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

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INFORMATION MEMORANDUM

TO: ACF Regional Offices

State Agencies Administering the Title IV-B Child and Family Services

Program and the Title IV-E Foster Care and Adoption Assistance Program

SUBJECT: NEW LEGISLATION - Creation of an Adoption Tax Credit and Changes in Title IV-E State Plan Requirements

LEGAL AND RELATED REFERENCES: The Small Business Job Protection Act (Public Law (P.L.) 104-188), the Howard M. Metzenbaum Multiethnic Placement Act of 1994 (P.L. 103-382), and Titles IV-B (42 U.S.C. 620 et seq.) and IV-E (42 U.S.C. 670 et seq.) of the Social Security Act (the Act), the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (P.L. 104-193), Section 471(a) of Title IV-E of the Social Security Act (the Act) (42 U.S.C. 671(a)), and 45 CFR 1356

PURPOSE: The purpose of this information memorandum is to inform States of new legislation that provides adoption assistance by means of an adoption tax credit, removes barriers to interethnic adoption, and states a preference for kinship foster and adoptive placements. These amendments are contained in the Small Business Job Protection Act (P.L. 104-188) and the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (P.L. 104-193) respectively.

INFORMATION: On August 20, 1996 President Clinton signed The Small Business Job Protection Act of 1996. Included in this new law are two provisions which relate to adoption.

Adoption Tax Assistance

Section 1807, entitled "Adoption Assistance," amends Subpart A of part IV of subchapter A of chapter 1 of the Internal Revenue Code. It allows for a \$5,000 tax credit (\$6,000 in the case of a child with special needs) for qualified adoption expenses paid or incurred by the taxpayer. The section provides additional information on the allowance of credit, limitations, carrying forward

unused credit, definitions for "qualified adoption expenses" and "eligible child", special rules for foreign adoptions, filing requirements and application to an employer's adoption assistance programs.

Effective date: Tax years beginning on and after January 1, 1997.

The Removal of Barriers to Interethnic Adoption

Section 1808, entitled "Removal of Barriers to Interethnic Adoption," amended Title IV-E, section 471(a) of the Act with the following:

Section 1808(a), entitled "State Plan Requirements" added:

"(18) not later than January 1, 1997, provides that neither the State nor any other entity in the State that receives funds from the Federal Government and is involved in adoption or foster care placements may--

- A. deny to any person the opportunity to become an adoptive or a foster parent, on the basis of race, color, or national origin of the person, or of the child involved; or
- B. delay or deny the placement of a child for adoption or into foster care, on the basis of race, color, or national origin of the adoptive or foster parent or the child, involved."

Section 1808(b), entitled "Enforcement" added section 474(d)(1):

"If, during any quarter of a fiscal year, a State's program operated under this part is found, as a result of a review conducted under section 1123A, or otherwise, to have violated section 471(a)(18) with respect to a person or to have failed to implement a corrective action plan within a period of time not to exceed 6 months...the Secretary shall reduce the amount otherwise payable to the State under this part, for that fiscal year quarter and for any subsequent quarter of such fiscal year...by--2 percent...in the case of the 1st such finding...3 percent...in the case of the 2nd such finding...5 percent...in the case of the 3rd or subsequent such finding...the Secretary shall not reduce any fiscal year payment to a State by more than 5 percent."

This section also states, "Any other entity which is in a State that receives funds under this part and which violates section 471(a)(18) during a fiscal year quarter...shall remit to the Secretary all funds that were paid by the State to the entity during the quarter from such funds."

Section 1808(d), entitled "Conforming Amendment" repeals section 553 of the Howard M. Metzenbaum Multiethnic Placement Act of 1994 (42 U.S.C. 5115a) [regarding permissible considerations].

Effective date: Title IV-E State Plan requirements are effective January 1, 1997. The remaining provisions were effective August 20, 1996 the date of enactment.

On August 22, 1996 President Clinton signed the Personal Responsibility and Work Opportunity Reconciliation Act (PRWORA) of 1996 (P.L. 104-193). Included in this new law is a provision which relates to foster and adoptive placements funded under title IV, Part E of the Act.

Kinship care

Section 505 of the Personal Responsibility and Work Opportunity Reconciliation Act (PRWORA) of 1996 amends section 471 of title IV-E of the Act by adding the following new State Plan requirement:

" (18) provides that the State shall consider giving preference to an adult relative over a non-related caregiver when determining a placement for a child, provided that the relative caregiver meets all relevant State child protection standards."***

*****Note:** A technical amendment to PRWORA has been submitted to change title V, section 505(3) to read, " (19) provides that the State shall consider..." because the Small Business Job Protection Act (P.L. 104-188) also contained an amendment to section 471(a) of the Act which added paragraph 18, with different content.

Effective Date: This amendment was effective upon the date of enactment of the statute -- August 22, 1996.

The Administration for Children, Youth and Families in the Department of Health & Human Services (DHHS), in cooperation with the DHHS Office of Civil Rights will publish the procedures DHHS will use to determine any penalties for violation of 471(a)(18) of the Act. The Internal Revenue Service will provide detailed information on filing and other requirements related to the adoption assistance provision.

INQUIRIES: Related to the Adoption Tax Assistance:

The [Internal Revenue Service](#) expects to issue public guidance by January 1, 1997. That guidance will contain names and phone numbers for IRS contacts.

Related to the Interethnic Adoption and Kinship Care provisions:

/s/

James A. Harrell
Deputy Commissioner
Administration on Children, Youth and Families

Attachments:

[Attachment A:](#) The Small Business and Job Protection Act (P.L. 104-188) Sections 1807 and 1808

[Attachment B:](#) Section 505 of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (P.L. 104-193)