

September 16, 2024

**RE:** Response to Notice of Proposed Rulemaking to “Increase Flexibility for Tribes in Child Care and Development Fund (CCDF) Eligibility”

Dear Dr. Ruth Friedman and Office of Child Care (OCC) staff,

The Children's Equity Project (CEP) at Arizona State University is grateful for the opportunity to provide public comment on the [notice of proposed rulemaking](#) (NPRM) by the Administration for Children and Families (ACF) on proposed changes to allow all Tribes and Tribal Organizations operating CCDF programs to establish and use eligibility criteria regardless of family income, at their discretion. We appreciate the solicitation of public input and provide our feedback and recommendations developed with research, policy, and practice in mind.

**We strongly support ACF's efforts through this rule to provide the flexibility for Tribal Lead Agencies with medium and large CCDF allocations to disregard family income and assets when determining family eligibility for CCDF.** The proposed changes will help Tribal Lead Agencies better meet the needs of children and families in their unique communities and affirms Tribal sovereignty and self-determination in decision-making around early care and education (ECE) programs. We commend ACF's efforts and offer an additional recommendation for consideration.

The CEP's comments reflect our goal to expand access, enhance quality, and advance equity in early learning systems. With these changes, Tribal Lead Agencies can ensure access to ECE for Indigenous children and families who have been historically marginalized, including those with disabilities, emerging bilinguals who speak a language other than or in addition to English including Native languages, and those living in under-resourced communities.

Please let us know if we can provide any additional information. Thank you for your consideration.

**Mario Cardona, J.D.**, Professor of Practice, Children's Equity Project, [mario.r.cardona@asu.edu](mailto:mario.r.cardona@asu.edu)  
**Eric Bucher, Ed.D.**, Research Assistant Professor, Children's Equity Project, [ezbucher@asu.edu](mailto:ezbucher@asu.edu)

## Public Comments from the Children’s Equity Project (CEP)

Decades of research show the critical role that positive ECE experiences play in setting the foundation for children’s lifelong learning and success—especially for children and families from historically and contemporarily marginalized populations.<sup>1</sup> Yet, children who are Indigenous often face unique inequities in their access, experiences, and outcomes in the formative early years compared to other racial groups. These inequities—resulting from systemic racism, discrimination, and historical traumas such as assimilation of Native peoples—can lead to health, social, and economic disadvantages. Access to culturally affirming, community-responsive ECE can help mitigate these disparities.<sup>2</sup> For example, cultural programs and family engagement practices in ECE settings contribute to positive outcomes related to cultural and language heritage for Indigenous children, thus enriching cultural continuity, promoting responsive child development, and building resilience.<sup>3</sup> For example, children enrolled in Tribal Head Start programs experienced gains in language and literacy, mathematical thinking, executive functioning, and social-emotional interactions over their program year.<sup>4</sup> Research also shows that enrollment in Pre-Kindergarten programs was associated with improved academic skills for American Indian and Alaska Native (AI/AN) children in elementary school, and they experienced increased attendance and higher state standardized test scores in middle school.<sup>5</sup>

Across the 184 Tribes reviewed in a 2022 Bipartisan Policy Center analysis, the Tribal CCDF program served 433,339 Indigenous children birth to age 13.<sup>6</sup> What’s more, these ECE programs often serve as a key setting for the preservation of Native languages, cultures, and values. This makes Tribal CCDF an especially important financial resource to expand access to child care and early learning for children and families who are Indigenous and a program through which Tribes can flexibly integrate their cultural practices.

---

<sup>1</sup> National Academies of Sciences, Engineering, and Medicine (NASEM). (2023). *Closing the opportunity gap for young children*. The National Academies Press. <https://doi.org/10.17226/26743>; Schweinhart, L.J. (2000). The High/Scope Perry Preschool study: A case study in random assignment. *Evaluation and Research in Education*, 14(3), 136-147; Shonkoff, J.P. & Phillips, D.A. (Eds.). (2000). *From neurons to neighborhoods: The science of early childhood development*. The National Academies Press. <https://doi.org/10.17226/9824>.

<sup>2</sup> Patel, A., Amadon, S., & Around Him, D. (June, 2023). *Pre-K may be critical to academic success for American Indian and Alaska Native (AI/AN) children*. Child Trends. [www.childtrends.org/publications/pre-k-may-be-critical-to-academic-success-for-american-indian-and-alaska-native-ai-an-children](http://www.childtrends.org/publications/pre-k-may-be-critical-to-academic-success-for-american-indian-and-alaska-native-ai-an-children).

<sup>3</sup> Elek, C., Gubhaju, L., Lloyd-Johnsen, C., Eades, S., & Goldfeld, S. (2020). Can early childhood education programs support positive outcomes for indigenous children? A systematic review of the international literature. *Educational Research Review*, 31, 100363. <https://doi.org/10.1016/j.edurev.2020.100363>.

<sup>4</sup> Bernstein, S. & Malone, L. (2018). *A year in Region XI Head Start: Children’s growth and development from the American Indian and Alaska Native family and child experiences survey 2015* (OPRE Report #2018-72). Office of Planning, Research, and Evaluation; Administration for Children and Families; U.S. Department of Health and Human Services.

[www.mathematica.org/our-publicationsandfindings/publications/a-year-in-region-xi-head-start-childrens-growth-and-development-from-the-american-indian-and-alaska](http://www.mathematica.org/our-publicationsandfindings/publications/a-year-in-region-xi-head-start-childrens-growth-and-development-from-the-american-indian-and-alaska).

<sup>5</sup> Patel, A., Amadon, S., & Around Him, D. (June, 2023). *Pre-K may be critical to academic success for American Indian and Alaska Native (AI/AN) children*. Child Trends. [www.childtrends.org/publications/pre-k-may-be-critical-to-academic-success-for-american-indian-and-alaska-native-ai-an-children](http://www.childtrends.org/publications/pre-k-may-be-critical-to-academic-success-for-american-indian-and-alaska-native-ai-an-children).

<sup>6</sup> Bipartisan Policy Center. (April, 2021). *Data and funding gaps in Tribal early care and education*. <https://bipartisanpolicy.org/download/?file=/wp-content/uploads/2021/04/Data-and-Funding-Gaps-in-Tribal-Early-Care-and-Education.pdf>; Smith, L. & Rosen, S. (April, 2022). *Righting a wrong: Advancing equity in child care funding for American Indian & Alaska Native families*. Bipartisan Policy Center. [https://bipartisanpolicy.org/download/?file=/wp-content/uploads/2022/04/BPC-Tribal-Report\\_RV5.pdf](https://bipartisanpolicy.org/download/?file=/wp-content/uploads/2022/04/BPC-Tribal-Report_RV5.pdf).

### **§ 98.81(b)(1)(ii) Application and Plan Procedures**

**Recommendation #1:** The CEP ***strongly supports and agrees with*** the proposal to amend the paragraph to read, “the basis for determining family eligibility may be determined by the Tribe notwithstanding family income as described in § 98.20(a)(2).”

First, this proposed change aligns with the legislative change to section 645 of the Head Start Act (42 U.S.C. 6840), in the [Further Consolidated Appropriations Act of 2024](#). This recent Head Start change allows Tribal Head Start programs to establish selection criteria at their own discretion to serve children in their service area and to prioritize children and families who are Tribal members.<sup>7</sup> These revisions were also included in the recently published 2024 final rule of the [Head Start Program Performance Standards](#) by the Office of Head Start effective August 21, 2024.<sup>8</sup> Coordinating with Tribal Head Start enables Tribes to streamline access to ECE services across a mixed-delivery system, maximize partnerships across these two important federally-funded programs, and expand access to serve children and families who are members of a Native Tribe by removing income levels as a barrier.

Second, this proposed change aligns with President Biden’s 2023 Executive Order “[Reforming Federal Funding and Support for Tribal Nations To Better Embrace Our Trust Responsibilities and Promote the Next Era of Tribal Self-Determination](#)”. It does so by heeding the recommendation that federal Agencies should improve flexibility and accessibility and remove unnecessary limitations where feasible, to maximize federal funding and support programs for Tribal Nations.<sup>9</sup>

### **§ 98.81(b)(2)(ii) Tribal Service Area**

**Recommendation #2:** We recommend that ACF ***clarify in the final rule*** that “Tribal Service Area” may carry the same definition as it does for Head Start Tribal grant recipients. ACF can accomplish this by providing a small amendment to the current regulatory text. We provide a proposed change, with new language, for § 98.81(b)(2) to read: “for the purposes of determining eligibility, the following terms shall also be defined: (i) Indian Child; and (ii) Indian reservation or tribal service area, which for Head Start grant recipients may include the same service area determined under 45 C.F.R. § 1302.11(a)(1)(i).”

---

<sup>7</sup> Further Consolidated Appropriations Act, 2024, H.R.2882 (2024). [www.congress.gov/bill/118th-congress/house-bill/2882/text](http://www.congress.gov/bill/118th-congress/house-bill/2882/text).

<sup>8</sup> National Archives and Records Administration. (August, 2024). *Supporting the Head Start workforce and consistent quality programming*. Federal Register. [www.federalregister.gov/documents/2024/08/21/2024-18279/supporting-the-head-start-workforce-and-consistent-quality-programming](http://www.federalregister.gov/documents/2024/08/21/2024-18279/supporting-the-head-start-workforce-and-consistent-quality-programming).

<sup>9</sup> Executive Office of the President. (December, 2023). *Reforming federal funding and support for Tribal Nations to better embrace our trust responsibilities and promote the next era of Tribal self-determination*. Federal Register. [www.federalregister.gov/documents/2023/12/11/2023-27318/reforming-federal-funding-and-support-for-tribal-nations-to-better-embrace-our-trust](http://www.federalregister.gov/documents/2023/12/11/2023-27318/reforming-federal-funding-and-support-for-tribal-nations-to-better-embrace-our-trust).

The goals of the proposed rule are to provide greater flexibility to Tribal grantees, encourage alignment between CCDF and Head Start, and better support Tribal Sovereignty and Self-Determination. To further these important goals, in addition to removing any restrictions on eligibility on the basis of income, ACF should take the opportunity to align the definitions of Tribal service areas for Head Start and CCDF.

Since 1998, HHS has required that all Tribes seeking funds under CCDF must submit a plan that defines “Indian reservation or tribal service area”.<sup>10</sup> Service area definitions carry significant weight, particularly as it relates to eligibility for services. Under the recommendations proposed under the NPRM, a Tribal grantee may consider any Indian child in the Tribe’s service area as eligible to receive CCDF funds.

In its most recent preprint of the Tribal CCDF Plan, HHS suggested that Tribal Lead Agencies may establish service areas that are “within reasonably close geographic proximity to the area where the Tribe’s population resides.”<sup>11</sup> The preprint also explains that an example of a “reasonably close geographic proximity” to the borders of a Tribe’s reservation is “within 20 miles of the reservation boundaries.” However, there are no requirements in the statute that limit the tribal service area to a particular radius outside of a reservation, nor does any such requirement exist within the regulations promulgated by HHS in 1998 and 2016. While it is helpful that HHS has created flexibility in the interpretation of a service area for Tribal CCDF grantees, the 20-mile limitation may prove difficult for Tribes that wish to serve families who reside farther from the reservation, particularly in areas where residents must travel vast distances, such as places in the western part of the United States.

In contrast, the Head Start Program Performance Standards reinforce flexibility in the drawing of Tribal service areas and provide the following guidance:

---

<sup>10</sup> 45 C.F.R. § 98.81(b)(2)(ii) (1998). <https://www.acf.hhs.gov/sites/default/files/documents/occ/fr072498.pdf>.

<sup>11</sup> U.S. Department of Health & Human Services. *Preprint: Child Care and Development Fund tribal plan for 2023-2025*. [https://www.acf.hhs.gov/sites/default/files/documents/occ/FY2023-FY2025\\_Tribal\\_CCDF\\_Preprint.pdf](https://www.acf.hhs.gov/sites/default/files/documents/occ/FY2023-FY2025_Tribal_CCDF_Preprint.pdf)

*“A tribal program may propose a service area that includes areas where members of Indian tribes or those eligible for such membership reside, including but not limited to Indian reservation land, areas designated as near-reservation by the Bureau of Indian Affairs (BIA) provided that the service area is approved by the tribe’s governing council, Alaska Native Villages, Alaska Native Regional Corporations with land-based authorities, Oklahoma Tribal Statistical Areas, and Tribal Designated Statistical Areas where federally recognized Indian tribes do not have a federally established reservation.”<sup>12</sup>*

This language gives Tribal grantees maximum flexibility in determining the boundaries of their service area, and offers no suggested outer-limit for what may constitute a reasonable distance from beyond the reservation for the purposes of service provision. As stated above, most AI/AN individuals reside outside the boundaries of reservations, and if the federal child care assistance program aims to truly benefit AI/AN children, the law should allow Tribal grantees to define for themselves the geography and populations they intend to serve, without suggesting arbitrary limitations. This proposed change would also be consistent with the way Tribes administer Head Start, which is salient as the NPRM notes that “all Tribal Head Start grantees administer a Tribal CCDF program.”

---

<sup>12</sup> 45 C.F.R. § 1302.11(a)(1)(i).