

## **Disregard of Federal Tax Refunds in Determining CCDF Eligibility**

A new federal law includes a provision impacting eligibility determination in the Child Care and Development Fund (CCDF) program. The law addresses the treatment of federal tax refunds when determining families' eligibility for major means-tested programs funded in whole or part with federal funds, including the CCDF program. All federal tax refunds received after December 31, 2009 must be disregarded as income and from consideration as a resource for a period of 12 months from receipt (in relation to asset tests) when determining eligibility for program benefits. This disregard applies to amounts received through December 31, 2012.

The law, called the "Tax Relief, Unemployment Insurance Reauthorization, and Job Creation Act of 2010 (P.L. 111-312)" was signed on December 17, 2010.<sup>1</sup> The law is not retroactive, but applies as of the date of enactment and, thus, Tribes must move expeditiously to implement the provision.

Families will begin to file their 2010 tax returns very shortly and will, in turn, begin to receive federal tax refunds soon. Low-income families that had earnings in 2010 can receive sizable refunds on the basis of refundable tax credits such as the EITC. The total amount of a federal refund received after December 31, 2009 – regardless of whether the refund is the result of a refundable credit, over-withholding, or both – should be disregarded as income in the month the refund is received when determining eligibility. This disregard applies to both new applicants and ongoing recipients. Because the provision applies to all refunds received after December 31, 2009, individuals applying or updating their eligibility in 2011 may have received a tax refund in 2010 that now needs to be disregarded as income.

The new law also requires exclusion of federal tax refunds received after December 31, 2009 from being considered as a resource in programs that have an asset limit for a period of 12 months from receipt. While all CCDF Lead Agencies establish eligibility based on income, many Lead Agencies do not apply an asset test when determining eligibility for CCDF. Federal rules neither require nor prohibit an asset limit for CCDF. For Lead Agencies that do have an asset limit for CCDF, please see further guidance at the end of this email regarding this specific provision.

To ensure compliance with the P.L. 111-312 provision, it is important that applications and interview protocols are designed such that an application or assistance unit has the opportunity to provide information about a federal tax refund if receipt of such a refund may affect the unit's eligibility for or level of benefits. We recognize that the timeframe presents challenges to Tribes and understand that Tribes may not be able to revise automated systems immediately. However, Tribes must find a mechanism to ensure that applicants or recipients are not denied or terminated for benefits in conflict with the provisions included in this new law. Note that this legislation only addresses treatment of federal tax refunds; federal law does not specify how local or tribal tax refunds should be treated, therefore it is up to the Tribes to determine whether non-federal refunds are considered in eligibility and benefit determinations.

***For Lead Agencies that have an asset test:*** Under CCDF, Tribes have flexibility to set asset policy, including whether to have an asset test at all. If a Tribe has an asset test, its policy must comply with the disregard provision included in P.L. 111-312 and an individual, family, or household may not be determined ineligible for assistance on the basis of having assets above a limit, if the assistance unit would have met the resource limit if the tax refund was disregarded. While Tribes have flexibility on how compliance with this provision is achieved, one method for implementing this provision would be to subtract any federal tax refund an individual, family, or household received in the last 12 months from the reported assets of the eligibility unit. If the difference between the unit's reported assets and the amount received from the tax refund is less than the resource limit, the assistance unit would meet the resource-related eligibility criteria. This approach will minimize administrative burdens on Tribes and families alike.

Tribes should ensure that their applications and interview protocols are designed such that an application or assistance unit has the opportunity to provide information about a federal tax refund if receipt of such a refund may affect the unit's eligibility for or level of benefits. Regardless of the manner in which an individual, family or household submits an application or provides information that will be used to update or renew eligibility, including those who submit information in person, by phone, or online and those who do and do not have an interview with an eligibility worker. This is particularly important when applicants are reporting on their assets and simply may be asked for the amount of money in a bank account. An application or request for eligibility renewal should not be denied on the basis of the eligibility unit having assets about a resource limit unless the applicant has been asked whether anyone in the unit has received a tax refund in the last 12 months and those refunds have been properly disregarded. Tribal Lead Agencies are encouraged to develop outreach strategies to encourage households that were denied because they were over the resource limit to reapply for CCDF benefits.

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<sup>1</sup> Section 728 of the Act states:

“(a) IN GENERAL.—Notwithstanding any other provision of law, any refund (or advance payment with respect to a refundable credit) made to any individual under this title shall not be taken into account as income, and shall not be taken into account as resources for a period of 12 months from receipt, for purposes of determining the eligibility of such individual (or any other individual) for benefits or assistance (or the amount or extent of benefits or assistance) under any Federal program or under any State or local program financed in whole or in part with Federal funds.

“(b) TERMINATION.—Subsection (a) shall not apply to any amount received after December 31, 2012.”