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INFORMATION MEMORANDUM

To: State, Tribal and Territorial Agencies Administering or Supervising the Administration of Title IV-B and Title IV-E of the Social Security Act, Indian Tribes and Indian Tribal Organizations

Subject: New Legislation—The Deficit Reduction Act of 2005

References: Title VII of the Deficit Reduction Act of 2005; Titles IV-B and IV-E of the Social Security Act; 70 FR 4803; ACYF-CB-PI-02-08 superseded; ACYF-CB-IM-04-03.

Purpose: The purpose of this Information Memorandum is to inform States and Indian Tribes of the enactment of the Deficit Reduction Act of 2005, provide basic information about the child welfare provisions in the law and discuss its implications for States and Indian Tribes.

Information: The President signed the Deficit Reduction Act of 2005, Public Law 109-171 into law on February 8, 2006. The law amends many programs under the Social Security Act (the Act), including title IV-B subparts 1 and 2, the Court Improvement Program in subpart 2 and the title IV-E Foster Care Maintenance Payments and Adoption Assistance Programs. Please refer to the attached excerpt of law for the amendments. A summary of the amendments to titles IV-B and IV-E follows:

Court Improvement. The law authorizes and appropriates funds for two new grants under the Court Improvement Program in title IV-B, section 438 of the Act.¹ The highest State court in a State with an approved title IV-E plan is eligible to apply for either or both of the new grants for each grant purpose. The new grants are for the purposes of:

¹ The original court improvement grants are authorized through Fiscal Year 2006 (see sections 436(b)(2) and 437(b)(2) of the Act) and have not been reauthorized by this legislation.

- Ensuring that the needs of children are met in a timely and complete manner through improved case tracking and analysis of child welfare cases, and
- Training judges, attorneys and other legal personnel in child welfare cases and conducting cross-training with child welfare agency staff and contractors.

The new grants are authorized for \$10 million each and funded for Federal Fiscal Years 2006 through 2010. State allocations include \$85,000 for each State, plus a share of the remaining appropriation based on the State's population of persons under age 21.

Collaboration with courts. The law adds a title IV-B plan requirement to section 422 of the Act for the State or Tribe to demonstrate substantial, ongoing and meaningful collaboration with State courts in the development and implementation of its title IV-B and title IV-E plan, child and family services review and other program improvement plans required by section 1123A of the Act (section 422(b)(15) of the Act).

Public Access to Court Proceedings. The law adds section 471(c) to title IV-E of the Act to provide States with the flexibility to allow public access to court proceedings that determine child abuse or neglect and other court hearings held pursuant to titles IV-B and title IV-E, except that the State shall, at a minimum, ensure the safety and well-being of the child, parents and family in developing "open court" policies.

Promoting Safe and Stable Families (PSSF). The law authorizes (but does not separately appropriate) \$345 million in mandatory funds for the PSSF program under title IV-B, subpart 2 of the Act for Fiscal Year (FY) 2006, which is an increase in the authorization by \$40 million (section 436 of the Act).

Administrative costs for children in unallowable facilities and relative homes. The law adds section 472(i) to title IV-E of the Act to allow a State to claim Federal Financial Participation (FFP) for allowable administrative expenses for a child otherwise eligible for title IV-E in limited circumstances. The law allows the State to claim FFP for administrative costs:

- For the lesser of 12 months or the average length of time it takes the State to license or approve the home when an otherwise title IV-E eligible child is placed in the home of a relative with an application pending for a foster family home license or approval, or
- For one calendar month for an otherwise title IV-E eligible child transitioning from an unlicensed or unapproved facility to a licensed or approved foster family home or child care institution.

Administrative costs for title IV-E foster care candidates. New section 472(i) also permits a State to claim Federal reimbursement for allowable administrative costs for a potentially title IV-E eligible child who is at imminent risk of removal from the home if:

- Reasonable efforts are being made to prevent the removal of the child from the home or, if necessary, to pursue the removal, and
- The State agency has made, at least every six months, a determination or redetermination that the child remains at imminent risk of removal from the home.

Clarification of Foster Care Maintenance Payments Eligibility Criteria. The law revises section 472(a) of the Act to clarify that for title IV-E foster care eligibility a child must be eligible for Aid to Families with Dependent Children (AFDC) in the specified relative's home from which he or she is removed. The amendment to the Act corresponds with the Department of Health and Human Services' long-standing interpretation that in order to be eligible under title IV-E, a child must be eligible for AFDC (as it was in effect in the State on July 16, 1996) in the specified relative's home from which the child is removed. If the child is not eligible in the specified relative's home from which the child is removed, the child will be ineligible for title IV-E for the duration of the child's foster care episode.

Adoption Assistance Eligibility Criteria. The law revises section 473(a)(2) of the Act to clarify that for title IV-E adoption assistance eligibility, a child must meet the AFDC criteria in the specified relative's home from which he or she is removed.² Further, the law simplifies an aspect of adoption assistance eligibility by requiring that a child meet the AFDC eligibility criteria (as they existed in the State's title IV-A plan on July 16, 1996) at the time of the child's removal from a specified relative only. A State is no longer required to determine the child's AFDC eligibility at the time of the initiation of adoption proceedings.

Implications for States of the title IV-B and IV-E amendments:

Court Improvement. Instructions regarding the new court improvement grants will be provided under a separate program instruction.

Effect on States operating under the Rosales v. Thompson decision. The law, as amended, governs all States including those in the Ninth Circuit. All title IV-B/IV-E State agencies must now determine a child's AFDC eligibility based on the specified relative's home from which the child was removed and not based on the criteria stated in the *Rosales v. Thompson* decision. Further, the law confirms

² The law makes no substantive changes for children eligible under the non-AFDC eligibility criteria for the adoption assistance program (i.e., for a child with special needs who is either eligible for Supplemental Security Income, a child of a minor parent receiving title IV-E foster care maintenance payments, or has received title IV-E adoption assistance previously (see sections 473(a)(2)(A)(i)(II), 473(a)(2)(A)(i)(III) and 473(a)(2)(C) of the Act)).

that the children who were determined eligible only because of the *Rosales* decision are not eligible for title IV-E foster care maintenance payments.

For children in the Ninth Circuit who were determined eligible only because of the *Rosales* decision on or prior to February 8, 2006, we will permit eligibility for title IV-E foster care maintenance payments to continue through the month when the child's next annual redetermination of eligibility is due.³ After the month of redetermination, States will no longer be eligible to receive title IV-E foster care maintenance payments on behalf of children determined eligible only because of the *Rosales* decision, in accordance with section 472(a) of the Act as amended.

States need not alter their redetermination schedule. However, if redeterminations are not held timely (i.e., at least every 12 months) for children determined eligible pursuant to *Rosales*, the child will not be eligible for title IV-E foster care maintenance payments from the month subsequent to the month when the last redetermination was due.

A child cannot be newly eligible for title IV-E foster care maintenance payments pursuant to the *Rosales* decision after February 8, 2006.⁴

Effect on title IV-E administrative cost claims for candidates for foster care and children placed in unlicensed relative foster family homes. The law supersedes ACYF-CB-PI-02-08, which permitted States to claim FFP for the administrative costs associated with an otherwise title IV-E eligible child placed in an unlicensed foster family home.

For a child placed with an unlicensed or unapproved relative caregiver after February 8, 2006, the State can claim allowable administrative costs for a child placed with an unlicensed or unapproved relative only if all criteria in section 472(i) of the Act are met.⁵

Effect on simplified title IV-E adoption assistance eligibility. A child whose adoption was finalized on or after October 1, 2005, and who meets the criteria in section 473(a)(2)(A) of the Act as amended, is eligible for title IV-E adoption assistance.

The Regional Office staff will work with the States to ensure that title IV-E State plans and cost allocations plans are amended accordingly.

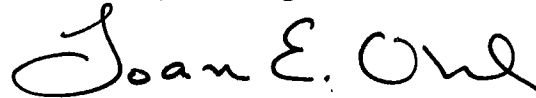
³ See Child Welfare Policy Manual Section 8.3A.10 QA#2 regarding redeterminations of a child's eligibility for AFDC.

⁴ A child must meet the AFDC criteria pursuant to *Rosales* on or prior to February 8, 2006, but other eligibility factors (e.g., judicial determinations regarding reasonable efforts and placement in an approved or licensed foster family home or child care institution) may be met at a later date consistent with section 472(a) of the Act and 45 CFR 1355.20 and 1356.21.

⁵ Allowable costs are defined in statute at section 474 of the Act and 45 CFR 1356.60(c).

INQUIRIES TO:

Regional Administrators, ACF Regions I-X

A handwritten signature in black ink that reads "Joan E. Ohl". The signature is written in a cursive style with a large initial 'J' and 'O'.

Joan E. Ohl
Commissioner
Administration on Children, Youth and Families

Attachment – Relevant excerpts from Public Law 109-171, The Deficit Reduction Act of 2005

family the portion of the amount so collected that remains after withholding any fee pursuant to section 434(6)(B)(ii)."

42 USC 654 note.

(C) EFFECTIVE DATE.—The amendments made by this section shall take effect on October 1, 2006.

42 USC 654 note.

SEC. 7311. EXCEPTION TO GENERAL EFFECTIVE DATE FOR STATE PLANS REQUIRING STATE LAW AMENDMENTS.

In the case of a State plan under part D of title IV of the Social Security Act which the Secretary determines requires State legislation in order for the plan to meet the additional requirements imposed by the amendments made by this subtitle, the effective date of the amendments imposing the additional requirements shall be 3 months after 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 the enactment of this Act. For purposes of the preceding sentence, in the case of a State that has a 2-year legislative session, each year of the session shall be considered to be a separate regular session of the State legislature.

Subtitle D—Child Welfare

SEC. 7401. STRENGTHENING COURTS.

(a) COURT IMPROVEMENT GRANTS.—

(1) IN GENERAL.—Section 438(a) (42 U.S.C. 629h(a)) is amended—

(A) by striking “and” at the end of paragraph (1);

(B) by striking the period at the end of paragraph

(2) and inserting a semicolon; and

(C) by adding at the end the following:

“(3) to ensure that the safety, permanence, and well-being needs of children are met in a timely and complete manner; and

“(4) to provide for the training of judges, attorneys and other legal personnel in child welfare cases.”.

(2) APPLICATIONS.—Section 438(b) (42 U.S.C. 629h(b)) is amended to read as follows:

“(b) APPLICATIONS.—

“(1) IN GENERAL.—In order to be eligible to receive a grant under this section, a highest State court shall submit to the Secretary an application at such time, in such form, and including such information and assurances as the Secretary may require, including—

“(A) in the case of a grant for the purpose described in subsection (a)(3), a description of how courts and child welfare agencies on the local and State levels will collaborate and jointly plan for the collection and sharing of all relevant data and information to demonstrate how improved case tracking and analysis of child abuse and neglect cases will produce safe and timely permanency decisions;

“(B) in the case of a grant for the purpose described in subsection (a)(4), a demonstration that a portion of the grant will be used for cross-training initiatives that are jointly planned and executed with the State agency or

any other agency under contract with the State to administer the State program under the State plan under subpart 1, the State plan approved under section 434, or the State plan approved under part E; and

“(C) in the case of a grant for any purpose described in subsection (a), a demonstration of meaningful and ongoing collaboration among the courts in the State, the State agency or any other agency under contract with the State who is responsible for administering the State program under part B or E, and, where applicable, Indian tribes.

“(2) SEPARATE APPLICATIONS.—A highest State court desiring grants under this section for 2 or more purposes shall submit separate applications for the following grants: Grants.

“(A) A grant for the purposes described in paragraphs (1) and (2) of subsection (a).

“(B) A grant for the purpose described in subsection (a)(3).

“(C) A grant for the purpose described in subsection (a)(4).”

(3) ALLOTMENTS.—Section 438(c) (42 U.S.C. 429h(c)) is amended— 42 USC 629h.

(A) in paragraph (1)—

(i) by inserting “of this section for a grant described in subsection (b)(2)(A) of this section” after “subsection (b)”; and

(ii) by striking “paragraph (2) of this subsection” and inserting “subparagraph (B) of this paragraph”; (B) in paragraph (2)—

(i) by striking “this paragraph” and inserting “this subparagraph”;

(ii) by striking “paragraph (1) of this subsection” and inserting “subparagraph (A) of this paragraph”; and

(iii) by inserting “for such a grant” after “subsection (b)”; (C) by redesignating and indenting paragraphs (1) and

(2) as subparagraphs (A) and (B), respectively;

(D) by inserting before and above such subparagraph

(A) the following:

“(1) GRANTS TO ASSESS AND IMPROVE HANDLING OF COURT PROCEEDINGS RELATING TO FOSTER CARE AND ADOPTION.—”; and

(E) by adding at the end the following:

“(2) GRANTS FOR IMPROVED DATA COLLECTION AND TRAINING.—

“(A) IN GENERAL.—Each highest State court which has an application approved under subsection (b) of this section for a grant referred to in subparagraph (B) or (C) of subsection (b)(2) shall be entitled to payment, for each of fiscal years 2006 through 2010, from the amount made available under whichever of paragraph (1) or (2) of subsection (e) applies with respect to the grant, of an amount equal to the sum of \$85,000 plus the amount described in subparagraph (B) of this paragraph for the fiscal year with respect to the grant.

“(B) FORMULA.—The amount described in this subparagraph for any fiscal year with respect to a grant referred

to in subparagraph (B) or (C) of subsection (b)(2) is the amount that bears the same ratio to the amount made available under subsection (e) for such a grant (reduced by the dollar amount specified in subparagraph (A) of this paragraph) as the number of individuals in the State who have not attained 21 years of age bears to the total number of such individuals in all States the highest State courts of which have approved applications under subsection (b) for such a grant.”

(4) FUNDING.—Section 438 (42 U.S.C. 629h) is amended by adding at the end the following:

“(e) FUNDING FOR GRANTS FOR IMPROVED DATA COLLECTION AND TRAINING.—Out of any money in the Treasury of the United States not otherwise appropriated, there are appropriated to the Secretary, for each of fiscal years 2006 through 2010—

“(1) \$10,000,000 for grants referred to in subsection (b)(2)(B); and

“(2) \$10,000,000 for grants referred to in subsection (b)(2)(C).”

(b) REQUIREMENT TO DEMONSTRATE MEANINGFUL COLLABORATION BETWEEN COURTS AND AGENCIES IN CHILD WELFARE SERVICES PROGRAMS.—Section 422(b) (42 U.S.C. 622(b)) is amended—

(1) by striking “and” at the end of paragraph (13);

(2) by striking the period at the end of paragraph (14) and inserting “; and”; and

(3) by adding at the end the following:

“(15) demonstrate substantial, ongoing, and meaningful collaboration with State courts in the development and implementation of the State plan under subpart 1, the State plan approved under subpart 2, and the State plan approved under part E, and in the development and implementation of any program improvement plan required under section 1123A.”

(c) USE OF CHILD WELFARE RECORDS IN STATE COURT PROCEEDINGS.—Section 471 (42 U.S.C. 671) is amended—

(1) in subsection (a)(8), by inserting “subject to subsection (c),” after “(8)”; and

(2) by adding at the end the following:

“(c) USE OF CHILD WELFARE RECORDS IN STATE COURT PROCEEDINGS.—Subsection (a)(8) shall not be construed to limit the flexibility of a State in determining State policies relating to public access to court proceedings to determine child abuse and neglect or other court hearings held pursuant to part B or this part, except that such policies shall, at a minimum, ensure the safety and well-being of the child, parents, and family.”

SEC. 7402. FUNDING OF SAFE AND STABLE FAMILIES PROGRAMS.

Section 436(a) (42 U.S.C. 629f(a)) is amended to read as follows:

“(a) AUTHORIZATION.—In addition to any amount otherwise made available to carry out this subpart, there are authorized to be appropriated to carry out this subpart \$345,000,000 for fiscal year 2006. Notwithstanding the preceding sentence, the total amount authorized to be so appropriated for fiscal year 2006 under this subsection and under this subsection (as in effect before the date of the enactment of the Deficit Reduction Act of 2005) is \$345,000,000.”

SEC. 7403. CLARIFICATION REGARDING FEDERAL MATCHING OF CERTAIN ADMINISTRATIVE COSTS UNDER THE FOSTER CARE MAINTENANCE PAYMENTS PROGRAM.

(a) ADMINISTRATIVE COSTS RELATING TO UNLICENSED CARE.—Section 472 (42 U.S.C. 672) is amended by inserting after subsection (h) the following:

“(i) ADMINISTRATIVE COSTS ASSOCIATED WITH OTHERWISE ELIGIBLE CHILDREN NOT IN LICENSED FOSTER CARE SETTINGS.—Expenditures by a State that would be considered administrative expenditures for purposes of section 474(a)(3) if made with respect to a child who was residing in a foster family home or child-care institution shall be so considered with respect to a child not residing in such a home or institution—

“(1) in the case of a child who has been removed in accordance with subsection (a) of this section from the home of a relative specified in section 406(a) (as in effect on July 16, 1996), only for expenditures—

“(A) with respect to a period of not more than the lesser of 12 months or the average length of time it takes for the State to license or approve a home as a foster home, in which the child is in the home of a relative and an application is pending for licensing or approval of the home as a foster family home; or

“(B) with respect to a period of not more than 1 calendar month when a child moves from a facility not eligible for payments under this part into a foster family home or child care institution licensed or approved by the State; and

“(2) in the case of any other child who is potentially eligible for benefits under a State plan approved under this part and at imminent risk of removal from the home, only if—

“(A) reasonable efforts are being made in accordance with section 471(a)(15) to prevent the need for, or if necessary to pursue, removal of the child from the home; and

“(B) the State agency has made, not less often than every 6 months, a determination (or redetermination) as to whether the child remains at imminent risk of removal from the home.”

(b) CONFORMING AMENDMENT.—Section 474(a)(3) (42 U.S.C. 674(a)(3)) is amended by inserting “subject to section 472(i)” before “an amount equal to”.

SEC. 7404. CLARIFICATION OF ELIGIBILITY FOR FOSTER CARE MAINTENANCE PAYMENTS AND ADOPTION ASSISTANCE.

(a) FOSTER CARE MAINTENANCE PAYMENTS.—Section 472(a) (42 U.S.C. 672(a)) is amended to read as follows:

“(a) IN GENERAL.—

“(1) ELIGIBILITY.—Each State with a plan approved under this part shall make foster care maintenance payments on behalf of each child who has been removed from the home of a relative specified in section 406(a) (as in effect on July 16, 1996) into foster care if—

“(A) the removal and foster care placement met, and the placement continues to meet, the requirements of paragraph (2); and

“(B) the child, while in the home, would have met the AFDC eligibility requirement of paragraph (3).

“(2) REMOVAL AND FOSTER CARE PLACEMENT REQUIREMENTS.—The removal and foster care placement of a child meet the requirements of this paragraph if—

“(A) the removal and foster care placement are in accordance with—

“(i) a voluntary placement agreement entered into by a parent or legal guardian of the child who is the relative referred to in paragraph (1); or

“(ii) a judicial determination to the effect that continuation in the home from which removed would be contrary to the welfare of the child and that reasonable efforts of the type described in section 471(a)(15) for a child have been made;

“(B) the child’s placement and care are the responsibility of—

“(i) the State agency administering the State plan approved under section 471; or

“(ii) any other public agency with which the State agency administering or supervising the administration of the State plan has made an agreement which is in effect; and

“(C) the child has been placed in a foster family home or child-care institution.

“(3) AFDC ELIGIBILITY REQUIREMENT.—

“(A) IN GENERAL.—A child in the home referred to in paragraph (1) would have met the AFDC eligibility requirement of this paragraph if the child—

“(i) would have received aid under the State plan approved under section 402 (as in effect on July 16, 1996) in the home, in or for the month in which the agreement was entered into or court proceedings leading to the determination referred to in paragraph (2)(A)(ii) of this subsection were initiated; or

“(ii)(I) would have received the aid in the home, in or for the month referred to in clause (i), if application had been made therefor; or

“(II) had been living in the home within 6 months before the month in which the agreement was entered into or the proceedings were initiated, and would have received the aid in or for such month, if, in such month, the child had been living in the home with the relative referred to in paragraph (1) and application for the aid had been made.

“(B) RESOURCES DETERMINATION.—For purposes of subparagraph (A), in determining whether a child would have received aid under a State plan approved under section 402 (as in effect on July 16, 1996), a child whose resources (determined pursuant to section 402(a)(7)(B), as so in effect) have a combined value of not more than \$10,000 shall be considered a child whose resources have a combined value of not more than \$1,000 (or such lower amount as the State may determine for purposes of section 402(a)(7)(B)).

“(4) ELIGIBILITY OF CERTAIN ALIEN CHILDREN.—Subject to title IV of the Personal Responsibility and Work Opportunity

Reconciliation Act of 1996, if the child is an alien disqualified under section 245A(h) or 210(f) of the Immigration and Nationality Act from receiving aid under the State plan approved under section 402 in or for the month in which the agreement described in paragraph (2)(A)(i) was entered into or court proceedings leading to the determination described in paragraph (2)(A)(ii) were initiated, the child shall be considered to satisfy the requirements of paragraph (3), with respect to the month, if the child would have satisfied the requirements but for the disqualification.”

(b) ADOPTION ASSISTANCE.—Section 473(a)(2) (42 U.S.C. 673(a)(2)) is amended to read as follows:

“(2)(A) For purposes of paragraph (1)(B)(ii), a child meets the requirements of this paragraph if the child—

“(i)(I)(aa) was removed from the home of a relative specified in section 406(a) (as in effect on July 16, 1996) and placed in foster care in accordance with a voluntary placement agreement with respect to which Federal payments are provided under section 474 (or section 403, as such section was in effect on July 16, 1996), or in accordance with a judicial determination to the effect that continuation in the home would be contrary to the welfare of the child; and

“(bb) met the requirements of section 472(a)(3) with respect to the home referred to in item (aa) of this subclause;

“(II) meets all of the requirements of title XVI with respect to eligibility for supplemental security income benefits; or

“(III) is a child whose costs in a foster family home or child-care institution are covered by the foster care maintenance payments being made with respect to the minor parent of the child as provided in section 475(4)(B); and

“(ii) has been determined by the State, pursuant to subsection (c) of this section, to be a child with special needs.

“(B) Section 472(a)(4) shall apply for purposes of subparagraph (A) of this paragraph, in any case in which the child is an alien described in such section.

Applicability.

“(C) A child shall be treated as meeting the requirements of this paragraph for the purpose of paragraph (1)(B)(ii) if the child—

“(i) meets the requirements of subparagraph (A)(ii);

“(ii) was determined eligible for adoption assistance payments under this part with respect to a prior adoption;

“(iii) is available for adoption because—

“(I) the prior adoption has been dissolved, and the parental rights of the adoptive parents have been terminated; or

“(II) the child’s adoptive parents have died; and

“(iv) fails to meet the requirements of subparagraph (A) but would meet such requirements if—

“(I) 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

“(II) the prior adoption were treated as never having occurred.”