

DEPARTMENT OF HEALTH AND HUMAN SERVICES

45 CFR Part 98

RIN 0970-AD11

Increase Flexibility for Tribes in Child Care and Development Fund (CCDF) Eligibility

AGENCY: Office of Child Care (OCC), Administration for Children and

Families (ACF), Department of Health and Human Services (HHS).

ACTION: Final rule.

SUMMARY: This final rule amends the Child Care and Development Fund (CCDF) regulations to provide all Indian Tribes and Tribal Organizations operating CCDF programs the flexibility, at their discretion, to establish and use eligibility criteria regardless of family income or assets.

DATES: *Effective:* November 18, 2024.

FOR FURTHER INFORMATION CONTACT: Megan Campbell, Office of Child Care, 202-690-6499 or megan.campbell@acf.hhs.gov.

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I. Statutory Authority

This final rule is being issued under the authority granted to the Secretary of Health and Human Services by the Child Care and Development Block Grant (CCDBG) Act of 1990, as amended (42 U.S.C. 9857 *et seq.*), and section 418 of the Social Security Act (42 U.S.C. 618).

II. Background

In response to requests from Tribal Leaders and Tribal Child Care and Development Fund (CCDF) Lead Agencies for more flexibility on family income eligibility to better meet community needs and to recent statutory changes to eligibility in the Tribal Head Start program, this final rule amends the CCDF regulations to provide all Tribal CCDF Lead Agencies the flexibility to serve Indian children (as defined by the Tribal Lead Agency) in their defined service area regardless of family income or assets. This final rule is also responsive to Executive Order 14112, *Reforming Federal Funding and Support for Tribal Nations To Better Embrace Our Trust Responsibilities and Promote the Next Era of Tribal Self-Determination*, which directs agencies to “increase the accessibility, equity, flexibility, and utility of Federal funding.” This final rule provides Tribal Nations with more flexibility to better meet community needs, responds to calls for greater Tribal sovereignty and self-determination, and facilitates better alignment between Tribal CCDF and

American Indian and Alaska Native (AIAN) Head Start programs.

The CCDBG Act (42 U.S.C. 9857 *et seq.*), hereafter referred to as the “Act,” together with section 418 of the Social Security Act (42 U.S.C. 618), authorize the CCDF program, which is the primary federal funding source to Tribes, States, and Territories devoted to supporting families access to child care and to increasing the quality of child care for all children. CCDF plays a vital role in supporting child development and family well-being; facilitating parent employment, training, and education; and improving the economic well-being of participating families. In fiscal year (FY) 2024, 264 Tribal Lead Agencies representing 546 federally recognized Tribal Nations received CCDF grants totaling nearly \$600 million.¹ Annual Tribal CCDF awards range from \$70,000 to \$88 million per year.

The Act does not explicitly apply most of its provisions to the Tribal CCDF program, so with some exceptions and within certain parameters, the Secretary of Health and Human Services has the authority to determine many of the CCDF requirements for Tribal Lead Agencies, including the family income and assets eligibility requirements for children to receive services from Tribal CCDF programs. Previous Tribal CCDF regulations included different family income and assets eligibility requirements and flexibilities based on a Tribal Lead Agency’s award allocation size in FY 2016. Tribal Lead Agencies

who had allocations under \$250,000 in 2016 (155 Tribal Lead Agencies) could serve any Indian child (as defined by the Tribal Lead Agency) in their defined service area, regardless of family income or assets. However, Tribal Lead Agencies with allocations above \$250,000 in 2016 were subject to the same CCDF income and assets eligibility standard as States, set forth at § 98.20(a)(2), which meant that family income could not be more than 85 percent of Grantee Median Income (GMI) and family assets could not exceed \$1 million.

This final rule extends the existing flexibility for Tribal Lead Agencies with small allocations to disregard family income and assets in determining family eligibility for CCDF to all Tribal Lead Agencies. All Tribal CCDF Lead Agencies may continue to use family income and/or assets criteria for eligibility at their option, but it will no longer be a requirement. Tribal Lead Agencies choosing to use family income or assets criteria for eligibility would have the flexibility to determine the appropriate threshold for their Nation. This final rule does not alter existing flexibilities that permit Tribal Lead Agencies with medium and large allocations to apply categorical eligibility criteria for families under certain conditions.

This final rule will benefit Tribal Nations by better aligning family income eligibility rules in the Tribal CCDF with Head Start programs and providing necessary flexibility to determine how early childhood program

¹ <https://www.acf.hhs.gov/occ/data/gy-2024-ccdf-tribal-allocations-based-appropriations>.

family income or assets determinations can best support their communities. This alignment is particularly salient because many American Indian and Alaskan Native (AIAN) Head Start grant recipients administer a Tribal CCDF program. At the request of Tribal Nations and the Biden-Harris Administration, the Further Consolidated Appropriations Act, 2024 (Public Law (Pub. L.) 118–47, Div. D, Tit. II, Sec. 238) included changes to AIAN Head Start eligibility criteria, to make eligible for Head Start services all age-eligible children in an AIAN program's service area regardless of income. The Head Start Act, unlike the CCDBG Act, required legislative action to make this change.

Effective Dates

This final rule will become effective on the date of publication to expedite Tribal Lead Agencies' ability to implement the flexibilities included in this final rule.

Severability

The provisions of this final rule are intended to be severable, such that, in the event a court were to invalidate any particular provision or deem it to be unenforceable, the remaining provisions would continue to be valid.

III. Development of Regulation

ACF published a notice of proposed rulemaking (NPRM) in the **Federal Register** on July 16, 2024, (89 FR 57835) proposing revisions to CCDF regulations. We provided a 60-day comment period during which interested parties could submit comments in writing electronically.

ACF received 18 comments on the proposed rule (public comments on the proposed rule are available for review on www.regulations.gov), including Tribal Nations and Tribal organizations, a state CCDF Lead Agency, non-profit and research organizations, parents, and individual members of the public. Public comments informed the development of content for this final rule.

Tribal consultation and comments. ACF is committed to consulting with Tribal Nations prior to promulgating any regulation that has Tribal implications. ACF held a formal consultation session virtually in August 2024 with Tribal leaders and authorized representatives to discuss the impact of the proposed regulations on Tribes. Tribes and Tribal organizations were informed of these events through formal letters to Tribal leaders and announcements to Tribal CCDF administrators. ACF also distributed

materials specifically addressing the impact of the proposed rule on Tribes. ACF will publish a consultation report, which will be posted as a supplemental document in the **Federal Register** and will include information on consultation attendees as well as their specific comments. During consultation, ACF received testimony from one authorized representative who expressed strong support for the proposed change. This final rule was informed by this testimony.

In addition, prior to the development of the NPRM, OCC sought feedback from Tribal Nations and other interested parties on areas where more flexibility and/or different program rules would better serve children, families, and Tribal Nations through a formal Request for Information (RFI), published in the **Federal Register** at 88 FR 48409 (July 27, 2023). Through the RFI process, many Tribal Lead Agencies expressed support for changing eligibility requirements so they can serve Indian children (as defined by the Tribal Lead Agency), regardless of family income. OCC also received feedback on the need for flexibility in eligibility determination at the ACF Tribal Early Childhood Consultation held in July 2024. This final rule was informed by this feedback.

This final rule maintains the structure and organization of the current CCDF regulations. Where language of previous 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 rule. (See 57 FR 34352, Aug. 4, 1992; 63 FR 39936, Jul. 24, 1998; 72 FR 27972, May 18, 2007; 72 FR 50889, Sep. 5, 2007; 81 FR 67438, Sept. 30, 2016; 89 FR 15366, Mar. 1, 2024).

IV. Discussion of Comments and Regulatory Provisions

This final rule amends § 98.81(b)(1) to provide all CCDF Tribal Lead Agencies the flexibility to determine family eligibility for CCDF without regard to family income and assets. Specifically, the rule revises § 98.81(b)(1)(ii) so that all Tribal Lead Agencies may disregard family income and assets requirements described in § 98.20(a)(2), while retaining the ability for Tribal Lead Agencies with a Tribal median income below a level determined by the Secretary to deem any child in their service area categorically eligible, regardless of work, or training status. Previously, the 40 percent of Tribal Lead Agencies with medium and large allocations were subject to the requirements at § 98.20(a)(2) that

children must be in families with incomes below 85 percent Grantee Median Income (GMI) and with assets under \$1 million to be eligible for CCDF. Tribes with small allocations were already exempt from the requirements at § 98.20(a)(2). Extending the flexibility to serve any Indian child in the service area regardless of family income or assets to all Tribal Lead Agencies gives the Lead Agencies the authority to better meet the needs of Tribal Nations and their communities and supports Tribal sovereignty and self-determination. It also creates better opportunities for Tribes to align CCDF programs with other Tribal early childhood programs, including Tribal home visiting, Early Head Start, Head Start preschool, and tribally or state funded preschool.

The new flexibility included in this final rule is at the option of the Tribal Lead Agency. Therefore, Tribal Lead Agencies with medium and large allocations may choose to continue using income and/or assets when determining if a child is eligible for CCDF. Tribal Lead Agencies who choose to keep income and/or assets as eligibility criteria are not limited to setting the income threshold at or below 85 percent GMI, or an asset limit at \$1 million and may set these thresholds higher.

This final rule does not make any other changes to Tribal CCDF regulations. No other changes were made to family eligibility rules, including existing Tribal categorical eligibility flexibilities, which remain unchanged.

Comment: Commenters unanimously expressed support for the proposed change to provide all Tribal Lead Agencies the flexibility to serve all Indian children (as defined by the Lead Agency) in their service area regardless of family income or assets. Commenters noted that the change is a step toward promoting Tribal sovereignty and enabling Tribal Nations to implement the CCDF program in a way that meets the unique needs of each community. They also noted that the change better aligns with eligibility rules of other early childhood programs, including Head Start, which may lead to more inclusive and equitable services for Native families.

Response: We acknowledge that commenters supported the proposed change and agree that this change supports Tribal sovereignty and have retained the provision as proposed with one minor addition to clarify that Tribal Lead Agencies may disregard eligibility requirements for assets, in addition to

those required for income, which has always been the intent of the rule.

Comment: While all commenters supported the change, some noted that all Tribal Lead Agencies may not have the funding to serve all Indian children in their service areas.

Response: This regulatory change provides a new flexibility for all Tribal Lead Agencies. The rule does not impact Congressionally appropriated funds or Tribal CCDF allocations. Disregarding income and assets as eligibility criteria is an option for Tribal Lead Agencies, not a requirement. Tribal Lead Agencies have flexibility to establish income and asset requirements that balance the needs of the community and resources available.

V. Regulatory Process Matters

Paperwork Reduction Act

Under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*, as amended), all Departments are required to submit to the Office of Management and Budget (OMB) for review and approval any reporting or recordkeeping requirements inherent in a proposed or final rule. As required by this Act, we will submit all revised data collection requirements to OMB for review and approval.

The final rule modifies the previously approved ACF-118-A CCDF Tribal Plan information collection (OMB #0970-0198). ACF initiated the process to receive OMB approval to revise and extend approval of the ACF-118-A

CCDF Tribal Plan. This began with the initial 60-day comment period, which started on July 2, 2024, (89 FR 54827) and the first comment period ended on September 3, 2024. ACF will include the changes that result from this final rule in the revision request that is submitted to OMB for review and approval. This includes updates to the information collection and the associated burden estimates. This process will include publication of a second **Federal Register** notice soliciting public comments over a 30-day period on the revisions to the ACF-118-A CCDF Tribal Plan.

CCDF title/code	Relevant section in the proposed rule	OMB control No.	Expiration date	Description
ACF-118-A (CCDF Tribal Plan) Part I and Part II.	§ 98.81	0970-0198	4/30/2025	This final rule provides new flexibilities which Tribal lead agencies with medium and large allocations will be required to report on in the CCDF plans.

The table below provides current approved annual burden hours and estimated annual burden hours for these

existing information collections that are modified by this final rule.

ANNUAL BURDEN ESTIMATES

Instrument	Total number of respondents	Total number of responses per respondent	Current approved average burden hours per response	Current annual burden hours	Estimated average burden hours per response based on final rule	Estimated annual burden hours based on final rule
ACF-118A Part I (for all tribes)	265	1	120	10,600	120	10,600
ACF-118-A Part II (for medium and large Tribes only)	106	1	24	848	24	848

We did not receive any public comments on these burden estimates, which were included in the NPRM.

Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) (see 5 U.S.C. 605(b), as amended by the Small Business Regulatory Enforcement Fairness Act) requires federal agencies to determine, to the extent feasible, a rule’s impact on small entities, explore regulatory options for reducing any significant impact on a substantial number of such entities, and explain their regulatory approach. The term “small entities,” as defined in the RFA, comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. HHS considers a rule to have a significant impact on a substantial number of small

entities if it has at least a 3 percent impact on revenue on at least 5 percent of small entities. The Secretary certifies, under 5 U.S.C. 605(b), as enacted by the RFA (Pub. L. 96-354), that this rulemaking will not result in a significant impact on a substantial number of small entities, as this rulemaking primarily impacts tribes receiving federal CCDF grants. Therefore, a regulatory flexibility analysis is not required for this document.

Unfunded Mandates Reform Act of 1995

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104-4, establishes requirements for federal agencies to assess the effects of regulatory actions on state, local, and tribal governments, and the private sector. Under section 202 of the UMRA, the Department generally must prepare a written statement, including a cost-

benefit analysis, for proposed and final rules with “federal mandates” that may result in expenditures by State, local or Tribal governments, in the aggregate, or the private sector, of \$100 million in 1995 dollars, updated annually for inflation. In 2024 the threshold is approximately \$183 million. This final rule does not impose an unfunded mandate on State, local, or Tribal governments or the private sector of more than \$183 million per year. Therefore, ACF is not required to provide a statement, including a cost-benefit analysis, of the impacts of the changes.

Executive Order 13132

Executive Order 13132 requires federal agencies to consult with State and local government officials if they develop regulatory policies with federalism implications. Federalism is rooted in the belief that issues that are

not national in scope or significance are most appropriately addressed by the level of government close to the people. This rulemaking does not have substantial direct impact 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. Therefore, in accordance with section 6 of Executive Order 13132, this action does not have sufficient federalism implications to warrant the preparation of a federalism summary impact statement.

Assessment of Federal Regulations and Policies on Families

Assessment of Federal Regulations and Policies on Families section 654 of the Treasury and General Government Appropriations Act of 2000 requires federal agencies to determine whether a policy or regulation may negatively affect family well-being. If the agency determines a policy or regulation negatively affects family well-being, then the agency must prepare an impact assessment addressing seven criteria specified in the law. HHS believes it is not necessary to prepare a family policymaking assessment (see Pub. L. 105–277) because the action it takes in this final rule will not have any impact on the autonomy or integrity of the family as an institution.

Regulatory Review

We have examined the impacts of the rule under Executive Order 12866, Executive Order 13563, the RFA (5 U.S.C. 601–612), and the UMRA of 1995 (Pub. L. 104–4). Executive Orders 12866 and 13563 direct us to assess all benefits, costs, and transfers of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity).

The Office of Information and Regulatory Affairs has determined that this final rule is not a significant regulatory action under section 3(f)(1) of Executive Order 12866, as amended by Executive Order 14094. This final rule has, however, been designated “a significant regulatory action” under section 3(f) of Executive Order 12866, as amended by Executive Order 14094. Of the nearly \$600 million appropriated for 264 Tribal Lead Agencies in FY 2024, approximately \$422 million was allocated to grantees that already have discretion to take-up the flexibilities included in this rule. The remaining \$173 million is allocated to Tribal Lead

Agencies that could be impacted by the change included in this rule. Further, these Tribal Lead Agencies have discretion on whether to adopt this flexibility based on their unique needs. This final rule does not stipulate any new requirements.

VI. Tribal Consultation Statement

Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, requires agencies to consult with Indian tribes when regulations have substantial direct effects on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes. The discussion in sections III and IV of the preamble serves as the Tribal impact statement and contains a detailed description of the consultation and outreach in this final rule.

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

Dated: November 14, 2024.

Xavier Becerra,

Secretary, Department of Health and Human Services.

List of Subjects in 45 CFR Part 98

Child care, Grant programs-social programs.

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

PART 98—CHILD CARE AND DEVELOPMENT FUND

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

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

■ 2. Amend § 98.81 by revising paragraph (b)(1)(ii) to read as follows.

§ 98.81 Application and Plan procedures.

* * * * *

(b) * * *

(1) * * *

(ii) The basis for determining family eligibility may be determined by the Tribe notwithstanding family income or assets as described in § 98.20(a)(2).

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[FR Doc. 2024–26909 Filed 11–15–24; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

49 CFR Chapter III

[Docket No. FMCSA–2024–0201]

RIN 2126–AC66

Federal Motor Carrier Safety Regulations

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), Department of Transportation (DOT).

ACTION: Final rule; general technical, organizational, conforming, and correcting amendments.

SUMMARY: FMCSA amends its regulations by making technical corrections throughout the Federal Motor Carrier Safety Regulations (FMCSRs). The Agency makes minor changes to correct inadvertent errors and omissions, remove or update obsolete references, and improve the clarity and consistency of certain regulatory provisions. The Agency also makes a change to its rules of organization, procedures, and practice. Because the rule does not impose any new material requirements or increase compliance obligations, it is issued without prior notice and opportunity for comment, pursuant to the good cause exception in the Administrative Procedure Act (APA).

DATES: Effective November 18, 2024.

Petitions for Reconsideration of this final rule must be submitted to the FMCSA Administrator no later than December 18, 2024.

FOR FURTHER INFORMATION CONTACT: Mr. Nicholas Lockhart, Regulatory Development Division, Office of Policy, FMCSA, 1200 New Jersey Avenue SE, Washington, DC 20590–0001; (202) 366–2219; *nicholas.lockhart@dot.gov*.

SUPPLEMENTARY INFORMATION:

I. Legal Basis for the Rulemaking

Congress delegated certain powers to regulate interstate commerce to DOT in numerous pieces of legislation, most notably in section 6 of the Department of Transportation Act (DOT Act) (Pub. L. 89–670, 80 Stat. 931, 937, Oct. 15, 1966). Section 6 of the DOT Act transferred to DOT the authority of the former Interstate Commerce Commission (ICC) to regulate the qualifications and maximum hours of service of employees, the safety of operations, and the equipment, of motor carriers in interstate commerce (80 Stat. 939). This authority, first granted to the ICC in the Motor Carrier Act of 1935