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DEPARTMENT OF HEALTH AND HUMAN SERVICES

45 CFR Part 98

[Docket Number ACF-2015-0011]

RIN 0970-AC67

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 (NPRM).

SUMMARY: The Department of Health and Human Services, Administration for Children and Families, proposes to amend the Child Care and Development Fund (CCDF) regulations. This proposed rule makes changes to CCDF regulations to detail provisions of the Child Care and Development Block Grant Act of 2014 in order to protect the health and safety of children in child care; help parents make informed consumer choices and access information to support child development; provide equal access to stable, high quality child care for low-income children; and enhance the overall quality of child care and the early childhood workforce.

DATES: In order to be considered, written comments on this proposed rule must be received on or before [INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: You may submit comments, identified by docket number ACF-2015-0011and/or RIN number 0970-AC67, by either of the following methods:

- Federal eRulemaking Portal: http://www.regulations.gov. Follow the instructions for submitting comments.
- Mail: Submit comments to the Office of Child Care, Administration for Children and Families, 330 C Street SW, Washington, DC 20201, Attention: Office of Child Care Policy Division.

Instructions: All submissions received must include the agency name and docket number or RIN number for this rulemaking. To ensure we can effectively respond to your comment(s), clearly identify the issue(s) on which you are commenting. Provide the page number, identify the column, and cite the relevant paragraph/section from the Federal Register document, (e.g., On page 10999, second column, § 98.20(a)(1)(i).). All comments received are a part of the public record and will be posted for public viewing on www.regulations.gov, without change. That means all personal identifying information (such as name or address) will be publicly accessible. Please do not submit confidential information, or otherwise sensitive or protected information. We accept anonymous comments. If you wish to remain anonymous, enter "N/A" in the required fields.

FOR FURTHER INFORMATION CONTACT: Andrew Williams, 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.

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I. Executive Summary

Overview. On November 19, 2014, President Barack Obama signed the Child Care and Development Block Grant (CCDBG) Act of 2014 (Pub. L. No. 113-186) into law following its passage in the 113th Congress. The CCDBG Act (to be codified, as amended, at 42 U.S.C. 9858 *et seq.*, and hereinafter referred to as the "Act") (along with Section 418 of the Social Security Act (42 U.S.C. 618)) authorizes the Child Care and Development Fund (CCDF), which is the primary Federal funding source devoted to providing low-income families who are working or participating in education or training activities with help paying for child care and improving the quality of child care for all children.

The bipartisan CCDBG Act of 2014 made sweeping statutory changes that will require significant reforms to State and Territory CCDF programs to raise the health, safety, and quality of child care and provide more stable child care assistance to families. It expanded the purposes of the CCDF for the first time since 1996, ushering in a new era for child care in this country. Since 1996, a significant body of research has demonstrated the importance of early childhood development and how stable, high quality early experiences can positively influence that development and contribute to children's futures. In particular, low-income children stand to benefit the most from a high quality early childhood experience. Research has also shown the important role of child care financial assistance in helping parents afford reliable child care in order to get and keep stable employment or pursue education. The reauthorized law recognizes CCDF as an integral program to promote both the healthy development of children and parents' pathways to economic stability.

In Fiscal Year 2014, CCDF provided child care assistance to 1.4 million children from nearly 1 million low-income working families in an average month. The Congressional reauthorization of CCDBG made clear that the prior law was inadequate to protect the health and safety of children in care and that more needs to be done to increase the quality of CCDF-funded child care. It also recognized the central importance of access to subsidy continuity in supporting parents' ability to achieve financial stability and children's ability to develop nurturing relationships with their caregivers, which creates the foundation for a high quality early learning experience.

Purpose of this Regulatory Action. The majority of current CCDF regulations at 45 CFR parts 98 and 99 were last revised in 1998 (with the exception of some more recent updates related to State match and error reporting). This proposed regulatory action is needed to update

the regulations to accord with the reauthorized law and to update CCDF regulations to reflect what has been learned since 1998 about child care quality and child development, and changes in the law. The purposes of the law, as revised by Congress, have guided regulation development.

Legal authority. This proposed regulation is being issued under the authority granted to the Secretary of Health and Human Services by the CCDBG Act of 1990, as amended, (42 U.S.C. 9858 *et seq.*) and Section 418 of the Social Security Act (42 U.S.C. 618).

Major Provisions of the Proposed Rule. The proposed rule addresses the CCDBG Act of 2014, which includes provisions to: 1) protect the health and safety of children in child care; 2) help parents make informed consumer choices and access information to support child development; 3) provide equal access to stable, high quality child care for low-income children; and 4) enhance the quality of child care and the early childhood workforce.

Protect Health and Safety of Children in Child Care. This proposed rule would provide detail on the health and safety standards established in the new law, including health and safety training, comprehensive background checks, and monitoring. The law requires providers receiving CCDF funds (including those that are license-exempt) to be monitored, at least annually, to determine whether health and safety practices and standards are being followed in the child care setting, including a pre-licensure visit for licensed providers. Regular monitoring of child care settings is necessary to ensure compliance with appropriate standards that protect the health and safety of children. The proposed rule would allow Lead Agencies to develop alternative monitoring requirements for CCDF-funded care provided in the child's home and would exempt relative caregivers from the monitoring requirement at the option of Lead Agencies.

In this proposed rule, we address the Act's (i.e., the Child Care and Development Block Grant Act's) background check requirement by proposing to require all child care staff members (including prospective staff members) of all licensed, regulated, or registered child care providers and all child care providers eligible to deliver CCDF services to have a comprehensive background check, unless they are related to all children in their care. We propose to extend the background check requirement to all adults residing in family child care homes. Based on our interpretation of the statutory provisions, we believe that all parents, regardless of whether they receive CCDF assistance, deserve this basic protection of knowing that those individuals who have access to their children do not have prior records of behavior that could endanger their children.

The Act requires Lead Agencies to establish standards in ten topic areas related to health and safety that are fundamental for any child care setting, such as first aid, CPR, and safe sleep practices. We propose to add recognizing and reporting child abuse and neglect to this list. The Act also requires Lead Agencies to maintain records of substantiated parental complaints about child care. In this NPRM, we propose requiring Lead Agencies to designate a hotline or similar reporting process for parental complaints. Child care providers would also be required to report serious injuries or deaths that occur in child care settings in order to inform regulatory or other policy changes to improve health and safety.

Help Parents Make Informed Consumer Choices and Access Information to Support Child Development. The Act expanded requirements for the content of consumer education to be made available to parents receiving CCDF assistance, the public, and where applicable, child care providers. By adding providers, Congress recognized the positive role trusted caregivers can play in communicating and partnering with parents on a daily basis regarding their children's

development and available resources in the community. Effective consumer education strategies are important to inform parental choice of child care and also to engage parents in the development of their children in child care settings—a new purpose of the CCDF. States and Territories have the opportunity to consider how information can be best provided to low-income parents through their interactions with CCDF, partner agencies, and child care providers, as well as through electronic means such as a website. Parents face great challenges in finding reliable information and making informed consumer choices about child care for their children. The new law strengthens and builds on a foundational tenet of CCDF—the primacy of parental choice—by requiring that Lead Agencies provide parents information about their child care options and the quality of child care providers as available.

The Act requires Lead Agencies to make available via a consumer-friendly and easily-accessible website, information on policies and procedures regarding: 1) licensing child care providers; 2) conducting background checks and the offenses that would keep a provider from being allowed to care for children; and 3) monitoring of child care providers. We are proposing this be done through a single website that is easy for families to navigate and provides widest possible access to individuals who speak languages other than English and persons with disabilities. We propose that Lead Agencies provide information about the quality of providers on the consumer website, if available, and give parents receiving CCDF information about the quality of their chosen providers.

The law requires Lead Agencies to make results of monitoring available in a consumer-friendly and easily accessible manner. We are proposing that this include posting at least five years of full monitoring reports, beginning with the effective date and going forward, in a timely manner for parents and providers. In the case that full reports are not in plain language, Lead

Agencies must post a plain language summary or interpretation in addition to the full monitoring and inspection report. Parents should not have to parse through administrative code or understand advanced legal terms to determine whether safety violations have occurred in a child care setting.

Congress added a number of content areas that will support parents in their role as their child's first and most important teacher. In keeping with a new purpose of the CCDF program to "promote involvement by parents and family members in the development of their children in child care settings," the law requires information related to best practices in child development and State policies regarding child social and emotional development, including any State policies relevant to expulsion of children under age 5 from child care settings, be made available. The reauthorized law also requires that Lead Agencies provide information that can help parents identify other financial benefits and services that may support their pathway to economic stability. Families eligible for child care assistance are often eligible for other supports, and the law specifies that information on several public benefit programs, including Temporary Assistance for Needy Families (TANF), Supplemental Nutrition Assistance Program (SNAP), Medicaid, and the Children's Health Insurance Program (CHIP), be provided to them. In addition, the law requires information be provided on the programs and services that are part of Individuals with Disabilities Education Act (IDEA), such as early intervention and special education services and that parents are given information on how to obtain a developmental screening for their child. Low-income parents deserve to have easy access to the full range of information, programs, and services that can support them in their parenting efforts. To ensure equal access for persons with limited English proficiency and for persons with disabilities, Lead

Agencies would be required to provide child care program information in multiple languages and alternative formats.

Provide Equal Access to High Quality Child Care for Low-Income Children. Congress established requirements that will provide more stable child care financial assistance to families, including extending children's eligibility for child care for a minimum of 12 months, regardless of increases in parents' earnings (as long as income remains at or below the Federal eligibility limit) and temporary changes in participation in work, training, or education. This will make it easier for parents to maintain employment or complete education programs and supports both family financial stability and the relationship between children and their caregivers. Under the law, Lead Agencies that choose to end assistance prior to 12 months, due to a non-temporary change in a parent's work, training, or education participation, must continue assistance for a minimum of three months to allow for job search activities.

This proposed rule would require a set of policies intended to stabilize families' access to child care assistance and, in turn, help stabilize their employment or education and their child's care arrangement. These policies also have the potential to stabilize the revenue of child care providers who receive CCDF funds, as they would experience more predictable, reliable, and timely payments for services. We propose to reduce reporting requirements for families that can result in them unduly losing their assistance. 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. These provisions also make it easier for Lead Agencies to align CCDF policies with other programs, such as SNAP, Medicaid, CHIP, Early Head Start, and Head Start. More than half of children receiving CCDF-funded child care have incomes under poverty and qualify for Head Start and significant proportions of CCDF

families are also eligible for SNAP. In this proposed rule, while families may be determined to be ineligible within the minimum 12 month eligibility period if their income exceeds 85% SMI (taking into account irregular fluctuations in income) or, at Lead Agency option, the family experiences a non-temporary cessation in job, training, or education, we clarify that additional State-imposed eligibility criteria apply only at the time of initial eligibility determination and redetermination and provide examples of changes in parents' scheduling and conditions of employment that meet the statutory intent of stabilizing assistance for families through changes in circumstance. We propose that Lead Agencies that set their income eligibility threshold below 85 percent of State median income (SMI) must allow parents who otherwise qualify for CCDF assistance to continue receiving assistance, at subsequent redeterminations, until their income exceeds the Federal income limit (85 percent of SMI for a family of the same size) or for a period of at least one year after the point at which the family's income exceeds the State eligibility threshold. This approach promotes continuity of care for children while allowing for wage growth for families to move on a path toward economic stability. All too often, getting and keeping CCDF assistance is overly burdensome for parents, resulting in short durations of assistance and churning on and off CCDF as parents lose assistance and then later return. This instability disrupts parental employment and education, harms children, and runs counter to nearly all of CCDF's purposes. We believe this full set of provisions that facilitates easier and sustained access to assistance is necessary to strengthen CCDF as a two-generation program that supports work, training, and education, as well as access to high quality child care.

Congress reaffirmed the core belief that families receiving CCDF-funded child care should have equal access to child care that is comparable to that of non-CCDF families. The Act requires Lead Agencies to set provider payment rates based on a valid market rate survey or

alternative methodology. To allow for equal access, we propose that Lead Agencies set base payment rates *at least* at a level sufficient to cover the costs to providers of the health, safety, and quality requirements included in the NPRM and provide equal access to child care available to families with incomes above 85 percent of SMI. This could be assured by setting payment rates at the 75th percentile of a recent market rate survey, which we believe remains an important benchmark for gauging equal access. Lead Agencies that set rates below the 75th percentile would be required to demonstrate that their payment rates allow CCDF families to purchase care that is of comparable quality to care that is available to families with incomes above 85 percent of SMI. Low payment rates limit access to high quality care for children receiving CCDF-funded care and violate the equal access provision that is central to CCDF. We believe higher provider payment rates are necessary to ensure that providers receiving CCDF funds have the means to provide high quality care for our country's low-income children. We also propose that Lead Agencies be required to use some direct contracts or grants, in addition to vouchers or certificates, in order to build the supply of high quality care.

In this NPRM, we provide detail on the statutory requirements for Lead Agencies to pay providers in a timely manner based on generally accepted payment practices for non-CCDF providers and that Lead Agencies delink provider payments from children's absences to the extent practicable. We establish a new Federal benchmark for affordable parent fees of 7 percent of family income and allow Lead Agencies more flexibility to waive co-payments for vulnerable families. We propose that Lead Agencies be permitted to increase parent fees only at redetermination or during a period of graduated phaseout when families' incomes have increased above the Lead Agency's initial income eligibility threshold, but seek comment around several elements of these policies.

This proposed rule would require Lead Agencies to take into consideration children's development and learning and promote continuity of care when authorizing child care services; offer increased flexibility for determining eligibility of vulnerable children; and clarify that Lead Agencies are not required to restrict a child's care to the hours of a parent's work or education. We believe these changes are important to make the program more child-focused and ensure that the most vulnerable children have access to and benefit from high quality care. These provisions may be implemented broadly in ways that best support the goals of Lead Agencies.

Enhance the Quality of Child Care and the Early Childhood Workforce. In this NPRM, we provide detail on the statutory requirement to increase spending on initiatives that improve the quality of care. The law increases the share of CCDF funds directed towards quality improvement activities, authorizes a new set-aside for infant-toddler care, and drives investments towards increasing the supply of high quality care for infant, toddlers, children with special needs, children experiencing homelessness, and other vulnerable populations including children in need of nontraditional hour care and children in poor communities. The law requires States and Territories to submit an annual report on quality expenditures, including measures created by the Lead Agency to evaluate progress on quality improvement. This proposed rule would require Lead Agencies to report data on their progress on those measures. The law also increases quality through more robust program standards, including training and professional development standards for caregivers, teachers, and directors to help those working with children promote their social, emotional, physical, and cognitive development.

In this rule, we address the law's training requirements by proposing that child care caregivers, teachers, and directors of CCDF providers receive training prior to caring for children, or during an orientation period not to exceed three months, and on an annual basis. In

order for the health and safety requirements to be implemented, and because these are areas that the Lead Agency will monitor, we propose that training include 10 basic health and safety topics identified in the Act, as well as recognizing and reporting child abuse and neglect in order to comply with child abuse reporting requirements.

Under the proposed regulation, Lead Agencies must provide for a progression of professional development for caregivers, teachers, and directors that may include postsecondary education. Through this NPRM, we propose definitions for six key components of a professional development framework and propose, to the extent practicable, that ongoing training yields continuing education units or is credit-bearing. These components advance expert recommendations to improve the knowledge and competencies of those who care for young children, which is central to children's learning experiences and the quality of child care.

In addition, the Act includes a number of provisions to improve access to high quality child care for children experiencing homelessness. The law requires Lead Agencies to establish a grace period that allows children experiencing homelessness (and children in foster care) to receive CCDF services while allowing their families (including foster families) a reasonable time to comply with immunization and other health and safety requirements. Through this NPRM, we propose to require Lead Agencies to help families comply with such requirements and coordinate with licensing agencies and other relevant State and local agencies to provide referrals and support to help families experiencing homelessness comply with immunization and health and safety requirements. The proposed rule would also require Lead Agencies to use the definition of homeless applicable to school programs from the McKinney-Vento Act to align with other Federal early childhood programs (42 U.S.C. 11434a).

The Act does not indicate the extent to which CCDF provisions apply to Tribes. Starting in early 2015, OCC began a series of formal consultations with Tribal leaders to determine how the provisions in the newly reauthorized child care law should apply to Tribes and Tribal organizations. We heard from many Tribal leaders and CCDF Administrators asking for flexibility to implement child care programs that meet the individual needs of their communities. The proposals included in this NPRM are intended to increase Tribal Lead Agency flexibility, in a manner consistent with the CCDF dual goals of promoting families' financial stability and fostering healthy child development. We are proposing to differentiate and exempt some Tribal grantees from a progressive series of CCDF provisions based on three categories of CCDF grant allocations: large, medium and small. We are also allowing Tribes flexibility to consider any Indian child in the Tribe's service area to be eligible to receive CCDF funds, regardless of the family's income or work, education, or training status, if a Tribe's median income is below a threshold established by the Secretary.

Costs, benefits and transfer impacts. Changes made by the CCDBG Act of 2014 and this proposed rule would have the most direct benefit for the 1.4 million children and their parents who use CCDF assistance to pay for child care. Many of the Act's changes will also positively impact children who do not directly participate in CCDF. Many children who receive no direct assistance from CCDF will benefit from more rigorous health and safety standards, provider inspections, criminal background checks for child care staff, and accessible consumer information and education for their parents and caregivers. The attention to quality goes beyond health and safety. Caregivers, teachers, and directors of CCDF providers will be supported in their ongoing professional development. Under the Act, States and Territories must direct an increasingly greater share of their CCDF grant towards activities that improve the quality of

child care, including a new share dedicated to improving the quality of infant and toddler care. Low-income parents who receive CCDF assistance will benefit from more stable financial assistance as they work toward economic stability and their children will benefit from more continuous relationships with their caregivers. Providers will benefit from improved provider payment rates (by certificate or grant or contract), as well as payment practices that support their financial stability. These include timely payments so that providers can sustain their operations and quality and paying providers for a reasonable number of absent days. The positive impacts of this law and the proposed rule will impact children, families, and providers now and into the future.

The cost of implementing changes made by the Act and this proposed rule would vary depending on a State's specific situation. There are a significant number of States and Territories that have already implemented many of these policies. ACF conducted a regulatory impact analysis to estimate costs and benefits of provisions in the final rule taking into account current State practices. We evaluated major areas of policy change, including monitoring and inspections (including a hotline for parental complaints), background checks, training and professional development, consumer education (including website and consumer statement), quality spending, minimum 12-month eligibility and related provisions, increased subsidies, and supply building.

Based on our analysis, annualized costs associated with these provisions, averaged over a ten year window, are $256 million and the annualized amount of transfers is approximately $840 million (both estimated using a 3 percent discount rate), which amounts to a total annualized impact of $1.10 billion. Of that amount, $1.09 billion is directly attributable to the statute, with only an annualized cost of $1.6 million (or less than 1% of the total estimated impact)

attributable to discretionary provisions of this proposed regulation. While this analysis does not attempt to fully quantify the many benefits of the reauthorization and this NPRM, we do conduct a breakeven analysis to compare requirements clarified through this regulation against a potential reduction in child fatalities and injuries. Further detail and explanation can be found in the regulatory impact analysis.

II. Background

A. Child Care and Development Fund

Nearly 13 million young children, under age 5, regularly rely on child care to support their healthy development and school success. (Census Bureau, *Who's Minding the Kids? Child Care Arrangements*, Spring 2011). Additionally, more than 10 million children participate in a range of school-age programs, before- and after-school and during summers and school breaks. (Afterschool Alliance, American After 3PM: Afterschool Programs in Demand, 2014) 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 and, thus, an integral part of the nation's child care and early education system. Each year, more than $5 billion in Federal CCDF funding is allocated to State, Territory and Tribal grantees. Combined with State funds and transfers from the Temporary Assistance for Needy Families (TANF) program, States and Territories spend nearly $9 billion annually to support child care services to low-income families and to improve the quality of child care. More than $1 billion of this spending is directed towards supporting child care quality improvement activities 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 nearly 20 years ago, upon the enactment of the Personal Responsibility and Work Opportunity Reconciliation Act (PRWORA) in 1996 (Pub. L. No. 104-193), in which Congress replaced the former Aid to Families with Dependent Children with the framework of TANF block grants, and established a new structure of 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).

The CCDBG Act of 2014 (Pub. L. No. 13-186) was the first reauthorization of CCDBG since 1996. The reauthorized CCDBG affirms the importance of CCDF as a two-generation program that supports parents' financial success and children's healthy development. Since PRWORA, the focus of CCDF has shifted from one largely dedicated to the goal of enabling low-income parents to work to one that includes a focus on promoting positive child development as we have learned a great deal about the value of high quality child care for young children. While low-income parents continue to need access to child care in order to work and gain economic independence, policymakers and the public now recognize that the quality of child care arrangements is also critically important. .

Fifteen years ago, HHS (in collaboration with other federal agencies and private partners) funded the National Academies of Sciences to evaluate and integrate the research on early childhood development and the role of early experiences. (National Research Council and Institute of Medicine, *From Neurons to Neighborhoods: The Science of Early Childhood Development*, Board on Children, Youth, and Families, Commission on Behavioral and Social Sciences and Education, 2000.) An overarching conclusion was that early experiences matter for

healthy child 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," and, "…children who have traditionally been at risk of not doing well in school are affected more by the quality of child care experiences than other children." (E. Peisner-Feinberg, M. Burchinal, *et al.*, *The Children of the Cost, Quality, and Outcomes Study Go to School: Executive Summary*, University of North Carolina at Chapel Hill, Frank Porter Graham Child Development Center, 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) showed that the quality of child care children received in their preschool years had small but detectable associations with their academic success and behavior into adolescence. (NICHD, *Study of Early Child Care and Youth Development*, 2010) Recent follow-up studies to the well-known Abecedarian Project, which began in 1972 and has followed participants from early childhood through young adulthood, found that adults who participated in a high quality early childhood education program are still benefiting from their early experiences. Abecedarian Project participants had significantly more years of education than their control group peers, were four times more likely to earn college degrees, and had lower risk of cardiovascular and metabolic diseases in their mid-30s. (Campbell, Pungello, Burchinal, et al., *Adult Outcomes as a*

Function of an Early Childhood Educational Program: An Abecedarian Project Follow-Up, Frank Porter Graham Child Development Institute, Developmental Psychology, 2012 and Campbell, Conti, Heckman et al, *Early Childhood Investments Substantially Boost Adult Health*, Science 28 March 2014, Vol. 343.)

Research also confirms that consistent time spent in afterschool activities during the elementary school years is linked to narrowing the gap in math achievement, greater gains in academic and behavioral outcomes, and reduced school absences. (Auger, Pierce, and Vandell, *Participation in Out-of-School Settings and Student Academic and Behavioral Outcomes*, presented at the Society for Research in Child Development Biennial Meeting, 2013.) 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, Weissberg, and Pachan, *The Impact of Afterschool Programs that Seek to Promote Personal and Social Skills in Children and Adolescents*, American Journal of Community Psychology, 2010.) 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 often operates in conjunction with other programs including Head Start, Early Head Start, state pre-kindergarten, and before-and after-school programs. States and Territories 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 funds quality improvements for settings beyond those that serve children receiving subsidies. CCDF has

helped lay the groundwork for development of State early learning systems. Lead Agencies have used CCDF funds to make investments in professional development systems to ensure a well-qualified and effective early care and education workforce. Lead Agencies have provided scholarships for child care teachers and worked closely with higher education, especially community colleges, to increase the number of teachers with training or a degree in early childhood or youth development. Lead Agencies have used CCDF funds to build quality rating and improvement systems (QRIS) to provide consumer education information to parents, help providers raise quality, and create a more systemic approach to child care quality improvement efforts and accountability. These investments have likely also generated benefits for children enrolled in unsubsidized child care programs.

Child care is a core early learning and care program and plays an important role within a broad spectrum of early childhood programs supporting young children. The Administration has consistently sought to support State and Territory efforts to improve the coordination and alignment of early childhood programs through multiple efforts, including the Race to the Top-Early Learning Challenge and the Early Head Start-Child Care Partnerships. Most recently, ACF published *Caring for our Children Basics*, a set of recommendations intended to create a common framework to align basic health and safety efforts across all early childhood settings. This proposed rule builds on the alignment and coordination work that has been advanced by the Administration. For example, Lead Agencies would be required to collaborate with multiple entities, including State Advisory Councils on Early Childhood Education and Care, authorized by the Head Start Act, or similar coordinating bodies. In addition, minimum 12-month eligibility periods will make it easier to align child care assistance with eligibility periods for other programs, such as Early Head Start, Head Start, and state prekindergarten. Policies that stabilize

access to child care assistance for families and bring financial stability to child care providers will play an important role in supporting the success of Early Head Start–Child Care Partnerships.

According to a recent report by the President's Council of Economic Advisors, investments in early childhood development will reap economic benefits now and in the future. Immediate benefits include increased parental earnings and employment; future benefits come when children who experience high quality early learning opportunities are prepared for success in school and go on to earn higher wages as adults. (Council of Economic Advisors, Executive Office of the President of the United States, *The Economics of Early Childhood Investments*, 2014.) Decades of research show that experiences babies and toddlers have in their earliest years shape the architecture of the brain and have long-term impacts on human development. At the same time, increasing the employability and stability of parents reduces the impact of poverty on children and sustains our nation's workforce and economy. Studies have shown that access to reliable child care contributes to increased employment and earnings for parents. (National Research Council and Institute of Medicine, *From Neurons to Neighborhoods: The Science of Early Childhood Development*, Board on Children, Youth, and Families, Commission on Behavioral and Social Sciences and Education, 2000 and Council of Economic Advisors, *The Economics of Early Childhood Investments*.) In short, high quality child care is a linchpin to creation of an educational system that successfully supports the country's workforce development, economic security, and global competitiveness. Successful implementation of the CCDBG Act of 2014 will ensure that child care is not only safe, but also supports children's healthy development and their future academic achievement and success.

Development of Regulation. After enactment of the law, the Office of Child Care (OCC) and the Office of the Deputy Assistant Secretary for Early Childhood Development in ACF conducted outreach to engage with a variety of stakeholders to better understand the implications of its provisions. OCC created a CCDF reauthorization page on its website to provide public information and an e-mail address to receive questions. OCC received approximately 650 questions and comments through this email address, webinars, inquiries to regional offices, and meetings with State, Territory and Tribal Administrators. OCC leadership and staff participated in more than 21 listening sessions with approximately 675 people representing diverse national, state, and local stakeholders regarding the law, held webinars, and gave presentations at national conferences. Participants included state human services agencies, child care caregivers and providers, parents with children in child care, child care resource and referral agencies, national and State advocacy groups, national stakeholders including faith-based communities, after-school and school-age caregivers and providers, child care researchers, State and local early childhood organizations, provider associations, labor unions, and Head Start grantees. In addition, OCC held five meetings with State and Territory CCDF administrators and a series of consultations with Tribal leaders to describe the law and to gather input from Federal grantees with responsibility for operating the CCDF program. This process informed and was invaluable to ACF's development of this proposed rule.

ACF had previously issued an NPRM for CCDF in May 2013, prior to passage of the CCDBG Act of 2014 (78 FR 29442, May 20, 2013). While that NPRM has since been withdrawn (80 FR 25260, May 4, 2015), public comments received by ACF in 2013 have informed the development of content for this proposed rule. Where relevant, we refer to comments received in response to the 2013 CCDF NPRM in the preamble for this proposed rule.

Use of terms. Terminology used to refer to child care settings and the individuals who provide care for children vary throughout the early childhood and afterschool fields. In this proposed rule, the terms *caregiver*, *director*, and *teacher* refer to individuals. The term *provider* refers to the entity providing child care services. This may be a child care program, such as a child care center, or an individual in the case of family child care or in-home care. Complete descriptions of these terms are included in Subpart A of this proposed rule.

B. Discussion of Changes Made in this Proposed Rule.

The changes included in this proposed rule provide detail on major provisions of the CCDBG Act of 2014 to: 1) protect the health and safety of children in child care; 2) help parents make informed consumer choices and access information to support child development; 3) provide equal access to stable, high quality child care for low-income children; and 4) enhance the quality of child care and the early childhood workforce.

First, Congress established minimum health and safety standards including mandatory criminal background checks, at least annual monitoring of providers, and health and safety training. Children in CCDF-funded child care will now be cared for by caregivers who have had basic training in health and safety practices and child development. Parents will know that individuals who care for their children do not have prior records of behavior that endanger their children. Health and safety is a necessary foundation for quality child care that supports early learning and development. 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).

Second, Congress increased consumer education requirements for States and Territories and made clear that parents need transparent information about health and safety practices, monitoring results, and the quality of child care providers. Parents will now be able to easily view on a website the standards a child care provider meets and their record of compliance. Most States and Territories administering the CCDF program have already begun building QRIS, which make strategic investments to provide pathways for providers to reach higher quality standards. Our proposed rule builds on the reauthorization and Lead Agency efforts to inform parents about the quality of providers by proposing that the consumer education website include provider-specific quality information, if available, such as from a QRIS, and that Lead Agencies provide parents receiving CCDF with information about the quality of their chosen provider.

Third, parents need access to stable, high quality child care for low-income children and the law affirms that they should have equal access to settings that are comparable to those accessible to non-CCDF families. Through this proposed rule, we detail the law's continuity of care provisions, such as extending eligibility for child care for a minimum of 12 months regardless of a parent's temporary change in employment or participation in education or training. Continuity of services contributes to improved job stability and is important to a family's financial health. Family economic stability is 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. Disruptions in services can stunt or delay socio-emotional and cognitive development. 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 demonstrated a relationship between child care stability and social competence, behavior outcomes, cognitive outcomes, language development, school adjustment, and overall child well-being. (Adams, Rohacek, and Danzinger, *Child Care Instability*, The Urban Institute, 2010.) This area includes a number of proposed changes including requirements for limiting administrative burdens on parents and enabling families to retain their child care assistance as their income increases in order to move towards economic success. We also address the law's equal access provisions by requiring that base payment rates be established at least at a level that supports implementation of the health, safety, and quality requirements in the NPRM and ensure access to care that is of comparable quality as care available to families with incomes above 85 percent of State median income, ensuring that copayments are affordable for families, and establishing provider payment practices that support access to high quality child care.

Finally, this proposed rule addresses improvements in the new law, which would enhance the quality of child care and the early childhood workforce. States and Territories would need to report on their investments in quality activities, which will now be a greater share of CCDF spending. They will also expand quality investments in infant-toddler care. High quality care for children under age 3 is the most expensive and hardest care to find during the most formative years. The law requires States and Territories to have training and professional development standards in effect for CCDF caregivers, providers, and we propose building on this requirement by outlining the components of a professional development framework. Research shows the fundamental importance of the caregiver in a high quality early learning setting and this proposed rule would help ensure that early childhood professionals have access to the knowledge and skills they need to best support young children and their development.

Through our proposed changes, we have strengthened program integrity by proposing changes that address Lead Agencies' policies for internal controls, fiscal management, and processes for identifying fraud and improper payments. We have also clarified key eligibility and payment policies as they relate to improper payments.

In developing this proposed rule, we were mindful of CCDF's purpose to allow Lead Agencies maximum flexibility in developing child care policies and programs. In some areas, we have added flexibility in order to allow Lead Agencies 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. In many areas, we have proposed new requirements as dictated by the updated law or because they further advance the revised purposes of the CCDF program.

Changes in the law, and in this proposed rule, would impact the State, Territorial, and Tribal agencies that administer the CCDF program. The law requires changes across many areas: child care licensing, subsidy, quality, workforce, and program integrity and requires coordination across State agencies. Achieving the full visions of reauthorization will be challenging, but this effort is necessary to improve child care in this country for the benefit of our children. ACF has and will continue to consult with State, Territorial, and Tribal agencies and provide technical assistance throughout implementation.

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, Aug. 4, 1992; 63 FR 39936, Jul. 24, 1998; 72 FR 27972, May 18, 2007; 72 FR 50889, Sep. 5, 2007).

C. Effective Date.

ACF expects provisions included in the Final Rule to become effective 60 days from the date of publication of the Final Rule, except for provisions with a later effective date as defined in the law (discussed further below). Compliance with provisions in the Final Rule would be determined through ACF review and approval of CCDF Plans, including State Plan amendments, as well as through the use of Federal monitoring, including on-site monitoring visits as necessary. ACF notes that Lead Agencies must comply with the provisions of the Child Care and Development Block Grant (CCDBG) Act of 1990, as revised by the CCDBG Act of 2014. Compliance with key statutorily required implementation dates outlined in Program Instruction CCDF-ACF-PI-2015-02 (http://www.acf.hhs.gov/programs/occ/resource/pi-2015-02), dated January 9, 2015, remain in effect. In some cases, the CCDBG Act of 2014 specifies a particular date when a provision is effective. Where the law does not specify a date, the new requirements became effective upon the date of enactment and States and Territories have until September 30, 2016 to implement the new statutory requirement(s). ACF has previously stated that if a State or Territory cannot certify compliance with a specific requirement in the FY 2016-2018 CCDF Plan, the Lead Agency must provide a State/Territory-specific implementation plan for achieving compliance with such provision(s) no later than September 30, 2016.

We recognize that, at the time of publication of this NPRM, States and Territories are preparing their FY 2016-2018 CCDF Plans, due March 1, 2016. States and Territories have been

asked to comply with the law based on their reasonable interpretation of the requirements in the revised CCDBG statute. Once a final rule is issued, any State or Territory that does not fully meet the requirements of the regulations would need to revise its policies and procedures to come into compliance, and file appropriate Plan amendments related to those changes.

We recognize that some of the proposed changes in this NPRM may require action on the part of a State's legislature or require State-level rulemaking in order to implement. 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.

ACF has extended CCDF Tribal Plans for one year. Tribal Lead Agencies will submit new 3-year Plans for FY 2017-2019, with an effective date of October 1, 2016. ACF expects that all provisions related to Tribes included in the Final Rule would become effective 60 days from the date of publication of the Final Rule. Tribal Lead Agencies may also want to consider ACF's interpretation of the CCDBG Act included in this NPRM as they consider policy changes and prepare CCDF plans.

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)

The CCDBG Act of 2014 amended and expanded the law's previous "goals" and renamed them "purposes". We are proposing changes to regulatory language at 45 CFR 98.1 to describe the revised purposes of the CCDF program, according to the updated law.

The first part of the regulations at § 98.1(a) mirrors the statutory language describing the revised purposes of CCDF. Language revised by the new law is indicated in italics in this paragraph. The purposes of CCDF are now: (1) to allow each State maximum flexibility in developing child care programs and policies that best suit the needs of children and parents within *that* State; (2) to promote parental choice to empower working parents to make their own decisions *regarding* the child care *services* that best suits their family's needs; (3) to encourage States to provide consumer education information to help parents make informed choices about child care *services and to promote involvement by parents and family members in the development of their children in child care settings*; (4) to assist States *in delivering high quality, coordinated early childhood care and education services to maximize parents' options and support* parents trying to achieve independence from public assistance; (5) to assist States in *improving the overall quality of child care services and programs by* implementing the health, safety, licensing*, training, and oversight* standards established in *this subchapter and in State law (including* State regulations*)*; (6) *to improve child care and development of participating children; and* (7) *to increase the number and percentage of low-income children in high quality child care settings*.

The second part at § 98.1(b) further defines the purposes of this proposed rule. We no longer refer to this section as the purposes of CCDF, as in the current regulations, so as not to

create confusion with the purposes now established in law. We have retained much of the previous language in this paragraph but have made amendments and additions to reflect the priorities in this proposed rule of improving the health, safety, and quality of child care and supporting pathways to family economic stability. We have removed language that was included in the law's new purposes so as to avoid duplication. The new language shown in italics: (1) Maximize parental choice *of safe, healthy and nurturing child care settings* through the use of certificates and through grants and contracts*, and by providing parents with information about child care programs*; (2) Include in their programs a broad range of child care providers, including center-based care, family child care, in-home care, care provided by relatives and sectarian child care providers; (3) *Improve the* quality and *supply of* child care and *before- and after-school care services* that meet applicable requirements *and promotes child development and learning and family economic stability*; (4) Coordinate planning and delivery of services at all levels*, including Federal, State, Tribal, and local*; (5) Design flexible programs that provide for the changing needs of recipient families*, and engages families in their children's development and learning*; (6) Administer the CCDF responsibly to ensure that statutory requirements are met and that adequate information regarding the use of public funds is provided; (7) Design programs that provide uninterrupted service to families and providers, to the extent statutorily possible*, to support parental education, training, and employment and continuity of care that minimizes disruptions to children's learning and development; (8) Provide a progression of training and professional development opportunities for caregivers, teachers, and directors to increase their effectiveness in supporting children's development and learning and strengthen the child care workforce.*

Definitions (Section 98.2)

We are proposing technical changes to definitions at § 98.2 and the addition of six new definitions. In this paragraph, italics indicate defined terms. First, we are proposing technical changes 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. Some 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. According to the National Association for Regulatory Administration, at least 13 States do not license group homes as a separate category. Some States and Territories 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.*, an individual 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 proposed definition would revise *family child care provider* to include one *or more* individuals who provide child care services. The remainder of the definition stays 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.

Lead Agencies may 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 allowing States, Territories, and Tribes to more easily align their practices with Federal requirements. Specifically, Lead Agencies would 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 § 98.45(b)(1). Rather, group homes would now be considered family child care homes for these purposes.

These changes were proposed in the 2013 CCDF NPRM and received mostly supportive comments. Several commenters did not support the deletion of group home child care. One commenter said legislation would be required to remove group home day care from their State statute and would result in those providers being classified as child care centers leading to

additional costs because of higher payment rates. Another commenter said elimination of group home care would impact the market rate for this category of care since the State surveys group home and family child care providers separately. We are clarifying that States and Territories would not be required to eliminate group homes from their categories of care or change the way they categorize providers for the purposes of analyzing or setting provider payment rates.

We are also proposing two additional changes to current definitions as called for by new statutory language. We are amending the definition of *eligible child* so that, in addition to being at or below 85 percent of the State median income for a family of the same size, a member of the family must certify that the "family assets do not exceed $1,000,000" as specified in Section 658P(4)(B) of the Act. We are amending the definition of *Lead Agency* so that it may refer to a State, Territorial or Tribal entity, or *a joint interagency office, designated or established under §§ 98.10 and 98.16(a)* as indicated at Section 658P(9) of the Act.

Finally, we are proposing to add five new terms to the definitions due to statutory changes and to include terms commonly used in the child care profession. We propose defining *child with a disability* as: a child with a disability as defined in section 602 of the Individuals with Disabilities Education Act (20 U.S.C. 1401); a child who is eligible for early intervention services under part C of the Individuals with Disabilities Education Act (20 U.S.C. 1431 *et seq.*); a child who is less than 13 years of age and who is eligible for services under section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794); or a child with a disability, as defined by the State. This definition is included in the Act. We changed the language from "and" to "or" to clarify that a child only has to meet one of the four options in order to be considered a child with a disability. We are defining *English learner* as an individual who is limited English proficient, as defined in section 9101 of the Elementary and Secondary Education Act of 1965 (20 U.S.C.

7801) or section 637 of the Head Start Act (42 U.S.C. 9832) as defined verbatim in the Act at Section 658P(5). We are defining *a child experiencing homelessness* as defined in section 725 of Subtitle VII-B of the McKinney-Vento Act (42 U.S.C. 11434a). While a definition of *child experiencing homelessness* was not included in the CCDBG Act, we understand the intent of Congress was to apply the McKinney-Vento definition here based on a letter sent to HHS Secretary Sylvia Burwell in February 2015 from Senate and House members (Senator Lamar Alexander, Senator Patty Murray, Senator Richard Burr, Senator Barbara Mikulski, Representative John Kline, Representative Robert "Bobby" Scott, Representative Todd Rokita, and Representative Marcia Fudge).

We also propose two new terms that reflect professional recognition for early childhood and school-age care teachers and the terms used in the field. We are defining *teacher* as a lead teacher, teacher, teacher assistant or teacher aide who is employed by a child care provider for compensation on a regular basis and whose responsibilities and activities are to organize, guide and implement activities in a group or individual basis, or to assist a teacher or lead teacher in such activities, to further the cognitive, social, emotional, and physical development of children from birth to kindergarten entry and/or school-age children and may be a family child care provider. We recognize that the responsibilities and qualifications for lead teachers, teachers, and teacher assistants are different as set by child care licensing, state early childhood professional development systems, and state teacher licensure policies and have proposed these definitions for simplification in relation to requirements in the law and this proposed regulation. We strongly encourage States and Territories to recognize differentiated roles and qualifications in their requirements and systems. We are defining *director* as a person who has primary responsibility for the daily operations management for a child care provider, which may be a family child care

home, and which may serve children from birth to kindergarten entry and/or school-age children. The definition of *caregiver* in the Act and current regulations remains unchanged.

The proposed definitions for these terms are based on a white paper commissioned by ACF for the proposed revisions to the U.S. Department of Labor's Standard Occupational Classification. (*Proposed Revisions to the Definitions for the Early Childhood Workforce in the Standard Occupational Classification. White Paper Commissioned by the Administration for Children and Families, U.S. Department of Health and Human Services,* prepared by the Workgroup on the Early Childhood Workforce and Professional Development under contract through the Child Care and Early Education Policy and Research Analysis, 2005-2018. June 18, 2014, www.acf.hhs.gov/sites/default/files/occ/soc_acf_submittal.pdf).

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 defined in the statute. A Lead Agency serves as the single point of contact for all child care issues, determines the basic use of CCDF funds and priorities for spending CCDF funds, and promulgates the rules governing overall administration and oversight.

Lead Agency Responsibilities (Section 98.10)

We are amending language at § 98.10 in accordance with new statutory language at Section 658D(a) that a Lead Agency may be a collaborative agency or a joint interagency office, as designated or established by the Governor of the State (or by the appropriate Tribal leader or applicant). Paragraphs (a) through (e) remain unchanged. We propose to add paragraph (f) to require that, at the option of an Indian Tribe or Tribal organization in the State, a Lead Agency

should consult, collaborate and coordinate in the development of the State Plan with Tribes or Tribal organizations in the State in a timely manner pursuant to § 98.14. Because States also provide CCDF assistance to Indian children, States benefit by coordination with Tribes and we encourage States to be proactive in reaching out to the appropriate Tribal officials for collaboration. We've added "consult" to recognize the need for formal, structured consultation with Tribal governments, including Tribal leadership, and the fact that many States and Tribes have consultation policies and procedures in place.

Administration Under Contracts and Agreements (Section 98.11)

Written Agreements. Section 98.11 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 the written agreements may vary based on the role the agency 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 Lead Agencies operate primarily through a county-based system, while others devolve decision-making and administration to local workforce boards, school readiness coalitions or community-based organizations such as child care resource and referral agencies. Through working with

grantees to improve program integrity, ACF has learned 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.

We included this proposed provision in our 2013 NPRM and received a large number of comments from labor unions regarding this change, specifically when a sub-recipient of the Lead Agency establishes affiliation agreements with family child care networks to serve CCDF children. Unions commented that these requirements should apply in any and all instances where CCDF funds are sub-granted or passed through to an entity, including arrangements between intermediary entities and individual child care providers. Commenters believed this additional requirement would increase transparency and promote greater accountability.

We are clarifying that, as proposed, this provision applies only to written agreements between Lead Agencies and first-level sub-recipients (and not to agreements between first-level sub-recipients and their sub-recipients). The regulations state that the agreement "must specify the mutual roles and responsibilities of the Lead Agency and the other agencies"—indicating that the Lead Agency is a party to the agreement. This language is intended to be broad as sub-entities may fulfill any number of different roles or projects, including implementing quality improvement activities, determining eligibility for families, or providing consumer education on behalf of the Lead Agency. We strongly encourage all agreements between sub-recipients to

have similar provisions, but prefer to leave this as an area of flexibility to give State and local agencies discretion over such details, given the wide-range of conditions and circumstances involved. Also, we note that regulations at § 98.67(c)(2) require Lead Agencies to have in place fiscal control and accounting procedures that permit the tracing of funds to a level of expenditure adequate to establish that such funds have not been used in violation of the CCDF rules. Therefore, we would expect that when Lead Agencies devolve program administration to first, second, and third-level entities they necessarily must be concerned with the integrity and transparency of all written agreements involving CCDF funds.

We appreciate commenters on the 2013 NPRM bringing this issue to our attention. We are cognizant that some States and Territories lack strong requirements to ensure there is transparency in cases where a sub-recipient contracts with a network of family child care providers to serve children receiving CCDF. This proposed rule places a strong emphasis on implementation of provider-friendly payment practices, including proposing that there be a payment agreement or authorization of services for all payments received by child care providers. When a local entity is contracting with a family child care network for services, we agree that there should be a clear understanding from the outset regarding payment rates for providers, any fees the provider may be subject to, and payment policies.

Finally, in § 98.11(b)(5) we propose to add a reference to the HHS regulations requiring that Lead Agencies oversee the expenditure of funds by sub-grantees and contractors, *in accordance with 75 CFR parts 351 to 353*. These regulations implement the Office of Management and Budget's Uniform Administrative Requirements for Federal awards (see ACF, *Uniform Administrative Requirements, Cost Principles, and Audit Requirements, Program Instruction: CCDF-ACF-PI-2015-01*, January 2015.)

Plan Process (Section 98.14)

Coordination. Currently, § 98.14(a)(1) requires Lead Agencies to coordinate the provision of program services with other Federal, State, and local early care and development programs, including the provision of such programs for the benefit of Indian children. Section 658E(c)(2)(O) of the Act added language to existing requirements for coordination of programs that benefit Indian children requiring Lead Agencies to also coordinate the provision of programs that serve infants and toddlers with disabilities, children experiencing homelessness and children in foster care. We include all children with disabilities, not just infants and toddlers, in the regulatory language, given the critical importance of serving that population of children.

Lead Agencies also are required to consult and coordinate services with agencies responsible for public health, public education, employment services/workforce development, and TANF. The CCDBG Act of 2014 added a requirement for the Lead Agency to develop the Plan in coordination with the State Advisory Council on Early Childhood Education and Care authorized by the Head Start Act (42 U.S.C. 9831 *et seq.*) at Section 658E(c)(2)(R).

We propose to amend § 98.14(a)(1) to add the State Advisory Council on Early Childhood Education and Care or similar coordinating body, as well as additional new entities with which Lead Agencies would be 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 pre-kindergarten programs, if applicable, and educational services provided under Parts 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; Head Start collaboration; Statewide after-school network or other coordinating entity for out-of-school time care; emergency

management and response; the Child and Adult Care Food Program (CACFP); Medicaid; mental health services agencies; services for children experiencing homelessness, including State Coordinators for the Education of Children and Youth Experiencing Homelessness; and, to the extent practicable, local liaisons designated by local educational agencies (LEAs) in the State as required by the McKinney-Vento Act (42 U.S.C. 11432) and the Department of Housing and Urban Development's Continuum of Care and Emergency Solutions Grantees.

Over time, the CCDF program has become an essential support in local communities to provide access to early care and education in before and after-school settings and to improve the quality of care. Many Lead Agencies already 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, child welfare, family support, public health, and disability services. Local coordinating councils or advisory boards also often provide input and direction on CCDF-funded programs.

This type of coordination is frequently facilitated through entities such as State Advisory Councils on Early Childhood Education and Care. 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 education; family literacy; and employment training. These comprehensive services are crucial in helping families progress towards economic stability and in helping parents provide a better future for their young children.

Implementation of the requirements of the CCDBG Act of 2014 will require leadership and coordination between Lead Agencies and other child- and family-serving agencies, services,

and supports at the State and local levels, including those identified above. For example, in many States, child care licensing is administered in a different agency than CCDF. In those States, implementation of the inspection and monitoring requirements included in the CCDBG Act necessitates coordination across agencies.

We proposed adding most of the above entities in the 2013 NPRM and received a large number of comments, nearly all supportive. Many commenters suggested including additional coordinating partners, such as child care resource and referral agencies, provider associations, maternal and child health home visiting programs, faith-based organizations, mental health services agencies, and Affordable Care Act health care outreach coordinators. With four exceptions, discussed below, we are declining to propose additional agencies as coordinating partners. We wanted to preserve State, Territory, and Tribal flexibility and keep requirements at this section manageable for Lead Agencies. This is not to devalue the importance of other coordinating partners suggested by commenters. Lead Agencies have the flexibility, and are encouraged, to engage a wide variety of cross-sector partners when developing the CCDF Plan. Some of the coordinating partners suggested by commenters, such as provider associations and faith-based organizations are already assumed to be included in existing regulations at § 98.14(a)(1), which requires coordination with child care and early childhood development programs.

In this proposed rule, we have included CACFP, which was not included in our list of proposed entities for coordination in the 2013 NPRM. CACFP is a Federal program that provides assistance to child care providers, including centers and family child care homes, for the provision of nutritious meals and snacks served to participants. A large number of public and private nonprofit child care centers, Head Start programs, before- and after-school programs, and

other providers that are licensed or approved to provide child care services, including license-exempt CCDF providers, participate in CACFP. More than 3.3 million children receive nutritious meals and snacks each day as part of the child care they receive, and many children supported by CCDF subsidies attend child care programs that also participate in CACFP.

We are proposing to add CACFP because of its nutritional importance. In addition, we propose to include CACFP because some of the training and inspection requirements for child care providers participating in CACFP are similar to those that are now required for providers receiving CCDF funds. CACFP requires periodic unannounced site visits to prevent and identify management deficiencies, fraud, and abuse under the program, as well as to improve program operations. In order to maximize available resources, we are proposing to require coordination between the State/Territory CCDF Lead Agency and CACFP agency, if they are different. In the FY 2014-2015 CCDF Plans, 43 States and Territories indicated that they coordinate with CACFP agencies in administration of the child care program. For example, one State described sharing lists of child care providers receiving CCDF funds with personnel who have oversight of CACFP to maximize access to CACFP services. Another State described coordinating with CACFP in monitoring child care services and providing professional development to child care caregivers on nutrition and health.

The second entity included above that was not included in the 2013 NPRM is the State agency responsible for services for children experiencing homelessness. The CCDBG Act of 2014 added a number of provisions related to improving access to high quality child care for children experiencing homelessness and we believe that implementing these provisions will necessitate coordination with State agencies already overseeing services for this population.

Third, we also propose to require coordination with State mental health services agencies, which were not proposed for coordination in the 2013 NPRM. We are choosing to propose these partners because of the desire to encourage collaboration that will make comprehensive services available for children who require mental health services.

We also propose to include the State/Territory Medicaid agency, which was not included in our list of proposed entities for coordination in the 2013 NPRM. The reauthorized CCDBG requires Lead Agencies to provide information on resources and services for parents to access developmental screenings for their children, including through the coordinated use of the Early and Periodic Screening, Diagnosis, and Treatment (EPSDT) program, which would require coordination with the Medicaid agency.

Finally, existing regulation at § 98.14(a)(1)(B) requires Lead Agencies to coordinate the provision of services with employment services/workforce development. We propose to retain this requirement without change since this remains a critical area for coordination. Last year the President signed the Workforce Innovation and Opportunity Act (WIOA) into law, replacing the Workforce Investment Act of 1998. WIOA authorizes and provides a strategic framework for Federal investments in: (1) employment and training services for adults, dislocated workers, and youth and Wagner-Peyser employment services administered by the Department of Labor (DOL) through formula grants to States; (2) adult education and literacy programs and Vocational Rehabilitation State grant programs that assist individuals with disabilities in obtaining employment administered by the Department of Education (ED); and (3) other programs administered by DOL, ED, and HHS, including programs for specific vulnerable populations such as the Job Corps, YouthBuild, Indian and Native Americans, and Migrant and Seasonal Farmworker programs. Because child care is an important support for families engaged in

workforce training and development, we strongly encourage CCDF Lead Agencies to collaborate with WIOA implementation efforts as part of the requirement at § 98.14(a)(1)(B) to coordinate with employment services/workforce development.

Combined Funding. In paragraph (3) of § 98.14(a) we add the statutory requirement that any Lead Agency that combines funding for CCDF services with any other early childhood programs shall provide a description in the CCDF Plan of how the Lead Agency will combine and use the funding according to Section 658E(c)(2)(O). Lead Agencies have the option of combining funding for CCDF child care services with programs operating at the Federal, State, and local levels for children in preschool programs, Tribal early childhood programs, and other early childhood programs, including those serving infants and toddlers with disabilities, children experiencing homelessness, and children in foster care. Combining funds could include blending, layering, or pooling multiple funding streams in an effort to expand and/or enhance services for children and families. For example, Lead Agencies may use multiple funding sources to offer grants or contracts to programs to deliver services; a Lead Agency may allow county or local government to use coordinated funding streams; or policies may be in place that allow local programs to layer funding sources to provide full-day, full-year child care that meets Early Head Start, Head Start or State/Territory pre-kindergarten standards in addition to child care licensing requirements. As per the OMB Circular A-133 Compliance Supplement 2014, https://www.whitehouse.gov/omb/circulars/a133_compliance_supplement_2014, CCDF funds may be used in collaborative efforts with Head Start programs to provide comprehensive child care and development services for children who are eligible for both programs. In fact, the coordination and collaboration between Head Start and CCDF is strongly encouraged by sections 640(g)(1)(D) and (E), 640(h), 641(d)(2)(H)(v), and 642(e)(3) of the Head Start Act in the

provision of full working day, full calendar year comprehensive services. In order to implement such collaborative programs, which share, for example, space, equipment or materials, grantees may blend several funding streams so that seamless services are provided. Lead Agencies can layer Early Head Start and CCDF funds for the same child as long as there is no duplication in payments for the exact same part of the service. This is an option that some Lead Agencies are already implementing. Early Head Start-Child Care Partnerships grants, which allow Early Head Start programs to partner with local child care centers and family child care providers serving infants and toddlers from low-income families, offer a new important opportunity for further utilization of this funding strategy. We do note that, when CCDF funds are combined with other funds, § 98.67 continues to require Lead Agencies to have in place fiscal control and accounting procedures sufficient to prepare required reports and trace funds to a level of expenditure adequate to establish that such funds have been used on allowable activities.

Public-Private Partnerships. We propose to add paragraph (a)(4) to § 98.14 in accordance with Section 658E(c)(2)(P), which requires Lead Agencies to demonstrate in their Plan how they encourage public-private partnerships to leverage existing child care and early education service delivery systems and to increase the supply and quality of child care services for children under age 13, such as by implementing voluntary shared services alliance models (*i.e.*, cooperative agreement among providers to pool resources to pay for shared fixed costs and operation). Public-private partnerships may include partnerships among State/Territory and public agencies, Tribal organizations, private entities, faith based organizations and/or community-based organizations.

Paragraphs (b) and (c) of this section would remain unchanged.

Public availability of Plans. We propose to add a new § 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 website or other appropriate State/Territory websites (such as the consumer education website required at §98.33(a)) 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 Plan period (now three years) through submission of Plan amendments (subject to ACF approval), but are not currently required to proactively make those amendments available to the public.

We proposed this provision in the 2013 NPRM and received several comments requesting that Lead Agencies be required to make Plans and Plan amendments publicly available in multiple languages. We strongly encourage Lead Agencies to be mindful of the needs of families, caregivers, and providers with limited English proficiency and persons with disabilities. States should continue to work with families and community groups to give them a voice in program planning and policymaking, for example, by organizing outreach meetings with competent interpreters, recruiting qualified sign language and multilingual eligibility staff, and providing accessible vital documents. Lead Agencies should provide notice of where persons with limited English proficiency and persons with disabilities can obtain an interpretation or translation of key documents that are integral to service delivery, which may include CCDF Plans.

Assurances and certifications (Section 98.15)

The Act requires Lead Agencies to provide assurances and certifications in its Plan. We are proposing to add new assurances based on new statutory language.

Lead Agencies are required to provide assurance that training and professional development requirements comply with § 98.44 and are applicable to caregivers, teachers, and directors working for child care providers receiving CCDF funds. They are also required to provide assurance that, to the extent practicable, enrollment and eligibility policies support the fixed costs of providing child care services by delinking provider payment rates from an eligible child's occasional absences in accordance with § 98.45(m). Both of these requirements are discussed in detail in later sections of this proposed rule.

Section 98.15(a)(9) adopts the statutory requirement for Lead Agencies to provide assurance that they will maintain or implement early learning and developmental guidelines that are developmentally appropriate for all children from birth to kindergarten entry, describing what children should know and be able to do, and covering the essential domains of early childhood development (cognition, including language arts and mathematics; social, emotional and physical development; and approaches toward learning) for use statewide by child care providers and caregivers. Guidelines should be research-based and developmentally, culturally, and linguistically appropriate, building in a forward progression, and aligned with entry to kindergarten. Guidelines should be implemented in consultation with the State educational agency and the State Advisory Council on Early Childhood Education and Care or similar coordinating body, and in consultation with child development and content experts.

Paragraph (a)(10) of § 98.15 details the new requirement that Lead Agencies provide assurance that funds received to carry out this subchapter will not be used to develop or

implement an assessment for children that will be the primary or sole basis for a child care provider being determined to be ineligible to participate in the program carried out under this subchapter; will be used as the primary or sole basis to provide a reward or sanction for an individual provider; will be used as the primary or sole method for assessing program effectiveness; or will be used to deny children eligibility to participate in the program carried out under this subchapter. The Consolidated and Further Continuing Appropriations Act of 2015, Public Law No. 113-235, made a correction to the CCDBG statute, adding that the assessments will not be the "primary or" sole basis for a child care provider being determined to be ineligible to participate in CCDF. The statute lays out the acceptable ways of using child assessments, including to support learning or improve a classroom environment; target professional development; determine the need for health, mental health, disability, developmental delay, or family support services; obtain information for the quality improvement process at the State/Territory level; or conduct a program evaluation for the purposes of providing program improvement and parent information.

Finally, § 98.15(a)(11) requires an assurance that any code or software for child care information systems or information technology that a Lead Agency, or other agency, expends CCDF funds to develop must be made available to other public agencies for their use in administering child care or related programs upon request. This provision is intended to prevent CCDF funds from being spent multiple times on the same, or similar, technology in order to provide accountability for public dollars.

Section 98.15(b) requires Lead Agencies to include certifications in its CCDF Plan. We are adding new requirements to reflect the following new statutory requirements:

- to develop the CCDF plan in consultation with the State Advisory Council on Early Childhood Education and Care (or similar coordinating body);
- to collect and disseminate to parents of eligible children, the general public, *and, where applicable, child care providers,* consumer education information that will promote informed child care choices *and information on developmental screenings,* as required by § 98.33;
- to make public the result of monitoring and inspections reports, as well as the number of deaths, serious injuries, and instances of substantiated child abuse that occurred in child care settings as required by § 98.33(a);
- to require caregivers, teachers, and directors of child care providers to comply with the State's, Territory's or Tribe's procedures for reporting child abuse and neglect as required by section 106(b)(2)(B)(i) of the Child Abuse Prevention and Treatment Act (42 U.S.C. 5106a(b)(2)(B)(i)), or other child abuse reporting procedures and laws in the service area, as required by § 98.41(e);
- to have in effect monitoring policies and practices pursuant to § 98.42; and
- to ensure payment practices of child care providers receiving CCDF funds reflect generally accepted payment practices of child care providers that serve children who do not receive CCDF assistance, pursuant to § 98.45(m).

These requirements are discussed later in this proposed rule. We are also removing "or area served by Tribal Lead Agency" from § 98.15(b)(6), as redesignated, because we are proposing distinct requirements for Tribes to enforce health and safety standards for child care providers. At § 98.15(b)(12), as redesignated, we are updating the reference to § 98.43, which is now § 98.45. All other paragraphs in this section remain unchanged.

Confidentiality Policies. We propose adding a new paragraph (b)(13) requiring Lead Agencies to certify in the CCDF Plan that they have in place policies to govern the use and disclosure of confidential and personally-identifiable information about children and families receiving CCDF-funded assistance and child care providers receiving CCDF funds. Currently there are no Federal requirements either in statute or regulation governing confidentiality in CCDF, although there are Federal requirements governing information that the CCDF agency may have in its files, such as child abuse and neglect information. The Federal Privacy Act is the primary source of Federal requirements related to client confidentiality (5 U.S.C. 552a note); however the Privacy Act generally applies to Federal agencies, and is not applicable to State and local government agencies, with some exceptions, such as computer matching issues and requirements related to the disclosure and protection of Social Security numbers. (ACF has previously issued guidance: *Clarifying policy regarding limits on the use of Social Security Numbers under the CCDF and the Privacy Act of 1974, Program Instruction: ACYF-PI-CC-00-04,* 2000, which remains in effect.)

Through proposed regulatory language, we would require that Lead Agencies have in place policies to govern the use and disclosure of confidential and personally-identifiable information (PII) about children and families receiving CCDF-funded assistance and child care providers, which should include their staff, receiving CCDF funds. We propose to offer Lead Agencies discretion to determine the specifics of such privacy policies because we recognize many Lead Agencies already have policies in place and it is not our intention to make them revise such policies, as long as the policy is in accordance with existing Federal confidentiality requirements. Further, many Lead Agencies are working on data sharing across Federal and State programs and it is not our intention to make these efforts more challenging by introducing a

new set of confidentiality requirements. This regulatory addition is not intended to preclude the sharing of individual, case-level data among Federal and State programs that can improve the delivery of services. The ACF *Confidentiality Toolkit* may be a useful resource for States in addressing privacy and security in the context of information sharing (https://www.acf.hhs.gov/sites/default/files/assets/acf_confidentiality_toolkit_final_08_12_2014.pdf).

It is important that personal information not be used for purposes outside of the administration or enforcement of CCDF, or other Federal, State or local programs, and that when information is shared with outside entities (such as academic institutions for the purpose of research) there are safeguards in place to ensure for the non-disclosure of Personally-Identifiable Information, which is information that can be used to link to, or identify, a specific individual. It is at the Lead Agency's discretion whether they choose to comply with this proposed provision by writing and implementing CCDF-specific confidentiality rules or by ensuring that CCDF data is subject to existing Federal or State confidentiality rules. Further, nothing in this provision should preclude a Lead Agency from making publicly available provider-specific information on the level of quality of a provider or the results of monitoring or inspections as described in § 98.33.

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 required to be included in the CCDF Plan are outlined in § 98.16. Many of the additions to this section correspond to proposed changes throughout the

regulations, which we provide explanation for later in this proposed rule. Paragraph (a) of § 98.16 would continue to require that the Plan specify the Lead Agency.

Written agreements. A new § 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 Lead Agency practices that devolve significant authority for administering the program to sub-recipients. Current paragraphs (b) through (f) would be redesignated as paragraphs (c) through (g). All paragraphs remain unchanged with the exception of paragraph (e), as redesignated, which has been revised by adding "and the provision of services" to clarify that the Plan's description of coordination and consultation processes should address the provision of services in addition to the development of the Plan.

Continuity of Care. A new § 98.16(h) is proposed to correspond with statutory changes in subpart C discussed later to describe and demonstrate that eligibility determination and redetermination processes promote continuity of care for children and stability for families receiving CCDF services, including a minimum 12-month eligibility redetermination period in accordance with § 98.21(a); a graduated phaseout for families whose income exceeds the Lead Agency's threshold to initially qualify for CCDF assistance, but does not exceed 85 percent of State median income, pursuant to § 98.21(b); processes that take into account irregular fluctuation in earnings, pursuant to § 98.21(c); procedures and policies to ensure that parents are

not required to unduly disrupt their employment, training, or education to complete eligibility redetermination, pursuant to § 98.21(d); limiting any requirements to report changes in circumstances in accordance with § 98.21(e); policies that take into account children's development and learning when authorizing child care services pursuant to § 98.21(f); and other policies and practices such as timely eligibility determination and processing of applications.

Grants or contracts. We propose to add language at § 98.16(i)(1), as redesignated, 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(a)(3) describing funding methods for child care services, discussed later in this proposed rule.

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 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 rate surveys, child care 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). At § 98.16(i)(2), as redesignated, is amended to reference §98.30(e)(1)(iii). The remaining subparagraphs remain unchanged.

Consumer education. We add language at § 98.16(j), as redesignated, to reference statutory changes to provide comprehensive consumer and provider education, including the posting of monitoring and inspection reports, pursuant to § 98.33, changes which are discussed later in this proposed rule.

Co-payments. We propose to revise language at § 98.16(k), as redesignated, requiring Lead Agencies to include a description of how co-payments are affordable for families, pursuant to § 98.45(k), including a description of any criteria established by the Lead Agency for waiving contributions for families. This proposed change is discussed later.

Health and safety standards and monitoring. We add a provision at § 98.16(l), as redesignated, requiring Lead Agencies to provide a description of any exemptions to health and safety requirements for relative providers made in accordance with § 98.41(a)(2), which is discussed later in this proposed rule.

We propose adding three new paragraphs, (m) through (o), requiring Lead Agencies to describe the child care standards for child care providers receiving CCDF funds, that includes group size limits, child-staff ratios, and required qualifications for caregivers, teachers, and directors, in accordance with § 98.41(d); monitoring and other enforcement procedures to ensure that child care providers comply with applicable health and safety requirements pursuant to § 98.42; and criminal background check requirements, policies, and procedures, including the

process in place to respond to other States', Territories', and Tribes' requests for background check results in order to accommodate the 45 day timeframe, in accordance with § 98.43.

Training and Professional Development. We propose to add § 98.16(p) requiring Lead Agencies to describe training and professional development requirements for caregivers, teachers, and directors of child care providers who receive CCDF funds in accordance with § 98.44. Paragraph (q), as redesignated, remains unchanged.

Payment rates. We revise § 98.16(r), as redesignated, to include the option of using an alternative methodology to set provider payment rates. This provision is described later in this proposed rule.

We revise paragraph (s), as redesignated, to include a detailed description of the State's hotline for complaints. This provision is described later in the proposed rule. Paragraph (t), as redesignated (previously paragraph (n)), remains unchanged.

We revise § 98.16(u), as redesignated (previously paragraph (o)), to include in the description of the licensing requirements, any exemption to licensing requirements that is applicable to child care providers receiving CCDF funds; a demonstration of why this exemption does not endanger the health, safety, or development of children; and a description of how the licensing requirements are effectively enforced, pursuant to § 98.42.

Building supply and quality. We also propose a new § 98.16(x) based on statutory language at Section 658E(c)(2)(M) requiring the Lead Agency to describe strategies to increase the supply and improve the quality of child care services for children in underserved areas, infants and toddlers, children with disabilities, and children who receive care during nontraditional hours. As described in the statute, strategies may include alternative payment rates to child care providers, the provision of direct contracts or grants to community-based

organizations, offering child care certificates to parents, or other means determined by the Lead Agency.

Pursuant to § 98.50 as proposed, Lead Agencies would be required to use CCDF funds for some direct contracts or grants for child care services. For contracts to be effective at increasing the supply of high quality care, contracts should be funded at levels that are sufficient to meet any higher quality standards associated with that care. Along with increased rates and contracts, we encourage Lead Agencies to consider other strategies, including training and technical assistance to child care providers to increase quality for these types of care.

We add § 98.16(y) requiring Lead Agencies to describe how they prioritize increasing access to high quality child care and development services for children of families in areas that have significant concentrations of poverty and unemployment and that do not have sufficient numbers of such programs, pursuant to § 98.46(b). This provision is discussed later in this proposed rule.

Finally, we propose to add § 98.16(z) reiterating the statutory requirement for Lead Agencies to describe how they develop and implement strategies to strengthen the business practices of child care providers to expand the supply, and improve the quality of, child care services. Some child care providers need support on business and management practices in order to run their child care businesses more effectively and devote more time and attention to quality improvements. Improved business practices can benefit caregivers and children. An example of a key business practice is providing paid sick leave for caregivers to keep children healthy. Without paid time off, caregivers may come to work sick and risk spreading illnesses to children in care. We also encourage child care providers to provide paid sick leave because it promotes better health for child care employees, which is important to maintaining a stable workforce as

well as consistency of care for children. According to The Council of Economic Advisors, "[Pa]id sick leave also induces a healthier work environment by encouraging workers to stay home when they are sick." (The Economics of Paid and Unpaid Leave, The Council of Economic Advisors, June 2014.)

Emergency preparedness. We propose to add § 98.16(aa) to the regulation, based on Section 658E(c)(2)(U) of the Act, to require the Lead Agency to demonstrate how the Lead Agency will address the needs of children, including the need for safe child care, before, during and after a state of emergency declared by the Governor or a major disaster or emergency (as defined by section 102 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5122) through a Statewide Child Care Disaster Plan (or Disaster Plan for a Tribe's service area). The Disaster Plan must be developed in collaboration with the State/Territory human services agency, the State/Territory emergency management agency, the State/Territory licensing agency, local and State/Territory child care resource and referral agencies, and the State/Territory Advisory Council on Early Childhood Education and Care, or similar coordinating body. Tribes must have similar Disaster Plans, for their Tribal service area, developed in consultation with relevant agencies and partners. The Disaster Plan must include guidelines for continuation of child care subsidies and child care services, which may include the provision of emergency and temporary child care services and temporary operating standards for child care during and after a disaster; coordination of post-disaster recovery of child care services; and requirements that providers receiving CCDF funds and other child care providers, as determined appropriate by the Lead Agency, have in place procedures for evacuation, relocation, shelter-in-place, lock-down, communication and reunification with families, continuity of operations, accommodations of infants and toddlers, children with disabilities, and

children with chronic medical conditions; and procedures for staff and volunteer emergency preparedness training and practice drills, including training requirements for caregivers of providers receiving CCDF.

This provision largely reflects statutory language of Section 658E(c)(2)(U), but we have clarified that the Plan must apply, at a minimum, to CCDF providers and may apply to other providers (such as all licensed providers) at the Lead Agency option. We also added language on post-disaster recovery.

In past disasters, the provision of emergency child care services and rebuilding and restoring of child care facilities and infrastructure emerged as an essential service. 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. The Commission's report included two primary sets of 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 has also been recognized by the Federal Emergency Management Agency (FEMA) as an essential service and an important part of disaster response and recovery. (FEMA Disaster Assistance Fact Sheet 9580.107, Public Assistance for Child Care Services Fact Sheet, 2013).

Maintaining the safety of children in child care programs during and after disaster or emergency situations necessitates planning in advance by State/Territory agencies and child care providers. The reauthorization of the CCDBG Act, and this proposed rule, implement the key recommendation of the National Commission on Children and Disasters by requiring a child

care-specific Statewide Disaster Plan. ACF has previously issued guidance (CCDF-ACF-IM-2011-01) recommending that Disaster Plans include five key components: (1) planning for continuation of services to CCDF families; (2) coordinating with emergency management agencies and key partners; (3) regulatory requirements and technical assistance for child care providers; (4) provision of temporary child care services after a disaster, and (5) rebuilding child care after a disaster. The guidance recommends that disaster plans for child care incorporate capabilities for shelter-in-place, evacuation and relocation, communication and reunification with families, staff training, continuity of operations, accommodation of children with disabilities and chronic health needs, and practice drills. ACF intends to provide updated guidance and TA to States, Territories, and Tribes as they move forward with implementing Disaster Plans as required by the reauthorization.

Payment practices. We propose new § 98.16(bb), requiring Lead Agencies to describe payment practices applicable to child care providers receiving CCDF, pursuant to § 98.45(m), including practices to ensure timely payment for services, to delink provider payments from children's occasional absences to the extent practicable, and to reflect generally-accepted payment practices. This is discussed later in this proposed rule.

Program integrity. We propose new § 98.16(cc), requiring Lead Agencies to describe processes in place to describe internal controls to ensure integrity and accountability; processes in place to investigate and recover fraudulent payments and to impose sanctions on clients or providers in response to fraud; and procedures in place to document and verify eligibility, pursuant to § 98.68. This change corresponds to a new program integrity section included in subpart G of the regulations, which is discussed later in the NPRM.

Outreach and services for families and providers with limited English proficiency and persons with disabilities. We propose to add a new § 98.16(dd) to require that the Lead Agency describe how it would provide outreach and services to eligible families with limited English proficiency and persons with disabilities, and facilitate participation of child care providers with limited English proficiency and disabilities in CCDF. Currently, the Plan requires Lead Agencies to describe how they provide outreach and services to eligible limited English proficient families and providers. In the FY 2014-2015 CCDF Plans, States and Territories reported a number of strategies to overcome language barriers. Forty-nine States and Territories have bilingual caseworkers or translators, 44 have applications in multiple languages, and 18 offer provider contracts or agreements in multiple languages. We are proposing to require that Lead Agencies develop policies and procedures to clearly communicate program information such as requirements, consumer education information, and eligibility information, to families and child care providers of all backgrounds.

Suspension and expulsion policies. We propose to add a new § 98.16(ee) to require that the Lead Agency describe its policies on suspension and expulsion of children from birth to age five in child care and other early childhood programs receiving CCDF funds, which must be disseminated as part of consumer and provider education efforts in accordance with §98.33(b)(1)(v). This requirement is detailed later in this proposed rule.

Reports of serious injuries or death in child care. We propose to add new § 98.16(ff) to require the Lead Agency to designate a State, Territorial, or Tribal entity to which child care providers must submit reports of any serious injuries or deaths of children occurring in child care, regardless of whether or not they receive CCDF assistance.

Family Engagement. We propose to add new § 98.16(gg) to require the Lead Agency to describe how it would support child care providers in the successful engagement of families in children's learning and development.

Complaints received through the national hotline and website. We propose to add new § 98.16(hh) to require the Lead Agency to describe how it will respond to complaints received through the national hotline and website, required in the reauthorized CCDBG Act (Section 658L(b)(2)). The description must include the designee responsible for receiving and responding to those complaints for both licensed and license-exempt child care providers. Clear channels of communication are crucial to ensure that complaints submitted through the national hotline or website are responded to quickly, especially when a child's health or safety is at risk. This proposed plan provision is aimed at building those connections and ensuring that a process is in place for addressing complaints regarding both licensed and license-exempt child care providers.

Finally, we have redesignated paragraph (v) as paragraph (ii) 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 triennially 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.

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, and/or sliding fee scales so as to 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. 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. We are providing Lead Agencies with flexibility to determine an appropriate time period for advance notice, since this may vary, such as depending on the type of policy change being implemented or the effective date of that policy change. Advance notice would 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. We note that while we encourage Lead Agencies to provide written notice of any changes that affect income eligibility, payment rates, and/or sliding fee scales, we would only require written notice of those that adversely impact parents or providers.

We would not require the Lead Agency to hold a formal public hearing or solicit comments on each Plan amendment, as is required by current regulations at § 98.14(c) for the submission of the CCDF Plan. However, we encourage solicitation of public input whenever possible and consider this proposed regulatory change to be consistent with the spirit and intent of the CCDF Plan public hearing provision. Paragraph (c) of § 98.18 describing appeal and disapproval of a Plan or Plan amendment would remain unchanged.

Requests for Temporary Relief from Requirements (Section 98.19)

Section 658I(c) of the CCDBG Act indicates that Lead Agencies are allowed to submit a request to the Secretary to waive one or more requirements contained in the CCDBG Act to ensure that effective delivery of services are not interrupted by conflicting or duplicative requirements, to allow for a period of time for a State legislature to enact legislation to implement the provisions of the Act or this part, or in response to extraordinary circumstances, such as a natural disaster or financial crisis. We are proposing to extend the waiver option to rules under this part as well. Prior to the enactment of the CCDBG Act in 2014, there was no waiver authority within the CCDF program.

We propose new § 98.19, Requests for Temporary Relief from Requirements, to provide guidance and clarity on: the eligibility of States, Territories, and Tribes to request a waiver; what provisions would not be eligible for waivers; and how the waiver request and approval (or disapproval) process would work. In addition to outlining the requirements detailed in the CCDBG Act of 2014, § 98.19 includes clarifying provisions to provide greater understanding of the intent and implementation of the waiver process.

This section details the process by which the Secretary may waive one or more of the requirements contained in the Act or this part, with the exception of State Match and Maintenance of Effort requirements, consistent with the requirements described in section 658I(c)(1) of the Act. In order for a waiver application to be considered, the waiver request must: describe circumstances that prevent the State, Territory, or Tribe from complying with any statutory or regulatory requirements of this part; demonstrate that the waiver, by itself, contributes to or enhances the State's, Territory's, or Tribe's ability to carry out the purposes of

this part; show that the waiver will not contribute to inconsistency with the objectives of this law; and meet the additional requirements in this section as described.

We propose to include a delineation of the types of waivers that States, Territories, and Tribes can request into two distinct types: (1) transitional and legislative waivers and (2) waivers for extraordinary circumstances. States, Territories, and Tribes may apply for temporary transitional and legislative waivers meeting the requirements described in this section that would provide temporary relief from conflicting or duplicative requirements preventing implementation, or for a temporary extension in order for a State, Territorial, or Tribal legislature to enact legislation to implement the provisions of this subchapter.

Transitional and legislative waivers are designed to provide States, Territories, and Tribes at most one full legislative session to enact legislation to implement the provisions of the Act or this part, and are limited to a one-year initial period and at most, an additional one-time, one-year renewal from the date of approval of the extension (which may be appropriate for a State with a two-year legislative cycle, for example).

Waivers for extraordinary circumstances would address temporary circumstances or situations, such as a natural disaster or financial crisis. Extraordinary circumstance waivers are limited to an initial period of no more than two years from the date of approval, and at most, an additional one-year renewal from the date of approval of the extension.

Both types of waivers are probationary, subject to the decision of the Secretary to terminate a waiver at any time if the Secretary determines, after notice and opportunity for a hearing, that the performance of a State, Territory, or Tribe granted relief under this subsection has been inadequate, or if such relief is no longer necessary to achieve its original purposes.

In order to request a waiver, the Lead Agency must submit a written request, indicating which type of waiver the State, Territory, or Tribe is requesting and why. The request must also provide detail on which provision(s) the State, Territory, or Tribe is seeking relief from and how relief from that sanction or provision, by itself, will improve delivery of child care services for children and families. If a transitional waiver, the Lead Agency should describe the steps being taken to address the barrier to implementation (*i.e.*, a timeline for legislative action). Furthermore, and importantly, in the written request, the State, Territory, or Tribe must certify and demonstrate that the health, safety, and well-being of children served through assistance received under this part will not be compromised as a result of the waiver.

Within 90 days of submission of the request, the Secretary would notify the State, Territory, or Tribe of the approval or disapproval. If rejected, the Secretary would provide the State, Territory, or Tribe, the Committee on Education and the Workforce of the House of Representatives, and the Committee on Health, Education, Labor, and Pensions of the Senate of the reasons for the disapproval and give the State, Territory, or Tribe the opportunity to amend the request. If approved, the Secretary would notify and submit a report to the Committee on Education and the Workforce of the House of Representatives and the Committee on Health, Education, Labor, and Pensions of the Senate on the circumstances of the waiver including each specific sanction or provision waived, the reason as given by the State, Territory, or Tribe of the need for a waiver, and the expected impact of the waiver on children served under this program.

No later than 30 days prior to the expiration date of the waiver, a State, Territory, or Tribe, at its option, may make a formal written request to re-certify the provisions described in this section, which must explain the necessity of additional time for relief from such sanction(s) or provisions. The Secretary may approve or disapprove a request from a State, Territory, or

Tribe for a one-time renewal of an existing waiver under this part for a period no longer than one year. The Secretary would adhere to the same approval or disapproval process for the renewal request as the initial request.

The goal of all the proposed inclusions at § 98.19 is to make continuity of the effective delivery of child care services a priority throughout the implementation process or in times of extraordinary circumstances. We are seeking comment on ways to ensure efficient and timely relief, when appropriate, for States, Territories, and Tribes impacted by extraordinary circumstances, such as natural disasters. Therefore, we ask for feedback about making the application process for waivers for extraordinary circumstances straightforward to provide States, Territories, and Tribes with minimal obstacles while they are likely in the preparedness, response, and recovery stages of handling the circumstances that prompted the initial request.

Subpart C – Eligibility for Services

This subpart establishes parameters for a child's eligibility for CCDF assistance and for Lead Agencies' eligibility and redetermination procedures. Congress made significant changes to CCDBG that emphasize stable financial assistance and continuity of care through CCDF eligibility policies, including establishing minimum 12-month eligibility for all children. In this subpart, we propose to restate these changes in regulation and provide additional clarification where appropriate.

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

A child's eligibility for child care services: This proposed rule clarifies at § 98.20(a) that eligibility criteria apply only at the time of eligibility determination or redetermination based on statutory language at Section 658E(c)(2)(N)(i) of the Act, which establishes a minimum 12-

month eligibility period by affirmatively stating that the child "will be considered to meet all eligibility requirements for such assistance and will receive such assistance, for not less than 12 months before the State or local entity re-determines the eligibility of the child." (We discuss minimum 12-month eligibility at greater length below.)

Income eligibility. We propose revising § 98.20(a)(2) by adding a sentence to clarify that the State median income (SMI) used to determine the eligibility threshold level must be based on the most recent SMI data that is published by the U.S. Census Bureau. This clarification would provide for use of the most current and valid data. It is important for Lead Agencies to use current data as, once determined eligible, children may continue to receive CCDF assistance until their household income exceeds 85 percent of SMI for a family of the same size, pursuant to § 98.21(a)(1) discussed further below, or at Lead Agency option, the family experiences a non-temporary cessation of work, training, or education. Using the most recent SMI data also allows for consistency for cross-State comparisons and a better understanding of income eligibility thresholds nationally. SMI data may not be available from the Census Bureau for some Territories, in which case an alternative source (subject to ACF approval through the CCDF State/Territory Plan process) may be used. The Act does not specify whether States should use the SMI with a single year estimate, a two-year average, or a three-year average (which is used by the Low Income Home Energy Assistance Program (LIHEAP)). We are requesting comment on whether ACF should provide additional guidance and specificity on the SMI used to determine eligibility.

Tribes are already allowed to use Tribal median income (TMI) (pursuant to § 98.81(b)(1)) and this would continue to be allowable under this proposed rule. ACF also recognizes that some Lead Agencies establish eligibility thresholds that vary by geographic area

and that some Lead Agencies use Area median income (AMI) to calculate income eligibility for different regions in order to account for cost of living variations across geographic areas. Lead Agencies may use AMI in their calculations, but must also report the threshold in terms of SMI in their Plan, and ensure that thresholds based on AMI are at or below 85 percent of SMI.

Asset limit. The Act revised the definition of eligible child at Section 658P(4)(B) so that in addition to being at or below 85 percent of SMI for a family of the same size, a member of the family must certify that the "family assets do not exceed $1,000,000 (as certified by a member of such family)," which we include in the proposed rule at § 98.20(a)(2)(ii). We interpret this language to mean that this requirement can be met solely through self-certification by a family member, with no further need for additional documentation. This new requirement provides assurance that CCDF funds are being used for families with the greatest need, but is not intended to impose an additional burden on families. In this proposed rule, we are not defining "family assets," but instead would allow the Lead Agency flexibility to determine what assets to count toward the asset limit.

Protective Services. Section 658P(4) of the CCDBG Act indicates that, for CCDF purposes, an eligible child includes a child who is receiving or needs to receive protective services. We are proposing to add language at § 98.20(a)(3)(ii) to clarify that the protective services category may include specific populations of vulnerable children as identified by the Lead Agency. Children do not need to be formally involved with child protective services or the child welfare system in order to be considered eligible for CCDF assistance under this category. 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. It is important to note that

including additional categories of vulnerable children in the definition of protective services is only relevant for the purposes of CCDF eligibility and does not mean that those children should automatically be considered to be in official protective service situations for other programs or purposes. It is critical that policies be structured and implemented so these children are not identified as needing formal intervention by the CPS agency, except in cases where that is appropriate for reasons other than the inclusion of the child in the new categories of vulnerable child for purposes of CCDF eligibility.

Similarly, we propose to remove the requirement that case-by-case determinations of income and co-payment fees for this eligibility category must be made by, or in consultation with, a child protective services (CPS) worker. While consulting with a CPS worker would no longer be a requirement, it would not be prohibited; a Lead Agency may consult with or involve a CPS caseworker as appropriate. We encourage collaboration with the agency responsible for children in protective services, especially when a child also is receiving CCDF assistance.

These changes would provide Lead Agencies with additional flexibility to offer services to those who have the greatest need, including high-risk populations, and reduce the burden associated with eligibility determination for vulnerable families.

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 existing 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. This proposed change would clarify, for example, that a family living in a homeless shelter may not meet certain eligibility requirements (*e.g.*, work or income requirements), but, because the child is in a vulnerable situation, could be considered eligible and benefit from access to high quality child care services.

This change was also included in the 2013 NPRM and received broad support in public comments. One commenter wrote this change "recognizes the particular challenges and barriers to assistance that these children [from other vulnerable populations] face and the importance of stable, supportive child care." Several commenters requested that the term "vulnerable populations" be defined at the Federal level and suggested several specific populations to be included in the definition—such as teen parents, the children of parents or guardians with disabilities who are unable to work, children with disabilities who have Individual Family Service Plans (IFSPs) or Individual Education Plans (IEPs), and children who are experiencing homelessness. While we encourage Lead Agencies to consider these vulnerable populations in their definitions and policies, we are declining to specifically define "vulnerable populations" in this proposed rule in order to allow Lead Agencies the flexibility to define the term in a way that is most responsive to the particular needs of their communities.

We note that this new provision would not require Lead Agencies to expand their definition of protective services. It merely provides the option to include other high-needs populations in the protective services category solely for purposes of CCDF, as many Lead Agencies already choose to do.

Additional eligibility criteria. Under existing regulations, Lead Agencies are allowed to establish eligibility conditions or priority rules in addition to those specified through Federal regulation so long as they do not discriminate, limit parental rights, or violate priority

requirements (these are described in full at § 98.20(b)). This proposed rule revises this section to add that any additional eligibility conditions or priority rules established by the Lead Agency cannot "impact eligibility other than at the time of eligibility determination or redetermination." This revision was made to be consistent with the aforementioned change to § 98.20(a) which says that eligibility criteria apply only at the time of determination or redetermination. It follows that the same would be true of additional criteria established at the Lead Agency's option.

We propose to add paragraph (c) clarifying that only the citizenship and immigration status of the child, the primary beneficiary of CCDF, is relevant for the purposes of determining eligibility under PRWORA and that a Lead Agency, or other administering agency, may not condition eligibility based upon the citizenship or immigration status of the child's parent. Under title IV of PRWORA, CCDF is considered a program providing Federal public benefits and thus is subject to requirements to verify citizenship and immigration status of beneficiaries. In 1998, ACF issued a Program Instruction (ACYF-PI-CC-98-08) which established that "only the citizenship status of the child, who is the primary beneficiary of the child care benefit, is relevant for eligibility purposes." This proposal codifies this policy in regulation and clarifies that Lead Agencies are prohibited from considering the parent's citizenship and immigration status.

ACF has previously clarified that when a child receives Early Head Start or Head Start services that are supported by CCDF funds and subject to the Head Start Performance Standards, the PRWORA verification requirements do not apply. Verification requirements also do not apply to child care settings that are subject to public educational standards. These policies remain in effect. (ACYF-PI-CC-98-09)

Eligibility Determination Processes (Section 98.21)

We propose to add a new section at § 98.21 to address the processes by which Lead Agencies determine and redetermine a child's eligibility for services.

Minimum 12-month eligibility. At § 98.21, we reiterate the statutory change made in Sec. 658E(c)(2)(N)(i) of the Act, which establishes minimum 12-month eligibility periods for all CCDF families, regardless of changes in income (as long as income does not exceed the Federal threshold of 85 percent of SMI) or temporary changes in participation in work, training, or education activities. Under the law, Lead Agencies may not terminate CCDF assistance during the 12-month period if a family has an increase in income that exceeds the Lead Agency's income eligibility threshold but not the Federal threshold, or if a parent has a temporary change in work, education or training. We note that during the minimum 12-month eligibility period Lead Agencies also may not end or suspend child care authorizations or provider payments due to a temporary change in a parent's work, training, or education status. In other words, once determined eligible, children are expected to receive a minimum of 12 months of child care services, unless family income rises above 85% SMI or, at Lead Agency option, the family experiences a non-temporary cessation of work, education, or training.

These requirements apply to both the initial eligibility period and any subsequent eligibility periods. Under the law, other than income exceeding 85 percent of SMI (unless the increase in income is considered temporary, pursuant with the irregular fluctuations in earning requirement discussed below), a family is considered to meet eligibility criteria for the entire 12-month period, though the Lead Agency has the option of also considering a status change due to non-temporary changes in employment, education, or training status (discussed below.)

As the statutory language states that a child determined eligible will not only be considered to meet all eligibility requirements, but also "will receive such assistance," Lead Agencies may not offer authorization periods shorter than 12 months as that would functionally undermine the statutory intent that, barring limited circumstances, eligible children shall receive a minimum of 12 months of CCDF assistance. We note that, despite the language that the child "will receive such assistance," the receipt of such services remains at the option of the family. The law does not require the family to continue receiving services nor would it force the family to remain with a provider if the family no longer chooses to receive such services.

We propose to define "temporary change" in the rule at § 98.21(a)(1)(ii) to include, at a minimum: 1) any time-limited absence from work for employed parents for periods of family leave (including parental leave) or sick leave; 2) any interruption in work for a seasonal worker who is not working between regular industry work seasons; 3) any student holiday or break for a parent participating in training or education; 4) any reduction in work, training or education hours, as long as the parent is still working or attending training or education; and 5) any cessation of work or attendance at a training or education program that does not exceed three months or a longer period of time established by the Lead Agency.

The above circumstances represent temporary changes to the parents' schedule or conditions of employment, but do not constitute permanent changes to the parents' status as being employed or attending a job training or educational program. This definition is in line with Congressional intent to stabilize assistance for working families. Lead Agencies must consider all changes on this list to be temporary, but should not be limited by this definition and may consider additional changes to be temporary.

At § 98.21(a)(1)(ii)(F), we clarify that a child should retain eligibility despite any change in age, including turning 13 years old during the eligibility period. This is consistent with the statutory requirement that a child shall be "considered to meet all eligibility requirements" until the next redetermination. This allows Lead Agencies to avoid terminating access to CCDF assistance immediately upon a child's 13th birthday in a manner that may be detrimental to positive youth development and academic success or that might abruptly put the child at-risk if a parent cannot be with the child before or after school.

At § 98.21(a)(1)(ii)(G), we propose that a child retain eligibility despite "any change in residency within the State, Territory, or Tribal service area." This would provide stability for families who, under current practice, may lose child care assistance despite maintaining their State, Territory or Tribal residency. This may require coordination between localities within States, Territories, or Tribes or necessitate some Lead Agencies to change practices for allocating funding. We believe this level of coordination is essential, as the State, Territory, or Tribe is the entity responsible for CCDF assistance.

Nothing in this rule prohibits Lead Agencies from establishing eligibility periods longer than 12 months or lengthening eligibility periods prior to a redetermination. We encourage (but do not require) Lead Agencies to consider how they can use this flexibility to align CCDF eligibility policies with other programs serving low-income families, including Head Start, Early Head Start, Medicaid, or SNAP. For example, once determined eligible, children in Head Start remain eligible until the end of the succeeding program year. Children in Early Head Start are considered eligible throughout the course of the program. Consistent with existing ACF guidance (ACYF-PIQ-CC-99-02) a Lead Agency could establish eligibility periods longer than 12 months for children enrolled in Head Start and receiving CCDF in order to align eligibility

periods between programs. Similarly, a Lead Agency could establish longer eligibility periods during an infant or toddler's enrollment in Early Head Start or in other collaborative models, such as Early Head Start-Child Care Partnerships.

Operationalizing alignment across programs can be challenging, particularly if families enroll in programs at different times. While the Lead Agency must ensure that eligibility is not redetermined prior to 12 months, it could align with other benefit programs by "resetting the clock" on the eligibility period to extend the child's CCDF eligibility by starting a new 12-month period if the Lead Agency receives information, such as information pursuant to eligibility determinations or recertifications in other programs, that confirms the child's eligibility and current co-payment rate. Alignment promotes conformity across Federal programs, such as SNAP, and can simplify eligibility and reporting processes for families and administering agencies. However, it should be noted that a Lead Agency cannot terminate assistance for a child prior to the end of the minimum 12-month period if the recertification process of another program reveals a change in the family's circumstances, unless those changes impact CCDF eligibility (*e.g.*, a change in income over 85 percent of SMI or, at the option of the Lead Agency, a non-temporary change in the work, job training, or educational status of the parent).

Continued Assistance. If a parent experiences a non-temporary job loss or cessation of education or training, Lead Agencies have the option—but are not required—to terminate assistance prior to 12 months. Per the Act, prior to terminating assistance, the Lead Agency must provide a period of continued assistance of at least three months to allow parents to engage in job search activities. At the end of the minimum three-month period of continued assistance, if the parent is engaged in an eligible work, education, or training activity, assistance should not be terminated and the child should either continue receiving assistance until the next scheduled

redetermination or be redetermined eligible for an additional 12-month period. In this proposed rule, we clarify that assistance must be provided "at the same level" during the period. This clarification is important because reducing levels of assistance during this period would undermine the statutory intent to provide stability for families during times of increased need or transition.

It is important to note that the Act allows Lead Agencies to continue child care assistance for the full 12-month eligibility period even if the parent experiences a non-temporary job loss or cessation of education or training. The default policy is that a child remains eligible for the full minimum 12-month eligibility period, but the Lead Agency has the option to terminate assistance under these particular conditions. A Lead Agency may choose not to terminate assistance for any families prior to a redetermination at 12 months. If a Lead Agency chooses to terminate assistance under these conditions, it has the option of doing so for all CCDF families or for only a subset of CCDF families. For example, a Lead Agency could choose to allow priority families (*e.g.*, children with special needs, children experiencing homelessness) to remain eligible through their eligibility period despite a parent's loss of work or cessation of attendance at a job training or educational program, but terminate assistance (with a period of continued assistance) for families who do not fall in a priority category. Or, a Lead Agency may choose to allow families in certain types of care, such as high quality care, to remain eligible regardless of a parent's work or education activity.

While the Lead Agency must provide continued assistance for at least three months, there is no requirement to document that the parent is engaged in a job search or other activity related to resuming attendance in an education or training program during that time. In fact, we strongly

discourage such policies as they would be an additional burden on families and be inconsistent with the purposes of CCDF and this proposed rule.

If a Lead Agency does choose to terminate assistance under these circumstances, it should allow families that have been terminated to reapply as soon as they are eligible again instead of making the family wait until their original eligibility period would have ended in order to reapply.

A policy that provides continuous eligibility, regardless of non-temporary changes, would reduce the burden on families and the administrative burden on Lead Agencies by minimizing reporting and the frequency of eligibility adjustments. Retention of eligibility during periods of family instability (such as losing a job) can alleviate some of the stress on families, facilitate a smoother transition back into the workforce, and support children's development by maintaining continuity in their child care. Moreover, studies show that the same families that leave CCDF often return to the program after short periods of ineligibility. A report published by the Assistant Secretary for Planning and Evaluation (ASPE) at HHS, *Child Care Subsidy Duration and Caseload Dynamics: A Multi-State Examination,* found that "many families receive subsidies sporadically over time and frequently return to the subsidy programs after they exit." Short periods of subsidy receipt can be the result of a variety of factors, including eligibility policies and procedures. The "churning" present in CCDF demonstrates that families often lose their child care assistance for conditions that are temporary, which is detrimental for the family and child and inefficient for the Lead Agency.

Lead Agencies considering the option to terminate assistance in response to "non-temporary" changes are encouraged to use administrative data to understand the extent to which CCDF families currently cycle on and off the program, to make a determination as to whether it

is in the interest of anyone (child, parent, or agency) to terminate assistance for families who may ultimately return to the program.

We understand that some Lead Agencies include in their definition of allowable work activities a period of job search and allow children to qualify for CCDF assistance based on their parent(s) seeking employment. It is not our intention to discourage Lead Agencies from allowing job search activities as qualifying work. We believe that it is in line with the intent of the statute to allow Lead Agencies the option to end assistance prior to a redetermination if the parent(s) has not secured employment or educational or job training activities, as long as assistance has been provided for no less than three months. In other words, if a child qualifies for child care assistance based on a parent's job search, the Lead Agency has the option to end assistance after a minimum of three months if the parent has still has not found employment. Lead Agencies could choose, however, to provide additional months of job search to families as well or to continue assistance for the full minimum 12-month eligibility period.

We are soliciting comment on whether there are any additional circumstances other than those discussed above under which a Lead Agency should be allowed to end a child's assistance (after providing three months of continued assistance) prior to the minimum 12-month period. Commenters should remember that since these regulations must comply with statutory requirements, any suggestions must remain within the bounds of the CCDBG Act in order to be considered.

Based on feedback from States and various stakeholders, ACF has already considered possible exceptions to the minimum 12-month eligibility period for certain populations, such as children in families receiving TANF and children in protective services, but has decided that

such special considerations would be in conflict with the CCDBG Act, which clearly provides 12-month eligibility for all children.

Co-payments. At § 98.21(a)(3) we clarify that a Lead Agency cannot increase family co-payment amounts within the minimum 12-month eligibility period as raising co-payments within the eligibility period would not be consistent with the statutory requirement that the child "receive such assistance" for not less than 12 months. Protecting co-payments levels within the eligibility period provides stability for families and reduces administrative burden for Lead Agencies. We propose an exception to this rule for families that are eligible as part of the graduated phaseout provision discussed below.

In addition, we propose requiring the Lead Agency to allow families the option to report changes, particularly because we want to permit families to report those changes that could be beneficial to the family's co-payment or subsidy level. The Lead Agency must act upon such reported changes if doing so would reduce the family's co-payment or increase the subsidy. The Lead Agency would be prohibited from acting on the family's self-reported changes if it would reduce the family's benefit, such as increasing the co-payment or decreasing the subsidy.

We believe that the limitation on raising copayments, by protecting the child's benefit level for the minimum 12 month eligibility period, is consistent with the statutory requirement at 658E(c)(2)(N) that once deemed eligible, a child shall "receive such assistance, for not less than 12 months." Raising co-payments earlier that the 12 month period could potentially destabilize the child's access to assistance and has the unintended consequence of forcing working parents to choose between advancing in the workplace and child care assistance. This is discussed further below in the section on reporting changes in circumstances.

Graduated phaseout. New statutory language at Section 658E(c)(2)(N)(iv) requires Lead Agencies to have policies and procedures in place to continue child care assistance at the time of redetermination for children of parents who are working or attending a job training or educational program and whose income has risen above the Lead Agency's initial income eligibility threshold to qualify for assistance but remains at or below 85 percent of State median income. We are interpreting this provision to mean that children receiving CCDF assistance would remain income-eligible for CCDF until their family income exceeds 85 percent of SMI. Section 98.21(b)(1), as proposed, requires Lead Agencies that set their initial income eligibility level below 85 percent of SMI for a family of the same size to provide for a graduated phaseout of assistance by implementing one of two approaches: (1) two-tiered eligibility (an initial, entry-level income threshold and a higher exit-level income threshold for families already receiving assistance) with the exit threshold set at 85 percent of SMI. If a Lead Agency's initial eligibility threshold is set at 85 percent of SMI, it would be exempt from this requirement; or (2) using the tiered eligibility approach in (1) but for a limited period of not less than an additional 12 months.

Lead Agencies retain the authority to establish their initial income eligibility threshold at or below 85 percent of SMI. This rule proposes to give Lead Agencies the option to decide between allowing children, who are otherwise eligible, to stay on CCDF until their income exceeds 85 percent of SMI for a family of the same size or to adopt this approach for at least one additional year. This provision promotes continuity of care and is consistent with the statutory requirement that families retain child care assistance during an eligibility period as their income increases as long as it remains at or below 85 percent of SMI. We are seeking comments on the anticipated impacts of the proposed graduated phaseout provision, including suggestions for

possible alternative approaches to consider that would also promote continuity of care for children and family financial stability.

Pursuant to § 98.21(a)(3) as proposed, Lead Agencies are prohibited from increasing family copayments within the minimum 12-month eligibility period. We propose, in paragraph (b)(2), that Lead Agencies be permitted to adjust family co-payment amounts during the proposed graduated phaseout period to help families transition off of child care assistance. ACF encourages Lead Agencies to ensure that copayment increases are gradual in proportion to a family's income growth and do not constitute too high a cost burden for families so as to ensure stability as family income increases.

Income eligibility policies play an important role in promoting pathways to financial stability for families. Currently, 16 Lead Agencies use two-tiered income eligibility. However, even with higher exit-level eligibility thresholds in these States/Territories, a small increase in earnings may result in families becoming ineligible for assistance before they are able to afford the full cost of care. An unintended consequence of low eligibility thresholds is that low income parents may pass up raises or job advancement in order to retain their subsidy, which undermines a key goal of CCDF to help parents achieve independence from public assistance. As proposed, this rule would allow low-income families to continue child care assistance as their income grows to 85 percent of State median income in order to support financial stability.

Irregular fluctuations in earnings. In § 98.21(c), we propose to reiterate statutory language at Sec. 658E(c)(2)(N)(i)(1I) that Lead Agencies establish processes for initial determination and redetermination of eligibility that take into account parents' irregular fluctuations in earnings. We clarify that temporary increases in income should not affect eligibility or family copayments, including monthly income fluctuations that show *temporary*

increases, which when taken in isolation, may incorrectly indicate that a family is above the federal threshold of 85 percent of SMI, when in actuality their annual income remains at or below 85% SMI.

Lead Agencies retain broad flexibility to set their policies and procedures for income calculation and verification. We propose, as examples, several approaches Lead Agencies may take to account for irregular fluctuations in earnings. Lead Agencies may average family earnings over a period of time (*e.g.*, 12 months) to better reflect a family's financial situation; Lead Agencies may adjust documentation requirements to better account for average earnings, for example, by requesting the earnings statement that is most representative of the family's income, rather than the most recent statement; or Lead Agencies may choose to discount temporary increases in income provided that a family demonstrates that an isolated increase in pay (*e.g.*, short-term overtime pay, lump sum payments such as tax credits, etc.) is not indicative of a permanent increase in income.

Undue disruption. Pursuant to section 658E(c)(2)(N)(i)(II) of the CCDBG Act, we are adding § 98.21(d), which requires the Lead Agency to establish procedures and policies to ensure that parents, especially parents receiving TANF assistance, are not required to unduly disrupt their education, training, or employment in order to complete the eligibility redetermination process. This provision of the law seeks to protect parents from losing assistance for failure to meet renewal requirements that place unnecessary barriers or burdens on families, such as requiring parents to take leave from work in order to submit documentation in person or requiring parents to resubmit documents that have not changed (*e.g.*, children's birth certificates).

To meet this provision, Lead Agencies could offer a variety of family-friendly mechanisms through which parents could submit required documentation (*e.g.*, phone, email, online forms, extended submission hours, etc.). Lead Agencies could also consider strategies that inform families, and their providers, of an upcoming redetermination and what is required of the family. Lead Agencies could consider only asking for information necessary to make an eligibility determination or only asking for information that has changed and not asking for documentation to be re-submitted if it has been collected in the past (*e.g.*, children's birth certificates; parents' identification, etc.) or is available from other electronic data sources. Lead Agencies can pre-populate renewal forms and have parents confirm that information is accurate.

In general, ACF strongly encourages Lead Agencies to adopt reasonable policies for establishing a family's eligibility that minimize burdens on families. Given the new eligibility provisions established by reauthorization, Lead Agencies are encouraged to re-evaluate processes for verifying and tracking eligibility to simplify eligibility procedures and reduce duplicative requirements across programs. Simplifying and streamlining eligibility processes along with other proposed changes in the subpart may require significant change within the CCDF program. Lead Agencies should provide appropriate training and guidance to ensure that caseworkers and other relevant child care staff (including those working for designated entities) clearly understand new policies and are implementing them correctly.

Reporting changes in circumstance. Currently, many Lead Agencies have policies in place to monitor eligibility on an ongoing basis to ensure that at any given point in time a family is eligible for services, often called change-reporting or interim-reporting. As the revised statute provides that children may retain eligibility through changes in circumstance, it is our belief that

comprehensive reporting of changes in circumstance is not only unnecessary but runs counter to CCDF's goals of promoting continuity of care and supporting families' financial stability.

Additionally, there are challenges associated with interim monitoring and reporting, including costs to families trying to balance work or education and family obligations and costs to Lead Agencies administering the program. Overly burdensome reporting requirements can also result in increased procedural errors, as even parents who remain eligible may face difficulties complying with onerous reporting rules.

Lead Agencies should significantly reduce change reporting requirements for families within the eligibility period, and limit the reporting requirements to changes that impact CCDF eligibility. Under this proposed rule, a Lead Agency would be required to specify in its Plan any requirements for families to notify the Lead Agency (or its designee) of changes in circumstances between eligibility periods, and describe efforts to ensure such requirements do not impact continuity for eligible families between redeterminations (§ 98.21(e)).

Under paragraph (e)(1), the Lead Agency must require families to report a change at any point during the minimum 12-month period only in circumstances where the family's income exceeds 85% of SMI, taking into account irregular income fluctuations. At the option of the Lead Agency, the Lead Agency may require families to report changes where the family has experienced a non-temporary cessation of work, training, or education.

In paragraph (e)(2), we specify that any notification requirements shall not constitute an undue burden on families and propose that compliance with requirements must include a range of notification options (*e.g.*, phone, email, online forms, extended submission hours) and not require an in-person office visit to accommodate the needs of parents.

We also propose limiting notification requirements only to items that impact a family's eligibility (*e.g.*, income changes over 85 percent of SMI, and at Lead Agency option, the status of the child's parent as working or attending a job training or educational program) or those that are necessary for the Lead Agency to contact the family or pay providers (*e.g.*, a family's change of address or a change in the parent's choice of provider). Nothing in this rule or the law precludes Lead Agencies from examining additional eligibility criteria at the time of the next redetermination.

In paragraph (e)(4), we propose requiring Lead Agencies to allow families the option of reporting of information on an ongoing basis, particularly to allow families to report information that would be beneficial to their assistance (such as an increase in work hours that necessitates additional child care hours or a loss of earnings that could result in a reduction of the family copayment). While we encourage limiting reporting requirements for families, it was not our intent to limit the family's ability to report changes in circumstances, particularly in cases where they may have entered into more stressful or vulnerable situations or would be eligible for additional child care assistance.

Moreover, as proposed in § 98.21(e)(4), if a family reports changes on an ongoing basis to the Lead Agency that do not make the family ineligible, the Lead Agency must act on these provisions if it would increase the family's benefit, but cannot act on any information that would reduce the family's benefit. All of the above provisions would apply to any entities that perform eligibility functions in the CCDF program on the Lead Agency's behalf.

Finally, some Lead Agencies currently use electronic data from other State/Territory and Federal databases to verify or monitor CCDF eligibility. Lead Agencies may continue this practice, which is particularly useful in reducing the burden on families at the time of initial

determination or redetermination. However, Lead Agencies should ensure any such data that is acted upon during the minimum 12-month eligibility period conform to the above requirements for change reporting and all CCDF rules.

We recognize that some States currently send interim reporting forms to families during the eligibility period to request that families verify or update information. Some States use such interim reporting to align with processes in other programs, such as semi-annual SNAP simplified change reporting. We believe that such periodic reporting forms are contrary to the spirit of the law, which provides for minimum 12-month eligibility between redeterminations. We ask for comments on whether States should have the option for 6-month interim reporting forms for CCDF, and if such reports are allowed, the best way to structure them so as to promote continuity of services for the minimum 12-month eligibility period for eligible families, consistent with the law. We also ask for comment on whether States should be able to adjust co-payments or otherwise act on verified information (e.g., updated income information) received from other programs or sources. As discussed earlier, acting on information received pursuant to eligibility determinations or recertifications in other programs allows CCDF Lead Agencies to extend a child's eligibility by "resetting the clock" and starting a new 12-month period. We ask for comments on whether the benefits of this approach outweigh the impact of any co-payment increases, if allowed, during the minimum 12-month period, and whether those benefits would be a reason to allow Lead Agencies to act on verified information from other programs.

Program integrity. It is important to ensure that 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 redetermination periods, are consistent with and support 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 remain consistent with the requirements in this subpart, we are proposing to add § 98.21(a)(4) to affirmatively state that because a child meeting eligibility requirements at the most recent eligibility determination or redetermination is considered eligible between redeterminations as described in paragraph (a)(1), any payment for such a child shall not be considered an error or improper payment under subpart K due to the family's circumstances. This clarifies that compliance with the policies in this Subpart do not constitute an error and Lead Agencies will not be held accountable for payments within these parameters.

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. These proposed changes are intended to remove 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.

Some Lead Agencies currently use "look back" and recoupment policies as part of eligibility redeterminations. These review a family's eligibility for the prior eligibility period to see if the family was ineligible during any portion of that time and recoup benefits for any period where the family had been ineligible. ACF would like to clarify that there is no Federal requirement for Lead Agencies to recoup CCDF overpayments, except in instances of fraud. We also strongly discourage such policies as they may impose a financial burden on low-income families that is counter to CCDF's long-term goal of promoting family economic stability. The

Act affirmatively states an eligible child "will be considered to meet all eligibility requirements" for a minimum of 12 months regardless of increases in income (as long as income remains at or below 85 percent of SMI) or temporary changes in parental employment or participation in education and training. Therefore, there are very limited circumstances in which a child would not be considered eligible after an initial eligibility determination. We encourage Lead Agencies instead to focus program integrity efforts on the largest areas of risk to the program, which tend to be intentional violations and fraud involving multiple parties.

Existing regulations at § 98.60 indicate that Lead Agencies shall recover child care payments that are the result of fraud from the responsible party. While ACF does not define the term fraud and leaves flexibility to Lead Agencies, fraud in this context typically involves knowing and willful misrepresentation of information to receive a benefit. We urge Lead Agencies to carefully consider what constitutes fraud, particularly in the case of individual families.

Taking into consideration children's development and learning. The proposed rule affirms that both the child's development and the parent's need to work or attend school or training are factors in the child care needs of each family. This proposed rule would amend § 98.21 to add paragraph (f) to require that "Lead Agencies must take into consideration children's development and learning and promote continuity of care when authorizing child care services." There are myriad ways in which this provision could be incorporated into Lead Agencies' eligibility, intake, authorization, and CCDF policies and practices. ACF intends to work with Lead Agencies to provide technical assistance and identify a variety of strategies to fit different eligibility processes. As an example, in serving a preschool-aged child (*e.g.*, age 3 or 4), the Lead Agency may consider whether or not the child has access to a high quality preschool setting

and how CCDF can make enrollment in a high quality preschool more likely. Lead Agencies could partner with Head Start, pre-kindergarten, or other high quality programs to build an intentional package of arrangements for the child that allows for attendance at preschool and a second arrangement that accommodates the parent's work schedule. For infants and toddlers, a Lead Agency may want to coordinate services with Early Head Start, while also maintaining a secondary child care arrangement to preserve the relationship with a familiar caregiver, as it is particularly important for infants and toddlers to build and maintain secure relationships with caregivers. A Lead Agency could also offer parents the choice to select high quality infant slots that are funded through contracts or grants. For children of all ages, providing more intensive case management for families with children with multiple risk factors can increase the likelihood that the family will find a stable, quality child care provider that is willing to work with other service providers in assisting the child and family.

The intent of this provision is that the Lead Agency has some mechanism in place to consider the child's development and learning, but a Lead Agency has broad flexibility to determine how this is done. At a minimum, we would expect Lead Agencies to collect sufficient information during the CCDF intake process in order to make necessary referrals for services. For example, a Lead Agency could make sure there is an automatic referral of eligible children to Early Head Start or Head Start. A Lead Agency could include in their eligibility determination process a question about whether or not the child has an Individualized Education Program (IEP) or Individual Family Service Plan (IFSP), so that the parent could be provided with information on providers that are equipped to provide services that meet the child's individual needs.

ACF encourages Lead Agencies to engage in public-private partnerships so that responsibility for implementing this provision does not fall solely on CCDF eligibility workers. Partnerships with child care resource and referral agencies, early intervention agencies, and others may mean that a few well-chosen questions during the intake process can prompt the eligibility worker (or automated system if the process is online) to direct the family to appropriate resources. This proposed requirement does not require a developmental screening of every child as part of the eligibility process; however, child care agencies should partner to ensure that children in the CCDF subsidy system can access appropriate screening and follow-up.

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 best meet the developmental and learning needs of children in their policies and practices and to encourage partnerships among high quality providers, child care resource and referral agencies, and case management partners to strengthen CCDF's capacity to fulfill its child development mission for families.

No requirement to limit authorized care to parent schedule. The proposed rule would clarify at § 98.21(g) that "Lead Agencies are not required to limit authorized child care services strictly based on the work, training, or educational schedule of the parent(s) or the number of hours the parent(s) spend in work, training, or educational activities." Tying child care subsidy authorizations closely to parental work hours may limit access to high quality settings and does not support the fixed costs of providing care. In particular, it creates challenges for parents with variable schedules and inhibits their children from accessing a consistent child care arrangement. This provision clarifies that "matching" the hours of child care to a parent's hours of work is not

required. ACF believes that, in some cases, such "matching" works against the interests of the parent or child.

Lead Agencies are encouraged to authorize adequate hours to allow children to participate in a high quality program, which may be more hours than the parent is working or in education or training. For example, if most local high quality early learning programs offer only full-time slots, a child whose parent is working part-time may need authorization for full-time care.

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

Two of the Act's purposes are "to promote parental choice to empower working parents to make their own decisions regarding the child care services that best suits their family's needs" and "to encourage States to provide consumer education information to help parents make informed choices about child care services and to promote involvement by parents and family members in the development of their children in child care settings." Subpart D of the regulations describes parental rights and responsibilities and provisions related to parental choice, including 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.

Parental Choice (Section 98.30)

Group home child care. As discussed earlier, we are proposing a technical change to delete *group home child care* from the variety of child care categories at § 98.30(e) from which parents receiving a certificate for child care service must be able to choose.

In-home care. We propose to revise § 98.30(f)(2) to explicitly allow for Lead Agencies to adopt policies that may limit parental access to in-home care. This change aligns with current policy as discussed in the preamble to the 1998 Final Rule. Specifically, the preamble documented Lead Agencies' "complete latitude to impose conditions and restrictions on in-home care." (63 FR 39950) As discussed in the 1998 preamble, monitoring the quality of care and the appropriateness of payments to in-home providers poses special challenges for Lead Agencies. We continue to urge Lead Agencies to consider the factors that may lead parents to choose in-home care, including the need for care at non-traditional hours or care for children with special needs, when deciding whether to put limitations on in-home care. It is crucial that parents have access to the types of care necessary for them to work and for their children to be in a safe and enriching environment. While this proposed change codifies Lead Agencies' ability to impose limits on the use of in-home care, it does not allow for Lead Agencies to flatly prohibit the use of in-home care. As this is longstanding policy, we do not expect the proposed change to have a significant impact on families or Lead Agencies.

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 a range of child care 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 child care and education programs, and some have expressed concerns that the current regulatory language related to parental choice inhibits their ability to link the child care subsidy program to these systems. ACF published a Policy Interpretation Question (CCDF-ACF-PIQ-2011-01) clarifying that parental choice provisions do not preclude a Lead Agency from implementing policies that require child care

providers serving children receiving CCDF funds to meet certain quality requirements, including those specified within a quality improvement system. As long as parental choice conditions are met, a Lead Agency could require that, in order to provide care to children receiving CCDF, 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 clarifying 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 QRIS or other transparent system of quality indicators.

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, such as in-home care, and types of child care providers, such as relative providers, that may not be eligible to participate in the quality improvement system. This is particularly important for geographic areas lacking an adequate supply of child care or when a parent has scheduling, transportation, or other issues that prevent the use of a preferred provider within the system.

Lead Agencies should ensure adequate time and support for providers before implementing a policy that requires providers to meet a certain level of quality in order to be eligible to serve CCDF children. While most States and Territories have implemented a QRIS, the number of providers participating varies significantly. In order to implement the policy at § 98.30(g), Lead Agencies should ensure that an adequate number of child care providers are included in the QRIS to provide parents with a variety of settings and high quality child care options from which to choose. Furthermore, it is important to ensure that providers have been given the financial, technical, and professional development supports necessary to meet high quality standards.

Similarly, 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. For example, Lead Agencies may provide brochures or other products that encourage parents to select a high quality provider without violating parental choice provisions. This provision would allow, but not require, Lead Agencies to adopt policies that incentivize parents to choose high quality providers as determined by a system of quality indicators and we strongly encourage that they do so. We believe this policy change would help Lead Agencies leverage the CCDF quality funds that have been invested in

QRIS and ensure that more children receiving CCDF are in high quality child care, which is in line with the new purposes and provisions in the statute.

Lead Agencies would have the flexibility to determine what types of information and incentives to use to encourage parents to choose high quality providers. One option is to lower parental copayments for parents that choose a high quality provider. We encourage Lead Agencies, or their partners such as child care resource and referral agencies, to use information from a QRIS or other system of quality indicators to make recommendations and help parents make informed child care decisions, for example, by listing the highest rated providers at the top of a referral list and providing information about the importance of high quality child care. Lead Agencies are not limited to these examples and should design information sharing and incentives in a way that best fits the families they serve with CCDF.

Parental Access (Section 98.31)

We propose a technical change at § 98.31 to specify that Lead Agencies shall provide a detailed description "in the Plan" of how they ensure that providers allow parents to have unlimited access to their children while the children are in care. This corresponds to the provision at § 98.16(t).

Parental Complaints (Section 98.32)

Hotline for parental complaints. Section 658E(c)(2)(C) of the CCDBG Act requires Lead Agencies to maintain a record of substantiated parental complaints, make 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 elaborate on the statutory requirement by proposing § 98.32(a), which would require Lead Agencies to "establish or designate a hotline or similar reporting process for parents to submit complaints about child care providers." In connection with this change we have added a provision at § 98.33(d), to require Lead Agencies to include in the consumer statement for CCDF parents disclosure of the hotline number or other reporting process pursuant to this requirement. Lead Agencies should identify the capability for the parental complaint hotline to be accessible to persons with limited English proficiency and persons with disabilities, such as through the provision of interpretation services and auxiliary aids.

The purpose of the proposed parental complaint hotline is to provide parents with an easy way to submit complaints about a child care provider or their staff. The current process for complaint submission varies widely across Lead Agencies, with some lacking any system at all. According to an analysis of FY 2014-2015 CCDF Plans, as well as State/Territory child care and licensing websites, 18 States/Territories have a parental complaint hotline that covers all CCDF providers, 22 States/Territories have a parental complaint hotline that covers some child care providers, and 16 States/Territories do not have a parental complaint hotline. Maintaining and sharing substantiated complaints is a statutory requirement and establishing a clear, easily-accessible way for parents to file complaints is an important part of meeting that requirement.

The value of parental complaint hotlines is illustrated by the longstanding national hotline established for the Department of Defense (DOD) military child care program. The Military Child Care Act of 1989 (Pub. L. No. 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 an important tool in engaging parents in child

care. In addition, complaints received through the hotline have helped DOD identify problematic child care programs. (Campbell, N., Appelbaum, J., Martinson, K., *Be All That We Can Be: Lessons from the Military for Improving Our Nation's Child Care System*, National Women's Law Center, 2000).

Lead Agencies can meet the proposed requirement at § 98.32(a) by establishing a telephone hotline or other type of system, such as a web- based system for accepting parental complaints about child care providers. However, we discourage reliance on only a web-based system as some families may have limited access to the Internet. We strongly encourage a parental complaint system that includes multiple submission platforms such as both telephonic and web-based submission. Regardless of the type of system utilized, Lead Agencies are encouraged to establish multilingual options and to ensure access for those with hearing and vision impairments.

The Lead Agency may choose a different agency at the State, Territory, Tribal, or local level to manage the parental complaint system or find ways to combine the process for collecting parental complaints with already existing hotlines. For example, in some States/Territories the licensing agency handles complaints of licensed providers and a different agency handles license-exempt providers. Lead Agencies may choose to devolve management of a complaint system to the local level in order to facilitate more prompt and timely follow-up. We leave it to the discretion of the Lead Agency to determine the best way to manage the hotline.

We also strongly encourage Lead Agencies to implement a single point of entry (*e.g.*, one toll-free hotline number) as the most straightforward way for parents to file a complaint. There should not be a burden for the parent in finding the correct hotline number or webpage address. Many parents may not know whether the provider is licensed or license-exempt, for example,

and therefore will not know which hotline to call if there are separate contact points for providers. Lead Agencies that choose to combine existing lines or devolve responsibility to local agencies should set-up a single point of entry with a process to immediately refer the call to the appropriate agency.

Lead Agencies should widely publicize the process for submitting a complaint about a provider and consider requiring child care providers to publicly post the process, including the hotline number and/or URL for the web-based complaint system, in their center or family child care home. Other areas for posting may be on the website required by § 98.33(a), through a child care resource and referral network, at local agencies where parents apply for benefits, or other consumer education materials distributed by the Lead Agency. In addition to making sure this information is made widely available to the public, the hotline or other reporting process must be disclosed to parents receiving CCDF as part of their consumer statement at § 98.33(d). To be most useful, parents should be able to file a complaint at any time. We strongly recommend that a telephonic hotline be operational 24 hours a day, or at minimum include a voicemail system that allows parents to leave complaints when an operator is not available. We encourage Lead Agencies to have a complaint response plan in place that includes appropriate time frames for following up on a complaint depending on the urgency or severity of the parent's concern and other relevant factors. We are not requiring Lead Agencies to do a monitoring visit in response to a complaint. However, inspections and monitoring visits may be necessary in order to substantiate the complaints received through the proposed hotline. Therefore, Lead Agencies should have a process for substantiating those complaints. We strongly recommend this process include unannounced visits in response to a complaint pertaining to the health and safety of children in the care of child care providers receiving CCDF. As discussed in Subpart E of this

preamble, we are seeking comment on whether the final rule should include a requirement that Lead Agencies conduct an unannounced monitoring visit in response to a complaint, and whether this requirement should apply to providers receiving CCDF funds or additional providers.

We propose a technical change at § 98.32(c), which we propose to redesignate as § 98.32(d), to specify that Lead Agencies shall provide a detailed description "in the Plan" of how they will maintain and make available to the public a record of substantiated parental complaints. This corresponds to the provision at § 98.16(s).

Consumer and Provider Education (Section 98.33)

In the 2014 reauthorization, Congress expanded the requirements related to consumer and provider education. Section 658E(c)(2)(E) of the CCDBG Act requires Lead Agencies to collect and disseminate, through child care resource and referral organizations or other means as determined by the Lead Agency, to parents of eligible children, the general public, and, where applicable, providers, consumer education information that will promote informed child care services. In addition, Section 658E(c)(2)(D) requires monitoring and inspection reports of child care providers to be made available electronically. This focus on consumer education as a crucial part of parental choice has laid the foundation for a more transparent system, helping parents to better understand their child care options and encouraging providers to improve the quality of their services.

Every interaction parents have with the subsidy system is an opportunity to engage them in consumer education to help them make informed decisions about their child care providers, as well as provide resources that promote child development. We propose that consumer education services be directly included as part of the intake and eligibility process for families applying for

child care assistance. Parents of eligible children often lack the information necessary to make informed decisions about their child care arrangement. 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, limited English proficiency, or disabilities. Lead Agencies can play an important role in bridging the gap created by these barriers by providing information directly to families receiving CCDF subsidies to ensure they fully understand their child care options and are able to assess the quality of providers.

When implementing proposed consumer and provider education provisions, we recommend Lead Agencies consider three target audiences: parents, the general public, and child care providers. While some components are aimed at ensuring parents have the information they need to choose a child care provider, others are equally important for caregivers who interact with parents on a regular basis and can serve as trusted sources of information.

Lead Agencies should ensure that all materials are consumer-friendly and easily accessible; this includes using plain language and considering the abilities, languages, and literacy levels of the targeted audiences. Lead Agencies should consider translation of materials into multiple languages, as well as the use of "taglines" on consumer education materials for frequently encountered non-English languages and to inform persons with disabilities how they can access auxiliary aids or services and receive information in alternate formats at no cost.

Consumer education website. We propose amending paragraph (a) of § 98.33 to require Lead Agencies "to collect and disseminate consumer education information to parents of eligible children, the general public, and providers through a consumer-friendly and easily accessible website." The website must, at a minimum, include five components: (1) Lead Agency policies and procedures, (2) provider-specific information, (3) aggregate number of deaths, serious

injuries, and instances of substantiated child abuse in child care settings each year (4) referral to local child care resource and referral organizations, and (5) directions on how parents can contact the Lead Agency, or its designee, and other programs to better understand information on the website. The specifics of each component are discussed in detail below.

The statute requires the website to be consumer-friendly and easily accessible. To ensure that the website is accessible for all families, we propose to require that it provide for the widest possible access to services for families who speak languages other than English and persons with disabilities. Lead Agencies should make sure the website meets all Federal and State laws regarding accessibility, including the Americans with Disabilities Act (ADA) of 1990 (42 U.S.C. 12101, *et seq.*), to ensure that individuals with disabilities are not excluded, denied services, segregated or otherwise treated differently because of the absence of auxiliary aids and services. We recommend Lead Agencies follow the guidelines laid out by section 508 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 794d), when designing their websites. Section 508 requires that individuals with disabilities, who are members of the public seeking information or services from a Federal agency, have access to and use of information and data that is comparable to that provided to the public who are not individuals with disabilities. The US Department of Justice has provided guidance and resources on how to create an accessible site at http://www.ada.gov/websites2.htm.

Parents should be able to access all consumer information they need to make an informed choice through a simple, single online source. We encourage Lead Agencies to review current systems and redesign if needed to allow for a single point of entry, especially if the systems are funded with CCDF funds. However, we recognize that Lead Agencies have made significant investments in databases and other web-based applications. For many States/ Territories, the

CCDF Lead Agency and the licensing agency may not be the same, leading to multiple data systems with different ownership. We do not intend to require completely new systems be built. Rather, the website would be a single starting point for parents to access the various sources of public information required by the statute, including health and safety information, licensing history, and other related provider information. In the case where this information is already available on multiple websites, such as in a locally-administered State where each county has its own website, the Lead Agency could choose to create a single webpage that includes links to each of these websites, provided that each of the websites meets all the criteria at § 98.33(a). Similarly, if there are two websites, one that includes licensed providers and another that includes CCDF providers, we strongly encourage Lead Agencies to create a single website through which parents can access information.

The first statutorily required component of the consumer education website is a description of Lead Agency policies and procedures relating to child care. This includes explaining how the Lead Agency licenses child care providers including the rationale for exempting providers from licensing requirements, as described at § 98.40; the procedure for conducting monitoring and inspections of child care providers, as described at § 98.42; policies and procedures related to criminal background checks for staff members of child care providers, as described at § 98.43; and the offenses that prevent individuals from being employed by a child care provider or receiving CCDF funds. The information about Lead Agency policies and procedures included on the consumer education website should be in plain language.

The second proposed component is provider-specific information in several categories for all eligible and licensed child care providers, excluding those related to all children in their care. These categories include a localized list of all providers that is searchable by zip code and

differentiates whether they are licensed or license-exempt providers; information about the quality of a provider as determined by the Lead Agency, if the information is available for that provider; and the results of monitoring and inspection reports, including those due to major substantiated complaints about failure to comply with health and safety provisions and Lead Agency policies, if available; and the number of serious injuries and deaths of children occurring in that child care setting . When making information public, Lead Agencies should ensure that the privacy of individual caregivers and children is maintained, consistent with State and, local, and tribal laws.

While not required, we recommend that Lead Agencies include additional information with provider profiles, beyond what is required by statute, including contact information, enrollment capacity, years in operation, education and training of caregivers, and languages spoken by caregivers. We also suggest that the quality information and monitoring reports be included in the initial search results.

The Act requires the Secretary to operate a national website for consumer education and submission of complaints. (Section 658L(b)(2)). The statute requires several components be included in the website, including many of the same requirements of the Lead Agency consumer education websites. We are proposing to incorporate all requirements of the national website into the requirements of the Lead Agency consumer education website, including the localized list of child care providers searchable by zip code proposed at § 98.33(a)(2)(i). The statute allows for the national website to provide the information either "directly or through linkages to State databases." It is not feasible or sensible for HHS to recreate databases many States have already created. Therefore, we are proposing to require Lead Agencies to include these components in their databases and websites to which we plan to link the national website. We welcome

comments regarding this proposed provision and suggestions for having the national website link to State/Territory-level databases and websites.

The website must include provider-specific quality information as determined by the Lead Agency, in accordance with Section 658E(c)(2)(E)(i)(II) of the Act. Lead Agencies may choose the best method for differentiating the quality levels of child care providers. In this proposed rule, we are not requiring that Lead Agencies have a QRIS. However, we strongly encourage Lead Agencies to use a QRIS, or other transparent system of quality indicators, to collect the quality information proposed at § 98.33(a)(2)(ii). Lead Agencies that have a QRIS should use information from the QRIS to provide parents with provider-specific quality information. By transparent system of quality indicators we mean a method of clear, research-based indicators that are appropriate for different types of providers, including child care centers and family child care homes, and appropriate for providers serving different age groups of children, including infants, toddlers, preschool, and school-age children. The system should help families easily understand whether a provider offers services meeting Lead Agency-determined best practices and standards to promote children's development, or is meeting a nationally recognized, research-based set of criteria, such as Head Start or national accreditation. We encourage Lead Agencies to incorporate mandatory licensing requirements as the foundation of any system of quality indicators, as a baseline of information for parents. By building on licensing structures, Lead Agencies may have an easier transition to a more sophisticated system that differentiates between indicators of quality.

Because not all eligible and licensed non-relative child care providers may be included in a transparent system of quality indicators, the proposed regulation clarifies that provider-specific quality information must only be posted on the consumer website if it is available for the

individual provider, which is a caveat included in statute. 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 the quality information provided on the website to be meaningful and useful for parents it should include as many providers as possible. We are not proposing a specific participation rate, but the public should have contextual information regarding the extent of participation by providers in a system of quality indicators.

In designing a mechanism for differentiating child care quality, 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; ensure assessments of quality include program standards that are developmentally appropriate for different age groups; incorporate feedback from child care providers 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 child care resource and referral programs and other public agencies that serve low-income parents.

The majority of States/Territories reported in their FY 2014-2015 CCDF Plans that they have at least started to implement a QRIS. HHS has established a Priority Performance Goal to track the number of States that implement a QRIS meeting recommended benchmarks, and, as of FY 2014, 29 States/Territories met the benchmark, and 27 States/Territories have made progress on implementing a high quality QRIS that meets HHS benchmarks since the goal was establish in FY 2011.

While ACF encourages Lead Agencies to implement a systemic framework for evaluating, improving, and communicating the level of quality in child care programs, we are not

limiting Lead Agencies to a QRIS as the only mechanism for collecting the required quality information. Lead Agencies have the flexibility to implement more limited, alternative systems of quality indicators. For example, Lead Agencies could choose to use a profile or report card of information about a child care provider that could include compliance with State/Territory 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 caregivers to work with young English learners or children with special needs. Lead Agencies could also build on existing professional development registries or other training systems to provide parents with information about caregiver training.

Section 658E(c)(2)(D) of the Act requires Lead Agencies to also include provider-specific results of monitoring and inspection reports, including those reports that are due to major substantiated complaints (as defined by the Lead Agency) about a provider's failure to comply with health and safety requirements and other Lead Agency policies. The definition of "major substantiated complaint" varies across the country. Therefore, we are not proposing a standard definition. However, the proposed rule would require Lead Agencies to explain how they define it on their consumer education websites. This proposed requirement ensures that the results of proposed monitoring and inspection requirements at § 98.42 are available to parents when they are deciding on a child care provider.

We propose requiring Lead Agencies to post full monitoring and inspection reports. In order for inspection results to be consumer-friendly and easily accessible, Lead Agencies would be required to use plain language for parents and child care providers and caregivers to understand. Often monitoring and inspection reports are long and include jargon and references to codes or regulations without any explanation. Reports that include complicated references and

lack explanation are not consumer-friendly, limiting a parent's ability to make an informed decision about a child care provider. In the case that full reports are not in plain language, Lead Agencies must post a plain language summary or interpretation in addition to the full monitoring and inspection report. We encourage Lead Agencies to consider simplifying and translating their monitoring and inspection reports in order to create more consumer-friendly documents.

We propose to require that results be posted in a timely manner and include information about the date of inspection, information about any corrective actions taken by the Lead Agency and child care provider, where applicable, and include at least five years of results, where available going forward. A single year of results could mask patterns of infractions and is insufficient for a parent to judge the safety of the environment. We do not expect Lead Agencies to post reports retrospectively or prior to the effective date of this provision (November 17, 2017). We expect Lead Agencies to keep five years of results posted once they are available, beginning with the November 17, 2017 effective date (unless a provider has been providing services for less time). We believe five years is a reasonable amount of time to include on the website. As adding new results to the completed website should not be a burden for the Lead Agency, we expect all reports to remain on the website. Finally, while not required, if earlier reports are available, we encourage Lead Agencies to post them on the website in order to provide more information for parents.

Posting results and corrective actions in a timely manner is crucial to ensuring parents have updated information when making their provider decisions. We recommend Lead Agencies update results as soon as possible and no later than 90 days after an inspection or corrective action is taken. We are interested in comments on whether this is an appropriate amount of time. However, we are not in the proposed rule defining timely in the regulatory language. Rather, the

proposed rule would leave it to the discretion of the Lead Agency to determine a reasonable amount of time based on the needs of its families and its capacity for updating.

In following the statutory language at Section 658E(c)(2)(D), Lead Agencies must post the monitoring and inspections results for child care providers, as defined at § 98.2. This means that the website must include any provider subject to the monitoring requirements at § 98.42, as well as all licensed child care providers and all child care providers eligible to deliver CCDF services. Lead Agencies would be required to post inspection reports for child care providers that do not receive CCDF, if available. However, if information is not available, such as if a provider is not being inspected and there is no inspection report, the requirement does not apply.

Lead Agencies with concerns regarding providers' privacy could use a unique identifier, such as a licensing number, to include on the profile. Parents interested in a certain provider can ask the provider or the Lead Agency for the identifier in order to look up more information about health and safety requirements met by a certain provider on the website. Lead Agencies also may choose to provide only limited information about a provider, such as provider name and zip code to make it easier for parents to identify their chosen provider.

We strongly support Lead Agencies implementing policies that are fair to providers, including protections related to the consumer education website. Lead Agencies should establish an appeals process for providers that receive violations. This appeals process should include timeframes for filing the appeal, for the investigation, and for removal of any violations from the website determined on appeal to be unfounded. Lead Agencies also must ensure that the consumer education website is updated regularly. Some Lead Agencies currently allow providers to review monitoring and inspection results prior to posting on a public website. Nothing in this proposed rule should be taken as prohibiting that practice moving forward. However, the

proposed requirement that information be posted in a timely manner means that Lead Agencies may need to limit the amount of time providers have to review the results prior to posting.

Finally, we propose to require that Lead Agencies post provider-specific information about the number of serious injuries (as defined by the State) and deaths that occurred in child care for all eligible child care providers on the consumer education website. This information should be included as part of the child care provider's profile discussed earlier. This proposed requirement works in conjunction with the proposed provision at § 98.42(b)(4), which would require child care providers to report serious injuries or deaths occurring in child care. Because Lead Agencies have different definitions, we are not proposing to define serious injury in this proposed rule.

Whether a provider has a history of serious injuries or deaths of children while in their care is a crucial piece of information that parents must have access to in order to make an informed decision about a provider. In addition, learning that a provider does not have a history of violations may provide parents additional peace of mind when leaving their children with a provider.

We recognize that not all serious injuries or deaths of children that occur in child care are the fault of the child care provider. We recommend that Lead Agencies include additional information about the context of the serious injuries and deaths to ensure that parents have the full picture when looking at these numbers on the consumer education website.

We are not proposing to require provider-specific information on substantiated cases of child abuse and neglect that occurred while a child was in the care of the provider. The Child Abuse Prevention and Treatment Act (CAPTA) (42 U.S.C. 5106a(b)(2)(B)(viii)-(ix)) requires States to preserve the confidentiality of all child abuse and neglect reports and records to protect

the privacy of the child and the child's parent or guardian. We believe that requiring provider-specific information on occurrences of child abuse and neglect may violate some of those privacy requirements. However, we think it is important for parents to have access to this information as well. We request comment on whether this information should be included and suggestions for ensuring the information does not violate privacy rules.

The third statutorily required component of the consumer education website is posting of the aggregate number of deaths, serious injuries, and instances of substantiated child abuse that occurred in child care settings each year, for eligible child care providers. This proposed requirement is associated with the provider setting and therefore it should include information about any child in the care of a provider eligible to receive CCDF, not just children receiving subsidies. As with serious injuries, we are choosing not to define substantiated child abuse in this proposed rule. We encourage Lead Agencies to use their State or Territory child welfare agency's definition of substantiated child abuse for consistent reporting across programs. Because of the wide variation in how child abuse in child care settings is reported and counted, we are requesting comments and examples about best practices for ensuring accurate data is collected and posted on the consumer education website. Lead Agencies may choose how the data are presented on the website. We encourage them to include the data with the results of an annual review of all serious injuries and deaths occurring in child care, as proposed at § 98.53(f)(4).

The fourth proposed component of the consumer education website is the ability to refer to local child care resource and referral organizations, which is also a requirement of the national website discussed earlier. The website should include contact information, as well as any links to websites for any local child care resource and referral organizations.

The final component of the consumer education website is information on how parents can contact the Lead Agency, or its designee, or other programs that can help the parent understand information included on the consumer education website. The proposed consumer education website at § 98.33(a) represents a significant step in making it easier for parents to access information about the child care system and potential child care providers. However, the amount of information may be difficult to understand or find. In addition, parents searching for child care may prefer to speak with a person directly as they make decisions about their child's care. Therefore, we propose that the website include information about how to contact the Lead Agency, or its designee such as a child care resource and referral agency, to answer any questions parents might have after reviewing the website.

Additional consumer education. We propose to incorporate statutory requirements at Section 658E(c)(E)(i) by adding new paragraph (b) at § 98.33, which requires Lead Agencies to provide additional consumer education to eligible parents, the general public, and, where applicable, child care providers. The consumer education may be done through child care resource and referral organizations or other means as determined by the Lead Agency, and can be delivered through the consumer education website at § 98.33(a). We strongly encourage Lead Agencies to use additional means to provide this information including through direct conversations with case workers and information sessions for parents and child care providers, outreach and counseling available at intake from eligibility workers, and to and through child care providers to parents.

The statute requires consumer education to include: information about the availability of child care services through CCDF, other programs for which families might be eligible, and the availability of financial assistance to obtain child care services; other programs for which

families receiving CCDF may be eligible; programs carried out under Section 619 and Part C of the Individuals with Disabilities Education Act (IDEA) (20 U.S.C. 1419, 1431 *et seq.*); research and best practices concerning children's development, including meaningful parent and family engagement and physical health and development; and policies regarding the social-emotional behavioral health of children, which are described below and included in the proposed rule at § 98.33(b)(1).

The first required piece of information is about the availability of child care services through CCDF and other programs that parents may be eligible for, as well as any other financial assistance that may be available to help parents obtain child care services. Lead Agencies should provide information about any other Federal, State/Territory/Tribal, or local programs that may pay for child care or other early childhood education programs, such as Head Start, Early Head Start and state-funded pre-kindergarten that would meet the needs of parents and children. It should also explain how other forms of child care assistance, including CCDF, are available to cover additional hours the parent might need due to their work schedule.

The second statutory requirement is for consumer education to include information about other assistance programs for which families receiving child care assistance may be eligible. These programs include: Temporary Assistance for Needy Families (TANF) (42 U.S.C. 601 *et seq.*); Head Start and Early Head Start (42 U.S.C. 9831 *et seq.*); Low-Income Home Energy Assistance Program (LIHEAP) (42 U.S.C. 8621 *et seq.*); Supplemental Nutrition Assistance Program (SNAP) (7 U.S.C. 2011 *et seq.*); Special Supplemental Nutrition Program for Women, Infants, and Children (WIC) (42 U.S.C. 1786); Child and Adult Care Food Program (CACFP) (42 U.S.C. 1766); and Medicaid and the State Children's Health Insurance Programs (CHIP) (42 U.S.C. 1396 *et seq.*, 1397aa *et seq.*).

In providing consumer education, Lead Agencies may consider the most appropriate and effective ways to reach families, which may include information in multiple languages and partnerships with other agencies and organizations, including child care resource and referral. Lead Agencies should also coordinate with workforce development entities that have direct contacts with parents in need of child care. Some Lead Agencies co-locate services for families in order to assist with referrals or enrollment in other programs.

Families eligible for child care assistance are often eligible for other programs and benefits but many parents lack information on accessing the full range of programs available to support their children. More than half of infants and toddlers in CCDF have incomes below the federal poverty level, making them eligible for Early Head Start. Lead Agencies can work with Early Head Start programs, including those participating in Early Head Start-Child Care Partnerships, to direct children who are eligible for Early Head Start to available programs.

Despite considerable overlap in eligibility among the major work support programs, historically, many eligible working families have not received all public benefits for which they qualify. For example, more than 40 percent of children who are likely to be eligible for both SNAP and Medicaid or CHIP fail to participate in both programs (Rosenbaum, D. and Dean, S. *Improving the Delivery of Key Work Supports: Policy & Practice Opportunities at A Critical Moment*, Center on Budget and Policy Priorities, 2011). A study using 2001 data found that only 5 percent of low-income working families obtained Medicaid or CHIP, SNAP, and child care assistance (Mills, G., Compton, J. and Golden, O., *Assessing the Evidence about Work Support Benefits and Low-Income Families*, Urban Institute, 2011).

In addition to informing families about the availability of these programs, some Lead Agencies have streamlined parents' access to other benefits and services by coordinating and

aligning eligibility criteria or processes and/or documentation or verification requirements across programs. This benefits both families and administering agencies by reducing administrative burden and inefficiencies. Lead Agencies also coordinate to share data across programs so families do not have to submit the same information to multiple programs. Finally, Lead Agencies have created online websites or portals to allow families to screen for eligibility and potentially apply for multiple programs. We recommend Lead Agencies consider alignment strategies that help families get improved access to all benefits for which they are eligible.

Thirdly, consumer education must also include information about programs for children with disabilities carried out under Part B Section 619 and Part C of the Individuals with Disabilities Education Act (IDEA) (20 U.S.C. 1419, 1431 *et seq.*).

The fourth piece of required consumer education is information about research and best practices concerning children's development, and meaningful parent and family engagement. It must also include information about physical health and development, particularly healthy eating and physical activity. This information may be included on the consumer education website, as well as be provided through brochures, in person meetings, and other trainings.

While this information is important for parents and the general public, we encourage Lead Agencies to target this information to child care providers as well. Each of these components is crucial for caregivers to understand in order to provide an enriching learning environment and build strong relationships with parents. Lead Agencies may choose to include information about family engagement frameworks in their provider education. Many States and communities have employed these frameworks to promote caregiver skills and knowledge through their QRIS, professional development programs, or efforts to build comprehensive early childhood systems. States have used publicly-available tools, including from the Office of Head

Start. The Head Start *Parent, Family, and Community Engagement* framework is a research-based approach to program change that shows how different programscan work together as a whole- across systems and service areas- to support parent and family engagement and children's learning and development.

Understanding research and best practices concerning children's development is an essential component for the health and safety of children, both in and outside of child care settings. Caregivers should be knowledgeable of important developmental milestones not only 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. Knowledge of developmental stages and milestones also reduces the odds of child abuse and neglect by establishing more reasonable expectations about normative development and child behavior. This requirement is associated with the proposed requirement at § 98.44(b)(1) that orientation or pre-service for child care caregivers, teachers and directors include training on child development.

Lastly, consumer education must include provision of information about policies regarding social-emotional behavioral health of children, which may include positive behavioral health intervention and support models for birth to school-age or as age- appropriate, and policies on suspension and expulsion of children birth to age five in child care and other early childhood programs as described in the Plan at § 98.16(ee).

Social-emotional development is fostered through securely attached relationships; and learning, by extension, is fostered through frequent cognitively enriching social interactions within those securely attached relationships. Studies indicate that securely attached children are more advanced in their cognitive and language development, and show greater achievement in school. In 2015, ACF issued an information memorandum detailing research and policy options

related to children's social-emotional development. (CCDF-ACF-IM-2015-01, http://www.acf.hhs.gov/sites/default/files/occ/ccdf_acf_im_2015_01.pdf). By providing consumer education on social-emotional behavioral health policies, Lead Agencies are helping parents, the general public, and caregivers understand the importance of social-emotional and behavioral health and how the Lead Agency is encouraging the support of children's ability to build healthy and strong relationships.

In conjunction with this consumer education requirement, we are proposing to add § 98.16(ee) to require Lead Agencies to provide a description of their policies on suspension and expulsion of children birth to age five in child care and other early childhood programs receiving CCDF assistance. Ensuring that parents and providers understand suspension and expulsion policies for children birth to age five is particularly important. In 2014, the U.S. Departments of Health and Human Services and Education jointly released a policy statement addressing expulsion and suspension in early learning settings and highlighting the importance of social-emotional and behavioral health (https://www.acf.hhs.gov/sites/default/files/ecd/expulsion_suspension_final.pdf). The policy statement affirms the Departments' attention to social-emotional and behavioral health and includes several recommendations to States and early childhood programs, including child care programs, to assist in their efforts. It strongly encourages States to establish statewide policies, applicable across settings, including publicly and privately funded early childhood programs, to promote children's social-emotional and behavioral health and to eliminate or severely limit the use of expulsion, suspension, and other exclusionary discipline practices. These policies may be included in State child care licensing regulations, as some States have done.

Information about developmental screenings. The reauthorized CCDBG Act requires at Section 658E(c)(2)(E)(ii) that consumer education about developmental screenings be provided to parents, the general public, and, when applicable, child care providers. Specifically, it should include (1) information on existing resources and services the Lead Agency can use in conducting developmental screenings and providing referrals to services for children who receive child care assistance; and (2) a description of how a family or eligible child care provider may use those resources and services to obtain developmental screenings for children who receive child care assistance and may be at risk for cognitive or other developmental delays, including social, emotional, physical, or linguistic delays. The information about the resources may include the State or Territory's coordinated use of the Early and Periodic Screening, Diagnosis, and Treatment program under the Medicaid program carried out under title XIX of the Social Security Act (42 U.S.C. 1396 *et seq.*) and developmental screening services available under section 619 and part C of the IDEA (20 U.S.C. 1419, 1431 *et seq.*). We propose to reiterate the statutory requirements and add new paragraph (c) at § 98.33 to require Lead Agencies to provide information on developmental screenings as part of their consumer education efforts during the intake process for families receiving CCDF assistance and to caregivers, teachers, and directors through training and education. Information on developmental screenings, as other consumer education information, should be accessible for individuals with limited English proficiency and individuals with disabilities.

Educating parents and caregivers on what resources are available for developmental screenings, as well as how to access these screenings, is crucial to ensuring that developmental delays or disabilities are identified early. Some children may require a more thorough evaluation by specialists and additional services and supports. Lead Agencies should ensure that all

providers are knowledgeable on how to access resources to support developmental and behavioral screening, and make appropriate referrals to specialists, as needed, to ensure that children receive the services and supports they need as early as possible.

While we are not proposing that all children be required to receive a developmental screening, we strongly recommend that Lead Agencies develop strategies to ensure all children receive a developmental and behavioral screening within 45 days of enrollment in CCDF, which aligns with Head Start standards. With regular screenings, families, teachers, and other professionals can assure that young children get the services and supports they need, as early as possible to help them thrive alongside their peers. *Birth to 5: Watch Me Thrive*, a coordinated Federal effort to encourage universal developmental and behavioral screening for children and to support their families and caregivers, has information and resources at www.acf.hhs.gov/programs/ecd/watch-me-thrive. In addition to research-based developmental and behavioral screenings, Lead Agencies should encourage parents and child care providers to use the tools and resources developed by the Centers for Disease Control and Prevention as part of their "Learn the Signs. Act Early." campaign. These resources help parents and child care providers to become familiar with and keep track of the developmental milestones of children. These resources are available at http://www.cdc.gov/ncbddd/actearly/. The resources provided through this campaign are not a substitute for regular developmental screenings, but help to improve early identification of children with autism and other developmental disabilities so children and families can get the services and support they need as early as possible.

Consumer statement for families. In addition to consumer education for parents, the general public, and where applicable, child care providers, we have a special interest in helping parents receiving CCDF select high quality child care because we know from research that low-

income children have the most to gain from such settings and because the care is publicly subsidized. We propose adding a new paragraph (d) to § 98.33 to require Lead Agencies to provide families receiving CCDF assistance with easily understandable information on the child care provider they choose, including health and safety requirements met by the provider, any licensing or regulatory requirements met by the provider, date the provider was last inspected, any history of violations of these requirements, and any quality standards met by the provider. Lead Agencies also should provide information necessary for parents and providers to understand the components of a comprehensive background check, and whether the child care staff members of their provider have received such a check. We also propose to require this consumer statement to include information about the hotline for parental complaints about possible health and safety violations and information describing how CCDF assistance is designed to promote equal access to comparable child care in accordance with § 98.45.

If a parent chooses a provider that is legally-exempt from regulatory requirements or exempt from CCDF health and safety requirements (*e.g.*, relatives at the Lead Agency option), the Lead Agency or its designee should explain the exemption to the parent. Lead Agencies that choose to use an alternative monitoring system for in-home providers, as proposed at § 98.42(b)(2)(v)(B), should describe this process for parents that choose in-home care. When a parent chooses a relative or in-home child care provider, the Lead Agency should explain to the parent the health and safety policies associated with relative or in-home care. The Lead Agency should provide the parents with resources about health and safety trainings should the parent wish for the relative to obtain training regardless of the exemption.

There is a great deal of variation in how Lead Agencies handle intake for parents receiving child care subsidies. Therefore, we propose flexibility for Lead Agencies to implement

the proposed consumer statement in the way that best fits both their administrative needs and the needs of the parents. This means that the consumer statement may be presented as a hard copy or electronically. When providing this information, a Lead Agency may provide it by referring to the website required by § 98.33(a). In such cases, the Lead Agency should ensure that parents have access to the Internet or provide access on-site in the subsidy office. While we recognize the need for Lead Agency flexibility in this area, we have concerns about relying solely on electronic consumer statements. Parents may not have access to the Internet or may have questions about the consumer statement that need to be answered by a person. If a parent is filing an application online, we encourage the inclusion of a phone number, directed to either the Lead Agency or another organization such as a child care resource and referral agency, to ensure parents can have their questions answered. We also recommend that intake done over the phone should include the offer to either email or mail the consumer statement to the parent; and, that information on consumer statements should be accessible by individuals with limited English proficiency and individuals with disabilities.

We realize, in some cases, a parent has chosen their provider prior to the intake process. If the parent comes in with a provider already chosen, the parent should be given the consumer statement on that provider. When a parent has not chosen a child care provider prior to intake, Lead Agencies should ensure that the parent receives information about available child care providers and general consumer education information proposed at § 98.33(a), (b), and (c). This information should include a description of health and safety requirements and licensing or regulatory requirements for child care providers, processes for ensuring requirements are met, as well as information about the background check process for child care staff members of providers, and what offenses may preclude a provider from serving children. Once the parent

selects a provider, this proposed provision would require the Lead Agency to provide a consumer statement to the parent with information about the provider they have selected, such as by mail or email.

Finally, we encourage Lead Agencies to provide parents receiving CCDF assistance with updated information on their child care provider on a periodic basis, such as by providing an updated consumer statement at the time of the family's next eligibility redetermination. Ties between the CCDF Lead Agency and the licensing agency can help to ensure that families are notified when providers are seriously out-of-compliance with health and safety requirements, and that placement of children and payment of CCDF funds do not continue where children's health and safety may be at-risk.

An area we want to highlight is child care consumer education for families receiving TANF. Commenters on our 2013 NPRM expressed concern that families receiving TANF are not given the support needed to identify high quality child care and that there should be a more coordinated, seamless process for TANF families to access consumer information on the availability of high quality providers. We strongly recommend that Lead Agencies provide parents receiving TANF and child care assistance, whether through CCDF or TANF, with the necessary support and consumer education in choosing child care. We strongly encourage social service agencies, child care licensing agencies, child care resource and referral agencies, and other related programs to work closely to ensure that parents receiving TANF are provided with the information and support necessary for them to make informed child care decisions.

CCDF plan. We propose a technical change at § 98.33(f) to change the reference to a biennial Plan to a *triennial* Plan as established in the statute at Section 658E (b).

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

Subpart E of the regulations describes Lead Agency and provider requirements related to applicable State/Territory and local regulatory and health and safety requirements, monitoring and inspections, and criminal background checks. It addresses training and professional development requirements for caregivers, teachers, and directors working for CCDF providers. It also includes provisions requiring the Lead Agency to ensure that payment rates to providers serving children receiving subsidies ensure equal access to the child care market, to establish a sliding fee scale that provides for affordable cost-sharing for families receiving assistance, and to establish priorities for who receives child care services.

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

Section 658E(c)(2)(F) of the Act maintains the requirement that every Lead Agency has in effect licensing requirements applicable to child care services within its jurisdiction. The Act now requires Lead Agencies, if they exempt any CCDF providers from licensing requirements, to describe "why such licensing exemption does not endanger the health, safety, or development of children who receive services from child care providers who are exempt from such requirements." We include a corresponding change in the proposed rule at § 98.40(a)(2), and we provide clarification that the Lead Agency's description must include a demonstration of how such exemptions do not endanger children and that such descriptions and demonstrations must include any exemptions based on provider category, type, or setting; length of day; providers not subject to licensing because the number of children served falls below a Lead Agency-defined threshold; and any other exemption to licensing requirements. This relates to the corresponding CCDF Plan provision proposed at § 98.16(u).

To clarify, this requirement does not compel the Lead Agency to offer exemptions from licensing requirements to providers. Rather, it requires that, if the Lead Agency chooses to do so, it must provide a rationale for that decision. We also note that these exemptions refer to exemptions from licensing requirements, but that license-exempt CCDF providers continue to be subject to the health and safety requirements applicable to all CCDF providers in the Act. The only allowable exception to CCDF health and safety requirements is for providers who care only for their own relatives, which we discuss further below.

Health and Safety Requirements (Section 98.41).

The Act requires Lead Agencies to have in effect health and safety requirements for providers and caregivers caring for children receiving CCDF assistance that relate to ten health and safety topics: (i) prevention and control of infectious diseases (including immunization); (ii) prevention of sudden infant death syndrome and use of safe sleeping practices; (iii) administration of medication, consistent with standards for parental consent; (iv) prevention and response to emergencies due to food and allergic reactions; (v) building and physical premises safety, including identification of and protection from hazards that can cause bodily injury such as electrical hazards, bodies of water, and vehicular traffic; (vi) prevention of shaken baby syndrome and abusive head trauma; (vii) emergency preparedness and response planning for emergencies resulting from a natural disaster, or a man-caused event (such as violence at a child care facility); (viii) handling and storage of hazardous materials and the appropriate disposal of bio contaminants; (ix) appropriate precautions in transporting children, if applicable; and (x) first aid and cardiopulmonary resuscitation.

The Act says that health and safety topics "may include requirements relating to nutrition, access to physical activity, or any other subject area determined by the State to be necessary to promote child development or to protect children's health and safety" (Section 658E(c)(2)(I)(ii)), which we restate at § 98.41(a)(1)(xii). While these topics are optional in this proposed rule, we strongly encourage Lead Agencies to include them in basic health and safety requirements. Educating caregivers on appropriate nutrition, including age-appropriate feeding, and physical activity for young children is essential to prevent long-term negative health implications and assist children in reaching developmental milestones. We also propose to add "caring for children with special needs" as an optional topic on this list.

Lead Agencies are responsible for establishing standards in the above areas for CCDF providers and should require providers to develop policies and procedures that comply with these standards. We encourage Lead Agencies to adopt these standards for all caregivers and providers regardless of whether they currently receive CCDF funds. The Act requires health and safety training on the above topics to be completed pre-service or during an orientation period and on an ongoing basis. This training requirement is discussed in greater detail below in § 98.44 on training and professional development.

ACF recently released *Caring for Our Children Basics (CfoC) Basics*, http://www.acf.hhs.gov/programs/ecd/caring-for-our-children-basics). *CfoC Basics* is a set of recommendations, which is intended to create a common framework to align basic health and safety efforts across all early childhood settings. *CfoC Basics*, represent minimum, baseline standards for health and safety. *CfoC Basics* is based on *Caring for Our Children: National Health and Safety Performance Standards*; *Guidelines for Early Care and Education Programs, 3rd Edition*, produced with the expertise of researchers, physicians, and practitioners. (American

Academy of Pediatrics, American Public Health Association, National Resource Center for Health and Safety in Child Care and Early Education. (2011). *Caring for our children: National health and safety performance standards; Guidelines for early care and education programs. 3rd edition,* American Academy of Pediatrics; Washington, DC: American Public Health Association.)

Lead Agencies looking for guidance on establishing health and safety standards should consult ACF's *CfoC Basics*. The list of health and safety topics required by the Act is aligned with, but not fully reflective of, health and safety recommendations from both *CfoC Basics* as well as *Caring for Our Children: National Health and Safety Performance Standards*. Lead Agencies can be confident that if their standards are aligned with *CfoC Basics,* they would be considered to have adequate minimum standards. Lead Agencies are encouraged, however, to go beyond these baseline standards to develop a comprehensive and robust set of health and safety standards that cover additional areas related to program design, caregiver safety, and child developmental needs, using the full *Caring for Our Children: National Health and Safety Performance Standards* guidelines.

We propose reiterating these new health and safety requirements at § 98.41(a) and propose some clarifications. These include specifying that the health and safety requirements be appropriate to the age of the children served in addition to the provider setting. Lead Agency requirements should reflect necessary content variation, within the required topic areas, depending on the provider's particular circumstances. For example, prevention of sudden infant death syndrome and safe sleep training would only be necessary if a caregiver cares for infants. Similarly, if an individual is caring for children of different ages, training in first-aid and CPR should include elements that take into account that practices differ for infants and older children.

We also clarify that, in addition to having these requirements in effect, they must be "implemented and enforced," and that these requirements are subject to monitoring pursuant to § 98.42. This is intended to help ensure that requirements are put into practice and that providers are held accountable for meeting them. The required health and safety topics are included at § 98.41(1).

Immunizations and Tribal programs. This proposed rule amends the regulatory language at § 98.41(a)(1)(i)(A) by replacing "States and Territories" with "Lead Agencies" to be inclusive of Tribes. Minimum Tribal health and safety standards under effect currently 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 requirement. We have made a corresponding change to the regulations at § 98.83(d) in subpart I and further discus this and other changes regarding health and safety requirements as they pertain to Tribes.

Immunization and in-home care. We also propose to add "provided there are no other unrelated children who are cared for in the home" to the existing exemption to the immunization requirement for children who receive care in their own homes at § 98.41(a)(1)(i)(B)(2). Such children may continue to be exempt from requirements, provided that they are not in care with other unrelated children, which could endanger the health of those children.

Children experiencing homelessness and children in foster care. In § 98.41(a)(1)(i)(C), we restate the new statutory requirement that Lead Agencies establish a grace period for children experiencing homelessness and children in foster care to allow such children to receive CCDF services while their families (including foster families) are given a reasonable time to take any necessary action to comply with immunization and other health and safety requirements. We clarify that any payment for such child during the grace period shall not be considered an error or

improper payment under 45 CFR part 98, subpart K. We propose adding § 98.41(a)(1)(i)(C)(2) to allow Lead Agencies the option of establishing grace periods for other children who are not homeless or in foster care consistent with current regulations, which allow the establishment of grace periods more broadly. This was included in the last CCDF regulation due to significant feedback that requiring immunizations to be completely up-to-date prior to receiving services could constitute a barrier to working. This provision was added to offer additional State flexibility and we believe that adding the a specific grace period provision in the statute was not intended to limit State's abilities to establish these policies, but rather to ensure that at a minimum this policy existed for children experiencing homelessness and children in foster care.

The intent of this provision was to reduce barriers to enrollment given the uniquely challenging circumstances of homeless and foster children, not to undermine children's health and safety. Therefore, we do not believe that the intent was for those children to be permanently exempt from immunization and other health and safety requirements. For that reason, we propose adding at § 98.41(a)(1)(i)(C)(3), which would require the Lead Agency to coordinate with licensing agencies and other relevant State/Territory and local agencies to provide referrals and support to help families experiencing homelessness and foster children comply with immunization and other health and safety requirements. This would help children, once enrolled and receiving CCDF services, to obtain necessary services and the proper documentation in a timely fashion.

Emergency preparedness and response. Section 658E(c)(2)(I)(i)(VII) of the Act indicates that CCDF health and safety requirements should include emergency preparedness and response planning for emergencies resulting from a natural disaster, or a man-caused event (such as violence at a child care facility) as defined under section 602(a)(1) of the Robert T. Stafford

Disaster Relief and Emergency Assistance Act (42 U.S.C. 5195a(a)(1)). We propose to include this provision at § 98.41(a)(1)(vii) and to include additional language drawn from Section 658E(c)(2)(U) of the Act regarding Statewide Disaster Plans. According to the Act, Statewide Disaster Plans should address: evacuation, relocation, shelter-in-place, and lock-down procedures; procedures for staff and volunteer emergency preparedness training and practice drills; procedures for communication and reunification with families; continuity of operations; and accommodation of infants and toddlers, children with disabilities, and children with chronic medical conditions. Communication and reunification with families should include procedures that identify entities with responsibility for temporary care of children in instances where the child care provider is unable to contact the parent or legal guardian in the aftermath of a disaster. Accommodation of infants and toddlers, children with disabilities, and children with chronic medical conditions should include plans that address multiple facets, including ensuring adequate supplies (*e.g.*, formula, food, diapers, other essential items) in the event that sheltering-in-place is necessary. In addition to being addressed in the Statewide Disaster Plan, we would require that health and safety requirements for CCDF providers include these topics so that child care providers and staff would be adequately prepared in the event of a disaster.

Guidance in *Caring for Our Children: National Health and Safety Performance Standards*, includes recommended standards for written evacuation plans and drills, planning for care for children with medical conditions, and emergency procedures related to transportation and emergency contact information for parents. The former National Association of Child Care Resource and Referral Agencies (now Child Care Aware of America) and Save the Children published *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 standards related to emergency preparedness for family child care homes and child care centers.

Group Size Limits and Child-Staff Ratios. Section 658E(c)(2)(H) of the Act requires Lead Agencies to establish group size limits for specific age populations and appropriate child-staff ratios that will provide healthy and safe conditions for children receiving CCDF assistance and meet children's developmental needs. It also requires Lead Agencies to address required qualifications for caregivers, teachers, and directors, which is discussed at § 98.44. Consistent with these requirements, § 98.41(d) of the proposed rule would require the Lead Agency to establish standards for CCDF child care services that promote the caregiver and child relationship in the type of child care setting involved and provide for the safety and developmental needs of the children served.

Ratio and group size standards are necessary to ensure that the environment is conducive to safety and learning. Child-staff ratios should be set such that caregivers can demonstrate the capacity to meet health and safety requirements and to evacuate all of the children in their care in a timely manner. A low child-staff ratio allows for stronger relationships between a child and their caregiver, which is a key component of quality child care. Studies of high quality early childhood programs found that group size and ratios mattered to the safety and the quality of children's experiences, as well as to children's health. (*13 Indicators of Quality Child Care: Research Update, presented to Office of the Assistant Secretary for Planning and Evaluation and Health Resources and Services Administration/Maternal and Child Health Bureau U.S. Department of Health and Human Services, 2002* and *National Institute of Child Health and Human Development (NICHD). 2006. The NICHD study of early child care and youth development: Findings for children up to age 4 1/2 years. Rockville, MD: NICHD.).*

Caring for Our Children Basics Maximum Child: Staff Ratios for Child Care Centers by Age of Children	
Age	Maximum Child: Staff Ratio
≤ 12 months	4:1
13-23 months	4:1
24-35 months	4:1- 6:1
3-year-olds	9:1
4- to 5-year-olds	10:1

While we are not establishing a Federal requirement for group size and child-staff ratios, there are resources that Lead Agencies can use when developing their standards. *CfoC Basics* recommends:

> Appropriate ratios should be kept during all hours of program operation. Children with special health care needs or who require more attention due to certain disabilities may require additional staff on-site, depending on their special needs and the extent of their disabilities. In center-based care, child-staff ratios should be determined by the age of the majority of children and the needs of children present. In family child care homes, the caregivers' children as well as any other children in the home temporarily requiring supervision should be included in the child-staff ratio. In family child care settings where there are mixed age groups that include infants and toddlers, a maximum ratio of 6:1 should be maintained and no more than two of these children should be 24 months or younger. If all children in care are under 36 months, a maximum ratio of 4:1 should be maintained and no more than two of these children should be 18 months or

younger. If all children in care are 3 years old, a maximum ratio of 7:1 should be preserved. If all children in care are 4 to 5 years of age, a maximum ratio of 8:1 should be maintained.

As stated earlier, these represent baseline recommendations and Lead Agencies should not feel limited by them. ACF encourages Lead Agencies to consider the group size and child-staff ratios outlined in *Caring for Our Children: National Health and Safety Performance Standards* and the Head Start and Early Head Start standards for child-staff ratios, especially in light of partnerships between Head Start and child care. The Head Start program performance standards set forth ratios and group size requirements for the center-based, combination program, and family child care options for Head Start and Early Head Start providers. Early Head Start requires a ratio of one staff person for every four infants and toddlers in center based programs with a maximum group size of eight. The requirement for family child care homes when an adult is working alone is two children under two years old in a maximum group of 6. When there is a teacher and an assistant, the maximum group size is 12 children, with no more than four of the 12 children under two years old. Head Start requires a ratio of one staff person for every eight children in center-based programs with a maximum group size of 17 children for 3 year olds and 20 children for 4 year olds.

Another resource for determining 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 caregiver 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 2 years of age be cared for where two

caregivers are caring for up to 12 children. (National Fire Protection Association, *NFPA 101: Life Safety Code*, 2009)

Compliance with Child Abuse Reporting Requirements. Section 658E(c)(2)(L) of the Act requires Lead Agencies to certify in its plan that child care providers comply with procedures for reporting child abuse and neglect as required by section 106(b)(2)(B)(i) of the Child Abuse Prevention and Treatment Act (CAPTA) (42 U.S.C. 5106a(b)(2)(B)(i)). That provision of CAPTA requires that "the State has in effect and is enforcing a State law, or has in effect and is operating a statewide program, relating to child abuse and neglect that includes… provisions or procedures for an individual to report known and suspected instances of child abuse and neglect, including a State law for mandatory reporting by individuals required to report such instances." Thus, Lead Agencies must certify that caregivers, teachers, and directors of child care providers will be required to report child abuse and neglect as individuals or mandatory reporters, whether or not the State explicitly identifies these persons as mandatory reporters.

Because the CAPTA requirement above is not applicable to Tribes or, in some circumstances, to Territories, we propose to expand upon this provision at § 98.41(e) by requiring Lead Agencies to certify that caregivers, teachers, and directors of child care providers within the State (or service area) will comply with the State's, Territory's or Tribe's child abuse reporting requirements as required by section 106(b)(2)(B)(i) of CAPTA or other child abuse reporting procedures and laws in the service area. We propose adding this last phrase to be consistent with any other child abuse reporting procedures and laws that may apply in the service area. Territories and Tribes may have their own reporting procedures and mandated reporter laws. Also, some Tribes may work with States to use the State's reporting procedures. Further, the Federal Indian Child Protection and Family Violence Prevention Act requires mandated

reporters to report child abuse occurring in Indian country to local child protective services agency or a local law enforcement agency (18 U.S.C. 1169). While State, Territory, and Tribal laws about when and to whom to report vary, child care providers and staff are often considered mandatory reporters of child abuse and neglect and responsible for notifying the proper authorities in accordance with applicable laws and procedures. Regardless, the provision is intended for the Lead Agency to ensure that caregivers, teachers, and directors follow all relevant child abuse and neglect reporting procedures and laws, regardless of whether a child care caregiver or provider is considered a mandatory reporter under existing child abuse and neglect laws. We note that this requirement applies to caregivers, teachers, and directors of all child care providers, regardless of whether they receive CCDF funds.

To support this statutory requirement, we propose adding "recognition and reporting of child abuse and neglect" to the list of health and safety topics at § 98.41(a)(1)(xi) to ensure that caregivers, teachers, and directors are properly trained to be able to recognize the manifestations of child maltreatment. Child abuse and neglect training can be used to educate and establish child abuse and neglect prevention and recognition measures for children, parents, and caregivers. While caregivers, teaches, and directors are not expected to investigate child abuse and neglect, it is important that all of these individuals be aware of common physical and emotional signs and symptoms of child maltreatment. According to the FY 2014-2015 CCDF Plans, 31 States and Territories have a pre-service training requirement on mandatory reporting of suspected abuse or neglect for staff in child care centers and 25 States and Territories require pre-service training in this area for family child care.

Enforcement of Licensing and Health and Safety Requirements (Section 98.42)

The majority of § 98.42 is new, based on requirements added in the reauthorized statute. Lead Agencies 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.

Procedures to ensure compliance with health and safety requirements. Current regulations, formerly at § 98.41(d), require that the Lead Agency must have procedures in effect to ensure that child care providers of services for which assistance is made available in accordance with this part, within the service area served by the Lead Agency, comply with all applicable State, local, or Tribal requirements. Through this proposed rule, we clarify at § 98.42(a) that these requirements must include the health and safety requirements described in § 98.41.

Monitoring requirements. Section 658E(c)(2)(K) of the Act requires that Lead Agencies conduct monitoring visits for all child care providers receiving CCDF funds, including license-exempt providers (except, at Lead Agency option, those that serve relatives). The Act requires Lead Agencies to certify that licensed child care providers receive one pre-licensure inspection for compliance with health, safety, and fire standards and at least one, annual, unannounced licensing inspection for compliance with licensing standards, including health, safety, and fire standards. License-exempt CCDF providers (except at Lead Agency option, those serving relatives) must receive at least one annual inspection for compliance with health, safety, and fire standards at a time determined by the Lead Agency. We propose to restate these requirements at § 98.42(b). For existing licensed providers already serving CCDF children, we will consider the

Lead Agency to have met the pre-licensure requirement through completion of the first, annual on-site inspection.

We propose to add clarification at § 98.42(b)(2) that would require annual inspections for both licensed and license-exempt CCDF providers to include, but not be limited to, those health and safety requirements described in § 98.41. We also clarify that Tribes would be subject to the monitoring requirements, unless a Tribal Lead Agency requests an alternative monitoring methodology in its Plan and provides adequate justification, subject to ACF approval, pursuant to § 98.83(d)(2).

Pre-licensure inspections. The vast majority of States and Territories already require inspections for all child care providers prior to licensure, which we strongly encourage. Only one State does not require pre-licensure inspections for child care centers and seven States do not require pre-licensure inspections for family child care. In States/Territories without pre-licensure inspections, it is unclear how to apply this statutory requirement specifically to CCDF providers as it may be unknown whether a child care provider will be a CCDF provider at some time in the future at the time of seeking licensure. In this NPRM, we are interpreting the pre-licensure inspection requirement as an indication that an on-site inspection is necessary for licensed child care providers prior to providing CCDF-funded child care. Therefore, any licensed provider that did not previously receive a pre-licensure inspection must be inspected prior to caring for a child receiving CCDF. We are interested in comments on whether there should be a specified time period for the inspection (*i.e.* within the previous 12 months).

Annual Inspections of Licensed Providers. The Act and this NPRM would require annual inspections of licensed child care providers receiving CCDF funds; however, we strongly encourage Lead Agencies to conduct annual, unannounced visits of all licensed child care

providers, including those not receiving CCDF funds. Research supports the use of regular, unannounced inspections for monitoring compliance with health and safety standards and protecting children. A recent series of Department of Health and Human Services' (HHS) Office of Inspector General (OIG) audits identified deficiencies with health and safety protections for children in child care in several states, including in Arizona, Connecticut, Louisiana, Maine, Michigan, Minnesota, Nebraska, and Pennsylvania. For example, an OIG audit in one State examined the monitoring of 20 family child care home providers and found 17 in violation of at least one licensing requirement, including four providers who did not comply with background check requirements. Another found 19 out of 20 licensed family child care home providers in violation of at least one State licensing requirement related to the health and safety of children. (HHS Office of the Inspector General, *Some Minnesota Childcare Home Providers Did Not Always Comply With State Health and Safety Licensing Requirements (A-05-14-00021),* 2015; HHS Office of the Inspector General, *Some Pennsylvania Family Child Day Care Home Providers Did Not Always Comply With State Health and Safety Requirements,* A-03-14-00250, 2015).

In addition to concerns about safeguarding children's well-being, ACF is very concerned that if all licensed child care providers are not subject to at least annual inspections, CCDF families would be restricted from accessing a portion of the provider population (those that have not been inspected annually), effectively denying children access to some providers, limiting parental choice, and resulting in a bifurcated system. We are soliciting comments on this concern and suggestions for addressing it to ensure equal access to child care for CCDF families.

Annual Inspections of License-Exempt Providers. The law does not require that inspections for license-exempt providers be unannounced, but ACF strongly encourages some

use of unannounced visits, as they have been found effective in promoting compliance with health and safety requirements. (R. Fiene, *Unannounced vs. announced licensing inspections in monitoring child care programs*, Pennsylvania Office of Children, Youth and Families, 1996; American Academy of Pediatrics, American Public Health Association, National Resource Center for Health and Safety in Child Care and Early Education; *Caring for our children: National health and safety performance standards; Guidelines for early care and education programs. 3rd edition*.) However, there may be situations in which a Lead Agency cannot be sure that a provider and children will be present (*e.g.*, when a provider is caring for a child whose parent has a variable work schedule). In such situations, advance notification of a visit may be necessary. The Lead Agency may also 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. Lead Agencies are encouraged to make reasonable efforts to conduct visits during the hours providers are caring for children and ensure that providers who care for children on the evenings and weekends are monitored so that the supply of non-traditional hour care is not reduced. ACF intends to provide technical assistance to CCDF Lead Agencies on best practices for monitoring license-exempt providers, including the use of unannounced inspections.

Monitoring in response to complaints. Section 658E(c)(2)(C) of the Act requires Lead Agencies to maintain a record of substantiated parental complaints and we have proposed at § 98.32 that Lead Agencies establish a reporting process for parental complaints. We believe a logical extension of these requirements would be for Lead Agencies to monitor in response to complaints, in particular those of greatest concern to children's health and safety. Unannounced inspections allow for an investigation of the situation and, if the threat is substantiated, may prevent future incidences. A majority of States already conduct inspections in response to

complaints for licensed child care providers. We believe that threats to any child's health and safety in child care warrant investigation, regardless of whether the provider is licensed, regulated, or receiving CCDF funds. We have not proposed a requirement for monitoring in response to complaints but are seeking comments on whether the final rule should include a requirement for Lead Agencies to conduct unannounced inspections in response to complaints and whether this requirement should apply to providers receiving CCDF funds or additional providers.

Coordination of Monitoring. We propose at § 98.42(b)(2)(iii) to require Lead Agencies to coordinate, to the extent practicable, with other Federal, State/Territory, and local entities that conduct similar on-site monitoring. Possible partners include licensing, QRIS, Head Start, and the CACFP.

Coordinating with other monitoring agencies can be beneficial to both agencies as they prevent duplication of services. As an example of current interagency coordination, one State holds monthly meetings with representation from its licensing division, 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. It is important that any shared costs be properly allocated between the organizations participating and benefiting from the partnership.

To the extent that other agencies provide an on-site monitoring component that may satisfy or partially satisfy the new monitoring requirement under the statute and this proposed rule, the Lead Agency is encouraged to pursue collaboration, which may include sharing information and data as well as coordinating resources. However, the Lead Agency is ultimately

responsible for meeting these requirements and ensuring that any collaborative monitoring efforts satisfy all CCDF requirements.

Differential monitoring. At § 98.42(b)(2)(iv)(A), we propose giving Lead Agencies the option of using differential monitoring, or a risk-based monitoring approach, provided that the monitoring visit is representative of the full complement of health and safety standards and is conducted for all applicable providers annually, as required in statute.

A white paper developed by HHS's Office of the Assistant Secretary for Planning and Evaluation (ASPE), found the following:

> Many states are using differential monitoring to make monitoring more efficient. As opposed to 'one size fits all' systems of monitoring, differential monitoring determines the frequency and depth of needed monitoring from an assessment of the provider's history of compliance with standards and regulations. Providers who maintain strong records of compliance are inspected less frequently, while providers with a history of non-compliance may be subject to more announced and unannounced inspections. In some states, more frequent inspections are conducted for providers who are on a corrective action plan, or after a particularly egregious violation. (Trivedi, P. A. (2015). *Innovation in monitoring in early care and education: Options for states. Washington, DC: Office of the Assistant Secretary for Planning and Evaluation, U.S. Department of Health and Human Services).*

Differential monitoring often involves monitoring programs using a subset of requirements to determine compliance. There are two methods used to identify rules for differential monitoring:

- Key Indicators: An approach that focuses on identifying and monitoring those rules that statistically predict compliance with all the rules; and
- Risk Assessment: An approach that focuses on identifying and monitoring those rules that place children at greater risk of mortality or morbidity if violations or citations occur.

The key indicators approach is often used to determine the rules to include in an abbreviated inspection. A risk assessment approach is often used to classify or categorize rule violations and can be used to identify rules where violations pose a greater risk to children, distinguish levels of regulatory compliance, or determine enforcement actions based on categories of violations. Note that monitoring strategies that rely on sampling of providers or allow for a monitoring frequency of less than once per year for providers are not allowable as every child care provider must receive at least one inspection annually, in accordance with the Act.

ACF encourages Lead Agencies to consider the use of differential monitoring as a method for determining the scheduling and priority for unannounced monitoring visits. This may be based on an assessment of the child care provider's past level of compliance with health and safety requirements, information received that could indicate violations, or the occurrence of a monitoring visit from another program. Differential monitoring allows Lead Agencies to prioritize monitoring of providers that have previously been found out of compliance or the subject of parental complaints or that have not been monitored through other programs.

Lead Agencies should use data to make necessary adjustments to differential monitoring or the frequency of monitoring visits over time. For example, if widespread or significant compliance issues are found under existing monitoring protocol, the Lead Agency could consider increasing the frequency of monitoring visits. As discussed in *Innovations in Monitoring*, Lead Agencies should be intentional and cautious in their use of differential monitoring and not

replace routine inspection of all licensed providers, including those with good compliance records.

Monitoring in-home care. At §98.42(b)(2)(iv) we propose that Lead Agencies have the option to "develop alternate monitoring requirements for care provided in the child's home that are appropriate to the setting." A child's home may not meet the same standards as other child care facilities and this provision gives Lead Agencies flexibility in conducting a more streamlined and targeted inspection. This flexibility cannot be used to bypass the monitoring requirement altogether. We are actively soliciting comments on this proposal.

Licensing inspector qualifications. Section 658E(c)(2)(K)(i)(I) of the Act requires Lead Agencies to "ensure that individuals who are hired as licensing inspectors in the State are qualified to inspect those child care providers and facilities and have received training in related health and safety requirements, and are trained in all aspects of the State's licensure requirements." We propose restating this statutory requirement at § 98.42(b)(1) and clarify that such training should include, at a minimum, the areas listed in § 98.41 as well as all aspects of State, Territory, or Tribal licensure requirements. As inspectors must monitor the health and safety requirements in § 98.41, it follows that the training of inspectors should include these standards.

We also propose to clarify that inspectors be trained in health and safety requirements "appropriate to provider setting and age of children served." Inspecting care for children of different ages, and in different settings, may require specialized training in order to understand differences in care. We also encourage Lead Agencies to consider the cultural and linguistic diversity of caregivers when addressing inspector competencies and training. *Caring for Our Children: National Health and Safety Performance Standards* recommends that licensing

inspectors have "pre-qualified" education and experience about the types of child care they will be assigned to inspect and in the concepts and principles of licensing and inspections. When hired, the standards recommend at least 50 clock hours of competency-based orientation training and 24 annual clock hours of competency-based continuing education.

Licensing Inspector-Provider Ratios. Section 658E(c)(2)(K)(i)(III) of the Act requires Lead Agencies to have policies in place to ensure the ratio of inspectors to providers is sufficient to ensure visits occur in accordance with Federal, State, and local law. We expand on this requirement at § 98.42(b)(3) to ensure applicability with Federal, State, Territory, Tribal, and local law. Large caseloads make it difficult for inspectors to conduct valid and reliable inspections. While the Act does not require a specific ratio, Lead Agencies can refer to the National Association of Regulatory Agencies recommendation of a maximum workload for inspectors of 50-60 facilities. (*NARA and Amie Lapp-Payne. (May 2011). Strong Licensing: The Foundation for a Quality Early Care and Education System: Preliminary Principles and Suggestions to Strengthen Requirements and Enforcement for Licensed Child Care.)*

Reporting of serious injuries and deaths. At § 98.42(b)(4), we propose requiring Lead Agencies to require child care providers to "report to a designated State, Territorial, or Tribal entity any serious injuries or deaths of children occurring in child care." This complements § 98.53(f)(4)), which requires States and Territories to submit a report describing any changes to regulations, enforcement mechanisms, or other policies addressing health and safety based on an annual review and assessment of serious child injuries and any deaths occurring in child care programs serving CCDF children and, to the extent possible, other regulated and unregulated child care settings. States, Territories, and Tribes would be required to apply this reporting requirement to all child care providers, regardless of subsidy receipt, to report incidents of

serious child injuries or death to a designated agency. This is also consistent with the statutory requirement at Section 658E(c)(2)(D), which requires Lead Agencies to collect and disseminate aggregate number of deaths, serious injuries, and instances of substantiated child abuse that occurred in child care settings each year, for eligible providers.

The Lead Agency may, at their option, have providers report to a "designated entity" as proposed at § 98.16(ff), which offers some flexibility on the implementation of the requirement. If there are existing structures in place that look at child morbidity, the Lead Agency would be able to work within that structure to establish a designated entity. The reporting mechanism can be tailored to fit with existing policies and procedures. Our purpose is the reporting of incidents so that the Lead Agency and other responsible entities can make the appropriate response.

Exemption for relative providers. Current regulations at § 98.41(e) 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. This relative exemption remains at § 98.42(c)). We propose adding language that would require Lead Agencies, if they choose to exclude such providers from any of these requirements, to "provide a description and justification in the CCDF Plan, pursuant to § 98.16(l), of requirements, if any, that apply to these providers." Asking Lead Agencies to describe and justify relative exemptions from health and safety requirements and monitoring would provide accountability that any exemptions are issued in a thoughtful manner that does not endanger children.

Criminal Background Checks (Section 98.43)

The reauthorization added Section 658H on requirements for comprehensive, criminal background checks, which are a basic safeguard essential to protect the safety of children in child care and reduce children's risk of harm. Parents have the right to be confident that their children's caregivers, and others who come into contact with their children, do not have a record of violent offenses, sex offenses, child abuse or neglect, or other behaviors that would disqualify them from caring for children. A GAO report 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, *Overview of Relevant Employment Laws and Cases of Sex Offenders at Child Care Facilities, GAO-11-757*, 2011).

Comprehensive background checks have been a long-standing ACF policy priority. According to an analysis of the FY 2014-2015 CCDF Plans, all States and Territories require that child care center staff undergo at least one type of criminal background check, and approximately 44 require a FBI fingerprint check for centers. Fifty-four States and Territories require family child care providers to have a criminal background check, and approximately 42 require an FBI 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.

Background check implementation. The statute requires that States "shall have in effect requirements, policies, and procedures to require and conduct criminal background checks for child care staff members (including prospective child care staff members) of child care providers…." Having procedures in place to conduct background checks on child care staff members will require coordination across public agencies. The CCDF Lead Agency must work

with other agencies, such as the Child Welfare office and the State Identification Bureau, to ensure the checks are conducted in accordance with the law. In recognition of this effort, we propose to add to the law's language at § 98.43(a)(1) to clarify that these requirements involve multiple State, Territorial, or Tribal agencies.

Tribes and background checks. ACF is proposing that Tribal Lead Agencies be subject to the background check requirements described in this section, with some flexibility as discussed later in subpart I.

Applicability of background checks requirements. The statutory language identifying which providers must conduct background checks on child care staff members is unclear. It is our interpretation of the statute that all licensed, regulated, and registered child care providers and all child care providers eligible to deliver CCDF services (with the exception of those individuals who are related to all children for whom child care services are provided) are subject to the Act's background check requirements. At § 98.43(a)(1)(i), we propose to apply this requirement to all licensed, regulated, or registered providers, regardless of whether they receive CCDF funds and all license-exempt CCDF providers (with the exception of individuals who are related to all children for whom child care services are provided).

We acknowledge that the statutory language is not clear about the universe of staff and providers subject to the background check requirement; however, we believe that our interpretation aligns with the general intent of the statute to improve the overall safety of child care services and programs. Furthermore, there is justification for applying this requirement in the broadest terms for two important reasons. First, all parents using child care deserve this basic protection of having confidence that those who are trusted with the care of their children do not have criminal backgrounds that may endanger the well-being of their children. Second, limiting

those child care providers who are subject to background checks has the potential to severely restrict parental choice and equal access for CCDF children, two fundamental tenets of CCDF. If not all child care providers are subject to comprehensive background checks, providers could opt to not serve CCDF children, thereby restricting access. Creating a bifurcated system in which CCDF children have access to only a portion of child care providers who meet applicable standards would be incongruous with the purposes of the CCDBG Act and would not serve to advance the important goal of serving more low-income children in high quality care. We would like to invite comment on the anticipated impacts of requiring background checks for child care staff members of all licensed, regulated, and registered child care providers and all child care providers eligible to deliver CCDF services (other than an individual who is related to all children for whom child care services are provided) based on current State practices and policies.

The law defines a child care staff member as someone (other than an individual who is related to all children for whom child care services are provided) who is employed by the child care provider for compensation or whose activities involve unsupervised access to children who are cared for by the child care provider. We are proposing at § 98.43(a)(2)(ii) to include contract and self-employed individuals in the definition of child care staff members as they may have direct contact with children. We propose to require individuals, age 18 or older, residing in a family child care home be subject to background checks, as well as the disqualifying crimes and appeals processes. We asked for comment on individuals 18 or older in family child care homes receiving background checks in the 2013 NPRM and received support from commenters who agreed this was important for ensuring the safety of children in child care. 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).

We are asking for comment on whether additional individuals in the family child care home should be subject to the background check requirements. Volunteers who have not had background checks should not be left with children unsupervised. We encourage Lead Agencies to require that volunteers who have not had background checks be easily identified by children and parents, for example through visible name tags or clothing.

Components of a criminal background check. The CCDBG Act outlines five components of a criminal background check: 1) a search of the State criminal and sex offender registry in the State where the staff member resides and each State where the staff member has resided for the past five years; 2) a search of the State child abuse and neglect registry in the State where the staff member resides and each State where the staff member has resided for the past five years; 3) a search of the National Crime Information Center; 4) a Federal Bureau of Investigation (FBI) fingerprint check using the Integrated Automated Fingerprint Identification System; and 5) a search of the National Sex Offender Registry.

After extensive consultation with the FBI and other subject-matter experts, we propose technical changes to address duplication among these components. We propose to consolidate the list of required components in the regulations at § 98.43(b) to:

- A search of the National Crime Information Center's National Sex Offender Registry;
- A Federal Bureau of Investigation fingerprint check using Next Generation Identification; and

- A search of the following registries, repositories, or databases in the State where the child care staff member resides and each State where such staff member resided during the preceding 5 years:
    - State criminal registry or repository using fingerprints;
    - State sex offender registry or repository; and
    - State-based child abuse and neglect registry and database.

The National Crime Information Center (NCIC) is a law enforcement tool consisting of 21 files, including the National Sex Offender Registry (NSOR). The 21 files contain seven property files that help track missing property and 14 person files with information relevant to law enforcement (*e.g.*, missing persons or wanted persons). State criminal records are not stored in the NCIC. We believe that the only file with information that would aid in determining whether an individual could be hired as a child care employee is the NSOR. The other files do not appear to contain information on the disqualifying crimes listed in the statute. Further, the FBI has advised that a general search of the NCIC database will return records that cannot be made privy to individuals outside of law enforcement (i.e. the Known or Appropriately Suspected Terrorist File). Therefore, we are clarifying that a check of the NCIC will only need to search the NSOR file.

ACF has identified a number of potential challenges in requiring an NCIC check. It is our understanding that an NCIC check has not been included in any other non-criminal background check law applicable to States to date and so resolving these challenges is in many ways unchartered territory. First, access to the NCIC, including, in some cases, physical access to computers capable of searching the NCIC, is limited, and it is primarily available to law enforcement agencies. Therefore, to conduct this check, Lead Agencies will have to partner with

a State, Tribal, or local law enforcement agency. Because the NCIC has not been used this way, we do not know of examples of other State agencies partnering in this way or what such partnerships would entail. We also do not know the implications for Lead Agencies that use third-party vendors to conduct background checks. Third-party vendors do not have authorized access to conduct name-based checks for noncriminal justice purposes. Secondly, the NCIC is a name-based check, rather than finger-print based. Hit verification of name-based checks may be labor intensive, especially when searching for individuals with common names. While we are concerned about the burden on Lead Agencies to conduct this check, we recognize that the NCIC was included in the statute, and we are concerned about the potential for missing sex offenders by not conducting a comprehensive search. We are very interested in comments on the feasibility of a search of the NCIC as proposed and the level of burden required by Lead Agencies.

The FBI fingerprint check using Next Generation Identification (NGI) (formerly the Integrated Automated Fingerprint Identification System- IAFIS) will provide a person's criminal history record information and will search ten of the NCIC person files, including the NSOR, providing certain identifying information has been entered into the NSOR record. The change in the language from IAFIS to NGI is a technical change and should not impact Lead Agency background check processes. The NGI is the biometric identification system that has now replaced the older IAFIS.

Based on consultation with the FBI, we understand there is significant overlap between the FBI fingerprint check and the NSOR check (via the NCIC), yet there are a number of individuals in the NSOR who are not identified by solely conducting an FBI fingerprint search. The FBI links fingerprint records to the NSOR records via a Universal Control Number, but a

small percentage of cases are missing the fingerprints. In some cases, individuals were not fingerprinted at the time of arrest, or the prints were rejected by the FBI for poor quality. This small percentage of records can be accessed through a name-based search of the NCIC, and a number of those individuals may also be identified by a search of the State sex offender registries.

Although we do not believe it is required, we also encourage an additional search of the National Sex Offender Public Website (NSOPW) at www.nsopw.gov. The NSOPW acts as a pointer for each State, Territory, and Tribally run sex offender registry. The registries are updated and kept in real time and may be searched by name, but other identifying information may be limited in these records.

It is our understanding that there is some duplication between the NCIC, FBI fingerprint searches, and searches of State criminal, sex offender, and child abuse and neglect registries. An FBI fingerprint check provides access to national criminal history record information across State lines on people arrested for felonies and some misdemeanors under State, Federal, or Tribal law. However, there are instances where information is contained in State databases, but not in the FBI database. A search of the State criminal records and a FBI fingerprint check returns the most complete record and better addresses instances where individuals are not forthcoming regarding their past residences or committed crimes in a State in which they did not reside.

We are also proposing to require that the search of the State criminal records include a fingerprint check. The 2013 NPRM also proposed to require States to use a fingerprint check when checking the State's criminal history records. Fingerprint searches reduce instances of false positives and also help capture records filed under aliases. We do not believe that a

fingerprint search of the State repository would be an additional burden. States can use the same set of fingerprints to check both the State criminal history check and the FBI fingerprint check.

In addition to gaps in the State criminal records, there are a number of instances in which an individual may be listed in the State sex offender registry and not in NSOR, and vice versa. For example, some States have statutes that disallow the removal of offenders, regardless of offender status, while in the NSOR the agency owning the record is required to remove the offender from active status once his/her sentencing is completed. In addition, federal, juvenile, and international sex offender records may be included in the NSOR; whereas, State laws may prohibit the use of this information in the State sex offender registry. Because of these discrepancies, we believe that it is important to check the State sex offender registries in addition to an FBI fingerprint check and a check of the NCIC NSOR.

The final component of a comprehensive background check included in the new law is the search of the State child abuse and neglect registries. We recognize that implementation of this critically important component of protecting children will vary across States. Every State has procedures for maintaining records of child abuse and neglect, but only 41 States, the District of Columbia, American Samoa, Guam, and Puerto Rico require central registries by statute. The type of information contained in central registries and department records differ from State to State. Some States maintain all investigated reports of abuse and neglect, while others maintain only substantiated reports. The length of time the information is held and the conditions for expunction also vary. Access to information maintained in registries and departments also varies by State and some States may need to make internal changes to meet the requirement to search the State's own child abuse and neglect registry. Approximately 31 States and the District of Columbia allow or require a check of the central registry or department records for individuals

applying to be child or youth care providers. (*Establishment and Maintenance of Central Child Abuse Registries*, Children's Bureau, July 2014).

The law requires States to check the State criminal registry or repository; sex offender registry or repository; and child abuse and neglect registry and database for every State that a child care staff member has lived in for the past five years. Based on our preliminary conversations with States, the requirement to conduct cross-state background checks of the three different repositories is another unexplored area for Lead Agencies. We have heard concerns about how to obtain and interpret the results and protect the privacy of individuals. We are asking for comments on whether States have any best practices or strategies to share and how ACF can support Lead Agencies in meeting the cross-State background check requirements.

In particular, we have heard concern about cross-State checks of the child abuse and neglect registries. We understand that States have developed their own requirements for submitting requests, and there is not a uniform method of responding. In addition, some States prohibit the use of child abuse and neglect registries for employment purposes. As the statute requires cross-state checks, we are soliciting comments on how States will meet this requirement and respond to other State requests.

The cross-State background check requirement has similarities to language at Section 152(a)(1)(C) of the Adam Walsh Child Protection and Safety Act of 2006 (42 U.S.C. 671(a)(1)(C)) for foster or adoptive parents: "the State shall check any child abuse and neglect registry maintained by the State for information on any prospective foster or adoptive parent and on any other adult living in the home of such a prospective parent, and request any other State in which any such prospective parent or other adult has resided in the preceding five years, to enable the State to check any child abuse and neglect registry maintained by such State for such

information, before the prospective foster or adoptive parent may be finally approved for placement of a child…" We are requesting comment from States about whether these systems for foster or adoptive parents could be used to support cross-State background checks for prospective child care staff members as well. It is impossible to know exactly how many individuals will require a check from another State. As discussed later in the Regulatory Impact Analysis, Census data on geographic mobility shows an out of state mobility rate of approximately 2 percent for employed adults.

While ACF is still working to understand how we can support cross-State background checks, this rule proposes a couple of provisions to help create transparency around the process. At § 98.43(a)(1)(iii), we propose that Lead Agencies must have "requirements, policies, and procedures in place to respond as expeditiously as possible to other States', Territories', and Tribes' requests for background check results in order to accommodate the 45 day timeframe." We also propose that Lead Agencies include the process by which another Lead Agency may submit a background check request on the Lead Agency's consumer education website, along with all of the other background check policies and procedures. In addition, this proposed rule would require at § 98.16(o) that Lead Agencies describe in their Plans the procedures in place to respond to other State, Territory, or Tribal requests for background check results within the 45 day timeframe. ACF will use this question in the Plan to help ensure compliance with the background check requirements in the law. These proposals are intended to minimize confusion about the correct contact information for background check requests and ensure that there are processes in place for timely responses.

Disqualifications. The law specifies a list of disqualifications for child care providers and staff members who are serving children receiving CCDF assistance. Unlike the other

requirements in the background check section of the statute, the restriction against employing ineligible child care staff members would only apply to child care providers receiving CCDF assistance. These employment disqualifications specifically do not apply to child care staff members of licensed providers who do not serve children receiving CCDF subsidies. We believe this gives Lead Agencies the flexibility to impose similar restrictions upon child care providers who are licensed, regulated, or registered and do not receive CCDF funds. These proposed disqualification requirements appear at §§ 98.43(a)(1)(ii) and 98.43(c). We are not proposing any additional disqualifications.

The Act did not include child abuse and neglect findings in the list of disqualifying crimes. Because there is so much variation in the information maintained in each registry, we are allowing Lead Agency flexibility in how to handle findings on the child abuse and neglect registries. We believe that the value of findings in these registries is in the identification of patterns of negative behavior.

Even though the law includes a specific list of disqualifications, it also allows Lead Agencies to prohibit individuals' employment as child care staff members based on their convictions for other crimes that may impact their ability to care for children. If a Lead Agency does disqualify an individual's employment, they must, at a minimum, give the individual the same rights and remedies described in § 98.43(e). This language from Section 658H(h) of the Act is restated in the proposed rule at § 98.43(h), and we have not proposed any changes. We strongly encourage Lead Agencies that chose to consider other crimes as disqualifying crimes for employment to ensure that a robust waiver and appeals process is in place. A waiver and appeals process should conform to the recommendations of the U.S. Equal Employment Opportunity Commission, including the ability to waive findings based on factors as inaccurate information,

certificate of rehabilitation, age when offense was committed, time since offense, and whether the nature of offense is a threat to children. (U.S. Equal Employment Opportunity Commission, *Enforcement Guidance on the Consideration of Arrest and Conviction Records in Employment Decisions under Title VII of the Civil Rights Act of 1964*, http://www.eeoc.gov/laws/guidance/upload/arrest_conviction.pdf). Moreover, we strongly discourage Lead Agencies from considering additional disqualifying crimes for other household members in family child care homes.

Lead Agencies may also consider requiring applicant self-disclosure for child care staff in order to avoid unnecessary checks on individuals who disclose information that would preclude them from passing a background check.

Frequency of Background Checks. Section 658H(d) of the Act requires child care providers to submit requests for background checks for each staff member. The requests must be submitted prior to when the individual becomes a staff member and must be completed at least once every five years. These requirements are included in the regulations at § 98.43(d)(1) and (2). For staff members employed prior to the enactment of the CCDBG Act, the provider must request a background check prior to September 30, 2017 (the last day of the second full fiscal year after the date of enactment) and at least once every five years.

Although not a requirement, we encourage Lead Agencies to enroll child care staff members in rap back programs. A rap back program works as a subscription notification service. An individual is enrolled in the program, and the State Identification Bureau receives a notification if that individual is arrested or convicted of a crime. States can specify which events trigger a notification. Rap back programs provide authorizing agencies with notification of subsequent criminal and, in limited cases, civil activity of enrolled child care staff members so

that background check information is not out of date. However, unless the rap back program includes all the components of a comprehensive background check under the law, the Lead Agency is responsible for ensuring that child care staff members complete all other components at least once every five years.

Section 658H(d)(4) of the Act specifies instances in which a child care provider does *not* need to submit a background check for a staff member. Staff members do not need background check requests if they satisfy three requirements: 1) the staff member received a background check that included the five required parts within the past five years while employed by, or seeking employment by, another child care provider in the State; 2) the State gave a qualifying result to the first provider for the staff member; and 3) the staff member is employed by a child care provider within the State or has been separated from employment from a child care provider for less than 180 days. These requirements are included in the proposed rule at § 98.43(d)(3). Lead Agencies should consider how to facilitate tracking this type of information and maintaining records of individual providers so that unnecessary checks are not repeated.

Provisional Employment. The law requires child care providers to submit a request for background check results prior to a staff member's employment but does not describe instances of provisional employment while waiting for the results of the background check. We received many comments on this issue in the 2013 NPRM, with commenters expressing concern that the background check requirements could prevent parents from accessing the provider of their choice, if the provider's staff has not already received a background check. Parents often need to access child care immediately, for example, as they start new jobs, and commenters were worried that this could lead to delays in accessing care.

In recognition of the possible logistical constraints and barriers to parents accessing the care they need, ACF proposes to allow prospective staff members to provide services to children on a provisional basis, while the background checks are being processed. We are proposing at § 98.43(d)(4) that a prospective staff member may begin work for a child care employer after a background check request has been submitted as long as: the staff member is continually supervised by an individual who has already completed the background check requirements. Prospective staff members in family child care homes may work under the continual supervision of a family child care provider, or other caregiver, who has completed the required checks. We encourage Lead Agencies to require child care providers to inform parents about background check policies and any provisional hires they may have. Allowing provisional hiring does offer more flexibility, but it is also important that Lead Agencies ensure that any provisional status is limited in scope and implemented with transparency.

Completion of Background Checks. Once a child care provider submits a background check request, Section 658H(e)(1) of the law requires the Lead Agency to carry out the request as quickly as possible. The process must not take more than 45 days after the request was submitted. These requirements are included in the proposed rule at § 98.43(e)(1). While we expect checks to be completed in the timeframe established by the law, we propose allowing Lead Agencies discretion on procedures in the event that all of the components of a background check are not complete within 45 days.

We have heard from Lead Agencies that are concerned about not being able to meet the 45 day timeframe. Lead Agencies must work together with the relevant State/Territory entities to minimize delays. After the FBI receives electronic copies of fingerprints, they typically turn around background check results within 24 hours. There can be delays when the submitted

fingerprint image quality is poor. Some States use hard copy fingerprints that need to be made electronic for submission to the FBI, which can lead to delays. We encourage Lead Agencies to adopt electronic fingerprinting, which allows for background check results to be processed more quickly.

We encourage Lead Agencies to leverage existing resources to build and automate their background check systems. One potential resource for States is the National Background Check Program (NBCP), as established by the Patient Protection and Affordable Care Act, which aims to create a nationwide system for conducting comprehensive background checks on applicants for employment in the long-term care (LTC) industry. The NBCP is an open-ended funding opportunity that can award up to $3 million dollars (with a $1 million dollar State match) to each State to support building State background check infrastructure. The Centers for Medicare & Medicaid Services (CMS) administers the NBCP and since 2010, has awarded nearly $57 million in grant funds to participating States to design, implement, and operate background check programs that meet CMS's criteria.

Privacy of Results. Section 658H(e)(2) of the Act requires the Lead Agency to make determinations regarding a child care staff member's eligibility for employment. The Lead Agency must provide the results of the background check to the child care provider in a statement that indicates only whether the staff member is eligible or ineligible, without revealing specific disqualifying information. If the staff member is ineligible, the Lead Agency must provide information about each disqualifying crime specific to the staff member, as well as information on how to appeal the results of the background check to challenge the accuracy and completeness. We have not proposed any additions to the statutory language, and this requirement is found at § 98.43(e)(2) of the proposed regulations.

In order for a Lead Agency to conduct FBI fingerprint checks, there must be statutory authority to authorize the checks. The CCDBG law may be used an authority to conduct FBI background checks, but Lead Agencies may continue to use other statutes as authorities to conduct FBI background checks on child care staff as well. Most Lead Agencies currently use Public Law 92-544 or the National Child Protection Act/ Volunteers for Children Act (NCPA/VCA) (42 U.S.C. 5119a) as the authority to conduct FBI background checks. Public Law 92-544, enacted in 1972, gave the FBI authority to conduct background checks for employment and licensing purposes. The majority of States are using Public Law 92-544 as authority to conduct background checks, but a few States use the NCPA/VCA.

Public Law 92-544 is similar to the CCDBG statute and only allows the State to notify the provider whether an individual is eligible or ineligible for employment. Similarly, the NCPA/VCA requires dissemination of the results to a governmental agency, unless the State has implemented a Volunteer and Employee Criminal History System (VECHS) program. Thus, a major difference between the CCDBG statute and the NCPA/VCA with a VECHS program is in the protection of privacy of results. Through the NCPA/VCA VECHS program, Lead Agencies may share an individual's specific background check results with the child care provider, providing the individual has given consent. Lead Agencies have the flexibility to continue to use these statutes as authority to complete the FBI fingerprint check, as long as the employment determination process required by the CCDBG statute is followed. That is, Lead Agencies must make employment eligibility determinations in accordance with the requirements in the CCDBG Act, but they also may exercise the flexibility allowed through the NCPA/VCA VECHS program to share results of background checks with child care providers.

Appeal and Review Process. Section 658H(e)(3) of the Act requires Lead Agencies to have a process for child care staff members (including prospective staff members) to appeal the results of a background check by challenging the accuracy or completeness of the information contained in their criminal background report. An appeals process is an important aspect of ensuring due process for providers. According to statute, each child care staff member should be given notice of the opportunity to appeal and receive instructions about how to complete the appeals process if the child care staff member wishes to challenge the accuracy or completeness of their background report. The appeals process must be completed in a timely manner. The statute's appeal requirements appear at § 98.43(e)(3) of the proposed rule. We are not proposing any additional requirements here.

Section 658H(e)(4) of the Act, which is reiterated at § 98.43(e)(4) of the proposed rule, allows Lead Agencies to allow for a review process through which the Lead Agency may determine that a child care staff member (including a prospective child care staff member) convicted of a disqualifying drug-related offense, committed during the preceding five years, may be eligible for employment by a provider receiving CCDF funds. The review process must be consistent with Title VII of the Civil Rights Act of 1964 (42 U.S.C. 2000e *et seq.*), which *prohibits employment discrimination based on race, color, religion, sex and national origin.* Lead Agencies may consider in their review process the nature of the conviction, age at the time of the conviction, length of time since the conviction, and relationship of the conviction to the ability to care for children, or other extenuating circumstances. Lead Agencies can consult the U.S. Equal Employment Opportunity Commission's guidance on the consideration of criminal records in employment decisions to ensure compliance with Title VII's prohibition against employment discrimination (U.S. Equal Employment Opportunity Commission, *Enforcement*

Guidance on the Consideration of Arrest and Conviction Records in Employment Decisions under Title VII of the Civil Rights Act of 1964, http://www.eeoc.gov/laws/guidance/upload/arrest_conviction.pdf). Finally, Section 658H(e)(5) of the Act notes that "nothing in this section shall be construed to create a private right of action if a provider has acted in accordance with this section."

Background Check Fees. Lead Agencies have the flexibility to determine who pays for background checks (*e.g.*, the provider, the applicant, or the Lead Agency) but Section 658H(f) of the Act requires that the fees charged for completing a background check may not exceed the actual cost of processing and administration. The cost of conducting background checks varies across States and Territories. The FBI fee is $14.75 to conduct a national fingerprint check, and, according to CCDF State Plan data, most Lead Agencies report low costs to check State registries.

ACF recognizes the important role that fees play in sustaining a background check system. While States and Territories cannot profit from background check fees, we do not want to prevent fees that support the necessary infrastructure. Fees cannot exceed costs and result in return to State general funds, but they can be used to build and maintain background check infrastructure. Further, we expect that Lead Agencies using third party contractors to conduct background checks will ensure that these contractors are not charging excessive fees that would result in huge profits. ACF does not want background check fees to be a barrier or burden for entry into the child care workforce. At Lead Agency discretion, CCDF funds may be used to pay the costs of background checks.

Consumer education website. The statute requires States and Territories to ensure that their background check policies and procedures are published on their websites. These policies

and procedures should be included on the consumer education website discussed in detail in subpart D at § 98.33(a). We propose that States and Territories also include information on the process by which a child care provider or other State or Territory may submit a background check request in order to increase transparency about the process.

Training and Professional Development (Section 98.44)

Section 658E(c)(2)(G) of the Act requires Lead Agencies to describe in their CCDF Plan their training and professional development requirements designed to enable child care providers to promote the social, emotional, physical and cognitive development of children and to improve the knowledge and skills of caregivers, teachers, and directors in working with children and their families, which are applicable to child care providers receiving CCDF assistance.

At § 98.44 we elaborate on the statute's provisions for professional development at Section 658E(c)(2)(G), provider training on health and safety at Section 658E(c)(2)(I)(i)(XI), and provider qualifications at Section 658E(c)(2)(H)(i)(III), as a cohesive approach to training and professional development. Our proposed regulations build on the pioneering work of States on professional development and reflect current State policies.

Caregiver, Teacher and Director. As discussed earlier, we have added definitions for "teacher" and "director" to § 98.2. We believe adding these terms promotes professional recognition for early childhood and school-age care teachers and directors and aligns with terms used in the field. The Act uses the terms "caregiver" and "provider" and we maintain the use of those terms throughout this section as appropriate. We also use the terms "teacher" and "director" to recognize the different professional roles and their differentiated needs for training and professional development. For example, teachers provide direct services to children and

need knowledge of curricula and health, safety, and developmentally appropriate practices. In addition, directors need skills to manage and support staff and perform other administrative duties.

Framework and progression of professional development. At § 98.44(a), we propose that Lead Agencies describe in their CCDF Plan the State or Territory framework for training, professional development and postsecondary education based on statutory language at Section 658E(c)(2)(G)(i). The statute requires the framework to be developed in consultation with the State Advisory Council on Early Childhood Education and Care (SAC). We propose at § 98.44(a)(1) that frameworks be developed in consultation with SACs or similar coordinating body. SAC grants, funded by the American Recovery and Reinvestment Act, along with Race to the Top-Early Learning Challenge grants, leveraged CCDF funds to develop and implement comprehensive professional development systems. An inclusive process for the design of a professional development system with a range of stakeholders (child care resource and referral agencies, State/Territory and local professional associations, entities that grant credentials and certificates, higher education institutions, workforce registries, QRIS administrators, for example) will result in a more effective and credible framework.

Section 658E(c)(2)(G)(ii)(II) allows the Lead Agency to "engage training providers in aligning training opportunities with the State's training framework," which we restate in the proposed rule at § 98.44(a)(2). We encourage the participation of the full range of training and professional development providers, including higher education and entities that grant certificates and credentials in early childhood education, to align with the framework. Training and professional development may be provided through institutions of higher education, child care resource and referral agencies, worker organizations, early childhood professional

associations, and other entities. This alignment may lead to a more coherent and accessible sequence of professional development for individuals to meet Lead Agency requirements and progress in their professional development and to maximize the use of professional development resources.

Proposed § 98.44(a)(3) describes the components of a professional development framework. We propose that Lead Agencies address six components (described below) in their professional development framework based on recommendations by the National Child Care Information Center and the National Center on Child Care Professional Development Systems and Workforce Initiatives (former technical assistance projects of the Office of Child Care), and national early childhood professional associations, including the National Association for the Education of Young Children. The recent report of the National Academies of Sciences' expert panel on the early childhood workforce speaks to the intentional and multifaceted system of supports that will be needed to ensure that every caregiver, teacher, and director can provide high quality development and learning to the diversity of children in child care and early childhood programs. (Institute of Medicine and National Research Council, 2015. Transforming the workforce for children birth through age 8: A unifying foundation. Washington, DC: The National Academies Press). The six proposed components are: professional standards and competencies, career pathways, advisory structures, articulation, workforce information, and financing. These components are discussed below. In the FY 2014-2015 CCDF Plans, the majority of States and Territories indicated that they have implemented the same components of a professional development framework system. We provide for flexibility on the strategies, breadth and depth with which States and Territories will develop and implement a framework that includes these components.

1. Core knowledge and competencies. Caregivers, teachers, and directors need a set of knowledge and skills to be able to provide high quality child care and school-age care. The foundational core knowledge—what all early childhood professionals should know and be able to do—should be supplemented with specialized competencies and professional development that recognizes different professional roles, ages of children being served, and special needs of children. According to the FY 2014-2015 CCDF Plans, 49 States and all but one Territory have developed core knowledge and competencies aligned to professional standards.

2. Career pathways. Section 658E(c)(2)(G)(ii)(I) of the Act requires Lead Agencies to create a progression of professional development, which may include encouraging postsecondary education. This progression is in essence a career pathway, also known as a career lattice or career ladder. The National Academies of Sciences' report, *Transforming the Early Childhood Workforce: A Unifying framework*, calls for States to implement "phased, multiyear pathways to transition to a minimum bachelor's degree requirement with specialized knowledge and competencies" for all early childhood teachers working with children from birth through age eight. *(Institute of Medicine (IOM) and National Research Council (NRC). 2015. Transforming the workforce for children birth through age 8: A unifying foundation. Washington, DC: The National Academies Press).* According to the FY 2014-2015 CCDF Plans, nearly all States and Territories have developed a career pathway that includes qualifications, specializations, and credentials by professional role. Although we do not propose that States set any particular credential as a licensing qualification or a point on the career pathway, the pathway should form a transparent, efficient sequence of stackable credentials from entry

level that can build to more advanced professional competency recognition. One model of professional development is the Registered Apprenticeship, providing job-embedded professional development and coursework that leads to a Child Development Associate (CDA) credential. In many apprenticeships, this is done through an agreement with the community college to carry credit toward an Associate degree. The costs of tuition, books, and the CDA evaluation fee is covered by the apprenticeship. The CDA is often a first professional step on an early childhood education career ladder that can lead to better compensation and a pathway to higher levels of education.

3. Advisory structures. Because professional development and training opportunities and advancement may cut across multiple agencies, it is important to have a formal communication and coordination effort. For example, professional development resources for individuals providing special education services for preschools and infants and toddlers may not be administered by the CCDF Lead Agency. Policies for higher education institutions are generally made by the State higher education board or board of education. Many States use the SACs as an advisory body for professional development systems policy and coordination. (Administration for Children and Families, U.S. Department of Health and Human Services, *Early Childhood State Advisory Councils Final Report*, 2015) We encourage the advisory body to include representatives of different types of professional development providers (such as higher education, child care resource and referral, QRIS coaches and technical assistance providers) as well as CCDF providers through membership on the advisory or participation in subcommittees or advisory groups.

4. Articulation. Articulation of coursework, when one higher education institution matches its courses or coursework requirements with other institutions, prevents students from repeating coursework when changing institutions or advancing toward a higher degree. Transfer agreements, another type of articulation, allow the credit earned for an associate degree to count toward credits for a baccalaureate degree. States and Territories can encourage articulation and transfer agreements between two- and four-year higher education degree programs, as well as articulation with other credentials and demonstrated competencies. In their FY 2014-2015 Plans, 45 States and Territories reported having articulation agreements in place across and within institutions of higher education and 39 States and Territories reported having articulation agreements that translate training and/or technical assistance into higher education credit.
5. Workforce information. It is important to collect and evaluate data to identify gaps in professional development accessibility, affordability, and quality. Information may be gathered from different sources, such as child care resource and referral agencies, scholarship granting entities, higher education institutions, Head Start Program Information Report data, and early childhood workforce registries. Information about the characteristics of the workforce, access to and availability of different types of training and professional development, compensation, and turnover can help the advisory body and other stakeholders make policy and financing decisions.
6. Financing. Financing of the framework and of individuals to access training and professional development, including postsecondary education, is critical. Many Lead Agencies use CCDF funds to finance the professional development infrastructure and the costs of training and professional development, including postsecondary education, for

caregivers, teachers, and directors. States and Territories report using their SAC grants and Race to the Top-Early Learning Challenge grants to leverage and expand CCDF funds for workforce improvement and retention. Twenty-eight States/Territories reported that they used SAC grants to complete a workforce study; 29 States/Territories used SAC grants to create or enhance their Core Knowledge and Competencies framework; and 18 States/Territories used SAC grants to develop or enhance their workforce registries. We encourage Lead Agencies to leverage CCDF funds with other public and private resources to accelerate professional development efforts.

Qualifications. Section 658E(c)(2)(H)(i)(III) of the Act requires Lead Agencies to set qualifications for CCDF providers. We propose to include that requirement at § 98.44(a)(4) and clarify that such qualifications should be designed to enable caregivers, teachers, and directors to promote the full range of children's development: social, emotional, physical, and cognitive development. States and Territories currently set minimum qualifications for teacher assistants, teachers, directors, and other roles in centers, family child care, and school-age care settings in their licensing standards. We encourage Lead Agencies to consider the linkage between these minimum qualifications and higher qualifications in the progression of professional development or career pathways. According to Section 658E(c)(2)(G)(ii)(I) of the Act, professional development should be conducted on an ongoing basis, provide for a progression of professional development (which may include encouraging the pursuit of postsecondary education), and reflect current research and best practices relating to the skills necessary for the caregivers, teachers, and directors to meet the developmental needs of participating children and engage families. These requirements are proposed in paragraphs (5) and (6) of § 98.44(a).

Quality, Diversity, Stability and Retention of the Workforce. Section 658E(c)(2)(G)(ii)(I) of the Act also requires assurances in the Plan that training and professional development will improve the quality of, and stability within, the child care workforce. At § 98.44(a)(7) we propose adding that the training and professional development requirements must also improve the quality and diversity of caregivers, teachers, and directors. Maintaining diverse and qualified caregivers, teachers, and directors is a benefit to serving children of all backgrounds. We also propose to add that such requirements improve the retention (including financial incentives) of caregivers, teachers, and directors within the child care workforce, based on the high turnover rate in child care that can disrupt continuity of care for children. In order for children to benefit from high quality child care, it is important to retain caregivers, teachers, and directors who have the knowledge and skills to provide high quality experiences. In 2012, the average annual turnover rate of classroom staff was 13 percent, and the turnover rate among centers (child care, Head Start and schools) that experienced any turnover was 25 percent. (Whitebook, M., Phillips, D. & Howes, C. (2014.)) *Worthy work, STILL unlivable wages: The early childhood workforce 25 years after the National Child Care Staffing Study*. Berkeley, CA: Center for the Study of Child Care Employment, University of California, Berkeley)

Aligning training and professional development with the professional development framework. We propose at § 98.44(b) to require each Lead Agency to describe in the Plan its requirements for training and professional development for caregivers, teachers, and directors of CCDF providers that, to the extent practicable, align with the State or Territory's training and professional development framework required by § 98.44(a).

Pre-service or orientation health and safety training. Section 658E(c)(2)(I)(i)(XI) of the Act requires Lead Agencies to set "minimum health and safety training, to be completed pre-

service or during an orientation period in addition to ongoing training, appropriate to the provider setting involved" that addresses the specific topic areas listed in the proposed rule at § 98.41(a)(1). All caregivers, teachers, and directors in programs receiving CCDF funds must receive this training. Many States and Territories already have pre-service and orientation training requirements for licensed providers. We have placed this requirement in the professional development section of the proposed rule because we see preliminary health and safety training requirements as a part of a continuum of professional development. We propose that pre-service or orientation training include the major domains of child development in addition to the Act's requirement for health and safety training. Understanding child development is integral to providing high quality child care.

The Act allows an orientation period during which staff can fulfill the training requirement. Lead Agencies will have broad flexibility to determine what training is required "pre-service" and what training may be completed during an "orientation" period. We propose that all orientation training be completed within three months of caring for children as recommended by *CfoC Basics*. We encourage providers to document completion of the pre-service or orientation training so that caregivers, teachers, and directors do not need to repeat foundational training when they change employment. This documentation can be useful for the State's or Territory's licensing agency and career pathway.

We expect variability in how Lead Agencies will implement this provision. There are a number of low or no cost resources available, including online resources, which cover many of these trainings. We do not advocate the exclusive use of online trainings, but believe that a mixed delivery training system that includes both online and in-person trainings can meet the varied needs of child care caregivers, teachers, and directors. We encourage Lead Agencies to

permit individuals to use certificates and credentials that include a demonstration of competence in any or all of the health, safety, and child development topics to fulfill, partially or in full, the training requirements.

Ongoing Professional Development: Section 658E(c)(2)(G)(ii)(I) of the Act requires the Plan to include assurances that training and professional development will be conducted on an ongoing basis, which we restate at § 98.44(b)(2) with a number of parameters. At § 98.44(b)(2)(i), we propose that ongoing training maintain and update the health and safety training standards described at § 98.41(a)(1).

Section 658E(c)(2)(G)(iii) of the Act requires each Lead Agency's Plan to include the number of hours of training for eligible providers and caregivers to engage in annually, as determined by the Lead Agency. We propose to reiterate this requirement at § 98.44(b)(2) by requiring Lead Agencies to establish the minimum annual requirement for hours of training and professional development for caregivers, teachers and directors of CCDF providers. While Lead Agencies have flexibility to set the number of hours, *Caring for Our Children: National Health and Safety Performance Standards, Guidelines for Early Care and Education Programs, 3rd Edition,* recommends that teachers and caregivers receive between 24 and 30 hours of ongoing training annually.

The Act also specifies that the ongoing professional development must: incorporate knowledge and application of the Lead Agency's early learning and developmental guidelines (where applicable) and the Lead Agency's health and safety standards; incorporate social-emotional behavior intervention models, which may include positive behavior intervention and support models; be accessible to providers supported by Tribal organizations or Indian Tribes that receive CCDF assistance; and be appropriate for different populations of children, to the

extent practicable, including different ages of children, English learners, children with disabilities, Native Americans and Native Hawaiians. We have re-stated these areas within § 98.44(b)(2)(iii) through (v) and (vii) with some elaboration. We propose at § 98.44(b)(2)(v) that the Plan promote, to the extent practicable, ongoing professional development opportunities that earn Continuing Education Units (CEUs) or are credit-bearing. Too often, early childhood educators participate in professional development that is not accepted by a credential or degree program or does not link to the career pathway. In some instances, this type of training is necessary, but often it results in an inefficient use of resources that does not help individuals advance professionally. CEUs and college credits are quality accountability mechanisms because they require some form of assessment of adult learning. CEUs may be accepted in some articulation agreements, particularly if granted by a higher education institution or accredited by the International Association for Continuing Education and Training (IACET). They also can facilitate articulation with degree programs, preventing individuals from repeating coursework for which they have already expended private funds or taken out loans. We encourage, as part of the State or Territory framework, a process for individuals to receive career and professional development advisement so that they can make informed choices about ongoing professional development opportunities.

Equal Access (Section 98.45)

Section 658E(c)(4) of the Act requires the Lead Agency to certify in its CCDF Plan that payment rates for CCDF subsidies are sufficient to ensure equal access for eligible children to child care services that are comparable to child care services provided to children whose parents are not eligible to receive child care assistance. In this NPRM, we are interpreting the

comparison group as families whose incomes exceed 85 percent of SMI. Many families with income above 85 percent of SMI have higher quality child care options available to them and we propose that families receiving CCDF should have access to child care of comparable quality. The statute requires the CCDF Plan to provide a summary of the facts the Lead Agency used to determine that payment rates are sufficient to ensure equal access. This proposed rule modifies three key elements in the current regulation, now at §98.45(b), used to determine that a CCDF program provides equal access for eligible families and proposes five additional elements consistent with statutory provisions on equal access and rate setting at Section 658E(c)(4) and payment practices at Section 658E(c)(2)(S) of the Act. As proposed, the summary of data and facts would include: (1) choice of the full range of providers; (2) adequate payment rates, based on the most recent market rate survey or alternative methodology; (3) base payment rates established at least at a level sufficient to support implementation of the health, safety and quality requirements in the NPRM; (4) payment rates that are sufficient to provide parental choice for families receiving CCDF subsidies to access care that is of comparable quality to care that is available to families with incomes above 85 percent of State Median Income; (5) the cost of higher quality child care; (6) payment practices that support equal access to a range of providers; (7) affordable copayments; and (8) any additional facts considered by the Lead Agency. All of these proposed changes are discussed further below.

Market Rate Survey or Alternative Methodology. We propose adding paragraph (c) based on new statutory language at Section 658E(c)(4)(B) of the Act requiring Lead Agencies to conduct, no earlier than two years before the submission of their CCDF Plan, a *statistically valid and reliable* market rate survey or an alternative methodology, such as a cost estimation model. Previously, the conducting of a market rate survey was a regulatory requirement, not statutory.

ACF is not defining *valid and reliable* within this proposed rule but is proposing a set of benchmarks, largely based on CCDF-funded research to identify the components of a valid and reliable market rate survey. (Grobe, D., Weber, R., Davis, E., Kreader, L., and Pratt, C., *Study of Market Prices: Validating Child Care Market Rate Surveys*, Oregon Child Care Research Partnership, 2008)

ACF will consider a market rate survey valid if it meets the following benchmarks:

- Includes the priced child care market. The survey 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 rate survey. 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 license-exempt providers since individuals 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 rate survey, Lead Agencies often use other facts to establish payment rates for providers outside of the priced market (*e.g.*, license-exempt 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 survey uses data sources (or combinations of sources) that fully capture the universe of providers in the priced child care market. The survey should use lists or databases from multiple sources, including licensing, resource and referral, and the subsidy program, if necessary, for completeness. In addition, the survey should reflect up-to-date information for a specific time period (*e.g.*, all of the prices in the survey are collected within a three- month time period).
- Represents geographic variation. The survey includes providers from all geographic parts of the State, Territory, or Tribal service area. It also should collect and analyze data in a manner that links prices to local geographic areas.
- Uses rigorous data collection procedures. The survey 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 (generally, 65 percent or higher is desirable and below 50 percent is suspect). Some research suggests that relatively low response rates in certain circumstances may be as valid as higher response rates. (Curtin R., Presser S., Singer E., *The Effects of Response Rate Changes on the Index of Consumer Sentiment*, Public Opinion Quarterly, 2000; Keeter S, Kennedy C, Dimock M, Best J, Craighill P., *Gauging the Impact of Growing Nonresponse on Estimates from a National RDD Telephone Survey*, Public Opinion Quarterly, 2006) Therefore, in addition to looking at the response rate, it is necessary to implement strong sample designs and conduct analyses of potential response bias to ensure that the full universe of providers in the child care market is adequately represented in the data and findings. Lead Agencies should consider surveying in

languages in addition to English based on the languages used by child care providers, and other strategies to ensure adequate responses from key populations.

- Analyzes data in a manner that captures market differences. The survey 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 survey should collect and analyze price data separately for each age group and category of care to reflect market differences.

The purpose of the market rate survey is to guide Lead Agencies in setting payment rates within the context of market conditions so that rates are sufficient to provide equal access to the full range of child care services, including high quality child care. However, the child care market itself often does not reflect the actual costs of providing child care and especially of providing high quality child care designed to promote healthy child development. Financial constraints of parents prevent child care providers from setting their prices to cover the full cost of high quality care, which is unaffordable for many families. As a result, a market rate survey may not provide sufficient information to assess the actual cost of quality care. Therefore, it's often important to consider a range of data, including, but not limited to, market rates, to understand prices in the child care market. In this proposed rule, we clarify that the market rate survey is intended to be an examination of prices and that Lead Agencies have flexibility to use data collection methodologies other than a survey so long as the data are reflective of the current

child care market. For example, Lead Agencies may use administrative data from resource and referral agencies or other sources, which may be used to determine payment rates.

We propose that the market rate survey also include information on the extent to which child care providers are participating in CCDF and any barriers to participation, including barriers related to CCDF payment rates and practices. We expect that Lead Agencies would include questions related to identifying such barriers in their survey. Previous surveys and focus groups with child care providers have found that low payment rates as well late or delayed payments and other hassles may force some providers to stop serving or limit the number of children receiving subsidies in their care. Other providers may choose to not serve CCDF children at all. (Adams, G., Rohacek, M., and Snyder, K., *Child Care Voucher Programs: Provider Experiences in Five Counties,* 2008). We think it is important to publicize information from child care providers on the extent to which barriers related to payment rates and practices deter providers from participating in CCDF and therefore limit equal access for children receiving CCDF. While we propose this requirement as part of the market rate survey, we encourage Lead Agencies that choose to use an alternative rate-setting methodology in lieu of a market rate study, discussed below, to find ways of collecting and publicizing information on barriers to CCDF participation from child care providers through survey or other means.

The revised law allows a Lead Agency to base payment rates on an alternative methodology, such as a cost estimation model, in lieu of a market rate survey. A cost estimation model is one such alternative approach in which a Lead Agency can estimate the cost of providing care at varying levels of quality based on resources a provider needs to remain financially solvent. The Provider Cost of Quality Calculator is a publicly available Web-based tool that calculates the cost of quality-based on site-level provider data for any jurisdiction.

Many States, working with the Alliance for Early Childhood Finance and Augenblick, Palaich and Associates (APA), contributed to the development of the cost calculator methodology that preceded the online tool, and was funded by the Office of Child Care through the support of the Child Care Technical Assistance Network. The tool helps policymakers understand the costs associated with delivering high quality child care and can inform payment rate setting.

In our 2013 NPRM, ACF proposed allowing Lead Agencies to use an alternative rate-setting methodology in lieu of a market rate study. We received many comments opposed to the proposal, including those expressing concern that alternative methodologies were an unproven approach that may be used to justify existing low payment rates. Due to concern about alternative methodologies and because they are new (in comparison to the long-standing use of market rate surveys), we propose that any alternative methodology used by a Lead Agency must receive advance approval by ACF. 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 that promote equal access and support a basic level of health, safety and quality, as discussed below. ACF approval will only be necessary if the Lead Agency plans to *replace* the market rate survey with an alternative methodology. Approval will not be required if the Lead Agency plans to implement both a market rate survey and an alternative methodology. After enactment of a final rule, ACF will provide guidance to Lead Agencies regarding the process for proposing an alternative methodology, including criteria and a timeline for approval. We will also consider whether to provide a list of recommended methodologies.

We propose adding paragraph (d) based on the updated law, which requires that the market rate survey reflect variations by geographic location, provider, and child's age. We propose applying the same requirement to any alternative methodology used by a Lead Agency.

Lead Agencies must include in their Plan how and why they differentiate their rates based on these factors.

We propose adding paragraph (e) that reflects new statutory language requiring the Lead Agency to consult with the State's Early Childhood Advisory Council or similar coordinating body, child care directors, local child care resource and referral agencies, and other appropriate entities prior to conducting a market rate survey or alternative methodology. Lead Agencies should consult with members of the public in the development of their survey or methodology, including worker organizations representing child care caregivers, teachers, and directors.

In accordance with §§98.81(b)(5) and 98.83(d)(1)(v), we propose to exempt Tribal grantees from the requirement to conduct a market rate survey or alternative methodology. However, in their CCDF Plans, Tribes must still describe their payment rates; how they are established; and how they support quality and, where applicable, cultural and linguistic appropriateness. Tribes, at their option, may still conduct a market rate survey or alternative methodology or use the State's market rate survey or alternative methodology when setting payment rates.

Setting Payment Rates. We propose adding §98.45(f)(1) reflecting the statutory requirement for a Lead Agency to prepare and make widely available a detailed report containing results of its survey or alternative methodology. Section 658E(c)(4)(B)(ii) of the Act requires this report be available 30 days after completion of the survey or alternative methodology. Because we consider analysis and preparation of the report to be part of completing a survey, we are clarifying that Lead Agencies have 30 days from completion of the report to make the information available.

We propose adding language that would require Lead Agencies to indicate in their report the estimated price or cost of care necessary to support child care providers' implementation of the health, safety, and quality requirements at §§ 98.41, 98.42, 98.43, and 98.44, including any relevant variation by geographic location, category of provider, or age of child. We expect that payment rates, *at a minimum*, should be sufficient to ensure compliance with applicable licensing and regulatory requirements, health and safety standards, training and professional development standards, and appropriate child to staff ratio and group size limits (that Lead Agencies define) as required by the Act. We intend to ask Lead Agencies in their Plans to indicate the estimated price or cost of care necessary to support child care providers' implementation of these health, safety, and quality requirements, as well as how that baseline corresponds with licensing requirements and levels of a quality rating and improvement system or other transparent system of quality indicators. We also strongly encourage Lead Agencies to consider the costs associated with implementation of higher quality standards, such as those in *Caring for Our Children Basics*, the Head Start program performance standards, or various levels of QRIS, when establishing base payment rates.

Section 658E(c)(4)(B)(iii) of the Act requires Lead Agencies to set payment rates in accordance with the result of the market rate survey or alternative methodology, taking into consideration the cost of providing higher quality care. We interpret this statutory provision to mean that Lead Agencies must use results of the most *recent* market rate survey or alternative methodology to set payment rates and propose language in § 98.45(f)(2)(i) to clarify this. Payment rates should reflect the current child care market. Setting payment rates based on older market rate surveys that reflect outdated prices, results in insufficient payment rates that do not reflect current market conditions and undermine the statutory requirement of equal access. This

proposal would effectively require Lead Agencies to reevaluate their payment rates *at least* every three years. Where updated data from a market rate survey or alternative methodology indicate that prices or costs have increased, Lead Agencies must update their rates as a result. Moreover, we encourage Lead Agencies to consider annual increases in rates that keep pace with regular increases in the costs of providing child care. While we anticipate that payment rates will differ by types of care, ages of children and geographic location, among other factors, we expect that Lead Agencies will ensure that rates for all provider categories and age groups similarly provide equal access for children served by CCDF.

The preamble to the 1998 Final Rule reminds 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). While this principle remains in effect, we are clarifying that Lead Agencies may pay amounts above the provider's private pay rate to support quality. A Lead Agency also may peg a higher payment rate to the provider's cost of doing business at a given level of quality. For example, an analysis of the cost of providing high quality care (*i.e.*, at the top levels of a QRIS) using a cost estimation model or other method could show the cost of providing the service is greater than the price charged in the market. Recognizing that private pay rates are often not sufficient to support high quality, many Lead Agencies have already implemented tiered subsidy payments that support quality. Payments may exceed private pay rates if they are designed to pay 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 disabilities or special health care needs, etc.).

In paragraphs (f)(2)(ii) and (iii), we propose new parameters for determining whether payment rates are set at levels that allow eligible families equal access to child care that is

comparable to child care access by families who are not eligible for CCDF. We propose, as mentioned above, that Lead Agencies set payment rates, *at a minimum,* at levels sufficient to support implementation of health, safety, and quality requirements as described in this NPRM. We also propose that Lead Agencies set payment rates at levels that provide parental choice to families receiving CCDF subsidies to access care that is of comparable quality to care that is available to families with incomes above 85 percent of State Median Income. The preamble to the 1998 Final Rule indicated that payments established at least at the 75th percentile of prices charged in the private-pay child care market would be regarded as providing equal access (63 FR 39959). We believe the 75th percentile remains an important benchmark for gauging equal access and recognize that Lead Agencies and other stakeholders are familiar with this rate as a proxy for equal access. To establish payments at the 75th percentile, rates within categories from the market rate survey are arranged from lowest to highest. The 75th percentile is the number separating the 75 percent of lowest rates from the 25 percent that are highest. Setting rates at the 75th percentile demonstrates that CCDF families have access to at least three-quarters of all available child care, including care available to families with incomes above 85 percent of State median income. While it is true that the price of child care does not always correlate with the quality of child care, we believe it is essential that CCDF families have access to a majority of the care available to families with incomes above 85 percent of income, which would be accomplished with rates established at the 75th percentile. Retaining this benchmark also allows for accountability and comparability across States using a market rate survey approach, which can be useful in gauging equal access and monitoring trends in rates and access to quality care over time. We recognize that this benchmark is an imperfect proxy for the affordability of higher quality care. In order for providers to offer high quality care that meets the needs of

children from low-income families, they need sufficient funds to be able to recruit and retain qualified staff, use intentional approaches to promoting learning and development using curriculum and engaging families, and provide safe and enriching physical environments. ACF plans to continue monitoring rates and equal access, which may lead to improved rate setting approaches and benchmarks in future years.

Currently, nearly all Lead Agencies set rate ceilings that are below the 75th percentile and in many cases significantly below that benchmark. This is of great concern to ACF both because inadequate rates may violate the statutory requirement for equal access and because CCDF is serving a large number of vulnerable children who would benefit from access to high quality care and for whom payment rates even higher than the 75th percentile may be necessary to afford access to such care. Low rates simply do not provide sufficient resources to cover costs associated with the provision of high quality care or to attract and retain qualified caregivers, teachers, and directors. Low rates may also impact the willingness of child care providers to serve CCDF children thereby restricting access. Currently, even in States and Territories that pay higher rates for higher quality care, base rates are so inadequate that even the highest payment levels are often below the 75th percentile. While rates vary by category of care, locality, and other factors, 22 States/Territories reported in their FY 2014-2015 CCDF Plans they had at least some base rates below the 10th percentile of a market rate survey. This means that CCDF families are unable to access a significant portion of the child care market, including higher quality care accessed by families with incomes over 85 percent of SMI.

While we are not requiring that Lead Agencies pay providers at the 75th percentile, we strongly discourage Lead Agencies from paying providers less than the 75th percentile. Further, Lead Agencies that set rates below the 75th percentile would be required to demonstrate that their

payment rates allow CCDF families to purchase care that is of comparable quality to care that is available to families with incomes above 85 percent of SMI. This should include data about the quality of care that CCDF families can purchase and that is available to families above 85 percent of SMI. For example, a State could provide data on the share of licensed providers in the State or service area that meet established quality benchmarks, as well as the share of CCDF providers meeting those standards and the share of children receiving CCDF in care that meets an established quality level. States could use information on QRIS participation and ratings, national accreditation or other quality benchmarks for providers.

ACF intends to enhance its monitoring of rates through the CCDF Plan approval process. ACF may deny Plans or take penalties under the equal access provision of this law if base rates do not give access to a minimum level of quality. Lead Agencies that set their rates at the 75th percentile of the most recent market rate survey will be assured approval by ACF that rates provide equal access. ACF will apply scrutiny in its review to rates set below that threshold, as well as to rates that appear to be below a level to meet minimum quality standards based on alternate methodologies.

We recognize that at the present time in many States and Territories the available quality data on child care providers is limited and we are requesting comments on how to best assess the comparability of child care quality between that accessed by families receiving CCDF and that available to families above 85 percent of SMI, including parameters and requirements for any data collection. ACF intends to examine the integrity of reported data and provide assistance to Lead Agencies in assessing comparability. We are also seeking comments on a possible benchmark or metric for measuring the adequacy of rates set by alternative methodologies, as comparable to the 75th percentile. Finally, any alternative methodology or market rate survey

that results in stagnant or reduced payment rates will result in further increased scrutiny by ACF in its review, and the Lead Agency will need to provide a justification for how such rates result in improving access to higher quality child care.

We propose adding paragraph (f)(2)(iii) in accordance with the new statutory requirement for Lead Agencies to take into consideration the cost of providing higher quality care than was provided prior to the reauthorization when setting payment rates. Lead Agencies may take different approaches to meeting this provision, including increasing base payment rates, using pay differentials or higher rates for higher quality care, or other strategies, such as direct grants or contracts that pay higher rates for child care services that meet higher quality standards. As stated, ACF acknowledges that rates above the benchmark of 75th percentile may be required to support the costs associated with high quality care.

We propose adding paragraph (f)(2)(iv) reflecting new language in the law that requires Lead Agencies set payment rates without reducing the number of families receiving assistance, to the extent practicable. ACF recognizes the limitations of Lead Agencies' abilities to increase rates under resource constraints and that Lead Agencies must balance competing priorities. We recognize that greater budgetary resources are needed to serve all children eligible for CCDF. While we do not want to see a reduction in children served, it is our belief that current payment rates for CCDF-funded care in many cases do not support equal access to a minimum level of quality for CCDF children and should be increased.

Current regulations prohibit Lead Agencies from differentiating payment rates based on a "family's eligibility status or circumstance". This provision is intended to prevent Lead Agencies from establishing different payment rates for child care for low-income working families as payments for children from TANF families or families in education or training. We

believe that such a prohibition remains relevant and that differentiating payment rates, based on an eligibility status (such as receiving TANF or participation in education or training), would violate the equal access provision. In order to clarify that this prohibition does not conflict with the ability of Lead Agencies to differentiate payments based on the needs of particular children, for example paying higher rates for higher quality care for children experiencing homelessness, we have removed the word "circumstance" in paragraph (g) so that this provision only refers to the conditions of eligibility and not the needs or circumstance of children. We do not believe that setting lower payment rates based on the eligibility status of the child is consistent with Congress' intent to allow for differentiation of rates or that establishing different payment rates for low-income families and TANF families furthers the goals of the Act or support access to high quality care for low-income children.

Finally, we propose, in paragraph (i), to add, "if the Lead Agency acted in accordance with" this regulation, to the existing language that nothing in this section shall be construed to create a private right of action in accordance with statutory language.

Section 658E(c)(4)(C) of the Act states that Lead Agencies may not be prevented from differentiating payment rates based on geographic location of child care providers, age or particular needs of children (such as children with disabilities and children served by child protective services), whether child care providers provide services during weekend or other non-traditional hours; or a Lead Agency's determination that differential payment rates may enable a parent to choose high quality child care. Section 98.45(j)(2) proposes to add children experiencing homelessness to this list of children with particular needs. Paying higher rates for higher quality care is an important strategy as it provides resources necessary to cover the costs of quality improvements in child care programs. Lead Agencies should also consider

differentiating rates for care that is in low supply, such as infant-toddler care and care during nontraditional hours, as an incentive for providers.

Parent Fees. Section 658E(c)(5) requires Lead Agencies to establish and periodically revise a sliding fee scale that provides for cost-sharing for families receiving CCDF funds. The reauthorization added language that cost-sharing should not be a barrier to families receiving CCDF assistance. In this proposed rule, we have moved the regulatory language on sliding fee scales (previously § 98.42) under this section, recognizing affordable copayments as an important aspect of equal access.

We propose amending the previous regulatory language, now § 98.45(k) by adding language that the cost-sharing should not be a barrier to families receiving assistance. Lead Agencies have flexibility in establishing their sliding fee scales and determining what constitutes a cost barrier for families. The preamble to the 1998 Final Rule established the Federal benchmark of 10 percent of family income as an affordable copayment. As in the past, we are declining from defining affordable in regulation but we are revising this established benchmark through this preamble. It is our view that a fee that is no more than 7 percent of a family's income is a better measure of affordability. According to the U.S. Census Bureau, the percent of monthly income families spend on child care on average has stayed constant between 1997 and 2011, at around 7 percent. Poor families on average spend approximately four times the share of their income on child care compared to higher income families. *Who's Minding the Kids? Child Care Arrangements: Spring 2011,* U.S. Census Bureau, 2013.) As CCDF assistance is intended to offset the disproportionately high share of income that low-income families spend on child care in order to support parents in achieving economic stability, it is our belief that CCDF families should not be expected to pay a greater share of their income on child care than reflects

the national average. For the majority of CCDF families receiving assistance, this new Federal benchmark would not result in a change in the amount of copay charged. The average percentage of family income spent on CCDF copayments, among families with a copayment, is 6.2 percent.

According to § 98.21(a)(3), as proposed, Lead Agencies would be unable to increase family copayments within the minimum 12-month eligibility period unless the family's income is in a graduated phaseout of care as described at § 98.21(b)(2). When designing fee scales, we encourage Lead Agencies to consider how their fee scales address affordability for families at all income levels. Lead Agencies should ensure that small increases in earnings, during the graduated phaseout period, do not trigger large increases in copayments, in order to ensure stability for families as they improve their economic circumstance and transition off child care assistance.

In addition, we propose to add language to provide that Lead Agencies may not use the cost, price of care, or subsidy payment rate as a factor in setting co-payment amounts. 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 would correct this discrepancy by stating that Lead Agencies may not use the cost or price of care when setting their co-pay amounts, which could violate the statutory requirements to preserve equal access and parental choice by incentivizing families to use lower cost care.

Finally, current CCDF regulations at § 98.42(c) 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.’’ This provision would remain in effect and we encourage Lead Agencies to implement it. We propose amending this section so that Lead Agencies can waive contributions from families ‘‘that meet other criteria established by the Lead Agency.” Lead Agencies have often requested more flexibility to waive copayments beyond just those families at or below the poverty level. This change would increase flexibility to determine waiver criteria that the Lead Agency believes would best serve subsidy families. For example, a Lead Agency could use this flexibility to target particularly vulnerable populations, such as homeless families, migrant workers, or families receiving TANF. Lead Agencies may choose to waive copayments for children in Head Start and Early Head Start, which is an important alignment strategy. Head Start and Early Head Start are provided at no cost to eligible families, who cannot be required to pay any fees for Head Start services. Waiving CCDF fees for families served by both Head Start/Early Head Start and CCDF can support continuity for families. While we are allowing Lead Agencies to define criteria for waiving co-payments, the criteria must be described and approved in the CCDF Plan. 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 would have co-payment requirements for a substantial number of families receiving CCDF subsidies. We included this proposal on increasing Lead Agency flexibility on waiving co-payments in our 2013 NPRM and many commenters supported this policy revision.

We propose adding paragraph (l) that requires Lead Agencies to prohibit child care providers receiving CCDF funds from charging parents additional mandatory fees above the

family co-payment based on the Lead Agencies' sliding fee scale. According to the 2015-2016 CCDF Plans, 41 Lead Agencies have policies allowing providers to charge families the difference between the maximum payment rate and their private pay rate. In some States/Territories, parents may be asked to pay the difference only in certain circumstances or for certain types of providers. For example, Lead Agencies that allow providers to charge parents may prohibit providers from charging families who are exempt from copayments, or may only allow providers who have met an established quality level to charge families the difference in rates. (Minton, S., Durham, C., and Giannarelli, L., *The CCDF Policies Database Book of Tables: Key Cross-State Variations in CCDF Policies as of October 1, 2013, OPRE Report 2014-72*, U.S. Department of Health and Human Services, 2014). We believe that requiring families to pay above the established copayment may make care unaffordable for families and may be a barrier to families receiving assistance. We are also concerned that such policies require families to make up the difference for Lead Agencies' low payment rates. To ensure that providers are informed about this provision, Lead Agencies should include this prohibition in any written information given to providers and/or written provider agreements. Lead Agencies may want to consider what methods they would use to monitor compliance with this prohibition. This policy does not preclude providers from charging families optional fees, such as those to participate in field trips or other non-mandatory activities. We anticipate that any fiscal impact on providers from this policy change would be reduced or eliminated by the expectation that Lead Agencies increase and regularly update their payment rates and improve their payment policies pursuant to §98.45(f)(2) and (m). We solicit comments on the impact of this proposal for both parents and providers, including whether ACF should provide a phase-in period for implementation.

Provider Payment Practices. Section 658E(c)(2)(S) of the Act requires Lead Agencies to certify that payment practices for child care providers receiving CCDF funds reflect generally accepted payment practices of child care providers in the State/Territory that serve children who do not receive CCDF-funded assistance in order to support stability of funding and encourage more child care providers to serve children receiving CCDF funds. It also requires the Lead Agency, to the extent practicable, to implement enrollment and eligibility policies that support the fixed costs of providing child care services by delinking provider payment rates from an eligible child's occasional absences due to holidays or unforeseen circumstances, such as illness. Section 658E(c)(4)(iv) requires Lead Agencies to describe how they will provide for the timely payment for child care services provided by CCDF funds.

In addition to payment rates, policies governing provider payments are an important aspect of equal access and supporting the ability of providers to provide high quality care. Currently, many States closely link provider payments to the hours a child attends care. A child care provider may not be paid for days or hours when a child is absent, resulting in a loss of income. Moreover, the instability that results from such payment practices makes it difficult for providers to meet fixed costs of providing child care (such as rent, utilities and salaries) and to plan for investments in quality. 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.

Generally accepted payment practices typically require parents who pay privately for child care to pay their provider a set fee based on their child's enrollment, often in advance of when services are provided. Payments are not altered due to child absences. While Lead Agencies have flexibility to determine payment processes for subsidies, we believe that it is appropriate to set some Federal benchmarks for what constitutes timely payments, delinking of payments and absent days, and generally accepted payment practices. We are interested in receiving comments on whether these or other benchmarks should be included in a final rule.

At § 98.45(m)(1), we propose that Lead Agencies ensure timely provider payments by *either* paying prospectively prior to the delivery of services *or* paying providers retrospectively within no more than 21 days of the receipt of invoice for services. We strongly encourage Lead Agencies to pay prospectively where possible. For Lead Agencies that choose to reimburse providers for services, we provide 21 days as a *maximum* period of time but encourage Lead Agencies to provide payment sooner if possible. We do not expect this requirement to be burdensome for Lead Agencies. According to their FY 2014-2015 CCDF Plans, 37 States/Territories had an established timeframe for provider payments ranging from 3 to 35 days, the majority of which were shorter than 21 days. Administrative improvements such as automated billing and payment mechanisms, including direct deposit and web-based electronic attendance and billing systems can help facilitate timely payments to providers.

At § 98.45(m)(2), we propose three examples for how Lead Agencies could meet the statutory requirement to support the fixed costs of providing child care services by delinking provider payment rates from an eligible child's occasional absences due to holidays or unforeseen circumstances such as illness, to the extent practicable. This may include: 1) by paying providers based on a child's enrollment, rather than attendance; 2) by providing a full

payment to providers as long as a child attends for 85 percent of the authorized time; or 3) by providing full payment to providers as long as a child is absent for five or fewer days in a four week period. We recognize that these three examples represent different levels of stringency; however, we have provided flexibility in acknowledgement of the ways that States structure their policies. Lead Agencies that do not choose one of these three approaches must describe their approach in the State Plan, including how the approach is not weaker than one of the three listed above.

We are establishing 85 percent, or five or fewer days, as a benchmark for when providers should receive a full payment, regardless of the reason for the absence (*e.g.*, whether it is approved or unapproved). We selected 85 percent (or five or fewer days) as a threshold based in part on Head Start policy, which currently requires center-based programs to maintain a monthly 85 percent attendance rate and to analyze absenteeism if monthly average daily attendance falls below that threshold. New proposed Head Start Performance Standards, issued in June 2015, would require programs to take actions (which could include additional home visits or the provision of support services) to increase child attendance when children have four or more consecutive unexcused absences or are frequently absent. While Head Start policy informed the development of this proposal, our proposed provisions differ in several ways. We are not requiring CCDF child care providers to take action to address individual or systemic absenteeism, although Lead Agencies may encourage CCDF providers to take this approach and consider how child care providers may be supported in addressing high rates of absenteeism among families. Chronic absenteeism from high quality programs is a concern because it may lessen the impact on children's school readiness and may signal that a family is in need of additional supports.

We are proposing using a common threshold to encourage alignment and because it seems to reasonably allow for routine absences, such as due to illness, that occur among children. Lead Agencies retain discretion to allow for *additional* excused and/or unexcused absences and to provide for the full payment for services in those circumstances. Many Lead Agencies have invested in electronic time and attendance systems linked to provider payments. These systems may be used to track whether a child is enrolled and attending care; however, Lead Agencies should ensure that such systems do not link attendance and payment so tightly as to violate this provision.

The law requires Lead Agencies to implement this provision "to the extent practicable." We interpret this language as setting a limit on the extent to which Lead Agencies must act, rather than providing a justification for not acting at all. We are not requiring Lead Agencies to pay for all days when children are absent, although that would most closely mirror private pay practices, but each Lead Agency is expected to implement a policy that accomplishes the goals of the statute. A refusal to implement any such policies as being "impracticable" will not be accepted. We are asking for comment on alternatives to the three identified approaches that States may want to use to meet this requirement.

At § 98.45(m)(3) ,we propose minimum requirements for complying with the provision of "generally-accepted payment practices." Unless a Lead Agency is able to prove that the following policies are *not* generally-accepted in its particular State, Territory, or service area, or among particular types of providers, we propose requiring Lead Agencies to pay providers based on established part-time or full-time rates, rather than paying for hours of service or smaller increments of time. We also propose that Lead Agencies pay for mandatory fees that the provider charges to private-paying parents. This would include initial or annual registration fees.

It is not meant to include optional fees charged to families, such as those to participate in optional field trips or program activities.

In addition, there are certain generally-accepted payment practices that we propose to require of all Lead Agencies. In paragraphs (m)(4) through (6) we propose requiring Lead Agencies to ensure that child care providers receive payment for any services in accordance with a payment agreement or authorization for services, receive prompt notice of changes to a family's eligibility status that may impact payment, and establish timely appeal and resolution processes for any payment inaccuracies and disputes. While these practices are unique to the subsidy system, they are analogous to generally-accepted payment practices in the private pay market, such as establishing contracts between providers and parents and providing adequate advance notice of changes that impact payments. We believe the appeals and resolution process is important in fairness to providers.

Finally, Lead Agencies should ensure that payment practices for each type of provider reflect generally accepted payment practices for such providers in order to ensure that families have access to a range of child care options. We note that these benchmarks represent *minimum* generally accepted practices. Lead Agencies may consider additional policies that are fair to providers, promote the financial stability of providers and encourage more providers to serve CCDF eligible children. Such policies may include paying providers based on the provider's established procedures for private-pay families (*i.e.*, a flat monthly rate rather than paying by the day or week), providing information on payment practices in multiple languages to promote the participation of diverse child care providers; implementing dedicated phone lines, web portals, or other access points for providers to easily reach the subsidy agency for questions and assistance

regarding payments; and periodically surveying child care providers to determine their satisfaction with payment practices and timeliness, and to identify potential improvements.

Priority for Services (Section 98.46)

The reauthorization included several provisions to increase access to CCDF services for children and families experiencing homelessness. Consistent with the spirit of these additions, we are proposing to add "children experiencing homelessness" to the Priority for Services section at § 98.46.

Lead Agencies have flexibility as to how they offer priority to these populations, including by prioritizing enrollment, waiving copayments, paying higher rates for access to higher quality care, or using grants or contracts to reserve slots for priority populations. Section 658E(c)(3)(B)(ii) of the Act requires ACF to report to Congress on whether Lead Agencies are prioritizing services to children experiencing homelessness, children with special needs, and families with very low incomes.

The Section 658E(c)(2)(Q) of the Act also requires Lead Agencies to describe the process by which they propose to prioritize investments for increasing access to high quality child care for children of families in areas that have significant concentrations of poverty and unemployment and lack such programs. We propose reiterating this requirement in the proposed rule in § 98.46(b). It is our interpretation that the investments referred to in the statute may include direct child care services provided under § 98.50(a) and activities to improve the quality of child care services under § 98.50(c).

While Lead Agencies have flexibility in implementing this new statutory language, ACF encourages Lead Agencies to target investments based on analysis of data showing poverty,

unemployment and supply gaps. Lead Agencies may also consider how to best support parent's access to workforce development and employment opportunities (such as allowing job search as a qualifying activity for assistance and allowing broader access to assistance for education and training by reducing eligibility restrictions), which would support the child care needs of families in areas with high poverty and unemployment.

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)

This proposed rule includes a technical change to § 98.50(a) which we propose to redesignate as new paragraph (g) at § 98.50. The proposed change requires Lead Agencies to spend a substantial portion of the funds remaining after applying provisions at paragraphs (a) through (f) of this section to provide *direct* child care services to low-income working families.

We also make a clarifying change at current paragraph (b) in this section, which we propose to redesignate as paragraph (a). We propose to specify that proposed paragraph (a) is describing use of funds for *direct* child care services. These proposed changes work in conjunction to clarify that the reference to "a substantial portion of funds" applies to direct services, as opposed to other types of activities.

Section 658G(a)(2) of the CCDBG Act increases the percentage of total CCDF funds (including mandatory funding) that Lead Agencies must spend on activities to improve the

quality of child care services. Paragraphs (b), (d), (e), and (f), respectively, require Lead Agencies to spend a minimum of nine percent of funds (phased in over five years) on activities to improve the quality of care and three percent (beginning in FY 2017) to improve the quality of care for infants and toddlers; not more than five percent for administrative activities; not less than 70 percent of the Mandatory and Matching funds to meet the needs of families receiving TANF, families transitioning from TANF, and families at-risk of becoming dependent on TANF; and, after setting aside funds for quality and administrative activities, at least 70 percent of remaining Discretionary funds on direct services. These provisions are all based on statute.

Grants and contracts. We propose to add language at § 98.50(a)(3) which would require that funding methods used by States and Territories include some use of grants or contracts for direct services based on an assessment of shortages in the supply of high quality care. The statute references the use of grants or contracts in multiple places and we believe they are a critical aspect of an effective CCDF system and promote the fundamental principles of equal access and parental choice. Note that this proposal would not impact the requirement that the Lead Agency operate a certificate (or voucher) program and that eligible families be offered a certificate. Rather, the proposed change would require Lead Agencies to incorporate grants or contracts into their CCDF program, with specific consideration for how they can be used to address shortages in the supply of high quality child care.

According to preliminary FY 2013 CCDF administrative data, approximately 90 percent of children receiving CCDF-funded child care were served through certificates. According to analysis of the FY 2014-2015 CCDF Plans, only 20 States and Territories provide services through grants or contracts for child care slots, meaning parents in the majority of States/Territories do not have a choice other than certificates.

While child care certificates may also support parental choice, demand-side mechanisms like certificates are only fully effective when there is an adequate supply of child care. Grants or contracts can play a role in building the supply and availability of child care, particularly high quality care, in underserved areas and for special populations in order to expand parental choice. For example, Lead Agencies may use grants or contracts to incentivize providers to open in an area they might not otherwise consider, or to serve children for whom care is more costly. Grants and contracts are paid directly to the provider so long as slots are adequately filled, which is a more predictable funding source than vouchers or certificates. Stable funding can incent providers to pay the fixed costs associated with providing high quality child care, such as adequate salaries to attract qualified staff, or to provide higher cost care, such as for infants and toddlers or children with special needs, or to locate in low-income or rural communities.

We want to emphasize that this proposed addition is not meant to limit or discourage the use of certificates to provide assistance to families. As noted in the Senate Committee report, certificates "offer eligible parents the broadest array of options and afford parents maximum choice." (S. Rept. No. 113-138, at 12). We expect a substantial number of CCDF children would continue to be served through certificates or vouchers. However, we believe a mixed funding system that includes certificates, grants or contracts, and private pay families is the most sustainable option for the CCDF program and for child care providers. Further, a mixed funding system is a straightforward interpretation of language in the CCDBG statute, which clearly states that parents are to be given the option of child care funded by grants and contracts, as well as certificates. While Section 658Q(b) of the Act provides that "Nothing in this subchapter shall be construed in a manner (1) to favor or promote the use of grants and contracts for the receipt of child care services under this subchapter over the use of child care certificates," Congress chose

not to change the language at Section 658E(c)(2)(A) of the Act, requiring Lead Agencies to, "provide assurances that (i) the parent or parents of each eligible child within the State who receives or is offered child care service for which assistance is provided under this subchapter, are given the option either- (I) to enroll such child with a child care provider that has a grant or contract for the provision of such services; or (II) to receive a child care certificate."

Lead Agencies are strongly encouraged to contract with multiple types of settings, including child care centers and family child care networks or systems, to maximize parental choice. Family child care networks or systems are groups of associated family child care providers who pool funds to share some costs of operating and staff who provide supports to providers often to manage their businesses and enhance quality. Contracting directly with family child care networks allows for more targeted use of funds with providers that benefit from additional supports that can improve quality. Research shows affiliation with a staffed family child care network is a strong predictor of quality in family child care homes, when providers receive visits, training, materials, and other supports from the network through a specially trained coordinator. (Bromer, J., et al., *Staffed Support Networks and Quality in Family Child Care: Findings from the Family Child Care Network Impact Study*, Erikson Institute, 2008)

Faith-based or religious organizations may be funded through a grant or contract, although they may not use the funding for religious purposes. Pursuant to existing regulations at § 98.54(d), which we propose to redesignate as § 98.56(d), funds provided through grants or contracts to providers may not be expended for any sectarian purpose or activity, including sectarian worship or instruction. These provisions are designed to promote the participation of faith-based organizations in the CCDF program in a manner consistent with applicable Federal

statutes. In many States, faith-based organizations play a key role in the delivery of child care services, and this proposed rule fully supports their continued participation.

We do not expect Lead Agencies currently using direct grants or contracts to necessarily make changes to current grants or contracts. However, we strongly encourage these Lead Agencies to examine their current approach to ensure grants and contracts are focused on increasing the supply of high quality care, especially for underserved populations and communities.

Expenditures on activities to improve the quality of child care. Both the quality activity set-aside and the set-aside for infants and toddlers codified in § 98.50(b) apply to the Lead Agency's full CCDF award, which includes Discretionary, Mandatory, and Federal and State shares of Matching Funds. Non-Federal maintenance-of-effort funds are not subject to the quality and infant and toddler set-asides. These amounts are minimum requirements. Lead Agencies may reserve a larger amount of funding than is required at paragraphs (b)(1) and (2) for these activities.

We also propose to revise paragraph (c), which relates to the quality activity funds. First, the proposed rule would require use of the quality funds to align with an assessment of the Lead Agency's need to carry out such services. As part of this assessment, we expect Lead Agencies to review current expenditures on quality, assess the need for quality investment in comparison with revised purposes of the law, including the placement of more low-income children in high quality child care, and determine the most effective and efficient distribution of funding among and across the categories authorized by the statute. Second, the activities must include measurable indicators of progress in accordance with the required measures proposed at § 98.53(f). We recognize that some activities may have the same indicators of progress. However,

each activity must be reported on and linked to some indicator(s). Finally, the proposed rule allows for quality activities to be carried out by the Lead Agency or through grants and contracts with local child care resources and referral organizations or other appropriate entities.

Funding for Direct Services. The proposed rule includes a technical change at paragraph (e) to clarify that the provision applies to the Mandatory and Federal and State share of Matching Funds. This proposed change simply formalizes current policy. We propose to redesignate current paragraph (f) as paragraph (h) without changes.

We propose to replace current paragraph (f) with new regulatory language to restate requirements included in the Act. The proposed regulatory language would require at least 70 percent of any Discretionary funds left after the Lead Agency sets aside funding for quality and administrative activities to be used to fund direct services.

Services for Children Experiencing Homelessness (Section 98.51)

We propose a new section at § 98.51 that codifies new statutory language at 658E(c)(3)(B)(i) of the Act, which requires Lead Agencies to spend at least some CCDF funds on activities that improve access to quality child care services for children experiencing homelessness. The proposed regulatory language would require Lead Agencies to have procedures for allowing children experiencing homelessness to be determined eligible and enroll prior to completion of all required documentation. The proposed regulation also clarifies that if a child experiencing homelessness is found ineligible, after full documentation, any CCDF payments made prior to the final eligibility determination should not be considered errors or improper payments and any payments owed to a child care provider for services should be paid.

Lead Agencies would also be expected to provide training and technical assistance on identifying and serving children and families experiencing homelessness and outreach strategies.

Child Care Resource and Referral System (Section 98.52)

The law authorizes use of CCDF funds for child care resource and referral services to assist with consumer education and specifies functions of such entities. Consistent with this provision, this proposed rule would revise § 98.52 to include statutory language that allows Lead Agencies to spend funds to establish or support a system of local or regional child care resource and referral organizations that is coordinated, to the extent determined by the Lead Agency, by a statewide public or private nonprofit, community-based or regionally based, local child care resource and referral organization. The statute permits, but does not require, Lead Agencies to fund a child care resource and referral system. We recommend Lead Agencies give consideration to the expanded requirements for consumer education at § 98.33 and how best to meet those requirements, including whether existing child care resource and referral agencies and/or additional partners can assist in reaching low-income parents of children receiving subsidies, providers, and the general public.

Proposed paragraph (b) specifies a list of resource and referral activities that the statute says should be at the direction of the Lead Agency. Therefore, if the Lead Agency does not need the child care resource and referral organization to carry out a certain activity, the organization does not have to carry out that activity.

Activities to Improve the Quality of Child Care (Section 98.53)

As noted above, reauthorization increased the percent of expenditures Lead Agencies must spend on quality activities. We strongly encourage Lead Agencies to develop a carefully considered framework for quality expenditures that takes into account the activities specified by the law, and uses data on gaps in quality of care and the workforce, as well as effectiveness of existing quality enhancement efforts, to target these resources. Lead Agencies should also coordinate quality activities with the statutory requirement to spend at least three percent of expenditures on improving quality and access for infants and toddlers, beginning in FY 2017.

Section 658G(b) of the Act includes a new list of 10 allowable quality activities and requires that Lead Agencies spend their quality funds on at least one of the 10 activities. This proposed rule incorporates and expands on the list of allowable activities at § 98.53(a) with details described below.

1. *Supporting the training, professional development, and postsecondary education of the child care workforce as part of a progression of professional development.* We propose restating the statutory language specifying training and professional development as an allowable quality improvement expenditure at § 98.53(a)(1). The Act references the section of the Plan requiring assurances related to training and professional development, which is elaborated in the proposed rule at § 98.44. We encourage Lead Agencies to align the uses of funds for training, professional development, and postsecondary education with the State or Territory's framework and progression of professional development to maximize resources. Training and professional development may be provided through institutions of higher education, child care resource and referral agencies, worker organizations, early childhood

professional associations, and other entities. The Act also lists additional areas for investments in training and professional development, which we include with additional detail at § 98.53(a)(1)(i) through (vii) as follows:

a) Offering training, professional development and post-secondary education that relate to the use of scientifically based, developmentally, culturally, and age appropriate strategies to promote all of the major domains of child development and learning, including those related to nutritional nutrition and physical activity and specialized training for working with populations of children, including different age groups, English learners, children with disabilities, and Native Americans and Native Hawaiians, to the extent practicable, in accordance with the Act.

b) Incorporating the effective use of data to guide program improvement and improve opportunities for caregivers, teachers and directors to advance on their progression of training, professional development, and postsecondary education. We expanded upon the statutory language to include opportunities for caregivers, teachers and directors to advance professionally as there are a variety of data collected (such as information from licensing inspectors, quality rating and improvement systems, or accreditation assessments) that can guide program improvement by helping providers make adjustments in the physical environment and teaching practices.

c) Including effective behavior management strategies and training, including positive behavior interventions and support models for birth to school-age or age-appropriate, that promote positive social and emotional development and

reduce challenging behaviors, including reducing suspensions and expulsions of children under age five for such behaviors.

d) Providing training and outreach on engaging parents and families in culturally and linguistically appropriate ways to expand their knowledge, skills, and capacity to become meaningful partners in supporting their children's positive development.

e) Providing training in nutrition and physical activity needs of young children.

f) Providing training or professional development for caregivers, teachers and directors regarding the early neurological development of children; and

g) Connecting caregivers, teachers and directors of child care providers with resources to assist them in pursuing relevant postsecondary education.

2. *Improving upon the development or implementation of the early learning and development guidelines.* We restate at § 98.53(a)(2) statutory language to allow the use of CCDF quality funds to provide technical assistance to eligible child care providers on the development or implementation of early learning and development guidelines. Early learning and development guidelines should be developmentally appropriate for all children from birth to kindergarten entry, describing what such children should know and be able to do, and cover the essential domains of early childhood development. Most States and Territories already have such guidelines, but may need to update them or better integrate them into their professional development system proposed at § 98.44. Section 658E(c)(G) of the Act requires Lead Agencies to describe training and

professional development, including the ongoing professional development on early learning guidelines. In June 2015, ACF released the newly revised *Head Start Early Learning Outcomes Framework: Ages Birth to Five* (HSELOF, 2015. The HSELOF provides research-based expectations for children's learning and development across five domains from birth to age 5. As States and Territories undertake revisions to their early learning guidelines, we encourage them to crosswalk their guidelines with the HSELOF to ensure they are comprehensive and aligned. Coordinating between State/Territory early learning and development guidelines and the HSELOF can help build connections between child care programs and Early Head Start/Head Start programs. We also encourage Lead Agencies to consider expanding learning and development guidelines for school-age children, either through linkages to programs already in place through the State department of education or local educational agencies (LEAs), or by adapting current early learning and development guidelines to be age-appropriate for school-age children.

3. *Developing, implementing, or enhancing a tiered quality rating and improvement system (QRIS).* We propose to incorporate this allowable activity at § 98.53(a)(3). The statute lists seven activities that Lead Agencies may choose to include when funding a QRIS with quality funds, which we expand upon:

   a) Support and assess the quality of child care providers in the State, Territory, or Tribe. QRIS should include training and technical assistance to child care

providers to help them improve the quality of care and on-site quality assessments appropriate to the setting;

b) Build on licensing standards and other regulatory standards for such providers. We encourage Lead Agencies to incorporate their licensing standards and other regulatory standards as the first level or tier in their QRIS. Making licensing the first tier facilitates incorporating all licensed providers into the QRIS;

c) Be designed to improve the quality of different types of child care providers and services. We encourage 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. One way to provide support for different types of care is providing quality funds to established family child care networks that can work with individual family child care providers to improve the quality in those settings.

d) Describe the safety of child care facilities. Health and safety are the foundation of quality, and should not be treated as wholly separate requirements. Including the safety of child care facilities as part of a QRIS helps to reinforce this connection.

e) Build the capacity of early childhood programs and communities to support parents' and families' understanding of the early childhood system and the ratings of the programs in which the child is enrolled. This capacity may be built through a robust consumer and provider education system, as described

at § 98.33. Lead Agencies should provide clear explanations of quality ratings to parents. In addition to the website, Lead Agencies may have providers post their quality rating or have information explaining the rating system available at child care centers and family child care homes. This information should also be accessible to parents with low literacy or limited English proficiency;

f) Provide to the maximum extent practicable, financial incentives and other supports designed to expand the full diversity of child care options and help child care providers improve the quality of services. Research has found that significant financial incentives are needed to make the quality improvements necessary for providers to move up levels in the QRIS. In order to ensure that providers continue to improve their quality and help move more low-income children into high quality child care, we recommend Lead Agencies to make these incentives a focus of investment; and

g) Accommodate a variety of distinctive approaches to early childhood education and care, including but not limited to, those practices in faith-based settings, community based settings, child-centered settings, or similar settings that offer a distinctive approach to early childhood development. Parental choice is a very important part of the CCDF program, and parents often consider a variety of factors, including religious affiliation, when choosing a child care provider. Lead Agencies should take these factors into account when setting quality standards and levels in their QRIS, as well as designing how the information will be made available to the public.

4. *Improving the supply and quality of child care programs and services for infants and toddlers.* The statute includes improving the supply and quality of child care programs and services for infants and toddlers as an allowable quality activity, which we propose to reiterate at § 98.53(a)(4). Lead Agencies may use any quality funds for infant and toddler quality activities, in addition to the required three percent infant and toddler quality set-aside. Lead Agencies are encouraged to pay special attention to what is needed to enhance the supply of high quality care for infants and toddlers in developing their quality investment framework and coordinate activities from the main and targeted set asides to use resources most effectively. The statute and proposed rule state that allowable activities may include:

   a) Establishing or expanding high quality community or neighborhood-based family and child development centers, which may serve as resources to child care providers in order to improve the quality of early childhood services provided to infants and toddlers from low-income families and to help eligible child care providers improve their capacity to offer high quality, age-appropriate care to infants and toddlers from low-income families. We interpret this provision to encourage the provision of resources to high quality child care providers or other qualified community-based organizations that serve as hubs of support to providers in the community (by providing coaching or mentoring opportunities, lending libraries, etc.);

   b) Establishing or expanding the operation of community or neighborhood-based family child care networks. As discussed earlier, established family child care

networks can help improve the quality of family child care providers. Lead Agencies may choose to use the quality funds to help networks cover overheard and quality enhancement costs, such as providing access to coaches or health consultants;

c) Promoting and expanding child care providers' ability to provide developmentally appropriate services for infants and toddlers;

d) If applicable, developing infant and toddler components within the Lead Agency's QRIS for child care providers for infants and toddlers, or the development of infant and toddler components in the child care licensing regulations or early learning and development guidelines;

e) Improving the ability of parents to access transparent and easy to understand consumer education about high quality infant and toddler care as described at § 98.33; and

f) Carrying out other activities determined by the Lead Agency to improve the quality of infant and toddler care provided, and for which there is evidence that the activities will lead to improved infant and toddler health and safety, infant and toddler cognitive and physical development, or infant and toddler well-being, including providing health and safety training (including training in safe sleep practices, first aid, and cardiopulmonary resuscitation for providers and caregivers).

5. *Establishing or expanding a statewide system of child care resource and referral services.* We propose to reiterate the statutory language by adding § 98.53(a)(5)

to include establishing or expanding a statewide system of child care resource and referral services as an allowable quality activity. Activities that may be done by child care resource and referral organizations are included at § 98.52.

6. *Facilitating compliance with health and safety*. We restate the statutory language at § 98.53(a)(6) that includes facilitating compliance with Lead Agency requirements for inspection, monitoring, training, and health and safety, and with licensing standards. While it is likely Lead Agencies will need to use quality funding for implementation and enforcement of the new minimum health and safety requirements for child care providers in the law, we urge them to consider expenditures on this purpose foundational to enhancing quality, but not sufficient to meet the purposes of this reauthorization. For example, Lead Agencies should consider linking quality expenditures for health and safety to the quality framework discussed earlier in this preamble, such that a Lead Agency may establish a QRIS that ties eligibility for providers to participate directly to licensing as the base level.

7. *Evaluating and assessing the quality and effectiveness of child care programs and services offered, including evaluating how such programs positively impact children.* The statutorily allowable list of quality activities includes at § 98.53(a)(7) evaluating and assessing the quality and effectiveness of child care programs and services offered, including evaluating how such programs positively impact children. We propose at § 98.53(f)(3) to require Lead Agencies

to report on the measures they will use to evaluate progress in improving the quality of child care programs and services. Including evaluation as an allowable quality activity recognizes that evaluating progress may take additional investments, for which Lead Agencies may use quality funds. 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. (Government Accountability Office, *Child Care: States Have Undertaken a Variety of Quality Improvement Initiatives, but More Evaluations of Effectiveness Are Needed*, GAO-02-897)

8. *Supporting child care providers in the voluntary pursuit of accreditation by a national accrediting body with demonstrated, valid, and reliable program standards of high quality.* We propose to restate statutory language at § 98.53(a)(8) supporting child care providers in the voluntary pursuit of accreditation by a national accrediting body with demonstrated, valid and reliable program standards of high quality as an allowable quality activity. Accreditation is one way to differentiate the quality of child care providers. In order to gain accredited, child care centers and family child care homes must meet certain quality standards outlined by accrediting organizations.

9. *Supporting efforts to develop or adopt high quality program standards relating to health, mental health, nutrition, physical activity, and physical development.* We restate statutory language at § 98.53(a)(9) supporting Lead Agency or local efforts

to develop or adopt high quality program standards relating to health, mental health, nutrition, physical activity, and physical development for children as an allowable quality activity. We recommend Lead Agencies look to Head Start for strong program standards in comprehensive services and consider how these standards may be translated into child care program standards. This could include adding the standards to licensing, encouraging standards through QRIS, or embedding them in the requirements of grants or contracts for direct services. We encourage Lead Agencies that choose to use their quality funds for this activity to focus on research-based standards and work with specialists to develop age appropriate standards in these areas.

10. *Carrying out other activities, including implementing consumer education provisions, determined by the Lead Agency.* We propose to restate statutory language at § 98.53(a)(10) that carrying out other activities, including implementing consumer education provisions at § 98.33, determined by the Lead Agency to improve the quality of child care services provided and for which measurement of outcomes relating to improvement of provider preparedness, child safety, child well-being, or entry to kindergarten is possible, are considered allowable quality activities This tenth allowable activity provides Lead Agencies the flexibility they need to invest in quality activities that best suit the needs of parents, children, and providers in their area. Over the years, Lead Agencies have been innovative in how they spent their quality funds, creating novel ways for improving quality of care, such as QRIS, that are now widely used tools for

quality improvement. Therefore, we encourage Lead Agencies to experiment with the types of quality activities in which they invest. However, it is critical that Lead Agencies ensure that these new quality activities are focused and represent a smart investment of limited resources, which is why any activity that falls in the "other" category must have measurable outcomes that relate to provider preparedness, child safety, child well-being, or entry to kindergarten. Lead Agencies are encouraged to establish research-based measures for evaluating the outcomes of these quality activities. Lead Agencies will report on these measures and activities on an annual basis through the proposed Quality Progress Report at § 98.53(f).

Quality activities not restricted to CCDF children. This proposed rule adds new paragraph (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. 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. This proposed provision clarifies existing policy regarding CCDF quality expenditures.

Targeted funds and quality minimum. The proposed rule adds paragraph (e) at § 98.53 to codify longstanding ACF policy that targeted funds for quality improvement and other activities included in appropriations law may not count towards meeting the minimum quality spending requirement, unless otherwise specified by Congress. Beginning in FY 2000, Congress included in annual appropriations legislation for CCDF discretionary funds a requirement for Lead

Agencies to spend portions of such funds on specified quality activities. Changes to the minimum quality spending requirement and the addition of a set-aside for infant and toddler care included in reauthorization may lead to changes or removal of targeted funds from annual appropriations legislation. However, we have chosen to propose this provision, as we did in the 2013 NPRM, to formalize the policy, in the event that targeted funds are included in future appropriations.

Reporting on quality activities. Sections 658G(c) and (d) of the Act require Lead Agencies to report total expenditures on quality activities, certify that those expenditures met the minimum quality expenditure requirement, and describe the quality activities funded. We propose to incorporate these reporting requirements into the regulation § 98.53(f), which would require Lead Agencies to prepare and submit annual reports, including a quality progress report and expenditure report, to the Secretary, which must be made publicly available. We also propose to require that Lead Agencies detail the measures used to evaluate progress in improving the quality of child care programs and services, and data on the extent to which the Lead Agency has met these measures. Additionally, Lead Agencies would describe any changes to regulations, enforcement mechanisms, or other policies addressing health and safety based on an annual review and assessment of serious child injuries and any deaths occurring in child care programs serving children. While Lead Agencies are required to include child care programs serving children receiving CCDF, we encourage the inclusion of other regulated and unregulated child cares and family child care homes, to the extent possible.

Currently, States and Territories report their categorical expenditures through the ACF 696 reporting form. This form is used to determine if the Lead Agency has met the minimum quality expenditure amount and is referenced at § 98.65(g) in this proposed rule. We expect to

continue to use the ACF 696 form to determine whether a Lead Agency has met expenditure requirements at § 98.50(b), including both the quality set-aside and the set-aside to improve quality for infants and toddlers.

We propose to capture information on the quality activities and the measures and data used to determine progress in improving the quality of child care services through a Quality Progress Report. This report would replace the Quality Performance Report that was an appendix to the Plan. The Quality Performance Report has played an important role in increasing transparency on quality spending. The new Quality Progress Report would continue to gather detailed information about quality activities, but include more specific data points to reflect the new quality activities required by the statute. The Quality Progress Report would be a new annual data collection and would require a public comment and response period as part of the Paperwork Reduction Act process, which will give Lead Agencies and others the opportunity to comment on the specifics of the report.

As part of the Quality Progress Report, we propose to include a requirement that States and Territories describe any changes to regulations, enforcement mechanisms, or other policies addressing health and safety based on an annual review and assessment of serious injuries and any deaths occurring in child care programs serving children receiving child care assistance, and in other regulated and unregulated child cares and family child care homes, to the extent possible. This proposed provision complements § 98.41(d)(4), discussed earlier in the preamble, which requires child care providers to report to a designated State, Territorial, or Tribal entity any serious injuries or deaths of children occurring in child care. States and Territories would consider any serious injuries and deaths reported by providers and other information as part of their annual review and assessment. This report also works in conjunction with the proposed

requirements at § 98.33(a)(1)(iv) that Lead Agencies post provider-specific information about the number of serious injuries and deaths of children that occurred while in the care of that provider and at § 98.33(a)(3) that Lead Agencies post the aggregate number of deaths and serious injuries to their consumer education websites.

This proposed provision would require Lead Agencies to list and describe the annual number of child injuries and fatalities in child care and to describe the results of an annual review of all serious child injuries and deaths occurring in child care. The primary purpose of this change is the prevention of future tragedies. Sometimes, incidents of child injury or death in child care are preventable. 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 appropriate responses, such as training needs.

The utility of this assessment is reliant upon the Lead Agency obtaining accurate, detailed information about any child injuries and deaths that occur in child care. Therefore, ACF strongly encourages Lead Agencies to work with the State or Territory entity responsible for child care licensing in conducting the review and also with their established Child Death Review systems and with the National Center for the Review and Prevention of Child Death Review (www.childdeathreview.org). The National Center for the Review and Prevention of Child

Death Review, 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 United 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 that are usually submitted to the State governor and are publicly available. The National Center for the Review and Prevention of Child Death Review 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 also may work in conjunction with the National Commission to Eliminate Child Abuse and Neglect Fatalities, established in 2013 by the Protect Our Kids Act. (Pub. L. No. 112-275) 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. Although this Commission will only be studying a subsection of child injuries and deaths, it is important that the commissioners examine the issue of child abuse and neglect in child care settings.

Administrative Costs (Section 98.54)

Section 658E(c)(3)(C) of the Act and regulations proposed at redesignated § 98.54(a) prohibit Lead Agencies from spending more than five percent of CCDF funds for administrative activities, such as salaries and related costs of administrative staff and travel costs. Section 98.54(b) provides that this limitation applies only to States and Territories. (Note that a 15 percent limitation applies to Tribes under § 98.83(g)). At § 98.54(b) we propose a list of activities that should not be counted towards the limitation on administrative expenditures. As stated in the preamble to the 1998 CCDF Final Rule, the Conference Agreement (H.R. Rep. 104-725 at 411) that accompanied the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 indicated that these activities should not be considered administrative costs. We propose to incorporate this list into the regulation itself for clarity and easy reference.

Administrative costs and sub-recipients. We propose to add new paragraph (e) at § 98.54 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 § 98.54(a) (or § 98.83(g) for Tribes) shall be counted towards the administrative cost limit. Current CCDF regulations at § 98.52(a), which we propose to redesignate as § 98.54(a), provide 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.

We have received questions from Lead Agencies to clarify whether activities performed through sub-recipients or contractors are subject to the five 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. While we do not, as a technical matter, separately apply the administrative cap to funds provided to each sub-recipient, the Lead Agency must ensure 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 limit.

To clarify, the administrative costs cap only applies to activities related to administering the CCDF program in a State, Territory, or Tribe. It does not apply to administration of child care services in an individual child care center or family child care home. Any costs related to administration of services by a provider, even if that provider is being paid through a contract, are considered direct services. However, if a sub-recipient provides services that are part of administering the CCDF program, as defined at § 98.54(a) as redesignated, then those administrative costs would count toward 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 five percent administrative cost limitation depends on the function or nature of the contract, sub-grant, or other 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 provided services to administer the CCDF program (*e.g.*, for payroll services for Lead Agency 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 must develop a method for attributing an appropriate share of the sub-grant/contract costs to administrative costs. Lead Agencies should refer to the list of activities that are exempt from the administrative cost cap proposed at § 98.54(b) when determining what components must be included in the administrative cost limit.

Restrictions on the Use of Funds (Section 98.56)

Current CCDF regulations at § 98.54(b)(1), which we propose to redesignate as § 98.56(b)(1), indicate that States and local agencies, may not spend CCDF funds 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. Tribal Lead Agencies may request approval to use CCDF funds for construction and major renovation of child care facilities (§ 98.84).

We propose to modify § 98.54(b)(1), redesignated as § 98.56(b)(1), to indicate that 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, not prohibited. This proposed addition would formally incorporate ACF's long-standing interpretation into regulatory language.

When we proposed this addition in the 2013 NPRM, several commenters requested the regulation clarify that funds may be used to ensure facilities comply with the on-going requirements of the Americans with Disabilities Act (ADA) of 1990 (42 U.S.C. 12101, *et seq.*) In response, we want to note that current CCDF regulations at § 98.54(b) allow for funds to be expended for upgrading child care facilities to assure that providers meet State and local health

and safety standards, which may include assisting providers in meeting requirements of the ADA. States and Territories may use CCDF funds for minor renovations related to meeting the requirements of the ADA. However, funds may not be used for major renovation or construction for purposes of meeting the requirements of the ADA.

We propose making a technical change at § 96.54(e) by adding that CCDF may not be used as the non-Federal share for other Federal grant programs, *unless explicitly authorized by statute.*

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: addressing the amount of CCDF funds the Secretary may set-aside for technical assistance, research and evaluation, a national toll-free hotline and website; incorporating targeted funds that have been included in appropriations language (but are not in the current regulations); inclusion of the details of required financial reporting by Lead Agencies; and clarifying requirements related to obligations. Lastly, we propose a new section on program integrity.

Availability of Funds (Section 98.60)

Technical Assistance; Research and Evaluation; National Toll-free Hotline and Website. Prior to reauthorization, the CCDBG Act allowed the Secretary to provide technical assistance to help Lead Agencies carry out the CCDF requirements. Under current regulations at § 98.60(b)(1), the Secretary may withhold one quarter of one percent of a fiscal year's appropriation for technical assistance.

Reauthorization added greater specificity to the Act regarding the provision of technical assistance. Specifically, Section 658I(a)(3) of the Act requires the Secretary to provide technical assistance, such as technical assistance to improve the business practices of child care providers, (which may include providing technical assistance on a reimbursable basis) which shall be provided by qualified experts on practices grounded in scientifically valid research, where appropriate. Section 658I(a)(4) requires the Secretary to disseminate, for voluntary informational purposes, information on practices that scientifically valid research indicates are most successful in improving the quality of programs that receive CCDF assistance. Section 658G requires the Secretary to offer technical assistance which may include technical assistance through the use of grants or cooperative agreements, on activities funded by quality improvement expenditures. Section 658O(a)(4) indicates that the Secretary shall reserve up to ½ of 1 percent of the amount appropriated for the CCDBG Act to support these technical assistance and dissemination activities.

Section 658O(a)(5) of the Act also provides that the Secretary may reserve up to ½ of 1 percent of the amount appropriated for the Act to conduct research and demonstration activities, as well as periodic external, independent evaluations of the impact of the CCDF program on increasing access to child care services and improving the safety and quality of child care services, using scientifically valid research methodologies, and to disseminate the key findings of those evaluations widely and on a timely basis. For over a decade, annual appropriations law has included a set-aside of approximately $10 million a year for research. The reauthorization for the first time includes research funding in the CCDBG Act itself.

Over the years, this research funding has increased our knowledge of what child care services work best, has disseminated that knowledge throughout the country, and has been integral to improving the quality of care provided to children. It has funded numerous research projects, including the recent implementation of the National Survey of Early Care and Education to provide national estimates of utilization of child care and early education, parental preferences and choices of care, and characteristics of programs and of the teaching and care-giving staff. This research funding will be critical in informing and evaluating the implementation of the reauthorized statute and these implementing regulations.

In addition, section 658O(a)(3) of the Act indicates that the Secretary may reserve up to $1.5 million for the operation of a national toll-free hotline and website. Annual appropriations law has provided funding for a national hotline and website in prior years, but this funding is now authorized through the Act with an expanded scope and requirements. As authorized by section 658L(b), this national hotline and website will develop and disseminate publicly available child care consumer education information for parents, and help parents access safe and quality child care services in their community. The hotline and website will also allow persons to report suspected child abuse or neglect, or violations of health and safety requirements, occurring in child care settings.

In this proposed rule at § 98.60(b), we do not specify a particular funding amount for technical assistance, research and evaluation, or the national hotline and website. Rather, we say that "a portion" of CCDF funds will be made available for these purposes. Because appropriations law has addressed the amount of funding for some of these activities in the past, we want to leave flexibility to accommodate any future decisions by Congress. As we indicate

in the proposed regulatory language, funding for these activities is subject to the availability of appropriations, and will be made in accordance with relevant statutory provisions and the apportionment of funds from the Office of Management and Budget.

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 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, 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 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 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. A third party must be a wholly separate organization with and cannot be subordinate or superior offices of the Lead Agency, or under the same governmental organization as the Lead Agency.

Finally, we propose a number of technical changes. At § 98.60(d)(4)(ii), we update a reference to HHS regulations on expenditures and obligations to reflect new rules issued by HHS that implement the Office of Management and Budget's Uniform Administrative Requirements for Federal awards. At § 98.60(d)(6), we clarify that the provision regarding the obligation of funds used for certificates applies specifically "in instances where the Lead Agency issues child care certificates." We also 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 become 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)

Tribal funds. To address amended section 658O(a)(2) of the Act, we propose to revise § 98.61(c) to indicate that Indian Tribes and Tribal organizations will receive an amount "not less than" two percent of the amount appropriated for the Child Care and Development Block Grant (*i.e.*, CCDF Tribal Discretionary Funds). Under prior law and regulation, Tribes received "up

to" two percent. Under the new law, the Secretary may only reserve an amount greater than 2 percent for Tribes if two conditions are met: (1) the amount appropriated is greater than the amount appropriated in FY 2014, and (2) the amount allotted to States is not less than the amount allotted in FY 2014. It is important to note that reauthorization of the Act allows for a potential increase in the Tribal Discretionary funds, but it does not affect the Tribal Mandatory funds. Tribes may only be awarded up to 2 percent of the Mandatory Funds, per Section 418(a)(4) of the Social Security Act (42 U.S.C. 618(a)(4)). Recognizing the needs of Tribal communities, ACF increased the Tribal CCDF Discretionary set-aside from 2 percent to 2.5 percent for FY 2015, and we encourage Tribes to use any increased funds for activities included in reauthorization, such as health and safety, continuity of care, and consumer education. ACF has consulted with Tribes regarding future funding levels and plans to make that determination, taking into consideration unique Tribal needs and circumstances, including the need for sufficient funding to provide care that address culture and language in Tribal communities. We welcome comments on the specific, appropriate funding level for Tribes, but we do not intend to include that decision in the regulatory language in order to allow for adjustments over time as conditions warrant.

Targeted funds. We propose to add § 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). The reauthorized CCDBG Act includes increased quality spending requirements; however, we propose this regulatory addition in the event that Congress provide for additional targeted funds in the future. This proposed addition is for clarification so that the regulations 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 a technical change at § 98.65(a) regarding the requirement for the Lead Agency to have an audit conducted in accordance with the Single Audit Act Amendments of 1996. In this paragraph, we propose to replace a reference to OMB Circular A-133 with a reference to 45 CFR part 75, subpart F, which is the new HHS regulation implementing the audit provisions in the Office of Management and Budget's Uniform Administrative Requirements for Federal awards.

We propose revising § 98.65(g), which currently provides that the Secretary shall require financial reports as necessary, to specify that States and Territories 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 reallocated 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, including any sub-categories of quality activities as required by ACF; (3) Direct services; (4) Non-direct services including: (i) Computerized information systems, (ii) Certificate program cost/eligibility determination, (iii) 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 quality expenditure requirements 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 that would require 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 quality expenditure requirement at § 98.51(a). This reporting requirement is current practice.

Program Integrity. We propose to add a new section § 98.68 Program Integrity, which would 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)(1) we propose to require Lead Agencies to describe in their Plan the processes that are 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. Lead Agencies should also provide training to caseworkers responsible for eligibility determination and redetermination and make efforts to simplify forms.

We also propose regulatory language at § 98.68(b)(2) that would require Lead Agencies to describe in their Plans the processes that are in place to investigate and recover fraudulent payments and to impose sanctions on clients or providers in response to fraud. This 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 provision ensures 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. We 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.

We urge Lead Agencies to carefully consider what constitutes fraud, particularly in the case of individual families. In cases not involving fraud, recouping overpayments from low-income families is often administratively inefficient, and contrary to the goal of promoting economic stability, particularly for families already living in vulnerable conditions. The parents typically did not receive a cash benefit, but rather the child care provider received reimbursement

for the delivery of services. We are concerned about the ramifications for families if Lead Agencies try to recoup overpayments that resulted from small changes in family circumstances, such as modest changes in hours worked or income. The goals of CCDF – putting families on a pathway to financial stability and creating better developmental opportunities for children – are undermined by recoupment policies that burden low-income families with large debts. Given limited administrative resources, Lead Agencies should focus program integrity efforts on the largest areas of risk to the program, which tend to be intentional violations and fraud involving multiple parties.

At § 98.68(c) we propose to require Lead Agencies to describe in their Plans the procedures that are in place for documenting and verifying that children meet eligibility criteria at the time of eligibility determination and redetermination. Lead Agencies are responsible for ensuring that all children served in CCDF are eligible at the time of eligibility determination or redetermination. Lead Agencies should, at a minimum, verify or maintain documentation of the child's age, family income, and require proof that parents are engaged in eligible activities. Income documentation may include, but is not limited to, 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. While documentation and verification of eligibility is generally required, Section 658P(4)(b) of the Act indicates that compliance with the $1,000,000 limit on family assets included as part of eligibility requirements at § 98.20(a)(2)(ii) shall be "certified by a member of such family" Therefore, the Lead Agency should not seek documentation or conduct verification of the amount of family assets beyond the family member's certification.

Proposed § 98.68(c) would clarify that because a child meeting eligibility requirements at the most recent eligibility determination or redetermination is considered eligible during the period between redeterminations as described in § 98.21(a)(1), the Lead Agency shall pay any amount owed to a child care provider for services provided to such a child during this period in accordance with a payment agreement or authorization. Under this provision, the Lead Agency should not attempt to recoup payments for such services provided during this period for a child's whose eligibility was correctly determined at the most recent determination or redetermination. Further, the regulation provides that any CCDF payment made during this period to such child shall not be considered an error or improper payment under 45 CFR part 98, subpart K, due to a change in the family's circumstances, as set forth at § 98.21(a).

The program integrity efforts required by proposed § 98.68 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 reduce 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 that 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

Section 658K of the Act requires that Lead Agencies submit specified monthly case-level data (submitted on a quarterly basis) and annual aggregate data on the children and families

receiving CCDF services. The Act included a number of changes to the administrative data reporting requirements for CCDF. To address these changes and to improve data collection and reporting, ACF has separately proposed changes to the CCDF quarterly family case-level administrative data report (ACF–801) and the CCDF annual aggregate data report (ACF-800). The proposed revisions were available for two rounds of public comment under the Paperwork Reduction Act. Proposed revisions in this Subpart reflect changes made to the ACF–801 and ACF-800 forms.

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. The ACF-801 report includes a data element on the total monthly family income and family size used for determining eligibility. Current regulations as §98.71(a)(1) do not include *family size* so we propose to amend this paragraph to align the regulations with the reporting requirements in effect. This does not represent any change in how Lead Agencies currently report family income.

At §98.71(a)(2) we propose to add zip code data to both the family and the child care provider records. These new elements will allow States and Territories and ACF to identify the communities where CCDF families and providers are located, including the type and quality level of providers. Sections 658E(a)(2)(M) and 658E(a)(2)(Q) of the CCDBG Act require States and Territories to address the needs of certain populations regarding supply and access to high quality child care services in underserved areas including areas that have significant concentrations of poverty and unemployment.

Section 658K(a)(1)(E) of the Act prohibits the monthly case-level report from containing personally identifiable information. As a result, we are proposing to amend §98.71(a)(13) by deleting Social Security Numbers (SSNs) and instead requiring a unique identifying number from the head of the family unit receiving assistance and from the child care provider. It is imperative that the unique identifier assigned to each head of household be used consistently over time –regardless of whether the family transitions on and off subsidy, or moves within the State or Territory. This will allow Lead Agencies and ACF to identify unique families over time in the absence of the Social Security Number (SSN). A Lead Agency may still use personally identifiable information, such as SSNs, for its own purposes, but this information cannot be reported on the ACF-801. We also remind CCDF Lead Agencies that, under the Privacy Act (5 U.S.C. 552a note), Lead Agencies cannot require families to disclose SSNs as a condition of receiving CCDF.

We propose a new § 98.71(a)(15) to indicate whether a family is experiencing homelessness based on statutory language at Section 658K(a)(1)(B)(xi) that requires Lead Agencies to report whether children receiving CCDF assistance are experiencing homelessness.

We propose a new § 98.71(a)(16) to indicate whether the parent(s) are in the military service. The Administration has taken a number of actions to increase services and supports for members of the military and their families. This element will identify if the parent is currently active duty (*i.e.*, serving full-time) in the U.S. Military or a member of either a National Guard unit or a Military Reserve unit. This data will allow Lead Agencies and ACF to determine the extent to which military families are accessing the CCDF program.

We propose a new § 98.71(a)(17) to indicate whether a child is a child with a disability. Section 658E(c)(3)(B) requires a Lead Agency's priority for services to include children with

special needs. ACF is required to determine annually whether Lead Agencies use CCDF funds in accordance with priority for services requirements, including the priority for children with special needs. While Lead Agencies have flexibility to define "children with special needs" in their CCDF Plans, many include children with disabilities in their definitions. This data will help ACF determine, as required by law, whether Lead Agencies are in compliance with priority for service requirements. Additionally, the reauthorization added several other provisions related to ensuring children with disabilities have access to subsidies, and that the child care available meets the needs of these children and this proposed data element will provide information about the extent to which the CCDF program is serving children with disabilities.

We propose a new § 98.71(a)(18) to add a new data element on the primary language spoken in the child's home, using responses that are consistent with data reporting requirements for the Head Start program. The reauthorized Act includes provisions that support services to English learners. Specifically, Section 658E(c)(2)(G) of the Act requires Lead Agencies to assure that training and professional development of child care providers address needs of certain populations to the extent practicable, including English learners. Under Section 658G, allowable quality activities include providing training and outreach on engaging parents and families in culturally and linguistically appropriate ways to expand their knowledge, skills, and capacity to become meaningful partners in supporting their children's positive development. Furthermore, Title VI of the Civil Rights Act of 1964 requires federally assisted programs to take reasonable steps to provide meaningful access for persons who have limited English proficiency. The new data element on the ACF-801 will allow CCDF Lead Agencies to track provision of CCDF services to families who speak languages other than English. By collecting information on the

language spoken at home by families, the CCDF Lead Agency will be able to design outreach and consumer education materials that meet the needs of populations in their service areas.

We propose a new § 98.71(a)(19) to indicate for each child care provider currently providing services to a CCDF child, the date of the most recent inspection for compliance with health, safety, and fire standards (including licensing standards for licensed providers) as described in § 98.42(b). Lead Agencies will need to track inspection dates to ensure that CCDF providers are monitored at least annually. If the Lead Agency uses more than one visit to check for compliance with these standards, the Lead Agency should report the most recent date on which all inspections were completed.

Finally, we propose to add new § 98.71(a)(20) to require 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 change will allow ACF and Lead Agencies to capture child-level data on provider quality for each child receiving a child care subsidy. This addition is in line with one of the Act's new purposes, which is to increase the number and percentage of low-income children in high quality child care. States and Territories currently report on the quality of child care provider(s) based on several indicators—including: QRIS participation and rating, accreditation status, compliance with State pre-kindergarten standards or Head Start performance standards, and other State-defined quality measure. However, previously, States and Territories were required to report on at least one of the quality elements for a portion of the provider population. This resulted in limited quality data, often for only a small portion of child care providers in a State or Territory. This change would require quality information for every child care provider. Working with States and Territories to track this data will give us a key indicator on the progress we are making toward the goal of increasing the number of low-income children

in high quality care. Lead Agencies must also take into consideration the cost of providing higher quality care when setting payment rates pursuant to § 98.44(f)(iii). To ensure that the CCDF program is providing meaningful access to high quality care, it is essential for Lead Agencies to have data on the quality of CCDF providers. Current paragraph (a)(15) would be redesignated as paragraph (a)(21) but otherwise is unchanged.

We propose a new § 98.71(b)(5) to report the number of child fatalities by type of care as required by section 658K(a)(2)(F) of the CCDBG Act. This should include the number of fatalities occurring among children while in the care and facility of child care providers serving CCDF children (regardless of whether the child who dies was receiving CCDF). Current paragraph (b)(5) would be redesignated as paragraph (b)(6) but otherwise is unchanged.

We are revising paragraph (c), regarding reporting requirements for Tribal Lead Agencies, to specify that the Tribal Lead Agency's annual report shall include such information as the Secretary shall require. We intend to revisit requirements for all Tribal Lead Agencies, pursuant to proposed changes in Subpart I, at a later date. Proposed reporting requirements will be subject to public comment under the Paperwork Reduction Act.

Subpart I – Indian Tribes

This subpart addresses requirements and procedures for Indian Tribes and Tribal organizations applying for or receiving CCDF funds. This section describes provisions of Subpart I and serves as the Tribal summary impact statement as required by Executive Order 13175. CCDF currently provides funding to approximately 260 Tribes and Tribal organizations that, either directly or through consortia arrangements, administer child care programs for approximately 520 federally-recognized Indian Tribes. Tribal CCDF programs are intended for

the benefit of Indian children, and these programs serve only Indian children. 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 stability, and in promoting learning and development for children. In many cases, Tribal child care programs also emphasize traditional culture and language. Below we discuss the proposed Tribal CCDF framework and proposed regulatory changes.

The CCDBG Act is not explicit in how its provisions apply to Tribes. ACF traditionally issues regulations to define how the law applies to Tribes. These proposed regulations are the result of several months of consultation on the new law with Tribes, as well as past consultations and Tribal comments on our 2013 NPRM. We heard from many Tribal leaders and CCDF Administrators asking for flexibility to implement child care programs that meet the needs of individual communities. The proposals included in this NPRM are designed to increase Lead Agency flexibility, while balancing the CCDF dual goals of promoting families' financial stability and fostering healthy child development.

Funding. Tribal CCDF funding is comprised of two funding sources: 1) Discretionary Funds, authorized by the Act and annually appropriated by Congress; and 2) Tribal Mandatory Funds, provided under Section 418(a)(4) of the Social Security Act (42 U.S.C. 618(a)(4)). Reauthorization of the Act allows for a potential increase in the Tribal Discretionary funds, but does not affect the Tribal Mandatory funds. Tribes may only be awarded up to two percent of the Mandatory Funds, per the Social Security Act.

According to Section 658O(a)(2) of the Act, Tribes will receive not less than two percent of the Discretionary CCDF funding. The Secretary may reserve an amount greater than two

percent for Tribes if two conditions are met: 1) the amount appropriated is greater than the amount appropriated in FY 2014, and 2) the amount allotted to States is not less than the amount allotted in FY 2014.

Recognizing the needs of Tribal communities, ACF increased the Tribal CCDF Discretionary set-aside from two percent to 2.5 percent for FY 2015, which increased total Tribal CCDF Funding from $107 million to $119 million. As part of the consultations on the law (see below), ACF asked for Tribal input on the funding level for future years. We encouraged Tribes to use the increased funding on activities included in reauthorization, such as health and safety, continuity of care, and consumer education. In light of the proposals in this NPRM for how the law will apply to Tribes, ACF continues to ask for comment on the Tribal CCDF Discretionary set-aside, including the process to be used to determine the amount of the discretionary set-aside if the above-listed conditions are met to reserve a greater set-aside.

Tribal consultation. ACF is committed to consulting with Tribes and Tribal leadership to the extent practicable and permitted by law, prior to promulgating any regulation that has Tribal implications. As this proposed rule has been developed, ACF has engaged with Tribes through multiples means. The requirements in this proposed rule were informed by past consultations, listening sessions, and meetings with Tribal representatives on related topics. Starting in early 2015, we began a series of formal consultations, conducted in accordance with the ACF Tribal Consultation Policy (76 FR 55678) with Tribal leaders to determine how the provisions in the Act apply to Tribes and Tribal organizations. Tribal CCDF administrators and staff were also invited to attend. In addition to an informal listening session in February, from March to May, OCC held three formal conference calls and an in-person consultation session with Tribal leaders and Tribal CCDF administrators to discuss the impact of reauthorization on Tribes. Tribes and

Tribal organizations were informed of these consultations and conference calls through letters to Tribal leaders. Much of the testimony and dialogue focused on the vast differences among Tribes and Tribal organizations. This proposed rule was informed by these conversations and continues to balance flexibility for Tribes with the need to ensure accountability and quality child care for children.

102-477 Programs. We 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. No. 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 publishes 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 Pub. L. 102-477 programs.

Dual Eligibility of Indian Children. Census data indicates over 60 percent of American Indian and Alaskan Native families do not reside on reservations or other Native lands; therefore, significant numbers of eligible Indian children and families are served by State Lead Agencies. Eligible Indian children who reside in Tribal service areas continue to have dual eligibility to receive child care services from either the State or Tribal CCDF program in accordance with existing regulation at § 98.80(d). Section 658O(c)(5) of the Act mandates that, for child care services funded by CCDF, the eligibility of Indian children for a Tribal program does not affect their eligibility for a State program.

Tribal CCDF Framework. We propose that Tribes shall be subject to the CCDF requirements in Part 98 and 99 based on the size of their CCDF allocation. CCDF Tribal

allocations vary from less than $25,000 to over $12 million. We recognize that Tribes receiving smaller CCDF grants may not have sufficient resources or infrastructure to effectively operate a program that complies with all CCDF requirements. Therefore, we are proposing three categories of CCDF Tribal grants, with thresholds established by the Secretary: large allocations, medium allocations, and small allocations. Each category is paired with different levels of CCDF requirements, with those Tribes receiving the largest allocations expected to meet most CCDF requirements. Tribes receiving smaller allocations are exempt from specific provisions in order to account for the size of the grant awards (see table below).

Large Allocations	**Medium Allocations**	**Small Allocations**

• Subject to the majority of CCDF requirements
• Exempt from some requirements, including: consumer education website, use of grants or contracts, the requirement to have licensing for child care services, and market rate survey or alternative methodology (but still required to have rates that support quality)
• Subject to the monitoring requirements, but allowed the flexibility to propose an alternative monitoring methodology in their Plan
• Subject to the background check requirement to check other adults in a family child care home, but allowed to request an exemption in their Plan
	• Allowed the same exemptions as the large allocation category
	• Exempt from operating a certificate program
		• Exempt from the majority of CCDF requirements, including those exemptions for large and medium allocation categories
		• Must spend their funds in alignment with CCDF goals and purposes
		• Only subject to:
		  • If providing direct services: the health and safety requirements, the monitoring requirements, and the background check requirements;
		  • Quality spending requirements;
		  • The 15% admin cap;
		  • Fiscal, audit, and reporting requirements; and
		  • Any other requirement defined by the Secretary.
		• Submit an abbreviated Plan

ACF proposes that grants over $ 1 million would be considered large allocations. In FY 2015, this category would include 18 Tribes. Grants between $1 million and $250,000 would be considered medium allocations. For FY 2015, this category would include 79 Tribes. Grants of

less than $250,000 would be considered small allocations. In FY 2015, this category would include 162 Tribes. We are not proposing to set the allocation thresholds through regulation so that they may be updated or revised at a later date through consultation and notice. We discuss the exemptions further below.

In keeping with the goals of this NPRM and the intent of the law, ACF believes that ensuring the health and safety of children in child care and promoting quality to support child development are of the utmost importance. As such, we are proposing that all Tribes providing direct services be subject to the health and safety requirements at § 98.41 (as well as the monitoring and background check requirements, discussed later in this preamble) and that all Tribes be required to meet the quality spending requirements at §§ 98.50(b) and 98.53.

Health and Safety. We propose that all Tribes providing direct services are required to meet the requirements at § 98.41(a), which include requirements around a list of health and safety topics; health and safety training; setting group size limits and ratios; and compliance with child abuse reporting requirements. These health and safety requirements create a baseline essential to protecting children in child care. (In addition, as discussed below, we propose that Tribes be subject to the immunization requirements that previously only applied to States and Territories.)

The Act, at Section 658O(c)(2)(D), continues to require HHS to develop minimum child care standards for Indian Tribes and Tribal organizations receiving funds under CCDF. After three years of consultation with Tribes, Tribal organizations, and Tribal child care programs, health and safety standards were first published in 2000. 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 met. Many Tribes already exceed the minimum Tribal standards issued by HHS, and some have used the minimum standards as the starting point for developing their own more specific standards.

These minimum standards will need to be revised and updated to align with new requirements of the law and this proposed rule. In the preamble to Subpart E, ACF recommends that Lead Agencies consult the recently published *Caring for Our Children Basics (CfoC Basics)* for guidance on establishing health and safety standards. *CfoC Basics* represents a baseline for health and safety standards and would fulfill the need for updated HHS minimum standards for Tribes. However, before updating or replacing the HHS minimum standards, ACF is committed to consulting with Tribes. We welcome comments on whether the *CfoC Basics* should replace the current HHS minimum standards as the new health and safety guidelines for Tribes.

Quality improvement activities. We propose that all Tribes and Tribal organizations be subject to the quality spending and quality improvement activities requirements described at §§ 98.50(b) and 98.53. Current regulations at § 98.83(f) exempt Tribes and Tribal organizations with smaller allocations (total CCDF allocations less than $500,000) from the requirement to spend four percent on quality activities. We propose to amend § 98.83(f) by deleting paragraph (f)(3) so that all Tribes, regardless of their allocation size, are now required to meet quality spending requirements included at § 98.50(b). The law requires Lead Agencies to spend increasing minimum amounts on quality activities, reaching nine percent in 2020. In addition, Lead Agencies must spend at least three percent on quality activities to support infants and toddlers.

In the 2013 NPRM, we also proposed a similar change to make Tribal grantees, regardless of size, meet the quality spending requirements and we received a positive response

from commenters. A primary goal of this proposed rule is to promote high quality child care to support children's learning and development. We want to ensure that Indian children and Tribes benefit from the increased recognition of the importance of high quality child care.

Because the quality requirement is applied as a percentage of the Tribe's CCDF expenditures, the amount required will be relatively small. However, we are requesting comments on this provision, in particular as it relates to Tribes that receive small allocations.

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. Most Tribal Lead Agencies are likely already engaged in activities that would count as quality improvement. We will provide technical assistance to help Tribes identify current activities that may count towards meeting the quality spending requirement, as well as appropriate new opportunities for quality spending.

The revisions to § 98.53 (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, given the unique circumstances of Tribal communities. However, Tribes may implement selected components of the quality framework at § 98.53, such as training for caregivers, teachers, and directors or grants to improve health and safety.

The revisions to § 98.53 in no way restrict Tribes' ability to spend CCDF quality dollars on a wide range of quality improvement activities. Under existing § 98.53(a), 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: child care resource and referral activities, consumer education, grants or loans to assist providers, training and technical assistance for providers and caregivers, improving salaries of caregivers, teachers and directors, monitoring or enforcement of health and safety standards, and other activities to improve the quality of child care, including native language lesson and cultural curriculum development. 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.

We also are working with Tribes on creating a culturally appropriate quality vision and framework specifically for Tribes. The framework will include a range of quality improvement activities, including activities that integrate native culture and language into child care, in order to encompass both large and small Tribes. We look forward to working with Tribes on this quality framework, and we will provide opportunities for Tribes to give feedback.

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.

General Procedures and Requirements (Section 98.80)

Section 98.80 provides an introduction to the general procedures and requirements for CCDF Tribal grantees. As discussed above, ACF proposes to modify § 98.80(a) so that Tribes are subject to CCDF requirements based on the size of their CCDF allocation.

Application and Plan Procedures (Section 98.81)

Section 98.81 addresses the application and Plan procedures for Tribal CCDF grantees, and much of the new proposed regulatory language in this section, particularly the Plan exemptions listed at §§ 98.81(b)(6) and (9), reflects the changes made in § 98.80 (General procedures and requirements) and § 98.83 (Requirements for Tribal programs). These exemptions will be discussed in greater detail later in the preamble. Tribes receiving large or medium allocations will continue to fill out a traditional Tribal CCDF Plan, proposed at § 98.81(b), and Tribes receiving small allocations will fill out an abbreviated Plan, proposed at § 98.81(c). The Plan periods will now be three years, as required by the new statute.

Tribal Median Income. At § 98.81(b)(1), the regulations require that the Plan must include the basis for determining family eligibility. ACF proposes at § 98.81(b)(1)(i) to allow a Tribe, whose Tribal Median Income (TMI) is below a level established by the Secretary, the option of considering any Indian child in the Tribe's service area to be eligible to receive CCDF funds, regardless of the family's income, work, or training status. We believe that this flexibility allows Tribes to create opportunities to align CCDF programs with other Tribal early childhood programs, including Tribal home visiting, Early Head Start, and Head Start. We are considering setting the threshold at 85 percent of State median income (SMI) and would welcome comment on whether this is an appropriate threshold. Using 85 percent of SMI mirrors other thresholds set

by the CCDBG law and would allow the majority of CCDF Tribes to exercise this option, if they choose. We are choosing not to set this threshold through regulation to allow the level to be updated in the future though consultation and notice.

We also propose to move the requirement at § 98.80(f) to § 98.81(b)(1)(ii). Under this revised provision, if a Tribe chooses not to exercise the option at § 98.81(b)(1)(i) or has a higher TMI, the Tribe would need to determine eligibility for services in accordance with § 98.20(a)(2). Tribes will continue to have the option of using either 85 percent of SMI or 85 percent of TMI.

Payment Rates. ACF proposes to exempt all Tribes from the requirement to use a market rate survey or alternative methodology to set provider payment rates (discussed later in this preamble). However, at § 98.81(b)(5), we propose that Plans submitted by Tribes receiving large or medium allocations include a description of the Tribe's payment rates; how they are established; and how they support quality, and where applicable, cultural and linguistic appropriateness. While market rate surveys or alternative methodologies do not necessarily make sense for Tribal communities, it is important for Tribal Lead Agencies to have rates sufficient to provide equal access to the full range of child care services, including high quality child care.

Plan Exemptions. At § 98.81(b)(6), ACF proposes three new Plan exemptions for Tribes receiving large or medium allocations. Such Tribal Lead Agencies would be exempt from including in their Plans descriptions of the market rate survey or alternative methodology; the licensing requirements applicable to child care services; and the early learning guidelines. These requirements should not apply to Tribal communities.

At § 98.81(b)(9), ACF proposes that Plans for Tribes receiving medium allocations would be exempt from the requirement to include a description of the child care certificate

program, unless the Tribe choses to include those services. This exemption corresponds with the exemption in § 98.83 discussed later in the preamble.

Plans for Tribes Receiving Small Allocations. ACF proposes to exempt Tribes receiving small allocations (less than $250,000) from the majority of CCDF requirements. These Tribes would only be subject to core CCDF requirements. As such, we propose at § 98.81(c) that these Tribes fill out an abbreviated CCDF Plan, tailored to these core requirements. A shorter Plan application is more aligned with the level of funding that these Tribes receive. All of the Plan exemptions described in § 98.81(b) for Tribes receiving large or medium allocations will also apply to Tribes receiving small allocations. ACF will release a Program Instruction defining the elements that will be included in the abbreviated Plan for Tribes receiving small allocations.

Coordination (Section 98.82)

Section 98.82 currently requires Tribal Lead Agencies to coordinate with State CCDF programs and with other Federal, State, local, and Tribal child care and child development programs. Tribal Lead Agencies must also coordinate with the entities listed at §§ 98.12 and 98.14. We propose to add language at § 98.82(a) that would require Tribal Lead Agencies to coordinate the development of the Plan and the provision of services with the entities listed at §§ 98.12 and 98.14. This addition does not change existing policy; it serves as a clarification of the regulatory language.

The regulations at § 98.82(a) currently require Tribal Lead Agencies to coordinate with the entities described at § 98.14 in the development of their Plans. This list includes newly added child care licensing, Head Start collaboration, State Advisory Councils on Early Childhood Education and Care or similar coordinating bodies, statewide afterschool networks,

emergency management and response, CACFP, services for children experiencing homelessness, Medicaid, and mental health services. While we are not making any Tribally-specific changes to §§ 98.14 or 98.82, we do recognize that Tribes may not always have access or connections with these entities. Many of these agencies, especially the State Advisory Councils and the statewide afterschool networks, interact primarily on the State level. Others, including child care licensing and Head Start, may not exist in the Tribe's service area.

Tribes should coordinate with these agencies to the extent possible. The Tribal Plan pre-print will ask Tribes to describe their efforts to coordinate with all the entities listed at § 98.14, but if coordination is not applicable, then the Tribes may simply say so in their Plans. We will support Tribal Lead Agency efforts to coordinate with these entities and plan to provide technical assistance to both Tribes and States to promote Tribal access and participation.

Tribes should also take note of two new provisions in the CCDBG law, included in this NPRM, which require State coordination with Tribes. First, at § 98.10(f), State Lead Agencies must collaborate and coordinate with the Tribes, at the Tribes' option, in a timely manner in the development of the State Plan. We encourage States to be proactive in reaching out to the Tribal officials for collaboration.

Second, State Lead Agencies must have training and professional development in place designed to enable child care providers to promote the social, emotional, physical, and cognitive development of children and to improve the knowledge and skills of child care caregivers, teachers, and directors in working with children and their parents. Section 98.44(b)(2)(vi) would require this training and professional development be accessible to caregivers, teachers, and directors of CCDF child care providers supported through Indian Tribes or Tribal organizations. Section 98.44(b)(2)(iv) would provide that the training and professional development should

also, to the extent practicable, be appropriate for Native American children. Tribes should work with States to help ensure that these statutory requirements are met. Tribal CCDF programs should also coordinate with other childhood development programs located in the Tribal service area, including any programs that support the preservation and maintenance of Native languages.

Requirements for Tribal Programs (Section 98.83)

Section 98.83 addresses specific requirements for Tribal CCDF programs. In recognition of the unique social and economic circumstances in many Tribal communities, Tribal Lead Agencies are exempt from a number of CCDF requirements. At paragraph (d)(1), we propose to exempt all Tribes, regardless of allocation size, from the requirements for licensing applicable to child care services at § 98.40; a consumer education website at § 98.33(a); the market rate survey or alternative methodology and the related requirements at § 98.45(b)(2); the use of some grants or contracts at § 98.50(a)(3); the professional development framework at § 98.44(a); and the quality progress report at § 98.53(f). Tribes that receive medium or small CCDF allocations are also exempt from the requirements of operating a certificate program at § 98.30(a) and (d). Tribes that receive small allocations would be exempt from the majority of the new CCDF requirements to give these Tribes more flexibility in how they spend their CCDF funds. Finally, several provisions would apply to all Tribes providing direct services, unless the Tribe describes an alternative in its Plan: monitoring of child care providers and facilities at § 98.42(b)(2) and conducting background checks on other individuals residing in family child care homes at § 98.43(a)(2)(ii)(C).

We propose to remove previously-existing language on immunizations so that Tribes must now assure that children receiving CCDF services are age-appropriately immunized. We

also propose to add regulatory language to add clarity to the previously-existing exemptions; this language does not change the previous policy. ACF also proposes two new paragraphs at (d)(2) and (d)(3) giving Tribes more flexibility around the monitoring inspections requirements and the requirement for comprehensive background checks on other individuals in family child care homes. At paragraph (e), ACF proposes to exempt Tribes receiving medium or small CCDF allocations from the requirement to operate a certificate program. At paragraph (f), ACF proposes more flexibility for Tribes receiving small allocations by only subjecting them to core CCDF requirements.

Service Area. We propose a technical addition at §98.83(b) to clarify that Tribes (with the exception of Tribes located in Alaska, California, or Oklahoma) must operate their CCDF programs on or near Indian reservations. ACF has long-standing policy guidance that clarifies that a Tribe's service area must be "on or near the reservation," and therefore must be within a reasonably close geographic proximity to the delineated borders of a Tribe's reservation. Tribes that do not have reservations must establish service areas within reasonably close geographic proximity to the area where the Tribe's population resides. ACF will not approve an entire State as a Tribe's service area. This policy clarification does not impact States' jurisdiction over child care licensing. Tribal service areas are also addressed in the regulations at § 98.81(b)(2)(ii), and the same policy guidance applies.

Licensing for Child Care Services. ACF proposes to exempt all Tribes from the requirement to have in effect licensing requirements applicable to child care services at § 98.40. This is a pre-existing statutory and regulatory requirement that was re-affirmed by the reauthorized CCDBG law. The majority of CCDF Tribal grantees do not have their own licensing requirements. Many Tribes certify in their Plans that they have adopted their State's

licensing standards, but these requirements may not be appropriate for Tribal communities. In addition, we believe that requiring Tribes to have licensing requirements is counter to t Section 658O(c)(2)(D) of the Act, which states, "In lieu of any licensing and regulatory requirements under State or local law, the Secretary, in consultation with Indian Tribes and Tribal organizations, shall develop minimum child care standards that shall be applicable to Indian Tribes and Tribal organization receiving assistance under this subchapter." Tribes may instead use the voluntary guidelines issued by HHS, described earlier in the preamble.

Consumer Education Website. We propose to exempt all Tribes from the requirement for a consumer education website at § 98.33(a). We propose this exemption due to the administrative cost of building a website, as well as the lack of reliable high-speed internet in some Tribal areas. 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 website. However, where appropriate, we encourage Tribes to implement websites for consumer education and to work with entities, such as States or child care resource and referral agencies that maintain provider-specific information on a website. For example, in cases where Tribal child care providers are licensed by the State, information about compliance with health and safety requirements should be available on the State's website.

Market Rate Survey or Alternative Methodology. At § 98.83(d)(1)(iv), we propose to exempt all Tribes from conducting a market rate survey or alternative methodology and all of the related requirements. In many Tribal communities, the child care market is extremely limited. Also, many Tribes are located in rural, isolated areas and conducting a market rate survey or alternative methodology would be difficult. Furthermore, we have proposed at § 98.83(f) that Tribes receiving CCDF allocations of $1 million or less (medium and small allocations) be

exempt from operating a certificate program, and therefore, these Tribes are not required to offer the full range of child care services. For these Tribes especially, market rate surveys are not relevant. Despite exempting Tribes from these requirements, we believe that setting payment rates to support quality is essential to providing equal access to child care services. Tribes receiving large or medium allocations, will be asked in their Plans how rates were set and how these rates support quality.

Grants or Contracts. We propose to exempt all Tribes from the requirement at § 98.50(a)(3), which 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 shortages in the supply of high quality care*. We recognize that some Tribes, particularly those receiving smaller CCDF grant allocations, may lack the resources necessary to provide services through grants or contracts. 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 (*e.g.*, building supply, strengthening quality). 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.

Training and Professional Development Framework. We propose to exempt Tribes from the requirement at § 98.44(a) to describe in their CCDF Plan the State framework for professional development. This requirement is State-specific and not relevant for Tribes. We note, however, as required by the law at Section 658E(c)(2)(G)(ii)(IV), ongoing State professional development must be accessible to caregivers supported through Indian Tribes and

Tribal organizations. The trainings must also be, to the extent practicable, appropriate for populations of Native American and Native Hawaiian children. Tribes are encouraged to work with States to help States meet these statutory requirements.

Quality Progress Report. We propose that Tribal Lead Agencies be exempt from completing the Quality Progress Report (QPR) at § 98.53(f), which is a revised version of the former Plan appendix, the Quality Performance Report. In the future, we may consider adding additional questions on quality improvement activities to the Tribal Plan, ACF-700 or ACF-696T, but we will discuss these changes with Tribes and provide opportunity for public comment.

The QPR includes a report describing any changes to State regulations, enforcement mechanisms, or other policies addressing health and safety based on an annual review and assessment of serious child injuries and any deaths occurring in child care programs. Under this provision, Tribes are exempt from completing the QPR, including the review and assessment of serious injuries and deaths. Notwithstanding, we encourage Tribal Lead Agencies to complete a similar process to the one described in the QPR and to review the reported serious injuries or deaths and make policy or programmatic changes that could potentially save a child's life.

Immunization requirement. Consistent with the proposed rule's overall focus on promoting high quality care that supports children's learning and development, we propose to revise § 98.83(d) to extend coverage of CCDF health and safety requirements related to immunization so that the requirements would apply to Tribes, whereas previously Tribes were exempt. At the time the current regulations were issued in 1998, minimum Tribal health and safety standards had not yet been developed and released by HHS. 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, Tribes would 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, a Tribal Lead Agency has 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.

Monitoring Inspections. We propose that all Tribes providing direct services, regardless of allocation size, be subject to the monitoring requirements at § 98.42(b)(2), which reflect the requirements in the law. However, a Tribal Lead Agency may describe an alternative monitoring approach in its Plan, subject to ACF approval, and must provide adequate justification for the approach. Section 658E(c)(2)(K) of the Act requires at least one pre-licensure inspection and annual unannounced monitoring for licensed child care providers. License-exempt providers are

subject to annual monitoring on health, safety, and fire standards. The proposed rule would also allow Lead Agencies to use differential monitoring strategies and to develop alternate monitoring requirements for care provided in the child's home.

In our 2013 NPRM, we also proposed that Tribal Lead Agencies would be subject to monitoring requirements, and we received many comments asking for more flexibility for Tribes. As with the 2013 NPRM, we believe that the monitoring requirements in the law and the additional requirements proposed in this NPRM may not be culturally appropriate for some Tribal communities. By allowing Tribes to describe alternative monitoring strategies in their Plans, we wanted to give Tribal Lead Agencies some flexibility in determining which monitoring requirements should apply to child care providers. Tribes cannot use this flexibility to bypass the monitoring requirement altogether, but may introduce a monitoring strategy that is culturally appropriate for their communities. Tribes may also use this flexibility to partner with other agencies that may already be conducting monitoring visits, such as State Lead Agencies, the Indian Health Service, or the Child and Adult Care Food Program. Coordinating and partnering with existing agencies can help lessen the financial and administrative burden.

Comprehensive Background Checks. We propose that Tribal Lead Agencies be subject to the background check requirements at § 98.43, including the requirement for comprehensive background checks on other individuals residing in family child care homes. A comprehensive background check includes an FBI fingerprint check; a search of the National Crime Information Center; and a search of the following registries in the State where the child care staff member lives and each State where the staff member has lived for the past five years: State criminal registry using fingerprints, state sex offender registry, and the state child abuse and neglect registry, as described at § 98.43(b).

We note that in order to conduct an FBI fingerprint check using Next Generation Identification, Lead Agencies must act under an authority granted by a Federal statute. States, as described in subpart E, may choose among three federal laws that grant authority for FBI background checks for child care staff. These three statutes are: the CCDBG Act, Public Law 92-544, and the National Child Protection Act/ Volunteers for Children Act. These three laws give States the authority to conduct FBI fingerprint checks, but none of them specifically grant that same authority to Tribes. In order for Tribes to conduct FBI background checks, they may use the Indian Child Protection and Family Violence Prevention Act, which to date only covers those individuals who are being considered for employment by the Tribe in positions that have regular contact with, or control over, Indian children. Otherwise, Tribes will need to work with States to complete the FBI background check using a State's authority under an approved Public Law 92-544 statute or under procedures established pursuant to the National Child Protection Act/ Volunteers for Children Act (NCPA/VCA). We understand that this may present difficulties for Tribes, especially for those that do not currently have a partnership with the State. We believe that comprehensive background checks are important for ensuring children's health and safety in child care. We are asking for comments on Tribes' experiences obtaining FBI fingerprint checks.

ACF does want to offer some flexibility for Tribes around the background check requirements. We are proposing at § 98.83(d)(3) to allow Tribes to use an alternative approach to conducting full background checks on other individuals residing in a family child care home if the Tribal Lead Agency provides an adequate justification in its Plan, subject to ACF approval. We have heard through our consultation sessions that many Tribal families reside in households with several generations. Requiring all members of the household to complete all five

components of a comprehensive background check could be burdensome for the family and for the Tribal Lead Agency. Therefore, we are proposing to allow a Tribal Lead Agency to use an alternative strategy to conduct background checks on other individuals in a family child care home. ACF expects that Tribal Lead Agencies will conduct some components of a background check for these individuals. In its justification, a Tribe must describe how the alternative background check strategy is appropriately comprehensive and protects the health and safety of children in care.

Certificate Program. We propose at § 98.83(e) that Tribes that receive medium or small allocations 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 certificate program. Tribes that receive large allocations will still be required to offer all categories of care through a certificate program.

Under current regulations, Tribes receiving smaller CCDF grants are exempt from operating a certificate program. The dollar threshold for determining which Tribes are exempt from operating a certificate program is established by the Secretary. It was set at $500,000 in 1998 and has not changed. By proposing to exempt Tribes receiving medium or small allocations from operating a certificate program, we are effectively proposing to raise the dollar threshold to $1 million. As discussed earlier, we are proposing to consider medium allocations to be grants between $250,000 and $1 million and small allocations to be grants of less than $250,000. These proposals would expand the number of Tribes that are exempt from operating a certificate program. We believe that this higher threshold will allow Tribes with smaller CCDF

allocations to focus on implementing the new requirements proposed in this NPRM, specifically concentrating on the health and safety and quality requirements.

Small Allocations Requirements. ACF believes that the Tribes receiving the smallest CCDF allocations should not be subject to the same requirements as the Tribes receiving larger grant awards. ACF is proposing to exempt Tribes receiving small allocations (less than $250,000) from the majority of the CCDF requirements to give these Tribes more flexibility in how they spend their CCDF funds and to focus these funds on health and safety and quality spending. At § 98.83(f), we propose that Tribal Lead Agencies receiving small allocations spend their CCDF funds in alignment with the goals and purposes of CCDF as described in § 98.1. We propose that Tribes that provide direct services comply with the health and safety requirements, monitoring requirements; background checks requirements, and quality spending requirements. The proposed language at § 98.83(f) defines the only CCDF provisions that would apply to Tribes with small allocations.

We believe that this proposal allows Tribes with small allocations the flexibility to spend their CCDF funds in ways that would most benefit their communities. Tribes could choose to spend all of their CCDF funds on quality activities, or they could invest all of their funds into a Tribally-operated center. If a Tribe that receives a small allocation chooses to spend funds on direct services, then the Tribe would be required to meet the health and safety requirements, including the monitoring and background check requirements, as discussed earlier. Tribes that receive small allocations would also continue to be required to meet the fiscal, audit, and reporting requirements in the rule. To align with these limited CCDF requirements, Tribes with small allocations will complete an abbreviated Plan, as discussed earlier. This proposal

balances increased flexibility with accountability, and ACF encourages these Tribes to focus their CCDF spending on ensuring health and safety and quality for children in child care.

Base amount. Beginning with FY 2017, OCC is proposing to increase the base amount from $20,000 to $30,000 to account for inflation that has eroded the value of the base amount since it was originally established in 1998. Each year, Tribal CCDF grantees' CCDF allocations are based on a Discretionary base amount, as well as a Discretionary and Mandatory amount based on the number of children submitted in the child count.

OCC first notified Tribes of our proposal to increase the base amount through our 2013 NPRM. The base amount is not included in regulation, and does not require regulatory change. However, OCC wanted to give Tribes the opportunity to comment on this change through the public comment period associated with the proposed rule, and the comments received were largely supportive.

The increase in the Discretionary base amount will result in a lower Discretionary per child amount than would occur without the change in base amount. An increase in the base amount benefits smaller Tribes and consortia, and OCC hopes it will encourage capacity building, especially in Tribal consortia. Larger Tribes will receive less funding then they would have in the absence of this change; however, this impact could largely be offset by the overall increase in CCDF funding for Tribes and by an increase in the Tribal Discretionary set-aside, described above. Therefore, OCC anticipates stable or increased funding for most Tribal Lead Agencies.

Construction and renovation of child care facilities (Section 98.84)

Section 98.84 currently describes the procedures and requirements around Tribal construction or renovation of child care facilities. The CCDBG Act reaffirmed Tribes' ability to request to use CCDF funds for construction or renovation purposes. Section 658O(c)(6)(C) of the Act continues to disallow the use of CCDF funds for construction or renovation if it will result in a decrease in the level of child care services. However, the law now allows for a waiver for this clause if the decrease in the level of child care services is temporary. A Tribe will also need to submit a plan to ACF that demonstrates that after the construction or renovation is completed the level of child care services will increase or the quality of child care services will improve. In order for a Tribe to use CCDF funds on construction or renovation while decreasing the level of direct services, the Tribe must certify that, after the construction is completed, the number of children served will increase or the quality of care will increase. ACF added this language from the law to the regulations at § 98.84(b)(3).

ACF also issued a Program Instruction to describe the application process for using CCDF funds on construction or renovation. This Program Instruction will also be updated to reflect the new requirements in the law. The Program Instruction expands upon and describes the statutory and regulatory requirements. In the event that the CCDF regulations do not address a specific issue, then we will look to Head Start and HHS's generally-accepted construction and renovation guidelines.

Subpart J – Monitoring, Non-Compliance, and Complaints

Subpart J contains provisions regarding HHS monitoring of Lead Agencies to ensure compliance with CCDF requirements, processes for examining complaints and for determining non-compliance, and penalties and sanctions for non-compliance.

Penalties and Sanctions (Section 98.92)

Current regulations allow HHS to impose penalties and other appropriate sanctions for a Lead Agency's failure to substantially comply with the Act, the implementing regulations, or the Plan. Such penalties and sanctions may include the disallowance or withholding of CCDF funds in accordance with § 98.92. These regulations remain in effect.

In addition, we propose to add new provisions at § 98.92(b) in accordance with two penalties added by the reauthorization of the Act. New section 658E(c)(3)(B)(ii) requires HHS to annually prepare a report that contains a determination about whether each Lead Agency uses CCDF funding in accordance with priority for services provisions. These priority provisions are reiterated at § 98.44(a) of these proposed regulations, and require Lead Agencies to give priority to children with special needs, children from families with very low incomes, and children experiencing homelessness. The Act requires HHS to impose a penalty on any Lead Agency failing to meet the priority for services requirements. We propose to implement this new penalty through a new regulatory provision at § 98.92(b)(3). In accordance with the statute, the proposed rule provides that a penalty of not more than five percent of the CCDF Discretionary Funds shall be withheld if the Secretary determines that the Lead Agency has failed to give priority for service in accordance with § 98.44. This penalty will be withheld no earlier than the first full Fiscal Year following the determination to apply the penalty, and the penalty will not be applied

if the Lead Agency corrects its failure to comply and amends its CCDF Plan within six months of being notified of the failure. The Secretary may waive a penalty for one year in the event of extraordinary circumstances, such as a natural disaster.

The second new penalty was added by section 658H(j)(3) of the Act and is related to the new criminal background check requirements. We propose to implement this penalty through new regulatory language at § 98.92(b)(4). In accordance with the statute, the proposed rule provides that a penalty of not more than five percent of the CCDF Discretionary Funds for a Fiscal Year shall be withheld if the Secretary determines that the State, Territory, or Tribe has failed to comply substantially with the criminal background check requirements at § 98.43. We propose to add that this penalty will be withheld no earlier than the first full Fiscal Year following the determination to apply the penalty, and this penalty will not be applied if the State, Territory or Tribe corrects the failure before the penalty is to be applied or if it submits a plan for corrective action that is acceptable to the Secretary.

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. No. 107-300). In July 2010, the President signed into law the Improper Payments Elimination and Recovery Act (IPERA) (Pub. L. No. 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 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.

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

Interaction with eligibility requirements. We propose to add language at § 98.100(d), which defines an improper payment, to clarify that because a child meeting eligibility requirements at the most recent eligibility determination or redetermination is considered eligible between redeterminations as described in § 98.20(a)(1), any payment for such a child shall not be considered an error or improper payment due to a change in the family's circumstances, as set forth at § 98.21(a).

Corrective action plan. We propose to add § 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(b). 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 requirement will strengthen CCDF program integrity and accountability. Existing CCDF regulations at § 98.102(a)(6) and (8) currently require all 50 States, the District of Columbia, 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, any Lead Agency exceeding a threshold of improper payments will 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) 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 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 would 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 would 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 *et seq.*). In some instances (listed in the table below), the collections of information for the relevant sections of this proposed rule have been previously approved under a series of OMB control numbers, or are currently in the OMB approval process.

CCDF title/code	Relevant section in the proposed rule	OMB control number	Expiration date	Description
ACF-118 (CCDF State	§§ 98.14, 98.15, and 98.16 (and	0970-0114	05/13/2016	The Act and this proposed rule add new requirements which

CCDF title/code	Relevant section in the proposed rule	OMB control number	Expiration date	Description
and Territory Plan)	related provisions)			States and Territories will be required to report in the CCDF Plans, including provisions related to health and safety requirements, consumer education, and eligibility policies. State and Territorial compliance with the final rule will be determined in part through the review of CCDF Plans and Plan amendments. ACF has published Federal Register notices seeking public comment on this proposed information collection and the annual burden estimate.
ACF-800 (Annual Aggregate Data Reporting—States and Territories)	§ 98.71	0970-0150	06/30/2015	The Act and this proposed rule adds new data reporting requirements which States and Territories will be required to on the ACF-800. ACF has published Federal Register notices seeking public comment on this proposed information collection and the annual burden estimate.
ACF-801 (Monthly Case-Level Data Reporting—States and Territories)	§ 98.71	0970-0167	04/30/2015	The Act and this proposed rule adds new data reporting requirements which States and Territories will be required to on the ACF-800. ACF has published Federal Register notices seeking public comment on this proposed information collection and the annual burden estimate.
ACF-403, ACF-404, ACF-405 (Error Rate Reporting)	§§ 98.100 and 98.102	0970-0323	09/30/2015	The proposed rule does not make changes to this information collection.

CCDF title/code	Relevant section in the proposed rule	OMB control number	Expiration date	Description
ACF-700 (Administrative Data Report -- Tribes)	§ 98.71	0980-0241	10/31/2016	The proposed rule does not make changes to this information collection. If ACF proposes changes in the future, it will publish Federal Register notices seeking public comment.
ACF-696-T (Financial Reporting-Tribes)	§ 98.65	0970-0195	05/31/2016	The proposed rule does not make changes to this information collection.

In other instances, which are listed below, the proposed rule modifies several previously-approved information collections, but ACF has not yet initiated the OMB approval process to implement these changes. ACF will publish Federal Register notices soliciting public comment on specific revisions to those information collections and the associated burden estimates, and will make available the proposed forms and instructions for review.

CCDF title/code	Relevant section in the proposed rule	OMB control number	Expiration date	Description
Quality Progress Report (QPR)—States and Territories	§ 98.53	0970-0114	05/13/2016	The Act and the proposed rule require States and Territories to submit reports on quality improvement, and measures to evaluate progress. The QPR is currently approved as an appendix to the CCDF State Plan. ACF intends to propose a revised QPR through a separate information collection.
ACF-696 (Financial Reporting-States)	§ 98.65	0970-0163	05/31/2016	The proposed rule would modify this information collection to require any sub-categories of quality activities as required by ACF.

CCDF title/code	Relevant section in the proposed rule	OMB control number	Expiration date	Description
ACF-118-A (CCDF Tribal Plan)	§§ 98.14, 98.16, 98.18, 98.81, and 98.83 (and related sections)	0970-0198	05/31/2016	The rule changes requirements that Tribes and Tribal organizations will be required to report in the CCDF Plans, and indicates that Plan and application requirements will vary based on the size of a Tribe's allocation. Tribal compliance with the final rule will be determined in part through the review of Tribal CCDF Plans and Plan amendments.
CCDF-ACF -PI-2013-01 (Tribal Application for Construction Funds)	§ 98.84	0970-0160	03/31/2016	The Act and the proposed rule change requirements related to maintaining the level of child care services as a condition of using funds for construction and renovation.

The table below provides annual burden estimates for these 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 annual responses per respondent**	**Average burden hours per response**	**Total burden hours**
Quality Progress Report (QPR)—States and Territories	56	1	50	2800
ACF-696 (Financial Reporting-States)	56	4	5.5	1232
ACF-118-A (CCDF Tribal Plan)	257	0.33	120	10,177
CCDF-ACF -PI-2013-01 (Tribal Application	5	1	20	100

Annual Burden Estimates				
Instrument	**Number of respondents**	**Number of annual responses per respondent**	**Average burden hours per response**	**Total burden hours**
for Construction Funds)				

Finally, this proposed rule contains 2 new information collection requirements, and the table below provides an annual burden hour estimate for these collections. First, § 98.33 requires Lead Agencies to collect and disseminate consumer education information to parents of eligible children, the general public, and providers through a consumer-friendly and easily accessible website. This website will include information about State or Territory policies (related to licensing, monitoring, and background checks) as well as provider-specific information, including results of monitoring and inspection reports and, if available, information about quality. This requirement applies to the 50 States, the District of Columbia, and 5 Territories that receive CCDF grants. In estimating the burden estimate, we considered the fact that many States already have existing websites. Even in States without an existing website, much of the information will be 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 website over time.

Second, § 98.42 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 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 nearly 390,000 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 Website	56 States/Territories	1	300	16,800
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_submissions@omb.eop.gov, or by fax to (202) 395-7285.

VI. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA), as amended by the Small Business Regulatory Enforcement Fairness Act, (5 U.S.C. 605(b)) requires federal agencies to determine, to the extent feasible, a rule's economic impact on small entities, explore regulatory options for reducing any significant economic impact on a substantial number of such entities, and explain their regulatory approach.

This NPRM will not result in a significant economic impact on a substantial number of small entities. This rule is intended to implement provisions of the Act, and is not duplicative of other requirements. The reauthorization of the Act and these implementing regulations are intended to better balance the dual purposes of the CCDF program by adding provisions that ensure that healthy, successful child development is a consideration for the CCDF program (*e.g.*, preserving continuity in child care arrangements; ensuring that child care providers meet basic standards for ensuring the safety of children, etc.).

The primary impact of the Act and this proposed rule is on State, Territory, and Tribal CCDF grantees because the rule articulates a set of expectations for how grantees are to satisfy

certain requirements in the Act. To a lesser extent the rule would indirectly affect small businesses and organizations, particularly family child care providers, as discussed in more detail in the Regulatory Impact Analysis below. In particular, requirements for comprehensive criminal background checks and health and safety training in areas such as first-aid and CPR may impact child care providers caring for children receiving CCDF subsidies. However, the rule will not have a significant economic impact on a substantial number of child care providers. The estimated cost of a comprehensive criminal background check is $55 per check. For the required health and safety training, a number of low-cost or free training options are available. Many States use CCDF quality dollars or other funding to fully or partially cover the costs of background checks and trainings. The health and safety provisions in the rule will primarily impact those CCDF providers currently exempt from State licensing that are not relatives – which account for only about 22 percent of CCDF providers nationally. Finally, we note that the proposed rule contains many provisions that will benefit child care providers by providing more stable funding through the subsidy program (*e.g.*, eligibility provisions that promote continuity and improved payment practices).

VII. Executive Orders 12866 and 13563

Executive Orders 12866 and 13563 direct federal 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). The Orders require federal agencies to submit significant regulatory actions to the Office of Management and Budget (OMB) for approval. Section 3(f)(1) of Executive Order 12866 defines "significant regulatory actions," generally as any regulatory action that is likely to result in a rule that may (1) have an annual effect on the

economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or Tribal governments or communities; (2) create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

We estimate that the reauthorized CCDBG Act and this NPRM will have an annual effect on the economy of more than $100 million. Therefore, this NPRM represents a significant regulatory action within the meaning of section 3(f)(1) of Executive Order 12866. Given both the directives of Executive Orders 12866 and 13563 and the importance of understanding the benefits, costs, and savings associated with these proposed changes, we describe the costs and benefits associated with the proposed changes and available regulatory alternatives below in the Regulatory Impact Analysis.

VIII. Regulatory Impact Analysis

We have conducted a Regulatory Impact Analysis (RIA) to estimate and describe expected costs and benefits resulting from the reauthorized CCDBG Act and this NPRM. This included evaluating State-by-State policies in major areas of policy change, including monitoring and inspections (including a hotline for parental complaints), background checks, training and professional development, consumer education (including website and consumer statement), quality spending, minimum 12-month eligibility and related provisions, increased subsidies, and supply building (see Table 1).

The State policies described in this RIA, including information from the FY2014-2015 CCDF Plans, represent policies that were in place prior to the reauthorization of the CCDBG Act. This is consistent with Office of Management and Budget (OMB) Circular A-4 which indicates that in cases where substantial portions of a rule simply restate statutory requirements that would be self-implementing, even in the absence of the regulatory action, the RIA should use a pre-statute baseline (*i.e.*, comparison point for determining impacts). In conducting the analysis, we also took into account the statutory effective dates for various provisions. A number of States have already begun changing their policies toward compliance with the CCDBG Act, which passed in November of 2014, but data on those changes is not yet available and are not factored into this analysis.

Table 1: Overview of Major Provisions

	Relevant Provisions of CCDBG Act	**Provisions of Proposed Rule**
Health and Safety		
Background checks	658H	§ 98.43
Monitoring and inspections (including a hotline for parental complaints)	658E(c)(2)(J), 658E(c)(2)(C)	§ 98.42, § 98.32
Training and Professional Development (Pre-service, orientation, and ongoing training)	658E(c)(2)(G), 658E(c)(2)(I)	§ 98.44
Consumer Education		
Consumer education website	658E(c)(2)(D), 658E(c)(2)(E)	§ 98.33
Consumer statement	658E(c)(2)(D), 658E(c)(2)(E)	§ 98.33
Quality Spending		
Quality, infant and toddler spending	658G	§§ 98.53, 98.50(b)
Continuity of Care		
Minimum 12-month eligibility and related provisions	658E(c)(2)(N)	§§ 98.20, 98.21
Increased subsidy and supply building		
Increased subsidy	658E(c)(4), 658(c)(2)(S)	§ 98.45
Supply building	658E(c)(2)(A), 658E(c)(2)(M)	§ 98.50(a)(3)

Need for regulatory action. CCDF has far reaching implications for America's low-income children, and the reauthorized CCDBG Act and these proposed regulations shine a new light on the role that child care plays in child development and making sure children are ready

for school. The law and this proposed rule takes important steps toward ensuring that children's health and safety is being protected in child care settings. Both the Department of Health and Human Services' (HHS) Office of Inspector General (OIG) and the Government Accountability Office (GAO) have identified serious deficiencies with health and safety protections for children in child care. Prior to reauthorization of the CCDBG Act, there was a wide range of health and safety standards across States. For example, ten States lacked even the most basic first aid and CPR requirements, and many did not have requirements in other vital areas such as safe sleep practices and recognition and reporting of suspected child abuse and neglect. In addition, without any monitoring requirement prior to CCDBG reauthorization, 24 States allowed license-exempt family child care providers to self-certify that they met health and safety requirements without any documentation or other verification. As discussed throughout this proposed rule, minimum health and safety standards included in the new law and this proposed rule are essential to help prevent children from being exposed to child care settings that put their health and safety at risk. The importance of such standards and the inherent risks are discussed at length in *Caring for Our Children* (*Caring for Our Children: National Health and Safety Performance Standards*; *Guidelines for Early Care and Education Programs, 3rd Edition*, which was produced with the expertise of researchers, physicians, and practitioners. (American Academy of Pediatrics, American Public Health Association, National Resource Center for Health and Safety in Child Care and Early Education. (2011).

Parental choice is a foundational tenet of the CCDF program – to ensure parents are empowered to make their own decisions regarding the child care that best meets their family's needs. Prior to reauthorization, CCDF rules required Lead Agencies to promote informed child care choices by collecting and disseminating consumer education information to parents and the general public. Over the years, economists have researched and written about the problem of

information asymmetry in the child care market and the resulting impact both on the supply of high quality care and a parent's ability to access high quality care. (Blau, D., The Child Care Problem: An Economic Analysis, 2001; Mocan, N., The Market for Child Care, National Bureau of Economic Research, 2002) In order for parental choice to be meaningful, parents need to have access to information about the choices available to them in the child care market and have some way to gauge the level of quality of providers. The CCDBG Act and this proposed rule strengthen consumer education requirements to make information about child care providers more accessible and transparent for parents and the general public.

Stable relationships between a child and their caregiver are an essential aspect of quality. Yet, under current policies, clients "churn" on and off of CCDF assistance every few months, even when they remain eligible. Some studies show that many families appear to remain eligible for the subsidies after they leave the program, suggesting that child care subsidy durations also are likely influenced by factors unrelated to employment (Grobe, D., R. B. Weber and E. E. Davis (2006). Why do they leave?: Child care subsidy use in Oregon.).

Many State subsidy policies make it overly burdensome for parents to keep their subsidy, or are not flexible enough to allow for temporary or minor changes in a family's circumstances. This is supported by a study that featured a series of interviews with state and local child care administrators and identified a number of administrative practices that appear to reduce the duration of child care subsidy usage (Adams, G., K. Snyder and J. R. Sandfort (2002) Navigating the child care subsidy system: Policies and practices that affect access and retention.) The study found that families often faced considerable administrative burden when trying to apply for or recertify their eligibility status. For example, families sometimes had to interact with more than one agency during the application process, had to make more than one trip to an

administrative office, and sometimes had to wait for weeks or months to get an appointment with a social worker. In addition, families receiving Temporary Assistance for Needy Families (TANF) sometimes had additional difficulties with redetermination because of the temporary nature of their employment or training activities. The study also found that agencies had different policies regarding the ways in which families could recertify their eligibility status including mail, phone, or fax. Parents often find it difficult to navigate administrative processes and paperwork required to maintain their eligibility when policies are inflexible to changes in a family's circumstances. Policies that make it difficult for parents to keep their subsidy threaten the employment stability of parents and can disrupt children's continuity of care. This proposed rule establishes a number of family-friendly policies that benefit CCDF families by promoting continuity in subsidy receipt and child care arrangements.

Changes made by the CCDBG Act and this proposed rule, consistent with the revised purposes of the Act, are needed to: protect the health and safety of children in child care; help parents make informed consumer choices and access information to support child development; provide equal access to stable, high quality child care for low-income children; and enhance the quality of child care and the early childhood workforce. For the purposes of estimating the costs of these new requirements, the analysis makes a number of assumptions. We welcome comment on all aspects of the analysis, but throughout the narrative, we specifically request comment in areas where there is uncertainty.

One overarching assumption that is consistent across all the estimates is that we are assuming that the current caseload of children in the CCDF program (approximately 1.4 million children) remains constant. Due to inflation and the potential for erosion in the value of the subsidy over time, funding increases will likely be necessary to maintain the caseload; however,

those changes are not reflected in this RIA since they are not directly associated with this proposed rule.

While the estimate cannot fully predict how States and Territories will design policies in response to these new requirements or who would be responsible for paying certain costs, we do recognize that absent additional funding, these costs could impact the CCDF caseload. This point is discussed in greater detail below.

A. Analysis of costs

In our analysis of costs, we considered any claims on resources that would be made as a result of the proposed rule that would not have occurred absent the rule. This includes new requirements that are merely reiterating changes made in the reauthorized CCDBG Act of 2014, which were effective upon the date of enactment of November 19, 2014. This RIA discusses the potential impact of the following major provisions in the statute and in the proposed rule:

- monitoring and inspections (including State hotlines for parental complaints);
- background checks;
- health and safety training;
- consumer education (website and consumer statement);
- minimum 12-month eligibility periods;
- administrative and IT/infrastructure costs;
- increased subsidy rates per child associated with increasing continuity and equal access; and
- supply building.

We conducted a State-by-State analysis of these major provisions. It should be noted that due to insufficient data, the health and safety portions of this cost estimate do not include Territories and Tribes. This omission should not minimize the fact that requirements of the CCDBG Act and the proposed rule would still have a significant programmatic and financial impact on Territories and Tribes. For the purposes of a national cost estimate, however, Territories and Tribes comprise a relatively small percentage of the CCDF population and therefore excluding the Territories and Tribes from analysis should not significantly impact the overall cost of the proposal. This is particularly the case since Tribes are exempt from, or subject to a modified version of, a number of these new requirements. However, we welcome public comment on the anticipated financial impact of the CCDBG Act and this proposed rule on Territories and Tribes.

In order to determine State practices, we relied on information from state-submitted FY 2014-2015 CCDF Plans, as well as the *2011-13 Child Care Licensing Study* (prepared by the National Association for Regulatory Administration). If a State already met or exceeded an individual requirement, we assumed no additional cost associated with the proposed rule. For example, a State that has an annual monitoring requirement for its licensed centers would be assigned no additional cost to implement that part of the proposed regulatory requirement.

We used data on requirements within a State by child care setting type (center, family home, group home, child's home) and licensing status, to project costs based on specific features of a State's existing requirements. When possible, if a State partially met the requirement we applied a partial implementation cost. For example, some States already conduct comprehensive background checks that include all components of a comprehensive background check except an FBI fingerprint check. Costs were assigned accordingly (assumptions about partial costs are

explained in greater detail in the discussions below). The proposed rule offers significant flexibility in implementing various provisions, therefore in the RIA we identified a range of implementation options to establish lower and upper bound estimates and chose a middle-of-the-road approach in assessing costs.

This RIA takes statutory effective dates into account within a 10-year window. The analysis and accounting statements distinguish between average annual costs in years 1-5 during which some of the provisions will be in varying stages of implementation and the average annual ongoing costs in years 6-10 when all the requirements would be fully implemented. Some costs will be higher during the initial period due to start-up costs, such as building a consumer website, and costs associated with bringing current child care providers into compliance with health and safety requirements. However, significant costs, such as the requirement to renew background checks every five years, would not be realized until later. These compounding requirements account for the escalation in costs in the out years of the analysis.

Throughout this RIA, we calculate two kinds of costs: *money costs* and *opportunity costs*. Any new requirements that have budgetary impacts on States or involve an actual financial transaction are referred to as *money costs*. For example, there is a fee associated with conducting a background check, which is a money cost regardless of who pays for the fee. For purposes of this analysis, we examined what additional resource claims would be made as a result of the reauthorized Act and proposed rule regardless of who incurs the cost or from what source it is paid (which varies widely by State). In some instances, money costs will be incurred by the State and may require States to redistribute how they use CCDF funds in a way that has a budgetary impact. In other cases, money costs will be incurred by child care providers or parents.

Alternatively, claims that are made for resources where no exchange of money occurs are identified as *opportunity costs*. Opportunity costs are monetized based on foregone earnings and would include, for example, a caregiver's time to attend health and safety trainings when they might otherwise be working.

Each year, more than $5 billion in federal funding is allocated to State, Territory, and Tribal CCDF grantees. Activities in the proposed rule are all allowable costs within the CCDF program and we expect many activities to be paid for using CCDF funds. For example, although some States may supplement funding, others may choose to redistribute funding from a current use to address start-up costs or new priorities. We received a number of comments from States in response to the 2013 NPRM that, in the absence of additional funding, meeting requirements in the proposed rule would result in a reduction in the CCDF caseload. Therefore, we anticipate some money costs will result in this type of re-distributive budgetary impact within the CCDF program.

However, to make the costs of the rule concrete, we provide analysis on the economic impact of the rule if the child care caseload were to remain constant. While we recognize that there may be a decrease in caseload due to the financial realities of the new requirements, applying that decrease in caseload to this analysis would only lessen the estimated cost, which would result in a probable underestimate. While the costs estimated in this analysis represent the costs required, (regardless of who pays for the requirement) to meet the new requirements for the current caseload of 1.4 million children, it is not, and should not be interpreted as, our projection of future caseload.

Overall, based on our analysis, annualized costs associated with these provisions, averaged over a ten year window, are $256 million and the annualized amount of transfers is

approximately $840 million (both estimated using a 3 percent discount rate), which amounts to a total annualized impact of $1.10 billion. Of that amount, $1.09 billion is directly attributable to the statute, with only an annualized cost of $1.6 million (or less than 1% of the total estimated impact) attributable to discretionary provisions of this proposed regulation. While this analysis does not attempt to fully quantify the many benefits of the reauthorization and this NPRM, we do conduct a breakeven analysis to compare requirements clarified through this regulation against a potential reduction in child fatalities and injuries. Further detail and explanation on the impact of each of the provisions is available below.

1. Health and safety provisions

Per the new requirements in the CCDBG Act, this proposed rule includes several provisions focused on improving the health and safety of child care. We estimated costs associated with the following three requirements: monitoring and inspections at § 98.42; comprehensive background checks at § 98.43; and health and safety training at § 98.41(a)(2).

Implementation costs of health and safety provisions, specifically the start-up costs, in the proposed rule will depend primarily on the number of child care providers in a State and current State practice in areas covered by the proposed rule. We used data from the FY 2014 ACF-800 administrative data report to estimate that approximately 269,000 providers caring for children receiving CCDF subsidies would be subject to CCDF health and safety requirements. In addition to these CCDF providers, this analysis also includes approximately 110,000 licensed providers who are not currently receiving CCDF subsidies but would be subject to the background check and certain reporting requirements.

These figures exclude relative care providers since States may exempt these providers from CCDF health and safety requirements. According to OCC's 2014 administrative data, there

are approximately 115,000 relative care providers receiving CCDF assistance. States vary widely on what they require of relatives, with 18 States/Territories requiring that relative providers meet all health and safety requirements, 4 exempting relatives for all requirements, and 34 indicating that relative providers were exempt from some but not all requirements.

It is difficult to forecast State behavior in response to new requirements since Lead Agencies have the option to exempt relatives from these requirements. Even those States that currently apply requirements to relatives may keep those requirements at current levels rather than expanding to meet new requirements. To provide a general estimate of potential costs, if States were to apply half of all the new health and safety requirements to half of the current number of relative providers, the annualized cost (using a 3% discount rate) would be approximately $30 million (averaged over a 10 year window). However, since applying the new requirements to relatives is not a legal requirement, we are not including costs associated with relative providers in the accounting statement for this regulatory impact analysis. We do request comment on the extent to which Lead Agencies anticipate applying new requirements to relative providers.

It should be noted that, based on a longitudinal analysis of OCC's administrative data, the number of child care providers serving CCDF children has declined by nearly 50 percent between 2004 and 2014, an average decrease of 4 percent per year. The greatest decline occurred in settings legally operating without regulation, specifically family child care; however, both regulated and license-exempt child care centers also saw declines. This analysis is based on current provider counts, but assuming that the number of CCDF providers will continue to steadily decrease, this estimate of the number of providers, and resulting costs associated with implementing health and safety provisions, may be an overestimate.

Many States' licensing requirements for child care providers already meet or exceed components of the minimal health and safety requirements for CCDF providers in this proposed rule. For example, training in first-aid and CPR and background checks are commonly included as part of State licensing, with approximately 40 States already meeting this requirement for licensed providers (centers, group home, and family child care).

Many licensed CCDF providers already meet many of the other health and safety requirements as well. For example, more than 40 States already require annual monitoring of all their licensed providers, with even more already requiring pre-inspections of their licensed providers. In the case of licensed centers, more than 45 States already require pre-inspections. For those States whose licensing requirements do not meet CCDF health and safety requirements, there will be costs incurred. However, the largest cost will be incurred for those CCDF providers that are currently exempt from State licensing that are not relatives– approximately 85,000 providers nationally. (Table 2 below provides a national picture of the types of CCDF providers.) We used an expanded State-by-State version of this table to estimate costs for meeting health and safety requirements. As stated above, the proposed rule allows States to exempt relatives from health and safety requirements, including background checks, health and safety training, and monitoring. Therefore, ACF did not attribute any cost associated with these requirements to relative CCDF providers, though we welcome comment on predicted State policies in this area.

Table 2: Summary of CCDF Providers (FY2014)*

Licensed CCDF Providers			**CCDF Providers Legally Operating without Regulation (license-exempt)**					**TOTAL**
Centers	Family Home	Group Home	Child's Home (In-Home)		Family and Group Home		Centers	385,699
			Relative	Non-Relative	Relative	Non-Relative		
81,352	70,165	32,130	38,670	27,739	77,958	50,330	7,355	

*Source: ACF-800, Report 13

It should be noted that we include group home providers in this analysis because our current data includes a separate category for group homes. However, the proposed rule would remove "group home child care provider" from our definitions and data reporting, so group homes would no longer be included in the data going forward. In the future, according to the proposed rule, those providers currently designated as group home providers would now fall into the category of "family child care providers"

Monitoring and pre-inspections. The CCDBG Act requires that States conduct monitoring visits for all CCDF providers including all license exempt providers (except, at Lead Agency option, those that serve relatives). While States must begin monitoring no later than November 19, 2016, the full cost of this requirement will not be in effect until 2017. Therefore, we are projecting some period of phase-in, with 25% of providers subject to monitoring in 2015 and an additional 50% (a total of 75%) subject to monitoring requirements in 2016. The costs of these requirements will be fully realized from 2017 on.

The CCDBG Act specified different monitoring requirements for providers who are licensed and providers who are license-exempt.

- *For Licensed Child Care Providers* – States must conduct one pre-licensure inspection for health, safety, and fire standards and at least annual, unannounced inspections.
- *For License-Exempt Providers (except, at Lead Agency option, those serving relatives)* – States must conduct at least annual inspections for compliance with health, safety, and fire standards at a time determined by the State.

For this estimate, if a State reported that they conduct at least one annual monitoring visit for licensed child care providers (pre-licensure inspections are discussed separately below), we assumed no additional cost for those providers because it met or exceeded the frequency required by the statute and proposed rule. The majority of States already monitor licensed CCDF providers annually (more than 40 across all settings--centers, family child care, and group homes). A subset of States that currently have annual monitoring requirements do not conduct unannounced visits. However, we did not assign a cost for States changing their policy from announced to unannounced monitoring. We acknowledge that there may be an administrative cost to such a change, but for the purposes of this estimate, we consider that to be included in the overall administrative cost allocation discussed below. However, we welcome public comment on specific costs associated with moving from announced to unannounced inspections.

This cost estimate takes into account three major components of the new monitoring requirements: 1) Annual monitoring, 2) Pre-inspections, and 3) a Hotline for parental complaints.

The annual monitoring estimate includes the following variables analyzed on a State-by-State basis:

- Current State Practice: We collected State-level data from the 2014-15 CCDF State plans and the *NARA 2011-13 Child Care Licensing Study* to determine which States already met annual inspection requirements. Data was collected for the following settings:

licensed CCDF providers (family, group home, and centers) and license-exempt CCDF providers (non-relative).

- Current Provider Counts: Using 2014 CCDF administrative data, we collected the number of providers within each setting for each State.

Using these data we arrived at an estimate of the number of providers within each State that would newly require an annual monitoring visit. We then estimated the number of new licensing inspectors and supervisors that would be required to monitor the projected number of providers newly subject to monitoring, based on a projected caseload of child care providers for each licensing staff. To estimate the actual cost, we calculated the cost of employing (salary and overhead) the estimated number of necessary new licensing staff (inspectors and supervisors).

The CCDBG Act requires States to have a ratio of licensing inspectors to child care providers and facilities that is sufficient to conduct effective inspections on a timely basis, but there is no federally required ratio. The current range of annual caseloads per licensing inspector is large, from 1:33 to 1:231. We used the following range to estimate the impact:

- Lower bound: 50th percentile of current licensing caseloads (weighted by the number of providers in each State), which produced an adjusted caseload of 1:126 providers per monitoring staff.
- Upper bound: a 1:50 ratio of providers to monitoring staff, as recommended by the National Association of Regulatory Administration.

Our final cost estimate represents the midpoint between the lower and upper bound estimate. To calculate the number of required supervisory staff, we assumed a ratio of one

supervisor per seven monitoring staff, which is the current average across States as reported in the *NARA 2011-13 Child Care Licensing Study*.

To generate the actual cost associated with this staffing increase, we multiplied the number of new staff by salary and overhead costs for full-time equivalent (FTE) staff based on Bureau of Labor Statistics (BLS) data from the *National Occupation and Wage Estimates* from May 2013. The same FTE costs were applied to all States. The salary applied was $42,690 for each monitoring line staff (see Community and Social Service Specialists, All Other: Code 21-1099) and $65,750 for each supervisor (see Social and Community Service Managers: Code 11-9151), which was then multiplied by 2 to account for benefits and overhead. (Data from the Bureau of Economic Analysis's *National Income and Product Accounts* shows that in 2013, wages and salaries are approximately 50 percent of total compensation.). Using this methodology, the estimated present value cost of meeting this annual monitoring requirement over the 10 year period examined in this rule, using a 3% discount rate, is approximately $1.2 billion. The annualized money cost of meeting the monitoring requirements is $137 million, also estimated using a 3 percent discount rate.

We anticipate that annual monitoring in States could result in additional follow-up visits, which can be expected if problems were identified in the initial visit. Because we do not have data on this with which to estimate potential impacts, we welcome comment on the percentage of providers that would require a follow-up visit as a result of new annual monitoring visits.

Opportunity costs for the monitoring requirements account for the fact that to successfully pass a monitoring visit, there would presumably be a number of administrative costs (in terms of time; an opportunity cost) for providers and caregivers. For example, providers must read the new rules, change their current practices to comply, and obtain and track

paperwork to make sure they are in compliance. For the purposes of this following analysis, we made several assumptions about the amount of time required to prepare for and comply with the monitoring requirement, but we welcome comment on these assumptions. To calculate the opportunity cost of these visits, we assumed that time spent doing administrative tasks equals the length of the monitoring visit plus an additional 1.5 and 2.0 hours of preparation per hour of the visit, for family child care and center providers respectively.

Based on one State reporting that their monitoring visits for licensure took between 2.5 and 5 hours, we used 2.5 hours as the basis for our lower bound and 4 hours as the basis for our upper bound. We used 4 hours instead of 5 for our upper bound estimate because 5 hours is the amount reported for a licensing visit, but what is required in the proposed rule is generally much less extensive than what is generally required for licensure. As such, our lower bound estimate uses 6.25 and 7.5 hours of preparation for family child care and center providers, respectively, and our upper bound uses 10 and 12 hours of preparation for family child care and center providers, respectively. According to BLS, for child care workers, one hour equals $18.80 after accounting for benefits and overhead (we include overhead because administrative preparation time occurs during work hours). We estimated the opportunity cost of preparation time for monitoring to be an average of $5.2 million annually (estimated using a 3% discount rate) during the two-year phase-in period (assumes States begin to ramp-up monitoring, but not fully implemented) and an annualized opportunity cost of $9.5 million (estimated using a 3% discount rate) over the entire 10 year window. Note that the phase-in period discussed here covers a two year period and is different from the phase in period in the table below, which shows a phase-in period of 5 years (after which *all* requirements would be fully implemented).

Some proportion of providers will require remedial work to meet CCDF health and safety requirements after an annual visit. For example, a provider may be out of compliance with building safety or not have up-to-date immunization records, and costs in terms of time as well as material resources would be necessary to come into compliance. However, it is difficult to quantify these effects because the specific remediation required will vary by provider and other circumstances. Therefore, we did not attempt to monetize the cost of providers' remediation efforts. In addition, there are also benefits to be reaped (in terms of child health and safety) as providers makes changes to come into compliance with health and safety requirements as a result of this rule, but that are not quantified in this analysis.

Next we estimate cost of pre-licensure inspections required by the CCDBG Act. This requirement, as proposed, applies only to licensed CCDF providers. Using the same methodology that we used for annual monitoring, we determined how many States already met this requirement and used CCDF administrative data to determine the number of licensed CCDF providers (by setting type) that did not previously but would now require pre-licensure visits. The proposed rule allows States to grandfather all existing providers – thus there is no start-up cost or backlog of providers that need a pre-inspection. There are not good data to estimate how many new providers a State would need to pre-inspect on an annual basis, but anecdotal evidence suggests the number is relatively small. Of the States that do not currently require pre-inspections (1 for centers, 6 for group homes, and 7 for family child care), we estimated (based on information shared by a few States) that a lower bound of five percent of family child care and four percent of center care would be new each year (lower bound). For the upper bound, we estimate that 12 percent of family child care and 7 percent of child care centers would be new each year.

Using a caseload of 88 providers per monitoring staff (the midpoint of the 50th percentile of current caseload data and the recommended caseload of 50:1), and using the same salary and benefits data as the monitoring estimates, the estimated present value cost of meeting this requirement over the 10 year period examined in this rule, using a 3% discount rate, is approximately $6 million. Ongoing average annual pre-inspection costs are estimated to be approximately $1 million (estimated using a 3% discount rate), but would not begin until 2017.

Monetized caregiver time to prepare for pre-inspections is considered an opportunity cost and is estimated to be approximately $200,000 annually, a relatively small amount because this only applies to new licensed providers in the few States that don't already require pre-licensure inspections. Though some of the opportunity cost would be incurred prior to the actual inspection visit, for the purposes of this estimate, we considered all costs for pre-inspections as beginning after the end of the phase-in period. We used the same methodology used to calculate annual inspections to determine the opportunity cost of pre-inspections.

However, recognizing that preparing for an initial licensing inspection may require additional time, we used the midpoint of the estimate time for an annual visit and doubled it for an estimated 16.25 hours for family child care and group homes and 19.5 hours for centers. Again, we welcome comment on these assumptions if there is additional data on the amount of time required to prepare for and participate in an inspection.

This cost analysis also includes the "parental complaint hotline" as part of the monitoring requirements. Per the CCDBG Act, the proposed rule would require at § 98.32(a) Lead Agencies to establish or designate a hotline or similar reporting method for parents to submit complaints about child care providers. Lead Agencies have flexibility in how they implement this requirement, including whether the system is telephonic or through a similar reporting process,

whether the hotline is toll-free, and whether the hotline is managed at the State or local level. Based on an examination of several States that already have comparable hotlines in place, this estimate for the parental complaint hotline includes multiple components that might be associated with the implementation and maintenance of a telephonic hotline.

These components include the one-time purchase of an automatic call distribution (ACD) system at $45,000; the use of a digital channel on a T1 line ranging from $204 to $756 per year; 2,000 minutes of incoming call time at $0.06 per minute; and salary and benefits for one FTE to manage the hotline at $67,000.States vary in how they collect parental complaints. According to an analysis of the FY 2014-2015 CCDF Plans and review of State child care and licensing websites, 18 States/Territories have a parental complaint hotline that covers all CCDF providers, 22 States/Territories have a parental complaint hotline that covers some child care providers, and 16 States/Territories do not have a parental complaint hotline. (Note that unlike the other health and safety provisions, this estimate does include Territories).

States that had hotlines for both licensing and CCDF were considered as meeting the full requirement for a parental complaint hotline and had no additional costs. States that only had one hotline (*e.g.*, only for licensed providers) were considered as partially meeting the requirement for the hotline and had 0.5 FTEs applied. The full amount was applied to States that did not have anything in place that met the requirements of the hotline.

We used a range of options to estimate the impact of the parental complaint hotline requirement based on the cost of the TI line and whether the hotline is toll-free and chose the mid-point as the primary estimate. Using this methodology, the estimated present value cost of meeting this requirement over the 10 year period examined in this rule, using a 3% discount rate, is approximately $16.6 million. Average annual costs during the phase-in period are estimated to

be approximately $2.6 million during the first year (different than the phase-in figure in Table 3 below) and an average of $1.8 million for each year after. The estimate assumed slightly higher startup costs during the first year because States and Territories may need to purchase and install an ACD system.

Table 3: Estimated Impacts of Monitoring Provisions ($ in millions)

	Phase-In Annual Average (Years 1-5)	Ongoing Annual Average (Years 6-10)	Annualized Cost (over 10 years)			Total (over 10 years)		
			undiscounted	discounted		Undiscounted	discounted	
				3%	7%		3%	7%
Money Costs *($ in millions)*								
Annual monitoring…	123.4	154.3	138.9	136.9	134.1	1,388.7	1,202.5	1,007.8
Preinspection new facilities..	0.5	0.9	0.7	0.7	0.7	7.3	6.2	5.1
Hotline…..…..	2.0	1.8	1.9	1.9	1.9	18.8	16.6	14.3
Subtotal……..…	*125.9*	*157.0*	*141.5*	*139.5*	*136.7*	*1,414.7*	*1,225.3*	*1,027.2*
Opportunity Costs *($ in millions)*								
Annual monitoring…	8.5	10.7	9.6	9.5	9.3	95.9	83.0	69.6
Preinspection new facilities..	0.1	0.2	0.2	0.2	0.2	1.9	1.6	1.3
Subtotal……	*8.7*	*10.9*	*9.8*	*9.6*	*9.4*	*97.7*	*84.6*	*70.9*
Total……....…	**134.6**	**167.9**	**151.2**	**149.1**	**146.1**	**1,512.5**	**1,309.9**	**1,098.1**

Comprehensive background checks. The CCDBG Act added a new section at 658H on requirements for comprehensive, criminal background checks that draw on federal and State information sources. The CCDBG Act outlines five components of a criminal background check, which we restate in § 98.43 of the proposed rule. There are several aspects of the background check requirements that must be taken into account in a cost estimate. This includes the background checks for existing child care staff members (who do not already have them), the new federal requirement that child care staff members receive a background check every five years, background checks for family members living in family child care homes, and checks with

other States if a child care staff member has lived in another State. This cost estimate does not take into account the cost of the requirement at § 98.43(b)(2) for a search of the National Crime Information Center. ACF is currently in discussions with the FBI to determine the logistics behind States meeting this requirement. We welcome comment on the cost of meeting this requirement.

Similar to the methodology used for monitoring, the first step of the cost estimate was to determine current State practice. We used CCDF 2014-15 State Plan data (which included State-by-State data on four distinct background check components organized by provider type) to determine which States already met certain components of the background check requirement. After identifying the areas where States would need to implement new requirements we applied the provider counts to determine the number of child care staff members that would need to meet these new background check requirements.

Because our administrative data on the number of CCDF providers represent the number of child care programs serving CCDF children, not the individual child care staff members in these settings that would need to receive a background check, we estimate the number of individual child care staff members that would be affected by this provision by applying a multiplier to each provider type (centers, family home, and group home).

We propose to require individuals, age 18 or older, residing in a family child care home be subject to background checks. It is reasonable to assume that these individuals may have unsupervised access to children. Because we are including these individuals in the definition of child care staff members, they will be subject to the same requirements and will be allowed the same appeals process as employees.

To generate an estimated number of staff per child care center, we used data from the *National Survey of Early Care and Education (NSECE)*, which indicated that the median number of children per center nationally is approximately 50. We then used the following data sources: (1) ACF-801 CCDF administrative data, which provides a detailed breakdown of the number of CCDF children by age group; and (2) *Caring for our Children*, which has a recommended staff-child ratio for centers by age group. (*Caring for Our Children's* recommended staff-child ratios are an overestimate because not all States have adopted the standard.) Using these figures, a weighted average was generated that takes into account the national age-distribution of CCDF children served and recommended child-staff ratios for an average center. This resulted in a baseline multiplier of 11 staff members per child care center receiving CCDF-funded subsidies, 8 of whom are caregivers and 3 are additional staff members or individuals who may have unsupervised contact with children.

We estimated the number of other adult household members residing in family child care homes (persons other than the caregiver) and relevant staff members and added this to our cost estimate. We assumed each family child care and group home provider had an average of 1 additional household member. (This assumption is informed by consultation with State administrators, who stated that most frequently there is 1 other adult over the age of 18 in a family child care home that must undergo a background check).

Using these multipliers, we estimated the cost for background checks for staff members newly subject to the requirements. This includes both the cost of obtaining the background check and the opportunity cost for child care staff members to meet the required components. The opportunity cost represents the value of time (measured as foregone earnings) of child care staff members during the time, they spend to complete a background check.

Many States already require some, if not most, of the background check components. To determine the existing need, we compared the requirements described in this proposed rule against current background check requirements, as reported in the CCDF 2014-2015 Plans. According to the FY 2014-2015 CCDF Plans, nearly 30 States require that licensed child care center staff undergo a State criminal background check that includes a fingerprint. More States already have requirements for a State criminal background check without a fingerprint, but for this estimate, we only counted States that required a fingerprint as meeting the requirement. For licensed centers, more than 40 already require an FBI fingerprint check, nearly all already require a check with a child abuse and neglect registry, and more than 35 require a check with a sex offender registry. Nearly 30 States require licensed family child providers to have a State criminal background check that includes a fingerprint, more than 40 already require an FBI fingerprint check, more than 30 require a check with the child abuse and neglect registry, and more than 35 require a check against a sex offender registry.

Fewer States meet the background check requirements for unlicensed CCDF providers. According to our State Plan data, only fewer than 25 States already have FBI fingerprint check requirements in place for its unlicensed providers and only six require those providers to have a State background check that includes a fingerprint.

Using this data, we identified gaps in existing State policies as compared to the newly-required background check components. These gaps were matched with CCDF ACF-800 administrative data showing the number of providers per setting type by State, and then using the methodology above calculated the number of child care staff members requiring background checks.

As mentioned above, there are two costs of a background check: the fee to conduct the check and the time it takes for individuals to get the check. With regard to the fee, Lead Agencies have flexibility to determine who pays for background checks. According to the FY 2014-2015 CCDF Plans, more than States require the child care provider to pay for the background check, approximately 10 States indicated the cost was split, and fewer than 10 States indicated they pay the fees associated with the cost of conducting a background check. However, regardless of how costs are assigned, an impact analysis must include the overall monetary and opportunity cost impacts.

In their CCDF Plans, Lead Agencies described their costs associated with conducting background checks, including cost information on individual components of the background check. This information, combined with information we received from the FBI regarding costs of FBI fingerprint checks, was used to derive an estimated average cost of each background check component for a total of $55 for each set of four background checks. We applied this cost (or a partial cost) to the number of individuals in need of some or all of the background check components, determined after identifying State-by-State practices for different types of providers

Next, we estimated the average annual ongoing cost of administering background checks to new child care staff members (as opposed to start-up costs associated with bringing existing staff members into compliance). Child care provider departure rates cited in the literature vary widely from as low as 10 percent to 20 percent (*The Early Childhood Care and Education Workforce: Challenges and Opportunities*, Institute of Medicine and the National Research Council, 2012). We used these as the lower and upper bounds, respectively for our estimated turnover rate. We then reduced this estimate by another 10 percent to account for the fact that the law requires some portability of background checks for certain staff members in a State,

meaning that if a staff member has already passed a background check within the past five years, then that individual is not required to get another background check when changing employment from one child care provider to another.

Based on this approach, the estimated present value cost of meeting these background check requirements (for existing and new providers) over the 10 year period examined in this rule, using a 3% discount rate, is approximately $58.6 million. ACF estimated that during the three year phase-in period background check fees would have an average annual money cost of $10.8 million (also estimated using a 3% discount rate), as States bring existing providers into compliance. (Note again that this phase-in period is different than the five year period indicated in the table below). We estimate the average annual ongoing money costs associated with background checks for new staff members of approximately $4 million (estimated using a 3% discount rate).

The CCDBG Act requires that all child care staff members receive a background check every five years. Through the 2014-15 CCDF State Plans, States report on how frequently licensed providers are required to receive each component of the background check. This data was available both by individual background check component and by provider type. If a State already required that a particular background check be renewed every five years (or more frequently), we did not include it in this cost estimate. While we know that States have similar policies in place for unlicensed providers, we do not have data for this subset of the provider population. Therefore, we considered the renewal of background checks for unlicensed providers to be a fully new cost to all States, understanding that this is more likely than not an overestimate.

Since not all background checks will be conducted in the same year, we spread these costs evenly over a five year period to show that the costs would not be incurred all at once. We recognize that in practice these costs may not be evenly distributed over the five year period, depending on how States choose to conduct background checks during the initial implementation period. However, any uneven distribution of costs over time only negligibly affects the total dollar amount. The estimated present value cost of renewing background checks for all individuals over the 10 year period examined in this rule, using a 3% discount rate, is approximately $55.4 million, with the average annual ongoing money costs of this five year renewal requirement (once it begins in year six of the ten year window) to be $13.6 million. However, since provider counts have been in steady decline (as discussed earlier), this may be an over-estimate.

Another feature of the background check requirement is that States are required to check the State-based criminal, sex offender, and child abuse and neglect registries for any States where an individual resided during the preceding five years. To estimate how many individuals would require an additional State background check, we used data from the U.S. Census Bureau, which conducts a Current Population Survey that includes data on Migration and Geographic Mobility (*Current Population Survey Data on Migration/Geographic Mobility*, U.S. Census Bureau). Mobility data on *employed* individuals (inclusive of all races and genders) ages 25 to 64 show an out of State mobility rate of approximately two percent. Given that this data measures mobility in a given year and our requirement is for a five year window, we use a 10% mobility rate for this calculation. We assume that 10% of all child care staff members will require a check with another State and assign a prorated cost of the background checks minus the

FBI check accordingly. We estimate the average annual ongoing money costs of this requirement to check other States to be less than a million dollars.

Next, we monetized child care staff member time spent obtaining a comprehensive background check such as completing paperwork or other activities necessary to complete the check. We assumed that a check of the child abuse neglect registry takes 30 minutes, and that the other three components of a comprehensive background check take 1 hour combined (or 20 minutes each) for a total of 1.5 hours. We also assumed that each hour is worth $12.80, assuming $10 per hour for a child care staff member multiplied by 1.28 to account for benefits. (*Employer Cost for Employee Compensation database*, Bureau of Labor Statistics, adjusted to reflect the number of child care providers that are self-employed) ACF estimated average annual opportunity costs (using a 3% discount rate) for all the background check components of $6.3 million during the 3 year phase in period and an annualized cost of $ 7.1 million over the 10 year window.

More extensive background checks will lead to greater numbers of job applicants and other associated people being flagged as risky, thus leading to additional types of cost. For example, a hiring search would need to be extended if the otherwise top candidate is revealed by a background check to be unsuitable to work with children. These costs that result from background checks are correlated with benefits; indeed, if this category of costs is zero, then the background check provisions of this proposed rule would have no benefits. However, due to lack of data, we have not attempted to quantify either this type of costs or the associated benefits and request comments that could inform such quantification.

Table 4: Estimated Impacts of Background Check Provisions ($ in millions)

	Phase-In Annual Average (Years 1-5)	Ongoing Annual Average (Years 6-10)	Annualized (over 10 years)			Total (over 10 years)		
			undiscounted	discounted		undiscounted	discounted	
				3%	7%		3%	7%
Money Costs *($ in millions)*								
Background Checks……	8.4	4.5	6.5	6.7	6.9	64.6	58.6	52.2
Background Check Renewals……	0.0	13.6	6.8	6.3	5.7	68.1	55.4	42.6
Background Checks with Other States…	0.5	0.8	0.7	0.6	0.6	6.5	5.7	4.8
Subtotal……	*8.9*	*18.9*	*14.0*	*13.6*	*13.2*	*139.2*	*119.7*	*99.6*
Opportunity Costs *($ in millions)*								
Background Checks……	5.8	3.1	4.4	4.6	4.8	44.0	40.3	35.9
Background Check Renewals……	0.0	4.4	2.2	2.0	1.8	22.1	18.0	13.8
Background Checks with Other States…	0.5	0.4	0.5	0.5	0.5	4.7	4.1	3.6
Subtotal……	*6.3*	*7.9*	*7.1*	*7.1*	*7.1*	*71.2*	*62.4*	*53.3*
Total……	**15.2**	**26.8**	**21.1**	**20.7**	**20.3**	**210.4**	**182.1**	**152.9**

Caregiver, teacher and director training. The CCDBG Act and this proposed rule require Lead Agencies to establish training requirements for caregivers, teachers, and directors of CCDF providers. The Act (section 658E(c)(2)(I)) and the proposed rule (§ 98.41(a)(1)) require pre-service or orientation training and on-going training in health and safety topics, including first aid and CPR, safe sleep practices, and other specified areas. In addition, the law (section 658E(c)(2)(G)) and proposed rule (§ 98.44) require training and professional development, including training on child development.

For this analysis, we estimated costs in the following areas: current number of CCDF caregivers, teachers, and directors (using FY 2014 data) to meet new pre-service or orientation

training requirements; on-going training for caregivers, teachers, and directors (which includes new incoming caregivers); and pre-service or orientation training for new caregivers, teachers, and directors.

To establish a baseline, ACF used information reported by States in their FY 2014-2015 CCDF Plans and information from the *2011-13 Child Care Licensing Study* to determine – for each of the training areas – which trainings were already required by State policy for the following providers: centers, family homes, and group homes. The available data allowed us to distinguish between requirements for licensed providers and unlicensed providers, allowing us to further refine the cost estimate. Once current requirements for each State were identified, we were able to determine which new trainings would be required, and then apply the cost of receiving the balance of trainings.

We reviewed the health and safety training delivery models in multiple States with a range of available training requirements to get a better sense of the range of costs for training. We found a wide range, from training provided at no-cost, to training packages that cost up to $170. Using these figures as a basis, a lower bound of $60 and an upper bound of $140 was established for the total training package per caregiver. This range is informed by the fact that many no-cost online training courses have already been developed, and thus are truly no cost, but even States taking advantage of no-cost online trainings would most likely have to use additional trainings with costs associated in order to meet all the requirements.

Training costs were broken into three components: first-aid & CPR training, child development training, and then a package of all other basic health and safety requirements. For the purposes of this estimate, we created these groupings to better reflect the available cost information that we gathered through our research. First-aid and CPR are the most commonly

offered trainings, so their costs were easier to identify. We separated child development training from the rest of the package to reflect the fact that the delivery of trainings in this area are more likely to be tied to broader on-going professional development curricula or programs, and may have a higher cost. Breaking the trainings down in this way allowed us to apply a pro-rated amount, based on what was currently required by States.

This training requirement only applies to child care providers receiving CCDF subsidies. However, as with the background check estimate, another factor in the calculation was the number of caregivers, teachers and directors per provider that would need to receive the training, since the ACF-800 data captures the number of child care providers serving CCDF children not individual caregivers, teachers, or directors in these settings that would need to receive training. To compensate we applied a multiplier to each setting type (centers, family home, and group home). We used the same methodology described in the background check section above (based on data from the NSECE, ACF-801, and *Caring for our Children* child-staff ratios), to create a weighted average of nine caregivers/teachers/directors per child care center. Unlike the background check requirement, the training would only apply to those providing care for children. For family child care homes, we estimate that one caregiver per site would be required to receive training, and two caregivers per group home.

Next, we assumed that some caregivers, teachers, and directors may already have training in some of the topics, though they were not previously required, and reduced the total estimate by 10 percent. After applying these assumptions, to gaps in current State practice, we were able to estimate the present value cost of compliance with the new pre-service and orientation training requirement. A basic explanation of the calculation is "the number of trainings required for compliance (by State and by provider type) multiplied by number of individuals trained

multiplied by the cost per training (up to $140 per individual). We also assumed that some portion of individuals will have already received trainings that could apply to the new requirements, so we reduced the final estimate by ten percent. Using a 3% discount rate, the estimated cost is approximately $61 million over the 10 year period examined in this rule, or an annualized value of $7 million. We estimated that during the phase-in period, the required pre-service or orientation health and safety training has an average annual money cost of $18.8 million for the initial two year phase-in period and $3.0 million in subsequent years. The increased cost in the initial years is due to the high cost of bringing current providers into compliance during the phase-in period while in subsequent years, the pre-service and orientation trainings would only apply to new providers. To estimate the ongoing cost of providing health and safety training in the required topic areas pursuant to the CCDBG Act to newly entering caregivers, teachers, and directors of CCDF providers who would not otherwise have been required to receive training, we had to predict turnover within the provider population. We took the midpoint of the turnover number we used for background checks – 15 percent. Since, according to the NSECE, many caregivers new to a care setting are not new to the profession, we further reduced that estimate by 20 percent to account for the fact that some new caregivers, teachers, and directors will be coming from other CCDF care settings, and thus bring their training credentials with them. (*Number and Characteristics of Early Care and Education (ECE) Teachers and Caregivers: Initial Findings from the National Survey of Early Care and Education (NSECE)*, OPRE Report #2013-38)

To generate a cost of ongoing training, based on anecdotal evidence from State administrators, we assumed that ongoing trainings (*e.g.*, maintaining competencies and

certificates) would be the equivalent of approximately 20% of the total cost of pre-service and orientation training to the entire CCDF provider population and used that as our annual estimate. The estimated present value cost of renewing background checks for all individuals of ongoing training for existing providers over the 10 year period examined in this rule, using a 3% discount rate, is approximately $54 million. We estimated that on an ongoing basis, average annualized money costs for training would be $6.2 million (estimated using a 3% discount rate).

Next we monetized caregiver/teacher/director time spent completing the requisite health and safety trainings. *The National Center on Child Care Professional Development Systems and Workforce Initiatives* funded by ACF reported that the training topics together would require a minimum of 20 hours. However, most caregivers will require only a subset of the training topics (*e.g.*, SIDS training is only for caregivers that serve infants; transportation and child passenger safety is only as applicable). Using that as a baseline, for the purposes of this calculation we used a lower bound estimate of 15 hours and an upper bound of 30 hours to complete the required trainings. We used the midpoint of these two estimates for the final estimate. We assumed that each hour of staff time equals $12.80, the same as we did for background checks ($10 for child care caregivers multiplied by 1.28 to account for benefits, but not overhead). (*Employer Cost for Employee Compensation database*, Bureau of Labor Statistics, adjusted to reflect the number of child care providers that are self-employed) We then applied a 10 percent reduction to account for caregivers who have fulfilled some training requirements that were not previously required. Using these assumptions, during the initial two year phase-in period (different than the 5 year phase-in period indicated in the table below) the average annual opportunity cost of monetized caregiver time on trainings is estimated to be approximately $63.2

million. The average annual opportunity cost after full implementation (years 3 and on) is estimated to be $25.4 million.

Table 5: Estimated Impacts of Training Provisions ($ in millions)

	Phase-In Annual Average (Years 1-5)	Ongoing Annual Average (Years 6-10)	Annualized (over 10 years)			Total (over 10 years)		
			undiscounted	discounted		undiscounted	discounted	
				3%	7%		3%	7%
Money Costs *($ in millions)*								
Pre-Service & Orientation.....	9.8	3.5	6.6	7.0	7.5	66.4	61.4	56.0
On-going (existing providers)…	5.6	7.0	6.3	6.2	6.1	62.9	54.4	45.5
Subtotal……	*15.4*	*10.5*	*12.9*	*13.2*	*13.6*	*129.3*	*115.8*	*101.5*
Opportunity Costs *($ in millions)*								
Pre-Service & Orientation.....	27.8	10.0	18.9	19.9	21.2	189.2	174.9	159.5
On-going (existing providers)…	15.9	19.9	17.9	17.6	17.3	179.2	155.0	129.7
Subtotal……	*43.8*	*29.9*	*36.8*	*37.6*	*38.5*	*368.4*	*329.9*	*289.2*
Total……	**59.2**	**40.4**	**49.7**	**50.7**	**52.1**	**497.7**	**445.7**	**390.7**

Administrative and information technology (IT) startup. Compliance with these health and safety provisions will require States to incur administrative costs and develop or expand their information technology systems and capacity. Given that there will be significant variation at the State level on these costs, rather than attempt to quantify the related costs for each provision, we applied a percentage of the total health and safety money costs (minus the hotline for parental complaints) to estimate the costs of both administrative and IT/infrastructure costs. This analysis assumes 5 percent for administrative costs and an additional 5 percent for IT/Infrastructure costs. Since the annualized amount of all total health and safety money costs (minus the hotline for parental complaint) is approximately $165 million, five percent of that would be approximately $8.3 million per year (using a 3% discount rate).

Our 5 percent estimate for Administrative costs is based on Sec. 658E(c)(3)(C) of the Act, which places a 5 percent limit on administrative costs, "Not more than 5 percent of the aggregate amount of funds available to the State to carry out this subchapter by a State in each fiscal year may be expended for administrative costs incurred by such State to carry out all of its functions and duties under this subchapter."

The 5 percent estimate for IT/Infrastructure costs is based on OCC's expenditure data (ACF-696), which shows that Lead Agencies reported using a total of $68 million or approximately 1 percent of expenditures on computer information systems. Given the expected increase in IT costs associated with implementing the new rule, including possible costs associated with consultation, we increased that to 5 percent, which we considered a reasonable estimate given current expenditure levels.

The estimated present value cost of both administrative costs and IT/Infrastructure costs over the 10 year period examined in this rule, using a 3% discount rate, is $72.4 million for each. This amounts to an annualized cost of approximately $8.3 million each for administrative and IT/Infrastructure costs.

Table 6: Estimated Impacts of Health and Safety Provisions ($ in millions)

	Phase-In Annual Average (Years 1-5)	Ongoing Annual Average (Years 6-10)	Annualized (over 10 years)			Total (over 10 years)		
			undiscounted	discounted		undiscounted	discounted	
				3%	7%		3%	7%
Money Costs *($ in millions)*								
Monitoring.....	125.9	157.0	141.5	139.5	136.7	1,414.7	1,225.3	1,027.2
Background Checks.....	9.0	18.9	13.9	13.6	13.3	139.2	119.7	99.6
Training……..	15.4	10.5	12.9	13.2	13.5	129.3	115.8	101.5
Admin.....	7.5	9.2	8.3	8.2	8.1	83.4	72.4	60.9
IT & Infrastructure..	7.5	9.2	8.3	8.2	8.1	83.4	72.4	60.9
Subtotal.....…..	*165.3*	*205.0*	185.1	*182.9*	*179.9*	1,851.6	*1,606.8*	*1,351.1*
Opportunity Cost *($ in millions)*								
Monitoring….	8.7	10.9	9.8	9.6	9.4	97.7	84.6	70.9
Background Checks.....	6.3	7.9	7.1	7.1	7.1	71.1	62.4	53.3
Training...……..	43.8	29.9	36.8	37.6	38.5	368.4	330.0	289.3
Subtotal……	*58.8*	*48.7*	*53.7*	*54.3*	*55.0*	*537.2*	*477.0*	*413.5*
Total……	**224.1**	**253.7**	**238.8**	**237.2**	**234.9**	**2,388.8**	**2,083.8**	**1,764.6**

2. Consumer Education Provisions

The CCDBG Act and the proposed rule includes several provisions related to improving transparency for parents and helping them to make better informed child care choices. Some of these provisions may require new investments by the States, Territories, and Tribes, including a consumer education website at § 98.33(a) and a consumer statement at § 98.33(d). Greater discussion of each of the provisions can be found at Subpart D. All costs associated with implementation of consumer education requirements are considered money costs (as opposed to opportunity costs) since they would involve an actual money transaction.

Consumer education website. The proposed rule, per the CCDBG Act, would amend paragraph (a) of § 98.33 to require Lead Agencies to create a consumer-friendly and easily

accessible website as part of their consumer education activities. The website must at a minimum include five main components: (1) Lead Agency policies and procedures, (2) provider-specific information for all eligible and licensed child care providers (other than an individual who is related to all children for whom child care services are provided), (3) aggregate number of deaths, serious injuries, and instances of substantiated child abuse in child care settings each year for eligible providers, (4) referral to local child care resource and referral organizations, and (5) directions on how parents can contact the Lead Agency, or its designee, and other programs to help the parent understand information included on the website. We established our estimate based on current State practice and the market price of building a website that fulfills the requirements in this proposed rule.

ACF conducted a comprehensive review of State websites and found 35 States and Territories already have websites that meet at least some of the new requirements. Based on an analysis of current State consumer education websites, we assumed that any of the States that did not meet any of the new requirements would have all new costs. For States that met some of the requirements, we determined the percentage of work needed for the website to meet the requirements and multiplied the percentage of work needed by the cost estimate for building and implementing a consumer education website. Components of a website that we looked for and included in our estimate were: the scope of the website in terms of which providers were included (*e.g.*, whether it included licensed providers and unlicensed CCDF providers); health and safety requirements; posting the date of last inspection, including any history of violations or compliance actions taken against a provider; posting provider-specific information about the number of serious injuries and fatalities that occurred while in their care; information on the quality of the provider; and aggregate data on number of fatalities, serious injuries, and

substantiated cases of child abuse that occurred in child care. From this review, we determined the amount of work needed for all States and Territories to build and implement the requirements of the consumer education website. We also consulted several organizations familiar with building websites to establish an upper and lower bounds for the estimate based on the proposed rule that covered the full range of implementation, from planning and initial set-up to beta testing. The upper and lower bound estimates include features that would make the website more user-friendly but may not be included in the proposed rule, including advanced search functions, such as a map feature, to make it easier for parents to find care.

Building and implementing a new website would require some start-up costs, so the cumulative estimated costs are higher during the initial five-year phase-in period. We established a lower bound estimate to include the web developer costs of planning, creating supporting documentation, site and infrastructure set-up, static page creation, initial data imports, the creation of basic and advanced search functions and data management systems, and testing. The upper bound adds development and improvement activities to modernize the website as technologies change. Ongoing annual costs include quality control and maintenance, providing customer support, and monthly data updates to the website. All of these estimates include salaries and overhead for the website developers and staff, weighted by the number of CCDF providers in each State.

Based on our research, we used the same salary and overhead information ($67,000 for line staff) for all States. However, we believe that there will be different levels of effort depending on the number of providers in a State, so we assumed different FTEs based on the total number of child care providers in a State: States with more than 8,000 providers (3.0 FTE), states with between 3,000 and 8,000 providers (2.50 FTE), and States with less than 3,000

providers (2.0 FTE). 11 States had over 8,000 providers; 16 States and Territories had between 3,000 and 8,000 providers; and 29 States and Territories had fewer than 3,000 providers.

Over the five-year phase-in period, we estimated an average annual money cost (estimated using a 3% discount rate) for just the building and maintenance of websites of $12.8 million and ongoing money costs of $11.8 million annually.

The proposed consumer education website would require a list of available providers and provider-specific monitoring reports, including any corrective actions taken. The costs associated with collecting the information necessary to provide this information on the website is included in other parts of this RIA. For example, this RIA includes an estimate for the cost of implementing proposed monitoring and inspection requirements. There may also be effort associated with translating information from monitoring and inspection reports for an online format. However, since the monitoring cost assumes the full salary for monitoring staff and supervisors, we believe that it is reasonable to assume that the duties of these employees would include processing licensing information/findings.

However, one of the proposed components of the consumer education website at § 98.33(a)(2)(ii) is information about the quality of the provider as determined by the State through a quality rating and improvement system (QRIS) or other transparent system of quality indicators, if the information is available for the provider. For Lead Agencies that do not currently have a means for differentiating quality of care, there may be new money costs associated with creating the system of quality indicators necessary to obtain quality information on providers. Therefore, we are incorporating the cost of implementing a system of quality indicators into the cost estimate for the consumer education website.

In order to estimate the costs of implementing the transparent system of quality indicators for the consumer education website, we modeled a sample system of quality indicators using the QRIS Cost Estimation Model (developed by the National Center on Child Care Quality Improvement funded by ACF). Costs were associated with the following components included in the cost estimation model: quality assessment, monitoring and administration, and data and other systems administration. For each State, we identified the components of the sample system of quality indicators that each individual State or territory was missing. Costs were applied only in the areas that were lacking for States and territories with partial compliance. States and territories not meeting any of the components of the model had all new costs associated with each component. Using information from the CCDF FY 2014-2015 State Plans and the National Center on Child Care Quality Improvement, ACF determined which States had a system for differentiating the quality of care available in the state, which States could then use to provide information on the consumer education website. In order for States to be considered as already meeting this requirement, the State needed to have reported having a means for measuring and differentiating quality between child care providers. ACF recommends this system be a QRIS that meets high quality benchmarks, but as this NPRM does not propose requiring a QRIS, we counted other systems of quality indicators, such as tiered reimbursement based on quality, as meeting the proposed components of the consumer website. More than 45 States have sufficient means for differentiating quality and therefore we assumed no cost for those States.

ACF estimates that during the five-year phase-in period the total national cost associated with implementing transparent systems of quality indicators has an average annual cost of $2.2 million. This estimate has been added to the cost of designing and implementing the consumer

education website, with an estimated present value cost over the 10 year period examined in this rule, using a 3% discount rate, of $116.4 million, with an annualized cost of $13.3 million.

Consumer statement. The proposed rule at § 98.33(d) would require Lead Agencies to provide parents receiving CCDF subsidies with a consumer statement that includes information specific to the child care provider they select. The consumer statement must include health and safety, licensing or regulatory requirements met by the provider, the date the provider was last inspected, any history of violations, and any voluntary quality standards met by the provider. It also must disclose the number for the hotline for parents to submit complaints about child care providers, as well as contact information for local resource and referral agencies or other community-based supports that can assist parents in finding and enrolling in quality child care.

The information included in the consumer statement overlaps with much of the information required on the consumer education website. In their FY 2014-2015 CCDF Plans, 42 States and Territories report using their websites to convey consumer education information to parents about how their child care certificate permits them to choose from a variety of child care categories. Since many States and Territories are already using their websites to make available provider-specific information, we assume they would use their websites to begin building consumer statements. We assumed the consumer education website already includes the majority of information required in the consumer statement, including, if available, information about provider quality. However, Lead Agencies may have costs to pay for updates to their websites, including compiling information on the hotline and creating printable forms for hard copies of the consumer statement, if desired. This estimate also takes into account the number of providers in each State or Territory. During the five-year phase-in period, we

estimated an average annual cost of the consumer statement provisions to be approximately $1 million and an average ongoing cost of $775,000 annually.

Table 7: Estimated Impacts of Consumer Education Provisions ($ in millions)

	Phase-In Annual Average (Years 1-5)	Ongoing Annual Average (Years 6-10)	Annualized (over 10 years)			Total (over 10 years)		
			undiscounted	discounted		undiscounted	discounted	
				3%	7%		3%	7%
Money Costs *($ in millions)*								
Consumer education website…….....	12.8	11.8	12.3	12.4	12.5	123.0	108.6	93.6
Consumer statement……..	1.0	0.8	0.9	0.9	0.9	8.8	7.8	6.8
**Total……... **	**13.8**	**12.6**	**13.2**	**13.3**	**13.4**	**131.8**	**116.4**	**100.4**

3. Increased Average Subsidy Per Child.

The reauthorized statute and this proposed rule include several policies aimed at increasing access to quality care for low-income children, as well as creating a fairer system for child care providers. As Lead Agencies implement these new policies, we expect that there will be an increase in the amount paid to child care providers, representing a budget impact on Lead Agencies. While we expect these changes to cause an increase in payments, we lack data on the amounts associated with each of these policies, and request comments about whether Lead Agencies expect these policies to cause an increase in the subsidy payment rates.

We expect the following policies and practices to impose budget impacts on Lead Agencies:

- Setting payment rates based on the most recent market rate survey and at least at a level to cover health, safety, and quality requirements in the NPRM, and that provide families receiving CCDF subsidies access to care of comparable quality to care

available to families with incomes above 85 percent State Median Income. Lead Agencies must also take into consideration the cost of providing higher quality child care services (§ 98.45(f));

- Delinking provider payments from a child's occasional absences by either paying based on a child's enrollment, providing full payment if a child attends at least 85 percent of authorized time, or providing full payment if a child is absent for five or fewer days in a month (§ 98.45(m)(2)); and,

- Adopting the generally-accepted payment practices of child care providers who do not receive CCDF subsidies, including paying on a part-time or full-time basis (rather than paying for hours of service or smaller increments of time) and paying for mandatory fees that the provider charges to private-paying parents (§ 98.45(m)(3)).

Lead Agencies are required to implement each of these policies; however, several of them have a few options from which Lead Agencies may choose. We do not know which options Lead Agencies will choose, and therefore are not certain of which policies will impose budget impacts on which Lead Agencies. These impacts will also vary by Lead Agency depending on how many of the policies the Lead Agency adopted prior to this NPRM. We request comment on how Lead Agencies may choose to implement these different payment policies and practices.

Because of the multiple policy options available to Lead Agencies and limited data on the effects of individual policies, it is difficult to estimate new impacts associated with each policy listed. However, we recognize that implementing these new policies will impact Lead Agency budgets and contribute to an increase in the amount of cost per child of child care assistance per

child. Therefore, despite our uncertainty regarding specific effects, we would be overlooking a potentially significant new impact if we did not include an analysis of payment policies and practices in this RIA.

These payment policies and practices will each have varying effects, but once they are put together, one likely outcome is an increase in the average annual subsidy amount per child. Therefore, in order to estimate the possible payment effects associated with these policies, we are bundling them together and estimating their total impact on the average annual subsidy per child. The actual impact will depend on how many of the policies the Lead Agency currently has in place and how the Lead Agency chooses to implement these new policies.

The average annual subsidy rate per child in FY 2013 was $4,735. This amount is the starting point for our estimate. The average annual subsidy rate per child has historically increased each year. Therefore, we have built in a 2.59% increase for each of the ten years included in this cost estimate. This increase represents the historical increases in the average annual subsidy per child that were used to estimate the rate at which the subsidy would increase without this NPRM.

This subsidy amount, including the increase that would be expected to happen regardless of reauthorization and this NPRM, provides the baseline for our ten year estimate. This average represents all settings, all types of care, all ages, and all localities, which masks great variation across the States/Territories based on different costs of living or the higher costs associated with providing care to infants and toddlers. For example, the highest average annual subsidy per child paid by a State/Territory was $8,244 in FY 2013, while the lowest average annual subsidy per child paid by a State/Territory was $2,100. States/Territories with subsidy

payments substantially lower than the average subsidy payment are likely to see higher increases in the subsidy rate than States/Territories with subsidy payments closer to the average.

To calculate the impacts, we estimated a phased-in increase in the average annual subsidy per child above the baseline, which includes the expected increase in the average annual subsidy per child regardless of this proposed rule. We expect that there will be a phase-in of the subsidy increase as Lead Agencies phase-in the new policies in reauthorization and this NPRM. The phase-in is expected from FY 2016 to FY 2018, with the increase in the subsidy being $165 in FY 2016, $265 in FY 2017, and $515 in FY 2018. This represents the increase on top of the regular annual average subsidy per child, and not the estimated subsidy itself. Following the new market rate survey or alternative methodology that may lead to setting higher payment rates, we estimate the subsidy would increase by $765 in FY 2019, and stay steady in FY 2020 and FY 2021. With the new market rate survey or alternative methodology in FY 2022, we expect an additional increase in the subsidy of $1,015, and estimate the subsidy will stay steady in FY 2023 and FY 2024.

These estimated increases to average annual subsidy are based on our assumptions about how quickly Lead Agencies may implement the policies, and the reality that the average annual subsidy will likely grow incrementally. Because of limited data, we chose to estimate a modest increase to the average annual subsidy per child. However, given the uncertainty regarding exactly how much the average annual subsidy per child may increase each year, we request comments and estimates regarding these new costs and how they may impact the subsidy rate in each State/Territory.

The estimated increases included in this RIA are not recommendations for what ACF believes to be appropriate levels to set rates in States/Territories and should not be considered as

the amount needed to provide an acceptable level of health and safety, or to provide high quality care. As mentioned earlier in this NPRM, ACF is very concerned about States'/Territories' current low payment rates. As stated earlier in this NPRM, ACF continues to stand behind the 75th percentile of current market rates, which remains an important benchmark for gauging equal access for children receiving CCDF-funded child care.

The per child calculations used here are not recommendations for a per child subsidy, but rather represent an estimated cost of increasing the current national average annual subsidy per child as a result of these new policies. This is likely an underestimate of the payment amounts necessary to raise provider payment rates to a level that supports access to high quality child care for low-income children. We welcome comments on what provider payment rates may be necessary to support high quality child care.

To calculate the estimated total increase in the average annual subsidy per child and the impacts associated with the new payment policies in this NPRM, we multiplied the estimated increase in the average annual subsidy per child (described above) by the FY 2013 CCDF caseload of 1.4 million children. Based on this formula, we estimate the average annual impact to be $437 million during the initial five year period, with the estimated present value over the full ten year period of $844.9 million (estimated using a 3% discount rate).

As discussed above, there is a high level of uncertainty associated with this estimate. However, not including an estimate of the Lead Agency budget impacts associated with these policies would overlook significant policies in the legislation and this NPRM and fail to give an accurate picture of the costs associated with them. We appreciate any comments that provide additional information about State/Territory practice and costs associated with the proposed policies that could help to refine this analysis.

OMB Circular A-4 notes the importance of distinguishing between costs to society as a whole and transfers of value between entities in society. The increases in subsidy payments just described impose budget impacts on Lead Agencies, but from a society-wide perspective, they only generate costs to the extent that they lead to new resources being devoted to quantity or quality of child care. Although we acknowledge this potential increase in resource use, for the technical purposes of this regulatory impact analysis, we will refer to the estimated subsidy payment impacts as transfers from Lead Agencies to entities bearing the existing cost burden (mostly child care providers who typically have low earnings), rather than societal costs.

Supply building. This estimate takes into account costs associated with developing the supply of child care, which may include financial incentives and the use of grants and contracts to stabilize and/or target the supply of child care. For the purposes of this analysis, we are estimating the cost of grants and contracts, because the proposed rule at § 98.16(i)(1) requires Lead Agencies to describe how they will address supply shortages through the use of grants or contracts in their CCDF Plans. The proposed rule at § 98.50(b)(3) requires States and Territories to use some grants or contracts to provide direct services based on consideration of supply shortages of high quality care. Based on the FY 2014-2015 CCDF Plans, we identified States and Territories that currently make some use of grants and contracts, and those that do not. If a State currently uses grants or contracts, the State is already in compliance, and there is no cost associated with implementing this provision. Seventeen States, two Territories, and the District of Columbia currently use grants or contracts for direct services. For States without grants or contracts, there are two administrative costs: (1) the cost of identifying or analyzing supply shortages; and (2) the cost of awarding, overseeing and monitoring the grants or contracts. The value of the subsidy is not included as a cost since, in the absence of grants or contracts, the

services would have been delivered through an alternate mechanism (*e.g.*, certificates or vouchers). This value is more appropriately considered as a potential transfer. ACF has no information with which to calculate the value of potential transfers associated with the legislation and regulations. Building the supply of high quality care will require paying increased subsidy amounts, but this is addressed separately in the section above on *Increased Average Subsidy per Child*.

ACF estimated that money costs associated with implementing the provisions at §§ 98.16(i)(1) and 98.50(b)(3) are approximately $4.0 million on average over the phase-in period (which for this particular provision is three years, which is different than the phase-in period in the table below) and $7.0 million on average thereafter. During the phase-in period, we expect the costs of these provisions to depend on State assessment of supply gaps and costs associated with implementing the infrastructure necessary to manage the grants and contracts. As an ongoing cost, we assumed that small States would have 50 contracted sites, medium States would have 100 contracted sites, and large States would have 150 contracted sites. The estimate also assumes identification or analysis of supply shortages is ongoing and occurs every two years. States have readily-available supply data from market rate surveys, child care resource and referral agencies, and other sources, so the cost of analysis is relatively low if done in-house using existing data.

While using grants and contracts can build supply by providing stable payment and practices, there are other methods for building the supply quality child care. These include funding for start-up costs and financial incentives via attractive subsidy rates and Lead Agencies will be encouraged to consider a range of options for addressing supply shortages in their State.

Table 8: Estimated Impacts of Increased Subsidy and Supply Building

($ in millions)

	Phase-In Annual Average (Years 1-5)	Ongoing Annual Average (Years 6-10)	Annualized (over 10 years)			Total (over 10 years)		
			undiscounted	discounted		undiscounted	Discounted	
				3%	7%		3%	7
Transfers from Lead Agencies to Child Care Providers *($ in millions)*								
Increased Subsidy……	478.8	1,281.0	880.0	839.1	786.1	8,799.0	7,372.4	5,907.7
Money Costs *($ in millions)*								
Supply Building……..	5.1	6.8	6.0	5.8	5.7	59.5	51.3	42.9
Total (Transfers and Costs)……...	**483.9**	**1,287.8**	**885.9**	**844.9**	**791.8**	**8,858.5**	**7,423.7**	**5,950.6**

B. Analysis of Benefits

The changes made by the CCDBG Act and the proposed rule have three primary beneficiaries: children in care funded by CCDF (currently 1.4 million), their families who need the assistance to work, pursue education or to go to school /training, and the roughly 415,000 child care providers that care for and educate these children. But the effect of these changes will go far beyond those children who directly participate in CCDF and will accrue benefits to children, families, and society at large. Many providers who serve children receiving CCDF subsidies also serve private-paying families, and all children in the care of these providers will be safer because of the new CCDF health and safety requirements. Further, the requirements for background checks and monitoring extend beyond just CCDF providers. The public at large also benefits when there is stable, high quality child care in cost savings due to greater family work stability; lower rates of child morbidity and injury; fewer special education placements and less need for remedial education; reduced juvenile delinquency; and higher school completion rates.

In 2012, approximately 60 percent of children age 5 and younger not enrolled in kindergarten were in at least one weekly non-parental care arrangement. (U.S. Department of

Education, *Early Childhood Program Participation*, from the National Household Education Surveys Program of 2012, August 2013). We know that many child care arrangements are low quality and lack basic safeguards. A 2006 study conducted by the National Institute of Child Health and Development (NICHD) found that, "most child care settings in the United States provide care that is "fair" (between "poor" and "good") and fewer than 10 percent of arrangements were rated as providing very high quality child care." (U.S. Department of Health and Human Services, National Institutes of Health, *Study of Early Child Care and Youth Development*, 2006) More recently, both the Department of Health and Human Services' (HHS) Office of Inspector General (OIG) and the Government Accountability Office (GAO) have identified serious deficiencies with health and safety protections for children in child care settings. (HHS Office of the Inspector General, *Child Care and Development Fund: Monitoring of Licensed Child Care Providers*, OEI-07-10-00230, November 2013) (*Early Alert Memorandum Report: License-Exempt Child Care Providers in the Child Care and Development Fund Program*, HHS OIG, 2013). (Government Accountability Office, *Overview of Relevant Employment Laws and Cases of Sex Offenders at Child Care Facilities*, GAO-11-757, 2011) We also know from a growing body of research that in addition to the importance of quality to health and safety on a child's immediate and long term future health, quality is important for children's long term success in school and in life (as described elsewhere in this section).

While there are many benefits to children, families, providers and society from affordable, higher quality child care, there are challenges to quantifying their impact. CCDF provides flexibility to States, Territories, and Tribes in setting health and safety standards, eligibility, payment rates, and quality improvements. As a result, there is much variation in CCDF programs across States. Therefore, we do not have a strong basis for estimating the

magnitude of the benefits of the CCDBG Act and the proposed rule in dollar amounts. While we are not quantifying benefits in this analysis, we welcome comment on ways to measure the benefit that the Act and the proposed rule will have on children, families, child care providers, and the public.

As shown in the discussion below, there is evidence that the CCDBG Act and proposed rule's improvements to health and safety, quality of children's experiences, and stability of assistance for parents and providers will have a significant positive return on the public's investment in child care. We discuss these benefits as "packages" of improvements: (1) health and safety; (2) consumer information and education; (3) family work stability; (4) child outcomes; and (5) provider stability.

1. Health and Safety

One of the most substantial changes made by this proposed rule is a package of health and safety improvements, including health and safety requirements in specific topic areas, health and safety training, background checks, and monitoring and pre-inspections.

Health and Safety Requirements. The CCDBG Act requires Lead Agencies to set requirements in baseline areas of health and safety, such as CPR and first aid, and safe sleeping practices for infants. At their core, health and safety standards in this proposed rule are intended to make child care safer and thus lower the risk of harm to children.

The CCDBG Act and the proposed rule are expected to lead to a reduction in the risk of child morbidity and injuries in child care. The most recent study on fatalities occurring in child care found 1,326 child deaths from 1985 through 2003. The study also showed variation in fatality rates based on 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 risk to child safety. (Dreby, J., Wrigley, J., Fatalities and the Organization of Child Care in the United States, 1985-2003, American Sociological Review, 2005) ACF collects data about the number of child care injuries and fatalities through the Quality Performance Report (QPR) in the CCDF Plan (ACF-118). In 2014, there were 93 child deaths in child care based on data reported by 50 States and Territories. The number of serious injuries to children in child care in 2014 was 11,047, with 35 States and Territories reporting.

Various media outlets have also conducted investigations of unsafe child care and deaths of children. In Minnesota, the Star Tribune in Minneapolis reported in a series of articles in 2012 that the number of children dying in child care facilities "had risen sharply in the past five years, from incidents that include asphyxia, sudden infant death syndrome (SIDS) and unexplained causes." The report found 51 children died in Minnesota over the five-year period. (Star Tribune, *The Day Care Threat*, 2012) In Indiana, an investigation by the Indianapolis Star found, "21 deaths at Indiana day cares from 2009 to June 2013, and 10 more child deaths have since been reported." (Indianapolis Star, *How Safe are Indiana Day Cares*, 2013) Indiana recently passed legislation that raises standards for child care programs. In Kansas, the high incidence of fatalities prompted the Kansas legislature to implement new procedures to guide investigations of serious injury or sudden, possibly unexplained deaths in child care, particularly infants. (Kansas Blue Ribbon Panel on Infant Mortality, *Road Map for Preventing Infant Mortality in Kansas*, 2011) The case of Lexie Engelman was a rally cry of advocates for better health and safety requirements. The 13-month old child suffered fatal injuries in a registered family child care home in 2004 due to lack of supervision. As a result, Kansas enacted new protections such as requiring all providers to be licensed and regularly inspected, training for providers, and new rules of supervision. Since implementing "Lexie's Law," Kansas jumped

from 46th to 3rd in the Child Care Aware of America annual ranking of State policies, and State officials have been able to use data to target regulatory action and provide information to the public in a much more timely way. State officials report that more stringent regulations have greatly enhanced State capacity to protect children.

With respect to morbidity, 20 percent of SIDS deaths occur while children are in child care. (Moon, R.Y., Sprague, B.M., and Patel, K.M., *Stable Prevalence but Changing Risk Factors for Sudden Infant Death Syndrome in Child Care Settings in 2001*, 2005) Many of these deaths are preventable by safe sleep practices. Local review teams in one State found that 83 percent of SIDS deaths could have been prevented. (Arizona Child Fatality Review Program, *Twentieth Annual Report*, November 2013) As part of health and safety training requirements, the CCDBG Act and proposed rule require that caregivers, teachers, and directors serving CCDF children receive training in safe sleep practices. According to the FY 2014-2015 CCDF Plans, approximately 27 States and Territories already have safe sleep and SIDS prevention pre-service training requirements for child care centers, and 26 States and Territories have SIDS prevention pre-service training requirements for family child care homes. Requiring the remaining States and Territories to have safe sleep training for child care providers will likely help change provider practice and lower the risk of SIDS-related deaths for infants.

Health and Safety Training. The proposed rule codifies the requirement of the CCDBG Act that CCDF caregivers, teachers, and directors undergo a pre-service or orientation training, as well as receive ongoing training, in the health and safety standards. The proposed rule also adds child development as a required topic for required training, consistent with the professional development and training provisions of the law. Knowledge of child development is important to understanding and implementing safety and health practices and conditions. Training in health

and safety standards, particularly prevention of SIDS, should reduce child fatalities and injuries in child care. For example, the rate of SIDS in the U.S. has been reduced by more than 50 percent since the campaign in the early 1990s by the American Academy of Pediatrics on safe sleep practices with infants. (National Institutes of Health, Eunice Kennedy Shriver National Institute of Child Health and Human Development. Back to Sleep Public Education Campaign) Only 24 States currently require pre-service or orientation training to include SIDS prevention.

Background Checks. The new background check requirements are expected to prevent individuals with criminal records from working for child care providers. Data from two States show that 5 to 10 percent and 3 to 4 percent, respectively, of background checks result in criminal record "hits" that disqualify the provider. To the extent that these individuals would have otherwise worked in child care settings, thereby increasing the risk of maltreatment or injury to a child, we assume that background checks yield a positive benefit for child health and safety. That is, background checks serve a real purpose in preventing a small proportion of potentially dangerous individuals from providing care to children.

Monitoring. The CCDBG Act and this proposed rule require States to conduct monitoring visits for all child care providers, including license-exempt providers (except, at the Lead Agency option, those that serve relatives). Licensed providers must receive a pre-licensure inspection and annual, unannounced inspections. License-exempt CCDF providers (except at the Lead Agency option those that serve relatives) must have annual inspections for health, safety and fire standards. Currently, 15 States do not conduct a licensing pre-inspection visit of family child care; 12 States do not conduct pre-inspections on group homes; and one State does not pre-inspect child care centers. Nineteen States do not inspect family child care providers each year, 22 States do not conduct annual visits for group homes, and 10 States do not visit child care

centers on an annual basis. It is reasonable to expect that more stringent health and safety standards and their enforcement through pre-inspections and annual licensing inspections will result in fewer serious injuries and child fatalities in child care.

Child Abuse Reporting and Training. Nationally, there are approximately 12.5 million children in child care settings. With a rate of over 10 children per thousand being victims of substantiated abuse or neglect, there are over 100,000 children estimated to be victims of abuse in child care settings. This proposed rule contains a number of provisions designed to prevent child abuse and neglect. Under the CCDBG Act and this proposed rule, Lead Agencies must certify that child care caregivers, teachers, and directors comply with child abuse reporting requirements of the Child Abuse Prevention and Treatment Act. The proposed rule also requires training on "recognition and reporting of suspected child abuse and neglect", which would equip caregivers, teachers, and directors with training necessary to report potential abuse and neglect. The rule also requires training in child development for CCDF caregivers, teachers, and directors. 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*, Child Welfare, 1997) To the extent that this training would have a similar effect on caregivers, teachers, and directors of CCDF providers, we expect there to be some decrease in child abuse within child care settings.

In addition to the tragedy of injuries and fatalities in child care, there are tangible costs such as medical care, a parent's absence from work to tend to an injured child, the loss for the family, and loss of lifetime potential earnings for society. According to the 2014 Quality

Performance Report, there were 11,407 injuries (defined as needing professional medical attention) and 93 fatalities reported in child care. We believe these numbers are lower than the actual incidences because some Lead Agencies have difficulty accessing this information collected by other agencies.

2. Consumer information and education

As one research study said, "Child care markets would work more effectively if parents had access to more information about program quality and help finding a suitable situation. This would cut the cost of searching for care and increase the likelihood of more comparison shopping by parents." (Helburn, S. and Bergmann, B., *America's Child Care Problem: The Way Out*, 2002) The CCDBG Act and proposed rule require the Lead Agency to provide consumer education to parents of eligible children, the general public, and child care providers. This includes a consumer-friendly and easily accessible website about relevant Lead Agency processes and provider-specific information. The CCDBG Act and the proposed rule also require a range of information for parents, including the availability of child care services and other assistance for which they might be eligible, best practices relating to child development, how to access developmental screening, and policies on social-emotional behavioral health and expulsion. The proposed rule also requires a consumer statement for families receiving subsidies. Taken together, these provisions should improve parents' ability to make fully informed choices about child care arrangements.

The consumer education package also provides benefits to parents in regards to the value of their time. Most parents want to know about health and safety records, licensing compliance, and quality ratings when deciding on a child care provider. However, this research can be very time consuming because of barriers to accessing the information needed to make a fully

informed decision. For example, while all Lead Agencies must make substantiated complaints available to the public, some States previously required that people go to a government office during regular business hours to access these records. It is not reasonable to expect a parent who is working to take that time to navigate these bureaucratic requirements.

The proposed rule's package of consumer education provisions, including the consumer-friendly website, addresses the aforementioned information barrier by helping to provide parents with important resources in a manner that fits their needs.

3. Family work stability/improved labor force productivity

The CCDBG Act and the proposed rule promote continuity of care in the CCDF program through family-friendly policies – it requires Lead Agencies to implement minimum 12-month eligibility redetermination periods, ensures that parents who lose their jobs do not immediately lose their subsidy, minimizes requirements for families to report changes in circumstances, and provides more flexibility to serve vulnerable populations, such as children experiencing homelessness, without regard to income or work requirements.

Benefits to employers. There is a strong relationship between the stability of child care and the stability of the workforce for employers. The cost to businesses of employee absenteeism due to disruptions in child care is estimated to be $3 billion annually. (Shellenback, K., *Child Care & Parent Productivity: Making the Business Case*, Cornell University: Ithaca, NY. 2004) The eligibility provisions of the CCDBG Act and this proposed rule will allow parents to work for longer stretches without interruptions to their child care subsidy, and will benefit parents by limiting disruptions to their child care arrangements. These policies in turn also provide benefits to employers seeking to maintain a stable workforce.

Studies show a relationship between child care instability and employers' dependability of a stable workforce. In one study, 54 percent of employers reported that child care services had a positive impact on employee absenteeism, reducing missed workdays by as much as 20 to 30 percent. (Friedman, D.E., *Child Care for Employees' Kids*, Harvard Business Review, 1986) In addition, 63 percent of employees surveyed at American Business Collaboration (ABC) companies in 10 communities across the country reported improved productivity when a parent was using high quality dependent care, and 40 percent of employees reporting spending less time worrying about their families, 35 percent were better able to concentrate on work, and 30 percent had to leave work less often to deal with family situations. (Abt Associates, *National Report on Work and Family*, 2000) A 2010 study examined the impact of child care subsidy receipt by New York City employees and employees of subcontracted agencies in the health care sector. The study looked at the variables of attendance, work performance, productivity, and retention of employees. Results showed that subsidy receipt had a positive impact on work performance; whereas, the loss of the subsidy had a negative effect. After the subsidy period ended and parents were faced with less stable child care arrangements, participants self-reported a decrease in their work performance and in their work productivity coupled with an increase in tardiness and work/family conflict. (Wagner, K.C., *Working Parents for a Working New York Study*, Cornell and New York Child Care Coalition, 2010)

Benefits to parents. The lack of reliable and dependable child care arrangements negatively affects parents' income, hours worked, work performance, and advancement opportunities. To the extent that these new requirements will reduce barriers to retaining child care assistance for CCDF families, the new rule will mitigate some of the disruption currently experienced by low-income families. Studies have shown that many parents face child care

issues that can disrupt work, impacting both the parent and their employers. One researcher, using data from the Survey of Income and Program Participation (SIPP), found that 9-12 percent of families reported losing work hours as a result of child care disruptions. (Boushey, H., *Who Cares? The Child Care Choices of Working Mothers, Center for Economic and Policy Research Data*, 2003) Another study showed that 29 percent of parents experienced a breakdown in their child care arrangement in the last 3 months. (Bond, J., Galinsky, E., and Swanberg, J., *The 1997 National Study of the Changing Workforce*, 1998)

These child care disruptions can negatively impact parental employment. For example, a survey of over 200 mothers working in the restaurant industry in five cities: Chicago, Washington, D.C., Detroit, Los Angeles, and New York found that instability in child care arrangements negatively affected their ability to work desirable shifts or to move into better paying positions at the restaurant. More than half of the mothers surveyed lacked alternative child care options, which could lead to being late or having to leave early from work if there was a problem with their child care. (Restaurant Opportunities Centers United, et al., *The Third Shift: Child Care Needs And Access For Working Mothers In Restaurants*, Restaurant Opportunities Centers United, 2013)

4. Child outcomes and human capital development

Beyond implementing health and safety standards, the CCDBG Act states that two of the purposes of the grants are improving child development of participating children and increasing the number and percentage of low-income children in high-quality child care settings. This proposed rule places significant emphasis on policies that support those goals.

Child care continuity. The eligibility and redetermination provisions benefit children as well as parents and employers. Continuity in child care arrangements can have a positive impact

on a child's cognitive and socio-emotional development. (Raikes, H. *Secure Base for Babies: Applying Attachment Theory Concepts to the Infant Care Setting,* Young Children 51, no. 5, 1996) Young children need to have secure relationships with their caregivers in order to thrive. (Schumacher, R. and Hoffmann, E., *Continuity of Care: Charting Progress for Babies in Child Care Research-Based Rationale*, 2008) Children with fewer changes in child care arrangements are less likely to exhibit behavior problems. (de Schipper, J.C., Van Ijzendoorn, M. & Tavecchio, L., *Stability in Center Day Care: Relations with Children's Well-being and Problem Behavior in Day Care*, Social Development, 2004) Conversely, larger numbers of changes have been linked to less outgoing and more aggressive behaviors among four- and five-year-old children. (Howes, C. & Hamilton, *C.E., Children's Relationships with Caregivers: Mothers and Child Care Teachers*, Child Development, 1992) Continuity of care policies support children's ability to develop nurturing, responsive, and continuous relationships with their caregivers. For school-age children, continuity of care is important because it provides additional exposure to programming that can lead to improved school attendance and academic outcomes. (Welsh, M. Russell, C., Willimans, I., *Promoting Learning and School Attendance through After-School Programs*, Policy Studies Associates, 2002.)

Child care quality beyond health and safety. Health and safety form the foundation of quality but are not sufficient for high quality development and learning experiences. When children have high quality early care and education, there are benefits to the child and to society. (Yoshikawa, H., et al., *Investing in Our Future: The Evidence Base on Preschool Education*, 2013) The North Carolina Abecedarian Project demonstrated both categories of benefits. The Project enrolled very low-income children from infancy to kindergarten in full day, full year child care with high quality staff, environments, and curricula. A longitudinal study following

them through age 21 found significant returns on the investment in terms, such as greater school readiness that led to fewer special education and remedial education placements, higher rates of high school completion and jobs, fewer teen pregnancies, and lower rates of juvenile delinquency. (Masse, Leonard N. and Barnett, Steven W., *A Benefit Cost Analysis of the Abecedarian Early Childhood Intervention*, National Institute for Early Education Research; New Brunswick, NJ). Other cost-benefit analyses of other publicly funded preschool programs with similarly high quality standards, such as the Chicago Child Parent Centers, demonstrated a high return to society on the public investment. ("Age 21 Cost-Benefit Analysis of the Title I Chicago Child-Parent Centers." Educational Evaluation and Policy Analysis, 24(4): 267-303.)

Recognizing the importance of quality as well as access, the CCDBG Act and this proposed rule promote efforts to improve the quality of child care. Chief among these changes is the increased portion of the grant that a Lead Agency must use, at a minimum, for quality improvements. The reauthorized Act increases the prior minimum four percent quality spending requirement to nine percent over time. It also requires States to invest in quality by spending an additional 3 percent for infant and toddler quality. States use the quality dollars for a range of activities that benefit children and providers assisted with CCDF funds and for early childhood systems as a whole, such as State early learning guidelines, professional development, technical assistance such as coaching and mentoring as part of the quality rating and improvement system, scholarships for postsecondary education, and upgrades to materials and equipment.

A critical element in the quality of child care is the knowledge and skill of the child care workforce. The CCDBG Act and the proposed rule emphasize the importance of States creating and supporting a progression of professional development, starting with pre-service, and which

may include postsecondary education. Quality professional development is critical to creating a workforce that can support children's readiness for success in school and in later years.

States have a variety of ways to build the supply of high quality care including financial incentives and the use of grants and contracts. The CCDBG Act requires the Plan to provide assurances that parents of eligible children who receive or are offered child care assistance are given the option of enrolling with a provider that has a grant or contract or a child care certificate. Without limiting or discouraging the use of certificates to provide assistance to families, the proposed rule does note the role that grants or contracts can play in building the supply and quality of child care, particularly in underserved areas and for special populations. Currently 20 States are using grants or contracts along with certificates as part of a mixed funding system. Some provide grants or contracts to increase the supply of providers serving children with special needs, infants and toddlers, school-age children, or underserved geographic areas. Other States are providing grants or contracts to providers that meet and sustain higher standards of quality.

As detailed above, there is a growing amount of evidence and recognition that children who experience high quality early childhood programs are more likely to be better prepared in language, literacy, math and social skills when they enter school, and that these may have lasting positive impacts through adulthood. Because of the strong relationship between early experiences and later success, investments in improving the quality of early childhood and before- and after-school programs can pay large dividends.

5. Provider Stability

The CCDBG Act and proposed rule include provisions to strengthen the stability of providers serving CCDF-assisted children. Studies that have interviewed child care providers

participating in the subsidy system have shown the importance of policies that improve and stabilize payments to the providers. (Sandstrom, H, Grazi, J., and Henly, J.R., *Clients' Recommendations for Improving the Child Care Subsidy Program*, Urban Institute: Washington, DC, 2015; Adams, G., Snyder, Katherine, and Tout, Kathryn, *Essential But Often Ignored: Child care providers in the subsidy system*, Urban Institute: Washington, DC 2003; Oliveira, Peg, The Child Care Subsidy Program Policy and Practice: *Connecticut Child Care Providers Identify the Problems*, Connecticut Voices for Children, 2006)

In addition to rates that reflect the cost of providing quality services, the manner in which providers are paid is important to the stability of the child care industry. Provider instability has a domino effect that can lead to parent employment instability, an outcome that undercuts the CCDBG Act's core principle of ensuring that CCDF children have equal access to child care that is comparable to non-CCDF families.

The CCDBG Act and the proposed rule require Lead Agencies to pay providers in a timely manner based on generally accepted payment practices for non-CCDF providers. Lead Agencies also must de-link provider payments from children's absences to the extent practicable. Child care providers have many fixed costs, such as salaries, utilities, rent or mortgage.

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 has 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. Thus, lack of timely payments and rules on payments that lead to

disincentives to taking children with chronic illnesses or other reasons for absences undercut the equal access provision. By addressing these issues, these provisions of the law and proposed rule will provide increased stability and benefits for CCDF providers and the families they serve.

Market Rate or Alternative Methodology. The child care market often does not reflect the actual costs of providing child care, let alone the higher costs of quality child care. Financial constraints of low-income parents prevent child care providers from setting their prices to fully cover the cost of care (National Women's Law Center, *Building Blocks: State Child Care Assistance Policies*, 2015; Child Care Aware, *Parents and the High Cost of Child Care*, 2014. Currently, relative to the cost of providing quality care, CCDF subsidy payment rates are low in many States.

A report from the National Women's Law Center on State subsidy policies states that, "only one state had reimbursement rates at the federally recommended level in 2014, a slight decrease from the three states with rates at the recommended level in 2013, and a significant decrease from the twenty-two states with rates at the recommended level in 2001. Thirty-seven States had higher reimbursement rates for higher-quality providers in 2014—an increase from thirty-three states in 2013. However, in more than three-quarters of these states, even the higher rates were below the federally recommended level in 2014." (Turning the Corner: State Child Care Policies 2014. Schulman, K. and Blank, H. National Women's Law Center, Washington, DC 2014) The CCDBG Act and the proposed rule require Lead Agencies to set provider payment rates based on the current, valid market rate survey or alternative methodology. To allow for equal access, the rule proposes that Lead Agencies set base payment rates sufficient to support implementation of the health, safety and quality requirements in the NPRM. Establishing base rates at these levels is important to ensure that providers have the resources they need to

meet minimum requirements and that providers are not discouraged from serving CCDF children. With subsidy payments higher than the aforementioned base rate, providers can exceed the minimum requirements of health and safety and quality. In doing so, more providers will be able to serve CCDF-assisted children and more quality providers may decide to participate in the subsidy system--giving parents more choices for their children's care. Currently there has been a downward trend in the number of CCDF providers, and providing for a stronger base rate will help mitigate this effect.

C. Distributional effects

As part of our regulatory analysis, we considered whether changes would disproportionately benefit or harm a particular subpopulation. As discussed above, benefits accrue both directly and indirectly to society. In order to implement the requirements of the CCDBG Act and the NPRM, States may have to make key decisions about the allocation of resources, and some may shift priorities during the start-up phase and possibly continuing in later years once the State is fully implementing these requirements. The true impact partially depends on the overall funding level. The President's FY2016 Budget request includes additional funding to help States implement the policies required by the reauthorized CCDBG Act and this proposed rule, as well as significant new resources across a ten year period to expand access to child care assistance for all eligible families with children under age four years of age. If funding increases sufficiently, both quality and access could be improved.

While, depending on State behavior, there may be some distributional effect related to any cost, below is a discussion of two policy areas that represent specific distributional effects. The first--changes to subsidy policy required by the CCDBG Act—may result (depending on how the State chooses to implement the policy) in families receiving subsidies for a longer

period of time, while other families may not be able to access subsidies (absent an increase in funding for the CCDF program). The second area—increased statutory quality spending requirements—may result in a change in which families receive benefits, or how they receive them, by shifting resources away from direct services to quality spending.

Minimum 12-month eligibility and related provisions. In order to reduce administrative burden and to improve the stability and continuity of care in the CCDF program, the CCDBG Act and this proposed rule at §§ 98.20 and 98.21 require Lead Agencies to adopt a number of eligibility policies, including a 12-month minimum period for families to recertify their eligibility. This package of eligibility policies will allow families to maintain their eligibility regardless of temporary changes in work or training/education status or income changes (as long as income remains below 85% of State Median Income). Subsidy receipt is also predictive of more stable child care arrangements. (Brooks, et. al., Impacts of child care subsidies on family and child well-being, Early Childhood Research Quarterly, 2002) Stability of child care arrangements can affect children's healthy development, especially for vulnerable children who may be at special risk of poor developmental outcomes. (Adams, G., and Rohacek, M., *Child Care Instability: Definitions, Context and Policy Implications*, Urban Institute, 2010) Prior to reauthorization, about half the States had eligibility periods less than 12 months—typically providing only six months of eligibility—and families churned on and off the caseload.

Based on qualitative research and discussions with CCDF participants, we expect that longer eligibility periods, and the related policies in the Act and this rule, will increase the average length of time that participating families receive child care subsidies. As part of this RIA, we used CCDF administrative data to model the policy change in the Act and proposed rule wherein all States would have a minimum of 12-month eligibility periods, to predict whether

CCDF families would have longer participation durations and whether there would be any impact on the unduplicated number of families receiving CCDF assistance. The calculations in this estimate are informed by a demonstration project that randomly assigned working Illinois families with moderate incomes (*i.e.*, above the normal eligibility thresholds) to one of three groups. (Michalopoulos, C., Lundquist, E., and Castells, N., *The Effects of Child Care Subsidies for Moderate Income Families in Cook County, Illinois*, MDRC, 2010) Although two of the three groups were both eligible for child care subsidies, one of the groups required recertification every six-months and the other required recertification every 12-months. Over a 24-month follow-up period, the families assigned to 12-month recertification periods received child care subsidies an average of 2.5 months more than families assigned to 6-month recertification periods.

We also examined a "natural experiment" in Georgia, which changed its recertification period from six months to 12 months in April 2009. A preliminary analysis found that families had longer spell lengths after the policy change than families that entered care before the policy change. Although it is uncertain what the driving factor for this was, these findings from Georgia support the hypothesis that longer recertification periods increase the number of months that recipient families participate in the program.

Assuming that States will maintain their average monthly caseloads once they implement the 12-month recertification periods, but will serve fewer unique children over that time period because of longer subsidy participation durations, we estimated the number of families that could be impacted at current funding levels. Decreased churn would not decrease the amount of assistance given, but may result in a decrease in the total number of families served over the course of a given year. We used disaggregated CCDF administrative data from FY 2010 (to

determine the ratio between unique annual counts and average monthly caseloads) and average monthly caseload totals from FY 2012 (which showed 609,800 children being served in an annual month in the 25 States with eligibility periods less than 12 months). With this data, we estimated the unique caseload size of each State in FY 2012, which is the last year for which we have caseload estimates and documentation of policies (which showed 1,053,773 unique children received services at some point during the year in the 25 States). Based on these assumptions and using the results from the Illinois study to estimate the impact on length of subsidy receipt, we estimate that the reduction in unique children served in a given year after the policy change will be approximately 162,000 children.

Increase in Quality Set-aside. As discussed above in the analysis of benefits, the increased quality set-aside and the new infant and toddler set-aside required in reauthorization will benefit children and, when coupled with training and higher rates, child care providers. Lead Agencies are not required to use quality funds to support the quality of care for only CCDF children. Thus, quality investments often support the entire child care system in the State, especially because of the high investments in licensing, training, and quality rating and improvement systems. Therefore, these increased investments will have an impact broader than families receiving CCDF assistance, and will continue to improve the quality of care available to all children, regardless of subsidy receipt.

We do not expect the increase the quality set-aside to have a significant impact on caseload, particularly since the majority of states are already spending more than the new 9% quality set-aside requirement (see Table 9 below). Others will have time to phase-in the increases and will likely use these additional increases to cover several of the new health and safety and professional development requirements. Therefore, any caseload impact would have

already been included in the costs associated with those provisions. However, we recognize some Lead Agencies will have to reallocate funds currently being used for other activities, including direct services, so we are discussing possible distributional effects here. Currently, about 12 percent of CCDF expenditures are spent on quality improvement activities, including targeted funds included in appropriations. This amount is equivalent to the full percentage to be set aside for the quality and infant and toddler set-asides in FY 2020, once fully phased-in. Therefore, we do not expect a significant change in the national percentage of funds spent on quality activities, including those targeted at infants and toddlers. However, this is a national figure and may not provide a complete picture of how many States and Territories might have to adjust their quality expenditures to meet new requirements.

Using FY 2011 CCDF expenditure data, we did an analysis of the number of States and Territories that will have to increase their quality expenditures in order to meet the requirements in the CCDBG Act and incorporated into this proposed rule at § 98.50(b)(1). (Note: Compliance with spending requirements is determined after a full grant award is complete. States and Territories have three years to complete their grant awards. Therefore, the most recent award year for which we have data is FY 2011.) We included regular quality expenditures as well as the amount of funds spent for the "quality expansion" and "school-age/ resource and referral" targeted funds. The infant and toddler targeted funds were not included in this analysis because they have now been incorporated into the statute. Instead, we have a separate analysis of the new infant and toddler set-aside below. Below is a summary of the number of States and Territories at different amounts of quality expenditures:

Table 9: Quality Expenditures

% Quality Expenditures (FY 2013)	Number of States and Territories

< 7%	5
7% (effective FY 2016 and FY 2017)	5
8% (effective FY 2018 and FY 2019)	7
9% (effective FY 2020 and succeeding years)	4
> 9%	35

Based on this data, 39 States will not have to adjust the percent of funds they expend on quality activities, while five States and Territories will have to increase the percent of funds they spend on quality activities by FY 2016. For the other States and Territories, it varies when each will need to change the amount they spend on quality activities- 10 States will have to adjust by FY 2018 to meet the eight percent requirement; and 17 States will have to adjust by FY 2020 to meet the nine percent requirement.

In addition to the primary set-aside for quality activities, this NPRM incorporates at § 98.50(b)(2) a new requirement of the CCDBG Act that, beginning in FY 2017 and each succeeding fiscal year, Lead Agencies must expend at least three percent of their full awards (including discretionary, mandatory, and federal and State matching funds) on activities that relates to the care of infants and toddlers. Since FY 2001, federal appropriations law has included a requirement for Lead Agencies to spend a certain amount of discretionary funds on activities to improve the quality of care for infants and toddlers. In FY 2015, this set-aside was $102 million. The new three percent reservation represents an increase to about $237 million based on FY 2011 State and Territory expenditures.

Lead Agencies do not currently report how much of their general quality funds are spent on activities targeted to improving care for infants and toddlers. Therefore, we only have the

amount of targeted funds they spent on infant and toddler activities, which for all but five States and Territories is below the new three percent requirement. The increase necessary ranges from State to State, from $38,000 for Idaho to $21 million for New York. The average increase will be $2.5 million per State. However, as these estimates do not include any regular quality funds currently used to improve the quality of care for infants and toddlers, they are likely overestimating the required increases for the majority of States and Territories.

D. Analysis of Regulatory Alternatives

In developing this proposed rule, we considered alternative ways to meet the purposes of the reauthorized CCDBG Act. There are areas of the CCDBG Act that we are interpreting and proposing to clarify through this rule. Our interpretation of the law remains within the legal parameters of the statute and is consistent with the goals and purposes of the law. Below we include a discussion of areas that we clarified through the proposed rule: background checks for regulated and registered providers and background checks for non-caregivers.

For the purposes of this analysis, we are discussing the costs, benefits, and potential caseload impacts related to meeting these new requirements. However, it is particularly difficult to predict caseload impact due to a variety of unknown factors, including future federal funding levels. Even if we were to assume level federal funding, States could allocate new funds, redirect current quality spending (e.g., by changing quality activities to focus on health & safety), shift costs to parents or providers, or use a combination of these approaches to pay for new requirements. The caseload estimates in the following discussion are based on the assumption that the entire cost of meeting this requirement are covered by redistributing funds that would otherwise be used for direct services. Therefore, these caseload impact figures should be considered upper bound estimates and are mostly likely significant overestimates.

Background Checks for Regulated and Registered Providers: At § 98.43(a)(1)(i), we propose to apply the requirements to all child care staff members (including prospective child care staff members) of all licensed, regulated, or registered child care providers and all child care providers eligible to deliver CCDF services. This language includes all licensed, regulated, or registered providers, regardless of whether they receive CCDF funds and all license-exempt CCDF providers (with the exception of those related to all children in their care).

The alternative to this policy would be to limit background checks to only providers receiving CCDF assistance. While we acknowledge that others may interpret the statute differently; however, we firmly believe that there is justification for applying this requirement in the broadest terms for two important reasons. First, it is our strong belief that all parents using child care deserve this basic protection of knowing that those who are trusted with the care of their children do not have criminal backgrounds that may endanger the well-being of their children.

Second, limiting those child care providers who are subject to background checks, has the potential to severely restrict parental choice and equal access for CCDF children. If all child care providers are not subject to comprehensive background checks, providers could opt to not serve CCDF children thereby restricting access. Creating a bifurcated system in which CCDF children have access to only a portion of child care providers who meet applicable standards would be incongruous with the purposes of the CCDBG Act and would not serve to advance the important goal of serving more low-income children in high quality care.

Choosing this would present additional costs to the alternative of limiting background checks to only CCDF providers. The cost of the background check requirement for only CCDF providers would be approximately $11.9 million per year (estimated using a 3% discount rate).

Using the methodology discussed in detail in the background check section of the preamble, we estimate the additional cost of requiring background checks of all licensed and regulated providers, rather than just those who are eligible to deliver CCDF services, to be approximately $1.7 million annually (estimated using a 3% discount rate), which would amount to an upper bound caseload impact of about 300 fewer children served per year.

Background Checks for Non-Caregivers: The law defines a child care staff member as someone (unless they are related to *all* children in care) who is employed by the child care provider for compensation or whose activities involve unsupervised access to children who are cared for by the child care provider. We propose to require individuals, age 18 or older, residing in a family child care home be subject to background checks. The alternative to this would be to not require background checks of other individuals living in the family child care home. However, we chose this policy because it is reasonable to assume that these individuals may have unsupervised access to children. Because we are including these individuals in the definition of child care staff members, they will be subject to the same requirements and will be allowed the same appeals process as employees.

More than forty 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).

While the total cost of the background check requirement is approximately $13.6 million, we can isolate the costs of applying the background checks to non-caregiver individuals, we estimate the cost to be approximately $3 million annually (estimated using a 3% discount rate),

which would amount to a upper bound caseload impact of approximately 550 fewer children served per year.

E. Break Even Analysis for Reductions in Injuries and Deaths

This section estimates the potential benefits associated with the elimination of injuries and deaths in child care settings in the United States, and the proportion of fatalities and injuries, which, if eliminated by the provisions discussed here, would justify their costs on their own. Standard methods are used to monetize the value of these potential benefits. Although children receiving subsidies through the Child Care and Development Fund (CCDF) are the individuals that will likely benefit most from the rule's overall health and safety provisions, we conduct this break even analysis using data on children in all child care settings since children in non-CCDF arrangements will directly benefit from the extension of background check requirements and may see additional benefits as a result of other health and safety and quality provisions in the proposed rule. As described above, the primary regulatory alternative in implementing health and safety provisions would be to restrict background checks provisions. Therefore, this analysis discusses the costs and benefits of the proposed rule relative to that alternative.

The benefits estimated for this analysis are derived from voluntary data reporting on fatalities and injuries in the child care setting to ACF in a Quality Performance Report (QPR). These figures are supplemented by data from several other sources. Although many States contribute data to the QPR report, data on fatalities and injuries is not available for all States. To estimate fatalities and injuries in the child care setting at the national level in 2014 using the QPR data, we impute estimated fatalities and injuries for States with incomplete reports. For States with no reported data for 2014, we assume that the injury or fatality rate per provider is equal to the average injury or fatality rate per provider across States with available 2014 data.

To monetize benefits from reductions in injury rates, we rely on data on the cost of injury from the Centers for Disease Control (CDC). In particular, we use CDC data to calculate the cost of non-fatal injuries resulting in emergency room treatment and/or hospitalization for children age 12 and under, which includes medical costs as well as lost productivity costs for caretakers, based on 2012 data[1]. After adjusting for inflation using the Gross Domestic Product (GDP) deflator from the Bureau of Economic Analysis (BEA), the cost per injury for children age 12 and under is $8,095 in 2014 dollars. The benefit of a reduction in the injury rate, then, is the reduction in the medical costs and productivity losses associated with the reduction in injuries. Note that this does not include the dollar value of any changes in health status for the injured individuals, which implies that these estimates understate the value of reductions in injuries in the child care setting. Based on QPR data, we estimate that there were 18,209 injuries in child care settings in 2014. To calculate the monetary value of a reduction in the injury rate in child care settings due to this rule, we multiplied the expected number of avoided injuries in each year by the value of eliminating each injury. For simplicity, we assume that the number of prevented injuries is the same in each year after implementation of the requirements, and that the cost of injury, in 2014 dollars, is constant over time. This method implies that the present value of eliminating all injuries in the child care setting over the period examined in this rule, using a 3% discount rate, is approximately $1.30 billion.

To monetize the value of reductions in mortality rates, we use estimates of the number of child fatalities in child care settings and information on the value of a statistical life for children. The number of child fatalities in the child care setting is estimated by combining two numbers: (1) the number of fatalities due to Sudden Infant Death Syndrome (SIDS), and (2) the number of

[1] CDC provided updated estimates of the cost of injury based on Cost of Injury Reports 2005 and 2012 data on non-fatal injuries. For more information, see http://www.cdc.gov/injury/wisqars/cost/cost-learn-more.html.

fatalities due to causes other than SIDS. These two numbers are estimated separately because SIDS is one type of fatality that is likely to be impacted by the health and safety provisions in the law and because the Centers for Disease Control (CDC)[2] publishes accurate estimates for this type of death[3]. According to CDC, there were 1,563 deaths due to SIDS in 2011. Research from a study in 2000 estimated that 14.8 percent[4] of SIDS fatalities took place in a family child care or a child care center. After applying the 14.8 percent to the 1,563 SIDS deaths, we estimate that the number of SIDS deaths in child care settings were 231 in 2014.

The number of non-SIDS deaths in 2014 is estimated based on QPR data. Information on cause of death were reported for 18 deaths in the 2014 QPR data, of which 5 were due to SIDS and 13 were due to other causes. Based on this information, we estimate that 72 percent of deaths in child care settings reported in QPR data were due to causes other than SIDS. After adding the 82 fatalities from non-SIDS as reported in the QPR data to the 231 fatalities from SIDS, we arrive at a sum of 313 fatalities in child care settings.

A 2010 study estimates that the value of a statistical life for children to be $12-15 million[5]. After taking the mean of this range and adjusting it for inflation using the GDP deflator, we arrive at $14.5 million in 2014 dollars per fatality. For simplicity, we assume that the potential number of lives saved is the same in each year after implementation of the requirements. We follow Department of Transportation (DOT) guidance[6] to adjust the value of a

[2] For more information, see http://wonder.cdc.gov.

[3] Our review of the QPR data conclude that the number of deaths and injuries reported are likely to be undercounts because some states do not collect data from some types of child care providers.

[4] Moon, Rachel Y., Kantilal M. Patel, and Sarah J. McDermott Shaefer. "Sudden infant death syndrome in child care settings." *Pediatrics* 106.2 (2000): 295-300.

[5] Hammitt, James K., and Kevin Haninger. "Valuing fatal risks to children and adults: Effects of disease, latency, and risk aversion." *Journal of Risk and Uncertainty* 40.1 (2010): 57-83 (estimate derived using stated-preference surveys inquiring about willingness to pay to reduce risks to one's child).

[6] For more information, see http://www.dot.gov/sites/dot.dev/files/docs/VSL%20Guidance.doc.

statistical life for real income growth, increasing it by 1.07 percent each year. To calculate the dollar value of reductions in mortality, we calculate the number of statistical lives saved, and multiply that number by the relevant value of a statistical life. This method implies that the present value of eliminating all deaths in the child care setting over the period examined in this rule, using a 3 percent discount rate, is approximately $44.4 billion.

Next, we estimate the proportion of fatalities and injuries which, if eliminated by these provisions that extend background checks would justify their costs on their own. Based on the assumptions and methodologies described above, the present value of the injury and mortality rate reduction benefits of the rule, using a 3% discount rate, would equal the costs of these provisions if fatalities and injuries were reduced by less than 1 percent over the period examined in this rule. Note that this does not include other benefits associated with this rule.

F. Accounting Statement – Table of Quantified Money Costs and Opportunity Costs

As required by OMB Circular A-4, we have prepared an accounting statement table showing the classification of the impacts associated with implementation of this proposed rule.

Table 10: Quantified Money Costs, Opportunity Costs, and Transfers ($ in millions)

	Phase-in Annual Average (Years 1-5)	On-going Annual Average (Years 6-10)	Annualized (over 10 years)			Total (over 10 years)		
			undiscounted	discounted		undiscounted	discounted	
				3%	7%		3%	7%
Money Costs *($ in millions)*								
Health and Safety								
Monitoring…….	125.9	157.0	141.5	139.5	136.7	1,414.7	1,225.3	1,027.2
Bkgd Checks.....	9.0	18.9	13.9	13.6	13.3	139.2	119.7	99.6
Training……	15.4	10.5	12.9	13.2	13.5	129.3	115.8	101.5
Admin……..*	7.5	9.2	8.3	8.2	8.1	83.4	72.4	60.9
IT and Infra-structure…….*	7.5	9.2	8.3	8.2	8.1	83.4	72.4	60.9
Consumer Education								
Website……	12.8	11.8	12.3	12.4	12.5	123.0	108.6	93.6
Statement.……..	1.0	0.8	0.9	0.9	0.9	8.8	7.8	6.8
Supply Building..	5.1	6.8	6.0	5.8	5.7	59.5	51.3	42.9
Money Costs Total……...	**184.2**	**224.2**	**204.1**	**201.8**	**198.8**	**2,041.3**	**1,773.3**	**1,493.4**
Opportunity Costs *($ in millions)*								
Health and Safety								
Monitoring…….	8.7	10.9	9.8	9.6	9.4	97.7	84.6	70.9
Bkgd Checks….	6.3	7.9	7.1	7.1	7.1	71.1	62.4	53.3
Training.……	43.8	29.9	36.8	37.6	38.5	368.4	330.0	289.3
Opportunity Costs Total.....	**58.8**	**48.7**	**53.7**	**54.3**	**55.0**	**537.2**	**477.0**	**413.5**
Cost Total.....	**243.0**	**272.9**	**257.8**	**256.1**	**253.8**	**2,578.5**	**2,250.3**	**1,906.9**
Transfers *($ in millions)*								
Increased Subsidy.	478.8	1,281.0	879.9	839.1	786.1	8,799.0	7,372.4	5,907.7
Transfers Total..	**478.8**	**1,281.0**	**879.9**	**839.1**	**786.1**	**8,799.0**	**7,372.4**	**5,907.7**
Grand Total ($ in millions)								
Costs and Transfers…….	***721.8***	***1,553.9***	***1,137.7***	***1,095.2***	***1,039.9***	***11,377.5***	***9,622.7***	***7,814.6***

*Administrative and IT/Infrastructure costs are only applied to Health and Safety requirements. Other costs have administrative costs already built into their cost estimates.

XII. Executive Order 13132; Federalism Impact Statement

Executive Order 13132 requires Federal agencies to consider the impact of their regulatory actions on State and local governments. Where such actions have federalism implications, agencies are directed to provide a statement for inclusion in the preamble to the regulations describing the agency's considerations.

Consultations with State and local officials. After passage of the CCDBG Act of 2014, the Office of Child Care (OCC) in the Office of the Deputy Assistant Secretary for Early Childhood Development in ACF conducted outreach to engage with a variety of stakeholders to better understand the implications of its provisions. OCC created a reauthorization page on its website to provide public information and a specific e-mail address to submit general questions. OCC received approximately 650 questions and comments through this email address, webinars, inquiries to regional offices, and meetings with grantees. OCC leadership and staff participated in more than 21 listening sessions with approximately 675 people representing diverse national, State, and local stakeholders regarding the law, held webinars and gave presentations at national conferences. Participants included State human services agencies, child care providers, parents with children in child care, child care resource and referral agencies, national and State advocacy groups, national stakeholders including faith-based communities, after-school and school-age child care providers, child care researchers, State and local early childhood organizations, provider associations, labor unions, and National Head Start Association members. In addition, OCC held five meetings with State and Territory CCDF administrators and a series of consultations with Tribal leaders to describe the law and to gather input from federal grantees with responsibility for operating the CCDF program. In addition, ACF reviewed the records of

comments received after issuing a now withdrawn NPRM for CCDF in May 2013 prior to passage of the CCDBG Act of 2014 by Congress. Many, but not all, of the key components of the Act are in alignment with provisions included in that NPRM.

Nature of concerns and the need to issue this proposed rule. State, Territorial and Tribal CCDF Lead Agencies want to provide family-friendly child care assistance and support increased quality of child care services, but are concerned about the cost of the proposed rule and need for grantee flexibility. While noting that this proposed rule implements a law that was enacted by Congress and signed by the President, we seriously considered these views in developing the proposed rule. We also completed a Regulatory Impact Analysis to fully assess costs and benefits of the new requirements. We recognize that a number of the new regulatory provisions will require some State, territory, and Tribal child care agencies to re-direct CCDF funds to implement specific provisions.

Extent to which we meet those concerns. The federal government provides annually to States, Territories, and Tribes $5.3 billion in annual funding to implement the CCDF program. Further, in large part, the changes included in the Act and this proposed rule are based upon practices already implemented by many States. Finally, in several areas, the proposed rule increases the flexibility available to States, Territories, and Tribes in administering the program (*e.g.*, waiving family copayments, defining protective services).

XIII. 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 determine whether a regulation may negatively impact 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. This rule will not have a negative impact on the autonomy or integrity of the family as an institution. Accordingly, we conclude that it is not necessary to prepare a family policymaking assessment. In fact, the proposed rule will have positive benefits by improving health and safety protections and the quality of care that children receive, as well as improving transparency for parents about the child care options available to the so they can make more informed child care decisions. This rule also increases continuity of care and stability through family-friendly practices.

XIV. Executive Order 13175 on Consultation with Indian Tribes

Executive Order 13175 requires agencies to consult with Tribal leaders and Tribal officials early in the process of developing regulations and prior to the formal promulgation of the regulations. Agencies also must include a Tribal impact statement, which includes a description of the agency's prior consultation with Tribal officials, a summary of the nature of their concerns and the agency's position supporting the need to issue the regulation, and a statement of the extent to which the concerns of Tribal officials have been met. ACF is committed to continued consultation and collaboration with Tribes, and this proposed rule meets the requirements of Executive Order 13175. The discussion of subpart I in section IV of the preamble serves as the Tribal impact statement and contains a detailed description of the consultation and outreach on this proposed rule.

List of Subjects in 45 CFR Part 98

Child care, Grant programs-social programs.

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

_____

Mark H. Greenberg,
Acting Assistant Secretary
for Children and Families.

Approved: October 28, 2015.

_____

Sylvia M. Burwell,
Secretary.

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 as follows:

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

2. Revise § 98.1 to read as follows:

§ 98.1 Purposes.

(a) The purposes of the CCDF are:

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

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

(3) To encourage States to provide consumer education information to help parents make informed choices about child care services and to promote involvement by parents and family members in the development of their children in child care settings;

(4) To assist States in delivering high-quality, coordinated early childhood care and education services to maximize parents' options and support parents trying to achieve independence from public assistance;

(5) To assist States in improving the overall quality of child care services and programs by implementing the health, safety, licensing, training, and oversight standards established in this subchapter and in State law (including State regulations);

(6) To improve child care and development of participating children; and

(7) To increase the number and percentage of low-income children in high-quality child care settings.

(b) The purpose of these regulations is to provide the basis for administration of the Fund. These regulations provide that State, Territorial, and Tribal Lead Agencies:

(1) Maximize parental choice of safe, healthy and nurturing child care settings through the use of certificates and through grants and contracts, and by providing parents with information about child care programs;

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

(3) Improve the quality and supply of child care and before- and after-school care services that meet applicable requirements and promote child development and learning and family economic stability;

(4) Coordinate planning and delivery of services at all levels, including Federal, State, Tribal, and local;

(5) Design flexible programs that provide for the changing needs of recipient families and engage families in their children's development and learning;

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

(7) Design programs that provide uninterrupted service to families and providers, to the extent statutorily possible, to support parental education, training, and employment and continuity of care that minimizes disruptions to children's learning and development;

(8) Provide a progression of training and professional development opportunities for caregivers, teachers, and directors to increase their effectiveness in supporting children's development and learning and strengthen the child care workforce.

3. Amend § 98.2 by:

a. Revising the definitions of *Categories of care*, *Eligible child*, *Eligible child care provider*, *Family child care provider*, *Lead Agency*, *Programs*, and *Sliding fee scale*;

b. Removing the definition of *Group home child care provider*; and

c. Adding in alphabetical order the definitions of *Child experiencing homelessness*, *Child with a disability*, *Director*, *English learner*, and *Teacher*.

The revisions and additions read as follows:

§ 98.2 Definitions.

* * * * *

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

* * * * *

Child experiencing homelessness means a child who is homeless as defined in section 725 of Subtitle VII-B of the McKinney-Vento Act (42 U.S.C. 11434a);

Child with a disability means:

(1) A child with a disability, as defined in section 602 of the Individuals with Disabilities Education Act (20 U.S.C. 1401);

(2) A child who is eligible for early intervention services under part C of the Individuals with Disabilities Education Act (20 U.S.C. 1431 *et seq*.);

(3) A child who is less than 13 years of age and who is eligible for services under section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794); or

(4) A child with a disability, as defined by the State, Territory or Tribe involved;

* * * * *

Director means a person who has primary responsibility for the daily operations management for a child care provider, which may be a family child care home, and which may serve children from birth to kindergarten entry and children in school-age child care;

* * * * *

Eligible child means an individual:

(1) Who is less than 13 years of age;

(2) Whose family income does not exceed 85 percent of the State median income for a family of the same size, and whose family assets do not exceed $1,000,000 (as certified by a member of such family); and

(3) Who--

(i) Resides with a parent or parents who are working or attending a job training or educational program; or

(ii) Is receiving, or needs to receive, protective services and resides with a parent or parents not described in paragraph (3)(i) of this definition;

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--

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

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

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

English learner means an individual who is limited English proficient, as defined in section 9101 of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 7801) or section 637 of the Head Start Act (42 U.S.C. 9832);

* * * * *

Family child care provider means one or more individual(s) 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;

* * * * *

Lead Agency means the State, territorial or tribal entity, or joint interagency office, designated or established under §§ 98.10 and 98.16(a) to which a grant is awarded and that is accountable for the use of the funds provided. The Lead Agency is the entire legal entity even if only a particular component of the entity is designated in the grant award document;

* * * * *

Programs refers generically to all activities under the CCDF, including child care services and other activities pursuant to § 98.50 as well as quality activities pursuant to § 98.51;

* * * * *

Sliding fee scale means a system of cost-sharing by a family based on income and size of the family, in accordance with § 98.45(k);

* * * * *

Teacher means a lead teacher, teacher, teacher assistant, or teacher aide who is employed by a child care provider for compensation on a regular basis and whose responsibilities and activities are to organize, guide, and implement activities in a group or individual basis, or to assist a teacher or lead teacher in such activities, to further the cognitive, social, emotional, and physical development of children from birth to kindergarten entry and children in school-age child care and may be a family child care provider;

* * * * *

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

§ 98.10 Lead Agency responsibilities.

The Lead Agency (which may be an appropriate collaborative agency), or a joint interagency office, as designated or established by the Governor of the State (or by the appropriate Tribal leader or applicant), shall:

* * * * *

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

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

(f) Consult, collaborate, and coordinate in the development of the State Plan in a timely manner with Indian Tribes or tribal organizations in the State (at the option of the Tribe or tribal organization).

5. Amend § 98.11 by adding a sentence to the end of paragraph (a)(3) and revising paragraph (b)(5) 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 agency 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.

(b) * * *

(5) Oversee the expenditure of funds by subgrantees and contractors, in accordance with 75 CFR parts 351 through 353;

* * * * *

6. Amend § 98.12 by revising paragraph (c) to read as follows:

§ 98.12 Coordination and consultation.

* * * * *

(c) Coordinate, to the maximum extent feasible, per § 98.10(f) with any Indian Tribes in the State receiving CCDF funds in accordance with subpart I of this part.

7. Amend § 98.14 by revising paragraphs (a)(1) introductory text, (a)(1)(C), and (a)(1)(D) and adding paragraphs (a)(1)(E), (F), (G), (H), (I), (J), (K), (L), and (M), (a)(3) and (4), and (d) to read as follows:

§ 98.14 Plan process.

* * * * *

(a)(1) Coordinate the provision of services funded under this part with other Federal, State, and local child care and early childhood development programs (including such programs for the benefit of Indian children, infants and toddlers, children with disabilities, children experiencing homelessness, and children in foster care) to expand accessibility and continuity of care as well as full-day services. The Lead Agency shall also coordinate the provision of services with the State, and if applicable, tribal agencies responsible for:

* * * * *

(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));

(D) Providing Temporary Assistance for Needy Families;

(E) Child care licensing;

(F) Head Start collaboration, as authorized by the Head Start Act (42 U.S.C. 9831 *et seq.*);

(G) State Advisory Council on Early Childhood Education and Care (designated or established pursuant to the Head Start Act (42 U.S.C. 9831 *et seq.*)) or similar coordinating body;

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

(I) Emergency management and response;

(J) Child and Adult Care Food Program (CACFP) authorized by the National School Lunch Act (42 U.S.C. 1766);

(K) Services for children experiencing homelessness, including State Coordinators of Education for Homeless Children and Youth (EHCY State Coordinators) and, to the extent practicable, local liaisons designated by Local Educational Agencies (LEAs) in the State as required by the McKinney-Vento Act (42 U.S.C. 11432) and Continuum of Care grantees;

(L) Medicaid authorized by title XIX of the Social Security Act; and

(M) Mental health services.

* * * * *

(3) If the Lead Agency elects to combine funding for CCDF services with any other early childhood program, provide a description in the CCDF Plan of how the Lead Agency will combine and use the funding.

(4) Demonstrate in the CCDF Plan how the State, Territory, or Tribe encourages partnerships among its agencies, other public agencies, Indian Tribes and Tribal organizations, and private entities, including faith-based and community-based organizations, to leverage existing service delivery systems for child care and development services and to increase the supply and quality of child care and development services and to increase the supply and quality of child care services for children who are less than 13 years of age, such as by implementing voluntary shared service alliance models.

* * * * *

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

8. Amend § 98.15 by:

a. Revising paragraph (a)(6);

b. Adding paragraphs (a)(7), (8), (9), (10), and (11); and

c. Revising paragraph (b).

The revisions and additions read as follows:

§ 98.15 Assurances and certifications.

(a) * * *

(6) That if expenditures for pre-Kindergarten services are used to meet the maintenance-of-effort requirement, the State has not reduced its level of effort in full-day/full-year child care services, pursuant to § 98.55(h)(1).

(7) Training and professional development requirements comply with § 98.44 and are applicable to caregivers, teaching staff, and directors working for child care providers of services for which assistance is provided under the CCDF.

(8) To the extent practicable, enrollment and eligibility policies support the fixed costs of providing child care services by delinking provider payment rates from an eligible child's occasional absences in accordance with § 98.45(m).

(9) The State will maintain or implement early learning and developmental guidelines that are developmentally appropriate for all children from birth to kindergarten entry, describing what such children should know and be able to do, and covering the essential domains of early childhood development (cognition, including language arts and mathematics; social, emotional and physical development; and approaches toward learning) for use statewide by child care providers and caregivers. Such guidelines shall—

(i) Be research-based and developmentally, culturally, and linguistically appropriate, building in a forward progression, and aligned with entry to kindergarten;

(ii) Be implemented in consultation with the State educational agency and the State Advisory Council on Early Childhood Education and Care (designated or established pursuant to section 642B(b)(I)(A)(i) of the Head Start Act (42 U.S.C. 9837b(b)(1)(A)(i)) or similar coordinating body, and in consultation with child development and content experts; and

(iii) Be updated as determined by the State.

(10) Funds received by the State to carry out this subchapter will not be used to develop or implement an assessment for children that—

(i) Will be the primary or sole basis for a child care provider being determined to be ineligible to participate in the program carried out under this subchapter;

(ii) Will be used as the primary or sole basis to provide a reward or sanction for an individual provider;

(iii) Will be used as the primary or sole method for assessing program effectiveness; or

(iv) Will be used to deny children eligibility to participate in the program carried out under this subchapter.

(11) Any code or software for child care information systems or information technology that a Lead Agency or other agency expends CCDF funds to develop must be made available upon request to other public agencies for their use in administering child care or related programs.

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

(1) The State has developed the CCDF Plan in consultation with the State Advisory Council on Early Childhood Education and Care (designated or established pursuant to section 642B(b)(I)(A)(i) of the Head Start Act (42 U.S.C. 9837b(b)(1)(A)(i))) or similar coordinating body, pursuant to § 98.14(a)(1)(G);

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

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

(4) It will collect and disseminate to parents of eligible children, the general public and, where applicable, child care providers, consumer education information that will promote informed child care choices, information on access to other programs for which families may be eligible, and information on developmental screenings, as required by § 98.33;

(5) In accordance with § 98.33(a), that the State makes public through a consumer-friendly and easily accessible website the results of monitoring and inspection reports, as well as the number of deaths, serious injuries, and instances of substantiated child abuse that occurred in child care settings;

(6) There are in effect licensing requirements applicable to child care services provided within the State, pursuant to § 98.40;

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

(8) In accordance with § 98.42(a), procedures are in effect to ensure that child care providers of services for which assistance is provided under the CCDF comply with all applicable State or local (or tribal) health and safety requirements;

(9) Caregivers, teachers, and directors of child care providers comply with the State's, Territory's, or Tribe's procedures for reporting child abuse and neglect as required by section

106(b)(2)(B)(i) of the Child Abuse Prevention and Treatment Act (42 U.S.C. 5106a(b)(2)(B)(i)) or other child abuse reporting procedures and laws in the service area, as required by § 98.41(e);

(10) There are in effect monitoring policies and practices pursuant to § 98.42;

(11) Payment rates for the provision of child care services, in accordance with § 98.45, are sufficient to ensure equal access for eligible children to comparable child care services in the State or sub-State area that are provided to children whose parents are not eligible to receive assistance under this program or under any other Federal or State child care assistance programs;

(12) Payment practices of child care providers of services for which assistance is provided under the CCDF reflect generally accepted payment practices of child care providers that serve children who do not receive CCDF assistance, pursuant to § 98.45(m); and

(13) There are in effect policies to govern the use and disclosure of confidential and personally-identifiable information about children and families receiving CCDF assistance and child care providers receiving CCDF funds.

9. Revise § 98.16 to read as follows:

§ 98.16 Plan provisions.

A CCDF Plan shall contain the following:

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

(b) 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);

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

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

(2) Identification of the public or private entities designated to receive private donated funds and the purposes for which such funds will be expended, pursuant to § 98.55(f);

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

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

(g) Definitions of the following terms for purposes of determining eligibility, pursuant to §§ 98.20(a) and 98.46:

(1) Special needs child;

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

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

(4) Job training and educational program;

(5) Residing with;

(6) Working;

(7) Protective services (if applicable), including whether children in foster care are considered in protective services for purposes of child care eligibility; and whether respite care is provided to custodial parents of children in protective services.

(8) Very low income; and

(9) In loco parentis;

(h) A description and demonstration of eligibility determination and redetermination processes to promote continuity of care for children and stability for families receiving CCDF services, including:

(1) An eligibility redetermination period of no less than 12 months in accordance with § 98.21(a);

(2) A graduated phaseout for families whose income exceeds the Lead Agency's threshold to initially qualify for CCDF assistance, but does not exceed 85 percent of State median income, pursuant to § 98.21(b);

(3) Processes that take into account irregular fluctuation in earnings, pursuant to § 98.21(c);

(4) Procedures and policies to ensure that parents are not required to unduly disrupt their education, training, or employment to complete eligibility redetermination, pursuant to § 98.21(d);

(5) Limiting any requirements to report changes in circumstances in accordance with § 98.21(e);

(6) Policies that take into account children's development and learning when authorizing child care services pursuant to § 98.21(f); and

(7) Other policies and practices such as timely eligibility determination and processing of applications;

(i) For child care services pursuant to § 98.50:

(1) A description of such services and activities, including how the Lead Agency will address supply shortages through the use of grants and contracts. The description should identify 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;

(2) Any limits established for the provision of in-home care and the reasons for such limits pursuant to § 98.30(e)(1)(iii);

(3) A list of political subdivisions in which such services and activities are offered, if such services and activities are not available throughout the entire service area;

(4) A description of how the Lead Agency will meet the needs of certain families specified at § 98.50(e);

(5) Any additional eligibility criteria, priority rules, and definitions established pursuant to § 98.20(b);

(j) A description of the activities to provide comprehensive consumer and provider education, including the posting of monitoring and inspection reports, pursuant to § 98.33, to increase parental choice, and to improve the quality of child care, pursuant to § 98.53;

(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 § 98.45(k). This shall 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, and any exemptions to those requirements for relative providers made in accordance with § 98.42(c);

(m) A description of child care standards for child care providers of services for which assistance is provided under the CCDF, in accordance with § 98.41(d), that includes group size limits, child-staff ratios, and required qualifications for caregivers, teachers, and directors;

(n) A description of monitoring and other enforcement procedures in effect to ensure that child care providers comply with applicable health and safety requirements pursuant to § 98.42;

(o) A description of criminal background check requirements, policies, and procedures in accordance with § 98.43, including of description of the requirements, policies, and procedures in place to respond to other States', Territories', and Tribes' requests for background check results in order to accommodate the 45 day timeframe;

(p) A description of training and professional development requirements for caregivers, teaching staff, and directors of providers of services for which assistance is provided in accordance with § 98.44;

(q) A description of the child care certificate payment system(s), including the form or forms of the child care certificate, pursuant to § 98.30(c);

(r) Payment rates and a summary of the facts, including a biennial local market rate survey or alternative methodology relied upon to determine that the rates provided are sufficient to ensure equal access pursuant to § 98.45;

(s) A detailed description of the State's hotline for complaints, its process for responding to complaints, 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;

(t) A detailed description of the procedures in effect for affording parents unlimited access to their children whenever their children are in the care of the provider, pursuant to § 98.31;

(u) A detailed description of the licensing requirements applicable to child care services provided, any exemption to licensing requirements that is applicable to child care providers of services for which assistance is provided under the CCDF and a demonstration why such exemption does not endanger the health, safety, or development of children, and a description of how such licensing requirements are effectively enforced, pursuant to § 98.40;

(v) Pursuant to § 98.33(e), the definitions or criteria used to implement the exception, provided in section 407(e)(2) of the Social Security Act, to individual penalties in the TANF work requirement applicable to a single custodial parent caring for a child under age six;

(w)(1) When any Matching funds under § 98.55(b) are claimed, a description of the efforts to ensure that pre-Kindergarten programs meet the needs of working parents;

(2) When State pre-Kindergarten expenditures are used to meet more than 10% of the amount required at § 98.55(c)(1), or for more than 10% of the funds available at § 98.55(b), or both, a description of how the State will coordinate its pre-Kindergarten and child care services to expand the availability of child care;

(x) A description of the Lead Agency's strategies (which may include alternative payment rates to child care providers, the provision of direct grants or contracts, offering child care certificates, or other means) to increase the supply and improve the quality of child care services for children in underserved areas, infants and toddlers, children with disabilities as defined by the Lead Agency, and children who receive care during nontraditional hours;

(y) A description of how the Lead Agency prioritizes increasing access to high quality child care and development services for children of families in areas that have significant concentrations of poverty and unemployment and that do not have sufficient numbers of such programs, pursuant to § 98.46;

(z) A description of how the Lead Agency develops and implements strategies to strengthen the business practices of child care providers to expand the supply, and improve the quality of, child care services;

(aa) A demonstration of how the State, Territory or Tribe will address the needs of children, including the need for safe child care, before, during and after a state of emergency declared by the Governor or a major disaster or emergency (as defined by section 102 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5122) through a Statewide Disaster Plan (or Disaster Plan for a Tribe's service area) that:

(1) For a State, is developed in collaboration with the State human services agency, the State emergency management agency, the State licensing agency, the State health department or public health department, local and State child care resource and referral agencies, and the State Advisory Council on Early Childhood Education and Care (designated or established pursuant to section 642B(b)(I)(A)(i) of the Head Start Act (42 U.S.C. 9837b(b)(1)(A)(i))) or similar coordinating body; and

(2) Includes the following components:

(i) Guidelines for continuation of child care subsidies and child care services, which may include the provision of emergency and temporary child care services during a disaster, and temporary operating standards for child care after a disaster;

(ii) Coordination of post-disaster recovery of child care services; and

(iii) Requirements that child care providers of services for which assistance is provided under the CCDF, as well as other child care providers as determined appropriate by the State, Territory or Tribe, have in place:

(A) Procedures for evacuation, relocation, shelter-in-place, lock-down, communication and reunification with families, continuity of operations, accommodations of infants and toddlers, children with disabilities, and children with chronic medical conditions; and

(B) Procedures for staff and volunteer emergency preparedness training and practice drills, including training requirements for child care providers of services for which assistance is provided under CCDF at § 98.41(a)(1)(vii);

(bb) A description of payment practices applicable to providers of child care services for which assistance is provided under this part, pursuant to § 98.45(m), including practices to ensure timely payment for services, to delink provider payments from children's occasional absences to the extent practicable, and to reflect generally-accepted payment practices;

(cc) A description of internal controls to ensure integrity and accountability, processes in place to investigate and recover fraudulent payments and to impose sanctions on clients or providers in response to fraud, and procedures in place to document and verity eligibility, pursuant to § 98.68;

(dd) A description of how the Lead Agency will provide outreach and services to eligible families with limited English proficiency and persons with disabilities and facilitate participation of child care providers with limited English proficiency and disabilities in the subsidy system;

(ee) A description of policies on suspension and expulsion of children birth to age five in child care and other early childhood programs receiving assistance under this part, which must be disseminated as part of consumer and provider education efforts in accordance with §98.33(b)(1)(v);

(ff) Designation of a State, territorial, or tribal entity to which child care providers must submit reports of any serious injuries or deaths of children occurring in child care, in accordance with §98.42(b)(4);

(gg) A description of how the Lead Agency will support child care providers in the successful engagement of families in children's learning and development;

(hh) A description of how the Lead Agency will respond to complaints submitted through the national hotline and website, required in the CCDBG Act of 2014 (Section 658L(b)(2)), including the designee responsible for receiving and responding to such complaints regarding both licensed and license-exempt child care providers; and

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

10. Amend § 98.17 by revising paragraph (a) to read as follows:

§ 98.17 Period covered by Plan.

(a) For States, Territories, and Indian Tribes the Plan shall cover a period of three years.

* * * * *

11. Amend § 98.18 by revising paragraph (b) to read as follows:

§ 98.18 Approval and disapproval of Plans and Plan amendments.

* * * * *

(b) *Plan amendments*. (1) Approved Plans shall be amended whenever a substantial change in the program occurs. A Plan amendment shall be submitted within 60 days of the effective date of the change. Plan amendments will be approved not later than the 90th day following the date on which the amendment is received, unless a written agreement to extend that period has been secured.

(2) Lead Agencies must ensure advanced written notice is provided 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.

* * * * *

12. Add § 98.19 to subpart B to read as follows:

§ 98.19 Requests for temporary relief from requirements.

(a) The Secretary may waive one or more of the requirements contained in the Act or this part, with the exception of State Match and Maintenance of Effort requirements for a State, consistent with the conditions described in section 658I(c)(1) of the Act, provided that the waiver request:

(1) Describes circumstances that prevent the State, Territory, or Tribe from complying with any statutory or regulatory requirements of this part;

(2) By itself, contributes to or enhances the State's, Territory's, or Tribe's ability to carry out the purposes of the Act and this part;

(3) Will not contribute to inconsistency with the purposes of the Act or this part, and;

(4) Meets the requirements set forth in paragraphs (b) through (g) of this section.

(b) Types of waivers include:

(1) *Transitional and legislative waivers*. Lead Agencies may apply for temporary waivers meeting the requirements described in paragraph (a) of this section that would provide transitional relief from conflicting or duplicative requirements preventing implementation, or an extended period of time in order for a State, territorial, or tribal legislature to enact legislation to implement the provisions of this subchapter. Such waivers are:

(i) Limited to a one-year initial period;

(iii) May be extended, in accordance with paragraph (f) of this section, for at most one additional year from the date of approval of the extension,

(iii) Are designed to provide States, Territories and Tribes at most one full legislative session to enact legislation to implement the provisions of the Act or this part, and;

(iv) May be terminated by the Secretary at any time in accordance with paragraph (e) of this section.

(2) *Waivers for extraordinary circumstances*. States, Territories and Tribes may apply for waivers meeting the requirements described in paragraph (a) of this section, in cases of extraordinary circumstances, which are defined as temporary circumstances or situations, such as a natural disaster or financial crisis. Such waivers are:

(i) Limited to an initial period of no more than 2 years from the date of approval;

(ii) May be extended, in accordance with paragraph (f) of this section, for at most one additional year from the date of approval of the extension, and;

(iii) May be terminated by the Secretary at any time in accordance with paragraph (e) of this section.

(c) Waiver requests must be submitted to the Secretary in writing and:

(1) Indicate which type of waiver, as detailed in paragraph (b) of this section, the State, Territory or Tribe is requesting;

(2) Detail each sanction or provision of the Act or regulations that the State, Territory or Tribe seeks relief from;

(3) Describe how a waiver from that sanction or provision will, by itself, improve delivery of child care services for children; and

(4) Certify and describe how the health, safety, and well-being of children served through assistance received under this part will not be compromised as a result of the waiver.

(d) Within 90 days after receipt of the waiver request or, if additional follow-up information has been requested, the receipt of such information, the Secretary will notify the Lead Agency of the approval or disapproval of the request.

(e) *Termination*. The Secretary shall terminate approval of a request for a waiver authorized under the Act or this section if the Secretary determines, after notice and opportunity for a hearing, that the performance of a State, Territory or Tribe granted relief under this section has been inadequate, or if such relief is no longer necessary to achieve its original purposes.

(f) *Renewal.* The Secretary may approve or disapprove a request from a State, Territory or Tribe for renewal of an existing waiver under the Act or this section for a period no longer than one year. A State, Territory or Tribe seeking to renew their waiver approval must inform the Secretary of this intent no later than 30 days prior to the expiration date of the waiver. The State,

Territory or Tribe shall re-certify in its extension request the provisions in paragraph (a) of this section, and shall also explain the need for additional time of relief from such sanction(s) or provisions.

(g) *Restrictions*. The Secretary may not:

(1) Permit Lead Agencies to alter the eligibility requirements for eligible children, including work requirements, job training, or educational program participation, that apply to the parents of eligible children under this part;

(2) Waive anything related to the Secretary's authority under this part; or

(3) Require or impose any new or additional requirements in exchange for receipt of a waiver if such requirements are not specified in the Act.

13. Amend § 98.20 by:

a. Revising paragraphs (a) and (b) introductory text; and

b. In paragraph (b)(2), removing "Subpart D; or" and adding in its place "subpart D of this part;";

c. In paragraph (b)(3):

i. Removing "§ 98.44" and adding "§ 98.46" in its place; and

ii. Removing the period at the end of the paragraph and adding "; or" in its place; and

d. Adding paragraphs (b)(4) and (c),

The revisions and additions read as follows:

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

(a) In order to be eligible for services under § 98.50, a child shall, at the time of eligibility determination or redetermination:

(1)(i) Be under 13 years of age; or,

(ii) At the option of the Lead Agency, be under age 19 and physically or mentally incapable of caring for himself or herself, or under court supervision;

(2)(i) Reside with a family whose income does not exceed 85 percent of the State's median income (SMI), which must be based on the most recent SMI data that is published by the Bureau of the Census, for a family of the same size; and

(ii) Whose family assets do not exceed $1,000,000 (as certified by such family member); and

(3)(i) Reside with a parent or parents who are working or attending a job training or educational program; or

(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 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 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) At grantee option, the waiver provisions in paragraph (a)(3)(ii)(A) of this section apply to children in foster care when defined in the Plan, pursuant to § 98.16(g)(7).

(b) A grantee or other administering agency may establish eligibility conditions or priority rules in addition to those specified in this section and § 98.46, which shall be described in the Plan pursuant to § 98.16(i)(5), so long as they do not:

*****

(4) Impact eligibility other than at the time of eligibility determination or redetermination.

(c) For purposes of implementing the citizenship eligibility verification requirements mandated by title IV of the Personal Responsibility and Work Opportunity Reconciliation Act, 8 U.S.C. 1601 *et seq.*, only the citizenship and immigration status of the child, who is the primary beneficiary of the CCDF benefit, is relevant. Therefore, a Lead Agency or other administering agency may not condition a child's eligibility for services under § 98.50 based upon the citizenship or immigration status of their parent or the provision of any information about the citizenship or immigration status of their parent.

14. Add § 98.21 to subpart C to read as follows:

§ 98.21 Eligibility determination processes.

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

(1) During the period of time between redeterminations, if the child met all of the requirements in §98.20(a) on the date of the most recent eligibility determination or redetermination, the child shall be considered to be eligible and will receive services, regardless of:

(i) A change in family income, if that family income does not exceed 85 percent of SMI for a family of the same size; or

(ii) A temporary change in the ongoing status of the child's parent as working or attending a job training or educational program. A temporary change shall include, at a minimum:

(A) Any time-limited absence from work for an employed parent for periods of family leave (including parental leave) or sick leave;

(B) Any interruption in work for a seasonal worker who is not working between regular industry work seasons;

(C) Any student holiday or break for a parent participating in training or education;

(D) Any reduction in work, training or education hours, as long as the parent is still working or attending training or education;

(E) Any other cessation of work or attendance at a training or education program that does not exceed three months or a longer period of time established by the Lead Agency;

(F) Any change in age, including turning 13 years old during the eligibility period; and

(G) Any change in residency within the State, Territory, or Tribal service area.

(2) Lead Agencies have the option, but are not required, to discontinue assistance due to a parent's loss of work or cessation of attendance at a job training or educational program that does not constitute a temporary change in accordance with paragraph (a)(1)(ii) of this section. However, if the Lead Agency exercises this option, it must continue assistance at the same level for a period of not less than three months after such loss or cessation in order for the parent to engage in job search and resume work, or resume attendance at a job training or educational activity.

(3) Lead Agencies cannot increase family co-payment amounts, established in accordance with § 98.45(k), within the minimum 12-month eligibility period except as described in paragraph (b)(2) of this section.

(4) Because a child meeting eligibility requirements at the most recent eligibility determination or redetermination is considered eligible between redeterminations as described in paragraph (a)(1) of this section, any payment for such a child shall not be considered an error or improper payment under subpart K of this part due to a change in the family's circumstances.

(b) Lead Agencies that establish family income eligibility at a level less than 85 percent of SMI for a family of the same size (in order for a child to initially qualify for assistance) must provide a graduated phaseout by implementing two-tiered eligibility thresholds.

(1) This can be accomplished either by:

(i) Establishing the second tier of eligibility at 85 percent of SMI for a family of the same size and considering children to be eligible (pursuant to paragraph (a) of this section) if their parents, at the time of redetermination, are working or attending a job training or educational program even if their income exceeds the Lead Agency's income limit to initially quality for assistance, but does not exceed the second eligibility threshold; or

(ii) Using the approach specified in paragraph (b)(1)(i) of this section but only for a limited period of not less than an additional 12 months.

(2) Lead Agencies may gradually adjust co-pay amounts for families that are determined eligible under the conditions described in paragraph (b) of this section to help families transition off of child care assistance.

(c) The Lead Agency shall establish processes for initial determination and redetermination of eligibility that take into account irregular fluctuation in earnings, including policies that ensure temporary increases in income, including temporary increases that result in monthly income exceeding 85 percent of SMI (calculated on a monthly basis), do not affect eligibility or family co-payments.

(d) The Lead Agency shall establish procedures and policies to ensure parents, especially parents receiving assistance through the Temporary Assistance for Needy Families (TANF) program, are not required to unduly disrupt their education, training, or employment in order to complete the eligibility redetermination process.

(e) The Lead Agency shall specify in the Plan any requirements for parents to notify the Lead Agency of changes in circumstances during the minimum 12-month period, and describe efforts to ensure such requirements do not impact continuity for eligible families between redeterminations.

(1) The Lead Agency must require families to report a change at any point during the minimum 12-month period, limited to:

(i) If the family's income exceeds 85% of SMI, taking into account irregular income fluctuations; or

(ii) At the option of the Lead Agency, the family has experienced a non-temporary cessation of work, training, or education.

(2) Any requirement for parents to provide notification of changes in circumstances to the Lead Agency or entities designated to perform eligibility functions shall not constitute an undue burden on families. Any such requirements shall:

(i) Limit notification requirements to items that impact a family's eligibility (e.g., only if income exceeds 85 percent of SMI, or there is a non-temporary change in the status of the child's parent as working or attending a job training or educational program) or those that enable the Lead Agency to contact the family or pay providers;

(ii) Not require an office visit in order to fulfill notification requirements; and

(iii) Offer a range of notification options (e.g., phone, email, online forms, extended submission hours) to accommodate the needs of working parents;

(3) During a period of graduated phase-out, the Lead Agency may require additional reporting on changes in family income in order to gradually adjust family co-payments, if desired, as described in paragraph (b)(2) of this section.

(4) Lead Agencies must allow families the option to voluntarily report changes on an ongoing basis.

(i) Lead Agencies are required to act on this information provided by the family if it would reduce the family's co-payment or increase the family's subsidy.

(ii) Lead Agencies are prohibited from acting on information that would reduce the family's subsidy unless the information provided indicates the family's income exceeds 85 percent of SMI for a family of the same size, taking into account irregular income fluctuations, or, at the option of the Lead Agency, the family has experienced a non-temporary change in the work, training, or educational status.

(f) Lead Agencies must take into consideration children's development and learning and promote continuity of care when authorizing child care services.

(g) Lead Agencies are not required to limit authorized child care services strictly based on the work, training, or educational schedule of the parent(s) or the number of hours the parent(s) spend in work, training, or educational activities.

15. Amend § 98.30 by revising paragraphs (e)(1), (f) introductory text, and (f)(2) and adding paragraphs (g) and (h) to read as follows:

§ 98.30 Parental choice.

* * * * *

(e)(1) For child care services, certificates under paragraph (a)(2) of this section shall permit parents to choose from a variety of child care categories, including:

(i) Center-based child care;

(ii) Family child care; and

(iii) In-home child care, with limitations, if any, imposed by the Lead Agency and described in its Plan at § 98.16(i)(2). Under each of the above categories, care by a sectarian provider may not be limited or excluded.

* * * * *

(f) With respect to State and local regulatory requirements under § 98.40, health and safety requirements under § 98.41, and payment rates under § 98.45, CCDF funds will not be available to a Lead Agency if State or local rules, procedures or other requirements promulgated for purposes of the CCDF significantly restrict parental choice by:

* * * * *

(2) Having the effect of limiting parental access to or choice from among such categories of care or types of providers, as defined in § 98.2, with the exception of in-home care; 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, such as those identified in a quality improvement system or other transparent system of quality indicators.

(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.

16. Revise § 98.31 to read as follows:

§ **98.31 Parental access.**

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

17. Revise § 98.32 to read as follows:

§ 98.32 Parental complaints.

The State shall:

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

(b) Maintain a record of substantiated parent complains;

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

(d) The Lead Agency shall provide a detailed description in the Plan of how such record is maintained and is made available.

18. Revise §98.33 to read as follows:

§ 98.33 Consumer and provider education.

The Lead Agency shall:

(a) Certify that it will collect and disseminate consumer education information to parents of eligible children, the general public, and providers through a consumer-friendly and easily accessible website that ensures the widest possible access to services for families who speak languages other than English and persons with disabilities, including:

(1) Lead Agency processes, including:

(i) The process for licensing child care providers pursuant to § 98.40;

(ii) The process for conducting monitoring and inspections of child care providers pursuant to § 98.42:

(iii) Policies and procedures related to criminal background checks for child care providers pursuant to § 98.43; and

(iv) The offenses that prevent individuals from serving as child care providers.

(2) Provider-specific information for all eligible and licensed child care providers (other than an individual who is related to all children for whom child care services are provided), including:

(i) A localized list of child care providers, differentiating between licensed and license-exempt providers, searchable by zip code;

(ii)The quality of a provider as determined by the Lead Agency through a quality rating and improvement system or other transparent system of quality indicators, if such information is available for the provider;

(iii) Results of monitoring and inspection reports for child care providers, including those required at § 98.42 and those due to major substantiated complaints about failure to comply with provisions at § 98.41 and Lead Agency child care policies. Lead Agencies shall post in a timely manner full monitoring and inspection reports, either in plain language or with a plain language summary, for parents and child care providers to understand. Such results shall include:

(A) Information on the date of such inspection;

(B) Information on corrective action taken by the State and child care provider, where applicable; and

(C) A minimum of 5 years of results, where available.

(iv) The number of serious injuries and deaths of children that occurred while in the care of the provider.

(3) Aggregate number of deaths, serious injuries, and instances of substantiated child abuse that occurred in child care settings each year, for eligible providers.

(4) Referrals to local child care resource and referral organizations.

(5) Directions on how parents can contact the Lead Agency or its designee and other programs to help them understand information included on the website.

(b) Certify that it will collect and disseminate, through resource and referral organizations or other means as determined by the State, including, but not limited to, through the website at § 98.33(a), to parents of eligible children and the general public, and where applicable providers, information about:

(1) The availability of the full diversity of child care services to promote informed parental choice, including information about:

(i) the availability of child care services under this part and other programs for which families may be eligible, as well as the availability of financial assistance to obtain child care services;

(ii) Other programs for which families that receive assistance under this part may be eligible, including:

(A) Temporary Assistance for Needy Families (TANF) (42 U.S.C. 601 *et seq.*);

(B) Head Start and Early Head Start (42 U.S.C. 9831 *et seq.*);

(C) Low-Income Home Energy Assistance Program (LIHEAP) (42 U.S.C. 8621 *et seq.*);

(D) Supplemental Nutrition Assistance Program (SNAP) (7 U.S.C. 2011 *et seq.*);

(E) Special supplemental nutrition program for women, infants, and children (42 U.S.C. 1786);

(F) Child and Adult Care Food Program (CACFP) (42 U.S.C. 1766);

(G) Medicaid and the State children's health insurance programs (42 U.S.C. 1396 *et seq.*, 1397aa *et seq.*);

(iii) Programs carried out under section 619 and part C of the Individuals with Disabilities Education Act (IDEA) (20 U.S.C. 1419, 1431 *et seq.*)

(iv) Research and best practices concerning children's development, and meaningful parent and family engagement, and physical health and development, particularly healthy eating and physical activity; and

(v) State policies regarding social-emotional behavioral health of children which may include positive behavioral health intervention and support models for birth to school-age or age-appropriate, and policies on suspension and expulsion of children birth to age five in child care and other early childhood programs, as described in the Plan pursuant to § 98.16(ee), receiving assistance under this part.

(2) [Reserved]

(c) Provide information on developmental screenings to parents as part of the intake process for families receiving assistance under this part, and to providers through training and education, including:

(1) Information on existing resources and services the State can make available in conducting developmental screenings and providing referrals to services when appropriate for children who receive assistance under this part, including the coordinated use of the Early and Periodic Screening, Diagnosis, and Treatment program (42 U.S.C. 1396 *et seq.*) and

developmental screening services available under section 619 and part C of the Individuals with Disabilities Education Act (20 U.S.C. 1419, 1431 *et seq.*); and

(2) A description of how a family or eligible child care provider may utilize the resources and services described in paragraph (c)(1) of this section to obtain developmental screenings for children who receive assistance under this part who may be at risk for cognitive or other developmental delays, which may include social, emotional, physical, or linguistic delays.

(d) For families that receive assistance under this part, provide specific information about the child care provider selected by the parent, including health and safety requirements met by the provider pursuant to § 98.41, any licensing or regulatory requirements met by the provider, date the provider was last inspected, any history of violations of these requirements, and any voluntary quality standards met by the provider. Information must also describe how CCDF subsidies are designed to promote equal access in accordance with § 98.45, how to submit a complaint through the hotline at § 98.32(a), and how to contact local resource and referral agencies or other community-based supports that assist parents in finding and enrolling in quality child care.

(e) Inform parents who receive TANF benefits about the requirement at section 407(e)(2) of the Social Security Act that the TANF agency make an exception to the individual penalties associated with the work requirement for any single custodial parent who has a demonstrated inability to obtain needed child care for a child under six years of age. The information may be provided directly by the Lead Agency, or, pursuant to § 98.11, other entities, and shall include:

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

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

(i) “Appropriate child care”;

(ii) “Reasonable distance”;

(iii) “Unsuitability of informal child care”;

(iv) “Affordable child care arrangements”;

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

(f) Include in the triennial Plan the definitions or criteria the TANF agency uses in implementing the exception to the work requirement specified in paragraph (e) of this section.

19. § Amend 98.40 by redesignating paragraph (a)(2) as (a)(3), revising newly redesignated paragraph (a)(3), and adding paragraph (a)(2) to read as follows:

§ 98.40 Compliance with applicable State and local regulatory requirements.

(a) * * *

(2) Describe in the Plan exemption(s) to licensing requirements, if any, for child care services for which assistance is provided, and a demonstration for how such exemption(s) do not endanger the health, safety, or development of children who receive services from such providers. Lead Agencies must provide the required description and demonstration for any exemptions based on:

(i) Provider category, type, or setting;

(ii) Length of day;

(iii) Providers not subject to licensing because the number of children served falls below a State-defined threshold; and

(iv) Any other exemption to licensing requirements; and

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

* * * * *

20. Revise § 98.41to read as follows:

§ 98.41 Health and safety requirements.

(a) Each Lead Agency shall certify that there are in effect, within the State (or other area served by the Lead Agency), under State, local or tribal law, requirements (appropriate to provider setting and age of children served) that are designed, implemented, and enforced to protect the health and safety of children. Such requirements must be applicable to child care providers of services, for which assistance is provided under this part. Such requirements, which are subject to monitoring pursuant to § 98.42, shall:

(1) Include health and safety topics consisting of:

(i) The prevention and control of infectious diseases (including immunizations); with respect to immunizations, the following provisions apply:

(A) 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, territorial, or tribal public health agency.

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

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

(2) Children who receive care in their own homes, provided there are no other unrelated children who are cared for in the home.

(3) Children whose parents object to immunization on religious grounds.

(4) Children whose medical condition contraindicates immunization.

(C) Lead Agencies shall establish a grace period that allows children experiencing homelessness and children in foster care to receive services under this part while providing their families (including foster families) a reasonable time to take any necessary action to comply with immunization and other health and safety requirements.

(1) Any payment for such child during the grace period shall not be considered an error or improper payment under subpart K of this part.

(2) The Lead Agency may also, at its option, establish grace periods for other children who are not experiencing homelessness or in foster care.

(3) Lead Agencies must coordinate with licensing agencies and other relevant State and local agencies to provide referrals and support to help families of children receiving services during a grace period comply with immunization and other health and safety requirements;

(ii) Prevention of sudden infant death syndrome and use of safe sleeping practices;

(iii) Administration of medication, consistent with standards for parental consent;

(iv) Prevention and response to emergencies due to food and allergic reactions;

(v) Building and physical premises safety, including identification of and protection from hazards, bodies of water, and vehicular traffic;

(vi) Prevention of shaken baby syndrome and abusive head trauma;

(vii) Emergency preparedness and response planning for emergencies resulting from a natural disaster, or a man-caused event (such as violence at a child care facility), within the meaning of those terms under section 602(a)(1) of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5195a(a)(1)) that shall include procedures for evacuation, relocation, shelter-in-place and lock down, staff and volunteer emergency preparedness training and practice drills, communication and reunification with families, continuity of operations, and accommodation of infants and toddlers, children with disabilities, and children with chronic medical conditions;

(viii) Handling and storage of hazardous materials and the appropriate disposal of biocontaminants;

(ix) Appropriate precautions in transporting children, if applicable;

(x) First aid and cardiopulmonary resuscitation;

(xi) Recognition and reporting of child abuse and neglect, in accordance with the requirement in paragraph (e) of this section; and

(xii) May include requirements relating to:

(A) Nutrition (including age-appropriate feeding);

(B) Access to physical activity;

(C) Caring for children with special needs; or

(D) Any other subject area determined by the Lead Agency to be necessary to promote child development or to protect children's health and safety.

(2) Include minimum health and safety training on the topics above, as described in § 98.44.

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

(c) The requirements in paragraph (a) of this section shall apply to all providers of child care services for which assistance is provided under this part, within the area served by the Lead Agency, except the relatives specified at § 98.42(c).

(d) Lead Agencies shall describe in the Plan standards for child care services for which assistance is provided under this part, appropriate to promoting the adult and child relationship in the type of child care setting involved, to provide for the safety and developmental needs of the children served, that address:

(1) Group size limits for specific age populations;

(2) The appropriate ratio between the number of children and the number of caregivers, in terms of age of children in child care; and

(3) Required qualifications for caregivers in child care settings as described at § 98.44(a)(4).

(e) Lead Agencies shall certify that caregivers, teachers, and directors of child care providers within the State or service area will comply with the State's, Territory's, or Tribe's child abuse reporting requirements as required by section 106(b)(2)(B)(i) of the Child Abuse and

Prevention and Treatment Act (42 U.S.C. 5106a(b)(2)(B)(i)) or other child abuse reporting procedures and laws in the service area.

21. Revise § 98.42 to read as follows:

§ 98.42 Enforcement of licensing and health and safety requirements.

(a) Each Lead Agency shall certify in the Plan that procedures are in effect to ensure that child care providers of services for which assistance is made available in accordance with 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 § 98.41.

(b) Each Lead Agency shall certify in the Plan it has monitoring policies and practices applicable to all child care providers and facilities eligible to deliver services for which assistance is provided under this part. The Lead Agency shall:

(1) Ensure individuals who are hired as licensing inspectors are qualified to inspect those child care providers and facilities and have received training in related health and safety requirements appropriate to provider setting and age of children served. Training shall include, but is not limited to, those requirements described in § 98.41, and all aspects of the State, Territory, or Tribe's licensure requirements;

(2) Require inspections of child care providers and facilities, performed by licensing inspectors (or qualified inspectors designated by the Lead Agency), as specified below:

(i) For licensed child care providers and facilities:

(A) Not less than one pre-licensure inspection for compliance with health, safety, and fire standards, and

(B) Not less than annually an unannounced inspection for compliance with all child care licensing standards, which shall include an inspection for compliance with health and safety, (including, but not limited to, those requirements described in § 98.41) and fire standards (inspectors may inspect for compliance with all three standards at the same time); and

(ii) For license-exempt child care providers and facilities, an annual inspection for compliance with health and safety (including, but not limited to, those requirements described in § 98.41), and fire standards;

(iii) Coordinate, to the extent practicable, monitoring efforts with other Federal, State, and local agencies that conduct similar inspections.

(iv) The Lead Agency may, at its option:

(A) Use differential monitoring or a risk-based approach to design annual inspections, provided that the contents covered during each monitoring visit is representative of the full complement of health and safety requirements;

(B) Develop alternate monitoring requirements for care provided in the child's home that are appropriate to the setting; and

(3) Ensure the ratio of licensing inspectors to such child care providers and facilities is maintained at a level sufficient to enable the State, Territory, or Tribe to conduct effective inspections on a timely basis in accordance with the applicable Federal, State, Territory, Tribal, and local law;

(4) Require child care providers to report to a designated State, Territorial, or Tribal entity any serious injuries or deaths of children occurring in child care.

(c) For the purposes of this section and § 98.41, Lead Agencies may exclude grandparents, great grandparents, siblings (if such providers live in a separate residence), aunts, or uncles, from the term "child care providers." If the Lead Agency chooses to exclude 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.

§§ 98.43 through 98.47 [Redesignated as §§ 98.45 through 98.49]

22. Redesignate §§ 98.43 through 98.47 of subpart E as §§ 98.45 through 98.49.

23. Add § 98.43 to subpart E to read as follows:

§ 98.43 Criminal background checks

(a)(1) States, Territories, and Tribes, through coordination of the Lead agency with other State, territorial, and tribal agencies, shall have in effect:

(i) Requirements, policies, and procedures to require and conduct criminal background checks for child care staff members (including prospective child care staff members) of all licensed, regulated, or registered child care providers and all child care providers eligible to deliver services for which assistance is provided under this part as described in paragraph (a)(2) of this section;

(ii) Licensing, regulation, and registration requirements, as applicable, that prohibit the employment of child care staff members as described in paragraph (c) of this section; and

(iii) Requirements, policies, and procedures in place to respond as expeditiously as possible to other States', Territories', and Tribes' requests for background check results in order to accommodate the 45 day timeframe required in paragraph (e)(1) of this section.

(2) In this section:

(i) Child care provider means a center-based child care provider, a family child care provider, or another provider of child care services for compensation and on a regular basis that:

(A) Is not an individual who is related to all children for whom child care services are provided; and

(B) Is licensed, regulated, or registered under State law or eligible to receive assistance provided under this subchapter; and

(ii) Child care staff member means an individual age 18 and older (other than an individual who is related to all children for whom child care services are provided):

(A) Who is employed by a child care provider for compensation, including contract employees or self-employed individuals;

(B) Whose activities involve the care or supervision of children for a child care provider or unsupervised access to children who are cared for or supervised by a child care provider; or

(C) Any individual residing in a family child care home who is age 18 and older.

(b) A criminal background check for a child care staff member under paragraph (a) of this section shall include:

(1) A Federal Bureau of Investigation fingerprint check using Next Generation Identification;

(2) A search of the National Crime Information Center's National Sex Offender Registry; and

(3) A search of the following registries, repositories, or databases in the State where the child care staff member resides and each State where such staff member resided during the preceding five years:

(i) State criminal registry or repository using fingerprints;

(ii) State sex offender registry or repository; and

(iii) State-based child abuse and neglect registry and database.

(c)(1) A child care staff member shall be ineligible for employment by child care providers of services for which assistance is made available in accordance with this part, if such individual:

(i) Refuses to consent to the criminal background check described in paragraph (b) of this section;

(ii) Knowingly makes a materially false statement in connection with such criminal background check;

(iii) Is registered, or is required to be registered, on a State sex offender registry or repository or the National Sex Offender Registry; or

(iv) Has been convicted of a felony consisting of:

(A) Murder, as described in section 1111 of title 18, United States Code;

(B) Child abuse or neglect;

(C) A crime against children, including child pornography;

(D) Spousal abuse;

(E) A crime involving rape or sexual assault;

(F) Kidnapping;

(G) Arson;

(H) Physical assault or battery; or

(I) Subject to paragraph (e)(4) of this section, a drug-related offense committed during the preceding 5 years; or

(v) Has been convicted of a violent misdemeanor committed as an adult against a child, including the following crimes: child abuse, child endangerment, sexual assault, or of a misdemeanor involving child pornography.

(2) A child care provider described in paragraph (a)(2)(i) of this section shall be ineligible for assistance provided in accordance with this subchapter if the provider employs a staff member who is ineligible for employment under paragraph (c)(1) of this section.

(d)(1) A child care provider covered by paragraph (a)(2)(i) of this section shall submit a request, to the appropriate State, Territorial, or Tribal agency, defined clearly on the State or Territory website described in paragraph (g) of this section, for a criminal background check described in paragraph (b) of this section, for each child care staff member (including prospective child care staff members) of the provider.

(2) Subject to paragraph (d)(3) of this section, the provider shall submit such a request:

(i) Prior to the date an individual becomes a child care staff member of the provider; and

(ii) Not less than once during each 5-year period for any existing staff member.

(3) A child care provider shall not be required to submit a request under paragraph (d)(2) of this section for a child care staff member if:

(i) The staff member received a background check described in paragraph (b) of this section:

(A) Within 5 years before the latest date on which such a submission may be made; and

(B) While employed by or seeking employment by another child care provider within the State;

(ii) The State provided to the first provider a qualifying background check result, consistent with this subchapter, for the staff member; and

(iii) The staff member is employed by a child care provider within the State, or has been separated from employment from a child care provider within the State for a period of not more than 180 consecutive days.

(4) A prospective staff member may begin work for a child care provider described in paragraph (a)(2)(i) of this section after the provider has submitted such a request if the staff member is supervised at all times by an individual who received a qualifying result on a background check described in paragraph (b) of this section within 5 years of the request.

(e)(1) *Background check results*. The State, Territory, or Tribe shall carry out the request of a child care provider for a criminal background check as expeditiously as possible, but not to exceed 45 days after the date on which the provider submitted the request, and shall provide the results of the criminal background check to such provider and to the current or prospective staff member.

(2) States, Territories, and Tribes shall ensure the privacy of background check results by:

(i) Providing the results of the criminal background check to the provider in a statement that indicates whether a child care staff member (including a prospective child care staff member) is eligible or ineligible for employment described in paragraph (c)(1) of this section, without revealing any disqualifying crime or other related information regarding the individual.

(ii) If the child care staff member is ineligible for such employment due to the background check, the State, Territory, or Tribe will, when providing the results of the background check, include information related to each disqualifying crime, in a report to the staff member or prospective staff member.

(iii) No State, Territory, or Tribe shall publicly release or share the results of individual background checks, except States and Tribes may release aggregated data by crime as listed under paragraph (c)(1)(iv) of this section from background check results, as long as such data is not personally identifiable information.

(3) States, Territories, and Tribes shall provide for a process by which a child care staff member (including a prospective child care staff member) may appeal the results of a criminal background check conducted under this section to challenge the accuracy or completeness of the information contained in such member's criminal background report. The State, Territory, and Tribe shall ensure that:

(i) Each child care staff member is given notice of the opportunity to appeal;

(ii) A child care staff member will receive instructions about how to complete the appeals process if the child care staff member wishes to challenge the accuracy or completeness of the information contained in such member's criminal background report; and

(iii) The appeals process is completed in a timely manner for each child care staff member.

(4) States, Territories, and Tribes may allow for a review process through which the State, Territory, or Tribe may determine that a child care staff member (including a prospective child care staff member) disqualified for a crime specified in paragraph (c)(1)(iv)(I) of this section is eligible for employment described in paragraph (c)(1) of this section, notwithstanding paragraph (c)(2) of this section. The review process shall be consistent with title VII of the Civil Rights Act of 1964 (42 U.S.C. 2000e *et seq.*);

(5) Nothing in this section shall be construed to create a private right of action if a provider has acted in accordance with this section.

(f) Fees that a State, Territory, or Tribe may charge for the costs of processing applications and administering a criminal background check as required by this section shall not exceed the actual costs for the processing and administration.

(g) The State or Territory must ensure that its policies and procedures under § 98.43, including the process by which a child care provider or other State may submit a background check request, are published in the website of the State or Territory as described in § 98.33(a) and the website of local lead agencies.

(h)(1) Nothing in this section shall be construed to prevent a State, Territory, or Tribe from disqualifying individuals as child care staff members based on their conviction for crimes not specifically listed in this section that bear upon the fitness of an individual to provide care for and have responsibility for the safety and well-being of children.

(2) Nothing in this section shall be construed to alter or otherwise affect the rights and remedies provided for child care staff members residing in a State that disqualifies individuals as child care staff members for crimes not specifically provided for under this section.

24. Add § 98.44 to subpart E to read as follows:

§ 98.44 Training and professional development.

(a) The Lead Agency must describe in the Plan the State or Territory framework for training, professional development, and postsecondary education for caregivers, teachers, and directors that:

(1) Is developed in consultation with the State Advisory Council on Early Childhood Education and Care (designated or established pursuant to section 642B(b)(1)(A)(i) of the Head Start Act (42 U.S.C. 9837b(b)(1)(A)(i))) or similar coordinating body;

(2) May engage training providers in aligning training opportunities with the State's framework;

(3) To the extent practicable, addresses professional standards and competencies, career pathways, advisory structure, articulation, and workforce information and financing;

(4) Establishes qualifications in accordance with § 98.41(d)(3) designed to enable child care providers that provide services for which assistance is provided in accordance with this part to promote the social, emotional, physical, and cognitive development of children and improve the knowledge and skills of caregivers, teachers and directors in working with children and their families;

(5) Is conducted on an ongoing basis, providing a progression of professional development (which may include encouraging the pursuit of postsecondary education);

(6) Reflects current research and best practices relating to the skills necessary for caregivers, teachers, and directors to meet the developmental needs of participating children and engage families; and

(7) Improves the quality, diversity, stability, and retention (including financial incentives) of caregivers, teachers, and directors.

(b) The Lead Agency must describe in the Plan its established requirements for pre-service or orientation (*i.e.*, to be completed within three months) and ongoing professional development for caregivers, teachers, and directors of child care providers of services for which assistance is provided under the CCDF that, to the extent practicable, align with the State framework:

(1) Accessible pre-service or orientation, training in health and safety standards, addressing each of the requirements relating to matters described in § 98.41(a)(1)(i) through (xi) and, at the Lead Agency option, in § 98.41(a)(1)(xii), and child development, including the major domains (cognitive, social, emotional, physical development and approaches to learning) appropriate to the age of children served;

(2) Ongoing, accessible professional development, aligned to a progression of professional development, including the minimum annual requirement for hours of training and professional development for eligible caregivers, teachers and directors that:

(i) Maintains and updates health and safety training standards described in Sec. 98.41(a)(1)(i) through (xi), and at the Lead Agency option, in § 98.41(a)(1)(xii);

(ii) Incorporates knowledge and application of the State's early learning and developmental guidelines for children birth to kindergarten (where applicable);

(iii) Incorporates social-emotional behavior intervention models for children birth through school-age, which may include positive behavior intervention and support models including preventing and reducing expulsions and suspensions of preschool-aged and school-aged children;

(iv) To the extent practicable, are appropriate for a population of children that includes:

(A) Different age groups;

(B) English learners;

(C) Children with developmental delays and disabilities; and

(D) Native Americans, including Indians, as the term is defined in section 4 of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450b) (including Alaska Natives

within the meaning of that term), and Native Hawaiians (as defined in section 7207 of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 7517));

(v) To the extent practicable, awards continuing education units or is credit-bearing; and

(vi) Shall be accessible to caregivers, teachers, and directors supported through Indian tribes or tribal organizations that receive assistance under this subchapter.

25. Amend newly redesignated § 98.45 by:

a. Revising paragraph (b);

b. Redesignating paragraphs (c) through (e) as (g) through (i);

c. Revising newly redesignated paragraphs (g) and (i); and

d. Adding paragraphs (c), (d), (e), (f), (j), (k), (l), and (m).

The revisions and additions read as follows:

§ 98.45 Equal access.

* * * * *

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

(1) How a choice of the full range of providers is made available;

(2) How payment rates are adequate and have been established based on the most recent market rate survey or alternative methodology conducted in accordance with paragraph (c) of this section;

(3) How base payment rates support health, safety, and quality in accordance with paragraphs (f)(1)(i) and (f)(2)(ii) of this section;

(4) How payment rates provide parental choice for families receiving CCDF subsidies to access care that is of comparable quality to care that is available to families with incomes above 85 percent of State Median Income;

(5) How the Lead Agency took the cost of higher quality into account in accordance with paragraph (f)(2)(iii) of this section;

(6) How copayments based on a sliding fee scale are affordable, as stipulated at paragraph (k) of this section;

(7) How the Lead Agency's payment practices support equal access to a range of providers by providing stability of funding and encouraging more child care providers to serve children receiving CCDF subsidies, in accordance with paragraph (m) of this section;

(8) How and on what factors the Lead Agency differentiates payment rates; and

(9) Any additional facts the Lead Agency considered in determining that its payment rates ensure equal access.

(c) The Lead Agency shall demonstrate in the Plan that it has developed and conducted, not earlier than two years before the date of the submission of the Plan, either:

(1) A statistically valid and reliable survey of the market rates for child care services (that also includes information on the extent to which child care providers are participating in the CCDF subsidy program and any barriers to participation, including barriers related to payment rates and practices); or

(2) An alternative methodology, such as a cost estimation model, that has been:

(i) Proposed by the Lead Agency in accordance with uniform procedures and timeframes established by ACF; and

(ii) Approved in advance by ACF.

(d) The market rate survey or alternative methodology must reflect variations by geographic location, category of provider, and age of child.

(e) Prior to conducting the market rate survey or alternative methodology, the Lead Agency must consult with:

(1) The State Advisory Council on Early Childhood Education and Care (designated or established pursuant to section 642B(b)(1)(A)(i) of the Head Start Act (42 U.S.C. 9837b(b)(1)(A)(i)) or similar coordinating body, local child care program administrators, local child care resource and referral agencies, and other appropriate entities; and

(2) Organizations representing child care caregivers, teachers, and directors.

(f) After conducting the market rate survey or alternative methodology, the Lead Agency must:

(1) Prepare a detailed report containing the results, and make the report widely available, including by posting it on the Internet, not later than 30 days after the completion of the report.

(i) The report must indicate the estimated price or cost of care necessary to support child care providers' implementation of the health, safety, and quality requirements at §§ 98.41 through 98.44, including any relevant variation by geographic location, category of provider, or age of child.

(ii) [Reserved]

(2) Set payment rates for CCDF assistance:

(i) In accordance with the results of the most recent market rate survey or alternative methodology conducted pursuant to paragraph (c) of this section;

(ii) With base payment rates established at least at a level sufficient to support implementation of health, safety and quality requirements in accordance with paragraph (f)(1)(i) of this section;

(iii) That provides parental choice to families receiving CCDF subsidies to access care that is of comparable quality to care that is available to families with incomes above 85 percent of State Median Income;

(iv) Taking into consideration the cost of providing higher quality child care services; and

(v) Without, to the extent practicable, reducing the number of families receiving CCDF assistance.

(g) A Lead Agency may not establish different payment rates based on a family's eligibility status, such as TANF status.

* * * * *

(i) Nothing in this section shall be construed to create a private right of action if the Lead Agency acted in accordance with the Act and this part.

(j) Nothing in this part shall be construed to prevent a Lead Agency from differentiating payment rates on the basis of such factors as:

(1) Geographic location of child care providers (such as location in an urban or rural area);

(2) Age or particular needs of children (such as the needs of children with disabilities, children served by child protective services, and children experiencing homelessness);

(3) Whether child care providers provide services during the weekend or other non-traditional hours; or

(4) The Lead Agency's determination that such differential payment rates may enable a parent to choose high-quality child care that best fits the parents' needs.

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

(1) Helps families afford child care and enables choice of a range of child care options;

(2) Is based on income and the size of the family and may be based on other factors as appropriate, but may not be based on the cost of care or amount of subsidy payment;

(3) Provides for affordable family co-payments that are not a barrier to families receiving assistance under this part;

(4) Allows for co-payments to be waived for families whose incomes are at or below the poverty level for a family of the same size, that have children who receive or need to receive protective services, or that meet other criteria established by the Lead Agency.

(l) Lead Agencies must have a policy that prohibits child care providers of services for which assistance is provided under the CCDF from charging parents additional mandatory fees above the family co-payment determined in accordance with the sliding fee scale.

(m) The Lead Agency shall demonstrate in the Plan that it has established payment practices for CCDF child care providers that:

(1) Ensure timeliness of payment by either:

(i) Paying prospectively prior to the delivery of services; or

(ii) Paying within no more than 21 days of the receipt of invoice for services.

(2) To the extent practicable, support the fixed costs of providing child care services by delinking provider payments from a child's occasional absences. A Lead Agency must describe its approach in the State Plan, including justification for an alternative approach that is not one of the following:

(i) Paying based on a child's enrollment rather than attendance;

(ii) Providing full payment if a child attends at least 85 percent of the authorized time; or

(iii) Providing full payment if a child is absent for five or fewer days in a month.

(3) Reflect generally accepted payment practices of child care providers that serve children who do not receive CCDF subsidies, which must include (unless the Lead Agency provides evidence in the Plan that such practices are not generally-accepted in the State or service area):

(i) Paying on a part-time or full-time basis (rather than paying for hours of service or smaller increments of time); and

(ii) Paying for mandatory fees that the provider charges to private-paying parents, such as fees for registration:

(4) Ensure child care providers receive payment for any services in accordance with a payment agreement or authorization for services;

(5) Ensure child care providers receive prompt notice of changes to a family's eligibility status that may impact payment;

(6) Include timely appeal and resolution processes for any payment inaccuracies and disputes.

26. Revise newly redesignated § 98.46 to read as follows:

§ 98.46 Priority for child care services.

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

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

(2) Children with special needs, which may include any vulnerable populations as defined by the Lead Agency; and

(3) Children experiencing homelessness.

(b) Lead Agencies shall prioritize increasing access to high quality child care and development services for children of families in areas that have significant concentrations of poverty and unemployment and that do not have a sufficient number of such programs.

27. Revise § 98.50 to read as follows:

§ 98.50 Child care services.

(a) Direct child care services shall be provided:

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

(2) Using a sliding fee scale, as described in § 98.45(k);

(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 shortages in the supply of high quality care described in the Plan pursuant to § 98.16(i)(1) and other factors as determined by the Lead Agency; and

(4) Based on the priorities in § 98.46.

(b) Of the aggregate amount of funds expended (*i.e.*, Discretionary, Mandatory, and Federal and State share of Matching Funds):

(1) No less than seven percent in fiscal years 2016 and 2017, eight percent in fiscal years 2018 and 2019, and nine percent in fiscal year 2020 and each succeeding fiscal year shall be used

for activities designed to improve the quality of child care services and increase parental options for, and access to, high-quality child care as described at § 98.53; and

(2) No less than three percent in fiscal year 2017 and each succeeding fiscal year shall be used to carry out activities at §98.53(a)(4) as such activities relate to the quality of care for infants and toddlers.

(3) Nothing in this section shall preclude the Lead Agency from reserving a larger percentage of funds to carry out activities described in paragraphs (b)(1) and (2) of this section.

(c) Funds expended from each fiscal year's allotment on quality activities pursuant to paragraph (b) of this section:

(1) Must be in alignment with an assessment of the Lead Agency's need to carry out such services and care as required at § 98.53(a);

(2) Must include measurable indicators of progress in accordance with § 98.53(f); and

(3) May be provided directly by the Lead Agency or through grants or contracts with local child care resource and referral organizations or other appropriate entities.

(d) Of the aggregate amount of funds expended (*i.e.*, Discretionary, Mandatory, and Federal and State share of Matching Funds), no more than five percent may be used for administrative activities as described at § 98.54.

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

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

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

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

(f) From Discretionary amounts provided for a fiscal year, the Lead Agency shall:

(1) Reserve the minimum amount required under paragraph (b) of this section for quality activities, and the funds for administrative costs described at paragraph (d) of this section; and

(2) From the remainder, use not less than 70 percent to fund direct services (provided by the Lead Agency).

(g) Of the funds remaining after applying the provisions of paragraphs (a) through (f) of this section the Lead Agency shall spend a substantial portion funds to provide direct child care services to low-income families who are working or attending training or education.

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

§§ 98.51 through 98.55 [Redesignated as §§ 98.53 through 98.57]

28. Redesignating §§ 98.51 through 98.55 of subpart F as §§ 98.53 through 98.57.

29. Add § 98.51 to subpart F to read as follows:

§ 98.51 Services for children experiencing homelessness.

Lead Agencies shall expend funds on activities that improve access to quality child care services for children experiencing homelessness, including:

(a) The use of procedures to permit enrollment (after an initial eligibility determination) of children experiencing homelessness while required documentation is obtained;

(1) If, after full documentation is provided, a family experiencing homelessness is found ineligible:

(i) The Lead Agency shall pay any amount owed to a child care provider for services provided as a result of the initial eligibility determination.

(ii) Any CCDF payment made prior to the final eligibility determination shall not be considered an error or improper payment under subpart K of this part; and

(2) [Reserved]

(b) Training and technical assistance for providers and appropriate Lead Agency (or designated entity) staff on identifying and serving children experiencing homelessness and their families; and

(c) Specific outreach to families experiencing homelessness.

30. Add § 98.52 to subpart F to read as follows:

§ 98.52 Child care resource and referral system.

(a) A Lead Agency may expend funds to establish or support a system of local or regional child care resource and referral organizations that is coordinated, to the extent determined appropriate by the Lead Agency, by a statewide public or private nonprofit, community-based or regionally based, lead child care resource and referral organization.

(b) If a Lead Agency uses funds as described in paragraph (a) of this section, the local or regional child care resource and referral organizations supported shall, at the direction of the Lead Agency:

(1) Provide parents in the State with consumer education information referred to in § 98.33 (except as otherwise provided in that paragraph), concerning the full range of child care options (including faith-based and community-based child care providers), analyzed by provider, including child care provided during nontraditional hours and through emergency child care centers, in their political subdivisions or regions;

(2) To the extent practicable, work directly with families who receive assistance under this subchapter to offer the families support and assistance, using information described in

paragraph (b)(1) of this section, to make an informed decision about which child care providers they will use, in an effort to ensure that the families are enrolling their children in the most appropriate child care setting to suit their needs and one that is of high quality (as determined by the Lead Agency);

(3) Collect data and provide information on the coordination of services and supports, including services under section 619 and part C of the Individuals with Disabilities Education Act (20 U.S.C. 1431, *et seq.*), for children with disabilities (as defined in section 602 of such Act (20 U.S.C. 1401));

(4) Collect data and provide information on the supply of and demand for child care services in political subdivisions or regions within the State and submit such information to the State;

(5) Work to establish partnerships with public agencies and private entities, including faith- based and community-based child care providers, to increase the supply and quality of child care services in the State; and

(6) As appropriate, coordinate their activities with the activities of the State Lead Agency and local agencies that administer funds made available in accordance with this part.

31. Revise newly redesignated § 98.53 to read as follows:

§ 98.53 Activities to improve the quality of child care.

(a) The Lead Agency must expend funds from each fiscal year's allotment on quality activities pursuant to § 98.50(b) in accordance with an assessment of need by the Lead Agency. Such funds must be used to carry out at least one of the following quality activities to increase the number of low-income children in high-quality child care:

(1) Supporting the training, professional development, and postsecondary education of the child care workforce as part of a progression of professional development through activities such as those included at § 98.44, in addition to:

(i) Offering training, professional development, and postsecondary education opportunities for child care caregivers, teachers and directors that:

(A) Relate to the use of scientifically-based, developmentally-appropriate, culturally-appropriate, and age-appropriate strategies to promote the social, emotional, physical, and cognitive development of children, including those related to nutrition and physical activity; and

(B) Offer specialized training, professional development, and postsecondary education for caregivers, teachers and directors caring for those populations prioritized at § 98.44(b)(2)(iv), and children with disabilities;

(ii) Incorporating the effective use of data to guide program improvement and improve opportunities for caregivers, teachers and directors to advance on their progression of training, professional development, and postsecondary education;

(iii) Including effective behavior management strategies and training, including positive behavior interventions and support models for birth to school-age or age-appropriate, that promote positive social and emotional development and reduce challenging behaviors, including reducing suspensions and expulsions of children under age five for such behaviors;

(iv) Providing training and outreach on engaging parents and families in culturally and linguistically appropriate ways to expand their knowledge, skills, and capacity to become meaningful partners in supporting their children's positive development;

(v) Providing training corresponding to the nutritional and physical activity needs of children to promote healthy development;

(vi) Providing training or professional development for caregivers, teachers and directors regarding the early neurological development of children; and

(vii) Connecting child care caregivers, teachers, and directors with available Federal and State financial aid, or other resources, that would assist these individuals in pursuing relevant postsecondary education, such as programs providing scholarships and compensation improvements for education attainment and retention.

(2) Improving upon the development or implementation of the early learning and development guidelines at § 98.15(a)(9) by providing technical assistance to eligible child care providers in order to enhance the cognitive, physical, social, and emotional development and overall well-being of participating children.

(3) Developing, implementing, or enhancing a tiered quality rating and improvement system for child care providers and services to meet consumer education requirements at § 98.33, which may:

(i) Support and assess the quality of child care providers in the State, Territory, or Tribe;

(ii) Build on licensing standards and other regulatory standards for such providers;

(iii) Be designed to improve the quality of different types of child care providers and services;

(iv) Describe the safety of child care facilities;

(v) Build the capacity of early childhood programs and communities to promote parents' and families' understanding of the early childhood system and the rating of the program in which the child is enrolled;

(vi) Provide, to the maximum extent practicable, financial incentives and other supports designed to expand the full diversity of child care options and help child care providers improve the quality of services; and

(vii) Accommodate a variety of distinctive approaches to early childhood education and care, including but not limited to, those practiced in faith-based settings, community-based settings, child-centered settings, or similar settings that offer a distinctive approach to early childhood development.

(4) Improving the supply and quality of child care programs and services for infants and toddlers through activities, which may include:

(i) Establishing or expanding high-quality community or neighborhood-based family and child development centers, which may serve as resources to child care providers in order to improve the quality of early childhood services provided to infants and toddlers from low-income families and to help eligible child care providers improve their capacity to offer high-quality, age-appropriate care to infants and toddlers from low-income families;

(ii) Establishing or expanding the operation of community or neighborhood-based family child care networks;

(iii) Promoting and expanding child care providers' ability to provide developmentally appropriate services for infants and toddlers through, but not limited to:

(A) Training and professional development for caregivers, teachers and directors, including coaching and technical assistance on this age group's unique needs from statewide networks of qualified infant-toddler specialists; and

(B) Improved coordination with early intervention specialists who provide services for infants and toddlers with disabilities under part C of the Individuals with Disabilities Education Act (20 U.S.C. 1431. *et seq.*);

(iv) If applicable, developing infant and toddler components within the Lead Agency's quality rating and improvement system described in paragraph (a)(3) of this section for child care providers for infants and toddlers, or the development of infant and toddler components in the child care licensing regulations or early learning and development guidelines;

(v) Improving the ability of parents to access transparent and easy to understand consumer information about high-quality infant and toddler care as described at § 98.33; and

(vi) Carrying out other activities determined by the Lead Agency to improve the quality of infant and toddler care provided, and for which there is evidence that the activities will lead to improved infant and toddler health and safety, infant and toddler cognitive and physical development, or infant and toddler well-being, including providing health and safety training (including training in safe sleep practices, first aid, and cardiopulmonary resuscitation for providers and caregivers.

(5) Establishing or expanding a statewide system of child care resource and referral services.

(6) Facilitating compliance with Lead Agency requirements for inspection, monitoring, training, and health and safety, and with licensing standards.

(7) Evaluating and assessing the quality and effectiveness of child care programs and services offered, including evaluating how such programs positively impact children.

(8) Supporting child care providers in the voluntary pursuit of accreditation by a national accrediting body with demonstrated, valid, and reliable program standards of high-quality.

(9) Supporting Lead Agency or local efforts to develop or adopt high-quality program standards relating to health, mental health, nutrition, physical activity, and physical development.

(10) Carrying out other activities, including implementing consumer education provisions at § 98.33, determined by the Lead Agency to improve the quality of child care services provided, and for which measurement of outcomes relating to improvement of provider preparedness, child safety, child well-being, or entry to kindergarten is possible.

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

(c) Non-Federal expenditures required by § 98.55(c) (*i.e.*, the maintenance-of-effort amount) are not subject to the requirement at paragraph (a) 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 set-asides that may be included in appropriations law may not be used towards meeting the quality expenditure minimum requirement at § 98.50(b).

(f) States shall annually prepare and submit reports, including a quality progress report and expenditure report, to the Secretary, which must be made publicly available and shall include:

(1) An assurance that the State was in compliance with requirements at §98.50(b) in the preceding fiscal year and information about the amount of funds reserved for that purpose;

(2) A description of the activities carried out under this section to comply with §98.50(b);

(3) The measures the State will use to evaluate its progress in improving the quality of child care programs and services in the State, and data on the extent to which the State had met these measures; and

(4) 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 child injuries and any deaths occurring in child care programs serving children receiving assistance under this part, and in other regulated and unregulated child care centers and family child care homes, to the extent possible.

32. Amend newly redesignated § 98.54 by:

a. Revising paragraphs (a) introductory text and (a)(6);

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

c. Revising newly redesignated paragraph (d); and

d. Adding paragraphs (b) and (e).

The revisions and additions read as follows:

§ 98.54 Administrative costs.

(a) Not more than five percent of the aggregate funds expended by the Lead Agency from each fiscal year's allotment, including the amounts expended in the State pursuant to § 98.55(b), shall be expended for administrative activities. These activities may include but are not limited to:

* * * * *

(6) Indirect costs as determined by an indirect cost agreement or cost allocation plan pursuant to § 98.57.

(b) 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 and redetermination;

(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.

* * * * *

(d) Non-Federal expenditures required by § 98.55(c) (*i.e.*, the maintenance-of-effort amount) are not subject to the five percent limitation at paragraph (a) of this section.

(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 in this section shall be counted towards the five percent limit.

33. Amend newly redesignated § 98.55 by revising paragraphs (e)(2)(iv), (f), (g)(2), and (h)(2) to read as follows:

§ 98.55 Matching fund requirements.

* * * * *

(e) * * *

(2) * * *

(iv) Shall be certified both by the Lead Agency and by the donor (if funds are donated directly to the Lead Agency) or the Lead Agency and the entity designated by the State to receive donated funds pursuant to § 98.55(f) (if funds are donated directly to the designated entity) as available and representing funds eligible for Federal match; and

* * * * *

(f) Donated funds need not be transferred to or under the administrative control of the Lead Agency in order to qualify as an expenditure eligible to receive Federal match under this section. They may be given to the public or private entities designated by the State to implement the child care program in accordance with § 98.11 provided that such entities are identified and designated in the State Plan to receive donated funds in accordance with § 98.16(d)(2).

(g) * * *

(2) Family contributions to the cost of care as required by § 98.45(k).

(h) * * *

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

* * * * *

34. Amend newly redesignated § 98.56 by adding a sentence to the end of paragraph (b)(1) and revising paragraphs (d) and (e) to read as follows:

§ 98.56 Restrictions on the use of funds.

* * * * *

(b) * * * (1) * * * 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, not prohibited.

* * * * *

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

(e) The CCDF may not be used as the non-Federal share for other Federal grant programs, unless explicitly authorized by statute.

35. Amend § 98.60 by:

a. Revising paragraphs (b) introductory text, (b)(1), (d)(2)(i), (d)(4)(ii), (d)(6) introductory text, and (h);

b. Redesignating paragraph (d)(7) as (d)(8); and

c. Adding paragraph (d)(7).

The revisions and addition read as follows:

§ 98.60 Availability of funds.

* * * * *

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

(1) May withhold a portion of the CCDF funds made available for a fiscal year for the provision of technical assistance, for research, evaluation, and demonstration, and for a national toll-free hotline and website;

* * * * *

(d) * * *

(2)(i) Mandatory Funds for States requesting Matching Funds per § 98.55 shall be obligated in the fiscal year in which the funds are granted and are available until expended.

* * * * *

(4) * * *

(ii) If there is no applicable State or local law, the regulation at 45 CFR 75.2, Expenditures and Obligations.

* * * * *

(6) In instances where the Lead Agency issues child care certificates, funds for child care services provided through a child care certificate will be considered obligated when a child care certificate is issued to a family in writing that indicates:

* * * * *

(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 a quality improvement activity pursuant to § 98.53, 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.

* * * * *

36. Amend § 98.61 by revising paragraph (c) introductory text and adding paragraph (f) to read as follows:

§ 98.61 Allotments from the Discretionary Fund.

* * * * *

(c) For Indian Tribes and tribal organizations, including any Alaskan Native Village or regional or village corporation as defined in or established pursuant to the Alaska Native Claims Settlement Act (43 U.S.C. 1601 *et seq*.) not less than two percent of the amount appropriated for the Child Care and Development Block Grant shall be reserved.

* * * * *

(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.

37. Amend § 98.63 by revising paragraphs (b) and (c) to read as follows:

§ 98.63 Allotments from the Matching Fund.

* * * * *

(b) For purposes of this section, the amounts available under section 418(a)(3) of the Social Security Act excludes the amounts reserved and allocated under § 98.60(b)(1) for technical assistance, research and evaluation, and the national toll-free hotline and website and under § 98.62(a) and (b) for the Mandatory Fund.

(c) Amounts under this section are available pursuant to the requirements at § 98.55(c).

38. Amend § 98.64 by revising paragraph (c)(1) to read as follows:

§ 98.64 Reallotment and redistribution of funds.

* * * * *

(c)(1) Any portion of the Matching Fund granted to a State that is not obligated in the period for which the grant is made shall be redistributed. Funds, if any, will be redistributed on the request of, and only to, those other States that have met the requirements of § 98.55(c) in the period for which the grant was first made. For purposes of this paragraph (c)(1), the term ``State" means the 50 States and the District of Columbia. Territorial and tribal grantees may not receive redistributed Matching Funds.

* * * * *

39. Amend § 98.65 by revising paragraphs (a) and (g) and adding paragraphs (h) and (i) to read as follows:

§ **98.65 Audits and financial reporting.**

(a) Each Lead Agency shall have an audit conducted after the close of each program period in accordance with 45 CFR part 75, subpart F, and the Single Audit Act Amendments of 1996.

* * * * *

(g) Lead Agencies shall submit financial reports, in a manner specified by ACF, 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, including any sub-categories of quality activities as required by ACF;

(3) Direct services;

(4) Non-direct services, including:

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

(ii) Certificate program cost / eligibility determination;

(iii) All other non-direct services; and

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

(i) Tribal Lead Agencies shall submit financial reports annually in a manner specified by ACF.

40. Add § 98.68 to subpart G to read as follows:

§ **98.68 Program integrity.**

(a) Lead Agencies are required to describe in their Plan effective internal controls that are 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 describe in their Plan the processes that are in place to:

(1) Identify fraud or other program violations, which may include, but are not limited to the following:

(i) Record matching and database linkages;

(ii) Review of attendance and billing records;

(iii) Quality control or quality assurance reviews; and

(iv) Staff training on monitoring and audit processes.

(2) Investigate and recover fraudulent payments and to impose sanctions on clients or providers in response to fraud.

(c) Lead Agencies must describe in their Plan the procedures that are in place for documenting and verifying that children receiving assistance under this part meet eligibility criteria at the time of eligibility determination and redetermination. Because a child meeting eligibility requirements at the most recent eligibility determination or redetermination is considered eligible during the period between redeterminations as described in § 98.21(a)(1):

(1) The Lead Agency shall pay any amount owed to a child care provider for services provided for such a child during this period under a payment agreement or authorization for services; and

(2) Any CCDF payment made for such a child during this period shall not be considered an error or improper payment under subpart K of this part due to a change in the family's circumstances, as set forth at § 98.21(a).

41. Amend § 98.71 by:

a. Revising paragraphs (a)(1), (2), and (13) and (c);

b. Redesignating paragraphs (a)(15) and (b)(5) as (a)(21) and (b)(6);

c. Removing the word "and" from the end of paragraphs (a)(14) and (b)(4); and

d. Adding paragraphs (a)(15), (16), (17), (18), (19), and (20) and (b)(5).

The revisions and additions read as follows:

§ 98.71 Content of reports.

(a) * * *

(1) The total monthly family income and family size used for determining eligibility;

(2) Zip code of residence of the family and zip code of the location of the child care provider;

* * * * *

(13) Unique identifier of the head of the family unit receiving child care assistance, and of the child care provider;

* * * * *

(15) Whether the family is homeless;

(16) Whether the parent(s) are in the military service;

(17) Whether the child has a disability;

(18) Primary language spoken at home;

(19) Date of the child care provider's most recent health, safety and fire inspection meeting the requirements of § 98.42(b)(2);

(20) Indicator of the quality of the child care provider; and

* * * * *

(b) * * *

(5) The number of child fatalities by type of care; and

* * * * *

(c) A Tribal Lead Agency's annual report, as required in § 98.70(c), shall include such information as the Secretary shall require.

42. Amend § 98.80 by revising paragraphs (a) and (c)(1) and (2) and removing paragraph (f) to read as follows:

§ 98.80 General procedures and requirements.

* * * * *

(a) An Indian Tribe applying for or receiving CCDF funds shall be subject to the requirements under this part as specified in this section based on the size of the awarded funds. The Secretary shall establish thresholds for Tribes' total CCDF allotments pursuant to §§ 98.61(c) and 98.62(b) to be divided into three categories:

(1) Large allocations;

(2) Medium allocations; and

(3) Small allocations.

* * * * *

(c) * * *

(1) The consortium adequately demonstrates that each participating Tribe authorizes the consortium to receive CCDF funds on behalf of each Tribe or tribal organization in the consortium;

(2) The consortium consists of Tribes that each meet the eligibility requirements for the CCDF program as defined in this part, or that would otherwise meet the eligibility requirements if the Tribe or tribal organization had at least 50 children under 13 years of age;

* * * * *

43. Amend § 98.81 by revising paragraphs (b) introductory text, (b)(1), (5), and (6), and (c) and adding paragraph (b)(9) to read as follows:

§ 98.81 Application and Plan procedures.

* * * * *

(b) Tribal Lead Agencies with large and medium allocations shall submit a CCDF Plan, as described at § 98.16, with the following additions and exceptions:

(1) The Plan shall include the basis for determining family eligibility.

(i) If the Tribe's median income is below a certain level established by the Secretary, then, at the Tribe's option, any Indian child in the Tribe's service area shall be considered eligible to receive CCDF funds, regardless of the family's income, work, or training status.

(ii) If the Tribe's median income is above the level established by the Secretary, then a tribal program must determine eligibility for services pursuant to § 98.20(a)(2). A tribal program, as specified in its Plan, may use either:

(A) 85 percent of the State median income for a family of the same size; or

(B) 85 percent of the median income for a family of the same size residing in the area served by the Tribal Lead Agency.

* * * * *

(5) The Plan shall include a description of the Tribe's payment rates, how they are established, and how they support quality including, where applicable, cultural and linguistic appropriateness.

(6) The Plan is not subject to the following requirements:

(i) A definition of very low income at § 98.16(g)(8);

(ii) A description at § 98.16(i)(4) of how the Lead Agency will meet the needs of certain families specified at § 98.50(e);

(iii) The description of the market rate survey or alternative methodology at § 98.16(r);

(iv) The licensing requirements applicable to child care services at § 98.15(b)(6); and

(v) The early learning and developmental guidelines requirement at § 98.15(a)(9).

* * * * *

(9) Plans for Tribal Lead Agencies with medium allocations are not subject to the following requirements unless the Tribe chooses to include such services, and, therefore, the associated requirements, in its program:

(i) The assurance at § 98.15(a)(2) regarding options for services;

(ii) A description of any limits established for the provision of in-home care at § 98.16(i)(2); or

(iii) A description of the child care certificate payment system(s) at § 98.16(q).

(c) Tribal Lead Agencies with small allocations shall submit an abbreviated CCDF Plan, as described by the Secretary.

44. Revise § 98.82 to read as follows:

§ **98.82 Coordination.**

(a) Tribal applicants shall coordinate the development of the Plan and the provision of services as required by §§ 98.12 and 98.14 and:

(1) To the maximum extent feasible, with the Lead Agency in the State or States in which the applicant will carry out the CCDF program; and

(2) With other Federal, State, local, and tribal child care and childhood development programs.

(b) [Reserved]

45. Amend § 98.83 by:

a. Revising paragraphs (b), (c)(1), and (d);

b. Redesignating paragraphs (g) and (h) as (h) and (i), paragraph (e) as (g), and paragraph (f) as (e);

c. Revising newly redesignated paragraphs (e), (g), (h), and (i); and

d. Adding paragraph (f).

The revisions and additions read as follows:

§ 98.83 Requirements for tribal programs.

* * * * *

(b) With the exception of Alaska, California, and Oklahoma, programs and activities for the benefit of Indian children shall be carried out on or near an Indian reservation.

(c) * * *

(1) A brief description of the direct child care services funded by CCDF for each of their participating Tribes shall be provided by the consortium in their three-year CCDF Plan; and

* * * * *

(d)(1) Tribal Lead Agencies shall not be subject to:

(i) The requirement to have licensing applicable to child care services at § 98.40;

(ii) The requirement to produce a consumer education website at § 98.33(a). Tribal Lead Agencies still must collect and disseminate the provider-specific consumer education information described at § 98.33(a) through (e), but may do so using methods other than a website;

(iii) The requirement that Lead Agencies shall give priority for services to children of families with very low family income at § 98.46(a);

(iv) The market rate survey or alternative methodology described at § 98.45(b)(2) and the related requirements at § 98.45(c), (d), (e), and (f);

(v) The requirement to use some grants or contracts for the provision of direct services at § 98.50(a)(3);

(vi) The requirement for a training and professional development framework at § 98.44(a);

(vii) The requirements about Mandatory and Matching Funds at § 98.50(e);

(viii) The requirement to complete the quality progress report at § 98.53(f);

(ix) The requirement that Lead Agencies shall expend no more than five percent from each year's allotment on administrative costs at § 98.54(a); and

(x) The Matching fund requirements at §§ 98.55 and 98.63.

(2) Tribal Lead Agencies with large, medium, and small allocations shall be subject to the provision at § 98.42(b)(2) to require inspections of child care providers and facilities, unless a Tribal Lead Agency describes an alternative monitoring approach in its Plan and provides adequate justification for the approach.

(3) Tribal Lead Agencies with large, medium, and small allocations shall be subject to the requirement at § 98.43(a)(2)(ii)(C) to conduct comprehensive criminal background checks on other individuals residing in a family child care home, unless the Tribal Lead Agency describes an alternative background check approach for such individuals in its Plan and provides adequate justification for the approach.

(e) Tribal Lead Agencies with medium and small allocations shall not be subject to the requirement for certificates at § 98.30(a) and (d).

(f) Tribal Lead Agencies with small allocations must spend their CCDF funds in alignment with the goals and purposes described in § 98.1. These Tribes shall have flexibility in how they spend their CCDF funds and shall be subject to the following requirements:

(1) If providing direct services:

(i) The health and safety requirements described in § 98.41;

(ii) The monitoring requirements at §§ 98.42 and 98.83(d)(2); and

(iii) The background checks requirements described in §§ 98.43 and 98.83(d)(3);

(2) The requirements to spend funds on activities to improve the quality of child care described in §§ 98.50(b) and 98.53;

(3) The use of funds requirements at § 98.56 and cost allocation requirement at §98.57;

(4) The financial management requirements at subpart G of this part that are applicable to Tribes;

(5) The reporting requirements at subpart H of this part that are applicable to Tribes;

(6) The 15 percent limitation on administrative activities at § 98.83(h);

(7) The monitoring, non-compliance, and complaint provisions at subpart J of this part; and

(8) Any other requirement established by the Secretary.

(g) The base amount of any tribal grant is not subject to the administrative cost limitation at paragraph (h) of this section or the quality expenditure requirement at § 98.53(a). The base amount may be expended for any costs consistent with the purposes and requirements of the CCDF.

(h) Not more than 15 percent of the aggregate CCDF funds expended by the Tribal Lead Agency from each fiscal year's (including amounts used for construction and renovation in accordance with § 98.84, but not including the base amount provided under paragraph (g) of this section) shall be expended for administrative activities. Amounts used for construction and major renovation in accordance with § 98.84 are not considered administrative costs.

(i)(1) CCDF funds are available for costs incurred by the Tribal Lead Agency only after the funds are made available by Congress for Federal obligation unless costs are incurred for planning activities related to the submission of an initial CCDF Plan.

(2) Federal obligation of funds for planning costs, pursuant to paragraph (i)(1) of this section is subject to the actual availability of the appropriation.

46. Amend § 98.84 by adding a sentence at the end of paragraph (b)(3) and paragraphs (b)(3)(i) and (ii) and revising paragraphs (d)(1), (2), (3), (4), (5), and (6) to read as follows:

§ 98.84 Construction and renovation of child care facilities.

* * * * *

(b) * * *

(3)* * * The Secretary shall waive this requirement if:

(i) The Secretary determines that the decrease in the level of child care services provided by the Indian tribe or tribal organization is temporary; and

(ii) The Indian tribe or tribal organization submits to the Secretary a plan that demonstrates that after the date on which the construction or renovation is completed:

(A) The level of direct child care services will increase; or

(B) The quality of child care services will improve.

* * * * *

(d) * * *

(1) Federal share requirements and use of property requirements at 45 CFR75.318;

(2) Transfer and disposition of property requirements at 45 CFR 75.318(c);

(3) Title requirements at 45 CFR 75.318(a);

(4) Cost principles and allowable cost requirements at subpart E of this part;

(5) Program income requirements at 45 CFR 75.307;

(6) Procurement procedures at 45 CFR 75.326 through 75.335; and

* * * * *

47. Amend § 98.92 by revising paragraph (a)(1) and adding paragraphs (b)(3) and (4) to read as follows:

§ **98.92 Penalties and sanctions.**

(a) * * *

(1) The Secretary will disallow any improperly expended funds;

* * * * *

(b) * * *

(3)(i) A penalty of not more than five percent of the funds allotted under § 98.61 (*i.e.*, the Discretionary Funds) for a Fiscal Year shall be withheld if the Secretary determines that the Lead Agency has failed to give priority for service in accordance with § 98.46(a);

(ii) This penalty will be withheld no earlier than the first full Fiscal Year following the determination to apply the penalty;

(iii) This penalty will not be applied if the Lead Agency corrects its failure to comply and amends its CCDF Plan within six months of being notified of the failure; and

(iv) The Secretary may waive a penalty for one year in the event of extraordinary circumstances, such as a natural disaster.

(4)(i) A penalty of not more than five percent of the funds allotted under § 98.61 (*i.e.*, the Discretionary Funds) for a Fiscal Year shall be withheld if the Secretary determines that the State, Territory, or Tribe has failed to comply substantially with the criminal background check requirements at § 98.43;

(ii) This penalty will be withheld no earlier than the first full Fiscal Year following the determination to apply the penalty; and

(iii) This penalty will not be applied if the State, Territory, or Tribe corrects the failure before the penalty is to be applied or if it submits a plan for corrective action that is acceptable to the Secretary.

* * * * *

§ 98.93 [Amended]

48. Amend § 98.93, in paragraph (b), by removing “, 370 L’Enfant Promenade, SW., Washington, DC 20447”.

49. Amend § 98.100 by adding a sentence at the end of paragraph (d)(2) and revising paragraph (e) to read as follows:

§ 98.100 Error Rate Report.

* * * * *

(d) * * *

(2) * * * Because a child meeting eligibility requirements at the most recent eligibility determination or redetermination is considered eligible between redeterminations as described in § 98.21(a)(1), any payment for such a child shall not be considered an error or improper payment due to a change in the family’s circumstances, as set forth at § 98.21(a).

(e) *Costs of Preparing the Error Rate Report*--Provided the error rate calculations and reports focus on client eligibility, expenses incurred by the States, the District of Columbia and Puerto Rico in complying with this rule, including preparation of required reports, shall be considered a cost of direct service related to eligibility determination and therefore is not subject to the five percent limitation on CCDF administrative costs pursuant to § 98.54(a).

50. Amend § 98.102 by revising paragraph (a)(5) and adding paragraph (c) to read as follows:

§ **98.102 Content of Error Rate Reports.**

(a) * * *

(5) Estimated annual amount of improper payments (which is a projection of the results from the sample to the universe of cases statewide during the 12-month review period) calculated by multiplying the percentage of improper payments by the total dollar amount of child care

payments that the State, the District of Columbia or Puerto Rico paid during the 12-month review period;

* * * * *

(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 paragraph (b) of this section.

(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.

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