

Department of Health and Human Services

OFFICE OF
INSPECTOR GENERAL

OPPORTUNITIES FOR ACF
TO IMPROVE
CHILD WELFARE SERVICES AND
PROTECTIONS
FOR NATIVE AMERICAN CHILDREN



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AUGUST 1994
OEI-01-93-00110

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EXECUTIVE SUMMARY

PURPOSE

The purpose of this study is to identify opportunities for the Administration for Children and Families to strengthen the provision of child welfare services and protections to American Indian and Alaska Native children.

BACKGROUND

Indian Child Welfare Services

American Indian and Alaska Native children (hereafter, both are referred to as Native American children) are significantly over-represented in substitute care. According to the most recent data, about 9,000--16 of every 1,000--Native American children were in substitute care in 1986, compared with about 5 of every 1,000 children in the general population.

Many child welfare experts and Federal, State, and Tribal child welfare administrators have raised concerns about serious gaps in the provision of child welfare services and federally legislated child welfare protections to these children. Federal responsibility for funding these services and ensuring these protections rests with the Bureau of Indian Affairs (BIA) in the Department of the Interior and the Administration for Children and Families (ACF) in the Department of Health and Human Services (DHHS).

The Bureau of Indian Affairs

The BIA provides the largest amount of Federal funding for Tribal child welfare services. It funds child welfare services for federally recognized Tribes through the Snyder Act, the Indian Self-Determination Act, and the Indian Child Welfare Act. The Indian Child Welfare Act also stipulates child welfare protections for Tribal children in State custody: it establishes Federal standards for removing these children from their families and placing them in foster or adoptive homes that reflect the unique values of Tribal culture. The BIA does not fund States to provide child welfare services for Tribal children.

The Administration for Children and Families

The ACF funds State and some Tribal child welfare programs under three titles of the Social Security Act. Title IV-E supports State foster care and adoption assistance programs. Title XX supports State social services, including child welfare services. States may share these monies with Tribal child welfare agencies. Title IV-B supports States' and some Tribes' child welfare programs and family preservation and support services.

In addition to funding child welfare services, ACF monitors States and some Tribes to ensure their compliance with the Adoption Assistance and Child Welfare Act (P.L. 96-272), which specifies standards for agency planning and internal control systems, and the timely provision of certain child welfare services and protections to all children in public custody.

This Report

The ACF has already begun to take some important steps to better ensure services and protections for Native American children. This report responds to ACF's interest in identifying options for additional ways to make its funds more accessible to Tribes and better ensure child welfare protections for these children.

The report is based on data gathered from four primary sources: a mail survey of State child welfare agencies in those 24 States with the largest Native American populations; a review of data on ACF funding to Tribes and States; a review of relevant Federal legislation, regulations, and policy; and interviews and discussion groups with child welfare experts and administrators in ACF, BIA, State and Tribal child welfare agencies, and Native American child welfare organizations.

ACF FUNDING FOR TRIBAL CHILD WELFARE SERVICES

Most Tribes have received little or no Title IV-E or Title XX funding.

In 15 of the 24 States with the largest Native American populations, eligible Tribes received neither Title IV-E nor Title XX funds from 1989 to 1993. Among the factors that limit the Tribes' access to Title IV-E and Title XX funds are several Federal requirements.

- The Congress provided no authority for ACF to award Title IV-E and Title XX funds directly to Tribes; and legislation neither requires nor encourages States to share funds with Tribes.
- Efforts to develop the necessary Tribal-State Title IV-E funding agreements and Title XX funding arrangements are constrained by requirements that put States at financial risk for Tribes' use of Title IV-E funds, mandate a matching share for Tribes' Title IV-E funds, and necessitate Tribal negotiations for funding with multiple States in instances in which Tribal land extends across State borders.

Most Tribes have received little or no Title IV-B funding.

In 1993, 471 of the 542 federally recognized Tribes received no Title IV-B funds from ACF. Several Federal requirements constrain the Tribes' access to Title IV-B funds.

- The eligibility criteria for Title IV-B child welfare funds effectively exclude many Tribes.
- Because of the Title IV-B award formulas, few Tribes receive Title IV-B funds. Those Tribes that do receive funds receive relatively small grants.
- The application, review, and compliance requirements discourage Tribes from seeking the funds.

OVERSIGHT OF FEDERAL CHILD WELFARE PROTECTIONS

The ACF has monitored the Tribal provision of the child welfare protections required by the Adoption Assistance and Child Welfare Act, but few Tribal records have been reviewed.

- The ACF has conducted periodic administrative and case-record reviews of those Tribes that have certified their eligibility for incentive funding under Title IV-B, Section 427 of the Social Security Act; according to ACF records, 21 of the 542 Tribes certified their eligibility for fiscal year 1993 funding.
- The ACF sample selection procedure for State Title IV-E and Title IV-B, Section 427 reviews has not guaranteed oversight of protections for those children in Tribal custody for whom Title IV-E payments are made by States.

Neither ACF nor any other Federal agency has ensured State compliance with the protections required by the Indian Child Welfare Act.

- The Act does not assign to any Federal agency the responsibility for assuring State compliance with its requirements.
- The DHHS and DOI have not implemented the provision of the Act that allows them to form agreements in support of child welfare services for Native American children.

OPPORTUNITIES FOR ACF TO IMPROVE CHILD WELFARE SERVICES AND PROTECTIONS

The ACF has an important role to play in facilitating the Tribes' access to Federal child welfare funding and strengthening Federal efforts to ensure that States and Tribes are providing required protections to Native American children.

We identify specific options for ACF to consider in these two areas: access to funds and oversight of protections. In the text, we discuss the implications of each for ACF, the Tribes, and the States. Many options could be implemented together; a few are mutually exclusive.

We recognize that making constructive change in this area requires sensitivity to the complex relationships among Tribes and States and various Federal agencies. To implement some options, ACF would need to change existing legal authorities. Other options entail difficult tradeoffs and politically sensitive choices. We also recognize that ACF faces growing program responsibilities at a time of increasing Federal financial constraints. Accordingly, in each area, we begin with those options that ACF could undertake in the near term with minimal investment of staff or program resources, and within existing legal authorities. We follow with other options that ACF could pursue over the longer term; these entail more fundamental changes in practices and relationships, changes in existing legal authorities, and/or larger investments of administrative or program resources.

As ACF considers future directions, we urge that it work closely with BIA, perhaps through the memorandum of agreement mechanism allowed by the Indian Child Welfare Act. Similarly, we urge ACF to involve Tribal and State government representatives in these deliberations as it has in other program and policy arenas in recent months.

FACILITATING TRIBES' ACCESS TO ACF FUNDS

The ACF could facilitate the Tribes' access to each of its three major child welfare funding streams: Title XX, Title IV-E, and Title IV-B. Because Title XX and Title IV-E funds have flowed from ACF to Tribes indirectly through the States, we consider them separately from Title IV-B funds that ACF awards directly to Tribes.

Title XX and Title IV-E funds

Option: Effective practices. Identify best practices and lessons learned from those States and Tribes that have successfully negotiated arrangements for sharing Title XX and/or Title IV-E funds. Disseminate the information widely to both States and Tribes and provide technical assistance as appropriate.

Option: State reporting. Establish routine reporting by States of their efforts to address the child welfare needs of Tribes in the States.

Option: Legal barriers to agreements. Change Federal requirements that have impeded the development of Tribal-State agreements. These include requirements that (1) States assume financial risk for Tribes' use of Title IV-E funds; (2) a matching share be contributed for Tribe's Title IV-E funds; and (3) Tribes negotiate with multiple States for Title XX and/or Title IV-E funds when their land extends across State borders.

Option: Direct grants. Fund Tribes directly with Title XX and/or Title IV-E funds, as ACF has in some of its other programs.

Title IV-B funds

Option: Technical Assistance. Strengthen technical assistance to those Tribes that are eligible for and interested in obtaining Title IV-B funds.

Option: Eligibility. Broaden eligibility for Title IV-B funds by eliminating some of the requirements that limit the number of Tribes that qualify. These include requirements that Tribes must (1) have contracted with BIA for child welfare services in order to qualify for Title IV-B Subpart 1 child welfare base funding, (2) be located in States meeting the Section 427 protection requirements before they are eligible for Title IV-B Subpart 1 child welfare incentive funding; and (3) qualify for a Title IV-B Subpart 2 fiscal year 1995 allotment of at least \$10,000 to receive any family preservation and support services monies.

Option: Funding streams. Further streamline requirements for plans, applications, and reporting. Pursue consolidation of funding streams for ACF's child welfare and related programs, and for those of other Federal agencies, especially BIA.

STRENGTHENING FEDERAL CHILD WELFARE PROTECTIONS FOR NATIVE AMERICAN CHILDREN

The ACF could take steps to strengthen compliance with the protections required by the Adoption Assistance and Child Welfare Act and/or the protections required by the Indian Child Welfare Act. We present our options for each separately.

Protections Required by the Adoption Assistance and Child Welfare Act

Option: Sampling tribal records. Examine more records for children in the custody of Tribes for whom Title IV-E payments are made by States.

Option: Protections and BIA grantees. Invite BIA, Tribal, and State representatives to examine the differences between the child welfare protections required by the Adoption Assistance and Child Welfare Act for all children in State custody and the child welfare protections required by BIA for children in Tribal custody to ensure that adequate protections are ensured for all Native American children in public custody.

Protections Required by the Indian Child Welfare Act

Option: Technical assistance. Strengthen technical assistance to State child welfare agencies and State courts to improve their understanding of the protections required by the Indian Child Welfare Act.

Option: Ensuring States' compliance. Establish clear authority for ACF to oversee the States' provision of the protections required by the Indian Child Welfare Act.

COMMENTS ON THE DRAFT REPORT

We solicited and received written comments on our draft report from ACF, the Public Health Service (PHS), and BIA. The complete text of these comments appears in appendix C. We are pleased that ACF, PHS and BIA all agree with the general direction and content of the report and that all three agencies volunteered their interest in working together to improve child welfare services and protections for Native American children.

The BIA requested that we omit from the final report our option to encourage or require some Tribal child welfare programs to provide for children in their custody the basic child welfare protections mandated by the Adoption Assistance and Child Welfare Act. The BIA suggested that the implementation of this option could result in an increased administrative burden for Tribes without a corresponding increase in funding. In addition, the BIA advised against the unilateral imposition of any new ICWA program requirements. In response to the BIA concern, we have revised the option to clarify our intent that ACF work with BIA, Tribal, and State representatives to ensure that Federal requirements provide adequate protections for Native American children in either State or Tribal custody.

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INTRODUCTION

PURPOSE

The purpose of this study is to identify opportunities for the Administration for Children and Families to strengthen the provision of child welfare services and protections to American Indian and Alaska Native children.

BACKGROUND

Concerns about American Indian and Alaska Native Children in Substitute Care

American Indian and Alaska Native children (hereafter, both are referred to as Native American children) are significantly over-represented in substitute care. According to the most recent data, which appeared in a 1988 report prepared for the Administration for Children and Families (ACF) and the Bureau of Indian Affairs (BIA), Native American children represented .9 percent of the total 1986 U.S. population of 63.8 million children, but 3.1 percent of the 287,000 children in substitute care. About 9,000--16 of every 1,000--Native American children were in substitute care, compared with about 5 of every 1,000 children in the general population.¹

Child welfare services for Native American children are provided primarily by either Tribes or States. According to the 1988 report, Tribal child welfare programs provided care for 35 percent of the 9,000 Native American children in substitute care and State-administered programs provided care for 52 percent. The BIA and off-reservation programs served the remaining children.²

In the 1988 report and in discussions with the Office of Inspector General, child welfare experts, along with Federal, State, and Tribal child welfare administrators raised concerns about serious gaps in the provision of child welfare services and federally legislated child welfare protections to Native American children. Major concerns include the inconsistent provision of some federally mandated child welfare protections by States, and the limited capacity of some Tribes to provide child welfare services--attributable, in part, to difficulties obtaining Federal funds that could be used to strengthen Tribal programs.

Federal Oversight and Funding

Both BIA in the Department of the Interior (DOI) and ACF in the Department of Health and Human Services (DHHS) are responsible for Federal funding of child welfare services and oversight of child welfare protections for Native American children.

The BIA Role: The BIA serves as the focal point for Federal programs for American Indians and Alaska Natives.³ Within BIA, the Division of Social Services administers a broad range of programs, including child welfare services, for Tribal members. The BIA provides child welfare services funding to Tribal governments or those who care for Tribal children under three laws: The Indian Child Welfare Act (ICWA) (P.L. 95-608); the Snyder Act [ch. 115, 42 Stat. 208 (1921)]; and the Indian Self-Determination Act (P.L. 93-638). The BIA does not fund States to provide child welfare services for Tribal children.

Through ICWA, BIA provides grants for Tribal child welfare programs.⁴ In fiscal year 1993, BIA distributed about \$9.7 million in ICWA grants to 375 Tribes (see appendix A for a discussion of this and other funding for Tribal child welfare services from BIA and ACF).⁵

In addition to providing funding, ICWA stipulates child welfare protections for Tribal children in State custody. The law establishes Federal standards for removing these children from their families and placing them in foster or adoptive homes that reflect the unique values of Tribal culture.

Under the Snyder Act, BIA provides child welfare assistance payments as additional support for child welfare services for Tribal children. These payments are made, however, only when Tribes are unable to obtain funds from other sources. In 1993, BIA distributed a total of about \$20 million in child welfare assistance payments to support an average monthly caseload of 3020 children.⁶

The Indian Self Determination Act (P.L. 93-638) provides legal authority under which some Tribes have contracted with BIA to administer their own child welfare services with funds that BIA would have expended on the administration of those services.⁷ According to the most recent data available, 154 Tribes received about \$60.2 million in 1992 to administer their own social services.⁸ Some of these monies supported child welfare services, but the exact amount is unknown.

The ACF Role: The ACF directs, funds, and oversees programs for vulnerable children and families in the United States. Within ACF, the Children's Bureau supports State and Tribal programs to provide child welfare, foster care, adoption, and family preservation and support services.⁹ These programs are funded under three titles of the Social Security Act: Titles IV-E, XX and IV-B. The ACF awards funds under these three Titles to support State child welfare services for all children, including Native American children, in State custody.¹⁰ States may share these monies with Tribal child welfare agencies.¹¹ The ACF also awards Title IV-B funds directly to some Tribes.

Title IV-E is the largest source of Federal funding that supports foster care and adoption services. In 1993, ACF distributed about \$2.54 billion in Title IV-E funds.¹²

Title XX, the Social Services Block Grant program, supports many social services programs, including those for child welfare. In 1993, \$2.8 billion was allotted for social services.

Title IV-B provides smaller amounts to support child and family services. In 1993, \$295 million was appropriated for Subpart 1 of Title IV-B to support both base funding and Section 427 incentive funding for child welfare programs.¹³ Title IV-B Subpart 2 was created by the Family Preservation and Support Act, which was passed as part of the Omnibus Budget Reconciliation Act of 1993 (P.L. 103-66). Subpart 2 will provide \$60 million for family preservation and support services in 1994.¹⁴

In addition to funding child welfare services, ACF oversees the provision of child welfare protections mandated by the Adoption Assistance and Child Welfare Act of 1980 (P.L. 96-272).¹⁵ This law ties child welfare services funding under Titles IV-E and IV-B Subpart 1 to compliance with requirements for child welfare programs. Further, it specifies standards for agency planning and internal control systems, and the timely provision of certain child welfare services and protections to all children in public custody. The law requires that each State receiving Title IV-E funds provide child welfare services to all eligible children, including Native American children, in the State. Tribes may assume responsibility for providing these services to Tribal children. In all instances, ACF expects States to coordinate with Tribes for the provision of services and protections to Tribal children who are in public custody.

The Objectives of this Report

The ACF has already begun to take some important steps to better ensure services and protections for Native American children. This report responds to ACF's interest in identifying options for additional ways to make its funds more accessible to Tribes and better ensure child welfare protections for these children. Accordingly, the first section of the report summarizes the extent to which Tribes are now able to access ACF's child welfare and family services funding.¹⁶ It also summarizes the current status of oversight for the provision of federally legislated child welfare protections to Native American children.¹⁷ Further, it identifies those factors that constrain ACF in its efforts to ensure that services and protections are provided to these children.

The second section of the report identifies a variety of options for ACF to consider as it develops plans for future efforts to ensure child welfare services and protections for Native American children. We recognize that ACF's consideration of some of these options will occur as part of the broader review it has begun of its oversight mechanisms for State child welfare programs.

METHODOLOGY

Our report is based on data gathered from four primary sources. First, to determine the amount of Title IV-E and Title XX funding that States share with Tribes, we conducted a mail survey of State child welfare agencies in those 24 States with the largest Native American populations (see appendix B for a summary of the survey results).¹⁸ Second, we reviewed ACF data on the amount of Title IV-B Subpart 1 child welfare funding that ACF awards to Tribes and States. Third, we reviewed relevant Federal legislation, regulations, and policy.

Finally, we spoke with child welfare experts and administrators in ACF and BIA, and in State and Tribal child welfare agencies, and American Indian child welfare advocacy organizations. We held telephone discussions with ACF Indian child welfare staff in 9 regions; a discussion group with child welfare administrators representing 10 States; and 2 discussion groups with Indian child welfare administrators and Indian child welfare experts representing 17 Tribal child welfare agencies from 8 States and 2 organizations that provide education about Indian child welfare services and protections.¹⁹

We conducted our review in accordance with the *Quality Standards for Inspections* issued by the President's Council on Integrity and Efficiency.

ACF FUNDING FOR TRIBAL CHILD WELFARE SERVICES

Most Tribes have received little or no Title IV-E or Title XX funding.

In 15 of the 24 States with the largest Native American populations, eligible Tribes received neither Title IV-E nor Title XX funds from 1989 to 1993.²⁰ In 1993 alone, these 15 States received \$1,714 million in Title IV-E funds and \$1,289 million in Title XX funds.

Nine of the 24 States reported that some Tribes in their States received Title IV-E and/or Title XX funds in 1993. (See Table 1.)

Eight States reported that 46 Tribes received \$1.9 million --.2 percent--of the States' \$82 million Title IV-E funds, while 4 States reported that 32 Tribes received \$2.8 million --.3 percent--of the States' \$98 million Title XX funds. (For additional results from the OIG mail survey, see appendix B.)

TABLE 1: OF THE TWENTY-FOUR STATES WITH THE LARGEST NATIVE AMERICAN POPULATIONS, NINE SHARED TITLE IV-E AND/OR TITLE XX FUNDS WITH ELIGIBLE TRIBES IN 1993.

State ^d	Number of Tribes ^b	Title IV-E Funds ^c		Title XX Funds ^c	
		Number of Tribes Funded	Number of Tribes Eligible	Number of Tribes Funded	Number of Tribes Eligible
AK	222	0	NA ^d	0	NA
AZ	20	0	20	20	21
CA	102	0	NA	0	NA
CO	2	2	2	0	2
FL	2	0	NA	0	NA
ID	4	0	6	0	NA
KS	4	0	NA	0	NA
MI	7	0	NA	0	NA
MN	6	0	NA	0	NA
MT	7	4	7	0	NA
NE	6	2	2	0	NA
NV	16	0	NA	0	NA
NM	23	5	22	2	22
NY	7	0	0	0	0
NC	1	0	NA	0	NA
ND	4	4	4	0	NA
OK	36	24	27	0	NA
OR	9	2	9	8	9
SD	9	3	9	2	9
TX	3	0	NA	0	NA
UT	7	0	NA	0	NA
WA	27	0	NA	0	NA
WI	11	0	NA	0	NA
WY	2	0	NA	0	NA
TOTAL	537^e	For 11 States: 46/108		For 6 States: 32/63	

^a According to both the *Indian Service Population and Labor Force Estimates* (Bureau of Indian Affairs, January 1991) and the *Resident Population Distribution for the United States, Regions, and States, by Race and Hispanic Origin* (Bureau of the Census, 1990), this list of 24 States comprises those 20 that had the largest Native American populations in absolute numbers and those 20 that had the largest Native American populations as percentages of the total State populations.

^b List of federally recognized Tribes (58 Fed. Reg. 54,222, Oct. 20, 1993).

^c Survey of 24 State Child Welfare Departments, Office of Inspector General, Fall 1993

^d "NA" indicates that the information was not available from the State.

^e Tribes whose land extends into multiple States have been counted in each State.

Between 1989 and 1993, the number of States that shared these funds with Tribes, the number of Tribes receiving the funds, and the amount of money they received, as a percentage of the States' aggregate funding, increased very little.²¹

The Tribes' access to Title IV-E and Title XX funds is constrained by some important factors, which are summarized below.

- The Congress provided no authority for ACF to award Title IV-E and Title XX funds directly to Tribes; and legislation neither requires nor encourages States to share funds with Tribes.

The ACF requires that formal Title IV-E funding agreements be achieved before States transfer Title IV-E monies to Tribes. These funding agreements define the responsibility of the Tribes to meet the requirements of P.L. 96-272 and they outline the conditions under which States will transfer funds. States and Tribes are allowed greater flexibility in making arrangements for the transfer of Title XX funds. Such arrangements may include contracts, grants, or other State-approved mechanisms for the transfer of funds and the provision of social services.

- Efforts to develop Tribal-State Title IV-E funding agreements and Title XX funding arrangements are constrained by several factors.

Disputes Between Tribes and States about Issues Unrelated to Child Welfare: In many cases, to arrive at Title IV-E funding agreements and Title XX funding arrangements, the two governments must circumnavigate longstanding points of contention about such issues as land and jurisdiction. Several of the child welfare administrators and experts with whom we spoke indicated that a fundamental lack of trust between State and Tribal representatives contributed to the incidence of protracted and/or failed negotiations. One State child welfare administrator reported that disagreements over land rights and jurisdiction had prevented his State from reaching an agreement with a Tribe. An Indian child welfare expert reported that Tribal sovereignty became a key issue in negotiations between another State and a Tribe when the State suggested that the funding agreement would be contingent upon the Tribal adoption of the complete set of State child welfare policies and procedures.

State Responsibility for Tribal Compliance with the Requirements of P.L. 96-272 for Title IV-E Funds: Some States are reluctant to form Title IV-E agreements with Tribes because, according to law, the States are then accountable for Tribal compliance with the requirements of Title IV-E and, in some instances, Title IV-B. Thus, States can lose both Title IV-E and Section 427 incentive funds if Tribal records are out of compliance.²² Officials that we interviewed from two States volunteered that ACF had disallowed Title IV-E payments that the States had transferred to Tribes.

The Matching Share Requirement for Title IV-E Funding: Officials from States that have Title IV-E agreements with Tribes told us that their States assume responsibility for the Tribal portion of the Title IV-E matching share. Other States, however, may be less willing or able to do so, and most of the State and Tribal child welfare administrators with whom we spoke agreed that many Tribes would have difficulty fulfilling the matching share requirement.

Tribal Land that Extends into Multiple States: In cases in which Tribal land extends across State borders, Tribes must negotiate Title IV-E funding agreements and Title XX funding arrangements with each of the States involved. For example, the reservation of the Navajo Nation, one of the largest Tribes in this country, extends into Arizona, New Mexico, and Utah. To obtain all of the Title IV-E and Title XX funds for which it might qualify, this Tribe would have to conclude six separate negotiations with the three States. To date, the Navajo have received no Title IV-E funding at all; they have received Title XX funds from Arizona and New Mexico. At least eight federally recognized Tribes have land that extends into multiple States.²³

Most Tribes have received little or no Title IV-B funding.

In fiscal year 1993, 471 of the 542 federally recognized Tribes received no Title IV-B child welfare funds from ACF. Of the 59 that did receive base child welfare funding, only 21 were eligible to receive incentive funds. In all, the 59 Tribes received about \$762,000--.3 percent--of the nearly \$295 million Title IV-B child welfare funds awarded. This is a slight increase in funding from 1989, when 29 Tribes received about \$461,000--.2 percent--of the nearly \$246.7 million in Title IV-B funds.²⁴ A few important factors limit the Tribes' access to Title IV-B funds. These are discussed below.

- The eligibility criteria for Title IV-B child welfare funds effectively exclude many Tribes.

P.L. 96-272 indicates that Tribal eligibility for Title IV-B base child welfare funding is contingent upon ACF approval of the child welfare services plan for the State in which the Tribe is located.²⁵ The ACF program instructions further specify that Tribal eligibility for Section 427 incentive funding is dependent upon State compliance with the requirements of the Section 427 review.²⁶ According to ACF records, however, at least four States--Alaska, California, Connecticut, and Massachusetts--have been out of compliance in recent years.²⁷ The 344 federally recognized Tribes located in these States were ineligible for Section 427 incentive funds in the years that the States were out of compliance.²⁸

The ACF regulations also require that, to be eligible for this funding, a Tribe must have a P.L. 93-638 self-determination contract or grant with BIA to provide its own child welfare services. Tribes that have neither, but that do, nonetheless, provide

some child welfare services with ICWA grants or other funds, are ineligible to receive Title IV-B child welfare funds. The ACF is considering a regulatory change to address this issue.

- Because of the Title IV-B award formulas, few Tribes receive Title IV-B funds. Those Tribes that do receive funds receive relatively small grants.

The formula that ACF uses to calculate the amount of the Title IV-B child welfare base-funding awards results in many grants being quite small.²⁹ Furthermore, ACF requires Tribes to contribute a 25 percent matching share, in cash or in kind, for this funding. Of the 59 Tribes that were funded in 1993, 8 received annual Title IV-B child welfare funding of less than \$1000. The mean amount of the Title IV-B child welfare grants awarded to the 59 Tribes was about \$12,900.³⁰ The ACF is considering a regulatory change to the Title IV-B base-award formula that would double the amount of grant funding to individual Tribes.

P.L. 103-66 mandates that 1 percent of the annual appropriation of the new Title IV-B funding for family preservation and support services be set aside for Tribes. The law ties Tribal allotments to population counts, however, and it prohibits allotments to Tribes that qualify for less than \$10,000. The ACF estimates that 41 of the 542 federally recognized Tribes will be eligible for funding.

- The application, review, and compliance requirements discourage Tribes from seeking the funds.

In our discussions with State and Tribal child welfare administrators and experts, most agreed that it is more difficult for Tribes than for States to obtain available funding. Tribal child welfare programs have fewer staff and a higher staff turn-over rate than their State counterparts. Many tribal child welfare programs also lack staff with grant-writing expertise. In addition, Tribes seeking support for their child welfare programs must meet the different eligibility, application, review, and compliance requirements for each piece of funding they are able to obtain from Federal, State, local, or private sources.

For many Tribes, the requirements tied to ACF's Title IV-B child welfare funding--contracting services from BIA, submitting child welfare plans to ACF, certifying and demonstrating compliance with Section 427, and contributing a 25 percent matching share--have been particularly burdensome, given the relatively small amounts of funding available.³¹

OVERSIGHT OF FEDERAL CHILD WELFARE PROTECTIONS

The ACF has monitored the Tribal provision of the child welfare protections required by P.L. 96-272, but few Tribal records have been reviewed.

- The ACF has conducted periodic administrative and case-record reviews of those Tribes that have certified their eligibility for Section 427 funding; according to ACF records, 21 of the 542 Tribes certified their eligibility for fiscal year 1993 funding.

According to P.L. 96-272, only these 21 Tribes are required to undergo the periodic Section 427 administrative and case-record reviews to determine that children in Tribal custody are receiving the child welfare protections required by Section 427.³² The ACF is now re-evaluating these reviews and other of its oversight mechanisms, however, and has postponed additional reviews.

- The ACF sample-selection procedure for State Title IV-E and Section 427 reviews has not guaranteed oversight of protections for those children in Tribal custody for whom Title IV-E payments are made by States.

Title IV-E payments made by a State for children in Tribal custody have been included in the pool from which a random sample has been drawn for the ACF review of all of the State Title IV-E payments. If the Tribe that has custody of the children has not certified its eligibility for Section 427 incentive funding and review, then the children's records have also been included in the pool from which the State Section 427 record review random sample has been drawn.³³

Neither ACF nor any other Federal agency has ensured State compliance with the protections required by the Indian Child Welfare Act.

Many Tribal, State, BIA, and ACF child welfare administrators and Native American child welfare experts expressed concerns about States' inconsistent provision of the ICWA protections. The extent to which States do comply with the law, however, is unknown because no Federal agency has monitored compliance.

- The ICWA does not assign to any Federal agency the responsibility for assuring State compliance with the requirements of the Act.

The BIA, to which the Act is addressed, has no funding or other formal relationships with State child welfare agencies. Thus, it has no means by which to provide either technical assistance or oversight for State compliance with the law.

The ACF, in part because it lacks clear jurisdiction, has provided little technical assistance to States related to ICWA. Many of the regional ACF staff who have responsibility for Indian child welfare issues indicated that they are unclear about the role they should play in encouraging or assisting the States to comply with the law.

- The DHHS and DOI have not implemented the ICWA provision that allows them to form agreements in support of child welfare services for Native American children.

The ICWA allows DOI and DHHS to enter into agreements for establishing, operating, and funding Indian child and family service programs, both on and off reservations. Through such agreements, ACF and BIA could clarify responsibility for ensuring State compliance with the requirements of the law. No such agreement, however, has been formed in the 15 years since the passage of the Act.

OPPORTUNITIES FOR ACF TO IMPROVE CHILD WELFARE SERVICES AND PROTECTIONS

The Federal, State, and Tribal child welfare administrators and child welfare experts with whom we spoke identified important problems with Federal financing of Tribal child welfare services and with Federal oversight of child welfare protections for Native American children. Access to Federal funds can be difficult for many Tribes, and Federal efforts to ensure that the States and Tribes are providing the required protections to children have been limited.

The ACF has an important role to play in addressing these issues. As we have noted in this report, ACF has already taken some steps to remedy these problems and is considering others. The ACF staff have asked OIG to identify options to consider as part of this process. We identify specific options for ACF to consider in two areas: access to funds and oversight of protections. Many options could be implemented together; a few are mutually exclusive.

We recognize that making constructive change in this area requires sensitivity to the complex relationships among Tribes and States and various Federal agencies. To implement some options, ACF would need to change existing legal authorities. Other options entail difficult tradeoffs and politically sensitive choices. In addition, some of the options we identify are best considered in the context of the reevaluation that ACF is currently conducting of its oversight processes.

We also recognize that ACF faces growing program responsibilities at a time of increasing Federal financial constraints. Accordingly, in each area, we begin with those options that ACF could undertake more readily with minimal investment of staff or program resources, and within existing legal authorities. We follow with other options that ACF could pursue over the longer term; these entail more fundamental changes in practices and relationships, changes in existing legal authorities, and/or larger investments of administrative or program resources.

As ACF considers future directions, we urge that it work closely with BIA, perhaps through the memorandum of agreement mechanism authorized by the ICWA statute. The BIA has long-established programs for child welfare services and it is important for ACF to take these into account as it considers which options to pursue. Similarly, we urge ACF to involve Tribal and State government representatives in these deliberations, as it has in other program and policy arenas in recent months. Both have major investments in child welfare programs for Native American children and have long histories of dealing with each other and with the Federal government on these issues.

FACILITATING TRIBES' ACCESS TO ACF FUNDS

The ACF could facilitate the Tribes' access to each of its three major child welfare funding streams: Title XX, Title IV-E, and Title IV-B. Because Title XX and Title IV-E funds have flowed from ACF to Tribes indirectly through the States, we consider them separately from Title IV-B funds that ACF awards directly to Tribes.

Title XX and Title IV-E funds

Option: Effective practices. *Identify best practices and lessons learned from those States and Tribes that have successfully negotiated Title IV-E funding agreements and Title XX funding arrangements. Disseminate the information widely to both States and Tribes and provide technical assistance as appropriate.* This option would require minimal resources to implement and could provide potentially valuable insights to States and Tribes, which often struggle with this process. In pursuing this option, ACF could build on its experiences with the few research and demonstration projects it has funded to support the development of Tribal-State agreements.³⁴ The ACF could also assess the feasibility of developing a model funding agreement to provide guidance on Federal standards and expectations. Pursuing this option, however, would not address the more intractable barriers to the formation of these funding agreements/arrangements that result from Federal legal requirements.

Option: State reporting. *Establish routine reporting by States of their efforts to address the child welfare needs of Tribes in the States.* The ACF does not now routinely receive information from States on the needs of Tribes, the nature of Tribal service programs, or the extent to which States share either Title XX or Title IV-E funds with Tribes. Fuller reporting would provide ACF with better information about the circumstances of those Tribes with which it has no other contact, and could serve as an incentive for States to share more Title XX and Title IV-E funds. This reporting might require legal authority, but could be incorporated into the joint-planning process that ACF conducts with States for Title IV-B child welfare funds.

Option: Legal barriers to agreements. *Change Federal requirements that have impeded the development of Tribal-State agreements. These include requirements that (1) States assume financial risk for Tribes' use of Title IV-E funds; (2) a matching share be contributed for Tribe's Title IV-E funds; and (3) Tribes negotiate with multiple States for Title XX and/or Title IV-E funds when their land extends across State borders.* Changing these requirements would involve legal action and so is a longer-term approach, but one that could alleviate some of the more fundamental barriers to the flow of funds from States to Tribes.

In eliminating the financial risk to States for the Tribes' use of IV-E monies, ACF would remove a major disincentive for States. The ACF could still ensure appropriate management of the funds by holding the Tribes themselves accountable for their performance, as it does in other programs. Allowing relief from the Title IV-E matching-share requirement would reduce the financial burden on States and would

allow those Tribes with limited resources to receive funds with little or no match. Such a reduction or elimination of matching share requirements for Tribal funding has been implemented in other ACF programs³⁵. Finally, designating a lead State for negotiations and the transfer of funds is one possible approach to simplifying the process for those Tribes with land that extends across State borders.

Option: Direct grants. *Fund Tribes directly with Title XX and/or Title IV-E funds, as ACF has in some of its other programs.* This option would be the surest route to facilitating the Tribes' access to these two important funding streams. It would, however, require legislative action and would entail fundamental changes in relationships, processes, and resources.³⁶

The precedent for ACF to fund Tribes directly already exists.³⁷ The agency deals with Tribes directly in funding, for example, the Title IV-B child welfare and family preservation and support grants, the JOBS program, and the Child Care and Development Block grants.³⁸ Many Tribal officials told us they would welcome this approach. It would facilitate their access to the funds, and would be more consistent with Tribal sovereignty.³⁹ With this direct approach, ACF could ensure that Tribal grantees have the capacity to provide quality services and are properly accountable for the Federal funds.

On March 24, 1994 a bill (H.R. 4162) that would mandate a three-percent set aside of Title XX monies for Tribes was introduced into the Congress. Direct Title XX grants to Tribes might be opposed by States, however; such grants would increase financial pressures on States because the grants would be drawn from the States' allotments.⁴⁰

With respect to Title IV-E funding, most State officials with whom we talked favored ACF dealing directly with Tribes. This direct approach for Title IV-E would eliminate the need for Tribal-State agreements and, because Title IV-E is an uncapped Federal entitlement, would not affect the monies available to the States.

This direct approach for Title IV-E would, however, increase Federal outlays as more Tribes seek reimbursement. It would also heighten demands on ACF to strengthen its own expertise, to provide more technical assistance to Tribes, and to manage an administrative process for more grantees.⁴¹ Given the heavy demands on its administrative resources, ACF could alleviate this burden somewhat by such strategies as contracting for technical assistance to Tribes, as it is now considering, and integrating its monitoring efforts with those of its other programs. The ACF could also examine the feasibility of using a nongovernment organization for reviews of plans and applications, for grants administration, or for monitoring, as well as for technical assistance. In so doing, ACF could retain important authorities such as those for setting policy and priorities, for approving Federal expenditures, and for hearing appeals.⁴²

Title IV-B funds

Title IV-B funds are important to Tribes: Even though they have been the smallest source of Federal funds for child welfare services, they can support a wide range of programs. They are also the one funding source for Tribes over which ACF has direct control. As noted earlier, ACF has recently taken some steps, such as simplifying requirements for the IV-B child welfare plans, to facilitate the Tribes' access to these funds. In continuing these efforts, ACF could pursue the following:

Option: Technical Assistance. *Strengthen technical assistance to those Tribes that are eligible for and interested in Title IV-B child welfare and/or family support and preservation funds.* The ACF regional office staff could provide intensified support to these Tribes with conference calls and periodic meetings that address specific concerns raised by the Tribes and the various components of the Title IV-B funding requirements. This option would benefit those Tribes with fewer staff, lesser grant-writing expertise, and lesser programmatic knowledge. In addition, it could be implemented without a major investment of time and without additional legal authority.

Option: Eligibility. *Broaden eligibility for Title IV-B funds by eliminating some of the requirements that limit the number of Tribes that qualify. These include requirements that Tribes must (1) have contracted with BIA for child welfare services in order to qualify for Title IV-B Subpart 1 child welfare base funding, (2) be located in States meeting the Section 427 protection requirements before they are eligible for Title IV-B Subpart 1 child welfare incentive funding; and (3) qualify for a Title IV-B Subpart 2 fiscal year 1995 allotment of at least \$10,000 to receive any family preservation and support services monies.* Any of these changes would require ACF to seek legal amendments to their authorities--a long-term, time-consuming process. Broadening eligibility for Title IV-B base and incentive funding could heighten financial pressures on the States; more Tribes may well be funded and the States' allotments would be reduced accordingly. Changing the requirement for family preservation funds, on the other hand, would have no financial impact on the States because Tribal grants are limited to one percent of the annual appropriation. This change would, however, likely reduce grant amounts for those Tribes that now qualify for funding. The ACF is considering a proposal to eliminate the BIA contract requirement. Further experience with grant awards under the new family preservation legislation could help inform ACF's decision about revising this eligibility requirement.

Option: Funding streams. *Further streamline requirements for plans, applications, and reporting. Pursue consolidation of funding streams for ACF's child welfare and related programs, and for those of other Federal agencies, especially BIA.* Further simplifying requirements and consolidating funding streams would significantly reduce the burden facing many Tribes that must piece together support from several funding sources, each with its own requirements and often with its own program staff.

The ACF has begun to simplify the planning requirements for Title IV-B programs. It could take additional steps to develop strategies for simplifying the application and reporting processes. It could support pilot projects with a few Tribes to "decategorize" the Title IV-B funding streams, or those along with other related funding. In so doing, ACF could draw on others' experiences, such as Iowa's decategorization initiative for child welfare services.⁴³ The ACF could also pursue the consolidation of funding streams through the efforts of the Intra-Departmental Council on Native American Affairs, which was recently reestablished with a revised charter.

The ACF could take advantage of already existing authority for the Secretaries of DOI and DHHS to support about 30 Tribal self-governance projects, in which the funding for several Federal programs is consolidated.⁴⁴ It could also pursue broader legislative authorities to consolidate funding streams for Tribes. The DHHS, together with the Departments of Education, Interior, and Labor, currently have authority, for example, to integrate their funding for Tribes' employment, training, and related services.⁴⁵ This authority might serve as a useful model for legislation allowing consolidation of the child welfare funding streams.

Further collaboration between ACF and BIA under the terms of a memorandum of agreement offers rich opportunities to simplify grant requirements and/or consolidate funding streams. The BIA's programs support child welfare services for many more Tribes than ACF currently reaches, and they involve significantly more Federal dollars than ACF currently provides to Tribes.

Many Federal, State, and Tribal child welfare administrators with whom we spoke urged ACF to take steps to simplify and consolidate grant programs.⁴⁶ Developing a simpler, more coherent Federal approach would be difficult and time consuming. Yet, this course of action offers, in their opinion, significant potential for achieving real improvement in the Federal government's approach to funding the Tribes' child welfare programs. Other lesser steps, they suggest, will address the problems only at the margin.

STRENGTHENING FEDERAL CHILD WELFARE PROTECTIONS FOR NATIVE AMERICAN CHILDREN

The ACF could take steps to strengthen compliance with the protections required by P.L. 96-272 and/or the protections required by ICWA. We present separately our options for each.

Protections of P.L. 96-272

Option: Sampling tribal records. *Examine more records for children in the custody of Tribes for whom Title IV-E payments are made by the State.* The protocol for drawing samples of records for the States' Title IV-E and Section 427 reviews has not ensured that any records for these children would be included in the samples. The ACF's current effort to develop different approaches to monitoring its programs presents an

opportunity to identify ways to strengthen its oversight of the Tribes' compliance with the P.L. 96-272 protections. Any new process, perhaps through more representative sampling, needs to ensure that Tribes are as accountable as the States for providing these protections. A more extensive review of Tribal records need not pose greater financial risk to the States if ACF were to hold the Tribes themselves accountable for their performance, as suggested in an option above.

Option: Protections and BIA grantees. *Invite BIA, Tribal, and State representatives to examine the differences between the child welfare protections required by the Adoption Assistance and Child Welfare Act for all children in State custody and the child welfare protections required by BIA for children in Tribal custody.* Tribes that receive Title IV-E and/or Title IV-B incentive funds are required to provide the P.L. 96-272 child welfare protections for children in their custody. Tribes that receive BIA funding for child welfare services are required to adhere to the social service guidelines in the BIA manual. If ACF, BIA, Tribal, and State representatives were to examine the differences between the P.L. 96-272 requirements and the BIA manual guidelines, the group might decide that some differences are justified by cultural or other important considerations while other differences should be eliminated. Such an effort could clarify child welfare protection requirements for Tribes and could simplify compliance requirements for Tribes that receive BIA funds and Title IV-E and/or Title IV-B incentive funds.

If the group were to agree that the required child welfare protections for children in Tribal custody should be amended, it could pursue a legislative remedy to this end. The group could also collaborate in developing and providing technical assistance to Tribes about existing and any newly mandated protections and means of ensuring their provision to children in the custody of Tribal child welfare agencies.

This option need not necessitate ACF monitoring of Tribes' compliance. The ACF and BIA could work together under the terms of a memorandum of agreement to address this issue and they could assess the feasibility of incorporating a monitoring process into BIA's already-required annual evaluations of Tribal grantees. Pursuing this option, however, could be a time-consuming, long-term effort.

Protections of P.L. 95-608 (ICWA)

Option: Technical assistance. *Strengthen technical assistance to State child welfare agencies and State courts to improve their understanding of the ICWA protections.* The ACF could rely on its regional office staff to work more intensively with the States. They could provide State officials with information about the protections and share information about any lessons learned from the States' experiences in implementing ICWA.⁴⁷ They could invite BIA staff to discuss ICWA protections in ACF conference calls and in various ACF meetings with State officials. They could encourage those State courts applying for the new grants authorized by the family preservation legislation to examine their handling of the ICWA protections as part of the overall assessment of their foster care and adoption proceedings.⁴⁸ This option

could be accomplished without significant investment of time and without additional authority, but it would likely require ACF to improve its expertise about ICWA.

Option: Ensuring States' compliance. *Establish clear authority to oversee the States' provision of the ICWA protections.* The ACF has established, extensive relationships with State child welfare agencies and has long monitored the States' compliance with the general child welfare protections of P.L. 96-272. Thus, ACF has valuable experience that it could apply to overseeing the States' compliance with the ICWA protections, which apply only to Tribal children in State custody.

In establishing a clear basis of authority, ACF could work with BIA under the terms of a memorandum of agreement to spell out its responsibilities.⁴⁹ Alternatively, ACF could seek a legislative remedy, either as an amendment to the ICWA statute, or as a requirement that States assure compliance with the ICWA protections as part of their Title IV-B plans.⁵⁰

Implementing this option would result in a somewhat increased administrative burden for ACF. It would require strengthening staff expertise, developing program guidance for State child welfare agencies and State courts, and developing a compliance review process. It would, however, allow ACF to meet the important need for Federal oversight of these protections. As ACF redesigns its monitoring processes more generally, it could address ways to include the ICWA protections in its reviews of the other child welfare protections required of the States.⁵¹

COMMENTS ON THE DRAFT REPORT

We solicited comments on our draft report from ACF, the Public Health Service (PHS), the Assistant Secretary for Planning and Evaluation (ASPE), the Assistant Secretary for Management and Budget (ASMB), the Assistant Secretary for Legislation (ASL) and BIA. The ACF, PHS, and BIA returned written comments on our report. The full text of these comments is included in appendix C. The ASMB concurred with our report without comment. The ASPE and ASL declined written comment.

We are pleased that ACF, PHS, and BIA agree with the general direction and content of the report and that all of the three agencies volunteered their interest in working together to improve child welfare services and protections for Native American children.

The ACF requested that OIG staff participate in the initial meetings between the Children's Bureau and the Bureau of Indian Affairs to assist them in acting on the report options. The OIG welcomes the opportunity to work with ACF and looks forward to participating in meetings to improve child welfare services and protections for Native American children.

The BIA requested that we omit from the final report our option to encourage or require some Tribal child welfare programs to provide for children in their custody the basic child welfare protections mandated by the Adoption Assistance and Child Welfare Act. The BIA suggested that the implementation of this option could result in an increased administrative burden for Tribes without a corresponding increase in funding. In addition, the BIA advised against the unilateral imposition of any new ICWA program requirements.

In response to the BIA concern, we have revised this option. We now suggest that ACF could engage BIA, Tribal, and State representatives in an examination of the differences between the child welfare protections required by the Adoption Assistance and Child Welfare Act for all children in State custody and the child welfare protections required by BIA for children in Tribal custody. Together, the group might decide that some differences are justified by cultural or other important considerations while other differences should be eliminated. Such an effort could clarify child welfare protection requirements for Tribes and could simplify compliance requirements for Tribes that receive BIA funds and Title IV-E and/or Title IV-B incentive funds.

APPENDIX A

MAJOR FUNDING FROM ACF AND BIA FOR TRIBAL CHILD WELFARE SERVICES IN FISCAL YEARS 1992 AND 1993

	FUNDING AUTHORITY	Fiscal Year 1992	Fiscal Year 1993
ACF	The Social Security Act (Title XX)	<ul style="list-style-type: none"> \$2.8 billion was allotted for all social services in the U.S. \$1.5 billion was distributed to the 24 States we surveyed.¹ Of this, \$2.8 million (.2 percent) reached Tribes. 	<ul style="list-style-type: none"> \$2.8 billion was allotted for all social services in the U.S. \$1.5 billion was distributed to the 24 States we surveyed.¹ Of this, \$2.8 million (.2 percent) reached Tribes.
	The Social Security Act (Title IV-E)	<ul style="list-style-type: none"> \$2.5 billion was expended. \$1.7 billion was distributed to the 24 States we surveyed.¹ Of this, \$1.4 million (.1 percent) reached Tribes. 	<ul style="list-style-type: none"> \$2.9 billion was expended. \$1.8 billion was distributed to the 24 States we surveyed.¹ Of this, \$1.9 million (.1 percent) reached Tribes.
	The Social Security Act (Title IV-B Subpart 1) Child Welfare Services	<ul style="list-style-type: none"> \$274 million was expended. Of this, \$491,533 (.2 percent) reached Tribes. 	<ul style="list-style-type: none"> \$295 million was appropriated. Of this, \$762,000 (.3 percent) reached Tribes.
	The Social Security Act (Title IV-B Subpart 2) Family Preservation and Support Services	<ul style="list-style-type: none"> Funding begins in fiscal year 1994. \$60 million is authorized for that year, with \$600,000 (1 percent) set-aside for Tribes. 	
BIA	The Indian Child Welfare Act (P.L. 95-608)	<ul style="list-style-type: none"> \$14.2 million was distributed to Tribes. 	<ul style="list-style-type: none"> \$9.7 million was distributed to Tribes.²
	The Indian Self-Determination Act (P.L. 93-638)	<ul style="list-style-type: none"> \$60.2 million was distributed to support social service programs administered by Tribes.³ 	<ul style="list-style-type: none"> \$60 million was distributed to support social service programs administered by Tribes.⁴
	The Snyder Act [ch. 115, 42 Stat. 208 (1921)]	<ul style="list-style-type: none"> \$18 million was distributed for child welfare assistance payments for Tribal children. 	<ul style="list-style-type: none"> \$20 million was distributed for child welfare assistance payments for Tribal children.

Sources:

- *Title XX Allotments to States Social Services, 1989 - 1993*, Administration for Children and Families;
- *Title IV-E Expenditures*, Administration for Children and Families;
- Title IV-B Subpart 1: *Fiscal Year 1994 Budget*, U.S. Department of Health and Human Services, April 8, 1993, p. 64;
- Title IV-B Subpart 2: *The Family Preservation and Support Act* (P.L. 103-66);
- Mail survey of 24 State Child Welfare Departments, Office of Inspector General, Fall 1993;
- The Office of Tribal Services and the Division of Social Services in the Bureau of Indian Affairs; and
- *Resident Population Distribution for the United States, Regions, and States, by Race and Hispanic Origin, 1990*, Bureau of the Census; and *Indian Service Population and Labor Force Estimates, January 1991*, BIA.

Notes:

- ¹ The list of 24 States (Alaska, Arizona, California, Colorado, Florida, Idaho, Kansas, Michigan, Minnesota, Montana, Nebraska, Nevada, New Mexico, New York, North Carolina, North Dakota, Oklahoma, Oregon, South Dakota, Texas, Utah, Washington, Wisconsin, and Wyoming) includes those 20 States that had the largest Native American populations, in absolute numbers; and those 20 States that had the largest Native American populations, calculated as a percentage of the total State populations.
- ² The FY 1993 ICWA allocation for Tribes was originally set at \$18.09 million, of which about 8.4 million was re-programmed.
- ³ Of the \$60.2 million, approximately 27.2 million came from the BIA Social Services budget to pay for Tribal social services staffing. The remaining, \$33 million came from a BIA indirect cost pool and paid for contract support and indirect administrative costs.
- ⁴ Of the \$60 million, approximately 28 million came from the BIA Social Services budget and \$32 million came from the BIA indirect cost pool.

For descriptions of each funding program, see pages A-2 - A-3.

Funding Programs Administered by ACF⁵²

Title XX of the Social Security Act: The Social Services Block Grant Program. Title XX of the Social Security Act was created in 1974 by P.L. 92-672, which authorized entitlement funding for States to support social services with certain goals, requirements and limitations. In 1981, P.L. 97-35 amended Title XX to establish a block grant for social services. These block grants are allocated to States on the basis of population, and are available without a State matching share requirement. From 1980 to 1993, Title XX entitlement funding declined in real dollars by 55 percent.⁵³

Title XX funding supports State programs to address five legislated goals, including preventing or remedying neglect, abuse, or exploitation of children and adults unable to protect their own interests; and preserving, rehabilitating or reuniting families.⁵⁴ While the law places some restrictions on the use of Title XX monies, States are allowed much discretion in determining the services they will provide and the groups that are eligible for these services. States are further allowed to determine the proportion of funds that will support service provision and the proportion of funds that will be used for staff training, administration, planning, evaluation, and technical assistance. For fiscal years 1983 through 1991, the most frequently provided services were: day care for children; home-based services; protective services for children; adoption services; social-support services; and special services for the disabled.

States may share funds with private agencies and Tribes to provide Title XX services.

Title IV-E of the Social Security Act: The Foster Care and Adoption Assistance Programs. In 1980, P.L. 96-272 transferred the Title IV-A foster care program to Title IV-E of the Social Security Act, specified protections for children in foster care, and established a new adoption assistance program under Title IV-E. Foster care funding is available only for children whose families are eligible for Aid for Families with Dependent Children (AFDC); adoption assistance funding is provided for special needs children who are eligible for AFDC or supplemental security income (SSI). Title IV-E funds are provided as Federal matching funds.⁵⁵ From 1981 to 1993, spending for foster care and adoption assistance grew from \$309 million to over \$2.5 billion.

States may contract with private agencies and form agreements with Tribes to provide Title IV-E services.

Title IV-B Subpart 1 of the Social Security Act: The Child Welfare Services Program. Title IV-B Subpart 1 is a capped entitlement program that provides 75 percent matching-share grants to States and Tribes for a broad range of child welfare services. Grant amounts are calculated with a formula using the State's or Tribe's under-21 population and per-capita income. These funds can be used to pay for services for all children. P.L. 96-272 mandated certain protections for foster care children and made additional Subpart 1, Section 427, incentive funding available to States and Tribes, contingent upon the provision of these protections. From 1981 to 1993, Title IV-B spending for child welfare services increased from \$164 million to \$295 million.

Title IV-B Subpart 2 of the Social Security Act: The Family Preservation and Support Services Program. Title IV-B Subpart 2 of the Social Security Act is a capped entitlement program that was created in 1993 by the Family Preservation and Support Act (P.L. 103-66). Subpart 2 grants are allocated on the basis of population and provide a 75 percent Federal match to support State and Tribal provision of family preservation services and community-based family support services. From 1994 to 1998, authorized Subpart 2 funding will increase from \$60 million to at least \$255 million. One percent of the annual appropriation is to be set-aside for Tribes that qualify for at least \$10,000 in funding.

Funding Programs Administered by BIA

The Indian Child Welfare Act (ICWA) Grant Program. The ICWA (P.L. 95-608) authorizes grants to federally recognized Tribes and organizations to support the establishment and operation of Indian child and family service programs on or near reservations and to support the preparation and implementation of child welfare codes. The ICWA grants were originally awarded competitively. Beginning in fiscal year 1994, however, ICWA monies will be made available to all federally recognized Tribes as formula grants. The law specifies that ICWA funds may be used by Tribes to meet the matching share requirements of other Federal programs for child and family services funding. The ICWA grant funding for Tribes has increased from \$7.2 million in 1989 to \$22.9 million in 1994.

The Indian Self-Determination Act Contract and Grant Programs. The Indian Self-Determination and Education Assistance Act of 1975 (P.L. 93-638) and the Indian Self-Determination Amendments of 1987 (P.L. 100-472) direct the BIA to establish service contracts with Tribes that want to provide for themselves the services that BIA would otherwise have provided for them. These contracts can be established only with those Tribes that reside in States that are not recognized as primary service providers for the Tribes. When contracts are established, the BIA transfers to the Tribes the funds the Federal agency would have expended in the delivery of the services and additional funds for indirect costs (such as rent and telephone use).

The BIA also awards discretionary self-determination grants to some Tribes to prepare them to administer service contracts or to improve their administration of services for which contracts have already been established. The self-determination grants, which are awarded on a competitive, one-time basis, can be used to meet the matching share requirements of other Federal funding programs; the contract monies cannot.

The Snyder Act Child Welfare Assistance Program. The Snyder Act [ch. 115, 42 Stat. 208 (1921)] authorized BIA expenditures for the benefit, care, and assistance of the American Indian population. The funds are used for general support, education, relief, and conservation of health, among other purposes; and are provided only when Tribal members cannot obtain such assistance from other sources. Through the Snyder Act, BIA provides monies to members of federally recognized Tribes for child welfare assistance, including foster care, residential care, and special needs.⁵⁶

APPENDIX B

TITLE IV-E AND TITLE XX FUNDS SHARED BY STATES WITH TRIBES: RESULTS OF THE MAIL SURVEY CONDUCTED BY THE OFFICE OF INSPECTOR GENERAL

In the fall of 1993, the Office of Inspector General conducted a mail survey of the 24 States with the largest Native American populations. We collected information on the amount of Title IV-E and Title XX funds these States shared with Tribes from fiscal year 1989 through fiscal year 1993. All 24 States completed and returned the survey.

We determined the size of the Native American populations in these States using both the 1991 *Indian Service Population and Labor Force Estimates*, prepared by the Bureau of Indian Affairs, and the 1990 *Resident Population Distribution for the United States, Regions, and States, by Race and Hispanic Origin*, prepared by the Bureau of the Census. The list of 24 States comprises those 20 that had largest Native American populations in absolute numbers and those 4 that had the largest Native American populations as percentages of the total State populations.

On the following pages are tables that summarize the demographic and financial information we collected.

Tables

- 1 The 24 States with the largest Native American populations: Total population statistics from the Bureau of the Census and the Bureau of Indian Affairs
- 2 The 24 States with the largest Native American populations: Population statistics for children under age 16 from the Bureau of the Census and the Bureau of Indian Affairs
- 3 Title XX and Title IV-E funds shared by nine States with eligible Tribes, summary for fiscal years 1989 through 1993
- 4 Title XX and Title IV-E funds shared by nine States with eligible Tribes and the proportion of eligible Tribes that received these funds, fiscal year 1989
- 5 Title XX and Title IV-E funds shared by nine States with eligible Tribes and the proportion of eligible Tribes that received these funds, fiscal year 1990
- 6 Title XX and Title IV-E funds shared by nine States with eligible Tribes and the proportion of eligible Tribes that received these funds, fiscal year 1991
- 7 Title XX and Title IV-E funds shared by nine States with eligible Tribes and the proportion of eligible Tribes that received these funds, fiscal year 1992
- 8 Title XX and Title IV-E funds shared by nine States with eligible Tribes and the proportion of eligible Tribes that received these funds, fiscal year 1993

TABLE 1
THE 24 STATES WITH THE LARGEST NATIVE AMERICAN POPULATIONS:
TOTAL POPULATION STATISTICS
FROM THE BUREAU OF THE CENSUS AND THE BUREAU OF INDIAN AFFAIRS¹

STATE	BUREAU OF THE CENSUS (1990) ^a			BUREAU OF INDIAN AFFAIRS (1991) ^b		
	TOTAL STATE POPULATION	NATIVE AMERICAN POPULATION		Number of Tribes ^c	TRIBAL POPULATION	
		Number	Percent of total population		Number	Percent of total population
AK	550,043	85,698	15.58	222 ²	88,160	16.03
AZ	3,665,228	203,527	5.55	20	169,771	4.63
CA	29,760,021	242,164	0.81	102	38,722	0.13
CO	3,294,394	27,776	0.84	2	2,529	0.08
FL	12,937,926	36,335	0.28	2	2,488	0.02
ID	1,006,749	13,780	1.37	4	9,830	0.98
KS	2,477,574	21,965	0.89	4	2,685	0.11
MI	9,295,297	55,638	0.60	7	12,890	0.14
MN	4,375,099	49,909	1.14	6	22,423	0.51
MT	799,065	47,679	5.97	7	38,181	4.78
NE	1,578,385	12,410	0.79	6	5,245	0.33
NV	1,201,833	19,637	1.63	16	9,477	0.79
NM	1,515,069	134,355	8.87	23	112,751	7.44
NY	17,990,455	62,651	0.35	7	15,548	0.09
NC	6,628,637	80,155	1.21	1	10,114	0.15
ND	638,800	25,917	4.06	4	24,093	3.77
OK	3,145,585	252,420	8.03	36	257,403	8.18
OR	2,842,321	38,496	1.35	9	12,305	0.43
SD	696,004	50,575	7.27	9	59,519	8.55
TX	16,986,510	65,877	0.39	3	2,548	0.02
UT	1,722,850	24,283	1.41	7	10,038	0.58
WA	4,866,692	81,483	1.67	27	51,643	1.06
WI	4,891,769	39,387	0.81	11	21,651	0.44
WY	453,588	9,479	2.09	2	7,255	1.60
Total for 24 States	133,319,894	1,681,596	1.26	537 ³	987,269	0.74
Total U.S.	248,709,873	1,959,234	0.79	542	1,001,441	0.40

Sources: ^a *Resident Population Distribution for the United States, Regions, and States, by Race and Hispanic Origin: 1990.* Bureau of the Census;
^b *Indian Service Population and Labor Force Estimates, January 1991,* Bureau of Indian Affairs; and
^c List of Tribes that have been recognized by the Bureau of Indian Affairs (58 Fed. Reg. 54,222, Oct. 20, 1993).

Notes: ¹ The 1991 statistics from the Bureau of Indian Affairs (BIA) reflect a much smaller Native American population than the 1990 Bureau of the Census count. Specifically excluded from the BIA count are Native Americans who are not enrolled in federally recognized Tribes, and enrolled members who reside in urban or rural areas not adjacent or contiguous to their reservations. The Bureau of the Census statistics reflect all individuals who identify themselves as Indian, Eskimo, or Aleut, regardless of where they reside.

² Recognized Alaska Native entities include Tribes, villages, communities, associations, and corporations.

³ Tribes whose land extends into multiple States have been counted in each State.

TABLE 2
THE 24 STATES WITH THE LARGEST NATIVE AMERICAN POPULATIONS:
POPULATION STATISTICS FOR CHILDREN UNDER AGE 16^a
FROM THE BUREAU OF THE CENSUS AND THE BUREAU OF INDIAN AFFAIRS

STATE	BUREAU OF THE CENSUS (1990) ^a						BUREAU OF INDIAN AFFAIRS (1991) ^b		
	STATE POPULATION			NATIVE AMERICAN POPULATION			TRIBAL POPULATION		
	Total	Under Age 16		Total	Under Age 16 ²		Total	Under Age 16 ²	
		Number & Percent of State Population			Number & Percent of Native American Population			Number & Percent of Tribal Population	
AK	550,043	157,485	28.63	85,698	31,769	37.07	88,160	31,018	35.18
AZ	3,665,228	882,470	24.08	203,527	77,346	38.00	169,771	52,767	31.08
CA	29,760,021	6,978,035	23.45	242,164	66,000	27.25	38,722	11,205	28.94
CO	3,294,394	775,969	23.55	27,776	8,202	29.53	2,529	971	38.39
FL	12,937,926	2,561,211	19.80	36,335	8,531	23.48	2,488	1,008	40.51
ID	1,006,749	276,972	27.51	13,780	4,564	33.12	9,830	3,967	40.36
KS	2,477,574	597,038	24.10	21,965	6,513	29.65	2,685	630	23.46
MI	9,295,297	2,191,548	23.58	55,638	16,791	30.18	12,890	3,707	28.76
MN	4,375,099	1,054,051	24.09	49,909	18,644	37.36	22,423	7,294	32.53
MT	799,065	199,316	24.94	47,679	18,065	37.89	38,181	14,187	37.16
NE	1,578,385	385,925	24.45	12,410	4,734	38.15	5,245	1,976	37.67
NV	1,201,833	267,893	22.29	19,637	5,691	28.98	9,477	3,511	37.05
NM	1,515,069	401,321	26.49	134,355	49,070	36.52	112,751	33,545	29.75
NY	17,990,455	3,800,149	21.12	62,651	17,064	27.24	15,548	4,301	27.66
NC	6,628,637	1,424,350	21.49	80,155	23,310	29.08	10,114	2,485	24.57
ND	638,800	157,722	24.69	25,917	10,580	40.82	24,093	8,906	36.97
OK	3,145,585	747,889	23.78	252,420	84,281	33.39	257,403	91,091	35.39
OR	2,842,321	650,202	22.88	38,496	11,907	30.93	12,305	4,262	34.64
SD	696,004	178,885	25.70	50,575	21,287	42.09	59,519	19,138	32.15
TX	16,986,510	4,331,339	25.50	65,877	16,528	25.09	2,548	728	28.57
UT	1,722,850	568,519	33.00	24,283	9,744	40.13	10,038	4,127	41.11
WA	4,866,692	1,138,105	23.39	81,483	26,426	32.43	51,643	17,452	33.79
WI	4,891,769	1,158,015	23.67	39,387	13,616	34.57	21,651	6,606	30.51
WY	453,588	121,587	26.81	9,479	3,545	37.40	7,255	2,378	32.78
Total for 24 States	133,319,894	31,005,996	23.26	1,681,596	554,208	32.96	987,269	327,260	33.15
Total U.S.	248,709,873	56,889,480	22.87	1,959,234	625,136	31.91	1,001,441	331,971	33.15

Sources: ^a Resident Population Distribution for the United States, Regions, and States, by Race and Hispanic Origin: 1990. Bureau of the Census; and ^b Indian Service Population and Labor Force Estimates, January 1991. Bureau of Indian Affairs.

Notes: ¹ The 1991 BIA statistics reflect a much smaller Native American population than the 1990 Bureau of the Census count. Specifically excluded from the BIA count are Native Americans who are not enrolled in federally recognized Tribes, and enrolled members who reside in urban or rural areas not adjacent or contiguous to their reservations. The Bureau of the Census statistics reflect all individuals who identify themselves as Indian, Eskimo, or Aleut, regardless of where they reside.

² The most recent data on the number of Native American children in substitute care in all of the above-listed 24 States is from 1986.

TABLE 3
TITLE XX AND IV-E FUNDS SHARED BY NINE STATES¹ WITH ELIGIBLE TRIBES,
SUMMARY FOR FISCAL YEARS 1989 THROUGH 1993

State	AZ	CO	MT	NE	NM	ND	OK	OR	SD	Total
Native Americans as a Percentage of the Total State Population ²										
Bureau of Indian Affairs (1991) ^d	4.63	0.08	4.78	0.33	7.44	3.77	8.18	0.43	8.55	3.75
Bureau of the Census (1990) ^e	5.55	0.84	5.97	0.79	8.87	4.06	8.03	1.35	7.27	4.36
Title XX Funds (in thousands)										
Title XX Funds Received by the State ^c	\$196,571	\$185,327	\$45,299	\$89,502	\$85,061	\$37,159	\$181,700	\$155,414	\$39,683	\$1,015,716
Title XX Funds Shared with Tribes ^a	\$5,906	0	0	0	\$1,936	0	0	\$319	\$1,564	\$9,725
Title XX Funds Shared with Tribes as a Percentage of Title XX Funds Received by the State ^{a, c}	3.00	0.00	0.00	0.00	2.28	0.00	0.00	0.21	3.94	0.96
Title IV-E Funds (in thousands)										
Title IV-E Funds Received by the State ^b	\$68,621	\$63,362	\$21,029	\$41,532	\$35,851	\$18,586	\$43,760	\$79,775	\$12,327	\$384,843
Title IV-E Funds Shared with Tribes ^a	0	\$101	\$703	\$464	\$61	\$2,129	\$1,250	\$77	\$771	\$5,556
Title IV-E Funds Shared with Tribes as a Percentage of Title IV-E Funds Received by the State ^{a, b}	0.00	0.16	3.34	1.12	0.17	11.45	2.86	0.10	6.25	1.44

Sources:

- ^a Mail Survey of State Child Welfare Departments, Fall 1993, Office of Inspector General;
- ^b Title IV-E Report of Expenditures, Administration for Children and Families;
- ^c Title XX Federal Allotments to States Social Services, 1989-1993, Administration for Children and Families;
- ^d Indian Service Population and Labor Force Estimates, January 1991, Bureau of Indian Affairs; and
- ^e Resident Population Distribution for the United States, Regions, and States, by Race and Hispanic Origin: 1990, Bureau of the Census.

Notes:

¹ Of the 24 States with the largest Native American populations, the nine listed in this table are the only States that shared Title XX and/or Title IV-E funds with eligible Tribes between 1989 and 1993.

² The 1991 statistics from the Bureau of Indian Affairs (BIA) reflect a much smaller Native American population than the 1990 Bureau of the Census count. Specifically excluded from the BIA count are Native Americans who are not enrolled in federally recognized Tribes, and enrolled members who reside in urban or rural areas not adjacent or contiguous to their reservations. The Bureau of the Census statistics reflect all individuals who identify themselves as Indian, Eskimo, or Aleut, regardless of where they reside.

TABLE 4
TITLE XX AND TITLE IV-E FUNDS SHARED BY NINE STATES¹ WITH ELIGIBLE TRIBES
AND THE PROPORTION OF ELIGIBLE TRIBES THAT RECEIVED THESE FUNDS
FISCAL YEAR 1989

State	AZ	CO	MT	NE	NM	ND	OK	OR	SD	Total
Native Americans as a Percentage of the Total State Population ²										
Bureau of Indian Affairs (1991) ^d	4.63	0.08	4.78	0.33	7.44	3.77	8.18	0.43	8.55	3.75
Bureau of the Census (1990) ^e	5.55	0.84	5.97	0.79	8.87	4.06	8.03	1.35	7.27	4.36
Title XX Funds (in thousands)										
Title XX Funds Received by the State ^c	\$36,535	\$36,390	\$9,123	\$17,800	\$16,474	\$7,563	\$36,813	\$30,052	\$7,886	\$198,636
Title XX Funds Shared with Tribes ^a	\$176	0	0	0	\$322	0	0	0	\$214	\$712
Proportion of Eligible Tribes Receiving Title XX Funds ^a	20/20	0/NA	0/NA	0/NA	2/22	0/NA	0/NA	0/NA	2/9	24/51
Title XX Funds Shared with Tribes as a Percentage of Title XX Funds Received by the State ^{a, c}	0.48	0.00	0.00	0.00	1.95	0.00	0.00	0.00	2.71	0.36
Title IV-E Funds (in thousands)										
Title IV-E Funds Received by the State ^b	\$8,061	\$5,390	\$3,406	\$5,660	\$5,956	\$2,130	\$7,437	\$13,087	\$2,256	\$53,383
Title IV-E Funds Shared with Tribes ^a	0	0	0	\$15	\$4	\$334	\$200	0	\$51	\$604
Proportion of Eligible Tribes Receiving Title IV-E Funds ^a	0/20	0/2	0/NA	2/2	4/22	4/4	18/27	0/9	2/9	30/95
Title IV-E Funds Shared with Tribes as a Percentage of Title IV-E Funds Received by the State ^{a, b}	0.00	0.00	0.00	0.27	0.07	15.68	2.69	0.00	2.26	1.13

Sources:

- ^a Mail Survey of State Child Welfare Departments, Fall 1993, Office of Inspector General;
- ^b *Title IV-E Report of Expenditures*, Administration for Children and Families;
- ^c *Title XX Federal Allotments to States Social Services, 1989-1993*, Administration for Children and Families;
- ^d *Indian Service Population and Labor Force Estimates, January 1991*, Bureau of Indian Affairs; and
- ^e *Resident Population Distribution for the United States, Regions, and States, by Race and Hispanic Origin: 1990*, Bureau of the Census.

Notes:

- ¹ Of the 24 States with the largest Native American populations, the nine listed in this table are the only States that shared Title XX and/or Title IV-E funds with eligible Tribes between 1989 and 1993.
- ² The 1991 statistics from the Bureau of Indian Affairs (BIA) reflect a much smaller Native American population than the 1990 Bureau of the Census count. Specifically excluded from the BIA count are Native Americans who are not enrolled in federally recognized Tribes, and enrolled members who reside in urban or rural areas not adjacent or contiguous to their reservations. The Bureau of the Census statistics reflect all individuals who identify themselves as Indian, Eskimo, or Aleut, regardless of where they reside.

TABLE 5
TITLE XX AND TITLE IV-E FUNDS SHARED BY NINE STATES¹ WITH ELIGIBLE TRIBES
AND THE PROPORTION OF ELIGIBLE TRIBES THAT RECEIVED THESE FUNDS
FISCAL YEAR 1990

State	AZ	CO	MT	NE	NM	ND	OK	OR	SD	Total
Native Americans as a Percentage of the Total State Population ²										
Bureau of Indian Affairs (1991) ^d	4.63	0.08	4.78	0.33	7.44	3.77	8.18	0.43	8.55	3.75
Bureau of the Census (1990) ^e	5.55	0.84	5.97	0.79	8.87	4.06	8.03	1.35	7.27	4.36
Title XX Funds (in thousands)										
Title XX Funds Received by the State ^c	\$39,624	\$37,476	\$9,073	\$17,821	\$17,418	\$7,484	\$36,783	\$30,574	\$7,909	\$204,162
Title XX Funds Shared with Tribes ^a	\$198	0	0	0	\$372	0	0	0	\$265	\$835
Proportion of Eligible Tribes Receiving Title XX Funds ^a	20/20	0/NA	0/NA	0/NA	2/22	0/NA	0/NA	0/NA	2/9	24/51
Title XX Funds Shared with Tribes as a Percentage of Title XX Funds Received by the State ^{a, c}	0.50	0.00	0.00	0.00	2.14	0.00	0.00	0.00	3.34	0.41
Title IV-E Funds (in thousands)										
Title IV-E Funds Received by the State ^b	\$9,804	\$6,955	\$3,504	\$6,813	\$6,893	\$3,207	\$7,988	\$14,254	\$2,000	\$61,418
Title IV-E Funds Shared with Tribes ^a	0	0	0	\$24	\$6	\$302	\$225	0	\$115	\$672
Proportion of Eligible Tribes Receiving Title IV-E Funds ^a	0/20	0/2	0/NA	2/2	4/22	4/4	19/27	0/9	2/9	31/95
Title IV-E Funds Shared with Tribes as a Percentage of Title IV-E Funds Received by the State ^{a, b}	0.00	0.00	0.00	0.35	0.09	9.42	2.82	0.00	5.75	1.09

Sources:

- ^a Mail Survey of State Child Welfare Departments, Fall 1993, Office of Inspector General;
- ^b Title IV-E Report of Expenditures, Administration for Children and Families;
- ^c Title XX Federal Allocations to States Social Services, 1989-1993, Administration for Children and Families;
- ^d Indian Service Population and Labor Force Estimates, January 1991, Bureau of Indian Affairs; and
- ^e Resident Population Distribution for the United States, Regions, and States, by Race and Hispanic Origin: 1990, Bureau of the Census.

Notes:

- ¹ Of the 24 States with the largest Native American populations, the nine listed in this table are the only States that shared Title XX and/or Title IV-E funds with eligible Tribes between 1989 and 1993.
- ² The 1991 statistics from the Bureau of Indian Affairs (BIA) reflect a much smaller Native American population than the 1990 Bureau of the Census count. Specifically excluded from the BIA count are Native Americans who are not enrolled in federally recognized Tribes, and enrolled members who reside in urban or rural areas not adjacent or contiguous to their reservations. The Bureau of the Census statistics reflect all individuals who identify themselves as Indian, Eskimo, or Aleut, regardless of where they reside.

TABLE 6
TITLE XX AND TITLE IV-E FUNDS SHARED BY NINE STATES¹ WITH ELIGIBLE TRIBES
AND THE PROPORTION OF ELIGIBLE TRIBES THAT RECEIVED THESE FUNDS
FISCAL YEAR 1991

State	AZ	CO	MT	NE	NM	ND	OK	OR	SD	Total
Native Americans as a Percentage of the Total State Population ²										
Bureau of Indian Affairs (1991) ^d	4.63	0.08	4.78	0.33	7.44	3.77	8.18	0.43	8.55	3.75
Bureau of the Census (1990) ^e	5.55	0.84	5.97	0.79	8.87	4.06	8.03	1.35	7.27	4.36
Title XX Funds (in thousands)										
Title XX Funds Received by the State ^c	\$39,498	\$37,391	\$9,118	\$18,146	\$17,070	\$7,555	\$36,723	\$31,342	\$8,076	\$204,919
Title XX Funds Shared with Tribes ^a	\$1,844	0	0	0	\$374	0	0	0	\$314	\$2,532
Proportion of Eligible Tribes Receiving Title XX Funds ^a	20/20	0/NA	0/NA	0/NA	2/22	0/NA	0/NA	0/NA	2/9	24/51
Title XX Funds Shared with Tribes as a Percentage of Title XX Funds Received by the State ^{a, c}	4.67	0.00	0.00	0.00	2.19	0.00	0.00	0.00	3.89	1.24
Title IV-E Funds (in thousands)										
Title IV-E Funds Received by the State ^b	\$12,624	\$8,530	\$4,648	\$7,937	\$7,897	\$3,357	\$8,853	\$15,608	\$2,500	\$71,954
Title IV-E Funds Shared with Tribes ^a	0	\$10	0	\$81	\$18	\$500	\$250	0	\$119	\$978
Proportion of Eligible Tribes Receiving Title IV-E Funds ^a	0/20	2/2	0/NA	2/2	4/22	4/4	21/27	0/9	3/9	36/95
Title IV-E Funds Shared with Tribes as a Percentage of Title IV-E Funds Received by the State ^{a, b}	0.00	0.12	0.00	1.02	0.23	14.89	2.82	0.00	4.76	1.36

Sources:

- ^a Mail Survey of State Child Welfare Departments, Fall 1993, Office of Inspector General;
- ^b Title IV-E Report of Expenditures. Administration for Children and Families;
- ^c Title XX Federal Allotments to States Social Services, 1989-1993, Administration for Children and Families;
- ^d Indian Service Population and Labor Force Estimates, January 1991, Bureau of Indian Affairs; and
- ^e Resident Population Distribution for the United States, Regions, and States, by Race and Hispanic Origin: 1990, Bureau of the Census.

Notes:

¹ Of the 24 States with the largest Native American populations, the nine listed in this table are the only States that shared Title XX and/or Title IV-E funds with eligible Tribes between 1989 and 1993.

² The 1991 statistics from the Bureau of Indian Affairs (BIA) reflect a much smaller Native American population than the 1990 Bureau of the Census count. Specifically excluded from the BIA count are Native Americans who are not enrolled in federally recognized Tribes, and enrolled members who reside in urban or rural areas not adjacent or contiguous to their reservations. The Bureau of the Census statistics reflect all individuals who identify themselves as Indian, Eskimo, or Aleut, regardless of where they reside.

TABLE 7
TITLE XX AND TITLE IV-E FUNDS SHARED BY NINE STATES¹ WITH ELIGIBLE TRIBES
AND THE PROPORTION OF ELIGIBLE TRIBES THAT RECEIVED THESE FUNDS
FISCAL YEAR 1992

State	AZ	CO	MT	NE	NM	ND	OK	OR	SD	Total
Native Americans as a Percentage of the Total State Population ²										
Bureau of Indian Affairs (1991) ^d	4.63	0.08	4.78	0.33	7.44	3.77	8.18	0.43	8.55	3.75
Bureau of the Census (1990) ^e	5.55	0.84	5.97	0.79	8.87	4.06	8.03	1.35	7.27	4.36
Title XX Funds (in thousands)										
Title XX Funds Received by the State ^c	\$29,884	\$37,193	\$9,040	\$18,069	\$17,138	\$7,403	\$36,161	\$31,629	\$8,020	\$204,537
Title XX Funds Shared with Tribes ^a	\$1,844	0	0	0	\$397	0	0	\$148	\$457	\$2,846
Proportion of Eligible Tribes Receiving Title XX Funds ^a	20/20	0/NA	0/NA	0/NA	2/22	0/NA	0/NA	6/9	2/9	30/60
Title XX Funds Shared with Tribes as a Percentage of Title XX Funds Received by the State ^{a, c}	4.62	0.00	0.00	0.00	2.32	0.00	0.00	0.47	5.70	1.39
Title IV-E Funds (in thousands)										
Title IV-E Funds Received by the State ^b	\$17,283	\$19,175	\$4,344	\$9,740	\$8,315	\$4,249	\$9,470	\$20,023	\$2,435	\$95,034
Title IV-E Funds Shared with Tribes ^a	0	\$41	\$171	\$173	\$22	\$513	\$275	\$31	\$216	\$1,442
Proportion of Eligible Tribes Receiving Title IV-E Funds ^a	0/20	2/2	4/7	2/2	5/22	4/4	22/27	1/9	3/9	43/102
Title IV-E Funds Shared with Tribes as a Percentage of Title IV-E Funds Received by the State ^{a, b}	0.00	0.21	3.94	1.78	0.26	12.07	2.90	0.15	8.87	1.52

Sources:

- ^a Mail Survey of State Child Welfare Departments, Fall 1993, Office of Inspector General;
- ^b Title IV-E Report of Expenditures, Administration for Children and Families;
- ^c Title XX Federal Allotments to States Social Services, 1989-1993, Administration for Children and Families;
- ^d Indian Service Population and Labor Force Estimates, January 1991, Bureau of Indian Affairs; and
- ^e Resident Population Distribution for the United States, Regions, and States, by Race and Hispanic Origin: 1990, Bureau of the Census.

Notes:

¹ Of the 24 States with the largest Native American populations, the nine listed in this table are the only States that shared Title XX and/or Title IV-E funds with eligible Tribes between 1989 and 1993.

² The 1991 statistics from the Bureau of Indian Affairs (BIA) reflect a much smaller Native American population than the 1990 Bureau of the Census count. Specifically excluded from the BIA count are Native Americans who are not enrolled in federally recognized Tribes, and enrolled members who reside in urban or rural areas not adjacent or contiguous to their reservations. The Bureau of the Census statistics reflect all individuals who identify themselves as Indian, Eskimo, or Aleut, regardless of where they reside.

TABLE 8
TITLE XX AND TITLE IV-E FUNDS SHARED BY NINE STATES¹ WITH ELIGIBLE TRIBES
AND THE PROPORTION OF ELIGIBLE TRIBES THAT RECEIVED THESE FUNDS
FISCAL YEAR 1993

State	AZ	CO	MT	NE	NM	ND	OK	OR	SD	Total
Native Americans as a Percentage of the Total State Population ²										
Bureau of Indian Affairs (1991) ^d	4.63	0.08	4.78	0.33	7.44	3.77	8.18	0.43	8.55	3.75
Bureau of the Census (1990) ^e	5.55	0.84	5.97	0.79	8.87	4.06	8.03	1.35	7.27	4.36
Title XX Funds (in thousands)										
Title XX Funds Received by the State ^c	\$41,030	\$36,877	\$8,945	\$17,666	\$16,961	\$7,154	\$35,220	\$31,817	\$7,792	\$203,462
Title XX Funds Shared with Tribes ^a	\$1,844	0	0	0	\$471	0	0	\$171	\$314	\$2,800
Proportion of Eligible Tribes Receiving Title XX Funds ^a	20/21	0/NA	0/NA	0/NA	2/22	0/NA	0/NA	8/9	2/9	32/61
Title XX Funds Shared with Tribes as a Percentage of Title XX Funds Received by the State ^{a, c}	4.49	0.00	0.00	0.00	2.78	0.00	0.00	0.54	4.03	1.38
Title IV-E Funds (in thousands)										
Title IV-E Funds Received by the State ^b	\$20,849	\$23,312	\$5,127	\$11,382	\$6,790	\$5,643	\$10,012	\$16,803	\$3,136	\$103,054
Title IV-E Funds Shared with Tribes ^a	0	\$50	\$532	\$171	\$11	\$480	\$300	\$46	\$270	\$1,860
Proportion of Eligible Tribes Receiving Title IV-E Funds ^a	0/20	2/2	4/7	2/2	5/22	4/4	24/27	2/9	3/9	46/102
Title IV-E Funds Shared with Tribes as a Percentage of Title IV-E Funds Received by the State ^{a, b}	0.00	0.21	10.38	1.50	0.16	8.51	3.00	0.27	8.61	1.80

Sources:

- ^a Mail Survey of State Child Welfare Departments, Fall 1993, Office of Inspector General;
- ^b Title IV-E Report of Expenditures, Administration for Children and Families;
- ^c Title XX Federal Allotments to States Social Services, 1989-1993, Administration for Children and Families;
- ^d Indian Service Population and Labor Force Estimates, January 1991, Bureau of Indian Affairs; and
- ^e Resident Population Distribution for the United States, Regions, and States, by Race and Hispanic Origin: 1990. Bureau of the Census.

Notes:

- ¹ Of the 24 States with the largest Native American populations, the nine listed in this table are the only States that shared Title XX and/or Title IV-E funds with eligible Tribes between 1989 and 1993.
- ² The 1991 statistics from the Bureau of Indian Affairs (BIA) reflect a much smaller Native American population than the 1990 Bureau of the Census count. Specifically excluded from the BIA count are Native Americans who are not enrolled in federally recognized Tribes, and enrolled members who reside in urban or rural areas not adjacent or contiguous to their reservations. The Bureau of the Census statistics reflect all individuals who identify themselves as Indian, Eskimo, or Aleut, regardless of where they reside.

APPENDIX C

COMPLETE COMMENTS ON THE DRAFT REPORT

In this appendix we present the full text of the comments we received on the draft report from the Administration for Children and Families (ACF), the Public Health Service (PHS) and the Bureau of Indian Affairs (BIA) in the Department of the Interior (DOI).

Comments from ACF	C-2
Comments from PHS	C-3
Comments from BIA	C-6



DEPARTMENT OF HEALTH & HUMAN SERVICES

AUG 2 1994

IG	<input checked="" type="checkbox"/>
SAIG	<input checked="" type="checkbox"/>
ADMINISTRATION FOR CHILDREN AND FAMILIES	<input checked="" type="checkbox"/>
Office of the Assistant Secretary, Suite 600	<input checked="" type="checkbox"/>
370 L'Enfant Promenade, S.W.	<input checked="" type="checkbox"/>
Washington, D.C. 20447	<input checked="" type="checkbox"/>
DIG-AS	<input type="checkbox"/>
DIG-EI	<input checked="" type="checkbox"/>
DIG-OI	<input type="checkbox"/>
AIG-CFAA	<input type="checkbox"/>
AIG-MP	<input type="checkbox"/>
OGC/IG	<input type="checkbox"/>
EXSEC	<input checked="" type="checkbox"/>
DATE SENT	8/2

TO: June Gibbs Brown
Inspector General

FROM: Mary Jo Bane *MJ Bane*
Assistant Secretary for
Children and Families

SUBJECT: Comments on Office of Inspector General Draft Report:
"Opportunities for ACF to Improve Child Welfare
Services and Protections for Native American Children,"
OEI-01-93-00110

Thank you for the opportunity to comment on your draft report of a study conducted on the opportunities for the Administration for Children and Families (ACF) to improve child welfare services and protections for Native American children.

The ACF agrees with the direction and content of this report. The report reflects in-depth knowledge and understanding of the complexities involved in the provision of child welfare services to this population and addresses our concerns for strengthening the provision of child welfare services and protections to American Indian and Alaskan Native children.

As you know, this report was the product of the diligent leadership of the Office of Inspector General (OIG) with the cooperation of concerned individuals and offices in ACF, specifically the Children's Bureau. We would like the OIG to continue its involvement in our efforts to improve services to this population. Although the report provides valuable information, at the exit conference, ACF staff requested that the OIG staff who worked on the report join in the initial meetings between the Children's Bureau and the Bureau of Indian Affairs. This would provide all attending with access to the expertise developed by your staff. I hope you will agree to make OIG staff available for a short time after the final report is issued to assist us in acting on the recommended options.

We look forward to working with your Office on other issues pertaining to the improvement of services to children and families.



MEMORANDUM

Rockville MD 20857

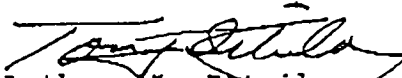
Date: AUG 3 1994

From: Deputy Assistant Secretary for Health Management Operations

Subject: OIG Draft Report: "Opportunities for ACF to Improve Child Welfare Services and Protections for Native American Children," OEI-01-93-00110

To: Inspector General

We have reviewed the subject draft inspection report and are providing the attached comments.


 Anthony L. Itteilag

Attachment

IG _____

SAIG /

PDIG _____

DIG-AS /

DIG-EI /

DIG-OI _____

AIG-CFAA _____

AIG-MP _____

OGC/IG _____

EXSEC /

DATE SENT 8-11

PHS COMMENTS ON THE OFFICE OF INSPECTOR GENERAL (OIG)
DRAFT REPORT: "OPPORTUNITIES FOR ACF TO IMPROVE
CHILD WELFARE SERVICES AND PROTECTIONS FOR NATIVE
AMERICAN CHILDREN," OEI-01-93-00110

General Comments

The overall report appears to have taken into consideration critical aspects of Administration for Children and Families (ACF) funded programs as they relate to Tribal programs and acknowledges the potential for improving the relationship between ACF and Tribal programs.

Child welfare services on Indian reservations need to be enhanced in terms of funding and professional expertise. Direct funding, rather than having to deal with State agencies, would be a better approach. Technical assistance for Indian Tribes regarding program administration and professional child welfare services needs to be emphasized.

Many of the options identified to rectify the weaknesses are realistic and achievable. The stated options for creating easier access to funds by Tribes are worth implementing if ACF makes funds available to Tribes.

We have the following comments on specific statements in the OIG report.

1. Page ii, "*Most Tribes have received little or no Title IV-E or Title XX funding.*" (second bullet, "Efforts to develop the necessary Tribal-State Title IV-E funding. . .")

State-Tribal agreements are very important and are necessary. Tribal Child Welfare Services should not be limited because of State lines, especially where reservations extend across State lines. Tribes should be allowed to exercise Federal jurisdiction in Tribal and State courts.

2. Page iii, third bullet, "The application, review, and compliance requirements discourage Tribes from seeking the funds."

Based on our experience in dealing with the application process for Title IV-E, we believe the process is complicated and set-up to discourage Tribes from seeking the funds. There needs to be technical assistance in the application process.

3. Page v, "Title IV-B funds," "Option: Technical Assistance."

We believe this is an excellent option for obtaining Title IV-B funds.

4. Page 15, "Protections of P.L. 96-272"

It is necessary to work closely with the Bureau of Indian Affairs (BIA) in establishing a protocol, which could include BIA or BIA Tribal contractors, in reviewing Title IV-E records and include ACF or State Protective Service workers in reviewing BIA and BIA contracted program records to ensure the basic protections identified by P.L. 96-272. Although the law applies specifically to ACF and States that receive Title IV-E payments, the basic protections are examples of good casework services which BIA and BIA contracted programs should be incorporating into substitute care services. Both ACF and BIA have a vested interest in pursuing this for the benefit of all children.

5. Page 16, "Protections of P.L. 95-608 (ICWA)"

The options presented have potential for being effective. We believe it is the opinion of the OIG that the option to ensure States' compliance would result in an increased administrative burden for ACF. If the responsibility is shared with BIA, neither ACF nor BIA would have to assume the bulk of the work. Through a Memorandum of Agreement, ACF could make use of BIA expertise and staff to address the areas of concerns identified, e.g., strengthening staff expertise, developing program guidance for State child welfare agencies and State courts and developing a compliance review process.

We would recommend that ACF work with the Indian Health Service (IHS) Mental Health and Social Services program to implement the OIG options. Although IHS does not have responsibility for custody of children, the IHS provides services to children and families involved with State child protective agencies.



IN DEPT. HEADQUARTERS
Social Services
Mail Stop 310-SIB

United States Department of the Interior

BUREAU OF INDIAN AFFAIRS
 Washington, D.C. 20245



JUL 27 1994

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PDIG	<input type="checkbox"/>
DIG-AS	<input type="checkbox"/>
DIG-EI	<input checked="" type="checkbox"/>
DIG-OI	<input type="checkbox"/>
AIG-CFAA	<input type="checkbox"/>
AIG-MP	<input type="checkbox"/>
OGC/IG	<input type="checkbox"/>
EXSEC	<input checked="" type="checkbox"/>
DATE SENT	8-8

Memorandum

To: Director, Office of Audit and Evaluation

From: Acting Director, Office of Tribal Services *Hilda A Manuel*

Subject: Division of Social Services' Comments on the Office of Inspector General Draft Report Entitled, "Opportunities for ACF to Improve Child Welfare Services and Protections for Native American Children," dated June 1994

This memorandum officially transmits the Bureau of Indian Affairs (BIA), Division of Social Services' comments on various aspects of the above-referenced report as discussed during the July 7, 1994, telephone conference amongst Ms. Dana Miller, Project Leader for the report; Mr. David Hickman, Chief of the BIA's Division of Social Services; and Ms. Betty Tippeconnle, Branch Chief for Child and Family Services.

The report recommends that the Administration for Children and Families (ACF) within the Department of Health and Human Services improve its coordination with the BIA. However, there are no recommendations specifically addressed to the BIA.

The BIA appreciates the emphasis Ms. Miller placed on working with BIA and Indian organizations as she engaged in the research and developmental phases of the draft report. She is to be commended for mastering the complexities of the subject matter, for presenting the material with great clarity and for delineating realistic and reasonable recommendations on how federal agencies may improve child welfare services and protections to American Indian children.

The BIA fully supports and embraces the majority of the recommendations contained in the report, particularly the concepts of Indian tribes accessing more direct funding from ACF and the streamlining of administrative, application, and reporting procedures for all funding streams emanating from ACF. However, the BIA remains concerned about areas needing additional discussion and/or exploration beyond the current recommendations. Additionally, some clarifying program information is provided below in order to more accurately portray BIA and/or tribally-administered programs.

The first major area of concern is the recommendation to establish a new requirement for tribal Indian Child Welfare Act (ICWA) grant programs to provide basic child welfare protections as specified in Pub. L. 96-272 for children in tribal custody. Tribal ICWA grant programs are administered by tribes under the auspices of BIA funds. The effect of this new requirement would be to require tribes to create additional bureaucracies and to carry additional burdens without new resources. It can be surmised that tribes will not be very receptive to this recommendation. Moreover, in keeping with the Indian Self-Determination and Education Assistance Act (Pub. L. 93-638), it is the policy of the BIA that, before any new and or major program requirements are implemented, the BIA must consult with tribes. Because BIA or tribally-administered social services programs often provide substitute care for children through the BIA's child welfare assistance program, few tribes opt to have their ICWA programs provide this service. For this reason, the BIA strongly advises against the unilateral imposition of any new ICWA program requirements in the manner suggested, and respectfully requests that this particular recommendation be dropped from the report.

A second major area of concern relates to ongoing problems relative to the enforcement of State compliance with major provisions of Pub. L. 95-608, the Indian Child Welfare Act of 1978. Fifteen years after the enactment of the statute, the BIA and Indian tribes continually experience the reluctance and/or resistance of States to adhere fully to the ICWA (see attached letter). This problem could be alleviated to some degree if one agency is assigned the role of monitoring State compliance in this area.

Moreover, the BIA recommends that States, in consultation with tribes within their boundaries, develop, implement and assure compliance with the ICWA protections as part of their Title IV-B State plan. To date, there have been no consequences for State noncompliance. Thus, it is recommended that sanctions for noncompliance be addressed in some manner by ACF, perhaps through ACF program and or quality control reviews. Finally, to improve the capacity of States to fully implement the ICWA, it is further recommended that States institutionalize mandatory training on the ICWA mandates for new employees. Joint training with the BIA and tribes might also prove helpful.

Some tribes have entered into tribal-state agreements to implement the Title IV-E program on their reservations. However, many tribes have stated that they are not compensated on the same basis as state workers responsible for the supervision and monitoring of Title IV-E foster care children. Many of these agreements are more beneficial to the States than to tribes taking on extra burdens to administer a Title IV-E program. In the final analysis, direct funding to tribes would take care of this problem.

Addressing these issues in a timely and productive manner is of critical importance to Indian children, families and communities. We are exceedingly pleased that these matters have now been given the attention that they merit, and we are hopeful that this focus on various areas of concern will greatly improve outcomes for Indian children. The BIA has indicated its willingness to meet at any time with ACF to discuss this important draft audit report. To date, ACF has been unable to schedule such a meeting.

Attachment

Admitted: FLORIDA and INDIANA

E. JOE FINKE, ESQ.
200 Windward Passage
Clearwater, Florida 34630
(813) 447-3215

400
1270
Federal Correspondence Ofc-BIA
JUL 26 1994

June 29, 1994

The Honorable Ada E. Deer, Assistant Secretary
Bureau of Indian Affairs
1849 C Street, N.W., Mail Stop 4140
Washington, D.C. 20240

Dear Ms. Deer,

I am writing to you concerning the enforcement of and compliance with the Indian Child Welfare Act enacted in 1978. I am an attorney practicing in Clearwater, Florida. I am involved in a lawsuit brought by my client, [REDACTED], a registered member of the Eastern Shawnee Tribe of Oklahoma in federal court. This case is designated [REDACTED], et al v. State of Florida et al (Case #93-[REDACTED]).

Very briefly, the case involves the removal of Ms. [REDACTED] two sons by the Florida Department of Health and Rehabilitative Services (H.R.S.) in 1989 on unsubstantiated charges of insufficient shelter and lack of food. H.R.S. made no inquiry as to the ethnic background of the children or my client even though the forms contain a space for this designation. Ms. [REDACTED] states that she informed the H.R.S. investigator that she received benefits from her tribe, however, H.R.S. chose not to follow the I.C.W.A. until Ms. [REDACTED] contacted her tribe who then contacted Indian Child Welfare in Oklahoma who then contacted Florida H.R.S.

One count of the complaint seeks to force H.R.S. to inquire whether the parties they investigate are Native American and if so, to follow the I.C.W.A. The Secretary of H.R.S., James Towey, according to the newspaper article enclosed, believes such an inquiry is too much to ask of his department. He stated that perhaps a name may be good enough or perhaps such an inquiry would be appropriate in a state such as South Dakota, but it would be too burdensome in Florida.

My client, the Florida Indian Alliance, Florida A.I.M., and myself agree that, in order for the I.C.W.A. to be effective, states must be required to inquire into the ethnic backgrounds as an initial part of any investigation. I have received inquiries from Texas, New Mexico, and Oklahoma regarding this case. I believe the B.I.A. and yourself should also take a position in

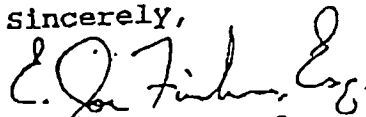
this matter. I am requesting that you and/or the B.I.A. assist in this effort by:

- 1) joining in this one count of the lawsuit or
- 2) filing a brief with the U.S. District Court for the Middle District of Florida in Tampa supporting the demand that Florida begin making appropriate inquiry or
- 3) addressing a letter to the Honorable Lawton Chiles, Governor of Florida and Secretary Towey requesting that the policy be changed to require the appropriate inquiry or
- 4) all of the above.

This is an important issue - one in which the B.I.A. can show that it will take positions supporting the preservation of the cultural heritage and continuity of members of the First Nations.

I look forward to your response.

sincerely,



E. Joe Finke, Esq.

E. Joe Finke, Esq.

APPENDIX D

NOTES

1. *Indian Child Welfare: A Status Report, Final Report of the Survey of Indian Child Welfare and Implementation of the Indian Child Welfare Act and Section 428 of the Adoption Assistance and Child Welfare Act of 1980*, prepared by CSR, Inc. in Washington DC and Three Feathers Associates in Norman, Oklahoma, April 18, 1988, pp. ES/3 - 1/26.

According to the report, 9,005 American Indian children were in substitute care in the United States on June 30, 1986.

No more recent, comprehensive statistical information on Native American children in substitute care has been collected. The ACF report *Analysis of 1989 Child Welfare Data* presents information from 26 States, excluding Alaska, Colorado, Florida, Idaho, Kansas, Michigan, Montana, Nebraska, New York, North Carolina, Oklahoma, Oregon, and Wyoming, which are among the States with the largest American Indian populations.

2. Ibid. State-administered programs provided care for 4,643 (52 percent) of these children; Tribes provided care for 3,156 (35 percent); BIA provided care for 797 (9 percent), and off-reservation programs served 409 (5 percent).
3. The BIA programs only serve members of Tribes that the Bureau has formally acknowledged or recognized. This Federal recognition may be the result of a treaty, statute, executive or administrative order, or history of dealings between the Federal government and a Tribe.

In order to achieve Federal acknowledgement or recognition, a Tribe that petitions the DOI must have governmental authority over its members and occupy a specified territory or community viewed as distinctly Indian. Other criteria for Federal acknowledgement include evidence that the tribe has been identified as an American Indian entity since 1900 and that tribal members are descendants of an historical Indian tribe or tribes that functioned as a single autonomous political entity [25 CFR 83.7 (1994)].

4. The ICWA grant monies can be used by tribes to meet the matching share requirements of other Federal funding programs.

Beginning in FY 1994, ICWA funds will be included with social services administration funding and other human services funding in the Tribal Priority Allocations for Tribes' base human services funding. Accordingly, ICWA funds are no longer exclusively designated for child welfare services. The ICWA monies can be reprogrammed by the Tribes to support other Tribal Priority

Allocation programs, such as those for tribal government, general administration, resources management, public safety and justice, and education.

5. According to BIA data, the FY 1993 ICWA allocation was originally set at about \$18.09 million. About \$8.4 million in ICWA funds were re-programmed, however, to cover a shortfall in BIA education funding.

Through FY 1991, BIA distributed its ICWA funds according to a competitive process. In January 1994, BIA issued revised ICWA regulations, however, and the agency will now make funds available to all Tribes according to a grant formula.

Below are listed, for fiscal years 1989 through 1994, approximate ICWA funding amounts and the number of Tribes funded.

1989: \$7.2 million	98 tribes
1990: \$7.1 million	124 tribes
1991: \$7.0 million	113 tribes
1992: \$14.2 million	374 tribes
1993: \$9.7 million	375 tribes
1994: \$22.9 million	534 tribes

In 1994, ICWA grant awards to individual Tribes ranged in value from \$29,446 to \$750,000.

6. Below are listed, for fiscal years 1991 1992, and 1993, BIA estimates of the child welfare assistance payments made and the average monthly caseload of Tribal children for whom services were provided with these funds.

1991: \$17.5 million	2,920 children
1992: \$18 million	3,020 children
1993: \$20 million	3,020 children

7. The BIA provides services for Tribes when these services are not provided by another entity. Through contracts and grants established under P.L. 93-638, Tribes can, instead, provide for themselves the services that BIA would have provided for them.

When a social services contract is established, BIA transfers to the Tribe the monies it would have spent in the operation of the social services program, additional monies for indirect costs such as rent and telephone use, and the welfare assistance payments that the BIA would have distributed for the care of Tribal members.

The BIA also awards monies through discretionary, competitive, one-time

P.L. 93-638 grants, which support Tribes in their efforts to become prepared to administer P.L. 93-638 contracts. The grants are also awarded to support Tribes in improving their administration of services for which a contract has already been established. The P.L. 93-638 grant monies can be used to meet the matching share requirements of other Federal funding programs, but the contract monies cannot be. According to BIA records, in FY 1994, a total of \$4.2 million in Self-Determination discretionary grants was awarded to approximately 70 Tribes.

8. According to BIA, of the approximately \$60.2 million that Tribes received, approximately \$27.2 million was for Tribal social services staffing, and \$33 million for contract support (or indirect administrative costs) related to the administration of the Tribal social services programs. In 1993, Tribes received a total of approximately \$60 million, of which \$28 million was for Tribal social services staffing and \$32 million was for contract support. Funding for social services staffing comes from the BIA Social Services budget, while funds for contract support come from a separate budget.
9. The ACF National Center on Child Abuse and Neglect (NCCAN) provides additional funding to States for child protection and treatment programs under the Child Abuse Prevention and Treatment Act (P.L. 93-247 as amended). This funding includes Basic State grants (part I), Disabled Infants grants (part II), State Community-Based Child Prevention grants, and Children's Justice Act grants. In addition, NCCAN provides Emergency Services funding to States, and discretionary grants to both States and Tribes.

In FY 1993, \$17 million was appropriated for part I grants, \$3 million was appropriated for part II grants, \$5.3 million was appropriated for State Community-Based Prevention, and \$9.2 million was appropriated for Children's Justice Act grants. In addition, \$19 million was appropriated for emergency services and \$16 million was appropriated for discretionary grants.

10. The Adoption Assistance and Child Welfare Act defines "child welfare services" as "public social services which are directed toward the accomplishment of the following purposes: (A) protecting and promoting the welfare of all children, including handicapped, homeless, dependent, or neglected children; (B) preventing or remedying, or assisting in the solution of problems which may result in, the neglect, abuse, exploitation, or delinquency of children; (C) preventing the unnecessary separation of children from their families by identifying family problems, assisting families in resolving their problems, and preventing breakup of the family where the prevention of child removal is desirable and possible; (D) restoring to their families children who have been removed, by the provision of services to the child and the families; (E) placing children in suitable adoptive homes, in cases where restoration to the biological family is not possible or appropriate; and (F) assuring adequate care of children away from their homes, in cases where the child cannot be returned

home or cannot be placed for adoption." [P.L. 96-272, sec. 425, 94 Stat. 519, (1980)]

11. Some States voluntarily provide their own funding for Tribal child welfare services.

Other States provide some child welfare services for Tribal children because they have a legal responsibility to do so. In 1953, Public Law 280 allowed States to assume extensive criminal and civil jurisdiction over Indian lands. Tied to this jurisdiction is the responsibility to provide a variety of services for Indians on these lands.

Fifteen States have assumed some P.L. 280 jurisdiction over some Indian lands: Alaska, Arizona, California, Florida, Iowa, Idaho, Minnesota, Montana, Nebraska, Nevada, North Dakota, Oregon, Utah, Washington, and Wisconsin. As part of their legal responsibilities tied to P.L. 280, some of these States provide services, including child welfare services, for some Indians.

12. Title IV-E foster care funding is available only for children whose families are eligible for Aid for Families with Dependent Children (AFDC); adoption assistance funding is provided for special needs children who are eligible for AFDC or supplemental security income (SSI).
13. In both 1991 and 1992, about \$274 million was allocated for Subpart 1.
14. The law authorizes 5 years of funding for Title IV-B Subpart 2, and it mandates a set-aside of 1 percent of the annual appropriation for Tribes. The total authorized funding levels for each fiscal year are listed below.

1994: \$60 million
1995: \$150 million
1996: \$225 million
1997: \$240 million
1998: the greater of \$255 million or \$240 million increased by an inflation factor.
15. Among the required protections are those to prevent the need for removing a child from his or her home, the development of a case plan and review system for each child, and the determination of goals for each child in foster care.
16. Our report does not address the role of off-reservation Indian organizations in providing child welfare services and protections to Tribal children.
17. Our report does not address ACF efforts to ensure the State provision of those protections specified in P.L. 96-272 to Native American children. For information about ACF oversight of the State provision of the P.L. 96-272 protections, see the draft report *Oversight of State Child Welfare Programs*

(OEI-01-00770), issued by the Office of Inspector General in January 1994.

18. To develop this list of 24 States, we used data from both the *Resident Population Distribution for the United States, Regions, and States, by Race and Hispanic Origin, 1990*, produced by the Bureau of the Census, and the *Indian Service Population and Labor Force Estimates, January 1991*, produced by BIA.

The list of 24 States (Alaska, Arizona, California, Colorado, Florida, Idaho, Kansas, Michigan, Minnesota, Montana, Nebraska, Nevada, New Mexico, New York, North Carolina, North Dakota, Oklahoma, Oregon, South Dakota, Texas, Utah, Washington, Wisconsin, and Wyoming) includes those 20 States that had the largest Native American populations, in absolute numbers, and those 20 States that had the largest Native American populations calculated as a percentage of the total State populations.

The 1991 BIA statistics reflect a much smaller Native American population than the 1990 Census count. Specifically excluded from the BIA count are Native Americans who are not enrolled in federally recognized Tribes, and enrolled members who reside in urban or rural areas not adjacent or contiguous to their reservations. The Bureau of the Census statistics reflect all individuals who identify themselves as Indian, Eskimo, or Aleut, regardless of where they reside.

According to BIA data, the Tribal population in these 24 States represents 99 percent of the total U.S. population of members of federally recognized Tribes. According to the Bureau of the Census data, the Native American population in these States represents 86 percent of the total U.S. population of Native Americans.

19. The States represented in our discussion group were: Colorado, Montana, Oklahoma, Oregon, Nebraska, New Mexico, North Dakota, South Dakota, Utah, and Washington.

The Tribes represented in our discussion groups are located in Arizona, California, Idaho, Montana, Nebraska, Nevada, Oregon, and South Dakota.

20. While Tribal organizations may not have received any Title IV-E or Title XX funds from States to provide their own services, Tribal members are generally eligible for State services and may have received services provided by the State with Title IV-E and/or Title XX funds.

To be eligible for Title XX funds, Tribal organizations must administer social services programs and be prepared to make arrangements with the States in which they are located to receive funds and provide social services to members of the Tribes. Such arrangements can take the form of contracts, grants, or other State-approved funding mechanisms.

To be eligible for Title IV-E funds, Tribal organizations must administer child welfare programs that meet the standards specified by P.L. 96-272 and must be prepared to make formal Title IV-E funding agreements (as required by ACF) with the States in which they are located.

21. The number of States that shared Title IV-E funds with Tribes increased from five in 1989 to eight in 1993; the number of States that shared Title XX funds increased from three to four over this same period.

The amount of funding that Tribes received, as a percentage of the States' aggregate funding, also increased. The amount of Title IV-E funding that Tribes received increased from about 1.7 percent of the 5 States' aggregate funding in 1989 to about 2.3 percent of the 8 States' aggregate funding in 1993. The amount of Title XX funding that Tribes received increased, from about 1.2 percent of the 3 States' aggregate funding in 1989 to about 2.9 percent of the 4 States' aggregate funding in 1993.

The proportion of eligible Tribes receiving Title IV-E and Title XX funds also increased. In 1989, 9 States reported that 30 (30 percent) of the 101 eligible Tribes in the States received Title IV-E funds. In 1993, 11 States reported that 46 (43 percent) of the 108 eligible Tribes in the States received these funds. In 1989, 3 States reported that 24 (47 percent) of the 51 eligible Tribes in the States received Title XX funds. In 1993, 6 States reported that 32 (51 percent) of the 61 eligible Tribes in the States received these funds.

22. The Omnibus Budget Reconciliation Act of 1993 (OBRA 93) barred ACF from issuing disallowances as a result of Section 427 and Title IV-E reviews until October 1, 1994. The ACF is now reevaluating its Section 427 review process and its other oversight mechanisms for State child welfare programs. Until recently, the ACF review process operated as follows:

When a State passed through Title IV-E monies from ACF for the care of a child who was in Tribal custody, then payments made for that child's care entered the pool from which a sample was drawn for the ACF review of State Title IV-E payments. If the Title IV-E review identified an individual payment that was not made in accordance with the law, then ACF disallowed that Title IV-E payment. If too many payments were disallowed in this first review, then ACF conducted a review of a larger sample of payments. Based on the proportion of disallowed payments found in this second review, ACF disallowed a proportion of the State's total annual Title IV-E funds.

If the Tribe that had custody of the child had not certified its eligibility for Section 427 incentive funding and review, then the child's record also entered the population from which the State Section 427 record review sample was drawn. If the Section 427 review demonstrated that the required child welfare

protections were not provided for a certain percentage of children, then ACF issued a disallowance against the State's Title IV-B child welfare monies.

23. 58 Fed. Reg. 54,222, Oct. 20, 1993.
24. From information supplied to OIG by ACF.
25. P.L. 96-272, "Title IV-E, Part B--Child Welfare Services", Sec. 428: "(a) The Secretary may, in appropriate cases (as determined by the Secretary) make payments under this part directly to an Indian tribal organization within any State which has a plan for child welfare services provided under this part."
26. *ACYF-PI-93-10*, issued May 19, 1993: "For fiscal year 1993, the appropriation for the Child Welfare Services State Grant Program (title IV-B of the Social Security Act--the Act) is \$294,624,000. In order to be eligible for a direct grant at the amount of their share of the \$141,000,000, an Indian Tribe or Indian Tribal Organization (ITO) must meet the requirements of 45 CFR 1357.40 (a) - (e) and (g). *In order to be eligible for any funds above that level, up to their share of the \$294,624,000, an ITO must: (1) be located in a State meeting the requirements of section 427 (a) or (b) of the Act;...*" (italics added).
27. *Children's Bureau - Policy, Review and Operations: 427 Status Report as of March 19, 1993*
28. The Omnibus Budget Reconciliation Act of 1993 (OBRA 93) barred ACF from issuing disallowances as a result of Section 427 and Title IV-E reviews until October 1, 1994. Furthermore, ACF is now reassessing the Section 427 review and other of its child welfare oversight mechanisms.
29. The current formula takes into consideration the Tribe's resident population under age 21 and its per capita income. According to an ACF internal draft document, the current formula "results in an amount which bears approximately the same ratio to the total States' Title IV-B allotment as the product of 1.5 times the proportion of the Indian Tribe's resident population under age 21 to the State's total population under age 21."
30. In 1993, Title IV-B grant awards to individual Tribes ranged in value from \$377 to \$166,468.
31. The ACF requires Tribes seeking Title IV-B child welfare base funding to develop child welfare service plans with ACF. In June 1993, ACF issued program instructions that allow Tribes to submit plan documents that they prepared for BIA ICWA grant applications or other purposes. These new program instructions are intended to diminish the administrative burden of applying for funds. Program instructions issued for Title IV-B family preservation and support services funding also allow Tribes to submit plan documents that they may have prepared for other purposes.

To obtain Section 427 incentive funding, Tribes that receive Title IV-B child welfare base funding must first certify that they are in compliance with the requirements of Section 427 and, thus, eligible. Tribes have then been subject to periodic reviews by ACF to verify their compliance and eligibility.

32. Among the required protections are those to prevent the need for removing a child from his or her home, the development of a case plan and review system for each child, and the determination of goals for each child in foster care.
33. The child welfare plans that are developed with ACF by the 59 Tribes that receive Title IV-B child welfare base funding have provided another mechanism for oversight of the Tribal child welfare programs. These plans, which must be submitted at least once every three years, describe the Tribes' child welfare services and the steps the Tribes will take to expand and strengthen their programs.

The ACF has monitored State child welfare programs through review of the Title IV-E and Title IV-B child welfare plans that it requires from States, through Title IV-E administrative, training, and payment reviews, through Section 427 administrative and case-record reviews, and through voluntary program reviews of State child welfare programs.

The ACF Title IV-E and Section 427 reviews have entailed an examination of samples of children's records to assure that the children's families are eligible for Title IV-E payments, adequate court and case-worker review has been conducted, the foster homes are licensed, individual payments are allowable, and the children are receiving the protections required by P.L. 96-272.

The ACF has conducted neither Title IV-E reviews nor program reviews of Tribal child welfare programs. Furthermore, ACF does not require Tribes to submit Title IV-E child welfare plans.

For more information about ACF oversight of State programs, see the draft report *Oversight of State Child Welfare Programs* (OEI-01-00770), issued by the Office of Inspector General in January 1994.

34. The ACF has funded at least three different organizations to support the development of Tribal-State agreements for child welfare services and protections. Some of the funding was used for a conference which provided information to both Tribal and State representatives about the development of such agreements. In addition, some funding supported the development of an agreement model.
35. The Job Opportunities and Basic Skills Training (JOBS) program has no requirement for a matching share from Tribes. Under the Child Welfare

Research and Demonstration program, the matching share required from Native American grantees is less than that for other grantees and can be waived entirely.

36. If ACF were to pursue a direct funding approach, it would want to address the implications of this approach for those Tribes and States that have already developed effective relationships and administrative arrangements for sharing Title XX and/or Title IV-E funds.
37. The ACF recently affirmed the importance of the direct grants in a Program Instruction to States and Tribes: "The Department of Health and Human Services (HHS) believes that the direct funding of Native American Tribal Organizations (ITOs) strengthens Tribal child welfare services programs, as intended in the goals and requirements of the Social Security Act (the Act) as amended." See *ACYF-PI-93-13*, June 24, 1993.
38. Other block grants that DHHS awards directly to tribes include those for community services, alcohol and drug abuse and mental health services, preventive health and health services, primary care, and low-income home energy assistance.

The regulations for these block grants describe the direct funding approach: "The Secretary has determined that Indian tribes and tribal organizations would be better served by means of grants provided directly by the Secretary to such tribes and organizations out of the State's allotment of block grant funds than if the State were awarded its entire allotment. Accordingly, where provided for by statute, the Secretary will, upon request of an eligible Indian tribe or tribal organization, reserve a portion of a State's allotment and, upon receipt of the complete application and related submission that meets statutory requirements, grant it directly to the tribe or organization." [(45 C.F.R., sec. 96.40-.48; (1993)].

39. In an April 29, 1994 memorandum for the heads of executive departments and agencies; President Clinton stressed the importance of government-to-government relationships between Federal agencies and Tribes. In this memorandum, the President listed guidelines for executive branch activities to "ensure that the rights of sovereign Tribal governments are fully respected." (59 Fed. Reg. 22951, May 4, 1994.)

The BIA, according to the recently revised ICWA regulations, views its relationship with Tribes as one in which "the Federal government has a government-to-government relationship with the sovereign governments of federally recognized Indian tribes and Alaska native villages as contemplated by Public Law 95-608. Therefore, federal funds for which a tribe is eligible are distributed directly to the tribe by a Federal Finance System." (59 Fed. Reg. 2249, Jan. 13, 1994.)

40. Previous efforts to require a Title XX set aside for Tribes have failed in the Congress.
41. This burden might be somewhat less with Title XX grants because, as block grants, the demands on grantees and Federal agencies are deliberately minimized.
42. This nongovernment organization would need to be culturally appropriate, knowledgeable about Indian child welfare services and Federal grants administration, and willing to be subject to ACF monitoring.
43. *Improving Children's Welfare: Learning from Iowa*, National Conference of State Legislatures, Denver, CO, 1990.
44. The Indian Self Determination and Education Assistance Act Amendments, P.L. 100-472, 1988, Title III - Tribal Self-Governance Demonstration Project.
45. The Indian Employment, Training, and Related Services Demonstration Act (P.L. 102-477). This legislation authorizes the waiver of any regulation, policy, or procedure promulgated by any of the four departments to allow for consolidation of similar programs. The legislation requires the DOI to develop a single report format for project activities and expenditures, and a single system of Federal oversight for the projects.

In addition, P.L. 95-134 Title V allows Insular Areas to consolidate various grants, including Title XX block grants, and formula grants for child welfare services and for child abuse and neglect (45 C.F.R. Sec. 97.12).

Insular areas include the Virgin Islands, Guam, American Samoa, Trust Territory of the Pacific Islands, and the Government of the Northern Mariana Islands.

46. The ACF has demonstrated its commitment to finding more coherent approaches to improving opportunities for vulnerable children supported by its programs. The ACF Commissioner for Children, Youth and Families, for example, has affirmed the importance of the Federal government "putting the pieces together, because you can't make a difference for families if you are thinking only in narrow and categorical terms." See "ACYF Commissioner (*Olivia Golden*) Speaks Her Mind," *Child Protection Report*, Vol. 20, No. 2, p. 9, January 21, 1994.
47. The State and Tribal child welfare administrators with whom we spoke suggested that State workers could benefit from an endeavor in which State and Tribal representatives collaborated in the development of State ICWA legislation, policy, and procedures, and an ICWA manual for State child welfare agency and court workers. It was also suggested that State child welfare agency and court workers could benefit from ICWA training provided by BIA staff

and/or Indian child welfare experts who were invited by the State to provide this training.

48. See the Family Preservation and Support Act in OBRA 93 (P.L. 103-66, Item 335: (47) Sec. 13712).
49. Agreements between DOI and DHHS have already been formed to implement the Indian Child Protection and Family Violence Prevention Act of 1990, which appears as Title IV of P.L. 101-630; the Indian health Care Amendments of 1990, which appear as Title V of this law; and the Anti-Drug Abuse Act of 1986 (P.L. 99-570).

As part of an ICWA memorandum of agreement, ACF and BIA could plan to exchange information relevant to Indian child welfare services and protections. The Intra-Departmental Council on Native American Affairs, which was recently re-established with a new charter, could serve as an alternative mechanism for sharing information.

50. A proposal to require States to ensure compliance with ICWA protections as part of their IV-B plans was considered in the 103rd Congress first session as part of the draft Family Preservation and Support Act (H.R. 2264); it was dropped from the final legislation for technical reasons. This requirement is still being considered by the Congress as part of S. 1886, which was introduced on November 17, 1993.

State and Tribal child welfare administrators suggested that should such State ICWA planning be implemented, Tribes should be given an opportunity to indicate their level of satisfaction with the State plans. This would encourage State-Tribal communication and might better ensure State compliance with ICWA.

State and Tribal child welfare administrators and Native American child welfare experts also suggested that making Federal funding contingent upon demonstrated State compliance with ICWA would greatly increase the likelihood that States would comply with the law. Accordingly, ACF could seek to make State compliance with ICWA a requirement for some ACF child welfare funding, such as the Title IV-B Subpart 1 base or Section 427 incentive funding.

51. The ACF could build on the efforts of States--such as Washington--that have already developed and tested instruments to assess State compliance with ICWA requirements.
52. *Overview of Entitlement Programs, 1992 Green Book*, Committee on Ways and Means, U.S. House of Representatives, 102-44, May 15, 1992, pp. 828 - 886.

53. In 1990 dollars, funding decreased from \$5,790 million in 1977 to \$2,565 million in 1992. In nominal dollars, funding increased from \$2,796 million to \$2,800 million over this same period. Ibid. pp. 829 - 830.
54. The other four goals are: 1) achieving or maintaining economic self-support; 2) achieving or maintaining self-sufficiency; 3) preventing or reducing inappropriate institutional care by providing for community-based care, home-based care, or other forms of less intensive care; and 4) securing referral or admission for institutional care when other forms of care are not appropriate, or providing services to individuals in institutions. Ibid. p. 832.
55. Federal reimbursement for State foster care assistance payments and State adoption assistance payments are made as an open-ended match at the State's Medicaid rate (which averages about 54 percent nationally). State placement services and administrative costs related to both foster care and adoption are reimbursed as an open-ended Federal match at a rate of 50 percent. Training expenses are reimbursed as an open-ended match at a rate of 75 percent. Nonrecurring adoption expenses are reimbursed as an open-ended Federal match at 50 percent. Ibid. p. 846.
56. The Snyder Act also authorizes funds to support payments to members of federally recognized Tribes for general welfare assistance, participation in the Tribal Work Experience Program, and non-medical institutional or custodial care of adults. Miscellaneous assistance payments authorized by the Act include burial assistance and emergency assistance to prevent hardship caused by fire, flood, or acts of nature.