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INFORMATION MEMORANDUM

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

Subject: New Legislation - The Deficit Reduction Act of 2005

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VII of the Deficit Reduction Act of 2005; Titles IV-B and IV-E of the Social Security Act; 70 FR 4803; ACYF-CB-PI-02-08 superseded; ACYF-CB-IM-04-03.

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

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

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

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

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

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

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

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

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

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

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

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

Clarification of Foster Care Maintenance Payments Eligibility Criteria. The law revises section 472(a) of the Act to clarify that for title IV-E foster care eligibility a child must be eligible for Aid to Families with Dependent Children (AFDC) in the specified relative's home from which he or she is removed. The amendment to the Act corresponds with the Department of Health and Human Services' long-standing interpretation that in order to be eligible under title IV-E, a child must be eligible for AFDC (as it was in effect in the State on July 16, 1996) in the specified

relative's home from which the child is removed. If the child is not eligible in the specified relative's home from which the child is removed, the child will be ineligible for title IV-E for the duration of the child's foster care episode.

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

Implications for States of the title IV-B and IV-E amendments: Court Improvement. Instructions regarding the new court improvement grants will be provided under a separate program instruction.

Effect on States operating under the Rosales v. Thompson decision. The law, as amended, governs all States including those in the Ninth Circuit. All title IV-B/IV-E State agencies must now determine a child's AFDC eligibility based on the specified relative's home from which the child was removed and not based on the criteria stated in the *Rosales v. Thompson* decision. Further, the law confirms that the children who were determined eligible only because of the *Rosales* decision are not eligible for title IV-E foster care maintenance payments.

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

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

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

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

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

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

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

Inquiries To:

/s/

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

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

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

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

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