DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

45 CFR Part 98

RIN 0970–AC67

Child Care and Development Fund (CCDF) Program

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

ACTION: Final rule.

SUMMARY: This final rule makes regulatory changes to the Child Care and Development Fund (CCDF) based on the Child Care and Development Block Grant Act of 2014. These changes strengthen requirements to protect the health and safety of children in child care; help parents make informed consumer choices and access information to support child development; provide equal access to stable, high-quality child care for low-income children; and enhance the quality of child care and the early childhood workforce.

DATES: *Effective:* November 29, 2016.

Compliance date: States and Territories are expected to be in full compliance by the end of the Fiscal Year (FY) 2016—2018 CCDF Plan period. ACF will determine compliance with provisions in this final rule through review and approval of the FY 2019—2021 CCDF Plans that become effective October 1, 2018 and through the use of federal monitoring of progress in accordance with section 98.90 prior to that date.

For Tribal Lead Agencies, ACF will determine compliance through review and approval of the FY 2020—2022 Tribal CCDF Plans that become effective October 1, 2019. See further discussion of effective and compliance dates in the background section of this rule.

FOR FURTHER INFORMATION CONTACT: Andrew Williams, Office of Child Care at 202–401–4795 (not a toll-free call). Deaf and hearing impaired individuals may call the Federal Dual Party Relay Service at 1–800–877–8339 between 8 a.m. and 7 p.m. Eastern Time.

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I. Executive Summary

Overview. On November 19, 2014, President Barack Obama signed the Child Care and Development Block Grant (CCDBG) Act of 2014 (Pub. L. 113–186) into law following its passage in the 113th Congress. The CCDBG Act, as amended (42 U.S.C. 9858 *et seq.*, and hereinafter referred to as the "Act"), along with Section 418 of the Social Security Act (42 U.S.C. 618) authorizes the Child Care and Development Fund (CCDF), which is the primary Federal funding source devoted to providing low-income families who are working or participating in education or training activities with help paying for child care and improving the quality of child care for all children.

The bipartisan CCDBG Act of 2014 made sweeping statutory changes that require significant reforms to State and Territory CCDF programs to raise the health, safety, and quality of child care and provide more stable child care assistance to families. It expanded the purposes of CCDF for the first time since 1996, ushering in a new era for child care in this country. Since 1996, a significant body of research has demonstrated the importance of early childhood development and how stable, high-quality early experiences can positively influence that development and contribute to children's futures. In particular, low-income children stand to benefit the most from a high-quality early childhood experience. Research has also shown the important role of child care financial assistance in helping parents afford reliable child care in order to obtain and maintain stable employment or pursue education. The reauthorized Act recognizes CCDF as an integral program to promote both the healthy development of children and parents' pathways to economic stability.

In Fiscal Year (FY) 2014, CCDF provided child care assistance to 1.4 million children from nearly 1 million low-income working families in an average month. The Congressional reauthorization of CCDBG made clear that the prior law was inadequate to protect the health and safety of children in care and that more needs to be done to increase the quality of CCDF-funded child care. It also recognized the central importance of access to subsidy continuity in supporting parents' ability to achieve financial stability and children's ability to develop nurturing relationships with their caregivers, which creates the foundation for a high-quality early learning experience.

Purpose of this regulatory action. The majority of CCDF regulations at 45 CFR parts 98 and 99 were last revised in 1998 (with the exception of some more recent updates related to State match and error reporting). This regulatory action is needed to update the regulations to accord with the reauthorized Act and to reflect what has been learned since 1998 about child care quality and child development.

Legal authority. This final rule is being issued under the authority granted to the Secretary of Health and Human Services by the CCDBG Act of 1990, as amended, (42 U.S.C. 9858 *et seq.*) and Section 418 of the Social Security Act (42 U.S.C. 618).

Major provisions of the final rule. The final rule addresses the CCDBG Act of 2014, which includes provisions to: (1) Protect the health and safety of children in child care; (2) help parents make informed consumer choices and access information to support child development; (3) provide equal access to stable, high-quality child care for low-income children; and (4) enhance the quality of child care and the early childhood workforce.

Protect Health and Safety of Children in Child Care

This rule provides details on the health and safety standards established in the CCDBG Act of 2014, including health and safety training,

comprehensive background checks, and monitoring. The Act requires States to monitor providers receiving CCDF funds (including those that are license-exempt), at least annually, to determine whether health and safety practices and standards are being followed in the child care setting, including a pre-licensure visit for licensed providers. Regular monitoring of child care settings is necessary to ensure compliance with appropriate standards that protect the health and safety of children. However, this rule allows Lead Agencies to develop alternative monitoring requirements for CCDF-funded care provided in the child's home and exempts relative caregivers from the monitoring and training requirements at the option of Lead Agencies. This flexibility allows Lead Agencies to address the unique characteristics of these care arrangements.

In this final rule, we address the Act's background check requirements by requiring all child care staff members (including prospective staff members) of all licensed, regulated, or registered child care providers and all child care providers eligible to deliver CCDF services to have a comprehensive background check, unless they are related to all children in their care. We extend the background check requirement to all adults residing in family child care homes. All parents, regardless of whether they receive CCDF assistance, deserve this basic protection of knowing that those individuals who have access to their children do not have prior records of behavior that could endanger their children.

The Act requires Lead Agencies to establish standards and training in 10 topic areas related to health and safety that are fundamental for any child care setting, such as first aid, CPR, and safe sleep practices. We added recognizing and reporting child abuse and neglect to this list. The Act also requires Lead Agencies to maintain records of substantiated parental complaints about child care. The final rule requires Lead Agencies to designate a hotline or similar reporting process for parental complaints. Child care providers are required to report serious injuries or deaths that occur in child care settings in order to inform regulatory or other policy changes to improve health and safety.

Help Parents Make Informed Consumer Choices and Access Information To Support Child Development

The Act expanded requirements for the content of consumer education available to parents receiving CCDF assistance, the public, and where applicable, child care providers. By adding providers, Congress recognized the positive role trusted caregivers can play in communicating and partnering with parents on a daily basis regarding their children's development and available resources in the community. Effective consumer education strategies are important to inform parental choice of child care and to engage parents in the development of their children in child care settings—a new purpose of the CCDF added by the CCDBG Act of 2014. States and territories have the opportunity to consider how information can be best provided to low-income parents through their interactions with CCDF, partner agencies, and child care providers, as well as through electronic means such as a Web site. Parents face great challenges in finding reliable information and making informed consumer choices about child care for their children.

The Act requires Lead Agencies to make available via a consumer-friendly and easily accessible Web site, information on policies and procedures regarding: (1) Licensing of child care providers; (2) conducting background checks and the offenses that keep a provider from being allowed to care for children; and (3) monitoring of child care providers. This is done through a single Web site that is easy for families to navigate and provides widest possible access to individuals who speak languages other than English and persons with disabilities. This Web site must give parents receiving CCDF information about the quality of their chosen providers. The final rule also requires Lead Agencies to provide CCDF parents with a consumer statement in hard copy or electronically (such as referral to the consumer education Web site) with specific information about the child care provider they select.

The Act requires Lead Agencies to make results of monitoring available in a consumer-friendly and easily accessible manner. We require posting a minimum of three years of results. If full reports are not in plain language, Lead Agencies must post a plain language summary for each report in addition to the full monitoring and inspection report. Parents should not have to parse through administrative code or understand advanced legal terms to determine whether safety violations have occurred in a child care setting.

Congress added a number of content areas that will support parents in their role as their child's first and most important teacher. In keeping with a new purpose of the CCDF program at Section 658A(b)(3) of the Act to promote involvement by parents and family members in the development of their children in child care settings, Section 658C(2)((E)(i) of the Act requires Lead Agencies to make available information related to best practices in child development and State policies regarding child social and emotional development, including any State policies relevant to preventing expulsion of children under age five from child care settings.

The reauthorized Act also requires Lead Agencies to provide information that can help parents identify other financial benefits and services that may support their pathway to economic stability. Families eligible for child care assistance are often eligible for other supports, and the Act specifies that Lead Agencies provide families with information on several public benefit programs, including Temporary Assistance for Needy Families (TANF), Supplemental Nutrition Assistance Program (SNAP), Medicaid, and the Children's Health Insurance Program (CHIP). In addition, the Act requires Lead Agencies to provide information on the programs and services that are part of Individuals with Disabilities Education Act (IDEA), such as early intervention and special education services, and that parents are given information on how to obtain a developmental screening for their child. Low-income parents deserve to have easy access to the full range of information, programs, and services that can support them in their parenting efforts. To ensure equal access for persons with limited English proficiency and for persons with disabilities, the final rule requires Lead Agencies to provide child care program information in multiple languages and alternative formats.

Provide Equal Access to High-Quality Child Care for Low-Income Children

Congress established requirements to provide more stable child care financial assistance to families, including extending children's eligibility for child care to a minimum of 12 months, regardless of increases in parents' earnings (as long as income remains at or below the Federal eligibility limit) and temporary changes in participation in work, training, or education. This will enable parents to maintain employment or complete education programs, and supports both family financial stability and the relationship between children and their caregivers. Under the reauthorized Act, Lead Agencies that choose to end assistance prior to 12 months, due to a non-temporary change in a parent's work,

training, or education participation, must continue assistance for a minimum of 3 months to allow parents to engage in job search, resume work, or attend an education or training program, as soon as possible.

This final rule establishes a set of policies intended to stabilize families' access to child care assistance and, in turn, help stabilize their employment or education and their child's care arrangement. These policies also have the potential to stabilize the revenue of child care providers who receive CCDF funds, as they experience more predictable, reliable, and timely payments for services. This rule reduces reporting requirements for families and prevents them from unduly losing their assistance. Parents often find it difficult to navigate administrative processes and paperwork required to maintain their eligibility, and state policies can be inflexible to changes in a family's circumstances. These provisions also make it easier for Lead Agencies to align CCDF policies with other programs serving low-income children. For example, more than half of children receiving CCDF-funded child care are in families with incomes under the federal poverty line, and therefore qualify for Head Start. Children once found eligible for Head Start may remain in the program until they age out, which promotes stability for families and for the Head Start program. The provisions here promote stability of child care programs and allow for greater alignment between child care services and Head Start for families in poverty who rely on child care subsidy to participate in work or education/job training.

Families may be determined to be ineligible within the minimum 12-month eligibility period if their income exceeds 85 percent of state median income (SMI) (taking into account irregular fluctuations in income) or, at Lead Agency option, the family experiences a non-temporary cessation in job, training, or education. We clarify that additional State-imposed eligibility criteria apply only at the time of initial eligibility determination and redetermination and provide examples of changes in parents' scheduling and conditions of employment that meet the statutory intent of stabilizing assistance for families through changes in circumstance. Lead Agencies that set their income eligibility threshold below 85 percent of SMI must allow parents who otherwise qualify for CCDF assistance to continue receiving assistance, at subsequent redeterminations, until their income exceeds a second tier of eligibility set at a level sufficient for the family to reasonably afford quality child care without assistance, based on the typical household budget of a low-income families. This approach promotes continuity of care for children while allowing for wage growth for families to move on a path toward economic stability.

All too often, getting and keeping CCDF assistance is overly burdensome for parents, resulting in short durations of assistance and churning on and off CCDF as parents lose assistance and then later return. This instability disrupts parental employment and education, harms children, and runs counter to nearly all of CCDF's purposes. This full set of provisions that facilitates easier and sustained access to assistance is necessary to strengthen CCDF as a two-generation program that supports work, training, and education, as well as access to high-quality child care.

Congress reaffirmed the core principle that families receiving CCDF-funded child care should have equal access to child care that is comparable to that of non-CCDF families. The Act requires Lead Agencies to set provider payment rates based on a valid market rate survey or alternative methodology. To allow for equal access, the final rule requires Lead Agencies to set base payment rates *at least* at a level sufficient to cover the costs to providers of the health, safety, quality, and staffing requirements included in the Act and the final rule. The Act also requires Lead Agencies to take into account the cost of higher quality when setting rates. We reaffirm our long-standing position that setting payment rates at the 75th percentile of a recent market rate survey remains an important benchmark for gauging equal access. Below market payment rates limit access to high-quality care for children receiving CCDF-funded care and violate the equal access provision that is central to CCDF. Higher provider payment rates are necessary to ensure that providers receiving CCDF funds have the means to provide high-quality care for our country's low-income children.

The final rule provides details on the statutory requirements for Lead Agencies to pay providers in a timely manner based on generally-accepted payment practices for non-CCDF providers and that Lead Agencies delink provider payments from children's absences to the extent practicable. We establish a new Federal benchmark for affordable family co-payments of seven percent of family income and allow Lead Agencies more flexibility to waive co-payments for vulnerable families. Under this rule, Lead Agencies may increase family co-payments only at redetermination or during a period of graduated phase-out when families' incomes have increased above the Lead Agency's initial income eligibility threshold. In addition, if a Lead Agency allows providers to charge amounts more than the required family co-payments, the Lead Agency must provide a rationale for this practice, including how charging such additional amounts will not negatively impact a family's ability to receive care they might otherwise receive taking into consideration a family's co-payment and the provider's payment rate.

This final rule requires Lead Agencies to take into consideration children's development and learning and promote continuity of care when authorizing child care services; offer increased flexibility for determining eligibility of vulnerable children; and clarify that Lead Agencies are not required to restrict a child's care to the hours of a parent's work or education. These changes are important to make the program more child-focused and ensure that the most vulnerable children have access to and benefit from high-quality care. These provisions may be implemented broadly in ways that best support the goals of Lead Agencies.

Enhance the Quality of Child Care and the Early Childhood Workforce

The final rule provides detail on the statutory requirement to increase spending on initiatives that improve the quality of care. The Act increases the share of CCDF funds directed towards quality improvement activities, authorizes a new set-aside for infant-toddler care, and drives investments towards increasing the supply of high-quality care for infants and toddlers, children with special needs, children experiencing homelessness, and other vulnerable populations including children in need of nontraditional hour care and children in poor communities. The Act requires States and Territories to submit an annual report on quality activities, including measures created by the Lead Agency to evaluate progress on quality improvement. This final rule requires Lead Agencies to report data on their progress on those measures. The Act also increases quality through more robust program standards, including training and professional development standards for caregivers, teachers, and directors to help those working with children promote their social, emotional, physical, and cognitive development.

The final rule clarifies the Act's training requirements by requiring that

child care caregivers, teachers, and directors of CCDF providers receive training prior to caring for children, or during an orientation period not to exceed three months, and on an annual basis. In order for the health and safety requirements to be implemented, and because these are areas that the Lead Agency will monitor, this final rule requires that the pre-service or orientation training include the ten basic health and safety topics identified in the Act, as well as recognizing and reporting child abuse and neglect (in order to comply with child abuse reporting requirements) and training in child development for eligible children from birth to 13 years of age.

Lead Agencies must provide for a progression of professional development that may include postsecondary education. The final rule identifies six key components of a professional development State framework, and we encourage, to the extent practicable, that ongoing training yields continuing education units or is credit-bearing. These components advance expert recommendations to improve the knowledge and competencies of those who care for young children, which is central to children's learning experiences and the quality of child care.

In addition, the Act includes a number of provisions to improve access to high-quality child care for children experiencing homelessness. The Act requires Lead Agencies to establish a grace period that allows children experiencing homelessness (and children in foster care) to receive CCDF services while allowing their families (including foster families) a reasonable time to comply with immunization and other health and safety requirements. The final rule requires Lead Agencies to help families by coordinating with licensing agencies and other relevant State and local agencies to provide referrals and support to help families experiencing homelessness comply with immunization and health and safety requirements. This final rule also requires Lead Agencies to use the definition of homeless applicable to school programs from the McKinney-Vento Act to align with other Federal early childhood programs (42 U.S.C. 11434a).

This final rule indicates the extent to which CCDF provisions apply to tribes, since this was not specified in the Act itself. Starting in early 2015, OCC began a series of formal consultations with Tribal leaders to determine how the provisions in the reauthorized Act should apply to Tribes and Tribal organizations. We heard from many Tribal leaders and CCDF Administrators asking for flexibility to implement child care programs that meet the individual needs of their communities. The final rule is intended to preserve Tribal Lead Agency flexibility, in a manner consistent with the CCDF dual goals of promoting families' financial stability and fostering healthy child development. We differentiate and exempt some Tribal grantees from a progressive series of CCDF provisions based on three categories of CCDF grant allocations: Large, medium and small. We are also allowing Tribes flexibility to consider any Indian child in the Tribe's service area to be eligible to receive CCDF funds, regardless of the family's income or work, education, or training status, if a Tribe's median income is below a threshold established by the Secretary. However, the Tribe's provision of services still must be directed to those with the highest need.

Costs, benefits and transfer impacts. Changes made by the CCDBG Act of 2014 and this final rule have the most direct benefit for the 1.4 million children and their parents who use CCDF assistance to pay for child care. Many of the Act's changes will also positively impact children who do not directly participate in CCDF. Many children who receive no direct assistance from CCDF will benefit from more rigorous health and safety standards, provider inspections, criminal background checks for child care staff, and accessible consumer information and education for their parents and providers. The attention to quality goes beyond health and safety. Caregivers, teachers, and directors of CCDF providers will be supported in their ongoing professional development. Under the Act, States and Territories must direct an increasingly greater share of their CCDF grant towards activities that improve the quality of child care, including a new share dedicated to improving the quality of infant and toddler care. Low-income parents who receive CCDF assistance will benefit from more stable financial assistance as they work toward economic stability and their children will benefit from relationships that are more continuous with their caregivers. Providers will benefit from improved provider payment rates (by certificate or grant or contract), as well as payment practices that support their financial stability. These include timely payments so that providers can sustain their operations and quality and paying providers for a reasonable number of absent days. The positive impacts of the reauthorized Act and this rule will benefit children, families, providers, and employers now and into the future.

The cost of implementing changes made by the Act and this rule vary depending on a State's specific situation. There are a significant number of States, Territories, and Tribes that have already implemented many of these policies. ACF conducted a regulatory impact analysis to estimate costs and benefits of provisions in this final rule, including the new statutory requirements, taking into account current State practices. We evaluated major areas of policy change, including monitoring and inspections (including a hotline for parental complaints), background checks, training and professional development, consumer education (including the Web site and consumer statement), quality spending, minimum 12-month eligibility and related provisions, increased subsidies, and supply building.

Based on our analysis, annualized costs associated with these provisions, averaged over a ten year window, are $235.2 million and the annualized amount of transfers is approximately $839.1 million (both estimated using a 3 percent discount rate), which amounts to a total annualized impact of $1.16 billion. Of that amount, approximately $1.15 billion is directly attributable to the CCDBG Act of 2014, with an annualized cost of only $4 million (or 0.3% of the total estimated impact) directly attributable to discretionary provisions of this regulation. While this analysis does not attempt to fully quantify the many benefits of the reauthorization and this rule, we do conduct a breakeven analysis to compare requirements clarified through this regulation against a potential reduction in child fatalities and injuries. Further detail and explanation can be found in the regulatory impact analysis.

II. Background

a. Child Care and Development Fund. Nearly 13 million young children, under age 5, regularly rely on child care to support their healthy development and school success. (Census Bureau, Who's Minding the Kids? Child Care Arrangements, Spring 2011). Additionally, more than 10 million children participate in a range of school-age programs, before- and after-school and during summers and school breaks. (Afterschool Alliance, America After 3PM: Afterschool Programs in Demand, 2014). CCDF is the primary Federal funding source devoted to providing low-income families with access to child care and before- and after-school care and improving the quality of care and, thus, is an integral part of the

nation's child care and early education system. Each year, more than $5 billion in Federal CCDF funding is allocated to State, Territory and Tribal grantees. Combined with State funds and transfers from the Temporary Assistance for Needy Families (TANF) program, States and Territories spend nearly $9 billion annually to support child care services to low-income families and to improve the quality of child care. More than $1 billion of this spending is directed towards supporting child care quality improvement activities designed to create better learning environments and more effective caregivers and teachers in child care centers and family child care homes across the country.

CCDF was created 20 years ago, upon the enactment of the Personal Responsibility and Work Opportunity Reconciliation Act (PRWORA) in 1996 (Pub. L. 104–193), in which Congress replaced the former Aid to Families with Dependent Children with the framework of TANF block grants, and established a new structure of consolidated funding for child care. This funding, provided under section 418 of the Social Security Act (42 U.S.C. 618), combined with funding from the Child Care and Development Block Grant (CCDBG) Act of 1990 (42 U.S.C. 9858 *et seq.*), was designated by HHS as the Child Care and Development Fund (CCDF).

The CCDBG Act of 2014 was the first reauthorization of CCDBG since 1996. The reauthorized Act affirms the importance of CCDF as a two-generation program that supports parents' financial success and children's healthy development. Since PRWORA, the focus of CCDF has shifted from one largely dedicated to the goal of enabling low-income parents to work to one that includes a focus on promoting positive child development as we have learned a great deal about the value of high-quality child care for young children. While low-income parents continue to need access to child care in order to work and gain economic independence, policymakers and the public now recognize that the quality of child care arrangements is also critically important.

Sixteen years ago, HHS (in collaboration with other federal agencies and private partners) funded the National Academies of Sciences to evaluate and integrate the research on early childhood development and the role of early experiences. (National Research Council and Institute of Medicine, From Neurons to Neighborhoods: The Science of Early Childhood Development, Board on Children, Youth, and Families, Commission on Behavioral and Social Sciences and Education, 2000.) An overarching conclusion was that early experiences matter for healthy child development. Nurturing and stimulating care given in the early years of life builds optimal brain architecture that allows children to maximize their enormous potential for learning. On the other hand, hardship in the early years of life can lead to later problems. Interventions in the first years of life are capable of helping to shift the odds for those at risk of poor outcomes toward more positive outcomes. A multi-site study conducted by the Frank Porter Graham Child Development Institute found that, "... children who experienced higher quality care are more likely to have more advanced language, academic, and social skills," and, "... children who have traditionally been at risk of not doing well in school are affected more by the quality of child care experiences than other children." (E. Peisner-Feinberg, M. Burchinal, et al., The Children of the Cost, Quality, and Outcomes Study Go to School: Executive Summary, University of North Carolina at Chapel Hill, Frank Porter Graham Child Development Center, 1999).

Evidence continues to mount regarding the influence that children's earliest experiences have on their later success and the role child care can play in shaping those experiences. The most recent findings from the National Institute of Child Health and Human Development (NICHD) showed that the quality of child care children received in their preschool years had small but statistically significant associations with their academic success and behavior into adolescence. (NICHD, Study of Early Child Care and Youth Development, 2010). Recent follow-up studies to the well-known Abecedarian Project, which began in 1972 and has followed participants from early childhood through young adulthood, found that adults who had participated in a high-quality early childhood education program experienced better educational, employment, and health outcomes. Abecedarian Project participants had significantly more years of education than their control group peers, were four times more likely to earn college degrees, and had lower risk of cardiovascular and metabolic diseases in their mid-30s. (Campbell, Pungello, Burchinal, et al., Adult Outcomes as a Function of an Early Childhood Educational Program: An Abecedarian Project Follow-Up, Frank Porter Graham Child Development Institute, Developmental Psychology, 2012 and Campbell, Conti, Heckman et al, Early Childhood Investments Substantially Boost Adult Health, Science 28 March 2014, Vol. 343).

Research also confirms that consistent time spent in afterschool activities during the elementary school years is linked to narrowing the gap in math achievement, greater gains in academic and behavioral outcomes, and reduced school absences. (Auger, Pierce, and Vandell, Participation in Out-of-School Settings and Student Academic and Behavioral Outcomes, presented at the Society for Research in Child Development Biennial Meeting, 2013). An analysis of over 70 after-school program evaluations found that evidence-based programs designed to promote personal and social skills were successful in improving children's behavior and school performance. (Durlak, Weissberg, and Pachan, The Impact of Afterschool Programs that Seek to Promote Personal and Social Skills in Children and Adolescents, American Journal of Community Psychology, 2010). After-school programs also promote youth safety and family stability by providing supervised settings during hours when children are not in school. Parents with school-aged children in unsupervised arrangements face greater stress that can impact the family's well-being and successful participation in the workforce. (Barnett and Gareis, Parental After-School Stress and Psychological Well-Being, Journal of Marriage and the Family, 2006).

CCDF often operates in conjunction with other programs including Head Start, Early Head Start, State pre-kindergarten, and before-and after-school programs. States and Territories have flexibility to use CCDF to provide children enrolled in these programs full-day, full-year care, which is essential to supporting low-income working parents. CCDF also funds quality improvements for settings beyond those that serve children receiving subsidies. CCDF has helped lay the groundwork for development of State early learning systems. Lead Agencies have used CCDF funds to make investments in professional development systems to ensure a well-qualified and effective early care and education workforce. Lead Agencies have provided scholarships for child care teachers and worked closely with higher education, especially community colleges, to increase the number of teachers with training or a degree in early childhood or youth development. Lead Agencies have used CCDF funds to build quality rating and improvement systems (QRIS) to provide consumer education information to parents, help providers

raise quality, and create a more systemic approach to child care quality improvement efforts and accountability. These investments have likely also generated benefits for children enrolled in unsubsidized child care programs.

Child care is a core early learning and care program and plays an important role within a broad spectrum of early childhood programs supporting young children. The Administration has consistently sought to support State, Territory and Tribal efforts to improve the coordination and alignment of early childhood programs through multiple efforts, including the Race to the Top-Early Learning Challenge and the Early Head Start-Child Care Partnerships. Most recently, ACF published Caring for our Children Basics (*www.acf.hhs.gov/sites/default/files/ecd/caring_for_our_children_basics.pdf*), a set of recommendations intended to create a common framework to align basic health and safety efforts across all early childhood settings. This final rule builds on the alignment and coordination work that has been advanced by the Administration. For example, Lead Agencies are required to collaborate with multiple entities, including State Advisory Councils on Early Childhood Education and Care, authorized by the Head Start Act, or similar coordinating bodies. In addition, minimum 12-month eligibility periods will make it easier to align child care assistance with eligibility periods for other programs, such as Early Head Start, Head Start, and State prekindergarten. Policies that stabilize access to child care assistance for families and bring financial stability to child care providers will play an important role in supporting the success of Early Head Start-Child Care Partnerships.

According to a recent report by the President's Council of Economic Advisors, investments in early childhood development will reap economic benefits now and in the future. Immediate benefits include increased parental earnings and employment. Future benefits come when children who experience high-quality early learning opportunities are prepared for success in school and go on to earn higher wages as adults. (Council of Economic Advisors, Executive Office of the President of the United States, The Economics of Early Childhood Investments, 2014). Decades of research show that the experiences babies and toddlers have in their earliest years shape the architecture of the brain and have long-term impacts on human development. At the same time, increasing the employability and stability of parents reduces the impact of poverty on children and sustains our nation's workforce and economy. Studies have shown that access to reliable child care contributes to increased employment and earnings for parents. (National Research Council and Institute of Medicine, From Neurons to Neighborhoods: The Science of Early Childhood Development, Board on Children, Youth, and Families, Commission on Behavioral and Social Sciences and Education, 2000 and Council of Economic Advisors, The Economics of Early Childhood Investments). In short, high-quality child care is a linchpin to the creation of an educational system that successfully supports the country's workforce development, economic security, and global competitiveness. Successful implementation of the CCDBG Act of 2014 will ensure that child care is not only safe, but also supports children's healthy development and their future academic achievement and success.

b. Statutory authority. This final rule is being issued under the authority granted to the Secretary of Health and Human Services by the CCDBG Act of 1990, as amended (42 U.S.C. 9858 *et seq.*) and Section 418 of the Social Security Act (42 U.S.C. 618).

c. Effective dates. This final rule will become effective 60 days from the date of its publication, except for provisions with a later effective date as defined in the Act (discussed further below). Compliance with provisions in the Act will be determined through ACF review and approval of CCDF Plans, including State Plan amendments, as well as using Federal monitoring, including on-site monitoring visits as necessary. Lead Agencies must comply with the provisions of the Act, as revised by the CCDBG Act of 2014. Compliance with key statutorily required implementation dates outlined in Program Instruction CCDF–ACF–PI–2015–02 (*http://www.acf.hhs.gov/programs/occ/resource/pi-2015-02*), dated January 9, 2015, remain in effect. In some cases, the CCDBG Act of 2014 specifies a particular date when a provision is effective. Where the Act does not specify a date, the new requirements became effective upon the date of enactment of the Act, and ACF guidance established September 30, 2016 as the deadline for States and Territories to implement the new statutory requirement(s). As discussed below, Tribes and Tribal organizations have different implementation and compliance timelines.

CCDF Final Rule Implementation Timeline	
State and Territory Lead Agencies (FY 2019-2021 CCDF Plans)	
July 2018	October 1, 2018
Plan Submission	Plan Effective Date
Tribal Lead Agencies (FY 2020-2022 CCDF Plans)	
July 2019	October 1, 2019
Plan Submission	Plan Effective Date

We recognize that States and Territories prepared their FY 2016–2018 CCDF Plans, which were due in March 2016, prior to the issuance of this final rule. States and Territories were to comply with the Act based on their reasonable interpretation of the requirements in the revised Act. With the issuance of this final rule, any State or Territory that does not fully meet the requirements of the Act, as interpreted by these regulations, will need to revise its policies and procedures to come into compliance. Plan amendments for substantial changes must be submitted within 60 days of the effective date of the change, and ACF will track compliance. The Act and this final rule also provide guidance on the process that allows the Secretary to consider whether to approve requests for temporary extensions from States and Territories through waivers. If a State or Territory receives an extension via waiver, ACF still expects full compliance with the Act, as interpreted by this final rule, by the end of the current triennial Plan period (FY 2016–2018). ACF will use federal monitoring in accordance with section 98.90.

Tribal Lead Agencies will submit new 3-year Plans for FY 2020–2022, with an effective date of October 1, 2019, and ACF will use those Plans to determine compliance with the Act, as interpreted by this rule. Tribes may also submit requests, for HHS to consider, seeking temporary extensions via waivers. Tribes that have consolidated CCDF with other employment, training and related programs under Public Law (Pub. L. 102–477), are not required to submit separate CCDF Plans, but will be required to submit amendments to their Public Law 102–477 Plans, along with associated documentation, in accordance with this timeframe to demonstrate compliance with the Act, as interpreted by this final rule.

This final rule is being published well in advance of the October 1, 2018 deadline for States and Territories (and October 1, 2019 deadline for Tribes) to ensure there is enough time to demonstrate compliance with all the statutory interpretations in this final rule. As a result, there is sufficient time for all States, Territories, and Tribes to demonstrate compliance with this rule's interpretations no later than these deadlines. We are not inclined to approve any requests for temporary extensions/waivers due to legislative or transitional purposes in order to comply with this rule's interpretations because the compliance deadlines already provide adequate time.

III. Development of Regulation

After enactment of the CCDBG Act of 2014, the Office of Child Care (OCC) and the Office of the Deputy Assistant Secretary for Early Childhood Development in ACF conducted outreach to engage with a variety of stakeholders to understand better the implications of its provisions. OCC created a CCDF reauthorization page on its Web site to provide public information and an email address to receive questions. OCC received approximately 650 questions and comments through this email address. OCC leadership and staff participated in more than 21 listening sessions with approximately 675 people representing diverse national, State, and local stakeholders regarding the Act, held webinars, and gave presentations at national conferences. Participants included State human services agencies, child care caregivers and providers, parents with children in child care, child care resource and referral agencies, national and State advocacy groups, national stakeholders including faith-based communities, after-school and school-age caregivers and providers, child care researchers, State and local early childhood organizations, provider associations, labor unions, and Head Start grantees. In addition, OCC held five meetings with State and Territory CCDF administrators and a series of consultations with Tribal leaders to describe the Act and to gather input from Federal grantees with responsibility for operating the CCDF program.

ACF published a notice of proposed rulemaking (NPRM) in the **Federal Register** on December 24, 2015, (80 FR 80466) proposing revisions to CCDF regulations consistent with the reauthorized Act and research on child safety, health, and child development in child care and school-age child care. We provided a 60-day comment period during which interested parties could submit comments in writing by mail or electronically.

ACF received 150 comments on the proposed rule (public comments on the proposed rule are available for review on *www.regulations.gov*), including comments from State human services and education agencies, national advocacy groups, State and local early childhood organizations, child care resource and referral agencies, faith-based organizations, provider associations, Tribes and Tribal organizations, labor unions, child care providers, parents, individual members of the public, and a joint letter by two members of the U.S. Congress. We were pleased to receive comments from 41 State and local governments, 1 Territory, and 15 Tribes and Tribal organizations. A number of stakeholders coordinated comments and policy recommendations so that their comments were signed by multiple entities, and there were some membership organizations whose comments were by signed by their individual members. Public comments informed the development of content for this final rule.

Use of terms. Terminology used to refer to child care settings and the individuals who provide care for children varies throughout the early childhood and afterschool fields. In this rule, the terms caregiver, teacher, and director refer to individuals. The term provider refers to the entity providing child care services. This may be a child care program, such as a child care center, or an individual in the case of family child care or in-home care. Complete descriptions of these terms are included in Subpart A of this rule.

Overview of changes made by CCDBG Act of 2014. The changes included in this final rule provide detail on major provisions of the CCDBG Act of 2014 to: (1) Protect the health and safety of children in child care; (2) help parents make informed consumer choices and access information to support child development; (3) provide equal access to stable, high-quality child care for low-income children; and (4) enhance the quality of child care and the early childhood workforce.

First, Congress established minimum health and safety standards including mandatory criminal background checks, at least annual monitoring of providers, and health and safety training. Children in CCDF-funded child care will now be cared for by caregivers who have had basic training in health and safety practices and child development. Parents will know that individuals who care for their children do not have prior criminal records that indicate potential endangerment of their children. Health and safety is a necessary foundation for quality child care that supports early learning and development. Research shows that licensing and regulatory requirements for child care affect the quality of care and child development. (Adams, G., Tout, K., Zaslow, M., Early care and education for children in low-income families: Patterns of use, quality, and potential policy implications, Urban Institute, 2007).

Second, Congress increased consumer education requirements for States and Territories and made clear that parents need transparent information about health and safety practices, monitoring

results, and the quality of child care providers. Parents will now be able to easily view on a Web site the standards a child care provider meets and their record of compliance. Most States and Territories administering the CCDF program have already begun building a quality rating and improvement system (QRIS), which make strategic investments to provide pathways for providers to reach higher quality standards. Our rule builds on the reauthorization and Lead Agency efforts to inform parents about the quality of providers by requiring that the consumer education Web site include provider-specific quality information, if available, such as from a QRIS, and that Lead Agencies provide parents receiving CCDF with information about the quality of their chosen provider.

Third, low-income parents need access to stable, high-quality child care for their children, and the Act affirms that they should have equal access to settings that are comparable to those accessible to non-CCDF families. This final rule details the Act's continuity of care provisions, such as extending eligibility for child care for a minimum of 12 months regardless of a parent's temporary change in employment or participation in education or training. Continuity of services contributes to improved job stability and is important to a family's financial health. Family economic stability is undermined by policies that result in unnecessary disruptions to receipt of a subsidy due to administrative barriers or other processes that make it difficult for parents to maintain their eligibility and thus fully benefit from the support it offers. Continuity also is of vital importance to the healthy development of young children, particularly the most vulnerable. Disruptions in services can stunt or delay socio-emotional and cognitive development, and make it harder for children to develop trusting relationships with their caregivers. Safe, stable environments allow young children the opportunity to develop the relationships and trust necessary to comfortably explore and learn from their surroundings. Research has demonstrated a relationship between child care stability and social competence, behavior outcomes, cognitive outcomes, language development, school adjustment, and overall child well-being. (Adams, Rohacek, and Danziger, Child Care Instability, The Urban Institute, 2010.) This area includes a number of changes, including requirements for limiting administrative burdens on parents and enabling families to retain their child care assistance as their income increases in order to move towards economic success.

The final rule also addresses the Act's equal access provisions by requiring that base payment rates be established at least at a level that enables child care providers to meet the health, safety, quality, and staffing requirements in the final rule, ensuring that co-payments are affordable for families, and establishing provider payment practices that support access to high-quality child care.

Finally, this final rule addresses increased quality set-asides in the reauthorized Act, which enhance the quality of child care and the early childhood workforce. States and Territories will report on their investments in quality activities, which will now be a greater share of CCDF spending. They will also expand quality investments in infant-toddler care. High-quality care for children under age 3 is the most expensive and hardest care to find during the most formative years. (National Survey of Early Care and Education, 2015, *www.acf.hhs.gov/sites/default/files/opre/es_price_of_care_toopre_041715_2.pdf*) The Act requires States and Territories to have training and professional development standards in effect for CCDF caregivers, and we build on this requirement by outlining the components of a professional development framework. Research shows the fundamental importance of the caregiver in a high-quality early learning setting, and this rule helps ensure that early childhood professionals have access to the knowledge and skills they need to best support young children and their development.

In developing this rule, we were mindful of CCDF's purpose to allow Lead Agencies maximum flexibility in developing child care policies and programs. In some areas, the final rule adds flexibility to allow Lead Agencies to tailor policies that better meet the needs of the low-income families they serve. For example, the rule provides more flexibility for Lead Agencies to determine when it is appropriate to waive a family's co-pay requirement. In many areas, the rule adds new requirements as dictated by the updated Act or because they advance the revised purposes of the CCDF program.

Changes in the Act, and in this final rule, affect the State, Territorial, and Tribal agencies that administer the CCDF program. The Act requires changes across many areas: Child care licensing, subsidy, quality, workforce, and program integrity and requires coordination across State agencies. Achieving the full visions of reauthorization will be challenging, but this effort is necessary to improve child care in this country for the benefit of our children. ACF has and will continue to consult with State, Territorial, and Tribal agencies and provide technical assistance throughout implementation.

This final rule generally maintains the structure and organization of the current CCDF regulations. The preamble in this final rule discusses the changes to current regulations and contains certain clarifications based on ACF's experience in implementing the prior final rules. Where language of previous regulations remains unchanged, the preamble explanation and interpretation of that language published with all prior final rules also is retained, unless specifically modified in the preamble to this rule. (See 57 FR 34352, Aug. 4, 1992; 63 FR 39936, Jul. 24, 1998; 72 FR 27972, May 18, 2007; 72 FR 50889, Sep. 5, 2007).

IV. General Comments and Cross-Cutting Issues

This final rule includes substantive changes in multiple areas spanning nearly every subpart of CCDF regulations. We received comments on a large majority of the proposed changes, and made significant revisions in this final rule in response to comments. For example, we deleted a proposal that would have required Lead Agencies to make some use of grants and contracts, revised the provision providing a graduated phase-out for certain families, and made a number of adjustments to equal access provisions. We discuss specific comments in the section-by-section analysis later in this final rule.

In general, public response to the proposed rule was positive. There was widespread support for the recognition of the dual purposes of the CCDF program—to support both parental pathways to economic security and stability and children's development. As noted by a joint set of comments by State child care administrators, "[we] share a common interest in increasing access to opportunities for high-quality early care and education for children and recognize the important developmental growth that occurs in early years." However, many of the commenters had concerns about costs and said more funding is needed to implement the changes. Developing this final rule required balancing both positive and negative comments, and we tried to be thoughtful about looking at the whole by considering the added-value of different provisions. Below we summarize these general comments as well other crosscutting issues raised by commenters.

General Comments

We received a few comments arguing that we lacked authority under the Act to establish some of the final rule's requirements. In developing this final rule, ACF was careful to stay within the authority provided by the reauthorized Act and cognizant of areas where our authority was limited and further changes would require Congressional action. We reviewed previously-existing regulations and identified areas under the CCDBG Act of 2014 where we could incorporate the tremendous amount of recent research on early brain development and best policies and practices to improve access to and the quality of child care being implemented.

Many commenters were concerned about the financial tensions between the objectives of the CCDF program—to provide access to child care for as many low-income families as possible so they can work and build financial stability, and to make sure children are in safe, quality child care settings. Many of these same commenters had concerns about costs and said more funding is needed to implement the statutory and regulatory changes. A letter submitted by 80 national and State organizations cautioned: "We note that CCDBG has been severely underfunded in recent years, resulting in large numbers of eligible children unserved and low provider payment rates, among other consequences. Achieving the goals of the Act to improve the health, safety, and quality of child care and the stability of child care assistance will require additional resources. Congress made a down payment on funding in the recent FY 2016 omnibus budget; however, additional investments will be necessary to ensure the success of the reauthorized Act and to address the gaps that already exist in the system." Several States and local governments voiced concern about the costs to implement the Act and the rule. They raised concerns about sufficiency of funding to meet requirements within the given period, and that insufficient funding could necessitate serving fewer eligible children.

We recognize that the CCDBG Act of 2014 makes many changes, and that States, Territories, and Tribes are budgeting with a limited amount of funding. Lead Agencies are faced with making difficult tradeoffs about where to direct scarce resources. Over time, some States have struggled to maintain the number of children and families served with child care subsidies, and caseloads declined to an all-time low in 2014. Additionally, the average CCDF subsidy per child is extremely low, approximately $4,800 annually in FY 2014. In inflation adjusted terms, the value of the child care subsidy (per child) has decreased in real dollars by about 20 percent since 2003, while the caseload has declined somewhat over that same period. This is a reflection of the tradeoffs that some States have had to consider due to limited federal and state funding under tight budget constraints, resulting in the erosion of the value of the subsidy and its ability to help families obtain high-quality care. On the other hand, there are States that have made different choices, such as providing an adequate subsidy value as they focused on serving children in settings where training and regulation is in place and oversight is sufficient.

This final rule attempts to bring a basic level of safety to all children whose care is supported with taxpayer funds. We will continue to pursue the goal of preserving and expanding access to quality child care for the many families who are currently unable to access a subsidy due to lack of funding. However, we see this final rule as a critical opportunity to ensure that the subsidized care families' access is of sufficient quality. The Act supports this goal of ensuring quality of care by requiring that providers serving CCDF children have background checks, receive basic training in health and safety, and are monitored on a regular basis. Like Lead Agencies, we have considered these difficult tradeoffs, but we believe that the final rule strikes the appropriate balance of both supporting quality and access and not ensuring one at the expense of the other. We will continue to pursue increased federal funding to increase access to high-quality, affordable child care. We believe that the policies in this final rule appropriately balance a reasonable cost burden while still achieving the goals (and resulting benefits) outlined in the Act and the rule.

We seriously considered concerns about cost, and recognize that the Act and final rule contain provisions that will require some State, Territory, and Tribal Lead Agencies to re-direct CCDF funds to implement specific provisions. Yet, the vast majority of the costs associated with this rule and outlined in the regulatory impact analysis are required by the law itself, and we support these critical investments as our guiding principle has been, and remains, that we cannot in good conscience continue to use any federal taxpayer dollars to support sub-standard child care for our nation's most vulnerable and disadvantaged children. The CCDBG Act of 2014 clearly spells out that its purpose is to improve the health, safety and quality of child care and to increase access to high-quality child care. Many Lead Agencies have already implemented some or most of the provisions in this final rule. In addition, each year, more than $5 billion in federal CCDF funding is allocated to State, Territory and Tribal grantees. The activities to implement requirements in this final rule are allowable costs in the CCDF program. Changes made by this final rule represent a commitment to shoring up quality and accountability in the CCDF program now, to provide a stronger foundation for future growth and investment.

Several States commented on wanting more flexibility to meet some the requirements. Our approach was to look at the provisions of this final rule in their entirety and identify areas where more flexibility is appropriate. While many Lead Agencies have made great strides to fashion the program in a way that emphasizes child development and increasing access to high-quality care, implementation of the CCDF program across the country varies greatly. The previous lack of substantive federal requirements in areas such as health and safety, consumer education, and eligibility policy means there is no uniform national standard that families can count on. All families receiving CCDF assistance, regardless of where they live, should have basic assurances about the safety and quality of services they receive.

This final rule provides more flexibility in areas that were not addressed by the reauthorized Act. For example, it allows Lead Agencies to establish their own criteria for waiving copays, gives flexibility to waive income and work requirements for vulnerable children, and provides the option for alternative monitoring strategies for in-home providers. In addition, there were several areas where we declined to impose a federal standard, even while some commenters asked us to go further. We also eliminated or revised a number of proposals from the NPRM in response to comments.

In addition, we took into consideration a number of comments that asked for more flexibility for Tribes. We continue to balance flexibility for Tribes to address the unique needs of their communities with the need to ensure accountability and quality child care for all children. In response to comments received from Tribes, we have made changes to how this final rule applies to them, including clarifying implementation periods and adding in flexibility around the background check requirements. This

final rule addresses all comments from Tribes and tribal organizations in the preamble discussion for Subpart I.

Finally, we received comments from some States and Tribes on the effective date of the final rule, indicating that time is needed to take administrative or legislative action, or to otherwise fully implement the provisions. While States should have already been proceeding with implementation of reauthorization requirements based on their reasonable interpretation of the reauthorized Act, we recognize that some States may need time to make adjustments to their policies and procedures based on this final rule. Therefore, we have provided delayed compliance dates, discussed in more detail earlier in this preamble, to allow States, Territories and Tribes time to fully implement this rule.

V. Section-by-Section Discussion of Comments and Regulatory Provisions

We received comments about changes we proposed to specific subparts of the regulation. Below, we identify each subpart, summarize the comments, and respond to them accordingly.

Subpart A—Goals, Purposes, and Definitions

§ 98.1 Purposes

The CCDBG Act of 2014 amended and expanded the Act's previous "goals" and renamed them "purposes". The final rule makes changes to regulatory language at 45 CFR 98.1 to describe the revised purposes of the CCDF program, according to the updated Act.

Comment: We received multiple comments from national and State organizations and child care worker organizations asking us to explicitly highlight compensation as an integral strategy to retaining a high-quality early childhood workforce in this section and in several other sections of the regulation.

Response: We agree and § 98.1(b)(8) of the final rule provides that, in providing a progression of professional development and promoting retention of quality early childhood caregivers, teachers, and directors, an important strategy is financial incentives and compensation improvements to align with § 98.44. We note that several States are working to improve compensation to support caregivers, teachers, and directors, generally linked to attaining higher professional credentials and education and as a strategy to retain educators who have these credentials and degrees in early childhood programs. Turnover remains a significant issue in child care, and investments in professional development and training should be coupled with improvements in compensation so that children benefit from teachers with those higher levels of knowledge and skill.

§ 98.2 Definitions

The final rule makes technical changes to definitions at § 98.2 and adds six new definitions. Below we discuss any comments we received to these proposals.

First, the final rule makes technical changes by deleting the definition for group home child care provider. Some States, Territories, and Tribes do not consider group homes to be a separate category of care when administering their CCDF programs or related efforts, such as child care licensing. According to the National Association for Regulatory Administration, at least 13 States do not license group homes as a separate category. Some States and Territories use alternative terminology (*e.g.*, large family child care homes), while others treat all family child care homes similarly regardless of size. Due to this variation, we are deleting the separate definition for group home child care provider, which requires a number of technical changes to the definitions section. We did not receive comments on this section.

Under this final rule, the categories of care are defined to include center based child care, family child care, and in-home care (*i.e.*, an individual caring for a child in the child's home).

This final rule also makes conforming changes to the definitions for categories of care, eligible child care provider, and family child care provider.

The final rule amends the definition for eligible child care provider at § 98.2 to delete a group home child care provider. The revised definition defines an eligible child care provider as a center-based child care provider, a family child care provider, an in-home child care provider, or other provider of child care services for compensation. Group home child care is considered a family child care provider for CCDF purposes.

The final rule also amends the definition for family child care provider at § 98.2 to include larger family homes or group homes. The new definition revises family child care provider to include one or more individuals who provide child care services. The remainder of the definition stays the same, specifying that services are for fewer than 24 hours per day per child, in a private residence other than the child's residence, unless care in excess of 24 hours is due to the nature of the parent(s)' work.

Lead Agencies may continue to provide CCDF services for children in large family child care homes or group homes, and this is allowable and recognized by the revised definition of family child care provider, which now includes care in private residences provided by more than one individual. This change eliminates group homes as a separately defined category of care for purposes of administering the CCDF—thereby allowing States, Territories, and Tribes to more easily align their practices with Federal requirements. The rule does not require that States and Territories eliminate group homes from their categories of care or change the way they categorize providers for the purposes of analyzing or setting provider payment rates.

The final rule makes one additional change to a pre-existing definition as called for by new statutory language. We are amending the definition of Lead Agency so that it may refer to a State, Territorial or Tribal entity, or a joint interagency office, designated or established under §§ 98.10 and 98.16(a) as indicated at Section 658P(9) of the Act. While the NPRM proposed amending the definition of eligible child, we decided a revision is unnecessary and have reverted to the pre-existing definition that references eligibility requirements at § 98.20.

Finally, the final rule adds five new terms to the definitions due to statutory changes and to include terms commonly used in the child care profession.

Caregiver

The definition of caregiver in the Act and prior regulations remains unchanged.

Comment: One child care worker organization raised concerns that the term "caregiver" is outdated, and requested deletion of the term.

Response: The final rule does not delete or alter the definition of "caregiver" that is included in the Act. The final rule, however, adds definitions for "teacher" and "director" to recognize the roles in child care and early childhood education as a professional field. The definitions for these terms are based on a white paper recommending revisions to the U.S. Department of Labor's Standard Occupational Classification. (Proposed Revisions to the Definitions for the Early Childhood Workforce in the Standard Occupational Classification. White Paper Commissioned by the Administration for Children and Families, U.S. Department of Health and Human Services, prepared by the Workgroup on the Early Childhood Workforce and Professional

Development under contract through the Child Care and Early Education Policy and Research Analysis, 2005–2018. June 18, 2014, *www.acf.hhs.gov/sites/default/files/occ/soc_acf_submittal.pdf*).

Teacher

The final rule defines teacher as 'a lead teacher, teacher, teacher assistant or teacher aide who is employed by a child care provider for compensation on a regular basis, or a family child care provider, and whose responsibilities and activities are to organize, guide and implement activities in a group or individual basis, or to assist a teacher or lead teacher in such activities, to further the cognitive, social, emotional, and physical development of children from birth to kindergarten entry and children in school-age child care.' We recognize that the responsibilities and qualifications for lead teachers, teachers, and teacher assistants are different as set by child care licensing, State early childhood professional development systems, and State teacher licensure policies and have added these definitions for simplification in relation to requirements in the Act and this rule. We strongly encourage States and Territories to recognize differentiated roles and qualifications in their requirements and systems.

Director

The final rule defines director as 'a person who has primary responsibility for the daily operations management for a child care provider, which includes a family child care provider, and which may serve children from birth to kindergarten entry and/or school-age children.'

Comment: Several comments from national and State organizations and child care worker organizations expressed support for the new definitions for teacher and director and asked for a reorganization of certain words in the proposed definition to ensure that they include family child care providers.

Response: We agree with the comments, and the final rule makes the requested changes.

Child With a Disability

We define child with a disability as: A child with a disability as defined in section 602 of the Individuals with Disabilities Education Act (20 U.S.C. 1401); a child who is eligible for early intervention services under part C of the Individuals with Disabilities Education Act (20 U.S.C. 1431 *et seq.*); a child who is less than 13 years of age and who is eligible for services under section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794); and a child with a disability, as defined by the State. This definition is identical to the definition found at Section 658P(3) of the Act.

Comment: We received comments from national organizations for individuals with disabilities on the definition of "child with a disability" asking to delete the "or" and an open-ended ability of the State to define the term.

Response: The final rule's definition is identical to the definition set forth in the Act, which allows States, Territories, and Tribes to include other developmental delays and disabilities if they choose. Consistent with the statute, we are changing "or" (which was proposed in the NPRM) to "and" to indicate that a child meeting at least one of any of the four parts of the definition (*i.e.*, section 602 of IDEA, part C of IDEA, section 504 of the Rehabilitation Act, or definition of State, Territory or Tribe) would be considered a child with a disability.

English Learner

The final rule reiterates Section 658P(5)'s definition of English learner as an individual who is limited English proficient, as defined in section 9101 of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 7801) or section 637 of the Head Start Act (42 U.S.C. 9832).

Child Experiencing Homelessness

The final rule's definition of a child experiencing homelessness is adopted from section 725 of Subtitle VII–B of the McKinney-Vento Act (42 U.S.C. 11434a). While a definition of child experiencing homelessness was not included in the reauthorized CCDBG Act, we understand the intent of Congress was to apply the McKinney-Vento definition here based on a letter sent to HHS Secretary Sylvia Burwell in February 2015 from Senate and House members.

Comment: Several comments expressed support for using the definition in the McKinney-Vento Act, section VII–B. One commenter sought to augment the definition to refer to several other federal laws that can be used to support children experiencing homelessness.

Response: Using the McKinney-Vento Act's definition, without modification here, will lead to better consistency in identifying children and in information collection. This definition is also used by Head Start and education programs.

Subpart B—General Application Procedures

Lead Agencies have considerable latitude in administering and implementing their child care programs. Subpart B of the regulations describes some of the basic responsibilities of a Lead Agency as defined in the Act. A Lead Agency serves as the single point of contact for all child care issues, determines the basic use of CCDF funds and priorities for spending CCDF funds, and promulgates the rules governing overall administration and oversight.

§ 98.10 Lead Agency Responsibilities

This final rule amends the language at § 98.10 in accordance with new statutory language at Section 658D(a) of the Act that a Lead Agency may be a collaborative agency or a joint interagency office, as designated or established by the Governor of the State (or by the appropriate Tribal leader or applicant). Paragraphs (a) through (e) remain unchanged. Paragraph (f) requires that, at the option of an Indian Tribe or Tribal organization in the State, a Lead Agency should consult, collaborate and coordinate in the development of the State Plan with Tribes or Tribal organizations in the State in a timely manner pursuant to § 98.14. Because States also provide CCDF assistance to Indian children, States benefit by coordination with Tribes and we encourage States to be proactive in reaching out to the appropriate Tribal officials for collaboration. The final rule adds "consult" to recognize the need for formal, structured consultation with Tribal governments, including Tribal leadership, and the fact that many States and Tribes have consultation policies and procedures in place. We received one comment on this section.

Comment: One State and a Tribal organization wrote that they support the requirement to consult, collaborate, and coordinate in the development of the State Plan with Indian Tribes or Tribal organizations.

Response: The final rule keeps this language.

§ 98.11 Administration Under Contracts and Agreements

Written agreements. Section 98.11 previously required Lead Agencies that administer or implement the CCDF program indirectly through other local agencies or organizations to have written agreements with such agencies that specify mutual roles and responsibilities. However, it did not address the content of such agreements. This final rule amends regulatory

language at § 98.11(a)(3) to specify that, while the content of the written agreements may vary based on the role the agency is asked to assume or the type of project undertaken, agreements must, at a minimum, include tasks to be performed, a schedule for completing tasks, a budget that itemizes categorical expenditures consistent with CCDF requirements at § 98.65(h), and indicators or measures to assess performance. Many Lead Agencies administer the CCDF program through the use of sub-recipients that have taken on significant programmatic responsibilities, including providing services on behalf of the Lead Agency. For example, some Lead Agencies operate primarily through a county-based system, while others devolve decision-making and administration to local workforce boards, school readiness coalitions or community-based organizations such as child care resource and referral agencies. Through working with grantees to improve program integrity, ACF has learned that the quality and specificity of written agreements vary widely, which hampers accountability and efficient administration of the program. These changes represent minimum, common-sense standards for the basic elements of those agreements, while allowing latitude in determining specific content. The Lead Agency is ultimately responsible for ensuring that all CCDF-funded activities meet the requirements and standards of the program, and thus has an important role to play to ensure written agreements with sub-recipients appropriately support program integrity and financial accountability.

We are cognizant that some States and Territories lack strong requirements to ensure there is transparency in cases where a sub-recipient contracts with a network of family child care providers to serve children receiving CCDF. This rule places a strong emphasis on implementation of provider-friendly payment practices, including a payment agreement or authorization of services for all payments received by child care providers. When a local entity contracts with a family child care network for services, we agree that there should be a clear understanding from the outset regarding payment rates for providers, any fees the provider may be subject to, and payment policies.

Finally, § 98.11(b)(5) adds a reference to the HHS regulations requiring Lead Agencies to oversee the expenditure of funds by sub-recipients and contractors, in accordance with 75 CFR 351 to 353. The final rule changes the term "subgrantee" in the proposed rule to "subrecipients" in this final rule as a technical correction. These regulations implement the Office of Management and Budget's Uniform Administrative Requirements for Federal awards (see ACF, Uniform Administrative Requirements, Cost Principles, and Audit Requirements, Program Instruction: CCDF–ACF–PI–2015–01, January 2015.)

Section 658D(b)(1)(A) of the Act provides Lead Agencies with broad authority to administer the program through other governmental or non-governmental agencies. In addition, CCDF Lead Agencies must comply with requirements for monitoring and management of sub-recipients, including government-wide grant requirements issued by the Office of Management and Budget (OMB) at 2 CFR 200.330 to 200.322 and adopted by HHS at 45 CFR 75.351 to 75.353, which address reporting, auditing and other requirements related to sub-recipients. This final rule adds language at § 98.11 to improve the quality and specificity of written agreements to promote program integrity and efficient administration at all levels. We received three comments on this section.

Comment: One child care worker organization commented that these requirements should apply in all instances where CCDF funds are sub-granted or passed through to an entity, including arrangements between intermediary entities and individual child care providers.

Response: This provision applies only to written agreements between lead Agencies and first-level sub-recipients (and not to agreements between first-level sub-recipients and lower-level sub-recipients). The regulation states that the agreement must specify the mutual roles and responsibilities of the Lead Agency and the other agencies—indicating that the Lead Agency is a party to the agreement. This language is intended to be broad as sub-entities may fulfill any number of different roles or projects, including implementing quality improvement activities, determining eligibility for families, or providing consumer education on behalf of the Lead Agency. We strongly encourage lower-level agreements to have similar provisions, but prefer to leave this as an area of flexibility to give State and local agencies discretion over the details, given the wide-range of conditions and circumstances involved. Also, we note that regulations at 98.67(c)(2) require Lead Agencies to have in place fiscal control and accountability procedures that permit the tracing of funds to a level of expenditure adequate to establish that such funds have not been used in violation of the CCDF rules. Therefore, Lead Agencies that devolve program administration to first, second, and third-level entities necessarily must be concerned with the integrity and transparency of all written agreements involving CCDF funds.

The comment also urged ACF to compile and disseminate best practices for written agreements between entities that administer CCDF monies and providers and that the State or local agency develop a model written agreement for networks. This is an area where ACF anticipates providing more technical assistance to assist States in developing model written agreements focused on cases where a sub-recipient contracts with a network of family child care providers to serve children receiving CCDF.

Comment: We received a comment from one State that some of the items for written agreements do not seem applicable to the administration of child care subsidies. For example, including a schedule for completing tasks does not seem applicable since the tasks of administering child care subsidies are ongoing and do not have end dates. States may have existing methods of ensuring compliance with administration requirements for the program, and should be offered flexibility in how tasks and expenditures are overseen and monitored. Conversely, we received a comment from a child care worker organization in support of requiring a written agreement between a Lead Agency and another agency that must include, at minimum, tasks to be performed, a schedule for completing tasks, a budget which itemizes categorical expenditures consistent with CCDF requirements at 98.65(h), and indicators or measures to assess performance.

Response: We have maintained the language in this section. Lead Agencies can adopt the required elements, as appropriate, to fit the circumstances. For example, in the schedule for tasks, they can indicate the tasks that are ongoing.

§ 98.14 Plan Process

Coordination. Section 658E(c)(2)(O) of the Act added language to previously-existing requirements for coordination of programs that benefit Indian children requiring Lead Agencies to also coordinate the provision of programs that serve infants and toddlers with disabilities, children experiencing homelessness, and children in foster care. We include all children with disabilities, not just infants and toddlers, in the regulatory language,

given the critical importance of serving that population of children.

Lead Agencies also are required to consult and coordinate services with agencies responsible for public health, public education, employment services/workforce development, and TANF. The CCDBG Act of 2014 added a requirement for the Lead Agency to develop the Plan in coordination with State Advisory Councils on Early Childhood Education and Care, which are authorized by the Head Start Act (42 U.S.C. 9831 *et seq.*) at Section 658E(c)(2)(R).

In this final rule, we amend § 98.14(a)(1) to add the State Advisory Council on Early Childhood Education and Care or similar coordinating body, as well as additional new entities with which Lead Agencies are required to coordinate the provision of child care services. We have added parenthetical language to paragraph (a)(1)(iii) to specify that coordination with public education should also include agencies responsible for pre-kindergarten programs, if applicable, and early intervention and preschool educational services provided under Parts B and C of the Individuals with Disabilities Education Act (IDEA) (20 U.S.C. 1400). Other coordinating entities include agencies responsible for child care licensing; Head Start collaboration; Statewide after-school network or other coordinating entity for out-of-school time care; emergency management and response; the Child and Adult Care Food Program (CACFP); Medicaid and the State children's health insurance program; mental health services agencies; services for children experiencing homelessness, including State Coordinators for the Education of Children and Youth Experiencing Homelessness; and, to the extent practicable, local liaisons designated by local educational agencies (LEAs) in the State as required by the McKinney-Vento Act (42 U.S.C. 11432) and the Department of Housing and Urban Development's Continuum of Care and Emergency Solutions Grantees. In the final rule, we added other relevant nutrition programs in addition to CACFP.

Over time, the CCDF program has become an essential support in local communities to provide access to early care and education in before- and after-school settings and to improve the quality of care. Many Lead Agencies already work collaboratively to develop a coordinated system of planning that includes a governance structure composed of representatives from the public and private sector, parents, schools, community-based organizations, child care, Head Start and Early Head Start, child welfare, family support, public health, and disability services. Local coordinating councils or advisory boards also often provide input and direction on CCDF-funded programs.

This type of coordination frequently is facilitated through entities such as State Advisory Councils on Early Childhood Education and Care. In both Head Start and CCDF, collaboration efforts extend to linking with other key services for young children and their families, such as medical, dental and mental health care; nutrition; services to children with disabilities; child support; refugee resettlement; adult education and postsecondary education; family literacy and English language acquisition; and employment training. These comprehensive services are crucial in helping families progress towards economic stability and in helping parents provide a better future for their young children.

Implementation of the requirements of the CCDBG Act of 2014 will require leadership and coordination between Lead Agencies and other child- and family-serving agencies, services, and supports at the State and local levels, including those identified above. For example, in many States, child care licensing is administered in a different agency than CCDF. In those States, implementation of the inspection and monitoring requirements included in the Act necessitates coordination across agencies.

Comment: One State noted that it has multiple agencies that serve children experiencing homelessness and asked for a change in the language.

Response: We recognize that there are many agencies that have responsibilities for serving children experiencing homelessness. The examples of agencies in this provision are not meant to be an exhaustive list. Each Lead Agency will need to identify the appropriate agencies that are responsible for providing services to children experiencing homelessness to comply with the coordination requirement.

Comment: We received multiple comments from national and State organizations supportive of the list of coordinating partners. We received a few comments suggesting additional coordinating partners to be named in this final rule, including child care resource and referral agencies, specific types of mental health providers, child care provider organizations, and child care providers who are faith-based or use a distinctive early childhood education approach.

Response: New paragraph 98.14(a)(1)(xiv) includes child care resource and referral agencies, as recommended by commenters. Recognizing that functions typically performed by resource and referral agencies in some instances may be performed by other types of entities, we expanded the regulatory language to also include child care consumer education organizations and providers of early childhood education and professional development. Lead Agencies have the flexibility, and are encouraged, to engage with a wide variety of cross-sector partners when developing the CCDF Plan. Some of the coordinating partners suggested by commenters, such as providers using distinctive approaches to teaching, and faith-based organizations are already assumed to be included in pre-existing regulations at § 98.14(a)(1), which requires coordination with child care and early childhood development programs.

Combined funding. Section 98.14(a)(3) reiterates the statutory requirement that any Lead Agency that combines funding for CCDF services with any other early childhood programs shall provide a description in the CCDF Plan of how the Lead Agency will combine and use the funding according to Section 658E(c)(2)(O) of the Act. Lead Agencies have the option of combining funding for CCDF child care services with programs operating at the Federal, State, and local levels for children in preschool programs, Tribal early childhood programs, and other early childhood programs, including those serving infants and toddlers with disabilities, children experiencing homelessness, and children in foster care. Combining funds could include blending, layering, or pooling multiple funding streams in an effort to expand and/or enhance services for children and families. For example, Lead Agencies may use multiple funding sources to offer grants or contracts to programs to deliver high-quality child care services; a Lead Agency may allow county or local governments to use coordinated funding streams; or policies may be in place that allow local programs to layer funding sources to provide full-day, full-year child care that meets Early Head Start, Head Start or State/Territory pre-kindergarten standards in addition to child care licensing requirements. As per the OMB Circular A–133 Compliance Supplement 2015, *https://www.whitehouse.gov/omb/circulars/a133_compliance_supplement_2015*, CCDF funds may be used in collaborative efforts with Head

Start programs to provide comprehensive child care and development services for children who are eligible for both programs. In fact, the coordination and collaboration between Head Start and CCDF is strongly encouraged by sections 640(g)(1)(D) and (E), 640(h), 641(d)(2)(H)(v), and 642(e)(3) of the Head Start Act in the provision of full working day, full calendar year of early care and learning and comprehensive services.

In order to implement such collaborative programs, which share, for example, space, equipment or materials, grantees may blend several funding streams so that services are provided seamlessly for the child and family. The same strategy applies to State-funded preschool programs where, working with CCDF funds, eligible children can benefit from a full-day and full-year program. Lead Agencies can layer Early Head Start and CCDF funds for the same child as long as there is no duplication in payments for the exact same part of the service. This is an option that some Lead Agencies are already implementing. Early Head Start-Child Care Partnerships grants, which allow Early Head Start programs to collaborate with local child care centers and family child care providers serving infants and toddlers from low-income families, offer a new important opportunity to implement this strategy to expand access to high-quality child care for infants and toddlers. We do note that, when CCDF funds are combined with other funds, § 98.67 continues to require Lead Agencies to have in place fiscal control and accounting procedures sufficient to prepare required reports and trace funds to a level of expenditure adequate to establish that such funds have been used on allowable activities.

Public-private partnerships. This final rule adds paragraph (a)(4) to § 98.14 in accordance with Section 658E(c)(2)(P) of the Act, which requires Lead Agencies to demonstrate in their Plan how they encourage public-private partnerships to leverage existing child care and early education service delivery systems and to increase the supply and quality of child care services for children under age 13, such as by implementing voluntary shared services alliance models (*i.e.*, cooperative agreements among providers to pool resources to pay for shared fixed costs and operation). Public-private partnerships may include partnerships among State/Territory and public agencies, Tribal organizations, private entities, faith based organizations and/or community-based organizations.

Public availability of Plans. The final rule adds language at § 98.14(c)(3) that requires the Lead Agency to post the content of the Plan that it proposes to submit to the Secretary on a Web site as part of the public hearing process. A new § 98.14(d) requires Lead Agencies to make their CCDF Plan and any Plan amendments publicly available. Ideally, Plans and Plan amendments are available on the Lead Agency Web site or other appropriate State/Territory Web sites (such as the consumer education Web site required at § 98.33(a)) to ensure that there is transparency for the public, and particularly for parents seeking assistance, about how the child care program operates. This is especially important for Plan amendments, given that Lead Agencies often make substantive changes to program rules or administration during the Plan period (now three years) through submission of Plan amendments (subject to ACF approval), but were not previously required to proactively make those amendments available to the public.

Comment: We received comments from disabilities organizations to insert "early intervention" to describe Part C and "preschool" before "Part B" for clarity.

Response: We agree with a comment recommending a technical fix to language at § 98.14(a)(1)(iii). The Act includes Part C and B of the Individuals with Disabilities Education Act (IDEA) for coordination. Part C provides early intervention services and Part B provides preschool as well as elementary and secondary educational services. The final rule adds "early intervention and preschool" to describe the educational services under IDEA.

Comment: We received several comments from provider and child care worker organizations supporting the requirement that Lead Agencies make draft and final Plans and Plan amendments publicly available. We received one comment that Lead Agencies should make the Plan available in the language of the community and another comment asking for a timeframe for States and Territories to make these items public.

Response: In paragraphs (c)(3) and (d) of this section, the final rule adds language that the Plan and any amendments to the Plan, as well as approved requests for temporary relief as discussed at § 98.19, must be made available on a Web site. The final rule does not require that the Plan be made available in multiple languages. However, we strongly encourage States to be mindful of the needs of families with limited English proficiency and to work with families and community groups to give them a voice in program planning and policymaking, for example, by organizing outreach meetings with interpreters, recruiting multilingual eligibility staff, and translating provider-focused documents to ensure a diverse group of providers. CCDF Plans are long, technical documents and there could be significant costs associated with translating them into multiple languages. The CCDF Plan asks States to indicate whether they provide information or services in other non-English languages and most States indicate that they have procedures in place to translate program materials and provide technical assistance to providers. Lead Agencies may decide it is more cost effective to prioritize translating provider contracts, consumer education information, or other key documents that are integral to service delivery than to translate the Plan itself, if resources are limited. We also urge States to publish these items as soon as possible, within a timeframe determined by the Lead Agency, for the greatest transparency to families, providers, and the public.

§ 98.15 Assurances and Certifications

Section 658E(c) of the Act requires Lead Agencies to provide assurances and certifications in its Plan. The final rule adds new assurances based on new statutory language.

The final rule provides that Lead Agencies are required to provide an assurance that training and professional development requirements comply with § 98.44 and are applicable to caregivers, teachers, and directors working for child care providers receiving CCDF funds. They are also required to provide assurance that, to the extent practicable, enrollment and eligibility policies support the fixed costs of providing child care services by delinking provider payment rates from an eligible child's occasional absences in accordance with § 98.45(l). Both of these requirements are discussed in detail in later sections of this rule.

Section 98.15(a)(9) of this final rule adopts the statutory requirement at Section 658E(c)(2)(G) of the Act for Lead Agencies to provide an assurance that they will maintain or implement early learning and developmental guidelines that are developmentally appropriate for all children from birth to kindergarten entry, describing what children should know and be able to do, and covering the essential domains of early childhood development (cognition, including language arts and mathematics; social, emotional and physical development; and approaches toward learning) for use

statewide by child care providers and caregivers. Guidelines should be research-based and developmentally, culturally, and linguistically appropriate, building in a forward developmental progression, and aligned with entry to kindergarten. Guidelines should be implemented in consultation with the State educational agency and the State Advisory Council on Early Childhood Education and Care or similar coordinating body, and in consultation with child development and content experts.

Paragraph (a)(10) of § 98.15 requires Lead Agencies to provide an assurance that funds received to carry out this subchapter will not be used to develop or implement an assessment for children that will be the primary or sole basis for deeming a child care provider ineligible to participate in a program carried out under this subchapter; will be used as the primary or sole basis to provide a reward or sanction for an individual provider; will be used as the primary or sole method for assessing program effectiveness; or will be used to deny children eligibility to participate in the program carried out under this subchapter. The Consolidated and Further Continuing Appropriations Act, 2015, Public Law 113–235, made a correction to the CCDBG Act, adding that the assessments will not be the "primary or" sole basis for a child care provider being determined to be ineligible to participate in CCDF. The statute lays out the acceptable ways of using child assessments, including to support learning or improve a classroom environment; target professional development; determine the need for health, mental health, disability, developmental delay, or family support services; obtain information for the quality improvement process at the State/Territory level; or conduct a program evaluation for the purposes of providing program improvement and parent information. We received one comment on this section, which was supportive.

Finally, § 98.15(a)(11) requires, to the extent practicable and appropriate, an assurance that any code or software for child care information systems or information technology that a Lead Agency, or other agency, expends CCDF funds to develop must be made available to other public agencies for their use in administering child care or related programs upon request. This provision is intended to prevent CCDF funds from being spent multiple times on the same, or similar, technology in order to provide accountability for public dollars.

Section 98.15(b) requires Lead Agencies to include certifications in its CCDF Plan. We are adding new requirements, as proposed in the NPRM, to reflect the following new statutory requirements:

- To develop the CCDF plan in consultation with the State Advisory Council on Early Childhood Education and Care (or similar coordinating body);
- to collect and disseminate to parents of eligible children, the general public, and, where applicable, child care providers, consumer education information that will promote informed child care choices and information on developmental screenings, as required by § 98.33;
- to make public the result of monitoring and inspections reports, as well as the number of deaths, serious injuries, and instances of substantiated child abuse that occurred in child care settings as required by § 98.33(a);
- to require caregivers, teachers, and directors of child care providers to comply with the State's, Territory's or Tribe's procedures for reporting child abuse and neglect as required by section 106(b)(2)(B)(i) of the Child Abuse Prevention and Treatment Act (42 U.S.C. 5106a(b)(2)(B)(i)), if applicable, or other child abuse reporting procedures and laws in the service area, as required by § 98.41(e);
- to have in effect monitoring policies and practices pursuant to § 98.42; and
- to ensure payment practices of child care providers receiving CCDF funds reflect generally-accepted payment practices of child care providers that serve children who do not receive CCDF assistance, pursuant to § 98.45(l).

These requirements are discussed later in this final rule. The final rule also removes "or area served by Tribal Lead Agency" from § 98.15(b)(6), as re-designated, because the rule includes distinct requirements for Tribes to enforce health and safety standards for child care providers. Section 98.15(b)(12), as re-designated, updates the reference to § 98.43, which is now § 98.45. All other paragraphs in this section remain unchanged.

The final rule adds a new paragraph (b)(13) requiring Lead Agencies to certify in the CCDF Plan that they have in place policies to govern the use and disclosure of confidential and personally-identifiable information about children and families receiving CCDF-funded assistance and child care providers receiving CCDF funds. Previously, there were no Federal requirements in statute or regulation governing confidentiality in CCDF, although there are Federal requirements governing information that the CCDF agency may have in its files, such as child abuse and neglect information. The Federal Privacy Act is the primary source of Federal requirements related to client confidentiality (5 U.S.C. 552a note); however, the Privacy Act generally applies to Federal agencies, and is not applicable to State and local government agencies, with some exceptions, such as computer matching issues and requirements related to the disclosure and protection of Social Security numbers. (ACF has previously issued guidance: Clarifying policy regarding limits on the use of Social Security Numbers under the CCDF and the Privacy Act of 1974, Program Instruction: ACYF–PI–CC–00–04, 2000, which remains in effect as of the effective date of this rule.)

This final rule requires that Lead Agencies have policies in place to govern the use and disclosure of confidential and personally identifiable information (PII) about children and families receiving CCDF-funded assistance and child care providers, which should include their staff, receiving CCDF funds. We offer Lead Agencies discretion to determine the specifics of such privacy policies because we recognize many Lead Agencies already have policies in place, and it is not our intention to make them revise such policies, provided the State's policy complies with existing Federal confidentiality requirements. Further, many Lead Agencies are working on data sharing across Federal and State programs and it is not our intention to make these efforts more challenging by introducing a new set of confidentiality requirements. This regulatory addition is not intended to preclude the sharing of individual, case-level data among Federal and State programs that can improve the delivery of services. The ACF Confidentiality Toolkit may be a useful resource for States in addressing privacy and security in the context of information sharing (*https://www.acf.hhs.gov/sites/default/files/assets/acf_confidentiality_toolkit_final_08_12_2014.pdf*).

It is important that personal information not be used for purposes outside of the administration or enforcement of CCDF, or other Federal, State or local programs, and that when information is shared with outside entities (such as academic institutions for the purpose of research) there are safeguards in place to ensure for the non-disclosure of Personally-Identifiable Information, which is information that can be used to link to, or identify, a specific individual. It is at the Lead Agency's discretion whether

they choose to comply with this provision by writing and implementing CCDF-specific confidentiality rules or by ensuring that CCDF data is subject to existing Federal or State confidentiality rules. Further, nothing in this provision should preclude a Lead Agency from making publicly available provider-specific information on the level of quality of a provider or the results of monitoring or inspections as described in § 98.33.

Comment: We received comments from private and faith-based providers on § 98.15(a)(9) requesting language to name certain pedagogical approaches and other distinctive approaches to teaching in multiple sections, including Lead Agency certification and assurances regarding the State's early learning guidelines.

Response: We decline to add this language because the request speaks to teaching practices rather than content of what children should learn and be able to do. Further, the Act prohibits the Secretary from requiring any specific curricula, teaching philosophy, or pedagogical approach. We encourage Lead Agencies to coordinate on the Plan development and its implementation with the full range of providers, including those who use distinctive curricula or teaching practices that are grounded in research of child development and learning.

Comment: Two States and a local government raised concerns that the provision in § 98.15(a)(11)—making available code or software for child care information systems or technology developed with CCDF funds be made available upon request by other agencies—could negatively affect their ability to procure vendors for information systems. The commenters suggested that the provision raised the risk of violating licensing agreements and intellectual property law and asked for clarification whether this provision applies to technology partially funded by CCDF. One comment asked for clarifying statements whether the regulation applies to systems partially funded by CCDF; whether the systems must be shared inter-state or intra-state; and that the child, program, and contractor data itself would be protected under applicable State and federal laws.

Response: We have modified the language in this provision to provide that the assurance for sharing upon request will be made "to the extent practicable and appropriate." We also added language to clarify that the CCDF-funded code and software should be shared upon request with other public agencies, "including public agencies in other States". We considered the regulation for the Medicaid Program's Mechanized Claims Processing and information Retrieval Systems (90/10) (*www.federalregister.gov/articles/2015/12/04/2015-30591/medicai-program-mechanized-claims-processing-and-information-retrieval-systems-90100* and the Office of Child Support Enforcement's Information Memoranda: Use of Enterprise Software in Automated Human Services Information Systems-Use of Enterprise Level Commercial-Off-the-Shelf (COTS) Software in Automated Human Services Information Systems (*www.acf.hhs.gov/programs/css/resource/use-of-enterprise-software-in-automated-human-services-information*).

As a general practice, the reuse and availability of IT code and software allows States to leverage software development funding more effectively. Subsidy child care data systems are being developed using CCDF funding. Thus, this provision applies to code and software developed fully or partially with CCDF funds. As to sharing with other public agencies within the State and across State borders, we expect the widest reuse of IT artifacts as possible. Lastly, data would be protected under applicable federal and State laws. The majority of information system definitions typically include several layers, such as users, business rules, hardware, software, and data. There is specific mention of code and software in the provision, which does not include data.

§ 98.16 Plan Provisions

Submission and approval of the CCDF Plan is the primary mechanism by which ACF works with Lead Agencies to ensure program implementation meets Federal regulatory requirements. All provisions that are required to be included in the CCDF Plan are outlined in § 98.16. Many of the additions to this section correspond to changes throughout the regulations, which we provide explanation and responses to comment for later in this rule. For provisions that do not cross-reference other sections of the rule, we respond to comments here. Paragraph (a) of § 98.16 continues to require that the Plan specify the Lead Agency.

General comments. We received supportive comments from national and State organizations on the following subsections: Emergency and disaster planning (aa); outreach to English language learner children and children with disabilities and providers who are English language learners (dd); supporting providers in successful family engagement (gg); and responding to complaints to the national hotline (hh).

Comment: We received comments from a child care worker organization requesting the addition of "higher compensation" as a strategy in several subsections of § 98.16.

Response: The final rule includes compensation improvements in the goals and purposes section and in the professional development and training sections. We agree that in raising standards, Lead Agencies should consider multiple strategies for raising compensation commensurate with caregivers, teachers, and directors attaining higher level credentials and education to retain highly knowledgeable and skilled educators and leaders. We also encourage Lead Agencies to consider strategies throughout the Plan that can bolster compensation, such as setting reimbursement rates, building the supply of quality child care, and using the quality set-aside dollars specifically to improve compensation in a field that remains undercompensated even when earning higher education and credentials comparable to their counterparts in the public education system.

Written agreements. A new § 98.16(b), which was proposed in the NPRM, corresponds with changes at § 98.11(a)(3) discussed earlier, related to administration of the program through written agreements with other entities. In the CCDF Plan, the change requires the Lead Agency to include a description of processes it will use to monitor administrative and implementation responsibilities undertaken by agencies other than the Lead Agency including descriptions of written agreements, monitoring, and auditing procedures, and indicators or measures to assess performance. This is consistent with the desire to strengthen program integrity within the context of current Lead Agency practices that devolve significant authority for administering the program to sub-recipients. Prior paragraphs (b) through (f) are re-designated as paragraphs (c) through (g). All paragraphs remain unchanged with the exception of paragraph (e), as re-designated, which has been revised by adding "and the provision of services" to clarify that the Plan's description of coordination and consultation processes should address the provision of services in addition to the development of the Plan. We address comments in discussion of § 98.11.

Continuity of care. A new § 98.16(h) corresponds with statutory changes in subpart C discussed later to describe

and demonstrate that eligibility determination and redetermination processes promote continuity of care for children and stability for families receiving CCDF services, including a minimum 12-month eligibility redetermination period in accordance with § 98.21(a); a graduated phase out for families whose income exceeds the Lead Agency's threshold to initially qualify for CCDF assistance, but does not exceed 85 percent of State median income, pursuant to § 98.21(b); processes that take into account irregular fluctuation in earnings, pursuant to § 98.21(c); procedures and policies to ensure that parents are not required to unduly disrupt their employment, training, or education to complete eligibility redetermination, pursuant to § 98.21(d); limiting any requirements to report changes in circumstances in accordance with § 98.21(e); policies that take into account children's development and learning when authorizing child care services pursuant to § 98.21(f); and other policies and practices such as timely eligibility determination and processing of applications. Comments on this topic are discussed later.

Child care services. Section 98.16(i)(2), as re-designated, is amended to reference § 98.30(e)(1)(iii). Section 98.16(i)(5), as re-designated, is amended to require that all eligibility criteria and priority rules, including those at § 98.46, are described in the CCDF Plan. The remaining subparagraphs remain unchanged.

Consumer education. Section 98.16(j), as re-designated, incorporates statutory changes to provide comprehensive consumer and provider education, including the posting of monitoring and inspection reports, pursuant to § 98.33, changes which are discussed later in this rule.

Co-payments. Section 98.16(k), as re-designated, requires Lead Agencies to include a description of how co-payments are affordable for families, pursuant to § 98.45(k), including a description of any criteria established by the Lead Agency for waiving contributions for families. This change is discussed in more detail later in the rule.

Health and safety standards and monitoring. The final rule adds a provision at § 98.16(l), as re-designated, requiring Lead Agencies to provide a description of any exemptions to health and safety requirements for relative providers made in accordance with § 98.41(a)(2), which is discussed later in this rule. We received no comments and have retained this language as proposed in the NPRM.

The final rule adds three new paragraphs, (m) through (o), as proposed in the NPRM, requiring Lead Agencies to describe the child care standards for child care providers receiving CCDF funds, that includes group size limits, child-staff ratios, and required qualifications for caregivers, teachers, and directors, in accordance with § 98.41(d); monitoring and other enforcement procedures to ensure that child care providers comply with applicable health and safety requirements pursuant to § 98.42; and criminal background check requirements, policies, and procedures, including the process in place to respond to other States', Territories', and Tribes' requests for background check results in order to accommodate the 45-day timeframe, in accordance with § 98.43.

Comment: We received one comment on 98.16(m) that the States should not be required to provide in their Plan the group size, child-staff ratios and required qualifications.

Response: Although the Act does not allow the Secretary to establish standards for group size, child-staff ratios, and required qualifications, there is nothing that prohibits the Secretary from requesting this information in the Plan. This final rule does not establish group size, ratios, or qualifications. However, this is helpful information in understanding the conditions of care children are experiencing and the child care workforce.

Training and Professional Development. The final rule adds § 98.16(p) requiring Lead Agencies to describe training and professional development requirements for caregivers, teachers, and directors of child care providers who receive CCDF funds in accordance with § 98.44. We received no comments and have retained the proposed language. Paragraph (q), as re-designated, remains unchanged.

Payment rates. The final rule revises § 98.16(r), as re-designated, to include the option of using an alternative methodology to set provider payment rates. This provision is described later in this final rule. It also deletes the word "biennial" as the reauthorized Act requires the market rate survey to be conducted every three years.

The final rule revises paragraph (s), as re-designated, to include a detailed description of the State's hotline for complaints and process for substantiating and responding to complaints, including whether or not the State uses monitoring as part of its process for responding to complaints for both CCDF and non-CCDF providers. This provision is described later in the rule at § 98.32. Paragraph (t), as re-designated (previously paragraph (n)), remains unchanged.

The final rule revises § 98.16(u), as re-designated (previously paragraph (o)), to include in the description of the licensing requirements, any exemption to licensing requirements that is applicable to child care providers receiving CCDF funds; a demonstration of why this exemption does not endanger the health, safety, or development of children; and a description of how the licensing requirements are effectively enforced, pursuant to § 98.42. We received no comments on this section.

Building supply and quality. The final rule adds a new § 98.16(x) based on statutory language at Section 658E(c)(2)(M) of the Act, which requires the Lead Agency to describe strategies to increase the supply and improve the quality of child care services for children in underserved areas, infants and toddlers, children with disabilities, and children who receive care during nontraditional hours. As described in the Act, strategies may include alternative payment rates to child care providers, the provision of direct contracts or grants to community-based organizations, offering child care certificates to parents, or other means determined by the Lead Agency. For grants or contracts to be effective at increasing the supply of high-quality care, they should be funded at levels that are sufficient to meet any higher quality standards associated with that care. Along with increased rates and contracts, we encourage Lead Agencies to consider other strategies, including training and technical assistance to child care providers to increase quality for these types of care. We recommend States, Territories, and Tribes consider the recommendations of different strategies in the Information Memorandum from the Administration for Children and Families, *Building the Supply of High-Quality Child Care* (November 6, 2015).

The final rule at § 98.16(x) adds that the Plan must: Identify shortages in the supply of high-quality child care providers; list the data sources used to identify supply shortages; and describe the method of tracking progress to support equal access and parental choice. In the NPRM, a similar requirement to identify supply shortages was included in the section on grants and contracts (which has been deleted in the final rule). We have moved this requirement to § 98.16(x) since identification of supply gaps of high-quality care is a critical step of building

supply and quality for certain populations, as required by the Act. To identify supply shortages, the Lead Agency may analyze available data from market rate surveys, alternative methodologies (if applicable), child care resource and referral agencies, facilities studies and other community needs assessments, Head Start needs assessments, and other sources. ACF recommends that the Lead Agency examine all localities in its jurisdiction, recognizing that each local child care market has unique characteristics—for example, many rural areas face supply shortages. Further, we recommend that the Lead Agency's analysis consider all categories of care, recognizing that a community with an adequate supply of one category of care (*e.g.*, centers) may face shortages for another category (*e.g.*, family child care).

Comment: We received a comment from a child care worker organization asking us to include compensation improvements as an example of a supply building strategy.

Response: We urge Lead Agencies, as they consider setting the rate for certificates and grants or contracts, to examine compensation as a factor in quality and in recruiting and retaining knowledgeable and skilled staff to work in child care, particularly in hard-to-serve communities.

Comment: One national organization urged us to include supply building strategies that reflect the linguistic and cultural characteristics of the families and children.

Response: High-quality child care respects and supports linguistic and cultural diversity of children and their families. As well, the building of supply in underserved areas, to serve more infants and toddlers, and to respond to the needs of families who need child care during non-traditional hours will include communities and children who are English language learners. Section 98.16(dd) addresses outreach to English language learner families and facilitates participation of providers who are English language learners in the subsidy system. The final rule also recognizes the importance of home culture and language in other provisions.

Comment: We received a comment from a multi-state private provider company asking us to modify the language that the strategies to increase supply should be directed to supplying high-quality child care.

Response: We think that the Act and this final rule will raise the quality of child care, especially for CCDF-funded children. The statutory language focuses on improving the supply and quality of care. Taken together, this means Lead Agencies should focus on building the supply of high-quality care.

Significant concentrations of poverty and unemployment. A new § 98.16(y), as proposed in the NPRM, requires Lead Agencies to describe how they prioritize increasing access to high-quality child care and development services for children of families in areas that have significant concentrations of poverty and unemployment and that do not have sufficient numbers of such programs, pursuant to § 98.46(b). This provision is discussed later in this rule.

Comment: We received a comment from a national organization in support of this provision and a recommendation that the Plan describe how the Lead Agency will develop programs and services that are culturally and linguistically relevant and support a diverse child care workforce.

Response: We decline to add language to § 98.16(y) but we do address issues of cultural and linguistically responsive child care services as well as the diversity of the child care workforce in other sections of this final rule.

Business practices. This final rule adds a new § 98.16(z) reiterating the statutory requirement for Lead Agencies to describe how they develop and implement strategies to strengthen the business practices of child care providers to expand the supply, and improve the quality of, child care services. Some child care providers need support on business and management practices in order to run their child care businesses more effectively and devote more time and attention to quality improvements. Improved business practices can benefit caregivers and children. An example of a key business practice is providing paid sick leave for caregivers to keep children healthy. Without paid time off, caregivers may come to work sick and risk spreading illnesses to children in care. We also encourage child care providers to provide paid sick leave because it promotes better health for child care employees, which is important to maintaining a stable workforce as well as consistency of care for children. According to The Council of Economic Advisors, "[Pa]id sick leave also induces a healthier work environment by encouraging workers to stay home when they are sick." (The Economics of Paid and Unpaid Leave, The Council of Economic Advisors, June 2014.)

Shared services is another business practice strategy, particularly for a network of family child care providers or small centers. The hub of the network or alliance provides business services such as billing and accounting, facility management, human resources management, and purchasing. It may also involve shared professional development and coaching and other pedagogical leadership. This business strategy can help providers leverage their limited resources more effectively and efficiently. We received no comments on this provision and have retained the language as proposed in the NPRM.

Emergency preparedness. The final rule adds a new § 98.16(aa) to the regulation, as proposed in the NPRM, based on Section 658E(c)(2)(U) of the Act, to require the Lead Agency to demonstrate how the Lead Agency will address the needs of children, including the need for safe child care, before, during and after a state of emergency declared by the Governor or a major disaster or emergency (as defined by section 102 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5122) through a Statewide Child Care Disaster Plan (or Disaster Plan for a Tribe's service area). The Disaster Plan must be developed in collaboration with the State/Territory human services agency, the State/Territory emergency management agency, the State/Territory licensing agency, local and State/Territory child care resource and referral agencies, and the State/Territory Advisory Council on Early Childhood Education and Care, or similar coordinating body. Tribes must have similar Disaster Plans, for their Tribal service area, developed in consultation with relevant agencies and partners. The Disaster Plan must include guidelines for continuation of child care subsidies and child care services, which may include the provision of emergency and temporary child care services and temporary operating standards for child care during and after a disaster; coordination of post-disaster recovery of child care services; and requirements that providers receiving CCDF funds and other child care providers, as determined appropriate by the Lead Agency, have in place procedures for evacuation, relocation, shelter-in-place, lock-down, communication and reunification with families, continuity of operations, accommodations of infants and toddlers, children with disabilities, and children with chronic medical conditions; and procedures for staff and volunteer emergency preparedness training and practice drills, including training requirements for caregivers of providers receiving CCDF.

This provision largely reflects statutory language of Section 658E(c)(2)(U) of the Act, but we have

clarified that the Plan must apply, at a minimum, to CCDF providers and may apply to other providers (such as all licensed providers) at the Lead Agency option. We also added language on post-disaster recovery.

In past disasters, the provision of emergency child care services and rebuilding and restoring of child care facilities and infrastructure emerged as an essential service. The importance of the need to improve emergency preparedness and response in child care was highlighted in an October 2010 report released by the National Commission on Children and Disasters. The Commission's report included two primary sets of recommendations for child care: (1) To improve disaster preparedness capabilities for child care; and (2) to improve capacity to provide child care services in the immediate aftermath and recovery from a disaster (2010 Report to the President and Congress, National Commission on Children and Disasters, p. 81, October 2010). Child care has also been recognized by the Federal Emergency Management Agency (FEMA) as an essential service and an important part of disaster response and recovery. (FEMA Disaster Assistance Fact Sheet 9580.107, Public Assistance for Child Care Services Fact Sheet, 2013).

Maintaining the safety of children in child care programs during and after disaster or emergency situations necessitates planning in advance by State/Territory agencies and child care providers. The reauthorization of the CCDBG Act, and this final rule, implement the key recommendation of the National Commission on Children and Disasters by requiring a child care-specific Statewide Disaster Plan. ACF has previously issued guidance (CCDF–ACF–IM–2011–01) recommending that Disaster Plans include five key components: (1) Planning for continuation of services to CCDF families; (2) coordinating with emergency management agencies and key partners; (3) regulatory requirements and technical assistance for child care providers; (4) provision of temporary child care services after a disaster, and (5) rebuilding child care after a disaster. The guidance recommends that disaster plans for child care incorporate capabilities for shelter-in-place, evacuation and relocation, communication and reunification with families, staff training, continuity of operations, accommodation of children with disabilities and chronic health needs, and practice drills. ACF intends to provide updated guidance and technical assistance to States, Territories, and Tribes as they move forward with implementing Disaster Plans as required by the reauthorization. We received no comments on this provision and have retained the language as proposed in the NPRM.

Payment practices. The final rule adds new § 98.16(bb), requiring Lead Agencies to describe payment practices applicable to child care providers receiving CCDF, pursuant to § 98.45(l), including practices to ensure timely payment for services, to delink provider payments from children's occasional absences to the extent practicable, and to reflect generally-accepted payment practices. This is discussed later in this rule. We received no comments on this provision but have made a conforming citation when referencing section 98.45(l). The rest of the language is retained as proposed in the NPRM.

Program integrity. The final rule adds new § 98.16(cc), requiring Lead Agencies to describe processes in place to describe internal controls to ensure integrity and accountability; processes in place to investigate and recover fraudulent payments and to impose sanctions on clients or providers in response to fraud; and procedures in place to document and verify eligibility, pursuant to § 98.68. This change corresponds to a new program integrity section included in subpart G of the regulations, which is discussed later in this rule.

Outreach and services for families and providers with limited English proficiency and persons with disabilities. The final rule adds new § 98.16(dd) to require that the Lead Agency describe how it provides outreach and services to eligible families with limited English proficiency and persons with disabilities, and facilitate participation of child care providers with limited English proficiency and disabilities in CCDF. Currently, the Plan requires Lead Agencies to describe how they provide outreach and services to eligible limited English proficient families and providers. In the FY 2016–2018 CCDF Plans, States and Territories reported a number of strategies to overcome language barriers. Forty-nine States and Territories have bilingual caseworkers or translators, 45 have applications in multiple languages, and 19 offer provider contracts or agreements in multiple languages. The final rule requires Lead Agencies to develop policies and procedures to clearly communicate program information such as requirements, consumer education information, and eligibility information, to families and child care providers of all backgrounds.

Comment: One comment requested language in the Plan to require a description of how Lead Agencies will develop child care services and programs that are culturally and linguistically relevant to the children and families that they serve, and how it will implement recruitment and workforce development strategies that will seek to increase the number of child care providers who are representative of the communities in which they serve.

Response: This concern is addressed in § 98.16(dd). We strongly agree that Lead Agencies should support children and families whose native language is not English, and providers who may be English language learners. The Migration Policy Institute's recent study shows that a large segment of the child care workforce, like the children and families they serve, are English language learners and come from a range of cultures. There is a strong body of research on the importance of child care providers respecting and supporting children's home language and culture in order to promote learning achievement.

Suspension and expulsion policies. The final rule adds a new § 98.16(ee) to require that the Lead Agency describe its policies to prevent suspension, expulsion, and denial of services due to behavior of children from birth to age five in child care and other early childhood programs receiving CCDF funds, which must be disseminated as part of consumer and provider education efforts in accordance with § 98.33(b)(1)(v).

Comment: We received several comments from national organizations supporting the attention to reducing or eliminating the high rates of suspension and expulsion of young children. We received a comment from one State expressing concern that it will be difficult to enforce such policies. National organizations representing children with disabilities urged language prohibiting the use of suspension and expulsion. They raise concerns that such practices have excluded children with disabilities.

Response: We added in the rule that the Lead Agency must describe policies *to prevent* suspension and expulsion. Recent data demonstrates a high rate of suspensions and expulsions of children as young as preschool, practices that are associated with negative educational and life outcomes. The data also demonstrates a greater prevalence of suspension and expulsion of children of color and boys. These disturbing trends warrant immediate attention from the early childhood and education fields to prevent expulsion and suspension while

ensuring the safety and well-being of young children (themselves and others) in early learning settings. Furthermore, if administered in a discriminatory manner, suspensions and expulsions of children may violate Federal civil rights laws. In addition, early childhood programs must comply with applicable legal requirements governing the discipline of a child for misconduct caused by, or related to, a child's disability, including, as applicable, implementing reasonable modifications to policies, practices, or procedures to ensure that children with disabilities are not suspended or expelled because of their disability-related behaviors unless a program can demonstrate that making such modifications would result in a fundamental alteration in the nature of a service, program, or activity.

The Child Care and Development Block Grant (CCDBG) Act of 2014 also allows States to target CCDF quality enhancement funds to professional development that includes effective behavior management strategies and training on strategies to promote social-emotional development. These kinds of supports, both through formal coursework, and field-based, ongoing support in the form of coaching, mentoring, or mental health consultation, have been demonstrated to reduce the challenging behavior in children that is associated with expulsions.

We strongly encourage States and child care providers (including school age providers) to utilize the guidance, policy statements, and resources made available by federal agencies. For school-age children, the following resources are available:

- *Supporting and responding to behavior:* Evidence-based classroom strategies for teachers: *https://www.osepideasthatwork.org/evidencebasedclassroomstrategies/*
- *Positive Behavioral Interventions & Supports (PBIS) National Technical Assistance Center:*
- *Rethinking Discipline 101:* Why it matters (webinar): *https://www.youtube.com/watch?v=Qg-qkilRw18&feature=youtu.be*

With regard to young children, we urge States and child care providers to consider the recommendations in the Policy Statement on Expulsion and Suspension Policies in Early Childhood Settings issued by the Secretaries of Health and Human Services and Education at *https://www2.ed.gov/policy/gen/guid/school-discipline/policy-statement-ece-expulsions-suspensions.pdf.*

Reports of serious injuries or death in child care. The final rule adds a new § 98.16(ff) to require the Lead Agency to designate a State, Territorial, or Tribal entity to which child care providers must submit reports of any serious injuries or deaths of children occurring in child care, regardless of whether or not they receive CCDF assistance. Comments are discussed later under the related requirement at § 98.42(b)(4).

Family engagement. The final rule adds new § 98.16(gg) to require the Lead Agency to describe how it supports child care providers in the successful engagement of families in children's learning and development. We received no comments on this provision and have left the language unchanged in the final rule.

Complaints received through the national hotline and Web site. The final rule adds new § 98.16(hh) to require the Lead Agency to describe how it will respond to complaints received through the national hotline and Web site, as required by (Section 658L(b)(2)) of the reauthorized Act. The description must include the designee responsible for receiving and responding to those complaints for both licensed and license-exempt child care providers. *Complaints received through the national hotline and Web site will be sent to the appropriate Lead Agency to make sure that they* are responded to quickly, especially when a child's health or safety is at risk. This provision is aimed at building those connections and ensuring that a process is in place for addressing complaints regarding both licensed and license-exempt child care providers. We received no comments and have left language unchanged in final rule.

Finally, the final rule re-designates paragraph (v) as paragraph (ii) with no other changes. We received no comments on this provision and have retained the language as proposed in the NPRM.

§ 98.17 Period Covered by Plan

This section describes the term of the Plan, which is now three years. We received no comments on this section.

§ 98.18 Approval and Disapproval of Plans and Plan Amendments

This section of the regulations describes processes and timelines for CCDF Plan approvals and disapprovals, as well as submission of Plan amendments. CCDF Plans are submitted triennially and prospectively describe how the Lead Agency will implement the program. To make a substantive change to a CCDF program after the Plan has been approved, a Lead Agency must submit a Plan amendment to ACF for approval. The purpose of Plan amendments is to ensure that grantee expenditures continue to be made in accordance with the statutory and regulatory requirements of CCDF, if the grantee makes changes to the program during the three- year Plan period.

Advance written notice. In conjunction with the change discussed at § 98.14(d) to make the Plan and any Plan amendments publicly available, the final rule adds a provision at § 98.18(b)(2) to require Lead Agencies to provide advance written notice to affected parties, specifically parents and child care providers, of changes in the program made through an amendment that adversely affect income eligibility, payment rates, and/or sliding fee scales so as to reduce or terminate benefits. The notice should describe the action to be taken (including the amount of any benefit reduction), the reason for the reduction or termination, and the effective date of the action.

Comment: Two States expressed concerns that the provisions on advance written notice would be administrative burdens. One State asked that its requirements for posting for administrative rule changes meet this requirement. The State also asked for clarification whether the advance written notice is separately required for any Plan amendment. By contrast, child care worker organizations submitted comments in support of this provision and requested additional requirements. They asked us to go further and require a public review and comment process for Plan amendments prior to Lead Agency submission to the federal government. They note that States prepared their three-year CCDF plans prior to the release of the final regulations, and thus there is a likelihood that many Plans will have to be modified in significant ways to fully meet the rule.

Response: The Lead Agency may choose to issue notification of adverse programmatic changes in a variety of ways, including a mailed letter or email sent to all participating child care providers and families. We are providing Lead Agencies with the flexibility to determine an appropriate time period for advance notice, depending on the type of policy change being implemented or the effective date of that policy change. Advance notice adds transparency to the Plan amendment process and provides a mechanism to ensure that affected parties remain informed of any substantial changes to the Lead Agency's CCDF Plan that may affect their ability to participate in the child

care program. We note that while we encourage Lead Agencies to provide written notice of any changes that affect income eligibility, payment rates, and/or sliding fee scales, we only require written notice of those that adversely impact parents or providers. We do not require the Lead Agency to hold a formal public hearing or solicit comments on each Plan amendment, as is required by regulations at § 98.14(c) for the submission of the CCDF Plan. However, we encourage solicitation of public input whenever possible and consider this regulatory change to be consistent with the spirit and intent of the CCDF Plan public hearing provision. We encourage Lead Agencies to ensure that advanced written notice is provided in multiple languages, as appropriate, so that all parents and child care providers have access and can plan for changes. As noted above, the final rule adds a provision at § 98.16(dd) to require Lead Agencies to include in the Plan a description of processes to provide outreach and services to CCDF families and providers with limited English proficiency.

Comment: A comment submitted by a group of providers asked for a required time limit on when advance notice is provided to them. A large, multi-state child care provider requested at least 30 days advance written notice to parties.

Response: We decline to require a specific time period for the Lead Agency to provide written notice. We do urge Lead Agencies to provide this information as soon as possible because of the consequences to families and providers.

§ 98.19 Requests for Temporary Relief From Requirements

Section 658I(c) of the Act indicates that Lead Agencies are allowed to submit a request to the Secretary to waive one or more requirements contained in the Act on a temporary basis: To ensure that effective delivery of services are not interrupted by conflicting or duplicative requirements; to allow for a period of time for a State legislature to enact legislation to implement the provisions of the Act or this part; or in response to extraordinary circumstances, such as a natural disaster or financial crisis. We are extending the waiver option to rules under this part as well. Prior to the enactment of the CCDBG Act of 2014, there was no waiver authority within the CCDF program.

Through the changes in this final rule, we provide guidance and clarity on: The eligibility of States, Territories, and Tribes to request a waiver; what provisions are not eligible for waivers; and how the waiver request and approval (or disapproval) process works. In addition to outlining the requirements detailed in the CCDBG Act of 2014, § 98.19 includes clarifying provisions to provide greater understanding of the intent and implementation of the waiver process as temporary.

This section of the rule details the process by which the Secretary may temporarily waive one or more of the requirements contained in the Act or this part, with the exception of State Match and Maintenance of Effort requirements, consistent with the requirements described in section 658I(c)(1) of the Act. In order for a waiver application to be considered, the waiver request must: Describe circumstances that prevent the State, Territory, or Tribe from complying with any statutory or regulatory requirements of this part; demonstrate that the waiver, by itself, contributes to or enhances the State's, Territory's, or Tribe's ability to carry out the purposes of this part; show that the waiver will not contribute to inconsistency with the objectives of the Act; and meet the additional requirements in this section as described.

The final rule delineates the types of waivers that States, Territories, and Tribes can request into two distinct types: (1) Transitional and legislative waivers and (2) waivers for extraordinary circumstances. States, Territories, and Tribes may apply for temporary transitional and legislative waivers meeting the requirements described in this section that provide temporary relief from conflicting or duplicative requirements preventing implementation, or for a temporary extension in order for a State, Territorial, or Tribal legislature to enact legislation to implement the provisions of this subchapter.

Transitional and legislative waivers are designed to provide States, Territories, and Tribes at most one full legislative session to enact legislation to implement the provisions of the Act or this part, and are limited to a one-year initial period and at most, an additional one-time, one-year renewal from the date of approval of the extension (which may be appropriate for a State with a two-year legislative cycle, for example).

Waivers for extraordinary circumstances address temporary circumstances or situations, such as a natural disaster or financial crisis. Extraordinary circumstance waivers are limited to an initial period of no more than two years from the date of approval, and at most, an additional one-year renewal from the date of approval of the extension.

Both types of waivers are probationary, subject to the decision of the Secretary to terminate a waiver at any time if the Secretary determines, after notice and opportunity for a hearing, that the performance of a State, Territory, or Tribe granted relief under this subsection has been inadequate, or if such relief is no longer necessary to achieve its original purposes. In the final rule, we added language to specify that such a hearing would be based on the rules of procedure in 45 CFR part 99—which contains existing hearing procedures governing CCDF that logically extend to the waiver process.

In order to request a waiver, the Lead Agency must submit a written request, indicating which type of waiver the State, Territory, or Tribe is requesting and why. The request must also provide detail on the provision(s) from which the State, Territory, or Tribe is seeking temporary relief and how relief from that sanction or provision, by itself, will improve delivery of child care services for children and families. If a transitional waiver, the Lead Agency should describe the steps being taken to address the barrier to implementation (*i.e.*, a timeline for legislative action). Furthermore, the Act emphasizes the importance of children's health and safety. Importantly, in the written request, the State, Territory, or Tribe must certify and demonstrate that the health, safety, and well-being of children served through assistance received under this part will not be compromised as a result of the temporary waiver.

Within 90 days of submission of the request, the Secretary will notify the State, Territory, or Tribe of the approval or disapproval. If rejected, the Secretary will provide the State, Territory, or Tribe, the Committee on Education and the Workforce of the House of Representatives, and the Committee on Health, Education, Labor, and Pensions of the Senate of the reasons for the disapproval and give the State, Territory, or Tribe the opportunity to amend the request. If approved, the Secretary will notify and submit a report to the Committee on Education and the Workforce of the House of Representatives and the Committee on Health, Education, Labor, and Pensions of the Senate on the circumstances of the waiver including each specific sanction or provision waived, the reason as given by the State, Territory, or Tribe of the need for a waiver, and the expected impact of the waiver on children served under this program.

No later than 30 days prior to the expiration date of the waiver, a State, Territory, or Tribe, at its option, may make a formal written request to re-certify the provisions described in this section, which must explain the necessity of additional time for relief from such sanction(s) or provisions. The State, Territory, or Tribe also must demonstrate progress toward implementation of the provision or provisions. The Secretary may approve or disapprove a request from a State, Territory, or Tribe for a one-time renewal of an existing waiver under this part for a period no longer than one year. The Secretary will adhere to the same approval or disapproval process for the renewal request as the initial request. Lastly, this final rule makes conforming technical amendments to the pre-existing procedures for a Lead Agency to appeal any ACF disapproval of a Plan or Plan amendment at § 98.18 to indicate that the appeal process also applies to any appeal of a disapproved request for temporary relief under § 98.19.

Comment: We received comments from many national and State organizations and a State supporting our limitation on the types and number of categories of waivers. For example, a child care worker organization wrote, "To prevent the States from backing out on investing in health, safety and quality standards, we commend the proposal for limiting waivers to reasons concerning transition, legislative action and extraordinary circumstances." A few States and a national organization had comments on the time limitation on waivers, with some commenters noting that the Act allows waivers for up to three years. A national organization asked for a three-year term for waivers of any type. Two States expressed concern that the two-year period for legislative and transitional waivers may not provide sufficient time for State legislatures to act, particularly legislatures in a few States that only convene in alternating years. Another State asked for a longer time frame to encompass a period for changing forms and processes reflecting newly adopted rules. A few States requested clarification on whether certain circumstances fall under the transitional and legislative category or extraordinary circumstances category.

Response: The final rule establishes parameters to ensure that States can move quickly to make any necessary legislative or transitional changes. The vast majority of State legislatures meet annually; only four States have a legislature that meets every other year. They have the potential to be approved for a one-year waiver followed by the possibility of being approved for a one-year renewal. Providing a longer base time period for a waiver could lead to delays in making the necessary legislative or transition changes.

Comment: One State commented that 90 days is too long for a decision by the Secretary and requested ACF to make a decision on a waiver application within 30 days.

Response: The Act says that the Secretary shall inform the State of approval of disapproval of the request within 90 days after the receipt of a State's request under this subsection. This final rule maintains a 90-day window, which is consistent with the period for reviewing Plan amendments for approval or rejection.

Comment: One State asked for clarification on the start date of the waiver.

Response: We refer Lead Agencies to the Office of Child Care's Program Instruction published December 17, 2015 (CCDF–ACF–PI–2015–09) which states: "If a State or Territory is not going to be in compliance with one or more provisions by the deadline required in the Act, then the State/Territory must request a temporary extension/waiver. Once the requirement(s) has been met, the Lead Agency must submit a Plan amendment to ACF for approval." Until such time, the State should make every effort to be in compliance. The start date of a waiver may vary depending on the circumstances. For example, a legislative or transitional waiver will typically start on the date corresponding with the federal statutory or regulatory deadline for compliance with the relevant requirement (*i.e.*, the requirement for which the Lead Agency is receiving a temporary extension). The start date for a waiver for extraordinary circumstances will typically be related to the timing of those circumstances (*e.g.*, natural disaster or financial crisis).

Comment: One State asked if ACF would consider delaying the need for a Plan amendment for a minimum of six months in circumstances when the State is submitting a request for a waiver for extraordinary circumstances.

Response: Lead Agencies need not submit the waiver request and Plan amendment together. Lead Agencies must submit temporary relief or waiver request at least 90 days before an effective date. Lead Agencies must submit Plan amendments within 60 days of a substantial change in the Lead Agency's program. We refer Lead Agencies to the Office of Child Care's Program Instruction published December 17, 2015 (CCDF–ACF–PI–2015–09). We recognize that requests for extension due to extraordinary circumstances will require a case-by-case decision on when the Plan amendment(s) needs to be submitted.

Comment: One State asked if it may submit a single application that combines multiple waiver requests.

Response: We have accepted submissions that combine multiple waivers. Each waiver request, however, must address separately each factor required by the Act.

Comment: Some States remarked on the need for extensions in order to make changes to the electronic systems to implement the rule. One State asked if this would fall into the category of an "extraordinary circumstance."

Response: Requests for a waiver relating to electronic system changes should be submitted under the "legislative or transitional" category.

Comment: One State recommended a third type of waiver when a State's current law may meet or exceed the intent of the regulations, and also in the case of experimental, pilot or demonstration projects, so long as children's health, safety, and well-being are not compromised and the waiver improves efficiency and effectiveness.

Response: We decline to add a third category of waiver. States and Territories have been innovative in a number of ways with CCDF, such as quality rating and improvement systems and scholarships for child care providers to enroll in college. Waivers are not necessary for States to create pilot or demonstration projects so long as those projects do not jeopardize children's health, safety and well-being and do not contradict requirements in the Act and this final rule. Further, multiple national and State groups supported limiting the waivers to the two types in the rule. The final rule adds language indicating that these waivers are conditional, dependent on progress towards implementation of the final rule. We think this adds important clarification to the expectation that these waivers are temporary and that Lead Agencies are expected to make progress toward full implementation. Other changes to this section proposed by the NPRM have been adopted in the final rule.

Subpart C—Eligibility for Services

This subpart establishes parameters for a child's eligibility for CCDF assistance and for Lead Agencies' eligibility and re-determination procedures. Congress made significant changes to CCDBG that emphasize stable financial assistance and continuity of care through CCDF

eligibility policies, including establishing minimum 12-month eligibility for all children. In this subpart, the final rule restates these changes and provides additional clarification where appropriate.

§ 98.20 A Child's Eligibility for Child Care Services

A child's eligibility for child care services: This final rule clarifies at § 98.20(a) and § 98.20(b)(4) that eligibility criteria apply only at the time of eligibility determination or re-determination based on statutory language at Section 658E(c)(2)(N)(i) of the Act, which establishes a minimum 12-month eligibility period by affirmatively stating that the child will be considered to meet all eligibility requirements for such assistance and will receive such assistance, for not less than 12 months before the State or local entity re-determines the eligibility of the child. (We discuss minimum 12-month eligibility at greater length below in § 98.21 Eligibility Determination Processes.) We received no comments on this provision and have retained the proposed language in this final rule.

Income eligibility. This final rule revises § 98.20(a)(2), adding a sentence to clarify that the State median income (SMI) used to determine the eligibility threshold level must be based on the most recent SMI data that is published by the U.S. Census Bureau. This clarification ensures the eligibility thresholds are based on the most current and valid data. It is important for Lead Agencies to use current data as, once determined eligible, children may continue to receive CCDF assistance until their household income exceeds 85 percent of SMI for a family of the same size, pursuant to § 98.21(a)(1) discussed further below, or at Lead Agency option, the family experiences a non-temporary cessation of work, training, or education. Using the most recent SMI data also allows for consistency for cross-State comparisons and a better understanding of income eligibility thresholds nationally.

SMI data may not be available from the Census Bureau for some Territories, in which case an alternative source (subject to ACF approval through the CCDF State/Territory Plan process) may be used. Tribes are already allowed to use Tribal median income (TMI) (pursuant to § 98.81(b)(1)) and this will continue to be allowable under this rule. ACF also recognizes that some Lead Agencies establish eligibility thresholds that vary by geographic area and that some Lead Agencies use Area median income (AMI) to calculate income eligibility for different regions in order to account for cost of living variations across geographic areas. Lead Agencies may use AMI in their calculations, but must also report the threshold in terms of SMI in their Plan, and ensure that thresholds based on AMI are at or below 85 percent of SMI.

Comment: One State commented about the timelines necessary to comply with this provision, noting that "States should be given up to one year to update income limits and copays after the publication of new State Median Incomes." In this State, "income limits and copays are updated in October each year. The date that new State Median Incomes are published varies each year. Because of this variation it is important that States be given up to one year to make updates."

Response: Compliance with this provision will be determined through the State plan submission, which will occur every three years. The intent of the policy is to ensure that State income thresholds reflect the most recent information available, but we understand that Lead Agencies will require time to update their policies and will allow for a reasonable timeframe for compliance. In this instance, updating within the year would be considered reasonable.

Comment: In the proposed rule, we asked for comment on whether ACF should provide additional guidance and specificity on the SMI used to determine eligibility. The Act does not specify whether States should use the SMI with a single year estimate, a two-year average, or a three-year average (which is used by the Low Income Home Energy Assistance Program (LIHEAP)).

Some commenters requested that States retain the flexibility to "define methodology and data sources in calculating SMI." Other commenters requested additional clarification, most specifically on what to do when a State's median income unexpectedly decreases. A number of commenters asked that States be "encouraged to use 3-year estimates of State median income to determine income eligibility to reduce the large year-to-year fluctuations that the single year estimates tend to generate in some States." Others went further, specifically asking ACF to revise regulatory language to include that in "cases where a State's median income decreases; in such cases, a State should be required to maintain its income limit, rather than reducing it."

Response: While we agree with the sentiment behind the suggestion of maintaining eligibility thresholds even if a State's median income decreases, the final rule maintains State flexibility in this area to allow States to determine which SMI estimate to use for eligibility determinations. If a State's median income decreases as a result of a single year estimate, the State would have the option of using, and we strongly encourage it to consider, the 3-year estimate to lessen that impact of any single year fluctuation. This could mitigate some of the impacts of unexpected decreases, and, by aligning with LIHEAP, another benefit program which families may also be accessing, make it easier for families to manage income requirements across programs. It should be noted, however, that regardless of which measure the State chooses to use, it would still be bound by the upper income limit of 85% of SMI for a family of the same size.

Asset limit. Section 658P(4)(B) of the Act revised the definition of eligible child at so that in addition to being at or below 85 percent of SMI for a family of the same size, a member of the family must certify that the family assets do not exceed $1,000,000 (as certified by a member of such family). The final rule includes this requirement at § 98.20(a)(2)(ii). We interpret this language in paragraph (2)(ii) of this section to mean that this requirement can be met solely through self-certification by a family member, with no further need for additional documentation. This new requirement provides assurance that CCDF funds are being used for families with the greatest need, but is not intended to impose an additional burden on families. This final rule does not define "family assets," but instead allows the Lead Agency flexibility to determine what assets to count toward the asset limit.

Comment: One commenter had concerns that the "very high maximum asset level draws attention to the notion that CCDF funding could be given to families that are quite a distance from poverty." The commenter also claimed that "if there is any basis for the importance of a $1 million ceiling, self-certification by a family member seems to negate the accuracy of tracking this."

Response: The asset limit was established by the CCDBG Act of 2014. The high level is not meant to indicate that families far above poverty should be served, but rather provide a mechanism to ensure that funding does not inadvertently go to families with high asset levels that are not reflected in their income calculations. Further, clarification that self-certification is sufficient to meet this requirement and that there is no need for additional documentation does not unnecessarily impair the accuracy of this requirement, but is important to honor the intent of

the requirement while minimizing any unnecessary burden on families. The final rule retains language in this provision as proposed in the NPRM.

Protective services. Section 658P(4) of the Act indicates that, for CCDF purposes, an eligible child includes a child who is receiving or needs to receive protective services. This final rule adds language at § 98.20(a)(3)(ii) to clarify that the protective services category may include specific populations of vulnerable children as identified by the Lead Agency. Children do not need to be formally involved with child protective services or the child welfare system in order to be considered eligible for CCDF assistance under this category. The Act references children who "need to receive protective services," demonstrating that the intent of this language was to provide services to at-risk children, not to limit this definition to serve children already in the child protective services system.

It is important to note that including additional categories of vulnerable children in the definition of protective services is only relevant for the purposes of CCDF eligibility and does not mean that those children should automatically be considered to be in official protective service situations for other programs or purposes. It is critical that policies be structured and implemented so these children are not identified as needing formal intervention by the CPS agency, except in cases where that is appropriate for reasons other than the inclusion of the child in the new categories of vulnerable child for purposes of CCDF eligibility. We received limited comments on this section and discuss these below.

Similarly, this final rule removes the requirement that case-by-case determinations of income and co-payment fees for this eligibility category must be made by, or in consultation with, a child protective services (CPS) worker. While consulting with a CPS worker is no longer a requirement, it is not prohibited; a Lead Agency may consult with or involve a CPS caseworker as appropriate. We encourage collaboration with the agency responsible for children in protective services, especially when a child also is receiving CCDF assistance.

These changes provide Lead Agencies with additional flexibility to offer services to those who have the greatest need, including high-risk populations, and reduce the burden associated with eligibility determinations for vulnerable families.

Under previous regulations at § 98.20(a)(3)(ii)(B), at the option of the Lead Agency, this category could already include children in foster care. The regulations already allowed that children deemed eligible based on protective services may reside with a guardian or other person standing "in loco parentis" and that person is not required to be working or attending job training or education activities in order for the child to be eligible. In addition, the prior regulations already allowed grantees to waive income eligibility and co-payment requirements as determined necessary on a case-by-case basis, by, or in consultation with, an appropriate protective services worker for children in this eligibility category. This final rule clarifies, for example, that a family living in a homeless shelter may not meet certain eligibility requirements (*e.g.*, work or income requirements), but, because the child is in a vulnerable situation, could be considered eligible and benefit from access to high-quality child care services.

We note that this new provision does not require Lead Agencies to expand their definition of protective services. It merely provides the option to include other high-needs populations in the protective services category solely for purposes of CCDF, as many Lead Agencies already choose to do.

We did not receive many comments on this policy, but those who did comment were supportive of this clarification and appreciative of the "discretion to include specific populations of vulnerable children, especially if they do not need to be formally involved with CPS or child welfare system." The regulatory language proposed in the NPRM is retained in this final rule.

Additional eligibility criteria. Under pre-existing regulations, Lead Agencies are allowed to establish eligibility conditions or priority rules in addition to those specified through Federal regulation so long as they do not discriminate, limit parental rights, or violate priority requirements (these are described in full at § 98.20(b)). This final rule revises this section in paragraph 98.20(b)(4) to add that any additional eligibility conditions or priority rules established by the Lead Agency cannot impact eligibility other than at the time of eligibility determination or re-determination. This revision was made to be consistent with the aforementioned change to § 98.20(a) which says that eligibility criteria apply only at the time of determination or re-determination. It follows that the same would be true of additional criteria established at the Lead Agency's option.

The final rule adds paragraph (c), clarifying that only the citizenship and immigration status of the child, the primary beneficiary of CCDF, is relevant for the purposes of determining eligibility under PRWORA and that a Lead Agency, or other administering agency, may not condition eligibility based upon the citizenship or immigration status of the child's parent. Under title IV of PRWORA, CCDF is considered a program providing Federal public benefits and thus is subject to requirements to verify citizenship and immigration status of beneficiaries. In 1998, ACF issued a Program Instruction (ACYF–PI–CC–98–08) which established that "only the citizenship status of the child, who is the primary beneficiary of the child care benefit, is relevant for eligibility purposes." This proposal codifies this policy in regulation and clarifies that Lead Agencies are prohibited from considering the parent's citizenship and immigration status.

ACF has previously clarified through a program instruction (ACYF–PI–CC–98–09) that when a child receives Early Head Start or Head Start services that are supported by CCDF funds and subject to the Head Start Performance Standards, the PRWORA verification requirements do not apply. Verification requirements also do not apply to child care settings that are subject to public educational standards. These policies remain in effect.

All comments received were supportive of the clarification on citizenship and this policy will remain in this final rule. One national organization commented that "ensuring that the citizenship or immigration status of a child's parent does not impact their ability to access CCDF-funded child care maintains the program's focus on ensuring access to high-quality child care services for vulnerable populations. Given that this policy was previously contained in sub-regulatory guidance to States, we are very appreciative of ACF's proposal to codify it within the CCDF program regulations."

§ 98.21 Eligibility Determination Processes

In this final rule, § 98.21 addresses the processes by which Lead Agencies determine and re-determine a child's eligibility for services. In response to comment, this final rule includes a new § 98.21(a)(5) which describes limited additional circumstances for which assistance may be terminated prior to the end of the minimum 12-month eligibility period, which will be discussed in greater detail below.

Minimum 12-month eligibility. Section 98.21 reiterates the statutory change made in Section 658E(c)(2)(N)(i) of the Act, which establishes minimum 12-month eligibility periods for all CCDF families, regardless of changes in income (as long as income does not exceed the Federal threshold of 85 percent of SMI) or temporary changes in participation in work, training, or education activities. Under the Act, Lead Agencies may not terminate CCDF assistance during the 12-month period if a family has an increase in income that exceeds the Lead Agency's income eligibility threshold but not the Federal threshold, or if a parent has a temporary change in work, education or training.

We note that, during the minimum 12-month eligibility period, Lead Agencies may not end or suspend child care authorizations or provider payments due to a temporary change in a parent's work, training, or education status. In other words, once determined eligible, children are expected to receive a minimum of 12 months of child care services, unless family income rises above 85% of SMI or, at Lead Agency option, the family experiences a non-temporary cessation of work, education, or training.

As the statutory language states that a child determined eligible will not only be considered to meet all eligibility requirements, but also "will receive such assistance," Lead Agencies may not offer authorization periods shorter than 12 months as that would functionally undermine the statutory intent that, barring limited circumstances, eligible children shall receive a minimum of 12 months of CCDF assistance. We note that, despite the language that the child "will receive such assistance," the receipt of such services remains at the option of the family. The Act does not require the family to continue receiving services nor does it force the family to remain with a provider if the family no longer chooses to receive such services. Lead Agencies would not be responsible for paying for care that is no longer being utilized. This is discussed further in the new § 98.21(a)(5).

Comment: Comments were generally supportive of the statutory change to a minimum 12-month eligibility period, though there were concerns about the costs and possible impacts on enrollment patterns. Those in support emphasized that this change "would make it easier for families to access and retain more stable child care assistance and increase continuity of care for children." These commenters considered this a significant improvement to the previous law which "commonly resulted in children experiencing short periods of assistance of usually less than a year, and families cycling on and off assistance," and had the unintended consequence of "modest increases in earnings or brief periods of unemployment or reductions in work hours caus[ing] families to lose child care assistance."

Other commenters also thought that "setting eligibility for longer periods will dramatically reduce the significant administrative burden on small businesses and at-risk families," and that this policy will facilitate "the ability to partner with others such as Head Start and Early Head Start and increases the quality of those partnerships."

However, some commenters, particularly States, shared concerns about the implications of this change, wanting to "draw attention to the significant cost of this requirement especially in light of stagnant funding levels to implement all the required changes." Another commenter focused on the idea that the "unintended consequence of these proposed rules is that by extending eligibility for current recipients of child care subsidies, other families in need will never have a chance to access the subsidies because federal funding has not been sufficiently increased to cover the cost."

Response: While we recognize the logistical challenges that States will experience as they are transitioning to minimum 12-month eligibility, we re-emphasize that this is a statutory requirement. We also think these longer periods of assistance will ensure that families derive greater benefit from the assistance and that this policy creates more opportunity for families to work towards economic stability. Any policy decision will have significant tradeoffs, and while the total number of families served may decrease as families stay on longer, this effect would be due to a decrease in churn, meaning that the number of children and families served at any given point would not be affected by families staying on longer. We think that the added benefit of continuity of services provided by reducing churn will have a positive overall impact on children and families and be a more effective use of federal dollars.

However, we do recognize that during the minimum 12-month redetermination periods, it may be necessary to collect some information to complete the redetermination process in time. We allow such practices, so long as it is limited (*e.g.* a few days or weeks in advance) and is not used as a way to circumvent the minimum 12-month period. Even if information is collected in advance, eligibility cannot be terminated prior to the minimum 12-month period, even if disqualifying information is discovered during the preliminary collection of documentation (unless it indicates that family income has exceeded 85% of SMI or, at the Lead Agency option, the family has experienced a non-temporary cessation in work, or attendance at a training or education program).

Comment: One commenter questioned our interpretation of the Act that "assistance must be at the same level throughout the period." This commenter thought that "a State should be able to adjust the number of authorized hours (and thus the payment level) within the 12-month period due to a change in the number of hours of child care needed for a parent to work or participate in education or training, while maintaining eligibility for the entire 12-month period."

Response: Section 658E(c)(2)(N)(i)(I) of the Act states that each child who receives assistance under this subchapter in the State will be considered to meet all eligibility requirements for such assistance "and will receive such assistance" for not less than 12 months before the State or designated local entity re-determines the eligibility of the child under this subchapter. "[A]nd will receive such assistance" clearly indicates that eligibility and authorization for services, as determined at the time of eligibility determination or redetermination, should be consistent throughout the period. To clarify the regulatory language on this policy, we are adding language at § 98.21(a)(1) to say that once deemed eligible, the child shall receive services "at least at the same level" for the duration of the eligibility period. This also makes this section more consistent with the Act, which says that the child will receive such assistance, for not less than 12 months, and § 98.21(a)(3) of the final rule, which prohibits Lead Agencies from increasing family co-payments within the minimum 12-month eligibility period.

We are making a change to the language as proposed in the NPRM to now say that, once deemed eligible, the child shall receive services "at least at the same level." This makes it clear that the Lead Agency still has the ability to increase the child's benefit during the eligibility period, aligning the section with the provision at § 98.21(e)(4)(i), which requires Lead Agencies to act on information provided by the family if it would reduce the family's co-payment or increase the family's subsidy.

However, we do note that a State is not obligated to pay for services that are

not being used, so if a family voluntarily changes their care arrangement to use less care, the State can adjust their payments accordingly. We do want to reemphasize, however, that as this rule makes it clear that authorizations do not have to be tied to a family's work, training, or education schedule, even if the parents' schedule changes, in the interest of child development and continuity, the child must be allowed the option to stay with their care arrangement.

Definition of temporary: This final rule defines "temporary change" at § 98.21(a)(1)(ii) to include, at a minimum: (1) Any time-limited absence from work for employed parents due to reasons such as need to care for a family member or an illness; (2) any interruption in work for a seasonal worker who is not working between regular industry work seasons; (3) any student holiday or break for a parent participating in training or education; (4) any reduction in work, training or education hours, as long as the parent is still working or attending training or education; and (5) any cessation of work or attendance at a training or education program that does not exceed three months or a longer period of time established by the Lead Agency.

The above circumstances represent temporary changes to the parents' schedule or conditions of employment, but do not constitute permanent changes to the parents' status as being employed or attending a job training or educational program. This definition is in line with Congressional intent to stabilize assistance for working families. Lead Agencies must consider all changes on this list to be temporary, but should not be limited by this definition and may consider additional changes to be temporary. The final rule modifies language proposed in the NPRM at § 98.21(a)(1)(ii)(A), which addresses absences from employment. Whereas the NPRM stipulated that the definition of temporary had to include family leave (including parental leave) or sick leave, the final rule modifies this to say any time-limited absence from work for an employed parent due to reasons such as need to care for a family member or an illness. This change was made to acknowledge that while a parent may have a legitimate reason for an absence, there may be circumstances where leave is not granted by the employer. This language ensures that even if official leave has not been granted, CCDF assistance should still be continued. To clarify, in this new language still accounts for family leave (or parental leave), which will now be included under the need to care for a family member.

Section 98.21(a)(ii)(F) clarifies that a child must retain eligibility despite any change in age, including turning 13 years old during the eligibility period. This is consistent with the statutory requirement that a child shall be considered to meet all eligibility requirements until the next re-determination. This allows Lead Agencies to avoid terminating access to CCDF assistance immediately upon a child's 13th birthday in a manner that may be detrimental to positive youth development and academic success or that might abruptly put the child at-risk if a parent cannot be with the child before or after school.

Comment: Commenters were supportive of this clarification, one stating that "taken together, these provisions protect children from losing access to child care because their parent experiences a temporary change in employment status, small increase in income, or has to move within the State," and another commenter stated that they found it particularly helpful "that ACF declares eligibility is maintained when a parent is using sick leave or parental leave or is on a student holiday break from classes."

However, one comment indicated that the State "would incur significant costs if allowed children to stay on after they turn 13," and recommended "State discretion to do this pending available funds."

Response: Given that there were few comments opposing this new policy allowing children to remain eligible after they turn 13, we are keeping this provision in this final rule. Additionally, given the nature of funding for CCDF, this "significant cost" is more accurately characterized as a reallocation of expenses rather than new costs. For the small subset of CCDF children who will turn 13 during their eligibility period, there is value in allowing them to retain eligibility, and that the benefits of such policies outweigh the potential challenges. We also note that if the family chooses to stop utilizing care prior to the end of the eligibility period (*e.g.* the school year ends and there are no plans for care during the summer), then the State would no longer be obligated to pay for the care that is not being used.

At § 98.21(a)(ii)(G), this final rule requires that a child retain eligibility despite any change in residency within the State, Territory, or Tribal service area. This provides stability for families who, under current practice, may lose child care assistance despite maintaining their State, Territory or Tribal residency. This may require coordination between localities within States, Territories, or Tribes or necessitate some Lead Agencies to change practices for allocating funding. This level of coordination is essential, as the State, Territory, or Tribe is the entity responsible for CCDF assistance.

Comment: We received a number of comments in this area, some that were supportive of this policy and its importance for ensuring that families retain their benefits, and others, particularly States that are county-administered, that were concerned about the implementation of this requirement. A number of States indicated that "due to the unique administrative structure of [county administered] States, with delegated authority to local entities for administration of programs and services, the transference of eligibility, from one part of the State to another, poses uniquely difficult situations when each locality has a distinctive financial situation. For example, the States are unsure how to handle continuity of services and maintenance of 12-month eligibility during situations where a family moves out of the county where they initially became eligible and into a county that is out of funding and has a wait list." Some commenters asked for further clarification, particularly as it related to which county would be responsible for the ongoing payment, "If a child is eligible for 12 months, does the originating county continue payments or the receiving county? Or, should the State reserve funding to address the inter-county movement of families?" This commenter further emphasized that "given the financial impact, additional guidance is needed with regard to how 12-month eligibility is funded."

This also raised the issue of what happens when a family moves out of State. One commenter said, "There are also situations where a customer moves out of State. In some instances, they move without notifying the Lead Agency. [This] Lead Agency recommends that the rule is amended to allow Lead Agencies to terminate benefits prior to 12-months if it is discovered that a family moved out of State."

Response: Given the number of comments on this issue, we carefully considered the various factors in play and are keeping the policy on retaining eligibility if a family moves within the State, but are adding new language that would allow a Lead Agency to terminate eligibility prior to the end of the eligibility period if the family moves out of the State.

While we understand some of the unique challenges facing county-administered States, given that the CCDF block grant is a block grant to the State, it is reasonable for the State to develop policies that allow a family to retain their eligibility as long as they remain within the State. The question of whether the receiving or originating county should pay for the assistance is a question best left up to the State. These are logistical and implementation issues that will vary depending on each State's approach to administering the program. However, we do emphasize that this does not prohibit counties from establishing different eligibility criteria to take into account local variation.

As for a family that moves out of the State, we agree that this would be considered appropriate grounds for termination. We have added a new section at § 98.21(a)(5) describing additional limited circumstances that would allow a Lead Agency to end assistance prior to the end of the minimum 12-month eligibility period. We discuss this in more detail below, but the new regulatory language at § 98.21(a)(5)(ii) allows Lead Agencies to terminate assistance due to a change in residency outside of the State, Territory, or Tribal service area. However, while the final rule allows Lead Agencies to terminate for this reason, this is a permissive policy and not a requirement. Neighboring States/Territories/Tribes can still develop agreements to allow families to retain their eligibility if they cross State/Territory/Tribal boundaries. For example, in large metropolitan areas where daily commutes and neighborhoods regularly cross State boundaries, or Tribal populations which may move outside the Tribal service area but remain within a State boundary, it may be appropriate to develop such agreements. We encourage Lead Agencies to develop policies to meet the needs of their families and match the realities of their population's geographic and economic mobility.

Nothing in this rule prohibits Lead Agencies from establishing eligibility periods longer than 12 months or lengthening eligibility periods prior to a re-determination. We encourage (but do not require) Lead Agencies to consider how they can use this flexibility to align CCDF eligibility policies with other programs serving low-income families, including Head Start, Early Head Start, Medicaid, or SNAP. For example, once determined eligible, children in Head Start remain eligible until the end of the succeeding program year. Children in Early Head Start are considered eligible until they age out of the program. Consistent with existing ACF guidance (ACYF–PIQ–CC–99–02) a Lead Agency could establish eligibility periods longer than 12 months for children enrolled in Head Start and receiving CCDF in order to align eligibility periods between programs. Similarly, Lead Agencies are encouraged to establish longer eligibility periods during an infant or toddler's enrollment in Early Head Start or in other collaborative models, such as Early Head Start-Child Care Partnerships.

Operationalizing alignment across programs can be challenging, particularly if families enroll in programs at different times. While the Lead Agency must ensure that eligibility is not re-determined prior to 12 months, it could align with other benefit programs by "resetting the clock" on the eligibility period to extend the child's CCDF eligibility by starting a new 12-month period if the Lead Agency receives information, such as information pursuant to eligibility determinations or re-certifications in other programs, that confirms the child's eligibility and current co-payment rate. Alignment promotes conformity across Federal programs, such as SNAP, and can simplify eligibility and reporting processes for families and administering agencies. However, it should be noted that a Lead Agency cannot terminate assistance for a child prior to the end of the minimum 12-month period if the recertification process of another program reveals a change in the family's circumstances, unless those changes impact CCDF eligibility (*e.g.*, a change in income over 85 percent of SMI or, at the option of the Lead Agency, a non-temporary change in the work, job training, or educational status of the parent). We retained the language in section 98.21(a)(1) as proposed in the NPRM.

Continued assistance. In 98.21(a)(2) of this final rule, if a parent experiences a non-temporary job loss or cessation of education or training, Lead Agencies have the option—but are not required—to terminate assistance prior to the minimum 12 months. Per the Act, prior to terminating assistance, the Lead Agency must provide a period of continued assistance of at least three months to allow parents to engage in job search activities. By the end of the minimum three-month period of continued assistance, if the parent is engaged in an eligible work, education, or training activity, assistance should not be terminated and the child should either continue receiving assistance until the next scheduled re-determination or be re-determined eligible for an additional minimum 12-month period. This final rule clarifies that assistance must be provided at least at the same level during the period. This clarification is important because reducing levels of assistance during this period would undermine the statutory intent to provide stability for families during times of increased need or transition.

It is important to note that the Act allows Lead Agencies to continue child care assistance for the full minimum 12-month eligibility period even if the parent experiences a non-temporary job loss or cessation of education or training. The default policy is that a child remains eligible for the full minimum 12-month eligibility period, but the Lead Agency has the option to terminate assistance under these particular conditions. A Lead Agency may choose not to terminate assistance for any families prior to a re-determination at 12 months.

If a Lead Agency chooses to terminate assistance under these conditions after at least three months of continued assistance, it has the option of doing so for all CCDF families or for only a subset of CCDF families. For example, a Lead Agency could choose to allow priority families (*e.g.*, children with special needs, children experiencing homelessness) to remain eligible through their eligibility period despite a parent's loss of work or cessation of attendance at a job training or educational program, but terminate assistance (after a period of continued assistance) for families who do not fall in a priority category. Or, a Lead Agency may choose to allow families in certain types of care, such as high-quality care, to remain eligible regardless of a parent's work or education activity.

While the Lead Agency must provide continued assistance for at least three months, there is no requirement to document that the parent is engaged in a job search or other activity related to resuming attendance in an education or training program during that time. In fact, we strongly discourage such policies as they would be an additional burden on families and be inconsistent with the purposes of CCDF.

If a Lead Agency does choose to terminate assistance under these circumstances, it must allow families that have been terminated to reapply as soon as they are eligible again instead of making the family wait until their original eligibility period would have ended in order to reapply.

A policy that provides continuous eligibility, regardless of non-temporary changes, reduces the burden on families and the administrative burden on Lead Agencies by minimizing reporting and

the frequency of eligibility adjustments. Retention of eligibility during periods of family instability (such as losing a job) can alleviate some of the stress on families, facilitate a smoother transition back into the workforce, and support children's development by maintaining continuity in their child care. Moreover, studies show that the same families that leave CCDF often return to the program after short periods of ineligibility. A report published by the Assistant Secretary for Planning and Evaluation (ASPE) at HHS, *Child Care Subsidy Duration and Caseload Dynamics: A Multi-State Examination,* found that "many families receive subsidies sporadically over time and frequently return to the subsidy programs after they exit." Short periods of subsidy receipt can be the result of a variety of factors, including eligibility policies and procedures. The "churning" present in CCDF demonstrates that families often lose their child care assistance for conditions that are temporary, which is detrimental for the family and child and inefficient for the Lead Agency.

Lead Agencies considering the option to terminate assistance in response to "non-temporary" changes are encouraged to use administrative data to understand the extent to which CCDF families currently cycle on and off the program, to make a determination as to whether it is in the interest of anyone (child, parent, or agency) to terminate assistance for families who may ultimately return to the program.

Some Lead Agencies include in their definition of allowable work activities a period of job search and allow children to initially qualify for CCDF assistance based on their parent(s) seeking employment. It is not our intention to discourage Lead Agencies from allowing job search activities as qualifying work. Therefore, consistent with language included in the preamble to the NPRM, new regulatory language at § 98.21(a)(2)(iii) addresses this circumstance. This is consistent with the intent of the Act to allow Lead Agencies the option to end assistance prior to a re-determination if the parent(s) has not secured employment or educational or job training activities, as long as assistance has been provided for no less than three months. In other words, if a child qualifies for child care assistance based on a parent's job search, the Lead Agency has the option to end assistance after a minimum of three months if the parent has still has not found employment, although assistance must continue if the parent becomes employed during the job search period. Even if the parent does not find employment within three months, Lead Agencies could choose to provide additional months of job search to families as well or to continue assistance for the full minimum 12-month eligibility period.

Comment: Commenters were supportive of this policy. One State indicated while "continuity will have a fiscal impact," they thought that "allowing States the option to terminate assistance prior to 12 months, with a minimum of 3 months of continued assistance is reasonable." Other States voiced appreciation for the clarification that States have the "discretion to continue assistance to a subset of families such as those within a certain priority or type of care."

There was a request for clarification regarding how often the minimum 3-month period of continued assistance could apply within a particular eligibility period. The commenter asked "if, within the 12-month eligibility period, an individual experiences more than one occasion of permanent job loss or of education/training, do they continue to get 3 months of job search each time, and with each new loss?" These commenters asked for clarification about "whether there are any limitations to how many times within a single 12-month eligibility period a person is entitled to a 3-month job search period." This was raised as a concern because of the potential negative impact it could have on a parent's motivation "to truly reestablish employment or education if they are able to "work" for one day every three months and still continue to receive services."

Response: A plain reading of the statutory language does not provide a limit to the number of times a family could receive the period of continued assistance. Given that the 3-month period of continued assistance is at the State option and that the default policy (as stated above) is for families to retain their eligibility until the end of the eligibility period, it would be inconsistent to put a limit on how many times this could apply. Since the intent of this provision is to allow the parent some time to resume work, or resume attendance at a job training or educational activity, a parent who has successfully found new employment or resumed another qualifying activity within the minimum 3-month period should not be penalized by losing their child care assistance (and possibly undermining the stability of newfound employment, training, or education). Especially given the often unstable nature of employment among low-income communities, this will provide some measure of stability in instances where families, despite their best efforts, cycle in and out of employment. In these instances, when the home life may be in flux, a level of stability in the child's care arrangement becomes that much more valuable.

Additional circumstances for termination: In the proposed rule, we asked for comment on whether there are any additional circumstances other than those discussed above under which a Lead Agency should be allowed to end a child's assistance (after providing three months of continued assistance) prior to the minimum 12-month period. Commenters were reminded that since these regulations must comply with statutory requirements, any suggestions had to remain within the bounds of the Act in order to be considered.

Based on feedback from States and various stakeholders (received prior to the publication of the proposed rule), ACF had already considered possible exceptions to the minimum 12-month eligibility period for certain populations, such as children in families receiving TANF and children in protective services, but had decided that such special considerations would be in conflict with the Act, which clearly provides 12-month eligibility for all children.

Comment: We had a number of comments in this area. Commenters provided suggestions for reasons that a State should be able to terminate assistance prior to the end of the eligibility period, including: Non-use of subsidy, fraud or intentional program violations, moving out of the State, changes in household composition, protective services status (some emergency assistance that may not be required for a full eligibility period), change in priority group, and failure to cooperate with mandatory child support.

Response: We agreed with commenters on the need to provide some additional allowances in this area because there were legitimate reasons why a Lead Agency may need to terminate assistance prior to the end of the eligibility period. Therefore, in response to comments, the final rule adds a new § 98.21(a)(5), which describes additional limited circumstances that would allow a Lead Agency to end assistance prior to the end of the minimum 12-month eligibility period.

This new regulatory language states that notwithstanding paragraph (a)(1), the Lead Agency may discontinue assistance prior to the next re-determination in limited circumstances where there have been: (i) Excessive unexplained absences despite multiple

attempts by the Lead Agency or designated entity to contact the family and provider, including notification of possible discontinuation of assistance; (A) If the Lead Agency chooses this option, it shall define the number of unexplained absences that shall be considered excessive; (ii) A change in residency outside of the State, Territory, or Tribal service area; or (iii) Substantiated fraud or intentional program violations that invalidate prior determinations of eligibility.

We have determined that these three were compelling reasons for which Lead Agencies would be justified in acting. Regarding termination due to excessive unexplained absences, we stress that every effort should be made to contact the family prior to terminating benefits. Such efforts should be made by the Lead Agency or designated entity, which may include coordinated efforts with the provider to contact the family. If a State chooses to terminate for this reason, the Lead Agency must define how many unexplained absences would constitute an "excessive" amount and therefore grounds for early termination. The definition of excessive should not be used as a mechanism for prematurely terminating eligibility and must be sufficient to allow for a reasonable number of absences. It is ACF's view that unexplained absences should account for at least 15 percent of a child's planned attendance before such absences are considered excessive. This 15 percent aligns generally with Head Start's attendance policy and ACF will consider it as a benchmark when reviewing and monitoring this requirement.

As discussed above, we are allowing States to terminate eligibility if the family moves outside of the State, Territory, or Tribal service area. This was not explicitly discussed in the proposed rule, but the discussion about maintaining eligibility when moving within State revealed the need for clarification in this area. Given that the CCDF program is a block grant with the State, it would not make sense for the family's benefit to be able to travel across those borders. As discussed above, this is a permissive policy and not a requirement. We encourage Lead Agencies to develop agreements where appropriate to accommodate parental movement, particularly in areas where appropriate and necessary to meet the needs of families. And as a reminder, as stated in § 98.21(a)(ii)(G), States cannot terminate assistance if a family is moving within the State.

As for changes in household composition, this is already allowed, in so far as the Lead Agency can require families to report such changes if they would result in a change that would raise the family's income level above 85% of SMI.

Fraud or intentional program violation would also be a legitimate reason to terminate assistance if such fraud invalidates the prior eligibility determination or redetermination. One commenter stated that it "is critical to have processes and procedures in place to limit improper payments and other fraudulent activities," and therefore recommended including a provision in the final rule that families could lose eligibility if they misrepresented circumstances at the initial determination and/or provided fraudulent information. Early termination of benefits is justified when there has been substantiated fraud or intentional program violation and such a family would not have been eligible. We caution that this does not change the limitations on what a State can require a family to report during the eligibility period. However, in instances where program integrity efforts reveal fraud or intentional program violations, under this final rule, the State would be able to terminate eligibility.

Co-payments. Section 98.21(a)(3) clarifies that a Lead Agency cannot increase family co-payment amounts within the minimum 12-month eligibility period as raising co-payments within the eligibility period would not be consistent with the statutory requirement that the child receive such assistance for not less than 12 months. Protecting co-payments levels within the eligibility period provides stability for families and reduces administrative burden for Lead Agencies. This final rule includes an exception to this rule for families that are eligible as part of the graduated phase-out provision discussed below.

In addition, the final rule requires the Lead Agency to allow families the option to report changes, particularly because we want to permit families to report those changes that could be beneficial to the family's co-payment or subsidy level. The Lead Agency must act upon such reported changes if doing so would reduce the family's co-payment or increase the subsidy. The Lead Agency is prohibited from acting on the family's self-reported changes if it would reduce the family's benefit, such as increasing the co-payment or decreasing the subsidy.

The limitation on raising co-payments, by protecting the child's benefit level for the minimum 12-month eligibility period, is consistent with the statutory requirement at 658E(c)(2)(N) of the Act that, once deemed eligible, a child shall receive such assistance, for not less than 12 months. Raising co-payments earlier than the 12-month period could potentially destabilize the child's access to assistance and has the unintended consequence of forcing working parents to choose between advancing in the workplace and child care assistance. This is discussed further below in the section on reporting changes in circumstances.

Comment: Comments received in this area were mixed. In general, States wanted to retain the ability to increase co-payments throughout the year, while national organizations and other stakeholders thought that keeping co-payments stable during the year was a worthwhile policy for families.

Those who supported this policy cited studies that showed that "high co-payments are a major reason that families leave the subsidy program." Commenters also referenced a Senate Health, Education, Labor, and Pensions Committee Report on the CCDBG Act, which notes that "The committee does not want to discourage families engaged in work from pursuing greater opportunities in the form of increased wages or earnings. . . . The committee strongly believes that if families are truly to achieve self-sufficiency that CCDBG cannot perversely incentivize families to forgo modest raises or bonuses for fear of losing assistance under the CCDBG program."

Those in favor of retaining the ability to increase co-pays pointed to the implications, primarily financial, should they be unable to adjust co-payments. One stated that they would be forced to "charge the highest co-payment amounts allowed in order to manage the fiscal liability" and another pointed out that such a policy "limits the Department's ability to utilize co-payments as a means of managing State fiscal resources," and an inability to do so would "result in serving fewer children and families and may force waitlists."

Other commenters stated that they thought increasing co-payment amounts during the eligibility period would not negatively affect a family's subsidy or co-payment and would not be unduly burdensome. This commenter reasoned that "In most cases, income changes reported are fairly small, and even if that change moves the family up on the co-pay schedule, the incremental change in the co-pay will likely be less than $4 per week." Commenters also pointed out that increasing co-payment amounts was beneficial to families to help them transition off child care assistance and thus avoid the cliff effect that comes with losing the subsidy.

Response: While we recognize the States' positions, for the following reasons, we are declining to change this for this final rule. Regarding the use of co-payments to manage budgets and wait lists, such ongoing incremental changes are to the overall detriment of participating families and ultimately undermine the effectiveness of the program. One of the commenters above mentioned that these co-payment increases are usually minor and would not impact the family's financial situation. Given this incremental financial benefit to the State, the administrative burden to both the family (notification with every change in income) and the State (having to track and adjust co-payments with minor changes for families throughout the year) outweighs the benefit gained. Additionally, a small increase (such as the $4 increase mentioned above) may seem incremental from a policy perspective, but may represent a significant burden on low-income families managing the daily expenses of food, clothing, diapers, etc.

As for using co-payments to mitigate the impact of the cliff effect, this is an area where we agree. This is why § 98.21(e)(3) allows Lead Agencies to increase co-payments for families eligible due to the graduated phase-out provision. Since the graduated phase-out period (which will be discussed in the next section) was specifically designed to help families transition as their income rises, it is appropriate that co-payments be adjusted.

Graduated phase-out. New statutory language at Section 658E(c)(2)(N)(iv) of the Act requires Lead Agencies to have policies and procedures in place to allow for the provision of continued child care assistance at the time of re-determination for children of parents who are working or attending a job training or educational program and whose income has risen above the Lead Agency's initial income eligibility threshold to qualify for assistance but remains at or below 85 percent of State median income. Lead Agencies retain the authority to establish their initial income eligibility threshold at or below 85 percent of SMI. If a Lead Agency's initial eligibility threshold is set at 85 percent of SMI, it would be exempt from this requirement.

The proposed rule would have required Lead Agencies that set their initial income eligibility level below 85 percent of SMI (for a family of the same size) to provide for a graduated phase-out of assistance by establishing two-tiered eligibility (an initial, entry-level income threshold and a higher exit-level income threshold for families already receiving assistance) with the exit threshold set at 85 percent of SMI. States would have had the option of either allowing the family to remain income eligible until the family exceeded 85% of SMI or for a limited period of not less than an additional 12 months.

The purpose of this graduated phase-out provision is to promote continuity of care and is consistent with the statutory requirement that families retain child care assistance during an eligibility period as their income increases. However, as discussed below, in response to comment, the final rule makes two significant changes to this requirement: (1) Offering additional flexibility on setting the second tier of eligibility, and (2) removing the possible time limit on eligibility.

Comment: We received mixed comment on the proposed graduated phase-out requirement. While commenters were supportive of improving continuity for families, a number of commenters indicated that they thought setting the two tiered system with the exit threshold at 85% of SMI was too restrictive. Commenters also raised similar concerns about the cost of this provision and the impact that it could potentially have on the demographics of CCDF families served. One commenter said that "the down side of this otherwise sensible policy idea is that, absent sufficient resources, lower income families may be denied access to subsidies while higher income families continue to benefit. It's a difficult tradeoff."

Response: Given the comments that we received in this area, and in recognition of the difficult trade-offs inherent in this policy, the final rule revises language proposed by the NPRM for the graduated phase-out provision. This final rule still requires Lead Agencies to establish two-tiered eligibility thresholds, but the graduated phase-out requirement at § 98.21(b) now says that the second tier of eligibility (used at the time of eligibility re-determination) will be set at 85 percent of SMI for a family of the same size, but that the Lead Agency has the option of establishing a second tier lower than 85% of SMI as long as that level is above the Lead Agency's initial eligibility threshold, takes into account the typical household budget of a low income family, and provides justification that the eligibility threshold is (1) sufficient to accommodate increases in family income that promote and support family economic stability; and (2) reasonably allows a family to continue accessing child care services without unnecessary disruption.

This revision from what was proposed in the NPRM will give Lead Agencies additional flexibility to establish their second tier of eligibility. However, it is important to note that once deemed eligible, the family shall be considered eligible for a full minimum 12-month eligibility period even if their income exceeds the second eligibility level during the eligibility period, as long as it does not exceed 85 percent of SMI.

While the revised regulatory language offers Lead Agencies some flexibility to set the second tier of eligibility, we still strongly encourage that Lead Agencies establish this second tier at 85 percent of SMI (as a number of States have already done). Not only does this maximize continuity of subsidy receipt for the family, linking the exit threshold to the Federal eligibility limit is the most straightforward approach for families to navigate and for Lead Agencies to implement. However, ACF also understands that there are significant trade-offs associated with establishing the second tier at 85% of SMI, including how many lower income families can be served in the program.

As a result, the final rule provides Lead Agencies flexibility to set their second tier below 85% of SMI, provided they show that their exit threshold takes into account typical family expenses, such as housing, food, health care, diapers, transportation, etc., and is set at an income level that promotes and supports family economic stability and reasonably allows a family to continue accessing child care services without unnecessary disruption. Lead Agencies setting their second tier below 85% of SMI must take into account a number of factors to determine whether the family's increase in income is a substantial enough change to justify a loss of assistance without causing a "cliff effect." For example, the Lead Agency would need to show that there is a difference between the first and second eligibility tiers and that this difference is sufficient to accommodate increases in income over time that are typical for low-income workers. ACF encourages Lead Agencies setting their second tier below 85% SMI to also consider how families that lose their subsidy will access ongoing child care and potential impacts on families' economic security.

Additionally, when determining a family's ability to afford child care, the Lead Agency should be mindful that this final rule uses seven percent of family income as a benchmark for affordable child care. While Lead Agencies have flexibility in establishing their sliding fee scales and determining what constitutes a cost barrier for

families, seven percent level is a recommended benchmark and any calculations about affordability should either incorporate this benchmark or provide justification for how families can afford to spend a higher percentage of their income on child care. Furthermore, to ensure Lead Agencies are fully taking into consideration the financial obligations of families, Lead agencies must also collect data on any amounts providers charge families more than the required family co-payment in instances where the provider's price exceeds the subsidy payment, if the State allows for such a practice, and to demonstrate a rationale for the allowance to charge families any additional amounts. This is mentioned in greater detail below in response to comments received specifically on the policies set forth in the proposed rule related to charging amounts above the co-payment. As for other concerns about the potential impact of the graduated phase-out provision, there are already several factors that will mitigate the possible negative impacts of this policy. First of all, the graduated phase-out provision provides some level of stability by protecting income growth, but there will still be natural attrition from the program due to other factors. Families have to go through redetermination every 12 months (or a longer period set by the Lead Agency) and be deemed otherwise eligible for the program. Families will also cycle out of the program through the Lead Agency option to terminate assistance due to job loss or cessation of education/training (after at least three months of continued assistance). According to analyses of CCDF administrative data, the current levels of attrition over time are steady and dramatic. Approximately 24 percent of families receive services for longer than a year, only about 10 percent receive it for 2 years, and the decline continues until approximately only 1 percent still receives the subsidy after 5 years. (Unpublished HHS tabulations based on CCDF administrative data reported by States on the ACF–801) We expect policies put into place to promote continuity will lengthen eligibility, but due to external factors, there will continue to be a turnover in the CCDF population.

In addition, the financial impact of this policy may be contained because: (1) The average cost of subsidy tends to naturally decline over time as the child's age increases, and (2) this final rule allows the Lead Agency to increase co-pays during the graduated phase-out period. CCDF administrative data shows that per child costs decline as the child ages. This is due to the fact that school-age care is typically part-time for much of the year and less expensive than care provided for younger children. Therefore, the cost of the subsidy for families who remain on the program will naturally decline, which will free up resources for new enrollment.

As discussed further below, this final rule at section 98.21(b)(3) allows Lead Agencies to adjust co-payments during the graduated phase-out period. Over time, this would result in more cost sharing with families and free up State funds to allow other children to enter the subsidy system. As co-pays rise for parents with increasing incomes, families will naturally choose to leave the program.

Comment: There were objections to the second option of the proposed graduated phase-out proposal, which would have allowed Lead Agencies to offer a period of graduated phase-out for a limited period of not less than an additional 12 months. A number of commenters objected to "any provision that allows or encourages States to set arbitrary time limits on child care assistance," and said that "income, rather than time spent in the program, is a far better measure of families' need for continued assistance."

Response: We agree with this concern and have removed the provision from this final rule. The option was included in the proposed rule to provide some parameters around the graduated phase-out provision, but we recognize now that the introduction of a time limit to the program could have unintended consequences and runs counter to the goals of the program, including to support parents trying to achieve independence from public assistance. And as described above, there are factors already in play within the graduated phase-out provision that will naturally limit the fiscal impact of this over time. That, combined with the new flexibility on establishing the second eligibility threshold, makes the previous option of "a limited period of not less than an additional 12 months" unnecessary.

We have also added language at § 98.21(b)(2) to clarify that once determined eligible under the graduated phase-out provision, the family is considered eligible under the same conditions described in § 98.20 and § 98.21, with the exception of the co-payment restrictions at § 98.21(a)(3). Pursuant to § 98.21(a)(3), Lead Agencies are prohibited from increasing family co-payments within the minimum 12-month eligibility period. However, in subparagraph (b)(2) of this section, Lead Agencies will be permitted to adjust family co-payment amounts during the graduated phase-out period to help families transition off of child care assistance as they become better able to afford the cost of care.

Lead Agencies have the option to gradually increase co-payments for families with children eligible under the graduated phase-out provision and may require additional reporting on changes to do so. However, this final rule further clarifies that such additional reporting requirements must not constitute an undue burden, pursuant to the conditions in (e)(2)(ii) and (e)(2)(iii). Such requirements must not require an office visit in order to fulfill notification requirements, and must offer a range of notification options (*e.g.*, phone, email, online forms, extended submission hours) to accommodate the needs of parents.

While such co-payment policies should help families gradually transition off of assistance, ACF encourages Lead Agencies to ensure that co-payment increases are gradual in proportion to a family's income growth and do not constitute too high a cost burden for families so as to ensure stability as family income increases. Lead Agencies must remain in compliance with the statutory requirement at Section 658E(c)(5) that the State's sliding fee scale is not a barrier to families receiving CCDF assistance.

Income eligibility policies play an important role in promoting pathways to financial stability for families. Currently, 16 Lead Agencies use two-tiered income eligibility. However, even with higher exit-level eligibility thresholds in these States/Territories, a small increase in earnings may result in families becoming ineligible for assistance before they are able to afford the full cost of care. While there are many factors that determine how a State sets their eligibility thresholds, an unintended consequence of low eligibility thresholds is that low income parents may pass up raises or job advancement in order to retain their subsidy, which undermines a key goal of CCDF to help parents achieve independence from public assistance. This rule allows low-income families to continue child care assistance as their income grows in order to support financial stability.

Irregular fluctuations in earnings. In § 98.21(c), we reiterate statutory language at Section 658E(c)(2)(N)(i)(II) of the Act which requires Lead Agencies to establish processes for initial determination and re-determination of eligibility that take into account parents' irregular fluctuations in earnings. We

clarify that temporary increases in income should not affect eligibility or family co-payments, including monthly income fluctuations that show *temporary* increases, which if considered in isolation, may incorrectly indicate that a family is above the federal threshold of 85 percent of SMI, when in actuality their annual income remains at or below 85 percent of SMI.

Lead Agencies retain broad flexibility to set their policies and procedures for income calculation and verification. There are several approaches Lead Agencies may take to account for irregular fluctuations in earnings. Lead Agencies may average family earnings over a period of time (*e.g.*, 12 months) to better reflect a family's financial situation; Lead Agencies may adjust documentation requirements to better account for average earnings, for example, by requesting the earnings statement that is most representative of the family's income, rather than the most recent statement; or Lead Agencies may choose to discount temporary increases in income provided that a family demonstrates that an isolated increase in pay (*e.g.*, short-term overtime pay, lump sum payments such as tax credits, etc.) is not indicative of a permanent increase in income.

We did not receive substantive comment in this section and are therefore retaining the proposed language in this final rule.

Undue disruption. In accordance with Section 658E(c)(2)(N)(i)(II) of the Act, the final rule adds § 98.21(d), which requires the Lead Agency to establish procedures and policies to ensure that parents, especially parents receiving TANF assistance, are not required to unduly disrupt their education, training, or employment in order to complete the eligibility re-determination process. This provision of the Act seeks to protect parents from losing assistance for failure to meet renewal requirements that place unnecessary barriers or burdens on families, such as requiring parents to take leave from work in order to submit documentation in person or requiring parents to resubmit documents that have not changed (*e.g.*, children's birth certificates).

To meet this provision, Lead Agencies could offer a variety of family-friendly mechanisms through which parents could submit required documentation (*e.g.*, phone, email, online forms, extended submission hours, etc.). Lead Agencies could also consider strategies that inform families, and their providers, of an upcoming re-determination and what is required of the family. Lead Agencies could consider only asking for information necessary to make an eligibility determination or only asking for information that has changed and not asking for documentation to be re-submitted if it has been collected in the past (*e.g.*, children's birth certificates; parents' identification, etc.) or is available from other electronic data sources (*e.g.*, verified data from other benefit programs). Lead Agencies can pre-populate renewal forms and have parents confirm that information is accurate.

In general, ACF strongly encourages Lead Agencies to adopt reasonable policies for establishing a family's eligibility that minimize burdens on families. Given the new eligibility provisions established by reauthorization, Lead Agencies are encouraged to re-evaluate processes for verifying and tracking eligibility to simplify eligibility procedures and reduce duplicative requirements across programs. Simplifying and streamlining eligibility processes along with other changes in the subpart may require significant change within the CCDF program. Lead Agencies should provide appropriate training and guidance to ensure that caseworkers and other relevant child care staff (including those working for designated entities) clearly understand new policies and are implementing them correctly. Comments received in this section were supportive of the proposed policies and we are therefore keeping these provisions in this final rule.

Reporting changes in circumstance. Currently, many Lead Agencies have policies in place to monitor eligibility on an ongoing basis to ensure that at any given point in time a family is eligible for services, often called change-reporting or interim-reporting. As the revised statute provides that children may retain eligibility through most changes in circumstance, it is our belief that comprehensive reporting of changes in circumstance is not only unnecessary but runs counter to CCDF's goals of promoting continuity of care and supporting families' financial stability.

Additionally, there are challenges associated with interim monitoring and reporting, including costs to families trying to balance work or education and family obligations and costs to Lead Agencies administering the program. Overly burdensome reporting requirements can also result in increased procedural errors, as even parents who remain eligible may face difficulties complying with onerous reporting rules.

Lead Agencies should significantly reduce change reporting requirements for families within the eligibility period, and limit the reporting requirements to changes that impact federal CCDF eligibility. Section 98.21(e) of final rule requires Lead Agencies to specify in their Plans any requirements for families to notify the Lead Agency (or its designee) of changes in circumstances between eligibility periods, and describe efforts to ensure such requirements do not place an undue burden on eligible families that could impact continued eligibility between re-determinations.

Under § 98.21(e)(1), the Lead Agency must require families to report a change at any point during the minimum 12-month period only when the family's income exceeds 85% of SMI, taking into account irregular income fluctuations. At the option of the Lead Agency, the Lead Agency may require families to report changes where the family has experienced a non-temporary cessation of work, training, or education.

Section 98.21(e)(2) specifies that any notification requirements may not constitute an undue burden on families and that compliance with requirements must include a range of notification options (*e.g.*, phone, email, online forms, extended submission hours) and not require an in-person office visit. This includes parents who are working, as well as those participating in job training or educational programs.

The final rule also limits notification requirements only to items that impact a family's eligibility (*e.g.*, income changes over 85 percent of SMI, and at Lead Agency option, the status of the child's parent as working or attending a job training or educational program) or those that are necessary for the Lead Agency to contact the family or pay providers (*e.g.*, a family's change of address or a change in the parent's choice of provider). Lead Agencies may examine additional eligibility criteria at the time of the next re-determination.

Section 98.21(e)(4) requires Lead Agencies to allow families the option of reporting information on an ongoing basis, particularly to allow families to report information that would be beneficial to their assistance (such as an increase in work hours that necessitates additional child care hours or a loss of earnings that could result in a reduction of the family co-payment). While we encourage limiting reporting requirements for families, it was not our intent to limit the family's ability to report changes in circumstances, particularly in cases where they may have entered into more stressful or vulnerable situations or would be eligible for additional child care assistance. Moreover, if a family voluntarily reports changes on an

ongoing basis to the Lead Agency that do not make the family ineligible, the Lead Agency must act on these provisions if it would increase the family's benefit, but cannot act on any information that would reduce the family's benefit. (We do note, however, that a Lead Agency may adjust the subsidy amount in accordance with its payment rate schedule in the event that a family voluntarily changes child care providers during the eligibility period). All of the above provisions apply to any entities that perform eligibility functions in the CCDF program on the Lead Agency's behalf.

Finally, some Lead Agencies currently use electronic data from other State/Territory and Federal databases to verify or monitor CCDF eligibility. Lead Agencies may continue this practice, which is particularly useful in reducing the burden on families at the time of initial determination or re-determination. However, Lead Agencies should ensure any such data that is acted upon during the minimum 12-month eligibility period conform to the above requirements for change reporting and all CCDF rules.

We recognize that some States currently send interim reporting forms to families during the eligibility period to request that families verify or update information. Some States use such interim reporting to align with processes in other programs, such as semi-annual SNAP simplified change reporting. Such periodic reporting forms are contrary to the spirit of the Act, which provides for minimum 12-month eligibility between redeterminations. In the NPRM, we asked for comments on whether States should have the option for 6-month interim reporting forms for CCDF, and if such reports are allowed, the best way to structure them so as to promote continuity of services for the minimum 12-month eligibility period for eligible families, consistent with the Act. We also asked for comment on whether States should be able to adjust co-payments or otherwise act on verified information (*e.g.*, updated income information) received from other programs or sources.

As discussed earlier, acting on information received pursuant to eligibility determinations or re-certifications in other programs allows CCDF Lead Agencies to extend a child's eligibility by "resetting the clock" and starting a new 12-month period. We asked for comments on whether the benefits of this approach outweigh the impact of any co-payment increases, if allowed, during the minimum 12-month period, and whether those benefits would be a reason to allow Lead Agencies to act on verified information from other programs.

Comment: Comments received in this area were mixed, mostly between States who value interim and six-month reporting as a mechanism for working with families and ensuring that their information is still accurate, and other commenters who prioritized stability for the family and minimizing administrative burden.

One State commented that six month reporting was necessary "to ensure that a need for care still exists and to review any changes that may benefit the client." Another said that it "utilizes a 6 month review form for parents to report changes in circumstances." This process, according to the State, "does not require the parent to show up in person and thus does not constitute an undue burden on families."

Another area of concern for States was alignment with other programs. There was concern that if a State cannot act on information discovered through interim reporting and "if these changes cannot be applied, the program will need to be de-linked from other eligibility programs. This would impose a significant administrative burden and will be costly."

Other commenters had concerns about the impact that interim reporting would have on families and were particularly wary of any such reporting undermining the minimum 12-month eligibility established by the Act. One commenter pointed out that the process "can be overly burdensome to poor and low-income families, adds an additional administrative cost and, as noted in the proposed rules, is not in keeping with the spirit of the Act's minimum 12-month eligibility period."

Response: Despite concerns to the contrary, limiting interim reporting and, in particular, prohibiting 6-month reporting is essential to maintaining the advances made by the CCDBG Act of 2014. We are concerned that 6-month interim checks will lead to de-facto redeterminations, with many families potentially losing subsidy for failure to submit interim reports (even if they otherwise continue to meet eligibility requirements). Additionally, because the Act specifies that, once determined to be eligible, a child will be considered to meet all eligibility requirements for such assistance and will receive such assistance, for not less than 12 months, there is no longer sufficient rationale for verifying information (such as a need for care) or tracking changes within the eligibility period. The Act now specifically mandates that children will be considered to meet eligibility requirements, so tracking changes would be not only unnecessary, but in conflict with the Act. While some States indicate that interim reporting is not burdensome to families, the fact remains that, if a family did not complete a report, they would most likely be terminated from assistance. This is counter to the minimum 12-month redetermination period established by the Act.

However, for the purposes of adjusting co-payments, in section 98.21(e)(3) we do allow Lead Agencies to require additional reporting on changes in family income for families in the graduated phase-out category. This should alleviate some of the concern from States and allow some measure of reporting, but limited to those families who have already exceeded the State's initial eligibility threshold.

Research and experience in the field suggests that administrative burden is a barrier to continuity; the Act requires that redetermination processes should not unduly disrupt parents' employment. A literature review of research on child care subsidies found, "According to an experimental study in Illinois and analyses of administrative data in six other States, the length of subsidy spells is associated with the timing of subsidy redetermination, with shorter redetermination periods being associated with shorter subsidy spells and subsidy spells tending to end at the time of redetermination." (Forry, et al., Child Trends, December 2013) We are therefore keeping this final rule consistent with what was proposed in the NPRM.

For commenters concerned about limitations on interim reporting being a barrier to linking with other programs, we want to emphasize that that these limits refer to CCDF reporting requirements. If a family is participating in another benefit program that has interim reporting requirements, nothing in this final rule prohibits those programs from interim reporting. This would, however, limit the Lead Agency's ability to act, for CCDF purposes, on information gathered through another program's reporting. We recognize the possible logistical challenges of alignment, and will make technical assistance providers with experience in this area available to work with and support Lead Agencies in maintaining alignment with other programs while implementing these new requirements.

For those commenters who expressed a desire for interim reporting so that families could report beneficial changes, § 98.21(e)(4) of this final rule requires that Lead Agencies must allow families the option to voluntarily report changes

on an ongoing basis. This ensures that a family will not be limited in their ability to report, particularly in instances that would be to their benefit.

Program integrity. It is important to ensure that CCDF funds are effectively and efficiently targeted towards eligible low-income families. Policies to promote continuity, such as lengthening eligibility periods and allowing a child to remain eligible between re-determination periods, are consistent with and support a strong commitment to program integrity. ACF expects Lead Agencies to have rigorous processes in place to detect fraud and improper payments, but these should be reasonably balanced with family-friendly practices.

In order to remain consistent with the requirements in this subpart, § 98.21(a)(4) affirmatively states that, because a child meeting eligibility requirements at the most recent eligibility determination or re-determination is considered eligible between re-determinations as described in § 98.21(a)(1), any payment for such a child shall not be considered an error or improper payment under Subpart K due to the family's circumstances. This clarifies that compliance with the policies in this Subpart do not constitute an error and Lead Agencies will not be held accountable for payments within these parameters.

When implementing their CCDF programs, Lead Agencies must balance ensuring compliance with eligibility requirements with other considerations, including administrative feasibility, program integrity, promoting continuity of care for children, and aligning child care with Head Start, Early Head Start, and other early childhood programs. These changes are intended to remove any uncertainty regarding applicability of Federal eligibility requirements for CCDF and the threat of potential penalties or disallowances that otherwise may inhibit a Lead Agencies' ability to balance these priorities in a way that best meets the needs of children.

Some Lead Agencies currently use "look back" and recoupment policies as part of eligibility re-determinations. These review a family's eligibility for the prior eligibility period to see if the family was ineligible during any portion of that time and recoup benefits for any period where the family had been ineligible. However, there is no Federal requirement for Lead Agencies to recoup CCDF overpayments, except in instances of fraud. We strongly discourage such policies as they may impose a financial burden on low-income families that is counter to CCDF's long-term goal of promoting family economic stability. The Act affirmatively states an eligible child will be considered to meet all eligibility requirements for a minimum of 12 months regardless of increases in income (as long as income remains at or below 85 percent of SMI) or temporary changes in parental employment or participation in education and training. Therefore, there are very limited circumstances in which a child would not be considered eligible after an initial eligibility determination. We encourage Lead Agencies instead to focus program integrity efforts on the largest areas of risk to the program, which tend to be intentional violations and fraud involving multiple parties.

Existing regulations at § 98.60 indicate that Lead Agencies shall recover child care payments that are the result of fraud from the responsible party. While the final rule does not define the term fraud and leaves flexibility to Lead Agencies, fraud in this context typically involves knowing and willful misrepresentation of information to receive a benefit. We urge Lead Agencies to carefully consider what constitutes fraud, particularly in the case of individual families.

Taking into consideration children's development and learning. This final rule affirms that both the child's development and the parent's need to work or attend school or training are factors in the child care needs of each family. This rule amends § 98.21 to add paragraph (f) to require that Lead Agencies take into consideration children's development and learning and promote continuity of care when authorizing child care services. There are myriad ways in which this provision could be incorporated into Lead Agencies' eligibility, intake, authorization, and CCDF policies and practices. ACF intends to work with Lead Agencies to provide technical assistance and identify a variety of strategies to fit different eligibility processes. As an example, in serving a preschool-aged child (*i.e.*, age 3 or 4), the Lead Agency may consider whether or not the child has access to a high-quality preschool setting and how CCDF can make enrollment in a high-quality preschool more likely.

Lead Agencies could partner with Head Start, pre-kindergarten, or other high-quality programs to build an intentional package of arrangements for the child that allows for attendance at preschool and a second arrangement that accommodates the parent's work schedule. For infants and toddlers, a Lead Agency may want to coordinate services with Early Head Start, while also maintaining a secondary child care arrangement to preserve the relationship with a familiar caregiver, as it is particularly important for infants and toddlers to build and maintain secure relationships with caregivers. A Lead Agency could also offer parents the choice to select high-quality infant slots that are funded through contracts or grants. For children of all ages, providing more intensive case management for families with children with multiple risk factors can increase the likelihood that the family will find a stable, quality child care provider that is willing to work with other service providers in assisting the child and family.

The intent of this provision is that the Lead Agency has some mechanism in place to consider the child's development and learning, but a Lead Agency has broad flexibility to determine how this is done. At a minimum, we expect Lead Agencies to collect sufficient information during the CCDF intake process in order to make necessary referrals for services. For example, a Lead Agency could ensure there is an automatic referral of eligible children to Early Head Start or Head Start. A Lead Agency could also include in their eligibility determination process a question about whether or not the child has an Individualized Education Program (IEP) or Individual Family Service Plan (IFSP), so that the parent could be provided with information on providers that are equipped to provide services that meet the child's individual needs.

ACF encourages Lead Agencies to engage in public-private partnerships so that responsibility for implementing this provision does not fall solely on CCDF eligibility workers. Partnerships with child care resource and referral agencies, early intervention agencies, and others may mean that a few well-chosen questions during the intake process prompt the eligibility worker (or automated system if the process is online) to direct the family to appropriate resources. This requirement does not require a developmental screening of every child as part of the eligibility process; however, child care agencies should partner to ensure that children in the CCDF subsidy system can access appropriate screening and follow-up.

We recognize that, given constraints on funding, limited human resource capacity, and the inadequate supply of high-quality care, a perfect arrangement will not be found in all cases. Rather, we expect Lead Agencies to consider how they can best meet the developmental and learning needs of

children in their policies and practices and to encourage partnerships among high-quality providers, child care resource and referral agencies, and case management partners to strengthen CCDF's capacity to fulfill its child development mission for families.

Comment: While comments in this area were supportive of the addition of child development, there were some concerns regarding implementation. One commenter pointed out that, in their State, "parents apply online for child care assistance and are not required to have an interview. The proposed requirement would result in adding a list of additional questions to the application for services. Eligibility workers process multiple programs (TANF, SNAP, Medicaid, Child Care) and do not have the expertise in this area. The questions would need to be automatically screened and referrals sent. This would require extensive programming changes."

Response: As stated above, the intent of this provision is that the Lead Agency has some mechanism in place to consider the child's development and learning, but a Lead Agency has broad flexibility to determine how this is done. In one of the examples given, eligibility for Early Head Start or Head Start, this could be determined through information already collected during the eligibility process. It may be necessary for the State to add additional questions to fulfill this requirement (for instance, the IEP or IFSP question mentioned above) However, given the broad flexibility that States have in this area, we will work with the State to implement these changes within a reasonable timeline and provide technical assistance where appropriate to support these efforts. We have retained the language in § 98.21(f) from the NPRM.

No requirement to limit authorized care to parent schedule. The final rule clarifies at § 98.21(g) that Lead Agencies are not required to limit authorized child care services strictly based on the work, training, or educational schedule of the parent(s) or the number of hours the parent(s) spend in work, training, or educational activities. Tying child care subsidy authorizations closely to parental work, education, or training hours may limit access to high-quality settings and does not support the fixed costs of providing care. In particular, it creates challenges for parents with variable schedules and inhibits their children from accessing a consistent child care arrangement. This provision clarifies that "matching" the hours of child care to a parent's hours of work is not required. In some cases, such "matching" works against the interests of the parent or child.

Lead Agencies are encouraged to authorize adequate hours to allow children to participate in a high-quality program, which may be more hours than the parent is working or in education or training. For example, if most local high-quality early learning programs offer only full-time slots, a child whose parent is working part-time may need authorization for full-time care. Commenters were supportive of this policy, and the final rule therefore retains it.

Subpart D—Program Operations (Child Care Services) Parental Rights and Responsibilities

Two of the Act's purposes are: (1) To promote parental choice to empower working parents to make their own decisions regarding the child care services that best suit their family's needs; and (2) to encourage States to provide consumer education information to help parents make informed choices about child care services and to promote involvement by parents and family members in the development of their children in child care settings. Subpart D of the regulations describes parental rights and responsibilities and provisions related to parental choice, including parental access to their children, requirements that Lead Agencies maintain a record of parental complaints, and consumer education activities conducted by Lead Agencies to increase parental awareness of the range of child care options available to them.

This final rule makes a number of changes to this subpart, including, establishment of a hotline for parents to submit complaints about child care providers, establishment of a consumer education Web site with provider-specific information including monitoring and inspection reports, ensuring parents and providers receive information about developmental screenings for children, and requiring Lead Agencies to affirmatively provide CCDF parents with a consumer statement with specific information about the child care provider they select.

§ 98.30 Parental Choice

This final rule includes a technical change to delete *group home child care* from the variety of child care categories at § 98.30(e) from which parents receiving a certificate for child care service must be able to choose. This is a conforming change consistent with revisions at § 98.2 removing group home child care from the definition of categories of care and eligible child care provider. As discussed earlier, instead the final rule modifies the definition of family child care provider to include one or more individuals to be inclusive of group home child care within this category. Lead Agencies may continue to use the category of group homes, but we are no longer requiring it as a separate category for federal reporting purposes. We did not receive comments on this provision and the final rule retains the language from the NPRM.

In-home care. This final rule revises § 98.30(f)(2) to explicitly allow for Lead Agencies to adopt policies that may limit parental access to in-home care. This change aligns with previously-existing policy as discussed in the preamble to the 1998 Final Rule. Specifically, the preamble documented Lead Agencies' "complete latitude to impose conditions and restrictions on in-home care." (63 FR 39950) As discussed in the 1998 preamble, monitoring the quality of care and the appropriateness of payments to in-home providers poses special challenges for Lead Agencies.

Comment: The few comments we received on this provision were generally supportive. One State commented that it would not prohibit or limit in-home care because it is often chosen in that State to provide care for families with non-traditional work hours.

Response: To clarify, this provision does not limit or prohibit a State from allowing parents to choose in-home care. Rather, it provides Lead Agencies with the flexibility to limit the use of that care. We understand there are many factors that may lead parents to choose in-home care, including the need for care at non-traditional hours or care for children with special needs, and urge Lead Agencies to consider those factors when deciding whether to put limitations on in-home care. It is crucial that parents have access to the types of care necessary for them to work and for their children to be in a safe and enriching environment. While this change codifies Lead Agencies' ability to impose limits on the use of in-home care, it does not allow for Lead Agencies to flatly prohibit the use of in-home care. As this is longstanding policy, we do not expect the change to have a significant impact on families or Lead Agencies. We have retained the language proposed in the NPRM.

Parental choice and child care quality. Regulations at § 98.30(f) prohibit Lead Agencies from implementing health and safety or regulatory requirements that significantly restrict parental choice by

expressly or effectively excluding any category or type of provider, as defined at § 98.2, or any type of provider within a category of care. Section 98.2 defines categories of care as center-based child care, family child care, and in-home care (*i.e.*, a provider caring for a child in the child's own home). Types of providers are defined as non-profit, for-profit, sectarian, and relative providers.

This final rule adds paragraph (g) at § 98.30 to clarify that, as long as parental choice provisions at paragraph (f) of this section are met, parental choice provisions should not be construed as prohibiting a Lead Agency from establishing policies that require child care providers that serve children receiving subsidies to meet higher standards of quality, such as those identified in a quality rating and improvement system or other transparent system of quality indicators pursuant.

In order to be meaningful, the parental choice requirements included in this section should give parents access to child care arrangements across a range of providers that foster healthy development and learning for children. Many Lead Agencies have invested a significant amount of CCDF funds to implement quality rating and improvement systems (QRIS) to promote high-quality early care and education programs, and some have expressed concerns that the previously existing regulatory language related to parental choice inhibited their ability to link the child care subsidy program to these systems. In order to fully leverage their investments, Lead Agencies are seeking to increase the number of children receiving CCDF subsidies that are enrolled with providers participating in the quality improvement system. ACF published a Policy Interpretation Question (CCDF–ACF–PIQ–2011–01) clarifying that parental choice provisions within regulations do not automatically preclude a Lead Agency from implementing policies that require child care providers serving subsidized children to meet certain quality requirements, including those specified within a quality improvement system. As long as certain conditions are met to protect a parent's ability to choose from a variety of categories and types of care, a Lead Agency could require that, in order to provide care to children receiving subsidies, the provider chosen by the parent must meet requirements associated with a specified level in a quality improvement system. This final rule incorporates the policy interpretation into regulation at § 98.30(g).

Comment: We received very few comments on this area. Faith-based and private education organizations recommended we delete the provision because it "potentially eliminates essential distinctions among providers and thus robs parents of choice."

Response: We declined to accept this comment and have left the provision as proposed in the NPRM. As a Lead Agency may make different allowances as they implement this policy, we do not think it will limit parental choice. There are certain tenants that the Lead Agency should follow when establishing these policies to ensure that parents continue to have access to the full range of providers. We encourage Lead Agencies to assess the availability of care across categories and types, and availability of care for specific subgroups (*e.g.*, infants, school-age children, families who need weekend or evening care) and within rural and underserved areas, to ensure that eligible parents have access to the full range of categories of care and types of providers before requiring them to choose providers that meet certain quality levels. Should a Lead Agency choose to implement a quality improvement system that does not include the full range of providers, the Lead Agency would need to have reasonable exceptions to the policy to allow parents to choose a provider that is not eligible to participate in the quality improvement system (*e.g.*, relative care). As an example, a Lead Agency may implement a system that incorporates only center-based and family child care providers. In cases where a parent selects a center-based or family child care provider, the Lead Agency may require that the provider meet a specified level or rating. However, the policy also must allow parents to choose other categories, such as in-home care, and types of child care providers, such as relative providers, that may not be eligible to participate in the quality improvement system. This is particularly important for geographic areas where an adequate supply of high-quality child care is lacking or when a parent has scheduling, transportation, or other issues that prevent the use of a preferred provider within the system.

In addition, this final rule includes § 98.30(h) to clarify that Lead Agencies may provide parents with information and incentives that encourage the selection of high-quality child care without violating parental choice provisions. This provision allows, but does not require, Lead Agencies to adopt policies that incentivize parents to choose high-quality providers as determined by a system of quality indicators. Lead Agencies are not required to adopt policies that encourage or incentivize parents to choose high-quality providers; however, we strongly encourage that they do adopt these policies.

Comment: We only received a few comments on the proposed provision. Faith-based and private education organizations recommended deleting the provision as it "substitutes the Lead Agency's interpretation of what constitutes 'high-quality' child care for the parent's interpretation." Another commenter supported keeping the provision but requested ACF provide examples of how Lead Agencies can use information and incentives to help parents choose high-quality providers.

Response: This provision codifies previously existing policy and provides Lead Agencies with needed tools to help support parents as they look for quality child care settings. Therefore, we have chosen to keep the provision as proposed in the NPRM. We want to emphasize that Lead Agencies are not required to implement these policies. Lead Agencies have the flexibility to determine what types of information and incentives to use to encourage parents to choose high-quality providers. One option is to lower parental co-payments for parents that choose a high-quality provider. We encourage Lead Agencies, or their partners such as child care resource and referral agencies, to use information from a QRIS or other system of quality indicators to make recommendations and help parents make informed child care decisions, for example, by listing the highest rated providers at the top of a referral list and providing information about the importance of high-quality child care. Lead Agencies are not limited to these examples and should design information sharing and incentives in a way that best fits the families they serve with CCDF.

§ 98.31 Parental Access

This final rule makes a technical change at § 98.31 to specify that Lead Agencies shall provide a detailed description "in the Plan" of how they ensure that providers allow parents to have unlimited access to their children while the children are in care. This corresponds to the provision at § 98.16(t). We received one comment from a national organization expressing support for this provision and have retained the proposed rule language

§ 98.32 Parental Complaints

Hotline for parental complaints. Section 658E(c)(2)(C) of the Act requires Lead Agencies to maintain a record of

substantiated parental complaints, make information regarding such parental complaints available to the public on request, and provide a detailed description of how such a record is maintained and made available. This final rule adds § 98.32(a), which requires Lead Agencies to establish or designate a hotline or similar reporting process for parents to submit complaints about child care providers. In connection with this change we have added a provision at § 98.33(d), to require Lead Agencies to include the hotline number or other reporting process in the consumer statement for CCDF parents, pursuant to this requirement. Lead Agencies should identify the capability for the parental complaint hotline to be accessible to persons with limited English proficiency and persons with disabilities, such as through the provision of interpretation services and auxiliary aids.

Lead Agencies vary in how they meet the previously-existing requirement to keep a record of and make public substantiated parental complaints. According to an analysis of FY 2014–2015 CCDF Plans, as well as State child care and licensing Web sites, 18 States have a parental complaint hotline that covers all CCDF providers, 22 States have a parental complaint hotline that covers some child care providers, and 16 States and Territories do not have a parental complaint hotline.

The Department of Defense (DOD) military child care program runs a national parental complaint hotline. The Military Child Care Act of 1989 (Pub. L. 101–189) required the creation of a national 24 hour, toll-free hotline that allows parents to submit complaints about military child care centers anonymously. DOD has found the hotline to be an important tool in engaging parents in child care. In addition, complaints received through the hotline have helped DOD identify problematic child care programs. For example, information that was submitted through the hotline led to an investigation and the closure of some child care facilities in the early 1990s. (Campbell, N., Appelbaum, J., Martinson, K., *Be All That We Can Be: Lessons from the Military for Improving Our Nation's Child Care System*, National Women's Law Center, 2000)

We strongly encourage the Lead Agency to widely publicize the process for submitting a complaint about a provider and to consider requiring child care providers to publicly post the process, including the hotline number and/or URL for the web-based complaint system, in their center or family child care home to increase parental awareness. Other areas for posting may be on the Web site required by Section 658E(c)(2)(E) of the Act and § 98.33(a), through a child care resource and referral network, at local agencies where parents apply for benefits, or other consumer education materials distributed by the Lead Agency.

We also strongly encourage Lead Agencies to implement a single point of entry (*e.g.*, one toll-free hotline number) as the most straightforward way for parents to file a complaint. There should not be a burden for the parent in finding the correct hotline number or Web page address. Many parents may not know whether the provider is licensed or license-exempt, for example, and therefore will not know which hotline to call if there are separate contact points for providers. Lead Agencies that choose to combine existing lines or devolve responsibility to local agencies should set-up a single point of entry with a process to immediately refer the call to the appropriate agency.

Comment: A few States requested clarification about whether the hotline had to be monitored 24 hours a day.

Response: Lead Agencies have a great deal of flexibility in how they implement the parental complaint hotline. To be most useful, parents should be able to file a complaint at any time. We strongly recommend, but do not require, that a telephonic hotline be operational 24 hours a day, or at minimum include a voicemail system that allows parents to leave complaints when an operator is not available. Lead Agencies may also choose to have a web-based system that allows for 24-hour complaint submission.

Comment: One State opposed the requirement to implement a hotline or similar process for parents to submit complaints. The State argued that the reauthorized statute required a national hotline to be created and "the State can include the national toll-free hotline information as the 'single contact number'. . . if necessary".

Response: Section 658L(b)(2) of the Act requires HHS to create a national hotline for submitting complaints. HHS is currently working on designing and implementing this hotline as a tool for parents to submit concerns. However, the CCDBG Act of 2014 did not change the requirement that States keep and make available a record of substantiated complaints. Maintaining and sharing substantiated complaints continues to be a statutory requirement and establishing a clear, easily-accessible way for parents to file complaints is an important part of meeting that requirement. As this is a separate process from the national hotline, States still must have a means for collecting parental complaints. In addition, States and localities are in a much better position to react quickly to complaints, which can be critical when there are immediate concerns about a child's safety. By requiring States and Territories to have a parental complaint system, ACF aims to ensure that parents have the tools necessary to ensure their children are in safe environments. Therefore, we have retained the language in the proposed rule.

Furthermore, the requirement provides enough flexibility that States likely already have the infrastructure in place to operationalize a hotline or other reporting mechanism, and therefore we do not expect it will be a burden. We want to emphasize that the Lead Agency may choose a different agency at the State, Territory, Tribal, or local level to manage the parental complaint system or find ways to combine the process for collecting parental complaints with already existing hotlines. For example, in some States and Territories, the licensing agency handles complaints of licensed providers and a different agency handles license-exempt providers. Lead Agencies may choose to devolve management of a complaint system to the local level in order to facilitate more prompt and timely follow-up. We leave it to the discretion of the Lead Agency to determine the best way to manage the hotline.

Process for Substantiating and Responding to Complaints. This final rule requires Lead Agencies at § 98.32(d)(1) to describe in their Plans their processes for substantiating and responding to complaints, including whether the State, Territory or Tribe uses monitoring as part of its process for responding to complaints for both CCDF and non-CCDF providers. We encourage Lead Agencies to have a complaint response plan in place that includes appropriate time frames for following up on a complaint depending on the urgency or severity of the parent's concern and other relevant factors. States, Territories and Tribes must have a process for substantiating complaints, and we strongly recommend that this include unannounced inspections and monitoring visits, particularly in instances where there is a potential threat to safety, health, or well-being of children.

Comment: In the NPRM, we requested comments about requiring Lead Agencies at § 98.42 to use unannounced monitoring visits to respond to complaints related to health and safety of the child. As discussed later, many

commenters supported States being required to conduct inspections in response to complaints. However, others felt that we should leave how Lead Agencies respond to complaints to the discretion of the State.

Response: This final rule does not require Lead Agencies to use a specific process for responding to complaints. However, it is important that the public know how a Lead Agency responds to and substantiates a complaint. This is especially true because of the long-standing statutory requirement for States to keep a record of any substantiated complaints made about a child care provider. In order to meet that requirement, Lead Agencies must have some process for examining complaints when they are submitted. Therefore, this final rule requires States to provide additional information in their Plans about how they respond to complaints, including whether or not the response includes monitoring visits of CCDF and non-CCDF providers.

§ 98.33 Consumer and Provider Education

In the 2014 reauthorization, Congress expanded the requirements related to consumer and provider education. Section 658E(c)(2)(E) of the Act requires Lead Agencies to collect and disseminate, through child care resource and referral organizations or other means as determined by the Lead Agency, to parents of eligible children, the general public, and, where applicable, providers, consumer education information that will promote informed child care services. In addition, Section 658E(c)(2)(D) requires monitoring and inspection reports of child care providers to be made available electronically. This focus on consumer education as a crucial part of parental choice has laid the foundation for a more transparent system, helping parents to better understand their child care options and encouraging providers to improve the quality of their services.

Every interaction parents have with the subsidy system is an opportunity to engage them in consumer education to help them make informed decisions about their child care providers, as well as provide resources that promote child development. This final rule requires consumer education services be directly included as part of the intake and eligibility process for families applying for child care assistance. Parents of eligible children often lack the information necessary to make informed decisions about their child care arrangement. Low-income working families may face additional barriers when trying to find information about child care providers, such as limited access to the internet, limited literacy skills, limited English proficiency, or disabilities. Lead Agencies can play an important role in bridging the gap created by these barriers by providing information directly to families receiving CCDF subsidies to ensure they fully understand their child care options and are able to assess the quality of providers.

When implementing consumer and provider education provisions, we recommend Lead Agencies consider three target audiences: Parents, the general public, and child care providers. While some components are aimed at ensuring parents have the information they need to choose a child care provider, others are equally important for caregivers who interact with parents on a regular basis and can serve as trusted sources of information.

Lead Agencies should ensure that all materials are consumer-friendly and easily accessible; this includes using plain language and considering the abilities, languages, and literacy levels of the targeted audiences. Lead Agencies should consider translation of materials into multiple languages, as well as the use of "taglines" on consumer education materials for frequently encountered non-English languages and to inform persons with disabilities how they can access auxiliary aids or services and receive information in alternate formats at no cost.

Consumer education Web site. This final rule amends paragraph (a) of § 98.33 to require Lead Agencies to collect and disseminate consumer education information to parents of eligible children, the general public, and providers through a consumer-friendly and easily accessible Web site. The Web site must, at a minimum, include seven components: (1) Lead Agency policies and procedures, (2) information on availability of child care providers, (3) quality of child care providers, (4) provider-specific monitoring and inspection reports, (5) aggregate number of deaths and serious injuries (for each provider category and licensing status) and instances of substantiated child abuse in child care settings each year, (6) referral to local child care resource and referral organizations, and (7) directions on how parents can contact the Lead Agency, or its designee, and other programs to better understand information on the Web site. The specifics of each component are discussed in detail below.

This final rule requires the Web site to be consumer-friendly and easily accessible. To ensure that the Web site is accessible for all families, it must provide for the widest possible access to services for families who speak languages other than English and persons with disabilities. Lead Agencies should make sure the Web site meets all Federal and State laws regarding accessibility, including the Americans with Disabilities Act (ADA) of 1990 (42 U.S.C. 12101, *et seq.*), to ensure individuals with disabilities are not excluded, denied services, segregated or otherwise treated differently because of the absence of auxiliary aids and services. We recommend Lead Agencies follow the guidelines laid out by section 508 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 794d), when designing their Web sites. Section 508 requires that individuals with disabilities, who are members of the public seeking information or services from a Federal agency, have access to and use of information and data that is comparable to that provided to the public who are not individuals with disabilities. The US Department of Justice has provided guidance and resources on how to create an accessible site at *http://www.ada.gov/Websites2.htm.*

Parents should be able to access all the consumer information they need to make an informed child care choice through a simple, single online source. We encourage Lead Agencies to review current systems and redesign if needed to allow for a single point of entry, especially if the systems are funded with CCDF funds. However, we recognize that Lead Agencies have made significant investments in databases and other web-based applications. For many States/Territories, the CCDF Lead Agency and the licensing agency may not be the same, leading to multiple data systems with different ownership. We do not intend to require completely new systems be built. Rather, the Web site is a single starting point for parents to access the various sources of public information required by the Act, including health and safety information, licensing history, and other related provider information. In the case where this information is already available on multiple Web sites, such as in a locally-administered State where each county has its own Web site, the Lead Agency could choose to create a single consumer-friendly Web page that connects to each of these Web sites, provided that each of the Web sites meets all the criteria at § 98.33(a). Similarly, if there are two Web sites, one that includes licensed providers and another that includes CCDF providers, we strongly encourage Lead Agencies to

create a single Web site through which parents can access information.

The first required component of the consumer education Web site is a description of Lead Agency policies and procedures relating to child care. This includes explaining how the Lead Agency licenses child care providers, including the rationale for exempting providers from licensing requirements, as described at § 98.40; the procedure for conducting monitoring and inspections of child care providers, as described at § 98.42; policies and procedures related to criminal background checks for staff members of child care providers, as described at § 98.43; and the offenses that prevent individuals from being employed by a child care provider or receiving CCDF funds. The information about Lead Agency policies and procedures included on the consumer education Web site should be in plain language.

The second required component is a localized list of all providers that is searchable by zip code and differentiates whether they are licensed or license-exempt providers. This information must include all licensed child care providers, and at the discretion of the State, all license-exempt child care providers serving children receiving CCDF assistance, other than those only providing care for children to whom they are related. This means that the Lead Agency may choose to not include license-exempt family child care homes in the zip code search. When making information public, Lead Agencies should ensure that the privacy of individual caregivers and children is maintained, consistent with State, local, and tribal laws. Lead Agencies must ensure that this localized list includes a clear indicator if a serious injury or death due to a substantiated health and safety violation has occurred at that provider. This clear indicator should link to the monitoring and inspection report (or plain language summary of the report) that provides more detail and context on the serious injury or death that occurred. As described in more detail below, it is crucial that parents are able to clearly identify if a provider had a violation that led to the death of a child or a serious injury. We expect that providers with serious violations (*e.g.*, leading to a child's death) will no longer be operating once a State, Territory or Tribe takes compliance action.

While not required, we recommend that Lead Agencies include additional information with provider profiles, beyond what is required by statute, including contact information, enrollment capacity, years in operation, education and training of caregivers, and languages spoken by caregivers. We also suggest that the quality information and monitoring reports be included in the initial search results.

The third required component is provider-specific quality information as determined by the Lead Agency, in accordance with Section 658E(c)(2)(E)(i)(II) of the Act, for all child care providers for whom they have this information on the Web site. Lead Agencies may choose the best method for differentiating the quality levels of child care providers. In this rule, we are not requiring that Lead Agencies have a QRIS. However, we strongly encourage Lead Agencies to use a QRIS, or other transparent system of quality indicators, to collect the quality information required at § 98.33(a)(3). Lead Agencies that have a QRIS should use information from the QRIS to provide parents with provider-specific quality information. By transparent system of quality indicators we mean a method of clear, research-based indicators that are appropriate for different types of providers, including child care centers and family child care homes, and appropriate for providers serving different age groups of children, including infants, toddlers, preschool, and school-age children. The system should help families easily understand whether a provider offers services meeting Lead Agency-determined best practices and standards to promote children's development, or is meeting a nationally recognized, research-based set of criteria, such as Head Start or national accreditation. We encourage Lead Agencies to incorporate mandatory licensing requirements as the foundation of any system of quality indicators, as a baseline of information for parents. By building on licensing structures, Lead Agencies may have an easier transition to a more sophisticated system that differentiates between indicators of quality.

Because not all eligible and licensed non-relative child care providers may be included in a transparent system of quality indicators, this final rule clarifies that provider-specific quality information must only be posted on the consumer Web site if it is available for the individual provider, which is a caveat included in statute. We recognize that it takes time to build a comprehensive system that is inclusive of a large number of providers across a wide geographic area. However, in order for the quality information provided on the Web site to be meaningful and useful for parents it should include as many providers as possible. We are not requiring a specific participation rate, but the public should have contextual information regarding the extent of participation by providers in a system of quality indicators.

In designing a mechanism for differentiating child care quality, we suggest considering the following key principles: Provide outreach to targeted audiences; ensure indicators are research-based and incorporate the use of validated observational tools when feasible; ensure assessments of quality include program standards that are developmentally appropriate for different age groups; incorporate feedback from child care providers and families; make linkages between consumer education and other family-specific issues such as care for children with special needs; engage community partners; and establish partnerships that build upon the strengths of child care resource and referral programs and other public agencies that serve low-income parents.

The majority of States/Territories reported in their CCDF Plans that they have at least started to implement a QRIS. HHS has established a Priority Performance Goal to track the number of States that implement a QRIS meeting recommended benchmarks, and, as of FY 2015, 32 States/Territories met the benchmark, and 28 States/Territories have made progress on implementing a high-quality QRIS that meets HHS benchmarks since the goal was established in FY 2011.

While ACF encourages Lead Agencies to implement a systemic framework for evaluating, improving, and communicating the level of quality in child care programs, we are not limiting Lead Agencies to a QRIS as the only mechanism for collecting the required quality information. Lead Agencies have the flexibility to implement more limited, alternative systems of quality indicators. For example, Lead Agencies could choose to use a profile or report card of information about a child care provider that could include compliance with State/Territory licensing or health and safety requirements, information about ratios and group size, average teacher training or credentials, type of curriculum used, any private accreditations held, and presence of caregivers to work with young English learners or children with special needs. Lead Agencies could also build on existing professional development registries or other training systems to provide parents with information about caregiver training.

The fourth Web site requirement is Lead Agencies must post provider-specific results of monitoring and inspection reports, including those

reports that are due to major substantiated complaints (as defined by the Lead Agency) about a provider's failure to comply with health and safety requirements and other Lead Agency policies. The definition of "major substantiated complaint" varies across the country. Therefore, we are not requiring a standard definition. However, this final rule requires Lead Agencies to explain how they define it on their consumer education Web sites. This requirement ensures that the results of monitoring and inspection requirements at § 98.42 are available to parents when they are deciding on a child care provider.

In following the statutory language at Section 658E(c)(2)(D) of the Act, Lead Agencies must post the monitoring and inspections results for child care providers, as defined at § 98.2. This means that the Web site must include any provider subject to the monitoring requirements at § 98.42, as well as all licensed child care providers and all child care providers eligible to deliver CCDF services. Lead Agencies are required to post inspection reports for child care providers that do not receive CCDF, if available. However, if information is not available, such as if a provider is not being inspected and there is no inspection report, States are not required to actively seek the information.

This final rule requires Lead Agencies to post full monitoring and inspection reports. In order for inspection results to be consumer-friendly and easily accessible, Lead Agencies must use plain language for parents and child care providers and caregivers to understand. Often monitoring and inspection reports are long and include jargon and references to codes or regulations without any explanation. Reports that include complicated references and lack explanation are not consumer-friendly, limiting a parent's ability to make an informed decision about a child care provider. In the case that full reports are not in plain language, Lead Agencies must post a plain language summary or interpretation in addition to the full monitoring and inspection report.

Lead Agencies must post reports in a timely manner and include information about the date of inspection, information about any corrective actions taken by the Lead Agency and child care provider, where applicable, and prominently display any health and safety violations, including any fatalities or serious injuries that occurred at that child care provider While this final rule does not define "consumer-friendly and easily accessible", it is crucial parents be able to clearly identify if a provider had a violation that led to the death of a child or a serious injury. To ensure this information is easily accessible, this final rule requires Led Agencies to clearly and prominently display any health and safety violations, including any fatalities or serious injuries taking place at the provider. Prominently displaying this information helps parents to access critical information quickly and without having to sift through other information or click through multiple pages. We recommend this information be the first item, after the provider name and identifying information, included on the report, and be highlighted in a way that makes it easy for parents to see, such as through a different or bold font or a special text box. As stated earlier in the rule, the localized list of providers should include a clear indicator if a serious injury or death occurred at the provider due to a substantiated health and safety violation, and this indicator should link to the monitoring and inspection report that contains greater detail and contextual information about the serious injury or death.

Lead Agencies must also post, at a minimum, three years of results, where available. A single year of results could mask patterns of infractions and is insufficient for a parent to judge the safety of the environment. We do not expect Lead Agencies to post reports retrospectively or prior to the effective date of this provision (November 19, 2017). Finally, while not required, if earlier reports are available, we encourage Lead Agencies to post them on the Web site in order to provide more information for parents.

Posting results and corrective actions in a timely manner is crucial to ensuring parents have updated information when making their provider decisions. The final rule does not define "timely." We are leaving it to the discretion of the Lead Agency to determine a reasonable amount of time based on the needs of its families and its capacity for updating. However, we do recommend Lead Agencies update results as soon as possible and no later than 90 days after an inspection or corrective action is taken.

This final rule also requires Lead Agencies to establish a process for correcting inaccuracies in the reports. Lead Agencies have discretion to determine the best process for ensuring that all the information included in the monitoring and inspection results is accurate. We recommend they work with child care providers to design and implement a process, and widely distribute the process to child care providers.

The fifth required component of the consumer education Web site is posting of the aggregate number of deaths, serious injuries, and instances of substantiated child abuse that occurred in child care settings each year, for eligible child care providers. This requirement is associated with the provider setting and therefore it should include information about any child in the care of a provider eligible to receive CCDF, not just children receiving subsidies. The information on deaths and serious injuries must be separately delineated by category of provider (*e.g.* centers, family child care homes) and licensing status (*i.e.*, licensed or license-exempt). The information should include: (1) The total number of children in care by provider category/licensing status; (2) the total number of deaths of children in care by provider category/licensing status; and (3) the total number of serious injuries in care by provider category/licensing status. We are not defining serious injuries or substantiated child abuse in this rule. We encourage Lead Agencies to use their State or Territory child welfare agency's definition of substantiated child abuse for consistent reporting across programs. We encourage Lead Agencies to include the data with the results of an annual review of all serious injuries and deaths occurring in child care, as required at § 98.53(f)(4).

The sixth required component of the consumer education Web site is the ability to refer to local child care resource and referral organizations, which is also a requirement of the national Web site discussed later in this final rule. The Web site should include contact information, as well as any links to Web sites for any local child care resource and referral organizations.

The final required component of the consumer education Web site is information on how parents can contact the Lead Agency, or its designee, or other programs that can help the parent understand information included on the consumer education Web site. The consumer education Web site required by § 98.33(a) represents a significant step in making it easier for parents to access information about the child care system and potential child care providers. However, the amount of information may be difficult to understand or find. In addition, parents searching for child care may prefer to speak with a person directly as they make decisions about their child's care. Therefore, the Web site must include information about how to contact the Lead Agency, or its designee, such as a

child care resource and referral agency, to answer any questions parents might have after reviewing the Web site.

Commenters expressed support for the proposed consumer education requirements. In general, they felt strongly about the importance of increased access to information for parents and new opportunities for family engagement both by the Lead Agency and the child care provider.

Comment: The majority of commenters supported including all licensed child care providers on the consumer education Web site. However, commenters were mixed on whether license-exempt providers receiving CCDF should be included. Organizations representing school-age child care programs, family child care providers, and private child care providers felt it was important that license-exempt providers be included on the Web site because they may include more formal types of care, like afterschool programs based in schools and are therefore license-exempt. One commenter said "Because many States offer exemptions from licensing for school-aged care centers, it will be important to make these centers and their information available to parents by ensuring that Web sites are not limited to licensed care, moreover expanding the Web site to all eligible providers/centers further provides parents with choice." Further, as another commenter pointed out, "In many States, license-exempt providers are also family child care providers who view themselves in this profession but cannot get licensed by their State even if they wanted to." For these providers, they may want to be on the Web site, and a policy exempting all license-exempt providers might not work in their best interest.

On the other hand, several commenters, including States, national advocacy organizations, and unions representing child care workers, suggested providing Lead Agencies with flexibility about which providers must be included on the Web site. Their concerns centered on the fact that not all providers, especially license-exempt family child care homes, are a part of the child care market and therefore may not want to be available for to care for children they do not know. Alternatively, they may be at capacity and unable to accept additional children. One comment signed by several national organizations said "We believe that including license-exempt providers would serve to advertise their services to parents looking for child care . . . These providers are often not in the business of child care and only care for individuals with whom they have a prior relationship." A State also noted that "this might serve to advertise the providers' services to parents looking for care when the care is an informal situation." A few States also expressed concerns about privacy for these providers as they are providing care in their homes.

Response: The proposed rule included all licensed and eligible child care providers, other than those only serving children to whom they were related, in all of the provider-specific posting requirements, including the zip-code search. However, the commenters raise valid points about how some providers may not actually be a part of the market. Therefore, the final rule gives Lead Agencies the flexibility to decide which license-exempt CCDF providers are included in the localized list at § 98.33(a)(2). We strongly encourage Lead Agencies not to have a blanket policy regarding including these providers in the zip-code search, but rather suggest being mindful about the different types of license-exempt providers in their State, as well as mindful of providers that might want to be included in searches for marketing purposes.

However, we have not extended this flexibility to the provider-specific quality information at § 98.33(a)(3), as the statute and this final rule include the caveat that quality information must be included only if it is available for that child care provider. If a Lead Agency has quality information based on a QRIS or other transparent system of quality indicators, then this information should be available to parents and the general public, regardless of the provider's licensing status. We understand that some States do not include license-exempt child care providers in their QRIS, and this rule continues to allow States the flexibility to only include licensed child care providers in their quality ratings. However, if the QRIS includes license-exempt providers, this quality information must be posted on the Web site for those providers with ratings.

We also have not extended this flexibility to monitoring and inspections results required at § 98.33(a)(4), and are requiring Lead Agencies to post provider-specific information for all licensed and eligible child care providers, unless the provider is related to all the children in their care. This is more consistent with the requirements of the Act and critical to ensuring that parents have the information they need to make an informed child care decision. These providers are required to be monitored on an annual basis. Therefore, the Lead Agency will have the report already, limiting additional burden. In addition, research suggests that online publishing of licensing violations and complaints impact provider behavior. One study found that after inspection reports were posted online, there was an improvement in the quality of care, specifically the classroom environment and improved management at child care centers serving low-income children receiving child care subsidies. (Witte, A. and Queralt, M., *What Happens When Child Care Inspections and Complaints Are Made Available on the Internet?* National Bureau of Economic Research, 2004) While the zip-code search may be more about marketing and referrals to child care providers, the monitoring reports are about ensuring parents know the health and safety records of their child care provider, as well as about transparency of public dollars.

Lead Agencies with concerns regarding providers' privacy could use a unique identifier, such as a licensing number, to include on the profile. Parents interested in a certain provider can ask the provider or the Lead Agency for the identifier in order to look up more information about health and safety requirements met by a certain provider on the Web site. Lead Agencies also may choose to provide only limited information about a provider, such as provider name and zip code to make it easier for parents to identify their chosen provider without posting their full address.

Comment: Commenters recognized and supported the need to have more than one year of reports available for each provider, but the majority of commenters, including States and national organizations, expressed concern about the proposed requirement that the Web sites include at least five years of results. Several States noted that five years of information may not be useful and cause parents to overlook the improvements and corrections providers have made in the last five years. One State said "Providing older data that may be outdated could be confusing to parents and detrimental to child care providers who have made changes or improvement to practices." While others said that for States that do more than one visit each year, this would lead to an excess of information. Several national organizations suggested giving Lead Agencies flexibility with how many years they included, provided they included at least one year. A couple of States said two to three years would better fit existing State licensing policies.

Response: We appreciated commenters providing additional

details about how reports are currently handled and how the proposed five-year requirement would interact with their policies. Based on these comments, we have changed the proposed regulation at § 98.33(a)(4)(iii) and now require that Lead Agencies include a minimum of either three years of results. This will balance the need for parents to have access to a comprehensive health and safety history of their provider with evolving State policies regarding monitoring and inspections.

Comment: Several national organizations commented that creating a plain language summary of individual monitoring and inspection reports would create a burden for Lead Agencies. Instead, they recommended "permitting States the alternative of posting an interpretation—for example, a plain language glossary of terms that could help parents interpret monitoring results".

Response: It is important to have individual monitoring and inspection reports easily accessible to both parents and providers. Expecting a parent to have to consult a separate guide or glossary in order to understand a monitoring and inspection report creates an additional burden to information. Therefore, we declined to allow a guide to take the place of the plain language summary. We encourage Lead Agencies to consider simplifying and translating their monitoring and inspection reports in order to create more consumer-friendly documents. This will help to ease any additional burden that might be created by having to create a plain language summary of the report.

Comment: Commenters, including national organizations and child care worker organizations, recommended that we add a regulatory requirement that Lead Agencies create an appeals process for findings included in the monitoring reports. Some commenters noted that sometimes reports have errors, and Lead Agencies should have a process to correct these errors to ensure proper information for both providers and parents. Others said providers should have time to appeal a finding before the report or finding is posted on the Web site.

Response: We agreed that Lead Agencies should have a process in place for quickly correcting errors on the Web site, and have made this a regulatory requirement at § 98.33(a)(4). However, we declined to add a regulatory requirement for States to have an appeals process for monitoring findings or to require a delay in posting this information while an appeal is in process. We leave it to the discretion of the Lead Agency to work with providers to determine the best approach.

We strongly support Lead Agencies implementing policies that are fair to providers, including protections related to the consumer education Web site. We recommend, but do not require, that Lead Agencies establish an appeals process for providers that receive violations, consistent with their own State laws and policies governing administrative appellate proceedings. This appeals process should include timeframes for filing the appeal, for the investigation, and for removal of any violations from the Web site determined on appeal to be unfounded. Lead Agencies also must ensure that the consumer education Web site is updated regularly. Some Lead Agencies currently allow providers to review monitoring and inspection results prior to posting on a public Web site. Nothing in this rule should be taken as prohibiting that practice moving forward. However, the requirement that information be posted in a timely manner means that Lead Agencies may need to limit the amount of time providers have to review the results prior to posting.

Comment: In the proposed rule, we requested comment on § 98.33(a) about whether the preamble to this final rule should set 90 days as a benchmark for timely posting of results. Commenters universally supported ACF not including a definition of "timely" in the regulatory language. We received many comments with a range of suggestions for how to define "timely". Several commenters, including many national organizations, said that 90 days was too long and recommended a 30-day benchmark. On the other hand, several States commented that while they are usually able to post reports within a few days, they can take up to 90 days when there are other agencies that need to be involved.

Response: We appreciated commenters providing feedback on this benchmark. We have chosen to leave it as proposed in the NPRM as a recommended 90 day benchmark, and are not adding a requirement to the regulatory language. We expect reports to be posted as quickly as possible, but believe 90 days is reasonable considering the complexities related to the monitoring and inspection process and reports.

Comment: We proposed to require that States post provider-specific information on the number of serious injuries and deaths that occurred in that provider setting. While a couple commenters supported the goal of this provision, the vast majority, including States, national organizations, and child care worker organizations, were strongly opposed to the proposal. Most of the commenters noted, as we did in the preamble to the proposed rule, that not all serious injuries and deaths that occur in child care are the fault of the child care provider, and any provider-specific information would need to include additional details about what happened. However, as one State said, "Providing information on the context of the situation would be labor intensive and may potentially violate the child and families' privacy. However, providing no context would be unfair to providers." Several States also commented that "Where a provider's conduct related to an injury or other incident fails to meet licensing requirements, the incident will result in an enforcement action that is publicly posted." Another State said "If the child care provider or a staff member is found to be responsible for a child's death, the child care provider would not continue to be registered, licensed, or employed at a licensed child care facility. Information on specific incidents would be available through the substantiated complaint information already required for the public Web site."

Response: Based on comments, we have chosen not to include the proposed requirement to post provider-specific information on serious injuries and deaths in this final rule, though nothing in this rule should be seen as prohibiting Lead Agencies from including this information on their Web sites if they so choose.

However, we continue to have concerns about a parent's ability to quickly access information about whether a death or serious injury had occurred at a specific child care provider. To balance the concerns of the commenters with the need for parents to be able to easily access this information, we have revised § 98.33(a)(4) to require that monitoring and inspection reports and summaries prominently display information about health and safety violations, including fatalities and serious injuries, that occurred at that child care provider. Parents will be able to access this important information more quickly if it is highlighted at the beginning of the report, as opposed to buried amongst other inspection items. Further, including this information as part of the monitoring and inspection report avoids providing information about deaths and serious injuries without the context necessary for parents to make an informed decision.

Additional consumer education. This final rule incorporates statutory requirements at Section 658E(c)(E)(i) of the Act by adding paragraph (b) at

§ 98.33, which requires Lead Agencies to provide additional consumer education to eligible parents, the general public, and, where applicable, child care providers. The consumer education may be done through child care resource and referral organizations or other means as determined by the Lead Agency, and can be delivered through the consumer education Web site at § 98.33(a). We strongly encourage Lead Agencies to use additional means to provide this information including through direct conversations with case workers, information sessions for parents and child care providers, outreach and counseling available at intake from eligibility workers, and to and through child care providers to parents.

This final rule requires consumer education to include: Information about the availability of child care services through CCDF, other programs for which families might be eligible, and the availability of financial assistance to obtain child care services; other programs for which families receiving CCDF may be eligible; programs carried out under Section 619 and Part C of the Individuals with Disabilities Education Act (IDEA) (20 U.S.C. 1419, 1431 *et seq.*); research and best practices concerning children's development, including meaningful parent and family engagement and physical health and development; and policies regarding the social-emotional behavioral health of children.

The first required piece of information is about the availability of child care services through CCDF and other programs that parents may be eligible for, as well as any other financial assistance that may be available to help parents obtain child care services. Lead Agencies should provide information about any other Federal, State/Territory/Tribal, or local programs that may pay for child care or other early childhood education programs, such as Head Start, Early Head Start and State-funded pre-kindergarten that would meet the needs of parents and children. This information should also detail how other forms of child care assistance, including CCDF, are available to cover additional hours the parent might need due to their work schedule.

The second requirement is for consumer education to include information about other assistance programs for which families receiving child care assistance may be eligible. These programs include: Temporary Assistance for Needy Families (TANF) (42 U.S.C. 601 *et seq.*); Head Start and Early Head Start (42 U.S.C. 9831 *et seq.*); Low-Income Home Energy Assistance Program (LIHEAP) (42 U.S.C. 8621 *et seq.*); Supplemental Nutrition Assistance Program (SNAP) (7 U.S.C. 2011 *et seq.*); Special Supplemental Nutrition Program for Women, Infants, and Children (WIC) (42 U.S.C. 1786); Child and Adult Care Food Program (CACFP) (42 U.S.C. 1766); and Medicaid and the State Children's Health Insurance Programs (CHIP) (42 U.S.C. 1396 *et seq.*, 1397aa *et seq.*).

In providing consumer education, Lead Agencies may consider the most appropriate and effective ways to reach families, which may include information in multiple languages and partnerships with other agencies and organizations, including child care resource and referral. Lead Agencies should also coordinate with workforce development entities that have direct contacts with parents in need of child care. Some Lead Agencies co-locate services for families in order to assist with referrals or enrollment in other programs.

Families eligible for child care assistance are often eligible for other programs and benefits but many parents lack information on accessing the full range of programs available to support their children. More than half of infants and toddlers in CCDF have incomes below the federal poverty level, making them eligible for Early Head Start. Lead Agencies can work with Early Head Start programs, including those participating in Early Head Start-Child Care Partnerships, to direct children who are eligible for Early Head Start to available programs. Currently only approximately 5% of eligible children receive Early Head Start, and less than half of eligible children are served by Head Start.

Despite considerable overlap in eligibility among the major work support programs, historically, many eligible working families have not received all public benefits for which they qualify. For example, more than 40 percent of children who are likely to be eligible for both SNAP and Medicaid or CHIP fail to participate in both programs (Rosenbaum, D. and Dean, S. *Improving the Delivery of Key Work Supports: Policy & Practice Opportunities at A Critical Moment,* Center on Budget and Policy Priorities, 2011). A study using 2001 data found that only 5 percent of low-income working families obtained Medicaid or CHIP, SNAP, and child care assistance (Mills, G., Compton, J. and Golden, O., *Assessing the Evidence about Work Support Benefits and Low-Income Families,* Urban Institute, 2011). In addition to providing consumer education on the assistance programs listed at § 98.33(b)(1)(ii), Lead Agencies must provide outreach to families experiencing homelessness in accordance with § 98.51(c). As part of their outreach to families experiencing homelessness, we encourage Lead Agencies to provide consumer education about housing assistance programs when providing consumer information on other assistance programs.

In addition to informing families about the availability of these programs, some Lead Agencies have streamlined parents' access to other benefits and services by coordinating and aligning eligibility criteria or processes and/or documentation or verification requirements across programs. This benefits both families and administering agencies by reducing administrative burden and inefficiencies. Lead Agencies also coordinate to share data across programs so families do not have to submit the same information to multiple programs. Finally, Lead Agencies have created online Web sites or portals to allow families to screen for eligibility and potentially apply for multiple programs. We recommend Lead Agencies consider alignment strategies that help families get improved access to all benefits for which they are eligible.

Thirdly, consumer education must include information about programs for children with disabilities carried out under Part B Section 619 and Part C of the Individuals with Disabilities Education Act (IDEA) (20 U.S.C. 1419, 1431 *et seq.*).

The fourth piece of required consumer education is information about research and best practices concerning children's development, and meaningful parent and family engagement. It must also include information about physical health and development, particularly healthy eating and physical activity. This information may be included on the consumer education Web site, as well as be provided through brochures, in person meetings, from caseworks, and other trainings.

While this information is important for parents and the general public, we encourage Lead Agencies to target this information to child care providers as well. Each of these components is crucial for caregivers to understand in order to provide an enriching learning environment and build strong relationships with parents. Lead Agencies may choose to include information about family engagement frameworks in their provider education. Many States and communities have employed these frameworks to promote caregiver skills and knowledge through

their QRIS, professional development programs, or efforts to build comprehensive early childhood systems. States have used publicly-available tools, including from the Office of Head Start. The Head Start *Parent, Family, and Community Engagement* framework is a research-based approach to program change that shows how different programs can work together as a whole—across systems and service areas—to support parent and family engagement and children's learning and development. This framework will be revised by joint technical assistance center for use by States and Territories and for child care providers. In addition, the U.S. Department of Health and Human Services and U.S. Department of Education in 2016 released a policy statement on family engagement from the early years to the early grades, including resources for States, early childhood programs, and others to build capacity to effectively partner with families.

Understanding research and best practices concerning children's development is an essential component for the health and safety of children, both in and outside of child care settings. Caregivers should be knowledgeable of important developmental milestones not only to support the healthy development of children in their care, but also so they can be a resource for parents and provide valuable parent education. Knowledge of developmental stages and milestones also reduces the odds of child abuse and neglect by establishing more reasonable expectations about normative development and child behavior. This requirement is associated with the requirement at § 98.44(b)(1) that orientation or pre-service for child care caregivers, teachers and directors include training on child development.

Lastly, consumer education must include provision of information about policies regarding social-emotional behavioral health of children, which may include positive behavioral health intervention and support models for birth to school-age or as age-appropriate, and policies to prevent suspension and expulsion of children birth to age five in child care and other early childhood programs as described in the Plan at § 98.16(ee).

Social-emotional development is fostered through securely attached relationships; and learning, by extension, is fostered through frequent cognitively enriching social interactions within those securely attached relationships. Studies indicate that securely attached children are more advanced in their cognitive and language development, and show greater achievement in school. In 2015, ACF issued an information memorandum detailing research and policy options related to children's social-emotional development. (CCDF–ACF–IM–2015–01, *http://www.acf.hhs.gov/sites/default/files/occ/ccdf_acf_im_2015_01.pdf*). By providing consumer education on social-emotional behavioral health policies, Lead Agencies are helping parents, the general public, and caregivers understand the importance of social-emotional and behavioral health and how the Lead Agency is encouraging the support of children's ability to build healthy and strong relationships.

In conjunction with this consumer education requirement, this rule adds § 98.16(ee) which requires Lead Agencies to provide a description of their policies to prevent suspension, expulsion, and denial of services due to behavior of children birth to age five in child care and other early childhood programs receiving CCDF assistance. Ensuring that parents and providers understand suspension and expulsion policies for children birth to age five is particularly important. Data on suspension and expulsion in early childhood education settings is somewhat limited and focused on rates at publicly-funded prekindergarten programs. One national study that looked at almost 4,000 State-funded prekindergarten classes found that the overall rate of expulsion in State-funded prekindergarten classes was more than three times the national rate of expulsion for students in Kindergarten through Twelfth Grade (Gilliam, W. *Prekindergarteners Left Behind: Expulsion Rates in State Prekindergarten Programs.* Foundation for Child Development, 2005). Data from the U.S. Department of Education showed that more than 8,000 preschool students were reported as suspended at least once during the 2011–2012 school year, with Black children and boys disproportionately being suspended more than once (U.S. Department of Education Office of Civil Rights *Data Snapshot: Early Childhood Education,* March 2014. *http://www2.ed.gov/about/offices/list/ocr/docs/crdc-early-learning-snapshot.pdf*). In 2014, the U.S. Departments of Health and Human Services and Education jointly released a policy statement addressing expulsion and suspension in early learning settings and highlighting the importance of social-emotional and behavioral health (*https://www.acf.hhs.gov/sites/default/files/ecd/expulsion_suspension_final.pdf*). The policy statement affirms the Departments' attention to social-emotional and behavioral health and includes several recommendations to States and early childhood programs, including child care programs, to assist in their efforts. It strongly encourages States to establish statewide policies, applicable across settings, including publicly and privately funded early childhood programs, to promote children's social-emotional and behavioral health and to eliminate or severely limit the use of expulsion, suspension, and other exclusionary discipline practices.

Comment: Commenters were supportive of the additional consumer education information. We received a few comments from national organizations regarding the requirement that Lead Agencies provide information about policies related to suspension and expulsion of children ages birth to five. These commenters requested regulatory language that more specifically either prohibited the use of suspension and expulsion for these age groups or at least discouraged their use. One State commented that a statewide policy prohibiting providers from expelling or suspending children would be very difficult to enforce.

Response: In response to these comments, the regulatory language at § 98.33(b)(1)(v) requires consumer education about policies to *prevent* suspension and expulsion. A similar change was made in the plan section at § 98.16(ee). While we cannot require States to create policies that limit or prohibit suspension and expulsion of young children, we urge States to move in that direction. We received no other comments on § 98.33(b) and have retained the rest of the language as proposed in the NPRM.

Information about developmental screenings. Section 658E(c)(2)(E)(ii) of the Act requires Lead Agencies to provide consumer education about developmental screenings to parents, the general public, and, when applicable, child care providers. Specifically, such information should include (1) information on existing resources and services the Lead Agency can use in conducting developmental screenings and providing referrals to services for children who receive child care assistance; and (2) a description of how a family or eligible child care provider may use those resources and services to obtain developmental screenings for children who receive child care assistance and may be at risk for cognitive or other developmental delays, including social, emotional, physical, or linguistic delays. The

information about the resources may include the State or Territory's coordinated use of the Early and Periodic Screening, Diagnosis, and Treatment program under the Medicaid program carried out under title XIX of the Social Security Act (42 U.S.C. 1396 *et seq.*) and developmental screening services available under section 619 and part C of the IDEA (20 U.S.C. 1419, 1431 *et seq.*).

This final rule adds new paragraph (c) at § 98.33, which requires Lead Agencies to provide information on developmental screenings as part of their consumer education efforts during the intake process for families receiving CCDF assistance and to caregivers, teachers, and directors through training and education. Information on developmental screenings, as other consumer education information, should be accessible for individuals with limited English proficiency and individuals with disabilities.

Educating parents and caregivers on what resources are available for developmental screenings, as well as how to access these screenings, is crucial to ensuring that developmental delays or disabilities are identified early. Some children may require a more thorough evaluation by specialists and additional services and supports. Lead Agencies should ensure that all providers are knowledgeable on how to access resources to support developmental and behavioral screening, and make appropriate referrals to specialists, as needed, to ensure that children receive the services and supports they need as early as possible.

Comment: Commenters supported the requirement to provide information about developmental screenings to parents and providers. One advocacy organization recommended that we require that all children receive a developmental screening within 45 days of enrollment in order to align with Head Start standards.

Response: As we do not have the authority to require all children receiving CCDF to have a developmental screening, we declined to add the requirement to this final rule. While we are not requiring that all children receive a developmental screening, we strongly recommend that Lead Agencies develop strategies to ensure all children receive a developmental and behavioral screening within 45 days of enrollment in CCDF, which aligns with Head Start standards. With regular screenings, families, teachers, and other professionals can be assured that young children get the services and supports they need, as early as possible to help them thrive alongside their peers. *Birth to 5: Watch Me Thrive,* a coordinated Federal effort to encourage universal developmental and behavioral screening for children and to support their families and caregivers, has information and resources at *www.acf.hhs.gov/programs/ecd/watch-me-thrive.* In addition to research-based developmental and behavioral screenings, Lead Agencies should encourage parents and child care providers to use the tools and resources developed by the Centers for Disease Control and Prevention as part of their "Learn the Signs. Act Early." campaign. These resources help parents and child care providers to become familiar with and keep track of the developmental milestones of children. These resources are available at *http://www.cdc.gov/ncbddd/actearly/.* The resources provided through this campaign are not a substitute for regular developmental screenings, but help to improve early identification of children with autism and other developmental disabilities so children and families can get the services and support they need as early as possible. We received no other comments on this provision and have retained the language in § 98.33(c) as proposed in the NPRM.

This final rule adds new paragraph (d) to § 98.33, which requires Lead Agencies to provide families receiving CCDF assistance with easily understandable information on the child care provider they choose, including health and safety requirements met by the provider, any licensing or regulatory requirements met by the provider, date the provider was last inspected, any history of violations of these requirements, and any quality standards met by the provider. Lead Agencies also should provide information necessary for parents and providers to understand the components of a comprehensive background check, and whether the child care staff members of their provider have received such a check. The consumer statement must also include information about the hotline for parental complaints about possible health and safety violations and information describing how CCDF assistance is designed to promote equal access to comparable child care in accordance with § 98.45.

If a parent chooses a provider that is legally-exempt from regulatory requirements or exempt from CCDF health and safety requirements (*e.g.,* relatives at the Lead Agency option), the Lead Agency or its designee should explain the exemption to the parent. Lead Agencies that choose to use an alternative monitoring system for in-home providers, as described at § 98.42(b)(2)(v)(B), should describe this process for parents that choose in-home care. When a parent chooses a relative or in-home child care provider, the Lead Agency should explain to the parent the health and safety policies associated with relative or in-home care. The Lead Agency should provide the parents with resources about health and safety trainings should the parent wish for the relative to obtain training regardless of the exemption.

There is a great deal of variation in how Lead Agencies handle intake for parents receiving child care subsidies. Therefore, we allow flexibility for Lead Agencies to implement the consumer statement in the way that best fits both their administrative needs and the needs of the parents. This means that the consumer statement may be presented as a hard copy or electronically. When providing this information, a Lead Agency may provide it by referring to the Web site required by § 98.33(a). In such cases, the Lead Agency should ensure that parents have access to the Internet or provide access on-site in the subsidy office. While we recognize the need for Lead Agency flexibility in this area, we have concerns about relying solely on electronic consumer statements. Parents may not have access to the Internet or may have questions about the consumer statement that need to be answered by a person. If a parent is filing an application online, we encourage the inclusion of a phone number, directed to either the Lead Agency or another organization such as a child care resource and referral agency, to ensure parents can have their questions answered. We also recommend that intake done over the phone should include the offer to either email or mail the consumer statement to the parent; and, that information on consumer statements should be accessible by individuals with limited English proficiency and individuals with disabilities.

We realize, in some cases, a parent has chosen their provider prior to the intake process. If the parent comes in with a provider already chosen, the parent should be given the consumer statement on that provider. When a parent has not chosen a child care provider prior to intake, Lead Agencies should ensure that the parent receives information about available child care providers and general consumer education information required at § 98.33(a), (b), and (c). This information should include a description of health and safety requirements and licensing or regulatory requirements for child care

providers, processes for ensuring requirements are met, as well as information about the background check process for child care staff members of providers, and what offenses may preclude a provider from serving children.

We strongly recommend that Lead Agencies provide parents receiving TANF and child care assistance, whether through CCDF or TANF, with the necessary support and consumer education in choosing child care. We strongly encourage social service agencies, child care licensing agencies, child care resource and referral agencies, and other related programs to work closely to ensure that parents receiving TANF are provided with the information and support necessary for them to make informed child care decisions.

Comment: We received mixed comments on the requirement to provide a consumer statement to families receiving child care assistance. Organizations representing child care resource and referral agencies and those representing private child care providers supported the requirement with one commenter saying "This provision of information will further help support the selection of high-quality care for children that promotes their health and safety." We also received several comments from States and national organizations recommending we delete the proposed consumer statement because it is duplicative of the requirements for the consumer education Web site and created additional burdens for the States.

Response: We agree that there is a lot of overlap between the consumer statement and the Web site, as we designed it that way to avoid additional work for Lead Agencies. It seems we were unclear in our description in the proposed rule. We do not expect Lead Agencies to create a whole new document or information item. Rather, the Lead Agency can point parents to the provider's profile on the Web site or print it out for a parent who may be doing intake in person. We also do not expect the consumer statements to be used to try to change the mind of a parent that has already chosen a provider. It is meant to ensure that parents have a comprehensive understanding of the requirements of providers and the health and safety record of their provider. For these reasons, we have retained the proposed rule language related to the consumer statement.

While there is a lot of overlap, the consumer statement provides targeted consumer education to subsidy parents who are specifically clients of the agency, and we have a special interest in helping them select child care, because we know from research that low-income children have the most to gain from high-quality child care and because the care is publicly subsidized. Most Lead Agencies have a direct relationship with families receiving child care subsidies, thus they have an opportunity to provide these parents with the consumer statement and more targeted consumer education.

We encourage Lead Agencies to provide parents receiving CCDF assistance with updated information on their child care provider on a periodic basis, such as by providing an updated consumer statement at the time of the family's next eligibility redetermination. Ties between the CCDF Lead Agency and the licensing agency can help to ensure that families are notified when providers are seriously out-of-compliance with health and safety requirements, and that placement of children and payment of CCDF funds do not continue where children's health and safety may be at-risk.

Linkages to national Web site. Section 658L(b)(2) of the Act requires the Secretary to operate a national Web site and hotline for consumer education and submission of complaints. The Act allows for the national Web site to provide the information either directly or through linkages to State databases. As it is not feasible or sensible for HHS to recreate databases many States have already created, we intend to use electronic transfers between federal, State and local systems to provide information needed by parents to make informed choices about the highest quality early childhood settings available that meet the needs of the families in their communities. In response to this requirement and comments we received on the proposed rule, § 98.33(e) of the final rule adds a requirement for Lead Agencies to provide linkages to databases related to the consumer education requirements at paragraph (a), including a zip-code based list of licensed and license-exempt child care providers, information about the quality of an available child care provider, if available, and health and safety records including monitoring and inspection reports.

Comment: In the proposed rule, we requested comment about the best way to link the required national Web site with the States' consumer education Web sites in order to avoid duplication and maximize coordination. We received a few comments from States about how to link the systems. One State suggested we "simply link all State provider Web sites to the Federal page." A couple States requested clarification about what the linkages might be, with one commenting that "If the national Web site required a data transfer from our State system, we have concerns about the cost and time needed to coordinate implementation of this transfer."

Response: By requiring the opening of linkages to databases, as provided for in the Act, we expect to be able to easily use existing State data to update the national site without creating new requirements or burdens for the Lead Agencies. Creating direct linkages to State and Territory databases gives ACF the ability to pull required child care data, such as available providers and health and safety records, in a way that allows for an effective customer experience and user interface. This requirement is the best way to provide a seamless presentation of the items required in the Act.

The purpose of the national Web site is to provide families with easy to understand resources that help families in locating local child care providers and understanding local licensing and health and safety requirements. We plan to build the Web site around existing databases at the State level. As Web site best practices promote the reduction of redirecting users to multiple Web sites, using database linkages as opposed to linking to State Web sites provides a better user experience for families. In addition, the Act requires the national Web site to be searchable by zip code. Linking to sites would not allow for a search throughout the national Web site, and would not meet the requirements of the statute.

CCDF plan. This final rule includes a technical change at § 98.33(g), as redesignated, to change the reference to a biennial Plan to a *triennial* Plan as established by Section 658E(b) of the Act. We did not receive comments on this provision.

Subpart E—Program Operations (Child Care Services) Lead Agency and Provider Requirements

Subpart E of the regulations describes Lead Agency and provider requirements related to applicable State/Territory and local regulatory and health and safety requirements, monitoring and inspections, and criminal background checks. It addresses training and professional development requirements for caregivers, teachers, and directors working for CCDF providers. It also includes provisions requiring the Lead Agency to ensure that payment rates to

providers serving children receiving subsidies ensure equal access to the child care market, to establish a sliding fee scale that provides for affordable cost-sharing for families receiving assistance, and to establish priorities for receipt of child care services.

§ 98.40 Compliance With Applicable State/Territory and Local Regulatory Requirements

Section 658E(c)(2)(F) of the Act maintains the requirement that every Lead Agency has in effect licensing requirements applicable to child care services within its jurisdiction. If any types of CCDF providers are exempt from licensing requirements, the Act now requires Lead Agencies to describe why such licensing exemption does not endanger the health, safety, or development of children who receive services from child care providers who are exempt from such requirements. The final rule includes a corresponding change at § 98.40(a)(2), and provides clarification that the Lead Agency's description must include a demonstration of how these exemptions do not endanger children and that such descriptions and demonstrations must include any exemptions based on provider category, type, or setting; length of day; providers not subject to licensing because the number of children served falls below a Lead Agency-defined threshold; and any other exemption to licensing requirements. This relates to the corresponding CCDF Plan provision at § 98.16(u).

To clarify, this requirement does not compel the Lead Agency to offer exemptions from licensing requirements to providers. Rather, it requires that, if the Lead Agency chooses to do so, it must provide a rationale for that decision. We also note that these exemptions refer to exemptions from licensing requirements, but that license-exempt CCDF providers continue to be subject to the health, safety, and fire standards applicable to all CCDF providers in the Act. The only allowable exception to CCDF health and safety requirements is for providers who care only for their own relatives, which we discuss further below. In response to the NPRM, we received support for the requirement that Lead Agencies describe licensing exemptions and demonstrate that exemptions do not endanger the health, safety, or development of children in their care. We have therefore retained the NPRM language in this final rule.

§ 98.41 Health and Safety Requirements

Section 658E(c)(2)(I)(i) of the Act requires Lead Agencies to have in effect health and safety requirements for providers and caregivers caring for children receiving CCDF assistance that relate to ten health and safety topics: (i) Prevention and control of infectious diseases (including immunization); (ii) prevention of sudden infant death syndrome and use of safe sleeping practices; (iii) administration of medication, consistent with standards for parental consent; (iv) prevention and response to emergencies due to food and allergic reactions; (v) building and physical premises safety, including identification of and protection from hazards that can cause bodily injury such as electrical hazards, bodies of water, and vehicular traffic; (vi) prevention of shaken baby syndrome and abusive head trauma; (vii) emergency preparedness and response planning for emergencies resulting from a natural disaster, or a man-caused event (such as violence at a child care facility); (viii) handling and storage of hazardous materials and the appropriate disposal of biocontaminants; (ix) appropriate precautions in transporting children, if applicable; and (x) first aid and cardiopulmonary resuscitation (CPR). To clarify, biocontaminants include blood, body fluids or excretions that may spread infectious disease.

Section 658E(c)(2)(I)(ii) of the Act says that health and safety topics may include requirements relating to nutrition, access to physical activity, or any other subject area determined by the State to be necessary to promote child development or to protect children's health and safety—which the final rule restates at § 98.41(a)(1)(xii). While these topics are optional in this final rule, we strongly encourage Lead Agencies to include them in basic health and safety requirements. Educating caregivers on appropriate nutrition, including age-appropriate feeding, and physical activity for young children is essential to prevent long-term negative health implications and assist children in reaching developmental milestones. This final rule also adds "caring for children with special needs" as an optional topic on this list.

Lead Agencies are responsible for establishing standards in the above areas for CCDF providers and should require providers to develop policies and procedures that comply with these standards. We encourage Lead Agencies to adopt these standards for all caregivers and providers regardless of whether they currently receive CCDF funds. The Act requires health and safety training on the above topics to be completed pre-service or during an orientation period and on an ongoing basis. This training requirement is discussed in greater detail in § 98.44 on training and professional development.

ACF released *Caring for Our Children Basics (CfoC) Basics, http://www.acf.hhs.gov/programs/ecd/caring-for-our-children-basics*). *CfoC Basics* is a set of recommendations, which is intended to create a common framework to align basic health and safety efforts across all early childhood settings. *CfoC Basics,* represent minimum, baseline standards for health and safety. *CfoC Basics* is based on *Caring for Our Children: National Health and Safety Performance Standards; Guidelines for Early Care and Education Programs, 3rd Edition,* produced with the expertise of researchers, physicians, and practitioners (American Academy of Pediatrics, American Public Health Association, National Resource Center for Health and Safety in Child Care and Early Education. (2011). *Caring for Our children: National health and safety performance standards; Guidelines for early care and education programs. 3rd edition,* American Academy of Pediatrics; Washington, DC: American Public Health Association.)

We recommend that Lead Agencies looking for guidance on establishing health and safety standards consult ACF's *CfoC Basics.* The list of health and safety topics required by the Act is aligned with, but not fully reflective of, health and safety recommendations from both *CfoC Basics* as well as *Caring for Our Children: National Health and Safety Performance Standards.* Lead Agencies can be confident that if their standards are aligned with *CfoC Basics,* they will be considered to have adequate minimum standards. Lead Agencies are encouraged, however, to go beyond these baseline standards to develop a comprehensive and robust set of health and safety standards that cover additional areas related to program design, caregiver safety, and child developmental needs, using the full *Caring for Our Children: National Health and Safety Performance Standards* guidelines.

This final rule reiterates these new health and safety requirements at § 98.41(a) and provides clarifications that include specifying that the health and safety requirements be appropriate to the age of the children served in addition to the provider setting. Lead Agency requirements should reflect necessary content variation, within the required topic areas, depending on the provider's particular circumstances. For

example, prevention of sudden infant death syndrome and safe sleep training is only necessary if a caregiver cares for infants. Similarly, if an individual is caring for children of different ages, training in pediatric first-aid and CPR should include elements that take into account that practices differ for infants and older children. For providers that care for school-age children, Lead Agencies may need to develop requirements that are appropriate for that stage of development (*i.e.*, that recognize the greater need for older children's autonomy while maintaining health and safety). In this final rule, we also clarify that, in addition to having these requirements in effect, they must be implemented and enforced, and that these requirements are subject to monitoring pursuant to § 98.42. This is intended to help ensure that requirements are put into practice and that providers are held accountable for meeting them. The required health and safety topics are included at § 98.41(a)(1). Lead Agencies will continue to have flexibility to determine how they will implement requirements and whether additional or more stringent requirements are appropriate for their State. Further, if existing licensing or regulatory requirements for CCDF providers established by the Lead Agency address the areas specified in this rule, then no additional requirements are necessary.

Comment: Although there was some concern regarding cost to implement, we received strong support for the inclusion of health and safety requirements, specific to the age of children served, for providers and caregivers caring for children receiving CCDF. For example, there was support for the inclusion of prevention of shaken baby syndrome and abusive head trauma; building and physical premises safety; emergency preparedness; prevention of sudden infant death syndrome and use of safe sleeping practices; and recognition and reporting of child abuse and neglect. There was also support for the inclusion of optional topics such as nutrition, physical activity, and caring for children with special needs. There was a recommendation to clarify that the first aid and CPR requirement include reference to pediatrics. There were also recommendations to include the prevention of child maltreatment, quality sleep promotion, age-appropriate screen time promotion, and partnership with child care health consultants in the list of required health and safety topics.

While we received support for the requirement that license-exempt providers who receive CCDF must adhere to the health and safety requirements applicable to all CCDF providers in the Act, there was some concern with cost of implementation and barriers due to State statute. However, the federal statute clearly requires these standards apply to license-exempt providers.

Finally, we received a number of comments supporting the reference to *CfoC Basics* to aid in implementation if States so choose. Some commenters made the additional request that the individual health and safety topics in the regulation include specific references to the relevant standards in *CfoC Basics*. A few comments went further and asked that *CfoC Basics* be required for use by all CCDF providers.

Response: We agree that there is value in including child maltreatment to the list of topics, so the final rule amends § 98.41(a)(1)(vi) to include the prevention of child maltreatment to the provision that requires the prevention of shaken baby syndrome and abusive head trauma. We also agree that additional specificity for the type of first aid and CPR training is valuable and so the final rule amends § 98.41(a)(1)(x) to specify that the requirement of first aid and CPR must pertain to pediatrics.

While we do recognize the value in topics related to quality sleep, age-appropriate screen time, and partnership with child care health consultants, we declined to add these to the required list of health and safety topics. The list of health and safety topics is meant to provide a baseline of health and safety for child care, but does not preclude Lead Agencies from adding additional requirements. Lead Agencies should consider whether additional topics, such as those mentioned above and others, are necessary to promote child development or protect health and safety under § 98.41(a)(1)(xii)(D).

While we appreciate the support for *CfoC Basics*, we respectfully disagree with providing references to specific *CfoC Basics* standards within health and safety topics. Providing the complete *CfoC Basics* as reference allows the regulations to stay current as *CfoC Basics* is updated in the future. With respect to the request that *CfoC Basics* be made a requirement, while *CfoC Basics* is a valuable resource for Lead Agencies to utilize, we want to maintain Lead Agency flexibility as they implement these standards.

Immunizations and Tribal programs. This final rule amends the regulatory language at § 98.41(a)(1)(i)(A) regarding immunizations by replacing "States and Territories" with "Lead Agencies" to be inclusive of Tribes. Minimum Tribal health and safety standards under effect currently address immunization in a manner that is consistent with the requirements of this section. As a result, there is no longer a compelling reason to continue to exempt Tribes from this requirement. The final rule makes a corresponding change to the regulations at § 98.83(d) in Subpart I. We discuss this and other changes regarding health and safety requirements as they pertain to Tribes in our discussion of Subpart I.

Immunizations for in-home care and relative care. In the NPRM, we proposed to add "provided there are no other unrelated children who are cared for in the home" to the previously-existing exemption to the immunization requirement for children who receive care in their own homes at § 98.41(a)(1)(i)(B)(2). Such children may continue to be exempt from requirements, provided that they are not in care with other unrelated children, which could endanger the health of those children. Commenters on the NPRM were supportive of this proposed requirement, so the final rule retains the provision. The final rule also makes a corresponding change at § 98.41(a)(1)(i)(B)(*1*) to indicate that the pre-existing immunization exemption for children who are cared for by relatives only applies as long as there are no other unrelated children who are cared for in the same setting.

Children experiencing homelessness and children in foster care. Section 98.41(a)(1)(i)(C) of the final rule restates the new statutory requirement at Section 658E(c)(2)(I)(i)(I) that requires Lead Agencies to establish a grace period for children experiencing homelessness and children in foster care. This will allow such children to receive CCDF services while their families (including foster families) are given a reasonable period of time to comply with immunization and other health and safety requirements. The final rule clarifies that any payment for such child during the grace period shall not be considered an error or improper payment under subpart K of this part. At § 98.41(a)(1)(i)(C)(1), the final rule adds a requirement for Lead Agencies to establish grace periods in consultation with the State, Territorial, or Tribal health agency. As well, § 98.41(a)(1)(i)(C)(3) allows Lead Agencies the option of establishing grace periods for other children who are not homeless or in foster care consistent with previously-existing regulations, which allow the establishment of grace periods more broadly. This was included in the 1998 CCDF regulation due to significant feedback that requiring immunizations to be

completely up-to-date prior to receiving services could constitute a barrier to working. This provision was added to offer additional State flexibility. Adding a specific grace period provision in the statute was not intended to limit State's abilities to establish these policies but rather to ensure that, at a minimum, this policy existed for children experiencing homelessness and children in foster care.

The intent of this provision was to reduce barriers to enrollment given the uniquely challenging circumstances of homeless and foster children, not to undermine children's health and safety. The intent was not for those children to be permanently exempt from immunization and other health and safety requirements. For that reason, § 98.41(a)(1)(i)(C)(4) requires Lead Agencies to coordinate with licensing agencies and other relevant State/Territorial/Tribal and local agencies to provide referrals and support to help families experiencing homelessness and foster children comply with immunization and other health and safety requirements. This will help children, once enrolled and receiving CCDF services, to obtain necessary services and the proper documentation in a timely fashion. We received support for this proposal, and the final rule retains it.

Comment: There was support for the inclusion of a grace period for children experiencing homelessness and children in foster care in addition to the requirement that Lead Agencies help refer and support those children's families in obtaining immunizations. However, there was concern for the establishment of grace periods without oversight. Concerns were raised that the proposed rule allowed too much flexibility for Lead Agencies to establish grace periods without parameters, possibly negating group immunity protections that vaccinations are intended to provide. Conversely, there was concern that timeframes could be too restrictive and create barriers that the reauthorized Act intended to remove.

Response: In response to comments, we have amended the final rule to include language that now requires Lead Agencies to establish grace periods in consultation with the State, Tribal, or Territorial health agency. This provision is included at § 98.41(a)(1)(i)(C)(1). This will provide some valuable safeguards to health and safety of children in care while also allowing some considerations for the logistical challenges of the most vulnerable children and families.

Emergency preparedness and response. Section 658E(c)(2)(I)(i)(VII) of the Act requires CCDF health and safety requirements to include emergency preparedness and response planning for emergencies resulting from a natural disaster, or a man-caused event (such as violence at a child care facility) as defined under section 602(a)(1) of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5195a(a)(1)). This final rule includes this provision at § 98.41(a)(1)(vii) as well as additional language drawn from Section 658E(c)(2)(U) of the Act regarding Statewide Disaster Plans. According to the Act, Statewide Disaster Plans should address evacuation, relocation, shelter-in-place, and lock-down procedures; procedures for staff and volunteer emergency preparedness training and practice drills; procedures for communication and reunification with families; continuity of operations; and accommodation of infants and toddlers, children with disabilities, and children with chronic medical conditions. Communication and reunification with families should include procedures that identify entities with responsibility for temporary care of children in instances where the child care provider is unable to contact the parent or legal guardian in the aftermath of a disaster. Accommodation of infants and toddlers, children with disabilities, and children with chronic medical conditions should include plans that address multiple facets, including ensuring adequate supplies (*e.g.*, formula, food, diapers, and other essential items) in the event that sheltering-in-place is necessary. In addition to being addressed in the Statewide Disaster Plan, we require that health and safety requirements for CCDF providers include these topics so that child care providers and staff will be adequately prepared in the event of a disaster.

Guidance in *Caring for Our Children: National Health and Safety Performance Standards and CfoC Basics,* includes recommended standards for written evacuation plans and drills, planning for care for children with special health needs, and emergency procedures related to transportation and emergency contact information for parents. The former National Association of Child Care Resource and Referral Agencies (now Child Care Aware of America) and Save the Children published *Protecting Children in Child Care During Emergencies: Recommended State and National Standards for Family Child Care Homes and Child Care Centers,* that includes recommended State regulatory standards related to emergency preparedness for family child care homes and child care centers.

Comment: There was a recommendation to include mental health crisis training as a requirement in emergency preparedness and response planning.

Response: While we support the inclusion of mental health crisis training, such training is already included under the required emergency preparedness training for staff and volunteers as described under Section 98.41(a)(1)(vii). States have the latitude to include mental health crisis training within that requirement and are encouraged to do so.

Group Size Limits and Child-Staff Ratios. Section 658E(c)(2)(H) of the Act requires Lead Agencies to establish group size limits for age-specific populations and appropriate child-staff ratios that will provide healthy and safe conditions for children receiving CCDF assistance as well as meet children's developmental needs. It also requires Lead Agencies to address required qualifications for caregivers, teachers, and directors, which is discussed at § 98.44. Consistent with these requirements, § 98.41(d) of this final rule requires the Lead Agency to establish standards for CCDF child care services that strengthen the relationship between caregivers and children as well as provide for the safety and developmental needs of the children served, given the type of child care setting. This is a minor change from the proposed language in the NPRM, which required Lead Agencies to establish standards that "promote" the caregiver and child relationship. We changed "promote" to "strengthen" in this final rule to more accurately describe the intent of this provision, which is to ensure a strong, meaningful relationship between the child and the adult providing care.

Ratio and group size standards are necessary to ensure that the environment is conducive to safety and learning. Child-staff ratios should be set such that caregivers can demonstrate the capacity to meet health and safety requirements and evaluate the needs of children in their care in a timely manner. A low child-staff ratio allows for stronger relationships between a child and their caregiver, which is a key component of quality child care. Studies of high-quality early childhood programs found that group size and ratios mattered to the safety and the quality of children's experiences, as well as to children's health. (*13 Indicators of Quality Child Care: Research Update, presented to Office of the Assistant Secretary for Planning and*

Evaluation and Health Resources and Services Administration/Maternal and Child Health Bureau U.S. Department of Health and Human Services, 2002 and *National Institute of Child Health and Human Development (NICHD). 2006. The NICHD study of early child care and youth development: Findings for children up to age 4 1/2 years. Rockville, MD: NICHD.).*

While States have flexibility in setting group size and child-staff ratios, these standards are often inter-related. For example, using square footage per child by itself does not ensure an appropriate determination of group size. While we are not establishing a Federal requirement for group size and child-staff ratios, there are resources that Lead Agencies can use when developing their standards. *CfoC Basics* recommends:

> Appropriate ratios should be kept during all hours of program operation. Children with special health care needs or who require more attention due to certain disabilities may require additional staff on-site, depending on their special needs and the extent of their disabilities. In center-based care, child-staff ratios should be determined by the age of the majority of children and the needs of children present. For children 23 months and younger, a ratio of four children to one child care provider should be maintained. For children 24 to 35 months, a ratio of four to six children per provider should be maintained. For children who are three years old, a maximum ratio of 9:1 should be preserved. If all children in care are four to five years of age, a maximum ratio of 10:1 should be maintained.
>
> In family child care homes, the caregivers' children as well as any other children in the home temporarily requiring supervision should be included in the child-staff ratio. In family child care settings where there are mixed age groups that include infants and toddlers, a maximum ratio of 6:1 should be maintained and no more than two of these children should be 24 months or younger. If all children in care are under 36 months, a maximum ratio of 4:1 should be maintained and no more than two of these children should be 18 months or younger. If all children in care are three years old, a maximum ratio of 7:1 should be preserved. If all children in care are four to five years of age, a maximum ratio of 8:1 should be maintained.

As stated earlier, these represent baseline recommendations and Lead Agencies should not feel limited by them. ACF also encourages Lead Agencies to consider the group size and child-staff ratios outlined in *Caring for Our Children: National Health and Safety Performance Standards* and the Head Start and Early Head Start standards for child-staff ratios, especially in light of partnerships between Head Start and child care. The Head Start program performance standards set forth ratios and group size requirements for the center-based-and family child care options for Head Start and Early Head Start providers. Early Head Start requires a ratio of one teacher for every four infants and toddlers in center based programs with a maximum group size of eight, or a maximum group size of nine if there are three teachers.

A Head Start family child care provider working alone may have a maximum group size of six, with no more than two children under two years old. A family child care provider may care for up to four children under three years old with a maximum group size of four, with no more than of two children under 18 months of age. When there is a teacher and an assistant, the maximum group size is 12 children, with no more than four children under two years old. Head Start requires a ratio two teachers in center-based programs with a maximum group size of 17 children for three year olds and 20 children for four year olds.

Another resource for determining appropriate child-staff ratios and group sizes is *NFPA 101: Life Safety Code* from The National Fire Protection Association (NFPA), which recommends that small family child care homes with one caregiver serve no more than two children incapable of self-preservation. For large family child care homes, the NFPA recommends that no more than three children younger than 2 years of age be cared for where two caregivers are caring for up to 12 children (National Fire Protection Association, *NFPA 101: Life Safety Code,* 2009).

In response to the NPRM, commenters were supportive of giving Lead Agencies the latitude to establish their own requirements for child-staff ratios and group size specific to setting type and age of children served. For example, one comment stated that they "appreciate ACF's acknowledgement of the role provider-child ratios and group size standards play in ensuring an environment conducive to safety and learning, and the role of low ratios in stronger relationships with caregivers, a key element of quality. While ACF does not have the statutory authority to set specific ratios and size limits, we appreciate that ACF highlighted the examples in *CFOC Basics,* as well as Head Start, as examples for consideration."

Compliance with Child Abuse Reporting Requirements. Section 658E(c)(2)(L) of the Act requires Lead Agencies to certify in its Plan that child care providers comply with procedures for reporting child abuse and neglect as required by section 106(b)(2)(B)(i) of the Child Abuse Prevention and Treatment Act (CAPTA) (42 U.S.C. 5106a(b)(2)(B)(i)). That provision of CAPTA requires that the State has in effect and is enforcing a State law, or has in effect and is operating a statewide program, relating to child abuse and neglect that includes provisions or procedures for an individual to report known and suspected instances of child abuse and neglect, including a State law for mandatory reporting by individuals required to report such instances. Thus, Lead Agencies must certify that caregivers, teachers, and directors of child care providers will be required to report child abuse and neglect as individuals or mandatory reporters, whether or not the State explicitly identifies these persons as mandatory reporters.

Because the CAPTA requirement above is not applicable to Tribes or, in some circumstances, to Territories, the final rule expands upon this provision at § 98.41(e) by requiring Lead Agencies to certify that caregivers, teachers, and directors of child care providers within the State (or service area) will comply with the State's, Territory's or Tribe's child abuse reporting requirements as required by section 106(b)(2)(B)(i) of CAPTA, if applicable, or other child abuse reporting procedures and laws in the service area. Territories and Tribes may have their own reporting procedures and mandated reporter laws. Also, some Tribes may work with States to use the State's reporting procedures. Further, the Federal Indian Child Protection and Family Violence Prevention Act requires mandated reporters to report child abuse occurring in Indian country to local child protective services agency or a local law enforcement agency (18 U.S.C. 1169). While State, Territory, and Tribal laws about when and to whom they report vary, child care providers and staff are often considered mandatory reporters of child abuse and neglect and responsible for notifying the proper authorities in accordance with applicable laws and procedures. Regardless, the provision is intended for the Lead Agency to ensure that caregivers, teachers, and directors follow all relevant child abuse and neglect reporting procedures and laws, regardless of whether a child care caregiver or provider is considered a mandatory reporter under existing child abuse and neglect laws. We note that this requirement applies to caregivers, teachers, and directors of all child care providers, regardless of whether they receive CCDF funds. We did not receive comments on this provision and have

made no changes to the proposed rule language.

To support this statutory requirement, we have added recognition and reporting of child abuse and neglect to the list of health and safety topics at § 98.41(a)(1)(xi) to ensure that caregivers, teachers, and directors are properly trained to be able to recognize the manifestations of child maltreatment. According to the FY 2016–2018 CCDF Plans, 49 States and Territories have a pre-service training requirement on mandatory reporting of suspected abuse or neglect for staff in child care centers and 25 States and Territories require pre-service training in this area for family child care.

Comment: As mentioned earlier, we received support for the inclusion of the recognition and reporting of child abuse and neglect in the list of required health and safety topics.

Response: We have retained this provision in accordance with Section 658E(c)(2)(L) of the Act. Child abuse and neglect training can be used to educate and establish child abuse and neglect prevention and recognition measures for children, parents, and caregivers. While caregivers, teaches, and directors are not expected to investigate child abuse and neglect, it is important that all of these individuals are aware of common physical and emotional signs and symptoms of child maltreatment.

§ 98.42 Enforcement of Licensing and Health and Safety Requirements

The majority of the language we proposed in section 98.42 is new, based on requirements added in the CCDBG Act of 2014. States receiving CCDF funds are required to have child care licensing systems in place and must ensure child care providers serving children receiving subsidies meet certain health and safety requirements.

Procedures to ensure compliance with licensing and health and safety requirements. Previous regulations required that the Lead Agency must have procedures in effect to ensure that child care providers of CCDF services within the service area served by the Lead Agency, comply with all applicable State, local, or Tribal requirements. This final rule retains the proposed rule language and clarifies at § 98.42(a) that these requirements must include the health and safety requirements described in § 98.41. We received no comments on this section.

Monitoring requirements. Section 658E(c)(2)(K) of the Act requires that Lead Agencies conduct monitoring visits for all child care providers receiving CCDF funds, including license-exempt providers (except, at Lead Agency option, those that only serve relatives). The Act requires Lead Agencies to certify that licensed CCDF providers receive one pre-licensure inspection for compliance with health, safety, and fire standards and at least one, annual, unannounced licensing inspection for compliance with licensing standards, including health, safety, and fire standards. License-exempt CCDF providers (except, at Lead Agency option, those serving relatives) must receive at least one annual inspection for compliance with health, safety, and fire standards at a time determined by the Lead Agency. The final rule restates these requirements at § 98.42(b). For existing licensed providers already serving CCDF children, we will consider the Lead Agency to have met the pre-licensure requirement through completion of the first, annual on-site inspection.

Section 98.42(b)(2) of the final rule clarifies that annual inspections for both licensed and license-exempt CCDF providers includes, but is not be limited to, those health and safety requirements described in § 98.41. The final rule also clarifies that Tribes are subject to the monitoring requirements, unless a Tribal Lead Agency requests an alternative monitoring methodology in its Plan and provides adequate justification, subject to ACF approval, pursuant to § 98.83(d)(2).

Pre-licensure inspections. The vast majority of States and Territories already require inspections for all child care providers prior to licensure, which we strongly encourage. Only one State does not require pre-licensure inspections for child care centers, and seven States do not require pre-licensure inspections for family child care. This final rule interprets the pre-licensure inspection requirement as an indication that an on-site inspection is necessary for licensed child care providers prior to providing CCDF-funded child care. Therefore, any licensed provider that did not previously receive a pre-licensure inspection must be inspected prior to caring for a child receiving CCDF.

Comment: We received strong support for pre-licensure inspections as a condition for licensure as well as meeting the pre-licensure inspection requirement through the first annual on-site inspection for existing licensed CCDF providers and those in States that do not currently require pre-licensure visits. However, there was concern that the first annual inspection of existing licensed providers who provide CCDF-funded care would not take place in a timely manner and families would not receive needed care.

Response: Because monitoring of licensing and regulatory requirements does not go into effect until November 19, 2016, per Section 658E(c)(2), we expect existing CCDF providers to have received their annual on-site inspection before phase in of the pre-licensure inspection requirement. This visit will meet the pre-licensure inspection requirement and allow for providers to continue serving CCDF children without interruption.

The Act and this final rule require annual inspections of licensed child care providers receiving CCDF funds. Research supports the use of regular, unannounced inspections for monitoring compliance with health and safety standards and protecting children. A recent series of Department of Health and Human Services' (HHS) Office of Inspector General (OIG) audits identified deficiencies with health and safety protections for children in child care with CCDF providers in several States, including in Arizona, Connecticut, Florida, Louisiana, Maine, Michigan, Minnesota, Pennsylvania, Puerto Rico, and South Carolina. For example, an OIG audit in one State examined the monitoring of 20 family child care home providers that participate in the CCDF program and found 17 in violation of at least one licensing requirement, including four providers who did not comply with background check requirements. Another audit found 19 out of 20 licensed family child care home CCDF providers in violation of at least one State licensing requirement related to the health and safety of children. Unfortunately, the oversight and monitoring problems highlighted in recent reports were similar to those first identified 23 years ago. (HHS OIG, *Some Arizona Child Day Care Centers Did Not Always Comply with State Health and Safety Licensing Requirements.* (A–09–13–01008). January 2015; HHS OIG, *Some Connecticut Child Day Centers Did Not Always Comply with State Health and Safety Licensing Requirements,* (A–01–13–02506). April 2014; HHS, OIG, *Some Florida Child Care Centers Did Not Always Comply with State Health and Safety Licensing Requirements,* (A–04–14–08033), March 2016; HHS, OIG, *Some Louisiana Child Day Centers Did Not Always Comply with State Health and Safety Licensing Requirements,* (A–06–13–00036). August 2014; HHS, OIG, *Some Maine Child Day Centers Did Not Always Comply with State Health and Safety Licensing Requirements,* (A–01–13–02503) August 2014; HHS, OIG, *Some*

Minnesota Child Care Centers Did Not Always Comply with State Health and Safety Licensing Requirements, (A–05–14–00022) March 2015; HHS, OIG, *Some Pennsylvania Child Day Centers Did Not Always Comply with State Health and Safety Licensing Requirements,* (A–03–14–00251). September 2015; HHS, OIG, *Some South Carolina Child Care Centers Did Not Always Comply with State Health and Safety Licensing Requirements,* (A–04–14–08032) November 2015; HHS, OIG, *Review of Health and Safety Standards at Child Care Facilities in North Carolina,* (A–12–92–00044) March 23, 1993; HHS, OIG, *Audit of Health and Safety Standards at Child Care Facilities in Nevada,* (A–09–92–00103) September 1993. HHS, OIG, *Nationwide Review of Health and Safety Standards at Child Care Facilities* (A–04–94–00071) December 1994).

In the proposed rule, we specifically solicited comments about expanding the requirement for unannounced, annual inspections to all licensed child care providers, regardless of whether or not they currently receive CCDF funds. While we received many supportive comments, this final rule does not extend the requirements to providers not receiving CCDF and keeps the regulatory language at § 98.42(b) as proposed. However, we strongly encourage Lead Agencies to conduct annual, unannounced visits of all licensed child care providers, including those not serving children receiving child care subsidies.

Comment: The majority of commenters supported the goal of extending unannounced, annual inspections to all licensed providers. However, several commenters, including States and a municipality, expressed concerns about the high costs related to the proposal, especially considering the other costs associated with the monitoring requirements included in the Act. One State said it "understands the concern ACF poses regarding not inspecting all providers on the same inspection frequency; however, cost is a legitimate and real barrier to implementing a rule that would require annual inspection of all providers in States where this is not already in practice." Comments also reflected concerns about the logistics of implementing the proposed requirement. Child care providers, national/State/local organizations, child care worker organizations, and advocates supported unannounced, annual inspections for all licensed providers. Commenters agreed with ACF's concerns that requiring inspections only of licensed CCDF providers, and not all licensed providers, could result in a bifurcated system in which children receiving CCDF do not have access to the full range of licensed child care providers.

Response: In light of the significant number of concerns related to the cost of broader coverage, the final rule keeps § 98.42(b) as proposed and does not require the expansion of annual inspections to licensed child care providers not serving children receiving CCDF. However, ACF continues to be concerned that if all licensed child care providers are not subject to at least annual inspections, CCDF families would be restricted from accessing a portion of the provider population (those that have not been inspected annually), effectively denying children access to some providers, limiting parental choice, and resulting in a bifurcated system. Therefore, we strongly encourage Lead Agencies to use annual inspections as a means for monitoring all licensed child care providers.

Annual inspections of license-exempt providers. This provision is addressed in section 98.42(b)(2)(ii) of this final rule, which clarifies that the annual monitoring applies to license-exempt providers that are eligible to provide CCDF services. The Act does not require that inspections for license-exempt CCDF providers be unannounced, but ACF strongly encourages some use of unannounced visits, as they have been found effective in promoting compliance with health and safety requirements among providers who have a history of low compliance with State child care regulations. (R. Fiene, *Unannounced vs. announced licensing inspections in monitoring child care programs,* Pennsylvania Office of Children, Youth and Families, 1996; American Academy of Pediatrics, American Public Health Association, National Resource Center for Health and Safety in Child Care and Early Education; *Caring for Our Children: National health and safety performance standards; Guidelines for early care and education programs. 3rd edition.*) However, there may be situations in which a Lead Agency cannot be sure that a provider and children will be present (*e.g.*, when a provider is caring for a child whose parent has a variable work schedule). In such situations, advance notification of a visit may be necessary. The Lead Agency may also choose to inform providers before monitoring staff depart for unannounced visits that involve significant travel time, such as those in rural areas, to avoid staff visits when the provider or children are not present. Lead Agencies are encouraged to make reasonable efforts to conduct visits during the hours providers are caring for children and ensure that providers who care for children on the evenings and weekends are monitored so that the supply of non-traditional hour care is not reduced. ACF intends to provide technical assistance to CCDF Lead Agencies on best practices for monitoring license-exempt providers, including the use of unannounced inspections.

Comment: We received comments from a few States that indicated concerns for requiring inspections of license-exempt programs due to cost and conflicts with State statute. One commenter stated that "conducting monitoring visits to license-exempt programs will be challenging for our licensing staff since we will not have jurisdiction over these programs."

Response: The annual inspection of license-exempt providers who receive CCDF for compliance with health, safety, and fire standards is required by the Act. In cases where there is a conflict with State statute, the State will need to take legislative action in order to comply. If additional time is necessary to make this change, this final rule includes a waiver provision at § 98.19(b) that allows the Lead Agency to apply for a temporary extension that provides transitional relief from conflicting or duplicative requirements preventing implementation, or an extended period of time in order for a State, territorial, or tribal legislature to enact legislation to implement the provisions of this subchapter.

Process for responding to complaints. Section 658E(c)(2)(C) of the Act requires Lead Agencies to maintain a record of substantiated parental complaints, and § 98.32 of the final rule requires Lead Agencies to establish a reporting process for parental complaints. A logical extension of these requirements is for Lead Agencies to respond to complaints, including monitoring where appropriate, in particular those of greatest concern to children's health and safety. Unannounced inspections allow for an investigation of the situation and, if the threat is substantiated, may prevent future incidences. In the NPRM, we had not proposed a requirement for monitoring in response to complaints but sought comments on whether this final rule should include a requirement for Lead Agencies to conduct unannounced inspections in response to complaints and whether this requirement should apply to providers receiving CCDF funds or additional providers.

Comment: In general, there was support from national organizations for States to conduct inspections in response to complaints received about incidents in child care that impact children's health and safety. For example, one submission recommended that this final rule "include a requirement for States to conduct inspections in response to complaints received about incidents in child care that impact children's health and safety. Inclusion of such a requirement is a logical step given that States are required to have a hotline in place for the public to report complaints. States should have in place a system to determine those complaints that indicate a risk to children's health and safety and investigate accordingly."

However, there was also concern from national, State and local organizations; child care resource and referral agencies; and States about conducting unannounced inspections for *all* complaints and recommended that unannounced visits be conducted in response to complaints of imminent danger to children, as defined by the State. Many felt that States should have the ability to develop State-specific procedures for monitoring in response to complaints, including the triggers for unannounced visits.

Response: Consistent with the NPRM, we decline to require monitoring inspections in response to complaints. However, this final rule at § 98.32(d)(1) requires Lead Agencies to describe in their CCDF Plans how they respond to and substantiate complaints, including whether or not the State uses monitoring in its process of responding to complaints for both CCDF and non-CCDF providers. This requirement corresponds to the Plan question included at § 98.16(s).

Coordination of monitoring. Section 98.42(b)(2)(iii) of the final rule requires Lead Agencies to coordinate, to the extent practicable, with other Federal, State/Territory, and local entities that conduct similar on-site monitoring. Possible partners include licensing, QRIS, Head Start, and the Child and Adult Care Food Program (CACFP).

Coordinating with other monitoring agencies can be beneficial to both agencies as they prevent duplication of services. As an example of current interagency coordination, one State holds monthly meetings with representation from its licensing division, CCDF Lead Agency, CACFP, and other public agencies with child care monitoring responsibilities. These divisions and agencies identify areas of overlap in monitoring and coordinate accordingly to leverage combined resources and minimize duplication of efforts. It is important that any shared costs be properly allocated between the organizations participating and benefiting from the partnership.

To the extent that other agencies provide an on-site monitoring component that may satisfy or partially satisfy the new monitoring requirement under the Act and this final rule, the Lead Agency is encouraged to pursue collaboration, which may include sharing information and data as well as coordinating resources. However, the Lead Agency is ultimately responsible for meeting these requirements and ensuring that any collaborative monitoring efforts satisfy all CCDF requirements. In response to the NPRM, there was strong support for coordination of monitoring across programs with other Federal, State/Territory, and local entities that conduct similar on-site monitoring; therefore, we have retained this provision in this final rule.

Differential monitoring. Section 98.42(b)(2)(iv)(A) of the final rule gives Lead Agencies the option of using differential monitoring, or a risk-based monitoring approach, provided that the monitoring visit is representative of the full complement of health and safety standards and is conducted for all applicable providers annually, as required in statute.

A white paper developed by HHS's Office of the Assistant Secretary for Planning and Evaluation, found the following:

> Many States are using differential monitoring to make monitoring more efficient. As opposed to 'one size fits all' systems of monitoring, differential monitoring determines the frequency and depth of needed monitoring from an assessment of the provider's history of compliance with standards and regulations. Providers who maintain strong records of compliance are inspected less frequently, while providers with a history of non-compliance may be subject to more announced and unannounced inspections. In some States, more frequent inspections are conducted for providers who are on a corrective action plan, or after a particularly egregious violation. (Trivedi, P.A. (2015). *Innovation in monitoring in early care and education: Options for states. Washington, DC: Office of the Assistant Secretary for Planning and Evaluation, U.S. Department of Health and Human Services*)

Differential monitoring often involves monitoring programs using monitoring tools or protocols that investigate a subset of requirements to determine compliance. There are two methods used to identify rules for differential monitoring:

- *Key Indicators:* An approach that focuses on identifying and monitoring those rules that statistically predict compliance with all the rules; and
- *Risk Assessment:* An approach that focuses on identifying and monitoring those rules that place children at greater risk of mortality or morbidity if violations or citations occur.

The key indicators approach is often used to determine the rules to include in an abbreviated inspection. A risk assessment approach is often used to classify or categorize rule violations and can be used to identify rules where violations pose a greater risk to children, distinguish levels of regulatory compliance, or determine enforcement actions based on categories of violations. Note that monitoring strategies that rely on sampling of providers or allow for a monitoring frequency of less than once per year for providers are not allowable as every child care provider must receive at least one inspection annually, in accordance with the Act. However, differential monitoring key indicator approaches can be used in annual monitoring visits, provided that the content covered during each visit is representative of the full complement of health and safety requirements.

ACF encourages Lead Agencies to consider the use of differential monitoring as a method for determining the scheduling and priority for unannounced monitoring visits. This may be based on an assessment of the child care provider's past level of compliance with health and safety requirements, information received that could indicate violations, or the occurrence of a monitoring visit from another program. Differential monitoring allows Lead Agencies to prioritize monitoring of providers that have previously been found out of compliance or the subject of parental complaints or that have not been monitored through other programs.

Lead Agencies should use data to make necessary adjustments to differential monitoring or the frequency of monitoring visits over time. For example, if widespread or significant compliance issues are found under existing monitoring protocols, the Lead Agency could consider increasing the frequency of monitoring visits. As discussed in *Innovations in Monitoring,* Lead Agencies should be intentional and cautious in their use of differential monitoring and not replace routine inspection of all licensed providers, including those with good compliance records. We encourage Lead Agencies to follow the recommendations below

when implementing key indicators and/or risk-based approaches:

- Assess resources available in the federal TA system that can assist with undertaking a key indicator or statistical/risk-based approach;
- Conduct comprehensive unabbreviated inspections of all facilities at least every three years;
- Have a monitoring protocol/instrument in use and at least one year's worth of data from monitoring visits in place prior to determining key indicators;
- Combine a key indicator system with a risk-based approach, to ensure that resources are well-targeted to the providers that are out of compliance in the most crucial areas for the protection of children;
- Continue to do full inspections with providers that (1) have not maintained a regular license for the past two consecutive years, (2) have had recent changes in their director, (3) have had complaints that have been substantiated in the past 12 months, (4) have recently experienced sanctions, and (5) have a past history of repeated violations;
- Conduct validation studies by comparing compliance data from comprehensive reviews to compliance data from key indicator reviews;
- Consider and develop a different set of key indicators for different types of child care settings (*e.g.*, center-based versus family child care).

As there was strong support for the use of differential monitoring as a method for annual inspections, we are retaining this provision in this final rule.

Monitoring in-home care. At § 98.42(b)(2)(v)(B), this final rule requires that that Lead Agencies have the option to develop alternate monitoring requirements for care provided in the child's home that are appropriate to the setting. A child's home may not meet the same standards as other child care facilities and this provision gives Lead Agencies flexibility in conducting more streamlined and targeted inspections. For example, Lead Agencies may choose to monitor in-home providers on basic health and safety requirements such as training and background checks. Lead Agencies could choose to focus on health and safety risks that pose imminent danger to children in care. This flexibility cannot be used to bypass the monitoring requirement altogether. States should develop procedures for notifying parents of monitoring protocols and consider whether it would be appropriate to obtain parental permission prior to entering the home for inspection purposes.

Comment: In response to the NPRM, there was support from States and national organizations for Lead Agencies to have the option to develop alternative monitoring requirements for in-home care. Some felt that, when care is provided in the child's home, certain aspects of health and safety are the responsibility of the parents and not under the child care provider's control. One comment said that "the fact that there are public dollars being invested does indicate that the Lead Agency should be empowered to do what is necessary to ensure that the child care experience that is being funded is developmentally appropriate, safe, clean and is equal to what a family not eligible for CCDF funding might expect."

However, a number of comments believed care provided in a child's home should be exempt from on-site monitoring. In-home monitoring raises privacy concerns for families, as well as the potential for unintended consequences. They believed that imposing monitoring requirements on in-home care may lead States to further restrict the use of in-home care by families receiving assistance (as permitted by § 98.16(i)(2)), including among those who need it. The few families that use care in the child's own home may do so because of circumstances that severely limit their access to other options—circumstances such as a child's serious disability or a parent's work schedule that requires overnight care. Lead Agencies should be permitted to exempt in-home child care providers from health and safety and on-site monitoring requirements, just as relative providers may be exempt.

Response: While we are sensitive to concerns in this area, we do not have the statutory authority to exempt in-home providers from monitoring requirements. However, by allowing Lead Agencies to develop alternative methodologies for meeting this requirement, this final rule grants significant flexibility to States in how they choose to fulfill this requirement. We encourage Lead Agencies to use an approach that emphasizes training and technical assistance that focuses on assisting families in making their homes safe for their children. For example, some Lead Agencies provide parents with health and safety checklists that allow them to assess critical elements of their home environment. Additionally, instead of inspectors who monitor for compliance with licensing requirements, Lead Agencies should consider whether other entities, such as resource and referral agencies or other community organizations, are better positioned to monitor and provide supports for care provided in an in-home setting.

Licensing inspector qualifications. Section 658E(c)(2)(K)(i)(I) of the Act requires Lead Agencies to ensure that individuals who are hired as licensing inspectors in the State are qualified to inspect those child care providers and facilities and have received training in related health and safety requirements, and are trained in all aspects of the State's licensure requirements. This final rule re-states this statutory requirement at § 98.42(b)(1) and clarifies that such training should include, at a minimum, the areas listed in § 98.41 as well as all aspects of State, Territory, or Tribal licensure requirements. As inspectors must monitor the health and safety requirements in § 98.41, it follows that the training of inspectors should include these standards.

The final rule also clarifies that inspectors be trained in health and safety requirements appropriate to provider setting and age of children served. Inspecting care for children of different ages, and in different settings, may require specialized training in order to understand differences in care. We encourage Lead Agencies to consider the cultural and linguistic diversity of caregivers when addressing inspector competencies and training. *Caring for Our Children: National Health and Safety Performance Standards* recommends that licensing inspectors have "pre-qualified" education and experience about the types of child care they will be assigned to inspect and in the concepts and principles of licensing and inspections. When hired, the standards recommend at least 50 clock hours of competency-based orientation training and 24 annual clock hours of competency-based continuing education. There was significant support for specialized training of licensing inspectors in health and safety in early care and education settings, as well as the consideration of cultural and linguistic diversity of caregivers when addressing competencies and trainings, which we have retained in this final rule.

Licensing inspector-provider ratios. Section 658E(c)(2)(K)(i)(III) of the Act requires Lead Agencies to have policies in place to ensure the ratio of inspectors to providers is sufficient to ensure visits occur in accordance with Federal, State, and local law. The final rule expands on this requirement at § 98.42(b)(3) to ensure applicability with Federal, State, Territory, Tribal, and local law. The public comment process showed that there was support for this requirement. Large caseloads make it difficult for

inspectors to conduct valid and reliable inspections. While the Act does not require a specific ratio, Lead Agencies can refer to the National Association of Regulatory Agencies (NARA) recommendation of a maximum workload for inspectors of 50–60 facilities. (*NARA and Amie Lapp-Payne. (May 2011). Strong Licensing: The Foundation for a Quality Early Care and Education System: Preliminary Principles and Suggestions to Strengthen Requirements and Enforcement for Licensed Child Care.*)

Reporting of serious injuries and deaths. At § 98.42(b)(4), this final rule requires that Lead Agencies require child care providers to report to a designated State, Territorial, or Tribal entity any serious injuries or deaths of children occurring in child care. This complements § 98.53(f)(4), which requires States and Territories to submit a report describing any changes to regulations, enforcement mechanisms, or other policies addressing health and safety based on an annual review and assessment of serious child injuries and any deaths occurring in child care programs serving CCDF children and, to the extent possible, other regulated and unregulated child care settings. States, Territories, and Tribes are required to apply this reporting requirement to all child care providers, regardless of subsidy receipt, to report incidents of serious child injuries or death to a designated agency. This is also consistent with the statutory requirement at Section 658E(c)(2)(D), which requires Lead Agencies to collect and disseminate aggregate number of deaths, serious injuries, and instances of substantiated child abuse that occurred in child care settings each year, for eligible providers.

The Lead Agency must identify the "designated entity" in its Plan as required at § 98.16(ff). If there are existing structures in place that look at child morbidity, the Lead Agency may work within that structure to establish a designated entity. The reporting mechanism can be tailored to fit with existing policies and procedures. Our purpose is the reporting of incidents so that the Lead Agency and other responsible entities can make the appropriate response, publicly report prevalence data, and make any appropriate changes to health and safety policies.

Comment: There was support for the requirement of reporting serious injuries and deaths of children occurring in child care settings. However, concern was raised that the NPRM failed to provide specific direction as to how Lead Agencies should respond to reports of serious injuries and deaths, who should bear responsibility of investigating and responding to allegations, and what rights parents and defendants have to information during and following the investigation.

Response: As mentioned above, § 98.32(d)(1) requires Lead Agencies to report in their State Plans how they respond to and substantiate complaints, including whether the process includes monitoring of child care providers. We have chosen not to establish further parameters around this requirement to give Lead Agencies flexibility to design a system that best works for their program.

Exemption for relative providers. Previous regulations at § 98.41(e) allowed Lead Agencies to exempt relative caregivers, including grandparents, great-grandparents, siblings (if such providers live in a separate residence), and aunts or uncles from health and safety and monitoring requirements described in this section. In the final rule, this relative exemption remains at § 98.42(c), which includes language that requires Lead Agencies, if they choose to exclude such providers from any of these requirements, to provide a description and justification in the CCDF Plan, pursuant to § 98.16(1), of requirements, if any, that apply to these providers. Asking Lead Agencies to describe and justify relative exemptions from health and safety requirements and monitoring provides accountability that any exemptions are issued in a thoughtful manner that does not endanger children.

Comment: We received a request for clarification on whether or not relative providers are exempt from requirements for ratios, group size, and caregiver qualifications. We also received one comment that reflected concern for the lack of health and safety requirements on guidance and training for relative providers. We also received one comment requesting that the types of relatives who may be exempt from requirements be expanded to include additional types of relatives.

Response: A Lead Agency may choose to exclude relative providers from any health and safety and monitoring requirements if a description and justification is provided in the CCDF Plan. This may include requirements for ratios, group size, and caregiver qualifications.

We should clarify that while the federal statute gave the option to exempt relatives from health and safety requirements, it is not required. Also, Lead Agencies have the option to exempt relatives from certain, but not all health and safety requirements. They have the ability to determine the scope of an exemption and if there are certain health and safety requirements that the Lead Agency believes are important to apply to a relative provider, they have the ability to do so. Technical assistance will be available to support the promotion of health, safety, and child development in all early care and education settings.

The Act defines relatives and, therefore, we are unable to expand the scope of who may be considered for exemption due to statutory language. However, as there is an option in the final rule to develop alternative monitoring requirements for in-home providers at § 98.42(b)(2)(v), Lead Agencies may choose to explore this flexibility when care is provided in the child's home by individuals who are not included in the list for exemption but the Lead Agency believes merit special considerations.

§ 98.43 Criminal Background Checks

The reauthorization added Section 658H on requirements for comprehensive criminal background checks, which are a basic safeguard essential to protect the safety of children in child care and reduce children's risk of harm. Parents have the right to be confident that their children's caregivers, and others who come into contact with their children, do not have a record of violent offenses, sex offenses, child abuse or neglect, or other behaviors that would disqualify them from caring for children. A GAO report found several cases in which individuals convicted of serious sex offenses had access to children in child care facilities as employees, because they were not subject to a criminal history check prior to employment (*Overview of Relevant Employment Laws and Cases of Sex Offenders at Child Care Facilities, GAO–11–757,* GAO, 2011).

Comprehensive background checks have been a long-standing ACF policy priority. According to an analysis of the FY 2016–2018 CCDF Plans, all States and Territories require that child care center staff undergo at least one type of criminal background check, and approximately 45 require an FBI fingerprint check for centers. Fifty-five States and Territories require family child care providers to have a criminal background check, and approximately 45 require an FBI fingerprint check. For some States and Territories, these requirements are currently limited to licensed providers, rather than all providers that serve children receiving CCDF subsidies.

Background check effective dates. The Act requires that States and Territories shall meet the requirements for the provision of criminal background checks for child care staff members not later than the last day of the second full fiscal year after the date of enactment of the Child Care and Development Block Grant Act of 2014. This delayed effective date requires States and Territories to come into compliance with the background check requirements by September 30, 2017.

Comment: Several States requested clarifying language be added to the preamble around the statutory effective dates for the background check requirements.

Response: A State must have policies and procedures in place that meet the background check requirements not later than September 30, 2017. In addition, in accordance with Section 658H(d)(2), staff members who were employed prior to the enactment of the CCDBG Act of 2014 must have submitted requests for background checks that meet all the requirements by September 30, 2017. Section 658H(d)(4), the Act provides that a provider need not submit a new request for a child care staff member if the staff member received a background check meeting all the required components under the Act within the past five years while employed by, or seeking employment by, a child care provider within the State. If a staff member employed prior to the CCDBG Act of 2014 satisfies all of those requirements, then it is not necessary for a provider to submit a new request until five years following the background check completion. It will be important to evaluate the current background check requirements to ensure that all new requirements are satisfied, including the disqualification factors. If the current background check requirements do not satisfy the new requirements or results of the current background checks are not maintained, then new background checks would need to be conducted.

We strongly encourage States to establish policies and procedures well in advance of the September 30, 2017, effective date, in order to allow sufficient time to clear the backlog of existing providers and staff members that must be checked prior to the deadline. It is also important to note that the HHS Secretary may grant the State an extension of up to one year to complete the background check requirements, as long as the State demonstrates a good faith effort to comply. This extension is separate from the transitional waiver described earlier in the preamble. States applying for an extension must be able to describe their current implementation efforts and present a timeline for compliance within one year, by September 30, 2018. ACF will release specific guidance to States interested in an extension. In addition, the reauthorized Act establishes a penalty for noncompliance. For any year that a State fails to substantially comply, ACF shall withhold up to 5 percent of the State's CCDF funds for each year until coming into compliance.

Background check implementation. Section 658H(a) of the Act requires that States shall have in effect requirements, policies, and procedures to require and conduct criminal background checks for child care staff members (including prospective child care staff members) of child care providers. Having procedures in place to conduct background checks on child care staff members will require coordination across public agencies. The CCDF Lead Agency must work with other agencies, such as the Child Welfare office and the State Identification Bureau, to ensure the checks are conducted in accordance with the Act. In recognition of this effort, § 98.43(a)(1) clarifies that these requirements involve multiple State, Territorial, or Tribal agencies. We discuss the comments we received on this provision further below.

Tribes and background checks. In the final rule, Tribal Lead Agencies are also subject to the background check requirements described in this section, with some flexibility as discussed later in Subpart I.

Applicability of background checks requirements. The statutory language identifying which providers must conduct background checks on child care staff members is unclear. It is our interpretation of the Act that all licensed, regulated, and registered child care providers and all child care providers eligible to deliver CCDF services (with the exception of those individuals who are related to all children for whom child care services are provided) are subject to the Act's background check requirements. Section 98.43(a)(1)(i) of the final rules applies this requirement to all licensed, regulated, or registered providers, regardless of whether they receive CCDF funds and all license-exempt CCDF providers (with the exception of individuals who are related, as defined in the definition of *eligible child care provider,* to all children for whom child care services are provided).

Comment: Overall, the comments, from national organizations and multiple States, supported broadly applying the background check requirements to all licensed, regulated, or registered child care providers and all child care providers eligible to deliver CCDF services. One State and one Territory submitted comments disagreeing with our interpretation.

Response: ACF was pleased by the support for broad applicability of the background check requirements. We acknowledge that the statutory language is not clear about the universe of staff and providers subject to the background check requirement; however, our interpretation aligns with the general intent of the statute to improve the overall safety of child care services and programs. Furthermore, there is justification for applying this requirement in the broadest terms for two important reasons. First, all parents using child care deserve this basic protection of having confidence that those who are trusted with the care of their children do not have criminal backgrounds that may endanger the well-being of their children. Second, limiting those child care providers who are subject to background checks has the potential to severely restrict parental choice and equal access for CCDF children, two fundamental tenets of CCDF. If not all child care providers are subject to comprehensive background checks, providers could opt to not serve CCDF children, thereby restricting access. Creating a bifurcated system in which CCDF children have access to only a portion of child care providers who meet applicable standards would be incongruous with the purposes of the Act and would not serve to advance the important goal of serving more low-income children in high-quality care.

Comment: One comment suggested adding regulatory language to capture all State definitions of provider groups. The comment stated, "Some States may use words, such as 'certified' or 'listed care' that should not be exempt from a comprehensive check merely because the words 'licensed, regulated, or registered' are not used. For example, legislation is currently pending in at least one State that would eliminate the category of care called 'voluntarily registered' and replace it with a voluntary 'list.' "

Response: It is not necessary to insert additional regulatory language to address other State definitions of provider groups. As described earlier, the background check requirements apply to licensed, regulated, or registered providers, regardless of whether they receive CCDF funds as well as all providers eligible to deliver CCDF services. Our interpretation of the law applies these requirements broadly

and includes providers who are "certified" or "listed."

Definition of child care staff member. Section 658H(i) of the Act defines a child care staff member as someone (other than an individual who is related to all children for whom child care services are provided) who is employed by the child care provider for compensation or whose activities involve unsupervised access to children who are cared for by the child care provider. Section 98.43(a)(2)(ii) of the final rule includes contract and self-employed individuals in the definition of child care staff members, as they may have direct contact with children. In addition, we require individuals, age 18 or older, residing in a family child care home to be defined as child care staff members and, therefore, subject to background checks, as well as the disqualifying crimes and appeals processes.

Comment: In the NPRM, at § 98.43(a)(2)(ii), we defined child care staff member to mean "an individual age 18 and older . . ." We received a letter from Senator Alexander and Congressman Kline asking us to revise this regulatory language to reflect current State practice. The letter stated, "The NPRM defines those staff required to receive a background check as individuals 18 and older, yet a number of State laws allow individuals younger than 18 to be employed by providers. To ensure the maximum amount of safety while still respecting individual States' employment laws, we request the Department provide information or assistance to States on conducting background checks for both staff aged 18 and older, and those younger than 18 to ensure all States are able to comply with the background checks required in the Act."

Response: ACF agreed with the concerns described in the letter. The reference to "age 18 or older" is removed from the final rule. This change better aligns with the original statutory language and removes the unintentional limitation placed on the definition of child care staff member. The original statutory language requires any individual, regardless of age, who is employed by a child care provider for compensation to complete comprehensive background checks.

Comment: Several comments continued to ask for clarification on who is included in the definition of child care staff member. A letter from Senator Alexander and Congressman Kline advised, "The scope of the NPRM's definition of 'child care staff member' for the purposes of a required background check is unclear. We ask for clarity for providers so they may know definitively if an individual who receives 'compensation, including contract employees or self-employed individuals' is required to automatically receive a background check, or if such individuals should additionally have duties listed under subparagraph (B). As written, the definition is unclear if these requirements are mutually exclusive and would trigger a background check on their own regard or if a 'child care staff member' would need to fit both such requirements. We ask you also to review the administrative burden this definition could place on providers. While retaining the highest safety measures for children, we urge the Department to review this requirement and listen to comments from centers and providers to ensure their obligation captures individuals who may have unsupervised access to children but is not duplicative of State requirements or overly burdensome."

Response: The Act states that a child care staff member means an individual (other than an individual who is related to all children for whom child care services are provided) who is employed by a child care provider for compensation; *or* whose activities involve the care or supervision of children for a child care provider or unsupervised access to children who are cared for or supervised by a child care provider. This definition, like the definition of child care provider, is broad. It encompasses not only caregivers, teachers, or directors, but also janitors, cooks, and other employees of a child care provider who may not regularly engage with children, but whose placement at the facility gives them the opportunity for unsupervised access. Given that these individuals are employed by a child care provider, they are included in the statute's definition. Therefore, it is important that they also complete a comprehensive background check in order to ensure and protect children's safety.

The final rule adds the terms "contract employees" and "self-employed individuals" to the definition of "child care staff member." These terms are meant to clarify the definition, particularly for family child care providers. Many family child care providers are self-employed individuals who own their own businesses. The final rule specifically requires any individual residing in a family child care home age 18 or older to complete a background check. We discuss this requirement in greater detail below. These individuals may also have unsupervised access to children, so completing a background check is a necessary safeguard to protect the children in care. The definition of child care staff member generally covers any individual who is employed by the child care provider and any individual who may have unsupervised access to children in care.

Comment: The comments were mixed on whether other adults in a family child care home should be subject to the background checks requirements. Several national organizations and States wrote in support, while child care worker organizations, a few national organizations, and one State did not support the provision. One State wrote, "We currently require background reviews on all household members 18 years or older and have found multiple individuals whose presence could place children at risk."

Response: As illustrated by the State's comment, requiring other adults in family child care homes to complete background checks is vital to ensuring children's health and safety. A majority of States already require other adults in family child care homes to receive background checks. Forty-three States require some type of background check of family members 18 years of age or older that reside in the family child care home (*Leaving Child Care to Chance: NACCRRA's Ranking of State Standards and Oversight for Small Family Child Care Homes,* National Association of Child Care Resource and Referral Agencies, 2012).

Although these individuals may not be directly responsible for caring for children, they have ample opportunity for unsupervised access to children. For this reason, as proposed in the NPRM, we are specifically requiring other adults in family child care homes to complete the background check requirements. Because these individuals are included in the definition of child care staff member, they are subject to the same disqualifications and appeals processes described in the Act and the regulations. We strongly discourage States from identifying any additional disqualifying crimes for residents of family child care homes, and encourage them to consider that casting too wide a net could have adverse effects on the supply of family child care providers and other consequences for individuals returning from incarceration. As described later in the preamble, we also strongly encourage States to implement a waiver review process that meets the recommendations of the U.S. Equal Employment Opportunity Commission for any additional disqualifying crimes (U.S. Equal Employment Opportunity Commission, *Enforcement Guidance on*

the Consideration of Arrest and Conviction Records in Employment Decisions under Title VII of the Civil Rights Act of 1964, http://www.eeoc.gov/laws/guidance/upload/arrest_conviction.pdf).

Comment: In the NPRM, ACF asked for comment on whether additional individuals in the family child care homes should be subject to the background check requirements. There was only lukewarm support for requiring background checks for minors in family child care homes. Several States recommended checking individuals over ages 12, 13, or 16 to mirror current State policy and practice.

Response: ACF is declining to require background checks for individuals under age 18 in family child care homes. However, States that check individuals younger than age 18 may continue checking all background check components permitted by State law. The Adam Walsh Child Protection and Safety Act of 2006 (42 U.S.C. 16901) requires States to include in their sex offender registries juveniles convicted as adults and juveniles who are convicted of an offense similar or more serious than aggravated sexual abuse. We allow States the flexibility to follow current State laws and registry policies to check those individuals younger than 18 in family child care homes; however, we strongly encourage States to implement a waiver process that meets the recommendations of the U.S. Equal Employment Opportunity Commission for any additional disqualifying crimes (U.S. Equal Employment Opportunity Commission, *Enforcement Guidance on the Consideration of Arrest and Conviction Records in Employment Decisions under Title VII of the Civil Rights Act of 1964, http://www.eeoc.gov/laws/guidance/upload/arrest_conviction.pdf*).

Comment: A few comments asked for clarification around volunteers. One State wrote, "In many circumstances, a parent volunteer (for activities such as field trips) would fit into the definition of child care staff member ('activities involve the care or supervision of children' and they may be unsupervised for periods of time) and therefore [would] require them to meet all background check requirements. This requirement could prevent some parents from involvement in enrichment activities, particularly because of the cost associated with the background checks."

Response: Volunteers who provide infrequent and irregular service that is supervised or parent volunteers who are supervised do not meet the definition of child care staff member. Volunteers who come into a child care facility to help with a classroom party, read to students, or assist with recess are not caring for or supervising children for a child care provider. Rather, volunteers in the situations described above are providing additional assistance under supervision of the primary caregiver.

Volunteers are not specifically included in the Act, nor have we specifically included them in the regulation. We are allowing States the discretion to create their own policies and screening processes for volunteers. However, it is ACF's view that volunteers who have not had background checks may not be left with children unsupervised. Volunteers who have unsupervised access to children must have background checks that comply with the statute. These volunteers will be subject to the same disqualifications and appeals process as described in the Act and regulations. As with other adults in the household, we strongly discourage States from adding additional disqualifications outside the Act. We also encourage Lead Agencies to require that volunteers who have not had background checks be easily identified by children and parents, for example through visible name tags or clothing.

Components of a criminal background check. The Act outlines five components of a criminal background check: (1) A search of the State criminal and sex offender registry in the State where the staff member resides and each State where the staff member has resided for the past five years; (2) A search of the State child abuse and neglect registry in the State where the staff member resides and each State where the staff member has resided for the past five years; (3) A search of the National Crime Information Center; (4) A Federal Bureau of Investigation (FBI) fingerprint check using the Integrated Automated Fingerprint Identification System; and (5) A search of the National Sex Offender Registry.

After extensive consultation with the FBI and other subject-matter experts, we made technical changes to address duplication among these components. In the final rule, we are consolidating the list of required components in the regulations at § 98.43(b) to:

(1) A Federal Bureau of Investigation fingerprint check using Next Generation Identification;

(2) A search of the National Crime Information Center's National Sex Offender Registry; and

(3) A search of the following registries, repositories, or databases in the State where the child care staff member resides and each State where such staff member resided during the preceding 5 years:

i. State criminal registry or repository, with the use of fingerprints being required in the State where the staff member resides, and optional in other States;

ii. State sex offender registry or repository; and

iii. State-based child abuse and neglect registry and database.

It is our understanding that there is some duplication among the National Crime Information Center's (NCIC) National Sex Offender Registry (NSOR), the FBI fingerprint searches, and the searches of State criminal, sex offender, and child abuse and neglect registries. An FBI fingerprint check provides access to national criminal history record information across State lines on people arrested for felonies and some misdemeanors under State, Federal, or Tribal law. However, there are instances where information is contained in State databases, but not in the FBI database. A search of the State criminal records and a FBI fingerprint check returns the most complete record and better addresses instances where individuals are not forthcoming regarding their past residences or committed crimes in a State in which they did not reside.

In addition to gaps in the FBI fingerprint and the State criminal records, there are a number of instances in which an individual may be listed in the State sex offender registry and not in NSOR, and vice versa. For example, some States have statutes that disallow the removal of offenders, regardless of offender status, while in the NSOR, the agency owning the record is required to remove the offender from active status once his/her sentencing is completed. In addition, federal, juvenile, and international sex offender records may be included in the NSOR; whereas, State laws may prohibit the use of this information in the State sex offender registry. Because of these discrepancies, it is important to check the State sex offender registries in addition to an FBI fingerprint check and a check of the NCIC's NSOR. It is our belief that the Act requires such thorough background check to ensure that offenders do not slip through the cracks to be given access to children.

Comment: Commenters, including several national organizations, child care worker organizations, and a couple of States, argued that an FBI fingerprint check should be considered a sufficient check of the National Crime Information Center (NCIC) and the National Sex Offender Registry (NSOR) because it checks the fingerprint records of several NCIC files, including the NSOR.

Response: Based on consultation with the FBI, we understand that the comments are partially correct. The FBI fingerprint check using Next Generation Identification (NGI) (formerly the Integrated Automated Fingerprint Identification System—IAFIS) will provide a person's criminal history record information which will incorporate data from three NCIC person files, including the NSOR, provided certain identifying information has been entered into the NSOR record. The change in the language from IAFIS to NGI is a technical change and should not impact Lead Agency background check processes. The NGI is the biometric identification system that has now replaced the older IAFIS.

There is significant overlap between the FBI fingerprint check and the NSOR check (via the NCIC), yet there are a number of individuals in the NSOR who are not identified by solely conducting an FBI fingerprint search. The FBI links fingerprint records to the NSOR records via a Universal Control Number, but a small percentage of cases are missing the fingerprints. In some cases, individuals were not fingerprinted at the time of arrest, or the prints were rejected by the FBI for poor quality. This small percentage of records can be accessed through a name-based search of the NCIC. A number of those individuals may also be identified by a search of the State sex offender registries, but it is impossible to know whether there is complete overlap. In the absence of verification of complete duplication of records, it is important to require separate searches of an FBI fingerprint check and a name-based search of the NCIC's NSOR. Because Congress included each of these searches in the Act, it is our belief that the intent is for the background check to be as comprehensive and thorough as possible.

Comment: In the NPRM, we requested comments on the feasibility of a search of the NCIC and the level of burden required by the Lead Agency. We received comments from 12 States and two State police departments that all emphasized that without further guidance from the FBI, name-based searches of the NCIC and NSOR will be extremely difficult because these databases are limited to law enforcement purposes only.

Response: The comments are correct. The NCIC is a law enforcement tool consisting of 21 files, including the NSOR. The 21 files contain seven property files that help track missing property and 14 person files with information relevant to law enforcement (*e.g.*, missing persons or wanted persons). State criminal records are not stored in the NCIC. The only file with information that would aid in determining whether an individual could be hired as a child care employee is the NSOR. The other files do not contain information on the disqualifying crimes listed in the Act. Further, the FBI has advised that a general search of the NCIC database will return records that cannot be made privy to individuals outside of law enforcement (*i.e.*, the Known or Appropriately Suspected Terrorist File). Therefore, we are clarifying that a check of the NCIC will only need to search the NSOR file.

The comments call out a number of potential challenges, also identified by ACF, in requiring an NCIC check. It is our understanding that an NCIC check has not been included in any other non-criminal background check law applicable to States to date, and so, resolving these challenges is in many ways unchartered territory.

First, access to the NCIC, including, in some cases, physical access to computers capable of searching the NCIC, is limited, and it is primarily available to law enforcement agencies. Therefore, to conduct this check, Lead Agencies will have to partner with a State, Tribal, or local law enforcement agency. Because the NCIC has not been used this way, we do not know of examples of other State agencies partnering in this way or what such partnerships would entail. We also do not know the implications for Lead Agencies that use third-party vendors to conduct background checks. Third-party vendors do not have authorized access to conduct name-based checks of the NCIC for noncriminal justice purposes.

Secondly, the NCIC is a name-based check, rather than fingerprint based. Hit verification of name-based checks may be labor intensive, especially when searching for individuals with common names. While we are concerned about the burden on Lead Agencies to conduct this check, we recognize that the NCIC was included in the statute, and we are concerned about the potential for missing sex offenders by not conducting a comprehensive search.

Because of the challenges identified by both the commenters and ACF, we will not begin to determine compliance with the requirement to search the NCIC's NSOR until after guidance is issued by ACF and the FBI. ACF has been working closely with the FBI to find solutions for State access. We plan to release guidance that will be shared with both State Lead Agencies and State Identification Bureaus. We expect that Lead Agencies will be required to partner with local law enforcement to perform NCIC checks of the NSOR. This guidance will give States further instruction in how to search the NCIC's NSOR and how to utilize the results. We understand that States may not be able to begin implementing the check of the NCIC's NSOR until the specific guidance is released. ACF will address implementation timeframes for this particular search in the future guidance. Lead Agencies should begin to form partnerships with local law enforcement and State Identification Bureaus in order to meet the requirement to check the NCIC's NSOR database.

Comment: Several commenters, including States and a State police department, suggested requiring a search of the National Sex Offender Public Web site (NSOPW) instead of a search of the NSOR.

Response: A search of the NSOPW does not satisfy the statutory requirement for a search of the NSOR, and therefore, we declined to make any changes in the final rule. ACF does encourage an additional search of the NSOPW at *www.nsopw.gov*, although it is not required. The NSOPW acts as a pointer for each State, Territory, and Tribally-run sex offender registry. The registries are updated and kept in real time and may be searched by name, but other identifying information may be limited in these records.

Comment: In the NPRM, we proposed to require that the search of the State criminal records would include a fingerprint check in the State where the individual resides and the States the individual has resided for the past five years. However, State commenters, including State police departments, recommended removing the requirement to search other States' criminal repositories using fingerprints. The comments emphasized that the technology does not exist to allow States to send fingerprints electronically to check other States' repositories. A law enforcement representative wrote, "For State Identification Bureaus that are the ones sending the prints on to the FBI, it could be easy; however, requests coming from other States would be a very manual process—hard copy cards, scanned in, and mailed responses back. We have no way of disseminating results back to every other State via an automated means."

Response: ACF is removing the proposal to check other States' criminal repositories using fingerprints. It was not our intent to create an additional burden for States. Instead, in the final rule, we are requiring States to do a fingerprint-based check of the criminal repository only in the State where the individual resides. Use of fingerprints is

optional in other States where the individual resided within the past five years. Fingerprint searches reduce instances of false positives and also help capture records filed under aliases. We do not believe that a fingerprint search of the State repository is an additional burden. States can use the same set of fingerprints to check both the State criminal history check and the FBI fingerprint check. When conducting searches of other States' criminal repositories, the State may utilize a name-based search, instead of a fingerprint.

Comment: The Act requires States to check the State criminal registry or repository; sex offender registry or repository; and child abuse and neglect registry and database for every State where a child care staff member has lived in for the past five years. Based on our preliminary conversations with States, the requirement to conduct cross-State background checks of the three different repositories is another unexplored area for Lead Agencies. In the NPRM, we asked for comments on whether States have any best practices or strategies to share and how ACF can support Lead Agencies in meeting the cross-State background check requirements.

Comments we received from national organizations and States reinforced that these cross-State checks are indeed new territory for Lead Agencies. These comments offered a variety of suggestions of how ACF can support States in meeting the cross-State background check requirements, including introducing an electronic information exchange system, drafting a standard Memorandum of Understanding, maintaining a national contacts list, and studying the viability of cross-State background checks at the regional level.

Response: ACF is continuing to work closely alongside our technical assistance partners to learn how we can support and help facilitate these cross-State checks. In the months since the CCDBG Act of 2014 was enacted and the NPRM was published, we have been engaged in Regional level calls with States to understand supports needed to overcome barriers to the required cross-State checks. We have also been reaching out to other Federal partners to explore existing systems and opportunities to collaborate. We have not found an existing system that would support States in conducting all of the cross-State checks.

We appreciate the suggestions from the commenters and have already begun work toward bringing some of them to fruition. We know States want tools and guidance to complete these checks. ACF has recently announced a pilot project to develop a National Interstate Background Check Clearinghouse to support Lead agencies in meeting the cross-State background check requirements. The goal of this system is to enable Lead Agencies to exchange background check information securely with other State, Territory, and Tribal Lead Agencies. ACF is also working on developing a national CCDF information sharing agreement as part of this project. We ask that States continue to make a good faith effort toward complying with these checks and that States work to build partnerships across State lines.

While ACF is still working to understand how we can support cross-State background checks, this rule also requires a couple of provisions to help create transparency around the process. At § 98.43(a)(1)(iii), Lead Agencies are required to have requirements, policies, and procedures in place to respond as expeditiously as possible to other States', Territories', and Tribes' requests for background check results in order to accommodate the 45 day timeframe. The final rule also requires Lead Agencies to include the process by which another Lead Agency may submit a background check request on the Lead Agency's consumer education Web site, along with all of the other background check policies and procedures. In addition, this final rule requires, at § 98.16(o), that Lead Agencies describe in their Plans the procedures in place to respond to other State, Territory, or Tribal requests for background check results within the 45 day timeframe. ACF will use this question in the Plan to help ensure compliance with the background check requirements in the Act. These provisions are intended to minimize confusion about the correct contact information for background check requests and to ensure that there are processes in place for timely responses. Having policies and procedures in place to respond to outside background check requests is a first step toward an effective cross-State background check system.

Comment: We heard from a number of States that are closed-record States, which means they cannot release an individual's background check records or information to other States. One State explained that it is, "a closed record State and does not release criminal history information to any out-of-state entity for civil purposes, one of which is determining employment eligibility. This is a fundamental tenant of being a closed record State. However, there is a process by which an individual residing in another State may obtain his/her fingerprint-based personal criminal background history from [the State's] Bureau of Criminal Identification and Information (Bureau) within the Office of State Police and provide it to a Lead Agency in another State."

Response: States need to have a methodology in place to respond to other States' requests for background check results. ACF does not expect to penalize States that have made a good faith effort to request information from other States. For States with closed-record laws or policies, we understand that this requirement may be in direct opposition with State law. States will need to either change their laws to allow for the exchange of background check information for child care staff members or create other solutions. Although the Act requires States to be in compliance by September 30, 2017, States (including closed-record States) may request an extension of up to one year in order to make the necessary legislative or other changes to share background check information across State lines. ACF is currently working with our technical assistance partners to understand the impact of closed-record laws.

Although ACF discourages this practice, a closed-record State may utilize a process similar to what the State commenter describes above. The closed-record State may give the background check results directly to the individual to relay to the requesting State. States are required to respond to other States' requests for background check requests, and when a State is giving the results directly to an individual, that State must have a process in place to inform the requesting State. This practice increases the potential for fraud relating to the results and also places the burden on the individual. States should carefully consider these factors and the impact they could have on the supply of child care providers. ACF encourages States to find other solutions, whenever possible.

We encourage State partnerships and agreements, whenever possible, in order to meet the requirements of the Act. One potential solution may be for the closed-record States to determine whether the individual is eligible or ineligible for employment given the State background check results. The closed-record State could disclose this determination with the requesting State, without revealing the background check information. We do recognize that this is an imperfect solution, since States use different definitions and criteria for disqualification, particularly in the case of child abuse and neglect findings.

However, States may use this solution to comply with the statutory requirements, as long as States also comply with the requirements related to the appeals process.

If the individual is deemed ineligible by a closed-record State, then the closed-record State is also responsible for notifying the individual and following the requirements at § 98.43(e)(2)(ii). The closed-record State must provide information related to each disqualifying crime in a report to the individual. The closed-record State must also send information on the opportunity to appeal and adhere to the appeals process described at § 98.43(e)(3).

Comment: Comments from States and national organizations asked ACF to provide clarity around what to do if a State does not respond to another State's request for results from the State's criminal repository, sex offender registry, and child abuse and neglect registry.

Response: As discussed later in the preamble, we are allowing States the flexibility to make employment decisions in the event that not all background check components are completed within 45 days. ACF does not expect to penalize States that have made a good faith effort to request information from other States.

Comment: Before publishing our NPRM, we heard particular concern about the statutory requirement for cross-State checks of the child abuse and neglect registries. We understand that States have developed their own requirements for submitting requests, and there is not a uniform method of responding. Therefore, in the NPRM, we solicited comments on how States will meet this requirement and respond to other State requests.

Comments from national organizations and child care worker organizations suggested new regulatory language that would only require a search of the State-based child abuse and neglect registries "if one exists and such a search is allowable for such purposes under State law and practice." Other comments emphasized the importance of cross-State child abuse and neglect registries. A letter co-signed by several child care resource and referral agencies, asserted, "We do not support language that would circumvent the concept of checking against a State child abuse registry or listing or whatever such a registry may be called in a State. States have the systems, although they may be called different names. It is time to have effective cross-checks in place to promote the safety of children."

Response: ACF is declining to add the suggested regulatory language. The Act includes, as the final component of a comprehensive background check, the search of the State child abuse and neglect registries in the State where the individual lives and the States where the individual has resided for the past five years. States, including those that do not have formal child abuse and neglect registries, are expected to comply with this requirement. We recognize that implementation of this critically important component of protecting children will vary across States. Every State has procedures for maintaining records of child abuse and neglect, but only 41 States, the District of Columbia, American Samoa, Guam, and Puerto Rico require central registries by statute. The type of information contained in central registries and department records differ from State to State. Some States maintain all investigated reports of abuse and neglect in the central registry, while others maintain only substantiated or indicated reports. The length of time the information is held and the conditions for expunction also vary. Access to information maintained in registries also varies by State, and some States may need to make internal changes to meet the requirement for a search of the State's own child abuse and neglect registry. Approximately 31 States and the District of Columbia allow or require a check of the central registry or department records for individuals applying to be child or youth care providers. (*Establishment and Maintenance of Central Child Abuse Registries,* Children's Bureau, July 2014).

Comment: We received a number of requests for guidance on what information from child abuse and neglect registries States need to make employment decisions and how to interpret that information. Simply being part of a State-based child abuse and neglect registry is not a disqualification under the Act, so just knowing that an individual is on the registry is not enough information to make a determination. States need to know what types of information they need and how to interpret that information in order to make employment eligibility determinations for child care staff members.

Response: The commenters are correct that the Act only requires that the child abuse and neglect registries be checked and did not require an individual be disqualified because of child abuse and neglect findings. Because many child abuse and neglect registries use name-based searches, States may need to take additional steps to verify that the individual is the same person as is listed on a registry. There is so much variation in the information maintained in each registry, so we are allowing Lead Agency flexibility in how to handle findings on the child abuse and neglect registries. ACF does suggest that the Lead Agency not necessarily immediately disqualify an individual, depending on the finding and evaluate any findings carefully, on a case by case basis.

The definitions of child abuse and neglect, what is considered substantiated or indicated child abuse and neglect, and other legal terminology associated with child abuse and neglect registries varies from State to State. In addition, some registries may contain unsubstantiated complaints or incidences. Lead Agencies should be cautious when using unsubstantiated allegations of child abuse and neglect in determining an individual's employment eligibility.

Based on consultation with the Children's Bureau at ACF, we understand that State Child Welfare agencies or State Child Protective Services agencies already have policies and procedures in place to make determinations about the suitability of substitute care providers using child abuse and neglect findings. We are working to ensure that child welfare agencies are also aware of the requirements in the Act for a search of the State child abuse and neglect registry in the State where the individual lives and the States where the individual has resided for the past five years. Lead Agencies should partner closely with the relevant State agencies to seek guidance in making employment decisions.

Comment: We received several comments from States that do not conduct due process when placing an individual on their child abuse and neglect registry. One State wrote, "In the course of abuse/neglect investigations in our State, we do not offer up-front due process for findings made against an individual. If a background check is requested on the individual in the course of employment in child care in [the State] or as part of a foster care/adoption application in [the State], our agency uses that opportunity to offer a hearing in front of an administrative law judge through the State Office of Administrative Hearings. If an individual chooses to contest the finding(s), the process can be lengthy. It requires our agency to schedule and prepare for a hearing, including contacting appropriate witnesses and

providing opposing council (if one exists) with redacted case files."

Response: We understand the issue the commenters are raising relates to procedures that some State child welfare agencies have on due process for individuals in state child abuse and neglect registries that may delay the Lead Agency in providing information about an individual who is seeking employment with a child care provider. The Act requires States to carry out background checks requests, including searches of State-based child abuse and neglect registries, as quickly as possible, in not less than 45 days. States that have a due process approach as described by the commenters may not be able to meet the 45 day timeframe for providing the registry information for child care employment purposes. As such, we encourage the Lead Agencies to work with their child welfare agencies to assist them in understanding the statutory requirements to meet the 45 day timeframe. ACF is working on joint guidance to be released by the Children's Bureau and the Office of Child Care to ensure that both the State Lead Agencies and State child welfare agencies are aware of their roles in the background check process.

Comment: In the NPRM, ACF requested comment from States about whether cross-State background check systems for foster or adoptive parents could be used to support cross-State background checks for prospective child care staff members as well. Comments varied. Two States believe that their foster and adoptive parent systems would be able to support cross-State background checks for child care staff members. However, the national association of State child care administrators expressed concern about this suggestion: "Administrators understand that these data are housed in the child welfare agency and use of and compliance with this proposal would vary."

Response: The cross-State background check requirement has similarities to language at Section 152(a)(1)(C) of the Adam Walsh Child Protection and Safety Act of 2006 (42 U.S.C. 671(a)(1)(C)) for foster or adoptive parents. That law requires a State to check any child abuse and neglect registry maintained by the State for information on any prospective foster or adoptive parent and on any other adult living in the home of such a prospective parent, and request any other State in which any such prospective parent or other adult has resided in the preceding five years, to enable the State to check any child abuse and neglect registry maintained by such State for such information, before the prospective foster or adoptive parent may be finally approved for placement of a child. We encourage Lead Agencies to reach out to the State Child Welfare or Protective Services to explore whether the process in place for foster or adoptive parents could also be used to support a process for child care staff members.

Disqualifications. The Act specifies a list of disqualifications for child care providers and staff members who are serving children receiving CCDF assistance. Unlike the other requirements in the background check section, the Act only applies the restriction against employing ineligible child care staff members to child care providers receiving CCDF assistance. These employment disqualifications specifically do not apply to child care staff members of licensed providers who do not serve children receiving CCDF subsidies. This gives Lead Agencies the flexibility to impose similar restrictions upon child care providers who are licensed, regulated, or registered and do not receive CCDF funds.

The list of disqualifications from the Act includes a list of felonies and misdemeanors that disqualify an individual from being employed as a child care staff member. We understand that States define crimes differently, but our expectation is that States will match the equivalent crimes to those on this list. These disqualification requirements appear at § 98.43(a)(1)(ii) and § 98.43(c). We are not adding any additional disqualifications to the final rule.

Even though the Act includes a specific list of disqualifications, it also allows Lead Agencies to prohibit individuals' employment as child care staff members based on their convictions for other crimes that may impact their ability to care for children. If a Lead Agency does disqualify an individual's employment, they must, at a minimum, give the child care staff members or prospective staff members the same rights and remedies described in § 98.43(e). This language from Section 658H(h) of the Act is restated in the final rule at § 98.43(h). In the final rule, we also added language to link this paragraph to the list of disqualifications at § 98.43(c)(1).

We strongly encourage Lead Agencies that chose to consider other crimes as disqualifying crimes for employment to ensure that a robust waiver and appeals process is in place. As discussed later, a waiver and appeals process should conform to the recommendations of the U.S. Equal Employment Opportunity Commission, including the ability to waive findings based on factors as inaccurate information, certificate of rehabilitation, age when offense was committed, time since offense, and whether the nature of offense is a threat to children. (U.S. Equal Employment Opportunity Commission, *Enforcement Guidance on the Consideration of Arrest and Conviction Records in Employment Decisions under Title VII of the Civil Rights Act of 1964, http://www.eeoc.gov/laws/guidance/upload/arrest_conviction.pdf*). Moreover, we strongly discourage Lead Agencies from considering additional disqualifying crimes. Casting too wide a net could have adverse effects on the supply of family child care providers and other consequences for individuals returning from incarceration. The disqualifications described in the Act are appropriate to determine whether an individual should be able to care for children.

Comment: A couple of States requested clarification on the length of time an individual would be ineligible if convicted of one of the disqualifying crimes listed in the Act. One State said, "[the State's] Supreme Court rendered a decision that precludes the State from imposing lifetime employment bans. Enforcing the regulation as proposed will require the program office to challenge that decision. Additionally the proposed regulation appears to go beyond what the statute provides and encroaches on the State's police powers to decide who can be licensed in the State."

Response: ACF is not requiring any additional disqualifications or parameters around disqualifications that are not already required by the Act. The Act includes a list of disqualifications at Section 658H(c), with a list of disqualifying crimes at Sections 658H(c)(1)(D) and (E). With the exception of a felony conviction of a drug-related offense committed during the preceding five years, all of the felony and violent misdemeanor convictions listed by the Act are lifetime bans against employment by a child care provider delivering CCDF services. The Act does not allow any flexibility to grandfather in current child care staff members who have been convicted of one of the crimes described in the Act. States do have the option to individually review drug-related felony convictions that were committed during the preceding five years. As discussed later in the preamble, we encourage States to conduct these reviews in accordance with guidance from the U.S. Equal Employment Opportunity Commission.

Comment: Several comments from national organizations and child care worker organizations urged ACF to

redact self-disclosure language that originally appeared in the preamble of the NPRM. A letter co-signed by 80 national organizations, wrote, "Given the complexity of the background checks as prescribed and the specific disqualifying crimes established in Act, we recommend that ACF not encourage self-disclosure as it could prevent employment of a qualified child care staff member or prospective staff member. Individuals with a criminal history completely unrelated to their ability to care for and have responsibility for the safety and well-being of children, as well as those with no record whatsoever who might be intimidated, could inaccurately assume that they would not be eligible for employment. It could also violate a child care staff member's right to privacy with his or her employer."

Response: We agreed with the commenters and have removed the self-disclosure language from the preamble.

Frequency of Background Checks. Section 658H(d) of the Act requires child care providers to submit requests for background checks for each staff member. The requests must be submitted prior to when the individual becomes a staff member and must be completed at least once every five years. These requirements are included in the regulations at § 98.43(d)(1) and (2). For staff members employed prior to the enactment of the CCDBG Act of 2014, the provider must request a background check prior to September 30, 2017 (the last day of the second full fiscal year after the date of enactment) and at least once every five years.

Although not a requirement, we encourage Lead Agencies to enroll child care staff members in rap back programs. A rap back program works as a subscription notification service. An individual is enrolled in the program, and the State Identification Bureau receives a notification if that individual is arrested or convicted of a crime. States can specify which events trigger a notification. Rap back programs provide authorizing agencies with notification of subsequent criminal and, in limited cases, civil activity of enrolled child care staff members so that background check information is not out of date. However, unless the rap back program includes all the components of a comprehensive background check under the Act, the Lead Agency is responsible for ensuring that child care staff members complete all other components at least once every five years.

Section 658H(d)(4) of the Act specifies instances in which a child care provider is *not* required to submit a background check for a staff member. Staff members do not need background check requests if they satisfy three requirements: (1) The staff member received a background check that included all of the required parts within the past five years while employed by, or seeking employment by, another child care provider in the State; (2) the State gave a qualifying result to the first provider for the staff member; and (3) the staff member is employed by a child care provider within the State or has been separated from employment from a child care provider for less than 180 days. These requirements are included in the final rule at § 98.43(d)(3). Lead Agencies should consider how to facilitate tracking this type of information and maintaining records of individual providers so that unnecessary checks are not repeated.

Comment: We received several comments from States asking whether staff members' background checks could be re-assessed when they seek employment by another child care provider in the State. One State wrote, "We allow a child care staff to carry forward his or her fingerprint-based background check from one child care operation to another, as long as the person maintains a name-based recheck every 24 months. However, our agency also has a process where we re-assess an individual with certain criminal or abuse/neglect history for each child care operation in which he/she would like to work. [The State] looks at a variety of factors, including details about the role the individual will be working in and the compliance history of the specific child care operation, and makes a determination of overall risk given the results of the background check."

Response: If a staff member meets the three requirements described in the Act, then the child care provider does not need to submit a background check request. However, States do have the option of creating more stringent requirements, such as requiring background to be performed with greater frequency or when a staff member changes the place of employment. Where possible, ACF encourages States to keep processes in place, like the one described by the State, that allow them to make nuanced decisions about individuals' employment eligibility and that carefully consider extenuating circumstances relating to the individual's background check records.

Provisional Employment. The Act requires child care providers to submit a request for background check results prior to a staff member's employment but does not describe instances of provisional employment while waiting for the results of the background check. We received many comments on this issue in the 2013 NPRM, with commenters expressing concern that the background check requirements could prevent parents from accessing the provider of their choice, if the provider's staff has not already received a background check. Parents often need to access child care immediately, for example, as they start new jobs, and commenters were worried that this could lead to delays in accessing care.

In recognition of the possible logistical constraints and barriers to parents accessing the care they need, § 98.43(d)(4) of the final rule allows prospective staff members to provide services to children while under supervision and on a provisional basis, after completing either the FBI fingerprint check or the search of the State criminal repository, using fingerprints in the State where the staff member resides.

Comment: In the NPRM, we proposed that a prospective staff member could begin work for a child care provider after the background check request was submitted, as long as that staff member was continually supervised by someone who had already completed the background check requirements. Although several commenters supported the idea of provisional employment, others were concerned that the provision as proposed did not protect children's health and safety.

Response: We agreed with the commenters. The final rule allows a prospective staff member to begin work while under supervision after completing the FBI fingerprint check or the search of the State criminal repository using fingerprints in the State where the staff member resides. Until all the background check components have been completed, the prospective staff member must be supervised at all times by someone who has already received a qualifying result on a background check within the past five years. States may pose additional requirements beyond this minimum. We note that the new regulatory language aligns with the requirements in the Head Start Performance Standards and hope the language allows for better partnerships between the two programs.

In addition, we encourage Lead Agencies to require child care providers to inform parents about background check policies and any provisional hires they may have. Allowing provisional hiring does offer more flexibility, but it is also important that Lead Agencies ensure that any provisional status is

limited in scope and implemented with transparency.

Comment: Several commenters asked ACF to clarify what should happen to provisional employees if all of the required background check components are not completed by the end of the statutory 45 day timeframe.

Response: A State must process, at the very least, either the FBI fingerprint check or the search of the State criminal repository, using fingerprints in the State where the staff member resides, before a child care staff member may begin work. As described in further detail later in the preamble, we expect all of the checks to be completed in the timeframe established by the Act. However, the final rule gives Lead Agencies the discretion to make decisions in the limited cases in which not all of the required components are completed.

Completion of Background Checks. Once a child care provider submits a background check request, Section 658H(e)(1) of the Act requires the Lead Agency to carry out the request as quickly as possible. The process must not take more than 45 days after the request was submitted. These requirements are included in the final rule at § 98.43(e)(1).

Comment: Many comments from State continue to be concerned with being able to meet the statutory 45-day timeframe, especially for cross-State checks. Several comments asked ACF for an exception to the 45-day timeframe in those cases.

Response: The Act does not give ACF the authority to grant States exceptions to the 45-day timeframe. While we expect checks to be completed in the timeframe established by the Act, we will allow Lead Agencies to create their own procedures in the event that all of the components of a background check are not complete within the required 45 days. As described earlier in the preamble, prospective child care staff members are required to complete either the FBI fingerprint check or the search of the State criminal repository, using fingerprints in the State where the staff member resides, before they begin work.

Lead Agencies must work together with the relevant State/Territory entities to minimize delays. After the FBI receives electronic copies of fingerprints, they typically process background check results within 24 hours. There can be delays when the submitted fingerprint image quality is poor. Some States use hard copy fingerprints that must be made electronic for submission to the FBI, which can lead to delays. We encourage Lead Agencies to adopt electronic fingerprinting, which allows for background check results to be processed more quickly.

We encourage Lead Agencies to leverage existing resources to build and automate their background check systems. One potential resource for States is the National Background Check Program (NBCP), as established by Section 6201 of the Patient Protection and Affordable Care Act, which aims to create a nationwide system for conducting comprehensive background checks on applicants for employment in the long-term care (LTC) industry. The NBCP is an open-ended funding opportunity that can award up to $3 million dollars (with a $1 million dollar State match) to each State to support building State background check infrastructure. The Centers for Medicare & Medicaid Services (CMS) administers the NBCP and since 2010, has awarded over $63 million in grant funds to participating States to design, implement, and operate background check programs that meet CMS's criteria.

Privacy of results. Section 658H(e)(2) of the Act requires the Lead Agency to make determinations regarding a child care staff member's eligibility for employment. The Lead Agency must provide the results of the background check to the child care provider in a statement that indicates only whether the staff member is eligible or ineligible, without revealing specific disqualifying information. If the staff member is ineligible, the Lead Agency must provide information about each specific disqualifying crime to the staff member, as well as information on how to appeal the results of the background check to challenge the accuracy and completeness. In the final rule, we clarify the language at § 98.43(e)(2)(ii) to specifically require that when an individual is sent the information on the disqualifying crimes, the State must, at the same time, provide information on the opportunity to appeal. This change is discussed in greater detail below.

In order for a Lead Agency to conduct FBI fingerprint checks, it must have statutory authority to authorize the checks. The Act may be used an authority to conduct FBI background checks, but Lead Agencies may continue to use other statutes as authorities to conduct FBI background checks on child care staff as well. Most Lead Agencies currently use Public Law 92–544 or the National Child Protection Act/Volunteers for Children Act (NCPA/VCA) (42 U.S.C. 5119a) as the authority to conduct FBI background checks. Public Law 92–544, enacted in 1972, gave the FBI authority to conduct background checks for employment and licensing purposes. The majority of States are using Public Law 92–544 as authority to conduct background checks, but a few States use the NCPA/VCA.

Public Law 92–544 is similar to the Act and only allows the State to notify the provider whether an individual is eligible or ineligible for employment. Similarly, the NCPA/VCA requires dissemination of the results to a governmental agency, unless the State has implemented a Volunteer and Employee Criminal History System (VECHS) program. Thus, a major difference between the Act and the NCPA/VCA with a VECHS program is in the protection of privacy of results. Through the NCPA/VCA VECHS program, Lead Agencies may share an individual's specific background check results with the child care provider, provided the individual has given consent. Lead Agencies have the flexibility to continue to use these statutes as authority to complete the FBI fingerprint check, as long as the employment determination process required by the Act is followed. That is, Lead Agencies must make employment eligibility determinations in accordance with the requirements in the Act, but they also may exercise the flexibility allowed through the NCPA/VCA VECHS program to share results of background checks with child care providers. Comments from States that utilize differing statutes were supportive of this flexibility.

Appeals and review process. Section 658H(e)(3) of the Act requires Lead Agencies to have a process for child care staff members (including prospective staff members) to appeal the results of a background check by challenging the accuracy or completeness of the information contained in their criminal background report. An appeals process is an important aspect of ensuring due process for staff members and allows them to challenge the accuracy of the background check results. According to the Act, each child care staff member should be given notice of the opportunity to appeal and receive instructions about how to complete the appeals process if the child care staff member wishes to challenge the accuracy or completeness of their background report. The Lead Agency must complete the appeals process in a timely manner. The Lead Agency must work with other agencies that are in charge of background check information and results, such as the Child Welfare office and the State Identification Bureau, to ensure the appeals process is conducted in accordance with the Act.

The appeals requirements appear at § 98.43(e)(3) of the final rule.

Section 658H(e)(4) of the Act allows for a review process specifically for staff members convicted of drug-related felonies committed during the previous five years. States may use this review process, also known as a waiver process, to determine those staff members convicted of drug-related felonies committed during the previous five years to be eligible for employment by a CCDF provider. The review process is different from the appeals process because it allows the Lead Agency to consider extenuating circumstances on a case-by-case basis. The Act's review process requirements appear at § 98.43(e)(4) of the final rule.

Comment: A comment, co-signed by several national organizations, wrote advocating for more protections governing the appeals process for individuals who challenge inaccurate background checks. The letter advised, "[T]he regulations fail to include adequate standards governing appeals that seek to demonstrate that the background check information relied upon was inaccurate or incomplete. Given the CCDF program's reliance on the FBI background check system, which routinely generate[s] faulty information, ACF should adopt more robust appeals rights to protect those workers—mostly workers of color—who, through no fault of their own, often have inaccurate records in the federal and State criminal history information systems. Thus, the following key features of a fair and effective appeal process should be incorporated into the ACF regulations:

1. In response to an appeal filed by a worker challenging the accuracy of the background check report, the State should immediately make the background check report available in order for the worker to validate the State's information and properly prepare an appeal.

2. The burden should be on the State to make a genuine effort to track down missing disposition information related to disqualifying offenses, not on the worker. Often, the worker is not in a position to locate information on an arrest that may have occurred in another State or may no longer be readily accessible in court or law enforcement systems due to the age of the offense.

3. The worker should be provided at least 60 days to prepare the appeal, and a longer period of time (up to 120 days) if the State requires the individual to produce official documentation of a record. The State should also allow for a 'good cause' extension of time to file the appeal or supporting material.

4. Once the State has received the appeal information from the worker, it should issue a written decision within a specific period of time (not to exceed 30 days).

5. In the case of a negative determination, the decision should indicate the State's efforts to verify the accuracy of the information challenged by the worker. The decision should also indicate any additional appeal rights available to the worker, as well as information on how the individual can correct the federal or State records at issue in the case.

6. The State should collect and periodically report data on the number of appeals filed, the outcome of the appeals, and the State's decision processing times."

Response: ACF strongly agrees with the worker protections described in this comment. While background checks are a necessary safeguard to protect children in child care, we are also mindful of the disproportionate impact that they can have on low-income individuals of color. A robust and effective appeals process, that incorporates the elements described above, is critical to protect prospective child care staff members who have inaccurate or incomplete background check records. As such, we made changes to the regulatory language at § 98.43(e)(2)(ii) and § 98.43(e)(3) to incorporate many of these protections, while still preserving some State flexibility.

At § 98.43(e)(2)(ii), the final rule requires that when a staff member receives a disqualifying result from the State, that information should be accompanied by information on the opportunity to appeal. The State must provide information about each specific disqualifying crime to the staff member, and that information should allow the staff member to decide whether to challenge the accuracy and completeness of the background checks results. Each child care staff member will be given clear instructions about how to complete the appeals process. The instructions should include the process for appeals, with clear steps individuals may take to appeal and the timeline for each of these steps. Although we are not requiring a specific timeframe, we do recommend that States allow staff members a reasonable amount of time of at least 60 days to prepare the appeal.

If the staff member chooses to file an appeal, then, at § 98.43(e)(3)(iii), the final rule requires the State to attempt to verify the accuracy of the information challenged by the child care staff member, including making an effort to locate any missing disposition information related to the disqualifying crime. As the comment notes, child care staff members may not be able to access court or law enforcement records, so the burden should be on the State to recover them.

The Act requires that the appeals process must be completed in a timely manner. Although the final rule does not require a specific timeframe, we recommend that States issue a decision within 30 days of the appeal. The final rule, at § 98.43(e)(3)(v), requires that every staff member who submits an appeal will receive a written decision from the State. In the case of a negative determination, the decision should indicate the State's efforts to verify the accuracy of information challenged by the child care staff member, as well as any additional appeals rights available to the child care staff member. The final rule does not require that States collect and report data on the number of appeals filed, the outcome of the appeals, or the State's decision processing times. However, States should consider tracking and publishing this information. This information can be used to gage the speed and effectiveness of the appeals process, and States may be able to use it to make improvements to their appeals process over time.

Comment: A letter from Senator Alexander and Congressman Kline asked ACF to provide guidance on the obligations of a child care provider during the appeals process: "The NPRM strongly encourages Lead Agencies that choose to consider crimes other than those listed in the Act as disqualifying crimes for employment to ensure a robust waiver and appeals process is in place; however, it is unclear what the obligations of a provider are during the appeals process timeframe. We support the highest level of safety assurances for parents and children, as well as legal assurances for providers, and again we ask the Department to carefully consider the comments from providers and centers to ensure these provisions are easy to follow without causing great disruption to the delivery of care for children."

Response: The Act does not address the obligations of child care providers while staff members or prospective staff members are engaged in the appeals process. In addition, ACF did not receive any comments from child care providers addressing this issue. Therefore, ACF opts not to include additional regulatory language in order to allow States to make decisions that will continue to protect children's health and safety without causing great

disruption to the delivery of care for children. States are responsible for determining the most appropriate obligations for providers during the appeals process, and must inform providers about those obligations during an appeals process. States have the option of allowing child care providers to employ staff members or prospective staff members while they are involved in the appeals process. We encourage States to consult the U.S. Equal Employment Opportunity Commission's guidance (U.S. Equal Employment Opportunity Commission, *Enforcement Guidance on the Consideration of Arrest and Conviction Records in Employment Decisions under Title VII of the Civil Rights Act of 1964, http://www.eeoc.gov/laws/guidance/upload/arrest_conviction.pdf*). In addition, we note Section 658H(e)(5) of the Act, which is reiterated at § 98.43(e)(5), requires that nothing in this section shall be construed to create a private right of action if a provider has acted in accordance with this section. If a child care provider acts in accordance with the requirements of the Act, private parties may not bring a lawsuit.

Comment: Comments from national organizations and child care worker organizations urged ACF to include new regulatory language requiring the individualized review for drug-related felonies described at § 98.43(e)(4) to follow the U.S. Equal Employment Opportunity Commission's (EEOC) guidelines. A letter co-signed by several national organizations stated, "Communities of color, and women of color in particular, have suffered immeasurably as a result of the collateral consequences of an arrest or conviction for a drug offense. Indeed, women now represent the fastest growing segment of the criminal justice system, due largely to drug offenses, not violent crime. In fact, 24 percent of all incarcerated women were convicted of drug offenses, compared to just 16 percent of men. As the ACLU concluded in their analysis of the issue, '[w]omen of all races use drugs at approximately the same rate, but women of color are arrested and imprisoned at much higher rates.' [W]e urge ACF to emphasize in the preamble that the States should adopt robust waivers procedure as applied to disqualifying drug offenses. In addition, ACF should specifically incorporate the EEOC guidelines in the regulations (Section 98.43(e)(4)), which would provide specific direction to the States beyond simply referencing Title VII."

Response: Section 658H(e)(4) of the Act, which is reiterated at § 98.43(e)(4) of the final rule, allows Lead Agencies to conduct a review process through which the Lead Agency may determine that a child care staff member (including a prospective child care staff member) convicted of a disqualifying felony drug-related offense, committed during the preceding five years, may be eligible for employment by a provider receiving CCDF funds. The law also requires that the review process must be consistent with Title VII of the Civil Rights Act of 1964 (42 U.S.C. 2000e *et seq.*), which prohibits employment discrimination based on race, color, religion, sex and national origin. ACF interprets the statutory reference to Title VII of the Civil Rights Act to mean that Lead Agencies must conduct the review processes in accordance with the EEOC's current guidance on the use of criminal background checks in employment decisions, which requires individualized consideration of the nature of the conviction, age at the time of the conviction, length of time since the conviction, and relationship of the conviction to the ability to care for children, or other extenuating circumstances.

Lead Agencies should consult the EEOC's current guidance on the consideration of criminal records in employment decisions to ensure compliance with Title VII's prohibition against employment discrimination (U.S. Equal Employment Opportunity Commission, *Enforcement Guidance on the Consideration of Arrest and Conviction Records in Employment Decisions under Title VII of the Civil Rights Act of 1964, http://www.eeoc.gov/laws/guidance/upload/arrest_conviction.pdf*). As described in the comment, members of low-income communities of color are disproportionately charged and convicted of drug-related offenses. Establishing a robust process for an individualized review that follows EEOC guidance is important to protect these individuals. This process allows Lead Agencies to consider extenuating circumstances and to make nuanced decisions to deem an individual to be eligible for employment.

Comment: A letter co-signed by several national organizations also asked ACF to require an individualized review that complies with the EEOC guidance for any other disqualifying crimes added by the Lead Agency. The letter wrote, "This 'individualized assessment' of mitigating factors is a critical component of a fair background check process, as detailed in the EEOC guidance. It simply provides an opportunity for a prospective hire to explain why she is qualified for the position and does not pose a risk to child safety and well-being, even if she may have an otherwise disqualifying offense on her record. Individualized assessments are also particularly important for victims of domestic violence, who are often charged and convicted of a broad range of offenses, many of which are directly related to the abuse they experience. Accordingly, we urge ACF to incorporate the language of the EEOC guidance into Section 98.43(h)(1) of the CCDF regulations, thus mandating that the States take into account the individual's work history, evidence of rehabilitation, and other compelling factors that mitigate against disqualifying the individual from child care employment based on a conviction record."

Response: As described above, ACF interprets consistency with Title VII of the Civil Rights Act to mean that Lead Agencies must follow the EEOC guidelines. As such, we strongly encourage Lead Agencies to follow recommendations to implement an individualized assessment and waiver process in particular for any other disqualifying crimes not listed in the Act. In addition to challenging the record for accuracy and completeness, an individualized review allows the Lead Agency to consider other relevant information, and to provide waivers where appropriate. The EEOC recommends reviewing the following evidence: "the facts or circumstances surrounding the offense or conduct; the number of offenses for which the individual was convicted; older age at the time of conviction, or release from prison; evidence that the individual performed the same type of work, post-conviction, with the same or a different employer, with no known incidents of criminal conduct; the length and consistency of employment history before and after the offense or conduct; rehabilitation efforts (*e.g.*, education/training); employment or character references and any other information regarding fitness for the particular position; and whether the individual is bonded under a federal, State, or local bonding program" (U.S. Equal Employment Opportunity Commission, *Enforcement Guidance on the Consideration of Arrest and Conviction Records in Employment Decisions under Title VII of the Civil Rights Act of 1964, http://www.eeoc.gov/laws/guidance/upload/arrest_conviction.pdf*).

Background check fees. Lead Agencies have the flexibility to determine who pays for background checks (*e.g.*, the provider, the applicant, or the Lead Agency) but Section 658H(f) of the Act requires that the fees charged for completing a background check may

not exceed the actual cost of processing and administration. The cost of conducting background checks varies across States and Territories. The current FBI fee is $14.75 to conduct a national fingerprint check (subject to change). According to FY 2014–2015 CCDF State Plan data, most Lead Agencies report low costs to check State registries.

ACF recognizes the important role that fees play in sustaining a background check system. While States and Territories cannot profit from background check fees, we do not want to prevent fees that support the necessary infrastructure. Fees cannot exceed costs and result in return to State general funds, but they can be used to build and maintain background check infrastructure. Further, we expect that Lead Agencies using third party contractors to conduct background checks will ensure that these contractors are not charging excessive fees that would result in huge profits. ACF does not want background check fees to be a barrier or burden for entry into the child care workforce.

Comment: Comments from national organizations and child care worker organizations asked ACF to clarify whether CCDF funds could be used to cover the costs of background checks. One child care worker organization wrote, "We urge ACF to additionally clarify that States are permitted to use CCDBG funding to cover the cost of the background checks for legally exempt and family child care providers, and their household members, so that the cost of the background checks is not a barrier for these providers."

Response: We agree with the comments. The intent of the Act is not to create additional burdens for certain provider groups. At Lead Agency discretion, CCDF funds may be used to pay the costs of background checks, including legally exempt and family child care providers, and their household members.

Consumer education Web site. The Act requires States and Territories to ensure that their background check policies and procedures are published on their Web sites. We require that States and Territories also include information on the process by which a child care provider or other State or Territory may submit a background check request in order to increase transparency about the process. Comments on this provision, located at § 98.43(g) of the final rule, were largely supportive. These background check policies and procedures should be included on the consumer education Web site discussed in detail in Subpart D at § 98.33(a).

§ 98.44 Training and Professional Development

Section 658E(c)(2)(G) of the Act requires Lead Agencies to describe in their CCDF Plan their training and professional development requirements designed to enable child care providers to promote the social, emotional, physical and cognitive development of children and to improve the knowledge and skills of caregivers, teachers, and directors in working with children and their families, which are applicable to child care providers receiving CCDF assistance. At § 98.44 we create a cohesive approach to the Act's provisions for training and professional development at Section 658E(c)(2)(G), provider training on health and safety at Section 658E(c)(2)(I)(i)(XI), and provider qualifications at Section 658E(c)(2)(H)(i)(III). This rule builds on the pioneering work of States on professional development and reflects current State policies.

We received comments from States concerned about the resources needed to meet these requirements and the capacity of professional development providers to fulfill the demand. We recognize that the Act and the rule require more attention to training and professional development; however, the knowledge and skill of caregivers, teachers, and directors is at the heart of quality experiences for children.

Caregiver, teacher and director. As discussed earlier, we have added definitions for "teacher" and "director" to § 98.2. Adding these terms promotes professional recognition for early childhood and school-age care teachers and directors and aligns with terms used in the field. The Act uses the terms "caregiver" and "provider" and we maintain the use of those terms throughout this section as appropriate. We also use the terms "teacher" and "director" to recognize the different professional roles and their differentiated needs for training and professional development. For example, teachers provide direct services to children and need knowledge of curricula and health, safety, and developmentally appropriate practices. In addition, directors need skills to manage and support staff and perform other administrative duties. For simplicity sake, we have included teacher assistants or aides in the same term as teacher. Training and professional development should be tailored to the role or job responsibilities but all caregivers, teachers, and directors need the foundational knowledge of health, safety, and child development.

Collaboration. The Act requires the Lead Agency to consult with the State Early Care and Education Advisory Committee on this section of the Plan. We encourage Lead Agencies to collaborate as well with entities that set State teacher standards and certificates, entities that award early childhood education credentials, institutions of higher education, child care providers and early childhood education professional associations.

Framework and progression of professional development. At § 98.44(a), we require that Lead Agencies describe in their CCDF Plan the State or Territory framework for training, professional development and postsecondary education based on statutory language at Section 658E(c)(2)(G)(i). The Act requires the framework to be developed in consultation with the State Advisory Council on Early Childhood Education and Care (SAC). We received many comments supporting our outline of the six framework components.

The final rule at § 98.44(a)(3) describes the components of a professional development framework. We deleted language in the NPRM that proposed these components be addressed in the framework "to the extent practicable" since each State's framework should address these components to some extent— but we recognize that each State may be in a different stage of development of implementation. We received many comments supporting our identification of six components of a framework, described below. These are based on recommendations by the National Child Care Information Center and the National Center on Child Care Professional Development Systems and Workforce Initiatives (former technical assistance projects of the Office of Child Care), and national early childhood professional associations, including the National Association for the Education of Young Children. The recent report of the National Academies of Sciences' expert panel on the early childhood workforce speaks to the intentional and multifaceted system of supports that will be needed to ensure that every caregiver, teacher, and director can provide high-quality development and learning to the diversity of children in child care and early childhood programs. (Institute of Medicine and National Research Council, 2015. Transforming the workforce for children birth through age 8: A unifying foundation. Washington, DC: The National Academies Press) The six components are: Professional standards

and competencies, career pathways, advisory structures, articulation, workforce information, and financing. These components are discussed below. In the CCDF Plans, the majority of States and Territories indicated that they have implemented the same components of a professional development framework system. We provide for flexibility on the strategies, breadth and depth with which States and Territories will develop and implement a framework that includes these components. A comment from a national organization said, "The proposed rule's focus on professional development, including its specification of six components for Lead Agencies' professional development frameworks (based on the National Academies of Sciences expert panel report on the early childhood workforce), is a critical advance toward the professionalization of the early childhood workforce. This, in sum, is a key ingredient for quality."

1. Core knowledge and competencies. Caregivers, teachers, and directors need a set of knowledge and skills to be able to provide high-quality child care and school-age care. The foundational core knowledge—what all early childhood professionals should know and be able to do—should be supplemented with specialized competencies and professional development that recognizes different professional roles, ages of children being served, and special needs of children. According to the FY 2016–2018 CCDF Plans, 44 States and Territories have fully implemented core knowledge and competencies aligned to professional standards.

2. Career pathways. Section 658E(c)(2)(G)(ii)(I) of the Act requires Lead Agencies to create a progression of professional development, which may include encouraging postsecondary education. This progression is in essence a career pathway, also known as a career lattice or career ladder. The National Academies of Sciences' report, Transforming the Early Childhood Workforce: A Unifying Framework, calls for States to implement "phased, multiyear pathways to transition to a minimum bachelor's degree requirement with specialized knowledge and competencies" for all early childhood teachers working with children from birth through age eight. (Institute of Medicine (IOM) and National Research Council (NRC). 2015. Transforming the workforce for children birth through age 8: A unifying foundation. Washington, DC: The National Academies Press). According to the FY 2016–2018 CCDF Plans, nearly all States and Territories have developed a career pathway that includes qualifications, specializations, and credentials by professional role. Although we do not require that States set any particular credential as a licensing qualification or a point on the career pathway, the pathway should form a transparent, efficient sequence of stackable, and portable credentials from entry level that can build to more advanced professional competency recognition, and at each step, aligned to improved compensation. One model of professional development is the Registered Apprenticeship, providing job-embedded professional development and coursework that leads to a Child Development Associate (CDA) credential. In many apprenticeships, this is done through an agreement with the community college to carry credit toward an Associate degree. The costs of tuition, books, and the CDA evaluation fee are covered by the apprenticeship. The CDA is often a first professional step on an early childhood education career ladder that can lead to better compensation and a pathway to higher levels of education.

3. Advisory structures. Because professional development and training opportunities and advancement may cut across multiple agencies, it is important to have a formal communication and coordination effort. For example, professional development resources for individuals providing special education services for preschools and infants and toddlers may not be administered by the CCDF Lead Agency. The State higher education board or board of education generally makes policies for higher education institutions. Many States use the SACs as an advisory body for professional development systems policy and coordination. (Administration for Children and Families, U.S. Department of Health and Human Services, Early Childhood State Advisory Councils Final Report, 2015) We encourage the advisory body to include representatives of different types of professional development providers (such as higher education, entities that grant teacher certification, certificates and credentials in early childhood education, child care resource and referral, QRIS coaches and technical assistance providers) as well as CCDF providers through membership on the advisory or participation in subcommittees or advisory groups.

4. Articulation. Articulation of coursework, when one higher education institution matches its courses or coursework requirements with other institutions, prevents students from repeating coursework when changing institutions or advancing toward a higher degree. Transfer agreements, another type of articulation, allow the credit earned for an associate degree to count toward credits for a baccalaureate degree. States and Territories can encourage articulation and transfer agreements between two- and four-year higher education degree programs, as well as articulation with other credentials and demonstrated competencies specifically as it pertains to early childhood education degree programs. We require that, to the extent practicable, professional development and training awards continuing education units or is credit-bearing. We encourage professional development that is credit-bearing where these credits readily transfer to a degree or certificate program. In their FY 2016–2018 Plans, 52 States and Territories reported having articulation agreements in place across and within institutions of higher education and 47 States and Territories reported having articulation agreements that translate training and/or technical assistance into higher education credit.

5. Workforce information. It is important to collect and evaluate data to identify gaps in professional development accessibility, affordability, and quality. Information may be gathered from different sources, such as child care resource and referral agencies, scholarship granting entities, higher education institutions, Head Start Program Information Report data, and early childhood workforce registries. Information about the characteristics of the workforce, access to and availability of different types of training and professional development, compensation, and turnover can help the advisory body and other stakeholders make policy and financing decisions.

6. Financing. Financing of the framework and of individuals to access training and professional development, including postsecondary education, is critical. Many Lead Agencies use CCDF funds to finance the professional development infrastructure and the costs of training and professional development, including postsecondary education, for caregivers, teachers, and directors. States and Territories report using their SAC grants and Race to the Top-Early Learning Challenge grants to leverage and expand CCDF funds for workforce improvement and retention. Twenty-eight States/Territories reported that they used SAC grants to complete a workforce study; 29 States/Territories used SAC grants to create or enhance their Core Knowledge and Competencies framework; and 18 States/Territories used SAC grants to develop or enhance their workforce registries. We encourage Lead Agencies

to leverage CCDF funds with other public and private resources to accelerate professional development efforts.

We received multiple comments from national and State organizations that they were pleased to see the framework and its description in the preamble. We received comments from a national organization and early childhood worker organizations to add language to the preamble to expand the description of some of the components, and we have adopted some of these modifications in the preamble.

Section 658E(c)(2)(G)(ii)(II) of the Act allows the Lead Agency to engage training providers in aligning training opportunities with the State's training framework, which the rule restates at § 98.44(a)(2). The rule adds professional development providers, including higher education and education as well as training opportunities to ensure that all appropriate types of professional development, including formal education that is needed for career progression, are included. We encourage the participation of the full range of training and professional development providers, including higher education and entities that grant teacher certification, certificates and credentials in early childhood education, to align with the framework. Training and professional development may be provided through institutions of higher education, child care resource and referral agencies, worker organizations, early childhood professional associations, and other entities. This alignment may lead to a more coherent and accessible sequence of professional development for individuals to meet Lead Agency requirements and progress in their professional development and to maximize the use of professional development resources.

Qualifications. Section 658E(c)(2)(H)(i)(III) of the Act requires Lead Agencies to set qualifications for CCDF providers. The final rule reiterates that requirement at § 98.44(a)(4) and clarifies that such qualifications should be designed to enable caregivers, teachers, and directors to promote the full range of children's development: Social, emotional, physical, and cognitive development. States and Territories currently set minimum qualifications for teacher assistants, teachers, directors, and other roles in centers, family child care, and school-age care settings in their licensing standards. We encourage Lead Agencies to consider the linkage between these minimum qualifications and higher qualifications in the progression of professional development or career pathways. According to Section 658E(c)(2)(G)(ii)(I) of the Act, professional development should be conducted on an ongoing basis, provide for a progression of professional development (which may include encouraging the pursuit of postsecondary education), and reflect current research and best practices relating to the skills necessary for the caregivers, teachers, and directors to meet the developmental needs of participating children and engage families. These requirements are in paragraphs (5) and (6) of § 98.44(a).

Comment: One comment asked for specific language that the State framework and qualifications require at least basic training or coursework on early childhood care and education.

Response: The Act gives Lead Agencies the flexibility to determine qualifications. The final rule adds child development to the health and safety topical areas that must be addressed during the pre-service or orientation period. These we see as the foundation of the progression of professional development, and with the requirement for ongoing annual professional development, aligned to the State framework (particularly the component on career pathways) urge Lead Agencies to ensure opportunities for caregivers, teachers and directors to deepen their understanding and application of best practices to support children's development and learning. We note that our addition of child development to the topics in the pre-service or orientation training should be understood to give at minimum a basic overview and grounding in child development. The Act and this rule identify a variety of topics in child development for ongoing professional development, which should not be considered an exhaustive list.

Quality, diversity, stability and retention of the workforce. Section 658E(c)(2)(G)(ii)(I) of the Act also requires assurances in the Plan that training and professional development will improve the quality of, and stability within, the child care workforce. Section 98.44(a)(7) requires that the training and professional development requirements must also improve the quality and diversity of caregivers, teachers, and directors. Maintaining diverse and qualified caregivers, teachers, and directors is a benefit to serving children of all backgrounds. The final rule also provides that such requirements improve the retention (including financial incentives) of caregivers, teachers, and directors within the child care workforce, based on the high turnover rate in child care that can disrupt continuity of care for children. In order for children to benefit from high-quality child care, it is important to retain caregivers, teachers, and directors who have the knowledge and skills to provide high-quality experiences. In 2012, the average annual turnover rate of classroom staff was 13 percent, and the turnover rate among centers (child care, Head Start and schools) that experienced any turnover was 25 percent. (Whitebook, M., Phillips, D. & Howes, C. (2014.)) Worthy work, STILL unlivable wages: The early childhood workforce 25 years after the National Child Care Staffing Study. Berkeley, CA: Center for the Study of Child Care Employment, University of California, Berkeley)

Comment: One State raised concerns that it does not have a way to track outcomes for whether there were improvements in the quality, diversity, stability and retention of the workforce.

Response: The rule requires the Lead agency to describe in its plan how it will improve the quality, diversity, stability and retention of caregivers, teachers, and directors. We do not specify how a Lead Agency will evaluate or document changes in the child care workforce. A majority of States have established registries where early childhood caregivers, teachers, and directors can document their professional development. These registries also help provide information on the characteristics of the early childhood workforce in the State. There are a number of other sources of workforce information available to Lead Agencies, such as participants in State-provided trainings, scholarship programs for early childhood teachers for postsecondary education, quality rating and improvement systems, and workforce surveys. A minimum best practice should be that caregivers, teachers, and directors document training and professional development in the personnel files of the facility.

Comment: We received comments from multiple national and state organizations, including organizations representing child care workers, asking us to explicitly include higher compensation as an example of a retention strategy.

Response: We strongly agree that retaining caregivers, teachers, and directors who attain more professional knowledge and skill is important to raising the quality of children's experiences in child care and school-age care settings. The final rule adds compensation improvements as an example along with financial incentives at § 98.44(a)(7). There are examples of States that implement compensation

improvements that connect higher compensation with increasing levels of education in their career pathways, and that explicitly build such improvements into their quality rating and improvement systems. We urge States and Territories to implement strategies to raise the compensation of caregivers, teachers, and directors as they raise qualification standards. Given the amount of public and private investment in professional development and the length of time individuals are working in child care, it is important to retain the caregivers, teachers, and directors who have benefitted from those professional investments in order to create continuity of high-quality teaching and care for children.

Aligning training and professional development with the professional development framework. Section 98.44(b) of the final rule requires Lead Agencies to describe in the Plan their requirements for training and professional development for caregivers, teachers, and directors of CCDF providers that, to the extent practicable, align with the State or Territory's training and professional development framework required by § 98.44(a). There is a continuum of professional development from pre-service and orientation training through increasing levels of knowledge and skill.

Pre-service or orientation health and safety training. Section 658E(c)(2)(I)(i)(XI) of the Act requires Lead Agencies to set minimum health and safety training, to be completed pre-service or during an orientation period in addition to ongoing training, appropriate to the provider setting involved that addresses the specific topic areas listed in the final rule at § 98.41(a)(1). All caregivers, teachers, and directors in programs receiving CCDF funds must receive this training. Many States and Territories already have pre-service and orientation training requirements for licensed providers. We have placed this requirement in the professional development section of the rule because we see preliminary health and safety training requirements as a part of a continuum of professional development. We require that pre-service or orientation training include the major domains of child development in addition to the Act's requirement for health and safety training. Understanding child development is integral to providing high-quality child care.

The Act allows an orientation period during which staff can fulfill the training requirement. Lead Agencies will have broad flexibility to determine what training is required "pre-service" and what training may be completed during an "orientation" period. We require pre-service or orientation training be completed within three months of caring for children as recommended by CfoC Basics. During those three months, caregivers and teachers who provide direct care for children must be supervised until training is completed in pediatric first aid and CPR, safe sleep practices, standards precautions to prevent communicable disease, poison prevention, and shaken baby syndrome/abuse head trauma.

We encourage providers to document completion of the pre-service or orientation training so that caregivers, teachers, and directors do not need to repeat foundational training when they change employment. This documentation can be useful for the State's or Territory's licensing agency and career pathway.

We expect variability in how Lead Agencies will implement this provision. There are a number of low- or no-cost resources available, including online resources, which cover many of these trainings. Several of these are available at ACF's Web site, Early Educator Central at *https://earlyeducatorcentral.acf.hhs.gov/coursework.* We do not advocate the exclusive use of online trainings. A mixed delivery training system that includes both online and in-person trainings can meet the varied needs of child care caregivers, teachers, and directors. We encourage Lead Agencies to permit individuals to use certificates and credentials that include a demonstration of competence in any or all of the health, safety, and child development topics to fulfill, partially or in full, the training requirements.

Comment: Many comments supported the increased attention to training and professional development as a key component of quality child care. However, several States also noted that currently they do not require pre-service or orientation in all of the required health and safety topics, and that resources to pay for and provide the training is a challenge. One comment asked for additional clarification regarding whether the pediatric First Aid and CPR requirement applies to all child care personnel or to the provider itself (*e.g.,* ensuring at least one provider personnel is certified and on premises at any given time). Another comment expressed concern that training in pediatric CPR and First Aid without certification could potentially lead to liability issues in the event that First Aid is provided or CPR is administered by personnel who have been trained in these areas but not certified.

Response: We recognize that there is a need for resources to offset the costs of training and for building capacity to deliver it. However, licensing requirements for health and safety must go hand in hand with training to ensure that all caregivers, teachers, and directors understand how to preserve the health and safety of children in their care. As stated in the preamble, States and Territories have flexibility in how they will provide the training and comply with this provision. The Administration for Children and Families has provided several no-cost or low-cost trainings at the Web site *http://eclkc.ohs.acf.hhs.gov/hslc/tta-system/health/ccdbg/ccdbg-required-health-safety-training.html.*

With regard to flexibility and demonstrating competence, we recognize that some training for pre-service or orientation will not result in certification and others that will, such as pediatric First Aid and CPR. We remind States and Territories that they must set requirements for ongoing, annual professional development and must address certain topics beyond health and safety as outlined in the Act. All of these trainings and professional development opportunities should be aligned with the State's training and professional development framework, contribute to a progression of professional learning, and reflect current research and best practices to promote the social, emotional, physical and cognitive development of children.

Comment: One comment focused on infants and toddlers and the need to ensure that caregivers, teachers and directors are supervised until they have training in critical areas of health and safety. The comment cautioned that "babies and toddlers and other young children cannot wait three months to be in safe care."

Response: Because SIDS and other training are so important to health and safety, § 98.44(b)(1)(i) of the final rule requires supervision during the pre-service or orientation period.

Comment: We received a comment requesting more references to school-age caregivers.

Response: The final rules adds specific references to school-age care at § 98.44(a) and § 98.44(a)(4). The definitions of the terms caregiver, teacher, and director as defined in the final rule include school-age care. CCDF serves children from birth to age 13 years and we expect States to apply these training and professional development provisions to the caregivers, teachers, and directors

serving children in that age span. The final rule also promotes training and professional development that is appropriate to the setting and the age of children served.

Comment: We received support for a three-month period for pre-service or orientation from a number of national and State organizations. A State and an organization representing child care workers asked for a sixth-month period for pre-service or orientation training citing concerns about the resources to provide training and the capacity of training providers to meet the demand.

Response: We have maintained at § 98.44(b) the three-month window and encourage Lead Agencies to consider how credentials and certificates earned by caregivers, teachers, and directors prior to caring for children can fulfill these requirements. The Act requires specific health and safety protections in licensing, and for these to be implemented, caregivers, teachers, and directors should have foundation training in them. We added child development, but did not specify the depth and breadth of training in this area for the pre-service or orientation period and note that there is a requirement for ongoing, annual professional development as well. The combination of online and in-person resources in these topics, and that this is pre-service or orientation level training, should allow caregivers, teachers and directors to fulfill this requirement in this time frame. As we describe elsewhere in the preamble, ACF's Web site provides free or low-cost online resources on many of these topics.

Comment: We received a few comments asking from national organizations to add topics for pre-service or orientation training, such as violence/trauma, nutrition and physical activity, mathematics, arts, and behavior management. National disabilities groups requested the addition of communication to the early learning and development domains. We received comments from faith-based and private providers requesting language in several places that training and professional development would accommodate distinctive approaches, and specified certain methods, curricula, and philosophies.

Response: The Act and this final rule require pre-service or orientation training in health and safety and we have added child development. The Act and this rule also specify areas for ongoing professional development, outlining, at a minimum, knowledge and application of the State's early learning and developmental guidelines (where applicable), the State's health and safety standards, and social-emotional behavior intervention models, which may include positive behavior intervention and support models. We provide States with the flexibility in how to meet these requirements and promote ongoing professional learning in these more specific areas. Further, the final rule does not limit the type of training provider or the approach to teaching except that it should be research-based. Further, we encourage Lead Agencies to reach out to the full range of the types of providers when developing this section of the Plan and in aligning the professional development opportunities to the State's professional development framework and the progression of professional development or career pathway.

Comment: We received comments from representatives of family child care providers and child care workers organizations requesting language that the training be appropriate to the setting as well as the age of children served.

Response: All caregivers, teachers, and directors should have the foundational health, safety and child development training, as well as ongoing professional development that help them advance on an early childhood career pathway. We agree that training should also be meaningful for the setting in which the care is provided, and have added language to the final rule at § 98.44(b)(1) and § 98.44(b)(2) that training and professional development should be appropriate to the setting and age of children served, recognizing that family child care providers may benefit from training and professional development that reflects a different type of care than center-based programs, such as mixed age grouping and health and safety in a home environment.

Comment: We received comments asking for training and professional development in cultural and linguistic appropriate practices to support the diversity of children in child care.

Response: Section 98.44(a)(6) of the final rules provides that the training must reflect current research and best practices, including culturally and linguistically appropriate practices. We also note that the Act and this final rule encourage professional development related to different ages and populations of children, including English language learners.

Ongoing professional development. Section 658E(c)(2)(G)(ii)(I) of the Act requires the Plan to include assurances that training and professional development will be conducted on an ongoing basis, which the final rule restates at § 98.44(b)(2) with a number of parameters. Section 98.44(b)(2)(i) requires that ongoing training maintain and update the health and safety training standards described at § 98.41(a)(1).

Section 658E(c)(2)(G)(iii) of the Act requires each Lead Agency's Plan to include the number of hours of training for eligible providers and caregivers to engage in annually, as determined by the Lead Agency. Section § 98.44(b)(2) of the final rule reiterates this by requiring Lead Agencies to establish the minimum annual requirement for hours of training and professional development for caregivers, teachers and directors of CCDF providers. While Lead Agencies have flexibility to set the number of hours, Caring for Our Children recommends that teachers and caregivers receive at least 30 clock hours of pre-service training and a minimum of 24 clock hours of ongoing training annually. (American Academy of Pediatrics, American Public Health Association, National Resource Center for Health and Safety in Child Care and Early Education. 2011. *Caring for our children: National health and safety performance standards; Guidelines for early care and education programs. 3rd edition.* Elk Grove Village, IL: American Academy of Pediatrics; Washington, DC: American Public Health Association.)

The Act also specifies that the ongoing professional development must: Incorporate knowledge and application of the Lead Agency's early learning and developmental guidelines (where applicable) and the Lead Agency's health and safety standards; incorporate social-emotional behavior intervention models, which may include positive behavior intervention and support models; be accessible to providers supported by Tribal organizations or Indian Tribes that receive CCDF assistance; and be appropriate for different populations of children, to the extent practicable, including different ages of children, English learners, and children with disabilities.

Continuing education units and credit-bearing professional development. The final rule requires Lead Agencies to describe in the Plan the requirements for ongoing, accessible professional development aligned to a progression of professional development that, to the extent practicable, awards continuing education units or is credit-bearing. While we encourage credit-bearing professional development that readily transfers to a degree program or certificate, we also acknowledge that there remains work in States and

Territories to create transfer and articulations agreements.

Comment: We received comments relating to cultural linguistic diversity of the workforce and best practices with children and families.

Response: The final rule includes a provision that the States and Territories address in their framework improving the quality, diversity, stability and retention of caregivers, teachers, and directors. We urge States and Territories to examine and address diversity of the workforce at each step of the career pathway. Ensuring the diversity of the workforce—at all levels of the career pathway—should be interpreted broadly, such as demographic characteristics of race, gender, age, native language, among other characteristics.

Comment: There were a large number of comments from national and State organizations and child care worker organizations requesting an explicit reference to higher compensation throughout this section.

Response: We strongly agree that the compensation of many child care staff and program leaders is not reflective of the importance of the work. As required qualifications rise, there needs to be commensurate increases in compensation in order to retain a workforce with the specialized knowledge and skills to support children's positive development, health, and safety. Many States have initiatives that support child care providers with financial support as well as academic advisement to gain more formal education and credentials, with some compensation improvement. Thus, the final rule at § 98.44(a)(7) provides that improving the quality, stability, diversity and retention of the child care workforce includes financial incentives and compensation improvements. Section 98.53(a)(1)(vii) regarding the uses of the quality set-aside includes the ability to use those resources for these financial incentives and compensation improvements.

Comment: We received a comment from a national early childhood organization asking for additional language that would emphasize that the credit-bearing professional development readily transfers to a degree or certificate program.

Response: We require the Plan to address a State framework that includes career pathways and articulation agreements. We encourage the promotion of credit-bearing professional development that is readily transferable, but also recognize that there remains work to be done to implement transfer agreements. Some caregivers, teachers, and directors may already have a degree and a certificate and do not need transferable credit-bearing coursework, but as professionals, should be required to have appropriate ongoing, accessible professional development to deepen their knowledge and skills.

§ 98.45 Equal Access

Consistent with Section 658E(c)(4) of the Act, § 98.45 of this final rule requires the Lead Agency to: (1) Certify in its CCDF Plan that payment rates for CCDF subsidies are sufficient to ensure equal access for eligible children to child care services that are comparable to child care services provided to children whose parents are not eligible to receive child care assistance; and (2) provide a summary of the facts the Lead Agency used to determine that payment rates are sufficient to ensure equal access. This final rule modifies the key elements in the previous regulation used to determine that a CCDF program provides equal access for eligible families, and includes additional elements consistent with statutory provisions on equal access and rate setting at Section 658E(c)(4) of the Act and payment practices at Section 658E(c)(2)(S).

Under § 98.45(b) of this final rule, the summary of data and facts now includes: (1) Choice of the full range of providers, including the extent to which child care providers participate in the CCDF subsidy system; (2) adequate payment rates, based on the most recent market rate survey or alternative methodology; (3) base payment rates that enable child care providers to meet the health, safety, quality, and staffing requirements in the rule; (4) the cost of higher-quality child care, including how payment rates for higher-quality care relate to the estimated cost of that care; (5) affordable co-payments, a rationale for the Lead Agency's policy on whether child care providers may charge additional amounts to families above the required family co-payment (informed by data collected by the State and with regard to a working family's ability to pay such mandatory fees without restricting access to care they would otherwise access taking into consideration the family co-payment, payment rate for the provider, and the cost of care), and the extent to which CCDF providers charge such amounts; (6) payment practices that support equal access to a range of providers; (7) how and on what factors the Lead Agency differentiates payment rates; and (8) any additional facts considered by the Lead Agency. All of these changes are discussed further below.

Based on Section 658E(c)(4)(B) of the Act, § 98.45(c) of this final rule requires Lead Agencies to conduct, no earlier than two years before the submission of their CCDF Plan, a statistically valid and reliable market rate survey or an alternative methodology, such as a cost estimation model.

Statistically Valid and Reliable Market Rate Survey. A market rate survey is an examination of prices, and Lead Agencies have flexibility to use data collection methodologies other than a survey (*e.g.*, administrative data from resource and referral agencies or other sources) so long as the approach is statistically valid and reliable. ACF is not defining *statistically valid and reliable* within the regulatory language but is establishing a set of benchmarks, largely based on CCDF-funded research to identify the components of a valid and reliable market rate survey. (Grobe, D., Weber, R., Davis, E., Kreader, L., and Pratt, C., *Study of Market Prices: Validating Child Care Market Rate Surveys,* Oregon Child Care Research Partnership, 2008)

ACF will consider a market rate survey to be statistically valid and reliable if it meets the following benchmarks:

- Includes the priced child care market. The survey includes child care providers within the priced market (*i.e.*, providers that charge parents a price established through an arm's length transaction). In an arm's length transaction, the parent and the provider do not have a prior relationship that is likely to affect the price charged. For this reason, some unregulated, license-exempt providers, particularly providers who are relatives or friends of the child's family, are generally not considered part of the priced child care market and therefore are not included in a market rate survey. These providers typically do not have an established price that they charge the public for services, and the amount that the provider charges is often affected by the relationship between the family and the provider. In addition, from a practical standpoint, many Lead Agencies are unable to identify a comprehensive universe of license-exempt providers because individuals frequently are not included on lists maintained by licensing agencies, resource and referral agencies, or other sources. In the absence of findings from a market rate survey, Lead Agencies often use other facts to establish payment rates for providers outside of the priced market (*e.g.*, license-exempt providers); for example, many Lead Agencies set these payment rates as a percentage of the rates for providers in the priced market.

• Provides complete and current data. The survey uses data sources (or combinations of sources) that fully capture the universe of providers in the priced child care market. The survey should use lists or databases from multiple sources, including licensing, resource and referral, and the subsidy program, if necessary, for completeness. In addition, the survey should reflect up-to-date information for a specific time period (*e.g.*, all of the prices in the survey are collected within a three-month time period).

• Represents geographic variation. The survey includes providers from all geographic parts of the State, Territory, or Tribal service area. It also should collect and analyze data in a manner that links prices to local geographic areas.

• Uses rigorous data collection procedures. The survey uses good data collection procedures, regardless of the method (mail, telephone, or web-based survey; administrative data). This includes a response from a high percentage of providers (generally, 65 percent or higher is desirable and below 50 percent is suspect). Some research suggests that relatively low response rates in certain circumstances may be as valid as higher response rates. (Curtin R., Presser S., Singer E., *The Effects of Response Rate Changes on the Index of Consumer Sentiment,* Public Opinion Quarterly, 2000; Keeter S., Kennedy C., Dimock M., Best J., Craighill P., *Gauging the Impact of Growing Nonresponse on Estimates from a National RDD Telephone Survey,* Public Opinion Quarterly, 2006) Therefore, in addition to looking at the response rate, it is necessary to implement strong sample designs and conduct analyses of potential response bias to ensure that the full universe of providers in the child care market is adequately represented in the data and findings. Lead Agencies should consider surveying in languages in addition to English based on the languages used by child care providers, and other strategies to ensure adequate responses from key populations.

• Analyzes data in a manner that captures market differences. The survey should examine the price per child care slot, recognizing that all child care facilities should not be weighted equally because some serve more children than others. This approach best reflects the experience of families who are searching for child care. When analyzing data from a sample of providers, as opposed to the complete universe, the sample should be appropriately weighted so that the sample slots are treated proportionally to the overall sample frame. The survey should collect and analyze price data separately for each age group and category of care to reflect market differences.

The purpose of the market rate survey is to guide Lead Agencies in setting payment rates within the context of market conditions so that rates are sufficient to provide equal access to the full range of child care services, including high-quality child care. However, the child care market itself often does not reflect the actual costs of providing child care and especially of providing high-quality child care designed to promote healthy child development. Financial constraints of parents prevent child care providers from setting their prices to cover the full cost of high-quality care, which is unaffordable for many families. As a result, a market rate survey may not provide sufficient information to assess the actual cost of quality care. Therefore, it's often important to consider a range of data, including, but not limited to, market rates, to understand prices in the child care market.

Comment: One national organization recommended requiring that surveys be conducted by a neutral third party.

Response: We have not added this requirement because we do not want to hamper Lead Agencies' ability to administer the survey according to the available processes that work best for their jurisdiction. Many States currently administer the survey through a partner with expertise in survey design and implementation—such as a postsecondary educational institution or research firm. Some States, however, have an in-house unit with the necessary expertise. Regardless of the approach, the survey must meet the benchmarks for validity and reliability outlined above, and must be conducted in a manner that provides transparency—including the required pre-survey consultation with stakeholders and the preparation and dissemination of the detailed report containing results.

Alternative Methodology. The reauthorized Act allows a Lead Agency to base payment rates on an alternative methodology, such as a cost estimation model, in lieu of a market rate survey. The final rule at § 98.45(c)(2) requires that any alternative methodology be approved in advance by ACF. ACF plans to issue uniform procedures and timeframes regarding approval of alternative methodologies. A cost estimation model is one such alternative approach in which a Lead Agency can estimate the cost of providing care at varying levels of quality based on resources a provider needs to remain financially solvent. The Provider Cost of Quality Calculator (*https://www.ecequalitycalculator.com/Login.aspx*) is a publicly available web-based tool that calculates the cost of quality-based on site-level provider data for any jurisdiction. Many States, working with the Alliance for Early Childhood Finance and Augenblick, Palaich and Associates (APA), contributed to the development of the cost calculator methodology that preceded the online tool, and was funded by the Office of Child Care through the technical assistance network. The tool helps policymakers understand the costs associated with delivering high-quality child care and can inform payment rate setting.

Comment: National organizations and child care worker organizations supported the proposal to require ACF advance approval of alternative methodologies.

Response: The final rule maintains this provision, recognizing that alternative methodologies are a new, unproven approach (in comparison to the long-standing use of market rate surveys). To obtain ACF approval, the Lead Agency must demonstrate how the alternative methodology provides a sound basis for setting payment rates that promote equal access and support a basic level of health, safety, quality, and staffing, as discussed below. Advance ACF approval is only necessary if the Lead Agency plans to *replace* the market rate survey with an alternative methodology. Advance approval is not required if the Lead Agency plans to implement both a market rate survey and an alternative methodology. ACF will provide non-regulatory guidance to Lead Agencies regarding the process for proposing an alternative methodology, including criteria and a timeline for approval. We will also consider whether to provide a list of recommended methodologies, which may include modeling and other approaches. The Act specifically mentions cost estimation models, and we anticipate that such models would account for key factors that impact the cost of providing care—such as: Staff salaries and benefits, training and professional development, curricula and supplies, group size and ratios, enrollment levels, facility size, and other costs.

Additional Facts Demonstrating Equal Access. Section 98.45(d) of the final rule requires that the market rate survey or alternative methodology reflect variations by geographic location, category of provider, and child's age.

Section 658E(c)(4)(B)(i) of the Act applies this requirement to market rate surveys, but the final rule extends it to alternative methodologies as well. Lead Agencies must include in their Plans how and why they differentiate their rates based on these factors. The final rule also requires Lead Agencies to track through the market rate survey or alternative methodology, or through a separate source, information on the extent to which: (1) Child care providers are participating in the CCDF subsidy program and any barriers to participation, including barriers related to payment rates and practices; and (2) CCDF child care providers charge amounts to families more than the required family co-payment, including data on the size and frequency of any such amounts. Under § 98.45(b), this information must be included as part of the Lead Agency's summary of data and facts in the Plan that demonstrate equal access.

Comment: The NPRM had proposed that the market rate survey include information on the extent to which child care providers are participating in the CCDF subsidy program and any barriers to participation, including barriers related to payment rates and practices. National organizations and child care worker organizations supported the proposal and recommended that that the information be required of all States, whether conducting a market rate survey or alternative methodology. Two States shared concerns about the associated administrative burden and cost, but one of the States said the information would be useful.

Response: In response to comments, the final rule requires that all Lead Agencies track information on the extent of provider participation in CCDF and barriers to participation. Low payment rates as well as late or delayed payments and other obstacles may force some providers to stop serving or limit the number of children receiving subsidies in their care. Other providers may choose to not serve CCDF children at all. (Adams, G., Rohacek, M., and Snyder, K., *Child Care Voucher Programs: Provider Experiences in Five Counties,* 2008). The final rule allows flexibility for States to track this information through the most efficient process—whether through the market rate survey, alternative methodology, or another source. As suggested by commenters, we recommend that States track not only the number of providers participating in CCDF, but also the number/portion of children (served by each provider) who receive subsidizes, and whether the provider places any limits on the number.

Public Consultation and Input. Based on Section 658E(c)(4)((B)(i) of the Act, § 98.45(e) requires the Lead Agency to consult with the State's Early Childhood Advisory Council or similar coordinating body, child care directors, local child care resource and referral agencies, and other appropriate entities prior to conducting a market rate survey or alternative methodology. Under the rule, Lead Agencies must also consult with organizations representing child care caregivers, teachers, and directors. Under § 98.45(f)(2)(iv), when setting payment rates, Lead Agencies must take into consideration the views and comments of the public obtained through required consultation (under paragraph (e)) and other means determined by the Lead Agency.

Comment: Child care worker organizations supported the proposal in the NPRM providing for consultation with organizations representing child care caregivers, teachers, and directors, but requested additional provisions to ensure an adequate voice for child care workers in the process for setting payment rates. One national child care worker organization and its member affiliates recommended a separate public hearing specifically focused on rate setting and worker compensation levels.

Response: The final rule retains the provision at § 98.45(e) requiring consultation with worker organizations prior to the market rate survey or alternative methodology. We are not requiring a separate public hearing to allow Lead Agency flexibility to determine the best mechanism for obtaining public input; some Lead Agencies may be able to address rate setting through the public hearing already required at § 98.14(c). In response to comments, however, § 98.45(f)(2)(iv) requires Lead Agencies to take into consideration the views and comments of the public when setting rates. The final rule also requires the Lead Agency to respond to stakeholder comments in its detailed report (discussed below).

Detailed Report. Section 98.45(f)(1) of the final rule reflects the statutory requirement for a Lead Agency to prepare and make widely available a detailed report containing results of its survey or alternative methodology. Section 658E(c)(4)(B)(ii) of the Act requires this report be available 30 days after completion of the survey or alternative methodology. Because we consider analysis and preparation of the report to be part of completing a survey, the rule indicates that Lead Agencies have 30 days from completion of the report to make the information available. ACF expects Lead Agencies to complete this report well in advance of the Plan submission deadline in order to allow enough time to for review and input by stakeholders and the public.

In addition to the results of the market rate survey or alternative methodology, a Lead Agency must indicate in its report the estimated cost of care necessary to support child care providers' implementation of the health, safety, quality, and staffing requirements at §§ 98.41, 98.42, 98.43, and 98.44, including any relevant variation by geographic location, category of provider, or age of child. As part of the summary of data and facts demonstrating equal access, we will ask Lead Agencies in their Plans to indicate the estimated cost of care necessary to support child care providers' implementation of these health, safety, quality, and staffing requirements.

Under § 98.45(f)(1), a Lead Agency's report must also include the estimated cost of care necessary to support higher-quality child care, as defined by the Lead Agency using a quality rating and improvement system or other system of quality indicators, at each level of quality. Under § 98.45(b), this information must be included as part of the Lead Agency's summary of data and facts in the Plan that demonstrate equal access. The report must also include the Lead Agency's response to stakeholder views and comments.

Comment: One State indicated that the 30-day timeframe for making the report public would be difficult to meet due to the time needed to complete a rigorous analysis of the data and provide a meaningful report.

Response: Under the rule, the 30-day timeframe for posting the report on the Internet begins after the report is completed.

Setting Payment Rates. Section § 98.45(f)(2) establishes the parameters for setting payment rates based on the market rate survey or alternative methodology and on other factors. Paragraph (f)(2)(i) requires the Lead Agency to set rates in accordance with the most recent market rate survey or alternative methodology.

Comment: National organizations, child care worker organizations, child care providers, and one State supported the proposal to require use of the current survey or methodology to set rates. Six States opposed the proposal or expressed concerns. They said that, without increased Federal resources, this is an unfunded mandate, and increased rates will lead to serving fewer children due to significant costs.

Response: The final rule retains this provision at § 98.45(f)(2)(i) because the Act requires the use of the most recent survey or methodology. Section 658E(c)(4)(B)(iii) of the Act requires Lead Agencies to set payment rates in accordance with the results of the market rate survey or alternative methodology, which must be conducted every three years. We interpret this statutory provision to mean that Lead Agencies must use results of the most recent market rate survey or alternative methodology. The intent of the new statutory requirement to conduct a market rate survey or alternative methodology every three years is that it be used to set payment rates, not treated as an obligatory paperwork exercise.

Payment rates should reflect the current child care market. Setting payment rates based on older market rate surveys or alternative methodologies that reflect outdated prices or costs results in insufficient payment rates that do not reflect current market conditions and undermine the statutory requirement of equal access. This final rule effectively requires Lead Agencies to reevaluate their payment rates *at least* every three years. This process will vary based on State laws and rules. In a number of States, action by the State legislature is necessary to change payment rates; however, it is unclear whether State legislatures are adequately engaged in reviewing current market rate survey results. A hearing in the State legislature at least every three years based on the results of the most current survey/methodology, or other similar process, may be necessary in these States to meet this requirement. Where updated data from a market rate survey or alternative methodology indicates that prices or costs have increased, Lead Agencies must raise their rates as a result. Moreover, we encourage Lead Agencies to consider annual increases in rates that keep pace with regular increases in the costs of providing child care.

Comment: The preamble to the NPRM indicated that the 75th percentile remains an important benchmark for gauging equal access. National organizations, child care worker organizations, and child care providers strongly supported retaining the 75th percentile as a benchmark. One large multi-State child care provider said that "current rates set by Lead Agencies do not promote quality and equal access" and "a business offering a similar discount on services isn't staying in business long, is covering costs through another program, or is providing an inferior service." Six States opposed the benchmark or had concerns. They said that, without increased funding, expectations for the 75th percentile would result in major reductions in the number of children served. Some commenters questioned the use of the 75th percentile as a universal standard, saying that other factors, such as quality, should be considered.

Response: We restate the continued importance of the 75th percentile as a benchmark for gauging equal access by Lead Agencies conducting a market rate survey. Established as a benchmark for CCDF by the preamble to the 1998 Final Rule (63 FR 39959), Lead Agencies and other stakeholders are familiar with this rate as a proxy for equal access. To establish payments at the 75th percentile, rates within categories from the market rate survey are arranged from lowest to highest. The 75th percentile is the number separating the 75 percent of lowest rates from the 25 percent that are highest. Setting rates at the 75th percentile demonstrates that CCDF families have access to at least three-quarters of all available child care. Retaining this benchmark also allows for accountability and comparability across States using a market rate survey approach, which can be useful in gauging equal access and monitoring trends in rates and access to quality care over time.

Currently, nearly all Lead Agencies set rate ceilings that are below the 75th percentile and, in many cases, significantly below that benchmark. This is of great concern to ACF both because inadequate rates may violate the statutory requirement for equal access and because CCDF is serving a large number of vulnerable children who would benefit from access to high-quality care and for whom payment rates even higher than the 75th percentile may be necessary to afford access to such care. Low rates simply do not provide sufficient resources to cover costs associated with the provision of high-quality care or to attract and retain qualified caregivers, teachers, and directors. Low rates may also impact the willingness of child care providers to serve CCDF children thereby restricting access. Currently, even in States and Territories that pay higher rates for higher-quality care, base rates are so inadequate that even the highest payment levels are often below the 75th percentile. While rates vary by category of care, locality, and other factors, nine States include rates that are set below the 25th percentile and five States have not adjusted their rates in over five years according to the FY2016–2018 CCDF Plans, This means that CCDF families are unable to access a significant portion of the child care market.

We agree with commenters that rates must consider a range of factors, and we anticipate that payment rates will differ by types of care, ages of children and geographic location, among other factors. Regardless, we expect that Lead Agencies will ensure that rates for all provider categories and age groups similarly provide equal access for children served by CCDF. Consideration of quality factors is discussed further below.

We understand the States' concern about potential caseload decline; however, the Act mandates that payment rates support equal access. While we are not requiring that Lead Agencies pay providers at the 75th percentile, we strongly discourage Lead Agencies from paying providers less than the 75th percentile. ACF intends to enhance its monitoring of rates through the CCDF Plan approval process. Lead Agencies that set their base rates at the 75th percentile of the most recent market rate survey will be assured approval by ACF that rates provide equal access (assuming that the Lead Agency also demonstrates compliance with the other equal access components, including how the rates enable child care providers to meet health, safety, quality, and staffing requirements in accordance with § 98.45(f)(2)(ii)). ACF will apply scrutiny in its review to rates set below that threshold, as well as to rates that appear to be below a level to meet minimum quality standards based on alternate methodologies. Finally, any alternative methodology or market rate survey that results in stagnant or reduced payment rates will result in further increased scrutiny by ACF in its review, and the Lead Agency will need to provide a justification for how such rates result in improving access to higher-quality child care.

Comment: The NPRM proposed to require that payment rates must provide access to care that is of comparable quality to care with incomes above 85 percent of State median income (SMI). The preamble to the NPRM added that Lead Agencies with rates below the 75th percentile would be required to demonstrate that their rates allow CCDF families to purchase care of comparable quality to care that is available to families with incomes above 85 percent of SMI; this would include data on the quality of care that CCDF families can purchase and that is available to families above 85 percent of SMI. We received a letter from Senator Alexander and Congressman Kline objecting that this proposal was an unfunded mandate that would create a large paperwork and

administrative burden. National organizations and child care worker organizations said that this data comparison would not be meaningful enough to justify burdening States. They also indicated that little evidence exists that families above 85 percent of SMI are accessing care of higher quality compared to families below 85 percent of SMI.

Response: In light of the significant and widespread concerns, we have not included this provision in the final rule. However, the final rule includes additional provisions to strengthen the consideration of quality of care as an important factor in ensuring equal access (discussed further below).

Supporting Providers' Implementation of Health, Safety, Quality, and Staffing Requirements. Section 98.45(f)(2)(ii) requires Lead Agencies to set base payment rates, *at a minimum,* at levels sufficient for child care providers to meet health, safety, quality, and staffing requirements as described in the rule—consistent with the Lead Agency's summary of data and facts in the Plan under § 98.45(b)(3) and information included in its detailed report under § 98.45(f)(1)(ii)(A).

Comment: Numerous commenters supported the proposal, including national organizations, child care worker organizations, child care resource and referral agencies, and child care providers. Some child care worker organizations wanted to go further and also require a separate analysis related to adequate compensation for child care workers, including for home-based providers. Two commenters supported the proposal, but wanted to clarify that this provision does not stand on its own, but must be considered along with the other equal access components at § 98.45.

Response: We are retaining the provision, with revisions in response to comments. Base payment rates, *at a minimum,* should be sufficient to ensure compliance with applicable licensing and regulatory requirements, health and safety standards, training and professional development standards, and appropriate child to staff ratio, group size limits, and caregiver qualification requirements (that Lead Agencies define) as required by the Act. In light of the requirements for child to staff ratio, group size limits, and caregiver qualifications, we have added "staffing" to the regulatory language to reflect that base payment rates should be sufficient for providers to meet health, safety, quality, and *staffing* requirements. We are not requiring a separate calculation of rates that would be sufficient to support adequate compensation of child care workers, but strongly agree that worker compensation should be considered as part of the broader analysis of the cost of meeting health, safety, quality, and staffing requirements in order to attract skilled, trained, and adequately-compensated caregivers, teachers, and directors for the provision of CCDF-funded care. We also agree with commenters that Lead Agencies must demonstrate equal access through all components included in § 98.45.

Comment: Four States opposed or expressed concerns about this proposal, objecting to the additional administrative burden on States and providers of conducting the analysis necessary to determine if base rates are sufficient to support health, safety, quality, and staffing requirements—particularly in light of the vast variation across providers and communities. One State noted that price and cost are significantly different concepts, and conflating them creates confusion about the expectation. The State said that "base" payment rate was not defined in the Act or regulations, and objected to raising base rates rather than raising rates for higher-quality providers. Another State said the proposal was a back-door way to essentially require a cost estimation model rather than a market rate survey.

Response: OCC plans to provide technical assistance to help Lead Agencies conduct this analysis, and the free, web-based Provider Cost of Quality Calculator is available. While the NPRM referred to both cost and price in this provision, we agree that cost and price are two different concepts and, for purposes of clarity, have eliminated the reference to price in the final rule. Lead Agencies should ensure that base payment rates are sufficient to support the *cost* to the provider (rather than price) of health, safety, quality and, staffing requirements. Base rates are the lowest, foundational rates before any differentials are added (*e.g.,* for higher quality or other purposes). Lead Agencies that choose to conduct a market rate survey (rather than an alternative methodology) are still required to comply with this provision, but may conduct an analysis that is more narrowly focused on ensuring that base payment rates are adequate to cover the cost of health, safety, quality, and staffing—rather than a full alternative methodology (*e.g.,* cost estimation model) that would need to look more broadly at costs. We also agree with commenters that, beyond base rates, it is important to raise rates for higher-quality providers (discussed further below).

Cost of Higher Quality. The final rule includes § 98.45(f)(2)(iii) in accordance with the statutory requirement at Section 658E(c)(4)(B)(iii)(II) of the Act to take into consideration the cost of providing higher-quality care than was provided prior to the reauthorization when setting payment rates. Under the rule, a Lead Agency may define higher-quality care using a quality rating improvement system or other system of quality indicators. The Lead Agency must consider how payment rates compare to the estimated cost of care at each level of higher quality—consistent with the summary of data and facts in the Plan at § 98.45(b)(4) and information in the Lead Agency's detailed report at § 98.45(f)(1)(ii)(B). Within these parameters, Lead Agencies may take different approaches to setting rates for higher-quality care, including increasing base payment rates, using pay differentials or higher rates for higher-quality care, or other strategies, such as direct grants or contracts that pay higher rates for child care services that meet higher-quality standards. ACF acknowledges that rates above the benchmark of 75th percentile may be required to support the costs associated with high-quality care. In order for providers to offer high-quality care that meets the needs of children from low-income families, they need sufficient funds to be able to recruit and retain qualified staff, use intentional approaches to promoting learning and development using curriculum and engaging families, and provide safe and enriching physical environments.

Comment: One commenter, a national expert on child care financing, suggested some options to demonstrate equal access, such as requiring Lead Agencies to document the gap between the market rate and the estimated cost of services at each level of a Quality Rating and Improvement System or other quality measure, and implementing steps, over time, to close the gap at higher-cost programs (such as high-quality programs for infants and toddlers).

Response: We agree with the commenter's recommended approach, which is consistent with the statutory requirement at section 658E(c)(4)(B)(iii)(II) for Lead Agencies to take into consideration the cost of providing higher-quality child care services when setting payment rates. This approach is also an important companion to the provision requiring that base rates support the basic health, safety, quality, and staffing provisions required by the Act and this rule, as it is important to also consider how rates support higher-quality care.

Therefore, § 98.45(b)(4) of the final rule requires the Lead Agency's summary of data and facts in the CCDF Plan to include how its payment rates that apply to higher-quality care, as defined by the Lead Agency using a quality rating and improvement system or other system of quality indicators, relate to the estimated cost of care at each level of quality. To ensure transparency, the Lead Agency's detailed report required under § 98.45(f)(1), like the market rate survey or alternative methodology results, must also include the estimated cost of higher-quality care at each level of quality, as defined by the Lead Agency using a quality rating and improvement system or other system of quality indicators (and including any relevant variation by geographic location, category of provider, or age of child). Finally, when setting payment rates, § 98.45(f)(2)(iii) of the final rule requires the Lead Agency to take into consideration the cost of providing higher-quality child care services, including consideration of the estimated cost at each level of higher quality. ACF intends to provide technical assistance to help Lead Agencies conduct the analysis necessary to comply with these provisions, and, as previously mentioned, the Provider Cost of Quality Calculator is available as a tool.

Comment: The preamble to the 1998 Final Rule reminded Lead Agencies of the general principle that Federal subsidy funds cannot pay more for services than is charged to the public for the same service (63 FR 39959). In the 2015 NPRM, we clarified that, while this principle remains in effect, Lead Agencies may pay amounts above the provider's private-pay rate to support quality. A number of commenters supported this clarification. National organizations and child care worker organizations suggested going further to clarify that States must set base payment rates at a level sufficient to support implementation of health, safety, quality, and staffing requirements even if such rates are higher than private-pay rates (which is important for poor communities with depressed child care markets).

Response: In this final rule, we maintain the clarification that Lead Agencies may pay amounts above the provider's private pay rate to support quality. A Lead Agency also may peg a higher payment rate to the provider's cost of doing business at a given level of quality. For example, an analysis of the cost of providing high-quality care (*i.e.*, at the top levels of a QRIS) using a cost estimation model or other method could show the cost of providing the service is greater than the price charged in the market. Recognizing that private pay rates are often not sufficient to support high-quality, many Lead Agencies have already implemented tiered subsidy payments that support quality. Payments may exceed private pay rates if they are designed to pay providers for additional costs associated with offering higher-quality care or types of care that are not produced in sufficient amounts by the market (*e.g.*, non-standard hour care, care for children with disabilities or special health care needs, etc.).

We also agree with commenters that, as required by § 98.45(f)(2)(ii), Lead Agencies must set base payment rates at a level sufficient to support implementation of health, safety, and quality requirements even if such rates are higher than private-pay rates.

Comment: One commenter, an organization that operates child care programs, requested clarification that child care providers can charge reduced prices or give scholarships to non-CCDF children without impacting the private-pay level used to determine the subsidy amount.

Response: We agree that child care providers may receive CCDF payment for an eligible child at the level of the full private-pay price, even if some private-pay children receive scholarships or reduced prices. For example, if a provider's private-pay price is $200 per week and some private-pay children receive a scholarship of $50 per week, the families receiving scholarships would pay $150 per week (*i.e.*, the difference between the private-pay price and the scholarship). The provider, however, would still be eligible for CCDF subsidy reimbursement up to $200 per week under Federal rules as long as such scholarships are bona fide.

Tribes. In accordance with §§ 98.81(b)(6) and 98.83(d)(1), we exempt Tribal grantees from the requirement to conduct a market rate survey or alternative methodology and related rate-setting requirements. However, in their CCDF Plans, Tribes must still describe their payment rates, how they are established, and how they support health, safety, quality, and staffing requirements and, where applicable, cultural and linguistic appropriateness. Tribes, at their option, may still conduct a market rate survey or alternative methodology or use the State's market rate survey or alternative methodology when setting payment rates.

Other Provisions. The rule at § 98.45(f)(2)(v) reflects language at Section 658E(c)(4)(B)(iii)(III) of the Act, which requires Lead Agencies to set payment rates without reducing the number of families receiving assistance, to the extent practicable. ACF recognizes the limitations of Lead Agencies' abilities to increase rates under resource constraints and that Lead Agencies must balance competing priorities. We recognize that greater budgetary resources are needed to serve all children eligible for CCDF. While we do not want to see a reduction in children served, it is our belief that current payment rates for CCDF-funded care in many cases do not support equal access to a minimum level of quality for CCDF children and should be increased.

The final rule at § 98.45(g) re-designates and revises former § 98.43(c). The previous regulations prohibited Lead Agencies from differentiating payment rates based on a family's eligibility status or circumstance. This provision was intended to prevent Lead Agencies from establishing different payment rates for child care for low-income working families as payments for children from TANF families or families in education or training. Such a prohibition remains relevant; differentiating payment rates based on an eligibility status (such as receiving TANF or participation in education or training) would violate the equal access provision. In order to clarify that this prohibition does not conflict with the ability of Lead Agencies to differentiate payments based on the needs of particular children, for example, paying higher rates for higher-quality care for children experiencing homelessness, this final rule removes the word "circumstance" in paragraph (g) so that this provision only refers to the conditions of eligibility and not the needs or circumstance of children. Setting lower payment rates based on the eligibility status of the child is not consistent with Congress' intent to allow for differentiation of rates. Further, establishing different payment rates for low-income families and TANF families does not further the goals of the Act or support access to high-quality care for low-income children. Commenters on the NPRM supported this provision.

The rule at § 98.45(i) re-designates and revises the former § 98.43(e) to add "if the Lead Agency acts in accordance with" this regulation, to the pre-existing language that nothing in this section shall be construed to create a private right of action in accordance with statutory language.

Based on Section 658E(c)(4)(C) of the Act, § 98.45(j) states that Lead Agencies may not be prevented from differentiating payment rates based on

geographic location of child care providers, age or particular needs of children (such as children with disabilities and children served by child protective services), whether child care providers provide services during weekend or other non-traditional hours; or a Lead Agency's determination that differential payment rates may enable a parent to choose high-quality child care. Section 98.45(j)(2) adds children experiencing homelessness to the statute's list of children with particular needs; this addition was supported by homeless advocates who commented on the NPRM. Paying higher rates for higher-quality care is an important strategy as it provides resources necessary to cover the costs of quality improvements in child care programs. Lead Agencies should also consider differentiating rates for care that is in low supply, such as infant-toddler care and care during nontraditional hours, as an incentive for providers.

Parent fees. Section 658E(c)(5) requires Lead Agencies to establish and periodically revise a sliding fee scale that provides for cost-sharing for families receiving CCDF funds. The reauthorization added language that cost-sharing should not be a barrier to families receiving CCDF assistance. In this final rule, we have moved the regulatory language on sliding fee scales (previously § 98.42) under the equal access section (§ 98.45), recognizing affordable co-payments as an important aspect of equal access.

The final rule amends the previous regulatory language, now § 98.45(k), by adding language that the cost-sharing should not be a barrier to families receiving assistance. Further, the final rule provides that Lead Agencies may not use the cost, price of care, or subsidy payment rate as a factor in setting co-payment amounts. In addition to allowing Lead Agencies to waive co-payments for families below poverty and children that receive or need to receive protective services (as allowed under prior regulation), the final rule also allows Lead Agencies to waive contributions from families that meet other criteria established by the Lead Agency.

Comment: The NPRM proposed a new Federal benchmark for affordable parent fees of seven percent of family income. National organizations and advocates wrote in support of the proposal. Seven States and one municipal agency objected or expressed concerns, arguing that implementation would be costly and result in fewer children served. Two of the States said that co-payments higher than seven percent were reasonable for some families to allow for gradual transitioning to the full cost of care.

Response: We retain the seven percent benchmark in this final rule. Lead Agencies have flexibility in establishing their sliding fee scales and determining what constitutes a cost barrier for families, but the seven percent level is a recommended benchmark. This new Federal benchmark revises the prior benchmark, created in the preamble to the 1998 Final Rule, of 10 percent of family income as an affordable co-payment. As in the past, we are declining from defining affordable in regulation but we are revising this established benchmark through this preamble. It is our view that a fee that is no more than seven percent of a family's income is a better measure of affordability. According to the U.S. Census Bureau, the percent of monthly income families spend on child care on average has stayed constant between 1997 and 2011 (most recent data available), at around seven percent. Poor families on average spend approximately four times the share of their income on child care compared to higher income families. (*Who's Minding the Kids? Child Care Arrangements: Spring 2011*, U.S. Census Bureau, 2013.) As CCDF assistance is intended to offset the disproportionately high share of income that low-income families spend on child care in order to support parents in achieving economic stability, it is our belief that CCDF families should not be expected to pay a greater share of their income on child care than reflects the national average. For the majority of CCDF families receiving assistance, this new Federal benchmark would not result in a change in the amount of copay charged. The average percentage of family income spent on CCDF co-payments, among families with a co-payment, is seven percent.

Under § 98.21(a)(3), Lead Agencies cannot increase family co-payments within the minimum 12-month eligibility period unless the family's income is in a graduated phase-out of care as described at § 98.21(b)(2). When designing fee scales, we encourage Lead Agencies to consider how their fee scales address affordability for families at all income levels. Lead Agencies should ensure that small increases in earnings during the graduated phase-out period do not trigger large increases in co-payments that are unaffordable for families, in order to ensure stability for families as they improve their economic circumstance and transition off child care assistance.

Comment: National organizations and child care providers supported the NPRM's proposal to prohibit basing co-payment amounts on cost of care or amount of subsidy payment. Two States objected, saying the proposal was prescriptive and contrary to long-standing State practice.

Response: In the final rule, we include this provision at § 98.45(k)(2). This corrects a contradiction between the 1992 and 1998 preamble discussions. The 1992 preamble stated that "Grantees may take into account the cost of care in establishing a fee scale," (57 FR 34380), while the 1998 preamble states that "As was stated in the preamble to the regulations published on August 4, 1992, basing fees on the cost or category of care is not allowed." (63 FR 39960). The final rule corrects this discrepancy by stating that Lead Agencies may not base their co-payment amounts on the cost of care or subsidy amount. This is consistent with existing practice for the majority of States, and is essential to preserving equal access and parental choice because basing co-payments on cost or subsidy amount incentivizes families to use lower cost care and impedes access to higher cost care.

Comment: National organizations and two States endorsed the NPRM's proposal to allow Lead Agencies to waive co-payments for families meeting criteria set by the Lead Agency. One of the States said "this flexibility will better support efforts to provide services to vulnerable populations."

Response: We retain this provision in the final rule at § 98.45(k)(4), and add "at Lead Agency discretion" to clarify that the Lead Agency may choose whether or not to waive co-payments. Lead Agencies have often requested more flexibility to waive co-payments beyond just those families at or below the poverty level and children in need of protective services. This change increases flexibility to determine waiver criteria that the Lead Agency believes would best serve subsidy families. For example, a Lead Agency could use this flexibility to target particularly vulnerable populations, such as homeless families, migrant workers, victims of human trafficking, or families receiving TANF. Lead Agencies may choose to waive co-payments for children in Head Start and Early Head Start, including children served by ACF-funded Early Head Start-Child Care Partnerships, which is an important alignment strategy. Head Start and Early Head Start are provided at no cost to eligible families, who cannot be required to pay any fees for Head Start services. Waiving CCDF fees for families served by both Head Start/Early Head Start and CCDF can support continuity for families. While we are allowing Lead

Agencies to define criteria for waiving co-payments, the criteria must be described and approved in the CCDF Plan. Lead Agencies may not use this revision as an authority to eliminate the co-payment requirement for all families receiving CCDF assistance. We continue to expect that Lead Agencies will have co-payment requirements for a substantial number of families receiving CCDF subsidies.

Comment: The NPRM proposed to require that Lead Agencies prohibit child care providers receiving CCDF funds from charging parents additional mandatory fees above the family co-payment based on the Lead Agencies' sliding fee scale. Numerous commenters strongly objected to this proposal, including the letter from Senator Alexander and Congressman Kline, 13 States, national organizations, child care worker organizations, child care providers, and child care resource and referral agencies. Commenters said the proposal, while well-intentioned, would be a serious restraint on parental choice and impediment to accessing high-quality care. They were also concerned about the fiscal impact on child care providers, and anticipated that it would no longer be economically-feasible for many of them to keep slots open for CCDF children. Some of the commenters said the proposal would diminish socio-economic diversity in child care programs, and would be difficult to administer and enforce. One commenter, who opposed the proposal, suggested an alternative that would require Lead Agencies to estimate the size of the total family share (including co-payment and any additional amounts paid by the family) in order to frame to issue and inform future policy solutions.

Response: We withdraw our proposal in response to the strong negative reaction and specific issues raised by commenters. However, we remain concerned that, according to the 2016–2018 Plans, 42 Lead Agencies have policies allowing providers to charge families the difference between the maximum payment rate and their private-pay rate. Requiring families to pay above the established co-payment may make care unaffordable for families and may be a barrier to families receiving assistance. It masks the true cost of care to the family and whether co-pays are reasonable. Such policies require families to make up the difference for Lead Agencies' low payment rates. Due to these concerns, we have added new requirements at § 98.45(b)(5) that require the Lead Agency to include in its Plan a rationale for its policy on whether child care providers may charge additional amounts to families above the required family co-payment, including a demonstration that the policy promotes affordability and access. The Lead Agency must also provide an analysis of the interaction between any such additional amounts with the required family co-payments, and of the ability of subsidy payment rates to provide access to care without additional fees. In addition, under § 98.45(d)(2)(ii), mentioned earlier, Lead Agencies must track through the market rate survey or alternative methodology, or through a separate source, information on the extent to which CCDF providers charge such additional amounts, including data on the size and frequency of any such amounts disaggregated by category and licensing status of provider. This information will provide greater transparency on the scope of the issue and a basis for future decisions by policymakers and administrators.

Provider Payment Practices. The final rule at § 98.45(l) requires the Lead Agency to demonstrate in its Plan that it has established certain payment practices applicable to all CCDF child care providers, including practices related to timeliness, paying for absence days, and other generally-accepted payment practices. The NPRM proposed benchmarks in these key areas (discussed in more detail below), and asked for comment on whether the proposed benchmarks or other benchmarks should be included in the final rule.

Comment: National organizations, child care worker organizations, child care resource and referral agencies, and child care providers supported the proposed benchmarks. According to a coalition of national organizations, "Congress established a principle that payment practices under CCDBG should not differ from common practices for private-pay parents. Therefore, we support the benchmarks included in the NPRM. . . ." States opposed the benchmarks and asked for more flexibility.

Response: We retain the benchmarks for provider payment practices (with some modifications in response to comments, as discussed below) in light of the critical role of payment practices in ensuring equal access. At the same time, the final rule allows flexibility for Lead Agencies to choose from several options within each key area of payment practices (*i.e.*, timeliness, absence policies, and generally-accepted practices). In addition to payment rates, policies governing provider payments are an important aspect of ensuring equal access and supporting the ability of providers to provide high-quality care. When payment practices result in unstable, unreliable payments (as was often the case prior to reauthorization), it is difficult for providers to meet fixed costs of providing child care (such as rent, utilities and salaries) and to plan for investments in quality. Surveys and focus groups with child care providers have found that some providers experience problems with late payments, including issues with receiving the full payment on time and difficulties resolving payment disputes. (Adams, G., Rohacek, M., and Snyder, K., *Child Care Voucher Programs: Provider Experiences in Five Counties,* 2008) This research also found that delayed payments creates significant financial hardships for the impacted providers, and forces some providers to stop serving or limit the number of children receiving child care subsidies.

Comment: Some child care worker organizations requested additional language in the regulation to specify that the payment practices must be applied consistently over all categories of care, including family child care. One municipal agency recommended that absence day policies apply only to licensed providers.

Response: We have added language to the final rule to specify that the payment practices described in § 98.45(l) apply to all CCDF child care providers. It is important to ensure that the practices apply uniformly to all categories of providers in order to ensure parental choice for families.

Timeliness. The final rule at § 98.45(l)(1) requires Lead Agencies to ensure timeliness of payment. This provision is based on Section 658E(c)(4)(iv) of the Act, which requires Lead Agencies to describe how they will provide for the timely payment for child care services provided by CCDF funds. Under the rule, Lead Agencies must ensure timely provider payments by *either* paying prospectively prior to the delivery of services *or* paying providers retrospectively within no more than 21 calendar days of the receipt of a complete invoice for services.

Comment: While many commenters supported the proposal, a few (two States and a municipality) expressed concern about the option for prospective payments—suggesting that it would lead to improper payments and costly recoupment activities, and that it would be costly and unnecessary to redesign State payment systems.

Response: We do not believe prospective payments will lead to a higher incidence of improper payments, particularly if the Lead Agency has adequate policies allowing payment for

absence days. As discussed elsewhere in this rule, recoupment for improper payments is not required by Federal rules, except in cases of fraud. We strongly encourage Lead Agencies to pay prospectively where possible, but the final rule still allows the option for paying on a reimbursable basis within 21 days.

Comment: One State and a locality in that State indicated that 21 days was not long enough, and requested expanding to 30 days. One commenter requested clarifying that the timeframe referred to calendar days. One commenter asked that providers be able to assess late fees to Lead Agencies that miss the deadline.

Response: Given that most States did not specifically object to the 21-day timeframe, the final rule retains it. The final rule clarifies that the timeframe refers to *calendar* days. The rule does not include a provision regarding late fees, but OCC intends to monitor State performance and may take compliance action if necessary. The final rule provides 21 days as a *maximum* period of time but we encourage Lead Agencies to provide payment sooner if possible. We do not expect this requirement to be burdensome for Lead Agencies. According to their FY2016–2018 CCDF Plans, 39 States/Territories had an established timeframe for provider payments ranging from 3 to 35 days, the majority of which were shorter than 21 days. We encourage administrative improvements such as automated billing and payment mechanisms, including direct deposit and web-based electronic attendance and billing systems, to help facilitate timely payments to providers.

Comment: A few commenters (three States and a city) requested exceptions to the timeframe for certain cases, including cases where there is a late or incomplete bill or cases where there is an investigation for potentially fraudulent activity or risk assessment occurring. One commenter argued that the timeframe should apply to all invoices.

Response: We agree that the timeframe should not begin until a complete invoice is received, and the final rule at § 98.45(l)(1)(ii) reflects this. We also recognize that there may be some limited instances, such as cases involving a fraud investigation, when the 21-day timeframe is not met. However, because these instances should be rare exceptions to the rule, a change to the regulatory provision governing most payments is not warranted.

Absence days. Section 98.45(l)(2) provides three examples for how Lead Agencies could meet the statutory requirement at section 658E(c)(2)(S)(ii) of the Act to support the fixed costs of providing child care services by delinking provider payment rates from an eligible child's occasional absences due to holidays or unforeseen circumstances such as illness, to the extent practicable. This may include: (1) By paying providers based on a child's enrollment, rather than attendance; (2) by providing a full payment to providers as long as a child attends for 85 percent of the authorized time; or (3) by providing full payment to providers as long as a child is absent for five or fewer days in a four week period. We recognize that these three examples represent different levels of stringency; however, the final rule provides flexibility in acknowledgement of the ways that States structure their policies. Lead Agencies that do not choose one of these three approaches must describe their approach in the State Plan, including how the approach is not weaker than one of the three listed above.

Prior to reauthorization, many States closely linked provider payments to the hours a child attends care. A child care provider was not paid for days or hours when a child was absent, resulting in a loss of income. Generally-accepted payment practices typically require parents who pay privately for child care to pay their provider a set fee based on their child's enrollment, often in advance of when services are provided. Payments are not altered due to a child's absence in part because the child's teacher still serves in the same capacity with the same salary even if a particular child does not attend on a given day.

We are establishing 85 percent, or five or fewer days, as a benchmark for when providers should receive a full payment, regardless of the reason for the absence (*e.g.,* whether it is approved or unapproved). We selected 85 percent (or five or fewer days) as a threshold based in part on Head Start policy, which currently requires center-based programs to maintain a monthly 85 percent attendance rate and to analyze absenteeism if monthly average daily attendance falls below that threshold. New proposed Head Start Performance Standards, issued in June 2015, would require programs to take actions (which could include additional home visits or the provision of support services) to increase child attendance when children have four or more consecutive unexcused absences or are frequently absent. While Head Start policy informed the development of this rule, the final rule's provisions differ in several ways. The final rule does not require CCDF child care providers to take action to address individual or systemic absenteeism, although Lead Agencies may encourage CCDF providers to take this approach and consider how child care providers may be supported in addressing high rates of absenteeism among families. Chronic absenteeism from high-quality programs is a concern because it may lessen the impact on children's school readiness and may signal that a family is in need of additional supports.

The Act and final rule require Lead Agencies to implement this provision "to the extent practicable." We interpret this language as setting a limit on the extent to which Lead Agencies must act, rather than providing a justification for not acting at all. The final rule does not require Lead Agencies to pay for *all* days when children are absent, although that would most closely mirror private-pay practices; however, each Lead Agency is expected to implement a policy that accomplishes the goals of the Act. A refusal to implement all such policies as being "impracticable" will not be accepted.

Comment: Many commenters supported the provision regarding absence days, including the letter from Senator Alexander and Congressman Kline, national organizations, child care providers, and one State. The commenters recognized that providing more stability in subsidy payments will increase provider participation and parental choice.

Response: We agree, and the final rule retains the provision in the final rule as proposed in the NPRM.

Comment: Three States and one municipality raised concerns or questions, objecting to the cost and administrative burden. One State said that it had recently invested in an attendance system that issues full payment based on an 80% benchmark.

Response: The final rule allows for significant Lead Agency flexibility by providing three options, in addition for the opportunity to justify an alternative approach in the Plan. Lead Agencies retain discretion to allow for *additional* excused and/or unexcused absences (above the level of 85 percent, or 5 or fewer days) and to provide for the full payment for services in those circumstances. We recognize that many Lead Agencies have invested in electronic time and attendance systems linked to provider payments. These systems may be used to track whether a child is enrolled and attending care; however, Lead Agencies should ensure that such systems do not link attendance and payment so tightly as to violate this provision.

Comment: The NPRM asked for comments on alternatives to the three

identified examples of approaches that Lead Agencies may want to use for absence policies. Some States recommended greater flexibility in crafting absence policies that may be based on different periods of time (*e.g.*, 3-, 6- or 12-month periods), tiered attendance strata (*e.g.*, full-time, half-time), or other methods (*e.g.*, waivers and exceptions based on medical conditions). Other commenters supported only the three options without any additional choices. One State asked for clarification on what will be required for States to justify an alternative approach in lieu of the three identified options.

Response: The final rule accommodates the flexibility requested by State commenters. In addition to the three identified approaches, a Lead Agency may justify an alternative approach in its Plan. For example, a Lead Agency may choose an alternative time period for measuring absences (*e.g.*, 1, 3, 6, 12 months, etc.). In its Plan, the Lead Agency would need to demonstrate that its alternative approach delinks payment from a child's absences at least to the same extent as providing full payment for 85 percent attendance or five of fewer absences in a month.

Comment: A few commenters requested allowing flexibility for payment policies to accommodate program closure days, including holidays, inclement weather, and professional development days.

Response: We are sympathetic to this suggestion, and encourage Lead Agencies to adopt policies that provide payment for program closure days. However, we stop short of a requirement because the statutory provision focused on delinking payments from a child's absences rather than program closures.

Comment: One State asked whether States will be given the option of authorizing paid absences only for specific need categories (*e.g.*, children with chronic illnesses or court-ordered visitation), or be allowed to consider absence policies that discourage under-utilization.

Response: The absence policies must apply to all CCDF children and providers and may not be limited to specific need categories because the goal is to provide consistency and stability of payments consistent with generally-accepted practices in the private-pay market. The identified thresholds (85 percent, or five or fewer days) already acknowledge that children should be attending for large majority of the time, thereby guarding against under-utilization.

Generally-accepted payment practices. Consistent with section 658E(c)(2)(S) of the Act, § 98.45(l)(3) of the final rule requires CCDF payment practices to reflect generally-accepted payment practices of child care providers that serve children who do not receive CCDF-funded assistance. This provision is designed to support stability of funding and encourage more child care providers to serve children receiving CCDF funds. Unless a Lead Agency is able to prove that the following policies are *not* generally-accepted in its particular State, Territory, or service area, or among particular categories or types of providers, Lead Agencies must: (1) Pay providers based on established part-time or full-time rates, rather than paying for hours of service or smaller increments of time; and (2) pay for reasonable, mandatory registration fees that the provider charges to private-paying parents.

Lead Agencies should ensure that payment practices for each category or type of provider reflect generally-accepted payment practices for such providers in order to ensure that families have access to a range of child care options. We note that these benchmarks represent *minimum* generally-accepted practices. Lead Agencies may consider additional policies that are fair to providers, promote the financial stability of providers, and encourage more providers to serve CCDF eligible children. Such policies may include: Providing information on payment practices in multiple languages to promote the participation of diverse child care providers; implementing dedicated phone lines, web portals, or other access points for providers to easily reach the subsidy agency for questions and assistance regarding payments; and periodically surveying child care providers to determine their satisfaction with payment practices and timeliness, and to identify potential improvements.

Comment: Two States provided comments regarding part-time and full-time rates. One State requested that it be allowed to determine payment according to the time increment (*e.g.*, daily, weekly, etc.) that the provider uses to charge for services according to its rate structure. The other State requested an allowance to continue its current practice of paying a weekly rate when more than 35 hours of care is provided per week, or a daily rate when at least five hours of care is provided per day.

Response: The final rule allows Lead Agencies the flexibility to define part-time and full-time. However, the final rule prohibits Lead Agencies from paying for hours of service or smaller increments of time. Therefore, a Lead Agency may not pay in increments smaller than daily part-time and daily full-time rates. We encourage Lead Agencies to pay part-time and full-time rates on a weekly or monthly basis.

Comment: The NPRM proposed to require paying for mandatory fees that the provider charges to private-paying parents, such as fees for registration (unless the Lead Agency provides evidence that such practice is not generally-accepted in the State or service area). Several commenters, including eight States, objected—saying the provision would be administratively burdensome and costly, and would require revisions to automated payment systems and/or manual entry with the potential for errors. Commenters also said that it was unclear which mandatory fees were included (*e.g.*, fees for transportation, meals, supplies, late pick-up, etc.), and objected that the proposal did not include a cap or require fees to be reasonable.

Response: The final rule narrows and clarifies this provision in response to comments. The regulation at § 98.45(l)(3)(ii) limits the required payment to mandatory registration fees, which includes initial and annual registration fees, rather than including other types of fees. The rule also indicates that the registration fees must be "reasonable" so that a Lead Agency may establish a cap on fees that are beyond the bounds of fees typically charged, or establish an annual limit on the number of registration fees paid in a year (such as three registration fees a year) for families that change or start new providers. This requirement aligns with the statutory provision regarding generally-accepted payment practices as the payment of registration fees is generally-accepted in the private-pay market.

Other payment practices. In addition, there are certain other generally-accepted payment practices that the final rule requires of all Lead Agencies. Section 98.45(l)(4) through (6) requires Lead Agencies to: Ensure that child care providers receive payment for any services in accordance with a payment agreement or authorization for services; ensure that child care providers receive prompt notice of changes to a family's eligibility status that may impact payment; and establish timely appeal and resolution processes for any payment inaccuracies and disputes. While these practices are unique to the subsidy system, they are analogous to generally-accepted payment practices in

the private pay market, such as establishing contracts between providers and parents and providing adequate advance notice of changes that impact payments. The appeals and resolution process is important in fairness to providers.

Comment: Child care worker organizations requested that the payment agreements or authorization for services must be in writing and include basic standards or content.

Response: The final rule at § 98.45(l)(4) specifies that the payment agreement or authorization for services must be "written" and include, at a minimum, information regarding provider payment policies, including rates, schedules, and fees charged to providers, and the dispute resolution process.

Comment: Regarding the proposed requirement for a Lead Agency to ensure child care providers receive prompt notice of any changes to a family's eligibility status that may impact payment, one major child care provider requested additional parameters to ensure the notice is timely.

Response: In response to this comment, the final rule at § 98.45(l)(5) specifies that the notice be sent to providers no later than the day on which the Lead Agency becomes aware that such changes to eligibility status will occur.

§ 98.46 Priority for Services

The CCDBG Act of 2014 included several provisions to increase access to CCDF services for children and families experiencing homelessness. Consistent with the spirit of these additions, the final rule adds "children experiencing homelessness" to the Priority for Services section at § 98.46.

Lead Agencies have flexibility as to how they offer priority to these populations, including by prioritizing enrollment, waiving co-payments, paying higher rates for access to higher-quality care, or using grants or contracts to reserve slots for priority populations. Section 658E(c)(3)(B)(ii) of the Act requires ACF to report to Congress on whether Lead Agencies are prioritizing services to children experiencing homelessness, children with special needs, and families with very low incomes.

The Section 658E(c)(2)(Q) of the Act also requires Lead Agencies to describe the process by which they propose to prioritize investments for increasing access to high-quality child care for children of families in areas that have significant concentrations of poverty and unemployment and lack such programs. The final rule reiterates this requirement at § 98.46(b). It is our interpretation that the investments referred to in the Act may include direct child care services provided under § 98.50(a) and activities to improve the quality of child care services under § 98.50(c).

While Lead Agencies have flexibility in implementing this new statutory language, ACF encourages Lead Agencies to target investments based on analysis of data showing poverty, unemployment and supply gaps. Lead Agencies may also consider how to best support parents' access to workforce development and employment opportunities (such as allowing job search as a qualifying activity for assistance and allowing broader access to assistance for education and training by reducing eligibility restrictions), which would support the child care needs of families in areas with high poverty and unemployment.

Commenters were supportive of adding "children experiencing homelessness" to the list of populations for which the Lead Agency must give priority for services. One commenter emphasized that "Homeless families face barriers over and above what other poor families face, by virtue of their extreme poverty, high rates of mobility, trauma, invisibility, and lack of documentation. Compared to poor housed parents, homeless parents are less likely to receive child care subsidies. At the same time, they are more likely to rely on informal child care arrangements and to report quitting jobs or school due to problems with child care. In addition to the barriers to accessing child care, research has shown that homelessness puts children at increased risk of health problems, developmental delays, academic underachievement, and mental health problems."

Another commenter highlighted that prioritizing homeless families has the added benefit of aligning "federal child care with the Head Start requirement for Head Start programs to prioritize homeless children for enrollment. Aligning policies between these two programs will help to create consistent State and local policy, and remove barriers to essential services."

One commenter did express concern that "the proposed CCDF regulations do not contain a requirement in the plan provision (§ 98.16 Plan) for States to report how they are prioritizing homeless children," and were worried that "without specificity in a description, made publically available in a State Plan, stakeholders will not have the opportunity to share insights, experiences, and ideas for effective prioritization of this population. Implementation of the requirement will not be as clear and robust as it needs to be to reach the children and families who are the intended beneficiaries."

While the CCDF State Plan Preprint already includes a question about meeting priority categories, we agree that this should be included in the regulatory language. Therefore, the final rules revises prior language at 98.16(i), which formerly required reporting on additional eligibility criteria, priority rules, and definitions pursuant to 98.20(b), and expands it to require reporting on a description of any eligibility criteria, priority rules, and definitions established pursuant to §§ 98.20 and 98.46.

By adding the reference to 98.46, Lead Agencies must now include a description in their State Plans of how they are providing priority to children of families with very low family income (considering family size), children with special needs, which may include any vulnerable populations as defined by the Lead Agency, and children experiencing homelessness.

Comment: Another commenter requested additional clarification about whether "priority is given to all homeless children based on the McKinney Vento definition (shall) or can lead agencies choose to make portions of the definition a priority?"

Priority must be given to children experiencing homeless as defined in this final rule at § 98.2: A child who is homeless as defined in section 725 of Subtitle VII–B of the McKinney-Vento Act (42 U.S.C. 11434a). There are a variety of ways in which a State can demonstrate priority that could include some variation and targeting within the definition of homeless, provided that some priority for services is extended for the population experiencing homelessness as defined.

Comment: One commenter raised a concern that prioritizing services to children experiencing homelessness may have the "unintended consequence [of] segregating populations of children in contracted programs which is counter to the McKinney-Vento law."

Response: We appreciate that this concern was raised and welcome the opportunity to provide some additional clarification. We emphasize that while children experiencing homelessness should be prioritized, it is not our intent to serve them in separate segregated programs. Some States do use grants and contracts in a targeted manner to ensure that there are slots available in areas with high concentrations of poverty and wide-spread instances of homelessness. This is a valuable