

ACF

Administration
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U.S. DEPARTMENT OF HEALTH AND HUMAN SERVICES
Administration on Children, Youth and Families

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CHILD CARE AND DEVELOPMENT FUND PROGRAM INSTRUCTION

- TO:** Tribal Child Care and Development Fund (CCDF) Lead Agencies and Other Interested Parties
- SUBJECT:** Compliance with the National Environmental Policy Act and the National Historic Preservation Act when Using CCDF Funds for Construction or Major Renovation of Child Care Facilities
- LEGAL AND RELATED REFERENCES:** Section 6580(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. The National Environmental Policy Act (NEPA) of 1969 (42 U.S.C. §4321 et seq) and its implementing regulations (40 CFR Parts 1500-1508). The National Historical Preservation Act of 1966, as amended (16 U.S.C. §470f).
- BACKGROUND:** The Personal Responsibility and Work Opportunity Reconciliation Act of 1966 (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. Requests must follow uniform procedures (ACYF-PI-CC-97-05; August 18, 1997).
- These uniform procedures (Section VI "Application Requirements, item 20, page 8) require applicants to provide information that is necessary to comply with the National Environmental Policy Act and the National Historic Preservation Act. This Program Instruction provides guidance regarding compliance with these Federal laws.
- INQUIRIES:** Direct all inquiries to the appropriate ACF Regional Administrator.

/s/

James A. Harrell
Deputy Commissioner
Administration for Children, Youth
and Families

Attachments:

- A** - National Environmental Policy Act
- B** - National Historical Preservation Act
- C** - ACF Regional Administrators

Attachment A

National Environmental Policy Act

The uniform procedures for requesting to use Child Care and Development Fund (CCDF) monies for construction or renovation (ACYF-PI-CC-97-05); August 18, 1997) require that a tribal Lead Agency include in its written application:

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).

The purpose of the assessment is to determine whether the proposed construction or renovation will or will not significantly affect the quality of the human environment. The assessment should evaluate the expected environmental consequences of the proposed construction/renovation by means of the following steps:

Identify those things that will happen as a result of the proposed construction/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 long term (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, etc.).

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 affect 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, 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 is highly uncertain or involves 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.

Examples of changes that would not be judged significant include changes which:

- Do not produce direct, indirect, or cumulative effects, which will last beyond one year.
- Are remotely possible and involve a relatively small environment.

The assessment should also identify any reasonable, appropriate alternatives to the proposed construction/renovation project, and discuss the environmental impacts of these alternatives.

Finally, preparation of the assessment should involve consulting with interested agencies and persons, and the assessment should include a listing of any agencies and persons consulted.

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 document 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.

Direct any questions to the appropriate ACF Regional Office (listed in Attachment C).

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' General Administrative Manual, Part 30 - Environmental Protection, Chapter 30-60 - NEPA Review.

Attachment B

National Historic Preservation Act

The uniform procedures for requesting to use Child Care and Development Fund (CCDF) monies for construction or renovation (ACYF-PI-CC-97-05; August 18, 1997) require that a tribal Lead Agency include in its written application such information as may be necessary to comply with the National Historic Preservation Act of 1966, as amended (16 U.S.C. §470f).

Section 106 of the National Historic Preservation Act states that the Advisory Council for Historic Preservation (ACHP) will have an opportunity to comment on any proposed Federal undertaking which will affect a historic property which is 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 the ACF Regional Office concludes that the property (affected by the proposed 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 will 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 project on the property. These materials will be sent to ACHP for comment. For more detailed information about the ACHP review process, see regulations at 36 CFR Part 800.

Direct any questions to the appropriate ACF Regional Office (listed in Attachment C).

The above guidance is based on information provided by the Advisory Council on Historic Preservation on the World Wide Web (<http://www.achp.gov>) and the Department of Health and Human Services' General Administrative Manual, Part 30 - Environmental Protection, Chapter 30-40 - Cultural Asset Review.