

MEPA: References and Other Resources

5/21/14





Title VI of the 1964 Civil Rights Act

TITLE VI--NONDISCRIMINATION IN FEDERALLY ASSISTED PROGRAMS

SEC. 601. No person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance.

SEC. 602. Each Federal department and agency which is empowered to extend Federal financial assistance to any program or activity, by way of grant, loan, or contract other than a contract of insurance or guaranty, is authorized and directed to effectuate the provisions of section 601 with respect to such program or activity by issuing rules, regulations, or orders of general applicability which shall be consistent with achievement of the objectives of the statute authorizing the financial assistance in connection with which the action is taken. No such rule, regulation, or order shall become effective unless and until approved by the President. Compliance with any requirement adopted pursuant to this section may be effected (1) by the termination of or refusal to grant or to continue assistance under such program or activity to any recipient as to whom there has been an express finding on the record, after opportunity for hearing, of a failure to comply with such requirement, but such termination or refusal shall be limited to the particular political entity, or part thereof, or other recipient as to whom such a finding has been made and, shall be limited in its effect to the particular program, or part thereof, in which such non-compliance has been so found, or (2) by any other means authorized by law: Provided, however, That no such action shall be taken until the department or agency concerned has advised the appropriate person or persons of the failure to comply with the requirement and has determined that compliance cannot be secured by voluntary means. In the case of any action terminating, or refusing to grant or continue, assistance because of failure to comply with a requirement imposed pursuant to this section, the head of the federal department or agency shall file with the committees of the House and Senate having legislative jurisdiction over the program or activity involved a full written report of the circumstances and the grounds for such action. No such action shall become effective until thirty days have elapsed after the filing of such report.

SEC. 603. Any department or agency action taken pursuant to section 602 shall be subject to such judicial review as may otherwise be provided by law for similar action taken by such department or agency on other grounds. In the case of action, not otherwise subject to judicial review, terminating or refusing to grant or to continue financial assistance upon a finding of failure to comply with any requirement imposed pursuant to section 602, any person aggrieved (including any State or political subdivision thereof and any agency of either) may obtain judicial review of such action in accordance with section 10 of the Administrative Procedure Act, and such action shall not be deemed committed to unreviewable agency discretion within the meaning of that section.

SEC. 604. Nothing contained in this title shall be construed to authorize action under this title by any department or agency with respect to any employment practice of any employer, employment agency, or labor organization except where a primary objective of the Federal financial assistance is to provide employment.

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SEC. 605. Nothing in this title shall add to or detract from any existing authority with respect to any program or activity under which Federal financial assistance is extended by way of a contract of insurance or guaranty.

(<http://www.usdoj.gov/crt/cor/coord/titlevi.htm>)



Child Welfare Policy Manual

April 11, 2014

4. MEPA/IEAP

4.1 MEPA/IEAP, Diligent Recruitment

1. Question: Can you give us some guidance with respect to satisfying the diligent recruitment requirements of the Multiethnic Placement Act (MEPA)?

Answer: As recognized in the MEPA, in order to achieve timely and appropriate placement of all children, placement agencies need an adequate pool of families capable of promoting each child's development and case goals. This requires that each agency's recruitment process focuses on developing a pool of potential foster and adoptive parents willing and able to foster or adopt the children needing placement. The failure to conduct recruitment in a manner that seeks to provide all children with the opportunity for placement, and all qualified members of the community an opportunity to adopt is inconsistent with the goals of MEPA and could create circumstances which would constitute a violation of Title VI of the Civil Rights Act of 1964 and section 471(a)(18) of the Social Security Act.

An adequate recruitment process has a number of features. Recruitment efforts should be designed to provide to potential foster and adoptive parents throughout the community information about the characteristics and needs of the available children, the nature of the foster care and adoption processes, and the supports available to foster and adoptive families.

Both general and targeted recruiting are important. Reaching all members of the community requires use of general media--radio, television, and print. In addition, information should be disseminated to targeted communities through community organizations, such as religious institutions and neighborhood centers. The dissemination of information is strengthened when agencies develop partnerships with groups from the communities from which children come, to help identify and support potential foster and adoptive families and to conduct activities which made the waiting children more visible.

To meet MEPA's diligent efforts requirements, an agency should have a comprehensive recruitment plan that includes:

- 1) a description of the characteristics of waiting children;
- 2) specific strategies to reach all parts of the community;
- 3) diverse methods of disseminating both general and child specific information;
- 4) strategies for assuring that all prospective parents have access to the home study process, including location and hours of services that facilitate access by all members of the community;
- 5) strategies for training staff to work with diverse cultural, racial, and economic communities;
- 6) strategies for dealing with linguistic barriers;
- 7) non-discriminatory fee structures, and
- 8) procedures for a timely search for prospective parents for a waiting child, including the use of exchanges and other interagency efforts, provided that such procedures must insure that placement of a child in an appropriate household is not delayed by the search for a same race or ethnic placement.

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Agencies receiving Federal funds may not use standards related to income, age, education, family structure, and size or ownership of housing, which include groups of prospective parents on the basis of race, color, or national origin, where those standards are arbitrary or unnecessary or where less exclusionary standards are available.

- **Source/Date:** 07/27/2010
- **Legal and Related References:** **Social Security Act - Section 471(a)(18)**; The Multiethnic Placement Act (MEPA) of 1994 (PL 103-382); Title VI of the Civil Rights Act of 1964; The Small Business Job Protection Act of 1996 (Public Law 104-188).

2. **Question:** Is it permissible under the Multiethnic Placement Act (MEPA) to target minority families that are representative of the children in foster care in our recruitment of potential foster and adoptive parents?

Answer: To comply with the "diligent recruitment" provision, MEPA allows for targeted recruitment to increase the number of minority families in the pool of families available to provide adoptive or foster family homes. A title IV-E agency may conduct targeted recruitment activities for a special population itself and/or it may utilize the services of a private recruitment agency based on that agency's understanding of the needs of a specific community. However, targeted recruitment activities cannot be the only vehicle used by a title IV-E agency for identifying families for minority children. The overall recruitment program of the title IV-E agency must be open to all qualified families regardless of race, color, or national origin.

- **Source/Date:** ACYF-CB-PI-95-23 (10/11/95) (revised 07/14/10)
- **Legal and Related References:** **Social Security Act - section 422(b)(9)**; The Multiethnic Placement Act (MEPA) of 1994 (PL 103-382); The Small Business Job Protection Act of 1996 (PL104-188)

4.2 MEPA/IEAP, Enforcement of Section 471 (a)(18) of the SSA

1. **Question:** What criteria will be used to determine if a violation of section 471(a)(18) of the Act has occurred?

Answer: We have not developed any specific "criteria" for determining if a violation of section 471(a)(18) of the Social Security Act (the Act) has occurred. We will determine on a case-by-case basis whether the title IV-E agency has delayed or denied a child's adoptive or foster care placement or denied a person the opportunity to become an adoptive or foster parent based on race, color, or national origin. It is impossible to define every situation and circumstance that would result in a civil rights violation. Thus, the ACF Regional office will review the specific facts of each case to determine if a title IV-E agency or entity is in violation of section 471(a)(18) or if a policy or practice is consistent with previously issued guidance.

- **Source/Date:** Preamble to the Final Rule (65 FR 4020) (1/25/00) (revised 07/14/10)
- **Legal and Related References:** **Social Security Act - section 471 (a)(18)**; 45 CFR 1355.38

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2. **Question:** Section 474(a) of the Social Security Act restricts the application of penalties for MEPA violations to one fiscal year. By what authority can ACF continue a penalty into the next fiscal year?

Answer: The regulations do not provide for a continuation of a penalty into the subsequent fiscal year if a title IV-E agency fails to come into compliance. ACF may and has the authority to initiate a full or partial review in a subsequent fiscal year for those title IV-E agencies that are in violation of section 471(a)(18) of the Act and have failed to complete corrective action to come into compliance. Thus, any statute, regulation, policy, procedure or practice that remains uncorrected from a previous fiscal year may result in a new finding of a violation of noncompliance with section 471(a)(18) of the Act. We will not disregard an uncorrected violation simply because a fiscal year has ended. It is part of the Department's oversight responsibility to ensure that all title IV-E agencies are in compliance with section 471(a)(18) of the Act at any given time and any uncorrected violation may be subject to a review at the beginning of a new fiscal year.

- **Source/Date:** Preamble to the Final Rule (65 FR 4020) (1/25/00) (revised 07/14/10)
- **Legal and Related References:** Social Security Act - section 471 (a)(18); 45 CFR 1355.38

3. **Question:** Does section 471(a)(18) of the Social Security Act (the Act) apply to a private international adoption agency that receives Federal funds, but not title IV-E funds?

Answer: No. Section 471(a)(18) of the Act is a title IV-E plan requirement. Therefore, private agencies that do not receive title IV-E funds are not subject to the title IV-E plan provisions, even if such agencies receive Federal funds from a source other than title IV-E and are involved in adoption or foster care placements of any type. However, these private agencies still must ensure that they do not violate Title VI of the Civil Rights Act of 1964 (Title VI) by delaying or denying a foster care or adoption placement decision on the basis of race, color or national origin (Section 1808(c) of Public Law 104-188). Title IV-E agencies should note that all entities, both public and private, that receive any Federal funds, regardless of the source, and regardless of whether those funds are used for child welfare purposes, must comply with title VI. Title VI broadly prohibits all federally funded entities from discriminating, denying benefits or excluding an individual from participating in an activity or program on the basis of race, color, or national origin. The U.S. Department for Health and Human Services Office for Civil Rights (OCR) enforces title VI. For more information on Title VI, please refer to the OCR Title VI fact sheet: <http://www.hhs.gov/ocr/title6.html>.

- **Source/Date:** 12/31/07 (revised 07/14/10)
- **Legal and Related References:** Social Security Act – section 471(a)(18); P.L. 104-188 – section 1808(c)

4.3 MEPA/IEAP, Guidance for Compliance

1. **Question:** What are examples of some impermissible activities under the Multiethnic Placement Act (MEPA)?

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Answer: MEPA reflects Congress' judgement that children are harmed when placements are delayed for a period longer than is necessary to find qualified families. The legislation seeks to eliminate barriers that delay or prevent the placement of children into qualified homes. In particular, it focuses on the possibility that policies with respect to matching children with families of the same race, culture, ethnicity may result in delaying, or even preventing, the adoption of children by qualified families. It also is designed to ensure that every effort is made to develop a large and diverse pool of potential foster and adoptive families, so that all children can be quickly placed in homes that meet their needs.

In the context of child placement decisions, the United States Constitution and Title VI of the Civil Rights Act of 1964 (Title VI) forbid decision making on the basis of race or the ethnicity unless the consideration advances a compelling governmental interest. The only compelling governmental interest, in this context, is protecting the "best interests" of the child who is to be placed. Moreover, the consideration must be narrowly tailored to advancing the child's interests and must be made as an individualized determination for each child. An adoption agency may take race into account only if it has made an individualized determination that the facts and circumstances of the specific case require the consideration of race in order to advance the best interests of the specific child. Any placement policy that takes race or ethnicity into account is subject to strict scrutiny by the courts to determine whether it satisfies these tests.

Practices that clearly violate MEPA or Title VI include statutes or policies that:

- 1) establish time periods during which only a same race/ethnicity search will occur;
- 2) establish orders of placement preferences based on race, culture, or ethnicity;
- 3) require caseworkers to specially justify transracial placements; or
- 4) otherwise have the effect of delaying placements, either before or after termination of parental rights, in order to find a family of a particular race, culture, or ethnicity.

Other rules, policies, or practices that do not meet the constitutional strict scrutiny test would also be illegal.

- **Source/Date:** "Policy Guidance: Race, Color, or National Origin As Considerations in Adoption and Foster Care Placements," United States Department of Health and Human Services (4/20/95)
- **Legal and Related References:** **The Multiethnic Placement Act (MEPA) of 1994** (PL 103-382; Title VI of the Civil Rights Act of 1964)

2. **Question:** May public agencies allow foster or adoptive parents to specify the race, color, national origin, ethnicity or culture of children for whom they are willing to provide care?

Answer: In making decisions about placing a child, whether in an adoptive or foster setting, a public agency must be guided by considerations of what is in the best interests of the child in question. The public agency must also ensure that its decisions comply with statutory requirements. Where it comes to the attention of a public agency that particular prospective parents have attitudes that relate to their capacity to nurture a particular child, the agency may take those attitudes into consideration in determining whether a placement with that family would be in the best interests of the child in question.

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The consideration of the ability of prospective parents to meet the needs of a particular child should take place in the framework of the general placement decision, in which the strengths and weaknesses of prospective parents to meet all of a child's needs are weighed so as to provide for the child's best interests, and prospective parents are provided the information they need realistically to assess their capacity to parent a particular child. An important element of good social work practice in this process is the individualized assessment of a prospective parent's ability to serve as a foster or adoptive parent. This assessment can include an exploration of the kind of child with whom a prospective parent might comfortably form an attachment. It is appropriate in the context of good practice to allow a family to explore its limitations and consider frankly what conditions (for example, disabilities in children, the number of children in a sibling group, or children of certain ages) family members would be able or willing to accept. The function of assessing the needs and limitations of specific prospective foster or adoptive parents in order to determine the most appropriate placement considering the various individual needs of a particular child is an essential element of social work practice, and critical to an agency's ability to achieve the best interests of that child. The assessment function is also critical, especially in adoptive placements, to minimizing the risk that placements might later disrupt or dissolve. The assessment function must not be misused as a generalized racial or ethnic screen; the assessment function cannot routinely include considerations of race or ethnicity.

The Department generally does not distinguish between foster and adoptive settings in terms of an agency's consideration of the attitudes of prospective parents. However, it is possible that a public agency may attach different significance in assessing the best interests of a child in need of short term or emergency placement.

Agencies are not prohibited from discussing with prospective adoptive and foster parents their feelings, capacities and preferences regarding caring for a child of a particular race or ethnicity, just as they discuss other individualized issues related to the child. However, as the Department has emphasized, any consideration of race or ethnicity must be done in the context of individualized placement decisions. An agency may not rely on generalizations about the needs of children of a particular race or ethnicity, or on generalizations about the abilities of prospective parents of one race or ethnicity to care for a child of another race or ethnicity.

- **Source/Date:** ACYF-CB-IM-98-03 (5/11/98)
- **Legal and Related References:** Social Security Act - Titles IV-B and IV-E; The Small Business Job Protection Act of 1996 (PL104-188); The Multiethnic Placement Act of 1994 (PL 103-382)

3. **Question:** May public agencies assess the racial, national origin, ethnic and/or cultural needs of all children in foster care, either by assessing those needs directly or as part of another assessment such as an assessment of special needs? May they do this for a subset of all children in foster care?

Answer: Public agencies may not routinely consider race, national origin and ethnicity in making placement decisions. Any consideration of these factors must be done on an individualized basis where special circumstances indicate that their consideration is warranted. A practice of assessing all children for their needs in this area would be inconsistent with an

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approach of individually considering these factors only when specific circumstances indicate that it is warranted.

Assessment of the needs of children in foster care, and of any special needs they may have that could help to determine the most appropriate placement for a child, is an essential element of social work practice for children in out-of-home care, and critical to an agency's ability to achieve the best interests of the child.

Section 1808 of Public Law 104-188 by its terms addresses only race, color, or national origin, and does not address the consideration of culture in placement decisions. There are situations where cultural needs may be important in placement decisions, such as where a child has specific language needs. However, a public agency's consideration of culture would raise Section 1808 issues if the agency used culture as a proxy for race, color or national origin. Thus, while nothing in Section 1808 directly prohibits a public agency from assessing the cultural needs of all children in foster care, Section 1808 would prohibit an agency from using routine cultural assessments in a manner that would circumvent the law's prohibition against the routine consideration of race, color or national origin.

- **Source/Date:** ACYF-CB-IM-98-03 (5/11/98)
- **Legal and Related References:** **Social Security Act - Titles IV-B and IV-E;** The Small Business Job Protection Act of 1996 (PL104-188); The Multiethnic Placement Act of 1994 (PL 103-382)

4. **Question:** May public agencies assess the racial, national origin, ethnic and/or cultural capacity of all foster or adoptive parents, either by assessing that capacity directly or as part of another assessment such as an assessment of strengths and weaknesses?

Answer: No. Race, color and national origin may not routinely be considered in assessing the capacity of particular prospective foster or adoptive parents to care for specific children. However, assessment by an agency of the capacity of particular adults to serve as foster or adoptive parents for specific children is at the heart of the placement process, and essential to determining what would be in the best interests of a particular child.

- **Source/Date:** ACYF-CB-IM-98-03 (5/11/98)
- **Legal and Related References:** **Social Security Act - Titles IV-B and IV-E;** The Small Business Job Protection Act of 1996 (PL104-188); The Multiethnic Placement Act of 1994 (PL 103-382)

5. **Question:** May public agencies honor the request of birth parents to place their child, who was involuntarily removed, with foster parents of a specific racial, national origin, ethnic and/or cultural group? What if the child was voluntarily removed?

Answer: No, not even if the child is voluntarily removed.

- **Source/Date:** ACYF-CB-IM-98-03 (5/11/98)
- **Legal and Related References:** **Social Security Act - Titles IV-B and IV-E;** The Small Business Job Protection Act of 1996 (PL104-188); The Multiethnic Placement Act of 1994 (PL 103-382)

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6. **Question:** If an action by a public agency will not delay or deny the placement of a child, may that agency use race to differentiate between otherwise acceptable foster/adoptive placements?

Answer: No.

- **Source/Date:** ACYF-CB-IM-98-03 (5/11/98)
- **Legal and Related References:** Social Security Act - Titles IV-B and IV-E; The Small Business Job Protection Act of 1996 (PL104-188); The Multiethnic Placement Act of 1994 (PL 103-382)

7. **Question:** May public agencies decline to transracially place any child with a foster/adoptive parent who has unsatisfactory cultural competency skills?

Answer: Good practice requires an assessment of the capacity of potential foster/adoptive parents to accommodate all the needs of a particular child. It is conceivable that in a particular instance race, color or national origin would be a necessary consideration to achieve the best interests of the child. However, any placement decision must take place in a framework that assesses the strengths and weaknesses of prospective parents to meet all of a child's needs so as to provide for the child's best interests. Prospective parents should be offered, typically through training provided by an agency, information sufficient to confirm or broaden their understanding of what types of children for whom they might most appropriately provide a home. provide a home.

- **Source/Date:** ACYF-CB-IM-98-03 (5/11/98)
- **Legal and Related References:** Social Security Act - Titles IV-B and IV-E; The Small Business Job Protection Act of 1996 (PL104-188); The Multiethnic Placement Act of 1994 (PL 103-382)

8. **Question:** How can public agencies assure themselves that they have identified an appropriate placement for a child for whom racial, national origin, ethnic and/or cultural needs have been documented?

Answer: Adoption agencies must consider all factors that may contribute to a good placement decision for a child, and that may affect whether a particular placement is in the best interests of the child. Such agencies may assure themselves of the fitness of their work in a number of ways, including case review conferences with supervisors, peer reviews, judicial oversight, and quality control measures employed by State agencies and licensing authorities. In some instances it is conceivable that, for a particular child, race, color or national origin would be such a factor. Permanency being the sine qua non of adoptive placements, monitoring the rates of disruption or dissolution of adoptions would also be appropriate. Where it has been established that considerations of race, color or national origin are necessary to achieve the best interests of a child, such factor(s) should be included in the agency's decision-making, and would appropriately be included in reviews and quality control measures such as those described above.

- **Source/Date:** ACYF-CB-IM-98-03 (5/11/98)
- **Legal and Related References:** Social Security Act - Titles IV-B and IV-E; The Small Business Job Protection Act of 1996 (PL104-188); The Multiethnic Placement Act of 1994 (PL 103-382)

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9. **Question:** May a home finding agency that contracts with a public agency, but that does not place children, recommend only homes that match the race of the foster or adoptive parent to that of a child in need of placement?

Answer: No. A public agency may contract with a home finding agency to assist with overall recruitment efforts. Some home finding agencies may be used because of their special knowledge and/or understanding of a specific community and may even be included in a public agency's targeted recruitment efforts. Targeted recruitment cannot be the only vehicle used by a title IV-E agency to identify families for children in care, or any subset of children in care, e.g., older or minority children. Additionally, a home finding agency must consider and include any interested person who responds to its recruitment efforts.

- **Source/Date:** ACYF-CB-IM-98-03 (5/11/98) (revised 07/14/10)
- **Legal and Related References:** Social Security Act - Titles IV-B and IV-E; The Small Business Job Protection Act of 1996 (PL104-188); The Multiethnic Placement Act of 1994 (PL 103-382)

10. **Question:** May a home finding agency that contracts with a public agency, but that does not place children, dissuade or otherwise counsel a potential foster or adoptive parent who has unsatisfactory cultural competency skills to withdraw an application or not pursue foster parenting or adoption?

Answer: No. No adoptive or foster placement may be denied or delayed based on the race of the prospective foster or adoptive parent or based on the race of the child. Dissuading or otherwise counseling a potential foster or adoptive parent to withdraw an application or not pursue foster parenting or adoption strictly on the basis of race, color or national origin would be a prohibited delay or denial.

The term "cultural competency," as we understand it, is not one that would fit in a discussion of adoption and foster placement. However, agencies should, as a matter of good social work practice, examine all the factors that may bear on determining whether a particular placement is in the best interests of a particular child. That may in rare instances involve consideration of the abilities of prospective parents of one race or ethnicity to care for a child of another race or ethnicity.

- **Source/Date:** ACYF-CB-IM-98-03 (5/11/98)
- **Legal and Related References:** Social Security Act - Titles IV-B and IV-E; The Small Business Job Protection Act of 1996 (PL104-188); The Multiethnic Placement Act of 1994 (PL 103-382)

11. **Question:** May a home finding agency that contracts with a public agency, but that does not place children, assess the racial, national origin, ethnic and/or cultural capacity of all adoptive parents, either by assessing that capacity directly or as part of another assessment such as an assessment of strengths and weaknesses? May they do this for a subset of adoptive parents, such as white parents?

Answer: No. There should be no routine consideration of race, color or national origin in any part of the adoption process. Any assessment of an individual's

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capacity to be a good parent for any child should be made on an individualized basis by the child's caseworker and not by a home finding agency. Placement decisions should be guided by the child's best interest. That requires an individualized assessment of the child's total needs and an assessment of a potential adoptive parent's ability to meet the child's needs.

- **Source/Date:** ACYF-CB-IM-98-03 (5/11/98)
- **Legal and Related References:** Social Security Act - Titles IV-B and IV-E; The Small Business Job Protection Act of 1996 (PL104-188); The Multiethnic Placement Act of 1994 (PL 103-382)

12. Question: How does HHS define "culture" in the context of MEPA guidance?

Answer: HHS does not define culture. Section 1808 of Public Law 104-188 addresses only race, color, or national origin, and does not directly address the consideration of culture in placement decisions. A public agency is not prohibited from the nondiscriminatory consideration of culture in making placement decisions. However, a public agency's consideration of culture must comply with Section 1808 in that it may not use culture as a replacement for the prohibited consideration of race, color or national origin.

- **Source/Date:** ACYF-CB-IM-98-03 (5/11/98)
- **Legal and Related References:** Social Security Act - Titles IV-B and IV-E; The Small Business Job Protection Act of 1996 (PL104-188); The Multiethnic Placement Act of 1994 (PL 103-382)

13. Question: Please provide examples of what is meant by delay and denial of placement in foster care, excluding situations involving adoption.

Answer: Following are some examples of delay or denial in foster care placements:

- 1) A white newborn baby's foster placement is delayed because the social worker is unable to find a white foster home; the infant is kept in the hospital longer than would otherwise be necessary and is ultimately placed in a group home rather than being placed in a foster home with a minority family.
- 2) A minority relative with guardianship over four black children expressly requests that the children be allowed to remain in the care of a white neighbor in whose care the children are left. The title IV-E agency denies the white neighbor a restricted foster care license, which will enable her to care for the children. The agency's license denial is based on its decision that the best interests of the children require a same-race placement, which will delay the permanent foster care placement. There was no individualized assessment or evaluation indicating that a same-race placement is actually in the best interests of the children.
- 3) Six minority children require foster placement, preferably in a family foster home. Only one minority foster home is available; it is only licensed to care for two children. The children remain in emergency shelter until the agency can recertify and license the home to care for the six children. The children remain in an emergency shelter even though a white foster home with capacity and a license to care for six children is available.
- 4) Different standards may be applied in licensing white versus minority households resulting in delay or denial of the opportunity to be foster parents.

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5) Foster parent applicants are discouraged from applying because they are informed that waiting children are of a different race.

6) There are placement delays and denials when title IV-E agencies expend time seeking to honor the requests of biological parents that foster parents be of the same race as the child.

- **Source/Date:** ACYF-CB-IM-98-03 (5/11/98) (revised 07/14/10)
- **Legal and Related References:** Social Security Act - Titles IV-B and IV-E; The Small Business Job Protection Act of 1996 (PL104-188); The Multiethnic Placement Act of 1994 (PL 103-382)

14. Question: If a Tribal title IV-E agency places an Indian child in accordance with the Indian Child Welfare Act (ICWA), does that violate section 471(a)(18) of the Social Security Act (the Act)?

Answer: No. The Indian Child Welfare Act of 1978 (ICWA), Public Law 95-608, was passed in response to concerns about the large number of Indian children who were being removed from their families and Tribes and the failure of States to recognize the culture and tribal relations of Indian people. ICWA, in part, creates procedural protections and imposes substantive standards on the removal, placement, termination of parental rights and consent to adoption of children who are members of or are eligible for membership in an Indian tribe. ICWA and section 471(a)(18) of the Act work together to provide important protections for children. When a Tribal title IV-E agency places an Indian child (as defined by ICWA) according to the placement preferences established in ICWA, the agency is acting in accordance with section 474(d)(4) of the Act and 45 CFR 1355.38(a)(5). Therefore, it does not violate section 471(a)(18) of the Act.

However, Tribal title IV-E agencies must ensure that children achieve permanency in a timely manner (see section 471(a)(15)(C) of the Act). This is consistent with the Bureau of Indian Affairs' (BIA) guidance to State courts. The BIA has explained that if, after a diligent search has been completed for families in accordance with the ICWA preference criteria, and a suitable prospective foster care, preadoptive, or adoptive family has not been identified, the agency has good cause to expand the search beyond the order of preference (BIA Guidelines for State Courts; Indian Child Custody Proceedings; 44 FR 67584).

As with State agencies, if a Tribal title IV-E agency places a child to whom the ICWA protections do not apply, then the agency must comply with section 471(a)(18) of the Act, which prohibits agencies from:

- delaying or denying a child's foster care or adoptive placement on the basis of the child's or the prospective parent's race, color, or national origin; and
- denying to any individual the opportunity to become a foster or adoptive parent on the basis of the prospective parent's or the child's race, color, or national origin.
- **Source/Date:** 03/06/2012
- **Legal and Related References:** Social Security Act - sections 471(a)(18) and 474; 45 CFR 1355.38(a)(5); The Indian Child Welfare Act of 1978; BIA Guidelines for State Courts on Indian Child Custody Proceedings; 44 FR 67584 (November 26, 1979)

(http://www.acf.hhs.gov/cwpm/programs/cb/laws_policies/laws/cwpm/index.jsp?idFlag=0)



PL 104-188 — Small Business Job Protection Act of 1996

SEC. 1808. REMOVAL OF BARRIERS TO INTERETHNIC ADOPTION.

(a) STATE PLAN REQUIREMENTS- Section 471(a) of the Social Security Act (42 U.S.C 671(a)) is amended--

(1) by striking “and” at the end of paragraph (16); (2) by striking the period at the end of paragraph (17) and inserting “; and”; and (3) by adding at the end the following: “(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 the 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 the race, color, or national origin of the adoptive or foster parent, or the child, involved.”

(b) ENFORCEMENT- Section 474 of such Act (42 U.S.C. 674) is amended by adding at the end the following: “(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 with respect to such violation, then, notwithstanding subsection (a) of this section and any regulations promulgated under section 1123A(b)(3), 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, until the State program is found, as a result of a subsequent review under section 1123A, to have implemented a corrective action plan with respect to such violation, by--

“(A) 2 percent of such otherwise payable amount, in the case of the 1st such finding for the fiscal year with respect to the State; “(B) 3 percent of such otherwise payable amount, in the case of the 2nd such finding for the fiscal year with respect to the State; or “(C) 5 percent of such otherwise payable amount, in the case of the 3rd or subsequent such finding for the fiscal year with respect to the State.

In imposing the penalties described in this paragraph, the Secretary shall not reduce any fiscal year payment to a State by more than 5 percent.

“(2) 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 with respect to any person shall remit to the Secretary all funds that were paid by the State to the entity during the quarter from such funds.

“(3)(A) Any individual who is aggrieved by a violation of section 471(a)(18) by a State or other entity may bring an action seeking relief from the State or other entity in any United States district court. “(B) An action under this paragraph may not be brought more than 2 years after the date the alleged violation occurred. “(4) This subsection shall not be construed to affect the application of the Indian Child Welfare Act of 1978.”

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(c) CIVIL RIGHTS-

(1) PROHIBITED CONDUCT- A person or government that is involved in adoption or foster care placements may not--

(A) deny to any individual the opportunity to become an adoptive or a foster parent, on the basis of the race, color, or national origin of the individual, 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 the race, color, or national origin of the adoptive or foster parent, or the child, involved.

(2) ENFORCEMENT- Noncompliance with paragraph (1) is deemed a violation of title VI of the Civil Rights Act of 1964.

(3) NO EFFECT ON THE INDIAN CHILD WELFARE ACT OF 1978 - This subsection shall not be construed to affect the application of the Indian Child Welfare Act of 1978.

(d) CONFORMING AMENDMENT- Section 553 of the Howard M. Metzenbaum Multiethnic Placement Act of 1994 (42 U.S.C. 5115a) is repealed.

(www.childwelfare.gov/systemwide/laws_policies/federal/index.cfm?event=federalLegislation.viewLegis&id=47)



Answers to GAO QUESTIONS Regarding the Multiethnic Placement Act, as Amended

- 1. May public agencies allow foster parents to specify the race, color, national origin, ethnicity or culture of children for whom they are willing to provide care'**
- 2. May public agencies allow adoptive parents to specify the race, color, national origin, ethnicity or culture of children of whom they are willing to adopt?**

In making decisions about placing a child, whether in an adoptive or foster setting, a public agency must be guided by considerations of what is in the best interests of the child in question. The public agency must also ensure that its decisions comply with statutory requirements. Where it comes to the attention of a public agency that particular prospective parents have attitudes that relate to their capacity to nurture a particular child, the agency may take those attitudes into consideration in determining whether a placement with that family would be in the best interests of the child in question.

The consideration of the ability of prospective parents to meet the needs of a particular child should take place in the framework of the general placement decision, in which the strengths and weaknesses of prospective parents to meet all of a child's needs are weighed so as to provide for the child's best interests, and prospective parents are provided the information they need realistically to assess their capacity to parent a particular child.

An important element of good social work practice in this process is the individualized assessment of a prospective parent's ability to serve as a foster or adoptive parent. This assessment can include an exploration of the kind of child with whom a prospective parent might comfortably form an attachment. It is appropriate in the context of good practice to allow a family to explore its limitations and consider frankly what conditions (for example, disabilities in children, the number of children in a sibling group, or children of certain ages) family members would be able or willing to accept. The function of assessing the needs and limitations of specific prospective foster or adoptive parents in order to determine the most appropriate placement considering the various individual needs of a particular child is an essential element of social work practice, and critical to an agency's ability to achieve the best interests of that child.

The assessment function is also critical, especially in adoptive placements, to minimizing the risk that placements might later disrupt or dissolve.

The assessment function must not be misused as a generalized racial or ethnic screen; the assessment function cannot routinely include considerations of race or ethnicity.

The Department generally does not distinguish between foster and adoptive settings in terms of an agency's consideration of the attitudes of prospective parents. However, it is possible that a public agency may attach different significance in assessing the best interests of a child in need of short term or emergency placement.

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As noted in the Department's original guidance on MEPA, agencies are not prohibited from discussing with prospective adoptive and foster parents their feelings, capacities and preferences regarding caring for a child of a particular race or ethnicity, just as they discuss other individualized issues related to the child. However, as the Department has emphasized, any consideration of race or ethnicity must be done in the context of individualized placement decisions. An agency may not rely on generalizations about the needs of children of a particular race or ethnicity, or on generalizations about the abilities of prospective parents of one race or ethnicity to care for a child of another race or ethnicity.

May public agencies assess the racial, national origin, ethnic and/or cultural needs of all children in foster care, either by assessing those needs directly or as part of another assessment such as an assessment of special needs?

Public agencies may not routinely consider race, national origin and ethnicity in making placement decisions. Any consideration of these factors must be done on an individualized basis where special circumstances indicate that their consideration is warranted. A practice of assessing all children for their needs in this area would be inconsistent with an approach of individually considering these factors only when specific circumstances indicate that it is warranted.

Assessment of the needs of children in foster care, and of any special needs they may have that could help to determine the most appropriate placement for a child, is an essential element of social work practice for children in out-of-home care, and critical to an agency's ability to achieve the best interests of the child.

Section 1808 of Public Law 104-188 by its terms addresses only race, color, or national origin, and does not address the consideration of culture in placement decisions. There are situations where cultural needs may be important in placement decisions, such as where a child has specific language needs. However, a public agency's consideration of culture would raise Section 1808 issues if the agency used culture as a proxy for race, color or national origin. Thus, while nothing in Section 1808 directly prohibits a public agency from assessing the cultural needs of all children in foster care, Section 1808 would prohibit an agency from using routine cultural assessments in a manner that would circumvent the law's prohibition against the routine consideration of race, color or national origin.

If no to question 3, may they do this for a subset of all children in foster care?

As noted above, Section 1808 prohibits the routine consideration of race. It permits the consideration of race on an individualized basis where circumstances indicate that it is warranted. The question suggests that assessment of race, color, or national origin needs would not be done for all children in foster care, but for a subset. If the subset is derived by some routine means other than where specific individual circumstances suggest that it is warranted, the same considerations discussed above would apply.

May public agencies assess the racial, national origin, ethnic and/or cultural capacity of all foster parents, either by assessing that capacity directly or as part of another assessment such as an assessment of strengths and weaknesses?

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No. Race, color and national origin may not routinely be considered in assessing the capacity of particular prospective foster parents to care for specific children. However, assessment by an agency of the capacity of particular adults to serve as foster parents for specific children is at the heart of the placement process, and essential to determining what would be in the best interests of a particular child.

If yes to question 5, may public agencies decline to transracially place any child with a foster parent who has unsatisfactory cultural competency skills?

Not applicable; the answer to question 5 is no.

If no to question 5, may public agencies decline to transracially place a child who has documented racial, national origin, ethnic and/or cultural needs with a foster parent who has unsatisfactory cultural competency skills?

As noted in the answer to questions No. 1 and 2 above, good practice requires an assessment of the capacity of potential foster parents to accommodate all the needs of a particular child. It is conceivable that in a particular instance race, color or national origin would be a necessary consideration to achieve the best interests of the child. However, any placement decision must take place in a framework that assesses the strengths and weaknesses of prospective parents to meet all of a child's needs so as to provide for the child's best interests. As noted in the answer to Questions 1 and 2, prospective parents should be offered, typically through training provided by an agency, information sufficient to confirm or broaden their understanding of what types of children they might most appropriately provide a home for.

May public agencies honor the request of birth parents to place their child, who was involuntarily removed, with foster parents of a specific racial, national origin, ethnic and/or cultural group?

No.

Would the response to question 8 be different if the child was voluntarily removed?

No.

If an action by a public agency will not delay or deny the placement of a child, may that agency use race to differentiate between otherwise acceptable foster placements?

No.

May public agencies assess the racial, national origin, ethnic and/or cultural capacity of all adoptive parents, either by assessing that capacity directly or as part of another assessment such as an assessment of strengths and weaknesses?

No. The factors discussed above concerning the routine assessment of race, color, or national origin needs of children would also apply to the routine assessment of the racial, national origin or ethnic capacity of all foster or adoptive parents.

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If yes to question 11, may public agencies decline to transracially place any child with an adoptive parent who has unsatisfactory cultural competency skills?

As noted in the answer to questions No. 1 and 2 above, good practice requires an assessment of the capacity of potential foster parents to accommodate all the needs of a particular child. It is conceivable that in a particular instance race, color or national origin would be a necessary consideration to achieve the best interests of the child. However, any placement decision must take place in a framework that assesses the strengths and weaknesses of prospective parents to meet all of a child's needs so as to provide for the child's best interests.

If no to question 11, may public agencies decline to transracially place a child who has documented racial, national origin, ethnic and/or cultural needs with an adoptive parent who has unsatisfactory cultural competency skills?

As noted in the answer to questions No. 1 and 2 above, good practice requires an assessment of the capacity of potential foster parents to accommodate all the needs of a particular child. It is conceivable that in a particular instance race, color or national origin would be a necessary consideration to achieve the best interests of the child. However, any placement decision must take place in a framework that assesses the strengths and weaknesses of prospective parents to meet all of a child's needs so as to provide for the child's best interests. As noted in the answer to Questions 1 and 2, prospective parents should be offered, typically through training provided by an agency, information sufficient to confirm or broaden their understanding of what types of children they might most appropriately provide a home for.

If no to question 11, how can public agencies assure themselves that they have identified an appropriate placement for a child for whom racial, national origin, ethnic and/or cultural needs have been documented?

Adoption agencies must consider all factors that may contribute to a good placement decision for a child, and that may affect whether a particular placement is in the best interests of the child. Such agencies may assure themselves of the fitness of their work in a number of ways, including case review conferences with supervisors, peer reviews, judicial oversight, and quality control measures employed by State agencies and licensing authorities. In some instances it is conceivable that, for a particular child, race, color or national origin would be such a factor. Permanency being the *sine qua non* of adoptive placements, monitoring the rates of disruption or dissolution of adoptions would also be appropriate. Where it has been established that considerations of race, color or national origin are necessary to achieve the best interests of a child, such factor(s) should be included in the agency's decision-making, and would appropriately be included in reviews and quality control measures such as those described above.

May public agencies honor the request of birth parents to place their child, who was involuntarily removed, with adoptive parents of a specific racial, ethnic and/or cultural group?

No.

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Would the response to question 15 be different if the child was voluntarily removed?

No.

If an action by a public agency will not delay or deny the placement of a child, may that agency use race to differentiate between otherwise acceptable adoptive parents?

No.

May a home finding agency that contracts with a public agency, but that does not place children, recommend only homes that match the race of the foster or adoptive parent to that of a child in need of placement?

No. A public agency may contract with a home finding agency to assist with overall recruitment efforts. Some home finding agencies may be used because of their special knowledge and/or understanding of a specific community and may even be included in a public agency's targeted recruitment efforts. Targeted recruitment cannot be the only vehicle used by a State to identify families for children in care, or any subset of children in care, e.g., older or minority children. Additionally, a home finding agency must consider and include any interested person who responds to its recruitment efforts.

May a home finding agency that contracts with a public agency, but that does not place children, dissuade or otherwise counsel a potential foster or adoptive parent who has unsatisfactory cultural competency skills to withdraw an application or not pursue foster parenting or adoption?

No. No adoptive or foster placement may be denied or delayed based on the race of the prospective foster or adoptive parent or based on the race of the child.

Dissuading or otherwise counseling a potential foster or adoptive parent to withdraw an application or not pursue foster parenting or adoption strictly on the basis of race, color or national origin would be a prohibited delay or denial.

The term "cultural competency," as we understand it, is not one that would fit in a discussion of adoption and foster placement. However, agencies should, as a matter of good social work practice, examine all the factors that may bear on determining whether a particular placement is in the best interests of a particular child. That may in rare instances involve consideration of the abilities of prospective parents of one race or ethnicity to care for a child of another race or ethnicity.

May a home finding agency that contracts with a public agency, but that does not place children, assess the racial, national origin, ethnic and/or cultural capacity of all adoptive parents, either by assessing that capacity directly or as part of another assessment such as an assessment of strengths and weaknesses?

No. There should be no routine consideration of race, color or national origin in any part of the adoption process. Any assessment of an individual's capacity to be a good parent for any child should be made on an individualized basis by the child's caseworker and not by a home finding agency. Placement decisions should be guided by the child's best interest. That requires an

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individualized assessment of the child's total needs and an assessment of a potential adoptive parent's ability to meet the child's needs.

If no to question 20, may they do this for a subset of adoptive parents, such as white parents?

No.

If a black child is placed with a couple, one of whom is white and one of whom is black, is this placement classified as inracial or transracial?

If a biracial black/white child is placed with a white couple, is this placement classified as inracial or transracial?

Would the response to question 22 be different if the couple were black?

The statute applies to considerations of race, color or national origin in placements for adoption and foster care. The Department's Adoption and Foster Care Analysis and Reporting System (AFCARS) collects data on the race of the child and the race of adoptive and foster parents, as required by regulation at 45 CFR 1355, Appendix A. AFCARS uses racial categories defined by the United States Department of Commerce, Bureau of the Census. The Department of Commerce does not include "biracial" among its race categories; therefore no child would be so classified for AFCARS purposes. The Department of Health and Human Services does not classify placements as being "inracial" or "transracial."

How does HHS define "culture" in the context of MEPA guidance?

HHS does not define culture. Section 1808 addresses only race, color, or national origin, and does not directly address the consideration of culture in placement decisions. A public agency is not prohibited from the nondiscriminatory consideration of culture in making placement decisions. However, a public agency's consideration of culture must comply with Section 1808 in that it may not use culture as a replacement for the prohibited consideration of race, color or national origin.

Provide examples of what is meant by delay and denial of placement in foster care, excluding situations involving adoption?

Following are some examples of delay or denial in foster care placements:

A white newborn baby's foster placement is delayed because the social worker is unable to find a white foster home; the infant is kept in the hospital longer than would otherwise be necessary and is ultimately placed in a group home rather than being placed in a foster home with a minority family.

A minority relative with guardianship over four black children expressly requests that the children be allowed to remain in the care of a white neighbor in whose care the children are left. The state agency denies the white neighbor a restricted foster care license which will enable her to care for the children. The agency's license denial is based on its decision that the best interests of the children require a same-race placement, which will delay the permanent foster care placement.

There was no individualized assessment or evaluation indicating that a same-race placement is actually in the best interests of the children.

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Six minority children require foster placement, preferably in a family foster home. Only one minority foster home is available; it is only licensed to care for two children. The children remain in emergency shelter until the agency can recertify and license the home to care for the six children. The children remain in an emergency shelter even though a white foster home with capacity and a license to care for six children is available.

Different standards may be applied in licensing white versus minority households resulting in delay or denial of the opportunity to be foster parents.

Foster parent applicants are discouraged from applying because they are informed that waiting children are of a different race.

There are placement delays and denials when states or agencies expend time seeking to honor the requests of biological parents that foster parents be of the same race as the child.

Attachment:

Attachment 2- OCR and ACF Regional Office Lists

(<http://www.hhs.gov/ocr/civilrights/resources/specialtopics/adoption/sec1808asummary.html>)





Electronic Code of Federal Regulations (e-CFR)
BETA Test Site
E-CFR Data is current as of March 27, 2014

Title 45: Public Welfare
PART 1355 - General

§ 1355.38 Enforcement of section 471(a)(18) of the Act regarding the removal of barriers to interethnic adoption.

(a) *Determination that a violation has occurred in the absence of a court finding.* (1) If ACF becomes aware of a possible section 471(a)(18) violation, whether in the course of a child and family services review, the filing of a complaint, or through some other mechanism, it will refer such a case to the Department's Office for Civil Rights (OCR) for investigation.

(2) Based on the findings of the OCR investigation, ACF will determine if a violation of section 471(a)(18) has occurred. A section 471(a)(18) violation occurs if a title IV-E agency or an entity in the State/Tribe:

- (i) Has denied to any person the opportunity to become an adoptive or foster parent on the basis of the race, color, or national origin of the person, or of the child, involved;
- (ii) Has delayed or denied the placement of a child for adoption or into foster care on the basis of the race, color, or national origin of the adoptive or foster parent, or the child involved; or,
- (iii) With respect to a title IV-E agency, maintains any statute, regulation, policy, procedure, or practice that on its face, is a violation as defined in paragraphs (a)(2)(i) and (2)(ii) of this section.

(3) ACF will provide the title IV-E agency or entity with written notification of its determination.

(4) If there has been no violation, there will be no further action. If ACF determines that there has been a violation of section 471(a)(18), it will take enforcement action as described in this section.

(5) Compliance with the Indian Child Welfare Act of 1978 (Pub. L. 95-608) does not constitute a violation of section 471(a)(18).

(b) *Corrective action and penalties for violations with respect to a person or based on a court finding.*

(1) A title IV-E agency or entity found to be in violation of section 471(a)(18) of the Act with respect to a person, as described in paragraphs (a)(2)(i) and (a)(2)(ii) of this section, will be penalized in accordance with paragraph (g)(2) of this section. A title IV-E agency or entity determined to be in violation of section 471(a)(18) of the Act as a result of a court finding will be penalized in accordance with paragraph (g)(4) of this section. The title IV-E agency may develop, obtain approval of, and implement a plan of corrective action any time after it receives written notification from ACF that it is in violation of section 471(a)(18) of the Act.

(2) Corrective action plans are subject to ACF approval.

(3) If the corrective action plan does not meet the provisions of paragraph (d) of this section, the title IV-E agency must revise and resubmit the plan for approval until it has an approved plan.

(4) A title IV-E agency or entity found to be in violation of section 471(a)(18) of the Act by a court must notify ACF within 30 days from the date of entry of the final judgment once all appeals have been exhausted, declined, or the appeal period has expired.

(c) *Corrective action for violations resulting from a title IV-E agency's statute, regulation, policy, procedure, or practice.* (1) A title IV-E agency found to have committed a violation of the type described in paragraph (a)(2)(iii) of this section must develop and submit a corrective action plan within 30 days of receiving written notification from ACF that it is in violation of section 471(a)(18). Once the plan is approved the title IV-E agency will have to complete the corrective action and come into compliance. If the title IV-E agency fails to complete the corrective action plan within six months and come into compliance, a penalty will be imposed in accordance with paragraph (g)(3) of this section.

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(2) Corrective action plans are subject to ACF approval.

(3) If the corrective action plan does not meet the provisions of paragraph (d) of this section, the title IV-E agency must revise and resubmit the plan within 30 days from the date it receives a written notice from ACF that the plan has not been approved. If the title IV-E agency does not submit a revised corrective action plan according to the provisions of paragraph (d) of this section, withholding of funds pursuant to the provisions of paragraph (g) of this section will apply.

(d) *Contents of a corrective action plan.* A corrective action plan must:

(1) Identify the issues to be addressed;

(2) Set forth the steps for taking corrective action;

(3) Identify any technical assistance needs and Federal and non-Federal sources of technical assistance which will be used to complete the action steps; and,

(4) Specify the completion date. This date will be no later than 6 months from the date ACF approves the corrective action plan.

(e) *Evaluation of corrective action plan.* ACF will evaluate corrective action plans and notify the title IV-E agency (in writing) of its success or failure to complete the plan within 30 calendar days. If the title IV-E agency has failed to complete the corrective action plan, ACF will calculate the amount of reduction in the title IV-E agency's title IV-E payment and include this information in the written notification of failure to complete the plan.

(f) *Funds to be withheld.* The term "title IV-E funds" refers to the amount of Federal funds advanced or paid to the title IV-E agency for allowable costs incurred by a title IV-E agency for: foster care maintenance payments, adoption assistance payments, administrative costs, and training costs under title IV-E and includes the title IV-E agency's allotment for the Chafee Foster Care Independence Program under section 477 of the Act.

(g) *Reduction of title IV-E funds.* (1) Title IV-E funds shall be reduced in specified amounts in accordance with paragraph (h) of this section under the following circumstances:

(i) A determination that a title IV-E agency or entity is in violation of section 471(a)(18) of the Act with respect to a person as described in paragraphs (a)(2)(i) and (a)(2)(ii) of this section, or:

(ii) After a title IV-E agency's failure to implement and complete a corrective action plan and come into compliance as described in paragraph (c) of this section.

(2) Once ACF notifies a title IV-E agency (in writing) that it has committed a section 471(a)(18) violation with respect to a person, the title IV-E agency's title IV-E funds will be reduced for the fiscal quarter in which the title IV-E agency received written notification and for each succeeding quarter within that fiscal year or until the title IV-E agency completes a corrective action plan and comes into compliance, whichever is earlier. Once ACF notifies an entity (in writing) that it has committed a section 471(a)(18) violation with respect to a person, the entity must remit to the Secretary all title IV-E funds paid to it by the title IV-E agency during the quarter in which the entity is notified of the violation.

(3) For title IV-E agencies that fail to complete a corrective action plan within 6 months, title IV-E funds will be reduced by ACF for the fiscal quarter in which the title IV-E agency received notification of its violation. The reduction will continue for each succeeding quarter within that fiscal year or until the title IV-E agency completes the corrective action plan and comes into compliance, whichever is earlier.

(4) If, as a result of a court finding, a title IV-E agency or entity is determined to be in violation of section 471(a)(18) of the Act, ACF will assess a penalty without further investigation. Once the title IV-E agency is notified (in writing) of the violation, its title IV-E funds will be reduced for the fiscal quarter in which the court finding was made and for each succeeding quarter within that fiscal year or until the title IV-E agency completes a corrective action plan and comes into compliance, whichever is sooner. Once an entity is notified (in writing) of the violation, the entity must remit to the Secretary all title IV-E funds paid to it by the title IV-E agency during the quarter in which the court finding was made.

(5) The maximum number of quarters that a title IV-E agency will have its title IV-E funds reduced due to a finding of a title IV-E agency's failure to conform to section 471(a)(18) of the Act is limited to the number of quarters within the fiscal year in which a determination of nonconformity was made. However, an uncorrected violation may result in a subsequent review, another finding, and additional penalties.

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(6) No penalty will be imposed for a court finding of a violation of section 471(a)(18) until the judgment is final and all appeals have been exhausted, declined, or the appeal period has expired.

(h) *Determination of the amount of reduction of Federal funds.* ACF will determine the reduction in title IV-E funds due to a section 471(a)(18) violation in accordance with section 474(d)(1) and (2) of the Act.

(1) Title IV-E agencies that violate section 471(a)(18) with respect to a person or fail to implement or complete a corrective action plan as described in paragraph (c) of this section will be subject to a penalty. The penalty structure will follow section 474(d)(1) of the Act. Penalties will be levied for the quarter of the fiscal year in which the title IV-E agency is notified of its section 471(a)(18) violation, and for each succeeding quarter within that fiscal year until the title IV-E agency comes into compliance with section 471(a)(18). The reduction in title IV-E funds will be computed as follows:

(i) 2 percent of the title IV-E agency's title IV-E funds for the fiscal year quarter, as defined in paragraph (f) of this section, for the first finding of noncompliance in that fiscal year;

(ii) 3 percent of the title IV-E agency's title IV-E funds for the fiscal year quarter, as defined in paragraph (f) of this section, for the second finding of noncompliance in that fiscal year;

(iii) 5 percent of the title IV-E agency's title IV-E funds for the fiscal year quarter, as defined in paragraph (f) of this section, for the third or subsequent finding of noncompliance in that fiscal year.

(2) Any entity (other than the title IV-E agency) which violates section 471(a)(18) of the Act during a fiscal quarter must remit to the Secretary all title IV-E funds paid to it by the title IV-E agency in accordance with the procedures in paragraphs (g)(2) or (g)(4) of this section.

(3) No fiscal year payment to a title IV-E agency will be reduced by more than 5 percent of its title IV-E funds, as defined in paragraph (f) of this section, where the title IV-E agency has been determined to be out of compliance with section 471(a)(18) of the Act.

(4) The title IV-E agency or an entity, as applicable, will be liable for interest on the amount of funds reduced by the Department, in accordance with the provisions of 45 CFR 30.18.

(This requirement has been approved by the Office of Management and Budget under OMB Control Number 0970-0214. In accordance with the Paperwork Reduction Act of 1995, an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.)

[65 FR 4082, Jan. 25, 2000, as amended at 66 FR 58676, Nov. 23, 2001; 77 FR 931, Jan. 6, 2012]

(<http://www.ecfr.gov/cgi-bin/text-idx?SID=7f7e45fc1ec2e28100cccc5ebc0d4ea4&node=45:4.1.2.7.19&rgn=div5#45:4.1.2.7.19.0.1.13>)





Protection from Racial Discrimination in Adoption and Foster Care Summary of Section 1808 of the Small Business Job Protection Act and the Multiethnic Placement Act

Section 1808 of the Small Business Job Protection Act (Section 1808) and the Multiethnic Placement Act (MEPA) were enacted to ensure that adoption and foster care placements are not delayed or denied based on race, color or national origin. These statutes were also intended to remove barriers to permanency for children in child welfare systems, and to facilitate the diligent recruitment and retention of foster and adoptive parents. MEPA was passed by Congress in 1994. In 1996, Congress passed Section 1808. Section 1808 amended and repealed some parts of MEPA, and became effective on January 1, 1997.

These statutes prohibit the delay or denial of adoptive or foster care placements on the basis of race, color or national origin, and prohibit denying prospective adoptive or foster parents the opportunity to adopt or foster children based on race, color or national origin. A violation of these prohibitions is also a violation of Title VI of the 1964 Civil Rights Act, which prohibits discrimination based on race, color, or national origin by the recipients of federal financial assistance.

Section 1808 also provides for financial penalties against recipients of federal funds provided under Title IV(E) of the Social Security Act who violate Section 1808. The financial penalty process is administered by the HHS Administration for Children and Families (ACF).

Last revised: June 12, 2003
(<http://www.hhs.gov/ocr/mepa/sec1808a.html>)





MEPA/SECTION 1808 Internal Evaluation Instrument

INTRODUCTION

Since the enactment of the Multi-Ethnic Placement Act (MEPA) of 1994 and the Inter-Ethnic Adoption Provisions of the Small Business Job Protection Act of 1996 (Section 1808), the Office for Civil Rights (OCR) and the Administration on Children, Youth and Families (ACYF) have taken steps to ensure that delays or denial in the placement of a child for adoption or foster care are eliminated. We have done so by utilizing various approaches to ascertain State compliance with applicable Federal statutes, as well as through the issuance of guidance and provision of technical assistance to States. Protection from discriminatory practices or activities associated with adoption and foster care is an issue that warrants our continuous attention. Toward that end, we are continuing to develop common protocols that will assist States in their efforts to implement policies and procedures that ensure non-discriminatory practice in the placement of children.

The attached Internal Evaluation Instrument (Instrument) was developed by a joint OCR and ACYF workgroup as a self-assessment tool that can be used by States and other entities to evaluate or assess their compliance with MEPA/Section 1808. Completion of this Instrument is intended to be voluntary and does not guarantee MEPA/Section 1808 compliance. States and other entities that use the Instrument may still be the subject of OCR complaint investigations and compliance reviews and ACF reviews.

This Instrument was piloted in several States during 2000. Based upon feedback and comments from the States, the Instrument has been restructured in the areas of its applicability, usefulness and content.

We are asking that the OCR Regional Managers and ACF Regional Administrators coordinate and disseminate this Instrument to your contacts in State and local child welfare agencies. As it is intended for voluntary use, it should not be returned to ACF or OCR. We ask that you encourage States to consider using it as an internal tool to ascertain the degree and manner in which they are complying with MEPA/Section 1808, and how and in what ways they need to improve.

MEPA/SECTION 1808 Internal Evaluation Instrument INTRODUCTION

The Internal Evaluation Instrument (Instrument) is a document produced by the Department of Health and Human Services' Administration for Children and Families, Children's Bureau (ACF) and Office for Civil Rights (OCR) that provides a process by which States and agencies may voluntarily review programs, policies, procedures and practices for compliance with the Multiethnic Placement Act of 1994, and the Interethnic Adoption Provisions of the Small Business Job Protection Act of 1996 (MEPA/Section 1808). This Instrument is intended for internal use by States and agencies, and they are not in any way required to complete it. Therefore, States **should not** return it to ACF or OCR. Rather, it may serve as a useful tool for States to ascertain the degree and manner in which they are complying with MEPA/Section 1808, and how and in what ways they need to improve.

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States may also wish to assess their compliance in other ways. For instance, States may wish to conduct focus groups, surveys and/or interviews with staff in pertinent roles, as well as current and prospective foster and adoptive parents, since the information from these activities may prove useful in determining how the agency's actions are perceived by some of the stakeholders in the foster care/adoption process.

As part of this process, we suggest that State agencies review their written policies and procedures that may directly or indirectly impact MEPA/Section 1808 implementation. We further suggest that agencies completing this document consult with their counsel, as issues around MEPA/Section 1808 can be legally complex.

The Instrument is structured in a manner that recognizes that different steps in the foster and adoptive parent approval process are frequently contracted out or assigned to different agencies or associations. Since similar issues may apply during different steps of the process, there is some repetition in the Instrument. This is to ensure that each different agency or each contractor assessed for compliance with MEPA/Section 1808 is assessed for possible actions in their area of responsibility, both required and prohibited. To this end, although Section 1808 refers only to race, color and national origin, the term "ethnicity" is used when referring to issues related to the diligent recruitment provision of MEPA. Information required to be collected for AFCARS reporting is consistent with the Federal census and focuses on race and ethnicity rather than color or national origin. This data may be useful to States in analyzing the correlation between the ethnic and racial diversity of potential foster and adoptive families and the ethnic and racial diversity of children in the State for whom foster and adoptive homes are needed.

Finally, please note that throughout the document, the phrase "race, color and/or national origin" is abbreviated as "RCNO."

We encourage States and agencies to contact their respective Regional Offices of the Administration for Children and Families or the Office for Civil Rights if they have any questions or concerns involving compliance with MEPA/Section 1808. Contact information for ACF Regional Offices can be located at http://www.acf.hhs.gov/acf_about.html#offices. For further information on implementation, please refer to the MEPA/Section 1808 section of the Children's Bureau on-line policy manual at <http://www.acf.hhs.gov/programs/cb/pubs/mepa94/index.htm>. Contact information for OCR Regional Offices can be located at www.hhs.gov/ocr/. More information about OCR's work in enforcing Section 1808 and Title VI of the Civil Rights Act of 1964 in the context of foster care and adoption can be located at <http://www.hhs.gov/ocr/civilrights/resources/specialtopics/adoption/index.html>.

Completion of this Instrument does not guarantee MEPA/Section 1808 compliance. States and other entities that use the Instrument may still be the subject of OCR complaint investigations and compliance reviews pursuant to Section 1808 and Title VI of the Civil Rights Act of 1964 and ACF Title IV-E reviews. Both Section 1808 and Title VI impose significant legal penalties for race-based discrimination in adoption and foster care. Penalties for violations of Section 1808 can include the imposition of a penalty of up to five percent of a State's Title IV-E funds for a fiscal quarter. Remedies for violations of Title VI can include suspension or termination of, or the refusal to grant, Federal financial assistance. The following requirements will continue to be monitored by ACF and OCR:

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- The State has in place an identifiable process for assuring the diligent recruitment of potential foster and adoptive families that reflect the ethnic and racial diversity of children in the State for whom foster and adoptive homes are needed. (Section 422(b)(9) of the Social Security Act (the Act))
- The State may not deny to any person the opportunity to become an adoptive or a foster parent, on the basis of the race, color, or national origin of the person, or of the child, involved. (Section 471(a)(18) of the Act)
- The State may not delay or deny the placement of a child for adoption or into foster care, on the basis of the race, color, or national origin of the adoptive or foster parent, or the child involved. (Section 471(a)(18) of the Act)

The State does not maintain any statute, regulation, policy, procedure or practice that, if applied, would likely result in a violation against a person as defined in the above bullets. (45 CFR 1355.38(a)(2), (3))

State _____ County _____ Agency _____ Date _____

I. Recruitment of Foster and Adoptive Parents

A. Race and Ethnicity Data on Current Foster and Prospective Adoptive Parents

1) Review the number of people in the following populations and the demographic information related to the race and ethnicity of these populations:

- children in foster care under the responsibility of your agency
- children under the responsibility of your agency with a goal of adoption
- current pool of foster parents
- current pool of prospective adoptive parents

2) Do the racial and ethnic percentages of the foster parent population differ significantly from those of the children in foster care?

3) Do the racial and ethnic percentages of the prospective adoptive parent population differ significantly from those of the children awaiting adoption?

B. Recruitment Efforts

1) Does the agency have a comprehensive foster and adoptive home recruitment plan that indicates it is making diligent efforts to recruit foster and adoptive parents that reflect the racial and ethnic backgrounds of the population of children in foster care?

2) What recruitment strategies are being employed to ensure that all members of the community are provided with information about the opportunity to foster or adopt children in the care of the agency?

- Y N Are marketing and recruitment efforts made throughout the State or locality?
 Y N If respondent is a State agency, are there local diligent recruitment plans as well as a State plan?

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- Y N Are recruitment plans for foster/adoptive parents generalized to families of all racial and ethnic groups, as well as targeted toward those racial or ethnic groups that are under-represented in the approved foster/adoption parent population when compared to the children in care?
- Y N When doing diligent foster/adoptive recruitment of racial or ethnic groups that are under-represented in the approved foster/adoption parent population, does the agency ensure that families of other racial or ethnic groups are not excluded?

II. Screening, Orientation, Preparation, and Assessment of Prospective Foster and Adoptive Parents

A. Screening and Orientation

- 1) How does the agency ensure that persons of diverse RCNO are provided access to information on how to become a foster or adoptive parent?

- Y N Does the agency keep a log or database of all inquiries from persons interested in being foster and/or adoptive parents and the disposition?

If not, describe how the agency keeps track of inquiries and their disposition.

- Y N Does the log (or alternative method) indicate that follow-up occurred and when with every caller?

If not, why is there no follow-up?

- Y N Was the follow-up equally timely for all callers?

If not, why not?

- Y N Does the agency request information from prospective foster or adoptive parents about their RCNO?

- Y N Does the log (or alternative method) show an under-representation from any specific racial or ethnic group of persons interested in becoming foster or adoptive parents?

If yes, does the agency have a strategy for dealing with this issue, e.g., more targeted recruitment?

Describe the strategy that is being used.

- Y N Does the agency record the RCNO of persons who are interested in being a foster or adoptive parent?

Why or why not?

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2) If applicants for foster care or adoptive parenting are screened prior to orientation or training, what screening criteria are used?

Why is such screening criteria used?

How does the agency ensure that these criteria comply with MEPA/Section 1808 (i.e., that they do not "screen out" or discourage individuals from any particular racial or ethnic group interested in parenting children who are in the responsibility of the agency regardless of whether prospective applicants are interested in parenting within or across race, color and/or national origin)?

3) What are the steps involved in the foster or adoptive parent screening and orientation process and what purpose does each serve?

How does the agency ensure that each step in this process complies with MEPA/Section 1808, e.g., that additional steps are not being required for persons expressing interest in foster or adoptive parenting across RCNO lines?

4) Are **all** applicants for foster or adoptive parenting given complete information on the characteristics of **all** children who are in foster care waiting to be adopted, including select groups of children, such as medically fragile infants and teens?

How and when is this done?

If not, under what circumstances would the agency not provide this information to applicants?

5) How does the agency assist applicants to determine whether they are interested in fostering or adopting children from the public child welfare system? Does this include:

- Y N provision of data on the demographics and characteristics commonly found in the child welfare population (i.e., specific behaviors, common medical problems, common disabilities)?
- Y N individual interviews?
- Y N group training sessions?
- Y N meetings/mentoring with current foster/adoptive parents?
- Y N provision of self-assessment and preparation guides?

How does the agency ensure that each step in this process complies with MEPA/Section 1808, e.g., that additional steps are not being required for persons expressing interest in foster or adoptive parenting across RCNO lines?

6) During orientation, does the agency provide a comprehensive overview of each of the steps that are required for the applicant to become a foster or prospective adoptive parent (including the steps involved in the assessment, preparation, training, licensing or home study, and the selection and child placement processes)?

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If not during orientation, why and when is the overview done?

If yes, do these steps comply with MEPA/Section 1808, e.g., does the agency ensure that this explanation does not include additional activities/ steps or discourage those wishing to foster or adopt across RCNO lines?

7) Are prospective foster and adoptive parents apprised of their right not to be denied the opportunity to foster or adopt a child based on the prospective parent's RCNO?

If not, why not?

8) Are prospective foster and adoptive parents advised of what they should do, or whom they should contact within or outside of the agency, if they believe they are being denied the opportunity to foster or adopt a child based on the prospective parent's RCNO?

If not, why not?

B. Assessment and Preparation of Prospective Foster and Adoptive Parents

1) In exploring prospective parents' preferences regarding the characteristics of the children in foster care that the parents would feel comfortable fostering or adopting, does the agency:

Y N describe **all** the types of children available and the care needed by these children regardless of RCNO?

Y N describe only select groups of children?

If so, is it based on the need for families for that specific population, such as medically fragile infants or teens, as opposed to being based on the RCNO of the child or prospective parent?

2) How does the agency ensure that the description of the assessment, licensing/home study, selection and placement process and what is entailed in each step of these processes does not differ for families who are interested in fostering or adopting children of a different RCNO?

3) In what manner is an individual or family given the opportunity to express preferences regarding the type of children they are willing to parent?

How does the agency document the prospective parents' preferences?

Does the agency give prospective parents the opportunity to change their preferences as the family learns more about parenting the various children in the care of the agency?

4) How does the agency assess each prospective parent's ability to foster or adopt?

5) Do all staff use a standardized assessment method or tool, such as genograms, eco-maps, or a consistent home study outline to assess the parent's ability?

If there are variations in the assessment method or tool used, how does the agency determine which method or tool will be used?

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How does the agency ensure that the same type of information is being collected on all prospective parents regardless of the method or tool used?

6) For whatever assessment method or tool being used, how does the agency ensure that the questions asked comply with MEPA/Section 1808, e.g., that the assessment process only includes questions regarding the capacity of the prospective parent to foster or adopt a child of a different RCNO when supported by an individual assessment of the needs of the child?

7) How does the agency ensure that staff do not provide information to prospective families that suggests that all children of the same RCNO have the same needs?

8) How does the agency ensure that staff do not make decisions during the assessment process that are based on unsubstantiated generalizations about the capacity of a prospective parent of one RCNO to care for a child of a different RCNO?

III. Foster/Adoptive Parent and Staff Training

A. Are MEPA/Section 1808 requirements integrated into training curricula for:

Y N foster and adoptive parents?

Y N new staff (including social workers, supervisors, recruitment, licensing and management staff)?

Y N current staff (including social workers, supervisors, recruitment, licensing and management staff)?

Y N other staff whose area of responsibility includes foster care or adoption (e.g., ombudspersons, hotline staff, clinical staff)?

Y N contract or subcontract agencies?

B. Do these curricula accurately address current law in the following areas?

Y N purpose of MEPA/Section 1808?

Y N prohibited activities?

Y N diligent recruitment requirements for staff involved in foster/adoptive parent recruitment, policy development, and program monitoring of foster and adoption programs?

Y N penalties for violations?

C. Is each foster and adoptive parent provided the same information regarding policies and procedures about licensing/approval and/or other agency procedures regardless of the parent's RCNO?

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D. How does the agency ensure that all training complies with MEPA/Section 1808?

1) Does training clearly communicate to agency staff that an individual cannot be denied the opportunity to become a foster or adoptive parent on the basis of the RCNO of the individual or the child?

If so, how?

If not, why not?

2) Does training similarly communicate the foregoing to prospective foster and/or adoptive parents?

If so, how?

If not, why not?

3) Does training clearly communicate to agency staff that a child's foster and/or adoptive placement may not in any manner be delayed or denied based upon the RCNO of the prospective parent or the child involved?

If so, how?

If not, why not?

4) Does training similarly communicate the foregoing to prospective foster and/or adoptive parents?

If so, how?

If not, why not?

IV. Licensing/Approval of Foster and Adoptive Parents

A. Are uniform licensing and home study questions routinely applied throughout the State or locality?

B. Is there a formal mechanism within the agency by which prospective foster and adoptive parents can comment or express concern about the licensing process?

C. How does the agency ensure that the following practices do not occur?

Persons interested in adopting or fostering across RCNO lines are required to:

Y N answer additional questions because of the interest in adopting or fostering across RCNO lines?

Y N take additional training courses because of the interest in adopting or fostering across RCNO lines?

Y N move to a more diverse community?

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- Y N write additional narratives, such as a transracial adoption plan, because of the interest in adopting or fostering across RCNO lines?
- Y N have additional caseworker visits because of the RCNO context?
- Y N justify their interest in children of a different RCNO?
- Y N meet different or higher licensing or approval standards in order to become a foster or adoptive parent of a child of a different RCNO?
- Y N because of the interest in adopting or fostering across RCNO lines, go through any other additional steps not required for same RCNO placements?

D. How do families that have applied to foster or adopt view the following:

- 1) Do prospective foster and adoptive parents believe that the licensing policies provide an opportunity for all RCNO groups to foster or adopt?
- 2) How do prospective parents from different RCNO groups perceive the licensing process?
- 3) Do the prospective parents believe or express concerns that the licensing process considers their RCNO?

If so, what steps have been taken to address this problem?

Note: You may want to consider gathering this information through surveys, focus groups, or other similar methods.

E. Is information about a prospective family's preferences regarding the RCNO of children documented in the licensing or adoptive home study?

If so, how is this information recorded and used?

F. How are licensing and home studies assigned?

Is there any prioritization of which families get studied first?

If so, what are the criteria for this prioritization?

How does the agency ensure that the prioritization does not violate MEPA/Section 1808?

Are persons interested in adopting across RCNO lines singled out or listed as low priority?
Are same RCNO resources routinely considered as a strength and/or otherwise given preferential treatment?

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V. Assessment of Foster and Adoptive Children

A. How does the agency ensure that the process by which it assesses the children's needs complies with MEPA/Section 1808?

- 1) Does the agency conduct individualized assessments of children's needs?
- 2) How does the agency ensure that its assessment process is not based on the assumption that children in foster care all have the same needs based on their RCNO?
- 3) Consider the rare circumstances where the agency has determined that based on an individualized assessment of a child's needs, that child has particular needs that require consideration of RCNO.

- What were those needs?
- How were they determined, and by whom?
- Did supervisors review such a decision?

4) Are the needs of each child in foster care properly documented in the case record?

B. By its terms, Section 1808 of Public Law 104-188 addresses only RCNO, and does not address the consideration of culture in placement decisions. There are situations where a child's cultural needs may be important in placement decisions, such as where a child has specific language needs. However, a public agency's consideration of culture raises Section 1808 issues if the agency uses culture as a proxy for RCNO. While nothing in Section 1808 directly prohibits a public agency from assessing the cultural needs of all children in foster care, Section 1808 prohibits an agency from considering culture in a manner that circumvents the law's prohibition against the routine consideration of RCNO.

- 1) Under what circumstances are a child's cultural needs evaluated?
- 2) What are some of the cultural needs that the agency may consider when determining an appropriate placement for a child?
- 3) How does the agency ensure that it is not confusing RCNO with culture when assessing a child's needs?

VI. Selection Process and Placement of Foster and Adoptive Children

A. How is information on the pools of adoptive and available foster parents organized or maintained?

Does the agency ensure that this complies with MEPA/Section 1808, i.e., that the applicant pools are not separated by RCNO?

B. Do prospective foster and adoptive parents have the opportunity to meet children in need of an adoptive/foster home, regardless of RCNO, e.g., through adoption parties?

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- 1) How are photo listings of children who are waiting to be adopted maintained?
- 2) Do the listings provide a description of the child's strengths, challenges, and needs?
- 3) How does the agency ensure that any preference for an adoptive family of a particular RCNO indicated in a photo listing is supported by an assessment of the child showing the need for a family of this RCNO?

C. What are the procedures and resources used to locate and select potential, appropriate foster/adoptive families for a particular child?

- 1) What factors are taken into consideration when making the final selection of a family for a particular child among the appropriate families?
- 2) How does the agency ensure that the family location and selection process complies with MEPA/Section 1808, i.e., that RCNO is not considered in foster/adoptive family selection and child placement decisions except in individual situations where consideration of RCNO is necessary to meet the best interests of the child?

D. According to the agency's family selection and child placement policies and practices, under what circumstances would it be appropriate to consider the RCNO of the child or the foster or adoptive parent in making decisions on the most appropriate family for a particular child?

- 1) How does the agency ensure that such circumstances comply with MEPA/Section 1808, i.e., that when RCNO is a factor in this decision, that it is rare and is based on the individualized needs of a particular child as documented in the case record?
- 2) Has the agency ever moved a child into another home when the agency changes the goal to adoption even when the current foster parent desires to adopt the child?
- 3) If a child were moved under these circumstances, how does the agency ensure that RCNO are not factors in this move?

VII. Quality Assurance and Compliance Monitoring

A. Quality Assurance

- 1) Does the agency track the results of foster/adoptive recruitment efforts?

If yes, are there significant differences, based on RCNO in response times between:

- the first call from a prospective parent and agency contact?
- parent contact and agency scheduling of orientation training?
- orientation/training and completion of licensing/home study?
- final approval for foster/adoptive license/home study and placement licensing?

- 2) Are there any significant differences based on RCNO in the percentage of families that complete training and those who are approved/licensed?

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- 3) How has the agency ensured that all staff (caseworkers, hotline and legal staff, ombudspersons, etc.) and interested parties (e.g., foster parents) have been trained in the provisions of MEPA/Section 1808, including types of situations that constitute violations?
- 4) Is there post-testing of trainees on their understanding of MEPA/Section 1808?
- 5) Is there a widely publicized mechanism by which workers can ask questions about MEPA/Section 1808 when the worker has a question about MEPA/Section 1808?
- 6) Are supervisors required to assess staff compliance with MEPA/Section 1808 as a routine aspect of staff performance evaluation?
- 7) Does the agency track the timeliness of data for the following events:
 - average length of time from a child's initial placement into foster care until adoption is selected as the child's permanency plan?
 - (by age) average length of time from the change in a child's permanency plan to termination of parental rights?
 - (by age) average length of time from termination of parental rights to placing the child in his/her permanent adoptive home?

If so, are there any significant differences among children of different RCNO of the same age in the average length of time for any of these events?

Is there any indication that any delays are based on activities prohibited by MEPA/Section 1808, e.g., the delays are due to agency staff spending time trying to make same RCNO placements even though approved, appropriate families interested in placements across RCNO lines are available?

- 8) Are there placements across RCNO lines in the areas of foster care and adoption?
- 9) Have foster parents complained that they are not being allowed to adopt across RCNO lines?
- 10) How does the agency ensure that concerns about MEPA/Section 1808 will be adequately addressed?
 - What process is in place to allow staff and interested parties to report potential MEPA/Section 1808 violations?
 - Does the agency conduct a review of foster and adoptive parents' files and the child's file in order to ensure that staff have completed applicable paperwork and made decisions in accordance with the requirements of MEPA/Section 1808?

B. Monitoring

- 1) Does the agency perform internal monitoring to ensure its compliance with MEPA/Section 1808?

If so, how?

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2) If foster care and adoption services are county administered and/or the agency contracts or subcontracts with other agencies for foster care or adoption services, does the agency monitor the counties and/or contractors/vendors for compliance with MEPA/Section 1808?

If so, how?

3) Describe the agency's monitoring process used to ensure the agency's compliance with MEPA/Section 1808.

- Has the agency developed any instruments to conduct these monitoring activities?
- Is the monitoring process integrated into pre-existing review processes, or is it a separate process?

4) What happens with the results of the monitoring?

- Where and how expeditiously are the results forwarded to the appropriate staff?
- What is the process and time frame for addressing any problems?

(<http://www.hhs.gov/ocr/civilrights/resources/specialtopics/adoption/interneval.html>)





<h1 style="margin: 0;">ACF</h1> <p style="margin: 0;">Administration for Children and Families</p>	U.S. DEPARTMENT OF HEALTH AND HUMAN SERVICES Administration on Children, Youth and Families	
	1. Log No: ACYF-CB-PI-11-09	2. Issuance Date: 12-09-2011
	3. Originating Office: Children's Bureau	
	4. Key Words: Title IV-E Plan Pre-Print; Child and Family Services Improvement and Innovation Act; Case Plan; Case Review System; Adoption Assistance Program Reinvestment	

PROGRAM INSTRUCTION

TO: State, Tribal and Territorial Agencies Administering or Supervising the Administration of Title IV-E of the Social Security Act, Indian Tribes, Tribal Organizations and Tribal Consortia (Tribes)

SUBJECT: TITLE IV-E PLAN AMENDMENT – The Child and Family Services Improvement and Innovation Act (Public Law (Pub. L.) 112-34).

LEGAL AND RELATED REFERENCES: Titles IV-B and IV-E of the Social Security Act

PURPOSE: The purpose of this Program Instruction (PI) is to provide instruction on changes to the title IV-E plan requirements as a result of [Pub. L. 112-34](#).

INFORMATION: The President signed Pub. L. 112-34 into law on September 30, 2011. Generally, Pub. L. 112-34 extends programs funded under title IV-B of the Social Security Act (the Act) through Federal Fiscal Year (FY) 2016 and authorizes new child welfare waiver demonstration projects through FY 2014. It also amends case plan and case review system requirements and the Adoption Assistance Program reinvestment requirements in title IV-E of the Act. A summary of statutory provisions is provided in [ACYF-CB-IM-11-06](#). The attached title IV-E plan amendment incorporates the title IV-E plan provisions of Pub. L. 112-34 that became effective October 1, 2011.

Case Plan and Case Review System

Timing of Educational Stability Case Plan Requirement: Titles IV-B/IV-E agencies must now meet the educational stability case plan requirement at the time of each placement change, not just at initial placement into foster care as was the original requirement under the *Fostering Connections to Success and Increasing Adoptions Act of 2008* (Pub. L. 110-351) (section 475(1)(G) of the Act).

Credit Reports for Youth in Foster Care: Pub. L. 112-34 amends the case review system definition to require that each child age 16 and older in foster care receives a copy of any consumer credit report each year until discharged from foster care, and must be assisted in interpreting the credit report and resolving any inaccuracies (section 475(5)(I) of the Act). Title IV-E agencies and youth in foster care may find helpful information about understanding credit reports on the Federal Trade Commission webpage at: <http://www.ftc.gov/bcp/edu/microsites/freereports/index.shtml>.

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Title IV-E Adoption Assistance Program Reinvestment

Pub. L. 110-351 provided a requirement for a title IV-E agency to spend any savings generated from implementing the revised adoption assistance eligibility criteria on child welfare services that may be provided under titles IV-B and IV-E (section 473(a)(8) of the Act). In ACYF-CB-PI-09-08, we required the agency to provide a certification that this requirement is met in the title IV-E plan. In ACYF-CB-PI-10-11, we clarified that the title IV-E agency has flexibility to determine the methodology for calculating savings.

Pursuant to Pub. L. 112-34, title IV-E agencies must now document how savings (if any) are spent when using the applicable child eligibility criteria in the title IV-E adoption assistance program (sections 473(a)(2)(A)(ii) and (e) of the Act).

Instructions for Amending the Title IV-E Plan

By January 31, 2012, each title IV-E agency must submit to the appropriate Children's Bureau (CB) Regional Program Manager for approval (see Attachment A) a revised title IV-E plan pre-print amendment (see Attachment B), that includes:

- Only the revised sections of the pre-print applicable to all title IV-E agencies (Sections 2.D.1.o and 2.D.6.);
- The certification of authority applicable to all title IV-E agencies (Attachment D); and
- The revised State or Tribal Assurances (Attachments III and IV).

The new requirements and modified language are in bold. To complete the amendment, the title IV-E agency must record the applicable statutory, regulatory or policy references and citations for the affected Federal requirement. Agencies may submit their title IV-E plan amendment using the enclosed pages, or may use the electronic version found at CB's web page at: <http://www.acf.hhs.gov/programs/cb>. Title IV-E agencies may use a different format, provided that the format includes all of the applicable title IV-E plan requirements as set forth in the new law. If the title IV-E agency chooses to use its own format, it must include all applicable statutory, regulatory or policy references and citations for each requirement.

The title IV-E agency must submit the plan amendment and assurances electronically or on a compact disk or USB flash drive. When the agency is unable to submit electronic signatures for purposes of certification, it may submit the appropriate pages with original signatures.

Inquiries: Children's Bureau Regional Program Managers

/s/

Bryan Samuels
Commissioner

Attachments

- A – CB Regional Office Program Managers
- B – Title IV-E Preprint Amendments, Certification and Assurance

(<http://www.acf.hhs.gov/sites/default/files/cb/pi1109.pdf>)



<h1 style="margin: 0;">ACF</h1> <p style="margin: 0;">Administration for Children and Families</p>	U.S. DEPARTMENT OF HEALTH AND HUMAN SERVICES Administration on Children, Youth and Families	
	1. Log No: ACYF-CB-IM-03-01	2. Issuance Date: 03/25/2003
	3. Originating Office: Children's Bureau	
	4. Key Words: The Small Business Job Protection Act of 1996, Multiethnic Placement Act, Interethnic Adoption Provisions	

INFORMATION MEMORANDUM

TO: State and Territorial Agencies Administering or Supervising the Administration of Title IV-B and Title IV-E of the Social Security Act and ACF Regional Administrators

SUBJECT: The Multiethnic Placement Act (MEPA), as amended by the Interethnic Adoption Provisions of The Small Business Job Protection Act of 1996.

LEGAL AND RELATED REFERENCES: The Small Business Job Protection Act of 1996 (Pub. L. 104-188), the Howard M. Metzenbaum Multiethnic Placement Act of 1994 (Pub. 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).

PURPOSE: To reiterate support for the Multiethnic Placement Act, as amended by the Interethnic Adoption Provisions of The Small Business Job Protection Act of 1996 (collectively, Section 1808) and anti-discrimination in foster care and adoption placement decision-making.

BACKGROUND: On August 20, 1996, the Small Business Job Protection Act of 1996 was signed into law. Included in this law was Section 1808, "Removal of Barriers to Interethnic Adoption," which repealed Section 553 of MEPA and amended Title IV-E of the Act by adding a State plan requirement at section 471(a)(18). On June 5, 1997, the Children's Bureau issued an Information Memorandum (ACYF-IM-CB-97-04) to State Title IV-B/IV-E agencies and



others providing them with guidance and clarification on Section 1808. On May 11, 1998, the Children's Bureau issued another Information Memorandum (ACYF-IM-CB-98-03) in the form of questions and answers that further clarify implementation and practice issues around Section 1808.

INFORMATION: Congress passed the Multiethnic Placement Act in 1994 in an attempt to decrease the length of time that children wait to be adopted; to prevent discrimination in the placement of children based on race, color or national origin and to facilitate the identification and recruitment of foster, and, adoptive parents who can meet children's needs. Congress further strengthened the enforcement of these anti-discrimination provisions when it passed the Interethnic Adoption Provisions in 1996.

This Information Memorandum reiterates and confirms my long standing and unequivocal support for the letter of, and spirit underlying, the Multiethnic Placement Act, as amended by the MEPA (Section 1808). This administration will not tolerate discrimination in foster care and adoption placement decisions and will enforce Section 1808's provisions to the extent of the law.

Section 1808 allows vulnerable children and loving parents to connect with one another and become families, regardless of the parent's or child's race, color or national origin. Moreover, delaying, denying or otherwise discriminating in foster care or adoption placements on the basis of race, color or national origin further harms children who already have suffered abuse and neglect. Much of the harm committed against these children only can begin to be ameliorated by being received into a loving family that will provide a stable, secure and nurturing home.

Discrimination in foster care and adoption placements wrongly denies children a loving and stable home. To be sure, a loving and stable home for a foster child does not know boundaries of race, color or national origin. Moreover, discrimination in foster care and adoption placements contravenes the very principles upon which our Nation is based, and is intolerable, particularly where vulnerable children are concerned.

It is equally intolerable to erect needless barriers in a thinly veiled attempt to discourage or dissuade individuals from pursuing transracial adoption. State child welfare agencies, and the entities with which they contract, must ensure that they do not take action that deters families from pursuing foster care or adoption across lines of race, color or national origin. Whether subtle or direct,



efforts to thwart foster care and adoption across lines of race, color and national origin cannot be tolerated.

It is important to recognize that both Section 1808 of the Small Business Job Protection Act and Title VI of the Civil Rights Act of 1964 impose significant legal penalties for race-based discrimination in adoption and foster care. Remedies for violations of Section 1808 include the imposition of a penalty of up to five percent of a State's Title VI-E funds for a fiscal quarter. Remedies for violations of Title VI include the suspension or termination of, or the refusal to grant, Federal financial assistance.

Every child, especially one who is languishing in foster care, deserves a loving family. Discriminating against these children, or the families that wish to foster or adopt them, on the basis of race, color or national origin, is illegal. Equally important, however, is that such discrimination wrongly denies these vulnerable children the opportunity to enjoy the immeasurable benefits associated with being part of a loving family.

INQUIRIES TO: ACF Regional Offices

_____/s/
Wade F. Horn, Ph.D.
Assistant Secretary
for Children and Families

cc: ACF Regional Offices

(<http://www.acf.hhs.gov/sites/default/files/cb/im0301.pdf>)





§471(a)(18) of the Social Security Act State Plan for Foster Care and Adoption Assistance

§471(a)(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 the race, color, or national origin of the person, or of the child, involved; or

(B) (B) delay or deny the placement of a child for adoption or into foster care, on the basis of the race, color, or national origin of the adoptive or foster parent, or the child, involved;

(http://www.ssa.gov/OP_Home/ssact/title04/0471.htm)





Office of the Law Revision Counsel, U.S. House of Representatives

42 USC 674: Payments to States Text contains those laws in effect on January 15, 2013

From Title 42-THE PUBLIC HEALTH AND WELFARE CHAPTER 7-SOCIAL SECURITY SUBCHAPTER IV-GRANTS TO STATES FOR AID AND SERVICES TO NEEDY FAMILIES WITH CHILDREN AND FOR CHILD-WELFARE SERVICES Part E-Federal Payments for Foster Care and Adoption Assistance

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§674. Payments to States

(a) Amounts

For each quarter beginning after September 30, 1980, each State which has a plan approved under this part shall be entitled to a payment equal to the sum of-

(1) an amount equal to the Federal medical assistance percentage (which shall be as defined in section 1396d(b) of this title, in the case of a State other than the District of Columbia, or 70 percent, in the case of the District of Columbia) of the total amount expended during such quarter as foster care maintenance payments under section 672 of this title for children in foster family homes or child-care institutions (or, with respect to such payments made during such quarter under a cooperative agreement or contract entered into by the State and an Indian tribe, tribal organization, or tribal consortium for the administration or payment of funds under this part, an amount equal to the Federal medical assistance percentage that would apply under section 679c(d) of this title (in this paragraph referred to as the “tribal FMAP”) if such Indian tribe, tribal organization, or tribal consortium made such payments under a program operated under that section, unless the tribal FMAP is less than the Federal medical assistance percentage that applies to the State); plus

(2) an amount equal to the Federal medical assistance percentage (which shall be as defined in section 1396d(b) of this title, in the case of a State other than the District of Columbia, or 70 percent, in the case of the District of Columbia) of the total amount expended during such quarter as adoption assistance payments under section 673 of this title pursuant to adoption assistance agreements (or, with respect to such payments made during such quarter under a cooperative agreement or contract entered into by the State and an Indian tribe, tribal organization, or tribal consortium for the administration or payment of funds under this part, an amount equal to the Federal medical assistance percentage that would apply under section 679c(d) of this title (in this paragraph referred to as the “tribal FMAP”) if such Indian tribe, tribal organization, or tribal consortium made such payments under a program operated under that section, unless the tribal FMAP is less than the Federal medical assistance percentage that applies to the State); plus

(3) subject to section 672(i) of this title an amount equal to the sum of the following proportions of the total amounts expended during such quarter as found necessary by the Secretary for the provision of child placement services and for the proper and efficient administration of the State plan-

(continued on next page)



(A) 75 per centum of so much of such expenditures as are for the training (including both short- and long-term training at educational institutions through grants to such institutions or by direct financial assistance to students enrolled in such institutions) of personnel employed or preparing for employment by the State agency or by the local agency administering the plan in the political subdivision,

(B) 75 percent of so much of such expenditures (including travel and per diem expenses) as are for the short-term training of current or prospective foster or adoptive parents or relative guardians, the members of the staff of State-licensed or State-approved child care institutions providing care, or State-licensed or State-approved child welfare agencies providing services, to children receiving assistance under this part, and members of the staff of abuse and neglect courts, agency attorneys, attorneys representing children or parents, guardians ad litem, or other court-appointed special advocates representing children in proceedings of such courts, in ways that increase the ability of such current or prospective parents, guardians, staff members, institutions, attorneys, and advocates to provide support and assistance to foster and adopted children and children living with relative guardians, whether incurred directly by the State or by contract,

(C) 50 percent of so much of such expenditures as are for the planning, design, development, or installation of statewide mechanized data collection and information retrieval systems (including 50 percent of the full amount of expenditures for hardware components for such systems) but only to the extent that such systems-

(i) meet the requirements imposed by regulations promulgated pursuant to section 679(b)(2) of this title;

(ii) to the extent practicable, are capable of interfacing with the State data collection system that collects information relating to child abuse and neglect;

(iii) to the extent practicable, have the capability of interfacing with, and retrieving information from, the State data collection system that collects information relating to the eligibility of individuals under part A of this subchapter (for the purposes of facilitating verification of eligibility of foster children); and

(iv) are determined by the Secretary to be likely to provide more efficient, economical, and effective administration of the programs carried out under a State plan approved under part B of this subchapter or this part; and

(D) 50 percent of so much of such expenditures as are for the operation of the statewide mechanized data collection and information retrieval systems referred to in subparagraph (C); and

(E) one-half of the remainder of such expenditures; plus

(4) an amount equal to the amount (if any) by which-

(A) the lesser of-

(continued on next page)



(i) 80 percent of the amounts expended by the State during the fiscal year in which the quarter occurs to carry out programs in accordance with the State application approved under section 677(b) of this title for the period in which the quarter occurs (including any amendment that meets the requirements of section 677(b)(5) of this title); or

(ii) the amount allotted to the State under section 677(c)(1) of this title for the fiscal year in which the quarter occurs, reduced by the total of the amounts payable to the State under this paragraph for all prior quarters in the fiscal year; exceeds

(B) the total amount of any penalties assessed against the State under section 677(e) of this title during the fiscal year in which the quarter occurs; plus

(5) an amount equal to the percentage by which the expenditures referred to in paragraph (2) of this subsection are reimbursed of the total amount expended during such quarter as kinship guardianship assistance payments under section 673(d) of this title pursuant to kinship guardianship assistance agreements.

(b) Quarterly estimates of State's entitlement for next quarter; payments; United States' pro rata share of amounts recovered as overpayment; allowance, disallowance, or deferral of claim

(1) The Secretary shall, prior to the beginning of each quarter, estimate the amount to which a State will be entitled under subsection (a) of this section for such quarter, such estimates to be based on (A) a report filed by the State containing its estimate of the total sum to be expended in such quarter in accordance with subsection (a) of this section, and stating the amount appropriated or made available by the State and its political subdivisions for such expenditures in such quarter, and if such amount is less than the State's proportionate share of the total sum of such estimated expenditures, the source or sources from which the difference is expected to be derived, (B) records showing the number of children in the State receiving assistance under this part, and (C) such other investigation as the Secretary may find necessary.

(2) The Secretary shall then pay to the State, in such installments as he may determine, the amounts so estimated, reduced or increased to the extent of any overpayment or underpayment which the Secretary determines was made under this section to such State for any prior quarter and with respect to which adjustment has not already been made under this subsection.

(3) The pro rata share to which the United States is equitably entitled, as determined by the Secretary, of the net amount recovered during any quarter by the State or any political subdivision thereof with respect to foster care and adoption assistance furnished under the State plan shall be considered an overpayment to be adjusted under this subsection.

(4)(A) Within 60 days after receipt of a State claim for expenditures pursuant to subsection (a) of this section, the Secretary shall allow, disallow, or defer such claim.

(B) Within 15 days after a decision to defer such a State claim, the Secretary shall notify the State of the reasons for the deferral and of the additional

(continued on next page)



information necessary to determine the allowability of the claim.

(C) Within 90 days after receiving such necessary information (in readily reviewable form), the Secretary shall-

(i) disallow the claim, if able to complete the review and determine that the claim is not allowable, or

(ii) in any other case, allow the claim, subject to disallowance (as necessary)-

(I) upon completion of the review, if it is determined that the claim is not allowable; or

(II) on the basis of findings of an audit or financial management review.

(c) Automated data collection expenditures

The Secretary shall treat as necessary for the proper and efficient administration of the State plan all expenditures of a State necessary in order for the State to plan, design, develop, install, and operate data collection and information retrieval systems described in subsection (a)(3)(C) of this section, without regard to whether the systems may be used with respect to foster or adoptive children other than those on behalf of whom foster care maintenance payments or adoption assistance payments may be made under this part.

(d) Reduction for violation of plan requirement

(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 1320a-2a of this title, or otherwise, to have violated paragraph (18) or (23) of section 671(a) of this title 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 with respect to such violation, then, notwithstanding subsection (a) of this section and any regulations promulgated under section 1320a-2a(b)(3) of this title, 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, until the State program is found, as a result of a subsequent review under section 1320a-2a of this title, to have implemented a corrective action plan with respect to such violation, by-

(A) 2 percent of such otherwise payable amount, in the case of the 1st such finding for the fiscal year with respect to the State;

(B) 3 percent of such otherwise payable amount, in the case of the 2nd such finding for the fiscal year with respect to the State; or

(C) 5 percent of such otherwise payable amount, in the case of the 3rd or subsequent such finding for the fiscal year with respect to the State.

In imposing the penalties described in this paragraph, the Secretary shall not reduce any fiscal year payment to a State by more than 5 percent.

(2) Any other entity which is in a State that receives funds under this part and which violates paragraph (18) or (23) of section 671(a) of this title during a fiscal year quarter with respect to any person shall remit to the Secretary all funds that were paid by the State to the entity during the quarter from such funds.

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(3)(A) Any individual who is aggrieved by a violation of section 671(a)(18) of this title by a State or other entity may bring an action seeking relief from the State or other entity in any United States district court.

(B) An action under this paragraph may not be brought more than 2 years after the date the alleged violation occurred.

(4) This subsection shall not be construed to affect the application of the Indian Child Welfare Act of 1978 [25 U.S.C. 1901 et seq.].

(e) Discretionary grants for educational and training vouchers for youths aging out of foster care

From amounts appropriated pursuant to section 677(h)(2) of this title, the Secretary may make a grant to a State with a plan approved under this part, for a calendar quarter, in an amount equal to the lesser of-

(1) 80 percent of the amounts expended by the State during the quarter to carry out programs for the purposes described in section 677(a)(6) of this title; or

(2) the amount, if any, allotted to the State under section 677(c)(3) of this title for the fiscal year in which the quarter occurs, reduced by the total of the amounts payable to the State under this subsection for such purposes for all prior quarters in the fiscal year.

(f) Reduction for failure to submit required data

(1) If the Secretary finds that a State has failed to submit to the Secretary data, as required by regulation, for the data collection system implemented under section 679 of this title, the Secretary shall, within 30 days after the date by which the data was due to be so submitted, notify the State of the failure and that payments to the State under this part will be reduced if the State fails to submit the data, as so required, within 6 months after the date the data was originally due to be so submitted.

(2) If the Secretary finds that the State has failed to submit the data, as so required, by the end of the 6-month period referred to in paragraph (1) of this subsection, then, notwithstanding subsection (a) of this section and any regulations promulgated under section 1320a-2a(b)(3) of this title, the Secretary shall reduce the amounts otherwise payable to the State under this part, for each quarter ending in the 6-month period (and each quarter ending in each subsequent consecutively occurring 6-month period until the Secretary finds that the State has submitted the data, as so required), by-

(A) 1/6 of 1 percent of the total amount expended by the State for administration of foster care activities under the State plan approved under this part in the quarter so ending, in the case of the 1st 6-month period during which the failure continues; or

(B) 1/4 of 1 percent of the total amount so expended, in the case of the 2nd or any subsequent such 6-month period.

(g) Continued services under waiver

For purposes of this part, after the termination of a demonstration project relating to guardianship conducted by a State under section 1320a-9 of this title, the expenditures of the State for the provision, to children who, as of September 30, 2008, were receiving assistance or services under the project, of the same assistance and services under the same terms and conditions that applied during the conduct of the project, are deemed to be expenditures under the State plan approved under this part.

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(Aug. 14, 1935, ch. 531, title IV, §474, as added Pub. L. 96-272, title I, §101(a)(1), June 17, 1980, 94 Stat. 506; amended Pub. L. 96-611, §3, Dec. 28, 1980, 94 Stat. 3567; Pub. L. 98-369, div. B, title VI, §2663(c)(18), July 18, 1984, 98 Stat. 1167; Pub. L. 98-617, §4(a), (b), Nov. 8, 1984, 98 Stat. 3296, 3297; Pub. L. 99-272, title XII, §§12306(a), (b), 12307(c), Apr. 7, 1986, 100 Stat. 294, 296; Pub. L. 99-514, title XVIII, §1883(b)(9), Oct. 22, 1986, 100 Stat. 2917; Pub. L. 100-203, title IX, §9132(a), Dec. 22, 1987, 101 Stat. 1330-313; Pub. L. 101-239, title VIII, §§8001(a), 8002(c), 8006(a), title X, §§10401(a), 10402(a), 10403(c)(1), Dec. 19, 1989, 103 Stat. 2452, 2453, 2461, 2487, 2488; Pub. L. 101-508, title V, §5071(a), Nov. 5, 1990, 104 Stat. 1388-233; Pub. L. 103-66, title XIII, §13713(a)(1), (2), (b)(1), Aug. 10, 1993, 107 Stat. 656, 657; Pub. L. 103-432, title II, §§207(a), (b), 210(a), Oct. 31, 1994, 108 Stat. 4457, 4460; Pub. L. 104-188, title I, §1808(b), Aug. 20, 1996, 110 Stat. 1903; Pub. L. 105-89, title II, §202(b), Nov. 19, 1997, 111 Stat. 2125; Pub. L. 105-200, title III, §301(b), (c), title IV, §410(g), July 16, 1998, 112 Stat. 658, 674; Pub. L. 106-169, title I, §101(c), Dec. 14, 1999, 113 Stat. 1828; Pub. L. 107-133, title II, §201(f), Jan. 17, 2002, 115 Stat. 2424; Pub. L. 108-145, §4, Dec. 2, 2003, 117 Stat. 1881; Pub. L. 109-171, title VII, §7403(b), Feb. 8, 2006, 120 Stat. 151; Pub. L. 110-275, title III, §302(a), July 15, 2008, 122 Stat. 2594; Pub. L. 110-351, title I, §101(c)(3), (d), title II, §203(a), title III, §301(c)(2), Oct. 7, 2008, 122 Stat. 3952, 3953, 3959, 3970.)

References in Text

The Indian Child Welfare Act of 1978, referred to in subsec. (d)(4), is Pub. L. 95-608, Nov. 8, 1978, 92 Stat. 3069, as amended, which is classified principally to chapter 21 (§1901 et seq.) of Title 25, Indians. For complete classification of this Act to the Code, see Short Title note set out under section 1901 of Title 25 and Tables.

Amendments

2008-Subsec. (a)(1), (2). Pub. L. 110-351, §301(c)(2), inserted “(or, with respect to such payments made during such quarter under a cooperative agreement or contract entered into by the State and an Indian tribe, tribal organization, or tribal consortium for the administration or payment of funds under this part, an amount equal to the Federal medical assistance percentage that would apply under section 679c(d) of this title (in this paragraph referred to as the ‘tribal FMAP’) if such Indian tribe, tribal organization, or tribal consortium made such payments under a program operated under that section, unless the tribal FMAP is less than the Federal medical assistance percentage that applies to the State)” before semicolon.

Pub. L. 110-275 substituted “(which shall be as defined in section 1396d(b) of this title, in the case of a State other than the District of Columbia, or 70 percent, in the case of the District of Columbia)” for “(as defined in section 1396d(b) of this title)”.

Subsec. (a)(3)(B). Pub. L. 110-351, §203(a), inserted “or relative guardians” after “adoptive parents”, substituted “, the members” for “and the members”, inserted “, or State-licensed or State-approved child welfare agencies providing services,” after “providing care”, struck out “foster and adopted” before “children receiving assistance”, inserted “and members of the staff of abuse and neglect courts, agency attorneys, attorneys representing children or parents, guardians ad litem, or other court-appointed special advocates representing children in proceedings of such courts,” after “part,”, inserted “guardians,” before “staff members,”, substituted “institutions, attorneys, and advocates” for “and institutions”, and inserted “and children living with relative guardians” before “, whether incurred directly”.

Subsec. (a)(4). Pub. L. 110-351, §101(c)(3)(A), substituted “; plus” for period at end.

Subsec. (a)(5). Pub. L. 110-351, §101(c)(3)(B), added par. (5).

Subsec. (g). Pub. L. 110-351, §101(d), added subsec. (g).

2006-Subsec. (a)(3). Pub. L. 109-171 inserted “subject to section 672(i) of this title” before “an amount equal to” in introductory provisions.

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2003-Subsec. (f). Pub. L. 108–145 added subsec. (f).

2002-Subsec. (a)(4). Pub. L. 107–133, §201(f)(1), amended par. (4) generally. Prior to amendment, par. (4) read as follows: “the lesser of-

“(A) 80 percent of the amount (if any) by which-

“(i) the total amount expended by the State during the fiscal year in which the quarter occurs to carry out programs in accordance with the State application approved under section 677(b) of this title for the period in which the quarter occurs (including any amendment that meets the requirements of section 677(b)(5) of this title); exceeds

“(ii) the total amount of any penalties assessed against the State under section 677(e) of this title during the fiscal year in which the quarter occurs; or

“(B) the amount allotted to the State under section 677 of this title for the fiscal year in which the quarter occurs, reduced by the total of the amounts payable to the State under this paragraph for all prior quarters in the fiscal year.”

Subsec. (e). Pub. L. 107–133, §201(f)(2), added subsec. (e).

1999-Subsec. (a)(4). Pub. L. 106–169 amended par. (4) generally. Prior to amendment, par. (4) read as follows: “an amount equal to the sum of-

“(A) so much of the amounts expended by such State to carry out programs under section 677 of this title as do not exceed the basic amount for such State determined under section 677(e)(1) of this title; and

“(B) the lesser of-

“(i) one-half of any additional amounts expended by such State for such programs; or

“(ii) the maximum additional amount for such State under such section 677(e)(1) of this title.”

1998-Subsec. (a). Pub. L. 105–200, §410(g), struck out “(subject to the limitations imposed by subsection (b) of this section)” after “this part” in introductory provisions.

Subsec. (d)(1), (2). Pub. L. 105–200, §301(b), substituted “paragraph (18) or (23) of section 671(a) of this title” for “section 671(a)(18) of this title”.

Subsec. (e). Pub. L. 105–200, §301(c), struck out subsec. (e) which read as follows: “Notwithstanding subsection (a) of this section, a State shall not be eligible for any payment under this section if the Secretary finds that, after November 19, 1997, the State has-

“(1) denied or delayed the placement of a child for adoption when an approved family is available outside of the jurisdiction with responsibility for handling the case of the child; or

“(2) failed to grant an opportunity for a fair hearing, as described in section 671(a)(12) of this title, to an individual whose allegation of a violation of paragraph (1) of this subsection is denied by the State or not acted upon by the State with reasonable promptness.”

1997-Subsec. (e). Pub. L. 105–89 added subsec. (e).

1996-Subsec. (d). Pub. L. 104–188 added subsec. (d).

1994-Subsec. (b). Pub. L. 103–432, §207(a), (b)(2), redesignated subsec. (d) as (b) and struck out former subsec. (b) which related to maximum aggregate sums payable to any State and State allotments for fiscal years 1981 to 1992.

Subsec. (b)(4). Pub. L. 103–432, §210(a), added par. (4).

Subsec. (c). Pub. L. 103–432, §207(a), (b)(2), redesignated subsec. (e) as (c) and struck out former subsec. (c) which related to reimbursement for expenditures.

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Subsec. (d). Pub. L. 103-432, §207(b)(2), redesignated subsec. (d) as (b).
Subsec. (d)(1). Pub. L. 103-432, §207(b)(1), substituted “subsection (a) of this section for such quarter” for “subsections (a), (b), and (c) of this section for such quarter” and “subsection (a) of this section” for “the provisions of such subsections”.
Subsec. (e). Pub. L. 103-432, §207(b)(2), redesignated subsec. (e) as (c).

1993-Subsec. (a)(3)(B). Pub. L. 103-66, §13713(a)(1)(A), struck out “and” at end.
Subsec. (a)(3)(C). Pub. L. 103-66, §13713(b)(1), substituted “50 percent” for “75 percent” in two places in introductory provisions.
Pub. L. 103-66, §13713(a)(1)(C), added subpar. (C). Former subpar. (C) redesignated (E).
Subsec. (a)(3)(D), (E). Pub. L. 103-66, §13713(a)(1)(B), (C), added subpar. (D) and redesignated former subpar. (C) as (E).
Subsec. (e). Pub. L. 103-66, §13713(a)(2), added subsec. (e).
1990-Subsec. (a)(3). Pub. L. 101-508 inserted “provision of child placement services and for the” before “proper and efficient”.

1989-Subsec. (a)(3)(B), (C). Pub. L. 101-239, §8006(a), added subpar. (B) and redesignated former subpar. (B) as (C).
Subsec. (a)(4). Pub. L. 101-239, §8002(c), amended par. (4) generally. Prior to amendment, par. (4) read as follows: “an amount for transitional independent living programs as provided in section 677 of this title.”
Subsec. (b)(1). Pub. L. 101-239, §10403(c)(1), amended Pub. L. 98-617, §4(a)(1), see 1984 Amendment note below.
Pub. L. 101-239, §8001(a), substituted “through 1992” for “through 1989”.
Subsec. (b)(2)(A)(iv). Pub. L. 101-239, §10402(a), added cl. (iv).
Subsec. (b)(2)(B). Pub. L. 101-239, §10403(c)(1), amended Pub. L. 98-617, §4(a)(1), see 1984 Amendment note below.
Pub. L. 101-239, §8001(a), substituted “through 1992” for “through 1989”.
Subsec. (b)(4)(B). Pub. L. 101-239, §10403(c)(1), amended Pub. L. 98-617, §4(a)(1), see 1984 Amendment note below.
Pub. L. 101-239, §8001(a), substituted “through 1992” for “through 1989”.
Subsec. (b)(5)(A). Pub. L. 101-239, §8001(a), substituted “1992” for “1989” in introductory provisions and in cl. (ii).
Subsec. (c)(1), (2). Pub. L. 101-239, §8001(a), substituted “through 1992” for “through 1989”.
Subsec. (c)(4)(B), (C). Pub. L. 101-239, §10401(a), substituted “\$325,000,000” for “\$266,000,000”.

1987-Subsec. (b)(1), (2)(A)(iii), (B), (4)(B). Pub. L. 100-203, §9132(a)(1), substituted “through 1989” for “through 1987”.
Subsec. (b)(5)(A). Pub. L. 100-203, §9132(a)(1), (2), substituted “October 1, 1989” for “October 1, 1987” in introductory provisions and “through 1989” for “through 1987” in cl. (ii).
Subsec. (c)(1), (2). Pub. L. 100-203, §9132(a)(3), substituted “through 1989” for “through 1987”.

1986-Subsec. (a)(3). Pub. L. 99-272, §12307(c)(1), substituted “; plus” for period at end.
Subsec. (a)(4). Pub. L. 99-514 realigned margins of par. (4).
Pub. L. 99-272, §12307(c)(2), added par. (4).
Subsec. (b)(1). Pub. L. 99-272, §12306(a)(1), substituted “1987” for “1985”.
Subsec. (b)(2)(A). Pub. L. 99-272, §12306(a)(2), substituted in cl. (iii) “each of the fiscal years 1983 through 1987” for “fiscal year 1983”, and struck out cls. (iv) and (v) relating to limitations with respect to fiscal years 1984 and 1985, respectively, if the appropriation for each of those years is equal to \$266,000,000.
Subsec. (b)(2)(B), (4)(B). Pub. L. 99-272, §12306(a)(1), substituted “1987” for “1985”.

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Subsec. (b)(5)(A). Pub. L. 99–272, §12306(a)(3), substituted “October 1, 1987” for “October 1, 1985” in introductory provision, and in cl. (ii) substituted “1984 through 1987” for “1984 and 1985”.

Subsec. (c)(1), (2). Pub. L. 99–272, §12306(b), substituted “1987” for “1985”.

1984-Subsec. (b)(1). Pub. L. 98–617, §4(a)(1)(A), formerly §4(a)(1), as redesignated and amended by Pub. L. 101–239, §10403(c)(1), substituted “1985” for “1984” after “1981 through”.

Subsec. (b)(2)(A)(v). Pub. L. 98–617, §4(a)(2), added cl. (v).

Subsec. (b)(2)(B). Pub. L. 98–617, §4(a)(1)(B), formerly §4(a)(1), as redesignated and amended by Pub. L. 101–239, §10403(c)(1), substituted “1981 through 1985” for “1982 through 1984”.

Subsec. (b)(4)(A). Pub. L. 98–369, §2663(c)(18)(A), substituted “subparagraph (C)” for “subparagraph (c)”.

Subsec. (b)(4)(B). Pub. L. 98–617, §4(a)(1)(A), formerly §4(a)(1), as redesignated and amended by Pub. L. 101–239, §10403(c)(1), substituted “1985” for “1984” after “1981 through”.

Subsec. (b)(5)(A). Pub. L. 98–617, §4(a)(3)(A), substituted “October 1, 1985” for “October 1, 1984”.

Subsec. (b)(5)(A)(ii). Pub. L. 98–617, §4(a)(3)(B), substituted “each of fiscal years 1984 and 1985” for “fiscal year 1984”.

Subsec. (c)(1), (2). Pub. L. 98–617, §4(b), substituted “1985” for “1984” after “1981 through”.

Pub. L. 98–369, §2663(c)(18)(B), substituted “relevant” for “relvant”.

Subsec. (d)(1). Pub. L. 98–369, §2663(c)(18)(C), substituted “and (C) such” for “and (c) such” and “Secretary may find” for “secretary may find”.

1980-Subsec. (d). Pub. L. 96–611 added subsec. (d).

Effective Date of 2008 Amendment

Amendment by section 301(c)(2) of Pub. L. 110–351 effective Oct. 1, 2009, without regard to whether implementing regulations have been promulgated, see section 301(f) of Pub. L. 110–351, set out as a note under section 671 of this title.

Amendment by Pub. L. 110–351 effective Oct. 7, 2008, except as otherwise provided, and applicable to payments under this part and part B of this subchapter for quarters beginning on or after effective date of amendment, with delay permitted if State legislation is required to meet additional requirements, see section 601 of Pub. L. 110–351, set out as a note under section 671 of this title.

Pub. L. 110–275, title III, §302(b), July 15, 2008, 122 Stat. 2594, provided that: “The amendment made by subsection (a) [amending this section] shall take effect on October 1, 2008, and shall apply to calendar quarters beginning on or after that date.”

Effective Date of 2006 Amendment

Amendment by Pub. L. 109–171 effective as if enacted on Oct. 1, 2005, except as otherwise provided, see section 7701 of Pub. L. 109–171, set out as a note under section 603 of this title.

Effective Date of 2003 Amendment

Amendment by Pub. L. 108–145 effective Oct. 1, 2003, see section 5 of Pub. L. 108–145, set out as a note under section 673b of this section.

Effective Date of 2002 Amendment

Amendment by Pub. L. 107–133 effective Jan. 17, 2002, with delay permitted if State legislation is required, see section 301 of Pub. L. 107–133, set out as a note under section 629 of this title.

Effective Date of 1998 Amendment

Amendment by section 301(b), (c) of Pub. L. 105–200 effective as if included in the enactment of section 202 of the Adoption and Safe Families Act of 1997, Pub. L. 105–89, see section 301(d) of Pub. L. 105–200, set out as a note under section 671 of this title.

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Effective Date of 1997 Amendment

Amendment by Pub. L. 105–89 effective Nov. 19, 1997, except as otherwise provided, with delay permitted if State legislation is required, see section 501 of Pub. L. 105–89, set out as a note under section 622 of this title.

Effective Date of 1994 Amendment

Pub. L. 103–432, title II, §207(c), Oct. 31, 1994, 108 Stat. 4457, provided that: “The amendments and repeals made by this section [amending this section] shall apply to payments for calendar quarters beginning on or after October 1, 1993.”

Pub. L. 103–432, title II, §210(b), Oct. 31, 1994, 108 Stat. 4460, provided that: “The amendment made by subsection (a) [amending this section] shall be effective with respect to claims made on or after the date of the enactment of this Act [Oct. 31, 1994].”

Effective Date of 1993 Amendment

Pub. L. 103–66, title XIII, §13713(a)(3), Aug. 10, 1993, 107 Stat. 657, provided that: “The amendments made by this subsection [amending this section] shall take effect on October 1, 1993.”

Pub. L. 103–66, title XIII, §13713(b)(2), Aug. 10, 1993, 107 Stat. 657, as amended by Pub. L. 104–193, title V, §502, Aug. 22, 1996, 110 Stat. 2277, provided that: “The amendment made by paragraph (1) [amending this section] shall apply to expenditures during fiscal years beginning on or after October 1, 1997.”

Effective Date of 1990 Amendment

Pub. L. 101–508, title V, §5071(b), Nov. 5, 1990, 104 Stat. 1388–233, provided that: “The amendment made by subsection (a) [amending this section] shall take effect on the date of the enactment of this Act [Nov. 5, 1990].”

Effective Date of 1989 Amendment

Pub. L. 101–239, title VIII, §8001(b), Dec. 19, 1989, 103 Stat. 2452, provided that: “The amendments made by subsection (a) [amending this section] shall take effect on October 1, 1989.”

Pub. L. 101–239, title VIII, §8002(e), Dec. 19, 1989, 103 Stat. 2453, provided that: “The amendments made by subsections (a), (b) and (c) [amending this section and section 677 of this title] shall take effect October 1, 1989.”

Pub. L. 101–239, title VIII, §8006(b), Dec. 19, 1989, 103 Stat. 2462, as amended by Pub. L. 103–66, title XIII, §13715, Aug. 10, 1993, 107 Stat. 657, provided that: “The amendments made by subsection (a) [amending this section] shall apply to expenditures made on or after October 1, 1989, and before October 1, 1992, and to expenditures made on or after October 1, 1993.”

Pub. L. 101–239, title X, §10401(b), Dec. 19, 1989, 103 Stat. 2487, provided that: “The amendments made by subsection (a) [amending this section and former sections 620 and 627 of this title] shall take effect on October 1, 1989.”

Pub. L. 101–239, title X, §10402(b), Dec. 19, 1989, 103 Stat. 2487, provided that: “The amendments made by subsection (a) [amending this section] shall take effect on October 1, 1989.”

Pub. L. 101–239, title X, §10403(c)(2), Dec. 19, 1989, 103 Stat. 2488, provided that: “The amendment made by paragraph (1) of this subsection [amending this section] shall take effect as if included in section 4 of Public Law 98-617 at the time such section became law [enacted Nov. 8, 1974].”

Effective Date of 1987 Amendment

Pub. L. 100–203, title IX, §9132(b), Dec. 22, 1987, 101 Stat. 1330–314, provided that: “The amendments made by subsection (a) [amending this section] shall become effective October 1, 1987.”

Effective Date of 1984 Amendment

Amendment by Pub. L. 98–369 effective July 18, 1984, but not to be construed as changing or affecting any right, liability, status, or interpretation which existed (under the provisions of law involved) before that date, see section 2664(b) of Pub. L. 98–369, set out as a note under section 401 of this title.

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Construction of 2008 Amendment

For construction of amendment by section 301(c)(2) of Pub. L. 110–351, see section 301(d) of Pub. L. 110–351, set out as a note under section 671 of this title.

Phase-in

Pub. L. 110–351, title II, §203(b), Oct. 7, 2008, 122 Stat. 3959, provided that: “With respect to an expenditure described in section 474(a)(3)(B) of the Social Security Act [42 U.S.C. 674(a)(3)(B)] by reason of an amendment made by subsection (a) of this section [amending this section], in lieu of the percentage set forth in such section 474(a)(3)(B), the percentage that shall apply is-

“(1) 55 percent, if the expenditure is made in fiscal year 2009;

“(2) 60 percent, if the expenditure is made in fiscal year 2010;

“(3) 65 percent, if the expenditure is made in fiscal year 2011; or

“(4) 70 percent, if the expenditure is made in fiscal year 2012.”

(<http://uscode.house.gov/view.xhtml?req=granuleid%3AUSC-2012-title42-chapter7-subchapter4-partE&saved=%7CZ3JhbnVsZWlkOIVTQy0yMDEyLXRpdGxlNDItc2VjdGlvbjY3Mw%3D%3D%7CdHJlZXNvcnQ%3D%7CdHJlZQ%3D%3D%7C0%7Cfalse%7C2012&edition=2012>)



