penalty structure will follow section 474(d)(1) of the Act. Penalties will be levied for the quarter of the fiscal year in which the State is notified of its section 471(a)(18) violation, and for each succeeding quarter within that fiscal year until the State comes into compliance with section 471(a)(18). The reduction in title IV-E funds will be computed as follows:

(i) 2 percent of the amount of title IV-E funds claimed by the State for the fiscal year in which the first finding of noncompliance was made;

(ii) 3 percent of the amount of title IV-E funds claimed by the State for the fiscal year in which the second finding of noncompliance was made;

(iii) 5 percent of the amount of title IV-E funds claimed by the State for the fiscal year in which the third or subsequent finding of noncompliance was made.

(2) Any entity (other than the State agency) which violates section 471(a)(18) of the Act during a

fiscal quarter with respect to any person must remit to the Secretary all title IV-E funds paid to it by the State during the quarter in which the entity is notified of its violation.

(3) No fiscal year payment to a State will be reduced by more than 5 percent where the State has been determined to be out of compliance with section 471(a)(18) of the Act.

(4) The State agency or entity, as applicable, will be liable for interest on the amount of funds reduced by the Department, in accordance with the provisions of 45 CFR 30.13.

§1355.38 Administrative and judicial review.

States determined not to be in substantial conformity with titles IV-B and IV-E State plan requirements, or in violation of section 471(a)(18) of the Act:

(a) May appeal the final determination and any subsequent withholding of, or reduction in, funds to the HHS Departmental Appeals Board within 60 days after receipt of a notice of nonconformity described in §1355.36(e)(1) of this part, or receipt of a notice of noncompliance by ACF as described in §1355.37(b) of this Part; and

(b) Will have the opportunity to obtain judicial review of an adverse decision of the Departmental Appeals Board within 60 days after the State receives notice of the decision by the Board. The State must appeal to the district court of the United States for the judicial district in which the principal or headquarters office of the agency responsible for administering the program is located.

(c) The procedure described in paragraphs (a) and (b) will not apply to a finding that a State has been determined to be in violation of section 471(a)(18) which is based on a judicial decision.

PART 1356 - REQUIREMENTS APPLICABLE TO TITLE IV-E

4. The authority citation for Part 1356 continues to read as follows:

Authority: 42 U.S.C. 620 et seq., 42 U.S.C. 670 et seq., and 42 U.S.C. 1302.

5. Section 1356.20(e)(4) is revised to read as follows:

§1356.20 State plan document and submission requirements.

* * * * *

(e) * * *

(4) *Action.* Each Regional Administrator, ACF, has the authority to approve State plans and amendments thereto which provide for the administration of foster care maintenance payments and adoption assistance programs under section 471 of the Act. The Commissioner, ACYF, retains authority for determining that proposed plan material is not approvable, or that a previously approved plan no longer meets the requirements for approval.

* * *

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6. Section 1356.21 is revised to read as follows:

§1356.21 Foster care maintenance payments program implementation requirements.

(a) To implement the foster care maintenance payments program provisions of the title IV-E State plan and to be eligible to receive Federal financial participation (FFP) for foster care maintenance payments under this part, a State must meet the requirements of this section, and sections 472, 475(1), 475(4), 475(5) and 475(6) of the Act.

(b) Reasonable efforts. In order to satisfy the "reasonable efforts" requirements of section 471(a)(15) as implemented through section 472(a)(1) of the Act, the State must meet the requirements of paragraphs (b), (d) and (g)(4) of this section. In determining reasonable efforts to be made with respect to a child and in making such reasonable efforts, the child's health and safety must be the State's paramount concern.

(1) Judicial determination of reasonable efforts to prevent removal in non-emergency situations. When a child is removed from home pursuant to a court order, the court must determine, before issuing such an order, whether reasonable efforts had been made to prevent removal prior to the removal of the child from home. Except as specified in paragraph (b)(2) of this section, if a judicial determination regarding reasonable efforts to prevent removal is not made prior to the child's removal from the home, as

evidenced in the court order initiating that removal, the child is not eligible under the title IV-E foster care maintenance payments program for the duration of that stay in foster care.

(2) Judicial determinations of reasonable efforts to prevent removal in emergency situations.

(i) A child will be considered to be removed from his/her home in an emergency situation when a court order has not been obtained in advance of the removal.

(ii) When it is necessary to remove a child from his/her home prior to obtaining a court order, the judicial determination as to whether reasonable efforts were made to prevent removal or that reasonable efforts to prevent removal were not required in accordance with paragraph (b)(5) must be made at the first full hearing pertaining to removal of the child or no later than 60 days after a child has been removed from home, whichever is first. A State may claim Federal financial participation from the first day of the month in which all eligibility criteria have been met.

(iii) If the determination concerning reasonable efforts to prevent removal is not made as specified in clause (ii) above, the child is not eligible under the title IV-E foster care maintenance payments program for the duration of that stay in foster care.

(3) Judicial determination of reasonable efforts to reunify the child and family.

(i) A judicial determination regarding reasonable efforts to reunify the family must be made within twelve months of the date the child enters foster care when the permanent plan or goal for the child is to reunify the family, and at least once every twelve months thereafter as long as the permanent plan or goal is reunification. If such a judicial determination regarding reasonable efforts to reunify is not made, the child becomes ineligible under title IV-E from the end of the twelfth month following the date the child entered foster care or the most recent judicial determination of reasonable efforts to reunify, and remains ineligible until such a determination is made.

(ii) When, in accordance with paragraph (b)(5), the court determines that reasonable efforts to reunify the child and family are not required, the State must hold a permanency hearing within 30 days of such a determination, unless the requirements of the permanency hearing are fulfilled at the hearing in which the aforementioned determination was made.

unless

(4) Judicial determination of reasonable efforts to make and finalize permanent placements other than reunification. A judicial determination regarding reasonable efforts to make and finalize a child's permanent placement must be made at least once every twelve months from the date the permanency goal becomes adoption or placement in another permanent home. If such a judicial determination regarding reasonable efforts to make and finalize a permanent placement is not made, the child will become ineligible under title IV-E from the end of the twelfth month following the

date the alternate permanency goal was established or the most recent judicial determination of reasonable efforts to make and finalize a permanent placement, and will remain so until such a determination is made.

(5) Circumstances in which reasonable efforts are not required to prevent a child's removal from home or to reunify the child and family. Reasonable efforts to prevent a child's removal from home or to reunify the child and family are not required if the State agency obtains a judicial determination that such efforts are not required because:

(i) a court of competent jurisdiction has determined that the parent has subjected the child to aggravated circumstances (as defined in State law, which definition may include but need not be limited to abandonment, torture, chronic abuse, and sexual abuse);

(ii) a court of competent jurisdiction has determined that the parent has:

(A) committed murder (which would have been an offense under section 1111(a) of title 18, United States Code, if the offense had occurred in the special maritime or territorial jurisdiction of the United States) of another child of the parent;

(B) committed voluntary manslaughter (which would have been an offense under section 1112(a) of title 18, United States Code, if the offense had occurred in the special maritime or territorial jurisdiction of the United States) of another child of the parent;

(C) aided or abetted, attempted, conspired, or solicited to commit such a murder or such a voluntary manslaughter; or

(D) committed a felony assault that results in serious bodily injury to the child or another child of the parent; or,

(iii) the parental rights of the parent to a sibling have been terminated involuntarily.

(6) Reasonable efforts to place a child for adoption or with a legal guardian may be made concurrently with reasonable efforts to reunify.

(7) The State may use the Federal Parent Locator Service to search for absent parents in order to facilitate the permanency plan.

(c) Contrary to the welfare determination. Under section 472(a)(1) of the Act, a child's removal from the home must have been the result of a judicial determination (unless the child was removed pursuant to a voluntary placement agreement) to the effect that continuation of residence in the home would be contrary to the welfare, or that placement would be in the best interests, of the child.

(1) In nonemergency situations. When a child is removed from home pursuant to a court order, the court must make the "contrary to the welfare" determination prior to the removal of the child from home. The judicial determination must be documented in the court order which removes the child from home. If such a judicial determination is not made

prior to the removal, the child is not eligible for title IV-E foster care maintenance payments for the duration of his/her stay in foster care.

(2) In emergency situations. When it is necessary to remove a child from home prior to obtaining a court order, the "contrary to the welfare" determination must be made in the first court ruling that sanctions (even temporarily) the removal of a child from home. If the determination regarding "contrary to the welfare" is not made in the first court ruling pertaining to removal from the home, the child is not eligible for title IV-E foster care maintenance payments for the duration of his/her stay in foster care.

(d) Documentation of judicial determinations. The judicial determinations regarding "contrary to the welfare" and "reasonable efforts" to prevent removal, reunify the family, make and finalize a permanent placement, and that reasonable efforts are not required must be explicit and must be made on a case-by-case basis and so stated in the court order.

(1) If the "reasonable efforts" and "contrary to the welfare" judicial determinations are not included as required in the court orders identified in paragraphs (b) and (c) of this section, a transcript of the court proceedings is the only other documentation that will be accepted to verify that these required determinations have been made.

(2) Neither affidavits nor nunc pro tunc orders will be accepted as verification documentation in support of "reasonable efforts" and "contrary to the welfare" judicial determinations.

(3) Court orders which reference and rely on State law to substantiate that judicial determinations have been made are not acceptable, even if State law provides that a removal must be based on a judicial determination that remaining in the home would be contrary to the child's welfare or that removal can only be ordered after reasonable efforts have been made.

(e) Trial home visits. A trial home visit must not exceed six months in duration, unless a longer visit is ordered by a court. If a trial home visit extends beyond six months and has not been authorized by the court, or exceeds the time period the court has deemed appropriate, and the child is subsequently returned to a foster care setting, that placement must then be considered a new placement and title IV-E eligibility must be re-established. Under these circumstances, a new court order removing the child from the home, including judicial determinations regarding "contrary to the welfare" and "reasonable efforts" to prevent removal, is required.

(f) Case review system.

In order to satisfy the provisions of section 471(a)(16) of the Act regarding a case review system, each State's case review system must meet the requirements of sections 475(5) and 475(6) of the Act.

(g) Case plan requirements. In order to satisfy the case plan requirements of sections 471(a)(16), 475(1) and 475(5)(A) and (D) of the Act, the State agency must promulgate policy materials and instructions for use by State and local staff to determine the appropriateness of and necessity for the foster care placement of the child. The case plan for each child must:

(1) Be a written document, which is a discrete part of the case record, in a format determined by the State, which is developed jointly with the parent(s) or guardian of the child in foster care; and

(2) Be developed within a reasonable period, to be established by the State, but in no event later than 60 days from the time the State agency assumes responsibility for providing services including placing the child; and

(3) Include a discussion of how the case plan is designed to achieve a safe placement for the child in the least restrictive (most family-like) setting available and in close proximity to the home of the parent(s) when the case plan goal is reunification and a discussion of how the placement is consistent with the best interest and special needs of the child; and

(4) Include a description of the services offered and the services provided to prevent removal of the child from the home, to reunify the family, and to finalize a placement when the case plan goal is or becomes adoption or placement in another

permanent home in accordance with sections 475(1)(E) and (5)(E) of the Act.

(This requirement has been approved by the Office of Management and Budget (OMB) under OMB control number 0980-0140)

(h) <u>Application of permanency hearing requirements</u>.

(1) If a State chooses to claim Federal financial participation (FFP) for the costs of foster care maintenance payments, it must, among other requirements, comply with those in section 475(5)(C) of the Act.

(2) The provisions of this paragraph and section 475(5)(C) of the Act apply to all children under the responsibility of the title IV-E State agency for placement and care, except for a child with special needs or circumstances which prevent his or her return to the home or being placed for adoption. If this child is placed in a court-sanctioned permanent foster family home with a family caregiver specified by the court, no permanency hearings are required during that

specified permanent placement. If the foster care placement of this child is subsequently changed, the State is again required to hold permanency hearings, the first of which must be held within three months of the date of such change.

(3) In accordance with paragraph (b)(5), when a court determines that reasonable efforts to return the child home are not required, a permanency hearing must be held within 30 days of that determination, unless the requirements of the permanency hearing are fulfilled at the hearing in which the aforementioned determination was made.

(4) If the State concludes, after considering other permanency options, that the most appropriate permanency plan for a child is placement in a permanent foster family home, the State must document, to the State court, the compelling reason which prevented the child from being placed in an adoptive home, with a relative, or with a legal guardian. An example of a compelling reason for establishing such a permanency goal is the case of an older teen who specifically requests that such a goal be established.

(5) When an administrative body, appointed or approved by the court, conducts the permanency hearing, the procedural safeguards set forth in the definition of permanency hearing must be so extended by the administrative body.

(i) Application of the requirements for filing a petition to terminate parental rights at section 475(5)(E) of the Social Security Act.

(1) Unless one of the exceptions at subparagraph (2) exists, the State must file a petition (or, if such a petition has been filed by another party, seek to be joined as a party to the petition) to terminate the parental rights of a parent(s):

(i) whose child has been in foster care under the responsibility of the State for 15 of the most recent 22 months. The petition must be filed by the end of the child's fifteenth month in foster care. In calculating when to file a petition for termination of parental rights, the State:

(A) must use the date the child entered foster care as defined at section

475(5)(F) of the Act as the date from which the 22 month clock begins for calculating the 15 months in foster care;

(B) must use a cumulative method of calculation when a child experiences multiple exits from and entries into foster care during the 22 month period;

(C) must not include trial home visits or runaway episodes in calculating 15 months in foster care; and,

(D) need only apply section 475(5)(E) to a child once if the State does not file a petition because one of the exceptions at subparagraph (2) applies;

(ii) whose child has been determined by a court of competent jurisdiction to be an abandoned infant (as defined under State law). The petition to terminate parental rights must be filed within 60 days of the judicial determination that the child is an abandoned infant; or,

(iii) who has been found, by a court of competent jurisdiction, to have committed one of the felonies listed at paragraph (b)(5)(ii) of this section. Under such circumstances, the petition to terminate parental rights must be filed within 60 days of a judicial determination that reasonable efforts to reunify the child and parent are not required.

(2) The State may elect not to file or join a petition to terminate the parental rights of a parent per paragraph (i)(1) if:

(i) at the option of the State, the child is being cared for by a relative;

(ii) the State agency has documented in the case plan (which must be available for court review) a compelling reason for determining that filing such a petition would not be in the best interests of the child. Two examples of compelling reasons for not filing a petition to terminate parental rights are:

(A) that adoption is not the appropriate permanency goal for the child; or,

(B) insufficient grounds for filing a petition to terminate parental rights exist; or,

(iii) the State agency has not provided to the family, consistent with the time period in the case plan, services that the State deems necessary for the safe return of the child to the home, when reasonable efforts to reunify the family are required.

(3) When the State files or joins a petition to terminate parental rights in accordance with paragraph (i)(1), it must concurrently identify, recruit, process, and approve a qualified adoptive family for the child.

Should we specific say something about CT oversight/review of State election not to file?

(j) Child of a minor parent in foster care. Foster care maintenance payments made on behalf of a child placed in a foster family home or child-care institution, who is the parent of a son or daughter in the same home or institution, must include amounts which are necessary to cover costs incurred on behalf of the child's son or daughter. Said costs must be limited to funds expended on those items described in the definition of foster care maintenance payments.

(k) Removal from the home of a specified relative.

(1) For the purposes of meeting title IV-E eligibility under the requirements of section 472(a)(1) of the Act, the term removal from the home applies if a child had been living with a parent or other specified relative within six months of:

(i) a voluntary placement agreement entered into by such parent or relative which leads to physical removal of the child from the home;

(ii) a State agency's initiation of court proceedings which results in a judicial removal of the child from such parent or relative; or

(iii) the State agency's physical removal of the child from the home of another specified relative, or a court-ordered removal of custody from the specified relative while the child was residing in the home of an interim caretaker.

(2) Under the circumstances described in paragraph (k)(1) of this section, the act of "removal from the home" must have occurred for the purposes of title IV-E eligibility. This does not include situations where legal custody is removed from the parent or relative and the child remains with the same relative in that home under supervision by the State agency.

(1) Living with a specified relative. For purposes of meeting the requirements for living with a specified relative prior to removal from the home under section 472(a)(1) of the Act and all of the conditions under section 472(a)(4), either of the two following situations may apply:

(1) The child was living with and physically removed from the home of the parent or specified relative and was AFDC eligible in that home in the month of initiation of court proceedings, as well as at the time of removal; or

(2) The child was removed from the custody of the parent or specified relative with whom the child had been living within six months of the month in which court proceedings were initiated and the child would have been AFDC eligible in that month if he/she had still been living in that home.

(m) Review of payments and licensing standards. In meeting the requirements of section 471(a)(11) of the Act, the State must review at reasonable, specific, time-limited periods to be established by the State:

(1) The amount of the payments made for foster care maintenance and adoption assistance to assure their continued appropriateness; and

(2) The licensing or approval standards for child care institutions and foster family homes.

(n) Foster care goals. The specific foster care goals required under section 471(a)(14) of the Act must be incorporated into State law by statute or administrative regulation provided such administrative regulation has the force of law.

(o) Notice and opportunity to be heard. The State must provide the foster parent(s) of a child and any preadoptive parent or relative providing care for the child with notice of and an opportunity to be heard in permanency planning hearings and reviews held with respect to the child during the time the child is in the care of such foster parent, preadoptive parent, or relative caregiver. Notice of and an opportunity to be heard does not provide a foster parent, preadoptive parent, or a relative caring for the child with standing as a party to the case.

7. Section 1356.30 is redesignated as section 1356.22 and paragraphs (a) and (b) revised to read as follows:

§1356.22 Implementation requirements for children voluntarily placed in foster care.

(a) As a condition of receipt of Federal financial participation (FFP) in foster care maintenance payments for a dependent child removed from his home under a voluntary placement agreement, the State must meet the requirements of:

(1) Section 472 of the Act, as amended;

(2) Sections 422(b)(10) and 475(5) of the Act;

(3) 45 CFR 1356.21(h),(i), and (j); and

(4) The requirements of this section.

(b) Federal financial participation is available only for voluntary foster care maintenance expenditures made within the first 180 days of the date the voluntary placement agreement was signed by all pertinent parties unless there has been a judicial determination by a court of competent jurisdiction, within the first 180 days of the date the voluntary placement agreement was signed, to the effect that the continued voluntary placement is in the best interests of the child.

* * * * *

8. New Section §1356.30 is added to read as follows:

1356.30 Safety requirements for foster care and adoptive home providers.

(a) Unless an election provided for in paragraph (d) of this section is made, the State must provide documentation that criminal records checks have been conducted with respect to prospective foster and adoptive parents.

(b) The State may not approve or license any prospective foster or adoptive parent, nor may the State claim FFP for any foster care maintenance or adoption assistance payment made on behalf of a child placed in a foster home operated under the auspices of a child placing agency or on behalf of a child placed in an adoptive home through a private adoption agency, if the State finds that, based on a criminal records check conducted in accordance with paragraph (a), that a court of competent jurisdiction has determined that the prospective foster or adoptive parent has been convicted of a felony involving:

(1) child abuse or neglect;

(2) spousal abuse;

(3) a crime against children (including child pornography); or,

(4) a violent crime, including rape, sexual assault, or homicide, but not including other physical assault or battery.

(c) The State may not approve or license any prospective foster or adoptive parent, nor may the State claim FFP for any foster care maintenance or adoption assistance payment made on behalf of a child placed in a foster home operated under the auspices of a child placing agency or on behalf of a child placed in an adoptive home through a private adoption agency, if the State finds, based on a criminal records check conducted in accordance with paragraph (a), that a court of competent jurisdiction has determined that the prospective foster or adoptive parent has, within the last five years, been convicted of a felony involving:

(1) physical assault;

(2) battery; or,

(3) a drug-related offense.

(d) (1) The State may elect not to conduct or require criminal records checks on prospective foster or adoptive parents by:

(i) notifying the Secretary in a letter from the Governor; or

(ii) enacting State legislation.

(2) Such an election also removes the State's obligation to comport with paragraphs (b) and (c) of this section.

(e) In all cases where no criminal records check was conducted, the licensing file for that foster family, adoptive family, child care institution, or relative placement must contain documentation that safety considerations with respect to the caretaker(s) have been addressed.

8. §1356.65 and §1356.70 are removed and reserved.

9. New §1356.71 is added to read as follows:

§1356.71 Federal review of the eligibility of children in foster care and the eligibility of foster care providers in title IV-E programs.

(a) <u>Purpose and scope</u>.

(1) This section sets forth requirements governing Federal reviews of State compliance with the title IV-E eligibility provisions as they apply to

children and foster care providers under paragraphs (a) and (b) of section 472 of the Act.

(2) The requirements of this section apply to State agencies that receive Federal payments for foster care under title IV-E of the Act.

(b) Composition of review team and preliminary activities preceding an on-site review.

(1) The review team must be composed of representatives of the State agency, and ACF's Regional and Central Offices.

(2) The State must be responsible for providing ACF with the complete payment history for each of the sample and oversample cases prior to the on-site review.

(c) Sampling guidance and conduct of review.

(1) The list of sampling units in the target population (i.e., the sampling frame) will be drawn by ACF statistical staff from the Adoption and Foster Care Analysis and Reporting System (AFCARS) data which are transmitted by the State

agency to ACF. The sampling frame will consist of cases of children who were eligible for foster care maintenance payments during the reporting period reflected in a State's most recent AFCARS data submission. If these data are not available or are deficient, an alternative sampling frame will be selected by ACF in conjunction with the State agency.

(2) A sample of 80 cases (plus a 10 percent oversample of eight cases) from the title IV-E foster care program will be selected for the first review utilizing probability sampling methodologies. Usually, the chosen methodology will be simple random sampling, but other probability samples may be utilized, when necessary and appropriate.

(3) Cases from the oversample will be substituted and reviewed for each of the original sample of 80 cases which is listed in error in AFCARS.

(4) At the completion of the first eligibility review, the review team will determine the number of ineligible cases. When the total number of ineligible cases does not exceed eight, ACF can conclude with a probability of 88 percent that in

a population of 1000 or more cases the population ineligibility case error rate is less than 15 percent. (Three years after the date the final rule becomes effective, the acceptable population ineligibility case error rate threshold will be reduced from less than 15 percent (eight ineligible cases) to less than 10 percent (four ineligible cases)). A State agency which meets this standard is considered to be in "substantial compliance" (see paragraph (h) of this section). A disallowance will be assessed for the ineligible cases for the period of time the cases have been determined to be ineligible.

(5) A State which has been determined to be in "non-compliance" (i.e., not in substantial compliance) will be required to develop a program improvement plan according to the specifications discussed in paragraph (i) of this section, as well as undergo a second on-site review. For the second review, a sample of 150 cases (plus a 10 percent oversample of 15 cases) will be drawn from the most recent AFCARS submission. Cases from the oversample will be substituted and reviewed for each of the original sample of 150 cases which is listed in error in AFCARS.

(6) At the completion of the second eligibility review, the review team will calculate both the sample case ineligibility and dollar error rates for the cases determined ineligible during the review. An extrapolated disallowance equal to the lower limit of a 90 percent confidence interval for the population total dollars in error for the amount of time corresponding to the AFCARS reporting period will be assessed if both the child/provider (case) ineligibility and dollar error rates exceed 10 percent. If neither, or only one, of the error rates exceeds 10 percent, a disallowance will be assessed only for the ineligible cases for the period of time the cases have been determined to be ineligible. The State must provide the payment history for all 165 cases at the beginning of the eligibility review.

(d) Requirements subject to review. States will be reviewed against the requirements of title IV-E of the Act regarding:

(1) The eligibility of the children on whose behalf the foster care maintenance payments are made (section 472(a)(1)-(4) of the Act).

(2) The eligibility of the providers of foster care (see sections 471(a)(20), 472(b) and (c), and 475(1) of the Act).

(e) Review instrument. A title IV-E foster care eligibility review checklist will be used when conducting the eligibility review.

(f) Eligibility determination - child. The case record of the child must contain proper and sufficient documentation to verify a child's eligibility in accordance with paragraph (d)(1), in order to substantiate payments made on the child's behalf.

(g) Eligibility determination - provider.

(1) For each case being reviewed, the State agency must make available a licensing file which contains the licensing history, including a copy of the certificate of licensure/approval or letter of approval, for each of the providers in the following categories:

(i) Public child-care institutions with 25 children or less in residence;

(ii) Private child-care institutions;

(iii) Group homes; and

(iv) Foster family homes, including relative homes.

(2) The licensing file must contain documentation that the State has complied with the safety requirements for foster, relative, and adoptive placements in accordance with §1356.30.

(3) If the licensing file does not contain sufficient information to support a child's placement in a licensed facility, the State agency may provide supplemental information from other sources (e.g., a computerized database).

(h) Standards of compliance.

(1) Disallowances will be taken, and plans for program improvement required, based on the extent to which a State is not in substantial compliance with recipient or provider eligibility provisions of title IV-E, or applicable regulations in 45 CFR Parts 1355 and 1356.

(2) Substantial compliance and non-compliance are defined as follows:

(i) Substantial compliance - For the first review (of the sample of 80 cases), eight or fewer of the title IV-E cases reviewed must be determined to be ineligible. (This critical number of "errors", i.e., ineligible cases, is reduced to four errors or less, three years after the final rule becomes effective). For the second review (if required), substantial compliance means either the case ineligibility or dollar error rate does not exceed 10 percent.

(ii) Noncompliance - means not in substantial compliance. For the first review (of the sample of 80 cases), nine or more of the title IV-E cases reviewed must be determined to be ineligible. (This critical number of "errors", i.e., ineligible cases, is reduced to five or more three years after the final rule becomes effective). For the second review (if required), noncompliance means both the case ineligibility and dollar error rates exceed 10 percent.

(3) The ACF will notify the State in writing within 30 calendar days after the completion of the on-site

eligibility review of whether the State is, or is not, operating in substantial compliance.

(4) States which are determined to be in substantial compliance must undergo a subsequent review after a minimum of three years.

(i) Program improvement plans.

(1) States which are determined to be in noncompliance with recipient or provider eligibility provisions of title IV-E, or applicable regulations in 45 CFR Parts 1355 and 1356, will develop a program improvement plan designed to correct the areas determined not to be in substantial compliance. The program improvement plan will:

(i) Be developed jointly by State and Federal staff;

(ii) Identify the areas in which the State's program is not in substantial compliance;

(iii) Not extend beyond one year (i.e., a State will have a maximum period of one year in which to implement the provisions of the program improvement plan); and

(iv) Include:

(A) specific goals;

(B) the action steps required to correct each identified weakness or deficiency; and,

(C) a date by which each of the action steps is to be completed.

(2) States determined not to be in substantial compliance as a result of the first review must submit the program improvement plan to ACF for approval within 60 calendar days from the date the State receives the written notification that it is not in substantial compliance. This deadline may be extended an additional 30 calendar days when a State agency submits additional documentation to ACF in support of cases determined to be ineligible as a result of the on-site eligibility review.

(3) The ACF Regional Office will intermittently review, in conjunction with the State agency, the State's progress in completing the prescribed action steps in the program improvement plan.

(4) If a State agency's program improvement plan is not submitted for approval in accordance with the provisions of paragraph (i)(1) and (2) of this section, funds will be disallowed pursuant to the provisions of paragraph (k) of this section.

(j) Disallowance of funds. The amount of funds to be disallowed will be determined by the extent to which a State is not in substantial compliance with recipient or provider eligibility provisions of title IV-E, or applicable regulations in 45 CFR Parts 1355 and 1356.

(1) States which are ~~in~~ found to be in substantial compliance during the first or second review will have disallowances (if any) determined on the basis of individual cases reviewed and found to be in error. The amount of disallowance will be computed on the basis of payments associated with ineligible cases for the entire period of time that each case has been determined to be ineligible.

(2) States which are found to be in <u>noncompliance</u> during the first review will have disallowances determined on the basis of individual cases reviewed and found to be in error, and must implement a program improvement plan in accordance with the provisions contained within it. A second review will be conducted no later than during the AFCARS reporting period which immediately follows the program improvement plan completion date on a sample of 150 cases drawn from the State's most recent AFCARS data. If both the case ineligibility and dollar error rates exceed 10 percent the State is in non-compliance and an additional disallowance will be determined based on extrapolation from the sample to the universe of claims paid for the duration of the AFCARS reporting period. If either the case ineligibility or dollar rate does not exceed 10 percent, the amount of disallowance will be computed on the basis of payments associated with ineligible cases for the entire period of time the case has been determined to be ineligible.

(3) The State agency will be liable for interest on the amount of funds disallowed by the Department, in accordance with the provisions of 45 CFR 30.13.

(4) States may appeal any disallowance actions taken by ACF to the HHS Departmental Appeals Board in accordance with regulations at 45 CFR Part 16.

Legislation

104-188 Multiethnic Placement repealed
replaced by Small Business Job Protection

SEC. 1808. REMOVAL OF BARRIERS TO INTERETHNIC ADOPTION.

(a) STATE PLAN REQUIREMENTS- Section 471(a) of the Social Security Act (42 U.S.C 671(a)) is amended--

(1) by striking `and' at the end of paragraph (16);

(2) by striking the period at the end of paragraph (17) and inserting `; and'; and

(3) by adding at the end the following:

`(18) not later than January 1, 1997, provides that neither the State nor any other entity in the State that receives funds from the Federal Government and is involved in adoption or foster care placements may--

`(A) deny to any person the opportunity to become an adoptive or a foster parent, on the basis of the race, color, or national origin of the person, or of the child, involved; or

`(B) delay or deny the placement of a child for adoption or into foster care, on the basis of the race, color, or national origin of the adoptive or foster parent, or the child, involved.'.

(b) ENFORCEMENT- Section 474 of such Act (42 U.S.C. 674) is amended by adding at the end the following:

`(d)(1) If, during any quarter of a fiscal year, a State's program operated under this part is found, as a result of a review conducted under section 1123A, or otherwise, to have violated section 471(a)(18) with respect to a person or to have failed to implement a corrective action plan within a period of time not to exceed 6 months with respect to such violation, then, notwithstanding subsection (a) of this section and any regulations promulgated under section 1123A(b)(3), the Secretary shall reduce the amount otherwise payable to the State under this part, for that fiscal year quarter and for any subsequent quarter of such fiscal year, until the State program is found, as a result of a subsequent review under section 1123A, to have implemented a corrective action plan with respect to such violation, by--

`(A) 2 percent of such otherwise payable amount, in the case of the 1st such finding for the fiscal year with respect to the State;

`(B) 3 percent of such otherwise payable amount, in the case of the 2nd such finding for the fiscal year with respect to the State; or

`(C) 5 percent of such otherwise payable amount, in the case of the 3rd or subsequent such finding for the fiscal year with respect to the State.

In imposing the penalties described in this paragraph, the Secretary shall not reduce any fiscal year payment to a State by more than 5 percent.

`(2) Any other entity which is in a State that receives funds under this part and which violates section 471(a)(18) during a fiscal year quarter with respect to any person shall remit to the Secretary all funds that were paid by the State to the entity during the quarter from such funds.

`(3)(A) Any individual who is aggrieved by a violation of section 471(a)(18) by a State or other entity may bring an action seeking relief from the State or other entity in any United States district court.

`(B) An action under this paragraph may not be brought more than 2 years after the date the alleged violation occurred.

`(4) This subsection shall not be construed to affect the application of the Indian Child Welfare Act of 1978.'.

(c) CIVIL RIGHTS-

(1) PROHIBITED CONDUCT- A person or government that is involved in adoption or foster care placements may not--

(A) deny to any individual the opportunity to become an adoptive or a foster parent, on the basis of the race, color, or national origin of the individual, or of the child, involved; or

(B) delay or deny the placement of a child for adoption or into foster care, on the basis of the race, color, or national origin of the adoptive or foster parent, or the child, involved.

(2) ENFORCEMENT- Noncompliance with paragraph (1) is deemed a violation of title VI of the Civil Rights Act of 1964.

(3) NO EFFECT ON THE INDIAN CHILD WELFARE ACT OF 1978- This subsection shall not be construed to affect the application of the Indian Child Welfare Act of 1978.

(d) CONFORMING AMENDMENT- Section 553 of the Howard M. Metzenbaum Multiethnic Placement Act of 1994 (42 U.S.C. 5115a) is repealed.

TITLE II—MATERNAL AND CHILD HEALTH SERVICES BLOCK GRANT PROGRAM, INCOME SECURITY, HUMAN RESOURCES, AND RELATED PROGRAMS

SEC. 201. INCREASE IN AUTHORIZATION OF APPROPRIATIONS FOR THE MATERNAL AND CHILD HEALTH SERVICES BLOCK GRANT PROGRAM.

Section 501(a) (42 U.S.C. 701(a)) is amended by striking "$686,000,000 for fiscal year 1990" and inserting "$705,000,000 for fiscal year 1994".

Subtitle A—Child Welfare, Foster Care, Adoption

SEC. 202. REQUIRED PROTECTIONS FOR FOSTER CHILDREN.

(a) IN GENERAL.—Section 422(b) (42 U.S.C. 622(b)) is amended—

(1) by striking "and" at the end of paragraph (7);

(2) by striking the period at the end of paragraph (8) and inserting "; and"; and

(3) by adding at the end the following:

"(9) provide assurances that the State—

"(A) since June 17, 1980, has completed an inventory of all children who, before the inventory, had been in foster care under the responsibility of the State for 6 months or more, which determined—

"(i) the appropriateness of, and necessity for, the foster care placement;

"(ii) whether the child could or should be returned to the parents of the child or should be freed for adoption or other permanent placement; and

"(iii) the services necessary to facilitate the return of the child or the placement of the child for adoption or legal guardianship;

"(B) is operating, to the satisfaction of the Secretary—

"(i) a statewide information system from which can be readily determined the status, demographic characteristics, location, and goals for the placement of every child who is (or, within the immediately preceding 12 months, has been) in foster care;

"(ii) a case review system (as defined in section 475(5)) for each child receiving foster care under the supervision of the State;

"(iii) a service program designed to help children—

"(I) where appropriate, return to families from which they have been removed; or

"(II) be placed for adoption, with a legal guardian, or, if adoption or legal guardianship is determined not to be appropriate for a child, in some other planned, permanent living arrangement; and

"(iv) a preplacement preventive services program designed to help children at risk of foster care placement remain with their families; and

"(C)(i) has reviewed (or within 12 months after the date of the enactment of this paragraph will review) State policies and administrative and judicial procedures in effect for children abandoned at or shortly after birth (including policies and procedures providing for legal representation of such children); and

"(ii) is implementing (or within 24 months after the date of the enactment of this paragraph will implement) such policies and procedures as the State determines, on the basis of the review described in clause (i), to be necessary to enable permanent decisions to be made expeditiously with respect to the placement of such children.".

(b) RESTRICTION ON REALLOTMENT.—Section 424 (42 U.S.C. 624) is amended—

(1) in the first sentence, by striking "The amount" and inserting the following:

"(a) IN GENERAL.—Subject to subsection (b), the amount"; and

(2) by adding at the end the following:

"(b) EXCEPTION RELATING TO FOSTER CHILD PROTECTIONS.—The Secretary shall not reallot under subsection (a) of this section any amount that is withheld or recovered from a State due to the failure of the State to meet the requirements of section 422(b)(9).".

(c) REPEAL.—Section 427 (42 U.S.C. 627) is hereby repealed.

(d) CONFORMING AMENDMENTS.—

(1) Section 423(a) (42 U.S.C. 623(a)) is amended by striking "and in section 427".

(2) Section 425(a)(2) (42 U.S.C. 625(a)(2)) is amended by striking "the statistical report required by section" and inserting "section 422(b)(9) or".

(3) Section 472(d) (42 U.S.C. 672(d)) is amended by striking "427(b)" and inserting "422(b)(9)".

42 USC 622 note. (e) EFFECTIVE DATE.—The amendments and repeal made by this section shall be effective with respect to fiscal years beginning on or after April 1, 1996.

SEC. 203. CONFORMITY REVIEWS.

(a) IN GENERAL.—Part A of title XI (42 U.S.C. 1301–1320b-13) is amended by inserting after section 1122 the following:

"REVIEWS OF CHILD AND FAMILY SERVICES PROGRAMS, AND OF FOSTER CARE AND ADOPTION ASSISTANCE PROGRAMS, FOR CONFORMITY WITH STATE PLAN REQUIREMENTS

Regulations. "SEC. 1123. (a) IN GENERAL.—The Secretary, in consultation with the State agencies administering the State programs under parts B and E of title IV, shall promulgate regulations for the review of such programs to determine whether such programs are in substantial conformity with—

"(1) State plan requirements under such parts B and E,

"(2) implementing regulations promulgated by the Secretary, and

"(3) the relevant approved State plans.

"(b) ELEMENTS OF REVIEW SYSTEM.—The regulations referred to in subsection (a) shall—

"(1) specify the timetable for conformity reviews of State programs, including—

"(A) an initial review of each State program;

"(B) a timely review of a State program following a review in which such program was found not to be in substantial conformity; and

"(C) less frequent reviews of State programs which have been found to be in substantial conformity, but such regulations shall permit the Secretary to reinstate more frequent reviews based on information which indicates that a State program may not be in conformity;

"(2) specify the requirements subject to review, and the criteria to be used to measure conformity with such requirements and to determine whether there is a substantial failure to so conform;

"(3) specify the method to be used to determine the amount of any Federal matching funds to be withheld (subject to paragraph (4)) due to the State program's failure to so conform, which ensures that—

"(A) such funds will not be withheld with respect to a program, unless it is determined that the program fails substantially to so conform;

"(B) such funds will not be withheld for a failure to so conform resulting from the State's reliance upon and correct use of formal written statements of Federal law or policy provided to the State by the Secretary; and

"(C) the amount of such funds withheld is related to the extent of the failure to so conform; and

"(4) require the Secretary, with respect to any State program found to have failed substantially to so conform—

"(A) to afford the State an opportunity to adopt and implement a corrective action plan, approved by the Secretary, designed to end the failure to so conform;

"(B) to make technical assistance available to the State to the extent feasible to enable the State to develop and implement such a corrective action plan;

"(C) to suspend the withholding of any Federal matching funds under this section while such a corrective action plan is in effect; and

"(D) to rescind any such withholding if the failure to so conform is ended by successful completion of such a corrective action plan.

"(c) PROVISIONS FOR ADMINISTRATIVE AND JUDICIAL REVIEW.—The regulations referred to in subsection (a) shall—

"(1) require the Secretary, not later than 10 days after a final determination that a program of the State is not in conformity, to notify the State of—

"(A) the basis for the determination; and

"(B) the amount of the Federal matching funds (if any) to be withheld from the State;

"(2) afford the State an opportunity to appeal the determination to the Departmental Appeals Board within 60 days after receipt of the notice described in paragraph (1) (or, if later, after failure to continue or to complete a corrective action plan); and

"(3) afford the State an opportunity to obtain judicial review of an adverse decision of the Board, within 60 days after the State receives notice of the decision of the Board, by appeal to the district court of the United States for the judicial district in which the principal or headquarters office of the agency responsible for administering the program is located.".

(b) CONFORMING AMENDMENT.—Section 471(b) (42 U.S.C. 671(b)) is amended by striking all that follows the first sentence.

(c) EFFECTIVE DATES.—

42 USC 1320a-1a note.

(1) IN GENERAL.—The amendment made by subsection (a) shall take effect on the date of the enactment of this Act.

42 USC 671 note.

(2) CONFORMING AMENDMENT.—The amendment made by subsection (b) shall take effect on October 1, 1995.

42 USC 1320a-1a note.

(3) REGULATIONS.—The Secretary shall promulgate the regulations referred to in section 1123(a) of the Social Security Act (as added by this section) not later than July 1, 1995, to take effect on April 1, 1996.

SEC. 204. STATES REQUIRED TO REPORT ON MEASURES TAKEN TO COMPLY WITH THE INDIAN CHILD WELFARE ACT.

(a) STATE PLAN REQUIREMENT.—Section 422(b) (42 U.S.C. 622(b)), as amended by section 202(a), is amended—

(1) by striking "and" at the end of paragraph (8);

(2) by striking the period at the end of paragraph (9) and inserting "; and"; and

(3) by adding at the end the following:

"(10) contain a description, developed after consultation with tribal organizations (as defined in section 4 of the Indian Self-Determination and Education Assistance Act) in the State, of the specific measures taken by the State to comply with the Indian Child Welfare Act.".

42 USC 622 note.

(b) EFFECTIVE DATE.—The amendments made by subsection (a) shall be effective with respect to fiscal years beginning on or after October 1, 1995.

SEC. 205. CHILD WELFARE TRAINEESHIPS.

(a) IN GENERAL.—Subpart 1 of part B of title IV (42 U.S.C. 620–628) is amended by inserting after section 428 the following:

"CHILD WELFARE TRAINEESHIPS

42 USC 628a.

"SEC. 429. The Secretary may approve an application for a grant to a public or nonprofit institution for higher learning to provide traineeships with stipends under section 426(a)(1)(C) only if the application—

"(1) provides assurances that each individual who receives a stipend with such traineeship (in this section referred to as a 'recipient') will enter into an agreement with the institution under which the recipient agrees—

"(A) to participate in training at a public or private nonprofit child welfare agency on a regular basis (as determined by the Secretary) for the period of the traineeship;

"(B) to be employed for a period of years equivalent to the period of the traineeship, in a public or private nonprofit child welfare agency in any State, within a period of time (determined by the Secretary in accordance with regulations) after completing the postsecondary education for which the traineeship was awarded;

"(C) to furnish to the institution and the Secretary evidence of compliance with subparagraphs (A) and (B); and

"(D) if the recipient fails to comply with subparagraph (A) or (B) and does not qualify for any exception to this subparagraph which the Secretary may prescribe in regulations, to repay to the Secretary all (or an appropriately prorated part) of the amount of the stipend, plus interest, and, if applicable, reasonable collection fees (in accordance with regulations promulgated by the Secretary);

"(2) provides assurances that the institution will—

"(A) enter into agreements with child welfare agencies for onsite training of recipients;

"(B) permit an individual who is employed in the field of child welfare services to apply for a traineeship with a stipend if the traineeship furthers the progress of the individual toward the completion of degree requirements; and

"(C) develop and implement a system that, for the 3-year period that begins on the date any recipient completes a child welfare services program of study, tracks the employment record of the recipient, for the purpose of determining the percentage of recipients who secure employment in the field of child welfare services and remain employed in the field.".

(b) CONFORMING AMENDMENT.—Section 426(a)(1)(C) (42 U.S.C. 626(a)(1)(C)) is amended by inserting "described in section 429" after "including traineeships".

(c) APPLICABILITY.—The amendments made by this section shall apply to grants awarded on or after October 1, 1995. 42 USC 626 note.

SEC. 206. DISPOSITIONAL HEARING.

(a) MOST APPROPRIATE SETTING.—Section 475(5)(A) (42 U.S.C. 675(5)(A)) is amended by inserting "and most appropriate" after "(most family like)".

(b) TIMING OF SUBSEQUENT REVIEW.—Section 475(5)(C) (42 U.S.C. 675(5)(C)) is amended by striking "periodically" and inserting "not less frequently than every 12 months".

(c) EFFECTIVE DATE.—The amendments made by this section shall take effect on October 1, 1995. 42 USC 675 note.

SEC. 207. ELIMINATION OF FOSTER CARE CEILINGS AND OF AUTHORITY TO TRANSFER UNUSED FOSTER CARE FUNDS TO CHILD WELFARE SERVICES PROGRAMS.

(a) REPEAL.—Subsections (b) and (c) of section 474 (42 U.S.C. 674 (b) and (c)) are hereby repealed.

(b) CONFORMING AMENDMENTS.—Section 474 (42 U.S.C. 674) is amended—

(1) in subsection (d)(1)—

(A) by striking "subsections (a), (b), and (c)" and inserting "subsection (a)"; and

(B) by striking "the provisions of such subsections" and inserting "subsection (a)"; and

(2) by redesignating subsections (d) and (e) as subsections (b) and (c), respectively.

(c) EFFECTIVE DATE.—The amendments and repeals made by this section shall apply to payments for calendar quarters beginning on or after October 1, 1993. 42 USC 674 note.

SEC. 208. DEMONSTRATION PROJECTS.

Part A of title XI (42 U.S.C. 1301–1320b–13) is amended by inserting after section 1129 the following:

"DEMONSTRATION PROJECTS

42 USC 1320a-9. "SEC. 1130. (a) IN GENERAL.—The Secretary may authorize not more than 10 States to conduct demonstration projects pursuant to this section which the Secretary finds are likely to promote the objectives of part B or E of title IV.

"(b) WAIVER AUTHORITY.—The Secretary may waive compliance with any requirement of part B or E of title IV which (if applied) would prevent a State from carrying out a demonstration project under this section or prevent the State from effectively achieving the purpose of such a project, except that the Secretary may not waive—

"(1) any provision of section 427 (as in effect before April 1, 1996), section 422(b)(9) (as in effect after such date), or section 479; or

"(2) any provision of such part E, to the extent that the waiver would impair the entitlement of any qualified child or family to benefits under a State plan approved under such part E.

"(c) TREATMENT AS PROGRAM EXPENDITURES.—For purposes of parts B and E of title IV, the Secretary shall consider the expenditures of any State to conduct a demonstration project under this section to be expenditures under subpart 1 or 2 of such part B, or under such part E, as the State may elect.

"(d) DURATION OF DEMONSTRATION.—A demonstration project under this section may be conducted for not more than 5 years.

"(e) APPLICATION.—Any State seeking to conduct a demonstration project under this section shall submit to the Secretary an application, in such form as the Secretary may require, which includes—

"(1) a description of the proposed project, the geographic area in which the proposed project would be conducted, the children or families who would be served by the proposed project, and the services which would be provided by the proposed project (which shall provide, where appropriate, for random assignment of children and families to groups served under the project and to control groups);

"(2) a statement of the period during which the proposed project would be conducted;

"(3) a discussion of the benefits that are expected from the proposed project (compared to a continuation of activities under the approved plan or plans of the State);

"(4) an estimate of the costs or savings of the proposed project;

"(5) a statement of program requirements for which waivers would be needed to permit the proposed project to be conducted;

"(6) a description of the proposed evaluation design; and

"(7) such additional information as the Secretary may require.

"(f) EVALUATIONS; REPORT.—Each State authorized to conduct a demonstration project under this section shall—

"(1) obtain an evaluation by an independent contractor of the effectiveness of the project, using an evaluation design approved by the Secretary which provides for—

"(A) comparison of methods of service delivery under the project, and such methods under a State plan or plans, with respect to efficiency, economy, and any other appropriate measures of program management;

"(B) comparison of outcomes for children and families (and groups of children and families) under the project, and such outcomes under a State plan or plans, for purposes of assessing the effectiveness of the project in achieving program goals; and

"(C) any other information that the Secretary may require; and

"(2) provide interim and final evaluation reports to the Secretary, at such times and in such manner as the Secretary may require.

"(g) COST NEUTRALITY.—The Secretary may not authorize a State to conduct a demonstration project under this section unless the Secretary determines that the total amount of Federal funds that will be expended under (or by reason of) the project over its approved term (or such portion thereof or other period as the Secretary may find appropriate) will not exceed the amount of such funds that would be expended by the State under the State plans approved under parts B and E of title IV if the project were not conducted.".

SEC. 209. PLACEMENT ACCOUNTABILITY.

(a) CASE PLAN REQUIREMENTS.—Section 475(5)(A) (42 U.S.C. 675(5)(A)) is amended by adding at the end the following: "which—

"(i) if the child has been placed in a foster family home or child-care institution a substantial distance from the home of the parents of the child, or in a State different from the State in which such home is located, sets forth the reasons why such placement is in the best interests of the child, and

"(ii) if the child has been placed in foster care outside the State in which the home of the parents of the child is located, requires that, periodically, but not less frequently than every 12 months, a caseworker on the staff of the State agency of the State in which the home of the parents of the child is located, or of the State in which the child has been placed, visit such child in such home or institution and submit a report on such visit to the State agency of the State in which the home of the parents of the child is located,".

(b) DISPOSITIONAL HEARING.—Section 475(5)(C) (42 U.S.C. 675(5)(C)) is amended by inserting "and, in the case of a child described in subparagraph (A)(ii), whether the out-of-State placement continues to be appropriate and in the best interests of the child," after "long-term basis".

(c) DATA COLLECTION.—Section 479(c)(3)(C) (42 U.S.C. 679(c)(3)(C)) is amended—

(1) by striking "and" at the end of clause (i); and

(2) by adding at the end the following:

"(iii) children placed in foster care outside the State which has placement and care responsibility, and".

(d) EFFECTIVE DATE.—The amendments made by this section shall be effective with respect to fiscal years beginning on or after October 1, 1995. 42 USC 675 note.

SEC. 210. PAYMENTS OF STATE CLAIMS FOR FOSTER CARE AND ADOPTION ASSISTANCE.

(a) IN GENERAL.—Section 474(b) (42 U.S.C. 674(b)), as redesignated by section 207(b)(2), is amended by adding at the end the following:

"(4)(A) Within 60 days after receipt of a State claim for expenditures pursuant to subsection (a), the Secretary shall allow, disallow, or defer such claim.

"(B) Within 15 days after a decision to defer such a State claim, the Secretary shall notify the State of the reasons for the deferral and of the additional information necessary to determine the allowability of the claim.

"(C) Within 90 days after receiving such necessary information (in readily reviewable form), the Secretary shall—

"(i) disallow the claim, if able to complete the review and determine that the claim is not allowable, or

"(ii) in any other case, allow the claim, subject to disallowance (as necessary)—

"(I) upon completion of the review, if it is determined that the claim is not allowable; or

"(II) on the basis of findings of an audit or financial management review.".

42 USC 674 note.

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall be effective with respect to claims made on or after the date of the enactment of this Act.

SEC. 211. EFFECT OF FAILURE TO CARRY OUT STATE PLAN.

(a) IN GENERAL.—Part A of title XI (42 U.S.C. 1301–1320b–13), as amended by section 208, is amended by inserting after section 1130 the following:

"EFFECT OF FAILURE TO CARRY OUT STATE PLAN

42 USC 1320a-10.

"SEC. 1130A. In an action brought to enforce a provision of the Social Security Act, such provision is not to be deemed unenforceable because of its inclusion in a section of the Act requiring a State plan or specifying the required contents of a State plan. This section is not intended to limit or expand the grounds for determining the availability of private actions to enforce State plan requirements other than by overturning any such grounds applied in Suter v. Artist M., 112 S. Ct. 1360 (1992), but not applied in prior Supreme Court decisions respecting such enforceability: *Provided, however,* That this section is not intended to alter the holding in Suter v. Artist M. that section 471(a)(15) of the Act is not enforceable in a private right of action.".

42 USC 1320a-10 note.

(b) APPLICABILITY.—The amendment made by subsection (a) shall apply to actions pending on the date of the enactment of this Act and to actions brought on or after such date of enactment.

Subtitle B—Child Support Enforcement

SEC. 212. REPORTS TO CREDIT BUREAUS ON PERSONS DELINQUENT IN CHILD SUPPORT PAYMENTS.

(a) IN GENERAL.—Section 466(a)(7) (42 U.S.C. 666(a)(7)) is amended—

(1) by striking "Procedures" and all that follows through "request of such agency" and inserting "Procedures which

H. R. 867

ASFA
105-89

One Hundred Fifth Congress of the United States of America

AT THE FIRST SESSION

Begun and held at the City of Washington on Tuesday, the seventh day of January, one thousand nine hundred and ninety-seven

An Act

To promote the adoption of children in foster care.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the "Adoption and Safe Families Act of 1997".

(b) TABLE OF CONTENTS.—The table of contents of this Act is as follows:

TITLE I—REASONABLE EFFORTS AND SAFETY REQUIREMENTS FOR FOSTER CARE AND ADOPTION PLACEMENTS

SEC. 101. CLARIFICATION OF THE REASONABLE EFFORTS REQUIREMENT.

(a) IN GENERAL.—Section 471(a)(15) of the Social Security Act (42 U.S.C. 671(a)(15)) is amended to read as follows:

"(15) provides that—

"(A) in determining reasonable efforts to be made with respect to a child, as described in this paragraph, and in making such reasonable efforts, the child's health and safety shall be the paramount concern;

"(B) except as provided in subparagraph (D), reasonable efforts shall be made to preserve and reunify families—

"(i) prior to the placement of a child in foster care, to prevent or eliminate the need for removing the child from the child's home; and

"(ii) to make it possible for a child to safely return to the child's home;

"(C) if continuation of reasonable efforts of the type described in subparagraph (B) is determined to be inconsistent with the permanency plan for the child, reasonable efforts shall be made to place the child in a timely manner in accordance with the permanency plan, and to complete whatever steps are necessary to finalize the permanent placement of the child;

"(D) reasonable efforts of the type described in subparagraph (B) shall not be required to be made with respect to a parent of a child if a court of competent jurisdiction has determined that—

"(i) the parent has subjected the child to aggravated circumstances (as defined in State law, which definition may include but need not be limited to abandonment, torture, chronic abuse, and sexual abuse);

"(ii) the parent has—

"(I) committed murder (which would have been an offense under section 1111(a) of title 18, United States Code, if the offense had occurred in the special maritime or territorial jurisdiction of the United States) of another child of the parent;

"(II) committed voluntary manslaughter (which would have been an offense under section 1112(a) of title 18, United States Code, if the offense had occurred in the special maritime or territorial jurisdiction of the United States) of another child of the parent;

"(III) aided or abetted, attempted, conspired, or solicited to commit such a murder or such a voluntary manslaughter; or

"(IV) committed a felony assault that results in serious bodily injury to the child or another child of the parent; or "(iii) the parental rights of the parent to a sibling have been terminated involuntarily;

"(E) if reasonable efforts of the type described in subparagraph (B) are not made with respect to a child as a result of a determination made by a court of competent jurisdiction in accordance with subparagraph (D)—

"(i) a permanency hearing (as described in section 475(5)(C)) shall be held for the child within 30 days after the determination; and

"(ii) reasonable efforts shall be made to place the child in a timely manner in accordance with the permanency plan, and to complete whatever steps are necessary to finalize the permanent placement of the child; and

"(F) reasonable efforts to place a child for adoption or with a legal guardian may be made concurrently with reasonable efforts of the type described in subparagraph (B);".

(b) DEFINITION OF LEGAL GUARDIANSHIP.—Section 475 of such Act (42 U.S.C. 675) is amended by adding at the end the following:

"(7) The term 'legal guardianship' means a judicially created relationship between child and caretaker which is intended to be permanent and self-sustaining as evidenced by the transfer to the caretaker of the following parental rights with respect to the child: protection, education, care and control of the person, custody of the person, and decisionmaking. The term 'legal guardian' means the caretaker in such a relationship.".

(c) CONFORMING AMENDMENT.—Section 472(a)(1) of such Act (42 U.S.C. 672(a)(1)) is amended by inserting "for a child" before "have been made".

(d) RULE OF CONSTRUCTION.—Part E of title IV of such Act (42 U.S.C. 670–679) is amended by inserting after section 477 the following:

"SEC. 478. RULE OF CONSTRUCTION.

"Nothing in this part shall be construed as precluding State courts from exercising their discretion to protect the health and safety of children in individual cases, including cases other than those described in section 471(a)(15)(D).".

SEC. 102. INCLUDING SAFETY IN CASE PLAN AND CASE REVIEW SYSTEM REQUIREMENTS.

Title IV of the Social Security Act (42 U.S.C. 601 et seq.) is amended—

(1) in section 422(b)(10)(B)—

(A) in clause (iii)(I), by inserting "safe and" after "where"; and

(B) in clause (iv), by inserting "safely" after "remain"; and

(2) in section 475—

(A) in paragraph (1)—

(i) in subparagraph (A), by inserting "safety and" after "discussion of the"; and

(ii) in subparagraph (B)—

(I) by inserting "safe and" after "child receives"; and

(II) by inserting "safe" after "return of the child to his own"; and

(B) in paragraph (5)—

(i) in subparagraph (A), in the matter preceding clause (i), by inserting "a safe setting that is" after "placement in"; and

(ii) in subparagraph (B)—

(I) by inserting "the safety of the child," after "determine"; and

(II) by inserting "and safely maintained in" after "returned to".

SEC. 103. STATES REQUIRED TO INITIATE OR JOIN PROCEEDINGS TO TERMINATE PARENTAL RIGHTS FOR CERTAIN CHILDREN IN FOSTER CARE.

(a) REQUIREMENT FOR PROCEEDINGS.—Section 475(5) of the Social Security Act (42 U.S.C. 675(5)) is amended—

(1) by striking "and" at the end of subparagraph (C);

(2) by striking the period at the end of subparagraph (D) and inserting "; and"; and

(3) by adding at the end the following:

"(E) in the case of a child who has been in foster care under the responsibility of the State for 15 of the most recent 22 months, or, if a court of competent jurisdiction has determined a child to be an abandoned infant (as defined under State law) or has made a determination that the parent has committed murder of another child of the parent, committed voluntary manslaughter of another child of the parent, aided or abetted, attempted, conspired, or solicited to commit such a murder or such a voluntary manslaughter, or committed a felony assault that has resulted in serious bodily injury to the child or to another child of the parent, the State shall file a petition to terminate the parental rights of the child's parents (or, if such a petition has been filed by another party, seek to be joined as a party to the petition), and, concurrently, to identify, recruit, process, and approve a qualified family for an adoption, unless—

"(i) at the option of the State, the child is being cared for by a relative;

"(ii) a State agency has documented in the case plan (which shall be available for court review) a compelling reason for determining that filing such a petition would not be in the best interests of the child; or

"(iii) the State has not provided to the family of the child, consistent with the time period in the State case plan, such services as the State deems necessary for the safe return of the child to the child's home, if reasonable efforts of the type described in section 471(a)(15)(B)(ii) are required to be made with respect to the child.".

(b) DETERMINATION OF BEGINNING OF FOSTER CARE.—Section 475(5) of the Social Security Act (42 U.S.C. 675(5)), as amended by subsection (a), is amended—

(1) by striking "and" at the end of subparagraph (D);

(2) by striking the period at the end of subparagraph (E) and inserting "; and"; and

(3) by adding at the end the following:

"(F) a child shall be considered to have entered foster care on the earlier of—

"(i) the date of the first judicial finding that the child has been subjected to child abuse or neglect; or

"(ii) the date that is 60 days after the date on which the child is removed from the home.".

(c) TRANSITION RULES.—

(1) NEW FOSTER CHILDREN.—In the case of a child who enters foster care (within the meaning of section 475(5)(F) of the Social Security Act) under the responsibility of a State after the date of the enactment of this Act—

(A) if the State comes into compliance with the amendments made by subsection (a) of this section before the child has been in such foster care for 15 of the most recent 22 months, the State shall comply with section 475(5)(E) of the Social Security Act with respect to the child when the child has been in such foster care for 15 of the most recent 22 months; and

(B) if the State comes into such compliance after the child has been in such foster care for 15 of the most recent 22 months, the State shall comply with such section 475(5)(E) with respect to the child not later than 3 months after the end of the first regular session of the State legislature that begins after such date of enactment.

(2) CURRENT FOSTER CHILDREN.—In the case of children in foster care under the responsibility of the State on the date of the enactment of this Act, the State shall—

(A) not later than 6 months after the end of the first regular session of the State legislature that begins after such date of enactment, comply with section 475(5)(E) of the Social Security Act with respect to not less than ⅓ of such children as the State shall select, giving priority to children for whom the permanency plan (within the meaning of part E of title IV of the Social Security Act) is adoption and children who have been in foster care for the greatest length of time;

(B) not later than 12 months after the end of such first regular session, comply with such section 475(5)(E) with respect to not less than ⅔ of such children as the State shall select; and

(C) not later than 18 months after the end of such first regular session, comply with such section 475(5)(E) with respect to all of such children.

(3) TREATMENT OF 2-YEAR LEGISLATIVE SESSIONS.—For purposes of this subsection, in the case of a State that has a 2-year legislative session, each year of the session is deemed to be a separate regular session of the State legislature.

(4) REQUIREMENTS TREATED AS STATE PLAN REQUIREMENTS.—For purposes of part E of title IV of the Social Security Act, the requirements of this subsection shall be treated as State plan requirements imposed by section 471(a) of such Act.

(d) RULE OF CONSTRUCTION.—Nothing in this section or in part E of title IV of the Social Security Act (42 U.S.C. 670 et seq.), as amended by this Act, shall be construed as precluding State courts or State agencies from initiating the termination of parental rights for reasons other than, or for timelines earlier than, those specified in part E of title IV of such Act, when such actions are determined to be in the best interests of the child, including cases where the child has experienced multiple foster care placements of varying durations.

SEC. 104. NOTICE OF REVIEWS AND HEARINGS; OPPORTUNITY TO BE HEARD.

Section 475(5) of the Social Security Act (42 U.S.C. 675(5)), as amended by section 103, is amended—

(1) by striking "and" at the end of subparagraph (E);

(2) by striking the period at the end of subparagraph (F) and inserting "; and"; and

(3) by adding at the end the following:

"(G) the foster parents (if any) of a child and any preadoptive parent or relative providing care for the child are provided with notice of, and an opportunity to be heard in, any review or hearing to be held with respect to the child, except that this subparagraph shall not be construed to require that any foster parent, preadoptive parent, or relative providing care for the child be made a party to such a review or hearing solely on the basis of such notice and opportunity to be heard.".

SEC. 105. USE OF THE FEDERAL PARENT LOCATOR SERVICE FOR CHILD WELFARE SERVICES.

Section 453 of the Social Security Act (42 U.S.C. 653) is amended—

(1) in subsection (a)(2)—

(A) in the matter preceding subparagraph (A), by inserting "or making or enforcing child custody or visitation orders," after "obligations,"; and

(B) in subparagraph (A)—

(i) by striking "or" at the end of clause (ii);

(ii) by striking the comma at the end of clause (iii) and inserting "; or"; and

(iii) by inserting after clause (iii) the following: "(iv) who has or may have parental rights with respect to a child,"; and

(2) in subsection (c)—

(A) by striking the period at the end of paragraph (3) and inserting "; and"; and

(B) by adding at the end the following:

"(4) a State agency that is administering a program operated under a State plan under subpart 1 of part B, or a State plan approved under subpart 2 of part B or under part E.".

SEC. 106. CRIMINAL RECORDS CHECKS FOR PROSPECTIVE FOSTER AND ADOPTIVE PARENTS.

Section 471(a) of the Social Security Act (42 U.S.C. 671(a)) is amended—

(1) by striking "and" at the end of paragraph (18);

(2) by striking the period at the end of paragraph (19) and inserting "; and"; and

(3) by adding at the end the following:

"(20)(A) unless an election provided for in subparagraph (B) is made with respect to the State, provides procedures for criminal records checks for any prospective foster or adoptive parent before the foster or adoptive parent may be finally approved for placement of a child on whose behalf foster care maintenance payments or adoption assistance payments are to be made under the State plan under this part, including procedures requiring that—

"(i) in any case in which a record check reveals a felony conviction for child abuse or neglect, for spousal abuse, for a crime against children (including child pornography), or for a crime involving violence, including rape, sexual assault, or homicide, but not including other physical assault or battery, if a State finds that a court of competent jurisdiction has determined that the felony was committed at any time, such final approval shall not be granted; and

"(ii) in any case in which a record check reveals a felony conviction for physical assault, battery, or a drug-related offense, if a State finds that a court of competent jurisdiction has determined that the felony was committed within the past 5 years, such final approval shall not be granted; and

"(B) subparagraph (A) shall not apply to a State plan if the Governor of the State has notified the Secretary in writing that the State has elected to make subparagraph (A) inapplicable to the State, or if the State legislature, by law, has elected to make subparagraph (A) inapplicable to the State.".

SEC. 107. DOCUMENTATION OF EFFORTS FOR ADOPTION OR LOCATION OF A PERMANENT HOME.

Section 475(1) of the Social Security Act (42 U.S.C. 675(1)) is amended—

(1) in the last sentence—

(A) by striking "the case plan must also include"; and

(B) by redesignating such sentence as subparagraph (D) and indenting appropriately; and

(2) by adding at the end the following:

"(E) In the case of a child with respect to whom the permanency plan is adoption or placement in another permanent home, documentation of the steps the agency is taking to find an adoptive family or other permanent living arrangement for the child, to place the child with an adoptive family, a fit and willing relative, a legal guardian, or in another planned permanent living arrangement, and to finalize the adoption or legal guardianship. At a minimum, such documentation shall include child specific recruitment efforts such as the use of State, regional, and national adoption exchanges including electronic exchange systems.".

TITLE II—INCENTIVES FOR PROVIDING PERMANENT FAMILIES FOR CHILDREN

SEC. 201. ADOPTION INCENTIVE PAYMENTS.

(a) IN GENERAL.—Part E of title IV of the Social Security Act (42 U.S.C. 670–679) is amended by inserting after section 473 the following:

"SEC. 473A. ADOPTION INCENTIVE PAYMENTS.

"(a) GRANT AUTHORITY.—Subject to the availability of such amounts as may be provided in advance in appropriations Acts for this purpose, the Secretary shall make a grant to each State that is an incentive-eligible State for a fiscal year in an amount equal to the adoption incentive payment payable to the State under this section for the fiscal year, which shall be payable in the immediately succeeding fiscal year.

"(b) INCENTIVE-ELIGIBLE STATE.—A State is an incentive-eligible State for a fiscal year if—

"(1) the State has a plan approved under this part for the fiscal year;

"(2) the number of foster child adoptions in the State during the fiscal year exceeds the base number of foster child adoptions for the State for the fiscal year;

"(3) the State is in compliance with subsection (c) for the fiscal year;

"(4) in the case of fiscal years 2001 and 2002, the State provides health insurance coverage to any child with special needs (as determined under section 473(c)) for whom there is in effect an adoption assistance agreement between a State and an adoptive parent or parents; and

"(5) the fiscal year is any of fiscal years 1998 through 2002.

"(c) DATA REQUIREMENTS.—

"(1) IN GENERAL.—A State is in compliance with this subsection for a fiscal year if the State has provided to the Secretary the data described in paragraph (2)—

"(A) for fiscal years 1995 through 1997 (or, if the first fiscal year for which the State seeks a grant under this section is after fiscal year 1998, the fiscal year that precedes such first fiscal year); and

"(B) for each succeeding fiscal year that precedes the fiscal year.

"(2) DETERMINATION OF NUMBERS OF ADOPTIONS.—

"(A) DETERMINATIONS BASED ON AFCARS DATA.—Except as provided in subparagraph (B), the Secretary shall determine the numbers of foster child adoptions and of special needs adoptions in a State during each of fiscal years 1995 through 2002, for purposes of this section, on the basis of data meeting the requirements of the system established pursuant to section 479, as reported by the State and approved by the Secretary by August 1 of the succeeding fiscal year.

"(B) ALTERNATIVE DATA SOURCES PERMITTED FOR FISCAL YEARS 1995 THROUGH 1997.—For purposes of the determination described in subparagraph (A) for fiscal years 1995 through 1997, the Secretary may use data from a source or sources other than that specified in subparagraph (A) that the Secretary finds to be of equivalent completeness and reliability, as reported by a State by November 30, 1997, and approved by the Secretary by March 1, 1998.

"(3) NO WAIVER OF AFCARS REQUIREMENTS.—This section shall not be construed to alter or affect any requirement of section 479 or of any regulation prescribed under such section with respect to reporting of data by States, or to waive any penalty for failure to comply with such a requirement.

"(d) ADOPTION INCENTIVE PAYMENT.—

"(1) IN GENERAL.—Except as provided in paragraph (2), the adoption incentive payment payable to a State for a fiscal year under this section shall be equal to the sum of—

"(A) $4,000, multiplied by the amount (if any) by which the number of foster child adoptions in the State during the fiscal year exceeds the base number of foster child adoptions for the State for the fiscal year; and

"(B) $2,000, multiplied by the amount (if any) by which the number of special needs adoptions in the State during the fiscal year exceeds the base number of special needs adoptions for the State for the fiscal year.

"(2) PRO RATA ADJUSTMENT IF INSUFFICIENT FUNDS AVAILABLE.—For any fiscal year, if the total amount of adoption incentive payments otherwise payable under this section for a fiscal year exceeds the amount appropriated pursuant to subsection (h) for the fiscal year, the amount of the adoption incentive payment payable to each State under this section for the fiscal year shall be—

"(A) the amount of the adoption incentive payment that would otherwise be payable to the State under this section for the fiscal year; multiplied by

"(B) the percentage represented by the amount so appropriated for the fiscal year, divided by the total amount of adoption incentive payments otherwise payable under this section for the fiscal year.

"(e) 2-YEAR AVAILABILITY OF INCENTIVE PAYMENTS.—Payments to a State under this section in a fiscal year shall remain available for use by the State through the end of the succeeding fiscal year.

"(f) LIMITATIONS ON USE OF INCENTIVE PAYMENTS.—A State shall not expend an amount paid to the State under this section except to provide to children or families any service (including post-adoption services) that may be provided under part B or E. Amounts expended by a State in accordance with the preceding sentence shall be disregarded in determining State expenditures for purposes of Federal matching payments under sections 423, 434, and 474.

"(g) DEFINITIONS.—As used in this section:

"(1) FOSTER CHILD ADOPTION.—The term 'foster child adoption' means the final adoption of a child who, at the time of adoptive placement, was in foster care under the supervision of the State.

"(2) SPECIAL NEEDS ADOPTION.—The term 'special needs adoption' means the final adoption of a child for whom an adoption assistance agreement is in effect under section 473.

"(3) BASE NUMBER OF FOSTER CHILD ADOPTIONS.—The term 'base number of foster child adoptions for a State' means—

"(A) with respect to fiscal year 1998, the average number of foster child adoptions in the State in fiscal years 1995, 1996, and 1997; and

"(B) with respect to any subsequent fiscal year, the number of foster child adoptions in the State in the fiscal year for which the number is the greatest in the period that begins with fiscal year 1997 and ends with the fiscal year preceding such subsequent fiscal year.

"(4) BASE NUMBER OF SPECIAL NEEDS ADOPTIONS.—The term 'base number of special needs adoptions for a State' means—

"(A) with respect to fiscal year 1998, the average number of special needs adoptions in the State in fiscal years 1995, 1996, and 1997; and

"(B) with respect to any subsequent fiscal year, the number of special needs adoptions in the State in the fiscal year for which the number is the greatest in the period that begins with fiscal year 1997 and ends with the fiscal year preceding such subsequent fiscal year.

"(h) LIMITATIONS ON AUTHORIZATION OF APPROPRIATIONS.—

"(1) IN GENERAL.—For grants under subsection (a), there are authorized to be appropriated to the Secretary $20,000,000 for each of fiscal years 1999 through 2003.

"(2) AVAILABILITY.—Amounts appropriated under paragraph (1) are authorized to remain available until expended, but not after fiscal year 2003.

"(i) TECHNICAL ASSISTANCE.—

"(1) IN GENERAL.—The Secretary may, directly or through grants or contracts, provide technical assistance to assist States and local communities to reach their targets for increased numbers of adoptions and, to the extent that adoption is not possible, alternative permanent placements, for children in foster care.

"(2) DESCRIPTION OF THE CHARACTER OF THE TECHNICAL ASSISTANCE.—The technical assistance provided under paragraph (1) may support the goal of encouraging more adoptions out of the foster care system, when adoptions promote the best interests of children, and may include the following:

"(A) The development of best practice guidelines for expediting termination of parental rights.

"(B) Models to encourage the use of concurrent planning.

"(C) The development of specialized units and expertise in moving children toward adoption as a permanency goal.

"(D) The development of risk assessment tools to facilitate early identification of the children who will be at risk of harm if returned home.

"(E) Models to encourage the fast tracking of children who have not attained 1 year of age into pre-adoptive placements.

"(F) Development of programs that place children into pre-adoptive families without waiting for termination of parental rights.

"(3) TARGETING OF TECHNICAL ASSISTANCE TO THE COURTS.—Not less than 50 percent of any amount appropriated pursuant to paragraph (4) shall be used to provide technical assistance to the courts.

"(4) LIMITATIONS ON AUTHORIZATION OF APPROPRIATIONS.— To carry out this subsection, there are authorized to be appropriated to the Secretary of Health and Human Services not to exceed $10,000,000 for each of fiscal years 1998 through 2000.".

(b) DISCRETIONARY CAP ADJUSTMENT FOR ADOPTION INCENTIVE PAYMENTS.—

(1) SECTION 251 AMENDMENT.—Section 251(b)(2) of the Balanced Budget and Emergency Deficit Control Act of 1985 (2 U.S.C. 901(b)(2)), as amended by section 10203(a)(4) of the Balanced Budget Act of 1997, is amended by adding at the end the following new subparagraph:

"(G) ADOPTION INCENTIVE PAYMENTS.—Whenever a bill or joint resolution making appropriations for fiscal year 1999, 2000, 2001, 2002, or 2003 is enacted that specifies an amount for adoption incentive payments pursuant to this part for the Department of Health and Human Services—

"(i) the adjustments for new budget authority shall be the amounts of new budget authority provided in that measure for adoption incentive payments, but not to exceed $20,000,000; and

"(ii) the adjustment for outlays shall be the additional outlays flowing from such amount.".

(2) SECTION 314 AMENDMENT.—Section 314(b) of the Congressional Budget Act of 1974, as amended by section 10114(a) of the Balanced Budget Act of 1997, is amended—

(A) by striking "or" at the end of paragraph (4);

(B) by striking the period at the end of paragraph (5) and inserting "; or"; and

(C) by adding at the end the following:

"(6) in the case of an amount for adoption incentive payments (as defined in section 251(b)(2)(G) of the Balanced Budget and Emergency Deficit Control Act of 1985) for fiscal year 1999, 2000, 2001, 2002, or 2003 for the Department of Health and Human Services, an amount not to exceed $20,000,000.".

SEC. 202. ADOPTIONS ACROSS STATE AND COUNTY JURISDICTIONS.

(a) STATE PLAN FOR CHILD WELFARE SERVICES REQUIREMENT.— Section 422(b) of the Social Security Act (42 U.S.C. 622(b)) is amended—

(1) in paragraph (10), by striking "and" at the end;

(2) in paragraph (11), by striking the period and inserting "; and"; and

(3) by adding at the end the following:

"(12) contain assurances that the State shall develop plans for the effective use of cross-jurisdictional resources to facilitate timely adoptive or permanent placements for waiting children.".

(b) CONDITION OF ASSISTANCE.—Section 474 of such Act (42 U.S.C. 674) is amended by adding at the end the following:

"(e) Notwithstanding subsection (a), a State shall not be eligible for any payment under this section if the Secretary finds that, after the date of the enactment of this subsection, the State has—

"(1) denied or delayed the placement of a child for adoption when an approved family is available outside of the jurisdiction with responsibility for handling the case of the child; or

"(2) failed to grant an opportunity for a fair hearing, as described in section 471(a)(12), to an individual whose allegation of a violation of paragraph (1) of this subsection is denied by the State or not acted upon by the State with reasonable promptness.".

(c) STUDY OF INTERJURISDICTIONAL ADOPTION ISSUES.—

(1) IN GENERAL.—The Comptroller General of the United States shall—

(A) study and consider how to improve procedures and policies to facilitate the timely and permanent adoptions of children across State and county jurisdictions; and

(B) examine, at a minimum, interjurisdictional adoption issues—

(i) concerning the recruitment of prospective adoptive families from other States and counties;

(ii) concerning the procedures to grant reciprocity to prospective adoptive family home studies from other States and counties;

(iii) arising from a review of the comity and full faith and credit provided to adoption decrees and termination of parental rights orders from other States; and

(iv) concerning the procedures related to the administration and implementation of the Interstate Compact on the Placement of Children.

(2) REPORT TO THE CONGRESS.—Not later than 1 year after the date of the enactment of this Act, the Comptroller General shall submit to the appropriate committees of the Congress a report that includes—

(A) the results of the study conducted under paragraph (1); and

(B) recommendations on how to improve procedures to facilitate the interjurisdictional adoption of children, including interstate and intercounty adoptions, so that children will be assured timely and permanent placements.

SEC. 203. PERFORMANCE OF STATES IN PROTECTING CHILDREN.

(a) ANNUAL REPORT ON STATE PERFORMANCE.—Part E of title IV of the Social Security Act (42 U.S.C. 670 et seq.) is amended by adding at the end the following:

"SEC. 479A. ANNUAL REPORT.

"The Secretary, in consultation with Governors, State legislatures, State and local public officials responsible for administering child welfare programs, and child welfare advocates, shall—

"(1) develop a set of outcome measures (including length of stay in foster care, number of foster care placements, and number of adoptions) that can be used to assess the performance of States in operating child protection and child welfare programs pursuant to parts B and E to ensure the safety of children;

"(2) to the maximum extent possible, the outcome measures should be developed from data available from the Adoption and Foster Care Analysis and Reporting System;

"(3) develop a system for rating the performance of States with respect to the outcome measures, and provide to the States an explanation of the rating system and how scores are determined under the rating system;

"(4) prescribe such regulations as may be necessary to ensure that States provide to the Secretary the data necessary to determine State performance with respect to each outcome measure, as a condition of the State receiving funds under this part; and

"(5) on May 1, 1999, and annually thereafter, prepare and submit to the Congress a report on the performance of each State on each outcome measure, which shall examine the reasons for high performance and low performance and, where possible, make recommendations as to how State performance could be improved.".

(b) DEVELOPMENT OF PERFORMANCE-BASED INCENTIVE SYSTEM.—The Secretary of Health and Human Services, in consultation with State and local public officials responsible for administering child welfare programs and child welfare advocates, shall study, develop, and recommend to Congress an incentive system to provide payments under parts B and E of title IV of the Social Security Act (42 U.S.C. 620 et seq., 670 et seq.) to any State based on the State's performance under such a system. Such a system shall, to the extent the Secretary determines feasible and appropriate, be based on the annual report required by section 479A of the Social Security Act (as added by subsection (a) of this section) or on any proposed modifications of the annual report. Not later than 6 months after the date of the enactment of this Act, the Secretary shall submit to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate a progress report on the feasibility, timetable, and consultation process for conducting such a study. Not later than 15 months after such date of enactment, the Secretary shall submit to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate the final report on a performance-based incentive system. The report may include other recommendations for restructuring the program and payments under parts B and E of title IV of the Social Security Act.

TITLE III—ADDITIONAL IMPROVEMENTS AND REFORMS

SEC. 301. EXPANSION OF CHILD WELFARE DEMONSTRATION PROJECTS.

(a) IN GENERAL.—Section 1130(a) of the Social Security Act (42 U.S.C. 1320a–9) is amended to read as follows:

"(a) AUTHORITY TO APPROVE DEMONSTRATION PROJECTS.—

"(1) IN GENERAL.—The Secretary may authorize States to conduct demonstration projects pursuant to this section which the Secretary finds are likely to promote the objectives of part B or E of title IV.

"(2) LIMITATION.—The Secretary may authorize not more than 10 demonstration projects under paragraph (1) in each of fiscal years 1998 through 2002.

"(3) CERTAIN TYPES OF PROPOSALS REQUIRED TO BE CONSIDERED.—

"(A) If an appropriate application therefor is submitted, the Secretary shall consider authorizing a demonstration project which is designed to identify and address barriers that result in delays to adoptive placements for children in foster care.

"(B) If an appropriate application therefor is submitted, the Secretary shall consider authorizing a demonstration project which is designed to identify and address parental substance abuse problems that endanger children and result in the placement of children in foster care, including through the placement of children with their parents in residential treatment facilities (including residential treatment facilities for post-partum depression) that are specifically designed to serve parents and children together in order to promote family reunification and that can ensure the health and safety of the children in such placements.

"(C) If an appropriate application therefor is submitted, the Secretary shall consider authorizing a demonstration project which is designed to address kinship care.

"(4) LIMITATION ON ELIGIBILITY.—The Secretary may not authorize a State to conduct a demonstration project under this section if the State fails to provide health insurance coverage to any child with special needs (as determined under section 473(c)) for whom there is in effect an adoption assistance agreement between a State and an adoptive parent or parents.

"(5) REQUIREMENT TO CONSIDER EFFECT OF PROJECT ON TERMS AND CONDITIONS OF CERTAIN COURT ORDERS.—In considering an application to conduct a demonstration project under this section that has been submitted by a State in which there is in effect a court order determining that the State's child welfare program has failed to comply with the provisions of part B or E of title IV, or with the Constitution of the United States, the Secretary shall take into consideration the effect of approving the proposed project on the terms and conditions of the court order related to the failure to comply.".

(b) RULE OF CONSTRUCTION.—Nothing in the amendment made by subsection (a) shall be construed as affecting the terms and conditions of any demonstration project approved under section 1130 of the Social Security Act (42 U.S.C. 1320a–9) before the date of the enactment of this Act.

(c) AUTHORITY TO EXTEND DURATION OF DEMONSTRATIONS.—Section 1130(d) of such Act (42 U.S.C. 1320a–9(d)) is amended by inserting ", unless in the judgment of the Secretary, the demonstration project should be allowed to continue" before the period.

SEC. 302. PERMANENCY HEARINGS.

Section 475(5)(C) of the Social Security Act (42 U.S.C. 675(5)(C)) is amended—

(1) by striking "dispositional" and inserting "permanency";

(2) by striking "eighteen" and inserting "12";

(3) by striking "original placement" and inserting "date the child is considered to have entered foster care (as determined under subparagraph (F))"; and

(4) by striking "future status of" and all that follows through "long term basis)" and inserting "permanency plan for the child that includes whether, and if applicable when, the child will be returned to the parent, placed for adoption and the State will file a petition for termination of parental rights, or referred for legal guardianship, or (in cases where

the State agency has documented to the State court a compelling reason for determining that it would not be in the best interests of the child to return home, be referred for termination of parental rights, or be placed for adoption, with a fit and willing relative, or with a legal guardian) placed in another planned permanent living arrangement".

SEC. 303. KINSHIP CARE.

(a) REPORT.—

(1) IN GENERAL.—The Secretary of Health and Human Services shall—

(A) not later than June 1, 1998, convene the advisory panel provided for in subsection (b)(1) and prepare and submit to the advisory panel an initial report on the extent to which children in foster care are placed in the care of a relative (in this section referred to as "kinship care"); and

(B) not later than June 1, 1999, submit to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate a final report on the matter described in subparagraph (A), which shall—

(i) be based on the comments submitted by the advisory panel pursuant to subsection (b)(2) and other information and considerations; and

(ii) include the policy recommendations of the Secretary with respect to the matter.

(2) REQUIRED CONTENTS.—Each report required by paragraph (1) shall—

(A) include, to the extent available for each State, information on—

(i) the policy of the State regarding kinship care;

(ii) the characteristics of the kinship care providers (including age, income, ethnicity, and race, and the relationship of the kinship care providers to the children);

(iii) the characteristics of the household of such providers (such as number of other persons in the household and family composition);

(iv) how much access to the child is afforded to the parent from whom the child has been removed;

(v) the cost of, and source of funds for, kinship care (including any subsidies such as medicaid and cash assistance);

(vi) the permanency plan for the child and the actions being taken by the State to achieve the plan;

(vii) the services being provided to the parent from whom the child has been removed; and

(viii) the services being provided to the kinship care provider; and

(B) specifically note the circumstances or conditions under which children enter kinship care.

(b) ADVISORY PANEL.—

(1) ESTABLISHMENT.—The Secretary of Health and Human Services, in consultation with the Chairman of the Committee on Ways and Means of the House of Representatives and the Chairman of the Committee on Finance of the Senate, shall convene an advisory panel which shall include parents, foster

parents, relative caregivers, former foster children, State and local public officials responsible for administering child welfare programs, private persons involved in the delivery of child welfare services, representatives of tribal governments and tribal courts, judges, and academic experts.

(2) DUTIES.—The advisory panel convened pursuant to paragraph (1) shall review the report prepared pursuant to subsection (a), and, not later than October 1, 1998, submit to the Secretary comments on the report.

SEC. 304. CLARIFICATION OF ELIGIBLE POPULATION FOR INDEPENDENT LIVING SERVICES.

Section 477(a)(2)(A) of the Social Security Act (42 U.S.C. 677(a)(2)(A)) is amended by inserting "(including children with respect to whom such payments are no longer being made because the child has accumulated assets, not to exceed $5,000, which are otherwise regarded as resources for purposes of determining eligibility for benefits under this part)" before the comma.

SEC. 305. REAUTHORIZATION AND EXPANSION OF FAMILY PRESERVATION AND SUPPORT SERVICES.

(a) REAUTHORIZATION OF FAMILY PRESERVATION AND SUPPORT SERVICES.—

(1) IN GENERAL.—Section 430(b) of the Social Security Act (42 U.S.C. 629(b)) is amended—

(A) in paragraph (4), by striking "or" at the end;

(B) in paragraph (5), by striking the period and inserting a semicolon; and

(C) by adding at the end the following:

"(6) for fiscal year 1999, $275,000,000;

"(7) for fiscal year 2000, $295,000,000; and

"(8) for fiscal year 2001, $305,000,000.".

(2) CONTINUATION OF RESERVATION OF CERTAIN AMOUNTS.—Paragraphs (1) and (2) of section 430(d) of the Social Security Act (42 U.S.C. 629(d)(1) and (2)) are each amended by striking "and 1998" and inserting "1998, 1999, 2000, and 2001".

(3) CONFORMING AMENDMENTS.—Section 13712 of the Omnibus Budget Reconciliation Act of 1993 (42 U.S.C. 670 note) is amended—

(A) in subsection (c), by striking "1998" each place it appears and inserting "2001"; and

(B) in subsection (d)(2), by striking "and 1998" and inserting "1998, 1999, 2000, and 2001".

(b) EXPANSION FOR TIME-LIMITED FAMILY REUNIFICATION SERVICES AND ADOPTION PROMOTION AND SUPPORT SERVICES.—

(1) ADDITIONS TO STATE PLAN.—Section 432 of the Social Security Act (42 U.S.C. 629b) is amended—

(A) in subsection (a)—

(i) in paragraph (4), by striking "and community-based family support services" and inserting ", community-based family support services, time-limited family reunification services, and adoption promotion and support services,"; and

(ii) in paragraph (5)(A), by striking "and community-based family support services" and inserting ", community-based family support services, time-limited family reunification services, and adoption promotion and support services"; and

(B) in subsection (b)(1), by striking "and family support" and inserting ", family support, time-limited family reunification, and adoption promotion and support".

(2) DEFINITIONS OF TIME-LIMITED FAMILY REUNIFICATION SERVICES AND ADOPTION PROMOTION AND SUPPORT SERVICES.—Section 431(a) of the Social Security Act (42 U.S.C. 629a(a)) is amended by adding at the end the following:

"(7) TIME-LIMITED FAMILY REUNIFICATION SERVICES.—

"(A) IN GENERAL.—The term 'time-limited family reunification services' means the services and activities described in subparagraph (B) that are provided to a child that is removed from the child's home and placed in a foster family home or a child care institution and to the parents or primary caregiver of such a child, in order to facilitate the reunification of the child safely and appropriately within a timely fashion, but only during the 15-month period that begins on the date that the child, pursuant to section 475(5)(F), is considered to have entered foster care.

"(B) SERVICES AND ACTIVITIES DESCRIBED.—The services and activities described in this subparagraph are the following:

"(i) Individual, group, and family counseling.

"(ii) Inpatient, residential, or outpatient substance abuse treatment services.

"(iii) Mental health services.

"(iv) Assistance to address domestic violence.

"(v) Services designed to provide temporary child care and therapeutic services for families, including crisis nurseries.

"(vi) Transportation to or from any of the services and activities described in this subparagraph.

"(8) ADOPTION PROMOTION AND SUPPORT SERVICES.—The term 'adoption promotion and support services' means services and activities designed to encourage more adoptions out of the foster care system, when adoptions promote the best interests of children, including such activities as pre- and post-adoptive services and activities designed to expedite the adoption process and support adoptive families.".

(3) ADDITIONAL CONFORMING AMENDMENTS.—

(A) PURPOSES.—Section 430(a) of the Social Security Act (42 U.S.C. 629(a)) is amended by striking "and community-based family support services" and inserting ", community-based family support services, time-limited family reunification services, and adoption promotion and support services".

(B) PROGRAM TITLE.—The heading of subpart 2 of part B of title IV of the Social Security Act (42 U.S.C. 629 et seq.) is amended to read as follows:

"Subpart 2—Promoting Safe and Stable Families".

(c) EMPHASIZING THE SAFETY OF THE CHILD.—

(1) REQUIRING ASSURANCES THAT THE SAFETY OF CHILDREN SHALL BE OF PARAMOUNT CONCERN.—Section 432(a) of the Social Security Act (42 U.S.C. 629b(a)) is amended—

(A) by striking "and" at the end of paragraph (7);

(B) by striking the period at the end of paragraph (8); and

(C) by adding at the end the following:

"(9) contains assurances that in administering and conducting service programs under the plan, the safety of the children to be served shall be of paramount concern.".

(2) DEFINITIONS OF FAMILY PRESERVATION AND FAMILY SUPPORT SERVICES.—Section 431(a) of the Social Security Act (42 U.S.C. 629a(a)) is amended—

(A) in paragraph (1)—

(i) in subparagraph (A), by inserting "safe and" before "appropriate" each place it appears; and

(ii) in subparagraph (B), by inserting "safely" after "remain"; and

(B) in paragraph (2)—

(i) by inserting "safety and" before "well-being"; and

(ii) by striking "stable" and inserting "safe, stable,".

(d) CLARIFICATION OF MAINTENANCE OF EFFORT REQUIREMENT.—

(1) DEFINITION OF NON-FEDERAL FUNDS.—Section 431(a) of the Social Security Act (42 U.S.C. 629a(a)), as amended by subsection (b)(2), is amended by adding at the end the following:

"(9) NON-FEDERAL FUNDS.—The term 'non-Federal funds' means State funds, or at the option of a State, State and local funds.".

(2) EFFECTIVE DATE.—The amendment made by paragraph (1) takes effect as if included in the enactment of section 13711 of the Omnibus Budget Reconciliation Act of 1993 (Public Law 103–33; 107 Stat. 649).

SEC. 306. HEALTH INSURANCE COVERAGE FOR CHILDREN WITH SPECIAL NEEDS.

Section 471(a) of the Social Security Act (42 U.S.C. 671(a)), as amended by section 106, is amended—

(1) in paragraph (19), by striking "and" at the end;

(2) in paragraph (20), by striking the period and inserting "; and"; and

(3) by adding at the end the following:

"(21) provides for health insurance coverage (including, at State option, through the program under the State plan approved under title XIX) for any child who has been determined to be a child with special needs, for whom there is in effect an adoption assistance agreement (other than an agreement under this part) between the State and an adoptive parent or parents, and who the State has determined cannot be placed with an adoptive parent or parents without medical assistance because such child has special needs for medical, mental health, or rehabilitative care, and that with respect to the provision of such health insurance coverage—

"(A) such coverage may be provided through 1 or more State medical assistance programs;

"(B) the State, in providing such coverage, shall ensure that the medical benefits, including mental health benefits, provided are of the same type and kind as those that would be provided for children by the State under title XIX;

"(C) in the event that the State provides such coverage through a State medical assistance program other than the program under title XIX, and the State exceeds its funding for services under such other program, any such child shall be deemed to be receiving aid or assistance under the State plan under this part for purposes of section 1902(a)(10)(A)(i)(I); and

"(D) in determining cost-sharing requirements, the State shall take into consideration the circumstances of the adopting parent or parents and the needs of the child being adopted consistent, to the extent coverage is provided through a State medical assistance program, with the rules under such program.".

SEC. 307. CONTINUATION OF ELIGIBILITY FOR ADOPTION ASSISTANCE PAYMENTS ON BEHALF OF CHILDREN WITH SPECIAL NEEDS WHOSE INITIAL ADOPTION HAS BEEN DISSOLVED.

(a) CONTINUATION OF ELIGIBILITY.—Section 473(a)(2) of the Social Security Act (42 U.S.C. 673(a)(2)) is amended by adding at the end the following: "Any child who meets the requirements of subparagraph (C), who was determined eligible for adoption assistance payments under this part with respect to a prior adoption, who is available for adoption because the prior adoption has been dissolved and the parental rights of the adoptive parents have been terminated or because the child's adoptive parents have died, and who fails to meet the requirements of subparagraphs (A) and (B) but would meet such requirements if the child were treated as if the child were in the same financial and other circumstances the child was in the last time the child was determined eligible for adoption assistance payments under this part and the prior adoption were treated as never having occurred, shall be treated as meeting the requirements of this paragraph for purposes of paragraph (1)(B)(ii).".

(b) APPLICABILITY.—The amendment made by subsection (a) shall only apply to children who are adopted on or after October 1, 1997.

SEC. 308. STATE STANDARDS TO ENSURE QUALITY SERVICES FOR CHILDREN IN FOSTER CARE.

Section 471(a) of the Social Security Act (42 U.S.C. 671(a)), as amended by sections 106 and 306, is amended—

(1) in paragraph (20), by striking "and" at the end;

(2) in paragraph (21), by striking the period and inserting "; and"; and

(3) by adding at the end the following:

"(22) provides that, not later than January 1, 1999, the State shall develop and implement standards to ensure that children in foster care placements in public or private agencies are provided quality services that protect the safety and health of the children.".

TITLE IV—MISCELLANEOUS

SEC. 401. PRESERVATION OF REASONABLE PARENTING.

Nothing in this Act is intended to disrupt the family unnecessarily or to intrude inappropriately into family life, to prohibit the use of reasonable methods of parental discipline, or to prescribe a particular method of parenting.

SEC. 402. REPORTING REQUIREMENTS.

Any information required to be reported under this Act shall be supplied to the Secretary of Health and Human Services through data meeting the requirements of the Adoption and Foster Care Analysis and Reporting System established pursuant to section 479 of the Social Security Act (42 U.S.C. 679), to the extent such data is available under that system. The Secretary shall make such modifications to regulations issued under section 479 of such Act with respect to the Adoption and Foster Care Analysis and Reporting System as may be necessary to allow States to obtain data that meets the requirements of such system in order to satisfy the reporting requirements of this Act.

SEC. 403. SENSE OF CONGRESS REGARDING STANDBY GUARDIANSHIP.

It is the sense of Congress that the States should have in effect laws and procedures that permit any parent who is chronically ill or near death, without surrendering parental rights, to designate a standby guardian for the parent's minor children, whose authority would take effect upon—

(1) the death of the parent;

(2) the mental incapacity of the parent; or

(3) the physical debilitation and consent of the parent.

SEC. 404. TEMPORARY ADJUSTMENT OF CONTINGENCY FUND FOR STATE WELFARE PROGRAMS.

(a) REDUCTION OF APPROPRIATION.—Section 403(b)(2) of the Social Security Act (42 U.S.C. 603(b)(2)) is amended by inserting ", reduced by the sum of the dollar amounts specified in paragraph (6)(C)(ii)" before the period.

(b) INCREASE IN STATE REMITTANCES.—Section 403(b)(6) of such Act (42 U.S.C. 603(b)(6)) is amended by adding at the end the following:

"(C) ADJUSTMENT OF STATE REMITTANCES.—

"(i) IN GENERAL.—The amount otherwise required by subparagraph (A) to be remitted by a State for a fiscal year shall be increased by the lesser of—

"(I) the total adjustment for the fiscal year, multiplied by the adjustment percentage for the State for the fiscal year; or

"(II) the unadjusted net payment to the State for the fiscal year.

"(ii) TOTAL ADJUSTMENT.—As used in clause (i), the term 'total adjustment' means—

"(I) in the case of fiscal year 1998, $2,000,000;

"(II) in the case of fiscal year 1999, $9,000,000;

"(III) in the case of fiscal year 2000, $16,000,000; and

"(IV) in the case of fiscal year 2001, $13,000,000.

"(iii) ADJUSTMENT PERCENTAGE.—As used in clause (i), the term 'adjustment percentage' means, with respect to a State and a fiscal year—

"(I) the unadjusted net payment to the State for the fiscal year; divided by

"(II) the sum of the unadjusted net payments to all States for the fiscal year.

"(iv) UNADJUSTED NET PAYMENT.—As used in this subparagraph, the term, 'unadjusted net payment' means with respect to a State and a fiscal year—

"(I) the total amount paid to the State under paragraph (3) in the fiscal year; minus

"(II) the amount that, in the absence of this subparagraph, would be required by subparagraph (A) or by section 409(a)(10) to be remitted by the State in respect of the payment.".

(c) RECOMMENDATIONS FOR IMPROVING THE OPERATION OF THE CONTINGENCY FUND.—Not later than March 1, 1998, the Secretary of Health and Human Services shall make recommendations to the Congress for improving the operation of the Contingency Fund for State Welfare Programs.

SEC. 405. COORDINATION OF SUBSTANCE ABUSE AND CHILD PROTECTION SERVICES.

Within 1 year after the date of the enactment of this Act, the Secretary of Health and Human Services, based on information from the Substance Abuse and Mental Health Services Administration and the Administration for Children and Families in the Department of Health of Human Services, shall prepare and submit to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate a report which describes the extent and scope of the problem of substance abuse in the child welfare population, the types of services provided to such population, and the outcomes resulting from the provision of such services to such population. The report shall include recommendations for any legislation that may be needed to improve coordination in providing such services to such population.

SEC. 406. PURCHASE OF AMERICAN-MADE EQUIPMENT AND PRODUCTS.

(a) IN GENERAL.—It is the sense of the Congress that, to the greatest extent practicable, all equipment and products purchased with funds made available under this Act should be American-made.

(b) NOTICE REQUIREMENT.—In providing financial assistance to, or entering into any contract with, any entity using funds made available under this Act, the head of each Federal agency, to the greatest extent practicable, shall provide to such entity a notice describing the statement made in subsection (a) by the Congress.

TITLE V—EFFECTIVE DATE

SEC. 501. EFFECTIVE DATE.

(a) IN GENERAL.—Except as otherwise provided in this Act, the amendments made by this Act take effect on the date of enactment of this Act.

(b) DELAY PERMITTED IF STATE LEGISLATION REQUIRED.—In the case of a State plan under part B or E of title IV of the Social Security Act which the Secretary of Health and Human Services determines requires State legislation (other than legislation appropriating funds) in order for the plan to meet the additional requirements imposed by the amendments made by this Act, the State plan shall not be regarded as failing to comply with the requirements of such part solely on the basis of the failure of the plan to meet such additional requirements before the first day of the first calendar quarter beginning after the close of the first regular session of the State legislature that begins after the date of enactment of this Act. For purposes of the previous sentence, in the case of a State that has a 2-year legislative session, each year of such session shall be deemed to be a separate regular session of the State legislature.

Speaker of the House of Representatives.

Vice President of the United States and President of the Senate.

Draft Comment

Title IV-E Foster Care Eligibility Reviews and Child and Family Services State Plans

GENERAL:

1) Comment period – 60 days. Do we think 60 days is adequate for a regulation of this significance?

2) Please provide examples of reports from the test reviews.

3) Please provide estimates of ACF resources (by HQ and RO) necessary to perform reviews for FYs 1999-2003.

PREAMBLE: (additional tonal changes will come at a later date)

4) p. 11/12 AFCARS offers a rich source of individual case level data at the Federal level that we could use as an informational, oversight and monitoring tool. Please describe your plan to use this and other data in the development of the monitoring strategy going into each State.

5) p. 12 "The proposed regulations include various provisions for flexibility and individualizing the reviews to States." How do we guarantee consistency and fairness across States in light of the individual nature of each of State reviews due to self-assessment?

6) p. 15 refers to a 1994 OIG report. Please provide a copy.

7) p. 24 Discusses reviewing a sub-sample on non-IV-E cases during the reviews, which increases "the potential for States to receive Federal funding to which they are entitled." Please provide estimates of the additional costs. Would these costs be netted against ineligible payments?

8) p. 26 -27 Please provide information on historical state-by-state error rates for IV-E eligibility determination.

9) p. 27 "Reviewing for outcomes, as opposed to procedural indicators alone, is more likely to lead to improvements in State programs." Is there evidence from the test reviews that could support and strengthen this claim?

10) p. 29 notes, "we have followed the statutory requirements closely when the statute has provided specific parameters for review." Please provide a table comparing the proposed regulation and the statute.

11) p. 30 edit We have purposely crafted the regulation ~~so that penalties will only be imposed when States fail~~ **to encourage States** to make necessary program improvements.

12) p. 31-32 What are the "outcomes" and "systemic" factors reviewed?

13) p. 43 We recommend deleting the sentence "We believe this requirement provides the State the opportunity for self-evaluation and an opportunity to make any needed adjustments in policy or practice prior to another full review."

14) p. 44 Please illustrate the differences (in chart format, if possible) between "detailed inquiries," "reviews" and "partial reviews." Are States notified that detailed inquiries are being undertaken?

15) p. 48 Please explain the following sentence: "In those pilot States where both the old and the proposed review methods were deployed simultaneously, there was an over-reliance on the proposed method to reach conclusions about the status of outcomes in the States."

16) p. 49 [1355.34] ". . . we have limited the State plan requirements subject to review to those requirements related specifically to outcomes and the delivery of improved services." What elements in the State plan will not be reviewed? Which of these items were reviewed in the prior system?

17) p. 53 Please provide a copy of the self-assessment and the on-site instruments.

18) p. 54 edit We believe that **the proposed review of outcomes is necessary** ~~if we are~~ to achieve the goal of improved service. ~~, reviewing for outcomes in the manner we are proposing is necessary.~~

19) p. 60 edit " 1) assure that delays in evaluation do no **prevent** ~~place~~ the State ~~at risk of not~~ **from** correcting the areas of nonconformity **in a timely manner**?

20) p. 61/62 The lack of requirements for review reports raises concerns. The potential inconsistency among State reports makes it difficult to analyze reviews across States to develop and refine both the review and improvement processes.

21) p. 86 What are the implications of the change in focus for parents' requirements for complying with case plans? Has ACF estimated the effect of this on the number of TPRs?

22) pg.109 Please delete Ideally, all children who are removed from their homes will be reunited with the families, but reunification is not a possibility for some. -this appears contrary to the spirit of ASFA, which said that permanence and safety are paramount, not reunification.

23) p. 148 Why are States required to do a self assessment only once every 3 years? What is the basis for ACFs estimate that a self-assessment will require 240 hours?

RULE:

Section 1355.32

24) 1355.32(a); p. 167 initial reviews.
Why not require all States to do a self-assessment the first year? This could serve as the basis for selecting which States would be subject to initial reviews.

25) 1355.32(c); p. 169
Reinstatement of reviews. What is an inquiry? Does ACF have an estimate of how many of these will be necessary each year? Are these reflected in the burden tables on page 148/149?

Section 1355.33
26) 1355.33(a)(2)(I); p. 171
Why is there joint Federal/State approval for the service areas for on-site reviews?

27) 1355.33(b); p. 171
Who are the external members of the review team? Who is responsible for selecting them?

28) 1355.33(b); p. 171 Self Assessment
How will the accuracy of the States' self-assessments be judged? What sort of monitoring mechanisms are in place for this process?

29) 1355.33(c)(2); p. 173
On-site reviews. Given that many States have county-based systems how meaningful will State reviews be if they are concentrated in several specific political subdivisions within a State?

30) 1355.33(c)(3); p. 173
How will the interviews of children, parents and families be conducted? Will these be confidential? How will the collection of sensitive material be handled? What sort of burden is expected for individuals?

Section 1355.34
31) (Preamble notes sections that don't exist in rule --pg 50 of preamble refers to (a) (1) (iii) -- does not exist in rule) --

32) Is the State plan data (from AFCARS) double-checked by the feds?

33) 1355.34(b); p. 176
Are each of these outcomes equally weighted? Does it make sense to stress the protection from abuse and neglect/safety outcome -- (b)(I) (A) ?

34) 1355.34(b)(iii); p. 177
░Children have educational achievements appropriate to their abilities.░ Is this within the scope of the responsibilities of the child welfare systems? How would reviewers be in a position to determine this? The rule states that ASFA states ░unequivocally that our national goals for children in the child welfare system are safety, permanency, and well-being.░ ASFA <u>never mentions</u> well-being as an outcome goal, although the bill reauthorizes family preservation.

35) 1355.34(b)(2); p. 177.
A state's level of achievement with regard to each outcome reflects the extent to which a State has implemented the following CFSP requirements or assurances. Is this how ACF is translating the outcomes in (b)(1) into a working review? Does this mean that the State just has to make the assurance, or do they actually look behind it?

36) How will the reviewer determine substantial compliance in 95% of the cases? Is there a way to put a percentage within each outcome standard? For example, in (b)(1)(iii) if all the children in a sample are in school, but not necessarily in needed remedial education programs, is this substantial compliance? Or, if 80% of the children have stays of at least 8 months in the same foster care home, but 20% have stays less than 8 months, is this substantial compliance? Is this a qualitative or quantitative evaluation?

37) 1355.34(b) (2); p. 177
Is MEPA compliance a factor looked for to determine compliance? Or is it only addressed in relation to a reported violation? Does it make sense to proactively look for compliance with respect to policies and casework?

38) 1355.34(c); p. 179/p. 57
Should the review elements be made part of the State plan?

39) 1355.34 (c) (2) (iii); p. 181
Section citation at bottom --isn't the permanency hearing in section 475 of ASFA?

40) 1355.34 (4); p.183
Staff training requirements -is this new? Are these requirements in the law?

41) 1355.35(b); p. 190
What is the purpose of the voluntary PIP? It requires ACF involvement, yet ACF approval is not required and there are no consequences if the State fails to achieve the goals of the VPIP. Would ACF resources be better focused on States with mandatory PIPs? If program improvements are in fact needed shouldn't this be more than a voluntary improvement plan? How will voluntary improvement plans be enforced?

42) 1355.35(d); p. 192/p. 58
Please provide a chart of the continuum in the IV-E eligibility and children and family reviews including: time frames for reviews, compliance thresholds, program improvement plan (PIP) process and time frames; penalty process and time frames, and disallowance of funds from date of initial review through calculation.

43) 1355.35(d) p. 192/p. 59
How will the time periods for PIPs be determined? Why will States be granted up to three years to address problems identified in reviews? (A total of six years for States which are in the last year of

the initial -year cycle). Three years appears to be a considerable amount of time for improvement. Perhaps it would also be advisable to implement a risk-based time frame with maximum or minimum time frames for States with high risk child welfare systems. (Interestingly ACF does put a six month time cap on violations relating to denial to become an adoptive or foster parent on the basis of race, color or national origin (p.203)).

44) 1355.35(d); p. 192/p. 59-60
What are the implications of State consultations on differences in reviews among States? Why is State consultation critical for determining the time frames for evaluating PIPs?

45) 1355.35(e); p. 192/p. 60
What are the procedures for evaluating a PIP? What are the evaluation criteria used?

Section 1355.36

46) 1355.36(a); p. 194/p. 63
Please provide a more complete description of the pool of funds for penalties. Why only 10% of IV-E?

47) 1355.36(b) (2); p. 195
What does this mean --funds will not be withheld ░if the determination of nonconformity was caused by the State's correct use of formal written statements of Federal law or policy provided the State by DHHS░ --is this an appeals provision?

48) 1355.36(b)(4); p. 195/p. 9
"shift focus to program improvement and away from financial penalties." Please provide an analysis of penalties imposed and collected under the current and proposed systems.

49) 1355.36(b)(4); p. 196/p. 65
Please provide a schedule of State penalties based on their level on non-conformity.

50) 1356.71(I); Reg language on p. 246 seems to be inconsistent with the preamble on p. 140 Program improvement plans. The program improvement plan is composed of action steps. Each action step is to have a projected completion date that will not extend beyond 12 months beyond when the PIP is approved? Why should the PIP then be for three years?

Section 1355.37

51) Overall question: why is OCR not more fully involved in the MEPA violation correction process? Why does OCR finish its investigation, hand its file to ACF and step out of the process altogether? Why does OCR not make a recommendation to ACF about whether a violation occurred? Why is OCR not involved in approving a state's corrective plan or in evaluating that corrective plan? Can ACF make these determinations in consultation with OCR? Should we

create a risk assessment to the MEPA corrective action timeframe?

52) 1355.37(c) (1); p.203
Is 6 months too long for correction if there is an egregious violation in state statute or regulation that should immediately be repealed?

53) 1355.37(e); p.205
Is the evaluation of corrective action plans federal or team? If federal, in Washington or in regions?

Section 1356.21

54) 1356.21(b); p. 213 reasonable efforts
How much is this a change from current law? Please provide before/after scenarios.

55) 1356.21(b)(1); p. 213/p. 92 REASONABLE EFFORTS
What are the implications of requiring judicial determinations of reasonable efforts? Will it place additional burdens on State courts? Does the capacity exist? What will be the increased needs for services? What are the implications for the average amount of time children spend in foster care? Has ACF done any outreach with the judicial community?

56) 1356.21(b)(3); p. 215/p. 95
children become ineligible for IV-E if the judicial determination regarding reasonable efforts is not made. Are States eligible for retroactive claims if a judicial determination is made subsequent to 12 months? What does ACF estimate will be the effect of this provision?

57) 1356.21(b)(4) p. 216/p. 96
ACF proposes judicial determinations every 12 months after an initial determination is made. Why not propose 6 months and ask for comments?

58) 1356.21(d); p. 220/p. 102/103
Will reviews become the mechanism for enforcing reasonable efforts/contrary to the welfare provisions? (i.e. if a State finds that 25% of cases reviewed did not have a judicial reasonable efforts determination within 12 months of entering foster care, would ACF use this as a basis to project for the entire State caseload?)

59) 1356.21 (I); p. 226/p. 11 Termination of parental rights
Please provide a time line with examples of when the section 475(5)(E) 15/22 months provision would require TPR. Why are runaway episodes not counted in the 15/22 calculation?

60) 1356.21(I) (2); p. 226
Is there judicial oversight of the state's election not to file for TPR?

61) 1356.21(l)(2)(I); p. 228/p.116 exceptions to 475(5)(E).
Gives States the option not to apply the 15/22 requirement when a child is placed with a relative. Why? Given the large and growing number of children being cared for by relatives, what are the implications of this proposal? What proportion of the foster care caseload does ACF estimate will be affected by this provision?

62) 1356.21(l)(2)(iii); p. 229/p. 117 exceptions to 475(5)(E).
The provision does not apply when services identified in the case plan have not been provided. Has ACF estimated the number of cases that will be exempted from the TPR requirements because services have not been provided?

63) 1356.21(k); p. 229/p. 119
Please provide additional explanation of the 6 month "living with" exception in the case of a child living with a relative.

64) 1356.21(k); p. 230
Is the six month time period for IV-E eligibility unfair (if grandma calls within 6 months, child is eligible for assistance; if call is made 6 months and 1 day, child is ineligible)?

Section 1356.30

65) National versus state criminal records check --should we leave that to the state's discretion; even though ASFA wasn't specific, wasn't the spirit that it should be a national check?

66) 1356.30(e); p. 237/p. 130 criminal background checks.
Does ACF estimate that a significant number of children will be ineligible for federal maintenance payments because a criminal background check has not been completed? Will payments be made retroactively once background checks are completed?

SAMPLING QUESTIONS:

67) p. 31 Selection of sample. "small discovery sample" of cases selected randomly and stratified by type of cases, based on the findings of the self assessment. Please provide examples of how the self assessment will guide sample selection. How will cases be selected randomly from among the wide range of services offered (cps, out-of-home, in-home, etc.)? How will this be generalizable to the State as a whole?

Section 1355.33

68) 1355.33(c)(4); p. 174/p. 48
are the sample sizes discussed based on each geographic area reviewed or are they for the entire State? Please provide information on the number of cases that would be subject to on-site reviews on a State-by-State basis.

Section 1356.71

69) 1356.71(c); p. 238/p. 134

Sampling guidance and conduct of the review. ACF is proposing a three year transition period for case error threshold rates to revert to 10%. This would allow States in the third year of the review cycle 6 years to reduce their error rate. Given that these error rates may reflect a State failing to provide adequate services to children, are there ways to reduce the time period for States in the second and third year of initial reviews?

1356.71(c)(2); p.239 Sampling guidance
70) 80 cases appears to be rather low for a representative sample, particularly for large States. How did ACF arrive at this number?

71) 1356.71(c)(4); p.240
Are the error rates too high --15 percent?

End of sampling questions

72) 1356.71(c)(6); p. 241/p. 135
What is the rationale for requiring that <u>both</u> the dollar and the case level error rates exceed 10% in order to extrapolate a disallowance? Under what circumstances would the dollar and the caseload rates vary significantly?

73) 1356.71(e); p. 242/p. 136 Review Instrument.
Please provide a copy of the draft instrument. Should the State plan be modified to reflect the content of the review instrument?

74) 1356.71(I); p. 245/p. 140 Program improvement plans.
ACF states that previous review systems, which allowed for recovery of funds, did not lead to correcting deficiencies identified by reviewers. Why? How much in claims did ACF access annually? How much was collected? How will the new system lead to more successful correction of deficiencies?

75) 1356.71(l); p. 245/p. 140
What are examples of State law changes that would be necessary to bring a State into substantial compliance? Shouldn't State laws be consistent with titles IV-B and IV-E, as most recently amended by the date of publication of this final rule?

Comments to Child Welfare NPRM
Nicole Rabner, DPC/OFL

Note: these are my preliminary comments; more will be forthcoming, particularly tonal edits and comments to the preamble. Also, I did not note similar comments to Oliven/McKernan: length of review process/time frame questions/ educational outcome question/ interest in seeing a chart of time frames, scenarios.

Section 1355.34

(Preamble notes sections that don't exist in rule -- pg 50 of preamble refers to (a) (1) (iii) -- does not exist in rule) --

question: Is the State plan data (from AFCARS) double-checked by the feds?

(b)
question: are each of these outcomes equally weighted; does it make sense to stress the protection from abuse and neglect/safety outcome -- (I) (A) ?

(b) (2)
question: is MEPA compliance a factor looked for to determine compliance? Or is it only addressed in relation to a reported violation? Does it make sense to proactively look for compliance with respect to policies and casework?

(b) (3)
question: why 90 percent compliance in the state's initial review? If we suspect many states may be found out of compliance and therefore need to do a PIP, why not set the bar higher, i.e. 95 percent?

(c) (2) (iii)
question re: section citation at bottom -- isn't the permanency hearing in section 475 of ASFA?

Section 1355.35

Overall question about the amount of time a state has to implement its PIP without another review, particularly if a significant safety violation were found. (Is it enough that the feds can initiate another review at any time (noted in early section)?)

Section 1355.36

(b) (2)
question: what does this mean -- funds will not be withheld "if the determination of nonconformity was caused the correct use of formal written statements of Federal law or policy provided the State by DHHS" -- is this an appeals provision?

Section 1355.37 (MEPA)

Overall question: why is OCR not more fully involved in the MEPA violation correction process? Why does OCR finish its investigation, hand its file to ACF and step out of the process altogether? Why does OCR not make a recommendation to ACF about whether a violation occurred? Why is OCR not involved in approving a state's corrective plan or in evaluating that corrective plan? Can ACF make these determinations in consultation with OCR?

(c) (1)
Is 6 months too long for correction if there is an egregious violation in state statute or regulation that should immediately be repealed?

(c) (5)
Doesn't this provide an incentive for states to overestimate the amount of time required to complete its corrective action plan?

(e)
Is the evaluation of corrective action plans federal or regional ACF staff?

Section 1356.21

(b) reasonable efforts

question: how much is this a change from current law? Please provide before/after scenarios.

Meg: Just noticed - I'm missing page 216, could you please fax to 456-9412? Thanks.

(I) (2)
Is there judicial oversight of the state's election not to file for TPR?

(k)
Is the six month time period for IV-E eligibility unfair (if grandma calls within 6 months, child is eligible for assistance; if call is made 6 months and 1 day, child is ineligible)?

Section 1356.30

National versus state criminal records check -- should we leave that to the state's discretion; even though ASFA wasn't specific, wasn't the spirit that it should be a national check?

Section 1356.71

Are the error rates too high -- 15 percent?

Further preamble tonal comments to follow; below are some:

pg. 35
States that ASFA states "unequivocally that our national goals for children in the child welfare system are safety, permanency, and well-being." ASFA never mentions well-being as an outcome goal, although the bill reauthorizes family preservation.

pg. 109
strike sentence "Ideally, all children who are removed from their homes will be reunited with the families, but reunification is not a possibility for some." -- this flies in the face of the spirit of ASFA, which said that permanence and safety are paramount, not reunification.

Children are first
and foremost protected
from abuse and
neglect, and they
are safely maintained
in their homes
whenever possible

① worry that no state wd ever exact a penalty / length of process (p. 30, etc)

ASCR not'l
p 35 – goals → safety, perm, well-being – not in the law – could say "underscores"

CFSP? p 50 – data from state self assessment double-cked by feds through AFCARS

~~p 52 3rd sentence on toward~~

p 52 – substantially achieved – cases ok 90% in initial review; 95 in subseq. Why 90%?

p 64 what p 2 –
195(2) no withholding if determ of noncomf is caused by State's correct use of formal DHHS statements – what does that mean? misreading?

65 "equal weight" given to each of 7 core outcome – why? If all have to be met, why call them equal?

P 201(2) 203(2) 205(e) inclusive? p 70 MEPA – After OCR completes its review – ACF for determ – does OCR give an opinion – why aren't they part of the determ? Also, why don't they weigh in re: corrective action.