ACF Administration for Children and Families	U.S. DEPARTMENT OF HEALTH AND HUMAN SERVICES	
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To	Tribal Lead Agencies administering child care programs under the Child Care and Development Block Grant (CCDBG) Act and other interested parties.
References	Section 658O(c)(6) of the CCDBG Act, 42 U.S.C. § 9858m(c)(6). 45 C.F.R. §§ 98.2, 98.83(g), and 98.84. ACYF-PIQ-CC-99-01.
Subject	Procedures for Requests from Tribal Lead Agencies to Use Child Care and Development Fund (CCDF) Funds for Construction or Major Renovation of Child Care Facilities
Background	The CCDBG Act allows Tribal Lead Agencies to use CCDF funds for construction or renovation of child care facilities. A Tribal Lead Agency must first request and receive approval from the Administration for Children and Families (ACF) before using CCDF funds for construction or major renovation. Under the law, ACF must develop and implement uniform procedures for the solicitation and consideration of such requests. This Program Instruction sets forth the uniform procedures. This Program Instruction supersedes CCDF-ACF-PI-2016-05 (issued November 29, 2016). The revised procedures contained in this new Program Instruction update the construction and renovation procedures by: • Incorporated technical changes regarding the official title of Pub L. 102-477 to reflect as the Indian Employment, Training and Related Services Consolidation Act of 2017; including the correct contact for submission of SF-429 information and updated OMB circular references. • Clarified the process for disposition and included information regarding access to grantsolution.gov. • Added language regarding submission of the SF-429 cover page and Attachment C Encumbrance Request and support documentation into grantsolutions.gov.

Effective Date	These revised procedures apply to construction and renovation applications submitted after the date of issuance of this Program Instruction.
Questions	Direct all inquiries to the appropriate Office of Child Care (OCC) Regional Program Manager listed on the OCC website at https://www.acf.hhs.gov/occ/resource/regional-child-care-program-managers.

/s/
Shannon Christian
Director
Office of Child Care

Attachments:
A – Procedures for Requests to Use CCDF Funds for Construction or Major Renovation of Child Care Facilities
B – Compliance with the National Environmental Policy Act
C – Compliance with the National Historic Preservation Act
D – Application Checklist
E – Documents and Deadlines to be Submitted to the OCC Regional Offices
F – Sample Notice of Federal Interest

Attachment A

Procedures for Requests to Use CCDF Funds for Construction or Major Renovation of Child Care Facilities

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I. Background

Section 658O(c)(6) of the Child Care and Development Block Grant (CCDBG) Act, 42 U.S.C. § 9858(c)(6), allows Tribal Lead Agencies to use Child Care and Development Fund (CCDF) funds for construction or renovation of child care facilities.

Tribal Lead Agencies (including Tribal grantees with approved plans under the Indian Employment, Training and Related Services Consolidation Act of 2017, also known as Pub. L. 102-477 must first request and receive approval from the Administration for Children and Families (ACF) before using CCDF funds for construction or major renovation. Regulations at 45 CFR 98.84(b) require Tribal Lead Agencies to make requests in accordance with uniform procedures established by the Program Instruction. This Program Instruction sets forth the uniform procedures.

These procedures require a Tribal Lead Agency to show that adequate child care facilities are not otherwise available and that the lack of facilities will inhibit future program operations. Under the law, use of funds for construction or renovation cannot result in a decrease in the level of child care services compared to the preceding fiscal year, unless ACF grants the Tribal Lead Agency a waiver. In order to waive that requirement, the decrease of direct services must be temporary. The Tribal Lead Agency must also show that after the construction or renovation is complete, the level of direct services will increase or the quality of child care services will improve.

PAPERWORK REDUCTION ACT. Public reporting burden for this collection of information is estimated to average 20 hours per response, including the time for reviewing instructions, gathering and maintaining the data needed, and reviewing the collection of information. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.
Approved OMB Number: 0970-0160, expires 10/31/2022.

These funds give Tribal Lead Agencies an opportunity to include child-focused and culturally-appropriate elements into the construction or renovation design. Tribal Lead Agencies are encouraged to think strategically about their architectural and landscape design to incorporate these elements.

II. Applicability of these Procedures

These procedures only apply to requests to use funds for construction or major renovation.

> ***Construction*** means the building of a child care facility that does not currently exist.
>
> ***Major renovation*** involves 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. *Major renovation* also includes any extensive alteration of a facility such as to significantly change its function and purpose, even if such renovation does not include any structural change.

A Tribal Lead Agency does not need to request approval to spend CCDF funds on minor renovation.

> *Minor renovation* includes all renovation other than major renovation or construction, as defined above.

The term *renovation* as used in this Program Instruction refers to major renovation.

Section 658F(b)(1) of the CCDBG Act, 42 U.S.C. § 9858d(b)(1), prohibits the use of CCDF funds for "the purchase or improvement of land, or for the purchase, construction, or permanent improvement (other than minor remodeling) of any building or facility." However, Section 658O(c)(6) of the CCDBG Act, 42 U.S.C. §9858m(c)(6) provides an exception to this general prohibition, such that "[a]n Indian tribe or tribal organization may submit to the Secretary a request to use amounts provided under this subsection for construction or renovation purposes."

As a part of its application, a Tribal Lead Agency may request to use CCDF funds for the cost of amortizing the principal and paying interest on loans for construction or renovation.

A Tribal Lead Agency may request to use CCDF funds to pay for the costs of constructing or renovating a modular unit, including the costs of buying and installing the unit, if the unit is fixed to the land (for example, placed on a foundation and permanently connected to utility lines). If a Tribal Lead Agency is requesting funds for these purposes, it must also provide a cost comparison of the life of the modular unit compared to the construction of a more permanent structure, like a brick and mortar building.

> *Modular unit* is a portable structure made at another location and moved to a site for use by a Tribal Lead Agency to carry out a CCDF program (see Section XIII of this document for additional requirements for modular units).

A Tribal Lead Agency may request and receive approval to use CCDF funds for a new or ongoing construction or major renovation project. However, CCDF funds cannot actually be expended for construction or major renovation costs until ACF approval is granted in accordance with this Program Instruction. If a Tribal Lead Agency constructs or renovates more than one facility, it must seek ACF approval for *each* project (even if the projects use identical plans and specifications). However, a Tribal Lead Agency may, use a single application to seek approval for more than one project, as long

as all required information is provided for each project.

For purposes of these procedures, the terms *mortgage, loan,* and *deed of trust* refer to any agreement or instrument used to finance or secure financing for the construction or renovation of facilities with Federal CCDF funds.

III. Fiscal Procedures

Upon obtaining ACF approval pursuant to this Program Instruction, a Tribal Lead Agency may spend either Tribal Mandatory Funds or Discretionary Funds (or both) for construction or major renovation. **Any CCDF funds must come from a Tribal Lead Agency's CCDF allocation; a Tribal Lead Agency will not receive any additional CCDF funds for construction or renovation.**

Administrative Costs/Quality Expenditures. Amounts used for construction and major renovation, including planning and consultant costs (such as costs of an architect to develop plans and specifications), are not considered administrative costs for purposes of the 15 percent administrative cost limit at 45 CFR 98.83(g) (See Section V for more information on Planning Costs). Similarly, construction and renovation costs cannot be counted as quality expenditures for purposes of the minimum quality expenditure requirement at 45 CFR 98.83(g).

Application Deadline. In order to use CCDF funds awarded in a given fiscal year on construction or major renovation, a Tribal Lead Agency must submit an application in accordance with this Program Instruction prior to July 1 of that fiscal year. (For example, applications for fiscal year 2020 funding should be made before July 1, 2020.) This procedure will allow time for ACF to transfer CCDF funds to the separate construction and renovation grant award prior to the end of the fiscal year. Funds awarded in a given fiscal year cannot be transferred to the separate grant award after the end of that fiscal year.

Fiscal Reporting. Funds expended for construction or renovation must be reported separately from other CCDF funds on the tribal financial reporting form ACF-696T.

Grant Award Process. ACF will transfer CCDF funds to be used for construction and major renovation to a separate grant award with a separate grant document number. ACF will send an award letter to notify the Tribal Lead Agency of this transfer. Funds in this separate grant award can only be used for construction or renovation activities (unless ACF authorizes the Tribe to use the funds for other CCDF activities). For Tribes that have consolidated child care with employment and training programs under Pub. L. 102-477, construction or renovation funds will not be transferred to a separate grant award; see paragraph below on Pub. L. 102-477.

Liquidation Time Frame. Tribal Lead Agencies must liquidate CCDF funds used for construction or major renovation by the end of the second fiscal year following the fiscal year for which the grant is awarded. This gives Tribal Lead Agencies up to three years to liquidate funds approved for use on construction or major renovation. (For example, such funds awarded on October 1, 2019, must be liquidated by September 30, 2022). The liquidation period begins with the date that funds are originally awarded—not the date that funds are transferred to the separate grant award for construction and renovation. There is no separate obligation period for construction and major renovation funds. For Tribes that have consolidated child care with employment and training programs under Pub. L. 102-477, funds can be carried forward without obligation or liquidation periods.

Public Law 102-477. Tribes with approved plans under the Indian Employment, Training and Related

Services Consolidation Act of 2017, also known as Pub. L. 102-477 must request and receive ACF approval in accordance with this Program Instruction prior to spending CCDF funds on construction or major renovation. ACF will notify the U.S. Department of Interior upon approving a Pub. L. 102-477 grantee's construction or renovation application. The Tribe cannot use CCDF funds for construction or renovation until the Department of Interior notifies the Tribe that the scope of work for its Pub. L. 102-477 grant/compact has been modified to include the approved construction or renovation project.

Use of Construction/Renovation Funds for Other CCDF Activities. If funds approved for construction/renovation (or previously transferred to the separate grant award) are no longer needed for construction or renovation, the Tribal Lead Agency must submit a written request to ACF (signed by the Tribal Chairperson or his/her designated representative who has the authority to act) and obtain approval before it uses the funds for other allowable CCDF activities. The written request must: 1) specify the amount of funds that will be used for CCDF activities other than construction or renovation, 2) provide an explanation as to why the full construction award will not be spent, and 3) include documentation of the status of the construction plans.

IV. Pre-Application Activities

Before submitting an application pursuant to this Program Instruction, a Tribal Lead Agency must conduct a community needs assessment to determine the need for construction or major renovation. ACF has not prescribed a specific format or content for the needs assessment. However, the assessment should be designed to determine if there is a need to construct or renovate a child care facility and, if so, how the facility can be developed in a manner that best meets community needs. This process might involve:

- assessing the condition and adequacy of existing facilities;
- examining the current need for child care in the community (including population demographics; what type of child care meets the needs of the community);
- projecting whether the need for child care is likely to continue or change in the future;
- determining the best location and evaluating the site for the proposed facility;
- determining the size of the facility based on community needs and available resources; and
- estimating start-up and operating costs for the facility and evaluating whether adequate resources exist to meet these costs.

All Tribal Lead Agency must involve its OCC Regional Office early in the process of considering the merits of construction or renovation and must discuss with its Regional Office any proposed project prior to submitting a written application.

V. Planning Costs

A Tribal Lead Agency may, without prior ACF approval, use CCDF funds for reasonable and necessary planning and consultant costs associated with assessing the need for construction or renovation or for preparing an application to spend CCDF funds on construction or renovation. Such costs could include the costs of hiring an architect to develop plans and specifications.

If funds have already been transferred to the separate grant award for construction or renovation, these funds can be used to pay for the planning or consultant costs. If funds have not yet been transferred to

the separate award, the Tribal Lead Agency may use CCDF funds from its general Tribal Mandatory or Discretionary grant award for planning or consultant costs; however, once ACF approves the application, a retroactive adjustment must be made to charge these costs to the separate construction and renovation grant award.

A Tribal Lead Agency may only use CCDF funds to pay for the costs of an architect, engineer, or other consultant for a project that is subsequently approved by ACF. If the project later fails to gain ACF approval, the Tribal Lead Agency must pay for the architectural, engineering or consultant costs using non-CCDF funds and must make a retroactive adjustment to its CCDF grant claims. Disapproval of a project is unlikely if the Tribe follows the application procedures and Federal requirements and works closely with its OCC Regional Office as it develops the project. A Tribe is encouraged to contact its OCC Regional Office for guidance before undertaking the initial planning process for a construction or renovation project.

VI. Application Requirements

The Tribal Lead Agency proposing to use CCDF funds for construction or major renovation must submit the Real Property Status Report SF-429 cover page and Attachment B (Request to Acquire, Improve, or Furnish) in the GrantSolutions Online Data Collection (OLDC) system. Instructions on how to access and submit are available at: https://www.acf.hhs.gov/occ/resource/ccdf-acf-pi-2017-06.

In addition, the Tribal Lead Agency must submit a supplemental written application signed by the Tribal Chairperson or his/her designee that contains the following information:

(1) The Tribal name and the name of the Tribal Lead Agency responsible for administering the CCDF.

(2) A description of existing child care facilities located within a 50 mile radius of the proposed facility that are currently used by the Tribal Lead Agency to carry out CCDF activities. Include the number of each type of facility (e.g., homes, centers) and a brief description of each center (i.e., size, type of structure, condition, number of children served, and ages of children served).

(3) An explanation of why current facilities (described in item 3) are not adequate to carry out CCDF activities and why the lack of facilities will inhibit the operation of the Tribal Lead Agency's CCDF program in the future. The explanation must include estimates of the number of children who: (1) currently receive CCDF services; (2) are currently eligible to receive and are in need of CCDF services but are not being served due to inadequate facilities; (3) are projected to receive CCDF services over the next five years (in the absence of this proposed construction/renovation); and (4) are projected to be eligible to receive and in need of CCDF services, but will not be served (without this proposed construction/renovation) due to inadequate facilities, over the next five years.

(4) A statement that adequate facilities are not otherwise available through lease, donation, purchase by non-CCDF funds, or other means.

(5) (a) The following written assurance: "The use of CCDF funds for construction or renovation will not result in a decrease in the level of child care services provided by

the Tribal Lead Agency, as compared to the level of services provided in the preceding fiscal year."

(b) Additionally, describe how the current fiscal year's level of child care services compares to the preceding year's level of services. The Tribal Lead Agency may define "level of services" in terms of the number of children served and/or the amount of funds spent on child care. Regardless of which definition it chooses, the Tribal Lead Agency must include in its description explanatory information about both the number of children served and the amount of funds spent on child care. The "preceding fiscal year" is the fiscal year prior to the fiscal year that the Tribal Lead Agency submits its application in accordance with this Program Instruction.

NOTE: A new tribal grantee (i.e., one that did not receive CCDF funds the preceding fiscal year) may spend no more than an amount equivalent to its Tribal Mandatory allocation on construction and renovation. Therefore, a new tribal grantee must spend an amount equivalent to its Discretionary allocation on activities other than construction or renovation (i.e., direct services, quality activities, or administrative costs).

(c) If the Tribal Lead Agency is seeking a waiver from the requirement to maintain the level of child care services while using CCDF funds for construction or renovation, the Tribal Lead Agency must submit the following information:

(I) The following written assurance: "The decrease in the level of child care services provided by the Tribal Lead Agency is temporary."

(II) Additionally, describe the current fiscal year's level of child care services, the projected decrease as a result of the construction or renovation, and how long the Tribal Lead Agency estimates the projected decrease will last.

(III) Explain how the child care services will improve after the completion of the construction or renovation. The explanation must include a plan that shows that the level of services will increase or that the quality of services will improve.

(6) (a) A description and map of the site of the facility proposed to be constructed or on which renovations are proposed and an explanation of the appropriateness of the location in relation to the Tribal Lead Agency's service area.

(b) Include a statement of the effect of the facility's location on the transportation of children to the program; on the Tribal Lead Agency's ability to collaborate with other child care, Head Start/Early Head Start, social services, and health providers; and on all other program activities and services.

(7) (a) The plans and specifications for the proposed construction or renovation, including architectural designs.

NOTE: Draft architectural plans and specifications, as opposed to final plans, are acceptable if they include:
(1) a plot plan showing the orientation and location of the building in relation to key features (e.g., parking areas, playground, access points);

(2) floor plans showing the overall dimensions of the building and the location, size, and purpose of its components (e.g., rooms, hallways);
(3) drawings showing the size and appearance of all sides of the building's exterior; and
(4) outlined specifications listing a general description of materials and mechanical systems.

(b) Describe the facility as it will be after construction or renovation is complete, including:
(1) information on the size and type of structure;
(2) the number and a description of the rooms;
(3) the lot on which the building is located (including the space available for a playground and for parking);
(4) and the number of children the facility will serve.

For major renovation requests, describe and identify the current condition of the facility, as well as the proposed renovations.

(c) Describe the aspects of the building and physical premises that will ensure children's health and safety (e.g. appropriate diaper changing and hand washing areas; sufficient heating, cooling, and ventilation; secure storage space for any hazardous materials; smoke detectors or other fire warning devices; adequate exits in case of emergency; etc.)

(d) Explain the elements of the facility that will help create a developmentally-appropriate learning space (e.g. child-sized plumbing fixtures, low windows for children to look out, sufficient play space, etc.).

NOTE: The Tribal Lead Agency is encouraged to hire an architect or other expert who has experience in designing spaces for infants, toddlers, and children.

(e) In addition, describe the culturally significant elements, if any, in the facility's design or renovation (e.g. use of certain building materials, landscaping, play space).

(8) A proposed time schedule for each major activity of the construction or renovation and occupancy of the facility.

(9) The intended uses of the facility proposed to be constructed, or on which renovations are proposed, and information about the percentage of floor space that will be used to provide direct services to children. If the facility is to be used for other purposes, in addition to the operation of the child care program, the Tribal Lead Agency must state what portion of the facility is to be used for such other purposes.

NOTE: The facility must be used principally to provide direct services to children. Furthermore, if the facility is to be used for purposes in addition to the operation of the CCDF program, costs must be allocated in accordance with applicable cost principles (45 CFR Part 75 Subpart E).

(10) (a) Documentation on all other sources and uses of non-CCDF funds for the construction or renovation, including any restrictions or conditions imposed by other funding

sources. The documentation must include a cost allocation plan, in accordance with 45 CFR Part 75 (which replaces Office of Management and Budget (OMB) Circular No. A-87), for any facility that is shared with other programs.

(b) The terms of any proposed or existing loan(s) related to the construction or renovation of the facility and the repayment plans (detailing balloon payments or other unconventional terms, if any).

NOTE: Any loan or mortgage agreement, including a deed of trust, or any other instrument used to finance the construction or renovation secured by the property (or security agreement in the case of a modular unit which is proposed to be purchased under a chattel mortgage) shall require the lender, in the case of default by the Tribal Lead Agency, to notify ACF before foreclosing on the property.

The agreement must provide that ACF has the right to cure the default, and that the lender shall accept the payment of money or performance of any other obligation by ACF, or its designee, for the Tribal Lead Agency, as if such payment of money or performance had been made by the Tribal Lead Agency.

The agreement shall also provide that the lender will not foreclose on the property until at least 60 calendar days after ACF is notified of the default. This 60-day period will allow time for the responsible ACF official to designate a replacement Tribal Lead Agency, which shall assume all of the obligations of the Tribal Lead Agency under the loan (see Section X for more information).

(11) An estimate of the total cost of the proposed construction or major renovation. The estimate must provide a break down by major cost category, such as: demolition and removal; site work; general construction/renovation; plumbing; heating, ventilation and air conditioning; electrical; equipment; architectural and engineering fees. For modules provide a cost comparison of the life of the modular unit compared to the construction of a more permanent structure, like a brick and mortar building. Provide a copy of written documentation, such as a written estimate prepared by a licensed architect or engineer, to support the cost estimate. The cost estimate must include:

(a) Estimated one-time costs, including:
(1) planning costs,
(2) labor, materials and services necessary for the functioning of the facility, and
(3) initial equipment for the facility.

Equipment means items that are tangible, nonexpendable personal property having a useful life of more than five years. Some examples of one-time costs are the down payment, professional fees, moving expenses, and the cost of site preparation.

(b) An estimate of ongoing costs such as staffing costs, supplies, insurance premiums, maintenance costs, property taxes, and any other operating costs for the facility or the child care program. When planning for construction or renovation, the Tribal Lead Agency should carefully consider whether it would have sufficient funds to cover ongoing costs necessary to operate the facility after the construction or renovation is completed; and the impact on the Tribal Lead Agency's ability to meet its child care

service obligations. A large allocation Tribal Lead Agency must demonstrate that it has adequate resources to operate a certificate program, and all Tribes must demonstrate that they will meet quality expenditure requirements, in addition to constructing or completing a major renovation project. (*A large allocation Tribal Lead Agency is a grantee that receives a CCDF allocation of $1 million or more in a fiscal year. Large allocation Tribal Lead Agencies are required to operate a certificate program. All Tribes are required to spend a percent of CCDF expenditures on quality improvement activities*).

NOTE: A Tribal Lead Agency cannot use the separate grant award for construction/renovation to pay for ongoing operating costs, such as insurance premiums, maintenance costs, or property taxes. The separate grant award must only be used for one-time construction and renovation costs or principal and interest payments, if the project is financed through a loan. However, other CCDF funds from the Tribal Mandatory or Discretionary grant awards could be used for allowable operating costs.

(12) A statement of the amount of construction or major renovation costs that will be paid with CCDF funds listed separately by the Federal fiscal year in which the CCDF funds become (or became) available. Indicate whether the funds should be transferred from Tribal Mandatory or Discretionary funds.

NOTE: For a single project, a Tribal Lead Agency may use CCDF funds from more than one fiscal year. A project that uses more than one year of CCDF funding may be approved in a single application.

(13) A statement of whether or not there is a Head Start/Early Head Start program in the Tribal Lead Agency's service area. If there is a Head Start/Early Head Start program in the service area, the applicant must describe: any Child Care/Head Start and Early Head Start collaboration efforts, including whether or not the Tribe received an Early Head Start-Child Care partnership grant; the extent to which Head Start/Early Head Start will use the Child Care facility; and the extent to which Head Start/Early Head Start funds will pay for construction and renovation costs, if applicable.

NOTE: The applicant must demonstrate Child Care/Head Start and Early Head Start collaboration if there is a Head Start/Early Head Start program in the service area.

(14) A statement of who owns the land on which the facility is/will be located. If the Tribal Lead Agency proposes to construct or renovate a facility located on land that it does not own, the application must describe and provide a copy of the easement, right of way or land lease it will obtain or has obtained to allow it undisturbed use and possession of the facility for the purpose of operating a CCDF program.

NOTE: The land lease or other similar interest in the underlying land must be long enough for the Tribal CCDF program to receive the full value of the grant-funded improvements. The term of the lease or other arrangement should in most cases be for a period of years that is at least equal to the estimated useful life of the facility. The lease must contain certain information related to the Federal interest (see Section VIII).

(15) **FOR MAJOR RENOVATION REQUESTS ONLY:** A statement indicating whether the

Tribal Lead Agency owns the facility to be renovated. If the Tribal Lead Agency does not own the facility, the application must include information about the owner, a copy of written permission from the owner allowing the proposed renovation, and a copy of the lease for the facility.

NOTE: If the Tribal Lead Agency does not own the facility to be renovated, the Tribal Lead Agency must demonstrate that it has secured a lease that will assure the Tribal Lead Agency has access to the facility for a reasonable period of time, taking into consideration the amount of CCDF funds used to renovate the facility. In most cases, a minimum of five years (from the date the renovation is completed) is required, unless justified. The lease must contain certain information related to the Federal interest (see Section VIII).

(16) (a) A written assurance that the Tribal Lead Agency will provide and maintain competent and adequate oversight and inspection during all phases of the project at the work site to ensure that the completed work conforms to the approved plans and specifications.

(b) In addition, a description of specific steps the Tribal Lead Agency will undertake to ensure adequate oversight and inspection, including the qualifications of personnel who will be performing oversight and inspection tasks.

(17) Written assurances that the facility will be constructed or renovated to comply with:

(a) All applicable licensing and code requirements to ensure the health and safety of the children and child care staff;

(b) The access requirements of the Americans with Disabilities Act (P.L. 101-336), if applicable;

(c) Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. §794);

(d) The Flood Disaster Protection Act of 1973 (P.L. 93-234), if applicable; and,

(e) The Earthquake Hazards Reduction Act of 1977 (P.L. 95-124), if applicable.

(18) (a) An assessment of the impact of the proposed construction or renovation on the human environment, addressing in particular any significant change in land use (including substantial increases in traffic in the surrounding area due to the provision of transportation services), pursuant to the National Environmental Policy Act of 1969 (42 U.S.C. §4332(2)(C)) and its implementing regulations (40 CFR 1500-1508). See Attachment B for guidance regarding the National Environmental Policy Act (NEPA).

(b) A report showing the results of tests for environmental hazards present in the facility, ground water, and soil (or justification why such testing is not necessary). The report (or justification) is required regardless of whether or not the Tribal Lead Agency is required to submit a complete environmental assessment in accordance with NEPA.

See Section XIII regarding additional requirements for modular units.

Attachment D contains a checklist summarizing the above application requirements. The checklist merely serves as a guide to developing an application. It is not intended to serve as a

form or as a replacement for a thorough narrative.

VII. Application Process

The Tribal Lead Agency must send the completed application to the:

> Office of Child Care Regional Program Manager HHS/OCC Regional Office (See https://www.acf.hhs.gov/occ/resource/regional-child-care-program-managers for contact information).

Tribal grantees that have included their CCDF programs in approved plans under Pub. L. 102-477 must also send an additional copy to:

> Jeanette Hanna
> Deputy Bureau Director
> Office of Indian Services
> U.S. Department of the Interior
> 1849 "C" St NW
> MIB, Mail Stop 4513
> Washington, D.C. 20240
> jeanette.hanna@bia.gov

A Tribal Lead Agency may submit an application at any time (although, in order to use CCDF funds awarded in a given fiscal year on construction or major renovation, a Tribal Lead Agency must submit an application prior to July 1 of that fiscal year). Staff in the OCC Regional Office have responsibility for reviewing applications (including applications from tribal grantees with approved plans under Public Law 102-477). ACF will review the application for completeness and adherence to the application requirements described in this Program Instruction. ACF will contact the Tribal Lead Agency for any additional information if an application is incomplete.

If a Tribal Lead Agency is unable to submit all the information required for an application prior to the July 1 deadline a partial application will be accepted. The Tribal Lead Agency should submit as much information as possible prior to the July 1 deadline. At an absolute minimum, the Tribe must provide a written letter signed by the Tribal leader that includes the following:

- Item 1 – identify the Tribe and Tribe Lead Agency with contact information
- Item 2 – amount of CCDF funds. In item 12, the Tribe should indicate if the funds should be transferred from Tribal Mandatory or From Discretionary Funds (or both)

Tribes should move expeditiously in completing their applications, and upon receiving ACF approval, finish construction or major renovation of the projects. Any funds not liquidated within the three-year period will revert back to the Federal government.

The amount of time required for the review process varies depending on the thoroughness of the application in addressing all necessary issues, and other factors. Generally, ACF will attempt to respond to **complete applications** within 30 days, and will notify the applicant if additional time is necessary.

Once a decision is made, ACF will notify the Tribal Lead Agency in writing regarding whether or not and the extent to which a request is approved. The notification will include a specific amount of CCDF funds that can be used for construction or renovation, based on the Tribal Lead Agency's cost estimate in its application. The Tribal Lead Agency may not spend more than the approved amount of CCDF funds on construction and renovation, unless it submits and receives approval for an amended application. However, the Tribal Lead Agency may use non-CCDF funds or leverage other monies for construction or renovation.

In order to make any material changes in the scope, nature, or projected costs of a project once the original application is approved, the Tribal Lead Agency must submit and receive approval for an amended application that describes the changes. ACF must approve the amended application before the Tribal Lead Agency can implement the changes. In addition, the authorization to use funds for construction or renovation is subject to special conditions and post-award requirements described in ACF's approval notice and in the sections below.

VIII. Protection of Federal Interest

(1) The Federal government has a continuing reversionary interest in property that is constructed, renovated, or otherwise acquired with Federal funds. This interest takes the form of restrictions on the use and disposition of the property in accordance with 45 CFR 75.318. Use of the facility constructed or renovated with CCDF funds during its useful life for other than the purpose for which the facility was funded, without the prior express written approval of the responsible ACF official, is prohibited. Facilities constructed or renovated with CCDF funds may not be mortgaged, used as collateral, sold or otherwise transferred to another party, without the prior written permission of the responsible ACF official. The Federal interest also is manifested in the requirement that ACF receive a share of the proceeds from any sale of the property, as determined by the Federal share provisions of 45 CFR 75.318. ACF may, at its sole discretion, subordinate its interest in such property to that of a lender that finances the construction or renovation of the property.

(2) At the commencement of construction or major renovation of a facility with CCDF funds, the Tribal Lead Agency shall record a Notice of Federal Interest in the appropriate official records for the jurisdiction in which the facility will be located (unless the facility will be located on Tribal lands held in trust by the U.S. Government). **A Notice is not required for a facility on Tribal lands held in trust by the U.S. Government; however, there is still a Federal interest in any facility constructed or renovated with CCDF funds.** The Notice must be recorded in the official records and submitted to the OCC Regional Office within ten working days of the commencement of the construction or renovation.

The Notice must include the following information (except for renovations on leased facilities or construction on land not owned by the Tribal Lead Agency):

(a) The date of the award of CCDF funds for the construction or major renovation of the property to be used as a child care facility, and the address and legal description of the property;

(b) That the use of CCDF funds incorporated conditions which restrict the use of the property and provide for a Federal interest in the property;

(c) That the property may not be used for any purpose inconsistent with that authorized

by the CCDBG Act and applicable regulations;

(d) That the property may not be mortgaged, used as collateral, sold or otherwise transferred to another party, without the prior written permission of the responsible ACF official;

(e) That these grant conditions and requirements cannot be altered or nullified through a transfer of ownership; and

(f) The name (including signature) and title of the person who completed the Notice for the Tribal Lead Agency, and the date of the Notice.

(3) In the case of a leased facility undergoing major renovations, the Notice of Federal Interest shall be a copy of the executed lease and all amendments. In the case of a facility to be constructed on land not owned by the Tribal Lead Agency, the Notice of Federal Interest shall be the land lease or other document protecting the Federal interest. (In the event that filing of a lease is prohibited by law, the Tribal Lead Agency shall file an affidavit signed by the representatives of the Tribal Lead Agency and the lessor stating that the lease includes terms which protect the right of the Tribal Lead Agency to occupy the facility for the term of the lease.) The lease or affidavit (as substitute for the lease) serving as a Notice of Federal Interest shall include the following information:

(a) The address and legal description of the property;

(b) A statement indicating that the grant incorporated conditions which include restrictions on the use of property and provide for a Federal interest in the property for the term of the lease or other arrangement; and

(c) A statement indicating that the property may not be used for any purpose during the lease or other arrangement that is inconsistent with that authorized by the CCDBG Act and applicable regulations.

Title to a facility constructed or renovated with CCDF funds vests with the grantee upon acquisition, subject to the provisions of this Program Instruction (except for facilities on Tribal lands where the title is held in trust by the U.S. government). The Federal government assumes no liability for projects constructed or renovated with CCDF funds.

IX. Disposition of Property

CCDF Regulations at 45 CFR 98.84 provide that the use of real property purchased or constructed with CCDF funds during its useful life for purposes other than that which the real property was funded, without the prior written approval of ACF, is prohibited. Upon expiration of the useful life of real property purchased or constructed with CCDF funds, please refer to the ACF Property Disposition guidance, https://www.acf.hhs.gov/grants/real-property-and-tangible-personal-property#chapter-6. At the Office of Child Care discretion, only two of the three disposition options are available of such property by the Tribal Lead Agency:

(1) The Tribal Lead Agency could retain title to the property and use their own funds to compensate the Federal government for its share of the fair market value of the real property in accordance with 45 CFR 75.318(c)(1);

(2) The Tribal Lead Agency could sell, transfer, or otherwise dispose of the property and use the proceeds to compensate the Federal government for its share of the fair market value of the real property in accordance with 45 CFR 75.318(c)(2);

Before taking any of these actions, or using the subject real property for an activity outside the scope of the approved child care activity, the Tribal Lead Agency must first **submit a written request and receive written approval from ACF**. The written request should include the following information:

(1) A description of why the real property is not being used to provide Tribal child care services;

(2) A description of what the Tribe intends to do with the real property;

(3) A statement identifying any additional funds (other than CCDF) used to purchase or construct this real property; and

(4) As part of the disposition, the Tribe is required to complete and submit the SF-429 Cover page, SF-429 Attachment C Disposition Request, and supporting documentation in the GrantSolutions OLDC system, https://www.grantsolutions.gov, for review and approval. If you have any technical issues with OLDC or any of the forms in OLDC, please contact the GrantSolutions Help Desk at 202-401-5282, 1-866-577-0771, or help@grantsolutions.gov.

Once disposition has been completed, the Grants Management Officer (GMO) will prepare the Release of Federal Interest document. This document acknowledges HHS/ACF release of any right to, or interest in, the property and the property from the lien and effect of the Notice of Federal Interest

Note: With respect to determining the Federal share of the fair market value of real property that is being disposed in accordance with 45 CFR 75.318(c), Federal regulations at 45 CFR 75.2 define “Federal share” to mean, “the portion of the total project costs that are paid by Federal funds.”

When Federal funds have been used only to contribute to equity in a property, the calculation of the federal share is determined by dividing the total amount of Federal funds contributed to the construction and/or renovation of the property divided by the total cost of acquiring and

improving the property [i.e., the Federal contribution plus any non-Federal contribution (such as Tribe's contribution)]. This percentage is then multiplied by the current fair market value of the property to determine the Federal share, which must be returned to the Federal government in either of the first two options set forth by 45 CFR 75.318 (c).

When Federal funds have been used to pay interest on a loan used to construct and/or renovate real property, the calculation is the same as above, except that Federal funds used to pay principal and interest on the loan shall also be included in the numerator and all principal and interest payments plus the remaining principal balance on the loan shall also be included in the denominator. Thus, the Federal share would be calculated by dividing the total Federal contribution to the construction and/or renovation costs of the property, including contributions to the equity in the property (e.g., down payments) as well as any principal and interest payments on a loan, divided by the total acquisition, construction, and/or renovation cost of the property, including contributions to the equity in the property, all principal and interest payments, and any remaining principal balance on the loan. This percentage would then be multiplied by the current fair market value of the property to determine the Federal share, which must be returned to the Federal government in either of the first two options set forth by 45 CFR 75.318(c).

The Tribal Lead Agency may submit the request to the OCC addresses listed in Section VII. The Tribal Lead Agency is encouraged to involve its OCC Regional Office early in the process and must discuss with its Regional Office any proposed disposition prior to submitting a written request.

X. Rights and Responsibilities in the Event of a Mortgage or Loan Default

Any assignment of the facility and mortgage/loan repayment responsibilities by ACF to any party, other than ACF, will be made to an agency financially capable of assuming the mortgage/loan, and will be subject to prior approval of the mortgagee/lender or creditor. The Tribe is required to complete and submit the SF-429 Cover page, SF-429 Attachment C Encumbrance Request, and supporting documentation in the GrantSolutions OLDC system, https://www.grantsolutions.gov, for review and approval by ACF. If you have any technical issues with OLDC or any of the forms in OLDC, please contact the GrantSolutions Help Desk at 202-401-5282, 1-866-577-0771, or help@grantsolutions.gov.

The Tribal Lead Agency must immediately notify the OCC Regional Office both by telephone and in writing of a default of any description on the part of the grantee under a real property or chattel loan, deed of trust, or mortgage obtained in connection with a facility constructed or renovated with CCDF funds.

In the event ACF (or its designee) chooses not to cure a default, the procedures for calculating the Federal share of the property, as determined by 45 CFR 75.318, shall apply.

XI. Insurance and Maintenance

The Tribal Lead Agency shall obtain insurance coverage for the facility. The coverage must begin at the commencement of the expenditure of costs in fulfillment of construction or renovation work. A facility constructed or renovated with CCDF funds must be supported by:

(1) A title insurance policy that insures the fee interest in the facility for an amount not less than

the full appraised value, and which contains an endorsement identifying ACF as a loss payee to be reimbursed if the title fails (except title insurance is not required for a facility on tribal lands held in trust by the U.S. government); and

(2) A physical destruction insurance policy, including flood insurance where appropriate, which insures the full replacement cost of the facility from risk of partial and total physical destruction. The insurance policy is to be maintained for the period of time the facility is used by the grantee.

The Tribal Lead Agency shall submit copies of such insurance policies to the OCC Regional Office within five working days of completion of the construction or major renovation of the facility. If the Tribal Lead Agency has not received the policies in time to submit copies within this period, it shall submit evidence that it has obtained the appropriate insurance policies within five working days of the completion of the construction or major renovation, and it shall submit copies of the policies within five working days of their receipt. The insurance policies must contain a requirement for the insurance company to notify the OCC Regional Office of any changes in the policy or coverage. In the event of a payout under an insurance policy, the Tribal Lead Agency may be instructed to remit the Federal share of the proceeds to ACF.

The Tribal Lead Agency must maintain facilities constructed or renovated with CCDF funds in a manner consistent with the purposes for which the funds were provided and in compliance with property standards and building codes for the useful life of the property.

XII. Other Administrative Provisions

Allowable Costs. Consistent with the cost principles referred to in 2 CFR Part 225, reasonable fees and costs associated with and necessary to the construction or renovation of a facility are allowable costs for CCDF funds, but require prior, written approval from ACF.

Audits. Any audit of a Tribal Lead Agency which has constructed or renovated a facility with CCDF funds shall include an audit of any mortgage or encumbrance on the facility. Reasonable and necessary fees for this audit and appraisal are allowable costs for CCDF funds.

Davis-Bacon Act. The U.S. Department of Labor has found no basis for application of the Davis-Bacon prevailing wage rates to construction and renovation projects funded by CCDF. The CCDBG Act does not impose Davis-Bacon requirements. However, Davis-Bacon requirements may still apply if a project is partly funded by another program that is subject to the Davis-Bacon Act. In such circumstances, a Tribe should contact the other program with any questions regarding the applicability of Davis-Bacon.

Final Contract. The Tribal Lead Agency must submit to the OCC Regional Office, within ten working days of its execution, a copy of the final contract to construct or renovate the facility. The total price of any contract must be fixed, and the contract must include a provision stating that the price may not be increased after the contract is entered into except for reasons that are beyond the builder's control and unforeseeable at the time into which the contract was entered.

Final Inspection Report. Upon completion of the construction or renovation, the Tribal Lead Agency must submit a final inspection report that demonstrates the structural soundness and safety of the facility (if the facility is a modular unit; see section XII). The report must be submitted to the OCC Regional Office within 30 calendar days of the substantial completion of the construction or

renovation.

Income. Income from the sale of equipment or real property constructed in whole or in part with CCDF funds is subject to the provisions of 45 CFR 75.307 (d) governing such income.

Legal Documents. The Tribal Lead Agency must submit to the OCC Regional Office, within ten working days of their execution, certified copies of the deed, loan instrument, mortgage, and any other legal documents related to the construction or renovation of the facility or to the discharge of any debt secured by the facility.

Procurement Procedures. All facility construction and renovation transactions must comply with the procurement procedures in 45 CFR 75.326-335, and must be conducted in a manner to provide, to the maximum extent practicable, open and free competition.

Records. The Tribal Lead Agency must retain all records pertinent to the construction or renovation of a facility for a period equal to the period of the grantee's use of the facility plus three years, or for three years after the Tribe makes final payment and all pending matters (including any ongoing audits, claims, or litigation) are completed or closed, whichever is later.

Reporting. For any construction or renovation requests approved after this Program Instruction has been finalized, the Tribal Lead Agency must submit annually the Real Property Status Report cover page and Attachment A (General Reporting), available in the GrantSolutions OLDC system, https://www.grantsolutions.gov. This report will be due on the same date as the Tribe's ACF-696T, the Tribal CCDF Financial Report.

Statement by Licensed Engineer or Architect. If the total cost of the project exceeds $100,000, the Tribal Lead Agency must submit to the OCC Regional Office (after receiving ACF approval and prior to the start of actual construction or major renovation) a statement by a licensed engineer or architect indicating that: (1) the overall estimated cost of the proposed construction/renovation and the cost of its individual elements are within the range for similar projects in the same community, and (2) the facility will be structurally sound if constructed or renovated in accordance with the proposed design. The statement may be made by any engineer or architect, in the public or private sector, who is qualified to judge the structural soundness of the facility.

XIII. Additional Requirements for Modular Units

The procedures in this Program Instruction apply to construction or renovation of modular units. In addition, the following requirements apply:

(1) An application for the installation of a modular unit must include a statement describing the procedures that will be used by the Tribal Lead Agency to purchase the modular unit. This statement must include a copy of the specifications for the unit that is proposed to be purchased and an assurance that the Tribal Lead Agency will comply with procurement procedures in 45 CFR 75.328, including the assurance that all transactions will be conducted in a manner to provide, to the maximum extent practical, open and free competition.

(2) The Tribal Lead Agency must have the modular unit inspected to judge the soundness and safety of the unit and its installation. The unit must be inspected by a licensed engineer or architect, unless the use of another inspector is justified by the Tribal Lead Agency and approved by ACF. The Tribal Lead Agency must submit to the OCC Regional Office the

engineer's or architect's inspection report within 30 calendar days of the modular unit's installation.

(3) All reasonable costs necessary for the installation of a modular unit, the installation of which has been approved by ACF, are payable with CCDF funds. Such costs include, but are not limited to, payments for public utility hook-ups, site surveys and soil investigations.

(4) A modular unit that has been approved for construction or renovation in one location may not be moved to another location without the prior written permission of the responsible OCC official.

(5) Modular units that are constructed or renovated with CCDF funds or which are affixed to land that is not owned by the grantee, must have posted in a conspicuous place the following notice:

> "On (date of approval), the Administration for Children and Families (ACF) approved a request for (Name of Tribal Lead Agency) to use its Child Care and Development Fund allocation for the acquisition of this modular unit. The use of Federal funds incorporated conditions which included restrictions on the use and disposition of this property, and provided for a continuing Federal interest in the property. Specifically, the property may not be used for any purpose other than the purpose for which the facility was funded, without the prior express written approval of the responsible ACF official, or sold or transferred to another party without the prior written permission of the responsible ACF official. These conditions are in accordance with the statutory provisions set forth in 42 United States Code, Section 9858m(c)(6); the applicable regulatory provisions set forth in 45 CFR Part 98 and 45 CFR Part 75; and the Administration for Children and Families' grants policy."

Attachment B

Compliance with the National Environmental Policy Act

An application to use CCDF funds for construction/renovation must include an environmental assessment in accordance with the National Environmental Policy Act (NEPA). The purpose of the required environmental assessment is to determine whether the proposed construction or renovation will or will not significantly affect the quality of the human environment.

Contents. In response to item 18(a) of the construction/renovation application requirements, the assessment must:

1. Describe the potential environmental impacts of the proposed construction or renovation project. This description should indicate whether the proposed construction/renovation would significantly affect the quality of the human environment. (See additional guidance below under *Criteria*).

2. Indicate whether the proposed construction/renovation site is near any of the following: historic or cultural resources, park lands, prime farmlands, habitats of endangered species, wetlands, wild and scenic rivers, streams and other bodies of water, coastal zones, floodplains, marine sanctuaries, or sole source aquifers. Generally, for projects with these unique characteristics, the Administration for Children and Families will need to consult with appropriate Federal or State agencies in order to approve the proposed construction/renovation.

3. Describe measures, including suitable pollution prevention techniques, which would be taken to avoid or mitigate potential environmental impacts associated with the proposed construction/renovation project. Such measures might include soil erosion and sedimentation controls and the use of recycled products.

4. Describe in detail the environmental impact of reasonable alternatives to the proposed construction/renovation project (including delaying the project, or choosing not to construct/renovate), particularly those that will enhance the quality of the environment and avoid some or all of the adverse environmental effects of the proposed action.

5. Compare the environmental benefits and risks of the proposed construction/ renovation project and the reasonable alternatives (identified in item 4 above), identifying the preferred action based on environmental factors.

6. List those persons preparing the assessment and their areas of expertise, and persons and agencies consulted. It is strongly recommended that the grantee utilize a qualified environmental expert who can provide environmental planning and documentation services. Preparation of the assessment should involve consulting with interested agencies and persons. In addition, the Tribal Lead Agency should provide public notice of: (1) any public hearings or meetings that occur as part of the preparation of this assessment; and (2) the availability of the environmental assessment and related documents for review by the public. Public notice might include publication in local newspapers or newsletters, use of other local media, or direct mailing to owners and occupants of nearby or affected property.

7. List complete citations for all referenced documents and include copies of referenced articles that are not generally available.

Criteria. The assessment should determine whether the proposed construction or renovation will or will not "significantly affect the quality of the human environment" by means of the following steps:

Identify those things that will happen as a result of the proposed construction or renovation project. A project normally produces a number of consequences (e.g., will involve construction activity; will result in the provision of child care services).

Identify the "human environments" that the proposed construction/ renovation will affect. The human environments include terrestrial, aquatic, subterranean and aerial environments, such as islands, cities, rivers, or parts thereof.

Identify the kinds of changes that the proposed construction/renovation will cause on these "human environments." A change occurs when a proposed construction/ renovation project causes the human environment to be different in the future than it would have been absent the proposed project. For example: an increase in a human population; the introduction of a new chemical compound to natural environments; or an increase of traffic through residential neighborhoods. Effects in both the near term (e.g., during the construction or renovation process) and reasonably foreseeable future (e.g., after the construction or renovation has been completed) must be considered. Identify the magnitude of any change (e.g., whether the change will affect one neighborhood, the entire tribal service area).

Identify whether these changes are significant. Determining whether or not a proposed construction/renovation project will cause significant changes involves a case-by-case determination. This determination should consider:

- Impacts that may be both beneficial and adverse. A significant effect may exist even if on balance the effect will be beneficial.
- The degree to which the proposed project affects public health and safety.
- Unique characteristics of the geographic area such as proximity to historic or cultural resources, park lands, prime farmlands, wetlands, wild and scenic rivers, streams and other bodies of water, coastal zones, floodplains, marine sanctuaries, sole source aquifers, or ecologically critical areas.
- The degree to which the effects on the quality of the human environment are likely to be highly controversial.
- The degree to which the possible effects on the human environment are highly uncertain or involve unique or unknown risks.
- The degree to which the project may establish a precedent for future actions with significant effects or represents a decision in principle about a future consideration.
- Whether the project is related to other actions with individually insignificant but cumulatively significant impacts. Significance exists if it is reasonable to anticipate a cumulatively significant impact on the environment. Significance cannot be avoided by terming a project temporary or by breaking it down into small component parts.
- The degree to which the project may adversely affect districts, sites, highways, structures, or objects listed in or eligible for listing in the National Register of Historic Places or may cause loss or destruction of significant scientific, cultural, or historical resources.
- The degree to which the project may adversely affect an endangered or threatened species or its habitat that has been determined to be critical under the Endangered Species Act of 1973. The establishment of a species in or removal of a species from an environment is significant.

- Whether the project threatens a violation of law or requirements imposed for the protection of the environment.
- Whether the project changes the characterization of an environment (e.g., from terrestrial to aquatic); such a change is considered significant.

Consider alternatives to the proposed construction/renovation. The assessment should identify any reasonable, appropriate alternatives to the proposed construction/renovation project, and discuss the environmental impacts of these alternatives. Alternatives include: choosing not to construct/renovate; other reasonable courses of action (e.g., delaying the project, choosing another location); and mitigation measures to avoid or reduce potential environmental impacts.

The above guidance is based on NEPA regulations issued by the Council on Environmental Quality (40 CFR Parts 1500-1508), and the Department of Health and Human Services' Revised General Administrative Manual, Part 30 – Environmental Protection (published in the Federal Register on October 17, 2003).

Attachment C

Compliance with the National Historic Preservation Act

Question 14i of Attachment B of the SF-429 Real Property Status Report asks whether the property has any historic significance in order to comply with the National Historic Preservation Act.

Section 106 of the National Historic Preservation Act of 1966 (16 U.S.C. §470f), as amended, requires all Federal agencies to take into account the effects of their actions on historic properties, and provide the Advisory Council for Historic Preservation (ACHP) with a reasonable opportunity to comment on those actions. Historic properties include properties listed on or eligible for listing in the National Register of Historic Places (the Register).

Properties that meet the criteria for listing in the Register, which is administered and maintained by the National Park Service, are normally over 50 years of age (although there are exceptions for extremely significant recent properties), and include districts, sites, buildings, structures, and objects that are significant in American history, architecture, archeology, engineering, and culture. More detailed criteria are found in National Park Service regulations (36 CFR Part 60).

If either the Tribal Lead Agency or ACF concludes that the property (affected by the construction/renovation project) may be eligible for listing in the Register, ACF will submit a letter to the Department of the Interior requesting a decision concerning eligibility.

If a proposed construction/renovation project could potentially affect a property which is on or determined eligible for the Register, the Tribal Lead Agency must submit to ACF written materials regarding the impact of the proposed construction/renovation on the property. ACF will then consult with the Tribal or State Historic Preservation Officer, the public, other parties, and the Advisory Council for Historic Preservation, as appropriate, to assess adverse effects on the historic property, and to avoid, minimize, or mitigate the adverse effects. For more detailed information regarding this process, see regulations at 36 CFR Part 800.

The above guidance is based on information provided by the Advisory Council on Historic Preservation on their website: http://www.achp.gov.

Attachment D

CCDF Tribal Construction/Major Renovation Application Checklist

Tribe		**State**	
Date			

Three Requirements:

1) 429 (paper copy until the system is fixed)

The Tribal Lead Agency proposing to use CCDF funds for construction or major renovation must submit

☐ The Real **Property Status Report SF-429** cover page and

☐ **SF 429** Attachment B

They are available at: https://www.acf.hhs.gov/occ/resource/ccdf-acf-pi-2017-06-attachment-a

2) Cover Letter

In addition, the Tribal Lead Agency must submit a supplemental written application **signed by the Tribal Chairperson or his/her designee** that contains the following information:

3) Application Package:

(1) The **Tribal** name and the name of the **Tribal Lead Agency** responsible for administering the CCDF.	
Tribal name	
Tribal Lead Agency name	
Contact person's name, address, phone number, fax number, and e-mail address.	
Name	
Address	
Phone number	
Fax number	
E-mail address	
(2) A description of **existing child care facilities located within a 50 mile** radius of the proposed facility that are currently used by the Tribal Lead Agency to carry out CCDF activities. Include the **number of each type of facility** (e.g., homes, centers) and a **brief description of each center** (i.e., size, type of structure, condition, number of children served, and ages of children served).	
(3) An explanation of why current facilities (described in item 3) **are not adequate** to carry out CCDF activities and why the lack of facilities will inhibit the operation of the Tribal Lead Agency's CCDF program in the future. The explanation must include **estimates of the number of children** who: (1) currently receive CCDF services; (2) are currently eligible to receive and are in need of CCDF services but are not being served due to inadequate facilities;	

(3) are projected to receive CCDF services over the next five years (in the absence of this proposed construction/renovation); and
(4) are projected to be eligible to receive and in need of CCDF services, but will not be served (without this proposed construction/renovation) due to inadequate facilities, over the next five years.

Explanation of **why current facilities are not adequate**	
Why the lack of facilities will **inhibit** the operation of the program	

Must include **estimates of children who**:

(1) Currently receive CCDF services;	
(2) Are currently eligible and in need but are not being served due to inadequate facilities;	
(3) Are projected to receive CCDF services over the next five years (in the absence of this proposed construction/ renovation); and	
(4) Are projected to be eligible and in need, but will not be served (without proposed construction/renovation) due to inadequate facilities, over the next five years.	

(4) A statement that **adequate facilities are not otherwise available** through lease, donation, purchase by non-CCDF funds, or other means.

(5)
(a) The following **written assuranc**e: "The use of CCDF funds for construction or renovation will not result in a decrease in the level of child care services provided by the Tribal Lead Agency, as compared to the level of services provided in the preceding fiscal year."

(b) Additionally, describe how the current fiscal year's **level of child care** services compares to the preceding year's level of services. The Tribal Lead Agency may define "level of services" in terms of the number of children served and/or the amount of funds spent on child care. Regardless of which definition it chooses, the Tribal Lead Agency must include in its description explanatory information about both the number of children served and the amount of funds spent on child care. The "preceding fiscal year" is the fiscal year prior to the fiscal year that the Tribal Lead Agency submits its application in accordance with this Program Instruction.

NOTE: A new tribal grantee (i.e., one that did not receive CCDF funds the preceding fiscal year) may spend no more than an amount equivalent to its Tribal Mandatory allocation on construction and renovation. Therefore, a new tribal grantee must spend an amount equivalent to its Discretionary allocation on activities other than construction or renovation (i.e., direct services, quality activities, or administrative costs).

(c) If the Tribal Lead Agency is seeking a **waiver** from the requirement to maintain the level of child care services while using CCDF funds for construction or renovation, the Tribal Lead Agency must submit the following information:

(I) The following written assurance: “The decrease in the level of child care services provided by the Tribal Lead Agency is temporary.”

(II) Additionally, describe the current fiscal year's level of child care services, the projected decrease as a result of the construction or renovation, and how long the Tribal Lead Agency estimates the projected decrease will last.
(III) Explain how the child care services will improve after the completion of the construction or renovation. The explanation must include a plan that shows that the level of services will increase or that the quality of services will improve.

a) Written assurance			
b) Description of how the current fiscal year's level of child care services (number of children served and the amount of funds spent on childcare) compares to the preceding year's level of services.			
c) If waiver	(I) Written assurance		
	(II)	Current level of services Projected decrease Length of decrease	
	(III) Improve quality/quantity of services		

(6)
(a) A description and map of the site of the facility proposed to be constructed or on which renovations are proposed and an explanation of the appropriateness of the location in relation to the Tribal Lead Agency's service area.

(b) Include a statement of the effect of the facility's location on the transportation of children to the program; on the Tribal Lead Agency's ability to collaborate with other child care, Head Start/Early Head Start, social services, and health providers; and on all other program activities and services.

(a)	
Description of site	
Attach Map	☐ Attached
Appropriateness explanation	
(b) Statements	
Transportation	
Collaboration	
All other program activities and services	

(7)
(a) The plans and specifications for the proposed construction or renovation, including architectural designs.

NOTE: Draft architectural plans and specifications, as opposed to final plans, are acceptable if they include:

(1) a plot plan showing the orientation and location of the building in relation to key features (e.g., parking areas, playground, access points);

(2) floor plans showing the overall dimensions of the building and the location, size, and purpose of its components (e.g., rooms, hallways);
(3) drawings showing the size and appearance of all sides of the building's exterior; and
(4) outlined specifications listing a general description of materials and mechanical systems.

(b) Describe the facility as it will be after construction or renovation is complete, including:
(1) information on the size and type of structure;
(2) the number and a description of the rooms;
(3) the lot on which the building is located (including the space available for a playground and for parking);
(4) and the number of children the facility will serve. For major renovation requests, describe and identify the current condition of the facility, as well as the proposed renovations.

(c) Describe the aspects of the building and physical premises that will ensure children's health and safety (e.g. appropriate diaper changing and hand washing areas; sufficient heating, cooling, and ventilation; secure storage space for any hazardous materials; smoke detectors or other fire warning devices; adequate exits in case of emergency; etc.)

(d) Explain the elements of the facility that will help create a developmentally-appropriate learning space (e.g. child-sized plumbing fixtures, low windows for children to look out, sufficient play space, etc.).
NOTE: The Tribal Lead Agency is encouraged to hire an architect or other expert who has experience in designing spaces for infants, toddlers, and children.

(e) In addition, describe the culturally significant elements, if any, in the facility's design or renovation (e.g. use of certain building materials, landscaping, play space).

(a)	
Plans and specifications	☐ Attached

(b) Describe:	
Structure: size and type	
Rooms: number and description	
Lot (including playground and parking)	
Number of children	
Major renovation: current condition	
Major renovation: proposed renovations	

(c)	
Describe aspects that will ensure children's health and safety	

(d)	
Explain elements that will help create a developmentally-appropriate learning space	

(e)	
Describe culturally significant elements	

(8) A proposed time schedule for each major activity of the construction or renovation and occupancy of the facility.

(9) The intended uses of the facility proposed to be constructed, or on which renovations are proposed, and information about the percentage of floor space that will be used to provide direct services to children. If the facility is to be used for other purposes, in addition to the operation of the child care program, the Tribal Lead Agency must state what portion of the facility is to be used for such other purposes.

NOTE: The facility must be used principally to provide direct services to children. Furthermore, if the facility is to be used for purposes in addition to the operation of the CCDF program, costs must be allocated in accordance with applicable cost principles.

Intended uses	
Percentage to provide direct services	
If applicable, portion for other purposes	

(10)

(a) Documentation on all other sources and uses of non-CCDF funds for the construction or renovation, including any restrictions or conditions imposed by other funding sources. The documentation must include a cost allocation plan for any facility that is shared with other programs.

(b) The terms of any proposed or existing loan(s) related to the construction or renovation of the facility and the repayment plans (detailing balloon payments or other unconventional terms, if any).

NOTE: Any loan or mortgage agreement, including a deed of trust, or any other instrument used to finance the construction or renovation secured by the property (or security agreement in the case of a modular unit which is proposed to be purchased under a chattel mortgage) shall require the lender, in the case of default by the Tribal Lead Agency, to ***notify ACF before foreclosing on the property****. The agreement must provide that ACF has the right to cure the default, and that the lender shall accept the payment of money or performance of any other obligation by ACF, or its designee, for the Tribal Lead Agency, as if such payment of money or performance had been made by the Tribal Lead Agency. The agreement shall also provide that the lender will not foreclose on the property until at least 60 calendar days after ACF is notified of the default. This 60-day period will allow time for the responsible ACF official to designate a replacement Tribal Lead Agency, which shall assume all of the obligations of the Tribal Lead Agency under the loan (see Section X for more information).*

(a)	
Other sources: restrictions and conditions	
Cost allocation plan	
(b)If applicable:	
Loan terms and Repayment plans:	

(11) An estimate of the total cost of the proposed construction or major renovation. The estimate must provide a break down **by major cost category**, such as: demolition and removal; site work; general construction/renovation; plumbing; heating, ventilation and air conditioning; electrical; equipment; architectural and engineering fees.

Provide a copy of written documentation, such as a written estimate prepared by a licensed architect or engineer, to support the cost estimate. The **cost estimate** must include:

(a) **Estimated one-time costs**, including:

(1) planning costs,

(2) labor, materials and services necessary for the functioning of the facility, and

(3) initial equipment for the facility. Equipment means items that are tangible, nonexpendable personal property having a useful life of more than five years. Some examples of one-time costs are the down payment, professional fees, moving expenses, and the cost of site preparation.

(b) An **estimate of ongoing costs** such as staffing costs, supplies, insurance premiums, maintenance costs, property taxes, and any other operating costs for the facility or the child care program. When planning for construction or renovation, the Tribal Lead Agency should carefully consider whether it would have sufficient funds to cover ongoing costs necessary to operate the facility after the construction or renovation is completed; and the impact on the Tribal Lead Agency's ability to meet its child care service obligations.

*NOTE: A Tribal Lead Agency cannot use the separate grant award for construction/renovation to pay for ongoing operating costs, such as insurance premiums, maintenance costs, or property taxes. The separate grant award must only be used for **one-time construction and renovation costs** or principal and interest payments, if the project is financed through a loan. However, other CCDF funds from the Tribal Mandatory or Discretionary grant awards could be used for allowable operating costs.*

(a) **Estimated one-time costs:**	
(1) planning costs	
(2) labor, materials and services	
(3) initial equipment for the facility	

(b) **Estimate of ongoing costs:**	
Staffing costs	
Supplies	
Insurance premiums	
Maintenance costs	
Property taxes	
Other	

(12) A statement of the amount of construction or major renovation costs that will be paid with CCDF funds listed separately by the Federal fiscal year in which the CCDF funds become (or became) available. Indicate whether the funds should be transferred from Tribal Mandatory or Discretionary funds.

NOTE: For a single project, a Tribal Lead Agency may use CCDF funds from more than one fiscal year. A project that uses more than one year of CCDF funding may be approved in a single application.

Funds:

FY	Mandatory	Discretionary
FY		
FY		
FY		
FY		

(13) A statement of whether or not there is a Head Start/Early Head Start program in the Tribal Lead Agency's service area. If there is a Head Start/Early Head Start program in the service area, the applicant must describe: any Child Care/Head Start and Early Head Start collaboration efforts, including whether or not the Tribe received an Early Head Start-Child Care partnership grant; the extent to which Head Start/Early Head Start will use the Child Care facility; and the extent to which Head Start/Early Head Start funds will pay for construction and renovation costs, if applicable.

NOTE: The applicant must demonstrate Child Care/Head Start and Early Head Start collaboration if there is a Head Start/Early Head Start program in the service area.

• There is ☐ **an Early Head Start** program in the Tribal Lead Agency's service area. • There is ☐ a **Head Start** a program in the Tribal Lead Agency's service area.	Describe Collaboration efforts:
	Early Head Start-Child Care partnership grant: ☐ Yes ☐ No
	Will EHS/HS use the facility? ☐ Yes. Extent: ☐ No
	Will EHS/HS pay for construction/renovation cots? ☐ Yes. Extent: ☐ No

☐ There is not a Head Start/Early Head Start program in the Tribal Lead Agency's service area.

(14) A statement of **who owns the land** on which the facility is/will be located.
If the Tribal Lead Agency proposes to construct or renovate a facility located on land that it does not own, the application must describe and provide a **copy of the easement, right of way or land lease** it will obtain or has obtained to allow it undisturbed use and possession of the facility for the purpose of operating a CCDF program.

NOTE: The land lease or other similar interest in the underlying land must be long enough for the Tribal CCDF program to receive the full value of the grant-funded improvements. The term of the lease or other arrangement should in most cases be for a period of years that is at least equal to the estimated useful life of the facility. The lease must contain certain information related to the Federal interest (see Section VIII).

Statement	
If applicable, describe and provide a copy of the easement, right of way or land lease	

(15) **FOR MAJOR RENOVATION REQUESTS ONLY:**
A statement indicating whether the Tribal Lead Agency **owns the facility to be renovated**.
If the Tribal Lead Agency does not own the facility, the application must include **information about the owner, a copy of written permission from the owner allowing the proposed renovation, and a copy of the lease for the facility**.

*NOTE: If the Tribal Lead Agency does not own the facility to be renovated, the Tribal Lead Agency must demonstrate that **it has secured a lease** that will assure the Tribal Lead Agency has access to*

the facility for a reasonable period of time, taking into consideration the amount of CCDF funds used to renovate the facility. ***In most cases, a minimum of five years (from the date the renovation is completed) is required, unless justified****. The lease must contain certain information related to the Federal interest* ***(see Section VIII).***

Statement	
If applicable, information about the owner, including: ☐ a copy of written permission from the owner allowing the proposed renovation, and ☐ a copy of the lease for the facility	

(16)
(a) A written assurance that the Tribal Lead Agency will **provide and maintain competent and adequate oversight and inspection** during all phases of the project at the work site to ensure that the completed work conforms to the approved plans and specifications.
(b) In addition, a **description of specific steps the Tribal Lead Agency will undertake to ensure adequate oversight and inspectio**n, including the qualifications of personnel who will be performing oversight and inspection tasks.

(a) Written assurance	
(b) Oversight and Inspection	
(b) Inspector Qualifications	

(17) Written assurances that the facility will be constructed or renovated to comply with:
(a) All applicable licensing and code requirements to ensure the health and safety of the children and child care staff;
(b) The access requirements of the Americans with Disabilities Act (P.L. 101-336), if applicable;
(c) Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. §794);
(d) The Flood Disaster Protection Act of 1973 (P.L. 93-234), if applicable; and,
(e) The Earthquake Hazards Reduction Act of 1977 (P.L. 95-124), if applicable.

Assurances
(a)
(b) if applicable;
(c)
(d) if applicable;
(e) if applicable;

(18)
(a) An assessment of the impact of the proposed construction or renovation on the human environment, addressing in particular any significant change in land use (including substantial increases in traffic in the surrounding area due to the provision of transportation services), pursuant to the National Environmental Policy Act of 1969 (42 U.S.C. §4332(2)(C)) and its implementing regulations (40 CFR 1500-1508). See Attachment B for guidance regarding the National Environmental Policy Act (NEPA).

(b) A report showing the results of tests for environmental hazards present in the facility, ground water, and soil (or justification why such testing is not necessary). The report (or justification) is required regardless of whether or not the Tribal Lead Agency is required to submit a complete environmental assessment in accordance with NEPA.

(a) ☐ Attach environmental Assessment (b) ☐ Attach environmental hazards report
19. **FOR MODULAR UNIT REQUESTS ONLY:** A **statement** describing procedures for purchasing the modular unit. This must include a **copy of the unit's specifications** and an **assurance** that the Tribal Lead Agency will comply with procurement procedures in 45 CFR Part 92.36, including an assurance that transactions will be conducted in a manner to provide, to the maximum extent practical, open and free competition.

Statement	
Copy of the unit's specifications	☐ Attached
Procurement procedures assurance	
Open and free competition assurance	

Attachment E

Documents and Deadlines to be Submitted to the OCC Regional Office

Document	Deadline
Application	Any time (although to use CCDF funds awarded in a given fiscal year, a Tribe must submit an application prior to July 1 of that fiscal year)
Statement by a licensed engineer or architect as to the cost and technical appropriateness of the construction or renovation, if the project exceeds $100,000	After receiving ACF approval and prior to the start of actual construction or renovation
A copy of the final contract to construct or renovate the facility	Within 10 working days of its execution
Certified copies of the deed, loan instrument, mortgage, and any other legal documents	Within 10 working days of execution
Title insurance policy (not required for a facility on tribal lands held in trust by the U.S. government)	Submitted within 5 working days of the completion of construction or renovation
Physical destruction insurance policy, including flood insurance where appropriate	Submitted within 5 working days of the completion of construction or renovation
Notice of Federal Interest	Submitted within 10 working days of the commencement of construction or renovation
Final inspection report that demonstrates the structural soundness and safety of the facility (unless modular unit)	Within 30 calendar days of the substantial completion of the construction or renovation.
FOR MODULAR UNITS: Inspection report by engineer or architect (or other inspector approved by ACF) on the soundness and safety of the unit	Within 30 calendar days of the modular unit's installation

Attachment F

Sample Notice of Federal Interest

At the commencement of construction or major renovation with CCDF funds of a facility, the Tribal Lead Agency shall record a Notice of Federal Interest in the appropriate official records for the jurisdiction in which the facility will be located (unless the facility will be located on tribal lands held in trust by the U.S. government). A Notice is not required for a facility on tribal lands held in trust by the U.S. government. The Notice must be recorded in the official records and submitted to the OCC Regional Office within ten working days of the commencement of the construction or renovation. Below is a sample Notice:

[DATE]

Notice of Federal Interest

This is to serve as notice to all potential sellers, purchasers, transferrers and recipients of a transfer of the real property described below as to the Federal government's financial interest in the subject real property as set forth in 45 CFR Part 75, which have arisen as a result of the receipt and use of the Administration for Children and Families' grant funds by the [NAME OF CHILD CARE AND DEVELOPMENT FUND (CCDF) TRIBAL LEAD AGENCY] in connection with the [CONSTRUCTION OR RENOVATION] of said property. The [NAME OF CCDF TRIBAL LEAD AGENCY] received these grant funds on [DATE OF THE AWARD OF SEPARATE CCDF GRANT AWARD FOR CONSTRUCTION/RENOVATION]. The notice is applicable to the property at [ADDRESS] and identified as Parcel [APPROPRIATE NUMBER(S)] in the books and records of [APPROPRIATE NAME OF UNIT OF GOVERNMENT'S RECORDING AGENCY]. Said real property is also described as: [DESCRIPTION PROVIDED IN SURVEY]. In accordance with 45 CFR 75.318, this property may not be mortgaged, used as collateral, sold or otherwise transferred to another party, without prior written permission from the responsible official of the Administration for Children and Families. The property may not be used for any purpose inconsistent with that authorized by the Child Care and Development Block Grant Act ,42 U.S.C §9858 et seq. , and regulations at 45 CFR Parts 98 and 99. These grant conditions and requirements cannot be altered or nullified through a transfer of ownership. Further information as to the Federal government's interests referred to above can be obtained from the Administration for Children and Families (ACF), [ADDRESS OF OCC REGIONAL OFFICE].

[SIGNATURE]

_____

[NAME]
[TITLE]

[Note: this signature should be notarized and have a sufficient notary public affirmation].