

## § 98.2

including those who receive no direct assistance under the CCDF;

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

(4) Strengthen the role of the family;

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

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

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

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

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

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

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

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

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

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

### § 98.2 Definitions.

For the purpose of this part and part 99:

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

*ACF* means the Administration for Children and Families;

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

*Assistant Secretary* means the Assistant Secretary for Children and Fam-

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lies, Department of Health and Human Services;

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

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

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

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

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

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

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

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

*The Department* means the Department of Health and Human Services;

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

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

*Eligible child care provider* means:

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

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

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

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

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

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

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

*Indian Tribe* means any Indian Tribe, band, nation, or other organized group or community, including any Alaska Native village or regional or village corporation as defined in or established pursuant to the Alaska Native Claims

Settlement Act (43 U.S.C. § 1601 *et seq.*) that is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians;

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

*Lead Agency* means the State, territorial or tribal entity designated under §§ 98.10 and 98.16(a) to which a grant is awarded and that is accountable for the use of the funds provided. The Lead Agency is the entire legal entity even if only a particular component of the entity is designated in the grant award document.

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

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

*Major renovation* means: (1) structural changes to the foundation, roof, floor, exterior or load-bearing walls of a facility, or the extension of a facility to increase its floor area; or (2) extensive alteration of a facility such as to significantly change its function and purpose, even if such renovation does not include any structural change;

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

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

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

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

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

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

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

*Programs* refers generically to all activities under the CCDF, including child care services and other activities pursuant to § 98.50 as well as quality and availability activities pursuant to § 98.51;

*Provider* means the entity providing child care services;

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

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

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

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

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

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

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

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

*Tribal mandatory funds* means the child care funds set aside at section

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

*Tribal organization* means the recognized governing body of any Indian Tribe, or any legally established organization of Indians, including a consortium, which is controlled, sanctioned, or chartered by such governing body or which is democratically elected by the adult members of the Indian community to be served by such organization and which includes the maximum participation of Indians in all phases of its activities: Provided, that in any case where a contract is let or grant is made to an organization to perform services benefiting more than one Indian Tribe, the approval of each such Indian Tribe shall be a prerequisite to the letting or making of such contract or grant; and

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

#### § 98.3 Effect on State law.

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

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

### Subpart B—General Application Procedures

#### § 98.10 Lead Agency responsibilities.

The Lead Agency, as designated by the chief executive officer of the State