Memorandum

Date MAR 16 1994

From June Gibbs Brown
Inspector General

Subject Audit of Title IV-E Foster Care Eligibility in California for the Period October 1, 1988 through September 30, 1991 (A-09-92-00086)

To Mary Jo Bane
Assistant Secretary for
Children and Families

The purpose of the memorandum is to alert you to the issuance on March 18, 1994, of our final report entitled "Audit of Title IV-E Foster Care Eligibility in California for the Period October 1, 1988 through September 30, 1991," (A-09-92-00086). A copy is attached.

This report identifies several areas in which the California Department of Social Services (DSS) could make improvements to ensure that Federal eligibility requirements are met for foster care cases claimed for Federal financial participation (FFP). Our statewide review of a statistical sample of 805 cases resulted in the identification of 313 cases for which eligibility for FFP was not supported for all or part of maintenance payments made on behalf of the children.

The major issues identified for the 313 cases were as follows:

- The child's removal from the home was not supported by a judicial determination that continuance in the home was contrary to the welfare of the child, and/or that reasonable efforts were made to prevent or eliminate the need for the removal.

- The child's placement and care were no longer the legal responsibility of DSS.

- The child was no longer considered to be a "dependent child," as defined under sections 406(a) and 407 of the Social Security Act.

- There was inadequate information to establish that the child met eligibility requirements for public assistance available under the Aid to Families with Dependent Children (AFDC) program in the month of the petition to the court to remove the child from his or her home.

- The child was residing in either a foster care home that had not been licensed or approved by the State, or residing in a for-profit child care institution which would not be eligible for FFP.

- The placement of the child in foster care via a court order did not involve the physical removal of the child from the home of a specified relative.

We noted that strengthened procedures were needed to improve the flow of information to eligibility workers to ensure that decisions reflect requirements of Federal and State laws and regulations. Procedures for documenting and supporting such decisions could, in some situations, be improved to help in the decision-making process and provide better management over eligibility determinations.

To help ensure that foster care cases claimed for FFP are properly supported and meet Federal eligibility requirements, procedures involving the licensing of foster homes, and for strengthened quality control also need to be modified. Based on the sample results, we estimated that at least $51.7 million in Federal funds was claimed by the State for such cases over the 3-year period covered by our audit. However, the recently enacted Omnibus Budget Reconciliation Act of 1993, section 13716, provides that the Secretary of the Department of Health and Human Services shall not, before October 1, 1994, seek repayment of Federal funds claimed under title IV-E of the Act based on any audit conducted by the Office of Inspector General. Accordingly, no recommendation for a monetary recovery is being made in this report.

And finally, we are pointing out an ongoing problem area involving a difference in interpretation of program requirements between Federal and State program officials that should be resolved in order to improve the operation of the program in California. This issue relates to whether a child must actually be physically removed from his or her home, at the time of the foster care court order, in order for the case to be considered federally eligible for FFP.

In response to the draft audit report, DSS agreed to some of the findings identified in the report. However, DSS did not concur with our findings regarding court order determinations, eligibility for AFDC and physical removal of the child from the home. The DSS also did not concur with our statistical sampling methodology or our inclusion of the projected error amount in the report. The validity of our sample has been attested to by an outside expert; see page 12. Our response to all DSS comments appear throughout the body of the report.

If you have any questions, please call me or have your staff contact John A. Ferris, Assistant Inspector General for Administrations of Children, Family, and Aging Audits, at (202) 619-1175.

Attachment

Department of Health and Human Services

OFFICE OF INSPECTOR GENERAL

OFFICE OF AUDIT SERVICES REGION IX

AUDIT OF TITLE IV-E FOSTER CARE ELIGIBILITY IN CALIFORNIA FOR THE PERIOD OCTOBER 1, 1988 THROUGH SEPTEMBER 30, 1991

A-09-92-00086

DEPARTMENT OF HEALTH & HUMAN SERVICES

Office of Inspector General

Region IX
Office of Audit Services
50 United Nations Plaza
San Francisco, CA 94102

CIN: A-09-92-00086

Eloise Anderson, Director
California Department of Social Services
744 P Street, Mail Station 1711
Sacramento, CA 95814

Dear Ms. Anderson:

Enclosed are two copies of the U.S. Department of Health and Human Services (HHS), Office of Inspector General (OIG), Office of Audit Services (OAS) report entitled "Audit of Title IV-E Foster Care Eligibility in California for the Period October 1, 1988 through September 30, 1991." A copy of this report will be forwarded to the action official noted below for her review and any action deemed necessary.

Final determination as to actions taken on all matters reported will be made by the HHS action official named below. We request that you respond to the HHS action official within 30 days from the date of this letter. Your response should present any comments or additional information that you believe may have a bearing on the final determination.

In accordance with the principles of the Freedom of Information Act (Public Law 90-23), OIG, OAS reports issued to the Department's grantees and contractors are made available, if requested, to members of the press and general public to the extent information contained therein is not subject to exemptions in the Act which the Department chooses to exercise. (See 45 CFR Part 5.)

To facilitate identification, please refer to Common Identification Number A-09-92-00086 in all correspondence relating to this report.

Sincerely,

Lawrence Frelot
Regional Inspector General
for Audit Services

Enclosures - as stated

Direct Reply to HHS Action Official:

Sharon M. Fujii, Regional Administrator
Administration for Children and Families
50 United Nations Plaza, Room 351
San Francisco, CA 94102

SUMMARY

This report provides the results of our audit of the Foster Care program in California which covered maintenance payments claimed for Federal financial participation (FFP) for the period October 1, 1988 through September 30, 1991. The program is operated and funded under the provisions of title IV-E of the Social Security Act (the Act), and in California it is administered by the Department of Social Services (DSS). Our audit identified several areas in which DSS could make improvements to ensure that Federal eligibility requirements are met for foster care cases claimed for FFP. Our statewide review of a statistical sample of 805 cases resulted in the identification of 313 cases for which eligibility for FFP was not supported for all or part of maintenance payments made on behalf of the children.

The major issues identified for the 313 cases were as follows:

- The child's removal from the home was not supported by a judicial determination that continuance in the home was contrary to the welfare of the child, and/or that reasonable efforts were made to prevent or eliminate the need for the removal.

- The child's placement and care were no longer the legal responsibility of DSS.

- The child was no longer considered to be a "dependent child," defined under sections 406(a) and 407 of the Act as being a needy child that is (i) deprived of parental support for various specific reasons, and (ii) under age 18, except, at the State's option, the child may be 18 years of age if enrolled as a full-time student in a secondary school.

- There was inadequate information to establish that the child met eligibility requirements for public assistance available under the Aid to Families with Dependent Children (AFDC) program in the month of the petition to the court to remove the child from his or her home.

- The child was residing in either a foster care home that had not been licensed or approved by the State, or residing in a for-profit child care institution which would not be eligible under Federal criteria allowing FFP only for nonprofit institutions.

- The placement of the child in foster care via a court order did not involve the physical removal of the child from the home of a specified relative, i.e., the child was already living in the home in which he or she was legally placed by the court order.

We noted that strengthened procedures were needed to improve the flow of information to eligibility workers to ensure that decisions reflect requirements of Federal and State laws and regulations. Also, we found that procedures for documenting and supporting

such decisions could, in some situations, be improved to help in the decision-making process and provide better management over eligibility determinations.

There was also a need to modify existing procedures in certain circumstances involving the licensing of foster homes of persons who are related to the foster children. Further, we believe that strengthened quality control procedures would be of assistance to the State in ensuring that foster care cases claimed for FFP are properly supported and meet Federal eligibility requirements. And finally, we are pointing out an ongoing problem area involving a difference in interpretation of program requirements between Federal and State program officials that should be resolved in order to improve the operation of the program in California. This issue relates to whether a child must actually be physically removed from his or her home, at the time of the foster care court order, in order for the case to be considered federally eligible for FFP.

Based on the sample results, we estimated that at least $51.7 million in Federal funds was claimed by the State for such cases over the 3-year period covered by our audit. However, the recently enacted Omnibus Budget Reconciliation Act of 1993, section 13716, provides that the Secretary of the Department of Health and Human Services (HHS) shall not, before October 1, 1994, seek repayment of Federal funds claimed under title IV-E of the Act based on any audit conducted by the Office of Inspector General (OIG). Accordingly, no recommendation for a monetary recovery is being made in this report. However, the significance of the number and types of deficiencies, and related dollars, noted in the audit shows a need for strengthening controls over the program. In particular, the high incidence of noncompliance with the judicial requirements mandated by Federal legislation requires corrective action. Without the effective implementation of this requirement, controls over the inappropriate removal of children from their homes are weakened.

In response to the draft audit report, DSS generally concurred with our procedural recommendations. However, DSS did not concur with our statistical sampling methodology or our inclusion of the projected error amount in the report. The DSS also did not concur with all of our findings, specifically issues regarding court order determinations, eligibility for AFDC and physical removal of the child from the home.

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INTRODUCTION

This report presents the results of our audit of the Foster Care program in California which is operated and funded under the provisions of title IV-E of the Social Security Act (the Act). The California Department of Social Services (DSS) is the State agency responsible for overall administration of the program and for providing supervision over the 58 county social services agencies which directly administer the Foster Care program at the local level. The objectives of our audit were to evaluate the State's administration of the program in ensuring that Federal funds claimed for Federal financial participation (FFP) for foster care maintenance payments were made on behalf of children who met eligibility requirements stipulated by Federal laws and regulations. Our audit included maintenance payments claimed for the period October 1, 1988 through September 30, 1991.

BACKGROUND

The Adoption Assistance and Child Welfare Act of 1980, Public Law 96-272, created title IV-E of the Act which provides States with Federal financial assistance for administering Foster Care programs. The requirements for receiving this assistance are contained in the Act itself, the Code of Federal Regulations (CFR) and policy issuances by the Administration for Children and Families (ACF), formerly the Office of Human Development Services. In addition, the State plan for title IV-E of the Act and related State laws, regulations and other directives provide further provisions for administering the Foster Care program.

Social Security Act

Under title IV-E, for a State to be eligible for Federal assistance it is required to have a State plan for the administration of the Foster Care program approved by the Secretary of the Department of Health and Human Services (HHS). The plan must include a provision that foster care maintenance payments will be made in accordance with section 472 of the Act. Under section 472, Federal assistance is made available if:

1. The child meets the definition of a dependent child as described under section 406(a) or section 407 of the Act in which such child must be needy and (i) deprived of parental support, and (ii) under age 18, except, at the State's option, the child may be 18 years of age if enrolled as a full-time student in a secondary school (section 472(a)),

2. The removal of the child from his/her home was either (i) pursuant to a voluntary placement agreement entered into by the child's parent or legal guardian, or (ii) the result of a judicial determination that continuance in the home was contrary to the welfare of the child, and that reasonable efforts had been made to

prevent or eliminate the need for removal of the child from the home (sections 472(a)(1) and 471(a)(15)),

3. The child's placement and care are the responsibility of the State agency administering the title IV-E Foster Care program, or any public agency supervised by the State agency (section 472(a)(2)),

4. The child is placed into a facility that has been licensed or approved by the State agency as either a (i) foster family home of an individual, (ii) nonprofit private child care institution, or (iii) public child care institution which accommodates no more than 25 children (sections 472(a)(3) and 472(c)), and

5. In the month when the voluntary placement agreement was signed or court proceedings were initiated to remove the child, the child either (i) received aid under the Aid to Families with Dependent Children (AFDC) program, or (ii) would have been eligible to receive aid under the AFDC program if an application had been made for assistance (section 472(a)(4)).

Code of Federal Regulations

The requirements legislated in title IV-E of the Act are further defined under parts 1355 and 1356 of Title 45 of the CFR. These sections provide clarification on items such as the implementation of the Foster Care program and fiscal requirements.

Policy Issuances by ACF

The ACF has issued Policy Interpretation Questions, Policy Announcements and Information Memoranda to provide additional clarification and guidance to the States in administering the Foster Care program. These issuances cover a variety of topics including the requirements for the contents of court orders and interpretations of program requirements.

State Plan

As described above, each State is required to have a plan for the operation of its Foster Care program, approved by the Secretary, in order to receive Federal assistance under title IV-E. Because the Act does not provide specific requirements in all areas of the Foster Care program, such as for determining the rates of payment and the licensing of foster homes, it is the State plan which furnishes the additional provisions for receiving FFP. In California, the State plan requirements are, for the most part, embodied in State law in the Welfare and Institutions Code. They are further defined in the DSS Manual of Policies and Procedures (MPP), which serves as State regulations for the program. In addition, DSS issues All-County Letters and Notices to provide further guidance to the county social services agencies on the Foster Care program requirements.

County Social Services Agency Procedures

Although DSS is the State agency responsible for the title IV-E Foster Care program in California, the day-to-day operations of the program have been delegated to the 58 individual county social services agencies within the State. It is at this level that foster care clients are served on an individual and personal basis which include receiving applications, making eligibility determinations, providing social services, providing case management, and providing oversight functions. In addition, most of the county social services agencies also handle the licensing of foster family homes, whereas other foster care facilities, such as group homes, are licensed by a division of DSS.

Each of the 58 county social services agencies claims the foster care maintenance payments on expenditure reports submitted to DSS on a monthly basis. This report is supported by a payroll ledger which lists the case number, child's name, effective month, amount and type of each payment or transaction claimed on the expenditure report.

Juvenile Court Procedures

In California, the Juvenile Dependency Court of the Superior Court system is involved when children are placed into foster care via a written court order and when certain other legal actions are taken. A petition requesting that the child be made a dependent or ward of the court initiates the court hearings to remove a child from his or her home. The petition is prepared and submitted by the county social services agency. At the hearings, the court makes its findings and prepares written court orders regarding the removal of the child from the home. The physical format of the court orders varies from county to county. However, they are generally preprinted forms with a large number of items which can be "checked off" by the court based on the judges' findings and determinations during the court proceedings. Although the wording on the preprinted court orders is designed to comply with State law, they generally contain language which covers the judicial determinations required to be made under the Act.

SCOPE

Our audit was performed in accordance with generally accepted government auditing standards. The audit objectives were to evaluate the State's administration of the program in ensuring that Federal funds claimed for FFP for foster care maintenance payments were made on behalf of children who met eligibility requirements stipulated by Federal laws and regulations. The audit included foster care maintenance payments claimed for the period October 1, 1988 through September 30, 1991. The DSS claimed approximately $983 million in foster care maintenance payments (Federal share of $491.5 million) for the audit period.

Our review of the internal controls at the State level was limited to obtaining an understanding of DSS' procedures and controls over claiming title IV-E foster care maintenance payments. Our audit included significant substantive testing of DSS' compliance with title IV-E laws and regulations on claiming foster care maintenance

payments. Because of the limited audit objectives, an assessment of the DSS internal control structure was not considered necessary and was not performed.

We obtained an understanding of the types of activities that DSS performs in exercising oversight over the counties under the title IV-E program. However, since the program in California is administered at the local level by the 58 county social services agencies, we concluded that it would be inefficient to evaluate the internal control structures, policies and procedures at the different county locations. The audit was conducted more efficiently by expanding substantive audit tests during our case file reviews. Our reviews of foster care case files provided an understanding of the information and procedures used in determining Federal eligibility. However, in order to develop a better understanding of the processes and procedures involved, we also interviewed State and county officials on some of the procedures related to the results of our case reviews.

In performing our audit, we tested compliance with applicable Federal and State laws and regulations pertaining to the title IV-E Foster Care program. Other than for the issues noted in the report, we found no instances of noncompliance with applicable laws and regulations. For those items not tested, nothing came to our attention to cause us to believe that untested items were not in compliance with applicable laws and regulations.

Our audit used a multistage sampling approach as described in Appendix A of this report. Under this approach, 805 sample cases were selected for review. The amount determined to be not available for FFP represented the lower limit at the 95 percent one-sided confidence level.

To determine whether the 805 cases met Federal eligibility requirements, we examined the supporting documentation in the related social services and eligibility case files. For probation cases involving juvenile offenders, we reviewed applicable probation files. When necessary, we also reviewed pertinent court records. Our reviews of case files were conducted at county offices located in the counties of Los Angeles, Marin, Riverside, San Bernardino, San Diego, and Santa Clara. Subsequent to the completion of our site visits at each of the county offices, preliminary results were provided to county officials for their comments and to obtain additional supporting documentation. At the conclusion of our field work we held discussions with State and county personnel in order to solicit their ideas for improving the eligibility determination process in California. We also provided the preliminary results of our case reviews to Region IX ACF staff to obtain input on the eligibility determination process.

Our field work was performed between May 1992 and September 1993.

FINDINGS AND RECOMMENDATIONS

ELIGIBILITY DETERMINATIONS AND DOCUMENTATION

Improved procedures are needed by county social services agencies to facilitate the communication and flow of information to eligibility workers who determine whether foster care cases qualify for FFP. The information is needed to ensure that eligibility decisions reflect requirements of Federal and State laws and regulations, including the approved State plan for foster care. Further, procedures for documenting and supporting such decisions could, in some situations, be improved to help in the decision-making process and facilitate better management over eligibility determinations. In our audit, we often found that certain required documentation, although obtained and available in case files, was incomplete and inadequate to support eligibility decisions. In other cases, the required documentation was missing.

In our audit, which included case file reviews of 805 statistically selected foster care cases, we noted that eligibility determinations for the Federal Foster Care program were frequently made that were at variance with program requirements as set forth in applicable laws and regulations. We found deficiencies with program eligibility and/or payment amounts in 313 of the 805 sample cases. The total number of errors identified with the 313 cases totaled 411. The more significant areas in need of improvement are described in this finding. A table providing an itemization of the different types of errors is included with this report as Appendix B.

To show the significance of the errors identified, we estimate at the 95 percent confidence level that, on a statewide basis, at least $103.4 million (Federal share of $51.7 million) in foster care payments did not meet program eligibility requirements for FFP during the 3-year period covered by this audit. Based on provisions of Federal legislation recently enacted in section 13716 of the Omnibus Budget Reconciliation Act of 1993, we are not recommending a repayment by the State as a result of this audit. The legislation provides that the Secretary of the Department of Health and Human Services shall not, before October 1, 1994, seek repayment of Federal funds claimed under title IV-E of the Act based on any audit conducted by the Inspector General. However, to avoid future overclaiming of FFP under the title IV-E Foster Care program, we recommend that DSS reclassify the cases cited as not meeting Federal eligibility requirements to the State-only Foster Care program.

Eligibility Determination Issues

Information necessary for the determination of eligibility was not always provided to the eligibility worker. This flow of information is critical for the accuracy of claiming costs under the title IV-E Foster Care program. In our foster care case file reviews, we found that improvements were needed in communicating information from the Juvenile Courts and social worker to the eligibility worker.

Judicial Information

We found that court information that affected the child's eligibility for the title IV-E Foster Care program was not always relayed to the eligibility worker that classified the case as federally eligible. Specifically, information on the contents of the court order and the child's legal status was not always provided to the eligibility worker. To assist in the flow of information, we believe that (i) copies of court orders placing children into foster care, or which otherwise change the status of the children, should be given to eligibility workers for use in the eligibility determination process, and (ii) county social services agency personnel should work with court personnel to resolve issues involving problems with incomplete or incorrectly completed court orders.

Court Order Content. Our case file reviews disclosed 134 instances in which the court order removing the child from his or her home did not include a judicial determination that continuance in the home was contrary to the welfare of the child (40 instances), and/or that reasonable efforts had been made to prevent or eliminate the need for the removal (94 instances). Under section 472(a) of the Act, these two determinations must be made in order for FFP to be available for the foster care maintenance payment. In our review of the case files, we found that the court order either did not contain the appropriate item being "checked off," which would have indicated the determination of the judge that the two conditions existed, or any statement which would have provided evidence that the judge made the required judicial determination. Unless the required judicial determinations are made and documented in the files, the child would not be eligible and DSS would not be able to obtain Federal funding for foster care payments made on behalf of the child.

Although the court orders lacked the required judicial determinations, the foster care maintenance payments for the above cases were still claimed for FFP. Our review disclosed that copies of court orders were normally kept in the child's case file maintained by the social worker. However, they were usually not provided to the eligibility worker for determining if the child met the Federal eligibility requirements. If the court orders had been provided to the eligibility worker, they could have been reviewed for completeness and compliance with Federal requirements, and the claiming of FFP when Federal requirements were not met may have been avoided. Further, additional effort and follow-up with court personnel could have been initiated to determine if the required determinations were inadvertently omitted from the court orders. During our case review process, we found instances where the transcripts of the court proceedings provided evidence that such omissions had occurred, and thus when Federal eligibility was supported we did not take exception.

The high rate of noncompliance with the Federal requirements for obtaining and documenting judicial determinations in the court orders demonstrates a significant need for improving one of the important controls built into the Foster Care program by the Congress. The Legislative History for Public Law 96-272, as published in Senate Report No. 96-336, noted that a major reason for the legislation was evidence that many foster care placements may be inappropriate, in part because Federal law at that time provided

stronger incentives for the use of foster care than for attempts to provide permanent placements of the children. The requirement for the judicial determinations was considered an important safeguard against inappropriate agency action. Strengthening the procedures described above during the eligibility determination process should help accomplish the stated congressional objectives regarding the protection of children.

Placement and Care Responsibility. In 13 cases, the placement and care responsibility for the child was no longer legally assigned to the county social services agency. When the child was removed from his or her home by a court order, the court usually ordered that the child's care, custody and control be vested with the county social services agency. Subsequently, the court terminated the court orders and appointed a legal guardian for the child. At that point, the county agency was no longer responsible for the child's care. Although the social workers' files contained the court order terminating the county's responsibility, the eligibility workers' files did not always contain such documentation.

Federal foster care funding would not be available in these situations. However, if the eligibility worker was aware of this situation, the possibility of the county agency having joint placement and care responsibility with the legal guardian could be explored, thus preserving Federal eligibility.

Revised DSS Procedures. Subsequent to the period covered by our audit, DSS revised the form used in determining Federal eligibility to assist the eligibility worker with respect to the required judicial determinations. When using this new form, the eligibility worker must answer a question on whether the court order removing the child contained the requisite language for Federal eligibility, and the status of the court order. Specifically, it asks (i) if there is language in the court order which states that reasonable efforts were made to prevent removal of the child from the home and that continuance in the home would be contrary to the welfare of the child, and (ii) if the court order is in effect or if it has been dismissed. However, the effectiveness of this form is limited if the eligibility worker does not have a copy of the court order to validate the answer and only relies on verbal information from the social worker.

Case File Information

We found that information in the social worker's case file that affected the child's eligibility for the title IV-E Foster Care program was not always relayed to the eligibility worker who classified the case as federally eligible. For example, our review found instances in which the child was no longer considered to be a dependent child as described under section 406(a) or 407 of the Act. Under these sections a child is a dependent child if he or she is living with a parent or relative and is deprived of parental support by reason of absence, death or incapacity of one parent or the unemployment of the principal wage earner. In addition, the child must be under the age of 18, or if 18 years old, the child must be attending a secondary school full time with the expectation of completing school before reaching age 19. We believe that procedures should be improved to ensure that essential information, such as changes in the family

status regarding a finding of deprivation of parental support, or a change in an 18 year old foster child's enrollment in school, be given to the eligibility worker on a timely basis.

Deprivation of Parental Support. In our review of case files, we noted evidence in 10 cases where the circumstances in the child's home did not support the conclusion that he or she would be considered to be deprived of parental support. Under Federal program requirements, the State must redetermine, on a periodic basis, that deprivation of parental support still exists based on a review of the circumstances in the home from which the child was removed.

The cases involved circumstances whereby the child was determined to have been deprived of parental support on the basis that one of the child's parents was absent from the home. Based on ACF policy, this circumstance must continue to exist, or some other basis for deprivation must be determined by the State, in order for the child to remain eligible for FFP. In our reviews of case files, we noted that information in the court reports and social worker's notes indicated that the parents were living together and, in some instances, working. Although such information is required to be provided to the eligibility worker on a redetermination form every 6 months, the information was not always accurate. Also, there were cases where the eligibility worker was not informed of the changes in the parents' situation in a timely manner, although the social worker's files indicated knowledge of this information. Accurate and timely information is needed by the eligibility worker so that it can be determined whether the child is still eligible, or if additional effort can be made to continue Federal eligibility. For instance, the eligibility worker could explore the possibility that the principal wage earner is unemployed rather than absent, and Federal eligibility could continue on that basis.

Children Age 18. We found 3 instances where the child was 18 years old during the month of review and was either no longer in school or was not expected to graduate prior to age 19. This information was included in the social worker's notes and/or court reports, but was not provided to the eligibility worker in time to prevent the payment from being claimed for FFP.

Supporting Documentation Issues

Documentation used in establishing eligibility was not always sufficient to meet FFP requirements for the payment made on behalf of the child. In HHS Departmental Appeals Board Decision No. 1257, issued June 13, 1991, the Appeals Board affirmed that under Federal regulations (45 CFR Part 74, Subpart H), States have the burden of documenting their claims for FFP, and that this burden must still be met even in cases where the grant program is actually carried out by a sub-grantee or contractor. In California, this would include the county social services agencies and juvenile courts. Although the county agencies and courts operate independently of the State, the State was still responsible for assuring that there was adequate documentation for determining Federal eligibility. In our foster care case file reviews, we found a need for improvement in documenting in the case files foster care eligibility under Federal laws and regulations, specifically regarding the use of *nunc pro tunc* court orders, determinations of AFDC

linkage, and support for rates paid on behalf of foster children residing out of State. These conditions are described in the following paragraphs, and illustrate opportunities for DSS in improving documentation of program eligibility and ensuring that the program is operating as intended under Federal and State laws and regulations.

Nunc Pro Tunc Court Orders

In 26 instances where the required judicial determination was not included on the court order, the county social service agency later obtained another court order that contained the missing judicial finding *nunc pro tunc*, meaning "now for then." Under ACF policy, *nunc pro tunc* court orders may be used to supply, for the record, documentation of an action that had actually occurred during the original court hearing. It may not be used to make a finding that applies retroactively.

In some cases, the *nunc pro tunc* orders were obtained during our audit in response to our case file reviews; some were obtained earlier based on county concerns. However, there was no information provided in the court document or available in the case file to provide support that the required judicial determinations were actually made at the time of the hearing. An ACF informational memorandum, ACYF-IM-87-28, was issued October 7, 1987 to clarify the procedures when the courts enter an order *nunc pro tunc* to satisfy the required judicial determinations. The memorandum stated that:

> "...for every child for which there is a nunc pro tunc order that is used to meet the statutory requirements in section 472(a)(1), States are required to submit documentation to verify that these findings were in fact omissions from the record through inadvertence or mistake. Requested documentation may include the transcript of court proceedings and/or agency's report to the court, or any other documentation that would confirm that the information was actually presented to the court at the previous hearing and that the court made the determination(s) at that time."

Although the counties had submitted documentation supplemental to the court order, such as petitions and court reports, these items did not clearly show that the court had actually made the required judicial determination(s) at the time of the hearing. Documents such as the court transcripts or bench notes would have been acceptable evidence if they included the required judicial determinations. When *nunc pro tunc* orders are used, the counties should obtain the necessary documents to support the requirement that the court findings were inadvertently omitted.

On January 31, 1992, DSS issued All County Letter No. 92-17 on the subject of court order findings for the Foster Care program. In the letter, DSS included a section on the use of *nunc pro tunc* orders and a copy of two pertinent ACF Information Memoranda. However, based on the responses from the counties to our current audit findings regarding this issue, the All County Letter did not appear to have been effective in ensuring that sufficient documentation for *nunc pro tunc* orders was obtained.

AFDC Eligibility

Our review included 10 cases where the eligibility files did not include sufficient documentation to support the determination that the child would have been eligible if an application had been made for AFDC assistance. In some cases, the form used in determining eligibility was completed to indicate that a need existed, but there was no documentation to support such a determination. In other cases, financial data were provided by the social worker or parent; however, that information was not verified with other independent sources, such as the California Economic Development Department.

At the time of our audit, DSS was in the process of developing a standardized methodology for documenting a child's eligibility for the AFDC program. The DSS has drafted an approach called the Preponderance Of Evidence Model (POEM) and has presented the POEM approach in training sessions held throughout the State during September and October of 1993. This approach will use information available from various State sources. Based on discussions with DSS officials, the POEM approach will be implemented by the end of 1993.

Out-of-County Foster Care Rates

In 4 instances, we found that the case files did not include any documentation to support the foster care rates being paid to foster parents who reside in another State. Based on DSS regulations, section 11-401 of the MPP, the county agency in California that is responsible for the child is required to pay the amount authorized by the jurisdiction in which the child is placed. The only exception is when the host agency does not have a similar rate for which the child is qualified, such as a specialized care rate. In the cases identified, the county agency responsible for the child was paying its own basic care rate rather than the basic care rate for the jurisdiction in the host State. In those instances, the host State's rate was less than the California county agency's rate. However, the eligibility worker's files did not contain any documentation to determine what the authorized rate was for the host State. To determine that rate, we contacted the other State agency or the Regional ACF office.

Recommendations

1. We recommend that DSS develop and issue guidelines to county social services agencies providing for:

a. Copies of court orders placing children into foster care, or which otherwise change the status of the children, to be given to eligibility workers for use in the eligibility determination process.

b. County social services agency personnel to work with court personnel to resolve issues involving problems with incomplete or incorrectly completed court orders.

c. Improvement of procedures for ensuring that certain essential information, such as changes in the family status regarding a finding of deprivation of parental support, or a change in an 18 year old foster child's enrollment in school, be given to the eligibility worker on a timely basis.

d. Improvement in documentation in the case files supporting foster care eligibility under Federal laws and regulations, specifically regarding the use of *nunc pro tunc* court orders, determinations of AFDC linkage, and support for rates paid on behalf of foster children residing out of State.

2. In addition, to avoid claiming FFP in the future for the cases cited in this report as not meeting Federal eligibility requirements, we recommend that DSS reclassify the cases to the State-only Foster Care program.

Auditee Comments and OIG Response

Auditee General Comments

In written comments dated January 21, 1994 (See Appendix C), DSS requested that OIG not include any reference to the projected disallowance in the audit report and clarify the intentions of HHS regarding the recovery of payments deemed federally ineligible. The DSS acknowledged that our audit report specifically states that no recommendation for monetary recovery is being made. However, DSS expressed concern that the mention of a disallowance figure raises ambiguities over the issue of a monetary recovery. It was noted that the Omnibus Budget Reconciliation Act of 1993 does not preclude recovery after October 1, 1994, and DSS was concerned that HHS could pursue recovery of a projected disallowance at some later date.

The DSS also stated that it did not concur with the projected disallowance amount because it disagreed with OIG's interpretation of Federal and State law in the findings of ineligibility. It also provided additional documentation along with its comments to support 10 of the sample cases cited in our audit as not meeting Federal eligibility requirements.

Further, DSS stated that it felt that the Rao, Hartley, Cochran sampling methodology and extrapolation procedures used in the audit were incorrectly applied. Specifically, DSS contended that (i) the statistical sampling formula used to compute the projected disallowance was inappropriate, (ii) the Rao, Hartley, Cochran sampling method could not have accounted for all of the significant differences which exist in administering the Foster Care program in all California counties during the 36-month audit period, and (iii) the use of 800 sample payments cannot accurately represent the 1,430,026 foster care payments issued statewide during the audit period. Appendix C contains additional details as to the DSS position regarding the statistical sampling approach used in our audit.

OIG Response to General Comments

Although the DSS response refers to our projection of the amount of Federal funds associated with ineligible foster care payments as a projected disallowance, we did not identify it as such in our audit report. Our projection was included in the report to show the significance of the eligibility determination deficiencies that we identified. Further, it demonstrates the need for taking corrective action to ensure that foster care payments claimed for FFP are for cases that meet eligibility requirements under Federal law and regulations.

In Policy Announcement ACYF-PA-94-01, dated January 14, 1994, ACF provided additional information on the moratorium on recovering audit disallowances that was enacted in the Omnibus Budget Reconciliation Act of 1993. The announcement stated that generally no disallowances will be taken during the moratorium, but that HHS reserved the right to take a disallowance after the moratorium expired. We have not been informed as to ACF intentions on recovering the amount disclosed in this report, or whether a recovery is being or will be considered.

Although DSS stated that it did not agree with our interpretation of Federal and State laws and regulations when determining eligibility under the title IV-E Foster Care program, it did not provide information that, in our judgment, supports the disagreement. In determining whether cases met Federal eligibility requirements, we utilized the laws, regulations and policy interpretations applicable to the Foster Care program. To ensure that the audit findings were appropriate, we obtained additional guidance from officials at ACF, the Federal agency responsible for administering the title IV-E Foster Care program. Numerous discussions were held during the audit on the interpretation of Federal laws and regulations, as well as on specific case circumstances which we considered in making determinations of eligibility.

We have reviewed the documentation on the 10 sample cases which DSS submitted with its comments on our draft report. Based on our review, we concluded that the documentation was adequate to support AFDC linkage for the 10 cases. However, 4 of the 10 cases had other eligibility or payment deficiencies, even though AFDC linkage was adequately supported. For those four cases, the payments were still either fully or partially ineligible for FFP. Based on the additional documentation provided, our projection of the Federal share of ineligible payments has been changed from the $54.7 million that was included in our draft audit report to $51.7 million.

Although DSS expressed disagreement with our sampling and extrapolation methodology, the use of the Rao, Hartley, Cochran approach and the sample size were carefully planned in advance. The sampling plan was written in considerable detail, and was reviewed and approved at the start of the audit by the designated OIG Office of Audit Services statistical specialist.

Further, we have provided a copy of the DSS comments pertaining to our sampling methodology to an outside consultant who provides services to the OIG Office of Audit

Services under contract, and is an expert on the use of the Rao, Hartley, Cochran sampling approach. He has provided a written analysis of the DSS's comments which effectively rebuts those comments and supports the sampling approach used in our audit. A copy of the analysis is included as Appendix D.

Auditee Comments on Recommendations 1.a. and 1.b.

Comments pertaining to recommendations. The DSS concurred that information relative to a child's foster care status must be communicated to the eligibility worker and that the recommendations may have merit on an operational perspective. However, DSS explained that it allows the counties operational flexibility in the communication of such information. The DSS stated that it has long pursued all opportunities to emphasize the importance of timely communication between service and eligibility staff, and will continue to do so.

Comments pertaining to court orders. Although DSS generally concurred with the recommendations, it did not agree with all of the findings relative to court orders. The principal issue concerned the content of the court order removing the child from the home. Specifically, the issue is the requirement under Federal law that the removal must be based on a judicial finding that (i) continuance of the child living in the home would be contrary to his or her welfare, and that (ii) reasonable efforts have been made to prevent or eliminate the need for the removal of the child from the home.

The DSS cited Federal Policy Interpretation Question (PIQ) 86-02, which was issued by the predecessor agency to ACF, as the criteria for its position, which reads in part:

> "...if State law unambiguously requires that removal may only be based on a determination that remaining in the home would be contrary to the child's welfare (and in the appropriate circumstances, that removal can only be ordered after reasonable efforts to prevent removal have been made), it must be assumed that a judge who orders a child's removal from the home in accordance with that State statute does so only for the reasons authorized by the State statute. This conclusion can be drawn only if the State law clearly allows removal under no other circumstances except those required under Section 472 (a) (1) of the Act. If a State can show that it has such a clear and unequivocal State law, and if the court order is expressly based on that law, then the order can be accepted as sufficient evidence that the required determinations have been made."

The DSS contended that California statute (Welfare and Institutions Code Section 319) authorizes the detention of a child only when the court determines that remaining in the home would be contrary to the child's welfare, and that reasonable efforts to prevent removal were provided or it was reasonable not to provide services due to the emergency nature of the removal. Thus, it contends that Federal requirements for court order content have been met.

OIG Response to Comments on Recommendations 1.a. and 1.b.

Comments pertaining to recommendations. Although DSS agreed with the premise of our recommendations, it indicated that the counties are given the flexibility on the procedures used for ensuring that court order information is provided to eligibility workers. Under DSS regulations, the counties are required to maintain in the eligibility case record a statement from the social worker certifying that a copy of the court order is in the services case record (EAS section 45-202.44). This requirement does not provide any assurance that the court order contains the required determinations. We believe that the most effective way to ensure that the required judicial determinations were made before claiming FFP is to provide a copy of the court order to the eligibility worker.

Comments pertaining to court orders. Although DSS stated that California State law clearly and unequivocally allows the removal of a child only after the required determinations have been made, there are other situations that allow for removal. Section 319 of the Welfare and Institutions Code, which is the State's statutory basis for detaining children, requires that the court determine if any of the following four circumstances exists before detaining a child.

a. There is substantial danger to the physical health of the minor or the minor is suffering severe emotional damage, and there are no reasonable means by which the minor's physical or emotional health may be protected without removing the minor from the parents' or guardians' physical custody,

b. There is substantial evidence that a parent, guardian, or custodian of the minor is likely to flee the jurisdiction of the court,

c. The minor has left a placement in which he or she was placed by the juvenile court, or

d. The minor indicates an unwillingness to return home, if the minor has been physically or sexually abused by a person residing in the home.

Of the above circumstances, only the first one expressly states that there exist conditions which are contrary to the child's welfare if returned home. The other three circumstances do not clearly indicate that the return of the child to the home would be contrary to the child's welfare.

Further, section 319 states, in part, that in addition to the court determining whether any of the above circumstances exist, "The court shall also make a determination on the record as to whether reasonable efforts were made to prevent or eliminate the need for removal of the minor.... Whenever a court orders a minor detained, the court shall state the facts on which the decision is based, shall specify why the initial removal was necessary, and shall order services to be provided..." (emphasis added). In our audit, we noted that preprinted court order forms usually had items which could be checked off with wording that such determinations were made; however, as disclosed in our report,

this was not always done as the space on the court order relating to those determinations was left blank.

Auditee Comments on Recommendation 1.c.

The DSS generally concurred with our procedural recommendation. The DSS stated that State regulations exist which address the need for the cooperation of county service and eligibility staff, and that DSS has issued to the counties detailed instructions regarding those regulations. The DSS indicated that it has long pursued all opportunities to emphasize the importance of timely communication between service and eligibility staff. These included attending meetings with county welfare directors and holding training sessions. In addition, DSS stated that it plans to continue such activities in the future.

OIG Response to Comments on Recommendation 1.c.

We consider the DSS comments to meet the intent of our recommendation.

Auditee Comments on Recommendation 1.d.

The DSS generally concurred with the procedural recommendation for improving documentation in the case file supporting foster care eligibility. The DSS also agreed with the finding on out-of-county foster care rates. However, DSS disagreed with certain aspects of the findings regarding *nunc pro tunc* court orders and AFDC linkage as follows.

Nunc pro tunc court orders. The DSS stated that to clarify Federal policy regarding *nunc pro tunc* court orders, it has issued policy memoranda that specify that such orders must be supported by court transcripts, bench notes, or other court documents which confirm that the required information was presented to the court. However, DSS contends that *nunc pro tunc* orders are not essential for situations where the removal court order does not contain the determinations regarding conditions that are contrary to the child's welfare, and the efforts to prevent or eliminate the need for removal from the home. The DSS basis for disagreement is the same as that discussed above in the auditee comments on recommendations 1.a. and 1.b.

AFDC linkage. The DSS disagreed with the AFDC linkage findings on two points. First, DSS stated that there was no basis for the level of documentation required by OIG to support the determination that a child would have been AFDC eligible if an application for AFDC had been made. The rationale was that the Federal government had not issued regulations or guidelines to identify the level of documentation required, and that HHS Region IX staff had previously indicated that a "preponderance of evidence" could be used to establish AFDC linkage.

Second, DSS stated that, in cases where the child was linked to the AFDC program through the actual receipt of aid, the validity of the child's AFDC eligibility should not be an issue in an audit of the title IV-E Foster Care program. The DSS contended that the

determining factor for establishing Federal linkage is whether AFDC benefits were paid during the petition month to the person from whom the child was removed. If a subsequent determination was made by the AFDC eligibility worker that the family was not eligible for aid, then the child would be deemed federally ineligible for foster care and the case reclassified.

OIG Response to Comments on Recommendation 1.d.

The DSS comments regarding clarification of Federal policy for documentation to support the *nunc pro tunc* court orders are considered responsive to the audit recommendation. With respect to the DSS comments regarding situations in which the *nunc pro tunc* orders are not essential, DSS referred to its comments on court order content that it presented on recommendations 1.a. and 1.b. In the above OIG response to the DSS comments on recommendations 1.a. and 1.b. we have addressed the issue relating to the DSS position on court order content.

As to the State's comments regarding AFDC linkage, ACF in policy issuance ACYF-PIQ-82-15 requires that a State will use the same procedures to determine and document eligibility under the title IV-E program as are applicable to the AFDC program. Under AFDC regulations, a validation through an income eligibility verification system was required for demonstrating AFDC eligibility.

Finally, we do not agree with the State's contention that the validity of a child's AFDC eligibility, when that child is currently receiving AFDC benefits, should not be an issue in an audit of the title IV-E Foster Care program. If a social worker or eligibility worker became aware of information which would affect the child's AFDC benefits, it must be determined whether the child was actually eligible for AFDC before claiming the foster care payment under the title IV-E program. In the cases cited in our audit, information indicating the child's lack of AFDC eligibility was found in the social worker's case record.

Auditee Comments on Recommendation 2

The DSS generally concurred with recommendation and stated that it will direct county welfare departments to reclassify ineligible cases. However, DSS did not agree with all of the error cases cited and indicated that it will issue instructions to the counties depending upon the final outcome of those cases.

OIG Response to Comments on Recommendation 2

The DSS comments are responsive to the intent of the recommendation.

FOSTER HOME LICENSING OF RELATIVES

The State needs to reevaluate its requirement for the licensing of homes of foster children's relatives resulting from a change in family status when parental rights are terminated by court action or voluntarily relinquished by the parents. This situation occurs most frequently when children are being considered for adoption. When that occurs, State regulations provide that the parent(s) and his or her relatives are no longer considered to be the child's relatives.

Under State regulations, the home of a foster child's relative is considered by DSS, which is the State licensing agency, to be approved if it has been determined to meet the needs of the child. The family foster homes of nonrelatives require licensing in order to be approved. Thus, the change in the relative's legal status, as defined by State regulations, resulted in a change in foster home status from eligible to ineligible, even though the living arrangement of the child did not change. In our audit, we found 15 instances in which the required licensing was not obtained, thus resulting in the foster care case being ineligible for FFP.

Background

1. State law (Welfare and Institutions Code section 11402) provides, in part, that in order to be eligible for foster care, the child must be placed in one of the following:

"(a) The home of a relative, provided such home has been documented by the social worker or probation officer as being suited to the needs of the child and the child is otherwise eligible for federal financial participation in the AFDC-FC (foster care) payment.

"(b) The licensed family home of a nonrelative."

These are only two provisions of the State law; there are other types of facilities which qualify under the Foster Care program.

Thus, the home of a relative requires approval of DSS but not licensing by the State or local licensing jurisdiction. The home of a nonrelative must be licensed.

2. The DSS' Manual of Policies and Procedures contains provisions that change the status of a child's relatives when the parental rights are either voluntarily relinquished by the parents or terminated by a court order. Section 45-101.1(ee)(2) states:

"For AFDC-FC (foster care) purposes, when a parent's rights to a child are terminated by the filing of a relinquishment with the Department or by court action, that parent and his or her relatives are no longer considered to be the child's relatives."

Results of Audit

State DSS procedures applicable to 15 cases involving the termination or relinquishment of parental rights result in foster care cases that are "technically" ineligible for FFP, even though the actual relationship between the relative and the child was not changed. Since the relative is no longer considered to be a relative when parental rights no longer exist, that relative must apply for a license as if he or she had no ties to the child. This could create an additional obstacle in meeting an important case plan requirement of placing a child in the most family-like setting available that is consistent with the best interest of the child. To meet this goal, State regulations instruct social workers to give first priority to a relative's home when placing a child. However, if the relative does not agree to become licensed when there is a change in parental rights, the child may not be placed with the relative and the intent of the case plan requirement would not be met. Further, the 15 cases cited above show that the required licensing procedures are not always followed.

In addition, a "former" relative foster parent is not compensated the same as an eligible relative as defined under State regulations. A child living with a relative who is "technically" no longer a relative can be denied foster care when the relative does not become licensed. If the court and county retain jurisdiction over the child, the relative must still comply with the requirements which protect a child under the Foster Care program without being compensated for this. Although the relative would probably be eligible to receive public assistance for the child under the AFDC program, the amount is sometimes less than the amount under the Foster Care program. Also, that program does not recognize the need for additional monies if the relative is required to provide specialized care for the child.

The DSS initially included these definitions and provisions for both the AFDC public assistance program and the Foster Care program. However, in October 1991, these provisions were removed from the public assistance program. No such action was taken for the Foster Care program.

It is noted that the above provisions are not required by Federal laws, regulations or policy issuances for the Foster Care program. They are also not included in the Welfare and Institutions Code for California or the title IV-E State plan. They appear only in DSS regulations as a limitation when defining who can be considered a relative of the child placed into foster care. By removing these restrictive provisions regarding the licensing of foster homes of former relatives, the program could be improved to facilitate the placement of foster children into these homes. This would require State legislative and/or regulatory changes that impact on licensing the homes.

Recommendation

DSS should seek legislative and/or regulatory change regarding licensing requirements for the homes of relatives of foster children in situations where parental rights for a child have been terminated by the court or relinquished by the parents.

Auditee Comments

In its written comments to our draft report, DSS concurred with the recommendation. The DSS stated that it anticipated revisions to existing State regulations so that a child retains eligibility when placed with a "former" unlicensed relative.

OIG Response

The DSS comments are responsive to the recommendation.

QUALITY CONTROL SYSTEM

Although the State and various counties have undertaken numerous activities to improve the quality of eligibility determinations under the Foster Care program a more systematic review procedure is needed to assure compliance with the complex title IV-E requirements. In our audit, 313 of the 805 cases, or 39 percent, that we reviewed had at least one problem regarding eligibility or appropriateness of the amount paid. We believe that there is a need for an ongoing program to review a sample of foster care cases to determine if eligibility determinations and redeterminations are made in accordance with program laws and regulations. We also believe that such a system at the State and/or county level would improve oversight over the program, and help in providing assurance that eligibility requirements are met.

Background

1. Section 471 of title IV-E of the Social Security Act provides, in part, the following:

> "(a) In order for a State to be eligible for payments under this part, it shall have a plan approved by the Secretary which--
>
> * * * * * *
>
> (7) provides that the State agency will monitor and conduct periodic evaluations of activities carried out under this part."

2. The approved State plan provides for the above Federal requirement to be met in accordance with section 11213 of the Welfare and Institutions Code for California. Section 11213 provides, in part, for DSS to develop a quality control system for the Foster Care program.

Results of Audit

As the State agency responsible for the supervision of the title IV-E Foster Care program, DSS provides guidance to the county social services agencies on Federal program eligibility. This guidance has included issuing All-County Letters and Notices, conducting training courses and conferences, meeting with juvenile court and county welfare officials, and resolving audits and reviews of the program.

However, DSS does not normally conduct reviews of the program to determine if Federal and State eligibility criteria are being met. Such reviews would help to identify problems that county agencies, and well as juvenile courts, have in meeting Federal requirements. This would assist in initiating corrective action before ineligible cases are claimed for FFP. Although we were informed that some county agencies conduct some type of review for Federal eligibility, there did not appear to be a system for ongoing reviews at either the county or State level.

During the course of our audit field work, we observed that DSS was actively involved in training activities, including seminars and conferences, which related to issues involving improvement of the program and meeting various State and Federal requirements. They involved the participation of Federal, State and local officials responsible for administration of the Foster Care program, as well as juvenile court judges. Thus, efforts have been and are continuing to be made for strengthening the program and correcting problem areas.

However, the problems that we found in our case reviews extended throughout the 3-year period covered by the audit, and appeared to be ongoing. Our previous statewide audit of California's Foster Care program by the OIG Office of Audit Services contained the same type of problems identified in this audit. The report covered Fiscal Years 1985 and 1986, and resulted in questioned costs of $9,969,292 (report number A-09-87-00077, issued July 22, 1988). Of that amount, $8,453,563 was upheld by ACF, and the State paid this amount to the Federal government. The principal problems reported related to (i) placement and care responsibilities, (ii) AFDC eligibility, (iii) physical removal of the child from his or her home, and (iv) ineligible foster homes.

We believe that the problems which might be presented in after-the-fact audit disallowances could be avoided or minimized through early identification of the problems through ongoing quality control case reviews. Further, they would help in ensuring that the various county social services agencies in the State are applying eligibility criteria and other program requirements consistently.

Recommendation

We recommend that DSS develop and implement quality control procedures for sampling foster care cases to determine if eligibility determinations and redeterminations are being made in accordance with Federal and State laws and regulations.

Auditee Comments

In its written response, DSS concurred with the recommendation even though DSS did not agree with the number of cases considered not eligible for FFP. The DSS stated that it intended to pursue through the State budget process the additional resources necessary to implement and maintain a quality control system for the Foster Care program. The DSS also indicated that it will explore other alternatives with the same benefits as a quality control system.

OIG Response

The DSS comments meet the intent of the recommendation.

OTHER MATTERS

ELIGIBILITY REQUIREMENT: REMOVAL FROM THE HOME

Federal guidelines provide that, for a child to be eligible for payments under the Federal Foster Care program, he or she must have been physically removed from the child's home. Often, the child is already living with a relative, such as an aunt or a grandmother, at the time the court order is issued legally removing custody of the child from the parent(s). Thus, if the child continued to live with the relative after the court order, no physical removal would have taken place. It is ACF's interpretation that Federal eligibility requirements are not met in this case. However, DSS disagrees and continues to claim FFP for this type of case. This stalemate has existed for several years, and action needs to be taken to resolve the issue.

In its written response, DSS agreed that a resolution is needed on the differences in interpretation regarding the issue of "physical removal" from the home. The DSS stated that it hopes a mutually acceptable definition of "home of removal" can be reached with HHS, thereby bringing closure to this issue.

CURRENT DEVELOPMENTS INVOLVING JUDICIAL ISSUES

To better understand why many court orders did not contain the required title IV-E determinations, we obtained information from the juvenile dependency courts on procedures for issuing court orders. We also participated in a conference on the juvenile dependency system sponsored by the Juvenile Court Judges of California. In addition we held discussions with DSS and ACF on court order content.

One of the issues identified was the lack of familiarization with P.L. 96-272 by juvenile court judges in California. To this end, DSS is planning to propose funding for judicial training in its State plan. Another issue identified is the lack of a uniform court order in the 58 county jurisdictions throughout California. A DSS official has informed us that DSS is working towards standardizing the court order with the California Judicial Council. The conference of the juvenile dependency system that we attended has been held annually in California for the past 5 years. This conference brings together Federal State, county and judicial personnel for a continuing dialogue on child welfare issues. The ACF supports this concept and is recommending similar annual regional conferences throughout the nation.

In its written comments, DSS concurred that dialogue should continue between Federal, State, county and judicial personnel to discuss the requirements of the title IV-E Foster Care program. The DSS also stated that it is securing approval for resources to provide title IV-E training and technical assistance to juvenile court judges throughout California.

APPENDICES

STATISTICAL SAMPLING METHODOLOGY

Our audit used the Rao, Hartley, Cochran (RHC) multistage sampling approach to draw a sample in two stages. In the first stage, eight primary sample units were selected. A primary sample unit consisted of the payments claimed by one county on the monthly expenditure report submitted to DSS. Thus, the selection of the 8 primary sample units was made from the 2,087 county monthly expenditure reports submitted to DSS for October 1988 through September 1991. To recognize the differences in size between counties, the primary sample units were assigned a weighting factor. The weighting factor was the total number of Federal "persons count" claimed by a county in a month. A "persons count" represented the total aid payment made on behalf of an eligible child for a month regardless of the number of warrants that may be issued for that month. The primary units selected in the first stage were as follows:

County	Monthly Report
Riverside	August 1989
San Diego	January 1990
Los Angeles	July 1990
Marin	November 1989
San Bernardino	May 1990
Los Angeles	May 1991
Los Angeles	January 1990
Santa Clara	October 1988

In the second stage of this sampling approach, a sample of 100 payments was drawn from the payroll ledgers supporting the 8 primary units either using single stage random numbers or sets of 2 random numbers. The type of random numbers used depended on the records available from the county. In our selection process, random numbers were considered valid only if they contained a Main Payroll payment. Since there was only one Main Payroll payment for a child each month, this limitation helped ensure that each case had only one chance of being selected in a given month. Any transaction, such as a supplemental payment, related to the Main Payroll payment was included as part of the sample payment as long as the transaction was claimed prior to the start of our audit.

A sample of 100 payments was used for all of the counties except Marin County. This was because the number of Main Payroll payments in Marin County for November 1989 totaled 105. Because this represented the entire universe, we reviewed all 105 payments in Marin County. Therefore, the total number of sample payments for the 8 primary units was 805.

To determine whether the 805 payments were made on behalf of children who met Federal eligibility requirements, we examined the supporting documentation in the case files related to each of the payments. The results of our reviews were used to estimate an amount for which FFP was not available using the RHC appraisal method. The amount was calculated using the difference estimator, and represented the lower limit of the 90 percent two-sided confidence level.

SCHEDULE OF ERROR TYPES

Federal eligibility issues discussed in the report	No. of Instances
The court order did not include the required judicial determination. Continuance in the home was contrary to the welfare of the child (40) Reasonable efforts were made to prevent or eliminate the need for removal (94)	134
The County no longer had placement and care responsibility for the child due to the termination of court jurisdiction and appointment of a legal guardian.	13
The child was no longer considered to be a dependent child because deprivation of parental support no longer existed.	10
The child was no longer considered to be a dependent child because of age.	3
The required judicial determination that was ordered *nunc pro tunc* was not supported with documentation showing that the finding was inadvertently omitted from the original order.	26
The child's AFDC eligibility for the month of petition was not adequately supported with sufficient documentation.	10
The amount paid to an out of State facility was not in accordance with State regulations and was not documented in the case file.	4
The child was residing in the unlicensed home of a relative who was no longer considered to be a relative due to the relinquishment or termination of parental rights.	15
Other Federal eligibility issues noted in the report but not specifically discussed	
The amount of payment made was not in accordance with State/County rate policies.	86
The child's AFDC eligibility was not adequately established for the month of petition.	30
The child was residing in a foster home of an unrelated person that was not licensed nor approved by the County or DSS.	20
The child was not physically removed from his/her home.	19
The child was placed into foster care pursuant to a voluntary placement agreement.	7
The County did not have placement and care responsibility for the child during the month of review due to other reasons.	7
The child was not removed from the home of a specified relative.	7
The County identified the payment as ineligible, but still claimed the payment for FFP.	6
The child was residing in a for-profit facility.	5
The child was not residing in the foster home for which payment had been claimed.	4
The child's AFDC linkage in the month of review was not supported.	3
The child's income was not offset against the foster care payment.	1
The supporting court documentation was not available to determine eligibility.	1
Total instances where FFP would not be available.	411

STATE OF CALIFORNIA—HEALTH AND WELFARE AGENCY

DEPARTMENT OF SOCIAL SERVICES
744 P Street, Sacramento, California 95814

January 21, 1994

Mr. Herbert Witt
Regional Inspector General
for Adult Services
Department of Health and Human Services
Region IX
Office of Audit Services
50 United Nations Plaza
San Francisco, California 94102

Dear Mr. Witt:

U.S. DEPARTMENT OF HEALTH AND HUMAN SERVICES, OFFICE OF THE INSPECTOR GENERAL (DHHS-OIG), DRAFT AUDIT REPORT ENTITLED "AUDIT OF TITLE IV-E FOSTER CARE ELIGIBILITY IN CALIFORNIA FOR THE PERIOD OCTOBER 1, 1988 THROUGH SEPTEMBER 30, 1991; CIN A-09-92-00086"

This is in response to your November 24, 1993 request for the California Department of Social Services' (CDSS) comments regarding the findings and recommendations contained in the above named draft audit report. We appreciate the opportunity you have provided us to furnish information and comment on the findings and for granting the CDSS additional time (until January 24, 1994) to submit our response. CDSS comments regarding the individual audit recommendations are contained in Attachment A.

The Department does not concur with all of the findings and recommendations concerning "Eligibility Determinations and Documentation", and so does not agree that 319 cases failed to satisfy federal and State eligibility requirements. The Department also has concerns regarding the sampling methodology and extrapolation procedures used in the audit process. Accordingly, we do not agree that the State erroneously claimed $54.7 million in federal funds during the three year period covered by the draft audit report.

The Department understands that the draft report does not contain a request for monetary recovery because of the moratorium provided by the Omnibus Budget Reconciliation Act of 1993. For this reason, the Department believes no disallowance should be identified in the final audit report and respectfully requests that any mention of the projected $54.7 million disallowance be removed. In the event that a formal disallowance should be assessed at a future date, the CDSS reserves its right in the audit process to challenge any issues or case specific error findings of disagreement.

[Office of Audit Services note – The draft report submitted to the auditee for written comments cited 319 error cases and contained a projection of $54.7 million in ineligible Federal financial participation. Based on additional documentation provided by DSS, the number of error cases was reduced to 313 and the projection was revised to $51.7 million.]

The Department agrees that some findings identified in Appendix B of the draft report would make a case ineligible for federal financial participation. These would include those cases involving a child placed into foster care pursuant to a voluntary placement agreement prior to January 1993; a child residing in a for-profit facility; or a child residing in a foster home of an unrelated person that was not licensed or approved by the county or State. However, as discussed in the attached response, there are other findings cited in this report which remain issues of significant disagreement, including the subjects of court orders and unambiguous statute, documentation of AFDC linkage and legal removal from the home. We further note that some of the cases involve children who were otherwise eligible to the federal AFDC-FC Program, but lost that eligibility due to a more restrictive State policy.

Finally, we request that you consider additional information obtained from the State Employment Development Department (enclosed in Attachment B) which demonstrates that linkage and federal eligibility existed for certain specified audit sample cases previously cited in error. Based on this additional information, we request that the initial findings of ineligibility for these cases be reversed and pertinent parts of the audit report be revised to reflect these changes before the audit report is finalized. In the event the additional documentation is determined to be insufficient to establish federal eligibility, we request that you identify the specific reasons it failed to satisfy eligibility requirements.

Again, the CDSS appreciates the opportunity you have provided us to furnish information and comment on the findings.

If you have any questions regarding CDSS comments, please contact me at (916) 657-2598, or have your staff contact Mr. John H. Wilson, Financial Management Services Branch at (916) 657-3439.

Sincerely,

JARVIO A. GREVIOUS
Deputy Director
Administration Division

Attachments

ATTACHMENT A

CALIFORNIA DEPARTMENT OF SOCIAL SERVICES (CDSS) COMMENTS
IN RESPONSE TO THE DHHS-OIG REPORT ENTITLED
"AUDIT OF TITLE IV-E FOSTER CARE ELIGIBILITY
IN CALIFORNIA FOR THE PERIOD OCTOBER 1, 1988
THROUGH SEPTEMBER 30, 1991/ CIN A-09-92-00086"

I. TOTAL FEDERALLY INELIGIBLE FOSTER CARE PAYMENTS CLAIMED BY CALIFORNIA DURING THE THREE YEAR AUDIT PERIOD

We respectfully request that the OIG not include the $54.7 million projected disallowance in this report. The objectives of the audit report changed from one of financial recovery of disputed payments claimed for federal financial participation to one of recommendations to improve program administration. Therefore, any mention of a projected disallowance raises ambiguities over the issue of recovery which are not conclusively addressed in this report. The report specifically states that no recommendation for monetary recovery is being made at this time, but the Omnibus Budget Reconciliation Act (OBRA) of 1993 does not preclude recovery after October 1, 1994. The Department is concerned that the Department of Health and Human Services (DHHS) could pursue recovery of the projected disallowance at some later date.

Additionally, the CDSS does not concur with the projected disallowance figure. First, the CDSS disagrees with the OIG's interpretation of federal and state law in their findings of ineligibility for many of the sample payments. Secondly, the CDSS is submitting documentation along with its comments to demonstrate federal eligibility for specific error cases. This documentation should reduce the number of cases cited in error thereby reducing the projected disallowance amount. And finally, the CDSS feels that the Rao, Hartley, Cochran sampling methodology and extrapolation procedure for this audit appear to be incorrectly applied. On technical grounds, the CDSS contends that the OIG should have used a "t-variate" (1.895) instead of the "z-variate" (1.645) in their computation of the 90% confidence interval which would substantially reduce the projected disallowance total. In addition, the CDSS believes the Rao, Hartley, Cochran method cannot account for all the significant differences which have occurred in AFDC-FC program administration in all of the California counties during the thirty-six month audit period. The CDSS is not convinced that the eight hundred payment review sample can accurately represent the 1,430,026 foster care payments issued statewide during this period (.000559 of the universe). Regrettably, the extended comment period was not sufficient to enable us to adequately research this very central issue. The CDSS' major concern is that DHHS will pursue recovery of the projected disallowance at a later date.

For these specific reasons, the CDSS requests that the OIG remove any reference to the projected disallowance and clarify the intentions of the DHHS regarding the recovery of payments deemed federally ineligible.

II. SUPPORTING DOCUMENTATION ISSUES

RECOMMENDATION 1a:

The CDSS should issue guidelines to county social services agencies which provide that copies of court orders placing children into foster care, or which otherwise change the status of the children, should be given to eligibility workers for use in the eligibility determination process.

RECOMMENDATION 1b:

The CDSS should issue guidelines to county social services agencies which provide that county social services agency personnel should work with court personnel to resolve issues involving problems with incomplete or incorrectly completed court orders.

CDSS COMMENTS:

From an operational perspective these recommendations may have merit. Nevertheless, the CDSS does not concur with all of the findings relative to court orders. Several related issues are discussed in the draft report, the principle issue being court order content. The report states that 134 of the 805 reviewed cases did not have the required judicial determinations that either reasonable efforts had been made to prevent or eliminate the need for removal (94) or that continuance in the home would be contrary to the welfare of the child (40). However, the Department contends that California statute authorizes removal at detention only when the court determines that remaining in the home would be contrary to the child's welfare and that reasonable efforts to prevent removal were provided or it was reasonable not to provide services due to the emergency nature of removal.

Federal Policy Interpretation Question (PIQ) 86-02 provides that:

> "...if State law unambiguously requires that removal may only be based on a determination that remaining in the home would be contrary to the child's welfare (and in the appropriate

> circumstances, that removal can only be ordered after reasonable efforts to prevent removal have been made), it must be assumed that a judge who orders a child's removal from the home in accordance with that State statute does so only for the reasons authorized by the State statute. This conclusion can be drawn only if the State law clearly allows removal under no other circumstances except those required under Section 472 (a) (1) of the Act. If a State can show that it has such a clear and unequivocal State law, and if the court order is expressly based on that law, then the order can be accepted as sufficient evidence that the required determinations have been made."

State Welfare and Institutions Code (WIC) Section 300 describes the conditions by which a child can come within the jurisdiction of the juvenile court and be adjudged a dependent child of the court. If the placement worker determines that a child removed from his/her home meets one of these conditions and that it is in the best interest of the child to remain in out-of-home care, then the placement worker must petition the court to secure the authority for continued detention.

In California, the statutory basis for the detention hearing is WIC Section 319. WIC Section 319 states in part that:

> "The court shall order the release of the minor from custody unless a prima facie showing has been made that the minor comes within Section 300 and any of the following circumstances exist:
>
> (a) There is a substantial danger to the physical health of the minor or the minor is suffering severe emotional damage, and there are no reasonable means by which the minor's physical or emotional health may be protected without removing the minor from the parents' or guardians' physical custody.
>
> (b) There is substantial evidence that a parent, guardian, or custodian of the minor is likely to flee the jurisdiction of the court.
>
> (c) The minor has left a placement in which he or she was placed by the juvenile court.

(d) The minor indicates an unwillingness to return home, if the minor has been physically or sexually abused by a person residing in the home.

The court shall also make a determination determination on the record as to whether reasonable efforts were made to prevent or eliminate the need for removal of the minor from his or her home and whether there are available services which would prevent the need for further detention.... Where the first contact with the family has occurred during an emergency situation in which the child could not safely remain at home, even with reasonable services being provided, the court shall make a finding that the lack of preplacement preventive efforts were reasonable."

Thus, WIC Section 319 only allows a court to remove a child when the welfare of that child has been endangered and reasonable efforts have been made to prevent or eliminate the need for that child's removal from his or her home. If these conditions do not exist, the court would be required statutorily to release the minor from custody. Conversely, if a child is adjudged a dependent of the court pursuant to WIC Section 300 and is detained and placed in out-of-home care by a court order, the court order findings relative to federal eligibility requirements are met.

With regard to recommendations 1a and 1b, the Department concurs that any information relative to a child's foster care status must be communicated to the eligibility worker. The Department has instructed counties on eligibility requirements through statute, regulations and policy communications. However, the Department allows counties operational flexibility in such matters. For example, counties may choose, and some do, to require that copies of court orders be placed in the eligibility case file. The Department will continue to emphasize the importance of transmitting essential case data from the services file to the eligibility worker. As discussed below, the Department has long pursued all opportunities to emphasize the importance of timely communication between eligibility and service staff.

RECOMMENDATION 1c:

CDSS should issue guidelines to county social services agencies which ensure that certain essential information, such as changes in the family status regarding a finding of deprivation of parental support, or a change in an 18 year old foster child's enrollment in a school, be given to the eligibility worker on a timely basis.

CDSS COMMENTS:

The Department agrees with the Office of the Inspector General (OIG) that information essential for eligibility determinations must be made available to eligibility staff in a timely and efficient manner.

State Eligibility and Assistance Standards (EAS) Manual Section 40-101 specifically requires that administrative duties be performed in a way that secures for applicants and recipients the amount of aid they are legally entitled to receive. In addition, EAS Section 40-181 requires that counties ensure that payments are made only to eligible recipients in the correct amount, and that counties assist recipients to meet their financial and service needs as fully as possible, making the maximum use of their resources and capabilities. To accomplish these objectives, a timely exchange of information affecting that entitlement must exist between all interested parties.

More specifically, a significant body of existing State regulations has addressed the need for cooperation between county service and eligibility staff since the inception of the foster care program. EAS Section 45-201 mandates that service requirements be met to establish or continue eligibility for Aid to Families With Dependent Children (AFDC-FC) benefits. EAS Section 45-201 sets forth AFDC-FC eligibility requirements pertaining to age and 18 year old foster children. EAS Section 45-202 addresses deprivation and redetermination of deprivation requirements. More recently, the Department has issued All County Letters (ACL) 92-41, 89-42, 90-04 and 91-44 that provide additional and more detailed instructions to counties regarding the above referenced regulatory cites.

Equally important, the Department has long pursued all opportunities to emphasize the importance of timely communication between eligibility and service staff. Department staff regularly attend quarterly statewide and regional meetings of the County Welfare Director's Association to discuss relevant foster care issues and pending State and federal policies and legislation, and to answer questions related to the foster care program. In addition, because of the findings in the previous Title IV-E Audit, the Department sponsored a Statewide Foster Care Eligibility Conference in 1991. The conference was designed for and attended by service, probation and eligibility staff.

Most recently, because of preliminary findings from the current Title IV-E Audit, the Department hosted a series of Statewide Training and Technical Assistance workshops pertaining to Title IV-E eligibility requirements. These workshops were jointly developed and conducted by the federal Department of Health and Human Services (DHHS), CDSS and county service and eligibility staff. The Training and Technical Assistance workshops provided a vehicle to emphasize the importance of timely and accurate information sharing between all County Welfare Department (CWD) and Probation staff. Both of these efforts involved participation by DHHS Region IX program staff. The Department plans to continue such activities in the future.

RECOMMENDATION 1d:

The CDSS should issue guidelines to county social services agencies which provide for improved documentation in the case files supporting foster care eligibility under federal laws and regulations, specifically regarding the use of "nunc pro tunc" court orders, determinations of AFDC linkage, and support for rates paid on behalf of foster children residing out-of-state.

CDSS COMMENTS - NUNC PRO TUNC ORDERS:

For reasons pertaining to unambiguous state statute as described in our response to recommendations 1a and 1b, the Department contends that nunc pro tunc orders are not essential when a removal court order does not cite the requisite findings. Nevertheless, the Department has issued ACL 92-17 which included copies of PIQs 89-08 and 87-28 and clarified federal policy regarding nunc pro tunc orders for purposes of Title IV-E eligibility. These policy memoranda specify that nunc pro tunc orders must be supported by court transcripts, bench notes, or other court documents which, in conjunction with the State agency's report, confirm that the information was presented to the court. It is our understanding that the OIG is not challenging the validity of nunc pro tunc orders issued in California juvenile courts and recognizes that juvenile courts issue nunc pro tunc orders in accordance with general rules of the court.

CDSS COMMENTS - AFDC LINKAGE:

The Department agrees that documentation must exist in the eligibility file to support a determination of AFDC linkage and eligibility for federal AFDC-FC benefits. However, the Department does not concur with the findings of the OIG in regard to the 14 instances specifically cited in the report or the 35 additional instances referenced in Appendix B.

Title IV-E aids children who were or would have been eligible for AFDC benefits in the month of removal. "Linkage" to the AFDC program may be based on actual receipt of aid or a determination that the child would have been eligible had application been made. However, the federal government has not issued regulations nor program guidelines which delineate or identify the level of documentation required to find that a child "would have been eligible" for AFDC benefits had application been made.

DHHS Region IX staff have previously indicated that a "preponderance of evidence" could be used to establish "linkage" with the AFDC program, but during this review, the OIG arbitrarily chose to require that counties document an actual Title IV-A determination of eligibility to establish that linkage exists. There are no grounds for the level of linkage documentation required by the OIG.

Recently, the Department has taken steps, in conjunction with the DHHS, to resolve this issue. By working with the DHHS and California counties, the Department has developed a Preponderance of Evidence Model (POEM) which will provide concrete guidelines to counties for making linkage determinations. It should be noted that the OIG applauded these efforts in this draft report. The Department anticipates that POEM will be effective statewide by January 1, 1994.

A second linkage issue raised by the OIG involved cases in which the child was linked to the AFDC program through actual receipt of aid in the month of petition. However, OIG staff questioned whether some of the children were actually eligible for receipt of the AFDC benefits.

It is the Department's position that questions regarding Title IV-A eligibility determinations should not be an issue in a Title IV-E audit. If OIG staff wish to challenge the validity of AFDC program determinations a different forum for discussion should be utilized. It is the Department's contention that, if in the month of

petition the child's parents or the relative from whom the child was removed were receiving AFDC-FG/U benefits, the child is linked to the AFDC program; the fact that AFDC-FG/U benefits were paid to the person from whom the child was removed during the petition month becomes the determining factor for establishing federal linkage. Should there subsequently be a determination by the AFDC-FG/U eligibilty worker that the family was not, in fact, eligible for aid, the child would be determined federally ineligible and the case reclassified to the State-only Foster Care Program.

To demonstrate linkage and federal eligibility in a number of cases, the Department is enclosing additional documentation obtained from the Employment Development Department (see Attachment B).

CDSS COMMENTS - FOSTER CARE RATES:

We agree with the finding of the OIG. The Department requires that the county with payment responsibility pay the host county rate when placing out-of-county. State Manual of Policy and Procedures Section 11-401.41 states that "When a child is placed in a family home located in a different county than the county with payment responsibility, the county with payment responsibility shall pay the basic rate of the host county."

In addition, ACL 87-65 instructs counties to pay the receiving state's rate for an AFDC-FC eligible child placed out-of-state in a family home. All County Information Notice (ACIN) I-65-92 provides guidelines to the counties for out-of-state group home placements which include obtaining the correct rate from the appropriate rate-setting authority. Although only four cases were cited in the audit, the Department will continue to emphasize the importance of adhering to the existing out-of-county payment requirements.

RECOMMENDATION 2:

CDSS should require audited county social services agencies to reclassify federally ineligible cases cited in this report to the State-only Foster Care Program.

CDSS COMMENTS:

The Department agrees that federal financial participation (FFP) should not be claimed for cases found ineligible for federal assistance and will direct CWDs to reclassify all

ineligible cases. However, as noted in this response to the draft OIG report, the Department does not agree that all cases cited as being in error fail to meet federal eligibility requirements. Depending upon the final outcome of these cases, the Department will issue instructions to counties concerning adjustments and case reclassifications.

III. FOSTER HOME LICENSING OF RELATIVES

RECOMMENDATION:

The CDSS should seek legislative and/or regulatory change regarding licensing requirements for the homes of relatives of foster children in situations where parental rights for a child have been terminated by the court or relinquished by the parents.

CDSS COMMENTS

The Department concurs that it must reevaluate existing statute, regulation, and policy regarding relatives in its administration of the AFDC-FC program. The Department anticipates revisions to existing State regulations so that a child retains eligibility when s/he remains in placement with a "former" unlicensed relative.

IV. QUALITY CONTROL SYSTEM

RECOMMENDATION:

CDSS should implement quality control procedures for sampling foster care cases to determine if eligibility determinations are being made in accordance with Federal and State laws and regulations.

CDSS COMMENTS:

The Department does not agree with the OIG's assertion that 4 out of every 10 cases reviewed failed to satisfy federal eligibility requirements. However, the Department does agree that a quality control system can be a valuable tool in foster care program administration. The Department has made many efforts to ensure that information pertaining to eligibility determinations is processed accurately and in accordance with federal and State laws and regulations. Furthermore, it is the Department's intent to pursue through the State budget process the additional resources necessary to implement and maintain a quality control system for the foster care program. In addition, once the

Department's Statewide Automated Welfare System (SAWS) is fully implemented, the State AFDC Quality Control Branch will have the ability to electronically review AFDC-FC cases in all 58 counties. The Department will also continue to explore other alternatives that might provide the same benefit as a quality control system in regard to foster care program improvement.

V. OTHER MATTERS

PHYSICAL AND LEGAL REMOVAL

RECOMMENDATION:

CDSS should take action to resolve the difference in interpretation between DHHS and the Department regarding the eligibility requirement of removal from the home.

CDSS COMMENTS:

The Department concurs with the OIG's recommendation. Noteworthy are the 19 errors cited in Appendix B, which were not discussed in the draft report, that could be cleared if agreement were reached between DHHS and the Department regarding the appropriate interpretation of this issue.

The issue concerning "home of removal" has been an ongoing topic of discussion and correspondence between the Department and DHHS for several years. It is DHHS's interpretation that the "home of removal" is the home of the parent or relative from whom the child is physically removed. The DHHS contends that since eligibility for Title IV-E foster care maintenance payments is based upon eligibility for Title IV-A, the Title IV-A definition of "home" is applicable to the Title IV-E program. Based on this definition, DHHS argues that if the parents of a child have left the home or have placed the child with relatives or friends for an indefinite period of time the child's home and customary family setting have been shifted, in the parents absence, to the home of the relative or friend.

It is DHHS's position that the home in which the child was physically living at the time of legal removal should be differentiated from the residence or home of the person with legal responsibility for care and support of the child. Under DHHS's interpretation, FFP cannot be claimed on behalf of a child who was placed with a relative by the parent, prior to the commitment of the child to an agency,

unless the child is physically removed from that relative's home and placed in a different foster care home. The loss of FFP is the result of the fact that AFDC-FC benefits cannot be claimed when a child is placed back in the home of the relative from whom removed.

The Department contends that this position is not logically consistent with the purpose and result of the juvenile court's intervention in a dependency situation. Juvenile court intervention is initiated when a county files a petition stating facts that justify the court's assumption of jurisdiction over a child, and requests that due to these facts, the court order that custody and control over the minor be placed with the county. The removal that is a direct result of the court order is actually the "removal" of legal authority over the child from whomever possessed or exercised it before (e.g., parent or relative), to the county.

Therefore, the State's definition of "home of removal" is the home of the parent or relative from whom the child is legally removed. This position is also based on Section 472(a)(1) of the Social Security Act which, in outlining the conditions for federal Title IV-E eligibility, specifies that:

> "... the removal from the home occurred pursuant to a voluntary placement agreement entered into by the child's parent or legal guardian, or was the result of a judicial determination to the effect that continuation therein would be contrary to the welfare of such child and (effective October 1, 1983) that reasonable efforts of the type described in section 471(a)(15) have been made;"

The Department interprets this Section to mean that a legal removal via a court order (i.e., judicial determination) is the only way to remove a child from his/her home. It is this legal process which defines the "home of removal" as referenced in Section 472(a)(1). Therefore, for purposes of determining federal AFDC-FG/U linkage and AFDC-FC eligibility, including deprivation, the State reviews the circumstances in the home from which the child is legally removed via a court order.

The Department strongly believes that federal statute does not support the narrow interpretation of the term "home of removal" espoused by DHHS. DHHS interprets the term "home"

as that term is set out in 45 CFR Section 233.90(c)(1)(v)(13) to automatically include the home of a relative even though there may not be any evidence of "assumption of responsibility for day to day care of the child by the relative with whom the child is living." Furthermore, the DHHS interpretation supposes that the child's "customary family setting" follows the child everywhere they go, regardless of the facts surrounding the individual case. In essence, this interpretation means that whomever touched the child last becomes the "home of removal." We believe that this interpretation ignores the operative words of the definition of a "home" where the relative must exercise responsibility for the care and control of the child.

Furthermore, there are a wide variety of living situations in which an agency may find an abused or neglected child. The child may be physically residing with a relative, a neighbor, or may have been temporarily abandoned at the time the petition to detain is filed. Many of these cases involve relatives who are not the abusing party and court orders in these cases typically cite the parent as the "home of removal." Since the principle purpose of the detention and dispositional court orders is to transfer legal custody from the parent or guardian to the placing agency, California juvenile courts are reluctant to remove custody of children from individuals who do not have legal responsibility for those children.

Under DHHS's interpretation, if a child was removed from a nonabusive aunt and the court order cites the parent, the child cannot be returned to the aunt and remain eligible for federal AFDC-FC benefits. This clearly is contrary to the goals and purpose of the foster care program, which is to provide California's children with the best foster care placement available.

It is this Department's position that practical application of DHHS's interpretation in California would be unrealistic and run counter to the purpose of the foster care program. Because of the ramifications and complexities involved, the Department intends to request from DHHS a formal change in interpretation regarding "home of removal". We appreciate the OIG's recognition of this issue and the suggestion that action needs to be taken to reach resolution. The Department is hopeful that we can reach a mutually acceptable definition of "home of removal" with the DHHS, thereby bringing closure to this issue.

ATTACHMENT B

INFORMATION OBTAINED FROM THE CALIFORNIA EMPLOYMENT DEVELOPMENT DEPARTMENT WHICH DEMONSTRATES THAT LINKAGE AND FEDERAL ELIGIBILITY EXISTED FOR CERTAIN SPECIFIED AUDIT SAMPLE CASES PREVIOUSLY CITED IN ERROR

[Office of Audit Services note -- Comments have been deleted at this point because they pertain to material not included in this report.]

University of North Texas

Department of Business Computer Information Systems

Comments from Dr. Al Kvanli

Regarding: **California Department of Social Services (CDSS) Comments in Response to the DHHS-OIG Report Entitled "Audit of Title IV-E Foster Care Eligibility in California for the Period October 1, 1988 Through September 30, 1991/ CIN A-09-92-00086"**

In response to the above report, I have the following comments.

1. **t versus Z**

The t distribution is only appropriate for a statistic of the form $Z/\sqrt{W/k}$ where (1) Z is a standard normal random variable (2) W is a chi-square r.v. with k df (3) Z and W are independent and (4) the sampled population is normally distributed. It was "derived" to handle the case where $Z = (\bar{X} - \mu)/[\sigma/\sqrt{n}]$, $W = [(n - 1)/\sigma^2] \cdot s^2$ and $k = n - 1$; that is, deriving a confidence interval for the mean of a normal population using a SRS. It can be applied to stratified sampling when the strata populations are normally distributed since the sum of independent normal random variables is another normal random variable and the sum of independent chi-square random variables is another chi-square. But, I stress that <u>any</u> time one uses the t distribution to derive a confidence interval, there is an assumption made that random samples are obtained from a normally distributed population. Since we typically deal with samples containing a great many zero values (no error), our populations are far from normal to begin with, making use of the t distribution inappropriate.

In the case of using the RHC estimator for the California Foster Care audit, use of the t distribution is not justified since

1. The population under study is not normally distributed due to the zero/nonzero mixture within this population.

2. Letting Y = population total error, the statistic $(\hat{Y} - Y)/$(standard error of $\hat{Y}$) does not satisfy the (standard normal)/(independent chi-square / d.f.) requirement mentioned above, where $\hat{Y}$ is the RHC estimate.

This confidence interval is based on the limiting distribution of $\hat{Y}$, the normal distribution. Any attempts to "refine" this by using the t distribution is inappropriate.

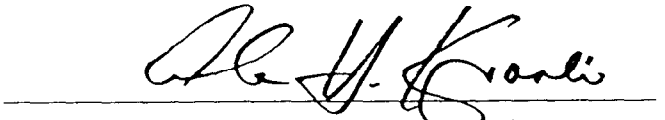
2. **Does the RHC methodology account for differences in the AFDC-FC program administration for this three year period? Is a sample of 800 payments adequate?**

The population is defined to be the 1,430,026 payments. The primary units are the county-months. Since a probability sample was obtained and the corresponding unbiased estimator was used, this sample must represent the population. Admittedly, due to administrative changes that occurred over this three year period, this population may be relatively nonhomogeneous, but this simply results in poor precision (wide confidence intervals) when estimating a parameter associated with this population (such as the population total error). Does this sample "capture" all the effects caused by administrative differences? Likely not, but statistical samples cannot be expected to capture all inherent sources of population variation. Such variation should be reflected in subsequent confidence intervals when using a probability based sampling strategy.

The concern here over the ratio n/N = .000559 is not whether the sample represents the population (it does) but rather the corresponding poor precision. The concern is understandable, but this small ratio only results in a wider confidence interval with a smaller lower limit -- an advantage to the auditee. Increasing this ratio would be to the advantage of the auditing agency, not the auditee.

3. **Is the RHC methodology appropriate here?**

The two-stage RHC procedure is an alternative to using a two-stage simple random sample. It employs an unbiased estimator of the population total difference and the variance estimator is also unbiased. It is appropriate whenever the situation calls for a two-stage procedure (as this audit does) but one wants to consider the size of the primary units in the sampling procedure. Here, "size" is defined to be the number of foster care cases claimed for federal participation by the county for that month. This audit was conducted exactly as dictated by this sampling strategy and the resulting confidence interval is statistically valid. As a final word here, simulation studies have demonstrated that this sampling methodology produces more stable point estimates and more stable variance estimates when compared with simple random sampling. This is one of the reasons I recommended this procedure eight or so years ago.



Dr. Alan H. Kvanli