

# ACF

Administration  
for Children  
and Families

**U.S. DEPARTMENT OF HEALTH AND HUMAN SERVICES  
Administration for Children, Youth and Families**

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**3. Originating Office:** Children's Bureau

**4. Key Words:** Multiethnic Placement Act

## INFORMATION MEMORANDUM

**TO:** State IVB/IVE Agencies State Civil Rights Officers

**SUBJECT:** Multiethnic Placement Act

**LEGAL AND RELATED REFERENCES:** Title IVB, Subpart 1 section 422(b) of the Social Security Act; 42 U.S.C. 622; Title XI, section 1123 of the Social Security Act; 42 U.S.C. 1302 1320 b13; Improving America's School Act of 1994, Public Law 103382 which includes the Multiethnic Placement Act of 1994; 45 CFR 1356.20

**DISCUSSION:** On October 20, 1994, the President signed the "Improving America's Schools Act of 1994, Public Law 103382" which includes among other provisions, the Multiethnic Placement Act of 1994. The purpose of this information memorandum is to provide preliminary information about the Multiethnic Placement Act and to highlight its importance for the submittal of your June 30, 1995 State plans.

This new law is designed to prohibit discrimination in the placement of children on the basis of race, color or national origin. The law prohibits an agency or entity that receives Federal assistance and that is involved in adoptive or foster care placements from delaying or denying the placement of a child solely on the basis of race, color, or national origin of the adoptive or foster parent or parents involved.

The new law permits an agency to consider, in determining whether a placement is in a child's best interests, the child's cultural, ethnic, and racial background and the capacity of prospective foster or adoptive parents to meet the needs of a child of this background. This factor must be considered in conjunction with other factors relevant to the child's best interest.

The new law also is designed to insure that agencies engage in active recruitment of potential foster and adoptive parents who reflect the ethnic and cultural diversity of the children needing placement. Section 554 of the Multiethnic Placement Act amends Section 422(b) of the Social Security Act (the Act) and Part A of title XI of the Act. The amendment to section 422(b) of the Act specifies the following requirements for child welfare services programs: "[Each plan for

child welfare services under this part shall . . .] (9) provide for the diligent recruitment of potential foster and adoptive families that reflect the ethnic and racial diversity of children in the State for whom foster and adoptive homes are needed." Specific attention also needs to be given to the new Section 1123 of the Act which was added to address the enforcement of State plans.

The Administration for Children and Families (ACF) and the Office for Civil Rights (OCR) have the responsibility for implementing the new legislation. OCR will provide guidance on the legislation and also is the agency which will administer the compliance for all requirements.

By March 1, 1995, ACF will provide instructions on the new provisions applicable to State plans.

**ATTACHMENT:** [Copy of the Multiethnic Placement Act](#)

**INQUIRIES TO:** Regional Administrators, ACF  
Regional Managers, OCR  
Olivia A. Golden  
Commissioner  
Administration on Children, Youth and Families

TITLE VI MULTIETHNIC PLACEMENT ACT of 1994  
Part E Multiethnic Placement  
Subpart 1 Multiethnic Placement

**SEC. 551. SHORT TITLE.**

This subpart may be cited as the "Multiethnic Placement Act of 1994".

**SEC. 552. FINDINGS AND PURPOSE.**

- a. **Findings.** Congress finds that
  1. nearly 500,000 children are in foster care in the United States;
  2. tens of thousands of children in foster care are waiting for adoption;
  3. 2 years and 8 months is the median length of time that children wait to be adopted;
  4. child welfare agencies should work to eliminate racial, ethnic, and national origin discrimination and bias in adoption and foster care recruitment, selection, and placement procedures; and
  5. active, creative, and diligent efforts are needed to recruit foster and adoptive parents of every race, ethnicity, and culture in order to facilitate the placement of children in foster and adoptive homes which will best meet each child's needs.
- b. **Purpose.** It is the purpose of this subpart to promote the best interests of children by
  1. decreasing the length of time that children wait to be adopted;
  2. preventing discrimination in the placement of children on the basis of race, color, or national origin; and
  3. facilitating the identification and recruitment of foster and adoptive families that can meet children's needs.

**SEC. 553. MULTIETHNIC PLACEMENTS.**

- a. **Activities.**
  1. **Prohibition.** An agency, or entity, that receives Federal assistance and is involved in adoption or foster care placements may not
    - A. categorically deny to any person the opportunity to become an adoptive or a foster parent, solely on the basis of the race, color, or national origin of the adoptive or foster parent, or the child, involved; or
    - B. delay or deny the placement of a child for adoption or into foster care, or otherwise discriminate in making a placement decision, solely on the basis of the race, color, or national origin of the adoptive or foster parent, or the child, involved.

- b. **Permissible consideration.** An agency or entity to which paragraph (1) applies may consider the cultural, ethnic, or racial background of a child and the capacity of the prospective foster or adoptive parents to meet the needs of a child of such background as one of a number of factors used to determine the best interests of a child.
- c. **Definition.** As used in this subsection, the term "placement decision" means the decision to place, or to delay or deny the placement of, a child in a foster care or an adoptive home, and includes the decision of the agency or entity involved to seek the termination of birth parent rights or otherwise make a child legally available for adoptive placement.

**Equitable Relief.** Any individual who is aggrieved by an action in violation of subsection (a), taken by an agency or entity described in subsection (a), shall have the right to bring an action seeking relief in a United States district court of appropriate jurisdiction.

Federal Guidance Not later than 6 months after the date of the enactment of this Act, the Secretary of Health and Human Services shall publish guidance to concerned public and private agencies and entities with respect to compliance with this subtitle.

#### Deadline for Compliance

In General Except as provided in paragraph (2), an agency or entity that receives Federal assistance and is involved with adoption or foster care placements shall comply with this subtitle not later than six months after publication of the guidance referred to in subsection (c), or one year after the date of enactment of this Act, whichever occurs first.

Authority to Extend Deadline If a State demonstrates to the satisfaction of the Secretary that it is necessary to amend State statutory law in order to change a particular practice that is inconsistent with this subpart, the Secretary may extend the compliance date for the State a reasonable number of days after the close of the first State legislative session beginning after the date the guidance referred to in subsection (c) is published.

Noncompliance Deemed a Civil Rights Violation Noncompliance with this subtitle is deemed a violation of title VI of the Civil Rights Act of 1964.

No Effect on Indian Child Welfare Act of 1978 Nothing in this section shall be construed to affect the application of the Indian Child Welfare Act of 1978 (25 U.S.C. 1901 et seq.).

### **SEC. 554 REQUIRED RECRUITMENT EFFORTS FOR CHILD WELFARE SERVICES PROGRAMS**

Section 422(b) of the Social Security Act (42 U.S.C. 622(b)) is amended

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

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

by adding at the end the following:

"(9) provide for the diligent recruitment of potential foster and adoptive families that reflect the ethnic and racial diversity of children in the State for whom foster and adoptive homes are needed."

*Subpart 2 Other Provisions*

**SEC. 555 EFFECT OF FAILURE TO CARRY OUT STATE PLAN**

In General Part A of title XI of the Social Security Act (42 U.S.C. 13011320b13) is amended by inserting after section 1122 the following:

"SEC. 1123. EFFECT OF FAILURE TO CARRY OUT STATE PLAN. "In an action brought to enforce a provision of the Social Security Act, such provision is not to be deemed unenforceable because of its inclusion in a section of the Act requiring a State plan or specifying the required contents of a State plan.

This section is not intended to limit or expand the grounds for determining the availability of private actions to enforce State plan requirements other than by overturning any such grounds applied in *Suter v. Artist M.*, 112 S. Ct. 1360 (1992), but not applied in prior Supreme Court decisions respecting such enforceability; provided, however, that this section is not intended to alter the holding in *Suter v. Artist M.* that section 471(a)(15) of the Act is not enforceable in a private right of action.

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