

**DEPARTMENT OF HEALTH AND HUMAN SERVICES****45 CFR Part 98**

RIN 0970-AD11

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

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

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The Department of Health and Human Services, Administration for Children and Families proposes to amend the Child Care and Development Fund (CCDF) regulations through this notice of proposed rulemaking (NPRM) to allow all Indian Tribes and Tribal Organizations operating CCDF programs, at their discretion, to establish and use eligibility criteria regardless of family income.

**DATES:** In order to be considered, written comments on this proposed rule must be received on or before September 16, 2024.

**ADDRESSES:** You may submit comments, identified by docket number ACF-2024-0010 and/or RIN number 0970-AD11, to the Federal eRulemaking Portal: <https://www.regulations.gov>. Follow the instructions for submitting comments.

**Instructions:** All submissions received must include the agency name and docket number or RIN number for this rulemaking. All comments received are a part of the public record and will be posted for public viewing on [www.regulations.gov](https://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.

**Docket:** Go to the Federal eRulemaking Portal at <https://www.regulations.gov> for access to the rulemaking docket, including any background documents and the plain-language summary of the proposed rule of not more than 100 words in length required by the Providing Accountability Through Transparency Act of 2023, 5 U.S.C. 553(b)(4).

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

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**I. Background**

In response to requests from Tribal Child Care and Development Fund (CCDF) Lead Agencies for more flexibility on family income eligibility to better meet community needs and to recent statutory changes to eligibility in the Tribal Head Start program, this NPRM proposes a regulatory change to allow all Tribal CCDF Lead Agencies to serve Indian children (as defined by the Tribal Lead Agency) in their service area regardless of family income or assets. This NPRM is also responsive to Executive Order 14112, *Reforming Federal Funding and Support for Tribal Nations To Better Embrace Our Trust Responsibilities and Promote the Next Era of Tribal Self-Determination*, which directs agencies to "increase the accessibility, equity, flexibility, and utility of Federal funding." This proposal will provide Tribal Nations with more flexibility to better meet community needs, address calls for greater Tribal sovereignty, and facilitate better alignment between Tribal CCDF and Tribal Head Start programs.

The Child Care and Development Block Grant Act (42 U.S.C. 9857 *et seq.*), hereafter referred to as the "Act," together with section 418 of the Social Security Act (42 U.S.C. 618) authorize CCDF, which is the primary Federal funding source to Tribes, States, and Territories devoted to supporting families with low incomes access to child care and to increasing the quality of child care for all children. CCDF plays a vital role in supporting child development and family well-being, facilitating parent employment, training, and education, and improving the economic well-being of participating families. In FY 2024, 264 Tribal Lead Agencies representing 546 federally recognized Tribal Nations received CCDF grants totaling \$600 million.<sup>1</sup>

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

Annual Tribal CCDF awards range from \$70,000 to \$88 million per year.

The Act does not explicitly apply most of its provisions to the Tribal CCDF program, so with some exceptions and within certain parameters, the Secretary of Health and Human Services has the authority to determine many of the CCDF requirements for Tribal Lead Agencies, including the family income eligibility requirements for children to receive services from Tribal CCDF programs. Current Tribal CCDF regulations at 45 CFR 98.81(b)(1) include different family income eligibility requirements and flexibilities based on a Tribe's award allocation size in FY 2016. Tribes who had allocations under \$250,000 in 2016 (155 Tribal Lead Agencies) may serve any Indian child (as defined by the Tribal Lead Agency) in the defined service area, regardless of family income or assets. However, Tribal Lead Agencies who had allocations above \$250,000 in 2016 are subject to the same CCDF income eligibility standard as States, set forth at 45 CFR 98.20(a)(2)—family income cannot be more than 85 percent of Grantee Median Income and the family must pass an asset test.

This proposed rule would provide the 109 Tribal Lead Agencies with medium and large allocations the flexibility to disregard family income and assets in determining family eligibility for CCDF. This would extend the flexibility Tribes with smaller allocations have to disregard family income to all Tribal CCDF Lead Agencies. Tribes, at their discretion, could continue to choose to use family income criteria for eligibility, but this would no longer be a requirement. This proposal does not alter existing flexibilities that permit Tribal Lead Agencies to apply categorical eligibility criteria for families under certain conditions.

Tribal Nations have requested greater flexibility for CCDF family income eligibility. Tribes report the rules do not provide the flexibility necessary for Tribal Nations to implement CCDF programs in ways that best meet the needs of the children and families in their communities. The significant variation between Tribal Nation child care needs, infrastructure, and location as well as the individuality of the 546 federally-recognized Tribal Nations receiving CCDF make the 85 percent grantee median income eligibility threshold poorly suited to Tribal Nations, hindering their ability to effectively and efficiently using CCDF to serve children and families. OCC recently sought feedback from Tribal Nations and other interested parties on areas where more flexibility and/or

different program rules would better serve children, families, and Tribal Nations through a formal Request for Information (RFI), published in the **Federal Register** at 88 FR 48409 (July 27, 2023). Throughout the RFI feedback process and other feedback processes, Tribal Lead Agencies expressed appreciation for many CCDF flexibilities but explained current categorical eligibility rules were complicated, burdensome, and too limited and that standard family income eligibility rules were too narrow to meet community needs. Many Tribal Lead Agencies expressed support for changing eligibility requirements so they can serve Indian children (as defined by the Tribal Lead Agency), regardless of family income.

This proposal will also benefit Tribal Nations by better aligning family income eligibility rules in the Tribal CCDF and Head Start programs. At the request of Tribal Nations and the Biden-Harris Administration, the Further Consolidated Appropriations Act, 2024 (Pub. L. 118–47) included a legislative change to section 645 of the Head Start Act, 42 U.S.C. 6840, to allow Tribal Head Start programs to serve children in their service area regardless of family income. The Head Start Act, unlike the CCDBG Act, required legislative action to make this change. This important new Head Start flexibility better supports Tribal sovereignty and allows Tribal Head Start programs to better meet the needs of children and families in their communities. However, it inadvertently makes CCDF more restrictive than Head Start, creating unintended implementation challenges for Tribes and barriers to effectively and efficiently using multiple types of early childhood Federal funding to support comprehensive early learning services, child development, and family well-being. This challenge is especially salient since almost all Tribal Head Start grantees administer a Tribal CCDF program. This proposal would better align Head Start and CCDF and allow

Tribal Nations the necessary flexibility to determine how early childhood program family income eligibility determinations can best support their communities.

#### *Effective Dates*

ACF proposes that the final rule become effective 60 days from the date of publication of the final rule.

#### *Severability*

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

## II. Statutory 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. 9857, *et seq.*), and section 418 of the Social Security Act (42 U.S.C. 618).

## III. Discussion of Proposed Changes

We propose to revise 45 CFR 98.81(b)(1) to allow all CCDF Tribal Lead Agencies the flexibility to determine family eligibility for CCDF without regard to family income and assets. The proposal amends § 98.81(b)(1)(ii) to allow Tribal Lead Agencies to disregard family income requirements described in § 98.20(a)(2), while retaining the ability for Tribal Lead Agencies with a Tribal median income below a level determined by the Secretary to deem any child in their service area categorically eligible, regardless of family income, work, or training status. Currently, the 40 percent of Tribal Lead Agencies with medium and large allocations, as defined in CCDF regulations, are subject to the requirements at § 98.20(a)(2) that children must be in families with incomes below 85 percent Grantee Median Income and with assets under

\$1 million in order to be eligible for CCDF. Tribes with small allocations are not subject to the requirements at § 98.20(a)(2) and are therefore already have the flexibility to serve Indian children (as defined by the Tribal Lead Agency) regardless of family income. Extending the flexibility to serve any Indian Child in the service area regardless of family income to all Tribal Lead Agencies better supports Tribal sovereignty and self-determination, and it gives Tribes the ability to prioritize services in the way that best meets the needs of Tribal Nations and communities. It will create better opportunities for Tribes to align CCDF programs with other Tribal early childhood programs, including Tribal home visiting, Early Head Start, Head Start, and tribally funded preschool.

This proposal does not make any other changes to current Tribal CCDF family eligibility rules, including existing Tribal categorical eligibility flexibilities, which remain unchanged.

## IV. Regulatory Process Matters

### *Paperwork Reduction Act*

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

The proposed rule modifies the previously approved ACF–118–A CCDF Tribal Plan information collection, but ACF has not yet initiated the OMB approval process to implement these changes. ACF will publish a **Federal Register** notice soliciting public comment on specific revisions to this information collection and the associated burden estimate and will make available the proposed form and instructions for review.

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

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

existing information collections that are modified by this proposed rule.

ANNUAL BURDEN ESTIMATES

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

*Regulatory Flexibility Act*

The Regulatory Flexibility Act (RFA) (see 5 U.S.C. 605(b) as amended by the Small Business Regulatory Enforcement Fairness Act) requires Federal agencies to determine, to the extent feasible, a rule’s impact on small entities, explore regulatory options for reducing any significant impact on a substantial number of such entities, and explain their regulatory approach. The term “small entities,” as defined in the RFA, comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. HHS considers a rule to have a significant impact on a substantial number of small entities if it has at least a 3 percent impact on revenue on at least 5 percent of small entities. The Secretary proposes to certify, under 5 U.S.C. 605(b), as enacted by the RFA (Pub. L. 96–354), that this rulemaking would not result in a significant impact on a substantial number of small entities, as this rulemaking primarily impacts tribes receiving Federal CCDF grants. Therefore, an initial regulatory flexibility analysis is not required for this document.

*Unfunded Mandates Reform Act of 1995*

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of regulatory actions on State, local, and Tribal governments, and the private sector. Under section 202 of the UMRA, the Department generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with “Federal mandates” that may result in expenditures by State, local or Tribal governments, in the aggregate, or the private sector, of \$100 million in 1995 dollars, updated annually for inflation. In 2024 the threshold is approximately \$183 million. This proposed rule does not impose an unfunded mandate on State, local, or

Tribal governments or the private sector of more than \$183 million per year. Therefore, ACF is not required to provide a statement, including a cost-benefit analysis, of the impacts of the proposed changes.

*Executive Order 13132*

Executive Order 13132 requires Federal agencies to consult with State and local government officials if they develop regulatory policies with federalism implications. Federalism is rooted in the belief that issues that are not national in scope or significance are most appropriately addressed by the level of government close to the people. This rulemaking would not have substantial direct impact on the States, on the relationship between the Federal Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with section 6 of Executive Order 13132, this action does not have sufficient federalism implications to warrant the preparation of a federalism summary impact statement.

*Assessment of Federal Regulations and Policies on Families*

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

*Regulatory Review*

We have examined the impacts of the rule under Executive Order 12866, Executive Order 13563, the Regulatory

Flexibility Act (5 U.S.C. 601–612), and the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4). Executive Orders 12866 and 13563 direct us to assess all benefits, costs, and transfers of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity). A regulatory impact analysis must be prepared for rules deemed significant under section 3(f)(1) of E.O. 12866, as amended by E.O. 14094.

The Office of Information and Regulatory Affairs has determined that this proposed rule is not a significant regulatory action under section 3(f)(1) of E.O. 12866, as amended by E.O. 14094, and does not require a full regulatory impact analysis. This proposed rule has, however, been designated “a significant regulatory action” under section 3(f) of Executive Order 12866, as amended by Executive Order 14094. In FY 2024, OCC estimates that up to \$173 million is allocated to Tribal Lead Agencies that could be impacted by the proposed change. Further, these Tribal Lead Agencies have discretion on whether to adopt this flexibility based on their unique needs. This proposed rule does not stipulate any new requirements.

**VI. Tribal Consultation Statement**

Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, requires agencies to consult with Indian tribes when regulations have substantial direct effects on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes. The proposed changes included in this NPRM are in response to requests from Tribal Nations for greater flexibility for CCDF family income eligibility that OCC has received through formal consultation with Tribal Leaders and through the Request for Information

(RFI) OCC published in July 2023. Additional discussion of proposed changes in section 3 of the preamble serves as the Tribal impact statement. We intend to notify Tribal lead agencies about the opportunity to provide comment on the NPRM no later than the day of publication. Further, shortly after publication of the NPRM, we will host consultation with Tribal Leaders and hold briefing sessions with Tribal lead agencies and any other interested tribe on the contents of the NPRM.

Jeff Hild, Principal Deputy Assistant Secretary for the Administration for Children and Families, performing the delegable duties of the Assistant Secretary, approved this document on May 22, 2024.

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

**List of Subjects in 45 CFR Part 98**

Child care, Grant programs—social programs.

Dated: July 8, 2024.

**Xavier Becerra,**

*Secretary, Department of Health and Human Services.*

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

**PART 98—CHILD CARE AND DEVELOPMENT FUND**

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

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

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

**§ 98.81 Application and Plan procedures.**

\* \* \* \* \*

(b) \* \* \*

(1) \* \* \*

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

\* \* \* \* \*

[FR Doc. 2024-15244 Filed 7-12-24; 8:45 am]

**BILLING CODE 4184-87-P**

**DEPARTMENT OF THE INTERIOR**

**Fish and Wildlife Service**

**50 CFR Part 17**

[Docket No. FWS-R2-ES-2022-0012; FXES1111090FEDR-245-FF09E21000]

**Endangered and Threatened Wildlife and Plants; 90-Day Finding and 12-Month Determination on a Petition To Revise Critical Habitat for Sonora Chub**

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Notification of a 90-day petition finding and 12-month determination.

**SUMMARY:** We, the U.S. Fish and Wildlife Service (Service), announce our 90-day finding and 12-month determination on how to proceed in response to a petition to revise critical habitat for Sonora chub (*Gila ditaenia*) pursuant to the Endangered Species Act of 1973, as amended (Act). The petition requests that the Service revise the existing critical habitat designation in Arizona by adding California Gulch. Our 90-day finding is that the petition, in conjunction with information readily available in our files, presents substantial scientific information indicating that the requested revision may be warranted. Our 12-month determination is that we intend to proceed with processing the petition by assessing critical habitat during the next 5-year status review for Sonora chub scheduled for release as soon as fiscal year 2027, as resources allow.

**DATES:** The finding and the determination announced in this document were made on July 16, 2024.

**ADDRESSES:** A detailed description of the basis for this finding and this determination is available on the internet at <https://www.regulations.gov> at Docket No. FWS-R2-ES-2022-0012. Information and supporting documentation used in preparing this finding and determination is also available by contacting the person listed under **FOR FURTHER INFORMATION CONTACT**. Please submit any new information, materials, comments, or questions concerning this finding to the contact listed under **FOR FURTHER INFORMATION CONTACT**.

**FOR FURTHER INFORMATION CONTACT:** Heather Whitlaw, Arizona Ecological Services Field Office, 9828 North 31st Ave. C3, Phoenix, AZ 85051-2517; telephone 602-242-0210. Individuals in the United States who are deaf, deafblind, hard of hearing, or have a speech disability may dial 711 (TTY,

TDD, or TeleBraille) to access telecommunications relay services. Individuals outside the United States should use the relay services offered within their country to make international calls to the point-of-contact in the United States.

**SUPPLEMENTARY INFORMATION:**

**Background**

Section 3(5)(A) of the Act defines critical habitat as (i) the specific areas within the geographical area occupied by the species, at the time it is listed, on which are found those physical or biological features (I) essential to the conservation of the species and (II) which may require special management considerations or protections; and (ii) specific areas outside the geographical area occupied by the species at the time it is listed, upon a determination by the Secretary of the Interior (Secretary) that such areas are essential for the conservation of the species.

In accordance with section 3(5)(A)(i) of the Act and regulations at 50 CFR 424.12(b), in determining which areas we will designate as critical habitat from within the geographical area occupied by the species at the time of listing, we consider the physical or biological features that are essential to the conservation of the species and which may require special management considerations or protection. Our implementing regulations at 50 CFR 424.02 define the “physical or biological features essential to the conservation of the species” as the features that occur in specific areas and that are essential to support the life-history needs of the species, including, but not limited to, water characteristics, soil type, geological features, sites, prey, vegetation, symbiotic species, or other features. A feature may be a single habitat characteristic or a more complex combination of habitat characteristics. Features may include habitat characteristics that support ephemeral or dynamic habitat conditions. Features may also be expressed in terms relating to principles of conservation biology, such as patch size, distribution distances, and connectivity. In addition, our implementing regulations at 50 CFR 424.02 define “special management considerations or protection” as methods or procedures useful in protecting the physical or biological features essential to the conservation of listed species.

Section 4(b)(2) of the Act states that the Secretary shall designate and make revisions to critical habitat for listed species on the basis of the best scientific data available and after taking into consideration the economic impact,