Final Report
State of New York Title IV-E Foster Care
Secondary Eligibility Review
October 1, 2005 – March 31, 2006

Introduction

During the week of August 21-25, 2006, officials and staff from the Administration for Children and Families' (ACF) Central and Regional Offices, contracted consultant reviewers, the New York State Office of Children and Families (OCFS), several local social services districts (selected by the State) and the Office of Court Administration (OCA) worked as a team in the conduct of a secondary eligibility review of New York's title IV-E foster care program in Rensselaer, New York. The purpose of the title IV-E foster care eligibility review (FCER) was (1) to determine if the State of New York was in compliance with the child and provider eligibility requirements as outlined in 45 CFR §1356.71 and Section 472 of the Act; and (2) to validate the basis of the State's financial claims to ensure that appropriate payments were made on behalf of eligible children and to eligible homes and institutions.

This secondary review was conducted as the result of the findings of the initial primary title IV-E review which was conducted during the week of April 28, 2003, in which New York was determined not to be in substantial compliance with title IV-E eligibility requirements for the period under review. As required, New York submitted a title IV-E Program Improvement Plan (PIP) addressing actions to be taken to correct the areas found to be deficient through the prior review. That PIP was approved with an effective date of April 1, 2004. A title IV-E PIP normally extends for up to a one year period. New York State, however, was provided with a year plus an extension for activities related to enactment of proposed legislative changes. The New York title IV-E PIP activities extended through July 31, 2005. ACF's approval of the completion of the PIP was based on quarterly progress reports submitted by New York and the final Progress Report dated August 30, 2005, which outlined the completion of all of the identified goals and action steps in the PIP. The PIP goals and activities included, but were not limited to the following:

- Increase the accuracy and reliability of the social service district title IV-E eligibility determination and re-determination process through issuance of an eligibility manual, development of an automated eligibility work sheet, the conduct of staff training, performance of eligibility determination audits in all major local districts and enactment of legislative changes designed to enhance judicial determinations, particularly regarding reasonable efforts to finalize the permanency plan
- Make automated changes to increase reliability in the title IV-E claiming process by implementing system enhancements designed to capture more information and subject payments to various additional system edits

- Secure court orders in a timely manner that reflect title IV-E criteria on legal authority, best interests and reasonable efforts by conducting training for judicial and other court personnel, reviewing sample court orders and identifying and working collaboratively with court officials to correct delays in the permanency hearing process
- Improve title IV-E eligibility documentation through several strategies including individual local district developed PIPs
- Eliminate from title IV-E claims any costs that are not documented as eligible through conduct of staff training and appropriate claims monitoring

Scope and Results of the Secondary Review

The State of New York's secondary FCER encompassed a sample of all of the title IV-E foster care cases that received a foster care maintenance payment during the period of October 1, 2005 to March 31, 2006. This period is referred to as the period under review (PUR). A computerized statistical sample of 200 cases (150 cases plus 50 over sample cases) was drawn from the Adoption and Foster Care Analysis and Reporting System (AFCARS) data which was transmitted by the State agency to the ACF for the period under review. Of the 50 over sample cases, 5 cases were selected for review to replace cases in which there had been no title IV-E payment made during the PUR.

During the on-site review each child's case file in the selected sample was reviewed to determine title IV-E eligibility. The provider's file was also reviewed to ensure that the foster home or child care institution in which the child was placed during the PUR was licensed or approved and that safety considerations were appropriately addressed. Payments made on behalf of each child were also reviewed to determine that they are title IV-E allowable and were not paid in an amount in excess of the State's standards. In addition, ACF and the State agreed that**,** subsequent to the on-site review, the State would have two weeks in which to submit any additional child and provider documentation for any case that was found to be in error, in undetermined status or to have an ineligible payment. As a result of such submissions, a number of initial case and payment determinations were modified.

For a secondary review, substantial compliance means that <u>either</u> the case error rate or the dollar error rate does not exceed 10 percent. Under a secondary review, any disallowance assessed is based on the actual amount of claims (maintenance payments and, where appropriate, associated administrative costs) found to be in error or as constituting ineligible or otherwise improper payments for individually reviewed sample cases. When <u>both</u> the case error rate and dollar error rate of a secondary review exceed 10 percent, the State is not found to be in substantial compliance and a disallowance is based on extrapolation from the sample to the universe of claims (maintenance payments and, where appropriate, associated administrative costs) paid for the duration of the AFCARS reporting period under review. The extrapolated disallowance is equal to the lower limit of a 90 percent confidence interval for the population's total dollars in error for the amount of time corresponding to the AFCARS reporting period. Further, a disallowance is also assessed on the basis of the actual amount of claims (maintenance

payments and, where appropriate, associated administrative costs) made during periods other than the PUR found to constitute ineligible or otherwise improper payments for individually reviewed sample cases. Efforts have also been made to identify any underpayments that may exist in the reviewed sample cases.

The secondary FCER conducted in New York during the week of August 21-25, 2006 consisted of a review of 150 cases as required for all states undergoing a secondary review. One of the findings from this review is that a total of thirteen (13) cases are in error for either part or all of the review period for reasons that are identified in the Case Record Summary section of this report. The case error rate is 8.67 percent. The gross dollar value of the maintenance payments in the 150 case sample was $1,083,445 for the PUR of which $79,223 represents maintenance payments for the 13 error cases. The dollar error rate is 7.31 percent. This data indicates that the State of New York's dollar error rate and the case error rate were both less than 10 percent. Therefore, the State of New York is considered to be in substantial compliance with title IV-E child and provider eligibility requirements as outlined in 45 CFSR 1356.71 and Section 472 of the Social Security Act. We are pleased to report this result and note that this represents a major improvement from the case findings obtained in the initial primary FCER conducted in New York State in April 2003.

In addition to the 13 cases with errors, 29 cases were found to contain payments that were claimed improperly. Ineligible payments were identified in 28 of these 29 cases because an eligibility factor was not met for a period other than the PUR. The other case contained one payment that is not title IV-E allowable because of the nature of the payment rather than the eligibility of the child and placement facility. The FCER did not identify any overpayments or underpayments. The specific improper payment determinations are delineated in the Improper Payments Summary section of this report.

Although none of the improper payment cases are considered "error cases" for determining substantial compliance, the ineligible maintenance payments and (where applicable) the associated administrative costs, as well as such amounts associated with error cases, are subject to disallowance. A title IV-E foster care claims disallowance in the amount of $412,223 Federal financial participation (FFP) in maintenance payments and $313,472 FFP in administrative costs is assessed for all of the unallowable claims found as a result of the FCER. The total disallowance is $725,695 FFP. More details on the calculation of the disallowance are provided in the disallowance letter transmitted with this report.

Case Record Summary

Cases Containing an Error

The following chart details for the 13 error cases, the reason(s) for ineligibility, appropriate citations, and the dates of ineligibility for the period under review (PUR) and for periods prior or subsequent to the PUR. Information on the disallowed payment and administrative cost claims for each case is provided as part of the disallowance letter

accompanying this report.

Case Count	Sample No.	Title IV-E Eligibility Criterion	Statutory Citation	Ineligibility Dates
1	5	Reasonable Efforts to Prevent Removals	472(a)(1),and 471(a)(15)(B)(i)	05/11/05 – 10/27/05
2	12	Placement in a Licensed Foster Family Home or Child Care Institution	472(a)(3), (b), and (c)	03/19/06 – 03/31/06
3	26	Validity of Removal Reasonable Efforts to Prevent Removals	472(a)(1) 472(a)(1),and 471(a)(15)(B)(i)	05/23/02 – Present 05/23/02 – 05/31/02
4	27	Voluntary Placement Agreements Safety Requirements of Provider	472(d), (e), and (f) 471(a)(20) and 475(1)	10/17/02 – Present 02/24/06 – Present
5	38	Validity of Removal	472(a)(1)	02/10/05 – Present
6	54	Reasonable Efforts to Make and Finalize a Permanency Plan	472(a)(1), 471(a)(15)(B)(ii) and (C)	09/01/05 – 11/30/05
7	62	Aid to Families with Dependent Children (AFDC) - Initial Eligibility Placement in a Licensed Foster Family Home or Child Care Institution	472(a)(1) and (4) 472(a)(3), (b), and (c)	07/08/05 – 10/30/05 10/31/05 – 01/05/06
8	64	Safety Requirements of Provider	471(a)(20) and 475(1)	10/25/05 – 12/31/05
9	82	Aid to Families with Dependent Children (AFDC) - Initial Eligibility	472(a)(1) and (4)	11/21/02 – Present
10	87	Placement and Care Responsibility Vested with the State Agency	472(a)(2)	02/10/06 – 02/27/06
11	102	Validity of Removal (Voluntary Placement)	472(a)(1)	02/21/03 – Present

12	108	Validity of Removal Reasonable Efforts to Prevent Removals Reasonable Efforts to Make and Finalize a Permanency Plan	472(a)(1) 472(a)(1),and 471(a)(15)(B)(i) 472(a)(1),and 471(a)(15)(B)(ii) and (C)	02/21/02 – Present 02/21/02 – Present 05/01/03 – 07/31/04
13	133	Aid to Families with Dependent Children (AFDC) - Initial Eligibility	472(a)(1) and (4)	12/19/03 – Present

Cases Containing Improper Payments

The following chart details for the 29 cases with improper payments, the reason for the ineligible or unallowable payment, appropriate citations, and the dates of ineligibility for the period under review and for periods prior to or subsequent to the period under review. Information on the disallowed payment and administrative cost claims for each case is provided as part of the disallowance letter accompanying this report.

Case Count	Sample No.	Title IV-E Eligibility Criterion	Statutory Citation	Ineligibility Dates for Payment Error
1	4	Items Outside of the Definition of Foster Care Maintenance Assistance Payments	475(4)(A)	07/14/03 – 07/14/03
2	6	Reasonable Efforts to Make and Finalize a Permanency Plan Safety Requirements of Provider	472(a)(1),and 471(a)(15)(B)(ii) and (C) 471(a)(20) and 475(1)	05/01/02 – 02/28/03 04/08/03 – 07/31/04
3	8	Placement in a Licensed Foster Family Home or Child Care Institution Safety Requirements of Provider	472(a)(3), (b), and (c) 471(a)(20) and 475(1)	05/15/03 – 12/31/03 05/15/03 – 12/31/03
4	11	Reasonable Efforts to Make and Finalize a Permanency Plan	472(a)(1),and 471(a)(15)(B)(ii) and (C)	08/01/03 – 08/31/04

		Placement and Care Responsibility Vested with the State Agency	472(a)(2)	10/01/04 – 01/31/05 05/01/05 – 05/31/05
5	13	Safety Requirements of Provider	471(a)(20) and 475(1)	07/22/02 – 07/31/05
6	19	Placement in a Licensed Foster Family Home or Child Care Institution	472(a)(3), (b), and (c)	02/19/05- 02/21/05
7	23	Reasonable Efforts to Make and Finalize a Permanency Plan	472(a)(1),and 471(a)(15)(B)(ii) and (C)	12/01/03 – 02/29/04
8	29	Reasonable Efforts to Make and Finalize a Permanency Plan Contrary to the Welfare	472(a)(1),and 471(a)(15)(B)(ii) and (C) 472(a)(1)	08/01/02 – 04/30/03 07/27/99 – 7/31/99
9	40	Reasonable Efforts to Make and Finalize a Permanency Plan	472(a)(1),and 471(a)(15)(B)(ii) and (C)	07/01/03 – 10/31/03
10	48	Reasonable Efforts to Make and Finalize a Permanency Plan	472(a)(1),and 471(a)(15)(B)(ii) and (C)	07/01/02 – 08/31/02 10//01/03 –02/29/04
11	52	Reasonable Efforts to Make and Finalize a Permanency Plan	472(a)(1),and 471(a)(15)(B)(ii) and (C)	05/01/04 – 05/31/04
12	55	Reasonable Efforts to Make and Finalize a Permanency Plan	472(a)(1),and 471(a)(15)(B)(ii) and (C)	09/01/04 – 12/31/04
13	59	Reasonable Efforts to Make and Finalize a Permanency Plan	472(a)(1),and 471(a)(15)(B)(ii) and (C)	11/01/03 – 11/30/03
14	68	Reasonable Efforts to Make and Finalize a Permanency Plan	472(a)(1),and 471(a)(15)(B)(ii) and (C)	05/01/04 – 10/31/04
15	69	Reasonable Efforts to Make and Finalize a Permanency Plan	472(a)(1),and 471(a)(15)(B)(ii) and (C)	09/01/05 – 09/30/05
16	71	Reasonable Efforts to Make and Finalize a Permanency Plan	472(a)(1),and 471(a)(15)(B)(ii) and (C)	04/01/04 – 06/30/04
17	74	Voluntary Placement Agreements and Best Interests Determinations	472(d), (e), and (f)	04/29/06 – Present

18	77	Placement in a Licensed Foster Family Home or Child Care Institution	472(a)(3), (b), and (c)	10/01/03 – 10/31/03
19	86	Reasonable Efforts to Make and Finalize a Permanency Plan	472(a)(1),and 471(a)(15)(B)(ii) and (C)	05/01/04 – 02/28/05 04/01/06 – Present
20	88	Reasonable Efforts to Make and Finalize a Permanency Plan	472(a)(1),and 471(a)(15)(B)(ii) and (C)	02/01/03 – 03/31/03 05/01/04 – 07/31/04
21	101	Reasonable Efforts to Make and Finalize a Permanency Plan	472(a)(1),and 471(a)(15)(B)(ii) and (C)	08/01/04 – 09/30/04
22	122	Reasonable Efforts to Make and Finalize a Permanency Plan Placement and Care Responsibility Vested with the State Agency	472(a)(1),and 471(a)(15)(B)(ii) and (C) 472(a)(2)	05/01/02 – 06/30/03 03/01/05 – 05/31/05 06/01/98 – 01/31/01
23	132	Reasonable Efforts to Make and Finalize a Permanency Plan Safety Requirements of Provider	472(a)(1),and 471(a)(15)(B)(ii) and (C) 471(a)(20) and 475(1)	06/01/03 – 07/31/03 03/05/02 – 06/30/02
24	143	Reasonable Efforts to Make and Finalize a Permanency Plan Contrary to the Welfare Reasonable Efforts to Prevent Removals	472(a)(1),and 471(a)(15)(B)(ii) and (C) 472(a)(1) 472(a)(1),and 471(a)(15)(B)(i)	11/01/03 – 06/30/04 04/22/97 – 08/31/97 04/22/97 – 08/31/97
25	147	Safety Requirements of Provider	471(a)(20) and 475(1)	10/16/03 – 10/31/03
26	149	Reasonable Efforts to Make and Finalize a Permanency Plan	472(a)(1),and 471(a)(15)(B)(ii) and (C)	11/01/04 – 12/31/04
27	OS-1	Reasonable Efforts to Make and Finalize a Permanency Plan	472(a)(1),and 471(a)(15)(B)(ii) and (C)	04/01/06 – Present
28	OS-2	Reasonable Efforts to Make and Finalize a Permanency Plan	472(a)(1),and 471(a)(15)(B)(ii) and (C)	01/01/05 – 06/30/05

29	OS-3	Reasonable Efforts to Make and Finalize a Permanency Plan	472(a)(1),and 471(a)(15)(B)(ii) and (C)	01/01/03 – 01/31/05

Case Specific Areas in Need of Improvement

The areas needing improvements in New York's title IV-E program identified through specific case findings are provided in the following sections. Under each heading the statutory and regulatory basis and the specific results from the review are provided.

I. <u>Removal Pursuant to a Court Order</u> - Removal of the child from the home must be pursuant to a judicial determination or a voluntary placement agreement. The contrary to the welfare determination must be made in the first court ruling that sanctions (even temporarily) the removal of a child from home. The judicial determination that reasonable efforts to prevent removal were made (or were not required) must be made no later than 60 days from the date of the child's removal from home. Judicial determinations must be made in a timely manner in a valid court order. [Statutory Citation: 472(a) (1), 471(a) (15) (B) (I); Regulatory Citation: §1356.21]

<u>For a child who enters care prior to March 27, 2000</u>: If the removal order does not contain the judicial determination regarding "contrary to the welfare", the requisite finding may result from court proceedings (the petition filed) that are initiated no later than 6 months from the date the child is removed from home, consistent with Departmental Appeals Board Decision Number 1508 (DAB 1508). The Departmental Appeals Board, through DAB 1508, ruled that a petition to the court stating the reason for the State agency's request for the child's removal from home, followed by a court order granting custody to the State agency, is sufficient to meet the contrary to the welfare requirement. The judicial determination that reasonable efforts were made to prevent removal or that reasonable efforts were made to reunify the child and family satisfies the reasonable efforts requirement.

A. Validity of Court Ordered or Voluntary Placement Agreement Removal

Four (4) cases were found as in error status because the circumstances of the removal do not support title IV-E eligibility. All of the payments in these cases are ineligible for Federal Financial Participation (FFP). In three (3) of the cases it was found that although the local district had sought or obtained a court order for the removal of the child, the removal was not valid since the physical removal of the child from the home of a specified relative did not coincide with the issuance of a court order. In a fourth case, a valid voluntary placement agreement was executed, but the child was permitted to remain in the same home of the relative and be treated as placed in a foster family home.

In the two cases where a court order providing for removal (citing imminent risk to the health and safety of the child) and authority for placement and care by the local district

was obtained, the child was not at that time physically removed from the home of the specified relative. The case records contained notes indicating that there was difficulty in locating the child upon obtaining the court order. The child was subsequently located and removed in both of these cases, The removals, however, occurred from three to five weeks after the court order date and were not accompanied by any further court order or voluntary placement agreement addressing the need for removal at that time. In one case, the child was actually living with a different relative at the time of removal. Neither of the initial court orders in these cases addressed a judicial expectation that removal of the child from the home would be delayed or whether the circumstances at the time of actual removal were such that it was contrary to the welfare of the child to remain in the home.

A third case involves a situation in which the father brought the child to an office of the local district child welfare agency. He requested that the child be placed into foster care due to difficulties that he was having in caring for the child. A decision was made by the local district officials to file a court petition alleging neglect against the father and simultaneously to obtain his signature on a consent form (not a voluntary placement agreement) recognizing that the child was being removed. The child was placed and remained in a relative foster family home. The court subsequently rejected the neglect petition on the basis that no evidence of neglect was presented. Approximately two months after the removal a voluntary placement agreement was executed. This agreement, however, was not the basis for the removal of the child. The foster care episode had begun earlier based on the consent form and the expectation that a court ordered placement would occur and the child was not removed from the home of the relative where he had been placed.

The circumstances in the fourth case are that the child had been living with a relative that sought to be recognized as a foster care provider. A voluntary placement agreement was executed, but the child remained in the same home of the relative while title IV-E payments were issued to the relative on behalf of the child.

A valid removal has not occurred for title IV-E eligibility purposes in any of these cases. A removal did not occur in situations in which the child is judicially removed from the parent or another specified relative and the child is permitted to remain in that same relative's home under the supervision of the State or local district agency. The physical removal from the home must coincide with the judicial ruling that authorizes the child's removal from the home and placement in foster care under the responsibility of the State agency. In these situations, the child is not eligible for title IV-E funding for the duration of the foster care episode, in accordance with 45 CFR §1356.21(k)(2).

A removal pursuant to a voluntary placement agreement did not occur in situations where the parent or another specified relative has signed the voluntary placement agreement and the child is permitted to remain in that same relative's home under the supervision of the State agency. In these situations, the child is not eligible for title IV-E funding for the duration of the foster care episode, in accordance with 45 CFR §1356.21(k)(2).

B. Contrary to Welfare/Best Interest of the Child, Reasonable Efforts to Prevent Removal/Reasonable Efforts to Reunify Child and Family

Three (3) cases were found as in error status and as ineligible for FFP because the court order addressing whether reasonable efforts to maintain the family unit and prevent the unnecessary removal of a child from the home, as long as the child's safety is ensured, was found not to be sufficient to establish that this requirement was met.

In two of the cases, the court order (or transcript of the hearing) occurring within sixty days of the initial court ordered removal in 2002 indicates that reasonable efforts were made, but does not cite any child specific basis for this determination. Judicial determinations must be made on a case-by-case basis; explicitly stated in the court order; and signed by a reviewing judge or other State designated court official. To be explicit, the court orders must definitively articulate the judge's child-specific ruling pertaining to the "contrary to the welfare" and "reasonable efforts" determinations.

A supplemental court order dated July 17, 2006 was provided for one of the cases. In this order the judge cites referrals given to the mother for drug treatment programs as the basis for the original 2002 reasonable efforts to prevent removal determination. An affidavit attesting that the judicial determination occurred at a previous hearing and nunc pro tunc ("now for then") court orders that change the substance of a prior judicial determination or constitute a judicial determination not previously made are not acceptable documentation in support of a judicial determination. If an acceptable court order containing the requisite judicial determination is not furnished, a transcript of the court proceeding is the only alternative to a court order to substantiate that the judicial determination requirement is met satisfactorily.

The third case involves a judicial determination that reasonable efforts to prevent removal were not made, but that the lack of such efforts was appropriate, The basis cited in the court order for this determination is the same child specific language used to support the contrary to the welfare determination in that court order. In summary, the information establishes that the child's behavioral actions have been found to represent circumstances where protection of the community is necessary. Federal regulations at 45 CFR 1356.21(b)(3) identify circumstances where reasonable efforts to prevent removal are not required as those instances where a judicial determination cites a series of actions or offenses that a **parent** rather than a **child** has committed. This court order, thus, fails to establish that reasonable efforts to prevent were not required in accordance with any of these regulatory exceptions. As such, there is no judicial determination of reasonable efforts to prevent removal.

Two (2) cases were found to have ineligible payments based on title IV-E claims for periods prior to obtaining the requisite court order containing the contrary to welfare and or reasonable efforts to prevent removal determination. The periods cited as ineligible are in 1997 and 1999 and thus do not reflect a pattern of such ineligible payments.

II. <u>Reasonable Efforts to Finalize the Permanency Plan</u> [Statutory Citation: 472(a)(1), 471(a)(15)(B)(ii) and (C) Regulatory Citation: 1356.21(b)(2)] - In order for a child to be eligible for title IV-E payments, there must be a judicial determination that reasonable efforts were made to finalize the child's permanency plan that is in effect. The permanency plan goal may be: reunification, adoption, legal guardianship, placement with a fit and willing relative, or another planned permanent living arrangement. The judicial determination that the agency has made reasonable efforts to finalize the permanency plan must be made no later than 12 months from the date on which the child is considered to have entered foster care and at least once every 12 months thereafter, while the child is in foster care.

If a judicial determination regarding reasonable efforts to finalize a permanency plan is not made within this timeframe, the child is ineligible at the end of the 12th month from the date the child was considered to have entered foster care or at the end of the month in which the subsequent judicial determination of reasonable efforts was due. The child remains ineligible until such a judicial determination is made.

Subsequent judicial determinations of "reasonable efforts to finalize" must occur at regular 12-month intervals and no later than 12 months from the month in which the prior determination actually is obtained. If the judicial determination of "reasonable efforts to finalize" is not made or is not timely, the child becomes ineligible from the time the finding is due and remains ineligible until such a judicial determination is made.

One (1) case was found as in error and ineligible for FFP because the case record did not contain the required judicial determination due within the PUR. This case appears to be an aberration in that all other reviewed cases were found to have documentation of a required judicial determination if the due date fell within the PUR. We note that in this case, the judicial determination was due in August 2005 and that it was made in December 2005. This activity is prior to the effective date (December 2005) of the State's Permanency Bill which provides for enhancements in permanency hearings.

Twenty-two (22) additional cases were determined to contain payments ineligible for FFP for periods prior to or subsequent to the PUR because either: 1) the case record contained an indication of a previous court order with a reasonable efforts to finalize the permanency plan determination that had been rendered greater than twelve months earlier and did not contain documentation of a subsequent timely appropriate judicial determination regarding reasonable efforts to finalize the permanency plan; or 2) the judicial determination was not made in a timely manner.

Based on the cases reviewed, one of the positive findings was that permanency hearings were being conducted by the New York State Family Courts and that court orders reflect the findings of those hearings. This finding is covered in more detail in the Areas of Systemic Strengths section below. However, it was also determined that, for periods prior to the PUR, there were a number of lapses or delays in the required twelve month judicial determinations regarding the efforts of the State to achieve permanency for the child. Only two of the twenty-four ineligible payments involve periods subsequent to the PUR. It was also noted that several cases (both for periods within the PUR and prior to

the PUR) barely met the requirement in that the judicial determination was issued before the expiration of the thirteenth calendar month after the prior determination.

The finding that required judicial findings with respect to the fact that the agency was making reasonable efforts to finalize the permanency plan were not uniformly made prior to the PUR adds strength to the finding that a significant improvement in the timeliness and quality of court orders has occurred during the past year in New York State. This represents a major achievement in consideration of the fact that this eligibility criterion represented the number one error in the initial primary FCER

III. <u>Voluntary Placements</u> - Title IV-E payments may be made on behalf of a child who is in foster care pursuant to a voluntary placement agreement only for the first 180 days of the foster care placement, unless there is a judicial determination that the continued voluntary placement is in the child's best interests. A valid voluntary placement agreement must be signed by the parent or legal guardian and the title IV-B/IV-E agency representative(s). [Statutory Citation: 472(d) (e) and (f); Regulatory Citation: §1356.22]

One (1) case was determined in error status and ineligible for FFP because the voluntary placement agreement was not signed by the parent or legal guardian. The individual signing the document was identified as a relative who was the child's custodian rather than legal guardian.

One (1) additional case was determined ineligible for FFP for periods outside of the PUR because the required court finding of best interests was not documented as obtained within 180 days of placement. Since the 180 days did not expire until after the end of the PUR, this case is not considered an error case. The State should, however, investigate to determine why the court order was not obtained and the current status of the child.

IV. <u>AFDC Eligibility</u> - Using its criteria in effect in its July 16, 1996 title IV-A State plan (or, if removal was prior to the effective date of The Personal Responsibility and Work Opportunity Reconciliation Act of 1996 [PRWORA] the title IV-A State Plan in effect at the time), the State must document that the child was removed from a specified relative, and that the child was financially needy and deprived of parental support in the month the voluntary placement agreement was signed or the month in which the petition that resulted in a court-ordered removal was signed. Deprivation must be by reason of death, absence, physical or mental incapacity of one parent, or the unemployment of the principal wage earner. In addition, the "living with" and "removal from" requirements have to be satisfied by the same specified relative. [Statutory Citation: 472(a) (1) and (4); Regulatory Citation: 1356.71(d) (1) (v)]

Three (3) cases were determined as in error status and ineligible for FFP because the necessary documentation was not provided to determine whether the child was eligible for AFDC at the time of placement. All of the cases involve questions regarding the documentation and assessment of family income for purposes of establishing AFDC financial need. See both the Systemic Factors In Need of Improvement sections below

for more information on the AFDC eligibility documentation concerns.

V. State Agency Responsibility for Placement and Care - Title IV-E payments can only be made for a child's placement and care that is under the responsibility of the State agency administering the title IV-E State Plan (or another public agency, including an Indian tribe, with which the title IV-E agency has a written agreement that is in effect). The court order or voluntary placement agreement must indicate that the agency has this responsibility. The State agency must maintain responsibility for placement and care regardless of the placement type. In addition, the court order giving the State agency placement and care responsibility must be maintained and available for review. [Statutory Citation: 472(a) (2); Regulatory Citation: 1356.71(d) (1) (iii)]

One (1) case was determined as in error status and ineligible for FFP during the PUR because the review results indicated that even though the child was discharged from foster care on February 9, 2006 payments continued to be made and title IV-E claimed for periods through February 28, 2006. The period after discharge does not constitute a period for which the State agency has legal authority for placement and care of the child. As such, the case is found to be in error.

Two (2) cases were found to have ineligible payments for periods prior to the PUR because a gap was identified in the case record with respect to court orders providing continuing legal authority. Thus, it could not be determined if the child was under the responsibility of the State agency or if the State maintained responsibility for placement and care of the child during the cited period of ineligibility. We note that prior to enactment of the State's Permanency Bill in December 2005 most court orders required that a judicial determination to extend a foster care placement be specifically obtained every twelve months. This requirement has, to a large degree, been prospectively eliminated by provisions in the Permanency Bill.

VI. Placement in Licensed Home or Facility [Statutory Citation: 1356.71(d) (1) (IV), Regulatory Citation: 1355.20]

In order to receive Federal financial reimbursement for foster care payments made on behalf of a child, the child must be placed in a facility that is licensed and meets all of the State agency standards of full licensure or approval. The documentation of full licensure can be satisfied by the certificate of licensure/approval or a letter of approval. Effective September 28, 2000, full licensure must be met by all providers, including those licensed or approved by a child placing agency. The license must show that the foster family home or child care institution is licensed for the duration of the child's placement.

An eligible facility may be a family foster home, group home, private child care institution, or public child care institution which accommodates 25 or fewer children. Children placed in detention facilities, forestry camps, training schools, or other facilities operated primarily for the detention of children determined to be delinquent are not eligible for title IV-E foster care maintenance payments. For each case being reviewed, the State agency must make available a licensing file which contains the licensing

history, including a copy of the certificate of licensure/approval or letter of approval, for each of the child's foster care providers.

Two (2) cases were found as in error status and ineligible for FFP because the foster family home was not licensed for a period when a title IV-E payment was made during the PUR. In one case the local district specifically "de-certified" the foster family home for about a month. The case is found to be in error for the portion of the month when the home was de-certified and title IV-E payments continued to be made. The other case involves issuance of a IV-E payment for transportation costs for a period when no information on a licensed placement was provided (child was in a facility not considered eligible for title IV-E payments).

Licensing files were sought and reviewed for any foster family home or child caring institution placement where the child was placed during the PUR. Documentation was also sought to establish that these facilities were licensed for any non-PUR periods during which that child was placed there as part of the same foster care episode. A total of three (3) cases were found to have ineligible payments because either the placement facility was not licensed when a title IV-E payment was made; 2) the licensing information was not provided; or 3) the license expired and was not renewed.

VII. <u>Safety Requirements of Provider</u> [Statutory Citation: 471(a)(20), 475(1); Regulatory Citation: 1356.30]

In all cases where the State opts out of the criminal records check requirement (New York State has opted-out), the licensing file for that foster or adoptive family must contain documentation that verifies that safety considerations with respect to the caretaker(s) have been addressed. In addition, in order for a child care institution to be eligible for title IV-E funding, the licensing file for the institution must contain documentation which verifies that safety considerations with respect to the staff of the institution have been addressed.

A. Safety requirements for foster/adoptive family homes when State has opted out of criminal records check

In two (2) cases, it was determined that the documentation regarding the safety considerations for the foster family home was not available or was not completed until after title IV-E payments began during the PUR. Both of these cases were, however, documented as fully licensed for the portion of the PUR when the child was placed in that home. These cases are in error status and ineligible for FFP for the cited periods. Specifically, it was determined that the State-required criminal records check had either not been conducted or that any safety concerns identified from such a check were not fully assessed prior to placement of the child in that home.

In five (5) additional cases, it was determined that documentation regarding completion of criminal history record check process was unavailable for a foster parent for a period prior to the PUR. In four of these cases, the foster family home was fully licensed even

though the criminal records check or the required safety assessment was not yet completed. Ineligible payments are cited for any month during which the requirement was not met.

The two error cases and the four ineligible payment cases where the foster family home was licensed without first successfully completing the safety check process represents a serious practice issue that should be reviewed and addressed by State agency officials.

B. Safety requirements for staff/caretakers in child care institutions

The review indicated that in all institutional cases reviewed the file contained the required documentation verifying that the safety consideration had been addressed for staff/caretakers in child care institutions.

VIII. <u>Unallowable Payment</u> – [Statutory Citation: 475(4); Regulatory Citation: 1356.60(a)(i)]

Title IV-E foster care maintenance assistance payments may only cover the costs of providing certain items encompassed within the definition of this term. The State must document that foster care maintenance payments claimed for title IV-E reimbursement are for items or services encompassed within the statutory definition of this term, are in amounts conforming with the State established rates of payment for the type and level of care provided and reflect non-duplicative amounts of the costs of daily maintenance.

In one (1) case, it was determined that an unallowable payment was claimed for title IV-E reimbursement. This amount is included as part of the disallowed claims, but does not involve either the designation of a case as being in error or the disallowance of associated administrative costs. The unallowable payment consists of a claim for a payment coded as for a gift. The State documentation indicated that the payment covered improvements to be made to a home where the child was being placed in another State. No details were available on the nature of the improvements or how this cost meets the statutory definition of title IV-E allowable costs. ACF recommends that the State assure that local districts have a common understanding of the types of cost that are and are not eligible for title IV-E reimbursement.

Systemic Areas In Need of Improvement

The following items cover systemic issues identified through the FCER where there is a need for improvement. While these matters do not directly relate to any of the cases found to be in error, they should be addressed as part of the State's continuing efforts to improve operations since these items have a significant potential impact on title IV-E eligibility determinations..

<u>AFDC Eligibility Determination and Scratch Pad Budget Forms</u>

The initial and redetermination of AFDC eligibility is supported by forms maintained in

the case record. We found that many of the forms are difficult to read, are not the latest version developed by the State agency and fail to provide information on the specific month used to determine initial eligibility. The source(s) of income, resources and the deprivation factor(s) are also not identified. This problem is particularly acute when the family is not in receipt of public assistance immediately prior to placement of the child. We did note that those local districts that chose to use the State's automated title IV-E eligibility determination form appeared to have better documentation of the ADFC eligibility determination. We recommend that the State agency review and appropriately revise forms used to capture information needed in determining AFDC eligibility.

Provision of Complete Case Records

We found that many of the case records provided for cases selected for sampling in the FCER did not contain the complete record for the most recent episode of foster care. Some local districts chose to provide excerpts from the case records covering the PUR and other periods that were believed to be subject to review in the FCER. This practice often resulted in less than a full picture of the circumstances in the case. Reviewers indicated that many cases did not include a copy of the child's birth certificate or other proof of his/her date of birth. In some instances, information that might have been of assistance in clarifying or confirming case circumstances contained in court petitions or case notes was omitted from the file.

While we appreciate the effort to reduce the need to review duplicative or unnecessary materials, it is possible that an opportunity was missed to highlight best practices or other title IV-E eligibility related information discernable from a review of the full case record. It also made for a good deal of confusion as numerous documents had to be requested and retrieved for many of the 150 cases. We also made efforts to re-review any finding where the reviewer cited an ineligible payment due to missing case record documentation. If the documentation was not required for the review and was clearly omitted from the version of the case record provided for the FCER, we excluded such a finding from this report. If, however, the documentation was required for the FCER or there was an indication in the case record that it did not exist (such as an identified licensing or court order gap), we cited the lack of documentation as constituting ineligible payment. The State should instruct local districts to provide the entire case record for future FCERs.

Division of Rehabilitative Services Claiming System

The FCER case sample is drawn from a universe of children in care during the PUR on whose behalf at least one foster care payment has been claimed for title IV-E reimbursement. This information is obtained from an automated file prepared by the State and submitted to the national Adoption and Foster Care Reporting and Analysis System (AFCARS). One of the selected sample cases for a child placed in facilities operated by OCFS' Division of Rehabilitative Services (DRS) was found not to have had any payment claims for the most recent foster care episode. As such, the case was removed from the FCER sample. We were informed that this case may actually have

simply been omitted for claiming purposes from the DRS system. While this may be an isolated example, we recommend that OCFS consider instituting controls and reconciliation procedures be put in place to assure that appropriate reimbursement claims are made to benefiting programs on behalf of each child that it serves during each quarter.

Court Orders in Juvenile Justice Cases

Children entering foster care on the basis of petitions containing allegations of juvenile delinquency or a person in need of supervision are served through different sections of State law designed to address these circumstances. We found that some of the court orders issued in such cases do not clearly address the extent to which the placement is meant to protect the interests of the community rather than those of the child. We recommend that judicial training focus on the purposes of the title IV-E foster care program and how court orders in such cases can more clearly demonstrate situations where the placement meets these purposes.

Areas of Systemic Strengths

The following is a summary of the systemic items noted as part of the conduct of the FCER that had a positive impact on the outcome of not just the review findings, but in several ways on the lives of children and families served.

Payment System Edits Supporting Proper Claiming Categorization

New York has historically had great difficulty in assuring that all case circumstances affecting the categorization of foster care payments for claiming purposes are timely and properly reflected within its automated systems. This has, in the past, resulted in the submission of some title IV-E claims that are not eligible for Federal reimbursement and the delayed filing of other claims because title IV-E status must first be confirmed through a complete review of the case record or through other methods. The full implementation in 2005 of upgrades to the New York State automated system known as the Benefits Information Control System (BICS) through an enhancement known as the Statewide Services Payment System II (SSPS II) has expanded both the scope and the breadth of the BICS. The payment system now includes more information needed to calculate the payment and designate how that payment should be claimed for reimbursement. Furthermore, the edits in BICS appear to serve as additional tools to alert workers to the need to take appropriate case actions to assure continuing title IV-E eligibility.

We were pleased to find that several cases initially classified as error cases by reviewers, were in fact, non-error cases because the State's enhanced BICS identified an eligibility criterion as not met for a particular period and reclassified the payment as not to be title IV-E claimed. This was observed both for instances where the required foster home license was not in place and where a required judicial determination of reasonable efforts to finalize a permanency plan had not been made. We also found one case (random sample #142) where it was initially thought that an underpayment existed since the State

had failed to claim as title IV-E a payment for a month during which a required judicial determination was made. Subsequent investigation found that the BICS recognized this payment approximately one month later as incorrectly classified for the particular month and generated an automated supplemental adjustment claim to reinstate title IV-E claiming.

Sample Case Payment History

The State provided a detailed listing of all of the payments issued for each child included in the review sample. It is our understanding that this was a major task, particularly for periods prior to the PUR and for cases served by New York City. The material provided identified the amount and all relevant detail information for each payment. The State also identified the portions of payments made to voluntary agencies where an administrative cost and a social services factor must be excluded in order to identify the amount of title IV-E maintenance assistance payments. This information was utilized in calculating all ineligible payments identified in the disallowance letter. We commend the State and local district officials involved in this process for the efforts made and the thoroughness of the results.

Court Order Language, Forms and Timeliness

ACF is well aware that New York State Office of Children and Families (OCFS) and New York State Office of Court Administration (OCA) personnel have been working, through a number of projects (including the CFSR and title IV-E PIPs and the State's Court Improvement Project) in a collaborative effort for a number of years to standardize and enhance the quality and timeliness of court orders issued in foster care cases. The results of this effort as demonstrated through the FCER are dramatic. Not only were almost all court orders needed for the PUR sample cases readily available and found to contain the required judicial determinations at the appropriate points in the child's placement, but most of the orders contained detailed child specific information and clear enunciation of judicial expectations for actions to achieve the desired permanency outcome. The permanency hearings, particularly for the PUR, were held timely and more frequently than is required for title IV-E eligibility purposes. In addition, we noted some court orders addressed Indian Child Welfare Act requirements of children's affiliation to Native American or tribal groups.

Overall, this is a dramatic change from what was found in the New York State initial primary FCER conducted in April 2003. The findings in that review were that a lack of documentation of court order findings constituted the largest group of case errors. This change could not have occurred without the formation and nurturing of critical linkages between the OCA, the OCFS and local districts on many levels. ACF applauds all those that have and continue to be involved collaboratively in these efforts.

We also note that opportunities for improvement were found in that some of the recent permanency hearing court orders appear to focus on approving the permanency goal and future service plans rather than addressing the adequacy and appropriateness of the

efforts made by local district and other child welfare staff to finalize the permanency plan. Statements such as "services were offered and referrals were made" may represent a missed opportunity to set on the record the intensity and impact of the work performed by dedicated staff. This judicial role is a critical tool in securing the vision built into the title IV-E foster care program through the Adoption and Safe Families Act that children secure permanent homes as soon as possible.

Impact of the Permanency Bill

Although New York State's Permanency Bill legislation was only in effect for a little more than half of the PUR, a clear impact was found in the reviewed sample cases with respect to the extent of involvement by judges in matters relating to the quality and timeliness of actions needed to secure permanency for children in foster care. Additionally, the need to secure placement extensions every twelve months for cases involving child abuse and neglect (Article 10) cases no longer exists in New York State. It is our hope that these efforts will bear fruit in terms of swifter and better permanency outcomes for children..

Foster Family Home Licensing and Safety Consideration Systems

The State's system for assuring that foster family homes are fully licensed in accordance with State standards continues to demonstrate strength. The criminal records background check process also appears to be operating in accordance with State standards. We note, however, that six cases were found where a full license was issued even though the safety considerations process was not yet completed. This may represent a systemic weakness in that full licenses should not be issued in cases where a prospective foster parent has yet to complete the safety consideration process.

The process for securing licensing and safety information for children placed by New York in other states should also be reviewed to assure that appropriate procedures are in place. It is critical that licensing and safety considerations be completed and readily available to appropriate officials even when a child is placed in another State.

Information Identified Through FCER Data Analysis

Length of Stay in Foster Care

Although the purpose of the FCER is not to assess the length of stay of children in an episode of foster care, ACF identified information for the cases reviewed on this critical measure of permanency achievement. Specifically, the payment history data provided by the State indicates that the number of children in care for two or more years (in the current foster care episode) as of the beginning of the PUR (October 2005) totaled 63 of the 150 (42.0%) sampled cases. This compares with 37 of the 80 (46.3%) children included in the sampled cases for the New York initial primary FCER conducted with a PUR beginning April 2002. While it is possible that the mix of children in the 2006 sample was somehow different from the 2002 sample, we note that the greater prevalence

of more recently placed children may be indicative of successful efforts to achieve permanency outcomes quicker. It appears, however, that a significantly greater percentage of children in the 2006 sample spent five or more years in care prior to the PUR. A remaining challenge for the State will be to more thoroughly address the permanency needs of children already in care for long periods of time.

The following table illustrates the findings with respect to length of stay from both FCERs:

New York Length of Current Foster Care Episode for Sampled FCER Cases

Length of Prior Stay As of Start of PUR	April – September 2002 PUR (80 Cases)	October 2005 – March 2006 PUR (150 Cases)	Percentage Change
Six Or More Months (# and % of sample)	60 (75.00%)	103 (68.67%)	-8.44%
One Or More Years (# and % of sample)	48 (60.00%)	89 (59.33%)	-1.11%
Two Or More Years (# and % of sample)	37 (46.25%)	63 (42.00%)	-9.19%
Three Or More Years (# and % of sample)	24 (30.00%)	37 (24.67%)	-17.78%
Four Or More Years (# and % of sample)	15 (18.75%)	20 (13.33%)	-28.89%
Five Or More Years (# and % of sample)	7 (8.75%)	15 (10.00%)	+14.29%
Six Or More Years (# and % of sample)	5 (6.25%)	13 (8.67%)	+38.67%

Disallowance

The New York secondary FCER included a sample of 150 cases with a total maintenance assistance dollar value of $3,163,737 FFP for the entire foster care episode. The sample was drawn from a universe of cases that received at least one title IV-E foster care maintenance payment during the 6-month AFCARS period of October 1, 2005 to March 31, 2006.

Based upon the results of the review, the State of New York has been found to be in substantial compliance. The review team determined that 13 cases were found to be in error for either part or all of the PUR, and that 29 additional cases contained improper payments for Federal funding for reasons that are identified in this report. Therefore, a disallowance in the amount of $235,717 FFP in maintenance assistance and $194,813 FFP in associated administrative costs is assessed for the entire period of time that these cases were determined to be in error. A disallowance in the amount of $176,506 FFP in maintenance assistance and $118,659 FFP in associated administrative costs is assessed for the 29 ineligible payment cases for the total time they were ineligible for title IV-E.

The total title IV-E disallowance for all categories and periods is $725,695 FFP.

The ineligible maintenance payments and administrative costs associated with the sample cases were calculated as shown in Attachment A. The administrative costs were identified based upon actual average monthly per child title IV-E foster care claimed costs. This calculation of average Federal fiscal year (FFY) administrative cost uses FFY 2005 - 2006 reported New York expenditures and applies the OMB Deflator Factor to other periods. It excluded claims for pre-placement services, eligibility determinations and SACWIS operations. The full calculation of the FFY average monthly per child administrative cost is delineated in Attachment B. The calculation of disallowed administrative costs for individual cases for applicable periods is shown in Attachment C.

Required Action

The State of New York must make the appropriate prospective claiming adjustments on behalf of the sample cases that were determined ineligible for FFP during the secondary FCER from July 1, 2006 to the present as a decreasing adjustment. The State must cease claiming IV-E costs until these cases are determined to be eligible. New York must also take appropriate claiming action to apply the findings contained in this report for any additional payments that are subsequently identified as title IV-E claimed or claimable for services rendered during the review period or for other periods during the same episode of foster care. To the extent that this effort results in the filing of prior period adjustments claims on Part 2 of Form IV-E-1, the State should include in column e (Other Comments) a reference to the "FY 2006 Title IV-E Review."

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