

ACF

Administration
for Children
and Families

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

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4. Key Words: Change in Allotment of Funds to Indian Tribes and ITOs

INFORMATION MEMORANDUM

TO: INDIAN TRIBES, STATE ADMINISTRATORS OF STATE PUBLIC WELFARE AGENCIES AND OTHER INTERESTED INDIVIDUALS

SUBJECT: Change in the Allotment of Direct Grants to Eligible Indian Tribes and Indian Tribal Organizations: Section 428 of the Social Security Act.

LEGAL AND RELATED REFERENCES: Sections 422(a), (b)(2)(8), 425, 427 and 428 of the Social Security Act; 45 CFR 1355.30, 1357.10(c), 1357.15(b), (c) and (d), 1357.25(d), 1357.40.

CONTENT: A final rule was published on June 2, 1995 which amends the regulations governing direct payments to Indian Tribal Organizations (ITOs) for child welfare services, by eliminating the requirement that to be eligible, ITOs must provide services under contract (or grant) with the Secretary of the Interior under section 102 of the Indian Self-Determination Act, and by adding a description of the formula used to calculate the amount of Federal funds available to eligible ITOs under title IV-B. Complex and limiting eligibility requirements, and low grant amounts have resulted in low ITO participation rates. The amendment, which is effective October 1, 1995, will improve the quality of Indian child welfare services nationally by broadening eligibility, and by allowing for an increase in ITO grant amounts in fiscal year 1996.

Currently, Title IVB allotments for ITOs are calculated by computing the amount per child under 21 in the State under the title IVB allotment for the State multiplied by the ITO population in the State and multiplied (or weighted) by a factor of 1.4. For fiscal year 1996, Title IV-B allotments for ITOs will be calculated by computing the amount per child under 21 in the State under the title IV-B allotment for the State multiplied by the ITO population in the State and multiplied (or weighted) by a factor of 3.0.

Indian Tribes and ITOs located in States eligible to receive funds under section 427 of the Social Security Act may certify eligibility for funds under section 427. All States are currently eligible to receive funds under section 427. Interested Indian Tribes and ITOs should consult with their

appropriate HHS Regional Office on both the amount of additional payments available and the specific foster care protections required.

In order to receive the funds potentially available to it, the ITO must provide at least 25 percent of the total funds expended by the ITO for Child Welfare Services. The Federal share is 75 percent of the total expenditures. The ITO's total expenditures may be greater than the amount needed to draw down the Federal funds, but the Federal reimbursement is limited to the amount in the allotment.

Attachment A lists the estimated maximum fiscal year 1996 title IV-B allotments. Attachment B contains a copy of the final rule.

Section 428 of the Act specifies that direct payments to Indian tribes and ITOs shall be deemed to be a part of the allotment of the State(s) in which the Indian tribe or ITO is located. As a result, the total amount of title IV-B funds available in a State will be unchanged. However, the proposed rule change will result in an increase in direct payments to Indian tribes and ITOs, and an equivalent decrease in payments to the States in which they are located.

INQUIRIES TO:

Regional Administrators
Administration for Children and Families
Olivia A. Golden
Commissioner

ATTACHMENTS:

[Attachment A:](#) Indian Tribes Currently Or Potentially Eligible For Direct Grants Under Section 428

[Attachment B:](#) Final Rule

**INDIAN TRIBES CURRENTLY OR POTENTIALLY ELIGIBLE FOR DIRECT
GRANTS UNDER SECTION 428
CHILD POPULATION AND ESTIMATED MAXIMUM FEDERAL SHARE OF FUNDS
FISCAL YEAR 1996**

ESTIMATED MAXIMUM ALLOTMENTS			
	Pop. Under Age 21	Sec. 427 Eligible \$	Share of \$141 Mil.
Alabama			
Poarch Creek	64	800	400
Alaska			
Akhiok	35	400	200
Akiachak Native Community	221	2,300	1,200
Akiak	137	1,400	800
Akutan	28	300	200
Alakanuk	269	2,800	1,500
Alatna	13	100	100
Aleknagik	66	700	400
Aleutian/Pribilof RC	874	9,200	4,800
Allakaket	52	500	300
Ambler	159	1,700	900
Anaktuvuk Pass	113	1,200	600
Andreafsky	159	1,700	900
Angoon	251	2,600	1,400
Aniak	198	2,100	1,100
Annette Islands Reserve	535	5,600	3,000
Anvik	34	400	200
Artic Slope NA RC	2,062	21,700	11,400
Artic Village	44	500	200
Asa`Carsarmiut TC (Mt. Village)	372	3,900	2,100
Assn of Vil. Council Pres's (Calista RC)	8,101	85,100	44,700
Atka	35	400	200
Atkasook	92	1,000	500
Atmautluak	116	1,200	600
Barrow	860	9,000	4,700

Beaver	42	400	200
Birch Creek	17	200	100
Brevig Mission	84	900	500
Bristol Bay RC	2,072	21,800	11,400
Buckland	168	1,800	900
Cantwell	11	100	100
Chalkyitsik	35	400	200
Chefornak	167	1,800	900
Chenega	31	300	200
Chevak	299	3,100	1,700
Chignik	32	300	200
Chignik Lagoon	10	100	100
Chignik Lake	61	600	300
Chilkat	52	500	300
Chilkoot	9	100	50
Chistochina	18	200	100
Chitina	8	100	44
Chuatbaluk	42	400	200
Chugachmiut (Chugach RC)	566	5,900	3,100
Circle	28	300	200
Clark's Point	21	200	100
Cook Inlet Tribal Council RC	7,913	83,100	43,700
Copper Center	63	700	300
Copper River NA (Ahtna RC)	243	2,600	1,300
Craig	129	1,400	700
Crooked Creek	43	500	200
Deering	74	800	400
Dillingham	506	5,300	2,800
Dot Lake	14	100	100
Eagle	7	100	39
Eek	102	1,100	600
Egegik	31	300	200
Eklutna	22	200	100
Ekwok	25	300	100
Elim	120	1,300	700

Emmonak	293	3100	1,600
English Bay	78	800	400
Evansville	12	100	100
Eyak	6	100	33
Fairbanks NA	2,800	29,400	15,500
False Pass	22	200	100
Fort Yukon	215	2,300	1,200
Galena	178	1,900	1,000
Gambell	230	2,400	1,300
Golovin	58	600	300
Goodnews Bay	93	1,000	500
Grayling	102	1,100	600
Grouse Creek Group	36	400	200
Gulkana	23	200	100
Healy Lake	19	200	100
Hoonah	228	2,400	1,300
Hooper Bay	424	4,500	2,300
Hughes	18	200	100
Huslia	85	900	500
Hydaburg	148	1,600	800
Igiugig	10	100	100
Iliamna	26	300	100
Inalik	83	900	500
Ivanof Bay	17	200	100
Kake	227	2,400	1,300
Kaktovik	70	700	400
Kalskag	66	700	400
Kaltag	114	1,200	600
Karluk	39	400	200
Kasaan	12	100	100
Kasigluk	211	2,200	1,200
Kawerak (Bering Straits RC)	2,839	29,800	15,700
Kiana	196	2,100	1,100
King Cove	74	800	400
King Salmon	52	500	300

Kipnuk	215	2,300	1,200
Kivalina	157	1,600	900
Klawock	171	1,800	900
Knik	13	100	100
Kobuk	37	400	200
Kodiak (Koniag RC)	904	9,500	5,000
Kokhanok	61	600	300
Koliganek	81	900	400
Kongiganak	138	1,400	800
Kotlik	230	2,400	1,300
Kotzebue	1,011	10,600	5,600
Koyuk	104	1,100	600
Koyukuk	52	500	300
Kwethluk	248	2,600	1,400
Kwigillingok	107	1,100	600
Larsen Bay	59	600	300
Levelock	35	400	200
Lime Village	17	200	100
Lower Kalskag	141	1,500	800
Manley Hot Springs	5	100	28
Manokotak	177	1,900	1,000
Marshall	115	1,200	600
Maniilaq Assn./Mauneluk (NANA RC)	2,639	27,700	14,600
McGrath	131	1,400	700
Mekoryuk	61	600	300
Mentasta Lake	32	300	200
Minto	89	900	500
Naknek	106	1,100	600
Napakiaik	138	1,400	800
Napaskiak	161	1,700	900
Nelson Lagoon	25	300	100
Nenana	86	900	500
New Stuyahok	177	1,900	1,000
Newhalen	79	800	400

Newtok	104	1,100	600
Nightmute	64	700	400
Nikolai	37	400	200
Nikolski	5	100	28
Ninilchik	197	2,100	1,100
Noatak	152	1,600	800
Nondalton	74	800	400
Noorvik	252	2,600	1,400
Northway	57	600	300
Nuiqsut	161	1,700	900
Nulato	168	1,800	900
Nunapitchuk	163	1,700	900
Old Harbor	121	1,300	700
Orutsaramuit (Bethel)	1,827	19,200	10,100
Oscarville	25	300	100
Ouzinkie	68	700	400
Pedro Bay	12	100	100
Pelican	30	300	200
Perryville	47	500	300
Pilot Point	20	200	100
Pilot Station	236	2,500	1,300
Pitkas Point	64	700	400
Platinum	26	300	100
Point Hope	319	3,300	1,800
Point Lay	50	500	300
Port Graham	59	600	300
Port Heiden	32	300	200
Port Lions	65	700	400
Quinhagak	214	2,200	1,200
Rampart	27	300	100
Red Devil	12	100	100
Ruby	58	600	300
Russian Mission	133	1,400	700
Salamatof	12	100	100
Sand Point	185	1,900	1,000

Savoonga	214	2,200	1,200
Saxman	117	1,200	600
Scammon Bay	179	1,900	1,000
Selawik	300	3,200	1,700
Seldovia	13	100	100
Shageluk	56	600	300
Shaktoolik	83	900	500
Sheldon Point	53	600	300
Shishmaref	220	2,300	1,200
Shungnak	101	1,100	600
Sleetmute	34	400	200
South Naknek	44	500	200
St. George	55	600	300
St. Mary's	9	100	50
St. Michael	147	1,500	800
St. Paul	217	2,300	1,200
Stebbins	221	2,300	1,200
Stevens Village	38	400	200
Stony River	172	200	100
Takotna	9	100	50
Tanacross	33	300	200
Tanana	116	1,200	600
Tanana (Doyon RC)	4,887	51,300	27,000
Tatitlek	46	500	300
Tazlina	27	300	100
Telida	6	100	33
Teller	63	700	300
Tetlin	31	300	200
Tlingit and Haida (Sealaska RC)	5,058	53,100	27,900
Togiak	242	2,500	1,300
Tok	55	600	300
Toksook Bay	193	2,000	1,100
Tuluksak	169	1,800	900
Tuntutuliak	132	1,400	700
Tununak	139	1,500	800

Twin Hills	21	200	100
Tyonek	54	600	300
Unalakleet	270	2,800	1,500
Unalaska	95	1,000	500
Venetie	79	800	400
Wainwright	218	2,300	1,200
Wales	66	700	400
White Mountain	65	700	400
Yakutat NA	122	1,300	700
Arizona			
Camp Verde	277	3,400	1,600
Cocopah	210	2,600	1,200
Colorado River (also in CA)	1,116	13,700	6,600
Fort McDowell	274	3,400	1,600
Fort Mojave (also in CA)	189	2,300	1,100
Gila River	4,291	52,800	25,500
Havasupai	176	2,200	1,000
Hopi	3,015	37,100	17,900
Hualapai	450	5,500	2,700
Kaibab	45	600	300
Maricopa (AkChin)	189	2,300	1,100
Navajo (also in NM and UT)	43,161	530,900	256,400
Pascua Yaqui	1,279	15,700	7,600
Payson (YavapaiApache) Com.	44	500	300
Salt River	1,726	21,200	10,300
San Carlos	3,499	43,000	20,800
San Xavier	507	6,200	3,000
Tohono O'odham (Papago)	3,876	47,700	23,200
White Mountain (Fort Apache)	4,924	60,600	29,200
Yavapai	69	800	400
California			
Agua Caliente	29	300	100
Barona Ran.	146	1,400	700
Benton Paiute	23	200	100
Big Lagoon Ran.	8	100	37

Big Pine Ran.	161	1,600	700
Big Sandy Ran.	11	100	100
Big Valley Ran.	32	300	100
Bishop Ran.	412	4,000	1,900
Blue Lake Ran.	8	100	37
Bridgeport Colony	17	200	100
Cabazon	12	100	100
Cahuilla	37	400	200
Campo	61	600	300
Chemehuevi	43	400	200
Chicken Ranch Ran.	7	100	32
Cold Springs Ran.	82	800	400
Colorado River (also in AZ)	9	100	41
Colusa (Cachil Dehe) Ran.	8	100	37
Cortina Ran.	7	100	32
Coyote Valley	68	700	300
Dry Creek Ran.	17	200	100
Elk Valley Ran.	13	100	100
Fort Bidwell	52	500	200
Fort Independence	10	100	46
Fort Mojave Trust Lands (also in AZ)	104	1,000	500
Fort Yuma (Quechon)	542	5,200	2,500
Grindstone Creek Ran.	59	600	300
Hoopla Valley	804	7,700	3,700
Hopland Ran.	77	700	400
Karok	22	200	100
La Jolla	74	700	300
Laytonville Ran.	54	500	200
Lone Pine Ran.	73	700	300
Lookout Ran.	6	100	28
Los Coyotes	22	200	100
Manchester (Point Arena) Ran.	82	800	400
Manzanita	23	200	100
Mesa Grande	31	300	100

Middletown Ran.	9	100	41
Morongo	226	2,200	1,000
Pala	262	2,500	1,200
Pauma	82	800	400
Pechanga	124	1,200	600
Picayune Ran.	7	100	32
Pinoleville Ran.	33	300	200
Redding Ran.	35	300	200
Redwood Valley Ran.	6	100	32
Resighini Ran.	12	100	100
Rincon	171	1,600	800
Roaring Creek Ran.	11	100	100
Robinson Ran.	68	700	300
Round Valley	280	2,700	1,300
San Manuel	24	200	100
San Pasqual	117	1,100	500
Santa Rosa	18	200	100
Santa Rosa Ran.	169	1,600	800
Santa Ynez	97	900	400
Santa Ysabel	63	600	300
Smith River Ran.	34	300	200
Soboda	157	1,500	700
Stewarts Point Ran.	33	300	200
Sulphur Bank (ElEm) Ran.	51	500	200
Susanville	72	700	300
Table Bluff Ran.	19	200	100
Table Mountain Ran.	12	100	100
TorresMartinez	70	700	300
Trinidad Ran.	28	300	100
Tule River	381	3,700	1,700
Tuolumne Ran.	40	400	200
Upper Lake Ran.	15	100	100
Viejas Ran.	118	1,100	500
XL Ranch	8	100	37
Yurok	208	2,000	1,000

Colorado			
Southern Ute	470	2,100	2,500
Ute Mountain (also in UT)	430	4,700	2,300
Connecticut			
Mashantucket Pequot	24	200	100
Florida			
Big Cypress	196	2,100	1,000
Brighton	178	1,900	900
Hollywood	234	2,500	1,200
Miccosukee	53	600	300
Seminole Trust Lands	51	500	300
Idaho			
Coeur d'Alene	350	4,700	2,300
Kootenai	31	400	200
Nez Perce	816	10,900	5,400
Paiute Shoshone Duck Valley (also in NV)	90	1,200	600
Shoshone Bannock (Fort Hall)	1,393	18,600	9,300
Iowa			
Sac and Fox (Iowa)	273	3,300	1,600
Kansas			
Iowa (also in NE)	31	400	200
Kickapoo	185	2,100	1,000
Potawatomi (Kansas)	229	2,600	1,300
Sac and Fox (KSNE)	23	300	100
Louisiana			
Chitimacha	104	1,400	700
Coushatta	16	200	100
Tunica Biloxi	5	100	32
Maine			
Houlton Band of Maliseets	531	6,500	3,200
Indian Township Passamaquoddy	472	5,800	2,900
Penobscot	658	8,000	4,000
Pleasant Point Passamaquoddy	663	8,100	4,100
Massachusetts			

WampanoagGay Head	97	800	400
size="+1">Michigan			
Bay Mills	207	2,300	1,100
Grand Traverse	102	1,100	500
Hannahville Community	93	1,000	500
Isabella	365	4,000	1,900
Keweenaw Bay Community (L'Anse)	332	3,600	1,700
Lac Vieux Desert	57	600	300
Sault Ste. Marie	4,098	45,000	21,500
size="+1">Minnesota			
Bois Forte (Nett Lake)	234	2,500	1,200
Fond du Lac	567	6,200	3,000
Grand Portage	73	800	400
Leech Lake	1,677	18,200	8,800
Lower Sioux	120	1,300	600
Mille Lacs	204	2,200	1,100
Minnesota Chippewa	11	100	100
Prairie Island Com.	21	200	100
Red Lake	1,822	19,800	9,600
Sandy Lake	16	200	100
Shakopee Com.	64	700	300
Upper Sioux Com.	16	200	100
Vermillion Lake	44	500	200
White Earth	1,275	13,800	6,700
size="+1">Mississippi			
Mississippi Choctaw	2,039	29,300	14,200
size="+1">Montana			
Assiniboine and Sioux (Fort Peck)	4,060	55,400	28,000
Blackfeet	4,716	64,400	32,500
Chippewa Cree (Rocky Boy's)	2,027	27,700	14,000
Conf'd Salish and Kootenai (Flathead)	2,460	33,600	17,000
Crow	2,304	331,400	15,900
Fort Belknap	1,781	24,300	12,300

Northern Cheyenne	2,060	28,100	14,200
size="+1">Nebraska			
Iowa (also in KS)	8	100	48
Omaha	1,018	12,200	6,000
Pine Ridge (Oglala Sioux) (also in SD)	7	100	42
Santee	204	2,500	1,200
Winnebago	581	7,000	3,500
size="+1">Nevada			
Carson Colony	95	1,000	500
Dresslerville Colony	60	600	300
Duck Valley (also in ID)	362	3,900	1,900
Duckwater	45	500	200
Ely Colony	25	300	100
Fallon Paiute Shoshone	130	1,400	700
Fallon Colony	73	800	400
Fort McDermitt	172	1,800	900
Goshute	12	100	100
Las Vegas Colony	31	300	200
Lovelock Colony	36	400	200
Moapa	80	900	400
Pyramid Lake	447	4,800	2,400
RenoSparks Colony	104	1,100	600
TeMoak	359	3,800	1,900
Walker River	271	2,900	1,500
Washoe	29	300	200
Winnemucca Colony	20	200	100
Yerington	143	1,500	800
Yomba	41	400	200
size="+1">New Mexico			
Acoma Pueblo	2,811	28,600	18,900
Alamo Navajo	617	8,500	4,100
Canoncito	565	7,800	3,800
Cochiti Pueblo	269	3,700	1,800
Isleta Pueblo	1,089	15,000	7,300

Jemez Pueblo	831	11,400	5,600
Jicarilla Apache	1,185	16,300	8,000
Laguna Pueblo	1,431	19,700	9,600
Mescalero Apache	1,301	17,900	8,700
Nambe Pueblo	153	2,100	1,000
Navajo (also in AZ and UT)	24,165	332,000	162,400
Picuris Pueblo	54	700	400
Pojoaque Pueblo	75	1,000	500
Ramah Navajo Com.	93	1,300	600
San Felipe Pueblo	1,157	15,900	7,800
San Ildefonso Pueblo	159	2,200	1,100
San Juan Pueblo	464	6,400	3,100
Sandia Pueblo	146	2,000	1,000
Santa Ana Pueblo	192	2,600	1,300
Santa Clara Pueblo	495	6,800	3,300
Santo Domingo Pueblo	1,329	18,300	8,900
Taos Pueblo	742	10,200	5,000
Tesque Pueblo	83	1,100	600
Zia Pueblo	281	3,900	1,900
Zuni Pueblo	3,117	42,800	20,900
size="+1">New York			
Allegany	433	3,800	1,800
Cattaraugus	876	7,800	3,700
Onieda (East)	13	100	100
St. Regis Mohawk	748	6,600	3,200
Tonawanda	158	1,400	700
Tuscarora	123	1,100	500
size="+1">North Carolina			
Eastern Cherokee	2,288	27,700	13,300
size="+1">North Dakota			
Devils Lake Sioux	1,474	20,500	10,600
Standing Rock (also in SD)	1,511	21,000	10,800
Three Affiliated (Fort Berthold)	1,460	20,300	10,500
Turtle Mountain Chippewa	4,516	62,900	32,400
size="+1">Oklahoma			

Absentee Shawnee	678	8,800	4,300
Apache	665	8,600	4,200
Cado	90	1,200	600
Cherokee	28,462	369,71000	178,500
CheyenneArapaho	3,197	41,500	20,000
Chickasaw	9,334	121,000	58,500
Choctaw	12,383	160,900	77,600
Citizen Band of Potawatomi	2,133	27,900	13,500
Comanche	2,395	30,900	14,900
Delware	28	400	200
Fort Sill Apache	65	800	400
Iowa	103	1,300	600
Kaw	296	3,800	1,900
Kiowa	2,684	34,700	16,800
Muscogee (Creek)	18,480	240,100	115,900
Osage	2,578	33,500	16,200
OtoeMissouria	224	2,900	1,400
Pawnee	688	8,900	4,300
Sac and Fox	3,433	44,600	21,500
Seminole	1,694	22,000	10,600
Tonkawa	457	5,900	2,900
Wichita	139	1,800	900
size="+1">Oregon			
Burns Paiute	62	700	400
Coquille Indian	356	4,200	2,100
Cow Creek	166	2,000	1,000
Klamath	1,096	13,000	6,300
Umatilla	439	5,200	2,500
Warm Springs	1,448	17,200	8,300
size="+1">Rhode Island			
Narragansett	7	100	41
size="+1">South Dakota			
Cheyenne River	2,678	36,200	18,500
Crow Creek	809	10,900	5,600
Flandreau	120	1,600	800

Lake Traverse (SissetonWahpeton)	1,453	19,700	10,000
Lower Brule	549	7,400	3,800
Pine Ridge (Oglala Sioux) (also in NE)	5,937	80,300	41,000
Rosebud	4,342	58,700	30,000
Standing Rock (also in ND)	1,085	14,700	7,500
Yankton	1,063	14,400	7,300
size="+1">Texas			
Alabama and Coushatta	280	3,300	1,600
Ysleta Del Sur Pueblo	102	1,200	600
size="+1">Utah			
Goshute (also in NV)	25	300	200
Navajo (also in AZ and NM)	2,699	36,800	17,900
Paiute	172	2,300	1,100
Skull Valley	13	200	100
Southern Ute	470	6,400	3,100
Uintah and Ouray	1,370	18,700	9,100
Ute Mountain (also in CO)	113	1,500	700
size="+1">Washington			
Chehalis	158	1,700	800
Colville	1,712	18,400	8,900
Hoh	39	400	200
Kalispel	41	400	200
Lower Elwha	56	600	300
Lummi	772	8,300	4,000
Makah	989	10,700	5,100
Muckleshoot	491	5,300	2,500
Nisqually	192	2,100	1,000
Nooksack	208	2,200	1,100
Port Gamble	189	2,000	1,000
Port Madison	195	2,100	1,000
Puyallup	420	4,500	2,200
Quileute	138	1,500	700
Quinault	418	4,500	2,200
SaukSuiattle	41	400	200

Shoalwater	32	300	200
Skokomish	195	2,100	1,000
Spokane	581	6,300	3,000
Squaxin Island	69	700	400
Stillaguamish	56	600	300
Swinomish	276	3,000	1,400
Tulalip	591	6,400	3,100
Upper Skagit	75	800	400
Yakima	3,039	32,700	15,800
size="+1">Wisconsin			
Bad River	384	4,400	2,100
Lac Courte Oreilles	872	10,100	4,900
Lac du Flambeau	662	7,600	3,700
Menominee	1,574	18,200	8,800
Onieda (West)	1,128	13,000	6,300
Potawatomi (Wisconsin)	138	1,600	800
Red Cliff	334	3,900	1,900
Sokaogon Chippewa Com.	170	2,000	900
St. Croix	225	2,600	1,300
Stockbridge	175	2,000	1,000
Wisconsin Winnebago	290	3,300	1,600
size="+1">Wyoming			
Wind River	3,622	48,600	25,500

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

45 CFR Part 1357

RIN: AB44

Child Welfare Services Program

AGENCY: Administration on Children, Youth and Families Administration for Children and Families, HHS.

ACTION: Final Rule.

SUMMARY: The Department of Health and Human Services is issuing this final rule to amend the regulations governing direct payments to Indian Tribal Organizations (ITOs) for child welfare services. It eliminates the requirement that to be eligible ITOs must provide services under contract (or grant) with the Secretary of the Interior under section 102 of the Indian Self-Determination Act, and adds a description of the formula used to calculate the amount of Federal funds available to eligible ITOs under title IV-B, Subpart 1 of the Social Security Act. We believe that complex and limiting eligibility requirements and low grant amounts have resulted in low ITO participation rates. The amendment will improve the quality of Indian child welfare services nationally by broadening eligibility and by allowing for an increase in grant amounts.

EFFECTIVE DATE: October 1, 1995.

FOR FURTHER INFORMATION CONTACT: Olivia A. Golden,
Administration on Children, Youth and Families,
P.O. Box 1182, Washington, D.C. 20013
(202) 205-8474.

SUPPLEMENTARY INFORMATION:

I. Program Description and Background

Title IV-B, Subpart 1, of the Social Security Act (the Act), the Child Welfare Services program, is a formula grant program. Each State receives a grant representing its share of the current authorized amount. The grants provide States with Federal support for a wide variety of State child welfare services including: preplacement preventive services to strengthen families and avoid placement of children; services to prevent abuse and neglect; services for the provision of foster care and adoption; and certain protections for children in foster care. The grant funds can be used to provide services regardless of the income of the families and children who are in need of such services.

The Child Welfare Services program has been a part of the Social Security Act (the Act) since the Act's inception in 1935. In 1968, Congress transferred this program to title IV, Part B of the Act (sections 420-425 of the Act). Historically, title IV-B has provided Federal grants to States to establish, extend and strengthen child welfare services. Under

this program, services are available to all children, including the homeless, neglected, dependent and those with disabilities.

The Adoption Assistance and Child Welfare Act of 1980 (Pub. L. 96-272) was enacted on June 17, 1980. In addition to amending title IV-B, Pub. L. 96-272 established a new program, the title IV-E program, which replaced on October 1, 1982, the title IV-A foster care program in the States. The law created links between the two programs with numerous program and fiscal incentives. The impetus behind the passage of Pub. L. 96-272 was the belief of Congress and most State child welfare administrators, supported by extensive research, that the public child welfare system responsible for serving dependent and neglected children, youth and families had become a receiving or holding system for children living away from their parents.

Congress envisioned in the new legislation a system that would help families remain together by assisting parents in carrying out their roles and responsibilities and providing alternative permanent placement for those children who cannot return to their own homes.

Pub. L. 96-272 created section 428 of the Act which provides for direct payments to certain Indian Tribal Organizations, of funds authorized under title IV-B for child welfare services to certain ITOs. Effective June 22, 1983, regulations published at 45 CFR 1357.40 implemented section 428 of the Act, and specified which ITOs are eligible to receive funds directly and under what circumstances direct payments should be made available. In determining which ITOs would be eligible for direct funding, the Department decided to make the option of applying for direct funding available to those ITOs which had contracted with, or received a grant from, the Bureau of Indian Affairs under Pub. L. 93-638 (Indian Self-Determination Act) for child welfare services. This requirement was intended to limit direct funding to ITOs that had established the need for child welfare services and had taken advantage of the opportunity for direct management and operation of a tribal child welfare services program. Under this approach, direct grants would be added to existing ongoing Indian child welfare programs operated by the tribal organizations. The title IV-B funds were intended to be linked to the other major Federal Indian social services program to support Indian self-determination, and complement the provisions of the Indian Child Welfare Act of 1978 (Pub. L. 95-608). This was considered important by the Department because title IV-B funds alone are insufficient for an ITO to establish and operate a basic child welfare services program.

We believe that the requirement that ITOs must contract, or receive a grant, for child welfare services under Pub. L. 93-638 in order to be eligible for direct funding under title IV-B is no longer necessary. In recent years, Federal social service funding under the Indian Child Welfare Act (ICWA) has increased significantly. In fiscal year 1994, 530 tribes are expected to receive \$22,905,000 under ICWA. We are aware that there are ITOs which do not receive Indian Self-Determination Act funding although they are operating child welfare services programs utilizing ICWA funding, and others which could choose to begin to provide child welfare services.

II. Discussion of the Comments and Final Rule

On October 20, 1994, the Department published a Notice of Proposed Rulemaking (NPRM) in the Federal Register [59 FR 52951] that proposed a revision of 45 CFR Part 1357, the regulation governing direct payments to Indian Tribal Organizations (ITOs). Interested persons were given 60 days in which to comment on the proposed rule. The following is a summary of the comments from the respondents and the Department's response.

The Department received comments from twenty-one respondents, including Tribal governments, Tribal human services agencies, national Indian organizations, a Federal agency, and a State agency. Nineteen comments supported changing the multiplication factor from 1.4 to 3.0. Eighteen responses supported elimination of the Indian Self-Determination Act eligibility requirement. One respondent opposed elimination of the Indian Self-Determination Act eligibility requirement. Two respondents recommended changes to the proposed rule.

Comment

One respondent opposed elimination of the Indian Self-Determination Act eligibility requirement, and requested that an impact study be conducted first to determine the effect of expanding the population of Indians served on the population of Indians currently served under title IV-B, Part 1. The respondent recommended that the results of the study be published in the **Federal Register** along with the proposed definition changes and proposed funding allocation, and that there be an opportunity for comments.

Response

This comment appears to reflect two concerns: that the change allows for native American consortiums to receive direct title IV-B funding, and that the resulting increase of population which could participate in title IV-B funding could adversely impact the program if not funded appropriately. In response, it should be noted that the current regulation allows Indian consortiums to receive title IV-B direct funding. The proposed rule did not change this. However, the proposed rule, by eliminating the Indian Self-Determination Act requirement would likely expand the population of Indian children and families served under title IV-B direct funding. If such a change in the population served did occur, the corresponding increase of funding to tribes would result in a corresponding equivalent decrease in funding available to the State title IV-B agencies. There would be no decrease in title IV-B funding available to those Indian Self-Determination Act tribes currently receiving direct title IV-B funding as a result of increasing the Indian population under this program. We do not believe that an impact study is therefore necessary or appropriate.

Comment

One respondent recommended delay of implementation of the multiplication factor change to FY 1996 and implementation in two stages: citing as examples, 2.25 in FY 1996, and 3.0 in FY 1997. The respondent expressed concern about the impact on a State Agency due to the significant percentage of the budget reduction anticipated and the lack of adequate advance time for a State Agency to plan for the change if implemented in FY 1995, as proposed.

Response

The Department agrees that a large increase in direct funding of Tribes, coming late in a State's budget cycle would impose serious problems. In order to allow those States that are likely to be significantly impacted by the final regulation to adequately plan for the change, the Department will delay the effective date of the final regulation to October 1, 1995. However, we do not agree with the proposal to raise the multiplication factor in stages because we do not believe that a lower multiplication factor than 3.0 would be sufficient to achieve the purpose of the policy, which is to substantially increase the participation of the tribes and raise the quality of Indian child welfare services. Although we understand the State's concern about the need to maintain adequate State funding to continue to serve the Indian population of enrolled tribal members living off reservation, the title IV-B appropriations are not intended to adequately meet all of a State's child welfare services needs. It is expected that States will fund a significant portion of State child welfare services from other sources.

Comment

One respondent recommended replacing the proposed funding formula with a \$20,000 base level of funding per Tribe, plus a percentage for each child. This comment opposes the proposed formula because small Tribes cannot sustain a viable program if this proposed funding formula to tribes is approved and because small tribes have the same base cost of providing services.

Response

Although we understand the concern that the funding formula does not adequately meet the needs of the smaller tribes, the Department believes that title IV-B is not sufficient to sustain base level plus percentage funding for every Tribe and also fund those States with either a large number of Tribes and/or a large population of Tribal children. Title IV-B is intended to supplement other State and Tribal child welfare resources. Under the Department's plan for increasing the multiplication factor from 1.4 to 3.0, the Tribes will receive twice the dollars per child in comparison with the States. The base level plus percentage proposal would result in differentials far greater in certain States. The proposed change as stated in the NPRM maintains more of a balance between the Department's decision to more adequately fund tribes, and the Federal responsibility to the States to assist them to meet the needs of the children served in their child welfare systems.

The Final Rule

This final rule revises paragraph (a) to eliminate the Indian Self-Determination Act eligibility requirement. Paragraph (a), as revised, states that "any ITO that meets the definitions in section 428(c) of the Act, or any consortium or other group of eligible tribal organizations authorized by the membership of the tribes to act for them is eligible to apply for direct funding if the Indian tribe, consortium or group has a plan for child welfare services provided by the ITO that is jointly developed by the ITO and the Department".

In determining the amount of direct funding available to an ITO eligible under the existing regulation, the Secretary currently applies a formula similar to the one used to calculate the title IV-B allotments of the territories. This formula takes into consideration the Indian tribe's resident population under 21 and its per capita income.

The current formula for calculating an ITO's allotment results in an amount which bears the same ratio to the total State's title IV-B allotment as the product of 1.4 times the proportion of the Indian tribes's resident population under age 21 to the State's total population under age 21. The 1.4 multiplication factor has not resulted in grant amounts large enough to make it worthwhile for many tribes to apply for title IV-B. By June 1993, only 24 tribes were receiving direct title IV-B grants totaling \$549,340. The average grant available to specified ITOs was \$22,889, and grants ranged from a high of \$166,468 to a low of \$648.

The Department plans to change the multiplication factor to 3.0 for fiscal year 1996 in order to improve the quality of Indian child welfare nationally. For comparison purposes, using the fiscal year 1993 figures given above, this would have raised the average amount available to the specified ITO's to \$45,778, and grants would have ranged from a high of \$332,936 to a low of \$1,296.

Paragraph (g) (6) contains the Department's formula for the calculation of ITO allotments. The multiplication factor will be adjusted in future years based on the Department's experience, if necessary, in order to achieve the purposes of the Act. Any decision to change the multiplication factor will be promulgated through the issuance of an Information Memorandum under the ACYF policy issuance system. Except for delaying the effective date to October 1, 1995, we have made no changes in the final rule as proposed in the Notice.

III. Impact Analysis Executive Order 12866

Executive Order 12866 requires that regulations be written to ensure that they are consistent with the priorities and principles set forth in the Executive Order. The Department has determined that the regulations are consistent with these priorities and principles. This final rule will not result in more costs because the increased funding to Indian tribes and ITOs will come from the change in the allotment formula.

Regulatory Flexibility Act of 1980

Consistent with the Regulatory Flexibility Act of 1980 (5 U.S.C. Ch. 5), the Department tries to anticipate and reduce the impact of rules and paperwork requirements on small businesses. For each rule with a "significant economic impact on a substantial number of small entities" an analysis is prepared describing the rule's impact on small entities. Small entities are defined in the Act to include small businesses and small non-profit organizations. This regulation would affect States and Indian tribes, which are not "small entities" within the meaning of the Act. For these reasons, the Secretary certifies that this rule will not have a significant impact on a substantial number of small entities.

Paperwork Reduction Act

Under the Paperwork Reduction Act of 1980, Pub. L. 96-511, all Departments are required to submit to the Office of Management and Budget (OMB) for review and approval any reporting or recordkeeping requirements in a proposed or final rule. This final rule contains no reporting or recordkeeping requirements. Therefore no submission to OMB is required.

List of Subjects in 45 CFR Part 1357

Adoption and foster care, Child welfare, Child welfare services, State plan, Indians, Reporting and recordkeeping requirements.

(Catalog of Federal Domestic Assistance Program Number 93.645, Child Welfare Services - State Grants)

Dated: _____

Mary Jo Bane
Assistant Secretary for Children and Families

For the reasons set forth in the preamble, 45 CFR 1357.40 is amended as follows:

PART 1357 -- REQUIREMENTS APPLICABLE TO TITLE IV-B

1. The authority statement for Part 1357 continues to read as follows:

Authority: 42 U.S.C. 620; 42 U.S.C. 670 et seq.; 42 U.S.C. 1302.

2. Section 1357.40 is amended by revising paragraph (a) and by adding paragraph (g)(6) to read as follows:

1357.40 Direct payments to Indian Tribal Organizations (title IV-B, subpart 1, child welfare services).

a. *Who may apply for direct funding'*

Any Indian Tribal Organization (ITO) that meets the definitions in section 428(c) of the Act, or any consortium or other group of eligible tribal organizations authorized by the membership of the tribes to act for them, is eligible to apply for direct funding if the ITO, consortium or group has a plan for child welfare services that is jointly developed by the ITO and the Department.

(g)Grants: General.

(6) In order to determine the amount of Federal funds available for a direct grant to an eligible ITO, the Department shall first divide the State's title IV-B allotment by the number of children in the State, then multiply the resulting amount by a multiplication factor determined by the Secretary, and then multiply that amount by the number of Indian children in the ITO population. The multiplication factor will be set at a level designed to achieve the purposes of the Act and revised as appropriate.