) Minimize disruptions to children's development and learning by promoting continuity of care; (5) Ensure program integrity and accountability in the CCDF program;* (6) Strengthen the role of the family *and engage families in their children's development, education, and health;* (7) Improve the quality of, and coordination among *Federal, State, and local* child care programs, *before- and after-school programs,* and early childhood development programs *to support early learning, school readiness, youth development, and academic success;* and (8) Increase the availability of early childhood development and before- and after-school care services.

We believe these changes bring the purposes of CCDF into better alignment with the current knowledge in the field, result in a more comprehensive vision of the program, and provide the foundation for a more balanced approach to program administration that acknowledges the two-generational impact of the CCDF program.

Definitions (Section 98.2)

We propose to make four technical changes at § 98.2 by deleting the definition for *group home child care provider* and by making conforming changes to the definitions for *categories of care, eligible child care provider,* and *family child care provider.* The current regulation defines *group home child care provider* as meaning 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. When ACF revised the FY 2012–2013 CCDF Plan, we received public comments indicating that many States, Territories and Tribes do not consider group homes to be a separate category of care when administering their CCDF programs or related efforts, such as child care licensing. Some States use alternative terminology (e.g., large family child care homes), while others treat all family child care homes similarly regardless of size. Due to this variation, we propose to delete the separate definition for *group home child care provider* which requires a number of technical changes to the definitions section.

We propose to revise the definition of *categories of care* at § 98.2 to delete group home child care. Under the proposed rule, *categories of care* would be defined to include center-based child care, family child care, and in-home care (i.e., a provider caring for a child in the child's home). Similarly, we propose to change the definition for *eligible child care provider* at § 98.2 to delete a group home child care provider. The revised definition defines an *eligible child care provider* as a center-based child care provider, a family child care provider, an in-home child care provider, or other provider of child care services for compensation. Group home child care would be considered a family child care provider for these purposes. Accordingly, we propose to amend the definition for *family child care provider* at § 98.2 to include larger family homes or group homes. The existing definition

of *family child care provider* is limited to one individual who provides services as the sole caregiver. The revised definition defines a *family child care provider* as one or more individuals who provide child care services. The remainder of the definition remains the same, specifying that services are 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.

Many Lead Agencies will continue to provide CCDF services for children in large family child care homes or group homes, and this is allowable and recognized by the revised definition of *family child care provider*—which would now include care in private residences provided by more than one individual. This proposed change would eliminate group homes as a separately-defined category of care for purposes of administering the CCDF—thereby providing States, Territories, and Tribes with greater flexibility. As a practical impact, CCDF Lead Agencies will no longer be required to report separately on group homes in their CCDF Plans (for example, regarding health and safety requirements), or to consider group homes as a separate category for purposes of meeting parental choice requirements at § 98.30 and equal access requirements at § 98.43(b)(1). Rather, group homes will now be considered as family child care homes for these purposes.

Subpart B—General Application Procedures

Lead Agencies have considerable latitude in administering and implementing their child care programs. Subpart B of the regulations describes some of the basic responsibilities of a Lead Agency as found in the statute. A Lead Agency is designated by the chief executive of a State or Territory, or by the appropriate Tribal leader or applicant, and serves as the single point of contact for all child care issues. The Lead Agency determines the basic use of CCDF funds and the priorities for spending CCDF funds and promulgates the rules governing overall administration.

Specifically, under existing rules, the Lead Agency responsibilities include oversight of CCDF funds spent by sub-grantees and contractors, monitoring programs and services, responding to complaints, and developing the CCDF Plan in the manner specified by the Secretary. In developing the CCDF Plan, the Lead Agency must consult with the appropriate representatives of local government, coordinate the provision of services with other Federal, State, and local child care and early childhood development programs and ''programs, including such programs for the benefit of Indian children, and hold at least one public hearing. Other Lead Agency responsibilities include having an independent audit conducted after the close of each program period, ensuring that sub-grantees are audited in accordance with appropriate audit requirements, and submission of fiscal and program reports as prescribed by HHS.

Lead Agency Responsibilities (Section 98.10)

We propose to add a provision to Lead Agency responsibilities at § 98.10 to require Lead Agencies to be responsible for implementing practices and procedures to ensure program integrity and accountability as a conforming change pursuant to the proposed new section at 98.68 Program Integrity at Subpart G—Financial Management. We include an explanation for this new section and change later in this proposed rule.

Administration Under Contracts and Agreements (Section 98.11)

Section 98.11 of the regulations currently requires Lead Agencies that administer or implement the CCDF program indirectly through other local agencies or organizations to have written agreements with such agencies that specify mutual roles and responsibilities. However, it does not address the content of such agreements. We propose amending regulatory language at § 98.11(a)(3) to specify that, while the content of Lead Agency written agreements with other governmental or non-governmental agencies may vary based on the role the entity is asked to assume or the type of project undertaken, agreements must, at a minimum, include tasks to be performed, a schedule for completing tasks, a budget that itemizes categorical expenditures consistent with proposed CCDF requirements at § 98.65(h), and indicators or measures to assess performance.

Many Lead Agencies administer the CCDF program through the use of sub-recipients that have taken on significant programmatic responsibilities, including providing services on behalf of the Lead Agency. For example, some States operate primarily through a county-based system, while other Lead Agencies devolve decision-making and administration to local workforce boards, school readiness coalitions or community-based organizations such as child care resource and referral agencies. ACF has learned through our efforts working with grantees to improve program integrity that the quality and specificity of written agreements vary widely, which hampers accountability and efficient administration of the program. These proposed changes represent minimum, common-sense standards for the basic elements of those agreements, while allowing latitude in determining specific content. The Lead Agency is ultimately responsible for ensuring that all CCDF-funded activities meet the requirements and standards of the program, and thus has an important role to play to ensure written agreements with sub-recipients appropriately support program integrity and financial accountability.

Plan Process (Section 98.14)

Coordination. Currently, § 98.14(a)(1) requires Lead Agencies to coordinate provision of program services with other Federal, State, and local early care and development programs as required by section 658D(b)(1)(D) of the CCDBG Act. Lead Agencies also are required to consult and coordinate services with agencies responsible for public health, public education, employment services/workforce development, and TANF. Over time, the CCDF program has become an essential support in local communities to provide access to early care and education and before and afterschool settings and to improve the quality of care. Partnerships with these agencies and local communities have been an important factor in improving the availability and quality of child care. Many Lead Agencies work collaboratively to develop a coordinated system of planning that includes a governance structure composed of representatives from the public and private sector, parents, schools, community-based organizations, child care, Head Start and Early Head Start, home visitation, as well as health, mental health, child welfare, family support, and disability services. Local coordinating councils or advisory boards also often provide input and direction on CCDF-funded programs.

We propose to amend § 98.14(a)(1) to add new entities with which Lead Agencies are required to coordinate the provision of child care services. We have added parenthetical language to paragraph (C) public education, to specify that coordination with public education should also include agencies responsible for prekindergarten programs, if applicable, and educational services provided under Part B and C of the Individuals with Disabilities Education Act (IDEA) (20 U.S.C. § 1400). Other proposed new coordinating

entities include agencies responsible for child care licensing, afterschool networks, Head Start collaboration, the State Advisory Council on Early Childhood Education and Care authorized by the Head Start Act (42 U.S.C. 9831 *et seq.*) (if applicable); and emergency management and response.

First, we propose to add a specification to the existing regulatory requirement to coordinate with agencies responsible for public education at § 98.14(a)(1)(C) to include prekindergarten, if applicable, and educational services provided through Part B and C of IDEA. Part B of the IDEA provides funding for Special Education Preschool grants. According to the National Institute for Early Education Research (NIEER), 40 States funded preschool programs during the 2009–2010 school year. (*The State of Preschool 2010,* NIEER, Rutgers graduate School of Education) Prekindergarten programs generally serve 3 and 4-year olds and aim to better prepare children to succeed in kindergarten. Similar to Head Start, many CCDF Lead Agencies coordinate services with children enrolled in prekindergarten programs to provide full-day, full-year care. Given the prevalence of State-funded prekindergarten programs and overlapping populations and purposes with the CCDF program we believe it is important to include these entities as a required coordinating partner.

State education agencies use IDEA funds to provide special education and related services for preschool-aged children with disabilities. Part C of the IDEA provides funding to provide early intervention services for infants and toddlers with disabilities and their families. Since the establishment of the Part C early intervention program under IDEA, all States have established State Interagency Coordinating Councils (SICCs) to advise and assist in the implementation of Part C for infants and toddlers with disabilities and their families. We believe this specification is important to ensure that Lead Agencies take into account children with special needs in child care and coordinate with other services available to children with disabilities and their families. Linkages between child care providers caring for children who have physical, developmental, behavioral, or emotional conditions and medical and therapeutic services can help make inclusion a reality by integrating additional resources and expertise needed to help care for children in a continuous and comprehensive manner. In the FY 2012–2013 CCDF Plans, nearly all States and Territories reported coordinating with agencies responsible for children with special needs, including IDEA implementation. [Note: The analysis of CCDF Plans throughout this proposed rule includes a total of 56 State and Territorial CCDF Plans, including American Samoa, Guam, Northern Marianas Islands, Puerto Rico, and the Virgin Islands.] Through these partnerships, many Lead Agencies provide joint training and collaborative technical assistance on child development and on the inclusion of children with disabilities in child care programs.

We propose to add child care licensing agencies as a required coordinating entity at new paragraph (E) to formalize a partnership that already exists in many States. Section 658A of the CCDBG Act provides that one of the goals of the program is ''to assist States in implementing the health, safety, licensing, and registration standards established in State regulations.'' According to the FY 2012–2013 CCDF Plans, 34 States and Territories indicate coordinating provision of CCDF services with agencies responsible for child care licensing. Child care licensing regulations and monitoring and enforcement policies help provide a baseline of protection for the health and safety of children in out-of-home care. According to the *2011 Child Care Licensing Study* (prepared by the National Child Care Information and Technical Assistance Center and the National Association for Regulatory Administration), there are a total of 312,000 licensed facilities in the U.S. with more than 10 million licensed child care slots. In addition, the study found that most State licensing agencies use CCDF funds to hire and support child care licensing staff.

We believe it is important that CCDF Lead Agencies collaborate with agencies responsible for child care licensing to ensure that information is shared about the licensing or regulatory status of providers serving children receiving subsidies, especially any history of licensing violations. To the extent that child care licensing agencies are responsible for monitoring compliance with State regulatory requirements, strong partnerships can help improve program integrity within CCDF by ensuring that providers serving children receiving subsidies are accountable for meeting health and safety and other regulatory requirements. We encourage CCDF Lead Agencies also to coordinate with licensing agencies when developing quality improvement systems to incorporate basic licensing requirements as part of the framework for determining program standards and a foundation for improving the quality of care.

We propose to add the Head Start collaboration office as a required coordinating entity at new paragraph (F) because CCDF services can be linked with the Head Start program to help support provision of full-day, full year care for children enrolled in Head Start and eligible for the CCDF program. The Head Start Act (42 U.S.C. 9801, *et seq.*) provides funding for each State to establish a Head Start collaboration office to promote linkages between Head Start, Early Head Start, and other child and family services. This proposed change has reciprocity with the requirement in the Head Start Act and would formalize a partnership that already exists in 46 States and Territories according to the FY 2012–2013 CCDF Plans. In both Head Start and CCDF, collaboration efforts extend to linking with other key services for young children and their families, such as medical, dental and mental health care, nutrition, services to children with disabilities, child support, refugee resettlement, adult and family literacy, and employment training. These comprehensive services are crucial in helping families progress towards self-sufficiency and in helping parents provide a better future for their young children.

We propose to add the agency responsible for the State Advisory Council on Early Childhood Education and Care, if applicable, at new paragraph (G) in recognition of provisions included in the Head Start Reauthorization Act of 2007 (Pub. L. 110–134) which require States to create State Advisory Councils on Early Childhood Education and Care to improve coordination and collaboration among Head Start and Early Head Start agencies, pre-k programs, and other early childhood education providers. In FY 2009, the American Recovery and Reinvestment Act (ARRA) (Pub. L. 111–5) provided funding to States to convene these councils. Fifty States and Territories indicated in the FY 2012–2013 CCDF Plans that they coordinate with the State Advisory Council. State Advisory Councils are often responsible for conducting a statewide needs assessment for early childhood education, developing recommendations for a statewide professional development and career plan for the early childhood education and care workforce, and developing recommendations for establishing a unified data collection system for publicly funded programs offering early childhood education services. Advisory councils may also play a role in making

linkages with Early Childhood Comprehensive Systems (ECCS) grantees within the State. Adding the State Advisory Council on Early Childhood Education and Care to the list of coordinating entities will ensure CCDF Lead Agencies continue to consult with and maintain effective collaboration with this important stakeholder.

We propose to add agencies responsible for administering Statewide afterschool networks or other coordinating entities for out-of-school time care (if applicable) at new paragraph (H). Approximately, 39 States have established statewide afterschool networks. (National Network of Statewide Afterschool Networks, *www.statewideafterschoolnetworks.net*) These networks bring together different stakeholders to consider ways to improve the quality, quantity, and sustainability of school-age programs in their State. The CCDF program provides assistance to children up to age 13, therefore we believe it is critical that child care administrators partner with statewide afterschool networks or other entities, such as State associations of school-age programs, in order to better understand and respond to the unique issues related to improving access to and the quality of before-and-after school programs.

Finally, we propose to add coordination with State and local government agencies responsible for emergency management and response at new paragraph (I) because maintaining the safety of children in early care and school-age programs in the event of a disaster or emergency necessitates advance planning by Lead Agencies and child care providers. In many disasters, including Hurricane Katrina in 2005, the tornado disaster in Joplin, Missouri in 2011, and Hurricane Sandy in 2012, the provision of emergency child care services and rebuilding of child care facilities emerged as a critical need. At the Federal level, ACF has worked with the National Commission on Children and Disasters (NCCD) and the Federal Emergency Management Agency (FEMA) to raise awareness of child care as a key component in disaster preparedness and response. For example, ACF published an Information Memorandum (CCDF–ACF–IM–2011–01) that provided guidance to assist Lead Agencies in the development of comprehensive statewide emergency preparedness and response plans for child care and the CCDF program.

State, Territorial, and Tribal Lead Agencies can play an important role in helping to better prepare child care providers and support programs after a disaster to help them quickly recover and provide care for children in a safe and effective manner. Child care providers need to be prepared to maintain the safety of children in the event of a disaster or emergency and facilitate safe return of children to families in the immediate aftermath of an event. Additionally, it is important that providers receive the support and help they need to repair damaged property and rebuild so they can re-open and provide child care services for families recovering from the disaster. Lead Agencies must be concerned with ensuring continuity of care and services for families receiving assistance through the CCDF program and providers caring for children who receive subsidies when a disaster strikes. Lead Agencies also may be called upon to assist emergency management officials and voluntary organizations with the provision of emergency child care services after a disaster. We believe adding emergency management agencies as a coordinating partner in the regulation will enable Lead Agencies to better handle these wide-ranging and important roles. Paragraphs (b) and (c) of this section would remain unchanged. As a technical matter, upon publication of the Final Rule we propose to correct the paragraph designations in § 98.14 by changing (a)(1)(A) through (I) to (a)(1)(i) through (ix).

Public availability of Plans. We propose to add a new paragraph § 98.14(d) to require Lead Agencies to make their CCDF Plan and any Plan amendments publicly available. Ideally, Plans and Plan amendments would be available on the Lead Agency Web site or other appropriate State Web site to ensure that there is transparency for the public, and particularly for parents seeking assistance, about how the child care program operates. We believe this is especially important for Plan amendments, given that Lead Agencies often make substantive changes to program rules or administration during the two-year Plan period through submission of Plan amendments (subject to ACF approval), but are not currently required to make those amendments available to the public.

Plan Provisions (Section 98.16)

Submission and approval of the CCDF Plan is the primary mechanism by which ACF works with Lead Agencies to ensure program implementation meets Federal regulatory requirements. All provisions that are currently required to be included in the CCDF Plan are outlined at § 98.16. Accordingly, this section of the regulation is the point at which our four priorities converge. Nearly all of our proposed regulatory changes are reflected in this section. The revisions and proposed additions to this section correspond to proposed changes throughout the regulations, many of which we provide explanation for later in this proposed rule. In addition, these proposed changes are consistent with changes included in the overhaul of the CCDF Plan. The Plan has been reorganized to better reflect State and Territorial practice in CCDF, to focus on a number of areas that are of high interest to both the Federal government and CCDF grantees, and to better capture the hallmarks of CCDF programs throughout the country, which have evolved significantly since its inception in 1996. Paragraph (a) of section 98.16 would continue to require that the Plan specify the Lead Agency.

Written agreements. A new paragraph § 98.16(b) is proposed to correspond with changes at § 98.11(a)(3) discussed earlier, related to administration of the program through agreements with other entities. In the CCDF Plan, the proposed change would require the Lead Agency to include a description of processes it will use to monitor administrative and implementation responsibilities undertaken by agencies other than the Lead Agency including descriptions of written agreements, monitoring, and auditing procedures, and indicators or measures to assess performance. This is consistent with the desire to strengthen program integrity within the context of current State practices that devolve significant authority for administering the program to sub-recipients. Current paragraphs (b) through (e) would be re-designated as paragraphs (c) through (f) and otherwise would remain unchanged.

Job search. We propose to require Lead Agencies to allow for some period of job search for families receiving CCDF assistance that experience job loss. The goal of this change is to minimize temporary disruption to subsidy receipt to promote children's development and learning by helping to sustain their early learning or school-age care placement through temporary periods of parental unemployment. We know that parents are better able to find new jobs quickly if they are allowed to retain their subsidy eligibility, providing the stability and flexibility to search for new employment. This is also consistent with changes we are proposing at § 98.20 describing a child's eligibility for services to promote continuity of subsidy receipt and care arrangements discussed later in this proposed rule.

Families can experience rapid and multiple changes within a short period of time and unemployment and job loss are very disruptive to families. Instability in a family's child care arrangement can make it difficult for parents to seek new employment, and retention of eligibility during a job search or temporary period of unemployment can alleviate some of the stress on families and facilitate a smoother transition back into the workforce. According to analysis of the FY 2012–2013 CCDF Plans, many States and Territories provide CCDF assistance during periods of job search. However, some States only offer job search for certain subsets of families receiving CCDF assistance, such as those also receiving assistance through TANF. Under this proposed change Lead Agencies must allow some period of job search for all families receiving CCDF.

In order to implement this change we propose to add parenthetical language at paragraph § 98.16(g)(6), as re-designated, to require the Lead Agency to include some period of job search in its definition of ''working'' in the CCDF Plan. Currently, paragraph (f) requires Lead Agencies to provide definitions for the following terms in the CCDF Plan: (1) Special needs child; (2) physical or mental incapacity (if applicable); (3) attending (a job training or educational program); (4) job training or educational program; (5) residing with; (6) working; (7) protective services (if applicable); (8) very low-income; and (9) in loco parentis.

We propose to require job search in the definition of ''working'' in the regulation because we view job search as closely linked to work and most Lead Agencies that allow job search already include job search in that definition in the Plan. However, some Lead Agencies currently elect to define job search under their definition of ''attending (a job training or education program)'' rather than ''working'' in the Plan, since job search also can be associated with activities such as attending interviews, job fairs, and résumé building classes; completing applications; and/or participating in job shadowing or unpaid internship opportunities. Therefore, as a technical matter, and in deference to State flexibility, when determining compliance with this provision through review of the CCDF Plan, ACF will continue to allow Lead Agencies to decide whether to include job search in their definition of ''working'' or ''attending (a job training or educational program).''

It should be noted that this proposed change continues to allow Lead Agencies discretion to determine the length of time that ''job search activities'' are counted as a qualifying activity and whether to allow job search as an eligible activity for families applying for subsidy in addition to those currently receiving a subsidy who subsequently become unemployed. This proposal is consistent with the practices that already exist in many programs as well as provisions in the revised CCDF Plan that requires that Lead Agencies describe their policies promoting continuity of care for children and stability for families.

Continuity of care. We propose to add a provision at paragraph § 98.16(h), as re-designated, requiring Lead Agencies to include a description of policies to promote continuity of care for children and stability for families receiving CCDF services, including policies which take into account developmental needs of children when authorizing child care services; timely eligibility determination and processing of applications; and policies that promote employment and income advancement for parents. This change complements proposed changes at § 98.20 describing a child's eligibility for services, which are discussed later in this proposed rule.

The Lead Agency would be required to specify in the Plan the time limit it has established for making eligibility determinations and processing applications. Lead Agencies have flexibility in determining the policies and practices related to parent applications and eligibility determination processes for CCDF subsidies. It is critical for Lead Agencies to design processes that promote timely eligibility determinations for CCDF subsidy applicants, particularly in cases where families need immediate assistance. For example, a parent may be unable to start employment or may risk losing their job if they cannot secure a child care arrangement while waiting for the CCDF subsidy application to be approved. Many Lead Agencies already have implemented policies to improve the timeframe between the receipt of an application and the approval of child care services using web-based application submissions and other systems enhancements to reduce processing time allowing for families and providers to receive authorization more quickly.

A study of mid-western States found that the time for processing applications ranged from 7 to 45 days. (Adams, G., Synder, K., and Banghardt, P., *Designing Subsidy Systems to Meet the Needs of Families,* 2008) This research also identified a number of customer-friendly State practices that promoted timely eligibility determinations, including certain administrative structures (such as consolidated eligibility units) and caseworker targets and timeframes for processing. Many Lead Agencies have established policies that set a time limit for eligibility determinations and electronically track and monitor the eligibility process.

Grants or contracts. We propose to add language at paragraph § 98.16(i)(1), as re-designated, requiring a Lead Agency to include a description of how it will use grants or contracts to address shortages in the supply of high quality child care. Grants and contracts can play an important role in building the supply and availability of high quality child care in underserved areas and for underserved populations, and provide greater financial stability for child care providers. This regulatory change complements proposed changes at § 98.30(a)(1) describing parental choice requirements and § 98.50(b)(3) describing funding methods for child care services, discussed later in this proposed rule. The new provision regarding grants and contracts maintains the principle of parental choice and the requirement that parents be offered a certificate.

Under this proposed change, the Lead Agency would be required to provide a description that identifies any shortages in the supply of high quality child care providers for specific localities and populations, includes the data sources used to identify shortages, and explains how grants or contracts for direct services will be used to address such shortages. To identify supply shortages, the Lead Agency may analyze available data from market price studies, resource and referral agencies, and other sources. ACF recommends that the Lead Agency examine all localities in its jurisdiction, recognizing that each local child care market has unique characteristics—for example, many rural areas face supply shortages. The Lead Agency also should consider the supply of child care for underserved populations such as infants and toddlers and children with special needs. Further, we recommend that the Lead Agency's analysis consider all categories of care, recognizing that a community with an adequate supply of one category of care (e.g., centers) may face shortages for another category (e.g., family child care).

Eligibility policies. We also propose to add language at § 98.16(i)(5) in this section. Currently the provision requires Lead Agencies to describe any eligibility criteria, priority rules and definitions established pursuant to § 98.20(b). We propose to expand the required information to include other eligibility policies, particularly any requirements

for families to report changes in circumstances that may impact eligibility between redetermination periods. The revised provision also adds a reference to § 98.20(c), in addition to the existing reference to § 98.20(b). This change complements proposed changes at § 98.20, which are discussed later in this proposed rule.

Consumer education and quality indicators. We also propose to add language at paragraph § 98.16(j), as re-designated, requiring Lead Agencies to include a description of a transparent system of quality indicators that provides parents with provider-specific information about the quality of child care providers in their communities as part of the description of consumer education activities. This change complements proposed changes at § 98.33 describing consumer education activities, which are discussed later in this proposed rule.

Co-payments. We propose to revise language at paragraph § 98.16(k), as re-designated, requiring Lead Agencies to include a description of how payments are affordable for families as part of the requirement to implement a sliding fee scale that provides for cost sharing for families receiving CCDF subsidies. This proposed change is consistent with the existing regulatory requirement at § 98.43(b)(3), which requires Lead Agencies to provide a summary of facts relied upon to determine that its payment rates ensure equal access including how copayments based on a sliding fee scale are affordable. In addition, we propose to add language requiring the Lead Agency to include the criteria established for waiving contributions for families, pursuant to proposed changes at § 98.42(c), discussed later in this proposed rule.

Monitoring of health and safety requirements. We propose to add a provision at paragraph § 98.16(l), as re-designated, requiring Lead Agencies to provide a description of unannounced, on-site monitoring and other enforcement procedures in effect to ensure that child care providers serving children receiving subsidies comply with applicable health and safety requirements. The change complements proposed changes at § 98.41 describing health and safety requirements, which are discussed later in this proposed rule. Paragraph (k), requiring a description of the child care certificate payment system would be re-designated as paragraph (m), but otherwise would remain unchanged.

Payment rates. We propose to revise language at paragraph § 98.16(n), as re-designated, requiring a description of a biennial local valid market price study, or other alternate approved methodology, and a description of how the quality of child care providers serving children receiving subsidies is taken into account when determining payment rates. This change complements proposed changes at § 98.43 describing equal access provisions, which are discussed later in this proposed rule.

Hotline for parental complaints. We propose to add language at paragraph § 98.16(o), as re-designated, to require States to establish or designate a hotline for parental complaints. This change complements the proposed change at § 98.32 describing requirements for maintaining a record of parental complaints, which is discussed later in this proposed rule. Current paragraph (n) would be re-designated as paragraph (p), but otherwise would remain unchanged.

Licensing exemptions. We propose to add language at paragraph § 98.16(q), as re-designated, requiring a description of any exemptions to licensing requirements and a rationale for such exemptions. This change complements the proposed change at § 98.40 which asks Lead Agencies to certify they have in place licensing requirements for child care services, discussed later in this proposed rule. Paragraph (p), requiring a description of the definitions or criteria used to implement the exception to individual penalties in the TANF program would be re-designated as paragraph (r), but otherwise would remain unchanged.

Provider payment practices and timely reimbursement. We propose to add a new paragraph § 98.16(t) requiring CCDF Lead Agencies to describe payment practices for child care providers of services for which assistance is provided under this part, including timely reimbursement for services, how payment practices support providers' provision of high quality services, and to promote the participation of child care providers in the subsidy system.

Lead Agencies have flexibility to determine payment processes for subsidies, and should use that flexibility to ensure payment practices are fair to child care providers and support the provision of high quality services. As noted in the preamble to the 1998 Final Rule, a system of child care payments that does not reflect the realities of the market makes it economically infeasible for many providers to serve low-income children—undermining the statutory and regulatory requirements of equal access and parental choice. In addition, failure to compensate in a timely manner may cause providers to refuse to care for children with subsidies (63 FR 39958). Surveys and focus groups with child care providers have found that some providers experience problems with late payments, including issues with receiving the *full* payment on time and difficulties resolving payment disputes. (Adams, G., Rohacek, M., and Snyder, K., *Child Care Voucher Programs: Provider Experiences in Five Counties,* 2008) This research also found that delayed payments creates significant financial hardships for the impacted providers, and forces some providers to stop serving or limit the number of children receiving child care subsidies.

A number of Lead Agencies have developed streamlined, provider-friendly payment policies and administrative processes, such as paying providers based on enrollment and paying for a limited number of absence days. Administrative improvements such as direct deposit, on-line training for providers for electronic voucher reimbursement, provider self-service components in an automated system for children authorized into their care, and web-based electronic attendance and billing systems also can help facilitate the participation of providers in the subsidy system. Lead Agencies can allow providers to be paid for days when a child is absent due to an illness and/or allow families a limited number of vacation days where providers would continue to receive payment. These policies would promote continuity of care by allowing the provider to retain the slot for the child without a financial penalty. Private-paying parents generally pay for an entire period (e.g., a week, a month) even if the child is out sick within that period. This policy would align subsidy policies with the general child care market and positively affect subsidy providers while also enabling families to retain child care services.

Program integrity. We propose to add a new paragraph § 98.16(u) requiring a description of processes a Lead Agency has in place to investigate and recover fraudulent payments and to impose sanctions on providers or clients in response to fraud. This change complements proposed changes at section 98.68 describing program integrity requirements, which are discussed later in this proposed rule.

Quality performance report. We also propose to add a new paragraph § 98.16(v) requiring States and Territories to establish performance goals and targets in the Plan for expenditures on activities to improve the quality of care, and report annually a description of progress towards

meeting those goals. This change is consistent with proposed changes at § 98.51(f) regarding quality improvement activities, which are discussed later in this preamble.

The Quality Performance Report (QPR) was recently added as an appendix to the CCDF Plan to improve accountability for quality expenditures and encourage more strategic, intentional planning between the subsidy system and quality initiatives. The report is organized to align with the CCDF Plan and asks Lead Agencies to report on the goals and performance measures that they set for themselves in the Plan. In addition, it asks for key data on the quality of child care. Over time, this data will be used to report to Congress, stakeholders, and the general public on the quality of child care and CCDF's critical role in improving quality. This proposed change would mandate submission of the Quality Performance Report appendix as part of the CCDF Plan process.

Assessment of serious injuries and deaths in child care. In this paragraph we also propose to add § 98.16(v)(2) asking Lead Agencies to describe, as part of the Quality Performance Report, any changes to State regulations, enforcement mechanisms, or other State policies addressing health and safety based on an annual review and assessment of serious injuries or deaths of children occurring in child care. Currently, the Quality Performance Report gives Lead Agencies the option to list and describe the annual number of child injuries and fatalities in child care. We are proposing to require Lead Agencies to answer these questions and to describe the results of an annual review of all serious child injuries and deaths occurring in child care (including both regulated and unregulated child care centers and family child care homes). The review would be publicly available and would include an assessment of whether any State or local regulatory requirements, enforcement mechanism, or other State or local policies addressing health and safety were changed in response to the review. ACF strongly encourages Lead Agencies to work with the State entity responsible for child care licensing in conducting their review.

The primary purpose of this proposed change is prevention of future tragedies. Often, incidents of child injury or death in child care are avoidable. For example, one State recently reviewed the circumstances surrounding a widely-publicized, tragic death in child care and identified several opportunities to improve State monitoring and enforcement that might otherwise have identified the very unsafe circumstances surrounding the child's death and prevented the tragedy. The State moved quickly to make several changes to its monitoring procedures. It is important to learn from these tragedies to better protect children in the future. Lead Agencies should review all serious child injuries and deaths in child care, including lapses in health and safety (e.g., unsafe sleep practices for infants, transportation safety, issues with physical safety of facilities, etc. * * *) to help identify training needs of providers.

The utility of this assessment is reliant upon the State obtaining accurate, detailed information about any child injuries and deaths that occur in child care. Therefore, as discussed later in this preamble, we are requiring at 98.41(d)(4) that Lead Agencies establish policies and procedures for child care providers serving children receiving CCDF support to report any incidents of serious child injuries or deaths to a designated State, territorial or tribal agency, such as the licensing agency. We recommend that States, Territories and Tribes require all child care providers, regardless of subsidy receipt, to report incidents of serious child injuries or death to a designated agency.

Lead Agencies are strongly encouraged to work with their established Child Death Review systems and with the National Center for the Review and Prevention of Child Death (*www.childdeathreveiw.org*) to conduct their annual reviews. The National Center for the Review and Prevention of Child Death, which is funded by the Maternal and Child Health Bureau in the Health Resources and Services Administration (HRSA), reports that all 50 States and the District of Columbia already review child deaths through 1,200 State and local Child Death Review panels (National Center for Child Death Review, Keeping Kids Alive: A Report on the Status of Child Death Review in the Unities States, 2011). The Child Death Review system is a process in which multidisciplinary teams of people meet to share and discuss case information on deaths in order to understand how and why children die so that they can take action to prevent other deaths. These review systems vary in scope and in the types of death reviewed, but every review panel is charged with making both policy and practice recommendations which are usually submitted to the State governor and are publicly available. The National Center for the Review and Prevention of Child Death provides support to local and State teams throughout the child death review process through training and technical assistance designed to strengthen the review and the prevention of future deaths.

Lead Agencies may also work in conjunction with the recently-established National Commission to Eliminate Child Abuse and Neglect Fatalities, established by the Protect Our Kids Act, H.R. 6655. The Commission, consisting of 12 members appointed by the President and Congress, will work to develop recommendations to reduce the number of children who die from abuse and neglect. The Commission will hold hearings and gather information about current Federal programs and prevention efforts in order to recommend a comprehensive strategy to reduce and prevent child abuse and neglect fatalities nationwide. Their report will be issued to both Congress and the President no later than two years after the date on which the majority of members of the Commission have been appointed. Although this Commission will only be studying a subsection of child injuries and death, it is important that the commissioners examine the issue of child abuse and neglect in child care settings.

Finally, we note that the requirement to submit a Quality Performance Report is not applicable to Tribal Lead Agencies, as we are mindful of the reporting burden on Tribes. In the future, ACF may consider asking Tribes to report performance outcomes associated with spending on quality improvement activities through the existing Tribal ACF–700 or ACF–696T reports using the information collection process, which would provide opportunity for public comment. We have re-designated paragraph (r) as paragraph (w) with no other changes.

Approval and Disapproval of Plans and Plan Amendments (Section 98.18)

This section of the regulations describes processes and timelines for CCDF Plan approvals and disapprovals, as well as submission of Plan amendments. CCDF Plans are submitted biennially and prospectively describe how the Lead Agency will implement the program. To make a substantive change to a CCDF program after the Plan has been approved, a Lead Agency must submit a Plan amendment to ACF for approval. The purpose of Plan amendments is to ensure that grantee expenditures continue to be made in accordance with the statutory and regulatory requirements of CCDF, if the grantee makes changes to the program during the two-year Plan period.

Advance written notice. In conjunction with the change discussed

at § 98.14(d) to make the Plan and any Plan amendments publicly available, we propose to add a provision at § 98.18(b)(2) to require Lead Agencies to provide advance written notice to affected parties, specifically parents and child care providers, of changes in the program made through an amendment that adversely affect income eligibility, payment rates, or sliding fee scales. The Lead Agency must provide written notice to affected recipients and child care providers prior to a policy change that will reduce or terminate benefits. The notice should describe the action to be taken (including the amount of any benefit reduction), the reason for the reduction or termination, and the effective date of the action. We are providing Lead Agencies with flexibility to determine an appropriate, specific time period for advance notice, since this may vary depending on the type of policy change being implemented and/or the effective date of that policy change. Advance notice will add transparency to the Plan amendment process and provide a mechanism to ensure that affected parties remain informed of any substantial changes to the Lead Agency's CCDF Plan that may affect their ability to participate in the child care program. For example, if a Lead Agency submits a Plan amendment to revise its sliding fee scale and raise family co-pay amounts, it is important to give advance notice to those families and child care providers because this change may have implications for their ability to continue with their child care arrangement.

We note that section 98.14(c)(1) of the current regulations requires Lead Agencies to conduct at least one statewide public hearing before the CCDF Plan is submitted to ACF. The public hearing serves as a mechanism to provide broad notice and comment for families, child care providers, and other stakeholders regarding key elements of the CCDF program. Lead Agencies routinely submit amendments to their CCDF Plans throughout the two-year period during which the Plan is in effect; yet there is no similar transparency requirement with regards to Plan amendments. We are not requiring the Lead Agency to hold a formal public hearing and solicit comments on each Plan amendment; however, we encourage solicitation of public input whenever possible. We are only requiring notification of substantial changes in the program that adversely affect income eligibility, payment rates, or sliding fee scales. This regulatory change is consistent with the spirit and intent of the public hearing provision. The Lead Agency may choose to issue the notification in a variety of ways, including a mailed letter or email sent to all participating child care providers and families. Paragraph (c) of this section describing appeal and disapproval of a Plan or Plan amendment would remain unchanged.

Subpart C—Eligibility for Services

This subpart establishes parameters for a child's eligibility for child care services under the CCDF program and how Lead Agencies determine and verify eligibility. The current regulatory language defining an eligible child mirrors statutory language in the CCDBG Act. In order to be eligible for child care services, a child must be under the age of 13 (or 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); reside with a family whose income does not exceed 85 percent of State median income for a family of the same size; reside with a parent or parents who are working or attending a job training or educational program; or receive or need to receive protective services, at grantee option this may include children in foster care. The section also describes provisions related to establishment of additional eligibility conditions and priority rules by the Lead Agency. We propose to revise and update this section to promote continuity of care, make a technical change regarding the State Median Income (SMI), expand the scope of the protective services category to provide more flexibility, and refine the regulations concerning eligibility determinations.

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

We propose to make several revisions to eligibility requirements under this section that will promote continuity of child care services. As envisioned in this proposed rule, the purpose of CCDF is to develop high-quality child care programs that best suit the needs of children and families as they pursue the dual goals of financial self-sufficiency and healthy development and school success for their children. With those two goals in mind, it is important to emphasize continuity of subsidy receipt when developing eligibility policies. Continuity of subsidy receipt supports financial self-sufficiency by offering working families stability to establish a strong financial foundation while also preparing children for school by creating stable conditions necessary for healthy child development and early learning.

Many families receive CCDF assistance for only short periods of time and have frequent spells of cycling on and off the program. For example, a five-State study has shown that the median length of child care subsidy receipt is often very short, ranging from 3 to 7 months. (Meyers, M.K., et al., *The Dynamics of Child Care Subsidy Use: A Collaborative Study of Five States,* National Center for Children in Poverty, 2002) Preliminary findings from other studies using CCDF administrative data also indicate short subsidy spells. Short periods of subsidy receipt can be the result of a variety of factors, but developing eligibility policies that provide increased continuity for families that continue to need child care assistance would offer valuable support and relief to families working toward long-term stability.

In addition, research has shown that children have better educational and developmental outcomes when they have continuity in their child care arrangements. (Raikes, H., *Secure Base for Babies: Applying Attachment Theory Concepts to the Infant Care Setting,* Young Children 51, no. 5, 1996) For young children, safe, stable environments provide the opportunity to develop the relationships and trust necessary to comfortably explore and learn from their surroundings. Concurrently, research has shown that frequent changes in care arrangements are associated with higher levels of distress and negative behavior in infants and toddlers. (Dicker, S., & Gordon, E., *Ensuring the Healthy Development of Infants in Foster Care; A Guide for Judges, Advocates, and Child Welfare Professionals,* Zero to Three, 2004)

Continuity of care also is important for school-age children because the amount of exposure to programming, or dosage, has been shown to determine the impact such services have on a child. One study revealed that children who actively attended after-school programming showed marked improvement in test scores and school attendance when compared to their peers who were less active or did not participate in the program at all. (Welsh, M., Russell, C., Willimans, I., Reisner, E., and Whites, R., *Promoting Learning and School Attendance through After-school Programs,* Policy Studies Associates, 2002) The effect on attendance is of particular importance because school attendance has been found to be significantly related to sociological and academic outcomes for school-age children. (Gottfried, M., *Evaluating the Relationship Between Student Attendance and Achievement in Urban Elementary and Middle*

Schools: An Instrumental Variables Approach, American Education Research Journal, 2009)

State eligibility policies should take into consideration the importance of continuity in arrangements for children receiving subsidies and what policies make the most sense for supporting the child's developmental outcomes and school readiness, especially if a child is enrolled with a high quality child care provider. Many of the proposed changes in this section seek to improve continuity through implementation of more family-friendly eligibility policies, while recognizing that Lead Agencies need flexibility to make decisions to ensure that funds are appropriately targeted to families in need. The Lead Agency, however, must ensure that its eligibility policies (e.g., related to frequency of eligibility re-determination) are not only included in policy, but also consistently implemented in practice—for example by the localities, sub-recipients, and eligibility workers that implement the program on the Lead Agency's behalf.

As mentioned earlier, the revisions to § 98.20, discussed below, complement new § 98.16(h), which requires Lead Agencies to include in their CCDF Plans a description of policies to promote continuity of care for children and stability for families receiving CCDF services, including policies that take into account developmental needs of children when authorizing child care services, timely eligibility determination and processing of applications, and policies that promote employment and income advancement for parents.

Income eligibility. Lead Agencies are required to report their income eligibility threshold in the CCDF Plan. However, neither the statute nor regulations specify a source or basis for SMI. Therefore, each Lead Agency currently has the ability to determine the data source for the SMI. From a national perspective, this means the SMI levels are not comparable—making it more difficult to get a true understanding of where Lead Agencies are setting their thresholds. We propose to revise § 98.20(a)(2) by adding new paragraph (i) to clarify that eligibility threshold levels should be based on the most recent SMI data that is published by the Bureau of the Census. The proposed clarification would ensure that eligibility criteria are based on the most current and valid available data and provide consistency that allows for cross-State comparisons. SMI data may not be available from the Census Bureau for some Territories, in which case the Territory may use an alternative source.

Income eligibility policies can also play an important role in promoting continuity of services. Lead Agencies have flexibility to establish income eligibility thresholds up to 85 percent of SMI, however many Lead Agencies set eligibility levels at a lower threshold due to resource constraints and competing budgetary priorities. When setting an eligibility threshold that is below 85 percent of SMI, some Lead Agencies have instituted a two-tiered eligibility threshold which provides for initial and continuing income eligibility limits. A preliminary analysis of the FY 2012–2013 CCDF plans shows that 16 States and Territories have implemented policies which provide an entry level eligibility threshold and a higher exit income eligibility threshold.

As an example, a Lead Agency may have a policy that families must have an income at or below 50 percent of SMI in order to access the subsidized child care system. The parent(s) may be determined eligible at an income level just below 50 percent of SMI. Over the course of the next 3 to 6 months the parent may receive a small hourly wage increase which results in exceeding the income eligibility level and losing the family's child care subsidy. This scenario not only could disrupt the child care arrangement, it undermines the goal of helping low-income parents to work and gain economic independence because the increase in child care costs experienced by the family may exceed the amount of the wage increase. The wage increase becomes detrimental to the family's financial success by jeopardizing receipt of a child care subsidy. As an alternative, the Lead Agency could have a policy which requires that parents applying for subsidies have income below 50 percent of SMI, but once determined eligible, allows those parents to have incomes up to 60 percent of SMI before becoming ineligible for the subsidy. This two-tiered approach supports financial success by allowing for a modest amount of wage growth and a gradual transition out of the program by minimizing abrupt disruptions in services.

In recognition of the fact that many States set eligibility thresholds below 85 percent of SMI, we are not proposing a regulatory change to require a two-tiered eligibility policy. Yet, ACF recommends that Lead Agencies consider this policy as a strategy that allows families to retain child care assistance while experiencing modest success in the job market. This approach is consistent with the goal of improving continuity of child care services and can help prevent unnecessary churning on and off of the program by allowing for some amount of wage growth as families work towards greater self-sufficiency.

Protective services. Section 658P(3) of the CCDBG Act indicates that, for CCDF purposes, an eligible child includes a child who is receiving or needs to receive protective services. Under current regulations at § 98.20(a)(3)(ii)(B), at the option of the Lead Agency, this category may include children in foster care. The regulations allow that children deemed eligible based on protective services may reside with a guardian or other person standing ''in loco parentis'' and that person is not required to be working or attending job training or education activities in order for the child to be eligible. In addition, the regulations allow grantees to waive income eligibility and co-payment requirements as determined necessary on a case-by-case basis, by, or in consultation with, an appropriate protective services worker for children in this eligibility category. According to a preliminary analysis of the FY 2012–2013 CCDF Plans, at least 44 States and Territories provide child care subsidies to children receiving or in need of protective services. Additionally, at least 35 States and Territories elect to waive, on a case-by-case basis, the fee and income eligibility requirements for cases in which children receive, or need to receive, protective services. For children in foster care, 11 States and Territories have elected to provide child care subsidies regardless of the foster parents' work status or participation in education or training activities.

The regulatory provision concerning protective services was put in place in recognition of the unique and distinct aspects of children in protective services wherein child care serves the child's needs as much or more than the parents' needs. Additionally, because the statute references children who ''need to receive protective services,'' we believe the intent of this language was to provide services to at-risk children, not to limit this definition to serve children already in the child protective services system. We are proposing to formally clarify this in regulation by adding language as § 98.20(a)(3)(ii) specifying that the protective services category may include specific sub-populations of vulnerable children as identified by the Lead Agency. Thus, children need not be formally involved with child protective services or the child welfare system in order to be considered eligible for CCDF assistance under this category. Similarly, we also propose to delete the language indicating that the case-by-

case determination of income and co-payment requirements for this category must be made by, or in consultation with, a protective services worker. These changes will provide Lead Agencies with additional flexibility to offer services to those who have the greatest need, including high-risk populations.

As an example, a family living in a homeless shelter may not meet certain eligibility requirements (e.g. work or income requirements), but the child is in a vulnerable situation and could benefit greatly from access to high-quality child care services. This would have a dual benefit of offering the child access to care that supports child development, education, and health while also offering support to the family as they work towards finding a home and stabilizing their lives. Another vulnerable population that could benefit from access to child care services is the migrant worker community. Since the employment or income status of a migrant family may fluctuate throughout the year, stable access to child care services would prevent the child's development from being negatively impacted by variable working and living conditions.

Eligibility re-determination periods. Neither the CCDBG Act nor the CCDF regulations currently address the frequency of eligibility re-determinations or whether the Lead Agency must ensure the child is eligible on a continuous basis. We propose to add a new paragraph § 98.20(b) establishing that Lead Agencies may re-determine a child's eligibility for child care services no sooner than 12 months following the initial eligibility determination or most recent re-determination. In conjunction with this change, the proposed new paragraph provides that during the period of time between re-determinations, a Lead Agency, at its option, may consider a child to be eligible pursuant to some or all of the eligibility requirements specified in paragraph (a), if the child met all of the requirements in paragraph (a) on the date of the most recent eligibility determination or re-determination. Finally, this proposed change would require Lead Agencies to specify in the CCDF Plan any requirements for families to report changes in circumstances that may impact eligibility between re-determinations. These provisions would also apply to any localities or sub-recipients that implement the CCDF program on the Lead Agency's behalf.

Over time, many Lead Agencies have changed their policies to allow for longer eligibility re-determination periods. One State found that 86 percent of its families were still eligible for subsidies at the time of their required 6 month re-determination. As a result, in order to reduce administrative burden on families, the State switched to a 12 month re-determination period for most families. Studies also suggest that a significant number of families are still income-eligible for child care services, by both Federal and State eligibility criteria, when they leave the CCDF program. (Grobe, D., Weber, R.B., & Davis, E.E., *Why Do They Leave? Child Care Subsidy Use in Oregon.* Oregon State University, 2006) According to the FY 2012–2013 CCDF Plans, slightly more than half of the States and Territories require eligibility re-determination at 6 months, one State has an 8 month re-determination requirement, and the remainder have 12 month eligibility re-determination periods.

ACF believes a 12 month re-determination period is the most consistent with the programmatic goals of promoting continuity of care and financial self-sufficiency for CCDF families. Lead Agencies would be allowed to adopt re-determination periods longer than 12 months. For example, a Lead Agency could establish a child's eligibility to continue until kindergarten entry to align with Head Start or extend eligibility to facilitate partnerships between child care and Early Head Start programs serving infants and toddlers. We recognize that this proposed change would require some Lead Agencies to change policy in this area by moving from a 6 month to a 12 month re-determination period. Therefore we are requesting comment regarding the impact of this change, particularly any benefits or burdens it may have for CCDF families and to better understand implications for Lead Agencies.

In conjunction with this change we propose to add language that would allow Lead Agencies the option to consider a child eligible (pursuant to some or all of the eligibility requirements) during the period of time between re-determinations, as long as the child met CCDF eligibility requirements on the date of eligibility determination or re-determination. We believe this proposed change would allow Lead Agencies to adopt more family-friendly eligibility policies, to align eligibility requirements with other assistance programs, and promote continuity in child care subsidy receipt. In the past, ACF has received questions from Lead Agencies seeking guidance regarding instances in which a family's circumstances may change after initial eligibility determination or between re-determination periods, and whether the Lead Agency would be subject to a disallowance if it was determined that, during those interim periods, the family no longer met CCDF eligibility requirements.

This proposed change acknowledges that there are costs and other challenges associated with monitoring and verifying eligibility on a continuous basis to ensure that at any given point in time a family is eligible for services. These include costs to families that are trying to balance work and family obligations as well as costs to Lead Agencies administering the program. This proposed change clarifies that the Lead Agency is responsible for correctly determining and verifying eligibility at the time of initial eligibility determination and periodic re-determinations conducted thereafter, as the most reasonable and practical application of the statutory intent establishing eligibility criteria for CCDF. Lead Agencies are not required to implement policies that ''look back'' at a family's eligibility in the months prior to a re-determination and, if the family is found to be ineligible upon re-determination, seek to recoup funds from the family for benefits received in prior months.

We note the proposed change indicates that a Lead Agency, at its option, may consider a child to be eligible pursuant to some or all of the eligibility requirements between eligibility re-determinations. This gives States latitude to decide which elements of CCDF eligibility, if any, to track between eligibility re-determinations. A Lead Agency may establish a family's eligibility for 12 months (or longer) and only identify changes to a family's circumstances at the time of the next re-determination and make necessary adjustments to the CCDF benefit then as appropriate. Alternately, a Lead Agency could set criteria for limited, significant changes that it will track between eligibility re-determinations, examining all other eligibility criteria at the time of the next re-determination. For example, the Lead Agency may establish criteria that require families to report changes in circumstances (if the State does not have other mechanisms for learning about the change) related to any changes in income above a certain threshold—but evaluate other eligibility criteria at the time of re-determination. ACF recommends that States require parents receiving subsidies to report a job loss between eligibility determinations to initiate the allowable period of job search. However, State policies that track all eligibility criteria on a

continuous basis and require more frequent reporting of changes in circumstances remain allowable, but are not recommended. Under the proposed change, Lead Agencies would be required to specify in the Plan any requirements for families to report changes in circumstances that may impact eligibility between re-determinations.

For school-age children, the proposed change would allow Lead Agencies to avoid terminating access to valuable high quality before-and after-school care in a manner that may be detrimental to positive youth development and academic success or put the child at-risk if a parent is working and cannot be with the child after school. As an example, in order to promote continuity of care for a 12-year old child enrolled in a before-or after-school program and supported by CCDF, the Lead Agency could schedule the family's re-determination date at the beginning of the school year and schedule the next re-determination to occur after the school year has ended. Therefore, if the child turned 13 during the school year, the child would continue to be able to participate in their before-or after-school program, as opposed to being abruptly removed immediately after the child's birthday. In addition, this type of policy can ease administration of school-age programs by making the eligibility of children receiving subsidies more commensurate with the school year.

We strongly encourage Lead Agencies to adopt reasonable policies for tracking eligibility that minimize compliance burdens on families and promote self-sufficiency. Many low-income families have frequent fluctuations in work schedules and hours of work. Strict requirements that families report all changes in circumstances in a short time frame, even those that do not directly impact eligibility, can make it more difficult for working families to maintain their eligibility, increase administrative burden, and could result in children having to leave child care providers with whom they have bonded. According to the FY 2012–2013 CCDF Plans, 20 States and Territories report implementing policies to minimize reporting requirements for changes in family circumstances that have no effect on a family's eligibility in order to promote continuity of care.

We also encourage Lead Agencies to consider how they can align CCDF eligibility policies with other programs serving low-income families. This proposed change is consistent with practices in other Federal programs serving low-income families which allow States the option to certify families as eligible for a specified period of time. For example, the Head Start program requires that families be eligible at an initial eligibility determination and allows the child to remain eligible until they enter school. A Lead Agency could establish eligibility periods longer than 12 months for children enrolled in Head Start and receiving CCDF, since children enrolled in Head Start remain eligible until they enter school—creating a better alignment between programs. Similarly, a Lead Agency could establish longer eligibility periods during an infant and toddler's enrollment in Early Head Start. The Supplemental Nutrition Assistance Program's (SNAP) simplified reporting requirements provide States the option of requiring households to report changes in income between certification and scheduled reporting periods only when total countable income rises above 130 percent of the poverty level. In SNAP, a Lead Agency may require a household that has been certified as eligible for a 12 or 6-month period to submit a periodic report (as opposed to a face-to-face visit), generally about halfway through the certification period, for which certain changes that have occurred since certification must be reported. Similarly, provisions in the Medicaid and Children's Health Insurance Program (CHIP) allow States the option to provide children with continuous 12 month eligibility. The changes proposed in this rule promote conformity across Federal programs by providing options to Lead Agency's to simplify CCDF reporting and eligibility requirements for families receiving assistance from multiple programs.

In proposing this change, ACF is cognizant of the importance of ensuring CCDF funds are effectively and efficiently targeted towards eligible low-income families. Policies to promote continuity, such as lengthening eligibility periods and allowing a child to remain eligible between re-determination periods, necessarily must be founded on a strong commitment to program integrity. ACF expects Lead Agencies to have rigorous processes in place to detect fraud and improper payments, but these should be reasonably balanced with family-friendly practices. In order to ensure that only eligible families receive CCDF assistance, Lead Agencies should focus administrative dollars on making sure that a family's eligibility is determined accurately at the initial determination and at times designated for re-determination. For this reason, the proposed rule includes the addition of a new section at § 98.68 titled *Program Integrity* that requires Lead Agencies to have procedures in place for documenting and verifying that children meet eligibility criteria at the time of eligibility determination and re-determination.

Lead Agencies receive a fixed amount of CCDF funds and often face challenges determining how to appropriately allocate resources. When implementing their CCDF programs, Lead Agencies must balance ensuring compliance with eligibility requirements with other considerations, including administrative feasibility, program integrity, promoting continuity of care for children, and aligning child care with Head Start, Early Head Start, and other early childhood programs to promote partnerships. This proposed change removes any uncertainty regarding applicability of Federal eligibility requirements for CCDF and the threat of potential penalties or disallowances that otherwise may inhibit a Lead Agencies' ability to balance these priorities in a way that best meets the needs of children in families within their jurisdiction.

Developmental needs of the child. We propose to amend § 98.20 to add paragraph (d) requiring Lead Agencies to take into account the developmental needs of the child when authorizing child care services. Under this proposed change, Lead Agencies would not be restricted to limiting authorized child care services based on the work, training, or educational schedule of the parent(s). This is consistent with the current regulations at § 98.20(a)(3)(i) requiring that the child ''reside with'' a parent or parents who are working or attending a job training or educational program. One of the goals of this proposed rule is to enhance recognition of the role of CCDF as a child development program by emphasizing access to early learning and afterschool settings that support children's success, as well as enabling parents to work. In service of this goal, this proposed change clarifies that Lead Agencies should take into account the developmental and academic needs of children—not just their parents' work or training needs—as part of eligibility, intake, authorization, and other CCDF policies and practices.

As an example, in serving a preschool aged child (e.g., age 3 or 4), the Lead Agency should consider whether or not the child has access to a high quality preschool setting and how CCDF can make attendance at a high quality preschool more likely. Many Lead Agencies tie access to child care subsidies closely with parental work

hours, which may limit access to high quality settings. If most local high quality early learning programs offer only full-time slots, but the child care authorization reflects only the parent's part-time work schedule, the child may be unable to attend a high quality early learning program, which is especially critical for low-income children in the year preceding kindergarten. Lead Agencies are encouraged to authorize adequate hours to allow the child to participate in a high quality program. Alternatively, Lead Agencies can partner with Early Head Start, Head Start, prekindergarten, or other high quality programs to build an intentional package of arrangements for the child—that allows for both attendance at preschool and perhaps a second arrangement that accommodates the parents' work schedule.

Specifically, it is important for infants and toddlers to build secure attachments and maintain relationships with caregivers over time to promote healthy child development. For example, a Lead Agency may wish to authorize part-day CCDF services that accommodate a child's participation in Early Head Start, while also maintaining a secondary child care arrangement to preserve the relationship with a familiar caregiver. A Lead Agency could also offer parents the choice to select high-quality infant slots that are funded through contracts or grants with infant and toddler programs. For children of all ages, a Lead Agency could provide more intensive case management for children with multiple risk factors to increase the likelihood that the family will find a stable, quality child care arrangement that will work with other services providers in assisting the child and family.

This proposed provision acknowledges that both the child's development and the parent's need to work are factors in the service needs of each family. We recognize that given constraints on funding, limited human resource capacity, and the inadequate supply of high quality care, a perfect arrangement will not be found in all cases. Rather, we expect Lead Agencies to consider how they can infuse the needs of children into their policies and practices and encourage partnerships with high quality providers, child care resource and referral agencies, and case management partners to look for ways to strengthen CCDF's capacity to fulfill its child development mission for families. Lead Agencies retain flexibility on how to carry out this provision and ACF expects to provide technical assistance to support innovation in this area.

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

In the description of goals for the child care program, section 658A(b)(2) of the CCDBG Act includes, ''to promote parental choice to empower working parents to make their own decisions on the child care that best suits their family's needs.'' Subpart D of the regulations describes parental rights and responsibilities and provisions related to parental choice, including unlimited parental access to their children, requirements that Lead Agencies maintain a record of parental complaints, and consumer education activities conducted by Lead Agencies to increase parental awareness of the range of child care options available to them. We have proposed a number of changes to this subpart including provisions directed towards increasing the supply of high quality child care, establishment of a hotline for parental complaints, consumer education activities to increase awareness of the quality of child care choices available to parents receiving subsidies, and ensuring parents receive specific information about the child care provider they select.

Parental Choice (Section 98.30)

Use of grants or contracts. Section 658E(c)(2)(A)(i) of the CCDBG Act requires that Lead Agencies provide assurances that parents are given the option to enroll their child with a child care provider that has a grant or contract to provide child care services or to receive a child care certificate. Current regulations at § 98.30(a) require that Lead Agencies offer eligible parents a child care certificate, or to enroll the child with a provider that has a grant or contract ''if such services are available.'' The statutory language does not include this clause; instead it was added through regulation. The proposed change would delete the phrase ''if such services are available'' at § 98.30(a)(1) and add ''in accordance with § 98.50.'' As discussed later in this preamble, we propose to modify § 98.50(b)(3) to read that child care services shall be provided using methods provided for in § 98.30, *which must include the use of grants or contracts for the provision of direct services, with the extent of such services determined by the Lead Agency after consideration of supply shortages described in the Lead Agency's Plan pursuant to § 98.16(i)(1), and other factors as determined by the Lead Agency.* We believe the current regulatory language undermines the strength of the parental choice statutory requirement by sending the message that contracts are of secondary importance to vouchers and need not be used as a mechanism for providing direct services. The proposed change would retain the requirement for Lead Agencies to offer parents a child care certificate or voucher.

In 2011, CCDF administrative data showed that approximately 90 percent of children receiving child care assistance were served through certificates (also referred to as vouchers). According to a preliminary analysis of the FY 2012–2013 CCDF Plans, only 21 States and Territories indicated that they provide child care services through grants or contracts through child care slots. We do not believe the intent of the CCDBG statute was to create a system solely operated through certificates. In fact, the statute does not give priority or preference to the use of certificates or vouchers, but reflects a balance between using both certificates and grants or contracts to provide child care assistance. Grants and contracts play a vital role in meeting the needs of underserved populations, and increase the choices available to parents.

While the majority of States and Territories rely on certificates to provide child care assistance to eligible families, some States and Territories have reported in their CCDF Plans using grants and contracts to increase the supply of specific types of child care. These include contracts to fund programs to serve children with special needs, targeted geographic areas, infants and toddlers, and school-age children. Grants and contracts are also used to provide wrap-around services to children enrolled in Head Start and prekindergarten to provide full-day, full-year care and to fund programs that provide comprehensive services. Additionally, Lead Agencies report using grants and contracts to fund child care programs that provide higher quality child care services.

The proposed revision retains the requirement that the Lead Agency operate a certificate program and that eligible families be offered a certificate, however the change requires Lead Agencies to find ways to also incorporate grants or contracts into their administration of the CCDF program, with specific consideration for how grants or contracts can be used to address shortage in the supply of high quality child care. Child care certificates can be an effective means of ensuring parental choice when providing child care assistance. However, demand-side mechanisms like certificates are only fully effective when there is an adequate

supply of child care. Multiple research studies have shown a lack of supply of certain types of child care and for certain localities. Child care supply in many low-income and rural communities is often low, particularly for infant and toddler care, school-age children, children with disabilities, and families with non-traditional work schedules. Parents in low-income communities also report that the regulated infant and toddler care or care for special needs children that is available is often unaffordable or of low quality. (Paulsell, D., Nogales, R., and Cohen, *Quality Child Care for Infants and Toddlers,* 2003) We provide further discussion of this proposed change regarding grants and contracts at Subpart F—Use of Child Care and Development Funds. Current paragraphs (b), (c), and (d) would remain unchanged.

We also propose a technical change at § 98.30(e) to delete group home child care from the variety of child care categories from which parents receiving a certificate for child care service must be able to choose. This is consistent with the changes made at § 98.2 removing group home child care from the definition of categories of care and eligible child care provider. As discussed earlier, instead we have modified the definition of family child care provider to include one or more individuals to be inclusive of group home care within this category. Current paragraph (f) at this section would remain unchanged.

Parental choice and child care quality. In order to be meaningful, we believe the parental choice requirements included in this section should give parents access to high quality child care arrangements across different types of providers that foster healthy development and learning for children. Many Lead Agencies have invested a significant amount of CCDF funds to implement quality rating and improvement systems (QRIS) to promote high quality early care and education programs, and some have expressed concerns that the current language of the parental choice regulatory provisions inhibits their ability to link the child care subsidy program to these systems. In order to fully leverage their investments, Lead Agencies are seeking to increase the number of children receiving CCDF subsidies that are enrolled with providers participating in the quality improvement system. ACF published a Policy Interpretation Question (CCDF–ACF–PIQ–2011–01) clarifying that parental choice provisions within regulations do not automatically preclude a Lead Agency from implementing policies that require child care providers serving subsidized children to meet certain quality requirements, including those specified within a quality improvement system. As long as certain conditions are met to protect a parent's ability to choose from a variety of categories of care, a Lead Agency could require that in order to provide care to children receiving subsidies, the provider chosen by the parent must meet requirements associated with a specified level in a quality improvement system.

We propose to incorporate this policy interpretation into regulation by adding paragraph (g) at § 98.30 to clarify that, as long as parental choice provisions at paragraph (f) of this section are met, parental choice provisions should not be construed as prohibiting a Lead Agency from establishing policies that require child care providers that serve children receiving subsidies to meet higher standards of quality as defined in a quality improvement system or other transparent system of quality indicators (discussed later in this proposed rule). Section 98.30(f) prohibits Lead Agencies from implementing health and safety or regulatory requirements that significantly restrict parental choice by expressly or effectively excluding any category or type of provider, as defined at § 98.2, or any type of provider within a category of care. Section 98.2 currently defines categories of care as center-based child care, group home child care, family child care, and in-home care (i.e., a provider caring for a child in the child's own home). (Note: We are proposing to delete group homes as a category of care at § 98.30(e)(1)). Types of providers are defined as non-profit, for-profit, sectarian, and relative providers.

When establishing such policies, we encourage Lead Agencies to assess the availability of care across categories and types, and availability of care for specific subgroups (e.g. infants, school-age children, families who need weekend or evening care) and within rural and underserved areas, to ensure that eligible parents have access to the full range of categories of care and types of providers before requiring them to choose providers that meet certain quality levels. Should a Lead Agency choose to implement a quality improvement system that does not include the full range of providers, the Lead Agency would need to have reasonable exceptions to the policy to allow parents to choose a provider that is not eligible to participate in the quality improvement system (e.g. relative care). As an example, a Lead Agency may implement a system that incorporates only center-based and family child care providers. In cases where a parent selects a center-based or family child care provider, the Lead Agency may require that the provider meet a specified level or rating. However, the policy also must allow parents to choose other categories and types of child care providers that may not be eligible to participate in the quality improvement system or when a parent decides that the rated providers are not suited to their family's needs or preferences. This is particularly important for geographic areas where an adequate supply of child care is lacking or when a parent has scheduling, transportation, or other issues that prevent the use of a preferred provider within the system.

In a similar manner, we propose adding paragraph (h) at § 98.30 to clarify that Lead Agencies may provide parents with information and incentives that encourage the selection of high quality child care without violating parental choice provisions. As discussed below, this proposed rule would require Lead Agencies to establish a system of quality indicators and to provide information about the quality of child care providers to parents receiving subsidies. Accordingly, this provision would allow Lead Agencies to adopt policies that incentivize parents to choose high quality providers as determined in a system of quality indicators. Lead Agencies may provide brochures or other products that encourage parents to select a high quality provider without violating parental choice provisions.

Parental Complaints (Section 98.32)

Hotline for parental complaints. Section 658E(c)(2)(C) of the CCDBG Act requires that a Lead Agency ''maintain a record of substantiated parental complaints and makes information regarding such parental complaints available to the public on request and provide a detailed description of how such record is maintained and is made available.'' Current language at § 98.32 mirrors the statutory requirement. We propose to add § 98.32(a) to require the Lead Agency to establish or designate a hotline for parents to submit complaints about child care providers. Paragraphs (a), (b), and (c) in the current regulations have been re-designated as paragraphs (b), (c), and (d) but otherwise remain unchanged.

States vary in how they meet the current requirement to keep a record of and make public substantiated parental complaints. In the FY 2012–2013 CCDF plans, 10 States reported having a toll-free hotline for parents to submit child care-related complaints, including 9

States with dedicated child care hotlines and one State that utilizes the child abuse and neglect hotline. An additional 16 States list public toll-free numbers on their Web sites for parents to contact the child care office. Not all are listed as hotlines, but may still provide parents with a means for submitting complaints and seeking additional information.

The Department of Defense (DoD) military child care program also runs a national parental complaint hotline. The Military Child Care Act of 1989 (P.L. 101–189) required the creation of a national 24 hour toll-free hotline that allows parents to submit complaints about military child care centers anonymously. DoD has found the hotline to be important tool in engaging parents in child care. In addition, complaints received through the hotline have helped DoD identify problematic child care programs. For example, information that was submitted through the hotline led to an investigation and the closure of some child care facilities in the early 1990s. (Campbell, N., Appelbaum, J., Martinson, K., Martin, E., Be All That We Can Be: Lessons from the Military for Improving Our Nation's Child Care System, 2000)

Lead Agencies have flexibility to design the hotline to fit the needs of the families they serve. Lead Agencies may also choose to work with other agencies to adapt existing hotlines, such as modifying hotlines used to report child abuse and neglect to include an option for reporting child care complaints.

We strongly encourage the Lead Agency to widely publicize the child care hotline number, and to consider requiring child care providers to publicly post the hotline number in their center or family child care home to increase parental awareness. Other areas for posting may be the Web site proposed at § 98.33(a), the child care resource and referral network and Web site, and consumer education materials, including the proposed consumer statement for parents receiving subsidy at § 98.33(c).

Lead Agencies are encouraged to establish a toll-free hotline that includes multilingual options and has a TTY/TDD option to ensure it is accessible to those with hearing impairments. It is important that all parents have access to the hotline, regardless of ability to pay for the call, English proficiency, or hearing ability. As with the military child care hotline, we recommend that the hotline be available for 24 hours a day. Allowing parents to submit complaints any time of the day gives them the flexibility to call when their work schedule allows. Parents should also have the option to report complaints anonymously. For some parents, reporting these issues may be difficult, and the option of anonymity may make them more comfortable with coming forward with a complaint.

Finally, Lead Agencies should have a complaint response plan in place that includes time frames for following up on a complaint depending on the urgency or severity of the parent's concern. This plan relates to the proposed regulatory change at § 98.41(d)(3) that Lead Agencies must do an unannounced, on-site monitoring visit in response to receipt of a complaint pertaining to the health and safety of children in the care of a provider serving children receiving CCDF subsidies.

Consumer Education (Section 98.33)

Section 658E(c)(2)(D) of the CCDBG Act requires that Lead Agencies ''collect and disseminate to parents of eligible children and the general public, consumer education information that will promote informed child care services.'' Current language at § 98.33(a) requires that, at a minimum, consumer education information should be provided about: (1) Full range of providers available; and (2) health and safety requirements.

Consumer education activities carried out across the country vary by who provides the information, how the information is presented, and what information is included. In some States and Territories, consumer education materials and referrals to providers are offered by the Lead Agency or by State or local TANF offices. In others, resource and referral agencies provide information about child care choices and referrals to all types of child care providers. The way information is presented to parents includes checklists, brochures, telephone hotlines, and in-person meetings. In addition to providing materials and referrals to parents receiving child care assistance, Lead Agencies engage in a variety of consumer education activities, including public awareness campaigns, planning or implementing quality rating systems, and translating outreach and education materials into other languages.

Current regulations do not specify mechanisms for how Lead Agencies should collect and disseminate consumer education information to the public or to parents determined eligible for CCDF assistance. In many States, the process for applying for and receiving a subsidy is disconnected from consumer education services offered by the Lead Agency, leaving the parent to find out what child care options are available to them with little to no information about the quality of that care. Additionally, it is unclear what information, if any, is provided to parents regarding the child care provider they choose, such as licensing or other regulatory requirements met by the provider.

We are proposing several changes to § 98.33 describing consumer education activities. Since the proposed regulatory changes at this section are extensive, the first part of this section briefly summarizes all of the proposed regulatory changes, and then each change is explained in more detail in the discussion that follows.

- *Consumer education Web site.* We propose to add language to § 98.33(a) requiring Lead Agencies to collect and disseminate, through a user-friendly, easy-to-understand Web site and other means identified by the Lead Agency, consumer education information that will promote informed child care choices. At § 98.33(a)(1) current regulations require that consumer education information, at a minimum, include information about the full range of available providers. We propose to add new provisions to require that the Lead Agency make available on a Web site: (i) Provider-specific information about any health and safety, licensing or regulatory requirements met by the provider, including the date the provider was last inspected; (ii) any history of violations of these requirements; and (iii) any compliance actions taken. We also propose to revise § 98.33(a)(2) to require that Lead Agencies include on the Web site a description of health and safety and licensing or regulatory requirements for child care providers and processes for ensuring that child care providers meet those requirements. The description must include information about the background check process for providers, as well as any other individuals in the child care setting (as applicable), and what offenses preclude a provider from serving children.
- *Transparent system of quality indicators.* We propose to add new paragraph § 98.33(b) to require Lead Agencies to collect and disseminate consumer education through a transparent system of quality indicators, such as a quality rating and improvement system or other system established by the Lead Agency, to provide parents with a way to differentiate between the quality of different child care providers in their communities using a rating or other descriptive method. The system must: (1) Include provider-specific information about the quality of child

care; (2) Describe the standards used to assess the quality of child care; (3) Take into account teaching staff qualifications and/or competencies, learning environment, and curricula and activities; and (4) Disseminate provider-specific quality information, if available, through the Web site described in § 98.33(a), or through an alternate mechanism which the Lead Agency shall describe in the CCDF Plan, including a description of how the mechanism makes the system of quality indicators transparent.

• *Providing consumer education to families receiving subsidies.* Finally, we propose to add a new paragraph § 98.33(c) requiring that Lead Agencies provide information to parents receiving subsidies about the child care providers available to them, as described in paragraphs (a) and (b), and specific information about the child care provider they choose, including health and safety requirements met by the provider described at § 98.41(a), licensing and regulatory requirements met by the provider, any voluntary quality standards met by the provider, and any history of violations of licensing or health and safety requirements.

Paragraphs (b) and (c) in the current regulations have been re-designated as paragraphs (d) and (e) but otherwise remain unchanged.

Consumer education Web site. We propose amending paragraph (a) of § 98.33 to require Lead Agencies to post provider-specific information to a user-friendly, easy-to-understand Web site as part of its consumer education activities. Making available a Web site with accessible, easy-to-understand basic information about how child care is regulated and monitored, as well as regulatory requirements met by individual child care providers can improve transparency and greatly reduce burden on families. Parents often lack information regarding specific requirements that individual child care providers may or may not meet. Some States and Territories currently post lists of licensed providers online, but not all licensing information is available, such as history of licensing violations or when the provider was last inspected or monitored. Limiting access to this information creates a burden for parents, makes it difficult for them to make informed decisions about their child's care, and denies parents information about providers' ability to protect their children's health and safety.

We believe parents choosing a provider should be able to do so with access to any information that the State may have about that provider, including information about, the date the provider was last inspected, licensing violations or compliance actions taken by the State against a provider. Similarly, if a provider is exempt from State licensing or regulatory requirements then the parent should be given that information and provided an explanation about why the provider is not required to be licensed.

The Web site also should make it easy for parents to know how the State regulates child care providers and what requirements they must meet. This must include a description of health and safety and licensing or regulatory requirements and processes for monitoring providers. We strongly recommend that the State tell parents how frequently providers are monitored or maximum amount of time between inspections. The Web site also must include a plain language description of the provider background check process including what the State looks at as part of a comprehensive background check (i.e., use of fingerprints for checks of Federal and State criminal history, as well as check of child abuse and neglect and sex offender registries). There must be information about what types of offenses that could preclude a provider from serving children, as well as offenses that would not disqualify a provider. We recommend using accessible terms when referring to criminal offenses, such as child abuse and violent crime, since terms like felony and misdemeanors might not have meaning for parents.

In order for a Web site to be a useful tool for parents, it should be easy to navigate, searchable, and in plain language. We recommend that Web sites be comprehensive, including a detailed profile for each licensed provider, which may include the provider's contact information, enrollment capacity, years in operation, languages spoken, etc . . . In addition, parents should be able to use many search terms when deciding on a provider, including name, type of care, county, zip code, or school district. All relevant licensing information should also be available on one Web site. Lead Agencies have flexibility to determine how to present information regarding child care provider licensing violations and compliance actions taken. This includes determining the length of the history to be included for providers, distinguishing between the severities of different violations, or posting information about compliance action or fines only after the provider has exhausted their due process rights or waives their rights.

This proposed change is consistent with current practices in many States to increase availability of information about licensing process, standards and violations to parents and the general public. According to a preliminary analysis of the FY 2012–2013 CCDF Plans, at least 30 States and Territories make all licensing information available to parents and the public online. Ten States and Territories reported making at least some licensing information available on a public Web site or other online tool, such as a provider training registry.

Research suggests that online publishing of licensing violations and complaints impact both inspector and provider behavior. One study found that after inspection reports are posted online, there was an improvement in the quality of care, specifically the classroom environment and improved management at child care centers serving low-income children. (Witte, A. & Queralt, M., What Happens When Child Care Inspections and Complaints Are Made Available on the Internet? NBER Working Paper No. 10227, 2004) Making provider compliance information widely available on a dedicated Web site allows all parents to make informed choices, and for purposes of the CCDF subsidy program, is key to ensuring that parental choice is meaningful for families receiving subsidies.

A transparent system of child care quality indicators. We propose to add new paragraph (b) at § 98.33 to require use of a transparent system of quality indicators, such as a quality rating and improvement system or other system established by the Lead Agency, to collect and disseminate consumer education information. As part of this proposed change, Lead Agencies would be required to implement a system that includes: Provider-specific information about the quality of child care; describes standards used to assess the quality of child care providers; takes into account teaching staff qualifications and/or competencies, learning environment, and curricula and activities; and disseminates provider-specific quality information through the Web site described above, or alternate mechanism established by the Lead Agency. This system would act as a basic tool that can be used not only to assess and collect quality information about specific child care providers, but also a straightforward way to provide parents with quality information and promote more informed child care choices. A system of quality indicators should include indicators which are appropriate to different types of

provider settings, including child care centers and family child care homes. Additionally, quality indicators should be appropriate for providers serving different age groups of children, including infants and toddlers, preschool, and school-age children.

In order for a transparent system of quality indicators to be useful, Lead Agencies must provide parents information that describes the standards used to assess the quality of child care providers, what the quality indicators mean, and if any providers are not covered in the system. In addition, the transparent system of quality indicators must take into account teaching staff qualifications and/or competencies, learning environments, and curricula and learning activities in child care settings. Teaching staff qualifications refer to specific education or training requirements attained by the teaching staff, program director, or family child care provider. Staff competencies reflect actual provider performance, typically measured with observational tools. Some research suggests that higher levels of education and credentials are related to better interactions between providers and the children in their care, leading to higher quality child care settings, when these training programs are informed by evidence and well-implemented. (Whitebook, M., Early Education Quality: Higher Teacher Qualifications for Better Learning Environments—A Review of the Literature, 2003; U.S. Department of Health and Human Services, National Institutes of Health, The NICHD Study of Early Child Care and Youth Development, 2006) Learning environments are the activities, practices, materials and provisions in the environment to promote children's optimal learning and development. The elements of a learning environment play an important role in determining the safety of a child's environment and the quality of a child's learning experience. Curricula and learning activities are the plan and activities used to help meet a child's developmental goals. ACF recommends curriculum indicators be linked with State early learning guidelines.

Finally, under proposed § 98.33(b)(3), Lead Agencies must disseminate the provider-specific quality information to the public, either through the Web site described at § 98.33(a), or, alternately, a Lead Agency may use another mechanism, such as dissemination through local resource and referral agencies or another approach, that the Lead Agency will describe in its CCDF Plan; the Plan will include a description of how the mechanism makes the system of quality indicators transparent.

We strongly encourage Lead Agencies to meet the requirement proposed in paragraph § 98.33(b) through the implementation of a Quality Rating and Improvement System (QRIS). QRIS provides a framework for organizing, guiding, and gauging the progress of early care and education quality initiatives at the State, Territorial, or Tribal level. In many cases, QRIS is the foundation of a cross-sector ECE system. States' leadership in creating and implementing QRIS has produced a more systemic approach to quality efforts and accountability. This move to a more systemic approach to improving child care quality also was reflected in the inclusion of a QRIS in the application for the Race to the Top-Early Learning Challenge (RTT–ELC) grant program.

As discussed earlier, more than half of the States have implemented QRIS as a framework for organizing and guiding the progress of early care and education quality initiatives and communicating the level of quality to parents. The rating structure of the QRIS typically uses a building block design, points, or some combination of the two to determine the rating earned by a provider. In a building block design, all of the standards in one level must be met in order to move to the next higher level. In a points system, points are earned for each standard and then are added together to determine the level. Each rating level includes a range of possible scores. These levels are then usually represented through symbols, such as one star, two stars, or three stars, providing an easy to understand means for parents to determine the quality of care available at a certain provider. Later in this rule we discuss proposed changes to § 98.51(a)(2) which describe activities to improve the quality of child care. We propose to add a description of a framework for organizing, guiding, and measuring progress of quality investments. A QRIS, or other system of quality improvement, is one key component of this larger framework and can help improve the ability to evaluate and communicate the quality of child care programs.

While ACF encourages all States to implement a systemic framework for evaluating, improving and communicating the level of quality in child care programs, we are not requiring Lead Agencies to implement a QRIS in order to meet the requirement to implement a transparent system of quality indicators. Lead Agencies have the flexibility to meet the requirement proposed at paragraph § 98.33(b)(3) by implementing, more limited, alternative systems of quality indicators. However, we recommend that these be an interim step for Lead Agencies on the path to developing a full QRIS. Over time, Lead Agencies are encouraged to work on linking their quality improvement initiatives and strategies, culminating in a comprehensive QRIS with adequate support for providers to attain higher levels of quality and transparency for parents and the community regarding the quality of child care.

Lead Agencies also could meet the new requirement for a transparent system of quality indicators by providing a profile or report card of information about the child care provider to parents that could include compliance with State licensing or health and safety requirements, information about ratios and group size, average teacher training or credentials, type of curriculum used, any private accreditations held, and presence of staff to work with young dual language learners or children with special needs. We encourage Lead Agencies to incorporate mandatory licensing requirements into a system of quality indicators, as a baseline of information for parents to use. For example, one State currently has a Licensed Plus option that designates providers who have met certain quality levels beyond that of the State's regular licensing program. By building on existing licensing structures, Lead Agencies may have an easier transition into a more sophisticated system that differentiates between indicators of quality. Lead Agencies should explain the licensing system to parents, as well as what a provider must do in order to receive a higher level license, and how violations of licensing standards are handled.

Another option for designing a transparent system of quality indicators to meet the new requirement at § 98.33(b), is to rely on accreditation programs to differentiate between quality of child care providers. The accreditation system may have different levels or steps in the process to indicate a progressive change in quality that would give a more useful picture of quality available to parents than if the system simply differentiates between accredited and not accredited. Lead Agencies that choose this type of system should provide information to parents about which type of accreditation options are available, what the accreditations mean, and what type of providers are eligible to participate. One limitation of this approach is that only a small proportion of child care providers are nationally accredited. To address this situation, many States

embed accreditation into a more widely-applicable set of quality indicators.

In designing a transparent system of quality indicators, we suggest considering the following key principles: Provide outreach to targeted audiences; ensure indicators are research-based and incorporate the use of validated observational tools when feasible and that assessments of quality include program standards that are developmentally appropriate for different age groups; incorporate feedback from child care providers and from parents and families; make linkages between consumer education and other family-specific issues such as care for children with special needs; engage community partners; and establish partnerships that build upon the strengths of resource and referral programs and public agencies that serve low-income parents.

Under the proposed change, each Lead Agency has the flexibility to develop a system of quality indicators, such as a QRIS, based on its specific needs. Lead Agencies may develop a system that is voluntary for child care providers to participate in or could choose to exempt certain providers, such as faith-based providers, from its system of quality indicators. A Lead Agency also could choose to incorporate licensing as part of the base level of indicators (e.g., some States automatically incorporate all licensed providers into their QRIS). We encourage Lead Agencies to establish a system of quality indicators that is inclusive of all types of providers, including family child care providers and providers serving school-age children.

We recognize that it takes time to build a comprehensive system that is inclusive of a large number of providers across a wide geographic area. However, in order for a system of quality indicators to be meaningful it should include as many providers as possible so that parents can benefit from having information about the quality of a wide range and variety of child care providers. While we are not mandating a specific approach or participation rate, the public needs contextual information regarding the extent of participation by providers in a system of quality indicators. For example, the Quality Performance Report, which has been implemented as an attachment to the CCDF Plan, asks States to track and report on the participation of providers in State QRIS.

Providing consumer education to families receiving subsidies. This discussion has focused on Lead Agency responsibilities for providing consumer education to the general public and all parents; however, we believe those families receiving subsidies deserve particular attention. We propose adding a new paragraph (c) to § 98.33 to require Lead Agencies to provide parents determined eligible for CCDF assistance with information about the child care provider options available to them, as described at paragraphs (a) and (b), and specific information on the child care provider they choose, including CCDF health and safety requirements met by the provider, any licensing and regulatory requirements met by the provider, any voluntary or State or locally mandated quality standards met by the provider, and any history of violations of health and safety, licensing or regulatory requirements.

Lead Agencies should also provide information necessary for parents to understand the components of a comprehensive criminal background check, as well as the types of findings that may preclude a provider from serving children receiving subsidies. In addition, if the parent chooses a provider that is legally-exempt from State regulatory requirements or exempt from CCDF health and safety requirements (e.g., relatives or in-home providers at Lead Agency option, as described later in this proposed rule), the Lead Agency or its designee should explain the exemption to the parent and the rationale for the exemption.

When providing this information, which is essentially a consumer statement for subsidy parents, a Lead Agency may provide that information using the Web site required by § 98.33(a) or through the alternative mechanism allowed by § 98.33(b). In such cases, the Lead Agency should ensure that parents have access to the internet or provide access on-site in the subsidy office. However, once a parent receiving a subsidy selects a particular provider, the Lead Agency must provide the health and safety and quality information about that specific provider, such as by providing a hard copy report or email (for parents with internet access and an email address) with a link to the specific information online.

We strongly encourage Lead Agencies to incorporate child care consumer education services directly into the intake and eligibility process for families applying for CCDF assistance to explain the full range of child care options and meaning of licensing violations and quality standards. Parents seeking subsidies should have access to information that the Lead Agency collects regarding the child care providers in their community, especially information about the quality of those child care providers. Parents of eligible children often lack the information necessary to make informed decisions about their child care arrangement. The child care market often faces the issue of information asymmetry, where parents may have difficulty accessing complete information about a particular provider without assistance. Low-income working families may face additional barriers when trying to find information about child care providers, such as limited access to the Internet, limited literacy skills, or limited English proficiency. Lead Agencies can play an important role in bridging the gap created by these barriers by providing information for families receiving CCDF subsidies to ensure the parent fully understands their child care options and feels comfortable in assessing the quality of providers.

Finally, ACF encourages Lead Agencies to provide parents receiving CCDF assistance with any updated information on the child care provider they select (or information about any new provider they may select if the child care provider changes), including notifying the parent of any violations incurred by the provider. These updates should be provided on a periodic basis, such as providing an update at the time of the family's next eligibility re-determination. We also encourage strong ties between the CCDF Lead Agency and the licensing agency to ensure that families are not referred to providers seriously out-of-compliance with health and safety requirements, and that placement and payment of subsidy does not continue where children's health and safety are at-risk.

The goal of all the proposed revisions at § 98.33 is to make the child care system as transparent as possible for parents and the public. In order to ensure a robust consumer education system, we are specifically seeking comment on the new proposals at § 98.33 and ask for feedback about areas that should be included in the system. We also ask for State, Tribal, and Territorial experiences with collecting and sharing child care provider information, including greater detail on what types of information from provider background checks are shared with parents seeking child care.

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

Subpart E of the regulations describes Lead Agency and provider requirements for compliance with applicable State and local regulatory and health and safety requirements. It also includes

provisions requiring the Lead Agency to establish a sliding fee scale that provides for cost sharing for families receiving assistance, to ensure that payment rates to providers serving children receiving subsidies ensure equal access to the child care market, and to establish priorities for child care services. We propose to make several changes to this subpart specifically regarding health and safety requirements, procedures for monitoring providers, sliding fee scales, and equal access provisions.

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

Section 658E(c)(2)(E) of the CCDBG Act requires every Lead Agency to certify that it has in effect licensing requirements applicable to child care services within its jurisdiction. Correspondingly, § 98.40 of the regulations implements section 658E(c)(2)(E), and asks Lead Agencies to provide a description of licensing requirements for child care services and how they are effectively enforced. We propose to make one change in this section to add language at paragraph § 98.40(a)(2) requiring the Lead Agency to provide a description of any exemptions to licensing requirements and a rationale for such exemptions in the CCDF Plan.

According to the *2011 Child Care Licensing Study (*prepared by the National Child Care Information and Technical Assistance Center and the National Association for Regulatory Administration*),* half of the States have exemptions from licensing for child care centers. The most common licensing exemptions include: Facilities with the parents are on the premises (e.g. child care services in shopping malls or health clubs); facilities with a small number of children in care; facilities consisting of recreation programs, instructional classes, and/or club programs; and facilities with a small number of hours per day or week. Lead Agencies will now be asked in their CCDF Plan, as reflected in the proposed change at § 98.16(q), to describe their licensing exemptions and to explain the necessity of those exemptions. Asking States to provide a rationale can help ensure that exemptions are issued in a thoughtful, purposeful manner that keeps children safe. Information about licensing and regulatory exemptions should be made publicly available on the Lead Agency's Web site, pursuant to § 98.33(a).

Health and Safety Requirements (Section 98.41)

The CCDBG Act also includes a provision at 658E(c)(2)(F) to require that Lead Agencies establish health and safety requirements applicable to child care providers serving children supported by CCDF subsidies. Congress included this additional section, separate from the certification of State licensing requirements discussed above, to apply specifically to providers serving subsidized children and identified three categories required to be addressed as part of health and safety requirements: (1) 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.

Existing CCDF regulations at § 98.41, implementing section 658E(c)(2)(F), elaborate on only one of these three categories describing requirements related to immunizations as part of prevention and control of infectious diseases. The regulations are silent as to what the language ''building and physical premises safety'' and ''minimum health and safety training'' actually means for providers serving subsidized children. We believe this has resulted in a lack of accountability in the use of Federal funds for child care subsidies despite the fact that the statute clearly intended to establish minimum standards. The changes described in this section of the proposed rule would provide further specificity regarding expectations for how Lead Agencies are to meet these requirements.

State child care licensing regulations and monitoring and enforcement policies help provide a baseline of protection for the health and safety of children in out-of-home care. However, States vary greatly in the extent to which they require different types of child care providers to meet licensing and regulatory requirements. According to the *2011 Child Care Licensing Study* (prepared by the National Child Care Information and Technical Assistance Center and the National Association for Regulatory Administration), every State licenses child care centers; however, 3 States do not license small family child care homes (defined in the study as one adult caring for a group of children in the provider's residence). Fifteen States require family child care homes to be licensed when they care for two or more children; 8 States require homes to be licensed when they care for three or more children; 11 States require homes to be licensed when they care for four or more children; and 14 States don't require homes to be licensed until they care for 5 children or more.

Recognizing that these exemptions may leave children unprotected, the RTT–ELC, administered by the Department of Education, established a competitive priority for State applicants that implemented a licensing and inspection system covering all programs that regularly care for two or more unrelated children for a fee in a provider setting.

There also is considerable variation among States in what they include in their child care licensing requirements. Some State licensing standards do not require providers to have pre-service training, such as in first-aid or CPR, or they do not require providers to undergo background checks before caring for children.

We believe revisions to this part are especially important because many child care providers serving children receiving CCDF subsidies either are not required to be licensed or have been exempted from licensing requirements by States, meaning that CCDF health and safety requirements are the primary, and in most cases, the only safeguard in place to protect those children—along with any other children the provider may be caring for. Approximately 10 percent of CCDF children are cared for by non-relatives in unregulated centers and homes.

When States exempt certain types of child care from licensing, the safety of children is left unmonitored and there can be a lack of accountability for children receiving CCDF subsidies. All too frequently, there are reports of child injury or death in child care homes or facilities not licensed or monitored by the State. A national study of child fatality rates in child care showed variation in fatality rates based on the strength of licensing requirements and suggested that licensing not only raises standards of quality, but serves as an important mechanism for identifying high-risk facilities that pose the greatest threat to child safety. (Dreby, J., Wrigley, J., *Fatalities and the Organization of Child Care in the United States, 1985–2003,* American Sociological Review, 2005) Additionally, child deaths at unlicensed child care homes or facilities have prompted some State legislatures to take action by passing laws to strengthen licensing requirements.

Because many child care providers may not fall under the purview of the State's licensing program, or licensing requirements themselves may not be rigorous, we believe it is important to provide additional detail in this section to ensure that all providers serving CCDF-subsidized children meet

minimum health and safety standards, whether or not they are licensed by the State (excepting relative providers and in-home providers that care for children in the child's home at the option of the Lead Agency, as discussed later in this proposed rule). Health and safety is the foundation of quality in child care and health promotion in child care settings can improve children's development. We believe the proposed changes will make significant strides in strengthening standards to ensure the basic safety, health, and well-being of children receiving a child care subsidy.

Our first proposed change to this section would amend the regulatory language at 98.41(a)(1)(i) to replace ''States and Territories'' with ''Lead Agencies'' to be inclusive of Tribes. When the 1998 Final Rule was issued, Tribes were exempt from this requirement because minimum tribal health and safety standards had not yet been developed and released by HHS at that time. However, minimum tribal standards have subsequently been developed and released, and the standards address immunization in a manner that is consistent with the requirements of this section. As a result, there is no longer a compelling reason to continue to exempt Tribes from this regulatory requirement.

Building and physical premises safety. Section 658E(c)(2)(F) of the CCDBG Act requires that Lead Agencies have in effect requirements designed to protect the health and safety of children that are applicable to providers serving children receiving subsidies which must include ''building and physical premises safety.'' However, the CCDBG Act and current regulations do not specify expectations for this requirement. We propose to amend § 98.41(a)(2) to describe minimum requirements for ''building and physical premises safety.'' The proposed change would specify that this requirement shall include:

i. Comprehensive background checks on child care providers that include use of fingerprints for State checks of criminal history records, use of fingerprints for checks of Federal Bureau of Investigation (FBI) criminal history records, clearance through the child abuse and neglect registry, if available, and clearance through sex offender registries, if available;

ii. Compliance with State and local fire, health, and building codes for child care, which must include ability to evacuate children in the case of an emergency. Compliance must be determined prior to child care providers serving children receiving assistance under this part; and

iii. Emergency preparedness and response planning, including provisions for evacuation and relocation, shelter-in-place, and family reunification.

Comprehensive criminal background checks. First, we believe the proposed change at § 98.41(a)(2)(i), to require comprehensive background checks, is a basic safeguard essential to minimize children's risk of abuse and neglect. This proposed change is consistent with a discussion in the preamble to the 1998 regulations which stated that, ''ACF considers [criminal background checks] to fall under the building and physical premises safety standard in the statute.'' (63 FR 39956) Chief among health and safety standards is that children are safe in the care of child care providers. Parents have the right to know that their child care providers and others who come into contact with children do not have a record of violent offenses, sex offenses, child abuse or neglect, and have not engaged in other behaviors that would disqualify them from caring for children. A GAO report issued in September 2011 found several cases in which individuals convicted of serious sex offenses had access to children in child care facilities as employees, because they were not subject to a criminal history check prior to employment. (GAO–11–757) This change also is consistent with other program policies such as Head Start, which requires all prospective Head Start and Early Head Start employees to receive a criminal background check.

According to a preliminary analysis of the FY 2012–2013 CCDF Plans, all States and Territories require that child care center staff undergo at least one type of criminal background check and approximately 40 require a fingerprint check. Fifty States and Territories require family child providers to have a criminal background check and approximately 36 require a fingerprint check. For some States and Territories, these requirements are currently limited to licensed providers rather than all providers that serve children receiving CCDF subsidies. Under this proposed rule, we would require that all providers serving CCDF-subsidized children (with the exception, at Lead Agency option, of relatives and providers in the child's own home) must undergo a comprehensive criminal background check that includes: (1) Use of fingerprints for State checks of criminal history records; (2) use of fingerprints for checks of Federal Bureau of Investigation (FBI) criminal history records; (3) clearance through the child abuse and neglect registry, if available; and (4) clearance through sex offender registries, if available. ACF recently published an Information Memorandum (CCDF–ACF–IM–2011–05) that provides further guidance and information regarding these four components of a comprehensive background check.

We are specifically seeking comments on whether requirements for a comprehensive criminal background check should also be applicable to other individuals in a child care center, such as food service and office personnel. In addition, we request comment on whether other individuals in a family child care home that provides services to children receiving CCDF subsidies should be required to undergo a background check, and at what age. Forty-three States require some type of background check of family members 18 years of age or older that reside in the family child care home. (*Leaving Child Care to Chance: NACCRRA's Ranking of State Standards and Oversight for Small Family Child Care Homes,* National Association of Child Care Resource and Referral Agencies, 2012)

Pre-inspections and ability to evacuate children. Secondly, we propose to add § 98.41(a)(2)(ii) requiring compliance with State and local applicable fire, health, and building codes, as part of the building and physical premises safety standard, including demonstration of the ability to evacuate children in the case of an emergency. Compliance must be determined before a provider serves a child care receiving a CCDF subsidy and phased in within an appropriate timeframe for providers currently caring for children. Building codes are designed to ensure that a building is safe for occupants and regular fire safety checks by trained officials can ensure that a child care facility or family child care home meets all applicable requirements as established by the State or locality.

According to the *2011 Child Care Licensing Study* (prepared by the National Center on Child Care Quality Improvement and the National Association of Regulatory Administrators), 39 States require fire, health, and building code inspections, also referred to as environmental inspections, for child care centers. In addition, many States conduct separate licensing inspections prior to issuing a license to a child care center. The study reports that 12 States require fire, health, and building code inspections for family child care providers. In addition, of the 42 States that license small family child care homes, 37 conduct an inspection before issuing a license to a family child care home.

Child care centers and family child care homes may be governed by

different fire, health, and building codes depending on the State or locality. Child care centers are a non-residential setting and serve more children and there may be more extensive fire, health and building codes in place for centers as opposed to family child care homes. The proposed requirement at § 98.41(a)(2)(ii) does not prescribe the fire, health, or building codes that should be applied to child care centers or family child care homes. Rather, Lead Agencies have the flexibility to determine the appropriate codes to apply to different providers.

We propose that Lead Agencies must take into account if the child care provider can evacuate children in the case of an emergency when determining whether a child care center or family child care home meets the building and physical premises safety standards. To ensure that children are in safe settings, Lead Agencies need to establish appropriate group sizes for child care providers that meet the health and safety needs of young children. Child-staff ratios should also be set such that providers can demonstrate the capacity to evacuate all of the children in their care in a timely manner. Currently, all States that license child care centers have requirements for child-staff ratios, and all States that license family child care homes have requirements about the maximum number of children (including infants, toddlers, preschool, and school-age children) that can be cared for by one adult provider. (*2011 Child Care Licensing Study,* National Center on Child Care Quality Improvement and National Association for Regulatory Administration, 2011)

One resource for determining the appropriate child-staff ratios and group sizes is NFPA 101: Life Safety Code from The National Fire Protection Association (NFPA) which recommends that small family child care homes with one provider serve no more than two children incapable of self-preservation. For large family child care homes, the NFPA recommends that no more than three children younger than two years of age be cared for where two staff members are caring for up to twelve children. (National Fire Protection Association. NFPA 101: Life Safety Code. 2009)

We are specifically seeking comments on the provision at 98.41(a)(2)(ii) requiring that health and safety inspections be completed prior to serving children receiving child care assistance. While we feel that requiring child care programs to meet State and local fire, health, and building codes prior to serving children is a crucial step in ensuring that the 1.6 million children served by CCDF are cared for in safe environments from day one, we recognize that this could create a burden for Lead Agencies, providers, and families. Additionally, we do not want to create additional barriers to parents finding care for their children because of delays in the availability of child care slots. We are also seeking comment about the process for inspecting programs that may already be serving children when this Final Rule is published.

Emergency preparedness and response planning. Third, consistent with the proposed changes at § 98.14, requiring Lead Agencies to coordinate with agencies responsible for emergency management and response when preparing the CCDF Plan, we propose adding § 98.41(a)(2)(iii) requiring Lead Agencies to include emergency preparedness and response planning requirements for child care providers serving children receiving CCDF subsidies. The importance of the need to improve emergency preparedness and response in child care was highlighted in an October 2010 report released by the National Commission on Children and Disasters (NCCD). The Commission was appointed by the President and Congress to conduct a comprehensive review of Federal disaster-related laws, regulations, programs, and policies to assess their responsiveness to the needs of children and make recommendations to close critical gaps. The Commission's report included two primary recommendations for child care: (1) To improve disaster preparedness capabilities for child care; and (2) to improve capacity to provide child care services in the immediate aftermath and recovery from a disaster. (*2010 Report to the President and Congress,* National Commission on Children and Disasters, p. 81, October 2010) Child care also has been recognized by the Federal Emergency Management Agency (FEMA) as an important part of disaster response (see FEMA Disaster Assistance Fact Sheet 9580.107, Public Assistance for Child Care Services, 2013).

This proposed change requires child care providers serving children supported by CCDF funds to appropriately plan for disasters and emergencies. Lead Agencies have flexibility to determine specific guidelines for what child care providers should include in emergency preparedness and response planning; however, planning must include provisions for evacuation and relocation, shelter-in-place, and family reunification. The National Resource Center for Health and Safety in Child Care and Early Education, funded by the Maternal and Child Health Bureau in HHS, publishes *Caring for Our Children: National Health and Safety Performance Standards: Guidelines for Out-of-Home Child Care, 2nd Edition.* This guidance includes recommended standards for written evacuation plans and drills, planning for care for children with special needs, and emergency procedures related to transportation and emergency contact information for parents. In addition, the National Association of Child Care Resource and Referral Agencies (NACCRRA) and Save the Children recently released a publication titled, *Protecting Children in Child Care During Emergencies: Recommended State and National Standards for Family Child Care Homes and Child Care Centers,* that includes recommended State regulatory and accreditation standards related to emergency preparedness for family child care homes and child care centers. Finally, ACF has published guidance for Lead Agencies to use for developing State-level emergency response plans for child care and resources for child care providers. These resources are available on our Web site at: *http://www.acf.hhs.gov/programs/occ/resource/child-care-resources-for-disasters-and-emergencies.*

Since all three of these building and physical premises safety requirements would apply to providers serving children receiving CCDF assistance, upon publication of a Final Rule, we are seeking comment as to what an appropriate phase-in or timeframe would be for ensuring that providers not meeting these requirements at that time are brought into compliance. We do not intend that these requirements cause disruption in the child care arrangements of children receiving subsidies, but expect that we would need to establish some reasonable period of time to ensure child care providers meet the conditions outlined at this section.

Minimum health and safety training. Adequate training in basic health and safety is essential to ensuring that the child care workforce is properly equipped to care for children receiving subsidies. The current regulations require minimum health and safety training, but do not define the requirement. Child care providers should have a firm grasp on essential health and safety areas prior to working with children so that they are fully prepared to meet the needs of all subsidy children from the very first professional interaction. Research has shown that caregivers who receive specialized training are better able to facilitate a positive learning

environment and tend to have children who exhibit fewer negative behaviors. (Fiene, R., *13 Indicators of Quality Child Care: Research Update,* Pennsylvania State University, National Resource Center for Health and Safety in Child Care, 2002) Given the breadth of health and safety issues related to young children, we believe it is important to establish a minimum baseline for pre-service and orientation training that applies uniformly across all providers serving children receiving CCDF subsidies. This proposed change will ensure that all child care providers responsible for the health and safety of children have received specific and basic training commensurate with their professional responsibilities.

We propose adding a list of minimum health and safety pre-service and orientation training, appropriate to the provider setting and ages of children served, at § 98.41(a)(3) to include the following: (i) First-aid and Cardiopulmonary Resuscitation (CPR); (ii) medication administration policies and practices; (iii) poison prevention and safety; (iv) safe sleep practices including Sudden Infant Death Syndrome (SIDS) prevention; (v) shaken baby syndrome and abusive head trauma prevention; (vi) age-appropriate nutrition, feeding, including support for breastfeeding, and physical activity; (vii) procedures for preventing the spread of infectious disease, including sanitary methods and safe handling of foods; (viii) recognition and reporting of suspected child abuse and neglect; (ix) emergency preparedness planning and response procedures; (x) management of common childhood illnesses, including food intolerances and allergies; (xi) transportation and child passenger safety (if applicable); (xii) caring for children with special health care needs, mental health needs, and developmental disabilities in compliance with the Americans with Disabilities Act (ADA); and (xiii) child development, including knowledge of developmental stages and milestones of all developmental domains appropriate for the ages of children receiving services.

The proposed minimum requirements are based on health and safety training recommendations from *Caring for Our Children: National Health and Safety Performance Standards; Guidelines for Early Care and Education Programs, 3rd Edition.* The proposed list is focused on those items that we believe represent the most immediate needs related to basic health and safety for children receiving subsidies. However, Lead Agencies are encouraged to develop a comprehensive and robust training program that also covers additional areas related to program design, worker safety, and child developmental needs, using the *Caring for our Children* guidelines as best practices in the field. In addition, training requirements should be appropriate to the provider setting and ages of children served. For example, training on SIDS is only necessary if a program cares for infants. If providers are caring for children of different ages, training in first-aid and CPR should include elements which take into account that practices differ for infants versus school-age children.

We propose to include § 98.41(a)(3)(i), first-aid and CPR, in the list of health and safety training requirements because studies show that training in these areas is associated with higher quality of care. A study of providers in four mid-western States, who had completed CPR or first-aid training within the past two years, showed that the training was associated with higher quality scores from the Family Day Care Rating Scale (FDCRS) and Early Childhood Environment Rating Scale Revised (ECERS–R) in family child care homes and centers. (Raikes, H. et al., *Child Care Quality and Workforce Characteristics in Four Midwestern States,* Omaha, NE, Gallup Organization, 2003)

It is important that someone who is qualified to respond to common injuries and life-threatening emergencies be in attendance in a child care setting at all times. A staff member trained in pediatric first-aid, including pediatric CPR can reduce the potential for serious injury. It also important to be trained specifically in first-aid and CPR for young children because first aid in the child care setting requires a more child-specific approach and technique than adult-oriented first-aid generally offers. Training in basic first-aid and CPR for children also has been shown to reduce the number of accidental injuries in child care. (Ulione, M.S., *Health Promotion and Injury Prevention in a Child Development Center,* Journal of Pediatric Nursing, 1997)

According to the FY 2012–2013 CCDF Plans, approximately 42 State and Territories have CPR pre-service training requirements for child care centers and 43 State and Territories have first-aid pre-service training requirements. For family child care providers, 44 have CPR pre-service training requirements and 43 have first-aid pre-service training requirements. (Note, throughout this section we have cited information from the most recent CCDF Plans which indicate the number of States and Territories that have *pre-service* training requirements in the areas discussed, consistent with the proposed change at § 98.41(a)(3) discussed later in this proposed rule. However, the CCDF Plan also asks Lead Agencies to indicate whether they have ongoing training requirements in certain areas, and in nearly all of the areas cited a higher number of Lead Agencies indicated they require ongoing training. Ongoing training requires the provider to receive specific training on some regular established basis, rather than, prior to provision of services.)

We propose to include § 98.41(a)(3)(ii), medication administration policies and practices, in the list of health and safety training requirements. We believe it is important that any child care provider who administers medication receive standardized training that educates the provider about the necessary skills and competencies needed to do so safely. Increasing numbers of children entering child care take medications (*Caring for Our Children,* Section 3.6.3). Medication will only be effective if appropriately administered and can be extremely dangerous if administered inappropriately. According to the FY 2012–2013 CCDF Plans, approximately 23 States and Territories have a medication administration pre-service training requirement for child care centers. For family child care homes, 15 States and Territories require pre-service training in medication administration.

We propose to include § 98.41(a)(3)(iii), poison prevention and safety, in the list of health and safety training requirements, so that staff can respond appropriately and in a timely manner to exposure to poisonous or toxic elements. There are over two million human poison exposures reported to poison centers every year, and children less than six years of age account for over half of those potential poisonings. (*Caring for Our Children,* Section 5.2.9.1) The substances most commonly involved in poison exposures of children are cosmetics and personal care products, cleaning substances, and medications. Toxic substances, when ingested, inhaled, or in contact with skin, may react immediately or slowly, with serious symptoms occurring much later. It is important for the caregiver to have the appropriate training to recognize symptoms, alert the poison center, and undertake the appropriate response. This precaution is essential to the health and well-being of staff and children alike.

We currently do not have data in the CCDF Plans regarding the number of Lead Agencies requiring poison prevention and safety training.

However, according to the *2011 Child Care Licensing Study* (prepared by the National Child Care Information and Technical Assistance Center and the National Association for Regulatory Administration), 46 States require an inaccessibility of toxic substances policy as part of their licensing system for child care centers, and 45 have the same requirement for family child care providers.

We propose to include § 98.41(a)(3)(iv), safe sleep practices including Sudden Infant Death Syndrome (SIDS) prevention in the list of health and safety training requirements. Despite the decrease in deaths attributed to SIDS and the decreased frequency of prone or side infant sleep position over the past two decades, many child care providers continue to place infants to sleep in positions or environments that are not safe and potentially fatal. According to the American Association of Pediatrics Task Force on Infant Sleep Position and Sudden Infant Death Syndrome, nearly 20 percent of SIDS deaths occur while the infant is in the care of a non-parental caregiver, with 60 percent of these occurring in family child care, 20 percent in child care centers, and 20 percent in relative care. (American Academy of Pediatrics, *Reducing the Risk of SIDS in Child Care* training, 2008)

Infants who are cared for by adults other than their parent/guardian or primary caregiver/teacher are at increased risk for dying from SIDS. According to *Caring for Our Children,* recent research and demonstration projects have revealed that caregivers/teachers are often unaware of the dangers or risks associated with prone infant sleep positioning, and many believe that they are using the safest practices possible, even when they are not. (*Caring for Our Children,* Section 3.1.4) Training has been shown to lead to an increase in healthy sleep practices which can help decrease the instance of injury or death in child care. According to the FY 2012–2013 CCDF Plans, approximately 25 States and Territories have safe sleep and SIDS prevention pre-service training requirements for child care centers, and 25 States and Territories have SIDS prevention pre-service training requirements for family child care homes.

We propose to include § 98.41(a)(3)(v), shaken baby syndrome and abusive head trauma prevention, in the list of health and safety training requirements. Over the past several years there has been increasing recognition of shaken baby syndrome which is the occurrence of brain injury in young children under three years of age due to shaking. Even mild shaking can result in serious, permanent brain damage or death. It is important for child care providers to be educated about the risks of shaking and supports should be in place to provide child care providers with healthy coping mechanisms to deal with frustrations that may arise when working with a challenging child. Research has suggested that approximately 1,300 U.S. children experience severe or fatal head trauma from child abuse every year and that approximately 30 per 100,000 children under age 1 suffered inflicted brain injuries (*www.dontshake.org*). It is important that child care providers are properly trained in healthy practices and how to prevent trauma from unsafe treatment of children.

We propose to add § 98.41(a)(3)(vi), age-appropriate nutrition, feeding, including support for breastfeeding, and physical activity, in the list of health and safety training requirements. Over the past three decades, childhood obesity rates in America have tripled, and today, nearly one in three children in America are overweight or obese. The persistence of childhood obesity can lead to significant health problems including diabetes, heart disease, high blood pressure, cancer, and asthma. (Let's Move! Child Care, *Learn the Facts,* 2010) Educating caregivers on appropriate nutrition and physical activity is essential to provide young children with a healthy environment to prevent long-term negative health implications. According to the FY 2012–2013 CCDF Plans, 19 States and Territories have a nutrition pre-service training requirement for child care centers, and 15 States and Territories require pre-service training in this area for family child care homes.

In May 2010, the White House Task Force on Childhood Obesity reported that physical activity assists children in obtaining and improving fine and gross motor skill development, coordination, balance and control, hand-eye coordination, strength, dexterity, and flexibility—all of which are necessary for children to reach developmental milestones. In addition, daily physical activity provides numerous health benefits including improved fitness and cardiovascular health, healthy bone development, improved sleep, and improved mood and sense of well-being. Daily physical activity is an important part of preventing excessive weight gain and childhood obesity. Early childhood years, in particular, are crucial for obesity prevention due to the timing of the development of fat tissue, which typically occurs from ages 3 to 7. During these preschool years, children's body mass index (BMI) typically reaches its lowest point and then increases gradually through adolescence and most of adulthood. However, if this BMI increase begins before ages 4 to 6, research has suggested that children face a greater risk of obesity in adulthood. (White House Task Force on Obesity, *Report to the President,* 2010)

Nutrition and age-appropriate feeding is important to ensure that children receive the proper nutritional content to provide for healthy development. This is of particular importance when working with families who may be facing nutritional challenges in the home as well. Eating well is equally important for the healthy development of young children, and research has shown that public programs can improve the nutritional quality of the food, as children who receive food through government-regulated programs (e.g., the U.S. Department of Agriculture Child and Adult Care Food Program) eat healthier than those bringing food from home. (White House Task Force, 2010) Age-appropriate feeding in particular is important to avoid potential health hazard (e.g. choking and allergies), particularly when introducing solid foods to young children. Age-appropriate feeding also means encouraging, providing arrangement for, and supporting breastfeeding in the child care environment.

We propose to include § 98.41(a)(3)(vii), procedures for preventing the spread of infectious disease, including sanitary methods and safe handling of foods, in the list of health and safety training requirements. Attendance at a child care facility may expose a child to the risk of acquiring infectious diseases. Staff members face challenges in terms of enforcing recommended hygiene measures including hand hygiene, maintenance of proper environmental sanitation, food safety, and the proper inclusion or exclusion due to illness for both children and staff. Training in such procedures for preventing and managing the spread of infectious disease will help mitigate the effects of an illness in the child care setting and protect children, staff, and families from unnecessary exposure. According to the FY 2012–2013 CCDF Plans, approximately 22 States and Territories have a pre-service training requirement on preventing the spread of infectious disease for its child care centers, and 20 States and Territories pre-service training in this area for family child care providers.

We propose to include § 98.41(a)(3)(viii), recognition and

reporting of suspected child abuse and neglect, in the list of health and safety training requirements. It is important for child care providers to be trained in child abuse and neglect prevention in order to be able to recognize the manifestations of child maltreatment. While child care providers are not expected to diagnose or investigate child abuse and neglect, it is important that they be aware of common physical and emotional signs and symptoms of child maltreatment. All States have laws mandating the reporting of child abuse and neglect to child protection agencies and/or the police. While the laws about when and to whom to report may vary by State, child care providers are often considered mandatory reporters of child abuse and neglect and therefore responsible for notifying the proper authorities in accordance with their State's child abuse reporting laws. Child care providers should use child abuse and neglect training to educate and establish child abuse and neglect prevention and recognition measures for children, providers, and parents. According to the FY 2012–2013 CCDF Plans, approximately 31 States and Territories have a pre-service training requirement on mandatory reporting of suspected abuse or neglect for child care centers, and 25 States and Territories require pre-service training in this area for family child care providers.

We propose to include § 98.41(a)(3)(ix), emergency preparedness planning and response procedures, in the list of health and safety training requirements. This is consistent with the earlier discussion in this proposed rule highlighting the importance of emergency preparedness and response planning for child care providers. These new requirements would ensure providers are trained on procedures and practices included in emergency preparedness and response plans. Given the extreme vulnerability of young children, it is important that providers be prepared to follow the necessary evacuation, shelter-in-place or re-location procedures, including emergency response practices for children with special needs, family reunification, and procedures related to transportation and accessing emergency contact information for parents. According to the FY 2012–2013 CCDF Plans, approximately 29 States and Territories have emergency preparedness and response training requirements for child care centers, and 22 States and Territories require training in this area for family child care providers. We note that Lead Agencies have flexibility to determine if health and safety training proposed in this section should occur pre-service or as part of orientation. In the case of emergency preparedness and response, it may be more appropriate for the provider to receive this training as part of orientation since emergency procedures are often site-specific.

We propose to include § 98.41(a)(3)(x), management of common childhood illnesses, including food intolerances and allergies, in the list of health and safety training requirements. Management of common childhood illnesses is essential to safeguarding the spread of illness throughout child care settings. Caregivers/teachers should be knowledgeable about infectious disease in order to recognize and properly contain the spread of illness among children, staff, and the greater community. Since young children are particularly susceptible to illness, the proper management of the child care environment through hygiene and sanitation trainings can drastically reduce the spread of common childhood illnesses. Similarly, proper feeding practices can prevent health problems for children with food intolerances and allergies.

We propose to include § 98.41(a)(3)(xi), transportation and child passenger safety, in the list of health and safety training requirements. We recognize that not all child care providers provide transportation services, so we have added ''if applicable.'' For child care providers that do provide transportation, we believe it is important that the provider is properly trained in age and size-appropriate child restraint practices for car safety seats and seatbelts. Additionally, child passenger safety training should include awareness of the incidence of death and injury associated with forgetting or leaving children unattended in a vehicle.

We propose to include § 98.41(a)(3)(xii), caring for children with special health care needs, mental health needs, and developmental disabilities, in the list of health and safety training requirements. In order to provide appropriate services, providers should be trained on caring for children with special health care needs, mental health needs, and developmental disabilities in compliance with the American with Disabilities Act (ADA) (42 U.S.C. 12101, *et seq.*) and other relevant Federal laws. (*Caring for Our Children,* Section 8.2.0.2) This is important to ensure that all children are included in all activities possible unless a specific medical contraindication exists. The goal is to provide fully integrated care to the extent feasible given each child's limitations. Federal and State laws do not permit discrimination on the basis of disability per the ADA.

Training to support a developmentally appropriate and inclusive environment is crucial because studies have found the following benefits of inclusive child care: Children with special needs develop increased social skills and self-esteem; families of children with special needs gain social support and develop more positive attitudes about their child; children and families without special needs become more understanding and accepting of differences and disabilities; caregivers/teachers learn from working with children, families, and service providers and develop skills in individualizing care for all children. A basic understanding of developmental disabilities and special care requirements of any child in care is a fundamental part of any orientation for new employees. Staff should obtain appropriate training in order to include children with special needs, such as children with severe disabilities and children with special health care needs such as chronic illnesses, into child care settings. These may include technology-dependent children and children with serious and severe chronic medical problems.

Finally, we propose to add § 98.41(a)(3)(xiii) child development, including knowledge of the stages and milestones of all developmental domains for the ages of children enrolled in the facility, in the list of health and safety training requirements. In addition to being integral to professional development, child development is an essential component for the health and safety of children, both in and outside the child care setting. From a protection standpoint, research has shown that improving parental understanding of child development reduces the incidence of child abuse and neglect cases. (Daro, D. and McCurdy, K., ''Preventing Child Abuse and neglect: Programmatic Interventions,'' Child Welfare, 1994); (*Reppucci, N., Britner, P., and Woodard, J., Preventing Child Abuse and Neglect Through Parent Education, 1997*) Child care providers should be knowledgeable of the important developmental milestones to support the healthy development of children in their care, but also so they can be a resource for parents and provide valuable parent education. Child abuse is often a result of frustration, which can be exacerbated by an improper understanding of a child's capabilities. Knowledge of

developmental stages and milestones minimizes this frustration and reduces the odds of child abuse and neglect by establishing more reasonable and appropriate expectations for children.

Child development training is also an important component of health and safety because it equips child care providers with the information necessary to recognize any significant developmental delays such as autism spectrum disorders, motor delays, or other conditions. Early detection and intervention, access to the appropriate developmental screenings, and referrals to the appropriate services provides a safeguard against avoidable developmental delays. According to *Caring for Our Children,* 70 percent of children with developmental disabilities and mental health problems are not identified until school entry. The report identifies child care professionals as playing an important role in early detection due to their daily interaction with children and families and their knowledge in child development principles and milestones. (*Caring for Our Children,* Section 2.1.1.4) Child development training must address all developmental domains, including social and emotional, physical, and cognitive domains. This comprehensive training will ensure that providers are able to recognize and provide appropriate services or referrals in all developmental areas, such as mental health services for children who are experiencing trauma or stress.

Pre-service or orientation training. In this proposed rule at § 98.41(a)(3) we also have added language to specify that the health and safety training requirements described above, proposed in paragraphs (a)(3)(i)–(xii,) should be met during *pre-service or orientation* training. We believe it is important that child care providers be well-prepared and have a firm grasp on basic health and safety issues prior to serving children receiving subsidies. Many Lead Agencies have already established pre-service training requirements for child care providers serving children receiving subsidies, which generally differ for child care center staff and family child care homes, as shown in the discussion above using data from the most recent CCDF Plans. These requirements may include a minimum number of training hours prior to employment through participation in workshops, meetings, or one-to-one consultation, and a minimum number of ongoing hours of training. Lead Agencies often allow requirements to be satisfied through completion of a certification course or vocational or occupational education program. In addition, while the proposed regulatory requirements focus on pre-service or orientation training, we strongly encourage Lead Agencies to establish requirements for ongoing training as well. Requiring periodic training on an ongoing basis will ensure that providers retain their knowledge and skills over time and are updated on the most current practices and information to ensure children's health and safety.

We are specifically seeking comment on whether regulatory changes should include a minimum number of pre-service training hours and ongoing hours of training in these areas. *Caring for our Children* guidelines recommend at least 30 hours of initial pre-service training for child care staff, at least 30 hours during the first year, and at least 24 hours per year of continuing education and professional development thereafter. (*Caring for our Children,* Section 1.4.1.1 and 1.4.4.1) We also request comment on whether the Final Rule should specify a format for the training and whether the training requirements should be linked to measures of accountability, such as continuing education credits, to ensure that ongoing training requirements lead to a progression or advancement in a provider's knowledge base.

We recognize that it may not be possible for child care providers serving subsidized children to meet all the listed minimum health and safety training requirements prior to the first day of service. Therefore, we are allowing Lead Agencies to require the training prior to the provider's start of service (i.e., pre-service) or during the initial service period (i.e., orientation). We are leaving it to the Lead Agency's discretion to specifically define ''pre-service'' and ''orientation'', which may include stipulations that the training be completed within the first weeks or month of providing child care services to children receiving CCDF assistance. Lead Agencies should also offer a grace period to providers who are already serving children receiving CCDF assistance to minimize disruptions to child care arrangements for children currently enrolled with a provider and receiving subsidies. A significant number of the proposed training requirements in this section are already being met by many child care providers that are subject to Lead Agency licensing or regulatory requirements. Additionally, many of the areas included in the proposed new requirements are readily available through on-line trainings, which should minimize burden on Lead Agencies.

Monitoring. The CCDBG Act at 658E(c)(2)(G) requires Lead Agencies to certify that procedures are in effect to ensure that child care providers serving children receiving CCDF subsidies comply with all applicable State and local health and safety requirements, including those described at § 98.41(a). Currently, § 98.41(d) of the regulations incorporates this language but does not provide further clarification of this requirement. The regulation as written states that ''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. . . .'' There is no further definition as to what procedures are appropriate for the Lead Agency to employ to meet this certification requirement or specific mention of monitoring as a key component to ensure child care providers comply with health and safety requirements.

We propose to amend § 98.41(d) to require that Lead Agencies procedures must include unannounced on-site monitoring and to add § 98.41(d)(1) to require that all providers serving children receiving CCDF subsidies must be subject to on-site monitoring, including unannounced visits. We propose to add § 98.41(d)(2) stating that the Lead Agency may not solely rely on child care provider self-certification of compliance with health and safety requirements included in paragraph (a) without documentation or other verification that requirements have been met. Finally, we propose to add § 98.41(d)(3) to require that Lead Agency monitoring procedures must require an unannounced visit in response to receipt of a complaint pertaining to the health and safety of children in the care of a provider serving children receiving CCDF subsidies.

These changes would add much needed clarity to the current regulations, which is especially important given the new proposed health and safety requirements at § 98.41(a), discussed above. CCDF requires Lead Agencies to provide assurances that providers caring for subsidized children, including providers that are not otherwise regulated or licensed, meet minimum health and safety requirements. We believe it makes sense also to articulate expectations for how compliance with those requirements should be monitored.

There is currently significant variation across States regarding the nature and intensity of on-site monitoring and unannounced visits, with a variation in the frequency of monitoring. According to a preliminary analysis of the 2012–2013 CCDF Plans, all 56 Lead Agencies currently have some unannounced visit component in place for licensed centers and 47 of the Lead Agencies currently have unannounced visits for licensed family child care providers. However, only 13 Lead Agencies indicate use of unannounced visits for license-exempt CCDF child care providers. ACF believes the use of unannounced visits more effectively influences provider behavior because the possibility of an unannounced visit may compel providers to maintain compliance with basic requirements.

The proposed change requires that all providers serving children receiving subsidies be subject to on-site unannounced monitoring. The Lead Agency may choose to inform providers before monitoring staff depart for unannounced visits that involve significant travel time, such as those in rural areas, to avoid staff visits when the provider or children are not present. A Lead Agency's on-site monitoring practices must require both regulated and unregulated family child care homes and centers that provide care to children receiving CCDF subsidies to be inspected. Further, Lead Agencies may not limit on-site monitoring solely to licensed or regulated providers if unregulated providers also are providing services to children receiving CCDF assistance, and Lead Agencies must conduct unannounced visits. Note that, pursuant to 98.41(e) and discussed later in this proposed rule, the Lead Agency may choose to exempt relative and in-home child care providers from monitoring requirements.

In recognition of resource constraints, we recommend, that Lead Agencies ensure child care providers caring for children receiving a subsidy receive an initial on-site monitoring visit and at least one annual unannounced on-site monitoring visit. We recognize that on-site monitoring requires adequate licensing and monitoring staff and other resources. Therefore, we are specifically requesting public comment on this recommendation and whether it should become a requirement and welcome input as to alternative monitoring frequencies.

ACF encourages Lead Agencies to consider the use of differential monitoring as a method for determining the use or frequency of on-site, unannounced monitoring based on an assessment of the child care provider's past level of compliance with health and safety requirements or with information received that could indicate violations. This allows Lead Agencies to prioritize monitoring of providers that have previously been found out of compliance or that receive parental complaints. Lead Agencies should make data-driven decisions, and make any necessary adjustments to these policies regarding the frequency of on-site monitoring visits over time based on the latest available data. For example, if the Lead Agency finds widespread or significant compliance issues under its existing monitoring protocol, it should consider increasing the number and frequency of inspections for those providers.

According to the *2011 Child Care Licensing Study* (prepared by the National Child Care Information and Technical Assistance Center and the National Association for Regulatory Administration), 26 States use differential or risk-based monitoring for child care centers and 21 States use this method for family child care homes. If a risk-based methodology is not feasible, Lead Agencies might consider random sampling.

Lead Agencies are also encouraged to coordinate with other entities that already have inspection and on-site monitoring mechanisms in place such as licensing, QRIS, and Head Start. Another key partner in ensuring health, safety and quality in child care is the U.S. Department of Agriculture's Child and Adult Care Food Program (CACFP), which provides funding to State agencies to reimburse child care providers for meals and snacks served to participants. The program requires CACFP agencies to conduct periodic unannounced site visits to prevent and identify management deficiencies, fraud and abuse under the program as well as to improve program operations. As an example of interagency coordination, one State holds monthly meetings with representation from its licensing division, the CCDF Lead Agency, CACFP, and other public agencies with child care monitoring responsibilities. These divisions and agencies identify areas of overlap in monitoring and coordinate accordingly to leverage combined resources and minimize duplication of efforts.

Coordinating with other monitoring agencies can be beneficial to both agencies as they prevent unnecessary duplication of services. To the extent that other agencies provide an on-site monitoring component that may satisfy or partially satisfy the new monitoring requirement under this proposed rule, the Lead Agency is encouraged to pursue this type of collaboration. It is important that any such collaboration does not impose additional burden or inappropriate authority on any one partner or its participating agencies and that any shared costs are properly allocated between the partnering organizations benefiting.

The regulatory revision at 98.41(d)(2) is being proposed because we feel that self-certification without documentation or other verification is an insufficient certification of compliance with health and safety requirements and represents a significant risk for unsafe conditions that endanger children, as well as for fraudulent or improper payments. In some States, child care providers caring for subsidized children can self-certify that they have met minimum health and safety standards without additional verification, monitoring or enforcement of those provisions. According to the FY 2012–2013 CCDF Plans, 21 States and Territories allow license-exempt family child care providers to self-certify that they have met the CCDF health and safety requirements and 6 Lead Agencies allow license-exempt child care centers to self-certify. Under the proposed rule, Lead Agencies must, at a minimum, verify any self-certification claims with supporting documentation. Some examples of documentation include inspection by a Fire Marshall, a current CPR certificate, certificates demonstrating completion of training hours, or confirmation of completion of on-line training.

Finally, the proposed regulation at 98.41(d)(3) provides that Lead Agency monitoring procedures must require an unannounced visit in response to receipt of a complaint pertaining to the health and safety of children in the care of a provider serving children receiving CCDF subsidies. We believe that it is incumbent upon a Lead Agency to investigate complaints related to possible health and safety violations for child care providers serving CCDF children and that it is reasonable to require that a complaint should automatically trigger an unannounced visit to the provider.

Finally, we propose at 98.41(d)(4) that Lead Agencies establish procedures that require child care providers that care for children receiving CCDF subsidies to report to a designated State, territorial, or tribal entity any serious injuries or deaths of children occurring in child care. We strongly recommend that States, Territories, and Tribes extend this requirement to all child care providers, including those not serving CCDF children. According to the *2011 Child Care Licensing Study,* 34 States

require child care centers to report all serious injuries that occur to children in programs, and 33 States require deaths that occur to children in programs to be reported. For family child care, 31 States require reporting of all serious injuries and 25 States require reporting of child deaths. Therefore, this requirement is in line with current State practice, and provides an important tool for States in monitoring the health and safety of child care providers. The information collected from these providers should be used to inform the proposed assessment of child injuries and deaths in child care as required at § 98.16(v)(2).

In-home and relative providers. Regulations at § 98.41(e) currently allow Lead Agencies to exempt relative caregivers, including grandparents, great grandparents, siblings (if such providers live in a separate residence), and aunts or uncles from health and safety and monitoring requirements described in this section. We propose to add language at § 98.41(e) to expand the Lead Agency's flexibility to also exempt in-home child care providers (i.e., an individual who provides child care services in the child's own home). Accordingly, at the Lead Agency's option, they may choose to exempt relative-caregivers and in-home caregivers from some or all of their health and safety training requirements and monitoring procedures. If the Lead Agency chooses to exempt either of these categories of providers, the Lead Agency must provide a description and justification in the CCDF Plan of requirements, if any, that apply to these providers. We believe this additional flexibility is important because we recognize that some of the proposed requirements, such as compliance with building, health, and fire codes, emergency preparedness and response planning, and unannounced on-site monitoring may not be appropriate for that type of care setting. However, we do not intend for in-home providers serving children receiving subsidies to meet *no* minimum standards. Lead Agencies should think carefully about what types of health and safety requirements should apply to in-home providers such as criminal background checks and minimum health and safety training, in a similar manner that is done when considering which of the requirements should apply to relative caregivers.

Sliding Fee Scales (Section 98.42)

CCDF regulations at § 98.42(c) currently state that ''Lead Agencies may waive contributions from families whose incomes are at or below the poverty level for a family of the same size.'' We propose amending this section so that Lead Agencies can waive contributions from families ''meeting criteria established by the Lead Agency.'' Lead Agencies have often requested more flexibility to waive co-payments beyond just those families at or below the poverty level. This change would increase flexibility to determine waiver criteria that the Lead Agency believes will best serve subsidy families. For example, a Lead Agency could use this flexibility to target particularly vulnerable populations, such as homeless families or migrant workers, or to better align services for children dually funded through both CCDF and Head Start. While we are allowing Lead Agencies to define criteria for waiving co-payments, the criteria must be described and approved in the CCDF Plan pursuant to the proposed change at § 98.16(k). Lead Agencies may not use this revision as an authority to eliminate the co-payment requirement for all families receiving CCDF assistance. We continue to expect that Lead Agencies will have co-payment requirements for a substantial number of families receiving CCDF subsidies.

Finally, we are also proposing to add paragraph § 98.42(d) to provide that Lead Agencies may not use cost or price of care or subsidy payment rate as a factor in setting co-payment amounts, but may use quality of care. This corrects a contradiction between the 1992 and 1998 preamble discussions. The 1992 preamble stated that ''Grantees may take into account the cost of care in establishing a fee scale,'' (57 FR 34380), while the 1998 preamble states that ''As was stated in the preamble to the regulations published on August 4, 1992, basing fees on the cost or category of care is not allowed.'' (63 FR 39960) This proposed change will correct this discrepancy by clearly stating that Lead Agencies may not use cost or price of care when setting their co-pay amounts, which could violate the statutory requirements to preserve equal access and parental choice.

Equal Access (Section 98.43)

Section 658E(c)(4) of the CCDBG Act requires the CCDF Plan to provide assurances that payment rates for CCDF subsidies are sufficient to ensure equal access for eligible children to comparable child care services that are provided to children whose parents are not eligible to receive child care assistance. The statute also requires the CCDF Plan to provide a summary of the facts on which the Lead Agency relied to determine that payment rates are sufficient to ensure equal access. The existing 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; (2) adequate payment rates, based on a local market rate survey conducted no earlier than two years prior to the effective date of the current Plan; and (3) affordable copayments. The proposed rule largely maintains these three key elements at § 98.43(b)(2), but proposes some revisions regarding payment rates and the market rate survey.

First, for purposes of clarity, we propose to replace the term *market rate survey* with the term *valid* local *market price study* in paragraph § 98.43(b)(2). This is not a substantive change, but rather a change in terminology that more accurately reflects the scope and nature of the requirement. As in the past, the purpose of the market price study is to ensure that payment rates are established within the context of market conditions so that the rates are sufficient to provide equal access to child care services in the open market. We propose to use the term *price* rather than *rate* since § 98.43(b)(2) requires the Lead Agency to systematically collect information about the prices (not rates) charged in the market by child care providers. Once a Lead Agency gathers and analyzes this price information, it is used to help determine the rates paid by the Lead Agency to providers that serve children who receive CCDF. The change in terminology in the regulatory language more clearly distinguishes between the initial collection of price data, and the subsequent analysis and setting of payment rates. We also propose to use the term *study* rather than *survey* since Lead Agencies have the flexibility to use data collection methodologies other than a survey. For example, Lead Agencies may use administrative data from resource and referral agencies or other sources.

We also propose to require that the market price study must be *valid*—meaning that it accurately reflects the prices charged for child care in the local community. If a market price study is not valid, it will provide misleading results that cannot serve as a sound basis for establishing payment rates to providers or for measuring the adequacy of the rates. A recent report funded by ACF using CCDF research dollars identified components of a valid market price study (Grobe, D., Weber, R., Davis, E., Kreader, L., and Pratt, C., *Study of Market Prices: Validating Child Care Market Rate Surveys,* 2008). Based

largely on this research, a market price study will be considered valid if it meets the following benchmarks:

- Includes the priced child care market. The study includes child care providers within the priced market (i.e., providers that charge parents a price established through an arm's length transaction). In an arm's length transaction, the parent and the provider do not have a prior relationship that is likely to affect the price charged. For this reason, some unregulated, license-exempt providers, particularly providers who are relatives or friends of the child's family, are generally not considered part of the priced child care market and therefore are not included in a market price study. These providers typically do not have an established price that they charge the public for services, and the amount that the provider charges is often affected by the relationship between the family and the provider. In addition, from a practical standpoint, many Lead Agencies are unable to identify a comprehensive universe of family, friend, and neighbor caregivers since these providers frequently are not included on lists maintained by licensing agencies, resource and referral agencies, or other sources. In the absence of findings from a market price study, Lead Agencies often use other facts to establish payment rates for providers outside of the priced market (e.g., family, friend, and neighbor providers); for example, many Lead Agencies set these payment rates as a percentage of the rates for providers in the priced market.
- Provides complete and current data. The study uses data sources (or combinations of sources) that fully capture the universe of providers in the priced child care market. The study should use lists or databases from multiple sources, including licensing, resource and referral, and the subsidy program, if necessary for completeness. In addition, the study should reflect up-to-date information for a specific time period (e.g., all of the prices in the study are collected within a three month time period). The existing regulation at § 98.43(b)(2) requires that the market price study be completed no earlier than two years prior to the effective date of the Plan, thereby ensuring that the study reflects recent prices. ACF expects a Lead Agency to use its *current* market study completed within the past two years, rather than an older study, when setting its payment rates, though the Lead Agency retains discretion on where to set payment levels as compared to the market study findings, provided that it meets the requirements for providing equal access at § 98.43.
- Represents geographic variation. The study includes providers from all geographic parts of the State, Territory, or Tribal Service Area. It should also collect and analyze data in a manner that links prices to local geographic areas. The existing regulation at § 98.43(b)(2) requires the market price study to be ''local'', meaning that it should measure differences in local child care markets.
- Uses rigorous data collection procedures. The study uses good data collection procedures, regardless of the method (mail, telephone, or web-based survey; administrative data). This includes a response from a high percentage of providers (65 percent or higher is desirable; below 50 percent is highly suspect).
- Analyzes data in a manner that captures market differences. The study should examine the price per child care slot, recognizing that all child care facilities should not be weighted equally because some serve more children than others. This approach best reflects the experience of families who are searching for child care. When analyzing data from a sample of providers, as opposed to the complete universe, the sample should be appropriately weighted so that the sample slots are treated proportionally to the overall sample frame. The study should collect and analyze price data separately for each age group and category of care to reflect market differences.

In addition, we propose regulatory revisions designed to promote alternative or additional methodologies to market price studies as a basis for setting rates. Specifically, under new § 98.43(b)(2)(ii) a Lead Agency may propose an alternative methodology, such as a model that estimates the cost of providing various levels of quality child care, in lieu of a market price study. The Lead Agency must receive advance ACF approval prior to substituting the methodology for a market price study. We also propose to add new § 98.43(b)(4) which requires the Lead Agency to provide any additional facts the Lead Agency considered in determining that its payment rates ensure equal access, such as information on the cost of providing quality child care. We encourage Lead Agencies to use the flexibility afforded them under the CCDF rules to adopt innovative approaches to setting subsidy payment rates in a way that also is linked to child care quality.

We are concerned that many Lead Agencies currently are setting payment rate ceilings that are inadequate to ensure equal access. The preamble to the 1998 Final Rule indicated that payments established at least at the 75th percentile of the market would be regarded as providing equal access (63 FR 39959). In order to provide access to the highest quality care, even higher payment rates may be necessary. However, the vast majority of States set rate ceilings that are below the 75th percentile, and in some cases significantly below that benchmark. This means that families are unable to access a significant portion of the child care market.

We recognize that Lead Agencies face resource constraints that limit their ability to increase payment rates, and we are not requiring an increase in payment rates through this proposed rule; however, we continue to be concerned about families' ability to access high quality care when rates are low. Many child care providers report that they are unable to set published prices that reflect the full cost of providing quality services because parents would be unable to pay these prices. (*Report of the Build Subsidized Child Care Rate Policy Task Force,* Pennsylvania Build Initiative, 2004) As a result, the published prices that are reflected in market price studies (and which are used as the basis for setting CCDF subsidy payment rates) are not always adequate to cover the providers' full costs, particularly for high quality care.

To address this situation, Lead Agencies could adopt new methodologies and approaches for setting payment rates. One approach is to conduct cost studies (in contrast to price studies) that document the full cost to providers of quality child care. Another method is to develop models that estimate the cost to providers at various levels of quality. We considered mandating new rate-setting approaches for all Lead Agencies through this proposed rule; however, we do not yet have sufficient State experience using alternative methods to mandate them at this time.

There is an urgent need for States to explore and document new rate-setting practices, and our intent is to spur innovation in this area. Therefore, we would like to solicit public comments on innovative rate setting approaches and possible new Federal requirements that would better ensure that subsidy rates provide equal access, as required by statute. In addition to providing a basis for setting subsidy payment rates, new methodologies may also help the State determine what level of financial supports and incentives, such as grants and bonuses, are necessary to support quality enhancements for providers (for

example, the level of support necessary to sustain providers at the top level of a QRIS or other system of quality indicators).

Because the market price study is a long-standing practice that can provide important contextual information for setting rates, we propose to require advance ACF approval before a Lead Agency replaces its market price study with an alternative methodology. After enactment of a Final Rule, ACF will provide additional guidance to Lead Agencies regarding the process for proposing an alternative methodology to be used in place of a market price study, and the specific criteria for ACF approval. To obtain approval, we anticipate that the Lead Agency will need to demonstrate how the alternative methodology provides a sound basis for setting payment rates. ACF approval will only be necessary if the Lead Agency plans to replace the market price study with an alternative methodology. Approval will not be required if the Lead Agency plans to implement both a market price survey and an additional methodology to inform rate-setting.

We also note that ACF has previously issued guidance (Program Instruction CCDF–ACF–PI–2009–02) that describes conditions under which Tribal and Territorial Lead Agencies may provide alternative documentation in lieu of conducting or using a market price study. Specifically, this includes circumstances where the Lead Agency funds direct services solely in settings outside the scope of a market price study. This guidance remains effective, and is not altered by this proposed rule.

We propose adding a new paragraph § 98.43(c) to clarify that a Lead Agency shall take into account the quality of child care when determining payment rates for child care providers. Higher quality care is often more expensive to provide, whether that is reflected in the price or not. Therefore, it is important for payment rates to consider quality in order to ensure that parents receiving CCDF subsidies have equal access to quality child care. Taken together, revised paragraph (b) and new paragraph (c) identify the key elements required for equal access—the full range of providers, affordable copayments, and adequate payment rates which take into account the quality of child care.

We recommend that Lead Agencies pay higher subsidy rates for higher quality care. The taxpaying public rightly expects the government to pay for results, and research shows that quality is a prerequisite for supporting children's learning and development through child care. By paying more for quality, Lead Agencies provide a financial incentive for providers to increase the quality of care. The higher rates also help give providers the necessary resources to pay for higher levels of compensation for child care professionals, as well as other components of quality care.

When determining the differential rate for higher quality, we encourage Lead Agencies to make certain that rates are sufficient to ensure access at the higher levels of quality. At the same time, a Lead Agency's base rates (i.e., before any quality incentives are included) must be sufficient for all children to access care that meets a baseline of quality and health and safety. In addition, higher subsidy rates alone may not be sufficient to promote quality, particularly for child care providers that serve only a limited number of children receiving CCDF assistance. We encourage Lead Agencies to use grants, contracts, training and scholarship opportunities and other forms of support to help providers increase their quality. Linking enhanced subsidy rates to higher quality is an important component of promoting quality when implemented in conjunction with other ongoing financial supports, assistance, and incentives. In the FY2012–2013 CCDF Plans, 32 States and Territories indicated that they provide tiered or differential rates for higher quality.

With regard to paying higher rates for quality, we note that, in the preamble to the 1998 Final Rule, we reminded Lead Agencies of the general principle that Federal subsidy funds cannot pay more for services than is charged to the general public for the same service (63 FR 39959). We would like to clarify, however, that Lead Agencies may pay amounts above the provider's private pay rate, as a quality bonus or incentive. Recognizing that private pay rates are often not sufficient to support high quality, many Lead Agencies have already implemented tiered reimbursement systems that support quality and produce the school readiness and success outcomes that children deserve. Lead Agencies may use CCDF quality dollars to recognize higher quality care, or to provide incentives to increase the availability of child care otherwise in short supply in the market. This can be achieved through provider bonuses or incentives that may be implemented through tiered or quality reimbursement systems or other mechanisms. These payments may exceed private pay rates if they are designed to reimburse providers for additional costs associated with offering higher quality care or types of care that are not produced in sufficient amounts by the market (e.g., non-standard hour care, care for children with special health care needs, etc. . . .). These bonuses or incentives may be provided in the form of an hourly, monthly or other augment to provider reimbursement for the care of an eligible child.

We also propose to make a technical correction at § 98.43(b)(3) to clarify the reference to how copayments are affordable as described at § 98.42. The previous language read in such a way as to suggest that § 98.42 described affordable copayments in reference to the sliding fee scale, when in fact it does not. Current paragraphs (c) through (e) would be re-designated as (d) through (f) but otherwise would be unchanged.

Subpart F—Use of Child Care and Development Funds

Subpart F of CCDF regulations establishes allowable uses of CCDF funds related to the provision of child care services, activities to improve the quality of child care, administrative costs, Matching fund requirements, restrictions on the use of funds, and cost allocation.

Child Care Services (Section 98.50)

We propose a technical change to § 98.50(a) which states that the Lead Agency shall spend a substantial portion of the funds remaining after applying provisions at (c), (d), and (e) of this section to provide child care services to low-income working families. Paragraphs (c), (d), and (e), respectively, require the Lead Agency to spend a minimum of 4 percent on activities to improve the quality of care, not more than 5 percent for administrative activities, and not less than 70 percent of the Mandatory and Matching funds to meet the needs of families receiving Temporary Assistance for Needy Families (TANF), families transitioning from TANF, and families at-risk of becoming dependent on TANF. We propose to specify that § 98.50(b) is describing use of funds for *direct* child care services. In the past, we have been asked to interpret whether this section would allow States to use a substantial portion of funds for activities other than direct services.

In accordance with the proposed change at § 98.30(a)(1) discussed earlier, we propose to add language to § 98.50(b)(3) of the regulations to clarify that child care services shall be provided using funding methods described at § 98.30 (i.e., using grants or contracts or certificates), which must include some use of grants or contracts for the provision of direct services, with

the extent of such services determined by the Lead Agency after consideration of the supply shortages described and other factors as determined by the Lead Agency. As discussed earlier, existing language at § 98.30 provides that parents must be offered a choice of a grant or contract ''if such services are available,'' or a certificate. This proposed change, in conjunction with the proposed change at § 98.30, is intended to promote the use of grants or contracts, along with certificates, as funding mechanisms for child care services. As noted earlier, the majority of children (approximately 90 percent) currently receiving child care subsidies are served through certificates. We recognize that there may be geographic areas or other circumstances where grants or contracts may not be a viable option to offer every parent applying for subsidies; therefore, we allow Lead Agencies to determine the extent to which grants or contracts are used based on supply shortages and other relevant factors. However, this proposed change would require Lead Agencies to employ some use of grants or contracts to provide child care services.

Grants or contracts should play a role in building the supply and availability of child care, particularly high quality care, in underserved areas and for underserved populations. For example, contracts can be used to fund programs to serve children with special needs, specific geographic areas, infants and toddlers, and school-age children. Grants or contracts may also be used to provide wrap-around services in Head Start and pre-kindergarten and to fund programs that provide comprehensive services. Another factor a Lead Agency may wish to consider in the use of grants or contracts might be the ability of the child care market to sustain high quality child care providers in certain localities or for specific populations.

Grants or contracts provide greater financial stability for child care providers by funding a specified number of slots even if individual children leave the program, whereas certificates are portable allowing parents to leave a given provider at any time. Child care providers that receive funding through certificates face a constant threat of losing funding and children. Without stable funding, it is difficult for providers to pay for the higher costs associated with providing high quality child care, most child care providers, especially those in low-income or rural areas, cannot afford the qualified staff, equipment, and facilities that are necessary to meet high quality program standards. With greater financial stability, providers may be more willing to provide higher cost care, such as for infants and toddlers, or to locate in low-income or rural communities. Finally, grants or contracts also can improve accountability and fiscal integrity by giving the Lead Agency more access to monitor child care provider's compliance with health and safety requirements and appropriate billing practices.

Activities To Improve the Quality of Child Care (98.51)

We propose making a technical change at § 98.51(a) by substituting ''from each fiscal year's allotment'' for ''for a fiscal year.'' The purpose for this change is to make clearer that the four percent minimum quality expenditure is calculated based on each fiscal year's allotment (rather than a fiscal year's expenditure) as Lead Agencies have multiple years to spend an entire CCDF allotment in accordance with the liquidation timeframes at § 98.60(d) and (e). The revision also is consistent with existing language at § 98.52(a) describing the five percent limitation on administrative costs.

Framework for quality improvement activities. Under Section 658G of the CCDBG Act and existing regulations at § 98.51(a)(1), Lead Agencies must use not less than 4 percent of the CCDF funds for activities that are designed to provide comprehensive consumer education to parents and the public, activities that increase parental choice, and activities designed to improve the quality and availability of child care, including resource and referral services. Lead Agencies have broad flexibility to determine what may constitute quality activities as long as those definitions fit within the broad statutory requirement.

Current regulations at § 98.51(a)(2) describe a list of potential activities which may be considered allowable in order to meet this minimum quality expenditure requirement. The current list of suggested activities includes: (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) and other activities that are consistent with the intent of this section.

This list of activities is based on specific activities formerly contained in the CCDBG Act of 1990 prior to its reauthorization in 1996, which were retained in the 1998 Final Rule. We believe this list includes worthwhile quality activities, but does not reflect the great progress that has been made in the last decade toward organizing quality activities into an intentional, systematic approach to helping child care programs meet higher standards and child care professionals advance in their skills and knowledge. Therefore, we propose to delete the current list of suggested quality improvement activities at § 98.51(a)(2) and insert the activities that follow: (We note that all of the previously listed activities are incorporated into this new framework, and the proposed revision should not be interpreted as an indication that the previously delineated activities are no longer allowable activities toward meeting the minimum quality expenditure requirement.)

As proposed, activities to improve the quality of child care services may include, but are not limited to, implementation of a systemic framework for organizing, guiding, and measuring progress of quality improvement activities that includes the following key components: (i) Activities to ensure the health and safety of children through licensing and health and safety standards pursuant to §§ 98.40 and 98.41; (ii) Establishment and implementation of age-appropriate learning and development guidelines for children of all ages, including infants, toddlers, and school-age children; (iii) Establishment and implementation of systems of quality improvement to evaluate, improve and communicate the level of quality of child care programs that may contain the following elements:

(A) Establishment of program standards to define expectations for quality and indicators of different levels

of quality appropriate to the provider setting;

(B) Provision of supports, training and technical assistance to assist child care programs in meeting child care quality improvement standards;

(C) Provision of financial incentives and monetary supports to assist child care programs in meeting child care quality improvement standards;

(D) Provision of quality assurance and monitoring to measure child care program quality over time; and

(E) Implementation of strategies for outreach and consumer education efforts to promote knowledge of child care quality improvement standards to child care programs and to provide parents, including parents receiving assistance under this part, with provider-specific information about the quality of child care provider options available to them and the child care provider they select consistent with § 98.33;

(iv) Implementation of professional development systems to ensure a well-qualified child care workforce that may contain the following elements:

(A) Establishment of core knowledge and competencies to define what the workforce should know (content) and be able to do (skills) in their role working with children and their families;

(B) Establishment of career pathways to define options and a sequence of qualifications and ongoing professional development opportunities;

(C) Conducting professional development assessments to build capacity of higher education systems and other training institutions to meet the diverse needs of the child care workforce and address the full range of development and needs of children;

(D) Provision of access to professional development to ensure practitioners are made aware of, and receive supports and assistance to utilize professional development opportunities;

(E) Provision of rewards or financial supports to practitioners for participating in and completing education or training and for increased compensation;

(v) Implementation of an infrastructure of support to build child care provider capacity to promote health through wellness, physical activity and nutrition programs, to serve children with special needs, dual language learners and other vulnerable children (e.g., children in the child welfare system and homeless children), to implement family engagement strategies;

(vi) Assessment and evaluation of the effectiveness of quality improvement activities; and

(vii) Any other activities consistent with the intent of this section.

This proposed change envisions a more comprehensive approach aimed at systems-level change by providing a framework Lead Agencies can use to determine whether CCDF-funded quality initiatives have actually made a measurable difference to improve the quality of care. The proposed change provides a list of suggested quality improvement activities that Lead Agencies may consider for purposes of meeting the minimum quality spending requirement. We are not proposing to limit Lead Agencies to only these activities or requiring that Lead Agencies use quality dollars for these purposes. However, we believe this framework will help promote strategic investments that are coordinated and planned to achieve goals more efficiently.

Nationally, there is an increased call for improvement in child care quality. The quality of child care across the country is uneven, and too often the quality is insufficient to promote children's growth and development. Research has shown that it is possible to improve the quality of child care, for example by increasing the caregiver to child ratios and supporting more qualified caregivers by helping them attain educational credentials and training. (NICHD Early Child Care Research Network, *Child Outcomes When Child Care Center Classes Meet Recommended Standards for Quality,* American Journal of Public Health, 1999) States, Territories, and Tribes have pioneered new pathways to excellence to help center and home-based providers move toward continuous quality improvement. Many Lead Agencies have used CCDF quality funds to build a strong child care infrastructure that is focused on ensuring child care providers are supporting children's learning and development to help them succeed in school and life. In FY 2011, States and Territories reported spending approximately $1 billion or 12 percent of CCDF expenditures on quality improvement activities. This exceeds the statutory quality spending requirement, demonstrating the commitment Lead Agencies have shown to improving child care quality. These quality investments reach millions of children not receiving CCDF subsidies across a wide array of settings in the child care market.

Health and safety and licensing standards. We propose to add new paragraph at § 98.51(a)(2)(i) to include compliance with health and safety standards pursuant to §§ 98.40 and 98.41 in the list of quality improvement activities. This consolidates some of the separate activities already currently listed at § 98.51(a)(2). This activity is of particular importance given the proposed changes we have discussed regarding minimum health and safety requirements for child care providers serving children receiving subsidies. Assisting providers in meeting these requirements and appropriately monitoring compliance is a fundamental quality improvement activity, as health and safety is the foundation of quality. For example, many QRIS tie eligibility to participate directly to licensing. Many Lead Agencies also report using CCDF quality funds to support monitoring of compliance with licensing and regulatory requirements, to support training for licensing staff, and funding data system automation.

Learning guidelines. We propose to add new paragraph 98.51(a)(2)(ii) to include establishment and implementation of age-appropriate learning guidelines or standards for children of all ages, including infants, toddlers, and school-age children in the list of quality improvement activities. Early learning guidelines (sometimes called early learning standards) describe what children need to know and be able to do and their disposition toward learning and can help Lead Agencies measure and promote the physical, cognitive, and social and emotional development of children. In the FY 2012–2013 CCDF Plans, 47 States and Territories indicated that they have developed early learning guidelines for infants and toddlers, 55 for three-to-five year olds, and 21 States and Territories have developed them for children five and older. Almost all States and Territories report aligning early learning guidelines with K–12 content standards or other content standards, such as the Head Start Child Development and Early Learning Framework or State or Territory pre-kindergarten expenditures. For school-aged children, Lead Agencies may use existing standards for K–12 education, or build on them to include other domains of development, such as social and emotional competencies. This proposed regulatory change formally encourages Lead Agencies to use CCDF quality funds to continue their efforts to implement early learning guidelines across the domains of early learning and development.

Systems of quality improvement. We propose to add new paragraph 98.51(a)(2)(iii) to include implementation of systems of quality improvement to evaluate, improve and communicate the level of quality of child care programs in the list of

suggested quality improvement activities. ACF encourages that the system contain the following five elements: (1) Program standards to define expectations for quality and quality indicators indicating different levels of quality; (2) supports, training and technical assistance to assist child care programs in meeting child care quality improvement standards; (3) financial incentives and monetary supports to assist child care programs in meeting child care quality improvement standards; (4) quality assurance and monitoring to measure child care program quality over time; and (5) strategies for outreach and consumer education efforts to promote knowledge of child care quality improvement standards to child care programs and to provide parents, including parents receiving assistance under this part, with information about the quality of child care provider options available to them, pursuant to § 98.33.

As discussed earlier, QRIS is one approach that has been gaining momentum as a key strategy for promoting child care quality and more informed child care choices throughout the country. Many States have found QRIS a useful mechanism for providing parents with tools and information to select high-quality care for their children, to provide incentives, resources and technical assistance to help programs attain higher levels of quality, and to improve cross-sector coordination within the early care and education system. The five content areas proposed in this section were included in the revisions to the FY 2012–2013 CCDF Plan and also align with the definition of a ''Tiered Quality Rating and Improvement System'' included in the Race to the Top Early Learning Challenge (RTT–ELC). ACF encourages Lead Agencies to implement QRIS that are applicable to all child care sectors and address the needs of all children, including children of all ages, families of all cultural-socio-economic backgrounds, and practitioners. We also encourage Lead Agencies to incorporate strategies for family engagement into their QRIS to enhance the capacity of families to support their children's education and development.

ACF's Child Care Technical Assistance Network has provided key resources to States and Territories regarding QRIS, including a *QRIS Resource Guide* and *a QRIS Cost-Estimation Tool.* In 2011–2012, ACF's National Center on Child Care Quality Improvement provided technical assistance related to QRIS to 32 States, responded to information requests from CCDF Administrators on QRIS, conducted regional roundtables to assist and inform State QRIS development, and participated and partnered in efforts to coordinate and connect QRIS technical assistance and research at the national level. Additionally, ACF's Office of Planning, Research and Evaluation (OPRE), released a Compendium of Quality Rating Systems and Evaluations providing information, analysis, and resources about quality rating systems for States and other key stakeholders.

A system of quality improvement, such as a QRIS, should include program standards that link to the other components of the quality framework. For example, the program standards should require child care providers to use curricula and learning activities that are based on the State's early learning guidelines, and should address the use of information about children's growth and development to improve services. The program standards should also address teacher qualifications and skills consistent with the State's professional development system.

Professional development systems. We propose to add new paragraph 98.51(a)(2)(iv) to include implementation of professional development systems in the list of quality improvement activities. We believe these activities are important to ensure a well-qualified child care workforce and propose that professional development systems contain the following five elements: (1) Core knowledge and competencies to define what the workforce should know (content) and be able to do (skills) in their role working with children and their families; (2) career pathways to define options and a sequence of qualifications and ongoing professional development opportunities; (3) professional development assessments to build capacity of higher education systems and other training institutions to meet the diverse needs of the child care workforce and address the full range of development and needs of children; (4) access to professional development to ensure practitioners are made aware of, and receive supports and assistance to utilize professional development opportunities; and (5) rewards or financial supports to practitioners for participating in and completing education or training and for increased compensation. The five components of a professional development system proposed in this section were included in the FY 2012–2013 CCDF Plan and also are reflected in the RTT–ELC focus on creating a strong early childhood workforce.

Responsive, well-qualified caregivers are the most important factor in children's development and learning in child care settings. In the FY 2012–2013 CCDF Plans, the majority of States and Territories indicated that they have implemented components of a professional development system, including core knowledge and competencies for practitioners and career pathways that define a sequence of qualifications related to professional development and experience. There are other areas where more progress is needed, such as providing sustained financial support on a periodic, predictable basis for high levels of training and education.

Professional development and workforce supports are needed to increase the stability of a child care workforce that experiences turnover rates of approximately 30 percent per year, a national average wage of $10.15 an hour and a decline in the number of teachers with college degrees. (National Association of Child Care Resource and Referral Agencies, *Child Care Workforce,* 2012) In May 2012, the Bureau of Labor Statistics data estimated there were 624,520 child care workers in the US. These numbers, however, only include professionals in licensed facilities. According to a study by the Center for the Child Care Workforce and Human Services Policy Center, there are an estimated 2.3 million paid child care providers working in varied settings including public and private, for-profit and nonprofit, faith-based, community-based, school-based, home-based, and employer-sponsored providers. Approximately 35 percent of child care workers are self-employed, with the majority of these workers serving as family child care providers. Of these 2.3 million paid child care providers, nearly half care for toddlers aged 19 through 36 months. (*Estimating the Size and Components of the U.S. Child Care Workforce and Caregiving Population,* Center for the Child Care Workforce and Human Services Policy Center, May 2002) There is little data available about the informal sector of child care, although it makes up a large number of child care providers in the U.S.

Because the professional development needs of child care providers can vary based on the ages of the children in a provider's care, Lead Agencies should ensure their professional development systems are applicable to all providers, including school-age practitioners, infant-toddler care providers, and family child care. For example, core knowledge and competencies and available trainings should be specific to

the needs of child care providers whether they work with infants and toddlers, preschool-age, or school-age children. Additionally, States may want to create credentials tailored to specific categories of practitioners, such as a school-age professional or youth development credential, or an infant and toddler credential.

All sectors of the early care and education field require a well-qualified workforce with opportunities for growth from entry level through master teacher, including the many additional roles in the child care system (e.g., consultants, technical assistance providers, trainers, and higher education faculty). Lack of access to professional development that leads to progressively higher levels of competency is a barrier to providing access to high-quality early childhood education for all children.

Infrastructure of support to build child care provider capacity. We propose to add new paragraph 98.51(a)(2)(v), to include implementation of an infrastructure of support to build child care provider capacity to deliver comprehensive services that meet the needs of children and families, including: promoting health and wellness; serving children with special needs, dual language learners and other vulnerable children (e.g., children in the child welfare system and homeless children); and implementing family engagement strategies. We believe it is important to dedicate resources towards building community-wide infrastructure for early care and afterschool programs to increase quality and provide comprehensive services. This infrastructure could include: coordinating referrals to health and social services; providing relevant training and professional development; supplying curricula, materials and resources; collecting and disseminating relevant data on the well-being of children and families to guide services; and including families and a broad range of community representatives in planning and leadership efforts.

Many States and localities have invested in infrastructure for early care and afterschool programs to increase their quality and provide comprehensive services. For example, one State contracts with programs that provide high quality early education and care services for homeless children. In addition to providing children a stable, nurturing and stimulating environment that meets the individual developmental, behavioral, and emotional needs, these programs offer services to parents like on-site GED classes, job skills training, and counseling and advocacy services.

Another example is a community-based organization that built a comprehensive system aimed at ensuring children are ready to succeed in school and helping families achieve economic success. The program collaborates with the local school district to provide education to three- and four-year olds with special needs. It also partners with family and children's services to provide family support, parent education, case management crisis intervention, and family counseling services. Lastly, it works with the local university to provide healthcare to enrolled children, their parents, and their siblings.

Family engagement is also an example of an approach for involving families in decisions about their children, services, and communities. It includes a wide array of activities, such as direct relationships with child care and other service providers, mutual support shared among parents, advocacy by parents on behalf of their families, decision-making and advisory roles in agencies, and leadership in the community. Lead Agencies should consider use of CCDF quality funds to encourage partnerships between child care providers and public, private, and grassroots organizations to implement parent and family engagement strategies. Local and community networks and infrastructure are strongest when built with input from engaged parents and other residents.

The *Strengthening Families* framework, developed by the Center for the Study of Social Policy, is a widely-used approach that gives child care and early education programs common-sense strategies to support vulnerable families. Many States and communities have employed the framework to anchor efforts to build comprehensive early childhood systems at State and local levels. The approach focuses on science-based parenting skills, children's life skills, and family life skills specifically designed to build protective factors that prevent abuse and neglect and promote family strength. Many States have incorporated the core concepts of Strengthening Families into child care staff training and professional development, as well as into quality standards for QRIS.

Assessment and evaluation of quality improvement activities. We propose to add new paragraph 98.51(a)(2)(vi) to include assessment and evaluation of the effectiveness of quality improvement activities in the list of suggested quality improvement activities. Lead Agencies are encouraged to evaluate and assess the success of their quality investments. A good evaluation design can provide information critical to improving a quality initiative at many points in the process, and increase the odds of its ultimate success. The importance of these activities is highlighted in a September 2002 GAO report that looks at evaluations of State quality initiatives. This report notes that the descriptive information collected from State-sponsored studies can provide reliable information required to address program design issues, as well as to assess program implementation, which can then be useful in planning more rigorous evaluations of program impacts. (GAO–02–897)

Lead Agencies with a QRIS or that plan to implement a QRIS are encouraged to use a QRIS validation study to assess whether rating components and summary ratings can be relied on as accurate indicators of quality. Validation is important because it promotes increased credibility and support for QRIS, as well as efficient use of limited quality improvement resources. Factors that Lead Agencies should consider when designing a QRIS validation study include the strength of evidence required to address research questions and program improvement inputs needed to inform program management, stage of QRIS development, available funding; and timeframe in which research questions must be answered. Similar to implementation of QRIS, States should also consider using CCDF quality funds to test the effectiveness or validate the different elements of their professional development system.

Paragraph § 98.51(a)(2)(vii), as re-designated, would continue to allow any activites consistent with the intent of this section. Paragraphs (b) and (c) of this section would remain unchanged.

We propose to add a new paragraph at § 98.51(d) to clarify that activities to improve the quality of child care are not restricted to children meeting eligibility requirements under § 98.20 or to the child care providers serving children receiving subsidies. Children or providers benefiting from Lead Agency quality improvement activities and investments are not required to meet applicable CCDF eligibility requirements at § 98.20. Thus, CCDF quality funds may be used to enhance the quality and increase the supply of child care for all families, including those who receive no direct assistance.

We propose to add a new paragraph at § 98.51(e) to codify longstanding ACF policy that targeted funds for quality improvement and other activities that

may be included in appropriations law may not count towards meeting the 4 percent minimum quality requirement, unless so specified by Congress. Since FY 2000, Congress has included language in annual appropriations legislation for CCDF discretionary funds requiring States and Territories to spend portions of their CCDF Discretionary Funds on specified activities, including: child care resource and referral and school-aged child care activities (this requirement also applies to Tribes); improving the quality of infant and toddler child care; and additional quality expansion activities intended to be in addition to the 4 percent requirement.

We propose to add a new paragraph at § 98.51(f) to require that Lead Agencies must include in the Plan a description of performance goals associated with expenditure of funds on activities to improve the quality of care and report annually on whether goals have been met, pursuant to quality performance report described at § 98.16(v). The CCDF Plan is a prospective document, but in many cases, Lead Agencies are primarily describing the child care system that is currently operating in the State or Territory. In keeping with our commitment to CCDF Lead Agency flexibility, we asked Lead Agencies to set goals for themselves for each upcoming biennium in the FY 2012–2013 Plans. We also asked Lead Agencies to tell us what performance measures they use to track progress on child care quality. This information will be a resource as we update national performance measures on child care quality. These self-reported goals and measures will guide ACF technical assistance and serve as the basis for reporting under the new CCDF Quality Performance Report.

Administrative Costs (Section 98.52)

Section 658E(c)(3) of the CCDF Act and regulations at § 98.52 prohibit Lead Agencies from spending more than 5 percent of CCDF funds for administrative activities, such as salaries and related costs of administrative staff and travel costs. Section 98.52 (b) specifically provides that this limitation applies only to States and Territories (Note that a 15 percent limitation applies to Tribes under § 98.83(g)). We propose to add a provision at § 98.52(d) to formally add a list of activities which should not be counted towards the 5 percent limitation on administrative activities. These include: (1) Establishment and maintenance of computerized child care information systems; (2) Establishing and operating a certificate program; (3) Eligibility determination; (4) Preparation/participation in judicial hearings; (5) Child care placement; (6) Recruitment, licensing, inspection of child care providers; (7) Training for Lead Agency or sub-recipient staff on billing and claims processes associated with the subsidy program; (8) Reviews and supervision of child care placements; (9) Activities associated with payment rate setting; (10) Resource and referral services; and (11) Training for child care staff. These activities were included in the preamble to the 1998 Final Rule, which stated that the Conference Agreement (H.R. Rep. 104–175 at 411) of PRWORA specified that these activities should not be considered administrative costs. (63 FR 39962) We propose to incorporate this list into the regulation itself for clarity and easy reference.

Administrative costs and sub-recipients. Current CCDF regulations at § 98.52(a) provides a listing of activities that may constitute administrative costs and defines administrative costs to include administrative services performed by grantees or sub-grantees or under agreements with third-parties. However, we have received questions from CCDF Lead Agencies to clarify whether activities performed through sub-recipients or contractors are subject to the 5 percent administrative cost limitation. Our interpretation is that sub-recipients (contractors or sub-grantees) that receive funds from the Lead Agency are not individually bound by this requirement. However, the Lead Agency continues to be responsible for ensuring that the program complies with all Federal requirements and is required to oversee the expenditures of funds by sub-recipients. As such, while we do not as a technical matter separately apply the administrative cap to funds provided to each sub-recipient, the Lead Agency continues to be responsible for ensuring that the total amount of CCDF funds expended on administrative activities—regardless of whether it is expended by the Lead Agency directly or via sub-grant, contract, or other mechanism does not exceed the administrative cost limitation. Therefore, we propose to add § 98.52(e) to clarify that if a Lead Agency enters into agreements with sub-recipients for operation of the CCDF program, the amount of the contract or grant attributable to administrative activities as described at § 98.52(a) shall be counted towards the administrative cost limit.

Determining whether a particular service or activity provided by a sub-recipient under a contract, sub-grant, or other mechanisms would count as an administrative activity towards the 5 percent administrative cost limitation depends on the function or nature of the contract/sub-grant/mechanism. If a Lead Agency provides a contract or sub-grant for direct services, the entire cost of the contract could potentially be counted as direct services if there is no countable administrative component. On the other hand, if the entire sub-grant or contract was administrative in nature (e.g., for payroll services for employees), then the entire cost of the contract would count towards the administrative cost cap. If a sub-grant/contract includes a mix of administrative and programmatic activities, the Lead Agency would need to develop a method for attributing an appropriate share of the sub-grant/contract costs to administrative costs.

Restrictions on Use of Funds (Section 98.54)

Current CCDF regulations at § 98.54(b)(1) stipulate that for States and local agencies, no funds shall be expanded 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. This rule does not apply to Tribal Lead Agencies, which may request approval to use CCDF funds for construction and major renovation of child care facilities (§ 98.84).

Under current regulations at § 98.2 major renovation is defined 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 alternation of a facility such as to significantly change its function and purpose, even if such renovation does not include any structural change. We propose to modify § 98.54(b) to include the following language: Improvements or upgrades to a facility that are not specified under the definitions of construction or major renovation at § 98.2 may be considered minor remodeling and are, therefore, allowable. The preamble to the 1998 Final Rule included a discussion regarding minor remodeling and stated that, ''. . . rather than create a separate definition for minor remodeling State Lead Agencies may assume that an improvement or upgrade to a facility which is not specified under the definition of major renovation adopted by this rule may, by default, be

considered a minor renovation and, therefore is allowable under the Act.'' (63 FR 39940) This proposed change formally incorporates this policy into regulatory language.

Subpart G—Financial Management

The focus of Subpart G is to ensure proper financial management of the CCDF program, both at the Federal level by HHS and the Lead Agency level. The proposed changes to this section include increasing the amount of CCDF funds the Secretary may set-aside for technical assistance, incorporating targeted funds that have been included in appropriations language, but are not in the current regulations, and inclusion of the details of required financial reporting by Lead Agencies. Lastly, we propose clarifications regarding obligations and reallotment of matching funds.

Availability of Funds (Section 98.60)

Technical assistance. Sections 658(a)(3) and (b)(1) of the CCDBG Act authorize the Secretary to provide technical assistance to help States carry out the requirements of these rules, as well as requiring the Secretary to ''review and monitor State compliance'' with the statute and the Plan approved by HHS. Under current regulation at § 98.60(b)(1), the Secretary may withhold one quarter of one percent of a fiscal year's appropriation for technical assistance. We propose amending paragraph (b) to allow the Secretary to withhold up to ½ of 1 percent of CCDF funds for technical assistance.

The increased set-aside for technical assistance and monitoring will allow ACF to invest in efforts to improve program integrity by providing increased technical assistance to States on reducing waste, fraud, and abuse and improving the quality of care. This training and technical assistance involves assessing Lead Agency needs, identifying innovations in child care administration, and promoting the dissemination and replication of solutions to the challenges that Lead Agencies and local child care programs face. The support provided by ACF and our technical assistance providers helps States, Territories, Tribes and local communities build integrated child care systems that enable parents to work and promote the health and development of children. We believe increasing the set-aside for technical assistance is necessary for ACF to meet its responsibility to support Lead Agencies as they begin to improve health and safety standards, implement a transparent system of quality indicators, and invest in improving access to high quality child care.

Currently, ACF funds the Child Care Technical Assistance Network (CCTAN) to provide training and technical assistance to CCDF Lead Agencies. The CCTAN includes the National Center on Child Care Quality Improvement, the National Center on Child Care Professional Development Systems and Workforce Initiatives, and the National Center on Child Care Subsidy Innovation and Accountability. In addition to these Centers, a National Center on Tribal Child Care Implementation and Innovation, a National Center on Child Care Data and Technology, and a Network of State Child Care Systems Specialists provide TA that meets the individual needs of States, Territories, and Tribes. The CCTAN supports CCDF grantees in their efforts to improve the quality of early care and education and school-age care and helps the States, Territories, and Tribes reach their CCDF Plan goals. The new resources made available under this proposed rule would build on these efforts and allow increased assistance to Lead Agencies administering CCDF.

Over the past several years there has been a heightened focus on program integrity in child care, Head Start and other ACF programs. Recent investigations into CCDF programs have brought the program integrity of several States into question. For example, a GAO investigation found that five test States included in the GAO investigation ''lacked controls over child care assistance application and billing processes for unregulated child care providers, leaving the program vulnerable to fraud and abuse.'' (GAO–10–1062) We believe it is necessary to increase the resources available for technical assistance in order to strengthen program integrity by ensuring that CCDF dollars are used to provide child care to eligible families and to make investments in improving the quality of child care programs, and are not lost to fraud or improper payments. See the discussion in Subpart J for more information on monitoring and oversight.

Obligations. We propose to add a paragraph at § 98.60(d)(7) to clarify that the transfer of funds from a Lead Agency to a non-governmental third party or sub-recipient counts as an obligation, even when these funds will be used for issuing child care certificates. Some Lead Agencies contract with local units of government or non-governmental third parties, such as Child Care Resource and Referral Agencies (CCR&Rs), to administer their CCDF programs. The functions included in these contracts could include eligibility determination, subsidy authorization, and provider payments. The contracting of some of these duties to a third party has led to many policy questions as to whether CCDF funds that are used by non-governmental third parties to administer certificate programs are considered obligated at the time the sub-grant or contract is executed between the Lead Agency and the third party pursuant to current regulation at § 98.60(d)(5), or rather at the time the voucher or certificate is issued to a family pursuant to current regulation at § 98.60(d)(6).

The preamble to the August 4, 1992 CCDBG Regulations (57 FR 34395) helps clarify the intent of § 98.60(d). It states, ''The requirement that State and Territorial grantees obligate their funds [within obligation timeframes] applies only to the State or Territorial grantee. The requirement does not extend to the Grantee's sub-grantees or contractors unless State or local laws or procedures require obligation in the same fiscal year.'' It follows that, in the absence of State or local laws or procedure to the contrary, § 98.60(d)(6) would not apply when the issuance of a voucher or certificate is administered by a non-governmental third party because the funds used to issue the vouchers or certificates would have already been obligated by the Lead Agency. Based on this language, we have interpreted the obligation to take place at the time of contract execution between the Lead Agency and the third party. The addition of proposed paragraph (d)(7) simply codifies current ACF policy, and does not change existing obligation and liquidation requirements. Note that a local office of the Lead Agency, and certain other entities specified in regulation at § 98.60(d)(5) are not considered third parties.

Finally, we propose to make a technical change at § 98.60(h) to eliminate a reference to [§ 98.51(a)(2)(ii)] of the regulation which would otherwise becomes obsolete since this proposed rule proposes to delete it. This technical change does not change the meaning or the substance of paragraph (h), which specifies that repayment of loans made to child care providers as part of a quality improvement activity may be made in cash or in services provided in-kind.

Allotments From Discretionary Funds (Section 98.61)

Targeted funds. We propose to add paragraph § 98.61(f) to reference funds targeted through annual appropriations law. Since FY 2000, annual appropriations law has required the use

of specified amounts of CCDF funds for targeted purposes (i.e., quality, infant and toddler quality, school-age care and resource and referral). This proposed addition is for clarification so that the regulations will provide a complete picture of CCDF funding parameters. New paragraph (f) provides that Lead Agencies shall expend any funds set-aside for targeted activities as directed in appropriations law.

Audits and Financial Reporting (Section 98.65)

We propose revising § 98.65(g), which currently provides that the Secretary shall require financial reports as necessary, to specify that States must submit quarterly expenditure reports for each fiscal year. Currently, States and Territories file quarterly expenditure reports (ACF–696); however, the current regulations do not describe this reporting in detail. Under proposed paragraph (h), States and Territories will be required to include the following information on expenditures of CCDF grant funds, including Discretionary (which includes any reallotted funds and funds transferred from the TANF block grant), Mandatory, and Matching funds; and State Matching and Maintenance-of-Effort (MOE) funds: (1) Child care administration; (2) Quality activities excluding targeted funds; (3) Targeted funds identified in appropriations law; (4) Direct services; (5) Non-direct services including: a. Systems, b. Certificate program cost/eligibility determination, c. All other non-direct services; and (6) Such other information as specified by the Secretary.

We propose adding greater specificity to the regulation in light of the important role expenditure data play in ensuring compliance with the four percent quality expenditure requirement at § 98.51(a), administrative cost cap at § 98.52(a), and obligation and liquidation deadlines at § 98.60(d). Additionally, expenditure data provide us with important details about how Lead Agencies are spending both their Federal and State CCDF funds, including what proportion of funds are being spent on direct services to families or how much has been invested in quality activities. These reporting requirements do not create an additional burden on Lead Agencies because we are simply updating the regulations to reflect current expenditure reporting processes.

Tribal financial reporting. We propose to add paragraph (i) at § 98.65 requiring Tribal Lead Agencies to submit annual expenditure reports to the Secretary (ACF–696T). As with State and Territorial grantees, these expenditure reports help us to ensure that tribal grantees comply with obligation and liquidation deadlines at § 98.60(e), the fifteen percent administrative cap at § 98.83(g), and the four percent quality expenditure requirement at § 98.51(a). This reporting requirement is current practice and does not create an additional reporting burden on tribal grantees.

Program Integrity. We propose to add a new section § 98.68 Program Integrity—to include requirements that Lead Agencies have effective procedures and practices that ensure integrity and accountability in the CCDF program. These proposed changes formalize changes made to the CCDF Plan which require Lead Agencies to report in these areas. The Plan now includes questions on internal controls, monitoring sub-recipients, identifying fraud and errors, methods of investigation and collection of identified fraud, and sanctions for clients and providers who engage in fraud. ACF has been working with State, Territorial and Tribal CCDF Lead Agencies to strengthen program integrity to ensure that funds are maximized to benefit eligible children and families. For example, ACF issued a Program Instruction (CCDF–ACF–PI–2010–06) that provides stronger policy guidance on preventing waste, fraud, and abuse and has worked with States to conduct case record reviews to reduce administrative errors. The requirements proposed in this section build on these efforts and are designed to reduce errors in payment and minimize waste, fraud and abuse to ensure that funds are being used for allowable program purposes and for eligible beneficiaries.

At § 98.68(a) we propose to require Lead Agency internal controls to include processes to ensure sound fiscal management, processes to identify areas of risk, and regular evaluation of internal control activities. Examples of internal controls include practices that identify and prevent errors associated with recipient eligibility and provider payment such as: checks and balances that ensure accuracy and adherence to procedures; automated checks for red flags or warning signs; and established protocols and procedures to ensure consistency and accountability. The *Grantee Internal Control Self Assessment Instrument is available as a resource for* assisting Lead Agencies in assessing how well their policies and procedures meet the CCDF regulatory requirements for supporting program integrity and financial accountability.

At § 98.68(b) we propose to require Lead Agencies to have processes in place to identify fraud and other program violations associated with recipient eligibility and provider payment. These processes may include, but are not limited to, record matching and database linkages, review of attendance and billing records, quality control or quality assurance reviews, and staff training on monitoring and audit processes. Lead Agencies may wish to use unique identifiers to crosscheck information provided by parents and providers across State and national data systems. For example, income reported on the application for child care assistance may be checked with State quarterly wage databases or other benefit programs (i.e., SNAP, TANF, or Medicaid). Many such data systems can be structured to automatically flag potential improper payments. States should also provide training to caseworkers responsible for eligibility determination and redetermination and make efforts to simplify forms.

At § 98.68(c) we propose to require Lead Agencies to have procedures in place for documenting and verifying that children meet eligibility criteria at the time of eligibility determination. Lead Agencies are responsible for ensuring that all children served in CCDF are eligible at the time of eligibility determination or re-determination and receiving care from eligible child care providers. Lead Agencies should, at a minimum, verify and maintain documentation of the child's age, family income, and require proof that parents are engaged in eligible activities. Income documentation may include pay stubs, tax records, child support enforcement documentation, alimony court records, government benefit letters, and receipts for self-employed applicants. Documentation of participation in eligible activities may include school registration records, class schedules, or job training forms. Lead Agencies are encouraged to use automated verification systems and electronic recordkeeping practices to reduce paperwork. In addition, Lead Agencies may use client information collected and verified by other State programs (e.g., through the use of consolidated application forms) to streamline the eligibility determination process for CCDF. This new amendment would require Lead Agencies to institute procedures that ensure eligibility is appropriately verified and to monitor State, local, and non-governmental agencies directly engaged in eligibility determination and would provide additional safeguards to ensure that

children receiving child care subsidies are eligible pursuant to requirements found at § 98.20.

At § 98.68(d) we propose to require Lead Agencies to have processes in place to investigate and recover fraudulent payments and to impose sanctions on clients or providers in response to fraud. This new provision complements the existing requirement at § 98.60(h)(1) that requires Lead Agencies to recover child care payments that are made as the result of fraud; these payments must be recovered from the party responsible for committing the fraud. The proposed new provisions ensure that Lead Agencies have the necessary processes in place to identify fraud and program violations so that recovery can be pursued and so that the Lead Agency can better design practices and procedures that prevent fraud from occurring in the first place. Lead Agencies are encouraged to use automated payment systems for child care providers, such as direct deposit, in order to minimize the risk of fraud. We also recommend that each Lead Agency include staff dedicated to program integrity efforts and that these staff should partner with law enforcement as appropriate to address fraud.

Program integrity efforts can help ensure that limited program dollars are going to low-income eligible families for which assistance is intended; however, it is important to ensure that these efforts do not inadvertently impair access for eligible families. The Administration has emphasized that efforts to reduce improper payments and fraud must be undertaken with consideration for impacts on eligible families seeking benefits. In November 2009, the President issued Executive Order 13520, which underscored the importance of reducing improper payments in Federal programs while protecting access to programs by their intended beneficiaries (74 FR 62201). It states, ''The purpose of this order is to reduce improper payments by intensifying efforts to eliminate payment error, waste, fraud, and abuse in the major programs administered by the Federal Government, while continuing to ensure that Federal programs serve and provide access to their intended beneficiaries.''

It is important to have a strategic and intentional planning process to formalize mechanisms to promote program integrity and financial accountability while balancing quality and access for eligible families. Efforts to promote program integrity and financial accountability should not compromise child care access for eligible children and families. A foundation for accountability should be policies and procedures that help low-income parents' access child care assistance to support their work and training and promote children's success in school. Once a Lead Agency has established policies and procedures, steps should be taken to implement the program with fidelity and to include a variety of checks to detect areas both where there may be vulnerability to error or fraud and areas in which the system is failing to serve families well. Lead Agencies also can promote program integrity by clearly communicating specific policies to staff, parents, and providers. When policies are easily understood by the public and clearly communicated, parents and providers can better understand reporting requirements and deadlines.

Subpart H—Program Reporting Requirements

Content of Reports (Section 98.71)

Section 98.71 describes administrative data elements that Lead Agencies are required to report to ACF, including basic demographic data on the children served, the reason they are in care, and the general type of care (center-based, family child care home, regulated vs. unregulated provider). While this data provides useful contextual information on the population of children and families receiving CCDF subsidies, it does not include information on the quality of care for subsidized children, which is a gap in our ability to track our goals to serve more low-income children in high quality care.

We propose to add new § 98.71(a)(15) to require State and Territorial Lead Agencies to submit an indicator of the quality of the child care provider as part of the quarterly family case-level administrative data report. This data will allow ACF and Lead Agencies to describe the quality of child care for each child receiving a child care subsidy and is consistent with revisions proposed at § 98.33 related to consumer education that would require Lead Agencies to implement a system of transparent quality indicators to provide parents with a way to differentiate the quality of child care providers. Many States pay higher subsidy rates for quality care, and therefore already track some information on the quality of care for at least a portion of child care providers in the subsidy system. This information may include the provider's level under a QRIS, accreditation status, compliance with State pre-kindergarten standards, compliance with Head Start performance standards, or compliance with other State-defined measures of child care quality.

However, States vary greatly in the extent to which they use this quality data to improve management of their CCDF program, track quality improvement initiatives, and target financial incentives and technical assistance. In addition, none of this data is available at the national level. The limited and dated information that we have from research studies in selected States suggests that the quality of care in too many instances is mediocre or poor. Greater attention needs to be paid to quality of care that children receive, particularly low-income children in the subsidy system, to ensure that their care is promoting their learning and development to support success in school and life.

To address this situation, ACF has separately revised the CCDF quarterly family case-level administrative data report (ACF–801) in order to add data elements related to the quality of care for children receiving CCDF subsidies (76 FR 44934). The revisions at § 98.71 reflect this change to the ACF–801 form. In our revisions to the form, we have allowed for a range of potential responses in recognition of State flexibility and variation in implementing CCDF, and a phased-in implementation period to allow States the necessary time to modify systems and implement the reporting. Current paragraph (a)(15) would be re-designated as paragraph (a)(16) but otherwise is unchanged.

Subpart I—Indian Tribes

This subpart addresses requirements and procedures for Indian Tribes and Tribal organizations applying for or receiving CCDF funds. CCDF currently provides funding to approximately 260 Tribes and Tribal organizations that, either directly or through consortia arrangements, administer child care programs for over 500 federally-recognized Indian Tribes. Tribes and Tribal organizations receive 2 percent of CCDF funds, equaling over $100 million. With few exceptions, Tribal CCDF grantees are located in rural and economically challenged areas. In these communities, the CCDF program plays a crucial role in offering child care options to parents as they move toward economic self-sufficiency, and in promoting learning and development for children. In many cases, Tribal child care programs also emphasize traditional culture and language.

Tribal Consultation. ACF is committed to consulting with Tribal leadership on the provisions of this proposed rule. The requirements in this

rule were informed by past consultations and meetings with Tribal representatives on related topics, such as the recent revisions to the CCDF Tribal Plan, which addressed many of the same issues as this proposed rule—including health and safety, quality improvement, and program integrity. ACF has not yet formally consulted with Tribal leaders on the specific provisions of this proposed rule, but will consult with Tribes through appropriate venues during the public comment period. The consultations will be conducted in accordance with ACF's newly-revised Tribal Consultation Policy (76 FR 55678). Advance notice regarding these consultations will be disseminated to Tribes. Furthermore, we encourage Tribes to submit written comments during the public comment period.

In light of unique tribal circumstances, this proposed rule continues to balance flexibility for Tribes with the need to ensure accountability and quality child care for children. In Subpart I, the proposed rule maintains all existing provisions at § 98.80 (General Procedures and Requirements), § 98.81 (Application and Plan Procedures) and § 98.82 (Coordination). It proposes three changes to § 98.83 (Requirements for Tribal Programs). Below we discuss broader contextual issues, including how provisions located outside of Subpart I apply to Tribes, before moving to a discussion of the proposed changes to § 98.83.

First, we would note that Tribes continue to 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. ACF does publish annual program instructions providing directions for Tribes wishing to consolidate CCDF funds under an Indian Employment, Training and Related Services plan. The Department of the Interior has lead responsibility for administration of Public Law 102–477 programs.

Subpart I continues to specify 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 specifically exempted. We propose to add a new exemption for Tribes, from the requirements at § 98.50(b)(3) regarding funding mechanisms (which is discussed further below). However, Tribal Lead Agencies are generally subject to the new and revised provisions in this proposed rule—including, but not limited to, changes regarding: a child's eligibility for services at § 98.20, consumer education at § 98.33; health and safety requirements at § 98.41; and new program integrity provisions at § 98.68. We have included further discussion below regarding how a number of these specific provisions would apply to Tribes and Tribal organizations.

Health and safety standards. Tribes would be required to meet proposed revisions to § 98.41 which provide greater specificity regarding CCDF health and safety requirements. (In addition, as discussed below, we are proposing that Tribes be subject to immunization requirements that currently apply only to States and Territories; see discussion below).

The CCDBG Act, as amended by PRWORA, required HHS to develop minimum child care standards for Indian Tribes and Tribal Organizations receiving funds under the CCDF. These health and safety standards were first published in 2000 after three years of consultation with Tribes, Tribal organizations, and Tribal child care programs, and the standards were updated and reissued in 2005. The HHS minimum standards are voluntary guidelines that represent the baseline from which all programs should operate to ensure that children are cared for in healthy and safe environments and that their basic needs are being met.

Tribes may comply with the proposed new requirements at § 98.41 by adopting and implementing components of the minimum tribal standards issued by HHS, or by developing and implementing their own tribal child care standards. Many Tribes already exceed the minimum tribal standards issued by HHS, and some Tribes have used the minimum standards as the starting point for developing their own more specific tribal standards. The minimum Tribal standards issued by HHS are generally consistent with the proposed revisions at § 98.41, but we will be reviewing the standards to ensure that they adequately address all aspects of the proposed rule. We welcome comments that provide recommendations on any necessary updates to the minimum standards.

Consumer education. Tribes would also be subject to proposed new requirements at § 98.33 related to consumer education, with the exception of the requirement for a Web site at § 98.33(a), see further discussion below. These new provisions require Lead Agencies to collect and disseminate information on the quality of child care providers, using information from a transparent system of child care provider quality standards, such as a QRIS. We recognize that many Tribes lack the resources necessary to implement their own comprehensive quality standards or QRIS. However, Tribal Lead Agencies may encourage child care providers in their service areas to participate in State quality initiatives, such as QRIS, to the extent that such systems are available and culturally relevant to Tribes. Tribes may also satisfy the requirements at revised § 98.33 by tracking and disseminating other information related to quality of providers, such as: compliance with health and safety requirements; training that the provider has completed; the group size and adult-child ratio for the provider; whether the provider is accredited; or whether the provider meets certain quality standards. We also encourage Tribes to explore innovative new models for tracking and disseminating quality information as a consumer education strategy, and we look forward to providing technical assistance to support these efforts. Please see further discussion below regarding the applicability of new quality provisions at § 98.51 to Tribes.

Increased Lead Agency flexibility. Provisions in this proposed rule that are designed to increase Lead Agency flexibility (e.g., waiving family copayments at § 98.43; allowing higher standards of CCDF providers at § 98.30(g)) all apply to Tribes and will increase the ability of Tribal Lead Agencies to design programs that meet the unique needs of tribal communities. In addition, with two exceptions (related to immunization requirements and quality expenditures, which are discussed further below), the proposed rule would maintain all existing tribal exemptions from CCDF requirements. These existing provisions exempt Tribes from a number of CCDF requirements that apply to State Lead Agencies, in recognition of the unique social and economic circumstances of many tribal communities. For example, as is the case with the existing rule, Tribes continue to be subject to a 15 percent administrative cost limit, rather than the five percent limit that applies to States. Similarly, Tribes may use either State median income or Tribal median income when determining a child's eligibility.

Requirements for Tribal Programs (Section 98.83)

We propose four changes to section 98.83. First, we propose to exempt

Tribes from the requirement for a Web site at § 98.33(a). Under the proposed rule, this provision would require Lead Agencies to establish a user-friendly, easy-to-understand Web site to disseminate consumer education information about the full range of available providers and provider-specific information about health and safety requirements; including history of violation of requirements and any compliance actions taken. Where appropriate, we encourage Tribes to implement Web sites for consumer education, but we are exempting Tribes from the mandate in recognition of the unique circumstances of tribal programs. For example, in cases where tribal child care providers are licensed by the State, information about compliance with health and safety requirements should already be available on the State's Web site. Furthermore, in some instances, the small number of child care providers in the Tribe's service area may not warrant the development and maintenance of a Web site. Although we are exempting Tribes from the Web site requirement, Tribes will still be required to meet other provisions of § 98.33(a), (b) and (c)—specifically to disseminate consumer education information on the full range of available providers, including provider-specific information about health and safety, a transparent system of quality indicators, and specific information about the provider selected by a parent receiving a CCDF subsidy. Tribes will have flexibility for determining the most effective approaches for providing this information.

Second, we propose to exempt Tribes from the requirement at § 98.50(b)(3). As revised by this proposed rule, that provision would require direct services to be provided using funding methods provided for in § 98.30 (i.e., grant or contract, certificate), which must include some use of grants or contracts, with the extent of such services determined by the Lead Agency after consideration of the supply of high quality care, the needs of underserved populations, and the circumstances of local communities. This would require Lead Agencies to employ some use of grants or contracts to provide child care services. We are exempting Tribes from this requirement because we recognize that some Tribes, particularly those receiving smaller CCDF grant awards, may lack the resources necessary to provide services through a grant or contract. In addition, we recognize that many Tribes directly administer their own tribally-operated child care facilities, rather than purchasing slots through a grant or contract. These tribally-operated centers can accomplish many of the same goals as the use of grants and contracts (i.e., building supply, strengthening quality). For home-based care, grants or contracts with family child care providers or networks of family child care providers can be an effective approach to increase quality and supply in rural areas, including tribal service areas. The provision of services by Tribal Lead Agencies through certificates is already separately addressed at § 98.83(f), and is discussed in this preamble further below.

In addition, consistent with this proposed rule's overall focus on promoting high quality care that supports children's learning and development, we propose two changes in § 98.83 in order to strengthen health and safety requirements and quality initiatives for Indian children. First, we propose to revise § 98.83(d) to remove reference to § 98.41(a)(1)(i) and thereby extend coverage of CCDF health and safety requirements related to immunization so that the requirements would apply to Tribes, whereas previously Tribes were exempt. Second, we propose to revise § 98.83(f) so that all Tribes would be required to spend a minimum of 4 percent of CCDF expenditures on quality improvement activities; previously this requirement only applied to larger Tribes.

Immunization requirement. Under § 98.83(d) of the existing regulation, Tribes are currently exempt from the requirement at § 98.41(a)(1)(i) to assure that children receiving services under CCDF are age-appropriately immunized. The preamble to the 1998 Final Rule (63 FR 39953) indicated that Tribes were not subject to this regulatory requirement due to the anticipated development of tribal health and safety standards. The minimum tribal health and safety standards, required by section 658E(c)(2)(E)(ii) of the CCDBG Act, had not yet been developed and released by HHS at the time that the 1998 final rule was issued. Since HHS planned to consider immunization requirements as part of the consultation and development of the minimum tribal standards, it was premature at that time to address immunization requirements for Tribes through regulation.

However, the minimum tribal standards have subsequently been developed and released, and the standards address immunization in a manner that is consistent with the requirements at § 98.41(a)(1)(i). As a result, there is no longer a compelling reason to continue to exempt Tribes from this regulatory requirement. We believe that many Tribes have already moved forward with implementing immunization requirements for children receiving CCDF assistance. By extending the requirement to Tribes, we will ensure that Indian children receiving CCDF assistance are age-appropriately immunized as part of efforts to prevent and control infectious diseases.

As with States and Territories, Tribal Lead Agencies will have flexibility to determine the method to implement the immunization requirement. For example, they may require parents to provide proof of immunization as part of CCDF eligibility determinations, or they may require child care providers to maintain proof of immunization for children enrolled in their care. As indicated in the regulation, Lead Agencies have the option to exempt the following groups: (1) Children who are cared for by relatives; (2) children who receive care in their own homes; (3) children whose parents object on religious grounds; and (4) children whose medical condition requires that immunizations not be given. In determining which immunizations will be required, Tribal Lead Agencies have the flexibility to apply its own immunization recommendations or standards. Many Tribes may choose to adopt recommendations from the Indian Health Service or the State's public health agency.

Quality improvement activities. The existing rule at § 98.83(f) currently exempts smaller Tribes and tribal organizations (with total CCDF allocations less than an amount established by the Secretary) from the 4 percent quality requirement at § 98.51(a) and the requirement to operate a certificate program at §§ 98.15(a)(2) and 98.30(a) and (d). We propose to amend § 98.83(f) by deleting paragraph (3) so that smaller Tribes would continue to be exempt from operating a certificate program, but all Tribes regardless of size would now be required to spend at least 4 percent on quality improvement activities.

As discussed elsewhere in this preamble, a primary goal of this proposed rule is to promote high quality child care to support children's learning and development. Since comprehensive CCDF regulations were last issued in 1998, policymakers and administrators have increasingly focused on promoting school-readiness and positive child outcomes through systemic efforts to improve the quality of child care. We want to ensure that Indian children and Tribes benefit from these quality improvement efforts. Therefore, we plan to require that all Tribes meet the 4

percent quality requirement, which already applies to larger Tribes, States, and Territories under the existing statute and regulation. Approximately 50 Tribal Lead Agencies currently receive over $500,000 and are therefore already subject to the 4 percent quality requirement. This rule proposes to require that the remaining Tribes (over 200 Tribal Lead Agencies) meet the 4 percent quality requirement as well.

Since the quality requirement is applied as a percentage of the Tribe's CCDF expenditures, the amount required will be relatively small, and therefore not burdensome, for Tribes receiving smaller CCDF grant awards. There are a wide range of quality improvement activities that Tribes have the flexibility to implement, and the scope of these efforts can be adjusted based on the resources available so that even smaller Tribal Lead Agencies can effectively promote the quality of child care. We will provide technical assistance to help Tribes identify current activities that may count towards meeting the 4 percent quality requirement, as well as appropriate new opportunities to spend at least 4 percent on quality.

The proposed revisions to § 98.51 (Activities to Improve the Quality of Child Care), discussed earlier in this preamble, provide a systemic framework for organizing, guiding, and measuring progress of quality improvement activities. We recognize that this systemic framework may be more relevant for States, than for many Tribes, since the framework is based on the innovative work occurring in States related to quality improvement, such as the development of a QRIS. Such large-scale, comprehensive systemic initiatives may not always be appropriate for Tribes, given the unique circumstances of tribal communities. However, Tribes may implement selected components of the quality framework at § 98.51—such as training for child care providers or grants to improve health and safety.

While proposed revisions to § 98.51 lay out a new quality vision and framework, the revisions in no way restrict Tribes' ability to spend CCDF quality dollars on a wide range of quality improvement activities. Under existing § 98.51(a)(1), Tribes continue to have the flexibility to use quality dollars for activities that include, but are not limited to: activities designed to provide comprehensive consumer education to parents and the public; activities that increase parental choice; and activities designed to improve the quality and availability of child care. As is currently the case, these activities could include: resource and referral activities, consumer education, grants or loans to assist providers, training and technical assistance for providers, improving salaries and compensation of practitioners, monitoring or enforcement of health and safety standards, and other activities to improve the quality of child care. While Tribes have broad flexibility, to the degree possible Tribes should plan strategically and systemically when implementing their quality initiatives in order to maximize the effectiveness of those efforts.

In addition, we encourage strong Tribal-State partnerships that promote Tribal participation in States' systemic initiatives, as well as State support for Tribal initiatives. For example, Tribes and States can work together to ensure that quality initiatives in the State are culturally relevant and appropriate for Tribes, and to encourage Tribal child care providers to participate in State initiatives such as QRIS and professional development systems. Under existing § 98.82(a), Tribes must coordinate to the maximum extent feasible with the State CCDF Lead Agencies. At the same time, § 98.12(c) requires State CCDF Lead Agencies to coordinate, to the maximum extent feasible, with any Indian Tribes in the State receiving CCDF funds.

Certificate program. Under revised § 98.83(f) in the proposed rule, Tribes receiving smaller CCDF grants would continue to be exempt from operating a certificate program. We recognize that small Tribal grantees may not have sufficient resources or infrastructure to effectively operate a certificate program. In addition, many smaller Tribes are located in less-populated, rural communities that frequently lack the well-developed child care market and supply of providers that is necessary for a robust certificate program.

The dollar threshold for determining which Tribes are exempt from operating a certificate program is established by the Secretary. The threshold is not included in regulation, and therefore revising the threshold does not require a regulatory change. However, we would like to inform Tribes of our intent to update the threshold—which has been set at $500,000 since 1998. We are planning to increase the threshold to $700,000 starting with grants awarded in FY 2015. This change will recalibrate the threshold to a level that is comparable to the original threshold, after adjusting for inflation. It will expand the number of Tribes that are exempt from operating a certificate program, thereby ensuring that only Tribes of sufficient size are required to meet the certificate requirement. With this change, Tribal Lead Agencies with total CCDF allocations less than $700,000 in a fiscal year will be exempt from the requirement to operate a certificate program. Tribal Lead Agencies with allocations equal to or greater than $700,000 will be required to operate a certificate program.

Base amount. Similarly, although a regulatory change is not required, we are planning to update the base amount of funding that each Tribal Lead Agency receives as part of its Discretionary Fund award per the current § 98.61(c)(1)(i). For grants awarded starting in FY 2015, we are planning to increase the base amount from $20,000 to $30,000 in order to account for inflation that has eroded the value of the base amount since it was originally established in 1998. As referenced at the existing § 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 CCDF, including the administrative costs of implementing a child care program.

Subpart J—Monitoring, Non-Compliance, and Complaints

We propose no changes at Subpart J.

Subpart K—Error Rate Reporting

On September 5, 2007, ACF published a final rule that added subpart K to the CCDF regulations. This subpart, which was effective October 1, 2007, established requirements for the reporting of error rates in the expenditure of CCDF grant funds by the 50 States, the District of Columbia and Puerto Rico. The error reports were designed to implement provisions of the Improper Payments Information Act of 2002 (IPIA; Pub. L. 107–300). In July 2010, the President signed into law the Improper Payments Elimination and Recovery Act (IPERA) (Pub. L. 111–204) which amended the IPIA of 2002 and provided a renewed focus on government-wide efforts to control improper payments. In recent years, ACF has provided technical assistance and guidance to CCDF Lead Agencies to assist their efforts in preventing and controlling improper payments. These program integrity efforts help ensure that limited program dollars are going to low-income eligible families for which assistance is intended.

This proposed rule retains the error reporting requirements at subpart K, but proposes two changes which are discussed below. In addition to the

regulatory requirements at subpart K, details regarding the error rate reporting requirements are contained in forms and instructions that are established through the Office of Management and Budget's (OMB) information collection process. As part of the renewal process for these forms and instructions, ACF recently revised the methodology in the forms and instructions to measure improper payments rather than improper authorizations for payment recognizing that an improper authorization does not always lead to an improper payment.

Error Rate Reports and Content of Error Rate Reports (Sections 98.100 and 98.102)

Estimated annual amount of improper payments. As provided below, in this proposed rule, we propose to delete existing § 98.102(a)(5), thereby eliminating one of the data elements currently required as part of the error rate report submitted by Lead Agencies. With this change, Lead Agencies would no longer be required to submit the estimated annual amount of improper payments. We propose a corresponding deletion at § 98.100(b), which also describes the content of the error reports.

It is no longer necessary to require Lead Agencies to report the estimated annual amount of improper payments. ACF can use other existing sources of data (i.e., CCDF outlay data) along with the percentage of improper payments reported by Lead Agencies for the representative samples, in order to estimate the annual amount of improper payments for the program as a whole. The resulting standard methodology will eliminate inconsistencies resulting from separate Lead Agency estimates. This proposed change will also reduce the reporting burden currently imposed on the 50 States, DC, and Puerto Rico. A number of Lead Agencies have experienced challenges in reporting this information in the past. ACF plans to revise the error rate forms and instructions, through the information collection approval process, to eliminate this data element once the final rule is published.

Corrective action plan. We propose to add paragraph § 98.102(c) to require that any Lead Agency with an improper payment rate that exceeds a threshold established by the Secretary must submit a comprehensive corrective action plan, as well as subsequent reports describing progress in implementing the plan. This is a conforming change to match new requirements for corrective action plans that were contained in the recent revisions to the forms and instructions. The corrective action plan must be submitted within 60-days of the deadline for submission of the Lead Agency's standard error rate report required by § 98.102(c). The corrective action plan must include: identification of a senior accountable official, milestones that clearly identify actions to be taken to reduce improper payments and the individual responsible for completing each action, a timeline for completing each action within one year of ACF approval of the plan and for reducing improper payments below the threshold established by the Secretary, and targets for future improper payment rates. Subsequent progress reports must be submitted as requested by the Assistant Secretary. Failure to carry out actions described in the approved corrective action plan will be grounds for a penalty or sanction under § 98.92.

This proposed new requirement will strengthen CCDF program integrity and accountability. Existing CCDF regulations at § 98.102(a)(6) and (8) currently require all 50 States, DC and Puerto Rico to report error rate targets for the next reporting cycle and to describe actions that will be taken to correct causes of improper payments. However, the information reported by Lead Agencies sometimes lacks detail or specificity, is only reported on a three-year cycle, and does not include status updates about the Lead Agency's progress in implementing corrective action. More specific and timely requirements are necessary for Lead Agencies with high improper payment rates. Therefore, we propose that any Lead Agency exceeding a threshold of improper payments be required to submit a formal, comprehensive corrective action plan with a detailed description and timeline of action steps of how it will meet targets for improvement. The corrective action plan should also address any relevant findings from annual audits required by existing regulation at § 98.65(a), OMB Circular A–133, and the Single Audit Act. The Lead Agency would also be required to submit subsequent reports, on at least an annual basis, describing progress in implementing corrective action. These new requirements will ensure that Lead Agencies engage in a strategic and thoughtful planning process for reducing improper payments, take action in a timely fashion, and provide information on action steps that is transparent and available to the public.

The proposed rule indicates that the improper payment threshold, which triggers the requirement for a corrective action plan, will be established by the Secretary. Although the proposed rule provides flexibility to adjust the threshold in the future, the initial threshold will be an improper payment rate of 10 percent or higher. In other words, if a Lead Agency indicates that its improper payment rate reported in accordance with § 98.102(a)(3) equals or exceeds 10 percent, the Lead Agency will be subject to corrective action under proposed § 98.102(b). This 10 percent threshold is consistent with the IPERA which indicates that an improper payment rate of less than 10 percent for a Federal program is necessary for compliance. Under IPERA, ACF must submit a corrective action plan if the national improper payment rate for CCDF exceeds 10 percent. Since CCDF is administered by State and Territory Lead Agencies and the error rate review process is executed by States, the only effective way for ACF to achieve and maintain an improper payment rate below the 10 percent threshold is to hold Lead Agencies accountable.

V. Paperwork Reduction Act

A number of sections in this proposed rule refer to collections of information. These collections of information are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (the PRA) (44 U.S.C. 3501–3520). In several instances, the collections of information for the relevant sections of this proposed rule have been approved previously under a series of OMB control numbers as indicated in the following table. The proposed rule does not modify these currently-approved collections.

CCDF title/code	Relevant section in the proposed rule	OMB control number	Expiration date
ACF–700 (CCDF Annual Report for Tribal Lead Agencies).	§ 98.71	0980–0241	12/31/2013
ACF–800 (Annual Aggregate Data Reporting)	§ 98.71	0970–0150	06/30/2015
ACF–801 (Monthly Case-Level Data Reporting)	§ 98.71	0970–0167	04/30/2015

CCDF title/code	Relevant section in the proposed rule	OMB control number	Expiration date
ACF–696 (Financial Reporting-States)	§ 98.65	0970–0163	05/31/2016 (renewal is under review at OMB)
ACF–696–T (Financial Reporting-Tribal Organizations).	§ 98.65	0970–0195	05/31/2016 (renewal is under review at OMB)
ACF–403, ACF–404, ACF–405 (CCDF Error Rate Reporting).	§§ 98.100 and 98.102	0970–0323	09/30/2015
CCDF–ACF –PI–2013–01 (Tribal Application for Construction Funds).	§ 98.84	0970–0160	03/31/2016

In other instances, the proposed rule seeks to modify several currently-approved information collections. HHS will publish **Federal Register** notices soliciting public comment on specific revisions to those information collections and will make available the proposed forms and instructions for review. To assist the public in reviewing the relevant provisions of the proposed rule, below is a summary of the status of these collections.

ACF–118 CCDF State Plan. The rule, at 45 CFR §§ 98.14, 98.16, 98.18, and 98.43, proposes to modify this existing information collection approved under OMB control number 0970–0114. The proposed rule adds several new requirements which States and Territories will be required to report in the biennial CCDF Plans, including provisions related to health and safety requirements, consumer education, and eligibility policies. As described earlier in the preamble, provisions included in a Final Rule will be incorporated into the review of FY 2016–2017 CCDF Plans that become effective October 1, 2015. HHS plans to publish separate **Federal Register** notices seeking public comment on this proposed information collection and the annual burden estimate.

ACF–118–A CCDF Tribal Plan. The rule, at 45 CFR 98.14, 98.16, 98.18, 98.43, 98.81, and 98.83, proposes to modify this existing information collection approved under OMB control number 0970–0198. The proposed rule adds several new requirements that Tribes and Tribal organizations will be required to report in the biennial CCDF Plans, including provisions related to health and safety requirements, consumer education, and eligibility policies. Provisions included in a Final Rule will be incorporated into the review of FY 2016–2017 CCDF Plans that become effective October 1, 2015. HHS plans to publish separate **Federal Register** notices seeking public comment on this proposed information collection and the annual burden estimate.

The table below provides annual burden estimates for existing information collections that are modified by this proposed rule. These estimates reflect the total burden of each information collection, including the changes made by this proposed rule.

ANNUAL BURDEN ESTIMATES

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
ACF–118 CCDF State Plan	56	0.5	163.5	4,578
ACF–118–A CCDF Tribal Plan	257	0.5	121	15,549

Finally, the proposed rule contains two new information collection requirements, and the table below provides an annual burden hour estimate for these collections. First, § 98.33 requires Lead Agencies to post provider-specific information to a user-friendly, easy to understand Web site as part of its consumer education activities (described earlier in this preamble). This Web site will provide information to parents about the degree to which specific child care providers meet State health and safety requirements and quality indicators. This requirement applies to the 50 States, District of Columbia, and five Territories that receive CCDF grants. States will have significant flexibility regarding how to implement this provision and each State will determine its own tailored approach based on existing practices, available resources, and other circumstances.

In estimating the burden estimate, we considered the fact that many States already have existing Web sites. Even in States without an existing Web site, much of the information will be readily available from licensing agencies, quality rating and improvement systems, and other sources. The burden hour estimate below reflects an average estimate, recognizing that there will be significant State variation. The estimate is annualized to encompass initial data entry as well as updates to the Web site over time. The total estimated dollar cost for all Lead Agencies is $2,000,000.

Second, § 98.41 requires Lead Agencies to establish procedures that require child care providers that care for children receiving CCDF subsidies to report to a designated State, territorial, or tribal entity any serious injuries or deaths of children occurring in child care. This is necessary for States to be able to examine the circumstances leading to serious injury or death of children in child care, and, if necessary, make adjustments to health and safety requirements and enforcement of those requirements in order to prevent any future tragedies

The requirement would potentially apply to the approximately 500,000 child care providers who serve children receiving CCDF subsidies, but only a portion of these providers would need to report, since our burden estimate assumes that no report is required in the absence of serious injury or death. Using currently available aggregate data on child deaths and injuries, we estimated the average number of provider respondents would be approximately 10,000 annually.

In estimating the burden, we considered that more than half the States already have reporting requirements in place as part of their licensing procedures for child care providers. States, Territories and Tribes have flexibility in specifying the

particular reporting requirements, such as timeframes and which serious injuries must be reported. While the reporting procedures will vary by jurisdiction, we anticipate that most providers will need to complete a form or otherwise provide written information.

ANNUAL BURDEN ESTIMATES

Instrument	Number of respondents	Number of responses per Respondent	Average burden hours per response	Total burden hours
Consumer Education Web site	56 States/Territories	1	260	14,560
Reporting of Serious Injuries and Death	10,000 child care providers	1	1	10,000

We will consider public comments regarding information collection in the following areas: (1) Evaluating whether the proposed collection is necessary for the proper performance of the CCDF program, including whether the information will have practical utility; (2) evaluating the accuracy of the estimated burden of the proposed collection; (3) enhancing the quality, usefulness, and clarity of the information to be collected; and (4) minimizing the burden of the collection of information, including the use of appropriate technology.

Written comments regarding information collection should be sent to ACF, and to the Office of Management and Budget, Office of Information and Regulatory Affairs (Attention: Desk Officer for the Administration for Children and Families) by email to: *oira_submission@omb.eop.gov*, or by fax to (202) 395–7285.

VI. Regulatory Flexibility Act

The Secretary certifies that, under 5 U.S.C. 605(b), as enacted by the Regulatory Flexibility Act (Pub. L. 96–354), this proposed rule will not result in a significant economic impact on a substantial number of small entities. This proposed rule is intended to ensure accountability for Federal funds consistent with the purposes of the CCDBG Act and regulations and is not duplicative of other requirements. The primary impact of this proposed rule is on State, Tribe, and Territorial grantees since the proposed changes articulate a set of expectations for how grantees are to satisfy certain requirements in the CCDBG Act. To a lesser extent the proposed rule could affect individuals and small businesses, particularly family child care providers, however the number of entities affected should be limited and the economic impact has not been determined to be significant. We have proposed changes to better balance the dual purposes of the program by adding provisions which would ensure that healthy, successful child development is a consideration when establishing policies for the CCDF program (e.g., preserving continuity in child care arrangements), and to ensure that child care providers caring for children receiving subsidies meet basic standards for ensuring the safety of children and have minimum training in health and safety. These include requirements for comprehensive criminal background checks and health and safety training in areas such as first-aid and CPR that may impact child care providers caring for children receiving CCDF subsidies. Some child care providers, particularly family child care providers that do not already meet these requirements, may incur some burden. However, we do not believe these new requirements will have a significant economic impact on a substantial number of small entities since we expect Lead Agencies to use CCDF funds to assist child care providers in meeting the requirements. For example, as indicated at proposed § 98.51(a)(2)(i), Lead Agencies may use quality funds to support activities that ensure the health and safety of children.

VII. Regulatory Impact Analysis

Executive Orders 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This proposed rule meets the criteria for a significant regulatory action under E.O. 12866 and thus has been reviewed by OMB. For the reasons set forth below, ACF does not believe the impact of this proposed regulatory action would be economically significant and that the total cost would fall well below the $100 million threshold.

Need for the proposed rule. The impetus for this proposed rule is based on the need to reform and update the CCDF program, which has not undergone a significant regulatory review or revision in more than 15 years. Since then, there has been a growing body of research on early childhood development underscoring the importance of children's earliest experiences and impacts on their later success. Given that CCDF is a program that provides Federal financial assistance to pay for child care for low-income children, it is absolutely essential that policy and program priorities be informed by this research. It is no longer sufficient to consider the quality of care arrangements for children receiving CCDF assistance as an afterthought to the function of the program as a work support for low-income parents. The CCDF program must necessarily be concerned with ensuring that child care providers caring for children meet minimum requirements for maintaining healthy and safe environments and work to improve the quality of those environments to the greatest extent possible. Many States, Territories, and Tribes administering CCDF have long since recognized this dual-purpose framework and have used their flexibility within the block grant program to adopt practices and policies that reflect these goals. However, implementation of the CCDF program across the country varies greatly. Lack of substantive Federal regulatory guidance in areas such as health and safety, quality, and eligibility policy jeopardizes accountability in the sense that all families receiving CCDF assistance, regardless of what State, Territory or Tribe they may reside in, should have basic assurances about the quality of services they receive. This proposed rule seeks to establish concrete expectations in these areas to better balance the dual purposes of the CCDF program and fully leverage its two-generational impact.

Benefits of the proposed rule. CCDF provides financial assistance to make child care more affordable so that parents can work or attend job training or educational programs. As stated throughout this proposed rule, we envision the program as also providing children in those families access to high quality care to ensure their healthy, safe development. In FY 2011, the CCDF program provided assistance to nearly 1.6 million children in nearly 1 million families. In addition, approximately 500,000 child care providers provided services to children receiving CCDF subsidies. The changes in this proposed rule are almost wholly directed towards improving the lives of the children and families we serve and improving health and safety and quality of child care providers caring for those children. In short, the changes in this proposed rule have three primary beneficiaries—low-income working parents, low-income children, and child care providers serving these families.

We have included several changes in this proposed rule that we believe will improve the continuity of services and stability of child care arrangements for families receiving CCDF. The benefits of these changes are not easily quantified, but can have a profound effect on the lives of the low-income parents and children we serve. For example, we anticipate that changes in the proposed rule will mean that a parent can retain their subsidy after experiencing job loss in order to search for new employment. In some States, parents enter into downward spirals when they lose their jobs and potentially lose their child care, jeopardizing the stability of care arrangements and stifling any positive impacts the arrangements may have had on their children's development. In other States, when parents lose their jobs, they maintain their subsidies and child care while they search for new jobs, leading to less stress on their families and preserving their children's relationships with their caregivers. We know that about half of the States already allow for a certain period of job search for parents that lose employment. Therefore, the benefits of this particular policy change will primarily be directed towards the CCDF families and children in the remaining States that have yet to adopt this practice.

Several of the changes in this proposed rule benefit child care providers and the children they serve. To the extent that the proposed rule causes a child care provider to receive training in basic areas of health and safety where they might not otherwise have been compelled to, this proposed rule will have spillover effects that reach not only the CCDF child in that providers' care, but all the children cared for by that provider. We believe the new health and safety requirements are a benefit to public health and safety because they are aimed at practices that ultimately are intended to reduce the incidence of injury and death for children in child care. For example, if a child care provider receives certification in CPR or is knowledgeable in poison prevention and safety then they are in a better position to respond to or prevent an emergency if a child is in danger. If a child care provider is trained in SIDS prevention then children in their care are less likely to be at risk. We believe that improving accountability for Federal dollars means paying for safe, healthy child care and ensuring children are cared for by providers with a minimum of health and safety training. The requirement for child care providers to have a core body of knowledge will also place more providers on a career pathway, increasing their opportunities to develop professional knowledge necessary for advancement.

Finally, changes in this proposed rule related to quality improvement and consumer education activities also will benefit not only CCDF families, but also the general public. For example, if a child care provider receives a grant funded by CCDF to implement a new curriculum as part of a quality improvement activity, then that investment will benefit all the children in that provider's care. In addition, one of the changes in this proposed rule would require States to post provider-specific information on a Web site with information about health and safety and licensing or regulatory requirements met by the provider, including the history of licensing violations and date of last inspection. We believe making this information readily available and transparent to parents will promote more informed child care choices. In all of these ways we believe that changes in this proposed rule will not only directly benefit CCDF parents, children and providers, but also have a valuable public benefit with the possibility of impacting many families far beyond the immediate reach of the CCDF program.

Costs of the proposed rule. At the beginning of this proposed rule, we explain that one of the reasons for revising the CCDF regulations is to better reflect State and local practices to improve the quality of child care and the tremendous strides that have been made in implementation of evidence-based policies. As such, in many of the areas where changes are proposed there are a significant number of States and Territories that have already implemented these policies, and we have been purposeful throughout to note these numbers. The cost of implementing the changes in this proposed rule will vary depending on a State's specific situation. We conducted an analysis of State and Territory responses in the FY 2012–2013 CCDF Plans covering five of the key policy areas where we anticipate there could be cost implications. [Note: The analysis of CCDF Plans throughout this proposed rule includes a total of 56 State and Territorial CCDF Plans, including American Samoa, Guam, Northern Marianas Islands, Puerto Rico, and the Virgin Islands.]

Parental complaint hotline. The proposed rule includes a new requirement at § 98.32(a) that Lead Agencies must establish or designate a hotline for parents to submit complaints about child care providers. In the FY 2012–2013 CCDF plans, 10 States reported having a toll-free hotline for parents to submit child care-related complaints. An additional 16 States list public toll-free numbers on their Web sites for parents to contact the child care office. Establishing or designating a hotline may lead to additional costs for States, such as those associated with establishing a new hotline system or staff time used to answer the hotline. However, Lead Agencies have flexibility in implementing the proposed hotline and may work with other agencies in the State to adapt existing hotlines, such as those used to report child abuse and neglect.

Consumer Education. The proposed rule includes two new requirements that may increase costs as part of the statutory requirement that Lead Agencies collect and disseminate consumer education information about child care. The first of these requirements is that Lead Agencies must post provider-specific information on a Web site. The second is that Lead Agencies must implement a transparent system of quality indicators.

We propose amending paragraph (a) of § 98.33 to require Lead Agencies to post provider-specific information to a user-friendly, easy to understand Web site as part of its consumer education activities. The proposed change would require Lead Agencies to list available child care providers on a Web site with provider-specific information about any health and safety, licensing or regulatory requirements met by the provider, any history of violations of these requirements, and any compliance actions taken, as well as information about the quality of the provider, if available, as identified through a

transparent system of quality indicators. The Web site must also include a description of health and safety, licensing or regulatory requirements for child care providers within the Lead Agency's jurisdiction and processes for ensuring providers meet those requirements, including the background check process for providers and any other individuals in the child care setting, and offenses that may preclude a provider from serving children. Lead Agencies have flexibility to determine how to improve transparency to the public regarding child care provider licensing violations and compliance actions taken. Making provider compliance information widely available on a dedicated Web site allows parents to make informed choices, and for purposes of the CCDF subsidy program, is key to ensuring that parental choice is meaningful.

Creating and maintaining a Web site with provider-specific information may come with new costs for Lead Agencies. However, as the majority of States already have these Web sites in place, we do not expect this requirement to create a significant financial burden. According to a preliminary analysis of the FY 2012–2013 CCDF Plans, at least 30 States and Territories make all licensing information available to parents and the public online. Ten States and Territories reported making at least some licensing information available on a public Web site or other online tool. Therefore, this proposed change is consistent with current practices in many States and will not create new costs for them.

At new paragraph § 98.33(b) we propose to require Lead Agencies to collect and disseminate consumer education through a transparent system of quality indicators. The system must include provider-specific information about the quality of child care providers; (2) describe the standards used to assess the quality of child care; (3) take into account teaching staff qualifications, learning environment, curricula and activities; and (4) disseminate provider-specific quality information through a Web site or other alternate mechanism. Each Lead Agency has the flexibility to develop a system of quality indicators based on its specific needs. The costs associated with implementing a transparent system of quality indicators will depend on what consumer education activities the Lead Agency currently has in place. According to the FY 2012–2013 CCDF Plans, more than half the States have implemented quality rating and improvement systems (QRIS) and additional States have a QRIS in one or more localities that has not been implemented statewide. Therefore, additional costs would be associated with expanding the QRIS or creating a means of disseminating quality information to parents and the public in an easy-to-understand manner.

Background Checks. We propose to amend § 98.41(a)(2)(i) of the regulations to include comprehensive background checks on child care providers serving children receiving CCDF subsidies (excepting relative and in-home providers at the State's discretion), including use of fingerprints for State checks of criminal history records, use of fingerprints for checks of FBI criminal history records, clearance through the child abuse and neglect registry, if available, and clearance through the sex offender registry. According to the FY 2012–2013 CCDF Plans, all States and Territories have some infrastructure in place to conduct criminal background checks on child care providers. However, States vary in the extent to which they require different types of providers to receive background checks and many do not require the use of fingerprints for background checks.

For example, 53 States and Territories already require that child care center staff undergo at least one type of criminal background check, however only 40 States and Territories conduct FBI checks that include fingerprints. Similarly, 50 States and Territories require family child care providers to have a criminal background check and 36 require an FBI background check that includes fingerprints. The majority of States and Territories already have requirements in place for checks of child abuse and neglect registries and over half have a sex offender registry requirement in place. While some States may have to revise their background check policies or expand the requirement to be inclusive of additional providers, all States are already in partial compliance with the proposed provision.

Additionally, the Lead Agency can work with other State or local organizations that may already have the necessary equipment and resources to carry out the comprehensive background checks as a way of reducing administrative burden and associated costs. Many State agencies have already purchased Livescan technology that significantly decreases delays and administrative burdens associated with fingerprint-based checks. The cost of conducting criminal background checks will vary from State to State, but an FBI background check should only cost between $18 and $24. States currently have several methods for allocating the expense of background checks. Lead Agencies may use CCDF funds to pay for comprehensive background checks, and can potentially obtain funds from other Federal sources such as the National Criminal History Improvement Program (NCHIP) and the Adam Walsh Implementation Grants. Lead Agencies may also require that providers assume responsibility for background check fees as a cost of doing business. In some States, the child care facility pays for staff members' background checks. Almost half of the States currently require individuals to pay for their own background checks. Since the cost of the background check requirement is not borne solely by the State, the cost of implementing this provision will be diffused throughout the field. While this may represent an additional burden for some child care providers, current practice indicates that background check expenses are already considered a reasonable cost of doing business within the field of child care. In addition, States can implement systems to facilitate making background check verifications portable, reducing the cost to providers in an industry with traditionally high turnover.

Pre-inspections for compliance with fire, health and building codes. The proposed rule adds a new requirement at § 98.41(a)(2)(ii) requiring States to ensure providers are in compliance with State and local applicable fire, health, and building codes, prior to serving children receiving CCDF subsidies. According to the *2011 Child Care Licensing Study* (prepared by the National Center on Child Care Quality Improvement and the National Association of Regulatory Administrators), 39 States require fire, health, and building code (also called environmental) inspections for child care centers. Many States also conduct separate licensing inspections prior to issuing a license to a child care center. For family child care providers, 12 states require fire, health, and building code inspections. Further, of the 42 states that license family child care homes, 37 conduct an inspection before issuing a license to a family child care home. Since fire, health, and building codes vary across States, the financial impact of this new requirement will also vary. States already have systems in place to conduct these inspections, and enforcement of the applicable codes may already be happening at the local level. Further, we are seeking public comment on an appropriate phase-in and timeframe for this provision, as well

as the requirement for comprehensive criminal background checks.

Health and safety training. We propose adding a list of minimum health and safety pre-service or orientation training for providers serving children receiving CCDF assistance. A preliminary analysis of the 2012–23 CCDF Plans shows that many States have a number of these trainings already in place for their licensed providers. Thirty-eight States already require pre-service CPR training for child care centers and 43 require it for family child care providers. Forty States already require pre-service first-aid training for centers and 43 require it for family child care providers. Most of the other trainings are offered to licensed center and family child care providers in approximately half of the States. However, since this only captures the current training data for licensed providers, the new requirements will most likely require an expansion of the trainings offered to license-exempt CCDF providers. This is important because many child care providers serving children receiving CCDF subsidies either are not required to be licensed or have been exempted from licensing requirements by States. Approximately 10 percent of CCDF children are cared for by non-relatives in unregulated centers and homes. In these cases, CCDF health and safety requirements are the primary, and in most cases, the only safeguard in place to protect children in this type of care.

We recognize that it may not be possible for child care providers serving subsidized children to meet all the listed minimum health and safety training requirements prior to the first day of service. Therefore, we are allowing Lead Agencies to require the training prior to the provider's start of service (i.e., pre-service) or during the initial service period (i.e., orientation). We are leaving it to the Lead Agency's discretion to specifically define ''pre-service'' and ''orientation,'' which may include stipulations that the training be completed within the first weeks or month of providing child care services to children receiving CCDF assistance. Lead Agencies should also offer a grace period to providers who are already serving children receiving CCDF assistance to minimize disruptions to child care arrangements for children currently enrolled with a provider and receiving subsidies. Additionally, many of the areas included in the proposed new requirements are readily available through on-line trainings, which should minimize burden on Lead Agencies.

Monitoring. We propose to amend 98.41(d) to require that Lead Agencies include unannounced on-site monitoring as part of their procedures to ensure providers serving children receiving CCDF assistance meet health and safety requirements. All providers serving children receiving CCDF subsidies must be subject to unannounced on-site monitoring. Further, Lead Agencies may not solely rely on self-certification of compliance with health and safety requirements and must include unannounced visits. The proposed change would allow Lead Agencies to retain the flexibility to determine the frequency and components of unannounced on-site monitoring visits. However, we are seeking comment on the recommendation that States conduct an initial on-site monitoring visit and at least one annual unannounced visit.

There is currently significant variation across States regarding the nature and intensity of on-site monitoring. According to the FY 2012–2013 CCDF Plans, States and Territories report using both announced and unannounced routine visits as a way to enforce licensing requirements with different policies applicable to child care centers versus family child care homes. Almost all Lead Agencies have an on-site monitoring component in place for licensed center and family child care providers, but 28 do not monitor unlicensed providers. Therefore, about half of the Lead Agencies will need to expand their on-site monitoring practices to include unlicensed providers caring for children receiving CCDF subsidies.

The new requirement may create additional costs for Lead Agencies because it could potentially expand the number of child care providers subject to unannounced on-site monitoring. These costs may include the need for additional monitoring staff or funding of contracts to carry out monitoring visits, new training for staff to ensure knowledge of new health and safety requirements, or additional tools and supplies necessary to carry out effective monitoring visits. However, because all States have an infrastructure for on-site monitoring visits through their licensing systems, we do not believe this requirement will create a significant financial burden for the majority of States. In FY 2011, there were approximately 500,000 providers caring for children receiving CCDF subsidies. Of these, approximately 180,000 were relative providers and approximately 39,000 in-home providers providing care in the child's home. The proposed rule allows Lead Agencies the option to exempt both relative and in-home providers from the health and safety and monitoring requirements. The remaining 205,000 child care providers must be subject to health and safety and monitoring requirements and about two-thirds of these providers are reported as licensed or regulated by the State and thus would potentially already be subject to monitoring. Therefore, we estimate approximately 90,000 providers (that are not relatives or in-home providers) caring for children receiving CCDF subsidies are currently unlicensed and would now be subject to monitoring. This number is potentially larger to the extent that States choose to apply monitoring and health and safety requirements to relative and in-home providers. This total is a national total and the distribution varies by State.

VIII. Unfunded Mandates Reform Act of 1995

Section 202 of the Unfunded Mandates Reform Act of 1995 requires that a covered agency prepare a written statement before promulgating a rule that includes any Federal mandate that may result in the expenditure by State, local, and Tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year. If an agency must prepare a budgetary impact statement, section 205 requires that it select the most cost-effective and least burdensome alternative that achieves the objectives of the rule consistent with the statutory requirements. Section 203 requires a plan for informing and advising any small government that may be significantly or uniquely impacted. The Department has determined that this proposed rule would not impose a mandate that will result in the expenditure by State, local, and Tribal governments, in the aggregate, or by the private sector, of more than $100 million in any one year.

IX. Congressional Review

This regulation is not a major rule as defined in 5 U.S.C. Chapter 8.

X. Executive Order 13132

Executive Order 13132, Federalism, requires that Federal agencies consult with State and local government officials in the development of regulatory policies with federalism implications. This proposed rule will not have substantial direct effect on the States, on the relationship between the Federal Government and the States, or on the distribution of power and responsibilities among the various levels of government. This proposed rule does not preempt State law. In large part, the changes included in the proposed rule are based upon practices

already implemented by many States. Therefore, in accordance with section 6 of Executive Order 13132, it is determined that this proposed rule does not have sufficient federalism implications to warrant the preparation of a federalism summary impact statement.

XI. Treasury and General Government Appropriations Act of 1999

Section 654 of the Treasury and General Government Appropriations Act of 1999 (Pub. L.105–277) requires Federal agencies to issue a Family Policymaking Assessment for any rule that may affect family well-being. This proposed rule would not have any impact on the autonomy or integrity of the family as an institution. Accordingly, HHS has concluded that it is not necessary to prepare a Family Policymaking Assessment.

List of Subjects in 45 CFR Part 98

Child Care, Grant programs-social programs.

For the reasons set forth in the preamble, we propose to amend part 98 of 45 CFR as follows:

PART 98—CHILD CARE AND DEVELOPMENT FUND

■ 1. The authority citation for part 98 continues to read:

Authority: 42 U.S.C. 618, 9858, *et seq.*

■ 2. Amend § 98.1 by revising paragraph (b) to read as follows:

§ 98.1 Goals and purposes.

* * * * *

(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 high quality child care for their children and serve children in safe, healthy, nurturing child care settings that are highly effective in promoting learning, child development, school readiness and success;

(2) Enhance the quality and increase the supply of child care and before- and after-school care services for all families, including those who receive no direct assistance under the CCDF, to support children's learning, development, and success in school;

(3) Provide parents with a broad range of options in addressing their child care needs by expanding high quality choices available to parents across a range of child care settings and providing parents with information about the quality of child care programs;

(4) Minimize disruptions to children's development and learning by promoting continuity of care;

(5) Ensure program integrity and accountability in the CCDF program;

(6) Strengthen the role of the family and engage families in their children's development, education, and health;

(7) Improve the quality of, and coordination among Federal, State, and local child care programs, before- and after-school programs, and early childhood development programs to support early learning, school readiness, youth development and academic success; and

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

* * * * *

■ 3. Amend § 98.2 by revising the definition for *Categories of care,* the introductory text of paragraph (1) in the definition of *Eligible child care provider,* and the definition of *Family child care provider* and removing the definition of *Group home child care provider.*

The revisions read as follows:

§ 98.2 Definitions.

* * * * *

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

* * * * *

Eligible child care provider means:

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

* * * * *

Family child care provider means one or more individual(s) who provide child care services for fewer than 24 hours per day per child, as the sole caregiver(s), 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;

* * * * *

■ 4. Amend § 98.10 by revising paragraphs (d) and (e) and adding paragraph (f) to read as follows:

§ 98.10 Lead Agency responsibilities.

* * * * *

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

(e) Coordinate CCDF services pursuant to § 98.12; and

(f) Implement practices and procedures to ensure program integrity and accountability pursuant to § 98.68.

■ 5. Amend § 98.11 by adding a sentence to the end of paragraph (a)(3) to read as follows:

§ 98.11 Administration under contracts and agreements.

(a) * * *

(3) * * * The contents of the written agreement may vary based on the role the entity is asked to assume or the type of project undertaken, but must include, at a minimum, tasks to be performed, a schedule for completing tasks, a budget which itemizes categorical expenditures consistent with CCDF requirements at § 98.65(h), and indicators or measures to assess performance.

* * * * *

■ 6. Amend § 98.14 by revising paragraphs (a)(1)(C) and adding paragraphs (a)(1)(E), (F), (G), (H), and (I), and (d) to read as follows:

§ 98.14 Plan process.

* * * * *

(a)(1) * * *

(C) Public education (including agencies responsible for pre-kindergarten services, if applicable, and educational services provided under Part B and C of the Individuals with Disabilities Education Act (20 U.S.C. 1400));

* * * * *

(E) Child care licensing;

(F) Head Start collaboration;

(G) State Advisory Council on Early Childhood Education and Care authorized by the Head Start Act (42 U.S.C. 9831 *et seq.*) (if applicable);

(H) Statewide afterschool network or other coordinating entity for out-of-school time care (if applicable); and

(I) Emergency management and response.

* * * * *

(d) Make the Plan and any Plan amendments publicly available.

■ 7. Amend § 98.16 by

■ a. Redesignating paragraph (r) as paragraph (w), paragraphs (g) through (q) as (i) through (s), and paragraphs (b) through (f) as (c) through (g);

■ b. Adding new paragraphs (b) and (h);

■ c. Revising newly redesignated paragraphs (g)(6), (i)(1), (i)(5), (j), (k), (l),(n), (o), and (q); and

■ d. Adding new paragraphs (t), (u), and (v).

The additions and revisions read as follows:

§ 98.16 Plan provisions.

* * * * *

(b) A description of processes the Lead Agency will use to monitor administrative and implementation responsibilities undertaken by agencies other than the Lead Agency including

descriptions of written agreements, monitoring and auditing procedures, and indicators or measures to assess performance pursuant to § 98.11(a)(3);

* * * * *

(g) * * *

(6) Working (which must include some period of job search);

* * * * *

(h) A description of policies to promote continuity of care for children and stability for families receiving services for which assistance is provided under this part, including:

(1) Policies that take into account developmental needs of children when authorizing child care services pursuant to § 98.20(d);

(2) Timely eligibility determination and processing of applications; and

(3) Policies that promote employment and income advancement for parents.

(i) * * *

(1) A description of such services and activities, including how the Lead Agency will address supply shortages through the use of grants or contracts. The description should identify any shortages in the supply of high quality child care providers, including for specific localities and populations, list the data sources used to identify shortages, and explain how grants or contracts for direct services will be used to address such shortages;

* * * * *

(5) Any additional eligibility criteria, priority rules, definitions, and policies, including any requirements for families to report changes in circumstances that may impact eligibility, established pursuant to § 98.20(b) and (c);

(j) A description of the activities to provide comprehensive consumer education, which must include a transparent system of quality indicators, pursuant to § 98.33(b), that provides parents with provider-specific information about the quality of child care providers in their communities; to increase parental choice; and to improve the quality and availability of child care, pursuant to § 98.51;

(k) 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 and how co-payments are affordable for families, pursuant to § 98.42. This shall also include a description of the criteria established by the Lead Agency, if any, for waiving contributions for families;

(l) 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, which must include a description of unannounced, on-site monitoring and other enforcement procedures in effect to ensure that providers of child care services for which assistance is provided under the CCDF comply with all applicable health and safety requirements pursuant to § 98.41(d);

* * * * *

(n) Payment rates and a summary of the facts, including a biennial valid local market price study or alternate approved methodology, relied upon to determine that the rates provided are sufficient to ensure equal access pursuant to § 98.43, which must include a description of how the quality of providers of child care services for which assistance is provided under this part is taken into account when determining payment rates;

(o) A detailed description of the hotline established or designated by the State for receiving parental complaints, of how the State 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;

* * * * *

(q) A detailed description of licensing requirements applicable to child care services provided, any exemptions to those requirements and a rationale for such exemptions, and a description of how such licensing requirements are effectively enforced, pursuant to § 98.40;

* * * * *

(t) A description of payment practices for child care services for which assistance is provided under this part, including timely reimbursement for services, how payment practices support providers' provision of high quality child care services, and practices to promote the participation of child care providers in the subsidy system;

(u) A description of processes in place to investigate and recover fraudulent payments and to impose sanctions on clients or providers in response to fraud pursuant to § 98.68(d);

(v) An annual quality performance report by the States and Territories to the Secretary, which must be made publicly available, and include:

(1) A description of progress related to meeting performance goals through activities to improve the quality of child care pursuant to § 98.51(f); and

(2) A report describing any changes to State regulations, enforcement mechanisms, or other State policies addressing health and safety based on an annual review and assessment of serious injuries or deaths of children occurring in child care (including both regulated and unregulated child care centers and family child care homes).

* * * * *

■ 8. Amend § 98.18 by designating paragraph (b) and paragraph (b)(1) and adding paragraph (b)(2) to read as follows:

§ 98.18 Approval and disapproval of Plans and Plan amendments.

* * * * *

(b) * * *

(2) Lead Agencies must provide advance, written notice to affected parties (i.e., parents and child care providers) of substantial changes in the program that adversely affect income eligibility, payment rates, and/or sliding fee scales.

* * * * *

■ 9. Amend § 98.20 by:

■ a. Revising paragraphs (a)(2), (a)(3)(ii) introductory text and (a)(3)(ii)(A);

■ b. Redesignating paragraph (b) as paragraph (c);

■ c. Adding a new paragraph (b); and

■ d. Adding paragraph (d)

The revisions and additions read as follows:

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

(a) * * *

(2) Reside with a family whose income does not exceed 85 percent of the State's median income (SMI) for a family of the same size. The SMI used to determine the eligibility threshold level must be based on the most recent SMI data that is published by the Bureau of the Census; and

(3) * * *

(ii) Receive, or need to receive, protective services, which may include specific populations of vulnerable children as identified by the Lead Agency, 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.

(A) At grantee option, the requirements in paragraph (a)(2) of this section and in § 98.42 may be waived for families eligible for child care pursuant to this paragraph, if determined to be necessary on a case-by-case basis.

* * * * *

(b) A Lead Agency shall re-determine a child's eligibility for child care services no sooner than 12 months following the initial determination or most recent re-determination, subject to the following:

(1) During the period of time between re-determinations a Lead Agency, at its option, may consider a child to be

eligible pursuant to some or all of the eligibility requirements specified in paragraph (a) of this section, if the child met all of the requirements in paragraph (a) on the date of the most recent eligibility determination or re-determination.

(2) The Lead Agency shall specify in the Plan any requirements for families to report changes in circumstances that may impact eligibility between re-determinations.

* * * * *

(d) Lead Agencies must take into consideration developmental needs of children when authorizing child care services and are not restricted to limiting authorized child care services based on the work, training, or educational schedule of the parent(s).

■ 10. Amend § 98.30 by:

■ a. Revising paragraph (a)(1);

■ b. Removing paragraph (e)(1)(ii) and redesignating paragraphs (e)(1)(iii) and (iv) as paragraphs (e)(1)(ii) and (iii);

■ c. Adding paragraphs (g) and (h).

The revisions and additions read as follows:

§ 98.30 Parental choice.

(a) * * *

(1) To enroll such child with an eligible child care provider that has a grant or contract for the provision of such services, in accordance with § 98.50; or

* * * * *

(g) As long as provisions at paragraph (f) of this section are met, parental choice provisions shall not be construed as prohibiting a Lead Agency from establishing policies that require providers of child care services for which assistance is provided under this part to meet higher standards of quality as identified in a quality improvement system or other transparent system of quality indicators pursuant to § 98.33.

(h) Parental choice provisions shall not be construed as prohibiting a Lead Agency from providing parents with information and incentives that encourage the selection of high quality child care.

■ 11. Amend § 98.32 by redesignating paragraphs (a) through (c) as paragraphs (b) through (d) and adding a new paragraph (a) to read as follows:

§ 98.32 Parental complaints.

* * * * *

(a) Establish or designate a hotline for parents to submit complaints about child care providers;

* * * * *

■ 12. Amend § 98.33 by:

■ a. Revising paragraph (a);

■ b. Redesignating paragraphs (b) and (c) as paragraphs (d) and (e);

■ c. Adding new paragraphs (b) and (c); and

■ d. In newly redesignated paragraph (e) removing ''paragraph (b)'' and adding in its place ''paragraph (d)''.

The revision and additions read as follows:

§ 98.33 Consumer education.

* * * * *

(a) Certify that it will collect and disseminate to parents and the general public, through a user-friendly, easy-to-understand Web site and other means identified by the Lead Agency, consumer education information that will promote informed child care choices including, at a minimum, information about:

(1) The full range of available providers, including:

(i) Provider-specific information about any health and safety, licensing or regulatory requirements met by the provider, including the date the provider was last inspected;

(ii) Any history of violations of these requirements; and

(iii) Any compliance actions taken.

(2) A description of health and safety requirements and licensing or regulatory requirements for child care providers and processes for ensuring that child care providers meet those requirements. The description must include information about the background check process for providers, and any other individuals in the child care setting (if applicable), and what offenses may preclude a provider from serving children.

(b) As part of its consumer education activities, implement a transparent system of quality indicators appropriate to the provider setting, such as those reflected in a quality rating and improvement system or other system established by the Lead Agency, to provide parents with a way to differentiate the quality of child care providers available to them in their communities through a rating or other descriptive method. The system must:

(1) Include provider-specific information about the quality of child care;

(2) Describe the standards used to assess the quality of child care providers;

(3) Take into account teaching staff qualifications and/or competencies, learning environment, curricula and activities; and

(4) Disseminate provider-specific quality information, if available, through the Web site described in paragraph (a) of this section, or through an alternate mechanism which the Lead Agency shall describe in the CCDF Plan, which shall include a description of how the mechanism makes the system of quality indicators transparent.

(c) For families that receive assistance under this part, provide information about the child care options available to them as described in paragraphs (a) and (b) of this section, and specific information about the child care provider selected by the parent, including health and safety requirements met by the provider described at 98.41(a), any licensing or regulatory requirements met by the provider, any voluntary quality standards met by the provider pursuant to paragraph (b) of this section, and any history of violations of health and safety, licensing or regulatory requirements.

* * * * *

■ 13. Amend 98.40 by redesignating paragraph (a)(2) as (a)(3) and adding new paragraph (a)(2) to read as follows:

§ 98.40 Compliance with applicable State and local regulatory requirements.

(a) * * *

(2) Any exemptions to licensing requirements and a rationale for such exemptions;

* * * * *

■ 14. Amend § 98.41 by revising paragraphs (a)(1)(i), (a)(2), (a)(3), (d), and (e) to read as follows:

§ 98.41 Health and safety requirements.

(a) * * *

(1) * * *

(i) As part of their health and safety provisions in this area, Lead Agencies shall assure that children receiving services under the CCDF are age-appropriately immunized. Those 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.

* * * * *

(2) Building and physical premises safety, which shall at a minimum include the following:

(i) Comprehensive background checks on child care providers that include use of fingerprints for State checks of criminal history records, use of fingerprints for checks of Federal Bureau of Investigation (FBI) criminal history records, clearance through the child abuse and neglect registry (if available) and clearance through sex offender registries (if available);

(ii) Compliance with applicable State and local fire, health and building codes, which must include ability to evacuate children in the case of an emergency. Compliance must be determined prior to child care providers

serving children receiving assistance under this part; and

(iii) Emergency preparedness and response planning including provisions for evacuation and relocation, shelter-in-place, and family reunification; and

(3) Minimum health and safety training appropriate to the provider setting and age of children served, which shall, at a minimum, include pre-service or orientation training in the following areas:

(i) First-aid and Cardiopulmonary Resuscitation (CPR);

(ii) Medication administration policies and practices;

(iii) Poison prevention and safety;

(iv) Safe sleep practices including Sudden Infant Death Syndrome (SIDS) prevention;

(v) Shaken baby syndrome and abusive head trauma prevention;

(vi) Age-appropriate nutrition, feeding, including support for breastfeeding, and physical activity;

(vii) Procedures for preventing the spread of infectious disease, including sanitary methods and safe handling of foods;

(viii) Recognition and reporting of suspected child abuse and neglect;

(ix) Emergency preparedness planning and response procedures;

(x) Management of common childhood illnesses, including food intolerances and allergies;

(xi) Transportation and child passenger safety (if applicable);

(xii) Caring for children with special health care needs, mental health needs, and developmental disabilities in compliance with the Americans with Disabilities (ADA) Act; and

(xiii) Child development, including knowledge of stages and milestones of all developmental domains appropriate for the ages of children receiving services.

* * * * *

(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, including those described in paragraph (a) of this section. The Lead Agency's procedures:

(1) Must include unannounced on-site monitoring. All child care providers of services for which assistance is provided under this part must be subject to on-site monitoring, including unannounced visits;

(2) May not solely rely on child care provider self certification of compliance with health and safety requirements included in paragraph (a) of this section without documentation or other verification that requirements have been met;

(3) Must require an unannounced visit in response to the receipt of a complaint pertaining to the health and safety of children in the care of a provider of services for which assistance is provided under this part; and

(4) Must require child care providers of services for which assistance is provided under this part to report to a designated State, territorial, or tribal entity any serious injuries or deaths of children occurring in child care.

(e) For the purposes of this section only, the term ''child care providers,'' at the option of the Lead Agency, may not include in-home child care providers, pursuant to § 98.2, and grandparents, great grandparents, siblings (if such providers live in a separate residence), aunts or uncles, pursuant to § 98.2. If the Lead Agency chooses not to include these providers, the Lead Agency shall provide a description and justification in the CCDF Plan, pursuant to § 98.16(l), of requirements, if any, that apply to these providers.

■ 15. Amend § 98.42 by revising paragraph (c) and adding paragraph (d) to read as follows:

§ 98.42 Sliding fee scales.

* * * * *

(c) Lead Agencies may waive contributions from families meeting criteria established by the Lead Agency.

(d) Lead Agencies may not use cost of care or subsidy payment rate as a factor in setting co-payment amounts.

■ 16. Amend § 98.43 by:

■ a. Revising paragraphs (b)(1) through (3);

■ b. Redesignating paragraphs (c), (d), and (e) as paragraphs (d), (e) and (f); and;

■ c. Adding new paragraphs (b)(4) and (c),

The revisions and additions read as follows:

§ 98.43 Equal access.

* * * * *

(b) * * *

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

(2) How payment rates are adequate based on either:

(i) a valid, local market price study conducted no earlier than two years prior to the effective date of the currently approved plan; or

(ii) an alternative methodology, such as a cost estimation model, that has been proposed by the Lead Agency and approved in advance by the Assistant Secretary;

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

(4) Any additional facts the Lead Agency considered in determining that its payment rates ensure equal access, such as information on the cost of providing quality child care.

(c) The Lead Agency shall take into account the quality of child care when determining payment rates.

* * * * *

■ 17. Amend § 98.50 by revising paragraphs (a) and (b)(3) to read as follows:

§ 98.50 Child care services.

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

(b) * * *

(3) Using funding methods provided for in § 98.30, which must include some use of grants or contracts for the provision of direct services, with the extent of such services determined by the Lead Agency after consideration of supply shortages described in the Plan pursuant to § 98.16(i)(1) and other factors as determined by the Lead Agency; and

* * * * *

■ 18. Amend § 98.51 by revising paragraphs (a) introductory text and (a)(2) and adding paragraphs (d), (e), and (f) to read as follows:

§ 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 from each fiscal year's allotment, and including the amounts expended in the State pursuant to § 98.53(b), shall be expended for quality activities.

* * * * *

(2) Activities to improve the quality of child care services may include, but are not limited to, implementation of a systemic framework for organizing, guiding, and measuring progress of quality improvement activities which includes the following key components:

(i) Activities to ensure the health and safety of children through licensing and health and safety standards pursuant to §§ 98.40 and 98.41;

(ii) Establishment and implementation of age-appropriate learning and development guidelines for children of all ages, including infants, toddlers, and school-age children;

(iii) Implementation of systems of quality improvement to evaluate,

improve and communicate the level of quality of child care programs that may contain the following elements:

(A) Establishment of program standards that define expectations for quality and indicators of different levels of quality appropriate to the provider setting;

(B) Provision of supports, training and technical assistance to assist child care programs in meeting child care quality improvement standards;

(C) Provision of financial incentives and monetary supports to assist child care programs in meeting child care quality improvement standards;

(D) Provision of quality assurance and monitoring to measure child care program quality over time; and

(E) Implementation of strategies for outreach and consumer education efforts to promote knowledge of child care quality improvement standards to child care programs and to provide parents, including parents receiving assistance under this part, with provider-specific information about the quality of child care provider options available to them, pursuant to § 98.33(b).

(iv) Implementation of professional development systems to ensure a well-qualified child care workforce that may contain the following elements:

(A) Establishment of core knowledge and competencies to define what the workforce should know (content) and be able to do (skills) in their role working with children and their families.

(B) Establishment of career pathways to define options and a sequence of qualifications and ongoing professional development opportunities;

(C) Conducting professional development assessments to build capacity of higher education systems and other training institutions to meet the diverse needs of the child care workforce and address the full range of development and needs of children;

(D) Provision of access to professional development to ensure practitioners are made aware of, and receive supports and assistance to utilize professional development opportunities; and

(E) Provision of rewards or financial supports to practitioners for participating in and completing education or training and for increased compensation;

(v) Implementation of an infrastructure of support to build child care provider capacity to promote health through wellness, physical activity and nutrition programs, to serve children with special needs, dual language learners, and other vulnerable children (e.g., children in the child welfare system and homeless children), to implement family engagement strategies;

(vi) Assessment and evaluation of the effectiveness of quality improvement activities; and

(vii) Any other activities consistent with the intent of this section.

* * * * *

(d) Activities to improve the quality of child care services are not restricted to activities affecting children meeting eligibility requirements under § 98.20 or to child care providers of services for which assistance is provided under this part.

(e) Unless expressly authorized by law, targeted funds for quality improvement and other activities that may be included in appropriations law may not count towards meeting the four percent minimum requirement in paragraph (a) of this section.

(f) The Lead Agency must include in the Plan a description of performance goals associated with expenditure of funds on activities to improve the quality of child care pursuant to the quality performance report described at § 98.16(v).

■ 19. Amend § 98.52 by adding paragraphs (d) and (e) to read as follows:

§ 98.52 Administrative costs.

* * * * *

(d) The following activities do not count towards the five percent limitation on administrative expenditures in paragraph (a) of this section:

(1) Establishment and maintenance of computerized child care information systems;

(2) Establishing and operating a certificate program;

(3) Eligibility determination;

(4) Preparation/participation in judicial hearings;

(5) Child care placement;

(6) Recruitment, licensing, inspection of child care providers;

(7) Training for Lead Agency or sub-recipient staff on billing and claims processes associated with the subsidy program;

(8) Reviews and supervision of child care placements;

(9) Activities associated with payment rate setting;

(10) Resource and referral services; and

(11) Training for child care staff.

(e) If a Lead Agency enters into agreements with sub-recipients for operation of the CCDF program, the amount of the contract or grant attributable to administrative activities as described at § 98.52(a) shall be counted towards the five percent limit.

■ 20. Revise § 98.54(b)(1) to read as follows:

§ 98.54 Restrictions on the use of funds.

* * * * *

(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. Improvements or upgrades to a facility which are not specified under the definitions of construction or major renovation at § 98.2 may be considered minor remodeling and are, therefore, allowable.

* * * * *

■ 21. Amend § 98.60 by revising paragraph (b)(1), redesignating (d)(7) as paragraph (d)(8), and adding a new paragraph (d)(7), and revising paragraph (h) to read as follows:

§ 98.60 Availability of funds.

* * * * *

(b) * * *

(1) May withhold up to one half of one percent of the CCDF funds made available for a fiscal year for the provision of technical assistance; and

* * * * *

(d) * * *

(7) In instances where third party agencies issue child care certificates, the obligation of funds occurs upon entering into agreement through a subgrant or contract with such agency, rather than when the third party issues certificates to a family.

* * * * *

(h) Repayment of loans made to child care providers as part of quality improvement activities pursuant to § 98.51, 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.

* * * * *

■ 22. In § 98.61, add paragraph (f) to read as follows:

§ 98.61 Allotments from the Discretionary Fund.

* * * * *

(f) Lead Agencies shall expend any funds that may be set-aside for targeted activities pursuant to annual appropriations law as directed by the Secretary.

■ 23. Amend § 98.65 by revising paragraph (g) and adding paragraphs (h) and (i) to read as follows:

§ 98.65 Audits and financial reporting.

* * * * *

(g) The Secretary shall require financial reports as necessary. Lead Agencies shall submit financial reports to the Department in a manner specified by the Secretary quarterly for each fiscal year until funds are expended.

(h) At a minimum, a State or territorial Lead Agency's quarterly report shall include the following information on expenditures under CCDF grant funds, including Discretionary (which includes realloted funding and any funds transferred from the TANF block grant), Mandatory, and Matching funds (which includes redistributed funding); and State Matching and Maintenance-of-Effort (MOE) funds:

(1) Child care administration;

(2) Quality activities excluding targeted funds;

(3) Targeted funds identified in appropriations law;

(4) Direct services;

(5) Non-direct services, including:

(i) Systems,

(ii) Certificate program cost/eligibility determination;

(iii) All other non-direct services; and

(6) Such other information as specified by the Secretary;

(i) Tribal Lead Agencies shall submit financial reports annually.

■ 24. Add § 98.68 to subpart G to read as follows:

§ 98.68 Program integrity.

(a) Lead Agencies are required to have effective internal controls in place to ensure integrity and accountability in the CCDF program. These shall include:

(1) Processes to ensure sound fiscal management;

(2) Processes to identify areas of risk; and

(3) Regular evaluation of internal control activities.

(b) Lead Agencies are required to have processes in place to identify fraud or other program violations which may include, but are not limited to the following:

(1) Record matching and database linkages;

(2) Review of attendance and billing records;

(3) Quality control or quality assurance reviews; and

(4) Staff training on monitoring and audit processes.

(c) Lead Agencies must have procedures in place for documenting and verifying that children receiving assistance under this part meet eligibility criteria at the time of eligibility determination.

(d) Lead Agencies are required to have processes in place to investigate and recover fraudulent payments and to impose sanctions on clients or providers in response to fraud.

■ 25. Amend § 98.71 by redesignating paragraph (a)(15) as paragraph (a)(16) and adding a new paragraph (a)(15) to read as follows:

§ 98.71 Content of reports.

(a) * * *

(15) Indicator of the quality of the child care provider pursuant to § 98.33(b); and

* * * * *

■ 26. Amend § 98.81 by revising paragraph (b)(6) to read as follows:

§ 98.81 Application and Plan procedures.

* * * * *

(b) * * *

(6) The Plan is not subject to requirements in § 98.16(g)(8), (i)(1), or (i)(4).

■ 27. Amend § 98.83 by revising paragraphs (d), (f)(1), and (f)(2) and removing paragraph (f)(3) to read as follows:

§ 98.83 Requirements for tribal programs.

* * * * *

(d) Tribal Lead Agencies shall not be subject to the requirements at §§ 98.33(a), limited to the Web site requirement, 98.44(a), 98.50(b)(3), 98.50(e), 98.52(a), 98.53, and 98.63.

* * * * *

(f) * * *

(1) The assurance at § 98.15(a)(2); and

(2) The requirement for certificates at § 98.30(a) and (d).

* * * * *

■ 28. Amend § 98.100 by revising the second sentence in paragraph (b) to read as follows:

§ 98.100 Error Rate Report.

* * * * *

(b) * * * States, the District of Columbia and Puerto Rico must use this report to calculate their error rates, which is defined as the percentage of cases with an error (expressed as the total number of cases with an error compared to the total number of cases); the percentage of cases with an improper payment (expressed as the total number of cases with an improper payment compared to the total number of cases); the percentage of improper payments (expressed as the total amount of improper payments in the sample compared to the total dollar amount of payments made in the sample); and the average amount of improper payment. * * *

* * * * *

■ 29. Amend § 98.102 by:

■ a. Removing paragraph (a)(5);

■ b. Redesignating paragraphs (a)(6) through (10) as (a)(5) through (9); and

■ c. Adding paragraph (c).

The addition reads as follows:

§ 98.102 Content of Error Rate Reports

* * * * *

(c) Any Lead Agency with an improper payment rate that exceeds a threshold established by the Secretary must submit to the Assistant Secretary for approval a comprehensive corrective action plan, as well as subsequent reports describing progress in implementing the plan.

(1) The corrective action plan must be submitted within 60 days of the deadline for submitting the Lead Agency's standard error rate report required by § 98.102(b).

(2) The corrective action plan must include the following:

(i) Identification of a senior accountable official;

(ii) Milestones that clearly identify actions to be taken to reduce improper payments and the individual responsible for completing each action;

(iii) A timeline for completing each action within 1 year of the Assistant Secretary's approval of the plan, and for reducing the improper payment rate below the threshold established by the Secretary; and

(iv) Targets for future improper payment rates.

(3) Subsequent progress reports must be submitted as requested by the Assistant Secretary.

(4) Failure to carry out actions described in the approved corrective action plan will be grounds for a penalty or sanction under § 98.92.

* * * * *

§§ 98.16, 98.20, 98.30, 98.50, 98.51, 98.53, 98.81, and 98.102 [Amended]

■ 30. In the table below, for each section indicated in the left column, remove the cross-reference indicated in the middle column from wherever it appears in the section, and add the cross-reference indicated in the right column:

REDESIGNATION TABLE

Amended sections	Remove cross-reference citations	Add, in its place, new cross-reference citations
§ 98.16(r), as redesignated	§ 98.33(b)	§ 98.33(d).
§ 98.20(a)(3)((ii)(B)	§ 98.16(f)(7)	§ 98.16(g)(7).
§ 98.20(c), as redesignated	§ 98.16(g)(5)	§ 98.16(i)(5).
§ 98.30(e)(1)(iii), as redesignated	§ 98.16(g)(2)	§ 98.16(i)(2).
§ 98.50(f)	§ 98.16(g)(4)	§ 98.16(i)(4).
§ 98.51(b)	§ 98.16(h)	§ 98.16(j).
§ 98.53(f)	§ 98.16(c)(2)	§ 98.16(d)(2).
§ 98.53(h)(2)	§ 98.16(q)	§ 98.16(s).
§ 98.81(b)(5)	§ 98.16(g)(2)	§ 98.16(i)(2).
§ 98.81(b)(5)	§ 98.16(k)	§ 98.16(m).
§ 98.102(b)(2)	§ 98.102(a)(1) through (5)	§ 98.102(a)(1) through 4.

(Catalog of Federal Domestic Assistance Program Number 93.575, Child Care and Development Block Grant; 93.596, Child Care Mandatory and Matching Funds)

Dated: January 12, 2012.

George H. Sheldon,

Acting Assistant Secretary for Children and Families.

Approved: January 19, 2012.

Kathleen Sebelius,

Secretary.

Note: This document was received by the Office of the Federal Register on May 13, 2013.

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