

§ 98.19 Requests for temporary waivers.

(a) *Requests for relief.* 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 for a State, consistent with the conditions described in section 658I(c)(1) of the Act (42 U.S.C. 9858g(c)(1)), provided that the waiver request:

- (1) Describes circumstances that prevent the State, Territory, or Tribe from complying with any statutory or regulatory requirements of this part;
- (2) By itself, contributes to or enhances the State's, Territory's, or Tribe's ability to carry out the purposes of the Act and this part;
- (3) Will not contribute to inconsistency with the purposes of the Act or this part, and;
- (4) Meets the requirements set forth in paragraphs (b) through (g) of this section.

(b) *Types.* Types of waivers include:

(1) *Transitional and legislative waivers.* Lead Agencies may apply for temporary waivers meeting the requirements described in paragraph (a) of this section that would provide 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. Such waivers are:

- (i) Limited to a two-year period;
- (ii) May not be extended, notwithstanding paragraph (f) of this section;
- (iii) 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;
- (iv) Are conditional, dependent on progress towards implementation, and may be terminated by the Secretary at any time in accordance with paragraph (e) of this section.

(2) *Waivers for extraordinary circumstances.* States, Territories and Tribes may apply for waivers meeting the requirements described in paragraph (a) of this section, in cases of extraordinary circumstances, which are defined as temporary circumstances or situations, such as a natural disaster or financial crisis. Such waivers are:

- (i) Limited to an initial period of no more than 2 years from the date of approval;
- (ii) May be extended, in accordance with paragraph (f) of this section, for at most one additional year from the date of approval of the extension, and;
- (iii) May be terminated by the Secretary at any time in accordance with paragraph (e) of this section.

(c) *Contents.* Waiver requests must be submitted to the Secretary in writing and:

(1) Indicate which type of waiver, as detailed in paragraph (b) of this section, the State, Territory or Tribe is requesting;

(2) Detail each sanction or provision of the Act or regulations that the State, Territory or Tribe seeks relief from;

(3) Describe how a waiver from that sanction or provision will, by itself, improve delivery of child care services for children; and

(4) Certify and describe how the health, safety, and well-being of children served through assistance received under this part will not be compromised as a result of the waiver.

(d) *Notification.* Within 90 days after receipt of the waiver request or, if additional follow up information has been requested, the receipt of such information, the Secretary will notify the Lead Agency of the approval or disapproval of the request.

(e) *Termination.* The Secretary shall terminate approval of a request for a waiver authorized under the Act or this section if the Secretary determines, after notice and opportunity for a hearing based on the rules of procedure in part 99 of this chapter, that the performance of a State, Territory or Tribe granted relief under this section has been inadequate, or if such relief is no longer necessary to achieve its original purposes.

(f) *Renewal.* Where permitted, the Secretary may approve or disapprove a request from a State, Territory or Tribe for renewal of an existing waiver under the Act or this section for a period no longer than one year. A State, Territory or Tribe seeking to renew their waiver approval must inform the Secretary of this intent no later than 30 days prior to the expiration date of the waiver. The State, Territory or Tribe shall re-certify in its extension request the provisions in paragraph (a) of this section, and shall also explain the need for additional time of relief from such sanction(s) or provisions.

(g) *Restrictions.* The Secretary may not:

(1) Permit Lead Agencies to alter the federal eligibility requirements for eligible children, including work requirements, job training, or educational program participation, that apply to the parents of eligible children under this part;

(2) Waive anything related to the Secretary's authority under this part; or

(3) Require or impose any new or additional requirements in exchange for receipt of a waiver if such requirements are not specified in the Act.

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