

August 18, 1997

Dear Tribal Child Care Lead Agency:

Enclosed is the Program Instruction that contains procedures regarding the use of Child Care and Development Fund (CCDF) grant awards for construction or major renovation of child care facilities. These procedures have been approved by the Office of Management and Budget. As a result, to request approval to use CCDF funds on construction or major renovation, you may now submit an application in accordance with these procedures to the Administration for Children and Families (ACF) Regional Office.

Also enclosed is guidance entitled "Fiscal Mechanism for Using FY 1997 Tribal Mandatory Funds for Construction or Major Renovation" and a form that you must complete and return so that ACF receives it no later than September 15. This special process is necessary for the start-up year of the construction and renovation process. The only CCDF funds awarded in FY 1997 that may be used for construction and renovation are Tribal Mandatory Funds; however, in subsequent years, tribal Lead Agencies may use both Discretionary and Tribal Mandatory Funds.

Sincerely,

/s/

Joan Lombardi
Associate Commissioner
Child Care Bureau
Enclosures

ACF Administration for Children and Families	U.S. DEPARTMENT OF HEALTH AND HUMAN SERVICES	
	Administration on Children, Youth and Families	
	1. Log No. ACYF-PI-CC-97-05	2. Issuance Date: August 18, 1997
	3. Originating Office: Child Care Bureau	
	4. Key Word: Child Care and Development Fund Construction and Renovation Procedures for Tribal Lead Agencies	

**CHILD CARE AND DEVELOPMENT FUND
PROGRAM INSTRUCTION**

TO: Tribal Child Care and Development Fund (CCDF) Lead Agencies and Other Interested Parties.

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

LEGAL AND RELATED REFERENCES: Section 658O(c)(6) of the Child Care and Development Block Grant (CCDBG) Act of 1990 (P.L. 101-508) as amended by P.L. 102-401, P.L. 102-586, P.L. 103-171, and P.L. 104-193.

BACKGROUND: The Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (Public Law 104-193) amended the CCDBG Act to allow 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 requests. This Program Instruction contains the uniform procedures.

INQUIRIES: Direct all inquiries to the appropriate ACF Regional Administrator listed at Attachment B.

/s/ _____
James A. Harrell
Acting Commissioner
Administration on Children, Youth
and Families

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

I. Background

The Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA; Public Law 104-193) added new section 658O(c)(6) to the Child Care and Development Block Grant (CCDBG) Act. This new provision allows tribal Lead Agencies to use CCDF funds for construction or renovation of child care facilities.

Tribal Lead Agencies (including tribal grantees with approved plans under Public Law 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. Under the law, ACF must develop and implement uniform procedures for the solicitation and consideration of requests. This Program Instruction contains 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.

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 which 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.

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 August 31, 2000.

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.

In accordance with section 658F(b)(1) of the CCDBG Act, a tribal Lead Agency cannot use CCDF funds to purchase an existing building or facility.

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. A "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.

The requirements in this Program Instruction apply only to CCDF funds awarded on or after October 1, 1996. Child Care and Development Block Grant funds made available prior to October 1, 1996 are subject to regulations published on August 4, 1992 at 45 CFR 98.54(b).

A tribal Lead Agency may request and receive approval to use CCDF funds for an ongoing or completed construction or major renovation project if the project began after October 1, 1996. However, CCDF funds cannot actually be expended for construction or major renovation costs until ACF approval is granted in accordance with this Program Instruction.

Upon the effective date of a final regulation regarding the use of CCDF funds for construction and renovation, any approvals previously granted by ACF in accordance with this Program Instruction will be renegotiated to prospectively apply, as appropriate, any new requirements contained in the final regulation.

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.

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.

In order to use CCDF funds awarded in a given fiscal year on construction or major renovation, a tribal Lead Agency must submit a complete application in accordance with this Program Instruction prior to July 1 of that fiscal year. 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.

If funds previously transferred to the separate grant award are no longer needed for construction or renovation, the tribal Lead Agency must notify ACF in writing so that ACF can release the funds to the tribal Lead Agency for use on other CCDF activities.

ACF will establish separate financial reporting requirements for funds that are used for construction and renovation. A tribal Lead Agency will be required to submit the short version of the ACF-269 for each fiscal year's funds that are used for construction or renovation.

Tribes with approved plans under Public Law 102-477 must request and receive ACF approval prior to spending CCDF funds on construction or major renovation, but once ACF approval is obtained, dispersal of funds will be handled by the Bureau of Indian Affairs in accordance with Public Law 102-477.

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, 1997 must be liquidated by September 30, 2000). The liquidation time frame 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.

IV. Pre-Application Activities

Before submitting an application pursuant to this Program Instruction, a tribal Lead Agency should conduct a community needs assessment to determine the need for construction or major renovation. A tribal Lead Agency must involve its ACF 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 use CCDF funds for reasonable and necessary planning costs associated with assessing the need for construction or renovation or for preparing an application to spend CCDF funds on construction or major renovation (in accordance with the uniform procedures). However, 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. CCDF funds used to pay for planning or consultant costs related to construction or major renovation must come from the separate construction and renovation grant award. (Prior to ACF approval of its construction/renovation application, a 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).

VI. Application Requirements

The tribal Lead Agency proposing to use CCDF funds for construction or major renovation must submit a 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 Child Care and Development Fund;
- (2) The name, address, telephone number, and, if applicable, FAX number of a contact person within the tribal Lead Agency;
- (3) A description of child care facilities 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, and number of children served).
- (4) 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.
- (5) A statement that adequate facilities are not otherwise available through lease, donation, purchase by non-CCDF funds, or other means.
- (6) 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." 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.
- (7) A description (or 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. 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, social services and health providers, and on all other program activities and services.
- (8) The plans and specifications of the facility proposed to be constructed or renovated, including architectural designs and information on the size and type of structure, the number and a description of the rooms, the lot on which the building is located (including the space available for a playground and for parking), and the number of children the facility serves. For major

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

(9) A proposed schedule for the construction or renovation, and occupancy, of the facility.

(10) The intended uses of the facility proposed to be constructed, or on which renovations are proposed, including information demonstrating that the facility will be used principally 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: 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.

(11) 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), and information on all other sources of funding of the construction or renovation, including any restrictions or conditions imposed by other funding sources.

NOTE: The mortgage agreement, 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 if ACF informs the lender in writing of its intention to replace the tribal Lead Agency with another agency, the lender shall refrain from effecting a foreclosure sale on the property for a period of time sufficient to enable 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 VIII below).

(12) An estimate of the total cost of the proposed construction or major renovation, including, but not limited to:

(a) Estimated one-time costs such as down payment, professional fees, moving expenses, and the cost of site preparation.

(b) The ongoing costs such as mortgage payments, insurance premiums, maintenance costs, and property taxes.

(13) 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.

NOTE: For a single project, a tribal Lead Agency may use CCDF funds from more than one fiscal year (for FY 1997 and later fiscal years). A project that uses more than one year of CCDF funding may be approved in a single application.

(14) A statement describing the procedures used to engage the persons and companies that will construct or renovate the facility. Procurement procedures must be designed to ensure, to the maximum extent possible, open and free competition.

(15) A statement of whether or not there is a Head Start program in the tribal Lead Agency's service area. If there is a Head Start program in the service area, the applicant must describe: any child care/Head Start collaboration efforts; the extent to which Head Start will use the child care facility; and the extent to which Head Start funds will pay for construction and renovation costs, if applicable.

- NOTE: The applicant must demonstrate child care/Head Start collaboration if there is a Head Start program in the service area.

(16) 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 the easement, right of way or land rental it will obtain or has obtained to allow it sufficient access to the facility.

(17) **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 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 which 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 with an option on the lease for an additional five years is required, unless justified.

(18) A copy of all proposed contracts pertaining to the construction or major renovation of the facility. For any contract not yet drafted, the tribal Lead Agency must provide, if known, the name and address of the contractor, the amount of the contract, services that will be provided under the contract, and terms of the contract.

- NOTE: 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 the contract was entered into. Use of CCDF funds to finance construction or major renovation in an amount greater than that fixed in the original approved contract requires the prior written approval of the ACF Regional Office.

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

all applicable licensing and code requirements;

the access requirements of the Americans with Disabilities Act (P.L. 101-336));

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

if applicable, the Flood Disaster Protection Act of 1973 (P.L. 93-234).

(20) 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 section 102(2)(C) of the National Environmental Policy Act (NEPA) of 1969 (42 U.S.C. §4332(2)(C)) and its implementing regulations (40 CFR Parts 1500-1508), and a report showing the results of tests for environmental hazards present in the facility and site (or justification why such testing is not necessary). In addition, such information as may be necessary to comply with the National Historic Preservation Act of 1966, as amended (16 U.S.C. §470f).

(21) An assurance that the tribal Lead Agency will comply with the requirements of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended (42 U.S.C. §4601 et seq. and 45 CFR Part 15), and information about the costs that may be incurred due to compliance with this Act. The law provides for fair and equitable treatment of persons displaced or whose property is acquired as a result of Federal and federally assisted programs. Under the Relocation Act, the cost of finding replacement housing for persons displaced by an agency receiving Federal financial assistance must be paid by the agency under certain circumstances.

See Section XI regarding additional requirements for modular units.

Attachment C 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.

The tribal Lead Agency must send the completed application to the:
ACF Regional Administrator
DHHS/ACF
(See attachment B for addresses.)

A tribal Lead Agency must also send a copy to the:
Commissioner
Administration on Children, Youth
and Families (ACYF)
Attention: Child Care Bureau
Mail Stop 320F
Hubert H. Humphrey Building
200 Independence Avenue, S.W.
Washington, D.C. 20201

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

Bureau of Indian Affairs
Office of Economic Development
Division of Job Placement and Training
1849 C Street, N.W.
Mail Stop 4660 MIB
Washington, D.C. 20240

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 a complete application prior to July 1 of that fiscal year). The ACF Regional Office has responsibility for reviewing and, if appropriate, approving applications. The Regional Office will review the application for completeness and adherence to the application requirements described in this Program Instruction. The Regional Office will contact the tribal Lead Agency for any additional information and will discuss the application with the Child Care Bureau, if necessary.

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. Compared to a renovation proposal, a construction proposal will typically require a longer time for review. Generally, ACF Regional Offices will attempt to respond to applications within 30 days, and will notify the applicant if additional time is necessary. The Regional Office may need to request additional information if an application is incomplete.

Once a decision is made, the ACF Regional Office will notify the tribal Lead Agency in writing regarding whether or not 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. In addition, the authorization to use funds for construction or renovation is subject to special conditions and post-award requirements described in the sections below.

VII. Protection of Federal Interest

The Administration for Children and Families (ACF) has an interest in property that is constructed, renovated, or otherwise acquired with CCDF funds. This interest takes the form of restrictions on the use and disposition of the property in accordance with 45 CFR Part 92.31^{*}. 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 Part 92.31. ACF has authority to subordinate its interest in such property to that of a lender which finances the construction or renovation of the property.

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.

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.

Upon completion of the construction or major renovation with CCDF funds of a facility owned by the grantee, the tribal Lead Agency shall record a Notice of Federal Interest in the appropriate official records for the jurisdiction in which the facility is located. The Notice must be recorded in the official records and submitted to the ACF Regional Office within ten working days of the completion of the construction or renovation. The Notice must include the following information:

- (1) 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;
- (2) That the use of CCDF funds incorporated conditions which restrict the use of the property and provide for a Federal interest in the property;
- (3) That the property may not be used for any purpose inconsistent with that authorized by the Child Care and Development Block Grant Act and applicable regulations;
- (4) 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;
- (5) That these grant conditions and requirements cannot be altered or nullified through a transfer of ownership; and
- (6) The name (including signature) and title of the person who completed the Notice for the tribal Lead Agency, and the date of the Notice.

In the case of leased property, the lessee must arrange for the lessor (owner) to record the Notice of Federal Interest.

Title to a facility constructed or renovated with CCDF funds vests with the grantee upon acquisition, subject to the provisions of this Program Instruction.

VIII. Rights and Responsibilities in the Event of a Mortgage Default

Any assignment of the facility and mortgage responsibilities by ACF to any party, other than ACF, will be made to an agency financially capable of assuming the mortgage, and will be subject to prior approval of the mortgagee or creditor.

The tribal Lead Agency must provide the ACF Regional Office with both telephonic and written notification of a default of any description on the part of the grantee under a real property or chattel 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 Part 92.31, shall apply.

IX. Insurance and Maintenance

A facility constructed or renovated with CCDF funds must be supported by:

(1) A title insurance policy which 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; and

(2) A physical destruction insurance policy 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 ACF 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 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.

X. Other Administrative Provisions

After receiving ACF approval and prior to the start of actual construction or major renovation, the tribal Lead Agency must submit to the ACF Regional Office a certification by a licensed engineer or architect as to the cost and technical appropriateness of the construction or major renovation, if the total cost of the project exceeds \$100,000. The certification 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.

The tribal Lead Agency must submit to the ACF 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.

Upon completion of the construction or renovation, the tribal Lead Agency must submit a final inspection report that demonstrates the structural soundness of the facility (if the facility is a modular unit; see section XI). The report must be submitted to the ACF Regional Office within 30 calendar days of the inspection.

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.

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.

Consistent with the cost principles referred to in 45 CFR Part 92.22, 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 of the ACF Regional Office.

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 Part 92.25 governing such income.

All facility construction and renovation transactions must comply with the procurement procedures in 45 CFR Part 92.36, and must be conducted in a manner to provide, to the maximum extent practicable, open and free competition.

XI. 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 which is proposed to be purchased and an assurance that the tribal Lead Agency will comply with procurement procedures in 45 CFR Part 92.36, 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 by a licensed engineer or architect to judge the soundness of the unit and its installation. The inspection must occur within 15 calendar days after completion of the construction or renovation, and the tribal Lead Agency must submit to the ACF Regional Office the engineer's or architect's inspection report within 30 calendar days of the inspection.

(3) All reasonable costs necessary for the installation of a modular unit, the installation of which has been approved by the ACF Regional Office, 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 which 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 ACF official.

(5) Modular units which are constructed or renovated with CCDF funds and which are not permanently affixed to land, or which are affixed to land which 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 9839; the applicable regulatory provisions set forth in 45 CFR Part 98 and 45 CFR Part 92; and the Administration for Children and Families' grants policy."

**Fiscal Mechanism for Using FY 1997 Tribal Mandatory Funds
for Construction or Major Renovation**

**Separate Grant
Award**

ACF will transfer CCDF funds to be used for construction and major renovation to a separate grant award with a separate grant document number. Funds in this separate grant award can only be used for construction or renovation activities.

General Rule

Generally, as indicated in the Program Instruction regarding construction and renovation, to use CCDF funds awarded in a given fiscal year on construction or major renovation, you must submit a complete application in accordance with the Program Instruction prior to July 1 of that fiscal year. 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.

**Special Rule for FY
1997 Tribal
Mandatory Funds**

The July 1 deadline does not apply to FY 1997. Instead, ACF has established a special process for determining the appropriate amount of a tribal Lead Agency's FY 1997 Tribal Mandatory Funds to transfer to the separate grant award for construction and renovation.

Enclosed Form

To use FY 1997 Tribal Mandatory Funds for construction or renovation, you must complete and return the enclosed form, "FY 1997 Tribal Mandatory Funds to be Used for Construction or Major Renovation." The ACF must receive this form no later than September 15, 1997. This form will notify ACF of the amount of FY 1997 Tribal Mandatory Funds (which were awarded in November 1996) that the tribal Lead Agency plans to use for construction or major renovation. While tribal Lead Agencies may apply to use either Discretionary or Tribal Mandatory Funds for construction or major renovation, only Tribal Mandatory Funds were awarded in FY 1997.

ACF will transfer the amount of FY 1997 Tribal Mandatory Funds that you indicate on the enclosed form to the separate grant award for use on construction and renovation. Notification using the enclosed form will allow ACF to transfer these funds prior to the end of FY 1997. After the end of FY 1997, ACF cannot transfer FY 1997 Tribal Mandatory Funds to the separate grant award.

You cannot use FY 1997 Tribal Mandatory Funds on construction or major renovation unless you provide a specific dollar estimate on the enclosed form and return the form so that ACF receives it by September 15. The amount of FY 1997 Tribal Mandatory Funds that you may use for construction or major renovation is limited to the amount that you indicate on the form.

When developing your dollar estimate, remember that 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.

Addresses

Send the completed form to:

Joe Lonergan, Director
Division of Formula, Entitlement, and Block Grants
Office of Program Support
Administration for Children and Families
Room 702
370 L'Enfant Promenade, S.W.
Washington, D.C. 20447

In addition, send a copy to:

ACF Regional Administrator
DHHS/ACF

**Application is Still
Required**

(See Attachment B of the enclosed Program Instruction for addresses).

Transfer of CCDF funds to the separate construction and renovation grant award does not automatically allow you to spend the funds for construction or major renovation. CCDF funds cannot be used for construction or major renovation until you submit, and ACF approves, an application in accordance with the enclosed Program Instruction. Completion and submittal of the enclosed form ("FY 1997 Tribal Mandatory Funds to be Used for Construction or Major Renovation") does not constitute an application to use CCDF funds for construction or major renovation.

**If Funds Are Not
Needed for
Construction or
Renovation**

If you later determine that funds that have been transferred to the separate grant award are no longer needed for construction or renovation, you must notify ACF in writing so that ACF can release the funds for your use on other CCDF activities.

**FY 1997 Tribal Mandatory Funds
to be Used for Construction or Major Renovation**

Name of Tribe/Tribal Organization _____

Name of Tribal Lead Agency _____

Name of Contact _____

Address _____

Telephone Number _____

FAX Number _____

Estimated Amount of FY 1997 Tribal Mandatory Funds to be Used for Construction or Major Renovation
\$ _____

On the line above, provide a dollar estimate. The estimate must be specific; do not provide a range. The estimate should be for FY 1997 Tribal Mandatory Funds only; do not include Tribal Mandatory Funds expected to be awarded in other fiscal years or any other funding sources regardless of fiscal year.

Complete and return this form so that ACF receives it no later than September 15, 1997.

Return it to the following address:

Joe Lonergan, Director
Division of Formula, Entitlement, and Block Grants
Office of Program Support
Administration for Children and Families
Room 702
370 L'Enfant Promenade, S.W.
Washington, D.C. 20447

In addition, send a copy to:

ACF Regional Administrator, DHHS/ACF
(See Attachment B of the enclosed Program Instruction for addresses.)

PAPERWORK REDUCTION ACT. Public reporting burden for this collection of information is estimated to average 3 minutes 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 June 30, 2000

Attachment C: Application Checklist

Yes/No	Application Requirement*	Comments
	1. Tribal name and tribal Lead Agency name.	
	2. Contact person's name, address, phone number and fax number.	
	3. Description of current child care facilities, including the number of each type of facility (e.g., homes, centers) and a brief description of each center (size, type of structure, condition, and number of children served)	
	4. Explanation of why current facilities are not adequate, and why the lack of facilities will inhibit future program operations. 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.	
	5. A statement that adequate facilities are not otherwise available through lease, donation, purchase by non-CCDF funds, or other means.	
	6. 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." Additionally, a description of 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 should include in its description information about both the number of children served and the amount of funds spent on child care.	
	7. A description (or map) of the facility's site, and an explanation of the appropriateness of the location in relation to the tribal Lead Agency's service area. Includes 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, social services and health providers, and on all other program activities and services.	
	8. The plans and specifications of the facility, including architectural designs and information on the size and type of structure, the number and a description of the rooms, and the lot on which the building is located (including the space available for a playground and for parking), and the number of children the facility serves. For major renovation requests, describe and identify the current condition of the facility as well as the proposed renovations.	

Yes/No	Application Requirement*	Comments
	9. A proposed schedule for the construction or renovation, and occupancy, of the facility.	
	10. The intended uses of the facility, including information demonstrating that the facility will be used principally 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.	
	11. The terms of any proposed or existing loan(s) related to the construction or renovation and the repayment plans (detailing balloon payments or other unconventional terms, if any), and information on all other sources of funding of the construction or renovation, including any restrictions or conditions imposed by other funding sources. The mortgage or security agreement must have provisions regarding foreclosure and default; see Program Instruction.	
	12. An estimate of the total cost of the proposed construction or major renovation, including, but not limited to: (a) estimated one-time costs such as down payment, professional fees, moving expenses, and the cost of site preparation; and (b) the ongoing costs such as mortgage payments, insurance premiums, maintenance costs, and property taxes.	
	13. 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.	
	14. A statement describing procedures that will be used to engage the persons and companies that will construct or renovate the facility. Procurement procedures must be designed to ensure, to the maximum extent possible, open and free competition.	
	15. A statement of whether or not there is a Head Start program in the tribal Lead Agency's service area. If there is a Head Start program in the service area, the applicant must describe: any child care/Head Start collaboration efforts; the extent to which Head Start will use the child care facility; and the extent to which Head Start funds will pay for construction and renovation costs, if applicable. The applicant must demonstrate collaboration if there is a Head Start program in the service area.	
	16. 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 the easement, right of way or land rental it will obtain or has obtained to allow it sufficient access to the facility.	

Yes/No	Application Requirement*	Comments
	<p>17. 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 and a copy of the lease for the facility. If the tribal Lead Agency does not own the facility, the tribal Lead Agency must have a long-term lease; see Program Instruction.</p>	
	<p>18. All proposed contracts pertaining to the construction or major renovation. For any contract not yet drafted, the tribal Lead Agency must provide, if known, the name and address of the contractor, the amount of the contract, services that will be provided under the contract, and terms of the contract. The contract must contain certain provisions regarding price; see Program Instruction.</p>	
	<p>19. Written assurances that the facility will be constructed or renovated to comply with: (1) applicable licensing and code requirements; (2) access requirements of the Americans with Disabilities Act (P.L. 101-336); (3) section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. §794); and, (4) if applicable, the Flood Disaster Protection Act of 1973 (P.L. 93-234).</p>	
	<p>20. An assessment of the impact of construction or renovation on the human environment, addressing in particular any significant change in land use (including substantial increases in traffic due to transportation services) pursuant to the National Environmental Policy Act of 1969 (42 U.S.C. §4332(2)(C)), and a report showing results of tests for environmental hazards present in the facility and site (or justification why testing is not necessary). In addition, information necessary to comply with the National Historic Preservation Act of 1966, as amended (16 U.S.C. §470f).</p>	
	<p>21. An assurance that the tribal Lead Agency will comply with the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended (42 U.S.C. §4601 <i>et seq.</i>), and information about costs that may be incurred due to compliance.</p>	
	<p>22. 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.</p>	

* See Procedures for a complete description of the application requirements.