

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Administration for Children and Families

#### 45 CFR Parts 1355 and 1356

RIN 0970-AC41

#### Tribal Child Welfare

**AGENCY:** Administration on Children, Youth and Families (ACYF), Administration for Children and Families (ACF), Department of Health and Human Services (HHS).

**ACTION:** Interim final rule.

**SUMMARY:** The Administration for Children and Families (ACF) is issuing this interim final rule to implement statutory provisions related to the Tribal title IV-E program. Effective October 1, 2009, section 479B(b) of the Social Security Act (the Act) authorizes direct Federal funding of Indian Tribes, Tribal organizations, and Tribal consortia that choose to operate a foster care, adoption assistance and, at Tribal option, a kinship guardianship assistance program under title IV-E of the Act. The Fostering Connections to Success and Increasing Adoptions Act of 2008 requires that ACF issue interim final regulations which address procedures to ensure that a transfer of responsibility for the placement and care of a child under a State title IV-E plan to a Tribal title IV-E plan occurs in a manner that does not affect the child's eligibility for title IV-E benefits or medical assistance under title XIX of the Act (Medicaid) and such services or payments; in-kind expenditures from third-party sources for the Tribal share of administration and training expenditures under title IV-E; and other provisions to carry out the Tribal-related amendments to title IV-E. This interim final rule includes these provisions and technical amendments necessary to implement a Tribal title IV-E program.

**DATES:** This rule is effective February 6, 2012. Consideration will be given to all comments received by March 6, 2012.

**ADDRESSES:** Interested persons may submit written comments to the Federal eRulemaking Portal: <http://www.regulations.gov>. Written comments also may be submitted via email to [CBComments@acf.hhs.gov](mailto:CBComments@acf.hhs.gov). Please include "Tribal Child Welfare" in the subject line of the message. Written comments also may be submitted via mail or courier delivery: Elizabeth Sharp, Division of Policy, Children's Bureau, Administration on Children, Youth and Families, Administration for

Children and Families, 1250 Maryland Avenue SW., 8th Floor, Washington, DC 20024.

**FOR FURTHER INFORMATION CONTACT:** Elizabeth Sharp, Children's Bureau, Administration on Children, Youth and Families, (202) 205-7265 or by email at [elizabeth.sharp@acf.hhs.gov](mailto:elizabeth.sharp@acf.hhs.gov). Do not email comments to this address.

#### SUPPLEMENTARY INFORMATION:

- I. Submitting Comments
- II. Background
- III. Justification for Interim Final Rule
- IV. Tribal and Stakeholder Consultation
- V. Section by Section Discussion of the Interim Final Rule
- VI. Impact Analysis

#### I. Submitting Comments

Although this interim final rule is effective without further regulatory action as indicated in the 'dates' section, we are soliciting comments from interested parties that we can use to determine the need for any further rulemaking. Comments should be specific, address issues raised by the rule, propose alternatives where appropriate, and explain reasons for any objections or recommended changes. You should reference the specific section of the interim final rule that is being addressed in the comment. We urge you to submit comments electronically to ensure we receive them in a timely manner.

#### II. Background

The Fostering Connections to Success and Increasing Adoptions Act of 2008, Public Law (Pub. L.) 110-351 (hereafter "Fostering Connections") was enacted on October 7, 2008. Prior to the law's enactment, the title IV-E program provided States and territories (hereafter, "States") with Federal funds to support eligible children in foster care, eligible children with special needs in adoptions, and the administrative expenses of States to operate the title IV-E program. As amended, the law permits Federally-recognized Indian Tribes, Tribal organizations or consortia (hereafter, "Indian Tribes") to apply to the Secretary of HHS to operate a title IV-E program beginning October 1, 2009.

By law, the requirements of title IV-E apply to a Tribal agency "in the same manner as this part [IV-E] applies to a State" (section 479B(b) of the Act), with limited exceptions specified in the law. This means that an Indian Tribe wishing to operate a title IV-E plan must adhere to most existing statutory and regulatory title IV-E requirements in place for a State title IV-E agency, with some exceptions provided in law. Those exceptions include: the ability for

Indian Tribes to define their own service areas and Tribal licensing standards; flexibility to use nunc pro tunc orders and affidavits to meet judicial determination requirements in the first 12 months of operation of the Tribal title IV-E plan; and, the ability to use in-kind third-party funding sources for sharing in the costs of the title IV-E program. As reflected throughout this rule, we determined that there are a very limited number of other variances necessary.

Public Law 110-351 also provides limited grants, beginning in Federal fiscal year (FY) 2009, to assist Indian Tribes that intend to implement a title IV-E program to develop a title IV-E plan. Eleven Indian Tribes have received a title IV-E development grant, and ACF expects to award grants to five more Indian Tribes in FY2011. Finally, the law permits a title IV-E agency to enter into a contract or cooperative agreement with an Indian Tribe to share in the administration of the title IV-E programs on behalf of Indian children.

In addition to creating these provisions unique to Indian Tribes, Fostering Connections contains new requirements and options for States and Indian Tribes with title IV-E plans. Public Law 110-351 permits a title IV-E agency the option to administer a new kinship guardianship assistance program under title IV-E, revises the eligibility criteria for the title IV-E adoption assistance program, allows a title IV-E agency the option to extend title IV-E foster care, adoption assistance, and kinship guardianship assistance payments to youth who meet certain conditions up to age 21, among other changes to the title IV-B and IV-E requirements. The entire text of Fostering Connections and issuances related to the new provisions can be found on the Children's Bureau's Web site at [www.acf.hhs.gov/programs/cb](http://www.acf.hhs.gov/programs/cb) and [www.acf.hhs.gov/programs/cb/laws\\_policies/implementation\\_foster.htm](http://www.acf.hhs.gov/programs/cb/laws_policies/implementation_foster.htm).

#### III. Justification for Interim Final Rule

Section 301(e) of Public Law 110-351 requires that we publish interim final rules generally to carry out the amendments made to title IV-E of the Act to authorize Indian Tribes to directly-operate title IV-E programs. Many of these amendments are present throughout this rule in the form of minor language changes to existing regulatory provisions to be inclusive of a Tribal title IV-E agency because the law mandates that we apply title IV-E requirements equally to States and Indian Tribes. Also, the law specifically requires that we develop and codify

procedures in an interim final rule to ensure that a transfer of responsibility for the placement and care of a child under a State title IV–E plan to a Tribal title IV–E plan or to an Indian Tribe with an agreement or contract under title IV–E does not affect the child’s eligibility for title IV–E or Medicaid. Further, the law requires that we address in interim final rules the types and amounts of in-kind expenditures that Indian Tribes may claim under a title IV–E plan. These specific requirements can be found in new sections of the regulation, 45 CFR 1356.67 and 1356.68.

We also are including several technical and conforming amendments to existing regulatory requirements that, although not directly related to the amendments of Public Law 110–351, clarify implementation of the title IV–E programs. These conforming amendments are to update statutory citations, remove obsolete references and make technical corrections. The Administrative Procedure Act provides an exception to the standard rulemaking process to propose rules and solicit comments prior to adopting a final rule where an agency finds good cause to adopt a rule without prior public participation (5 U.S.C. 553(b)(3)(B)). The good cause requirement is satisfied when prior public participation is impracticable, unnecessary, or contrary to the public interest. We find proposing rulemaking for these technical and conforming amendments impracticable and unnecessary since they are not substantive and only align the regulations with current law or practice. Moreover, we believe that delaying rulemaking on these technical amendments would be contrary to the public interest since doing so would cause significant confusion about the statutory and regulatory provisions to which Indian Tribes must adhere in implementing the title IV–E program for the first time. Therefore we find good cause to include these technical amendments in this interim final rule. More specific rationale for each amendment can be found in the section by section discussion.

#### IV. Tribal and Stakeholder Consultation

Section 301(e) of Public Law 110–351 requires us to consult with Indian Tribes and affected States prior to issuing interim final rules. Consistent with this requirement and the Department’s commitment to consult with Indian Tribes on a government-to-government basis, we conducted a series of consultation sessions with Indian Tribes and other Tribal stakeholders

prior to issuing these rules. On March 13, 2009, we published a **Federal Register** notice, 74 FR 10920 (hereafter, “FR notice”) inviting Tribal leaders and/or their representatives to attend one of seven in-person meetings held in Bloomington, Minnesota; Kansas City, Missouri; Seattle, Washington; Denver, Colorado; San Francisco, California; Dallas, Texas; and, Marksville, Louisiana. The FR notice also invited written comments from Tribal leaders or any other interested party.

Indian Tribes and other stakeholders were invited to provide input on the following questions:

- Considering that the Secretary is to apply title IV–E of the Act to Indian Tribes in the same manner as to States except where directed by law, what, if any, provisions and clarifications related to the title IV–E program for directly-funded Indian Tribes should be in regulations?

- Are guidelines above and beyond those provided pursuant to the Indian Child Welfare Act (ICWA) of 1974 needed to execute the transfer of placement and care responsibility of a title IV–E Indian child to an Indian Tribe operating a title IV–E plan? If so, please provide suggestions.

- What specific information pertaining to title IV–E and Medicaid should a State make available to an Indian Tribe that seeks to gain placement and care responsibility over an Indian child?

- Should the third-party sources and in-kind limits on Tribal administrative and training costs remain consistent with section 479B(c)(1)(D) of the Act? Please provide a rationale for this response.

- Any other comments regarding the development of an interim final rule per section 301(e) of Public Law 110–351.

The consultation was limited in scope and not intended to solicit comments on the remaining provisions of Public Law 110–351 or the title IV–E program in general. However, the consultations elicited a wide range of questions, issues and suggestions regarding implementation and operation of a title IV–E program. Further, we continue to listen to Tribal partners in ongoing consultations and less formal opportunities for discussion such as grantee meetings. Highlights of the comments that we received and how they are addressed in this regulation follow.

Commenters felt strongly that the requirement in Public Law 110–351 that title IV–E requirements apply to Indian Tribes in the same way as they apply to States, does not consider Indian Tribes’ sovereignty, cultural standards, lack of

historical funding under title IV–E and current economic circumstances. In particular, commenters requested: (1) Relief from the application of State-specific 1996 Aid to Families with Dependent Children (AFDC) requirements; (2) use of *nunc pro tunc* orders to ensure title IV–E eligibility for all Indian children who did not have the requisite court orders beyond the first twelve months of the approved Tribal title IV–E plan; and, 3) direct funding of selected components of the title IV–E plan of the Indian Tribe’s choosing. Although we respect Tribal sovereignty and standards and understand the unique situation of Indian Tribes in operating a long-standing Federal program for the first time, the existing statutory requirements of title IV–E of the Social Security Act do not allow us to meet these particular requests. Rather we have indicated in this interim final regulation the areas in which the law must be applied equally to Indian Tribes and States, where the law crafted unique requirements specific to Indian Tribes with title IV–E plans, and where there is discretion for the Indian Tribe to develop its own practices and approaches. We encourage Indian Tribes to seek technical assistance from the Children’s Bureau (CB) Regional Office staff in dealing with these issues.

Commenters sought more clarity about the relationships between States and Indian Tribes, and how those relationships may impact various parts of the title IV–E program and/or transfers of placement and care responsibility of a child from one jurisdiction to another. Commenters asked us to specify: (1) Which entities are responsible for funding Indian children in Tribal title IV–E programs; (2) the extent to which States may influence the direction of Tribal title IV–E plans/programs; and, (3) the extent of Tribal access to State-owned resources, such as funding, information systems, data and Medicaid program benefits. In general, we do not believe it necessary nor do we have the authority to prescribe the relationships between Indian Tribes and States. Rather, in this interim final regulation we have specified the minimum information States must provide to Indian Tribes with either a title IV–E plan or agreement when a child is transferred from the responsibility of the State to the Indian Tribe and we have explained that the law permits States and Indian Tribes to enter into various arrangements in support of Tribal title IV–E programs. A State that has a title IV–E plan under existing law may craft the relationships and partnerships it

desires with other public agencies, private child placing agencies and other contractors within broad Federal parameters. Indian Tribes with a title IV-E plan have this same discretion to enter into relationships and partnerships it finds beneficial in supporting the title IV-E plan. Through consultation, coordinated efforts and good faith negotiation of title IV-E agreements, States and Indian Tribes can determine for themselves issues of funding, responsibility, shared resources and services.

An overarching concern of most Tribal commenters was funding, and as such Indian Tribes requested: (1) More funding to operate the title IV-E program; (2) relief from provisions that limit in-kind contributions, require matching funds and/or allocation of costs; and (3) numerous clarifications about how title IV-E funding operates and interacts with other funding streams. We have clarified throughout this regulation how Indian Tribes may draw down title IV-E funding and will continue to make this a priority in further technical assistance activities. However, the title IV-E program's basic funding structure as a reimbursement program of a portion of an agency's expenses on behalf of eligible children, is not one that we can alter in the absence of statutory changes.

Finally, we received a number of specific questions about items that are not germane to this regulation. For example, we received questions about the Family Connection grants authorized by Public Law 110-351 (section 427 of the Act); availability of American Recovery and Reinvestment Act of 2009 ("stimulus") funding; and provisions for a kinship guardianship assistance program or an extension of title IV-E assistance to 18 to 21 year olds which are not specific to Indian Tribes. We will use the questions and comments we received in consultation that are outside this regulation to formulate other technical assistance efforts, policy proposals, and further consultation as appropriate.

## V. Section by Section Discussion of the Interim Final Rule

### *Section 1355.20—Definitions*

Section 1355.20 contains definitions pertaining to terms used in 45 CFR parts 1355, 1356 and 1357 of this title. We amended several definitions by removing references to "State" or "States" and replacing such references with the broader terms of "title IV-E agency" or "title IV-E agencies" or, by adding references to "Indian Tribe" or "Tribal" as descriptive terms. These

changes apply the terms defined in the regulation equally to States and Indian Tribes with an approved title IV-E plan pursuant to Public Law 110-351. These changes are made to the following definitions: "date a child is considered to have entered foster care", "entity", "foster care", "foster family home", "full review" and "permanency hearing." In some definitions we made additional conforming changes which are described below.

### Adoption

We amended the definition of the term "adoption" to include adoptions under Tribal law for Tribal title IV-E purposes. We understand that Indian Tribes finalize legal adoptions through court processes and/or through traditional or ceremonial processes, and therefore this change ensures that the term "adoption" is inclusive of adoptions finalized through these processes for Tribal title IV-E agencies.

### Child Care Institution

We amended the definition of a "child care institution" to account for the ability of an Indian Tribe that has an approved title IV-E plan pursuant to section 479B of the Act to license child care institutions in its service area. The revised definition provides three types of licensing authorities: A State licensing authority in the State in which the child care institution is located, a Tribal licensing authority with respect to a child care institution on or near an Indian Reservation, or the Tribal licensing authority of an Indian Tribe that operates a title IV-E plan pursuant to section 479B of the Act with respect to a child care institution in the Indian Tribe's service area.

A commenter requested that Indian Tribes be permitted flexibility with regard to the definition of "on or near an Indian Reservation." This language comes from section 1931 of the Indian Child Welfare Act of 1978 (ICWA) (Pub. L. 95-608) and applies to both child care institutions and foster family homes. The ICWA requirement states that for purposes of qualifying for funds under a Federally assisted program, e.g., titles IV-E and IV-B, licensing or approval of foster or adoptive homes or institutions on or near an Indian Reservation by an Indian Tribe is equivalent to licensing or approval by a State. There is no statutory or regulatory definition of this term. As such, if an Indian Tribe has a reservation, it has the discretion to make a reasonable determination of what it considers on or near the reservation. Another commenter requested clarification that the existing Tribal licensing authorities

may serve in the licensing role for title IV-E purposes. We confirm that the Indian Tribe has the discretion to use existing licensing authorities or create new authorities to license foster family homes or child care institutions on or near reservations and/or within a Tribal agency's service area.

### Foster Family Home

We amended the definition of "foster family home" to add a sentence that clarifies that the authority that licenses a foster family home must be a State licensing authority in the State in which the foster family home is located pursuant to section 471(a)(10) of the Act, a Tribal authority with respect to a foster family home on or near an Indian Reservation pursuant to section 1931 of ICWA, or the Tribal authority of an Indian Tribe that operates a title IV-E plan pursuant to section 479B(c)(2) of the Act with respect to a foster family home in the Tribal agency's service area. These changes are similar to the ones made to the definition of a child care institution.

During consultation, some commenters sought clarification of whether an Indian Tribe has to abide by Federal or State foster family home licensing/approval standards and exceptions to such standards such as, State rules that may limit the number of children in the home, Indian Health Service safety requirements, or requirements on driving. Another commenter sought flexibility in Federal Tribal licensing standards because of the limited nature of housing in Indian country and the unique cultural issues in Indian Tribes. In response, we would like to explain the foster family home licensing/approval requirements in title IV-E. Section 471(a)(10) of the Act requires the State or Tribal agency to establish or designate an authority for establishing and maintaining standards for foster family homes and child care institutions. An Indian Tribe that has a title IV-E plan will be responsible for establishing such an authority and applying the standards developed to the foster family homes or child care institutions in its service area and/or on or near its reservation. At a minimum, the licensing standards must cover admission policies, safety, sanitation, and protection of civil rights (see sections 471(a)(10) and 479B(c)(2) of the Act). Therefore, Indian Tribes may take into consideration the unique features of the housing, landscape and cultural norms in developing licensing or approval standards for foster family homes. In addition, standards must be applied equally to any licensed or approved foster family home receiving

title IV–B and IV–E funds, with one exception in section 471(a)(10) of the Act. The exception permits a title IV–E agency to waive the application of a standard unrelated to safety for relative foster family homes on a case-by-case basis. The title IV–E agency may not exclude relative homes, or any other group from the licensing requirement (see section 471(a)(10) of the Act and the definition of “foster family home” in 45 CFR 1355.20). There are no ACF prescribed standards for licensing or approving homes, although section 471(a)(10) of the Act requires standards to accord with recommended standards of national organizations. An Indian Tribe or a State may have to follow other Federal standards for licensure to the extent that the foster family homes are governed by other Federal laws and/or funding restrictions. Please note that for title IV–E funding purposes, criminal record and child abuse and neglect registry checks are a related but separate issue from licensure. Requirements related to the criminal record check provisions are in section 471(a)(20) of the Act and discussed in relation to section 1356.30 later in the preamble.

Some commenters sought clarification on whether Indian Tribes can use title IV–E to pay for children placed with prospective foster parents in the process of being licensed or approved as a foster family home. In certain circumstances, a title IV–E agency, including an Indian Tribe, may seek administrative cost reimbursement for eligible children placed with such prospective foster parents. Consistent with section 472(i)(1)(A) of the Act and policy at Child Welfare Policy Manual (CWPM) 8.1B Q/A #11, the title IV–E agency may claim administrative costs on behalf of an otherwise eligible child placed in an unlicensed or unapproved relative home for 12 months or the average length of time it takes the agency to license or approve a foster family home, whichever is less. During this time, an application for licensure or approval of the relative home as a foster family home must be pending. The title IV–E agency may only claim administrative costs in this situation for a child placed in an unlicensed or unapproved relative foster family home. For the purposes of this provision, a relative is defined by section 406(a) of the Act as in effect on July 16, 1996, and implemented in 45 CFR 233.90(c)(1)(v). In general, a title IV–E agency may not claim the cost of a title IV–E foster care maintenance payment on behalf of an otherwise eligible child until the first day of the first month in which the foster family home meets all licensure or approval

requirements. See CWPM 8.3A.8c Q/A #16.

#### Full Review

We amended the definition of “full review” to apply the definition equally to States and Indian Tribes by removing language that described the Child and Family Services Review (CFSR) as focused on child and family service programs “in the States” relative to “State” plans for title IV–B and IV–E. By removing this language, we make clear that the full reviews can occur in States or Indian Tribes with approved plans for both titles IV–E and IV–B. Further, we added parenthetical language to the definition of a full review to clarify that the statewide assessment, which is a component of the CFSR, may be an assessment of the Tribal service area in the case of a Tribal agency. For the purposes of title IV–E, a service area is defined by the Indian Tribe pursuant to section 479B(c)(1)(B) of the Act and for the purposes of title IV–B, it is the area covered by the Indian Tribe’s Child and Family Services Plan (CFSP). See sections 1355.31 through 1355.37 for a more complete discussion of the CFSRs as they apply to Indian Tribes with title IV–E plans.

#### Partial Review

We amended the definition of “partial review” to apply the process for reviewing title IV–E compliance to Indian Tribes with an approved title IV–E plan, consistent with section 479B(b) of the Act. As we did in the “full review” definition, we removed language that references States in paragraph (1) of the definition. This means that an Indian Tribe with an approved title IV–E plan will be subject to a partial review, if necessary, if there is a compliance issue that falls within the scope of the CFSR. Also, we added a new paragraph (3) to the definition to specify that partial reviews encompass Tribal title IV–E plan compliance issues that fall outside of the CFSR. This requirement is similar to the existing requirement for States in paragraph (2). Partial reviews do not pertain to Indian Tribes with only a title IV–B plan. Such compliance issues are regulated by the process described in sections 1355.30(n) and (p) instead.

#### Statewide Assessment (or Tribal Assessment)

We amended the definition of “statewide assessment” to apply the initial phase of a full review to Tribal title IV–E agencies by inserting the term “Tribal assessment.” This means that a Tribal assessment for a Tribal title IV–E agency is a review of all Federally-

assisted child and family services programs in the Tribal service area (as opposed to a review of all Federally-assisted child and family services programs in the State for a Statewide assessment). We also made an amendment to apply the assessment to the entire Tribal service area by inserting the phrase “(or for a Tribal title IV–E agency, in the service area).”

#### Title IV–E Agency

We added a new definition of a “title IV–E agency.” This definition is inclusive of a State or Tribal agency that administers or supervises the administration of both the title IV–B (subparts 1 and 2) plan and IV–E plan and a Tribal agency that administers or supervises the administration of both the title IV–B, subpart 1 and title IV–E plan. We added this definition pursuant to Public Law 110–351 which authorizes Indian Tribes to operate a title IV–E plan and requires ACF to apply the title IV–E program equally to States and Indian Tribes. This term is used throughout the interim final rule when we refer to common requirements for a State or Tribal title IV–E agency; we use the terms State agency (defined in this section of the regulation) or Tribal agency as described below, when we are referring to requirements unique to those entities.

#### Tribal Agency

We added a new definition of “Tribal agency.” Tribal agency means, for the purpose of title IV–E, the agency of the Indian Tribe, Indian Tribal organization or consortium of Indian Tribes that is designated to administer or supervise the administration of the title IV–E and title IV–B, subpart 1 plan. Section 479B(a) of the Act incorporates the definition of Indian Tribe in 25 U.S.C. 450b which is any Indian Tribe, band, nation, or other organized group or community that is recognized as eligible for special programs and services provided by the United States to Indians because of their status as Indians. Such Tribes are commonly referred to as Federally-recognized Indian Tribes. Section 479B(a) of the Act also incorporates the definition of Indian Tribal organization in 25 U.S.C. 450b which is a recognized body of an Indian Tribe. In this context, a consortium of Indian Tribes is two or more Federally-recognized Indian Tribes that agree to join for the purpose of operating the title IV–E plan.

*Section 1355.21—Plan Requirements for Titles IV–E and IV–B*

Section 1355.21 specifies the requirements for title IV–B and IV–E plans.

We changed the title of this section by removing the term “State” so that the section refers more generally to the plan requirements for titles IV–E and IV–B rather than “State plan” requirements. Similarly, we amended section 1355.21 in paragraphs (a), (b) and (c) to make conforming changes by removing the term “State” before “plan” and in paragraph (c) to replace the term “State agency” with the more general “title IV–E agency” to clarify that Indian Tribes with title IV–E plans must follow the same rules consistent with Public Law 110–351. These conforming changes apply the title IV–E and title IV–B plan requirements in section 1355.21 equally to States and Indian Tribes.

In addition, we amended paragraph (b) to add clarifying language that a title IV–E agency must comply with the applicable Departmental regulations described in section 1355.30. Section 1355.30 specifies which Departmental regulations apply to a title IV–E agency generally, or those that are specific to either a Tribal or State title IV–E agency.

In paragraph (c) as indicated above, we replaced the term “State agency” with “title IV–E agency” to make a conforming change. Through this conforming change, we apply the existing requirement that a title IV–E agency must make the title IV–E plan available for public review and inspection equally to all title IV–E agencies. Therefore, in addition to making the Child and Family Services Plans and the Annual Progress and Services Reports available for public review and inspection, an Indian Tribe with an approved title IV–E plan must make the title IV–E plan available for public review and inspection.

*Section 1355.30—Other Applicable Regulations*

Section 1355.30 identifies other Departmental regulations that are applicable to title IV–B and IV–E programs.

We amended the introductory paragraph to section 1355.30 to apply the regulations cited in this section to both State and Tribal title IV–B and title IV–E programs, as appropriate. The cited regulations are for: Departmental Appeals Board procedures (45 CFR 1355.30(a)), collecting claims (45 CFR 1355.30(b)), nonprocurement debarment and suspension (45 CFR 1355.30(c)), drug-free workplaces (45 CFR 1355.30(d)), nondiscrimination under

title VI of the Civil Rights Act and associated hearing procedures (45 CFR 1355.30(e)–(f)), nondiscrimination on the basis of handicap (45 CFR 1355.30(g)), nondiscrimination on the basis of age (45 CFR 1355.30(h)), lobbying restrictions (45 CFR 1355.30(j)), and grants and administration of public assistance programs (45 CFR 1355.30(k), (m) and (n)). The regulations in the above mentioned sections previously applied to State and Tribal title IV–B programs and State title IV–E programs. These amendments apply the regulatory requirements equally to Indian Tribes with a title IV–E plan consistent with Public Law 110–351. In addition, we made conforming amendments in the paragraphs described below that align these regulations with other regulatory and statutory changes implemented between November 2003 and January 2010.

We amended paragraph (c) to delete the Administration of Grants rules previously located in 45 CFR part 74 from the list of applicable requirements as 45 CFR part 74 is now obsolete. HHS moved a number of programs, including titles IV–B and IV–E, into the scope of 45 CFR part 92, and removed such programs from the scope of Part 74 (68 FR 52843–44, September 8, 2003). Therefore, an agency operating titles IV–B and IV–E programs is subject to the administrative rules published in 45 CFR part 92 as cited by amended section 1355.30(i) (see discussion below). We amended paragraph (c) further to add “2 CFR Part 376—Nonprocurement Debarment and Suspension” as an applicable regulation. This amendment reflects regulatory changes to the governmentwide Debarment and Suspension (nonprocurement) regulations at 45 CFR Part 76, which were previously cross-referenced in section 1355.30(d). HHS issued an interim final rule on March 1, 2007 which removed the full text of the Department’s debarment and suspension rules from 45 CFR part 76 and issued a new 2 CFR part 376 on nonprocurement debarment and suspension (72 FR 9233–9235). We believe that because this change is technical in nature there is no need to go through the notice and comment process to update the regulation.

We made a technical amendment to paragraph (d) to reflect changes in regulatory citations by deleting the current citation and replacing it with “2 CFR Part 382—Requirements for Drug-Free Workplace (Financial Assistance).” On November 26, 2003, HHS issued a final rule that implemented changes to the governmentwide nonprocurement

debarment and suspension common rule and the associated rule on drug-free workplace requirements (68 FR 66557). The rule on debarment and suspension was removed from Part 76 and codified at 2 CFR part 376 (see discussion in previous paragraph). The rule on drug-free workplace requirements was initially revised and codified in 45 CFR part 82, but effective January 11, 2010 these requirements were further simplified and relocated to 2 CFR 382 (74 FR 58189).

Paragraph (i) describes the Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments in 45 CFR part 92 that are applicable to the title IV–B and IV–E programs. We made a technical amendment to paragraph (i) by replacing the reference to the “Independent Living Program” with “the John H. Chafee Foster Care Independence Program” to reflect the name change and broader program purposes established in the Foster Care Independence Act of 1999. We also amended paragraph (i) to apply 45 CFR part 92 to Indian Tribes which operate Chafee Foster Care Independence Programs (CFCIP) in accordance with Section 477(j) of the Act.

We also amended paragraph (i) to maintain and clarify the current rule that Part 92 applies to State-operated title IV–E foster care and adoption assistance programs. The regulations cross-referenced in 45 CFR part 74 have moved to 45 CFR part 92, so we cite the relocated sections that do not apply to State title IV–E programs (matching or cost sharing requirements found at 45 CFR 92.24 which was formerly 45 CFR 74.23 and financial reporting requirements found at 45 CFR 92.41 which was formerly 45 CFR 74.52). Therefore, title IV–E policy and regulations continue to preclude States from using third-party in-kind contributions and places certain conditions on the use of donated funds as a source of non-Federal funds for the title IV–E foster care and adoption assistance programs.

Finally, we added language in paragraph (i) to apply 45 CFR part 92 to Tribal title IV–E plans for foster care and adoption assistance except that section 92.41 and the sections specified in section 1356.68 do not apply to a Tribal title IV–E agency.

Unlike States, title IV–E specifically allows Indian Tribes with an approved title IV–E plan to use in-kind contributions from third-party sources up to a specified percentage of the Indian Tribe’s cost sharing requirements for title IV–E administrative and training costs for certain fiscal years in

accordance with section 479B(c)(1)(D) of the Act. Regulations at 2 CFR part 225 Appendix B, Office of Management and Budget (OMB) Circular A-87, which set out cost principles for States, localities and Tribal Governments, apply to Indian Tribes and item 12b within that Circular requires that Indian Tribes that use third-party contributions follow 45 CFR part 92. Because an Indian Tribe may claim in-kind administrative and training contributions of its share of the title IV-E program from third-party sources, section 92.24 (formerly section 74.23) applies cost-sharing principals and section 92.41 (formerly section 74.52) applies financial reporting to an Indian Tribe's use of in-kind contributions from third-party sources.

We amended paragraph (k) to apply most of 45 CFR part 95 to both States and Indian Tribes with approved title IV-B and IV-E plans. The exceptions are specified in the subparagraphs detailed below. This is a conforming change consistent with section 479B(b) of the Act for an Indian Tribe with a title IV-E plan; it does not amend existing rules applicable to States or Indian Tribes with title IV-B plans or States with title IV-E plans.

We added a new subparagraph (k)(1), to maintain the exception to the applicability of 45 CFR 95.1(a), subpart A, to the State title IV-B program and the CFCIP for States, and to apply the exception to Indian Tribes operating title IV-B programs and CFCIP as well. The regulation at 45 CFR 95.1(a) specifies time limits for submitting financial claims which do not apply to the CFCIP or title IV-B programs; statutory provisions establish the claim submission timeframe.

We created a new subparagraph (k)(2) to explain that unlike States, 45 CFR part 95 subpart E, Cost Allocation Plans, is not applicable to Indian Tribes with an approved title IV-E plan pursuant to section 479B of the Act. This is because the Department of Interior (Interior) is the cognizant agency for cost allocation and Interior has provided for the use of indirect cost rates for Indian Tribes in accordance with that authority. However, ACF still retains authority for guiding the allocation and documentation of title IV-E costs pursuant to section 1356.60 and 2 CFR 225. As such, we issued guidance, ACYF-CB-PI-10-13, on how Indian Tribes can develop appropriate cost methodologies November 23, 2010.

We amended paragraph (m) to clarify that the regulations in 45 CFR 100.12 related to simplifying, consolidating or substituting federally required plans apply to States only. The regulatory provision relates to a process for

operationalizing intergovernmental partnership and Federalism principles for States. Although this particular provision applies only to States, other guidance reflects our commitment to working with Indian Tribes on a government-to-government basis. In particular, Executive Order 13175 (65 FR 6724, November 9, 2000) requires HHS to develop an accountable process to ensure "meaningful and timely input by Tribal officials in the development of regulatory policies that have Tribal implications."

In paragraph (n), which applies certain regulations related to grants for public assistance programs in 45 CFR part 201 to programs funded under titles IV-B and IV-E, we made minor amendments to remove references to "State" and replace them with more general references to apply the rules equally to Indian Tribes in subparagraph (n)(2). In addition we removed parenthetical marks but not the provisions within them, from paragraphs (n)(1) through (n)(4).

We amended paragraph (o) to clarify that the provision cross-referenced at 45 CFR 204.1 which requires that title IV-E plans be submitted for a Governor's review is applicable only to States. Indian Tribe's must submit their title IV-E plan to their designated Tribal leadership for review prior to submitting it to HHS. More instructions for doing so are included in the title IV-E plan preprint (most recently, in ACYF-CB-PI-09-08 issued October 14, 2009) which is applicable to States and Indian Tribes and is available on the CB Web site at [www.acf.hhs.gov/programs/cb](http://www.acf.hhs.gov/programs/cb).

#### *Section 1355.31—Elements of the Child and Family Services Review System*

This section specifies the scope of the CFSRs.

The CFSRs were established through regulations issued on January 25, 2000 (65 FR 4020) to monitor the performance of State child welfare programs consistent with section 1123A of the Act. The review assesses a title IV-E agency's substantial conformity with certain Federal requirements regarding child protection, foster care, adoption, family preservation and family support, and independent living services. The reviews are based on plan requirements in titles IV-B, subpart 1 and 2 of the Act and the title IV-E foster care and adoption programs. The reviews enable CB to: (1) Ensure conformity with Federal child welfare requirements; (2) determine what is actually happening to children and families as they are engaged in child welfare services; and, (3) assist agencies

to enhance their capacity to help children and families achieve positive outcomes.

We removed language in this section that limited the scope of the reviews to child and family services programs "administered by States," so that the CFSRs apply to such programs administered by a Tribal agency consistent with the requirement in Public Law 110-351 to apply the provisions of the title IV-E program equally to State and Tribal title IV-E agencies. The amendments in this section and throughout the CFSR related regulatory sections do not affect how we conduct CFSRs in States or our existing guidance to States engaged in the CFSR process. The application of the CFSRs to a Tribal title IV-E agency has been modified somewhat to take into consideration that such agencies are entering into a preexisting monitoring process. We encourage Indian Tribes to review the most recent CFSR procedures manual on CB's Web site, which explains the CFSR process in more detail ([http://www.acf.hhs.gov/programs/cb/cwmonitoring/tools\\_guide/proce\\_manual.htm](http://www.acf.hhs.gov/programs/cb/cwmonitoring/tools_guide/proce_manual.htm)).

#### *Section 1355.32—Timetable for the Reviews*

This section specifies the review timetable for the initial and subsequent CFSRs.

##### *Section 1355.32(a)—Initial Reviews*

In paragraph (a), we provide the timetable for the initial CFSR for a State or Tribal agency. The initial reviews for States were completed between FY's 2001 and 2004.

We amended paragraph (a) to specify a schedule of initial reviews for a Tribal title IV-E agency and replaced the reference to "Administration for Children and Families" with the acronym "ACF." The added provision establishes that each Tribal title IV-E agency must complete an initial full CFSR during the four-year period after we determine that the Indian Tribe has plans approved for each of the title IV-B subpart 1, title IV-B subpart 2 and title IV-E programs and has a sufficient number of cases to apply the procedures in section 1355.33(c). This new provision provides for reviews on an initial schedule for a Tribal agency similar to that for a State consistent with the statutory requirement to apply the title IV-E program rules equally to Indian Tribes with approved plans. However, we adjusted the timeframe to accommodate the unique position of Indian Tribes with approved title IV-E plans. When the initial reviews were scheduled for States, all States were

operating programs under both subparts of title IV–B and IV–E, and had been doing so for several years. This allowed us to set a fixed timeframe by which all States had to have an initial review. Since the title IV–E option is available to Indian Tribes on a continuous basis, we allow the timeframe for the initial review to vary depending on when an Indian Tribe's title IV–E plan is approved and other factors discussed below.

A title IV–E agency must have a sufficient number of children in foster care and children receiving in-home services during the period under review (i.e., those that have a case open for in-home services with the child welfare agency for a period of at least 60 days) from which we can select a sample of at least 30–50 cases for an on-site review as required by existing regulations. This sample is taken from a larger oversample of 150 foster care and 150 in-home services cases. At the time of promulgation of the CFSR process we were confident that States typically had at least this many child welfare cases open during our period under review. However, we understand that Indian Tribes operating title IV–E plans may not serve as many children at the initiation of their programs or for some years to follow. Therefore, to maintain fidelity with the existing CFSR process and apply the procedures equally to a Tribal title IV–E agency, we will not initiate a CFSR for such an Indian Tribe until we can select a sample that meets this threshold number of cases.

Finally, certain CFSR criteria are premised on the agency having in place a continuum of child welfare services as supported by the Federal requirements and provisions of title IV–B, subparts 1 and 2 (see 63 FR 50067), in addition to those of title IV–E. Indian Tribes which can be approved to operate a title IV–E program also must have a title IV–B, subpart 1 program for child welfare services (see CWPM Section 9.1 Q/A #4). However, there is nothing in Federal law that compels a Tribal title IV–E agency to operate the Promoting Safe and Stable Families Program under title IV–B, subpart 2. In fact, the existing provisions of title IV–B, subpart 2 limit the availability of grants under the program to those Indian Tribes who would qualify through the formula for a grant of at least \$10,000 (section 432(b)(2)(B) of the Act). We will conduct a full CFSR only if a Tribal title IV–E agency is operating both a title IV–B subpart 1 and 2 program.

Due to the many factors that must be met for ACF to conduct a CFSR of a Tribal agency, we will utilize all other existing monitoring protocols at our

disposal to ensure that such agencies are in compliance with Federal requirements and are achieving positive outcomes for children and families. Such protocols include reviewing and approving title IV–B plans and title IV–E plans, reviewing actual and estimated claims submitted on the CB–496 financial reporting forms each quarter and performance reported by Tribes in their title IV–B annual progress and service reviews, conducting partial reviews of requirements outside the scope of a CFSR of Federal requirements that we have reason to believe are out of conformity, and, as necessary, requiring Tribal title IV–E agencies to develop a program improvement plan to respond to areas we determine are out of substantial conformity. Consistent with section 1123A, the necessary elements of a program improvement plan and, if necessary, the amount of the withholding of Federal funds, will be commensurate with the extent of a Tribal title IV–E agency's non-conformity. See sections 1355.21, 1355.32(d), 1356.20 and 1357.15 for more information on ACF's oversight tools. In addition, ACF Regional Offices will continue to offer ongoing technical assistance to Indian Tribes as issues related to title IV–B and IV–E plans arise.

#### Section 1355.32(b)—Reviews Following the Initial Review

Paragraph (b) establishes the timetable for CFSRs after the initial review. We conduct a full review every five years following a review in which we determine the title IV–E agency to be operating in substantial conformity or two years after the approval of the Program Improvement Plan (PIP) if we determine that the title IV–E agency is not operating in substantial conformity.

We made a number of conforming amendments to paragraph (b) to apply the regulatory provisions for review timing following the initial review to a Tribal title IV–E agency in the same way as they are applied to a State title IV–E agency. Specifically, we amended paragraph (b)(1) to replace the reference to “State” with “title IV–E agency.” In paragraph (b)(1)(ii) we added reference to an assessment of the Tribal service area to parallel the reference to a statewide assessment, we removed “statewide” from the second and third sentences, we replaced the first reference to “State” with “title IV–E agency”, we replaced the reference to “Administration for Children and Families” with the acronym “ACF”, we added the phrase “or Indian Tribe's” to follow “the State's”, and we removed the word “State” from the phrase “State

plan requirements subject to review.” In paragraph (b)(2) we removed the word “State” in the phrase “a State program.” In sum, these changes mean that once a Tribal title IV–E agency has had an initial CFSR review, a subsequent review will occur five years later if the agency is found in substantial compliance or two years following an approved PIP for an agency that is not in substantial conformity.

#### Section 1355.32(c)—Reinstatement of Reviews Based on Information That a Title IV–E Agency Is Not in Substantial Conformity

Paragraph (c) describes the requirements for reinstatement of a full or partial review and describes the types of information that may require a review.

In paragraph (c) we made a number of conforming amendments to apply the requirements for reinstatement of a full or partial review to a Tribal title IV–E agency in the same way as the requirements are applied to a State title IV–E agency. Specifically, we amended paragraphs (c) and (c)(1) through (4) to replace all references to “State” with “title IV–E agency.”

#### Section 1355.32(d)—Partial Reviews Based on Noncompliance With Plan Requirements That Are Outside the Scope of a Child and Family Services Review

This section sets the parameters for addressing noncompliance with title IV–B and IV–E plan requirements that are outside of the scope of a child and family services review in the form of a partial review. In paragraph (d), we made conforming amendments to apply the partial review process to a Tribal title IV–E agency in the same way it is applied to a State title IV–E agency. Specifically, we amended the title to remove the term “State” that preceded “plan” and we replaced all references to “State” with “title IV–E agency” in paragraphs (d)(1) through (d)(4).

#### Section 1355.33—Procedures for the Review

This section sets forth the CFSR process and outlines general procedures for both the CFSR assessment and the on-site review portions of the review.

#### Section 1355.33(a)

Paragraph (a) describes the two phases of the review process and the review team membership. We made a number of conforming amendments to this paragraph to apply the two-part review process and review team membership to a Tribal title IV–E agency in the same way they are applied

to a State title IV–E agency. Specifically, we amended paragraph (a)(2) to change “State” to “title IV–E agency” to indicate that when there is a CFSR of a Tribal title IV–E agency, the review team will consist of representatives from ACF and the Tribal title IV–E agency. This parallels the review team composition for CFSRs conducted in States. We amended paragraphs (a)(2)(i), (a)(2)(ii) and (a)(2)(iv) to replace all references to “State” with “title IV–E agency.” In addition, we amended paragraph (a)(2)(i) to remove the word “State” from the phrase “State child and family services agency” and the phrase “State and local” from the phrase “State and local offices.” These changes apply the two steps of the review process equally to States and Indian Tribes as required by Public Law 110–351.

#### Section 1355.33(b)—Statewide or Tribal Assessment

In this paragraph, we describe the assessment process in more detail. The assessment involves representatives from the title IV–E agency and external stakeholders, reviewing and analyzing data to evaluate the strengths and needs of the child and family services system.

We made a number of conforming amendments in paragraph (b) to apply the requirements of the assessment process to a Tribal title IV–E agency in the same way they are applied to a State title IV–E agency, as required by Public Law 110–351. We amended the title to include “or Tribal” to precede “assessment” so it is clear that there is either a State or Tribal assessment, depending on which is the title IV–E agency subject to the CFSR. We indicated that in the case of the Tribal title IV–E agency, the assessment covers the scope of the Indian Tribe’s service area, including both the Indian Tribe’s title IV–E service area (as defined by the Indian Tribe in the title IV–E plan) and the title IV–B service area (that is, the area covered by the Indian Tribe’s CFSP). In paragraph (b)(1) we replaced references to “statewide” with “statewide/Tribal” and in paragraph (b)(2) we replaced references to “statewide” with “statewide/Tribal service area” to precede “data indicators.” This is a technical change to apply the data indicators equally to both State and Tribal IV–E agencies, as there is a single set of data indicators for Tribes and States. We also made changes throughout paragraphs (b) and (b)(2) through (b)(6), to replace all references to “State” and “State agency” with “title IV–E agency” and remove “statewide” where it prefaced “assessment.” These changes ensure

that the assessment provisions are parallel for States and Indian Tribes.

#### Section 1355.33(c)—On-Site Review

Paragraph (c) describes requirements for the on-site review process, including information on the scope of the review, the review sites, sources of information used in the review, and case sampling.

In paragraph (c) we made a number of conforming amendments to apply the regulatory requirements of the on-site review process to a Tribal title IV–E agency in the same way they are applied to a State title IV–E agency, with the exception of one requirement in paragraph (c)(2) discussed below. Specifically, we made conforming amendments to paragraphs (c)(1) through (c)(3) by replacing most references to “State” with “title IV–E agency.” We also amended paragraph (c)(4)(iv) to include reference to an Indian Tribe’s CFSP in the same way that we reference a State’s CFSP and replaced the reference to the “statewide” assessment to the “statewide/Tribal” assessment in paragraph (c)(6). In paragraph (c)(2), we maintain the reference to the State’s largest metropolitan area as a mandatory location for the on-site portion of the CFSR and did not include a mandate for a similar location for a Tribal CFSR. We kept this provision as is because we recognize that the Tribal title IV–E agency’s service area in most cases will not include a metropolitan area at all, or if there is a metropolitan area, it may not represent a subdivision in which a large number of child welfare services cases can be found as was the intention with the original requirement.

Taking the paragraph as amended as a whole, for Indian Tribes the on-site review will consist of a review of a title IV–E agency’s title IV–B and IV–E programs in operation in the title IV–E agency’s service area. The review will be planned jointly between ACF and the Tribal title IV–E agency, may focus on several political subdivisions in the Tribal service area (e.g., different Tribal organizations included in a Tribal consortium) as guided by information in the assessment, and will involve the gathering of information during the on-site portion of the review from Tribal agency staff, families who are served by the agency and stakeholders internal and external to the agency, including those who participated in the development of the Indian Tribe’s CFSP. The review will focus on at least 30 cases of foster care and in-home services cases, taken from a larger oversample of cases for each, which may be used to resolve discrepancies between the assessment and the on-site review.

#### Section 1355.33(d)—Resolution of Discrepancies Between the Assessment and the Findings of the On-Site Portion of the Review

In paragraph (d), we describe the process for resolving discrepancies between the assessment and the on-site portion of the review through either, at the title IV–E agency’s option, the submission of additional information or the review of additional cases.

In paragraphs (d), (d)(1) and (d)(2), we made conforming amendments to apply the regulatory requirements for resolution of such discrepancies to a Tribal title IV–E agency in the same way they are applied to a State title IV–E agency by removing the reference to “State” and replacing it with “title IV–E agency.” The paragraph now requires that discrepancies between the assessment and the findings of the on-site portion of the review be resolved by either information submitted by the title IV–E agency or the review of additional cases, as opted by the title IV–E agency.

#### Section 1355.33(e)—Partial Review

In paragraph (e) we outline when a targeted partial child and family services review will be conducted. We made a conforming amendment in this paragraph to apply the regulatory requirements of the partial review process to a Tribal title IV–E agency in the same way they are applied to a State title IV–E agency by removing the reference to “State” and replacing it with “title IV–E agency.” In the case of a Tribal title IV–E agency, partial CFSRs will be planned and conducted jointly by ACF and the Tribal title IV–E agency based on the nature of the concern.

#### Section 1355.33(f)—Notification

Paragraph (f) provides for ACF to notify the title IV–E agency as to whether it is, or is not, operating in substantial conformity within 30 days following a full review, partial review or resolution of a discrepancy between the findings of the on-site review and the statewide/Tribal assessments. In this paragraph we made conforming amendments to apply the regulatory requirements of the notification process to a Tribal title IV–E agency in the same way they are applied to a State title IV–E agency by removing the references to “State agency” and “State” and replacing them with “title IV–E agency.” We also removed references to “statewide” where it preceded “assessment” so that it is inclusive of either State or Tribal assessments. ACF will therefore notify the title IV–E agency, whether State or Tribal, of its

conformity status within 30 days of the events mentioned above.

*Section 1355.34—Criteria for Determining Substantial Conformity*

This section describes the criteria that will be used to determine a title IV–E agency’s degree of conformity with specified title IV–B and IV–E plan requirements for each outcome and systemic factor of the title IV–E agency’s service delivery system that undergoes review.

**Section 1355.34(a)—Criteria To Be Satisfied**

Paragraph (a) describes the basic criteria used to determine the title IV–E agency’s substantial conformity with applicable CFSP requirements based on: (1) The achievement of the seven outcomes specified in paragraph (b); and (2) the functioning of seven core systemic factors directly related to the title IV–E agency’s capacity to deliver services leading to improved outcomes. In paragraph (a) we made conforming amendments to apply these basic criteria to a Tribal title IV–E agency in the same way they are applied to a State title IV–E agency by removing the word “State” from the phrase “title IV–B and IV–E State plan requirements” and removing the references to “State” in paragraphs (a) and (a)(3) and replacing them with “title IV–E agency.” In paragraph (a)(1) we replaced the phrase “statewide” with “statewide/Tribal service area” to preface data indicators. This is a technical change to apply the data indicators equally to both States and Tribes, as there are not separate data indicators for each.

**Section 1355.34(b)—Criteria Related to Outcomes**

Paragraph (b) describes the seven outcomes in the areas of child safety, permanency for children and child and family well-being used for the purposes of the review. The title IV–E agency’s substantial conformity will be determined based on its ability to substantially achieve these outcomes. We made several conforming amendments in paragraph (b) to apply the regulatory requirements to a Tribal title IV–E agency in the same way they are applied to a State title IV–E agency and to update obsolete citations. Specifically, we made conforming amendments to remove the references to “State” in paragraphs (b)(1) through (b)(3) and in most cases replacing them with “title IV–E agency.” We also removed the reference to the title IV–B assurances being made “by the State” so that more general language remains to

allow for the review of these assurances when made by the Indian Tribe.

To remove and replace out-of-date statutory references with current citations, we amended: Paragraph (b)(2)(ii)(C) by removing reference to section “422(b)(9)” and replacing it with “422(b)(7)”; paragraph (b)(2)(ii)(D) by removing the reference to section “422(b)(10)(C)(i) and (ii)” and replacing it with “422(b)(8)(B)”; paragraph (b)(2)(ii)(E) by removing the reference to section “422(b)(11)” and replacing it with “422(b)(9)” and paragraph (b)(2)(ii)(F) by removing the reference to section “422(b)(12)” and replacing it with “422(b)(10).” We believe that because these changes are technical in nature there is no need to go through the notice and comment process to update the regulation.

We did not change the reference to the State’s compliance with ICWA in paragraph (b)(2)(ii)(E) as one of the CFSP assurances subject to review to make it also applicable to a Tribal title IV–E agency. This is because the ICWA provisions cited in section 422 of the Act and referenced here are those provisions which apply to State court proceedings and handling of custodial issues with regard to Indian children. Such provisions are not applicable to Indian Tribes and therefore cannot be a part of a review of Tribal title IV–E agency compliance with title IV–B and IV–E provisions.

We amended paragraphs (b)(2)(i), (b)(3)(i) and (b)(4) by replacing the term “statewide” with “statewide/Tribal service area” prior to “data indicator.” This allows ACF to develop data indicators based on title IV–E agencies’ Adoption and Foster Care Analysis and Reporting System (AFCARS) and National Child Abuse and Neglect Data System (NCANDS) data and make such indicators a factor in substantial conformity for both State and Tribal IV–E agencies. However, we did not alter the references to “statewide” indicators in paragraph (b)(5) as they refer to the data standards that were set initially in 2000 and not to those that may be established in the future. Any changes to the actual indicators that are applicable to the CFSR will be announced by ACF, as applicable, through other means, such as a **Federal Register** notice or other formal issuance.

**Section 1355.34(c)—Criteria Related to Title IV–E Agency Capacity To Deliver Services Leading to Improved Outcome for Children and Families**

In paragraph (c) we describe criteria for the seven core systemic factors that we evaluate to determine the agency’s

capacity to deliver services that improve outcomes for children and families.

We made several conforming amendments in paragraph (c) to apply the regulatory requirements to a Tribal title IV–E agency in the same way they are applied to a State title IV–E agency and to update outdated citations. The substance of the systemic factors remains the same with these conforming changes.

To apply the regulatory requirements to a Tribal title IV–E agency in the same way they are applied to a State title IV–E agency we removed references to “State” or “State’s” in paragraphs (c), (c)(2), (c)(3), (c)(4)(iv), (c)(5)(v) and (c)(6)(iv). We also removed and replaced references to “State agency” with “title IV–E agency” in the title, paragraphs (c), (c)(2) and (c)(2)(iii), (c)(3), (c)(4) and (c)(4)(i), (c)(5), (c)(6)(i), and (c)(7)(iii) through (c)(7)(v). We amended the title of paragraph (c)(1), paragraph (c)(4)(v) and (c)(6)(i) by replacing the terms “Statewide” with “Statewide/Tribal”, “State-licensed” with “State/Tribal-licensed”, “State-approved” with “State/Tribal-approved”, “county” with “county/local” and “State” with “State/Tribal” respectively. We amended paragraphs (c)(2)(i) and (c)(3)(i) by adding the phrase “Tribal service area” to follow “State.” We amended paragraphs (c)(7)(i) and (ii) by adding the phrase “or Tribe” to follow the word “State.”

To conform the regulation to current law as amended in this section, we updated several statutory references. In particular we amended: Paragraph (c)(1) by replacing the citation to section “422(b)(10)(B)(i)” with “422(b)(8)(A)(i)”; paragraphs (c)(2)(i) through (v) by replacing the citation to section “422(b)(10)(B)(ii)” with “422(b)(8)(A)(ii)”; paragraph (c)(5) by removing the citation to section “422(b)(10)(B)(iii)” and replacing it with “422(b)(8)(A)(iii)”; paragraph (c)(7)(iv) by removing the citation to section “422(b)(9)” and replacing it with “422(b)(7)”; and, paragraph (c)(7)(v) by removing the citation to section “422(b)(12)” and replacing it with “422(b)(10).” Further, we are amending one regulatory reference that we have discovered is incorrect. In paragraph (c)(6)(i) we are replacing the reference to 45 CFR 1357.15(l)(4) to the correct reference to the title IV–B consultation requirements in 45 CFR 1357.15(l)(3).

**Section 1355.34(d)—Availability of Review Instruments**

This paragraph describes the availability of review instruments to those subject to CFSRs. We made a conforming amendment in paragraph (d)

to apply the section to a Tribal title IV–E agency in the same way it is applied to a State title IV–E agency by removing the word “States” from the phrase “make available to States” and replacing it with the term “title IV–E agencies.” Therefore, review instruments will be made available to both States and Indian Tribes that are subject to the CFSR.

*Section 1355.35—Program Improvement Plans*

This section describes the requirements for developing, implementing and reviewing program improvement plans and for providing technical assistance to a title IV–E agency in implementing the program improvement plans. It implements the requirement in section 1123A(b)(4) of the Act that a title IV–E agency found not to be in substantial conformity be afforded the opportunity to develop and implement a corrective action plan. These plans are termed PIPs and are developed through a partnership between the title IV–E agency and ACF. In addition to the changes described below, we added a statement after paragraph (f) indicating that the information collection requirements in this section have been approved by OMB and providing the applicable OMB Control Number.

*Section 1355.35(a)—Mandatory Program Improvement Plan*

This paragraph describes the requirement that a PIP must be developed jointly by the title IV–E agency and Federal staff when the title IV–E agency is not in substantial conformity, and describes the content requirements for the PIPs. In paragraph (a) we made several conforming amendments to apply the regulatory requirements of the mandatory PIPs to a Tribal title IV–E agency in the same way they are applied to a State title IV–E agency. Specifically, we removed the references to “State”, “States” and “State’s” and replaced them with “title IV–E agency”, “title IV–E agencies” and “title IV–E agency’s” in paragraphs (a)(1), (a)(1)(i), (a)(1)(ii), (a)(1)(v) and (a)(2). We also amended paragraph (a)(1)(iv) by replacing the term “statewide” with “statewide/Tribal.”

*Section 1355.35(b)—Voluntary Program Improvement Plan*

This paragraph explains the requirements for a voluntary PIP, developed jointly by the title IV–E agency and an ACF Regional Office when the title IV–E agency is in substantial conformity but elects to develop a plan to target areas in need of improvement. In paragraph (b) we made

several conforming amendments to apply the regulatory provisions for voluntary PIPs to a Tribal title IV–E agency in the same way they are applied to a State title IV–E agency by removing the references to “States” “State” and “State’s” and replacing them with “title IV–E agencies,” “title IV–E agency” and “title IV–E agency’s” in paragraphs (b), (b)(1) and (b)(3), respectively.

*Section 1355.35(c)—Approval of Program Improvement Plans*

This paragraph outlines the requirements for the approval of a mandatory PIP by ACF, and sets a 90-day timeline for the initial submission of the PIP with a 30-day timeline for the resubmission of a plan in need of revision to meet the approval requirements, as well as when ACF will begin to withhold funds. In paragraph (c) we made several conforming amendments to apply the regulatory requirements which govern PIPs to a Tribal title IV–E agency in the same way they are applied to a State title IV–E agency by removing the references to “State” and replacing them with “title IV–E agency” in paragraphs (c)(1), (c)(3) and (c)(4).

*Section 1355.35(d)—Duration of Program Improvement Plans*

This paragraph describes ACF’s authority for establishing time frames, not to exceed two years, for the completion of PIPs, extensions of deadlines, the required title IV–E agency quarterly status reports to ACF. In paragraph (d) we made several conforming amendments to apply these regulatory requirements to a Tribal title IV–E agency in the same way they are applied to a State title IV–E agency by removing the references to “State” and replacing them with “title IV–E agency” in paragraphs (d)(3) and (d)(4).

*Section 1355.35(e)—Evaluating Program Improvement Plans*

This paragraph outlines the requirements for the joint evaluation of a PIP by the title IV–E agency and ACF and the ability to jointly renegotiate a PIP, as applicable. We made several conforming amendments to apply these regulatory requirements to a Tribal title IV–E agency in the same way they are applied to a State title IV–E agency by removing the references to “State” and “State’s” and replacing them with “title IV–E agency” and “title IV–E agency’s” respectively in paragraphs (e), (e)(1) through (e)(4) and (e)(4)(i). We also amended paragraph (e)(1) and (e)(4)(i) by replacing the term “statewide” with “statewide/Tribal service area” to precede “data indicators” as they are

applied equally to State and Tribal title IV–E agencies.

*Section 1355.35(f)—Integration of Program Improvement Plans With CFSP Planning*

This paragraph describes the requirement that the elements of the PIP be incorporated into the goals and objectives of the CFSP and the annual reviews and progress reports related to the CFSP. In paragraph (f) we made a conforming amendment to apply the regulatory requirements for integrating PIPs into CFSPs to a Tribal title IV–E agency in the same way they are applied to a State title IV–E agency by removing the reference to “State’s” and replacing it with “title IV–E agency’s.”

*Section 1355.36—Withholding Federal Funds Due to Failure To Achieve Substantial Conformity or Failure To Successfully Complete a Program Improvement Plan*

This section describes the pool of funds that are subject to withholding and the process for withholding Federal funds due to the failure of the title IV–E agency to meet the CFSR criteria for substantial conformity. The provisions address the method we use to determine the amount of funds to be withheld and the conditions under which such withholding may be applied, or if applicable, suspended or terminated.

We made several conforming amendments to apply the regulatory requirements for withholding funds to a Tribal title IV–E agency in the same way they are applied to a State title IV–E agency by removing all references to “State”, “States” and “State’s” and replacing them with “title IV–E agency”, “title IV–E agencies”, and “title IV–E agency’s” respectively in paragraphs (a)(1) and (2), (b), (b)(1) through (4), (b)(4)(i) and (ii), (b)(6), (b)(7), (b)(7)(iii), (b)(8), (b)(8)(iii), (c)(1), (c)(1)(ii), (d), (e)(1), (e)(2)(i), (e)(2)(iii), and (e)(3) through (5).

We made a technical amendment to paragraph (e)(5) to reflect changes in regulatory citations by deleting the current citation and replacing it with “45 CFR 30.18.” On March 8, 2007 HHS issued a final rule that implemented the provisions of the Debt Collection Improvement Act of 1996 (72 FR 10404). The rule on interest, penalties and administrative costs was removed from 45 CFR 30.13 and codified at 45 CFR 30.18.

*Section 1355.37—Opportunity for Public Inspection of Review Reports and Materials*

This section requires the title IV–E agency to make all statewide or Tribal

assessments, reports of findings, and PIPs available for public review. In this paragraph we made a conforming amendment to apply the regulatory requirements related to making these documents available to the public to a Tribal title IV–E agency in the same way they are applied to a State title IV–E agency by removing the reference to “State” and replacing it with “title IV–E,” and by adding the phrase “or Tribal” before “assessment.”

*Section 1355.38—Enforcement of Section 471(a)(18) of Act Regarding the Removal of Barriers to Interethnic Adoption*

This section implements the provisions of sections 474(d)(1) and (2) of the Act, which contain enforcement provisions regarding the requirements in section 471(a)(18) of the Act. Section 471(a)(18) of the Act prohibits a title IV–E agency, or any other entity in the State/Tribe that receives Federal funds and is involved in adoption or foster care placements, from denying an individual the opportunity to foster or adopt on the basis of the child’s or the prospective parent’s race, color or national origin, or delay or deny a child’s placement in foster care or adoption on that basis. Section 1355.38 describes the existing process for addressing an identified violation of section 471(a)(18) of the Act by a title IV–E agency, including corrective action plans and withholding. This process includes collaboration with the Department’s Office for Civil Rights (OCR) due to its significant expertise in investigating alleged civil rights violations including involvement in the development and implementation of corrective action plans. We want to note that section 471(a)(18) of the Act does not affect how ICWA applies.

With the exception of paragraph (d), where no changes were necessary, we made amendments to apply the regulatory requirements related to violations of section 471(a)(18) of the Act to a Tribal title IV–E agency in the same way they are applied to a State title IV–E agency in each paragraph. We accomplished this by removing the references to “State”, “States” and “State’s” in each place those terms appeared and replacing them with “title IV–E”, “title IV–E agencies” and “title IV–E agency’s” respectively. We also added the word “Tribe” to the phrase “an entity in the State” in paragraph (a)(2).

We made a technical amendment to paragraph (h)(4) to reflect changes in regulatory citations by deleting the current citation and replacing it with “45 CFR 30.18.” On March 8, 2007 HHS

issued a final rule that implemented the provisions of the Debt Collection Improvement Act of 1996 (72 FR 10404). The rule on interest, penalties and administrative costs was removed from 45 CFR 30.13 and codified at 45 CFR 30.18.

In addition to the change described above, we added a statement following the end of paragraph (h) providing that the information collection requirements in this section have been approved by the Office of Management and Budget (OMB) and provide the applicable OMB Control Number.

*Section 1355.39—Administrative and Judicial Review*

Section 1355.39 describes the administrative and judicial review requirements applicable to a title IV–E agency if the agency appeals a finding of non-conformity with title IV–E or IV–B plan requirements.

We amended section 1355.39 in the opening paragraph of the section and paragraphs (b) and (c) to replace the term “State” with “title IV–E agency” pursuant to Public Law 110–351. In doing so, we apply the appeal procedures for title IV–E agencies in 45 CFR Part 16 equally to State and Tribal title IV–E agencies. The term “title IV–E agency” is inclusive of both State and Tribal programs with a plan approved pursuant to section 471(a) of the Act.

Part 16 allows a title IV–E agency to file an appeal related to the operation of the title IV–B and IV–E programs to the HHS Departmental Appeals Board (DAB). The DAB is authorized to review disputes in HHS programs (45 CFR Part 16 Appendix A). The DAB specifically has jurisdiction over disputes arising from title IV–E disallowances, and title IV–B and IV–E withholding determinations. In accordance with section 1123A(c)(3) of the Act, we provide a title IV–E agency with the opportunity to appeal DAB decisions in the district court for the judicial district in which the principal or headquarters office of the agency responsible for administering the program is located.

*Section 1355.40—Foster Care and Adoption Data Collection*

*Section 1355.40(a)—Scope of the Data Collection System*

Paragraph 1355.40(a) describes the scope of the data collection system and the reporting populations that each title IV–E agency is to include in submissions to ACF. The system is called AFCARS.

We made several conforming amendments to apply the regulatory requirements for data collection and

reporting to a Tribal title IV–E agency in the same way they are applied to a State title IV–E agency either by removing references to “State”, “States” and “State’s” and replacing them with “title IV–E agency”, “title IV–E agencies”, and “title IV–E agency’s” respectively, or by adding a similar provision for a Tribal title IV–E agency.

In paragraph (a)(1) we removed specific dates when States were to begin collecting and transmitting data after the original AFCARS final rule (58 FR 67912) was issued in 1993 because they are obsolete. We believe that because these changes are technical in nature there is no need to go through the notice and comment process to update the regulation. An Indian Tribe will begin collecting and transmitting AFCARS data after we approve the Indian Tribe’s title IV–E plan, so the specific date will vary among Tribal title IV–E agencies.

In paragraphs (a)(2) and (a)(3) we added a requirement for children in an Indian Tribe’s placement and care responsibility and children placed for adoption that is similar to the State requirement in paragraphs (a)(2) and (a)(3). For children in the Tribal title IV–E agency’s placement and care responsibility or who are placed in foster care or for adoption and who are placed outside of the Tribal service area, the Indian Tribe placing the child and making foster care payments or adoption assistance payments must submit and continually update the data for each such child.

*Section 1355.40(b)—Foster Care and Adoption Reporting Requirements*

Paragraph (b) describes the requirements for transmitting foster care and adoption data, including timelines for submission, child-specific data requirements, summary file requirements and internal data consistency checks. We made several conforming amendments to apply the regulatory requirements for foster care and adoption reporting requirements to a Tribal title IV–E agency in the same way they are applied to a State title IV–E agency either by removing references to “State”, “States” and “State’s” and replacing them with “title IV–E agency”, “title IV–E agencies”, and “title IV–E agency’s” respectively, or by adding a similar provision for a Tribal title IV–E agency.

*Section 1355.40(c)—Missing Data Standards*

Paragraph (c) describes what we consider to be missing data, which is a factor in determining compliance with the AFCARS requirements. We are amending paragraph (c)(2) and

removing (c)(3) to remove obsolete references to a financial penalty as a consequence of an agency exceeding the threshold for missing data. In the case of paragraph (c)(2) we removed the reference to an obsolete penalty in paragraph (c)(3) and modified the language to accurately state that exceeding the missing data threshold is considered substantial noncompliance. We also completely removed paragraph (c)(3) and its references to penalties as these provisions are obsolete. Enactment of the Adoption Promotion Act of 2003 (Pub. L. 108-145), which added section 474(f) to the Act superseded these penalties in regulation, rendering them obsolete. We indicated in ACYF-CB-IM-04-04 that no penalties would be assessed until we issue revised final AFCARS regulations, yet to be published. In the interim, a title IV-E agency that exceeds the missing data threshold or any other AFCARS standard has an opportunity to correct its data, and failing that receives a notice that it is not in compliance. We believe that because these changes are technical in nature there is no need to go through the notice and comment process to update the regulation.

We find proposed rulemaking for these technical amendments to bring the regulation in line with existing practice impracticable and unnecessary since they are not substantive. States have not been subject to penalties for some time and Tribal title IV-E agencies will not be subject to these penalties until new regulations state otherwise. Moreover, we believe that delaying rulemaking on these technical amendments would be contrary to the public interest since doing so would cause significant confusion about the statutory and regulatory provisions which Indian Tribes must abide by in implementing the title IV-E program for the first time. Rather, it is prudent to change the regulation now to conform to existing practice so that States and Indian Tribes have an equal understanding that there is not an existing financial penalty being implemented due to noncompliance with AFCARS requirements. Therefore, we find good cause to include these technical amendments, and similar ones described below, in this interim final rule.

#### Section 1355.40(d)—Timeliness of Foster Care Data Reports

In paragraph (d) we renumbered paragraph (d)(1) as (d) and amended it to indicate that, in accordance with current policy, a title IV-E agency that does not meet the threshold for timely transaction date entries will be found in substantial noncompliance. We

removed paragraph (d)(2), in its entirety because it references paragraph (e) regarding penalties for missing data, which is obsolete. We believe that because this change is technical in nature there is no need to go through the notice and comment process to update the regulation.

#### Section 1355.40(e)—Substantial Noncompliance

In paragraph (e) we describe what constitutes substantial noncompliance with the AFCARS requirements. We renamed the title “Substantial Noncompliance” as opposed to “Penalties” and removed the second sentence of paragraph (e)(1) that discussed penalties. We deleted paragraphs (e)(2), (3), (4), and (5) and renumbered paragraph (e) accordingly. All of the changes to this paragraph were to bring the regulation in line with the current practice which does not penalize a title IV-E agency for noncompliance with the AFCARS standards, as discussed previously.

In addition to the changes described above, we added a statement after the end of paragraph (e) providing that the information collection requirements in this section have been approved by the OMB and providing the applicable OMB Control Number.

#### Section 1355.50—Purpose of This Part

Section 1355.50 describes the procedures and requirements a title IV-E agency must meet to receive Federal financial participation for the automated child welfare information system.

We amended section 1355.50 to make a conforming change by replacing the term “States” with “title IV-E agencies” to comply with Public Law 110-351 which permits Indian Tribes pursuant to an approved plan under title IV-E to operate a title IV-E program directly. We added “or Tribal” to follow reference to the “statewide” system to be inclusive of Tribal systems. Consequently, this conforming amendment applies the regulatory requirements to receive Federal financial participation for the planning, design, development, installation and operation of automated child welfare information systems equally to States and Indian Tribes operating title IV-E programs.

#### Section 1355.52—Funding Authority for Statewide or Tribal Automated Child Welfare Information Systems (SACWIS/TACWIS)

Section 1355.52 describes the requirements a title IV-E agency must follow to claim Federal reimbursement for automated child welfare information

system expenditures at the 50 percent match rate.

We amended the title to section 1355.52 to include a reference to “Tribal” automated child welfare systems and the accompanying acronym “TACWIS” within the parenthesis. We also amended paragraphs (a), (a)(1) and (b) to make conforming changes by replacing the term “States” or “State” with “title IV-E agencies” and “title IV-E agency” respectively. We similarly added reference to a “Tribal” automated information system to accompany references to a “State” or “statewide” automated system in paragraphs (a) and (a)(3) and removed the word “State” that preceded “plan” in paragraph (a)(4). These conforming changes apply the regulatory provisions for a title IV-E agency to claim Federal Financial Participation (FFP) for expenditures related to planning, designing, developing, and installing a child welfare information system at the 50 percent rate equally to States and Indian Tribes, as required by Public Law 110-351.

In response to the FR notice that solicited comments, we received questions regarding funding for the initial development of an automated child welfare information system. Previously, States were eligible to receive 75% Federal match for the initial development costs of a SACWIS as was reflected in the provision in paragraph (a). However, the statutory authority for that higher level of match expired several years ago and there is no other statutory authority for an enhanced match for automated systems development costs for any title IV-E agency, State or Tribal. To avoid confusion and accurately reflect existing law, we are making a technical change to remove the obsolete reference to a 75% rate for development of a SACWIS. We believe that because this change is technical in nature there is no need to go through the notice and comment process to update the regulation.

#### Section 1355.53—Conditions for Approval of Funding

Section 1355.53 describes the requirements a title IV-E agency must follow in designing, developing, and operating an automated child welfare system to receive funding for the system.

We amended paragraphs (b)(2), (b)(3), (e), and (f) to make conforming changes by replacing the term “State”, “States”, “State agency” and “State agencies” with “title IV-E agency” or “title IV-E agencies” to apply the SACWIS conditions for funding to a Tribal title IV-E agency in the same way they are

applied to a State title IV–E agency, as required by Public Law 110–351. In addition, we made additional conforming amendments to this section for the same reasons. Specifically, we amended paragraph (a) to make a conforming change to add the acronym “TACWIS” to follow “SACWIS” and to remove the term “State” before “plan.” These conforming changes apply the advance planning document (APD) requirements a title IV–E agency must follow to receive funding for its automated child welfare system equally to States and Indian Tribes. Similarly, in paragraph (b)(2) we added “or Tribe” to follow the reference to a “State” so that it is clear that Tribal automated systems should have electronic exchanges and referrals with other Tribal systems such as TANF and child support, as appropriate. In paragraph (b)(3), we added a parenthetical provision that indicates that for Indian Tribes, the automated system is to support the collection of data across the Tribal service area on children in foster care, which parallels the provision that States have statewide data that supports the same. In paragraph (g) we inserted the term “and where applicable, Tribal standards” after “State standards” to apply the existing requirement that the automated system must perform Quality Assurance functions related to compliance with State and Federal standards equally to Tribal standards where applicable.

#### *Section 1355.54—Submittal of Advance Planning Documents*

Section 1355.54 requires that the APD be signed by the appropriate official, in accordance with procedures specified in 45 CFR part 95, subpart F.

We amended section 1355.54 to make conforming changes by removing the two references to “State” to apply equally the requirement that the title IV–E agency submit an APD for an automated system signed by the appropriate official to Tribal and State title IV–E agencies, as required by Public Law 110–351.

#### *Section 1355.55—Review and Assessment of the System Developed With Enhanced Funds*

Section 1355.55 explains the process for the review and assessment of the automated child welfare information system. Such a review is conducted to determine the extent to which the system meets the functionality requirements, the approved APD and the requirements of 45 CFR part 95, subpart F. More details on the assessment are available in a review guide accessible at [http://](http://www.acf.hhs.gov/programs/cb/systems/sacwis/sacwisreviewguide/sacwisreviewguide_08.pdf)

[www.acf.hhs.gov/programs/cb/systems/sacwis/sacwisreviewguide/sacwisreviewguide\\_08.pdf](http://www.acf.hhs.gov/programs/cb/systems/sacwis/sacwisreviewguide/sacwisreviewguide_08.pdf).

We amended section 1355.55 to make a conforming change by adding the acronym “TACWIS” to follow “SACWIS” to apply the same ACF review and assessment process to both Tribal and State title IV–E systems.

In addition to the change described above, we added a statement after the end of paragraph (b) providing that the information collection requirements in this section have been approved by the OMB and providing the applicable OMB Control Number.

#### *Section 1355.56—Failure To Meet the Conditions of the Approved APD*

Section 1355.56 discusses the conditions in which an APD can be suspended and describes the suspension process.

We amended section 1355.56 in paragraphs (a), (b)(1), (b)(1)(iv), (b)(2) and (b)(4) to make conforming changes by replacing the term “State agency” with “title IV–E agency” to comply with Public Law 110–351. These conforming changes in section 1355.56 apply the conditions in which an APD can be suspended and the suspension process equally to States and Tribal IV–E agencies.

#### *Section 1355.57—Cost Allocation*

Section 1355.57 discusses the cost allocation requirements for SACWIS/TACWIS administrative costs claimed under title IV–E.

We amended section 1355.57 in paragraphs (a) and (b) by replacing a reference to “State” with “title IV–E agency,” by replacing references to “State plan” with “title IV–E plan,” and by adding the acronym “TACWIS” after “SACWIS” to comply with Public Law 110–351. We also updated the citation for section 474(e) to section 474(c) of the Act. These conforming changes in section 1355.57 apply the cost allocation conditions for SACWIS/TACWIS administrative costs equally to States and Tribal title IV–E agencies.

We want to note that the Department of the Interior, not HHS, is the cognizant agency for cost allocation for Indian Tribes. However, ACF still retains authority for guiding the allocation and documentation of title IV–E costs pursuant to section 1356.60 and 2 CFR 225. As such, we issued guidance including ACYF–CB–PI–10–13 (issued on November 23, 2010) on how Indian Tribes can develop appropriate cost methodologies, including the allocation for TACWIS administrative costs and ACYF–CB–PI–09–11 (issued on September 17, 2009) which discusses

conditions for obtaining Federal financial participation (FFP) by Indian Tribes for automated information technology projects including a TACWIS.

#### *Appendices to Part 1355*

Section 1355.40 includes references to appendices that identify the data elements, definitions, format standards and error standards for AFCARS.

We amended Appendices A through E to replace many of the references to “State”, “State agency” or “title IV–B/IV–E State agency” with “title IV–E agency” so that the related AFCARS provisions are applied equally to States and Indian Tribes operating title IV–E programs, pursuant to Public Law 110–351. We further amended the appendices as discussed in more detail below.

#### *Appendix A to Part 1355—Foster Care Data Elements*

Appendix A outlines the definitions and instructions for the foster care data elements a title IV–E agency is required to collect.

We added the variant “/Tribal service area” to the description of the data element “Is Current Placement Out-of-State?” and its response options in section I, V.B so that where applicable, Indian Tribes can report to AFCARS whether a child is placed inside or outside of the Tribal service area as defined under sections 471(a)(3) and 479B(c)(1)(B) of the Act. This is a parallel option to that for a State which must indicate whether a child’s current placement is intra- or interstate. Here we slightly modified this data element because a Tribal title IV–E agency must operate the title IV–E program in a Tribal service area. Therefore, a Tribal title IV–E agency reporting whether a child in its placement and care responsibility was placed in- or out-of-State would not provide us with meaningful information in this context. The service area of an Indian Tribe may be incongruent with a State’s geographical lines. Therefore, we developed a similar concept that is specific to a Tribal title IV–E agency to meet the law’s mandate that title IV–E requirements apply equally to Indian Tribes pursuant to Public Law 110–351. We also amended Section II, Reporting population, to replace the obsolete citation to section “422(b)(10)” with section “422(b)(8)” to reflect the existing statutory child protections. We believe that because this change is technical in nature there is no need to go through the notice and comment process to update the regulation.

In section II, I.A. we amended the instruction by renaming it Title IV–E agency and clarifying that an Indian Tribe submitting the report will use an abbreviation provided by ACF rather than a U.S. Postal Service abbreviation. We had to modify this requirement to address a Tribal title IV–E agency because the Tribal service areas do not correspond to State geographical areas. Further, we need a separate naming convention so that we can distinguish between AFCARS reports that come in from States and Indian Tribes. ACF will provide each Tribal title IV–E agency with an appropriate abbreviation or code to report in this data element outside of the regulatory process. Similarly, in section II, I.C. we amend the instruction for the data element “local agency” to permit a Tribal title IV–E agency to use an ACF-provided code other than a Federal Information Processing Standard (FIPS) as a representation of the local agency which has responsibility for the child’s foster care case. The FIPS five digit codes that States use for AFCARS standards were originally designed by the National Institute of Standards and Technology to correspond to county jurisdictional lines, which would not accurately reflect Tribal service areas. Again, ACF will provide the Tribal title IV–E agency with an appropriate code that represents the local agency with responsibility for the child’s case.

In section II, V.A., we amended the description related to the data element “Identify the type of setting in which the child currently lives.” We amended the definitions of “Foster Family Home (Relative)” and “Foster Family Home (Non-Relative)” to remove the phrase “State” and replace it with “title IV–E agency” to indicate that a foster family home is one regarded by either a State or Tribal title IV–E agency as a foster care living arrangement. We also amended the definition of “Trial Home Visit” to remove the phrase “State agency supervision” and replace it with “title IV–E agency supervision” to indicate that a child that has been in a foster care placement under State or Tribal title IV–E agency supervision, but has been returned to the principal caretaker for a limited and specified period of time, is in a trial home visit placement.

In section II, V.B., we amended the description related to the data element “Is current placement setting outside of the State?” We added the phrase “or Tribal service area” to the element names and its response options so that where applicable, Indian Tribes can report to AFCARS whether a child is placed inside or outside of the Tribal

service area as defined under the section 471(a)(3) of the Act. This is the same change as the one made earlier in section I, V.B. We made a similar change in section II, X.B. related to the “transfer to another agency” response option for the element “Reason for discharge.” In that provision we added language to clarify that the title IV–E agency is to indicate that the reason for discharge is transfer to another agency when the responsibility for the care of the child was awarded to another agency in or outside of the State “or Tribal service area.”

In section II, XI. we amended the description related to the data element “Source(s) of Federal Support/ Assistance for Child.” We amended the definition of “None of the Above” to remove the phrase “State” and replace it with “title IV–E agency” so that Tribal title IV–E agencies can report if a child is receiving support only from the Tribal title IV–E agency.

We consider all of these as conforming changes that apply AFCARS requirements to a Tribal title IV–E agency in the same manner as they are applied to States.

#### Appendix B to Part 1355—Adoption Data Elements

In Appendix B we provide definitions and instructions for the title IV–E agency reporting of adoption data elements.

We amended section I to add the variant “/Tribal service area” to the description of the responses to the “Child was placed from” data element described in section I, VII.A so that where applicable, Indian Tribes can report to AFCARS whether a child is placed for adoption inside or outside of the Tribal service area as defined under the section 471(a)(3) of the Act. This is the same change made for the same reasons as the one described earlier for the foster care data element related to child placement. We amended the question portion of section I, III.A to remove the phrase “State child welfare agency” and replace it with “title IV–E agency” to indicate that both State and Tribal title IV–E agencies are to report to AFCARS whether the agency determined if the child has special needs. We also amended the title of section I, VIII by removing the reference to “Federal/State” from “Financial Adoption Support.” This change will require both State and Tribal title IV–E agencies to report on monthly financial adoption subsidies being paid on behalf of a child.

We also amended section II, to add language to the Reporting Population section and in the following paragraph

(b), to include children in a Tribal title IV–E agency’s service area who are adopted and whom the agency has had some involvement in the adoption as within the scope of the reporting population. This added language parallels the scope of the adoption reporting population for a State title IV–E agency and therefore implements the requirement that the same title IV–E requirements apply to Indian Tribes and States per Public Law 110–351. We further made a technical change to the reporting population section to remove a sentence that instructed States to report all adoptions which occurred on or after October 1, 1994. We removed this instruction because it imposed a requirement related to the initial implementation of AFCARS in 1993; now obsolete. We believe that because this change is technical in nature there is no need to go through the notice and comment process to update the regulation.

The title IV–E agency must include in the AFCARS adoption file all children adopted with the involvement of the title IV–E agency, at the time of their adoption, as indicated in the remaining provisions of the reporting population section. Finally, in the same paragraph we revise language that suggested that financial penalties were a consequence of failure to report information on adoptions. As explained elsewhere, there are no financial penalties in effect at this time. Therefore, we have replaced the language with a provision that explains that a finding of noncompliance is the consequence for a title IV–E agency not reporting to AFCARS information on all adoptions in the reporting population.

We amended section II, I.A. to provide for a Tribal title IV–E agency to submit a two-digit abbreviation provided by ACF as opposed to the Postal Service abbreviation used by States. This is the same amendment made to the similar element found in the foster care file addressed previously. We also amended section II, I.D. related to the question “Did the title IV–E agency have any involvement in this adoption?” The element requires the title IV–E agency to indicate how it was involved in the child’s adoption for children in the reporting population. We amended the question by changing “State” to “title IV–E” and the instruction to include children who are in the placement and care responsibility of the title IV–E agency who are adopted “in the service area” of the Indian Tribe. This parallels State reporting of children within their placement and care responsibility who are adopted in the State. This is a conforming change that

applies the AFCARS requirements to Indian Tribes in the same manner as they are applied to States, as required by Public Law 110–351.

Section II, IV.B describes the adoption data element “Was the mother married at the time of the child’s birth?” We amended this description to define marriage for the purposes of this data element to include situations of common law marriage if it is legal in the Indian Tribe, in addition to those situations in which it is legal in the State. This is a technical change that allows Indian Tribes to report common law marriage as with States.

Section II, VII.A and B describe two data elements related to from where a child was placed for adoption and who the child was placed by for adoption. In the first element, we amended the response options so that references to adoptions that occur “within State” and “another State” include the alternatives “within Tribal service area” and “another Tribal service area.” These response options are to be used by the Tribal title IV–E agency as appropriate to indicate when children are placed for adoption with a family that is considered either within the service area or outside of the service area as defined in section 471(a)(3) of the Act. As with other conforming changes, this allows Indian Tribes to report AFCARS data in a similar manner to States. The second element describes a Tribal agency as a unit within one of the federally-recognized Indian Tribes or Indian Tribal organizations. We amended this response option to be inclusive of Tribal consortia to conform to Public Law 110–351 which permits Tribal consortia to operate a title IV–E plan.

In section II, VIII.A we amended the title of the section and the data element instruction regarding whether a child is receiving a monthly subsidy. We removed reference in the title to “State/Federal” adoption support and left it broad so it can be inclusive of Tribal adoption support. Similarly, we amended the instruction for the response option so that Indian Tribes can report whether the child was adopted with an adoption assistance agreement under which regular “Tribal” subsidies are paid in addition to Federal or State subsidies. This change is conforming in nature as it allows a Tribal title IV–E agency to report the same type of information as a State as required by Public Law 110–351; whether the Indian Tribe is providing adoption subsidies that are supported with their own funds, or with Federal funds.

Appendix C to Part 1355—Electronic Data Transmission Format

In Appendix C, we describe the transmission criteria that must be met by each title IV–E agency. We amended Appendix C to replace “State agency” and “States” with “title IV–E agency” and “title IV–E agencies.”

In order to meet the transmission criteria, the regulation offers as much flexibility as possible to negotiate a method of transmission best suited to the title IV–E agency’s environment. This language allows ACF and Tribal title IV–E agencies greater flexibility regarding electronic data exchange and secure transmission protocols and standards for the transmission of AFCARS data files through AFCARS Technical Bulletins, rather than regulation. States transmit the AFCARS data using a secure data transfer connection between the State’s information system and the Federal system. While an Indian Tribe may be able to submit data electronically using a similar software program, we also learned through discussions and consultations with Indian Tribes in the Spring 2009 that some Indian Tribes have limited technical resources with which to develop or upgrade a data reporting system and face technological barriers to submitting data through an electronic data exchange, including limited access to software and systems that will transmit data. We believe that the inability to transmit data via data transfer software should not be a barrier to Tribal operation of a title IV–E program, and that this section allow us flexibility regarding electronic data exchange. We will work with Tribes and prescribe alternative secure transmission protocols and standards for the transmission of AFCARS data files through AFCARS Technical Bulletins. We also will provide technical assistance to Indian Tribes in order to assist in building the capacity of Indian Tribes to submit AFCARS data files via a direct file transfer in accordance with Appendix C and 1355.40(b).

We removed the description of four methods for electronic data exchange that were in operation at HHS at the time the Appendix was issued in 1993 because the methods are now obsolete. We believe that because this change is technical in nature there is no need to go through the notice and comment process to update the regulation.

Further, we amended Appendix C to clarify that the four criteria for data submissions apply to a Tribal title IV–E agency in the same manner they apply to a State title IV–E agency consistent

with Public Law 110–351, regardless of whether a Tribal title IV–E agency transmits data in an electronic or non-electronic file in accordance with 1355.40(b). The four criteria which remain in the regulation are: (1) Records must be written using ASCII standard character format; (2) all elements must be comprised of integer (numeric) value(s); (3) all records must be a fixed length; and, (4) all State and Tribal title IV–E agencies must inform the Department, in writing, of the method of transfer they intend to use.

Appendix D to Part 1355—Foster Care and Adoption Record Layouts

Appendix D outlines the detailed record layouts for the AFCARS files.

We amended Appendix D to incorporate the changes previously discussed in Appendices A through C that affect the record layout. These changes include replacing references to “State” with “Title IV–E agency,” adding language that indicates whether a placement for adoption or foster care is in or out of the “Tribal service area,” and adding language that allows a Tribal title IV–E agency to submit a two-digit abbreviation provided by ACF as opposed to the Postal Service abbreviation used by States.

Appendix E to Part 1355—Data Standards

Appendix E outlines the four types of assessments which are conducted on the foster care and adoption data submissions to determine the completeness and internal consistency of the data.

We amended Appendix E throughout to replace references to “State” with “Title IV–E agency” and added language that indicates whether a placement for adoption or foster care is in or out of the “Tribal service area.”

In section A.2.a.(1) we amend the instruction for the data element “Local Agency” and the summary file to permit a Tribal title IV–E agency to use an ACF-provided code other than a FIPS as a representation of the local agency which has responsibility for the child’s foster care case.

We also amended Appendix E to remove references to the penalty provisions in section 1355.40(e) because they are obsolete as discussed previously, and replaced such provisions with language that indicates that the results of the assessments determine whether a title IV–E agency is in substantial compliance with the AFCARS requirements. We believe that because these changes are technical in nature that there is no need to go through the notice and comment

process to update the regulation accordingly.

#### Appendix F to Part 1355

Appendix F contained a chart that indicated the State allotments of incentive funds in 1993. These allotments were the basis for fiscal penalties for substantial noncompliance with AFCARS requirements. We have deleted Appendix F in its entirety because as explained previously the penalty structure in the regulations is no longer in use.

#### Part 1356—Requirements Applicable to Title IV–E

##### *Section 1356.10—Scope*

This section indicates the scope of the part 1356 rules as applicable to the title IV–E programs for foster care, adoption assistance and independent living.

We amended this section to replace “State” with “title IV–E agency” pursuant to Public Law 110–351 to apply the title IV–E program equally to States and Indian Tribes directly operating a title IV–E program.

##### *Section 1356.20—Title IV–E Plan Document and Submission Requirements*

This section outlines the process for submission and approval of title IV–E plans under section 471 of the Act.

We amended section 1356.20 in paragraphs (a), (b), (c) and (d) (as renumbered) by deleting all references to “State” and “State plan” and replacing them with “title IV–E agency” and “title IV–E plan” respectively, to apply the title IV–E program equally to States and Indian Tribes directly operating a title IV–E program pursuant to Public Law 110–351. We made additional changes to these paragraphs to remove obsolete references, conform to Public Law 110–351 or make technical corrections as follows. We believe that because these changes are technical in nature there is no need to go through the notice and comment process to update the regulation accordingly.

We amended paragraph (a) to specify that Indian Tribes directly operating a title IV–E program must have a plan approved by the Secretary that meets the requirements of section 479B(c) of the Act, in addition to the requirements of 45 CFR part 1355 and section 471(a) of the Act. This additional citation to section 479B(c) of the Act is necessary since Public Law 110–351 specifies some unique criteria for Tribal title IV–E programs only.

We removed an obsolete reference in paragraph (b) to penalties described in

45 CFR 1355.40(e) for AFCARS (see more discussion related to this provision in the section by section description of 45 CFR 1355.40(e)). We believe that because this change is technical in nature there is no need to go through the notice and comment process to update the regulation.

We deleted paragraph (c) because it contained references to outdated statutory provisions regarding voluntary foster care placements. Although these citations have been removed, both State and Tribal title IV–E agencies still have the option to provide title IV–E for eligible children voluntarily placed into foster care pursuant to section 472(a)(2)(A)(i) of the Act. Therefore, this is a technical change only. We renumbered paragraphs (d) and (e) as (c) and (d) accordingly.

We made various technical changes to renumbered paragraph (c) to clarify the Tribal official who has the authority to sign the title IV–E plan. States must have the governor or his or her designee review and submit the title IV–E plan. We added a parallel provision for Indian Tribes to authorize the Tribal leader or his or her designee to review and submit the plan in paragraph (c)(2). This is consistent with the law’s requirement to apply title IV–E requirements equally to States and Indian Tribes. We also amended paragraph (c)(4) because it is obsolete. ACYF is authorized to approve title IV–E plans consistent with our most recent functional statement of organization rather than the ACF Regional Administrator (see 71 FR 59117–59123, 10/06/06). We believe that because this change is technical in nature there is no need to go through the notice and comment process to update the regulation. Further, we amended paragraph (c)(8) to apply the requirements for effective dates of a new title IV–E plan equally to States and Indian Tribes. As such, in the case of an Indian Tribe that directly operates a title IV–E program, the effective date for expenditures made may not be earlier than the first day on which the plan is in operation in the Indian Tribe’s entire service area. This is a comparable requirement to the one in existence for States: Expenditures cannot be made earlier than the first day the plan is in operation on a statewide basis.

One commenter requested that an Indian Tribe that directly operates a title IV–E program be able to start a title IV–E program in any quarter of a fiscal year. This is allowable if the Indian Tribe submits an approvable title IV–E plan to ACF by the end of the calendar quarter. Another commenter requested that Indian Tribes be permitted to operate the foster care maintenance payments

program but not the adoption assistance program. The statute at section 471(a)(1) of the Act requires the operation of both the foster care and adoption programs under title IV–E as mandatory features of the program.

##### *Section 1356.21—Foster Care Maintenance Payments Program Implementation Requirements*

This section describes many of the requirements of the foster care maintenance payments program which relate to child eligibility.

We amended section 1356.21 throughout by deleting numerous references to “State agency,” “State plan” and “State” replacing them with “title IV–E agency” or “title IV–E plan” respectively pursuant to Public Law 110–351 to apply the title IV–E program equally to States and Indian Tribes directly operating a title IV–E program. The additional changes we made throughout this section are discussed below.

##### *Section 1356.21(a)—Statutory and Regulatory Requirements of the Federal Foster Care Program*

This paragraph states the requirements that apply in general to the title IV–E foster care maintenance payments program. In paragraph (a), for a Tribal title IV–E agency, we added a cross reference to section 479B(c)(1)(C)(ii)(II) of the Act. This statutory provision requires a Tribal title IV–E agency to use the 1996 AFDC eligibility standards in effect in the State of the child’s removal for the purposes of title IV–E foster care eligibility. We received comments during consultation that requested some form of relief from this requirement, as many noted that it would be burdensome to an Indian Tribe to become familiar with and apply AFDC eligibility standards from a number of different States. Suggestions included that we establish a national AFDC standard, streamline the AFDC eligibility determination process, and allow a Tribal title IV–E agency to disregard the AFDC income/resource standards or specifically exempt Tribal per capita payments from State AFDC standards. We are unable to deviate from the explicit statutory requirement regarding the process for determining eligibility for AFDC (section 479B(c)(1)(C)(ii)(II) of the Act). The Tribal title IV–E agency must use the 1996 title IV–A plan standards of the State in which the child was residing at the time of removal including those related to income and resources, with only those exceptions provided in law for deviating from those 1996 standards. Specifically, a title IV–E agency must use: The

Federal \$10,000 child resources limitation as provided for in section 472(a)(3)(B) of the Act; the State definition of unemployed parent subject to the requirements of 45 CFR 233.101(a)(1) as amended after 1996; and, the Federal restrictions on benefits to certain types of immigrants as provided for in section 401(a) of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (Pub. L. 104–193).

#### Section 1356.21(b)—Reasonable Efforts

This paragraph outlines the statutory requirement at section 471(a)(15) of the Act. We made a technical change to this paragraph to replace the reference to section 472(a)(1) of the Act with the correct citation to section 472(a)(2). At the time that the regulations were originally published, the eligibility requirement for a judicial determination regarding reasonable efforts was located in section 472(a)(1) of the Act. The Deficit Reduction Act of 2005 (Pub. L. 109–171) amended the law and repositioned the reasonable efforts requirement at section 472(a)(2) of the Act. This is a conforming change only to update the statutory reference. We further amended this paragraph to remove the reference to “State” in the statement that a child’s health and safety must be the paramount concern in making reasonable efforts. This change applies the requirement equally to States and Indian Tribes pursuant to Public Law 110–351.

A commenter sought clarification on the title IV–E requirements related to reasonable efforts versus the ICWA provisions for active efforts and requested that we explain who is responsible for determining whether the reasonable and active efforts standards are met. The title IV–E foster care eligibility requirement in paragraph (b)(1) mandates that the title IV–E agency obtain a judicial determination to the effect that reasonable efforts were made to prevent a child’s removal from the home within 60 days of the child’s removal, or a judicial determination that efforts are not required (i.e., making no efforts was reasonable) because one of the conditions in section 471(a)(15)(D) of the Act have been met. Additionally, per paragraph (b)(2) the title IV–E agency must obtain a judicial determination that it has made reasonable efforts to finalize the permanency plan in effect within 12 months of the child’s entry into foster care. Whether the State or Tribal title IV–E agency obtains this judicial determination depends on which party has placement and care responsibility for the child at the time it is due. ICWA

at 25 U.S.C. 1912(d) requires that any party seeking to effect a foster care placement of, or termination of parental rights to, an *Indian child under State law* (emphasis added) shall satisfy the court that active efforts have been made to provide remedial services and rehabilitative programs designed to prevent the breakup of the Indian family and that these efforts have proved unsuccessful. Here the party responsible for obtaining an active efforts determination is the one making the petition for foster care or other custodial proceedings in a State court. The requirements for reasonable efforts and active efforts are under separate Federal authorities and are not altered or superseded by one another. However, as ICWA is outside ACF’s purview, we do not have authority to instruct States and Tribes on how to meet its requirements.

There is no particular language required to satisfy the title IV–E reasonable efforts judicial requirements, however, the order should be clear that the court has determined that reasonable efforts were made or were not required (65 FR 4056). Therefore, to the extent that a State court makes a finding related to active efforts for ICWA purposes, it is possible that such a finding could also satisfy one of the title IV–E requirements related to reasonable efforts. However, this is a determination that can only be made in light of a specific case. ACF regional office staff and technical assistance resources are available to work in partnership with a title IV–E agency and its courts to help them address processes for meeting judicial determination requirements.

#### Section 1356.21(b)(3)—Circumstances in Which Reasonable Efforts Are Not Required To Prevent a Child’s Removal From Home or to Reunify the Child and Family

This paragraph describes the circumstances in which reasonable efforts to prevent a child’s removal or to reunify a child with his or her family are not required consistent with section 471(a)(15)(D) of the Act. We amended paragraph (b)(3)(i) to specify that if an Indian Tribe operates a title IV–E program, Tribal law must define what constitutes aggravated circumstances under which reasonable efforts are not required to prevent a child’s removal from home or reunify the child and family. We made this change to align the requirements for States and Indian Tribes directly operating a title IV–E plan as required by Public Law 110–351. We note here that Tribal law governs aggravated circumstances in the case of a Tribal title IV–E plan, but not

in the situation of a State plan under which a Tribal public agency has an title IV–E agreement pursuant to section 472(a)(2)(B)(ii) of the Act. In the case of a title IV–E agreement, there is no “Tribal title IV–E agency” and our existing policy at CWPM Section 9.4 Q/A #5 prevails. This policy explains that another public agency or Indian Tribe operating under a title IV–E agreement is bound by any State statute or policy related to the operation of the title IV–E program.

We received a comment requesting clarification on whether a finding regarding reasonable efforts to prevent placement is a requirement for children removed from their homes by police officers on an emergency basis. In all cases in which the State or Tribal title IV–E agency seeks to claim title IV–E funds for a child involuntary removed from his/her home, there must be a judicial determination that either: (1) Reasonable efforts were made to prevent the child’s removal from the home; or (2) that reasonable efforts to prevent removal are not required because one of the conditions in section 1356.21(b)(3) have been satisfied (i.e., a parent has subjected the child to aggravated circumstances, the parent was convicted of murdering another child, etc.). We also note that we have existing policy (CWPM Section 8.3A.9b Q/A #4) that explains, “\* \* \* if there is a judicial determination to the effect that efforts to prevent removal or reunify the family have not been made due to the immediate danger to the child, or that the lack of efforts is appropriate due to the particular circumstances of the case, the reasonable efforts requirements in 45 CFR 1356.21(b)(1) and (2) will be satisfied.”

#### Section 1356.21(c)—Contrary to the Welfare Determinations

This paragraph describes the requirement under section 472(a)(2) of the Act for a determination to the effect that continuation of residence in the home would be contrary to the welfare of the child. We made a technical change to this paragraph to replace the reference to section 472(a)(1) of the Act with the correct citation to section 472(a)(2).

#### Section 1356.21(d)—Documentation of Judicial Determinations

This paragraph describes the documentation requirements for the reasonable efforts and contrary to the welfare judicial determinations.

We amended paragraph (d)(2) to give effect to section 479B(c)(1)(C)(ii)(I) of the Act that allows a Tribal title IV–E agency to use nunc pro tunc orders and

affidavits in limited circumstances. This amendment allows a Tribal title IV–E agency, for the first 12 months in which the title IV–E plan is in effect, to use affidavits or nunc pro tunc orders to demonstrate that a judicial determination was made regarding reasonable efforts or contrary to the welfare of the child. This means that for the first 12 month period only, if the reasonable efforts or contrary to the welfare determination is not included in the requisite orders, we will accept an affidavit, or nunc pro tunc order as evidence that it was in fact made.

Several commenters to the FR notice requested that Indian Tribes be able to use nunc pro tunc orders to correct existing State/Tribal court orders for title IV–E eligibility purposes. We are not clear what was envisioned by this comment. The Tribal title IV–E agency may use nunc pro tunc orders to correct deficiencies in the record and otherwise provide evidence of a judicial determination regarding contrary to the welfare or reasonable efforts. We do not anticipate that judges will sign a nunc pro tunc order in the absence of evidence that substantiates the finding. In other words, we caution the Tribal agency from seeking nunc pro tunc orders as merely a paperwork exercise to obtain Federal funding. As we explained in a prior rule (65 FR 4056), the legislative history of the Federal foster care program indicates that the statutory requirement for judicial determinations was created as an “important safeguard(s) against inappropriate agency action.” Further, nunc pro tunc orders are related only to judicial determinations and cannot be used to ‘correct’ other aspects of eligibility, such as licensure of foster family homes or child care institutions or AFDC eligibility.

A commenter requested that nunc pro tunc orders be allowed for cases which are subject to a State/Tribal title IV–E agreement. The statutory flexibility exists only for a Tribal title IV–E agency through the first 12 months of the title IV–E plan, therefore, States may not use nunc pro tunc orders to document a judicial determination for cases subject to a title IV–E agreement. Another commenter requested that we provide a rationale to explain why nunc pro tunc orders are allowed for only a 12 month period at the beginning of the Tribal title IV–E plan and requested that we permit such orders beyond this period. The use of nunc pro tunc orders is limited in statute to 12 months and there is no explicit legislative history that clarifies why this flexibility was provided to Indian Tribes or why this particular timeframe. However, the

effect is to provide Indian Tribes who are commencing their title IV–E programs with a limited period where the Indian Tribe may be held harmless for court orders that ACF may otherwise find insufficient for title IV–E funding purposes.

We amended paragraph (d)(3) to include a Tribal title IV–E agency in the provision that explains that court orders that reference State (or Tribal) law to substantiate judicial determinations are not acceptable documentation that the findings were made. We made this change to align the requirements for States and Indian Tribes with a title IV–E plan as required by Public Law 110–351.

#### Section 1356.21(g)—Case Plan Requirements

This paragraph outlines the provisions for developing case plans for each child in foster care. In paragraph (g) we removed the phrase “State and local” that preceded “staff” so that the provision refers to staff of either a State or Tribal title IV–E agency. The paragraph now clarifies that the title IV–E agency must promulgate policy materials related to case plans. We also added “Tribal” adoption exchanges to the list of examples of child specific recruitment efforts that should be documented in the case plan for children with the goal of adoption or placement in another permanent home in paragraph (g)(5). These changes apply the existing case plan requirements to a Tribal title IV–E agency on the same basis as a State as required by Public Law 110–351.

A commenter asked during consultation whether Indian Tribes will be required to document child specific recruitment efforts for permanency; this change clarifies that they will.

One commenter requested that case plans developed by a Tribal title IV–E agency be completed within 90 days rather than the 60 day period in existing regulations. The commenter opined that a lack of Tribal resources and high caseloads justified the extended timeframe. We are following the statutory requirement to implement the program in the same manner for all title IV–E agencies and are therefore leaving the requirement at 60 days. Further, the requirement to develop case plans within 60 days is a longstanding requirement that dates back to the original title IV–E regulations issued in 1983. At that time, we concluded after public comment that 60 days is a reasonable and responsible time period in which to document the child and family’s assessed needs, set goals, identify needed services and estimate a

timeframe for permanency (47 FR 30932). Timely engagement of families and establishing provisions for the child’s safety, well-being, and permanency are critical components to the title IV–E foster care program.

The same commenter requested clarification regarding whether a Tribal title IV–E agency has the discretion to develop a case plan format of their own. This is allowable. There are no Federal requirements regarding the format of the case plan and a Tribal title IV–E agency may develop their own formats as they see fit. An Indian Tribe may want to take advantage of our Regional Office staff or technical assistance resource partners to help them develop or adapt a case plan format and process that works best for them and is conducive to parent engagement and the law’s other requirements. The same commenter sought clarification on whether Indian Tribes can develop case plans jointly with extended family/kin should reunification not be likely. The regulatory requirement is for the IV–E agency to develop a case plan jointly with the child’s parents or guardians. Additional persons, such as family, kin, service providers and other persons who can serve as supports to the child and family, can be engaged to assist in developing the child’s case plan as the State or Tribal title IV–E agency deems appropriate.

A commenter requested that regulatory references to children being placed in close proximity to their parent’s home, as in paragraph (g)(3), take into consideration that an Indian child may have affiliations with more than one Indian Tribe or be located in a service area that spans the geographic jurisdictions of several States. We have not made any adjustments to the regulatory text in response to this comment. Rather, we note here that the case plan provision to discuss how the placement setting will be in close proximity to the home of the parents, among other factors, is not a mandate that in all cases the child be placed close to the home of his/her parents. Rather, the goal is for the agency to outline in the case plan how the agency weighed or will weigh close proximity to the child’s parents in determining his/her placement setting(s). Another commenter requested that States provide enough information when cases are transferred from State to Tribal custody to allow the development of a good case plan. We concur that these transfers will require extensive coordination and communication between title IV–E agencies and set forth such provisions in new section 1356.67.

**Section 1356.21(i)—Application of the Requirements for Filing a Petition To Terminate Parental Rights at Section 475(E) of the Social Security Act**

This paragraph implements the provisions of section 475(E) of the Act regarding filing a petition to terminate parental rights (TPR) when a child has been abandoned, or has been in foster care for 15 out of 22 months unless a statutory exception applies.

We amended paragraph (i)(1)(ii) to include in the parenthetical statement that when a child is determined by a court to be abandoned, consistent with Tribal law, a petition to file termination of parental rights is due within 60 days of that determination. The situation in which Tribal law, as opposed to State law, is applicable is when an Indian Tribe has a title IV–E plan. Similar to aggravated circumstances, if an Indian Tribe is under a title IV–E agreement (section 472(a)(2)(B)(ii) of the Act) with a State, then State law on abandonment is controlling rather than Tribal law.

We received a request that we clarify whether customary adoptions satisfy the TPR requirement and whether Indian Tribes must follow the requirements for TPR. While we recognize that termination of parental rights and adoption may not be a part of an Indian Tribe's traditional belief system or legal code, there is no statutory authority to provide a general exemption for Indian Tribal children from the requirement to file a petition for TPR. All title IV–E agencies must file or seek to join a petition to terminate parental rights in the case of a child who has been in foster care for the specified timeframe or is abandoned. However, Federal law provides case by case exceptions to the requirement to file a petition for TPR that include: The child is being cared for by a relative; the agency has not provided reasonable efforts to reunify the family consistent with the case plan; adoption is not appropriate for the child; no legal grounds for TPR exist (see section 475(5)(E)(i) through (iii) of the Act). What constitutes the legal grounds for TPR are at the discretion of the Indian Tribe with regard to Tribal title IV–E plans. Once a title IV–E agency has filed a TPR consistent with this provision, it must concurrently begin to identify, recruit, process, and approve a qualified adoptive family for the child per section 1356.21(j)(3). Seeking customary adoption of a child is equivalent to other forms of legal adoption for these purposes. We direct a Tribal title IV–E agency to existing policy in the CWPM at Section 8.3C.2e for additional clarifications of the TPR provisions.

**Section 1356.21(l)—Living With a Specified Relative**

Paragraph 1356.21(l) describes the required conditions for living with a specified relative prior to removal from home to meet the AFDC requirements for title IV–E eligibility for foster care maintenance payments.

We amended paragraph (l) regarding living with a specified relative in two respects. First, we changed the statutory citation from section 472(a)(4) of the Act to section 472(a)(3) of the Act as renumbered by the enactment of the Deficit Reduction Act of 2005 (Pub. L. 109–171). Second, we added a reference to section 479B(c)(1)(C)(ii)(II) of the Act to cross reference the AFDC requirements that are applicable to Indian Tribes with a title IV–E plan. The terms “parent” and “specified relative” used in paragraph (l) are those of the AFDC program of the State in which the child was living at the time of removal as mandated by the statute. The law does not provide any discretion for a Tribal IV–E agency to define these terms. Rather, the regulations of the AFDC program at 45 CFR 233.90(c)(1)(v), state that a child may be considered to meet the requirement of living with a specified relative if his home is with a parent or a person in one of the following groups: (1) Any blood relative, including those of half-blood, and including first cousins, nephews, or nieces, and persons of preceding generations as denoted by prefixes of grand, great, or great-great; (2) Stepfather, stepmother, stepbrother, and stepsister; (3) Person who legally adopt a child or his parent as well as the natural and other legally adopted children of such persons, and other relatives of the adoptive parents in accordance with State law; and, (4) Spouses of any persons named in the above groups even after the marriage is terminated by death or divorce. Several commenters reasoned that a Tribal IV–E agency should have discretion regarding the AFDC-related requirements by allowing Indian Tribes to define the scope of a relative or otherwise permit “Indian custodians” as a substitute for parents or specified relatives. To do as the commenters requested regarding the AFDC-related requirements of title IV–E would go beyond the statute's mandate. All title IV–E agencies must comply with the requirements of the AFDC program as in effect on July 16, 1996. In the case of a Tribal title IV–E agency, the relevant AFDC program is the one in effect on that date in the State the child lived in at the time of removal.

We also received a couple of comments that asked whether we would overturn the “Rosales” requirement or deem as title IV–E eligible those children who resided with different relatives within six months of the child's removal from home. The commenter asserted that doing so would be more culturally sensitive to Indian Tribes. We understand the issue to be whether we will continue to require a title IV–E agency to base eligibility on an AFDC-eligible relative with whom a child was living during the six months prior to the removal month, but from whom he was not removed. The reference to Rosales is to a court case, *Rosales v. Thompson*, 321 F.3d 835 (9th Cir. 2003), that led to the clarification in Public Law 109–171 on the specified relative for whom AFDC eligibility will be determined. Again, we cannot deviate from the statutory requirements which tie title IV–E foster care eligibility to whether the child meets the AFDC criteria in the specified relative's home from which he or she is removed.

**Section 1356.21(n)—Foster Care Goals**

This paragraph describes the statutory requirement related to foster care goals that must be established by the title IV–E agency.

We amended paragraph (n) which requires that foster care goals be in law, to add in that such goals can be incorporated into Tribal law by statute, code, resolution or administrative rule. This change implements the requirement that a Tribal title IV–E agency operate the title IV–E program in the same manner as a State as required by Public Law 110–351.

**Section 1356.21(o)—Notice and Right To Be Heard**

This paragraph describes the requirement for a title IV–E agency to provide foster parents, and any pre-adoptive parent or relative providing care for the child with timely notice of court-held proceedings and a right to be heard.

We amended paragraph (o) to make it consistent with the Act and reflect changes made by Public Law 109–171. First, we changed the title of the paragraph from “Notice and opportunity to be heard” to “Notice and right to be heard” to reflect the statutory provision. Second, we deleted specific reference to the kinds of hearings to which the regulation applies to and replaced it with the phrase “in any proceedings held with respect to the child during the time the child is in the care of such foster parent, pre-adoptive parent, or relative caregiver” to give effect to the

changes made by Public Law 109–171 to section 475(5)(G) of the Act.

The regulation now reflects the requirement that the foster parents, pre-adoptive parents or relatives providing care for a child must, at a minimum, be provided with notice of their right to be heard in all permanency hearings, as well as six-month reviews, if held by the court (see also the CWPM Section 8.3C.2b Q/A #2).

#### *Section 1356.22—Implementation Requirements for Children Voluntarily Placed in Foster Care*

Section 1356.22 describes the requirements a title IV–E agency must follow to receive reimbursement on behalf of children placed through voluntary placement agreements.

We amended section 1356.22 in paragraphs (a) and (c) to make conforming changes by replacing the term “State” or “State agency” with “title IV–E agency.” These changes apply the voluntary placement agreement provisions equally to State and Tribal title IV–E agencies consistent with Public Law 110–351. To remove and replace an out-of-date statutory reference with the current citation, we amended paragraph (a)(2) by removing the reference to section “422(b)(10)” and replacing it with “422(b)(8).” We believe that because this change is technical in nature there is no need to go through the notice and comment process to update the regulation. In addition, we amended paragraph (c) by inserting the term “or Tribal” after “State” to apply the requirement for a uniform procedure for revoking voluntary placement agreements to Indian Tribes with a title IV–E plan.

During consultation, we received a request to clarify how the requirement at section 472(f) of the Act for voluntary placements may impact work that an Indian Tribe is doing with an Indian family. Sections 472(f) and 472(a)(2)(A)(i) of the Act should be read together as providing the statutory authority for a title IV–E agency to claim Federal reimbursement on behalf of an eligible child who is placed into foster care as a result of a voluntary agreement between the agency and the parents/legal guardians of the child. It is an option for the State or Tribal title IV–E agency to have a title IV–E plan that includes accepting voluntary placement agreements. Typically, voluntary agreements are used when the family is in need of short term stabilization or experiencing a temporary crisis that renders them unable to care for the child (i.e., a single mother has to enter the hospital for an acute episode and has no other resources available to take

care of her child). Judicial intervention—including judicial determinations regarding contrary to the welfare and reasonable efforts to prevent placement—is not necessary in voluntary placement cases unless the title IV–E agency seeks to continue the child’s placement beyond 180 days. However, a judicial determination that continued placement is in the child’s best interests is required within the first 180 days of such placement to continue title IV–E payments beyond that period. See CWPM Section 8.3A.13 for more information on voluntary placement agreements.

#### *Section 1356.30—Safety Requirements for Foster Care and Adoptive Home Providers*

Section 1356.30 describes the required safety checks for prospective foster family homes, child care institutions and adoptive parents.

We amended section 1356.30 in paragraphs (a), (b), and (c) to make conforming changes by replacing the term “State” with “title IV–E agency.” These changes apply the safety requirements in those paragraphs to Indian Tribes with a title IV–E plan in the same manner as States as required by Public Law 110–351. In addition, we removed the opening clause of paragraph (a), which referred to paragraph (d) and removed and reserved paragraph (d) as the Adam Walsh Child Protection and Safety Act of 2006 (Pub. L. 109–248) made these provisions obsolete. Paragraph (d) contained provisions that were relevant if a State opted out of criminal background checks, but Public Law 109–248 removed this option. We believe that because this change is technical in nature there is no need to go through the notice and comment process to update the regulation. Existing law requires a title IV–E agency to conform to the criminal background check and child abuse registry checks described in section 471(a)(20)(A) through (C) of the Act.

We amended paragraph (e) by changing the term “opts” to the past tense, and by inserting the phrase “as permitted prior to the amendments made by section 152 of Public Law 109–248” after “criminal records check requirement.” This change was necessary to preserve the safety requirements for foster family homes or child care institutions that were in place under the prior law’s provisions.

Commenters requested clarification regarding procedures that are sufficient to fulfill the criminal background check requirements for title IV–E. The commenters inquired whether other

criminal background check requirements for other programs would suffice for title IV–E purposes, such as those under the Indian Child Protection and Family Violence Prevention Act (Pub. L. 101–630). Under section 471(a)(20) of the Act, the title IV–E agency is required to conduct fingerprint-based checks for prospective foster parents, adoptive parents and relative guardians through the Federal Bureau of Investigation’s national crime information databases. As such, it is the only procedure that will meet title IV–E requirements.

#### *Section 1356.40—Adoption Assistance Program: Administrative Requirements To Implement Section 473 of the Act*

Section 1356.40 describes the administrative requirements a title IV–E agency must follow for the adoption assistance program.

We amended section 1356.40 in paragraphs (a), (d), (e), and (f) to make conforming changes by replacing the term “State” or “State agency” with “title IV–E agency. Through these conforming amendments we apply the regulatory provisions for the adoption assistance program equally to a Tribal title IV–E agency as they are applied to a State title IV–E agency. We made the following additional conforming amendments in this section.

We amended paragraph (a) to qualify the provision which requires the title IV–E agency to comply with section 473 of the Act as this section no longer refers solely to adoption assistance provisions. The amendments to the Act made by Public Law 110–351 added the optional kinship guardianship assistance requirements in section 473(d) of the Act. Therefore, we added the phrase “the applicable provisions of section” to precede the reference to section 473 of the Act for those title IV–E agencies that opt not to implement the kinship guardianship assistance program. In addition, we inserted the word “section” before “475(3).”

We amended paragraph (b)(4) by inserting the phrase “place of residence of” in place of the phrase “State of which” in order to apply the regulatory provision equally to Indian Tribes that an adoption assistance agreement must remain in effect regardless of where the adoptive parents reside at any given time.

We amended paragraph (d) by replacing the term “from one State to another State” with “from one place of residence to another” to apply the requirement equally to Indian Tribes to clarify that if an adoptive family moves, the family can apply for social services on behalf of the adoptive child in the

new “place of residence”, formerly referred to as “State of residence.” We are making additional changes to this paragraph by removing the obsolete phrase “However, for agreements entered into on or after October 1, 1983” since agreements entered into prior to this date have since expired. Hence, in all existing adoption assistance agreements the title IV–E agency that entered into the agreement is financially responsible to provide any specified social service even in the case that the adoptive family moves. We believe that because this change is technical in nature there is no need to go through the notice and comment process to update the regulation.

Commenters requested clarification regarding the requirements for placement of a child with an adoptive family outside of the jurisdiction of the title IV–E agency. Except for the requirements described in this paragraph for ensuring that assistance continues when a child moves to another jurisdiction and the overall obligation of the title IV–E agency not to delay or deny interjurisdictional placements based on that basis alone, there are no Federal title IV–E requirements unique to children being placed outside the title IV–E agency’s jurisdiction. The Tribal title IV–E agency can effectuate an adoption across State lines or Tribal service area lines consistent with its own authorities and those of the State or Indian Tribe in which the child will be placed.

We made another conforming change to paragraph (e) by inserting the term “or a Tribal service area” after “State” to apply the paragraph equally to States and Indian Tribes with title IV–E plans.

A commenter requested clarification on whether an Indian Tribe can participate in the title IV–E adoption program while another requested clarification on whether an Indian Tribe must be responsible for adoption assistance under a title IV–E directly funded plan. The adoption assistance payments program is a mandatory component of an approvable title IV–E plan per section 471(a)(1) of the Act and as such the Indian Tribe with a title IV–E plan is obligated to provide adoption assistance on behalf of all children in the Indian Tribe’s service area who are eligible for the program, with the exception of adopted children already receiving adoption assistance under a title IV–E agreement with a State. A Tribal title IV–E agency may claim allowable expenditures under the title IV–E adoption assistance program at the Tribal Federal Medical Assistance Percentages (FMAP) rate for adoption subsidies, 50 percent for administrative

costs, and variable rates for training expenses per section 474(a) of the Act. A Tribal title IV–E agency may contract with outside providers or other public agencies to assist in the implementation of the adoption assistance program.

Another commenter requested that we mandate a standard adoption assistance subsidy level for all children in the program. This is not a request we can accommodate; the statute requires the agency to negotiate adoption assistance agreements and the payment with the adoptive family based on the needs and circumstances of the child and family (section 473(a)(3) of the Act).

#### *Section 1356.41—Nonrecurring Expenses of Adoption*

This section describes the requirements a title IV–E agency must follow to claim reimbursement for nonrecurring costs of adoption for adoptive parents.

We amended section 1356.41 throughout to make conforming changes to replace the term “State agency” with “title IV–E agency.” Through these conforming amendments, we apply the regulatory provisions for nonrecurring expenses of adoption equally to a Tribal title IV–E agency as they are applied to a State title IV–E agency as required by Public Law 110–351. In addition, we made the following conforming amendments to implement this section in the same manner for State and Tribal title IV–E agencies or to remove obsolete provisions. We believe that because this change is technical in nature that there is no need to go through the notice and comment process to update the regulation accordingly.

We amended paragraph (b) by inserting the term “Tribal” after “State” to apply the current regulatory provision equally to Indian Tribes that an agreement for nonrecurring expenses of adoption may be a separate document or part of an agreement for any type of adoption assistance, whether it is State, Tribal, or Federal. We also removed the last clause of paragraph (b) and its two subordinate paragraphs (b)(1) and (2) because they referred to outdated exceptions to the general requirement to have an agreement for nonrecurring costs in place prior to the final decree of adoption.

We amended paragraph (d) to make a conforming change by removing the term “State and local” before “laws” to indicate that a child’s adoptive placement must be made in accordance with all applicable laws, whether they be State, Tribal, or local laws. We removed the last clause of paragraph (e)(1) and removed paragraph (e)(2) in its entirety because these provisions

referred to actions a State title IV–E agency had to take after the effective date of the initial rule related to nonrecurring adoption expenses which was issued in 1988 (53 FR 50220). We renumbered paragraph (e)(3) as paragraph (e)(2), and removed most of the text because it also referred to obsolete provisions that were to occur pursuant to the 1988 rule. We retained the text that required that the agreement for the payment of nonrecurring expenses must be signed at the time of or prior to the final decree of adoption and that adoptive families must file claims for nonrecurring expenses with the title IV–E agency within two years of the date of the final decree of adoption. We believe that because these changes are technical in nature there is no need to go through the notice and comment process to update the regulation.

In paragraph (f)(2), we insert the term “Tribal” after “consistent with State” to apply existing State nonrecurring payment requirements equally to a Tribal title IV–E agency. We also inserted the term “or Tribal service area” after “within the State,” to allow Indian Tribes the same ability as States to set a lower maximum amount for nonrecurring adoption expenses in a special needs adoption as permitted by the paragraph.

In paragraph (h) we replace the term “interstate placement” with “a placement outside the State or Tribal service area” to apply equally to State and Tribal title IV–E agencies the requirement that the title IV–E agency that enters into an adoption assistance agreement is responsible for the reimbursement of nonrecurring adoption expenses even if the child is placed in an area outside of the State or Tribal service area. We also make conforming changes to the language so that the reference to “State subsidy program” is replaced with “State or Tribal subsidy program,” by inserting the term “Tribal” after “Federal” and replacing the term “the State in which” with “the title IV–E agency in the jurisdiction in which.” Consequently, if an adopted child who meets the requirements of section 473(c) is placed in a different jurisdiction without an adoption assistance agreement being entered into on his/her behalf, then the title IV–E agency in the jurisdiction in which the final adoption decree is issued is responsible for reimbursement of the nonrecurring expenses.

We made a conforming change to paragraph (i) in the definition of “nonrecurring adoption expenses” to exclude any expenses that are prohibited by applicable laws, whether

it is State, Tribal, or otherwise. Finally, we removed the first sentence in paragraph (j) which referred to an obsolete requirement for a State agency to enact legislation following the publication of the 1988 rule (53 FR 50220). We believe that because this change is technical in nature there is no need to go through the notice and comment process to update the regulation.

*Section 1356.50—Withholding of Funds for Non-Compliance With the Approved Title IV–E Plan*

Section 1356.50 describes the conditions for compliance with the title IV–E plan and directs the title IV–E agency to the applicable appeal procedures in section 1355.39 for challenges of an ACF determination of non-conformity with the title IV–E plan.

We amended the title of section 1356.50 and paragraphs (a) and (b) to make conforming changes by removing the term “State” or replacing it with “title IV–E agency” in appropriate places to apply the provisions for withholding funds for noncompliance equally to States and Indian Tribes with title IV–E plans pursuant to Public Law 110–351.

*Section 1356.60—Fiscal Requirements (Title IV–E)*

This section describes the fiscal requirements and available FFP for title IV–E costs. We amended the section throughout to replace references to “State plan” with “title IV–E plan” and “States” or “State and local” with “title IV–E agencies” so that the section applies equally to States and Tribes with title IV–E plans consistent with Public Law 110–351. In addition, we made the following conforming amendments.

*Section 1356.60(a)—Federal Matching Funds for Foster Care Maintenance and Adoption Assistance Payments*

We amended paragraph (a)(1) to remove an obsolete effective date, which noted that FFP was available to States as of October 1, 1980. To be inclusive of a Tribal title IV–E agency that has the opportunity to operate a title IV–E plan and receive FFP as of October 1, 2009, we deleted the reference to the obsolete 1980 date. In paragraph (a)(1)(i), we removed the obsolete reference to section 102(d) of the Adoption Assistance and Child Welfare Act of 1980 (Pub. L. 96–272). This citation was to provisions related to the original implementation of voluntary placement agreements in a State agency regarding children removed from their home prior to FY 1980 that are no longer relevant.

As we explained earlier, both State and Tribal IV–E agencies have the ability to receive FFP for voluntary placement agreements that meet the requirements of the Act and 45 CFR 1356.22. We believe that because these changes are technical in nature there is no need to go through the notice and comment process to update the regulation.

We reference section 479B of the Act in paragraphs (a)(1)(i), (a)(1)(ii) and (a)(2) to make clear that FFP is authorized pursuant to Tribal title IV–E plans in addition to State title IV–E plans. In paragraph (a)(1)(ii) we made an additional change to provide for the applicable parts of section 473 of the Act to payments for adoption assistance. Adding the language “applicable provisions of” section 473 of the Act is intended to clarify that the provisions in section 473(d) of the Act that relate only to the kinship guardianship assistance program would not apply to receipt of FFP for the adoption assistance program. We also amended paragraph (a)(2) to add a reference to sections 474(a)(1) and (2) of the Act, which specifically authorize FFP at the Tribal FMAP rates to Indian Tribes with title IV–E plans and States with title IV–E agreements with Indian Tribes. These changes bring the regulations on fiscal requirements in line with the changes made by Public Law 110–351 to authorize direct payments to Indian Tribes with title IV–E plans.

Several commenters asked questions about the fiscal aspects of title IV–E that made it clear to us that we need to provide more clarity about this aspect of the program. Title IV–E funding is unavailable for activities outside of those required by title IV–E, including child abuse prevention or investigatory activities, social services, medical or education expenses. A title IV–E agency submits quarterly claims for Federal reimbursement and may send us adjusted claims, upwards or downwards, for up to two years after the expense is incurred. ACF reimburses a title IV–E agency for these expenses quarterly based on title IV–E agency reports provided to us. Title IV–E funding cannot be advanced to a title IV–E agency. In the absence of any agreement to which the State and Indian Tribe may be party which may include provisions for payment of funds, States are not obligated to provide title IV–E funding or matching funds to Indian Tribes who take placement and care responsibility for children who were once in a State’s placement and care responsibility.

Under title IV–E, FFP is available at the FMAP rate per sections 1905(b), 474(a)(1) and (2) and 479B(d) of the Act

to a title IV–E agency with an approved title IV–E plan for allowable costs in expenditures for foster care maintenance payments and adoption assistance payments. There is a unique FMAP rate established for a Tribal title IV–E agency that is at least as high as the FMAP rate of any State in which the Indian Tribe is located.

Additional FFP is available for administrative expenses at the 50 percent rate and training expenses at rates ranging from 55 to 75 percent, as indicated in section 474(a)(3) of the Act and section 203(b) of Public Law 110–351. The title IV–E agency may receive Federal reimbursement at the 75 percent rate for short or long term training of persons who are employed or preparing for employment with the title IV–E agency and are working on title IV–E activities under certain conditions. Such training can include educational programs that will lead to a baccalaureate or graduate degree in social work or a related field. FFP also is available at 75 percent for the title IV–E agency to provide short-term training of current or prospective foster or adoptive parents, the members of the staff of licensed or approved child care institutions providing care to title IV–E eligible foster and adopted children in ways that increase their ability to provide support and assistance to such children.

All title IV–E agencies must follow the provisions of section 474(a)(3)(A) and (B) of the Act regarding training expenses. We are not making changes in the regulation regarding the new groups of trainees for which training expenses may be claimed by a title IV–E agency as amended by Public Law 110–351 in this Interim Final Rule as they are not related to the Tribal provisions of section 301 of Public Law 110–351. However, section 474(a)(3)(B) of the Act allows FFP to be claimed at increasing rates, rising from 55 percent in FY 2009 to 75 percent in FY 2013, for short-term training of certain persons. These groups include title IV–E agency-licensed or approved child welfare agencies providing services to children receiving assistance under title IV–E, 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. The training must be provided for the purpose of increasing such persons’ ability to provide support and assistance to title IV–E foster and adopted children whether incurred directly by the IV–E agency or by contract. All training activities and costs

funded under title IV–E must be included in the title IV–E agency’s training plan for title IV–B. Paragraph (b)(3) cross-references to 45 CFR 235.63 through 235.66(a) and therefore requires that all short and long-term training allocated to title IV–E must be provided in accordance with these regulations as well.

Some commenters wondered if workers receiving title IV–E educational stipends can fulfill the agency work requirement with the Tribal title IV–E agency and we note that this is permissible. As mentioned above, 45 CFR 1356.60(b) cross-references to 45 CFR 235.63 through 235.66(a). These regulations require that persons preparing for employment whose education costs are being paid for by a title IV–E agency must commit to work for the title IV–E agency for a period of time at least equal to the period for which financial assistance is provided to them if the title IV–E agency makes them an offer of employment within two months of completion of the training. One commenter wanted to know if Tribal colleges are recognized as qualifying schools while another requested that Tribal stipend recipients be able to use the stipend at the college of their choice. The regulations at 45 CFR 235.63(b)(4) state that persons preparing for employment may pursue education at an institution approved by the title IV–E agency, which can include Tribal colleges at the option of the title IV–E agency.

#### Section 1356.60(e)—Federal Matching Funds for SACWIS/TACWIS

We amended the title to section 1356.60(e) to include the acronym “TACWIS” (Tribal automated child welfare information systems). We also amended paragraph (e) to make a conforming change by adding a reference to a “Tribal” automated information system to accompany the reference to a “Statewide” automated system.

#### Section 1356.67—Title IV–E State Procedures for the Transfer of Placement and Care Responsibility of a Child to a Tribal Title IV–E Agency

This section provides procedures for the transfer of placement and care responsibility of a child from a State title IV–E agency to an Indian Tribe with a title IV–E agreement or an approved title IV–E plan consistent with section 301(e)(1) of Public Law 110–351. The law mandates that we regulate these procedures should an Indian Tribe wish to take placement and care responsibility in these situations.

Paragraph (a) describes the scope of the transfer procedures. The procedures apply to each State with a title IV–E plan approved under section 471 and 479B of the Act or an Indian Tribe with a title IV–E agreement. A State must establish procedures, in consultation with Indian Tribes, for the transfer of responsibility for the placement and care of a child under a State title IV–E plan to a Tribal title IV–E agency or an Indian Tribe with a title IV–E agreement in a way that does not affect a child’s eligibility, receipt of services, or payment under title IV–E or the Medicaid program operated under title XIX. The procedures will apply regardless of whether there is a federally-recognized Indian Tribe within the State’s geographic boundaries or how the State exercises jurisdiction over Indian country pursuant to Public Law 83–280 (also known as Pub. L. 280). The procedures also will apply regardless of whether the State has within its geographic borders an Indian Tribe with an approved title IV–E plan or a title IV–E agreement. We chose broad applicability for these procedures as Public Law 110–351 seeks to ensure that an Indian child involved in a transfer retains his or her eligibility for title IV–E and Medicaid. We believe the ideal way to give this provision effect is to require any State with the potential to have an Indian child in its foster care system to have such procedures. However, we are affording States some flexibility to determine the most appropriate procedures that will ensure this protection in accordance with minimum elements that are described further below. A State must consult with Indian Tribes in developing the procedures so that the procedures are responsive to Indian Tribes who have a need for information on transfer procedures.

In paragraph (b), we establish the minimum elements for a State’s procedures for transferring children to an Indian Tribe with a title IV–E agreement or a title IV–E plan. In paragraph (b)(1), we require the State title IV–E agency to determine, if this determination is not already completed, the child’s eligibility under section 472 or 473 of the Act at the time of the transfer of placement and care responsibility of a child to a Tribal title IV–E agency or Indian Tribe with a title IV–E agreement. We believe that such a provision will ensure that the child’s eligibility for title IV–E and Medicaid is clear at the time of the child’s transfer to an Indian Tribe. This is most useful to the Indian Tribe or Tribal title IV–E agency in determining the child’s AFDC

status based on the State of removal as required by section 472 or 473 of the Act.

In paragraph (b)(2), we require the State title IV–E agency to provide essential documents and information necessary to continue a child’s eligibility under title IV–E and Medicaid to the Tribal title IV–E agency or Indian Tribe with a title IV–E agreement. In the subparagraphs we specify the types of documents that must be provided. In paragraph (b)(2)(i), we require that the State provide copies of the judicial determinations regarding contrary to the welfare and reasonable efforts. These are essential because they are threshold documents used to establish a child’s eligibility for title IV–E. It is important that States provide all judicial determinations regarding contrary to the welfare and reasonable efforts, and not just the most recent ones, so that the Indian Tribe has the ability to reconstruct eligibility as necessary or substantiate claims. In paragraph (b)(2)(ii), we require the State to provide any other documentation that relates to the child’s eligibility for title IV–E. We do not specify in regulation all of the possible kinds of documentation that could fall into this category. For example, the documentation may include AFDC determinations or worksheets, findings related to whether the State considered the child to meet the special needs criteria pursuant to section 473(c) of the Act, or documentation that an 18-year-old is making progress towards completing secondary school. As part of this process, we strongly encourage the State title IV–E agency to consult with the State Medicaid agency to ensure a child’s continuous eligibility under title XIX.

In paragraph (b)(2)(iii) we require the State to provide an Indian Tribe with any other information that relates to the child’s potential or actual eligibility for other Federal benefits. Again, we do not specify in regulations specific documentation, but examples may include documentation of a child’s eligibility for Supplemental Security Income (SSI), or indications that an application for SSI is on file. In addition, we encourage the State title IV–E agency to coordinate with the State title IV–D agency to address any existing child support case or assignment of rights to the State agency as it relates to the transfer of placement and care of the child to an Indian Tribe.

In paragraph (b)(2)(iv), we require the State to provide the child’s case plan to the Indian Tribe, including the health and educational records that are required elements of those plans

consistent with section 475(1)(C) of the Act. The case plan contains critical information for determining the child's existing safety, permanency and well-being status, as well as the agency's future plans for the child. Further, the case plan also may contain information that supports factors of eligibility for the title IV-E programs or other Federal benefits, such as efforts the agency made to finalize permanency. Therefore, we believe it a critical item to transfer to the Indian Tribe. We note here that the State agency is not required to turn over the entire case record, although States may choose to do so as it may be useful for an Indian Tribe who is taking placement and care responsibility of a child.

Finally, in paragraph (b)(2)(v), we require a State to provide information and documentation related to the child's placement settings, including a copy of the most recent provider's license or approval. A transfer of a child to the Indian Tribe does not necessitate that the child move to a different provider, so the Indian Tribe will need information on whether the foster family home or child care institution the child is living in is licensed or approved for title IV-E eligibility purposes. Further, the Indian Tribe may need to contact past providers to gather information on the child's needs. Further, we encourage States and Indian Tribes to discuss during consultation the formats in which this information can be provided and/or accepted, i.e., through hardcopy, electronic transmissions, or by allowing Indian Tribes access to State child welfare case management systems.

One commenter requested that "responsibility for a child" be clearly defined in the regulation. To be eligible for FFP, section 472(a)(2)(B) of the Act requires that the responsibility for placement and care of the child is with the title IV-E agency administering the plan approved under section 471(a) of the Act, or any other public agency with whom the title IV-E agency administering or supervising the administration of the plan approved under section 471(a) of the Act has made an agreement which is in effect. We define the phrase "placement and care responsibility" in the CWPM Section 8.3A.12 at Q/A #4. Placement and care responsibility means that the title IV-E agency is legally accountable for the day-to-day care and protection of the child who has come into foster care through either a court order or a voluntary placement agreement. Placement and care responsibility allows the title IV-E agency to make placement decisions about the child, such as where the child is placed and

the type of placement most appropriate for the child. It also ensures that the title IV-E agency provides the child with the mandated statutory and regulatory protections, including case plans, administrative reviews, permanency hearings, and updated health and education records.

We received many comments that provided recommendations and requested clarification on how a transfer procedure would be developed, the type of information that the State title IV-E agency should provide the Indian Tribe, ensuring continued Medicaid eligibility, and concerns about the confidentiality of information. For example, one Indian Tribe requested clarification regarding how we will develop a procedure for transfer, whether Indian Tribes would be included in the discussion, and if so, at what level. To maintain flexibility and develop a procedure that meets both the needs of the State and Indian Tribes, we specified in paragraph (b) the requirements for States, and that States are required to consult with Indian Tribes on such procedures.

Several commenters recommend that a State title IV-E agency make available all case-specific information requested by an Indian Tribe for the purpose of maintaining a child's title IV-E and Medicaid eligibility, in both electronic and paper format. Several commenters provide specific suggestions of the type of documents needed to continue a child's eligibility. We do not believe it is necessary to mandate that the State make available all information requested by an Indian Tribe, however, we have outlined in paragraph (b)(2) the minimum information that must be provided when a State title IV-E agency transfers placement and care responsibility of a child to an Indian Tribe. The list is not exhaustive, and the State title IV-E agency may provide additional information consistent with State and Federal laws. We also agree that the State title IV-E agency should provide the information to the Tribal title IV-E agency in a format most helpful to the Tribal title IV-E agency. However, we recognize that some Indian Tribes may have limited technical resources with which to develop or upgrade a data reporting system and technological barriers to receiving information in an electronic format. Therefore, to maintain flexibility, we did not mandate a specific format as long as the information shared accomplishes the goal of ensuring continued eligibility.

Several other commenters recommended that our regulations enhance ICWA guidelines to provide for an adequate transfer process because

there is currently no uniform application of ICWA by States. The commenters requested clarification about what to do when a State court does not agree to transfer a child and requested that we develop an enforcement mechanism for States that do not comply with ICWA. We do not have authority to regulate changes directly to ICWA, provide additional guidance for implementation of ICWA or intervene in court actions regarding transferring jurisdiction of a child. Rather, ICWA provisions set forth procedures for the notification to Indian Tribes of Indian children in State custody and the assumption of jurisdiction over court procedures by Indian Tribes for such children. The Bureau of Indian Affairs, Department of Interior, issued guidelines regarding such transfers in "Guidelines for State Courts-Indian Child Custody Proceedings" (see 44 FR 67584, November 26, 1979). Such provisions remain in effect and are not affected by ACF's approval of a title IV-E plan for an Indian Tribe or the effectuation of a title IV-E agreement between a State and an Indian Tribe.

We received a number of comments that requested clarification on procedures for continuing Medicaid eligibility. Several commenters requested clarification as to whether we can encourage States to continue Medicaid services without interruption, and whether the child's Medicaid card can remain with the child until the State child welfare case is closed. The Centers for Medicare and Medicaid Services is the Federal agency with authority to regulate State actions with regard to Medicaid programs under title XIX consistent with the law rather than ACF. However, since a child who is receiving title IV-E foster care or who is subject to a title IV-E adoption assistance agreement consistent with sections 472(h)(1) and 473(b)(1) and (3) of the Act, is categorically eligible for Medicaid, the child's title XIX eligibility will continue as long as the child is receiving title IV-E foster care or title IV-E adoption assistance payments. If a title IV-E eligible child is moving from one State's geographic boundaries to another in the course of a transfer of placement and care responsibility to an Indian Tribe, the child is eligible for Medicaid in the State where the child lives, as specified in Medicaid regulations at 42 CFR 435.403(g). Again, we encourage State title IV-E agencies to coordinate with State Medicaid agencies to ensure continuous title XIX enrollment when a child eligible under

title IV-E is transferred to the placement and care of an Indian Tribe.

Several commenters cited confidentiality concerns and requested clarification regarding what information a State may share with a Tribal title IV-E agency. The State title IV-E agency may share information with the Tribal title IV-E agency pursuant to existing law and this regulation for the purpose of administering a Tribal title IV-E plan as necessary to establish eligibility, determine the amount of assistance and provide services. This is because title IV-E of the Act requires that the title IV-E agency provide safeguards to restrict the use and/or disclosure of information regarding children receiving title IV-E consistent with section 471(a)(8) of the Act. In addition, in accordance with 45 CFR 1355.30(p)(3), records maintained under title IV-E are subject to the confidentiality provisions in 45 CFR 205.50. Among other things, 45 CFR 205.50 restricts the release or use of information concerning individuals receiving financial assistance under the title IV-E program to certain persons or agencies that require the information for specified purposes. One of those purposes identified in the law is the administration of the plan or program under title IV-B, IV-E, or XIX, or the SSI program established by title XVI when necessary to establish eligibility, determine the amount of assistance, and provide services for applicants and recipients. Section 8.4E of the CWPM provides additional information regarding confidentiality requirements of title IV-E.

One Indian Tribe recommended that the regulation pay special attention to the multi-jurisdictional aspects of transferring children from State custody to the Tribal title IV-E agency. Several commenters requested that we include regulatory procedures for inter-Tribal transfers of title IV-E eligible children. We are not regulating such inter-Tribal procedures for two reasons. First, the statutory language in Section 301(e) of Public Law 110-351 which requires us to issue interim final regulations is limited in scope and provides us authority to regulate only transfers from a State to an Indian Tribe. Second, we do not currently regulate transfer procedures between State governments for placement and care responsibility, and therefore, will not impose such a regulation between Tribal title IV-E agencies.

One nonprofit group recommended that the procedure developed in regulation recognize that Indian Tribes cannot become members of Interstate Compact for the Placement of Children

(ICPC), and should not require them to comply with guidelines that they cannot meet. The ICPC is a State compact and thus we do not have the authority require a Tribal title IV-E agency to comply with the ICPC.

*Section 1356.68—Tribal Title IV-E Agency Requirements for In-Kind Administrative and Training Contributions From Third-Party Sources*

Section 1356.68 regulates title IV-E administrative and training cost sharing requirements for Indian Tribes with an approved title IV-E plan as they pertain to in-kind contributions from third-party sources.

*Section 1356.68(a)—Option To Claim In-Kind Expenditures From Third-Party Sources for Non-Federal Share of Administrative and Training Costs*

In paragraph (a), we establish that a Tribal title IV-E agency may claim allowable in-kind expenditures from third-party sources for the purpose of determining the non-Federal share of administrative and training costs under sections 474(a)(3)(A) through (E) of the Act. This authority is specifically granted to Tribal title IV-E agencies in section 479B(c)(1)(D) of the Act and is not available to States, or by extension, those Indian Tribes with a title IV-E agreement. Please note that by cross-reference in 45 CFR 1355.30, existing Departmental regulations including 45 CFR 92.24 which addresses cost-sharing, apply to Indian Tribes who choose to use in-kind contributions from third-parties. Section 45 CFR 1356.60(b) provides examples of allowable training costs applicable to the title IV-E program and 45 CFR 1356.60(c)(2) provides specific examples of allowable administrative costs necessary for the administration of the title IV-E program. Additional information regarding allowable administrative costs for foster care and adoption assistance may be found in the CWPM at Section 8.1.

*Section 1356.68(b)—In-Kind Expenditures for Fiscal Years 2010 and 2011*

In paragraph (b), we apply the percentages of allowable in-kind expenditures from third-party sources that Indian Tribes can claim for FY 2010 and FY 2011, as required by section 479(B)(c)(1)(D)(ii) and (iii) of the Act. We explain the percentages of allowable in-kind expenditures from third-party sources as a portion of the total Tribal title IV-E agency expenditures for each FY quarter. We believe this clarifies the statutory references to “fiscal year quarter” expenditures and “non-Federal

shares” because the method used to calculate the non-Federal share begins by determining the Tribal title IV-E agency’s total expenditures. Once the total expenditures are provided, we determine the portion of total expenditures that the Indian Tribe may claim using in-kind contributions from third-party sources to meet the Tribal title IV-E agency’s share of costs and the remaining Federal reimbursement.

In paragraph (b)(1), we specify that a Tribal title IV-E agency may claim in-kind expenditures from third-party sources of up to 25 percent of the total administrative funds expended during a fiscal quarter pursuant to section 474(a)(3)(C), (D) or (E) of the Act. This percentage limitation for FYs 2010 and 2011 is required by statute. We plan to address the requirement in section 479B(c)(1)(D)(ii)(1) of the Act for a Tribal title IV-E agency, for FYs 2010 and 2011, to list the sources of in-kind contributions in the title IV-E plans in upcoming guidance on the Tribal title IV-E claiming process.

In paragraph (b)(2), we specify that a Tribal title IV-E agency may claim in-kind expenditures from third-party sources of up to 12 percent of the total training funds expended during a fiscal quarter pursuant to section 474(a)(3)(A) and (B) of the Act. These percentage limitations for FYs 2010 and 2011 are required by statute. We also specify the allowable sources of in-kind contributions as mandated in section 479B(c)(1)(D) of the Act.

*Section 1356.68(c)—In-Kind Expenditures for Fiscal Years 2012 and Thereafter*

In paragraph (c), we specify that allowable in-kind expenditures from third-party sources can be used for the Indian Tribe’s entire non-Federal share of administrative and training expenditures for FY 2012 and thereafter. Section 301(e)(2) of Public Law 110-351 and sections 479B(C)(1)(D)(iii) through (iv) of the Act require ACF to regulate, in consultation with Indian Tribes, the percentage of in-kind expenditures from third-party sources for Tribal title IV-E agencies beginning in FY 2012, or the opportunity to claim such contributions expires.

During consultation, most commenters encouraged us to interpret this provision as broadly as possible to allow Tribal title IV-E agencies the financial flexibility needed to operate a title IV-E program. We found these arguments compelling. Therefore, in FY 2012 and thereafter, we allow a Tribal title IV-E agency to claim the entire non-Federal share (Tribal match) of administration and training from in-

kind expenditures from third-party sources. We did not follow the structure set out in section 479B(c)(1)(D)(iii)(II) designed to address FYs 2012–2014 differently than FY 2015 and beyond in order to provide for a transition period for “Early Approved Tribes.” Because we are providing the maximum amount of flexibility for Indian Tribes beginning in FY 2012, no transition period is needed. We believe that this broad and flexible interpretation is justified by the unique circumstances of Indian Tribes and in recognition of the partnerships they may seek from third-parties to implement their title IV–E program.

At the same time, we recognize that even though we are allowing the total portion of the Indian Tribe’s expenditures for training and administration to be in-kind contributions from third-party sources, there may be both practical and other regulatory barriers to a Tribal title IV–E agency reaching their total required non-Federal share from such contributions. In particular, it may be difficult given the nature of administrative costs to have an Indian Tribe’s entire portion of expenditures as in-kind contributions from third-party sources. Further, Tribal title IV–E agencies must ensure that all of their claims, both in-kind and cash outlay, meet the applicable requirements of 45 CFR part 92 as well as the applicable cost allocation methodology.

Paragraph (c)(1) allows a Tribal title IV–E agency to claim allowable in-kind expenditures from third-party sources for up to 50 percent of its total administrative expenditures for FY 2012 and thereafter. This means that a Tribal title IV–E agency may claim in-kind expenditures from third-party sources for all of the required 50 percent match for administrative funds pursuant to section 474(a)(3)(C), (D) or (E) of the Act.

Paragraph (c)(2) allows a Tribal title IV–E agency to claim allowable in-kind expenditures from third-party sources for up to all of its required portion of training funds pursuant to section 474(a)(3)(A) and (B) of the Act. During each quarter of fiscal year 2012, a Tribal title IV–E agency may claim up to 25 or 30 percent as applicable of the total training funds expended depending on the trainee group from allowable in-kind contributions from third-party sources depending on the trainee group. The 25 percent match is for the short-term training of current or prospective foster or adoptive parents and the members of the staff of State/Tribal licensed or State/Tribal approved child care institutions pursuant to section 474(a)(3)(B) of the Act. The 30 percent

match is for short-term training for relative guardians, 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. This difference in match rates is due to the phase-in provisions for the latter trainee groups as required by section 203(b) of Public Law 110–351.

After FY 2012, a Tribal title IV–E agency may claim 25 percent of allowable in-kind expenditures from the total training expenditures from third-party sources provided in section 474(a)(3)(A) and (B) of the Act. This is because after FY 2012, title IV–E agencies are only required to provide a 25 percent match of funds expended on the total training for all categories of training listed in section 474(a)(3)(B) of the Act.

In paragraph (c)(3), we permit Tribal title IV–E agencies to claim in-kind training expenditures for training funds from any allowable third-party source during or after FY 2012. Prior to FY 2012, the Act restricts third-party sources for training expenditures to a specified list provided in statute; therefore this regulatory provision provides additional flexibility in later years. We believe that allowing the Tribal title IV–E agency to use in-kind contributions from any source otherwise allowable provides the greatest degree of flexibility and supports successful operation of a Tribal title IV–E program.

*Section 1356.71—Federal Review of the Eligibility of Children in Foster Care and the Eligibility of Foster Care Providers in Title IV–E Programs*

Section 1356.71 describes the requirements governing Federal reviews of State and Tribal compliance with title IV–E eligibility provisions as they apply to children and foster care providers under section 472 of the Act. The purpose of the title IV–E foster care review is to validate the accuracy of a title IV–E agency’s claims to assure that appropriate payments are made on behalf of eligible children, to eligible foster family homes and child care institutions. These determinations are made by an examination of a sample of records of children in foster care. By conducting title IV–E foster care eligibility reviews, ACF is fulfilling its financial and programmatic stewardship responsibilities in the administration of this program. Additional information on the reviews and the instruments used for the review can be found on the CB’s Web site at <http://www.acf.hhs.gov/>

*programs/cb/cwmonitoring/index.htm#title.*

Throughout section 1356.71 we removed references to “State” or “States” and in most cases, replaced them with “title IV–E agency” or “title IV–E agencies” to apply the requirements to States and Indian Tribes with a title IV–E plan equally as required by Public Law 110–351. However, title IV–E reviews for Indian Tribes cannot begin on a date certain as was the case with the reviews in States. Rather, an initial title IV–E eligibility review will be conducted for an Indian Tribe with a title IV–E plan when ACF determines there is a sufficient number of title IV–E foster care cases to review consistent with the existing sample protocol. Subsequent reviews will occur according to the regulated schedule in 45 CFR 1356.71(a) provided that there are enough sample cases to review. ACF will work with Indian Tribes that have an approved title IV–E plan to address scheduling reviews. To the extent that we made additional conforming changes to the title IV–E eligibility review regulations, they are described below.

In addition, we made a technical amendment to paragraph (j)(3) to reflect changes in regulatory citations by deleting the current citation and replacing it with “45 CFR 30.18.” On March 8, 2007 HHS issued a final rule that implemented the provisions of the Debt Collection Improvement Act of 1996 (72 FR 10404). The rule on interest, penalties and administrative costs was removed from 45 CFR 30.13 and codified at 45 CFR 30.18.

*Section 1356.71(d)—Requirements Subject To Review*

Paragraph (d) describes the requirements subject to the title IV–E eligibility reviews. In paragraph (d)(1)(iii), we made a conforming amendment to reference the section of the Act that requires the responsibility for placement and care of the child to be reviewed during the title IV–E eligibility review by adding “per section 472(a)(2)(B) of the Act” after “agency.” This means we will review whether a State or Tribal title IV–E agency (or other public agency under a title IV–E agreement with the State/Tribe) has placement and care responsibility of the child as an eligibility criterion.

We also made a conforming amendment in paragraph (d)(1)(v) to reference the sections of the Act that set forth the AFDC eligibility criteria a child must meet as part of title IV–E foster care eligibility. Specifically, we added the phrase “per section 472(a)(3) or 479B(c)(1)(C)(ii)(II) of the Act, as appropriate” after “July 16, 1996.” This

means that we will review whether a State followed its title IV–A plan in effect in 1996 in determining whether a child met the AFDC criteria as required by section 472(a)(3) of the Act or whether a Tribal title IV–E agency followed the title IV–A plan in effect in the State of the child’s removal in determining whether a child met the AFDC criteria as required by section 472(a)(3) of the Act.

In paragraph (d)(2) we added a reference to section “479B(c)(2)” of the Act to indicate that for Indian Tribes with a title IV–E plan, we will review whether payments were made to licensed or approved Tribal foster family homes or child care institutions, consistent with Tribal licensing authorities. All changes in paragraph (d) are made to ensure that the requirements subject to title IV–E eligibility reviews are applied in the same manner for Tribal and State title IV–E agencies consistent with Public Law 110–351, with appropriate allowances for provisions specific to Indian Tribes granted by law.

#### Section 1356.71(i)—Program Improvement Plans

Paragraph (i) sets forth the requirement for a title IV–E agency determined not to be in substantial compliance to develop a PIP. In paragraph (i)(1)(iii), we made conforming changes to apply the requirements for a PIP equally to Tribal and State title IV–E agencies. An Indian Tribe may extend the PIP timeframe beyond one year in the same way as a State, if legislation is required to implement and complete the plan.

#### Section 1356.83—Reporting Requirements and Data Elements

Section 1356.83 describes the reporting requirements and data elements for the National Youth in Transition Database (NYTD). We made a technical amendment in paragraph (g)(55) to bring the element response in line with NYTD Technical Bulletin #1 (revised June 29, 2010). Specifically, we deleted “not applicable” as a response option for Element 55 (Other health insurance coverage) because we believe that if a youth reports “yes” for the survey question related to data element 54 (Medicaid) and “no” for data element 56 (Health insurance type—Medical), then this is sufficient information to identify youth who solely participate in Medicaid for health insurance coverage.

In addition to the changes described above, we added a statement after the end of paragraph (h) providing that the information collection requirements in this section have been approved by the

OMB and providing the applicable OMB Control Number.

#### Section 1356.86—Penalties for Non-Compliance

Section 1356.86 describes the Federal funds subject to penalties for noncompliance with the NYTD standards, the amount of those penalties, notification to agencies of penalties, the application of interest and appeals of penalties. We made a technical amendment to paragraph (e) to reflect changes in regulatory citations by deleting the current citation and replacing it with “45 CFR 30.18.” On March 8, 2007 HHS issued a final rule that implemented the provisions of the Debt Collection Improvement Act of 1996 (72 FR 10404). The rule on interest, penalties and administrative costs was removed from 45 CFR 30.13 and codified at 45 CFR 30.18.

#### Appendix A to Part 1356—NYTD Data Elements

Appendix A details the information that must be collected as NYTD Data Elements. We deleted “not applicable” as a response option for element 55 “other health insurance coverage” to bring the response options in line with those listed at 45 CFR 1356.83(g)(55) which do not include the response option of “not applicable.” We also added “no” as a response option for element 56 “health insurance type—medical” to bring the response options in line with those listed at 45 CFR 1356.83(g)(56) which include the response option of “no.”

We believe that because these changes are technical in nature there is no need to go through the notice and comment process to update the regulation.

#### Appendix B to Part 1356—NYTD Youth Outcome Survey

Appendix B details the information that must be collected from all youth surveyed for outcomes in NYTD, whether the youth are in foster care or not. We added “no” as a response option for topic/outcome “Health insurance type—medical (56)”.

We believe that because this change is technical in nature there is no need to go through the notice and comment process to update the regulation.

## VI. Impact Analysis

We have examined the impact of this rule as required by Executive Order 12866 (September 1993, Regulatory Planning and Review), the Regulatory Flexibility Act (RFA) (September 19, 1980, Pub. L. 96–354), the Unfunded Mandates Reform Act of 1995 (Pub. L.

104–4), Executive Order 13175, and Executive Order 13132.

#### Executive Orders 12866 and 13563

Executive Orders 13563 and 12866 directs the agency to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. A regulatory impact analysis (RIA) must be prepared for major rules with economically significant effects (\$100 million or more in any one year). The Department has determined that this interim final rule is consistent with the priorities and principles of these Executive Orders. We have determined that the costs to Indian Tribes as a result of this rule will not be significant in terms of the stated threshold. This rule has been designated a “significant regulatory action,” although not economically significant, under section 3(f) of Executive Order 12866. Accordingly, the rule has been reviewed by the Office of Management and Budget.

#### Regulatory Flexibility Act (RFA)

The Secretary certifies under 5 U.S.C. 605(b) as enacted by the RFA (Pub. L. 96–354), that this rule will not result in a significant impact on a substantial number of small entities. This rule does not affect small entities because it is applicable only to Indian Tribes that administer title IV–E and IV–B of the Act and States directly. For purposes of the RFA, States or Indian Tribes are not small entities subject to the Act. Therefore, the Secretary certifies that this rule will not have a significant economic impact on a substantial number of small entities.

#### Unfunded Mandates

Section 202 of the Unfunded Mandates Reform Act of 1995 also requires that the agency assess anticipated costs and benefits before issuing any rule whose mandates require an annual expenditure of \$100 million (adjusted annually for inflation). That threshold level is currently approximately \$136 million. This interim final rule with comment period has no consequential effect on State, local, or Tribal governments or on the private sector that will result in an

annual expenditure of \$100 million or more.

#### *Executive Order 13132*

Executive Order 13132 on Federalism applies to policies that have federalism implications, defined as “regulations, legislative comments or proposed legislation, and other policy statements or actions that have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.” This interim final rule does not have federalism implications as defined in the Executive Order.

#### *Assessment of Federal Regulations and Policies on Families*

Section 654 of the Treasury and General Government Appropriations Act of 1999 requires Federal agencies to determine whether a policy or regulation may affect family well-being. If the agency’s conclusion is affirmative, then the agency must prepare an impact assessment addressing criteria specified in the law. We have determined that this interim final rule may affect family well-being as defined in section 654 of the law and certify that we have made the required impact assessment. The purpose of direct access to title IV–E funding by Indian Tribes is to provide greater safety and permanency for Indian children and families. This rule is responsive to the needs of Indian Tribes and Tribal organizations within the structure of the law, and provides them the opportunity to operate programs that serve this purpose. The rule will have a positive effect on family well-being. Implementation of Tribal title IV–E programs will help strengthen the safety and stability of Indian families.

#### *Paperwork Reduction Act*

Under the Paperwork Reduction Act (Pub. L. 104–13), all Departments are required to submit to the OMB for review and approval any reporting or recordkeeping requirements inherent in a proposed or final rule. This interim final rule contains information collections in certain sections, all of which are currently authorized by the OMB. The sections that contain information collection requirements are:

- 1355.33(b)—Statewide assessment or Tribal assessment, 0970–0214
- 1355.33(c)—On-site review, 0970–0214
- 1355.35(a)—Program improvement plan (CFSR), 0970–0214

- 1355.38(b)—Corrective action and penalties for violations with respect to a person based on a court finding (Multiethnic Placement Act [MEPA]), 0970–0214
- 1355.40—Adoption and Foster Care Analysis and Reporting System (AFCARS), 0980–0267
- 1356.21(g)—Case plan, 0980–0140
- 1356.71(i)—Program improvement plan (title IV–E review), 0970–0214

In addition, there are information collection requirements in section 1356.20 related to the title IV–E plan pre-print (0980–0141). This interim final rule is not making any changes to the title IV–E pre-print. However, the most recent version of the title IV–E pre-print approved by OMB through October 2012 estimates that up to 20 Indian Tribes would submit a title IV–E plan, so we are carrying that estimate through to the information collections included in this interim final rule.

The first set of information collections (collectively referred to as OMB 0970–0214) is used by the Children’s Bureau for various purposes. We use the first three parts of OMB 0970–0214 when we monitor child welfare programs through the CFSR. Title IV–E agencies use the fourth part of OMB 0970–0214, the Title IV–E PIP, to demonstrate how they will develop and implement a plan to correct areas of noncompliance with the applicable parts of title IV–E or the regulations. A title IV–E agency found to not be acting in accordance with section 471(a)(18) of the Act will use the fifth part of OMB 0970–0214, the MEPA corrective action plan, as a framework for demonstrating that it has changed its policies, practices and laws to conform to the applicable Federal laws.

We use AFCARS data (OMB 0980–0267) to calculate financial bonuses in the Adoption Incentive Payments program, describe child outcomes in the Child Welfare Outcomes Annual Report and CFSRs, and provide case samples for the title IV–E eligibility reviews and CFSRs. We also use the data to develop our budgets, inform policy and program decisions, and share information with the public and stakeholders about children in foster care and children being adopted.

OMB 0980–0140 pertains to the ACF requirement that title IV–E agencies use a case plan to describe the specific services offered and provided to meet the individualized needs of children and families; document compliance with requirements of titles IV–B and IV–E of the Act; report progress in achieving child safety, permanency and well-being; and provide for an

assessment of service delivery and timeliness of decision-making.

Data for the Statewide or Tribal Assessment and On-site Review come from a title IV–E agency’s information system, case review system, quality assurance system and other internal systems. If ACF requires a title IV–E agency to develop a CFSR PIP, MEPA corrective action plan and/or Title IV–E PIP, a title IV–E agency will use data from its internal records and files to complete the plan.

The regulations pertaining to AFCARS at 45 CFR 1355.40 require title IV–E agencies to electronically report certain data regarding children in foster care and adoption. The specific data elements are listed in the Appendix A and B of the regulations.

The case plan consists of a narrative description of the child’s individualized program of care as required by the applicable Federal laws and regulations. ACF does not collect the information in the case plan or require it to be reported to us.

The respondents to all these information collections are State or Tribal government entities.

As required by the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)), ACF has submitted a copy of these sections to OMB for its review. This interim final rule changes the collection requirements of all of these information collections only by extending the requirements that previously applied only to States to Tribal title IV–E agencies. The new respondents to the information collections in this interim final rule are Indian Tribes, Tribal organizations and consortia that have an approved title IV–E plan, or children in the title IV–E agency’s placement and care responsibility. We estimate that the total burden hours will increase from 2,443,205 to 2,568,445 (a 5% increase) as a result of the increased number of respondents as provided in this interim final rule.

The Department expands these collections of information to include Indian Tribes that have been approved to directly-operate a title IV–E program because, by law, the requirements of the title IV–E statute apply to such Indian Tribes “in the same manner as this part applies to a State” (section 479B(b) of the Act), with limited exceptions. This means that Indian Tribes operating title IV–E plans must adhere to existing statutory and regulatory title IV–E requirements in place for States unless the statute provides an exception.

The following are estimates:

Collection	Number of respondents (adding in the Indian Tribes)	Number of responses per respondent	Average burden per response	Total burden hours
1355.33(b)—Statewide or Tribal assessment 0970–0214 .....	14	1	240	3,360
1355.33(c)—On-Site Review 0970–0214 .....	14	1	1,170	16,380
1355.35(a)—Program Improvement Plan (CFSR) 0970–0214 .....	14	1	240	3,360
1355.38(b)—Corrective Action Plan (MEPA) 0970–0214 .....	1	1	780	780
1355.40—AFCARS 0980–0267 .....	72	2	3,005	432,720
1356.21(g)—Case plan 0980–0140 .....	639,735	1	3.3	2,111,125
1356.71(i) Program Improvement Plan (IV–E reviews) 0970–0214 .....	8	1	90	720

Below we describe how we arrived at the estimated burden for each information collection:

**CFSR**—Given the complexities and issues involving conducting a CFSR for a Tribal title IV–E agency, or an Indian Tribe with an approved title IV–E plan, we estimate we will conduct a CFSR in one Indian Tribe during the first three year period after the effective date of the interim final rule. ACF has current OMB approval for 13 CFSRs.

**On-site review**—Given the complexities and issues involving conducting an on-site review for a Tribal title IV–E agency, or Indian Tribe with an approved title IV–E plan, we estimate we will review one Indian Tribe during the first three year period. ACF has current OMB approval for 13 on-site reviews.

**CFSR PIP**—Given the complexities and issues involved in developing a PIP for a Tribal title IV–E agency, or Indian Tribe with an approved title IV–E plan, we estimate at most one additional PIP will be developed during the first three year period. ACF has current OMB approval for 13 PIPs.

**MEPA**—In MEPA enforcement actions, the Office for Civil Rights and ACF work jointly to assist the title IV–E agency to develop and implement corrective action plans that are targeted to remedying the violations for which the agency was cited. There have been few of these corrective action plans required in previous years and it has taken several years for the issues involved to advance to the corrective action phase. We are estimating that the number of title IV–E agencies found to have compliance issues will continue to be the exceptional circumstance and are not adding any additional burden estimate at this time.

**AFCARS**—Indian Tribes with title IV–E plans, which we have previously estimated as 20, will be required to submit AFCARS data. ACF has current OMB approval for 52 AFCARS reports.

**Case plan**—We have only rough estimates of the numbers of children in foster care who may be served by a Tribal title IV–E agency or Indian Tribe

with an approved title IV–E plan. We are using 50 children per Indian Tribe as a rough estimate based on our consultations with Indian Tribes and information from other sources but are very interested in hearing from Indian Tribes how accurate this estimate appears to be. We expect that it may be on the high side. ACF has current OMB approval for 638,735 respondents for the case plan and we are adding 1,000 more here.

**Title IV–E PIP**—We expect to begin these reviews within a four year period after an Indian Tribe's title IV–E plan is approved. Therefore, we estimate that at most one additional PIP will be developed during the first three year period. ACF has current OMB approval for 7 title IV–E PIPs.

ACF will consider comments by the public on these collections of information in the following areas:

- Evaluating whether the proposed collections are necessary for the proper performance of the functions of ACF, including whether the information will have practical utility;
- Evaluating the accuracy of the ACF's estimate of the burden of the proposed collection[s] of information, including the validity of the methodology and assumptions used;
- Enhancing the quality, usefulness, and clarity of the information to be collected; and
- Minimizing the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technology, e.g., permitting electronic submission of responses.

OMB is required to make a decision regarding the collection of information contained in this interim final rule between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment is best assured of having its full effect if OMB receives it within 30 days of publication. This does not affect the deadline for the public to comment to the Department on the interim final rule. Written comments to OMB on the

information collections included in this interim final rule should be sent directly to the following: Office of Management and Budget, either by fax to (202) 395–5806 or by email to [OIRA\\_submission@omb.eop.gov](mailto:OIRA_submission@omb.eop.gov).

Please mark faxes and emails to the attention of the desk officer for ACF. To ensure that public comments have maximum effect, ACF urges that each comment clearly identify the specific information collection that the comment addresses and that comments be in the same order as the regulations. You may also send a copy of these comments to the Department contact named in the **ADDRESSES** section of this preamble.

#### List of Subjects

##### 45 CFR Part 1355

Adoption and foster care, Child welfare, Grant programs—social programs.

##### 45 CFR Part 1356

Adoption and foster care, Grant programs—social programs.

(Catalog of Federal Domestic Assistance Program Number 93.658, Foster Care Maintenance)

Dated: July 5, 2011.

**George H. Sheldon,**

*Acting Assistant Secretary for Children and Families.*

Approved: August 29, 2011.

**Kathleen Sebelius,**

*Secretary, Department of Health and Human Services.*

For the reason set out in the preamble, the Administration for Children and Families amends 45 CFR parts 1355 and 1356 as follows:

#### **PART 1355—REQUIREMENTS APPLICABLE TO TITLE IV–B AND IV–E**

- 1. The authority citation for part 1355 continues to read as follows:

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

- 2. Amend § 1355.20(a) to:

■ a. Revise the definitions of *Adoption*, *Entity*, *Foster family home*, *Full review*, *Partial review* and *Statewide assessment*;

■ b. Remove the first sentence of the definition of *Child care institution* and add two sentences in its place;

■ c. Revise the second sentence of the definition of *Date a child is considered to have entered foster care*;

■ d. Revise paragraphs (1)(ii) and (v) and the third sentence in paragraph (2) in the definition of *Permanency hearing*;

■ e. Revise the first and third sentences of the definition of *Foster Care*; and

■ f. Add new definitions of *Title IV-E agency* and *Tribal agency* to read as follows:

**§ 1355.20 Definitions.**

(a) \* \* \*

*Adoption* means the method provided by State law, or for a Tribal title IV-E agency, Tribal law, which establishes the legal relationship of parent and child between persons who are not so related by birth, with the same mutual rights and obligations that exist between children and their birth parents. This relationship can only be termed “adoption” after the legal process is complete.

\* \* \* \* \*

*Child care institution* means a private child care institution, or a public child care institution which accommodates no more than twenty-five children, and is licensed by the licensing authority responsible for licensing or approval of institutions of this type as meeting the standards established for such licensing. The licensing authority must be a State authority in the State in which the child care institution is located, a Tribal authority with respect to a child care institution on or near an Indian Reservation, or a Tribal authority of a Tribal title IV-E agency with respect to a child care institution in the Tribal title IV-E agency’s service area. \* \* \*

\* \* \* \* \*

*Date a child is considered to have entered foster care* \* \* \* A title IV-E agency may use a date earlier than that required in this definition, such as the date the child is physically removed from the home. \* \* \*

\* \* \* \* \*

*Entity*, as used in § 1355.38, means any organization or agency (e.g., a private child placing agency) that is separate and independent of the title IV-E agency; performs title IV-E functions pursuant to a contract or subcontract with the title IV-E agency; and, receives title IV-E funds. A State or Tribal court is not an “entity” for the purposes of § 1355.38 except if an

administrative arm of the State or Tribal court carries out title IV-E administrative functions pursuant to a contract with the title IV-E agency.

*Foster care* means 24-hour substitute care for children placed away from their parents or guardians and for whom the title IV-E agency has placement and care responsibility. \* \* \* A child is in foster care in accordance with this definition regardless of whether the foster care facility is licensed and payments are made by the State, Tribal or local agency for the care of the child, whether adoption subsidy payments are being made prior to the finalization of an adoption, or whether there is Federal matching of any payments that are made.

\* \* \* \* \*

*Foster family home* means, for the purpose of title IV-E eligibility, the home of an individual or family licensed or approved as meeting the standards established by the licensing or approval authority(ies), that provides 24-hour out-of-home care for children. The licensing authority must be a State authority in the State in which the foster family home is located, a Tribal authority with respect to a foster family home on or near an Indian Reservation, or a Tribal authority of a Tribal title IV-E agency with respect to a foster family home in the Tribal title IV-E agency’s service area. The term may include group homes, agency-operated boarding homes or other facilities licensed or approved for the purpose of providing foster care by the State or Tribal agency responsible for approval or licensing of such facilities. Foster family homes that are approved must be held to the same standards as foster family homes that are licensed. Anything less than full licensure or approval is insufficient for meeting title IV-E eligibility requirements. Title IV-E agencies may, however, claim title IV-E reimbursement during the period of time between the date a prospective foster family home satisfies all requirements for licensure or approval and the date the actual license is issued, not to exceed 60 days.

*Full review* means the joint Federal and title IV-E agency review of all federally-assisted child and family services programs, including family preservation and support services, child protective services, foster care, adoption, and independent living services, for the purpose of determining the title IV-E agency’s substantial conformity with the plan requirements of titles IV-B and IV-E as listed in § 1355.34 of this part. A full review consists of two phases, the statewide

assessment (or for a Tribal title IV-E agency, an assessment of the service area) and a subsequent on-site review, as described in § 1355.33 of this part.

\* \* \* \* \*

*Partial review* means:

(1) For the purpose of the child and family services review, the joint Federal and State/Tribal review of one or more federally-assisted child and family services program(s), including family preservation and support services, child protective services, foster care, adoption, and independent living services. A partial review may consist of any of the components of the full review, as mutually agreed upon by the title IV-E agency and the Administration for Children and Families as being sufficient to determine substantial conformity of the reviewed components with the plan requirements of titles IV-B and IV-E as listed in § 1355.34 of this part;

(2) For the purpose of title IV-B and title IV-E State plan compliance issues that are outside the prescribed child and family services review format, e.g., compliance with AFCARS requirements, a review of State laws, policies, regulations, or other information appropriate to the nature of the concern, to determine State compliance; or

(3) For the purpose of title IV-E plan compliance issues for a Tribal title IV-E agency which are outside of the prescribed child and family services review format, a review of Tribal laws, policies, regulations, or other information appropriate to the nature of the concern, to determine plan compliance.

*Permanency hearing* means:

(1) \* \* \*

(ii) Placed for adoption, with the title IV-E agency filing a petition for termination of parental rights;

\* \* \* \* \*

(v) Placed in another planned permanent living arrangement, but only in cases where the title IV-E agency has documented to the State or Tribal court a compelling reason for determining that it would not be in the best interests of the child to follow one of the four specified options above.

(2) \* \* \* The permanency hearing must be conducted by a family or juvenile court or another court of competent jurisdiction or by an administrative body appointed or approved by the court which is not a part of or under the supervision or direction of the title IV-E agency. \* \* \*

\* \* \* \* \*

*Statewide assessment (or Tribal assessment)* means the initial phase of

a full review of all federally-assisted child and family services programs in the States (or for a Tribal title IV-E agency, in the service area), including family preservation and support services, child protective services, foster care, adoption, and independent living services as described in § 1355.33(b) of this part, for the purpose of determining substantial conformity with the plan requirements of titles IV-B and IV-E as listed in § 1355.34 of this part.

*Title IV-E agency* means the State or Tribal agency administering or supervising the administration of the title IV-B and title IV-E plans.

*Tribal agency* means, for the purpose of title IV-E, the agency of the Indian Tribe, Indian Tribal organization (as those terms are defined in section 479B(a) of the Act) or consortium of Indian Tribes that is administering or supervising the administration of the title IV-E and title IV-B, subpart 1 plan.

■ 3. Amend § 1355.21 to revise the section heading, paragraphs (a) and (b) and the second sentence of paragraph (c) as follows:

**§ 1355.21 Plan requirements for titles IV-E and IV-B.**

(a) The plans for titles IV-E and IV-B must provide for safeguards on the use and disclosure of information which meet the requirements contained in section 471(a)(8) of the Act.

(b) The plans for titles IV-E and IV-B must provide for compliance with the Department's regulations applicable to the State and/or Tribe as listed in 45 CFR 1355.30.

(c) \* \* \* The title IV-E agency also must make available for public review and inspection the title IV-E Plan.

■ 4. Amend § 1355.30 to revise the introductory text, revise paragraphs (c), (d), (i), (k), and (m), revise the heading of paragraph (n), and revise paragraphs (n)(1) through (n)(4) and (o) to read as follows:

**§ 1355.30 Other applicable regulations.**

Except as specified, the following regulations are applicable to State and Tribal programs funded under titles IV-B and IV-E of the Act.

(c) 2 CFR part 376—Nonprocurement Debarment and Suspension.

(d) 2 CFR part 382—Requirements for Drug-Free Workplace (Financial Assistance).

(i) 45 CFR part 92—Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments. Part 92 of this title is applicable to title IV-B programs

and the John H. Chafee Foster Care Independence Program under Section 477 of the Act that are operated by States and/or Tribes. Part 92 of this title is applicable to title IV-E foster care and adoption assistance programs operated by a State title IV-E agency, except that section 92.24 Matching or cost sharing and section 92.41 Financial reporting do not apply. Part 92 of this title is applicable to title IV-E foster care and adoption assistance programs operated by a Tribal title IV-E agency pursuant to section 479B, except that section 92.41 and the sections specified in § 1356.68 do not apply to a Tribal title IV-E agency.

\* \* \* \* \*

(k) 45 CFR part 95—General Administration—Grant Programs (Public Assistance and Medical Assistance). Part 95 of this title is applicable to State and Indian Tribe operated title IV-B and title IV-E programs, except:

(1) Notwithstanding 45 CFR 95.1(a), subpart A, Time Limits for States to File Claims, does not apply to State and Indian Tribe-operated title IV-B (subparts 1 and 2) program and the John H. Chafee Foster Care Independence Program; and

(2) 45 CFR part 95 Subpart E, Cost Allocation Plans, is not applicable to Indian Tribe-operated title IV-E foster care and adoption assistance pursuant to section 479B of the Act (ACYF-CB-PI-10-13).

\* \* \* \* \*

(m) 45 CFR part 100—Intergovernmental Review of Department of Health and Human Services Programs and Activities. Only one section is applicable: 45 CFR 100.12, How may a State simplify, consolidate, or substitute federally required State plans? This section is applicable to a State title IV-E agency only.

(n) 45 CFR part 201—Grants to States for Public Assistance Programs. \* \* \* (1) § 201.5—Grants. Applicable to title IV-E foster care and adoption assistance only.

(2) § 201.6—Withholding of payment; reduction of Federal financial participation in the costs of social services and training. Applicable only to an unapprovable change in an approved plan, or the failure of the agency to change its approved plan to conform to a new Federal requirement for approval of plans.

(3) § 201.15—Deferral of claims for Federal financial participation. Applicable only to title IV-E foster care and adoption assistance.

(4) § 201.66—Repayment of Federal funds by installments. Applicable only

to title IV-E foster care and adoption assistance.

(o) 45 CFR 204.1—Submittal of State Plans for Governor's Review. Applicable to State title IV-E agencies only.

\* \* \* \* \*

■ 5. Revise § 1355.31 to read as follows:

**§ 1355.31 Elements of the child and family services review system.**

*Scope.* Sections 1355.32 through 1355.37 of this part apply to reviews of child and family services programs under subparts 1 and 2 of title IV-B of the Act, and reviews of foster care and adoption assistance programs under title IV-E of the Act.

■ 6. Amend § 1355.32 to:

■ a. Add a second sentence to paragraph (a); and

■ b. Revise paragraphs (b)(1) introductory text, (b)(1)(ii), (b)(2) introductory text, (c), the heading of paragraph (d) and paragraphs (d)(1) through (4) to read as follows:

**§ 1355.32 Timetable for the reviews.**

(a) *Initial reviews.* \* \* \* Each Tribal title IV-E agency must complete an initial full review as described in § 1355.33 of this part, during the four-year period after the ACF determines that the Tribe has approved title IV-B, subpart 1 and 2 and title IV-E plans and has sufficient cases for ACF to apply the procedures in § 1355.33(c).

(b) \* \* \* (1) A title IV-E agency found to be operating in substantial conformity during an initial or subsequent review, as defined in § 1355.34 of this part, must:

\* \* \* \* \*

(ii) Submit a completed statewide assessment, or in the case of a Tribal title IV-E agency, a completed Tribal assessment of the service area, to ACF three years after the on-site review. The assessment will be reviewed jointly by the title IV-E agency and ACF to determine the State's or Indian Tribe's continuing substantial conformity with the plan requirements subject to review. No formal approval of this interim assessment by ACF is required.

(2) A program found not to be operating in substantial conformity during an initial or subsequent review will:

\* \* \* \* \*

(c) *Reinstatement of reviews based on information that a title IV-E agency is not in substantial conformity.* (1) ACF may require a full or a partial review at any time, based on any information, regardless of the source, that indicates the title IV-E agency may no longer be operating in substantial conformity.

(2) Prior to reinstating a full or partial review, ACF will conduct an inquiry

and require the title IV-E agency to submit additional data whenever ACF receives information that the title IV-E agency may not be in substantial conformity.

(3) If the additional information and inquiry indicates to ACF's satisfaction that the title IV-E agency is operating in substantial conformity, ACF will not proceed with any further review of the issue addressed by the inquiry. This inquiry will not substitute for the full reviews conducted by ACF under § 1355.32(b).

(4) ACF may proceed with a full or partial review if the title IV-E agency does not provide the additional information as requested, or the additional information confirms that the title IV-E agency may not be operating in substantial conformity.

(d) *Partial reviews based on noncompliance with plan requirements that are outside the scope of a child and family services review.* \* \* \*

(1) Conduct an inquiry and require the title IV-E agency to submit additional data.

(2) If the additional information and inquiry indicates to ACF's satisfaction that the title IV-E agency is in compliance, we will not proceed with any further review of the issue addressed by the inquiry.

(3) ACF will institute a partial review, appropriate to the nature of the concern, if the title IV-E agency does not provide the additional information as requested, or the additional information confirms that the title IV-E agency may not be in compliance.

(4) If the partial review determines that the title IV-E agency is not in compliance with the applicable plan requirement, the title IV-E agency must enter into a program improvement plan designed to bring the title IV-E agency into compliance, if the provisions for such a plan are applicable. The terms, action steps and time-frames of the program improvement plan will be developed on a case-by-case basis by ACF and the title IV-E agency. The program improvement plan must take into consideration the extent of noncompliance and the impact of the noncompliance on the safety, permanency or well-being of children and families served through the title IV-E agency's title IV-B or IV-E allocation. If the title IV-E agency remains out of compliance, the title IV-E agency will be subject to a penalty related to the extent of the noncompliance.

\* \* \* \* \*

■ 7. In § 1355.33, revise paragraphs (a)(2) introductory text, (a)(2)(i), (ii) and (iv), paragraphs (b), (c)(1) through (3)

and (c)(4)(iv), the last sentence of paragraph (c)(6), paragraph (d), the first sentence of paragraph (e), and paragraph (f) to read as follows:

**§ 1355.33 Procedures for the review.**

(a) \* \* \*

(2) Be conducted by a team of Federal, and State or Tribal reviewers that includes:

(i) Staff of the child and family services agency, including the offices that represent the service areas that are the focus of any particular review;

(ii) Representatives selected by the title IV-E agency, in collaboration with the ACF Regional Office, from those with whom the title IV-E agency was required to consult in developing its CFSP, as described and required in 45 CFR 1357.15(l);

\* \* \* \* \*

(iv) Other individuals, as deemed appropriate and agreed upon by the title IV-E agency and ACF.

(b) *Statewide or Tribal Assessment.* The first phase of the full review will be a statewide assessment, or for a Tribal title IV-E agency a service area assessment, conducted by the title IV-E agency's internal and external members of the review team. The assessment must:

(1) Address each systemic factor under review including the statewide/Tribal information system; case review system; quality assurance system; staff training; service array; agency responsiveness to the community; and foster and adoptive parent licensing, recruitment and retention;

(2) Assess the outcome areas of safety, permanence, and well-being of children and families served by the title IV-E agency using data from AFCARS and NCANDS. For the initial review, ACF may approve another data source to substitute for AFCARS, and in all reviews, ACF may approve another data source to substitute for NCANDS. The title IV-E agency must also analyze and explain its performance in meeting the national standards for the statewide/Tribal service area data indicators;

(3) Assess the characteristics of the title IV-E agency that have the most significant impact on the agency's capacity to deliver services to children and families that will lead to improved outcomes;

(4) Assess the strengths and areas of the title IV-E agency's child and family services programs that require further examination through an on-site review;

(5) Include a listing of all the persons external to the title IV-E agency who participated in the preparation of the assessment pursuant to § 1355.33(a)(2)(ii) and (iv); and

(6) Be completed and submitted to ACF within 4 months of the date that ACF transmits the information for the assessment to the title IV-E agency.

(c) \* \* \*

(1) The on-site review will cover the title IV-E agency's programs under titles IV-B and IV-E of the Act, including in-home services and foster care. It will be jointly planned by the title IV-E agency and ACF, and guided by information in the completed assessment that identifies areas in need of improvement or further review.

(2) The on-site review may be concentrated in several specific political subdivisions or jurisdictions of the title IV-E agency, as agreed upon by the ACF and the title IV-E agency; however, for a State title IV-E agency, a State's largest metropolitan subdivision must be one of the locations selected.

(3) ACF has final approval of the selection of specific areas of the title IV-E agency's child and family services continuum described in paragraph (c)(1) of this section and selection of the political subdivisions or jurisdiction referenced in paragraph (c)(2) of this section.

(4) \* \* \*

(iv) Interviews with key stakeholders, both internal and external to the agency, which, at a minimum, must include those individuals who participated in the development of the State's or Tribal title IV-E agency's CFSP required at 45 CFR 1357.15(1), courts, administrative review bodies, children's guardians ad litem and other individuals or bodies assigned responsibility for representing the best interests of the child.

\* \* \* \* \*

(6) \* \* \* The additional cases in the oversample not selected for the on-site review will form the sample of cases to be reviewed, if needed, in order to resolve discrepancies between the statewide/Tribal assessment and the on-site review in accordance with paragraph (d)(2) of this section.

(d) *Resolution of discrepancies between the assessment and the findings of the on-site portion of the review.* Discrepancies between the statewide or Tribal assessment and the findings of the on-site portion of the review will be resolved by either of the following means, at the title IV-E agency's option:

(1) The submission of additional information by the title IV-E agency; or

(2) ACF and the title IV-E agency will review additional cases using only those indicators in which the discrepancy occurred. ACF and the title IV-E agency will determine jointly the number of additional cases to be reviewed, not to

exceed 150 foster care cases or 150 in-home services cases to be selected as specified in paragraph (c)(6) of this section.

(e) *Partial review.* A partial child and family services review, when required, will be planned and conducted jointly by ACF and the title IV–E agency based on the nature of the concern. \* \* \*

(f) *Notification.* Within 30 calendar days following either a partial child and family services review, full child and family services review, or the resolution of a discrepancy between the assessment and the findings of the on-site portion of the review, ACF will notify the title IV–E agency in writing of whether the title IV–E agency is, or is not, operating in substantial conformity.

■ 8. In § 1355.34 revise paragraph (a) introductory text, (a)(1), (a)(3), (b)(1) introductory text, (b)(2) introductory text, (b)(2)(i), (b)(2)(ii)(C) through (F), (b)(3) introductory text, (b)(3)(i), the first sentence of (b)(3)(ii), (b)(4), the heading and introductory text of (c), paragraph (c)(1), (c)(2) introductory text, (c)(2)(i) through (v), (c)(3) introductory text, (c)(3)(i), (c)(4) introductory text, (c)(4)(i), (c)(4)(iv), (c)(4)(v), (c)(5) introductory text, (c)(5)(v), (c)(6)(i) and (iv), (c)(7)(i) through (v), and (d) to read as follows:

**§ 1355.34 Criteria for determining substantial conformity.**

(a) *Criteria to be satisfied.* ACF will determine a title IV–E agency’s substantial conformity with title IV–B and title IV–E plan requirements based on the following:

(1) Its ability to meet national standards, set by the Secretary, for the statewide/Tribal service area data indicators associated with specific outcomes for children and families;

\* \* \* \* \*

(3) Its ability to meet criteria related to the title IV–E agency’s capacity to deliver services leading to improved outcomes.

(b) \* \* \* (1) A title IV–E agency’s substantial conformity will be determined by its ability to substantially achieve the following child and family service outcomes:

\* \* \* \* \*

(2) A title IV–E agency’s level of achievement with regard to each outcome reflects the extent to which a title IV–E agency has:

(i) Met the national standard(s) for the statewide/Tribal service area data indicator(s) associated with that outcome, if applicable; and,

(ii) \* \* \*

(C) The requirements in section 422(b)(7) of the Act regarding recruitment of potential foster and adoptive families;

(D) The assurances as required by section 422(b)(8)(B) of the Act regarding policies and procedures for abandoned children;

(E) The requirements in section 422(b)(9) of the Act regarding the State’s compliance with the Indian Child Welfare Act;

(F) The requirements in section 422(b)(10) of the Act regarding a title IV–E agency’s plan for effective use of cross-jurisdictional resources to facilitate timely adoptive or permanent placements; and,

\* \* \* \* \*

(3) A title IV–E agency will be determined to be in substantial conformity if its performance on:

(i) Each statewide/Tribal service area data indicator developed pursuant to paragraph (b)(4) of this section meets the national standard described in paragraph (b)(5) of this section; and,

(ii) Each outcome listed in paragraph (b)(1) of this section is rated as “substantially achieved” in 95 percent of the cases examined during the on-site review (90 percent of the cases for an initial review). \* \* \*

(4) The Secretary may, using AFCARS and NCANDS, develop statewide/Tribal service area data indicators for each of the specific outcomes described in paragraph (b)(1) of this section for use in determining substantial conformity. The Secretary may add, amend, or suspend any such statewide/Tribal service area data indicator(s) when appropriate. To the extent practical and feasible, the statewide/Tribal service area data indicators will be consistent with those developed in accordance with section 203 of the Adoption and Safe Families Act of 1997 (Pub. L. 105–89).

\* \* \* \* \*

(c) *Criteria related to title IV–E agency capacity to deliver services leading to improved outcomes for children and families.* In addition to the criteria related to outcomes contained in paragraph (b) of this section, the title IV–E agency also must satisfy criteria related to the delivery of services. Based on information from the assessment and onsite review, the title IV–E agency must meet the following criteria for each systemic factor in paragraphs (c)(2) through (c)(7) of this section to be considered in substantial conformity:

All of the plan requirements associated with the systemic factor must be in place, and no more than one of the plan requirements fails to function as described in paragraphs (c)(2) through (c)(7) of this section. The systemic factor in paragraph (c)(1) of this section is rated on the basis of only one plan

requirement. To be considered in substantial conformity, the plan requirement associated with statewide/Tribal information system capacity must be both in place and functioning as described in the requirement. ACF will use a rating scale to make the determinations of substantial conformity. The systemic factors under review are:

(1) *Statewide/Tribal information system:* The State/Tribal title IV–E agency is operating a statewide/Tribal information system that, at a minimum, can readily identify the status, demographic characteristics, location, and goals for the placement of every child who is (or within the immediately preceding 12 months, has been) in foster care (section 422(b)(8)(A)(i) of the Act);

(2) *Case review system:* The title IV–E agency has procedures in place that:

(i) Provide, for each child, a written case plan to be developed jointly with the child’s parent(s) that includes provisions: for placing the child in the least restrictive, most family-like placement appropriate to his/her needs, and in close proximity to the parents’ home where such placement is in the child’s best interests; for visits with a child placed out of State/Tribal service area at least every 12 months by a caseworker of the agency or of the agency in the State/Tribal service area where the child is placed; and for documentation of the steps taken to make and finalize an adoptive or other permanent placement when the child cannot return home (sections 422(b)(8)(A)(ii), 471(a)(16) and 475(5)(A) of the Act);

(ii) Provide for periodic review of the status of each child no less frequently than once every six months by either a court or by administrative review (sections 422(b)(8)(A)(ii), 471(a)(16) and 475(5)(B) of the Act);

(iii) Assure that each child in foster care under the supervision of the title IV–E agency has a permanency hearing in a family or juvenile court or another court of competent jurisdiction (including a Tribal court), or by an administrative body appointed or approved by the court, which is not a part of or under the supervision or direction of the title IV–E agency, no later than 12 months from the date the child entered foster care (and not less frequently than every 12 months thereafter during the continuation of foster care) (sections 422(b)(8)(A)(ii), 471(a)(16) and 475(5)(C) of the Act);

(iv) Provide a process for termination of parental rights proceedings in accordance with sections 422(b)(8)(A)(ii), 475(5)(E) and (F) of the Act; and,

(v) Provide foster parents, preadoptive parents, and relative caregivers of children in foster care with notice of and a right to be heard in permanency hearings and six-month periodic reviews held with respect to the child (sections 422(b)(8)(A)(ii), 475(5)(G) of the Act, and 45 CFR 1356.21(o)).

(3) *Quality assurance system:* The title IV-E agency has developed and implemented standards to ensure that children in foster care placements are provided quality services that protect the safety and health of the children (section 471(a)(22)) and is operating an identifiable quality assurance system (45 CFR 1357.15(u)) as described in the CFSP that:

(i) Is in place in the jurisdictions within the State/Tribal service area where services included in the CFSP are provided;

\* \* \* \* \*

(4) *Staff training:* The title IV-E agency is operating a staff development and training program (45 CFR 1357.15(t)) that:

(i) Supports the goals and objectives in the title IV-E agency's CFSP;

\* \* \* \* \*

(iv) Provides ongoing training for staff that addresses the skills and knowledge base needed to carry out their duties with regard to the services included in the CFSP; and,

(v) Provides training for current or prospective foster parents, adoptive parents, and the staff of State/Tribal-licensed or State/Tribal-approved child care institutions providing care to foster and adopted children receiving assistance under title IV-E that addresses the skills and knowledge base needed to carry out their duties with regard to caring for foster and adopted children.

(5) *Service array:* Information from the assessment and on-site review determines that the title IV-E agency has in place an array of services (45 CFR 1357.15(n) and section 422(b)(8)(A)(iii) and (iv) of the Act) that includes, at a minimum:

\* \* \* \* \*

(v) Services that are accessible to families and children in all political subdivisions and/or the entire service area covered in the CFSP; and,

\* \* \* \* \*

(6) \* \* \*

(i) The title IV-E agency, in implementing the provisions of the CFSP, engages in ongoing consultation with a broad array of individuals and organizations representing the State/Tribal and county/local agencies responsible for implementing the CFSP and other major stakeholders in the

services delivery system including, at a minimum, Tribal representatives, consumers, service providers, foster care providers, the juvenile court, and other public and private child and family serving agencies (45 CFR 1357.15(l)(3));

\* \* \* \* \*

(iv) There is evidence that the services under the plan are coordinated with services or benefits under other Federal or federally-assisted programs serving the same populations to achieve the goals and objectives in the plan (45 CFR 1357.15(m)).

(7) \* \* \*

(i) The State or Tribe has established and maintains standards for foster family homes and child care institutions which are reasonably in accord with recommended standards of national organizations concerned with standards for such institutions or homes (section 471(a)(10) of the Act);

(ii) The standards so established are applied by the State or Tribe to every licensed or approved foster family home or child care institution receiving funds under title IV-E or IV-B of the Act (section 471(a)(10) of the Act);

(iii) The title IV-E agency complies with the safety requirements for foster care and adoptive placements in accordance with sections 471(a)(16), 471(a)(20) and 475(1) of the Act and 45 CFR 1356.30;

(iv) The title IV-E agency 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 or Tribe for whom foster and adoptive homes are needed (section 422(b)(7) of the Act); and,

(v) The title IV-E agency has developed and implemented plans for the effective use of cross-jurisdictional resources to facilitate timely adoptive or permanent placements for waiting children (section 422(b)(10) of the Act).

(d) *Availability of review instruments.* ACF will make available to the title IV-E agencies copies of the review instruments, which will contain the specific standards to be used to determine substantial conformity, on an ongoing basis, whenever significant revisions to the instruments are made.

■ 9. In § 1355.35 revise the first sentence of paragraph (a)(1) introductory text, paragraphs (a)(1)(i) through (ii), (iv) and (v), (a)(2), (b) introductory text, (b)(1) and (3), (c)(1), (3) and (4), the third sentence of (d)(3), the first sentence of (d)(4), the first sentence of (e) introductory text, (e)(1) through (3), (e)(4) introductory text, (e)(4)(i), and the first sentence of (f), and add a parenthetical OMB information

collection statement at the end of the section, to read as follows:

**§ 1355.35 Program improvement plans.**

(a) \* \* \* (1) Title IV-E agencies found not to be operating in substantial conformity shall develop a program improvement plan. \* \* \*

(i) Be developed jointly by title IV-E agency and Federal staff in consultation with the review team;

(ii) Identify the areas in which the title IV-E agency's program is not in substantial conformity;

\* \* \* \* \*

(iv) Set forth the amount of progress the statewide/Tribal data will make toward meeting the national standards;

(v) Establish benchmarks that will be used to measure the title IV-E agency's progress in implementing the program improvement plan and describe the methods that will be used to evaluate progress;

\* \* \* \* \*

(2) In the event that ACF and the title IV-E agency cannot reach consensus regarding the content of a program improvement plan or the degree of program or data improvement to be achieved, ACF retains the final authority to assign the contents of the plan and/or the degree of improvement required for successful completion of the plan. Under such circumstances, ACF will render a written rationale for assigning such content or degree of improvement.

(b) *Voluntary program improvement plan.* Title IV-E agencies found to be operating in substantial conformity may voluntarily develop and implement a program improvement plan in collaboration with the ACF Regional Office, under the following circumstances:

(1) The title IV-E agency and Regional Office agree that there are areas of the title IV-E agency's child and family services programs in need of improvement which can be addressed through the development and implementation of a voluntary program improvement plan;

\* \* \* \* \*

(3) No penalty will be assessed for the title IV-E agency's failure to achieve the goals described in the voluntary program improvement plan.

(c) \* \* \*

(1) A title IV-E agency determined not to be in substantial conformity must submit a program improvement plan to ACF for approval within 90 calendar days from the date the title IV-E agency receives the written notification from ACF that it is not operating in substantial conformity.

\* \* \* \* \*

(3) If the program improvement plan does not meet the provisions of paragraph (a) of this section, the title IV-E agency will have 30 calendar days from the date it receives notice from ACF that the plan has not been approved to revise and resubmit the plan for approval.

(4) If the title IV-E agency does not submit a revised program improvement plan according to the provisions of paragraph (c)(3) of this section or if the plan does not meet the provisions of paragraph (a) of this section, withholding of funds pursuant to the provisions of § 1355.36 of this part will begin.

(d) \* \* \*

(3) \* \* \* The title IV-E agency must provide compelling documentation of the need for such an extension. \* \* \*

(4) Title IV-E agencies must provide quarterly status reports (unless ACF and the title IV-E agency agree to less frequent reports) to ACF. \* \* \*

(e) \* \* \* Program improvement plans will be evaluated jointly by the title IV-E agency and ACF, in collaboration with other members of the review team, as described in the title IV-E agency's program improvement plan and in accordance with the following criteria:

(1) The methods and information used to measure progress must be sufficient to determine when and whether the title IV-E agency is operating in substantial conformity or has reached the negotiated standard with respect to statewide/Tribal service area data indicators that failed to meet the national standard for that indicator;

(2) The frequency of evaluating progress will be determined jointly by the title IV-E agency and Federal team members, but no less than annually. Evaluation of progress will be performed in conjunction with the annual updates of the title IV-E agency's CFSP, as described in paragraph (f) of this section;

(3) Action steps may be jointly determined by the title IV-E agency and ACF to be achieved prior to projected completion dates, and will not require any further evaluation at a later date; and

(4) The title IV-E agency and ACF may jointly renegotiate the terms and conditions of the program improvement plan as needed, provided that:

(i) The renegotiated plan is designed to correct the areas of the title IV-E agency's program determined not to be in substantial conformity and/or achieve a standard for the statewide/Tribal service area data indicators that is acceptable to ACF;

\* \* \* \* \*

(f) \* \* \* The elements of the program improvement plan must be incorporated into the goals and objectives of the title IV-E agency's CFSP. \* \* \*

(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.)

■ 10. In § 1355.36 revise paragraphs (a)(1) through (2), the first sentence of the introductory text of (b), (b)(1) through (4), (b)(6), the introductory text of (b)(7), (b)(7)(iii), the introductory text of (b)(8), (b)(8)(iii), the introductory text of (c)(1), (c)(1)(ii), the first sentence of (d), (e)(1), (e)(2)(i) and (iii), and (e)(3) through (5) to read as follows:

**§ 1355.36 Withholding Federal funds due to failure to achieve substantial conformity or failure to successfully complete a program improvement plan.**

(a) \* \* \*

(1) The term "title IV-B funds" refers to the title IV-E agency's combined allocation of title IV-B subpart 1 and subpart 2 funds; and

(2) The term "title IV-E funds" refers to the title IV-E agency's reimbursement for administrative costs for the foster care program under title IV-E.

(b) \* \* \* ACF will determine the amount of title IV-B and IV-E funds to be withheld due to a finding that the title IV-E agency is not operating in substantial conformity, as follows:

(1) A title IV-E agency will have the opportunity to develop and complete a program improvement plan prior to any withholding of funds.

(2) Title IV-B and IV-E funds will not be withheld from a title IV-E agency if the determination of nonconformity was caused by the title IV-E agency's correct use of formal written statements of Federal law or policy provided the title IV-E agency by DHHS.

(3) A portion of the title IV-E agency's title IV-B and IV-E funds will be withheld by ACF for the year under review and for each succeeding year until the title IV-E agency either successfully completes a program improvement plan or is found to be operating in substantial conformity.

(4) The amount of title IV-B and title IV-E funds subject to withholding due to a determination that a title IV-E agency is not operating in substantial conformity is based on a pool of funds defined as follows:

(i) The title IV-E agency's allotment of title IV-B funds for each of the years to which the withholding applies; and

(ii) An amount equivalent to 10 percent of the title IV-E agency's Federal claims for title IV-E foster care administrative costs for each of the years to which withholding applies;

\* \* \* \* \*

(6) Except as provided for in paragraphs (b)(7), (b)(8), and (e)(4) of this section, in the event the title IV-E agency is determined to be in nonconformity on each of the seven outcomes and each of the seven systemic factors subject to review, the maximum amount of title IV-B and title IV-E funds to be withheld due to the title IV-E agency's failure to comply is 14 percent per year of the funds described in paragraph (b)(4) of this section for each year.

(7) Title IV-E agencies determined not to be in substantial conformity that fail to correct the areas of nonconformity through the successful completion of a program improvement plan, and are determined to be in nonconformity on the second full review following the first full review in which a determination of nonconformity was made will be subject to increased withholding as follows:

\* \* \* \* \*

(iii) The maximum amount of title IV-B and title IV-E funds to be withheld due to the title IV-E agency's failure to comply on the second full review following the first full review in which the determination of nonconformity was made is 28 percent of the funds described in paragraph (b)(4) of this section for each year to which the withholding of funds applies.

(8) Title IV-E agencies determined not to be in substantial conformity that fail to correct the areas of nonconformity through the successful completion of a program improvement plan, and are determined to be in nonconformity on the third and any subsequent full reviews following the first full review in which a determination of nonconformity was made will be subject to increased withholding as follows:

\* \* \* \* \*

(iii) The maximum amount of title IV-B and title IV-E funds to be withheld due to the title IV-E agency's failure to comply on the third and any subsequent full reviews following the first full review in which the determination of nonconformity was made is 42 percent of the funds described in paragraph (b)(4) of this section for each year to which the withholding of funds applies.

(c) \* \* \*

(1) For title IV-E agencies determined not to be operating in substantial conformity, ACF will suspend the withholding of the title IV-E agencies'

title IV–B and title IV–E funds during the time that a program improvement plan is in effect, provided that:

\* \* \* \* \*

(ii) The title IV–E agency is actively implementing the provisions of the program improvement plan.

\* \* \* \* \*

(d) \* \* \* For title IV–E agencies determined not to be in substantial conformity, ACF will terminate the withholding of the title IV–E agency's title IV–B and title IV–E funds related to the nonconformity upon determination by the title IV–E agency and ACF that the title IV–E agency has achieved substantial conformity or has successfully completed a program improvement plan. \* \* \*

(e) \* \* \*

(1) Title IV–E agencies determined not to be in substantial conformity that fail to successfully complete a program improvement plan will be notified by ACF of this final determination of nonconformity in writing within 10 business days after the relevant completion date specified in the plan, and advised of the amount of title IV–B and title IV–E funds which are to be withheld.

(2) \* \* \*

(i) If the title IV–E agency fails to submit status reports in accordance with § 1355.35(d)(4), or if such reports indicate that the title IV–E agency is not making satisfactory progress toward achieving goals or actions steps, funds will be withheld at that time for a period beginning October 1 of the fiscal year for which the determination of nonconformity was made and ending on the specified completion date for the affected goal or action step.

\* \* \* \* \*

(iii) The withholding of funds commensurate with the level of nonconformity at the end of the program improvement plan will begin at the latest completion date specified in the program improvement plan and will continue until a subsequent full review determines the title IV–E agency to be in substantial conformity or the title IV–E agency successfully completes a program improvement plan developed as a result of that subsequent full review.

(3) When the date the title IV–E agency is determined to be in substantial conformity or to have successfully completed a program improvement plan falls within a specific quarter, the amount of funds to be withheld will be computed to the end of that quarter.

(4) A title IV–E agency that refuses to participate in the development or

implementation of a program improvement plan, as required by ACF, will be subject to the maximum increased withholding of 42 percent of its title IV–B and title IV–E funds, as described in paragraph (b)(8) of this section, for each year or portion thereof to which the withholding of funds applies.

(5) The title IV–E agency will be liable for interest on the amount of funds withheld by the Department, in accordance with the provisions of 45 CFR 30.18.

■ 11. Revise § 1355.37 to read as follows:

**§ 1355.37 Opportunity for public inspection of review reports and materials.**

The title IV–E agency must make available for public review and inspection all statewide or Tribal assessments (§ 1355.33(b)), report of findings (§ 1355.33(e)), and program improvement plans (§ 1355.35(a)) developed as a result of a full or partial child and family services review.

■ 12. In § 1355.38 revise paragraphs (a)(2) introductory text, (a)(2)(iii), (a)(3), (b)(1), (b)(3), (b)(4), the heading of (c), (c)(1) and (3), (e), (f), (g)(1)(i) and (ii), (g)(2) through (g)(5), the first and third sentences of (h)(1), (h)(1)(i) through (iii), and (h)(2) through (4) to read as follows:

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

(a) \* \* \*

(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:

\* \* \* \* \*

(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.

\* \* \* \* \*

(b) \* \* \*

(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.

\* \* \* \* \*

(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.

\* \* \* \* \*

(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.

\* \* \* \* \*

(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) \* \* \*

(1) \* \* \*

(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.

\* \* \* \* \*

(h) \* \* \*

(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. \* \* \* 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).

(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.)

■ 13. In § 1355.39 revise the introductory text, paragraph (b), and paragraph (c) to read as follows:

**§ 1355.39 Administrative and judicial review.**

A title IV–E agency determined not to be in substantial conformity with titles IV–B and IV–E plan requirements, or a title IV–E agency or an entity in violation of section 471(a)(18) of the Act:

\* \* \* \* \*

(b) Will have the opportunity to obtain judicial review of an adverse decision of the Departmental Appeals Board within 60 days after the title IV–E agency or entity receives notice of the decision by the Board. Appeals of adverse Department Appeals Board decisions must be made to the district court of the United States for the judicial district in which the principal or headquarters office of the agency responsible for administering the program is located.

(c) The procedure described in paragraphs (a) and (b) of this section will not apply to a finding that a title IV–E agency or an entity has been determined to be in violation of section 471(a)(18) which is based on a judicial decision.

■ 14. In § 1355.40 revise the first sentence of paragraph (a)(1), remove the second sentence of paragraph (a)(1), revise paragraph (a)(2), the first and fourth sentences of (a)(3), add a sentence to the end of paragraph (a)(3), revise the first sentence of (b)(1), revise the last sentence of (b)(2), revise paragraphs (b)(3), (b)(4), and (c)(2), remove paragraph (c)(3), revise paragraph (d) and (e) and add a parenthetical OMB information collection statement at the end of the section to read as follows:

**§ 1355.40 Foster care and adoption data collection.**

(a) \* \* \*

(1) Each title IV–E agency which administers or supervises the administration of titles IV–B and IV–E must implement a system to collect data. \* \* \*

(2) For the purposes of foster care reporting, each data transmission must include all children in foster care for whom the title IV–E agency has responsibility for placement, care, or

supervision. This includes American Indian children covered under the assurances in section 422(b)(8) of the Act on the same basis as any other child. For children in care less than 30 days, only a core set of information will be required, as noted in Appendix A to this part. For children who enter foster care prior to October 1, 1995 and who are still in the system, core data elements will be required; in addition, the title IV-E agency also will be required to report on the most recent case plan goal affecting those children. For children in out-of-State placement, the State placing the child and making the foster care payment submits and continually updates the data. For children in the Tribal title IV-E agency's placement and care responsibility who are placed outside of the Tribal service area, the Indian Tribe placing the child and making foster care payments submits and continually updates the data for each such child.

(3) For the purposes of adoption reporting, data are required to be transmitted by the title IV-E agency on all adopted children who were placed by the title IV-E agency, and on all adopted children for whom the agency is providing adoption assistance (either ongoing or for nonrecurring expenses), care or services directly or by contract or agreement with other private or public agencies. \* \* \* For a child adopted out-of-State, the title IV-E agency which placed the child submits the data. Similarly, the Tribal title IV-E agency which placed the child outside of the Tribal service area for adoption submits the data.

(b) \* \* \*

(1) The title IV-E agency shall transmit semi-annually, within 45 days of the end of the reporting period (i.e., by May 15 and November 14), information on each child in foster care and each child adopted during the reporting period. \* \* \*

(2) \* \* \* Entry of this date constitutes title IV-E agency certification that the data on the child have been reviewed and are current.

(3) Adoption data are to be reported during the reporting period in which the adoption is legalized or, at the title IV-E agency's option, in the following reporting period if the adoption is legalized within the last 60 days of the reporting period. For a semi-annual period in which no adoptions have been legalized, the title IV-E agency must report such an occurrence.

(4) A summary file of the semi-annual data transmission must be submitted and will be used to verify the completeness of the title IV-E agency's

detailed submission for the reporting period.

\* \* \* \* \*

(c) \* \* \*

(2) Substantial noncompliance occurs when missing data exceed 10 percent for any one data element.

(d) *Timeliness of foster care data reports.* Ninety percent of the subject transactions must have been entered into the system within 60 days of the event (removal from home or discharge from foster care) or the title IV-E agency will be found in substantial noncompliance.

(e) *Substantial Noncompliance.*

Failure by a title IV-E agency to meet any of the standards described in paragraphs (a) through (d) of this section is considered a substantial failure to meet the requirements of the title IV-E plan.

(This requirement has been approved by the Office of Management and Budget under OMB Control Number 0980-0267. 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.)

■ 15. Revise § 1355.50 to read as follows:

**§ 1355.50 Purpose of this part.**

This part sets forth the requirements and procedures title IV-E agencies must meet in order to receive Federal financial participation for the planning, design, development, installation and operation of statewide or Tribal automated child welfare information systems authorized under section 474(a)(3)(c) of the Act.

■ 16. In § 1355.52 revise the section heading and paragraphs (a) and (b) to read as follows:

**§ 1355.52 Funding authority for statewide or Tribal automated child welfare information systems (SACWIS/TACWIS).**

(a) Title IV-E agencies may receive Federal reimbursement at the 50 percent level for expenditures related to the planning, design, development and installation of a statewide or Tribal automated child welfare information system, to the extent such system:

(1) Provides for the title IV-E agency to collect and electronically report certain data required by section 479(b) of the Act and § 1355.40 of this part;

(2) To the extent practicable, provides for an interface with the data collection system for child abuse and neglect;

(3) To the extent practicable, provides for an interface with and retrieval of information from the State or Tribal

automated information system that collects information relating to the eligibility of individuals under title IV-A of the Act; and

(4) Provides for more efficient, economical and effective administration of the programs carried out under a plan approved under title IV-B and title IV-E.

(b) Title IV-E agencies may also be reimbursed for the full amount of expenditures for the hardware components for such systems at the rate provided under paragraph (a) of this section.

\* \* \* \* \*

■ 17. In § 1355.53 revise paragraph (a), paragraph (b)(2) introductory text, paragraph (b)(3), paragraph (e), paragraph (f) and paragraph (g) to read as follows:

**§ 1355.53 Conditions for approval of funding.**

(a) As a condition of funding, the SACWIS or TACWIS must be designed, developed (or an existing system enhanced), and installed in accordance with an approved advance planning document (APD). The APD must provide for a design which, when implemented, will produce a comprehensive system, which is effective and efficient, to improve the program management and administration of the plans for titles IV-B and IV-E as provided under this section.

(b) \* \* \*

(2) Provide, for electronic exchanges and referrals, as appropriate, with the following systems within the State or Tribe, unless the title IV-E agency demonstrates that such interface or integration would not be practicable because of systems limitations or cost constraints:

\* \* \* \* \*

(3) Support the provisions of section 422(a) by providing for the automated collection, maintenance, management and reporting of information on all children in foster care under the responsibility of the title IV-E agency, including statewide data (or in the case of a Tribal title IV-E agency, service area data) from which the demographic characteristics, location, and goals for foster care children can be determined;

\* \* \* \* \*

(e) If the cost benefit analysis submitted as part of the APD indicates that adherence to paragraphs (c) and (d) of this section would not be cost beneficial, final approval of the APD may be withheld until resolution is reached on the level of automation

appropriate to meet the title IV–E agency's needs.

(f) A Statewide or Tribal automated child welfare information system may be designed, developed and installed on a phased basis, in order to allow title IV–E agencies to implement AFCARS requirements expeditiously, in accordance with section 479(b) of the Act, as long as the approved APD includes the title IV–E agency's plan for full implementation of a comprehensive system which meets all functional and data requirements as specified in paragraphs (a) and (b) of this section, and a system design which will support these enhancements on a phased basis.

(g) The system must perform Quality Assurance functions to provide for the review of case files for accuracy, completeness and compliance with Federal requirements, State standards and where applicable, Tribal standards.

■ 18. Revise § 1355.54 to read as follows:

**§ 1355.54 Submittal of advance planning documents.**

The title IV–E agency must submit an APD for a statewide automated child welfare information system, signed by the appropriate official, in accordance with procedures specified by 45 CFR part 95, subpart F.

■ 19. In § 1355.55 revise paragraph (a) introductory text and add a parenthetical OMB information collection statement at the end of the section to read as follows:

**§ 1355.55 Review and assessment of the system developed with enhanced funds.**

(a) ACF will, on a continuing basis, review, assess and inspect the planning, design, development, installation and operation of the SACWIS or TACWIS to determine the extent to which such systems:

\* \* \* \* \*

(This requirement has been approved by the Office of Management and Budget under OMB Control Number 0970–0007. 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.)

■ 20. In § 1355.56 revise paragraph (a), the introductory text of paragraph (b)(1), paragraphs (b)(1)(iv), (b)(2), and (b)(4) to read as follows:

**§ 1355.56 Failure to meet the conditions of the approved APD.**

(a) If ACF finds that the title IV–E agency fails to meet any of the conditions cited in § 1355.53, or to

substantially comply with the criteria, requirements and other undertakings prescribed by the approved APD, approval of the APD may be suspended.

(b) \* \* \*

(1) The title IV–E agency will be given written notice of the suspension. This notice shall state:

\* \* \* \* \*

(iv) The actions required by the title IV–E agency for future enhanced funding.

(2) The suspension will be effective as of the date the title IV–E agency failed to comply with the approved APD;

\* \* \* \* \*

(4) Should a title IV–E agency cease development of an approved system, either by voluntary withdrawal or as a result of Federal suspension, all Federal incentive funds invested to date that exceed the normal administrative FFP rate (50 percent) will be subject to recoupment.

■ 21. Revise § 1355.57 to read as follows:

**§ 1355.57 Cost allocation.**

(a) All expenditures of a title IV–E agency to plan, design, develop, install, and operate the data collection and information retrieval system described in § 1355.53 of this part shall be treated as necessary for the proper and efficient administration of the title IV–E plan, without regard to whether the system 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 the title IV–E plan.

(b) Cost allocation and distribution for the planning, design, development, installation and operation must be in accordance with § 95.631 of this title and section 474(c) of the Act, if the SACWIS or TACWIS includes functions, processing, information collection and management, equipment or services that are not directly related to the administration of the programs carried out under the plan approved under title IV–B or IV–E.

■ 22. Remove Appendix F and revise Appendices A through E to part 1355 to read as follows:

**Appendix A to Part 1355—Foster Care Data Elements**

**Section I—Foster Care Data Elements**

Data elements preceded by “\*\*\*” are the only data elements required for children who have been in care less than 30 days. For children who entered care prior to October 1, 1995, data elements preceded by either “\*\*\*” and “\*\*\*\*” are the only data elements required. This means that, for these two categories of children, these are the only data

elements to which the missing data standard will be applied.

**I. General Information**

\*\*A. Title IV–E agency \_\_\_\_\_

\*\*B. Report date \_\_\_\_ (mo.) \_\_\_\_ (yr.)

\*\*C. Local Agency (County or Equivalent Jurisdiction) \_\_\_\_\_

\*\*D. Record Number \_\_\_\_\_

\*\*E. Date of Most Recent Periodic Review (if Applicable) \_\_\_\_ (mo.) \_\_\_\_ (day) \_\_\_\_ (yr.)

**II. Child's Demographic Information**

\*\*A. Date of Birth \_\_\_\_ (mo.) \_\_\_\_ (day) \_\_\_\_ (yr.)

\*\*B. Sex \_\_\_\_

Male: 1

Female: 2

C. Race/Ethnicity

a. American Indian or Alaska Native

b. Asian

c. Black or African American

d. Native Hawaiian or Other Pacific Islander

e. White

f. Unable to Determine

Yes: 1

No: 2

Unable to Determine: 3

D. Has this child been clinically diagnosed as having a disability(ies)? \_\_\_\_

Yes: 1

No: 2

Not Yet Determined: 3

1. If yes, indicate *each* type of disability with a “1”

Mental Retardation \_\_\_\_

Visually or Hearing Impaired \_\_\_\_

Physically Disabled \_\_\_\_

Emotionally Disturbed (DSM III)

Other Medically Diagnosed Condition

Requiring Special Care \_\_\_\_

E. 1. Has this child ever been adopted?

Yes: 1

No: 2

Unable to Determine: 3

2. If yes, how old was the child when the adoption was legalized? \_\_\_\_

Less than 2 years old: 1

2 to 5 years old: 2

6 to 12 years old: 3

13 years or older: 4

Unable to determine: 5

**III. Removal/Placement Setting Indicators**

A. Removal Episodes

Date of First Removal From Home \_\_\_\_ (mo.) \_\_\_\_ (day) \_\_\_\_ (yr.)

Total Number of Removals From Home to Date \_\_\_\_

Date Child was Discharged From Last Foster Care Episode (if Applicable) \_\_\_\_ (mo.) \_\_\_\_ (day) \_\_\_\_ (yr.)

\*\*; Date of Latest Removal From Home \_\_\_\_ (mo.) \_\_\_\_ (day) \_\_\_\_ (yr.)

\*\*Transaction Date \_\_\_\_ (mo.) \_\_\_\_ (day) \_\_\_\_ (yr.)

B. Placement Settings

Date of Placement in Current Foster Care Setting \_\_\_\_ (mo.) \_\_\_\_ (day) \_\_\_\_ (yr.)

Number of Previous Placement Settings During This Removal Episode \_\_\_\_

**IV. Circumstances of Removal**

A. Manner of Removal From Home for Current Placement Episode \_\_\_\_

Voluntary: 1

Court Ordered: 2  
 Not Yet Determined: 3  
 B. Actions or Conditions Associated With Child's Removal: (Indicate all that apply with a "1")  
 Physical Abuse (Alleged/Reported) \_\_\_\_\_  
 Sexual Abuse (Alleged/Reported) \_\_\_\_\_  
 Neglect (Alleged/Reported) \_\_\_\_\_  
 Alcohol Abuse (Parent) \_\_\_\_\_  
 Drug Abuse (Parent) \_\_\_\_\_  
 Alcohol Abuse (Child) \_\_\_\_\_  
 Drug Abuse (Child) \_\_\_\_\_  
 Child's Disability \_\_\_\_\_  
 Child's Behavior Problem \_\_\_\_\_  
 Death of Parent(s) \_\_\_\_\_  
 Incarceration of Parent(s) \_\_\_\_\_  
 Caretaker's Inability to Cope Due to Illness or Other Reasons \_\_\_\_\_  
 Abandonment \_\_\_\_\_  
 Relinquishment \_\_\_\_\_  
 Inadequate Housing \_\_\_\_\_  
 \*\*V. Current Placement Setting \_\_\_\_\_  
 \*\*A. Pre-Adoptive Home: 1  
 Foster Family Home (Relative): 2  
 Foster Family Home (Non-Relative): 3  
 Group Home: 4  
 Institution: 5  
 Supervised Independent Living: 6  
 Runaway: 7  
 Tribal Home Visit: 8  
 \*\*B. Is Current Placement Out-of-State/Tribal service area? \_\_\_\_\_  
 Yes (Out-of-State/Tribal service area Placement): 1  
 No (In State/Tribal service area Placement): 2\*\*\*  
 VI. Most Recent Case Plan Goal \_\_\_\_\_  
 Reunify With Parent(s) or Principal Caretaker(s): 1  
 Live With Other Relative(s): 2  
 Adoption: 3  
 Long Term Foster Care: 4  
 Emancipation: 5  
 Guardianship: 6  
 Case Plan Goal Not Yet Established: 7  
 VII. Principal Caretaker(s) Information  
 A. Caretaker Family Structure \_\_\_\_\_  
 Married Couple: 1  
 Unmarried Couple: 2  
 Single Female: 3  
 Single Male: 4  
 Unable to Determine: 5  
 B. Year of Birth \_\_\_\_\_  
 1st Principal Caretaker \_\_\_\_\_  
 2nd Principal Caretaker (If Applicable) \_\_\_\_\_  
 VIII. Parental Rights Termination (If Applicable)  
 A. Mother \_\_\_\_ (mo.) \_\_\_\_ (day) \_\_\_\_ (yr.)  
 B. Legal or Putative Father \_\_\_\_ (mo.) \_\_\_\_ (day) \_\_\_\_ (yr.)  
 IX. Foster Family Home—Parent(s) Data (To be answered only if Section V., Part A. CURRENT PLACEMENT SETTING is 1, 2 or 3)  
 A. Foster Family Structure \_\_\_\_\_  
 Married Couple: 1  
 Unmarried Couple: 2  
 Single Female: 3  
 Single Male: 4  
 B. Year of Birth \_\_\_\_\_  
 1st Foster Caretaker \_\_\_\_\_  
 2nd Foster Caretaker (If Applicable) \_\_\_\_\_  
 C. Race/Ethnicity \_\_\_\_\_

1. Race of 1st Foster Caretaker  
 a. American Indian or Alaska Native  
 b. Asian  
 c. Black or African American  
 d. Native Hawaiian or Other Pacific Islander  
 e. White  
 f. Unable to Determine  
 2. Hispanic or Latino Ethnicity of 1st Foster Caretaker \_\_\_\_\_  
 Yes: 1  
 No: 2  
 Unable to Determine: 3  
 3. Race of 2nd Foster Caretaker (If Applicable)  
 a. American Indian or Alaska Native  
 b. Asian  
 c. Black or African American  
 d. Native Hawaiian or Other Pacific Islander  
 e. White  
 f. Unable to Determine  
 4. Hispanic or Latino Ethnicity of 2nd Foster Caretaker (If Applicable)  
 Yes: 1  
 No: 2  
 Unable to Determine: 3  
 X. Outcome Information  
 \*\*A. Date of Discharge From Foster Care \_\_\_\_ (mo.) \_\_\_\_ (day) \_\_\_\_ (yr.)  
 \*\*Transaction Date \_\_\_\_ (mo.) \_\_\_\_ (day) \_\_\_\_ (yr.)  
 \*\*B. Reason for Discharge \_\_\_\_\_  
 Reunification With Parents or Primary Caretakers: 1  
 Living with Other Relative(s): 2  
 Adoption: 3  
 Emancipation: 4  
 Guardianship: 5  
 Transfer to Another Agency: 6  
 Runaway: 7  
 Death of Child: 8  
 XI. Source(s) of Federal Financial Support/ Assistance for Child (Indicate all that apply with a "1")  
 Title IV-E (Foster Care) \_\_\_\_\_  
 Title IV-E (Adoption Assistance) \_\_\_\_\_  
 Title IV-A (Aid to Families with Dependent Children) \_\_\_\_\_  
 Title IV-D (Child Support) \_\_\_\_\_  
 Title XIX (Medicaid) \_\_\_\_\_  
 SSI or Other Social Security Act Benefits \_\_\_\_\_  
 None of the Above \_\_\_\_\_

XII. Amount of the monthly foster care payment (regardless of sources). \_\_\_\_\_

## Section II—Definitions of and Instructions for Foster Care Data Elements

*Reporting population.* The population to be included in this reporting system includes all children in foster care under the responsibility of the title IV-E agency administering or supervising the administration of the title IV-B Child and Family Services plan and the title IV-E plan; that is, all children who are required to be provided the assurances of section 422(b)(8) of the Social Security Act.

This population includes all children supervised by or under the responsibility of another public agency with which the title IV-E agency has an agreement under title IV-E and on whose behalf the title IV-E agency makes title IV-E foster care maintenance payments.

Foster care is defined as 24 hour substitute care for children outside their own home. The reporting system includes all children who have or had been in foster care at least 24 hours. The foster care settings include, but are not limited to:

- Family foster homes
- Relative foster homes (whether payments are made or not)
- Group homes
- Emergency shelters
- Residential facilities
- Child care institutions
- Pre-adoptive homes

Foster care does not include children who are in their own homes under the responsibility of the title IV-E agency. However, children who are at home on a trial basis may be included even though they are not considered to be in foster care. If they are included, element number V. CURRENT PLACEMENT SETTING must be given the value of "8".

### I. General Information

A. Title IV-E agency\*\*—for a State, the U.S. Postal Service two letter abbreviation for the State submitting the report. For a Tribal title IV-E agency, the abbreviation provided by ACF.

B. Report Date\*\*—the last month and year for the reporting period.

C. Local Agency\*\*— Identity of the county or equivalent unit which has responsibility for the case. The 5 digit Federal Information Processing Standard (FIPS) must be used or other ACF-provided code.

D. Record Number\*\*—The sequential number which the title IV-E agency uses to transmit data to the Department of Health and Human Services (DHHS) or a unique number which follows the child as long as he or she is in foster care. The record number cannot be linked to the child's case I.D. number except at the title IV-E agency level.

E. Date of Most Recent Periodic Review (if applicable)—For children who have been in care for seven months or longer, enter the month, day and year of the most recent administrative or court review, including dispositional hearing. For children who have been in care less than seven months, leave the field blank. An entry in this field certifies that the child's computer record is current up to this date.

### II. Child's Demographic Information

A. Date of Birth\*\*—Month, day and year of the child's birth. If the child is abandoned or the date of birth is otherwise unknown, enter an approximate date of birth. Use the 15th as the day of birth.

B. Sex\*\*—Indicate as appropriate.

C. Race/Ethnicity\*\*

1. Race—In general, a person's race is determined by how they define themselves or by how others define them. In the case of young children, parents determine the race of the child. Indicate all races (a through e) that apply with a "1." For those that do not apply, indicate a "0." Indicate "f. Unable to Determine" with a "1" if it applies and a "0" if it does not.

American Indian or Alaska Native—A person having origins in any of the original peoples of North or South America

(including Central America), and who maintains tribal affiliation or community attachment.

**Asian**—A person having origins in any of the original peoples of the Far East, Southeast Asia, or the Indian subcontinent including, for example, Cambodia, China, India, Japan, Korea, Malaysia, Pakistan, the Philippine Islands, Thailand, and Vietnam.

**Black or African American**—A person having origins in any of the black racial groups of Africa.

**Native Hawaiian or Other Pacific Islander**—A person having origins in any of the original peoples of Hawaii, Guam, Samoa, or other Pacific Islands.

**White**—A person having origins in any of the original peoples of Europe, the Middle East, or North Africa.

**Unable to Determine**—The specific race category is “unable to determine” because the child is very young or is severely disabled and no person is available to identify the child’s race. “Unable to determine” is also used if the parent, relative or guardian is unwilling to identify the child’s race.

**2. Hispanic or Latino Ethnicity**—Answer “yes” if the child is of Mexican, Puerto Rican, Cuban, Central or South American origin, or a person of other Spanish cultural origin regardless of race. Whether or not a person is Hispanic or Latino is determined by how they define themselves or by how others define them. In the case of young children, parents determine the ethnicity of the child. “Unable to Determine” is used because the child is very young or is severely disabled and no person is available to determine whether or not the child is Hispanic or Latino. “Unable to determine” is also used if the parent, relative or guardian is unwilling to identify the child’s ethnicity.

**D. Has the child been clinically diagnosed as having a disability(ies)?** “Yes” indicates that a qualified professional has clinically diagnosed the child as having at least one of the disabilities listed below. “No” indicates that a qualified professional has conducted a clinical assessment of the child and has determined that the child has no disabilities. “Not Yet Determined” indicates that a clinical assessment of the child by a qualified professional has not been conducted.

**1. Indicate Each Type of Disability With a “1”**

**Mental Retardation**—Significantly subaverage general cognitive and motor functioning existing concurrently with deficits in adaptive behavior manifested during the development period that adversely affect a child’s/youth’s socialization and learning.

**Visually or Hearing Impaired**—Having a visual impairment that may significantly affect educational performance or development; or a hearing impairment, whether permanent or fluctuating, that adversely affects educational performance.

**Emotionally Disturbed (DSM III)**—A condition exhibiting one or more of the following characteristics over a long period of time and to a marked degree: An inability to build or maintain satisfactory interpersonal relationships; inappropriate types of behavior or feelings under normal

circumstances; a general pervasive mood of unhappiness or depression; or a tendency to develop physical symptoms or fears associated with personal problems. The term includes persons who are schizophrenic or autistic. The term does not include persons who are socially maladjusted, unless it is determined that they are also seriously emotionally disturbed. The diagnosis is based on the Diagnostic and Statistical Manual of Mental Disorders (Third Edition) (DSM III) or the most recent edition.

**Other Medically Diagnosed Conditions Requiring Special Care**—Conditions other than those noted above which require special medical care such as chronic illnesses. Included are children diagnosed as HIV positive or with AIDS.

**E.1. Has this child ever been adopted? If this child has ever been legally adopted, enter “yes.” If the child has never been legally adopted, enter “no.” Enter “Unable to Determine” if the child has been abandoned or the child’s parent(s) are otherwise not available to provide the information.**

**2. If yes, how old was the child when the adoption was legalized? Enter the number which represents the appropriate age range. If uncertain, use an estimate. If no one is available to provide the information, enter “Unable to Determine.”**

### III. Removal/Placement Setting Indicators

**A. Removal Episodes**—The removal of the child from his/her normal place of residence resulting in his/her placement in a foster care setting.

**Date of First Removal From Home**—Month, day and year the child was removed from home for the first time for purpose of placement in a foster care setting. If the current<sup>1</sup> removal is the first removal, enter the date of the current removal.<sup>1</sup>For children who have exited foster care, “current” refers to the most recent removal episode and the most recent placement setting.

**Total Number of Removals from Home to Date**—The number of times the child was removed from home, including the current removal.

**Date Child was Discharged From Last Foster Care Episode (if Applicable)**—For children with prior removals, enter the month, day and year they were discharged from care for the episode immediately prior to the current episode. For children with no prior removals, leave blank.

**Date of Latest Removal From Home\*\***—Month, day and year the child was last removed from his/her home for the purpose of being placed in foster care. This would be the date for the current episode or, if the child has existed foster care, the date of removal for the most recent removal.

**Transaction Date\*\***—A computer generated date which accurately indicates the month, day and year the response to “Date of Latest Removal From Home” was entered into the information system.

### B. Placement Settings.

**Date of Placement in Current Foster Care Setting**—Month, day and year the child moved into the current foster home, facility, residence, shelter, institution, etc. for purposes of continued foster care.

**Number of Previous Placement Settings During This Removal Episode**—Enter the

number of places the child has lived, including the current setting, during the current removal episode. Do not include trial home visits as a placement setting.

### IV. Circumstances of Removal

**A. Manner of Removal From Home for Current Placement Episode.**

**Voluntary Placement Agreement**—An official voluntary placement agreement has been executed between the caretaker and the agency. The placement remains voluntary even if a subsequent court order is issued to continue the child in foster care.

**Court Ordered**—The court has issued an order which is the basis of the child’s removal.

**Not Yet Determined**—A voluntary placement agreement has not been signed or a court order has not been issued. This will mostly occur in very short-term cases. When either a voluntary placement agreement is signed or a court order issued, the record should be updated to reflect the manner of removal at that time.

**B. Actions or Conditions Associated With Child’s Removal (indicate all that apply with a “1”).**

**Physical Abuse**—Alleged or substantiated physical abuse, injury or maltreatment of the child by a person responsible for the child’s welfare.

**Sexual Abuse**—Alleged or substantiated sexual abuse or exploitation of a child by a person who is responsible for the child’s welfare.

**Neglect**—Alleged or substantiated negligent treatment or maltreatment, including failure to provide adequate food, clothing, shelter or care.

**Alcohol Abuse (Parent)**—Principal caretaker’s compulsive use of alcohol that is not of a temporary nature.

**Drug Abuse (Parent)**—Principal caretaker’s compulsive use of drugs that is not of a temporary nature.

**Alcohol Abuse (Child)**—Child’s compulsive use of or need for alcohol. This element should include infants addicted at birth.

**Drug Abuse (Child)**—Child’s compulsive use of or need for narcotics. This element should include infants addicted at birth.

**Child’s Disability**—Clinical diagnosis by a qualified professional of one or more of the following: Mental retardation; emotional disturbance; specific learning disability; hearing, speech or sight impairment; physical disability; or other clinically diagnosed handicap. Include only if the disability(ies) was at least one of the factors which led to the child’s removal.

**Child’s Behavior Problem**—Behavior in the school and/or community that adversely affects socialization, learning, growth, and moral development. These may include adjudicated or nonadjudicated child behavior problems. This would include the child’s running away from home or other placement.

**Death of Parent(s)**—Family stress or inability to care for child due to death of a parent or caretaker.

**Incarceration of Parent(s)**—Temporary or permanent placement of a parent or caretaker in jail that adversely affects care for the child.

**Caretaker’s Inability to Cope Due to Illness or Other Reasons**—Physical or emotional

illness or disabling condition adversely affecting the caretaker's ability to care for the child.

**Abandonment**—Child left alone or with others; caretaker did not return or make whereabouts known.

**Relinquishment**—Parent(s), in writing, assigned the physical and legal custody of the child to the agency for the purpose of having the child adopted.

**Inadequate Housing**—Housing facilities were substandard, overcrowded, unsafe or otherwise inadequate resulting in their not being appropriate for the parents and child to reside together. Also includes homelessness.

#### V. Current Placement Setting\*\*

A. Identify the type of setting in which the child currently lives.

**Pre-Adoptive Home**—A home in which the family intends to adopt the child. The family may or may not be receiving a foster care payment or an adoption subsidy on behalf of the child.

**Foster Family Home (Relative)**—A licensed or unlicensed home of the child's relatives regarded by the title IV-E agency as a foster care living arrangement for the child.

**Foster Family Home (Non-Relative)**—A licensed foster family home regarded by the title IV-E agency as a foster care living arrangement.

**Group Home**—A licensed or approved home providing 24-hour care for children in a small group setting that generally has from seven to twelve children.

**Institution**—A child care facility operated by a public or private agency and providing 24-hour care and/or treatment for children who require separation from their own homes and group living experience. These facilities may include: Child care institutions; residential treatment facilities; maternity homes; etc.

**Supervised Independent Living**—An alternative transitional living arrangement where the child is under the supervision of the agency but without 24 hour adult supervision, is receiving financial support from the child welfare agency, and is in a setting which provides the opportunity for increased responsibility for self care.

**Runaway**—The child has run away from the foster care setting.

**Trial Home Visit**—The child has been in a foster care placement, but, under title IV-E agency supervision, has been returned to the principal caretaker for a limited and specified period of time.

B. Is current placement setting outside of the State or Tribal service area?

"Yes" indicates that the current placement setting is located outside of the State or the Tribal service area of the Tribal title IV-E agency making the report.

"No" indicates that the child continues to reside within the State or the Tribal service area of the Tribal title IV-E agency making the report.

Note: Only the title IV-E agency with placement and care responsibility for the child should include the child in this reporting system.

#### VI. Most Recent Case Plan Goal\*\*

Indicate the most recent case plan goal for the child based on the latest review of the

child's case plan—whether a court review or an administrative review. If the child has been in care less than six months, enter the goal in the case record as determined by the caseworker.

**Reunify With Parents or Principal Caretaker(s)**—The goal is to keep the child in foster care for a limited time to enable the agency to work with the family with whom the child had been living prior to entering foster care in order to reestablish a stable family environment.

**Live With Other Relatives**—The goal is to have the child live permanently with a relative or relatives other than the ones from whom the child was removed. This could include guardianship by a relative(s).

**Adoption**—The goal is to facilitate the child's adoption by relatives, foster parents or other unrelated individuals.

**Long Term Foster Care**—Because of specific factors or conditions, it is not appropriate or possible to return the child home or place her or him for adoption, and the goal is to maintain the child in a long term foster care placement.

**Emancipation**—Because of specific factors or conditions, it is not appropriate or possible to return the child home, have a child live permanently with a relative or have the child be adopted; therefore, the goal is to maintain the child in a foster care setting until the child reaches the age of majority.

**Guardianship**—The goal is to facilitate the child's placement with an agency or unrelated caretaker, with whom he or she was not living prior to entering foster care, and whom a court of competent jurisdiction has designated as legal guardian.

**Case Plan Goal Not Yet Established**—No case plan goal has yet been established other than the care and protection of the child.

#### VII. Principal Caretaker(s) Information

A. Caretaker Family Structure—Select from the four alternatives—married couple, unmarried couple, single female, single male—the category which best describes the type of adult caretaker(s) from whom the child was removed for the current foster care episode. Enter "Unable to Determine" if the child has been abandoned or the child's caretakers are otherwise unknown.

B. Year of Birth—Enter the year of birth for up to two caretakers. If the response to data element VII. A—Caretaker Family Structure, was 1 or 2, enter data for two caretakers. If the response was 3 or 4, enter data only for the first caretaker. If the exact year of birth is unknown, enter an estimated year of birth.

#### VIII. Parental Rights Termination

Enter the month, day and year that the court terminated the parental rights. If the parents are known to be deceased, enter the date of death.

#### IX. Family Foster Home—Parent(s) Data

Provide information only if data element in Section V., Part A. CURRENT PLACEMENT SETTING is 1, 2, or 3.

A. Foster Family Structure—Select from the four alternatives—married couple, unmarried couple, single female, single male—the category which best describes the nature of the foster parents with whom the

child is living in the current foster care episode.

B. Year of Birth—Enter the year of birth for up to two foster parents. If the response to data element IX. A.—Foster Family Structure, was 1 or 2, enter data for two caretakers. If the response was 3 or 4, enter data only for the first caretaker. If the exact year of birth is unknown, enter an estimated year of birth.

C. Race—Indicate the race for each of the foster parent(s). See instructions and definitions for the race categories under data element II.C.1. Use "f. Unable to Determine" only when a parent is unwilling to identify his or her race. Hispanic or Latino Ethnicity—Indicate the ethnicity for each of the foster parent(s). See instructions and definitions under data element II.C.2. Use "f. Unable to Determine" only when a parent is unwilling to identify his or her ethnicity.

#### X. Outcome Information

Enter data only for children who have exited foster care during the reporting period.

A. Date of Discharge From Foster Care\*\*—Enter the month, day and year the child was discharged from foster care. If the child has not been discharged from care, leave blank.

Transaction Date\*\*—A computer generated date which accurately indicates the month, day and year the response to "Date of Discharge from Foster Care" was entered into the information system.

B. Reason for Discharge\*\*.

**Reunification With Parents or Primary Caretakers**—The child was returned to his or her principal caretaker(s)' home.

**Living With Other Relatives**—The child went to live with a relative other than the one from whose home he or she was removed.

**Adoption**—The child was legally adopted.

**Emancipation**—The child reached majority according to the law by virtue of age, marriage, etc.

**Guardianship**—Permanent custody of the child was awarded to an individual.

**Transfer to Another Agency**—Responsibility for the care of the child was awarded to another agency—either in or outside of the State or Tribal service area.

**Runaway**—The child ran away from the foster care placement.

**Death of Child**—The child died while in foster care.

#### XI. Source(s) of Federal Support/Assistance for Child (Indicate All That Apply With a "1".)

**Title IV-E (Foster Care)**—Title IV-E foster care maintenance payments are being paid on behalf of the child.

**Title IV-E (Adoption Subsidy)**—Title IV-E adoption subsidy is being paid on behalf of the child who is in an adoptive home, but the adoption has not been legalized.

**Title IV-A (Aid to Families With Dependent Children)**—Child is living with relative(s) whose source of support is an AFDC payment for the child.

**Title IV-D (Child Support)**—Child support funds are being paid to the State agency on behalf of the child by assignment from the receiving parent.

**Title XIX (Medicaid)**—Child is eligible for and may be receiving assistance under title XIX.

**SSI or Other Social Security Act Benefits**—Child is receiving support under title XVI or

other Social Security Act titles not included in this section.

None of the Above—Child is receiving support only from the title IV–E agency, or from some other source (Federal or non-Federal) which is not indicated above.

## XII. Amount of the Monthly Foster Care Payment (Regardless of Sources)

Enter the monthly payment paid on behalf of the child regardless of source (i.e., Federal, State, county, municipality, tribal, and private payments). If title IV–E is paid on behalf of the child the amount indicated should be the total computable amount. If the payment made on behalf of the child is not the same each month, indicate the amount of the last full monthly payment made during the reporting period. If no monthly payment has been made during the period, enter all zeros.

## Appendix B to Part 1355—Adoption Data Elements

### Section I—Adoption Data Elements

#### I. General Information

A. Title IV–E agency \_\_\_\_\_

B. Report Date \_\_\_\_ (mo.) \_\_\_\_ (day) (yr.)

C. Record Number \_\_\_\_\_

D. Did the Title IV–E Agency Have any Involvement in This Adoption? \_\_\_\_\_

Yes: 1

No: 2

#### II. Child's Demographic Information

A. Date of Birth \_\_\_\_ (mo) \_\_\_\_ (day) (yr.)

B. Sex \_\_\_\_\_

Male: 1

Female: 2

C. Race/Ethnicity

1. Race

a. American Indian or Alaska Native

b. Asian

c. Black or African American

d. Native Hawaiian or Other Pacific

Islander

e. White

f. Unable to Determine

2. Hispanic or Latino Ethnicity \_\_\_\_\_

Yes: 1

No: 2

Unable to determine: 3

#### III. Special Needs Status

A. Has the title IV–E agency determined that this child has special needs? \_\_\_\_\_

Yes: 1

No: 2

B. If yes, indicate the primary basis for determining that this child has special needs

Racial/Original Background: 1

Age: 2

Membership in a Sibling Group to be

Placed for Adoption Together: 3

Medical Conditions or Mental, Physical or Emotional Disabilities: 4

Other: 5

1. If III. B was "4," indicate with a "1" the type(s) of disability(ies)

Mental Retardation \_\_\_\_\_

Visually or Hearing Impaired \_\_\_\_\_

Physically Disabled \_\_\_\_\_

Emotionally Disturbed (DSM III) \_\_\_\_\_

Other Medically Diagnosed Condition Requiring Special Care \_\_\_\_\_

#### IV. Birth Parents

A. Year of Birth \_\_\_\_\_

Mother, if known \_\_\_\_\_

Father (Putative or Legal), if known \_\_\_\_\_

B. Was the mother married at the time of the child's birth? \_\_\_\_\_

Yes: 1

No: 2

Unable to Determine: 3

#### V. Court Actions

A. Dates of Termination of Parental Rights

Mother \_\_\_\_ (mo.) \_\_\_\_ (day) \_\_\_\_ (yr.)

Father \_\_\_\_ (mo.) \_\_\_\_ (day) \_\_\_\_ (yr.)

B. Date Adoption Legalized \_\_\_\_ (mo.) \_\_\_\_ (day) \_\_\_\_ (yr.)

#### VI. Adoptive Parents

A. Family Structure \_\_\_\_\_

Married Couple: 1

Unmarried Couple: 2

Single Female: 3

Single Male: 4

B. Year of Birth

Mother (if Applicable) \_\_\_\_\_

Father (if Applicable) \_\_\_\_\_

C. Race/Ethnicity

1. Adoptive Mother's Race (If Applicable)

a. American Indian or Alaska Native

b. Asian

c. Black or African American

d. Native Hawaiian or Other Pacific

Islander

e. White

f. Unable to Determine

2. Hispanic or Latino Ethnicity of Mother

(If Applicable) \_\_\_\_\_

Yes: 1

No: 2

Unable to Determine: 3

3. Adoptive Father's Race (If Applicable)

a. American Indian or Alaska Native

b. Asian

c. Black or African American

d. Native Hawaiian or Other Pacific

Islander

e. White

f. Unable to Determine

4. Hispanic or Latino Ethnicity of Father (If Applicable) \_\_\_\_\_

Yes: 1

No: 2

Unable to Determine: 3

D. Relationship of Adoptive Parent(s) to the Child (Indicate with a "1" all that apply)

Stepparent

Other Relative of Child by Birth or

Marriage \_\_\_\_\_

Foster Parent of Child \_\_\_\_\_

Non-Relative \_\_\_\_\_

#### VII. Placement Information

A. Child Was Placed From \_\_\_\_\_

Within State/Tribal Service Area: 1

Another State/Tribal Service Area: 2

Another Country: 3

B. Child Was Placed by \_\_\_\_\_

Public Agency: 1

Private Agency: 2

Tribal Agency: 3

Independent Person: 4

Birth Parent: 5

#### VIII. Financial Adoption Support

A. Is a monthly financial subsidy being paid for this child? \_\_\_\_\_

Yes: 1

No: 2

B. If yes, the monthly amount \_\_\_\_\_

C. If VIII. A is yes, is the subsidy paid under Title IV–E adoption assistance? \_\_\_\_\_

Yes: 1

No: 2

### Section II—Definitions of Instructions for Adoption Data Elements

#### Reporting Population

The title IV–E agency must report on all children who are adopted in the State or Tribal service area during the reporting period and in whose adoption the title IV–E agency has had any involvement. Failure to report on these adoptions will result in assessed finding of noncompliance. Reports on all other adoptions are encouraged but are voluntary. Therefore, reports on the following are mandated:

(a) All children adopted who had been in foster care under the responsibility and care of the child welfare agency and who were subsequently adopted whether special needs or not and whether subsidies are provided or not;

(b) All special needs children who were adopted in the State or Tribal service area, whether or not they were in the public foster care system prior to their adoption and for whom non-recurring expenses were reimbursed; and

(c) All children adopted for whom an adoption assistance payment or service is being provided based on arrangements made by or through the title IV–E agency.

These children must be identified by answering "yes" to data element I.D. Children who are reported by the title IV–E agency, but for whom there has not been any title IV–E agency involvement, and whose reporting, therefore, has not been mandated, are identified by answering "no" to element I.D.

#### I. General Information

A. Title IV–E agency—For a State, the U.S. Postal Service two letter abbreviation for the State submitting the report. For a Tribal title IV–E agency, the two letter abbreviation provided by ACF.

B. Report Date—The last month and the year for the reporting period.

C. Record Number—The sequential number which the title IV–E agency uses to transmit data to the Department of Health and Human Services (DHHS). The record number cannot be linked to the child except at the title IV–E agency level.

D. Did the title IV–E Agency Have Any Involvement in This Adoption?

Indicate whether the title IV–E agency had any involvement in this adoption, that is, whether the adopted child belongs to one of the following categories:

- A child who had been in foster care under the responsibility and care of the child welfare agency and who was subsequently adopted whether special needs or not and whether a subsidy was provided;

- A special needs child who was adopted in the State or Tribal service area, whether or not he/she was in the public foster care system prior to his/her adoption and for whom non-recurring expenses were reimbursed; or

- A child for whom an adoption assistance payment or service is being provided based on arrangements made by or through the title IV-E agency.

## II. Child's Demographic Information

A. Date of Birth—Month and year of the child's birth. If the child was abandoned or the date of birth is otherwise unknown, enter an approximate date of birth.

B. Sex—Indicate as appropriate.

C. Race/Ethnicity

1. Race—In general, a person's race is determined by how they define themselves or by how others define them. In the case of young children, parents determine the race of the child. Indicate all races (a-e) that apply with a "1." For those that do not apply, indicate a "0." Indicate "f. Unable to Determine" with a "1" if it applies and a "0" if it does not.

American Indian or Alaska Native—A person having origins in any of the original peoples of North or South America (including Central America), and who maintains tribal affiliation or community attachment.

Asian—A person having origins in any of the original peoples of the Far East, Southeast Asia, or the Indian subcontinent including, for example, Cambodia, China, India, Japan, Korea, Malaysia, Pakistan, the Philippine Islands, Thailand, and Vietnam.

Black or African American—A person having origins in any of the black racial groups of Africa.

Native Hawaiian or Other Pacific Islander—A person having origins in any of the original peoples of Hawaii, Guam, Samoa, or other Pacific Islands.

White—A person having origins in any of the original peoples of Europe, the Middle East, or North Africa.

Unable to Determine—The specific race category is "unable to determine" because the child is very young or is severely disabled and no person is available to identify the child's race. "Unable to determine" is also used if the parent, relative or guardian is unwilling to identify the child's race.

2. Hispanic or Latino Ethnicity—Answer "yes" if the child is of Mexican, Puerto Rican, Cuban, Central or South American origin, or a person of other Spanish cultural origin regardless of race. Whether or not a person is Hispanic or Latino is determined by how they define themselves or by how others define them. In the case of young children, parents determine the ethnicity of the child. "Unable to Determine" is used because the child is very young or is severely disabled and no other person is available to determine whether or not the child is Hispanic or Latino. "Unable to determine" is also used if the parent, relative or guardian is unwilling to identify the child's ethnicity.

## III. Special Needs Status

A. Has the title IV-E Agency Determined That the Child has Special Needs? Use the title IV-E agency definition of special needs as it pertains to a child eligible for an adoption subsidy under title IV-E.

B. Primary Factor or Condition for Special Needs—Indicate only the primary factor or condition for categorization as special needs

and only as it is defined by the title IV-E agency. Racial/Original Background—Primary condition or factor for special needs is racial/original background as defined by the title IV-E agency.

Age—Primary factor or condition for special needs is age of the child as defined by the title IV-E agency.

Membership in a Sibling Group to be Placed for Adoption Together—Primary factor or condition for special needs is membership in a sibling group as defined by the title IV-E agency.

Medical Conditions of Mental, Physical, or Emotional Disabilities—Primary factor or condition for special needs is the child's medical condition as defined by the title IV-E agency, but clinically diagnosed by a qualified professional.

When this is the response to question B, then item 1 below must be answered.

1. Types of Disabilities—Data are only to be entered if response to III.B was "4." Indicate with a "1" the types of disabilities.

Mental Retardation—Significantly subaverage general cognitive and motor functioning existing concurrently with deficits in adaptive behavior manifested during the developmental period that adversely affect a child's/youth's socialization and learning.

Visually or Hearing Impaired—Having a visual impairment that may significantly affect educational performance or development; or a hearing impairment, whether permanent or fluctuating, that adversely affects educational performance.

Physically Disabled—A physical condition that adversely affects the child's day-to-day motor functioning, such as cerebral palsy, spina bifida, multiple sclerosis, orthopedic impairments, and other physical disabilities.

Emotionally Disturbed (DSM III)—A condition exhibiting one or more of the following characteristics over a long period of time and to a marked degree: An inability to build or maintain satisfactory interpersonal relationships; inappropriate types of behavior or feelings under normal circumstances; a general pervasive mood of unhappiness or depression; or a tendency to develop physical symptoms or fears associated with personal problems. The term includes persons who are schizophrenic or autistic. The term does not include persons who are socially maladjusted, unless it is determined that they are also seriously emotionally disturbed. Diagnosis is based on the *Diagnostic and Statistical Manual of Mental Disorders (Third Edition)* (DSM III) or the most recent edition.

Other Medically Diagnosed Conditions Requiring Special Care—Conditions other than those noted above which require special medical care such as chronic illnesses. Included are children diagnosed as HIV positive or with AIDS.

## IV. Birth Parents

A. Year of Birth—Enter the year of birth for both parents, if known. If the child was abandoned and no information was available on either one or both parents, leave blank for the parent(s) for which no information was available.

B. Was the Mother Married at the Time of the Child's Birth?

Indicate whether the mother was married at time of the child's birth; include common law marriage if legal in the State or Tribe. If the child was abandoned and no information was available on the mother, enter "Unable to Determine."

## V. Court Actions

A. Dates of Termination of Parental Rights—Enter the month, day and year that the court terminated parental rights. If the parents are known to be deceased, enter the date of death.

B. Date Adoption Legalized—Enter the date the court issued the final adoption decree.

## VI. Adoptive Parents

A. Family Structure—Select from the four alternatives—married couple, unmarried couple, single female, single male—the category which best describes the nature of the adoptive parent(s) family structure.

B. Year of Birth—Enter the year of birth for up to two adoptive parents. If the response to data element IV.A—Family Structure, was 1 or 2, enter data for two parents. If the response was 3 or 4, enter data only for the appropriate parent. If the exact year of birth is unknown, enter an estimated year of birth.

C. Race/Ethnicity—Indicate the race/ethnicity for each of the adoptive parent(s). See instructions and definitions for the race/ethnicity categories under data element II.C. Use "f. Unable to Determine" only when a parent is unwilling to identify his or her race or ethnicity.

D. Relationship to Adoptive Parent(s)—Indicate the prior relationship(s) the child had with the adoptive parent(s).

Stepparent—Spouse of the child's birth mother or birth father.

Other Relative of Child by Birth or Marriage—A relative through the birth parents by blood or marriage.

Foster Parent of Child—Child was placed in a non-relative foster family home with a family which later adopted him or her. The initial placement could have been for the purpose of adoption or for the purpose of foster care.

Non-Relative—Adoptive parent fits into none of the categories above.

## VII. Placement Information

A. Child Was Placed From: Indicate the location of the individual or agency that had custody or responsibility for the child at the time of initiation of adoption proceedings.

Within State or Tribal service area—Responsibility for the child resided with an individual or agency within the State or service area of the Tribal title IV-E agency filing the report.

Another State or Tribal service area—Responsibility for the child resided with an individual or agency in another State, Tribal service area, or territory of the United States.

Another Country—Immediately prior to the adoptive placement, the child was residing in another country and was not a citizen of the United States.

B. Child Was Placed By: Indicate the individual or agency which placed the child for adoption.

Public Agency—A unit of State or local government.

Private Agency—A for-profit or non-profit agency or institution.

Tribal Agency—A unit within one of the federally recognized Indian Tribes, Indian Tribal organizations, or Indian Tribal consortia.

Independent Person—A doctor, a lawyer or some other individual.

Birth Parent—The parent(s) placed the child directly with the Adoptive parent(s).

VIII. Adoption Support

A. Is The Child Receiving a Monthly Subsidy?

Enter “yes” if this child was adopted with an adoption assistance agreement under which regular subsidies (Federal, State, or Tribal) are paid.

B. Monthly Amount—Indicate the monthly amount of the subsidy. The amount of the subsidy should be rounded to the nearest dollar. Indicate “0” if the subsidy includes only benefits under titles XIX or XX of the Social Security Act.

C. If VIII.A is “Yes,” is Child Receiving Title IV–E Adoption Subsidy?

If VIII.A is “yes,” indicate whether the subsidy is claimed by the title IV–E agency for reimbursement under title IV–E. Do not include title IV–E non-recurring costs in this item.

Appendix C to Part 1355—Electronic Data Transmission Format

All AFCARS data to be sent from title IV–E agencies to the Department are to be in electronic form. In order to meet this general specification, the Department will offer as much flexibility as possible. Technical

assistance will be provided to negotiate a method of transmission best suited to the title IV–E agency’s environment.

There will be four semi-annual electronic data transmissions from the title IV–E agency to the Administration for Children and Families (ACF).

Regardless of the electronic data transmission methodology selected, certain criteria must be met by the title IV–E agency:

(1) Records must be written using ASCII standard character format.

(2) All elements must be comprised of integer (numeric) value(s). Element character length specifications refer to the maximum number of numeric values permitted for that element. See Appendix D.

(3) All records must be a fixed length. The Foster Care Detailed Data Elements Record is 150 characters long and the Adoption Detailed Data Elements Record is 72 characters long. The Foster Care Summary Data Elements Record and the Adoption Summary Data Elements Record are each 172 characters long.

(4) All title IV–E agencies must inform the Department, in writing, of the method of transfer they intend to use.

Appendix D to Part 1355—Foster Care and Adoption Record Layouts

A. Foster Care

1. Foster Care Semi-Annual Detailed Data Elements Record

a. The record will consist of 66 data elements.

b. Data must be supplied for each of the elements in accordance with these instructions:

(1) All data must be numeric. Enter the appropriate value for each element.

(2) Enter date values in year, month and day order (YYYYMMDD), e.g., 19991030 for October 30, 1999, or year and month order (YYYYMM), e.g., 199910 for October 1999. Leave the element value blank if dates are not applicable.

(3) For elements 8, 11–15, 26–40, 52, 54 and 59–65, which are “select all that apply” elements, enter a “1” for each element that applies, enter a zero for non-applicable elements.

(4) Transaction Date—is a computer generated date indicating when the datum (Elements 21 or 55) is entered into the title IV–E agency’s automated information system.

(5) Report the status of all children in foster care as of the last day of the reporting period. Also, provide data for all children who were discharged from foster care at any time during the reporting period, or in the previous reporting period, if not previously reported.

c. Foster Care Semi-Annual Detailed Data Elements Record Layout follows:

Element No.	Appendix A data element	Data element description	Number of numeric characters
01	I.A	Title IV–E agency	2
02	I.B	Report period ending date	6
03	I.C	Local Agency FIPS code (county or equivalent jurisdiction) or other ACF assigned code.	5
04	I.D	Record number	12
05	I.E	Date of most recent periodic review	8
06	II.A	Child’s date of birth	8
07	II.B	Sex	1
08	II.C.1	Race	
08a		American Indian or Alaska native	1
08b		Asian	1
08c		Black or African American	1
08d		Native Hawaiian or Other Pacific Islander	1
08e		White	1
08f		Unable to Determine	1
09	II.C.2	Hispanic or Latino Ethnicity	1
10	II.D	Has this child been clinically diagnosed as having a disability(ies) Indicate each type of disability of the child with a “1” for elements 11–15 and a zero for disabilities that do not apply.	1
11	II.D.1.a	Mental retardation	1
12	II.D.1.b	Visually or hearing impaired	1
13	II.D.1.c	Physically disabled	1
14	II.D.1.d	Emotionally disturbed (DSM III)	1
15	II.D.1.e	Other medically diagnosed condition requiring special care	1
16	II.E.1	Has this child ever been adopted	1
17	II.E.2	If yes, how old was the child when the adoption was legalized?	1
18	III.A.1	Date of first removal from home	8
19	III.A.2	Total number of removals from home to date	2
20	III.A.3	Date child was discharged from last foster care episode	8
21	III.A.4	Date of latest removal from home	8
22	III.A.5	Removal transaction date	8
23	III.B.1	Date of placement in current foster care setting	8
24	III.B.2	Number of previous placement settings during this removal episode	2
25	IV.A	Manner of removal from home for current placement episode Actions or conditions associated with child’s removal: Indicate with a “1” for elements 26–40 and a zero for conditions that do not apply.	1

Element No.	Appendix A data element	Data element description	Number of numeric characters
26	IV.B.1	Physical abuse (alleged/reported)	1
27	IV.B.2	Sexual abuse (alleged/reported)	1
28	IV.B.3	Neglect (alleged/reported)	1
29	IV.B.4	Alcohol abuse (parent)	1
30	IV.B.5	Drug abuse (parent)	1
31	IV.B.6	Alcohol abuse (child)	1
32	IV.B.7	Drug abuse (child)	1
33	IV.B.8	Child's disability	1
34	IV.B.9	Child's behavior problem	1
35	IV.B.10	Death of parent(s)	1
36	IV.B.11	Incarceration of parent(s)	1
37	IV.B.12	Caretaker's inability to cope due to illness or other reasons	1
38	IV.B.13	Abandonment	1
39	IV.B.14	Relinquishment	1
40	IV.B.15	Inadequate housing	1
41	V.A	Current placement setting	1
42	V.B	Out of State/Tribal service area placement	1
43	VI	Most recent case plan goal	1
44	VII.A	Caretaker family structure	1
45	VII.B.1	Year of birth (1st principal caretaker)	4
46	VII.B.2	Year of birth (2nd principal caretaker)	4
47	VIII.A	Date of mother's parental rights termination	8
48	VIII.B	Date of legal or putative father's parental rights	8
49	IX.A	Foster family structure	1
50	IX.B.1	Year of birth (1st foster caretaker)	4
51	IX.B.2	Year of birth (2nd foster caretaker)	4
52	IX.C.1	Race of 1st foster caretaker	1
52a		American Indian or Alaska Native	1
52b		Asian	1
52c		Black or Asian American	1
52d		Native Hawaiian or Other Pacific Islander	1
52e		White	1
52f		Unable to Determine	1
53	IX.C.2	Hispanic or Latino ethnicity of 1st foster caretaker	1
54	IX.C.3	Race of 2nd foster caretaker	1
54a		American Indian or Alaska Native	1
54b		Asian	1
54c		Black or African American	1
54d		Native Hawaiian or Other Pacific Islander	1
54e		White	1
54f		Unable to Determine	1
55	IX.C.4	Hispanic or Latino ethnicity of 2nd foster caretaker	1
56	X.A.1	Date of discharge from foster care	8
57	X.A.2	Foster care discharge transaction date	8
58	X.B	Reason for discharge	1
		Sources of Federal support/assistance for child; indicate with a "1" for elements 58-64 and a zero for sources that do not apply.	1
59	XI.A	Title IV-E (Foster Care)	1
60	XI.B	Title IV-E (Adoption Assistance)	1
61	XI.C	Title IV-A (Aid to Families With Dependent Children)	1
62	XI.D	Title IV-D (Child Support)	1
63	XI.E	Title XIX (Medicaid)	1
64	XI.F	SSI or other Social Security Act benefits	1
65	XI.G	None of the above	1
66	XII	Amount of monthly foster care payment (regardless of source)	5
		Total characters	197

2. Foster Care Semi-Annual Summary Data Elements Record

a. The record will consist of 22 data elements.

The values for these data elements are generated by processing all records in the semi-annual detailed data transmission and computing the summary values for Elements

1 and 3-22. Element 2 is the semi-annual report period ending date. In calculating the age range for the child, the last day of the reporting period is to be used.

b. Data must be supplied for each of the elements in accordance with these instructions:

(1) Enter the appropriate value for each element.

(2) For all elements where the total is zero, enter a numeric zero.

(3) Enter date values in year, month order (YYYYMM), e.g., 199912 for December 1999.

c. Foster Care Semi-Annual Summary Data Elements Record Layout follows:

Element No.	Summary data file	Number of characters
01	Number of records	8

Element No.	Summary data file	Number of characters
02	Report period ending date (YYYYMM)	6
03	Children in care under 1 year	8
04	Children in care 1 year old	8
05	Children in care 2 years old	8
06	Children in care 3 years old	8
07	Children in care 4 years old	8
08	Children in care 5 years old	8
09	Children in care 6 years old	8
10	Children in care 7 years old	8
11	Children in care 8 years old	8
12	Children in care 9 years old	8
13	Children in care 10 years old	8
14	Children in care 11 years old	8
15	Children in care 12 years old	8
16	Children in care 13 years old	8
17	Children in care 14 years old	8
18	Children in care 15 years old	8
19	Children in care 16 years old	8
20	Children in care 17 years old	8
21	Children in care 18 years old	8
22	Children in care over 18 years old	8
	Record Length	174

B. Adoption

1. Adoption Semi-Annual Detailed Data Elements Record

- a. The record will consist of 37 data elements.
- b. Data must be supplied for each of the elements in accordance with these instructions:

- (1) Enter the appropriate value for each element.
- (2) Enter date values in year, month and day order (YYYYMMDD), e.g., 19991030 for October 30, 1999, or year and month (YYYYMM), e.g., 199910 for October 1999. Leave the element value blank if dates are not applicable.

- (3) For elements 7, 11–15, 25, 27 and 29–32 which are “select all that apply” elements, enter a “1” for each element that applies; enter a zero for non-applicable elements.
- c. Adoption Semi-Annual Detailed Data Elements Record Layout follows:

Element No.	Appendix B data element	Data element description	Number of numeric characters
01	I.A	Title IV–E agency	2
02	I.B	Report period ending date	6
03	I.C	Record number	6
04	I.D	Title IV–E agency involvement	1
05	II.A	Date of birth	6
06	II.B	Sex	1
07	II.C.1	Race	
07a		American Indian or Alaska Native	1
07b		Asian	1
07c		Black or African American	1
07d		Native Hawaiian or Other Pacific Islander	1
07e		White	1
07f		Unable to Determine	1
08	II.C.2	Hispanic or Latino ethnicity	1
09	III.A	Has the title IV–E agency determined that this child has special needs	1
10	III.B	Primary basis for special needs	1
		Indicate a primary basis of special needs with a “1” for elements 11–15. Enter a zero for special needs that do not apply.	
11	III.B.1.a	Mental retardation	1
12	III.B.1.b	Visually or hearing impaired	1
13	III.B.1.c	Physically disabled	1
14	III.B.1.d	Emotionally disturbed (DSM III)	1
15	III.B.1.e	Other medically diagnosed condition requiring special care	1
16	IV.A.1	Mother’s year of birth	4
17	IV.A.2	Father’s (Putative or legal) year of birth	4
18	IV.B	Was the mother married at time of child’s birth	1
19	V.A.1	Date of mother’s termination of parental rights	8
20	V.A.2	Date of father’s termination of parental rights	8
21	V.B	Date adoption legalized	8
22	VI.A	Adoptive parents family structure	1
23	VI.B.1	Mother’s year of birth (if applicable)	4
24	VI.B.2	Father’s year of birth (if applicable)	4
25	VI.C.1	Adoptive mother’s race	
25a		American Indian or Alaska Native	1
25b		Asian	1

Element No.	Appendix B data element	Data element description	Number of numeric characters
25c		Black or African American	1
25d		Native Hawaiian or Other Pacific Islander	1
25e		White	1
25f		Unable to Determine	1
26	VI.C.2	Hispanic or Latino Ethnicity	1
27	VI.C.3	Adoptive father's race	
27a		American Indian or Alaska Native	1
27b		Asian	1
27c		Black or African American	1
27d		Native Hawaiian or Other Pacific Islander	1
27e		White	1
27f		Unable to Determine	1
28	VI.C.4	Hispanic or Latino Ethnicity	1
		Indicate each type of relationship of adoptive parent(s) to the child with a "1" for elements 29–32. Enter a zero for relationships that do not apply below.	
29	VI.D.1	Stepparent	1
30	VI.D.2	Other relative of child by birth or marriage	1
31	VI.D.3	Foster parent of child	1
32	VI.D.4	Other non-relative	1
33	VII.A	Child was placed from	1
34	VII.B	Child was placed by	1
35	VIII.A	Is this child receiving a monthly subsidy	1
36	VIII.B	If VIII.B is "yes." What is the monthly amount	5
37	VIII.C	If VII.B is "yes." Is the child receiving title IV–E adoption assistance?	1
		Total Characters	

2. Adoption Semi-Annual Summary Data Elements Record

a. The record will consist of 22 data elements.

The values for these data elements are generated by processing all records in the semi-annual detailed data transmission and

computing the summary values for Elements 1 and 3–22. Element 2 is the semi-annual report period ending date. In calculating the age range for the child, the last day of the reporting period is to be used.

b. Data must be supplied for each of the elements in accordance with these instructions:

(1) Enter the appropriate value for each element.

(2) For all elements where the total is zero, enter a numeric zero.

(3) Enter data values in year, month order (YYYYMM), e.g., 199912 for December 1999.

c. Adoption Semi-Annual Summary Data Element Record Layout follows:

Element No.	Summary data file	Number of characters
01	Number of records	8
02	Report period ending date (YYYYMM)	6
03	Children adopted Under 1 year old	8
04	Children adopted 1 year old	8
05	Children adopted 2 years old	8
06	Children adopted 3 years old	8
07	Children adopted 4 years old	8
08	Children adopted 5 years old	8
09	Children adopted 6 years old	8
10	Children adopted 7 years old	8
11	Children adopted 8 years old	8
12	Children adopted 9 years old	8
13	Children adopted 10 years old	8
14	Children adopted 11 years old	8
15	Children adopted 12 years old	8
16	Children adopted 13 years old	8
17	Children adopted 14 years old	8
18	Children adopted 15 years old	8
19	Children adopted 16 years old	8
20	Children adopted 17 years old	8
21	Children adopted 18 years old	8
22	Children adopted over 18 years old	8
	Record Length	174

Appendix E to Part 1355—Data Standards

All data submissions will be evaluated to determine the completeness and internal consistency of the data. Four types of

assessments will be conducted on both the foster care and adoption data submissions. The results of these assessments will determine the applicability of a substantial

noncompliance determination with the title IV–E plan.

The four types of assessments are:

- Comparisons of the detailed data to summary data;

- Internal consistency checks of the detailed data;
- An assessment of the status of missing data; and
- Timeliness, an assessment of how current the submitted data are.

A. Foster Care

1. Summary Data Elements Submission Standards

A summary file must accompany the Detailed Data Elements submission. Both transmissions must be sent through electronic means (see appendix C for details). This summary will be used to verify basic counts of records on the detailed data received.

a. The summary file must be a discrete file separate from the semi-annual reporting period detailed data file. The record layout for the summary file is included in appendix D. section A.2.c. All data must be included. If the value for a numeric field is zero, zero must be entered.

b. The Department will develop a second summary file by computing the values from the detailed data file received from the title IV-E agency. The two summary files (the one submitted by the title IV-E agency and the one created during Federal processing) will be compared, field by field. If the two files match, further validation of the detailed data elements will commence. If the two summary files do not match, we will assume that there has been an error in transmission and will request a retransmission from the title IV-E agency within 24 hours of the time the title IV-E agency has been notified. In addition, a log of these occurrences will be kept as a means of cataloging problems and offering suggestions on improved procedures.

2. Detailed Data File Submission Standards

a. Internal Consistency Validations.

Internal consistency validations involve evaluating the logical relationships between data elements in a detailed record. For example, a child cannot be discharged from foster care before he or she has been removed from his or her home. Thus, the Date of Latest Removal From Home data element must be a date prior to the Date of Discharge. If this is not the case, an internal inconsistency will be detected and an "error" indicated in the detailed data file.

A number of data elements have "if applicable" contingency relationships with other data elements in the detailed record. For example, if the Foster Family Structure has only a single parent, then the appropriate sex of the Single Female/Male element in the "Year of Birth" and "Race/Origin" elements must be completed and the "non-applicable" fields for these elements are to be filled with zero's or, for dates, left blank.

The internal consistency validations that will be performed on the foster care detailed data are as follows:

(1) The Local Agency must be the county or a county equivalent unit which has responsibility for the case. The 5 digit Federal Information Processing Standard (FIPS) or other ACF assigned code must be used.

(2) If Date of Latest Removal From Home (Element 21) is less than nine months prior

to the Report Period Ending Date (Element 2) then the Date of Most Recent Periodic Review (Element 5) may be left blank.

(3) If Date of Latest Removal From Home (Element 21) is greater than nine months from Report Date (Element 2) then the Date of Most Recent Periodic Review (Element 5) must not be more than nine months prior to the Report Date (Element 2).

(4) If a child is identified as having a disability(ies) (Element 10), at least one Type of Disability Condition (Elements 11-15) must be indicated. Enter a zero (0) for disabilities that do not apply.

(5) If the Total Number of Removals From Home to Date (Element 19) is one (1), the Date Child was Discharged From Last Foster Care Episode (Element 20) must be blank.

(6) If the Total Number of Removals From Home to Date (Element 19) is two or more, then the Date Child was Discharged From Last Foster Care Episode (Element 20) must not be blank.

(7) If Date Child was Discharged From Last Foster Care Episode (Element 20) exists, then this date must be a date prior to the Date of Latest Removal From Home (Element 21).

(8) The Date of Latest Removal From Home (Element 21) must be prior to the Date of Placement in Current Foster Care Setting (Element 23).

(9) At least one element between elements 26 and 40 must be answered by selecting a "1". Enter a zero (0) for conditions that do not apply.

(10) If Current Placement Setting (Element 41) is a value that indicates that the child is not in a foster family or a pre-adoptive home, then elements 49-55 must be zero (0).

(11) At least one element between elements 59 and 65 must be answered by selecting a "1". Enter a zero for sources that do not apply.

(12) If the answer to the question, "Has this child ever been adopted?" (Element 16) is "1" (Yes), then the question, "How old was the child when the adoption was legalized?" (Element 17) must have an answer from "1" to "5."

(13) If the Date of Most Recent Periodic Review (Element 5) is not blank, then Manner of Removal From Home for Current Placement Episode (Element 25) cannot be option 3, "Not Yet Determined."

(14) If Reason for Discharge (Element 58) is option 3, "Adoption," then Parental Rights Termination dates (Elements 46 and 47) must not be blank.

(15) If the Date of Latest Removal From Home (Element 21) is present, the Date of Latest Removal From Home Transaction Date (Element 22) must be present and must be later than or equal to the Date of Latest Removal From Home (Element 21).

(16) If the Date of Discharge From Foster Care (Element 56) is present, the Date of Discharge From Foster Care Transaction Date (Element 57) must be present and must be later than or equal to the Date of Discharge From Foster Care (Element 56).

(17) If the Date of Discharge From Foster Care (Element 56) is present, it must be after the Date of Latest Removal From Home (Element 21).

(18) In Elements 8, 52, and 54, race categories ("a" through "e") and "f. Unable

to Determine" cannot be coded "0," for it does not apply. If any of the race categories apply and are coded as "1" then "f. Unable to Determine" cannot also apply.

b. Out-of-Range Standards.

Out-of-range standards relate to the occurrence of values in response to data elements that exceed, either positively or negatively, the acceptable range of responses to the question. For example, if the acceptable responses to the element, Sex of the Adoptive Child, is "1" for a male and "2" for a female, but the datum provided in the element is "3," this represents an out-of-range response situation.

Out-of-range comparisons will be made for all elements. The acceptable values are described in Appendix A, Section I.

3. Missing Data Standards

The term "missing data" refers to instances where data for an element are required but are not present in the submission. Data elements with values of "Unable to Determine," "Not Yet Determined" or which are not applicable, are not considered missing.

a. In addition, the following situations will result in converting data values to a missing data status:

(1) Data elements whose values fail internal consistency validations as outlined in A.2.a.(1)-(18) above, and

(2) Data elements whose values are out-of-range.

b. The maximum amount of allowable missing data is dependent on the data elements as described below:

(1) No Missing Data.

The data for the elements listed below must be present in all records in the submission. If any record contains missing data for any of these elements, the entire submission will be considered missing and processing will not proceed.

Element No.	Element name
01 .....	Title IV-E agency.
02 .....	Report date.
03 .....	Local agency FIPS code or other ACF assigned code.
04 .....	Record number.

(2) Less Than Ten Percent Missing Data.

The data for the elements listed below cannot have ten percent or more missing data without incurring a finding of substantial noncompliance with the title IV-E plan.

Element No.	Element description
05 .....	Date of most recent periodic, re-view.
06 .....	Child's date of birth.
07 .....	Child's sex.
08 .....	Child's race.
09 .....	Child's Hispanic or Latino Ethnicity.
10 .....	Does child have a disability(ies)?
11-15 .....	Type of disability (at least one must be selected).
16 .....	Has child been adopted?
17 .....	How old was child when adoption was legalized?

Element No.	Element description
18	Date of first removal from home.
19	Total number of removals from home to date.
20	Date child was discharged from last foster care.
21	Date of latest removal from home.
22	Removal transaction date.
23	Date of placement in current foster care setting.
24	Number of previous placement settings during this removal episode.
25	Manner of removal from home for current placement episode.
26–40	Actions or conditions associated with child's removal (at least one must be selected).
41	Current placement setting.
42	Out of State/Tribal service area placement.
43	Most recent case plan goal.
44	Caretaker family structure.
45	Year of birth of 1st principal caretaker.
46	Year of birth of 2nd principal caretaker.
47	Date of mother's parental rights termination.
48	Legal or putative father parental rights termination date.
49	Foster family structure.
50	Year of birth of 1st foster caretaker.
51	Year of birth of 2nd foster caretaker.
52	Race of 1st foster caretaker.
53	Hispanic or Latino Ethnicity of 1st foster caretaker.
54	Race of 2nd foster caretaker.
55	Hispanic or Latino Ethnicity of 2nd foster caretaker.
56	Date of discharge from foster care.
57	Foster care discharge transaction date.
58	Reason for discharge.
59–65	Sources of Federal support/assistance for child (at least one must be selected).
66	Amount of monthly foster care payment (regardless of source).

1 to 4  
6 to 9  
21 and 22  
41 and 42  
56 to 58

(b) If Date of Latest Removal From Home (Element 18) is prior to October 1, 1995, then the following data elements are the only ones to be used in evaluating the missing data provisions for purposes of a determination of substantial noncompliance with the title IV–E plan:  
Elements  
1 to 4  
6 to 9  
21 and 22  
41 and 43  
56 to 58

(2) Determination of substantial noncompliance with the title IV–E plan.  
The percentage calculation will be performed for each data element. The total number of detailed records that are included by the selection rules in 3.c.(1), will serve as the denominator. The number of missing data occurrences for each element will serve as the numerator. The result will be multiplied by one hundred. The determination of substantial noncompliance with the title IV–E plan is made when any one element's missing data percentage is ten percent or greater.

4. Timeliness of Foster Care Data Reports  
Title IV–E agencies are required to submit reports within 45 calendar days after the end of the semi-annual reporting period.  
Computer generated transaction dates indicate the date when key foster care events are entered into the title IV–E agency's computer system. The intent of these transaction dates is to ensure that information about the status of children in foster care is recorded and, thus, reported in a timely manner.  
a. Date of Latest Removal From Home.  
The Date of Latest Removal From Home Transaction Date (Element 22) must not be more than 60 days after the Date of Latest Removal From Home (Element 21) event.  
b. The Date of Discharge From Foster Care Transaction Data (Element 57) must not be more than 60 days after the Date of Discharge From Foster Care (Element 56) event.  
For purposes of a determination of substantial noncompliance with the title IV–E plan, ninety percent of the records in a detailed data submission, must indicate that:  
(1) The difference between the Date of Latest Removal From Home Transaction Date (Element 22) and the Date of Latest Removal From Home (Element 21) event is 60 days or less;  
and, where applicable,  
(2) The difference between the Date of Discharge From Foster Care Transaction Date (Element 57), and the Date of Discharge From Foster Care (Element 56) event is 60 days or less.

B. Adoption  
1. Summary Data Elements File Submission Standards  
A summary file must accompany the detailed Data Elements File submission. Both files must be sent through electronic means

(see appendix C for details). This summary will be used to verify the completeness of the Detailed Data File submission received.

a. The summary file should be a discrete file separate from the semi-annual reporting period detailed data file. The record layout for the summary file is included in appendix D, section B.2.c. All data must be included. If the value for a numeric field is zero, zero must be entered.

b. The Department will develop a second summary file by computing the values from the detailed data file received from the title IV–E agency. The two summary files (the one submitted by the title IV–E agency and the one created during Federal processing) will be compared, field by field. If the two files match, further validation of the detailed data elements will commence. (See section B.2 below.) If the two summary files do not match, we will assume that there has been an error in transmission and will request a retransmission from the title IV–E agency within 24 hours of the time the title IV–E agency has been notified. In addition, a log of these occurrences will be kept as a means of cataloging problems and offering suggestions on improved procedures.

2. Detailed Data Elements File Submission Standards

a. Internal Consistency Validations

Internal consistency validations involve evaluating the logical relationships between data elements in a detailed record. For example, an adoption cannot be finalized until parental rights have been terminated. Thus, the dates of Mother/Father Termination of Parental Rights, elements must be present and the dates must be prior to the "Date Adoption Legalized." If this is not the case, an internal inconsistency will be detected and an "error" indicated in the detailed data file.

A number of data elements have "if applicable" contingency relationships with other data elements in the detailed record. For example, if the Adoptive Parent is single, then the appropriate sex of the single female/male element in the "Family Structure," "Year of Birth" and "Race/Origin" elements must be completed and the "non-applicable" fields for these elements are to be filled with zeros or left blank.

The internal consistency validations that will be performed on the adoption detailed data are as follows:

(1) The Child's Date of Birth (Element 5) must be later than both the Mother's and Father's Year of Birth (Elements 16 and 17) unless either of these is unknown.)

(2) If the title IV–E agency has determined that the child is a special needs child (Element 9), then "the primary basis for determining that this child has special needs" (Element 10) must be completed. If "the primary basis for determining that this child has special needs" (Element 10) is answered by option "4," then at least one element between Elements 11–15, "Type of Disability," must be selected. Enter a zero (0) for disabilities that do not apply.

(3) Dates of Parental Rights Termination (Elements 19 and 20) must be completed and must be prior to the Date Adoption Legalized (Element 21).

c. Determination of substantial noncompliance with the title IV–E plan.

Missing data are a major factor in determining substantial noncompliance with the title IV–E plan.

(1) Selection Rules.

All data elements will be used in calculating missing data unless one of the following limiting rules applies to the detailed case record.

(a) If Date of Latest Removal From Home (Element 21) and the Date of Discharge From Foster Care (Element 56) is less than 30 days, then the following date elements are the only ones to be used in evaluating the missing data provisions for purposes of a determination of substantial noncompliance with the title IV–E plan:

Elements

(4) If “Is a monthly financial subsidy being paid for this child?” (Element 35) is answered negatively, “2”, then Element 36 must be zero (0) and “Is the subsidy paid under Title IV–E adoption assistance” (Element 37) must be a “2”.

(5) If the “Child Was Placed By” (Element 34) is answered with option 1, “Public Agency,” then the question, “Did the title IV–E Agency Have any Involvement in This Adoption” (Element 4) must be “1”.

(6) If the “Relationship of Adoptive Parent(s) to the Child,” “Foster Parent of Child” (Element 31) is selected, then the question, “Did the title IV–E Agency Have any Involvement in This Adoption” (Element 4) must be “1”.

(7) If “Is a monthly financial subsidy being paid for this child?” (Element 35) answered “1,” then the question, “Did the title IV–E Agency Have any Involvement in This Adoption” (Element 4) must be “1.”

(8) If the “Family Structure” (Element 22) is option 3, Single Female, then the Mother’s Year of Birth (Element 23), the “Adoptive Mother’s Race” (Element 25) and “Hispanic or Latino Ethnicity” (Element 26) must be completed. Similarly, if the “Family Structure” (Element 22) is option 4, Single Male, then the Father’s Year of Birth (Element 24), the Adoptive Father’s Race” (Element 27) and “Hispanic or Latino Ethnicity” (Element 28) must be completed. If the “Family Structure” (Element 22) is option 1 or 2, then both Mother’s and Father’s “Year of Birth,” “Race” and “Hispanic or Latino Ethnicity” must be completed.

(9) In Elements 7, 25, and 27, race categories (“a” through “e”) and “f. Unable to Determine” cannot be coded “0,” for it does not apply. If any of the race categories apply and are coded as “1” then “f. Unable to Determine” cannot also apply.

**b. Out-of-Range Standards**

Out-of-range standards relate to the occurrence of values in response to data elements that exceed, either positively or negatively, the acceptable range of responses to the question. For example, if the acceptable response to the element, Sex of the Adoptive Child, is “1” for a male and “2” for a female, but the datum provided in the element is “3,” this represents an out-of-range response situation.

Out-of-range comparisons will be made for all elements. The acceptable values are described in appendix B, section I.

**3. Missing Data Standards**

The term “missing data” refers to instances where data for an element are required but are not present in the submission. Data elements with values of “Unable to Determine,” “Other” or which are not applicable, are not considered missing.

a. In addition, the following situations will result in converting data values to a missing data status:

(1) Data elements whose values fail internal consistency validations as outlined in 2.a.(1)–(9) above, and

(2) Data elements whose values are out-of-range.

b. The maximum amount of allowable missing data is dependent on the data elements as described below.

**(1) No Missing Data.**

The data for the elements listed below must be present in all records in the submission. If any record contains missing data for any of these elements, the entire submission will be considered missing and processing will not proceed.

Element No.	Element name
01 .....	Title IV–E agency.
02 .....	Report date.
03 .....	Record number.
04 .....	Did the title IV–e agency have any involvement in this adoption?

**(2) Less Than Ten Percent Missing Data**

The data for the elements listed below cannot have ten percent or more missing data without incurring a determination of substantial noncompliance with the title IV–E plan.

Element No.	Element name
05 .....	Child’s date of birth.
06 .....	Child’s sex.
07 .....	Child’s race.
08 .....	Is the child of Hispanic or Latino ethnicity?
09 .....	Does child have special needs?
10 .....	Indicate the primary basis for determining that the child has special needs. (If Element 09 is yes, you must answer this question.)
11–15 .....	Type of special need (at least one must be selected.)
16 .....	Mother’s year of birth.
17 .....	Father’s year of birth.
18 .....	Was mother married at time of child’s birth?
19 .....	Date of mother’s termination of parental rights.
20 .....	Date of father’s termination of parental rights.
21 .....	Date adoption legalized.
22 .....	Adoptive parent(s) family structure.
23 .....	Mother’s year of birth.
24 .....	Father’s year of birth.
25 .....	Adoptive mother’s race.
26 .....	Hispanic or Latino ethnicity of mother.
27 .....	Adoptive father’s race.
28 .....	Hispanic or Latino ethnicity of father.
29–32 .....	Relationship of adoptive parent(s) to child (at least one must be selected.)
33 .....	Child placed from.
34 .....	Child placed by.
35 .....	Is a monthly financial subsidy paid for this child?
36 .....	If yes, the monthly amount is?
37 .....	Is the child receiving Title IV–E adoption assistance? (If Element 35 is a “1” (Yes) an answer to this question is required.)

c. Determination of substantial noncompliance with the title IV–E plan.

Missing data are a major factor in determining substantial noncompliance with the title IV–E plan.

**(1) Selection Rules.**

Only the adoption records with a “1” (Yes) answer in Element 4, “Did the title IV–E Agency have any Involvement in this adoption” will be subject to a determination of substantial noncompliance with the title IV–E plan.

(2) Determination of substantial noncompliance with the title IV–E plan.

The percentage calculation will be performed for each data element. The total number of detailed records will serve as the denominator and the number of missing data occurrences for each element will serve as the numerator. The result will be multiplied by one hundred. The determination of substantial noncompliance with the title IV–E plan is made when any one element’s missing data percentage is ten percent or greater.

**4. Timeliness of Adoption Reports**

The title IV–E agency is required to submit reports within 45 calendar days after the end of the semi-annual reporting period.

For determinations of substantial noncompliance with the title IV–E plan purposes, however, no specific timeliness of data standards apply. Data on adoptions should be submitted as promptly after finalization as possible.

The desired approach to reporting adoption data is that adoptions should be reported during the reporting period in which the adoption is legalized. Or, at the title IV–E agency’s option, they can be reported in the following reporting period if the adoption is legalized within the last 60 days of the reporting period.

Negative reports must be submitted for any semi-annual period in which no adoptions have been legalized.

**PART 1356—REQUIREMENTS APPLICABLE TO TITLE IV–E**

■ 23. The authority citation for part 1356 continues to read as follows:

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

■ 24. Revise § 1356.10 to read as follows:

**§ 1356.10 Scope.**

This part applies to title IV–E agency programs for foster care maintenance payments, adoption assistance payments, related foster care and adoption administrative and training expenditures, and the independent living services program under title IV–E of the Act.

■ 25. Revise § 1356.20 to read as follows:

**§ 1356.20 Title IV–E plan document and submission requirements.**

(a) To be in compliance with the title IV–E plan requirements and to be eligible to receive Federal financial participation (FFP) in the costs of foster

care maintenance payments and adoption assistance under this part, a title IV–E agency must have a plan approved by the Secretary that meets the requirements of this part, part 1355, section 471(a) of the Act and for Tribal title IV–E agencies, section 479B(c) of the Act. The title IV–E plan must be submitted to the appropriate Regional Office, ACYF, in a form determined by the title IV–E agency.

(b) Failure by a title IV–E agency to comply with the requirements and standards for the data reporting system for foster care and adoption (§ 1355.40 of this chapter) shall be considered a substantial failure by the title IV–E agency in complying with the plan.

(c) The following procedures for approval of plans and amendments apply to the title IV–E program:

(1) *Plan.* The plan consists of written documents furnished by the title IV–E agency to cover its program under part E of title IV. After approval of the original plan by the Commissioner, ACYF, all relevant changes, required by new statutes, rules, regulations, interpretations, and court decisions, are required to be submitted currently so that ACYF may determine whether the plan continues to meet Federal requirements and policies.

(2) *Submittal.* Plans and revisions of the plans are submitted first to the State governor or his/her designee, or the Tribal leader or his/her designee for review and then to the regional office, ACYF. Title IV–E agencies are encouraged to obtain consultation of the regional staff when a plan is in process of preparation or revision.

(3) *Review.* Staff in the regional offices are responsible for review of plans and amendments. They also initiate discussion with the title IV–E agency on clarification of significant aspects of the plan which come to their attention in the course of this review. Plan material on which the regional staff has questions concerning the application of Federal policy is referred with recommendations as required to the central office for technical assistance. Comments and suggestions, including those of consultants in specified areas, may be prepared by the central office for use by the regional staff in negotiations with the title IV–E agency.

(4) *Action.* ACYF has the authority to approve plans and amendments thereto which provide for the administration of foster care maintenance payments and adoption assistance programs under section 471 of the Act. The Commissioner, ACYF, retains the authority to determine that proposed plan material is not approvable, or that a previously approved plan no longer

meets the requirements for approval. The Regional Office, ACYF, formally notifies the title IV–E agency of the actions taken on plans or revisions.

(5) *Basis for approval.* Determinations as to whether plans (including plan amendments and administrative practice under the plans) originally meet or continue to meet, the requirements for approval are based on relevant Federal statutes and regulations.

(6) *Prompt approval of plans.* The determination as to whether a plan submitted for approval conforms to the requirements for approval under the Act and regulations issued pursuant thereto shall be made promptly and not later than the 45th day following the date on which the plan submittal is received in the regional office, unless the Regional Office, ACYF, has secured from the title IV–E agency a written agreement to extend that period.

(7) *Prompt approval of plan amendments.* Any amendment of an approved plan may, at the option of the title IV–E agency, be considered as a submission of a new plan. If the title IV–E agency requests that such amendment be so considered, the determination as to its conformity with the requirements for approval shall be made promptly and not later than the 45th day following the date on which such a request is received in the regional office with respect to an amendment that has been received in such office, unless the Regional Office, ACYF, has secured from the title IV–E agency a written agreement to extend that period. In absence of request by a title IV–E agency that an amendment of an approved plan shall be considered as a submission of a new plan, the procedures under § 201.6(a) and (b) shall be applicable.

(8) *Effective date.* The effective date of a new plan may not be earlier than the first day of the calendar quarter in which an approvable plan is submitted, and with respect to expenditures for assistance under such plan, may not be earlier than the first day on which the plan is in operation on a statewide basis or, in the case of a Tribal title IV–E agency, in operation in the Tribal title IV–E agency's entire service area. The same applies with respect to plan amendments.

(d) Once the title IV–E plan has been submitted and approved, it shall remain in effect until amendments are required. An amendment is required if there is any significant and relevant change in the information or assurances in the plan, or the organization, policies or operations described in the plan.

■ 26. In 1356.21 revise paragraphs (a), (b) introductory text, (b)(2)(i), (b)(3)

introductory text, (b)(3)(i), the first sentence of (c), paragraphs (d)(2) and (3), paragraph (f), the first sentence of paragraph (g) introductory text, (g)(1) and (2), the second sentence of (g)(5), (h)(1), (h)(3) introductory text, paragraphs (i)(1) introductory text, (i)(1)(i) introductory text, (i)(1)(i)(D), the first sentence of (i)(1)(ii), paragraphs (i)(2) introductory text, (i)(2)(i), the first sentence of (i)(2)(ii), paragraphs (i)(2)(iii), (i)(3), (k)(2), paragraph (l) introductory text, paragraph (m) introductory text, paragraph (n) and paragraph (o) to read as follows:

**§ 1356.21 Foster care maintenance payments program implementation requirements.**

(a) *Statutory and regulatory requirements of the Federal foster care program.* To implement the foster care maintenance payments program provisions of the title IV–E plan and to be eligible to receive Federal financial participation (FFP) for foster care maintenance payments under this part, a title IV–E agency must meet the requirements of this section, 45 CFR 1356.22, 45 CFR 1356.30, and sections 472, 475(1), 475(4), 475(5), 475(6), and for a Tribal title IV–E agency section 479(B)(c)(1)(C)(ii)(II) of the Act.

(b) *Reasonable efforts.* The title IV–E agency must make reasonable efforts to maintain the family unit and prevent the unnecessary removal of a child from his/her home, as long as the child's safety is assured; to effect the safe reunification of the child and family (if temporary out-of-home placement is necessary to ensure the immediate safety of the child); and to make and finalize alternate permanency plans in a timely manner when reunification is not appropriate or possible. In order to satisfy the "reasonable efforts" requirements of section 471(a)(15) (as implemented through section 472(a)(2) of the Act), the title IV–E agency must meet the requirements of paragraphs (b) and (d) of this section. In determining reasonable efforts to be made with respect to a child and in making such reasonable efforts, the child's health and safety must be the paramount concern.

\* \* \* \* \*

(2) \* \* \*

(i) The title IV–E agency must obtain a judicial determination that it has made reasonable efforts to finalize the permanency plan that is in effect (whether the plan is reunification, adoption, legal guardianship, placement with a fit and willing relative, or placement in another planned permanent living arrangement) within twelve months of the date the child is considered to have entered foster care in

accordance with the definition at § 1355.20 of this part, and at least once every twelve months thereafter while the child is in foster care.

\* \* \* \* \*

(3) *Circumstances in which reasonable efforts are not required to prevent a child's removal from home or to reunify the child and family.*

Reasonable efforts to prevent a child's removal from home or to reunify the child and family are not required if the title IV-E agency obtains a judicial determination that such efforts are not required because:

(i) A court of competent jurisdiction has determined that the parent has subjected the child to aggravated circumstances (as defined in State, or for a Tribal title IV-E agency, Tribal law, which definition may include but need not be limited to abandonment, torture, chronic abuse, and sexual abuse);

\* \* \* \* \*

(c) *Contrary to the welfare determination.* Under section 472(a)(2) of the Act, a child's removal from the home must have been the result of a judicial determination (unless the child was removed pursuant to a voluntary placement agreement) to the effect that continuation of residence in the home would be contrary to the welfare, or that placement would be in the best interest, of the child. \* \* \*

(d) \* \* \*

(2) Neither affidavits nor nunc pro tunc orders will be accepted as verification documentation in support of reasonable efforts and contrary to the welfare judicial determinations except for a Tribal title IV-E agency for the first 12 months that agency's title IV-E plan is in effect as provided for in section 479B(c)(1)(C)(ii)(I) of the Act.

(3) Court orders that reference State or Tribal law to substantiate judicial determinations are not acceptable, even if such law provides that a removal must be based on a judicial determination that remaining in the home would be contrary to the child's welfare or that removal can only be ordered after reasonable efforts have been made.

\* \* \* \* \*

(f) *Case review system.* In order to satisfy the provisions of section 471(a)(16) of the Act regarding a case review system, each title IV-E agency's case review system must meet the requirements of sections 475(5) and 475(6) of the Act.

(g) \* \* \* In order to satisfy the case plan requirements of sections 471(a)(16), 475(1) and 475(5)(A) and (D) of the Act, the title IV-E agency must

promulgate policy materials and instructions for use by staff to determine the appropriateness of and necessity for the foster care placement of the child.

\* \* \*

(1) Be a written document, which is a discrete part of the case record, in a format determined by the title IV-E agency, which is developed jointly with the parent(s) or guardian of the child in foster care; and

(2) Be developed within a reasonable period, to be established by the title IV-E agency, but in no event later than 60 days from the child's removal from the home pursuant to paragraph (k) of this section;

\* \* \* \* \*

(5) \* \* \* When the case plan goal is adoption, at a minimum, such documentation shall include child-specific recruitment efforts such as the use of State, Tribal, regional, and national adoption exchanges including electronic exchange systems.

(h) \* \* \*

(1) To meet the requirements of the permanency hearing, the title IV-E agency must, among other requirements, comply with section 475(5)(C) of the Act.

\* \* \* \* \*

(3) If the title IV-E agency concludes, after considering reunification, adoption, legal guardianship, or permanent placement with a fit and willing relative, that the most appropriate permanency plan for a child is placement in another planned permanent living arrangement, the title IV-E agency must document to the court the compelling reason for the alternate plan. Examples of a compelling reason for establishing such a permanency plan may include:

(i) \* \* \*

(1) Subject to the exceptions in paragraph (i)(2) of this section, the title IV-E agency must file a petition (or, if such a petition has been filed by another party, seek to be joined as a party to the petition) to terminate the parental rights of a parent(s):

(i) Whose child has been in foster care under the responsibility of the title IV-E agency for 15 of the most recent 22 months. The petition must be filed by the end of the child's fifteenth month in foster care. In calculating when to file a petition for termination of parental rights, the title IV-E agency:

\* \* \* \* \*

(D) Need only apply section 475(5)(E) of the Act to a child once if the title IV-E agency does not file a petition because one of the exceptions at paragraph (i)(2) of this section applies;

(ii) Whose child has been determined by a court of competent jurisdiction to

be an abandoned infant (as defined under State or for a Tribal title IV-E agency, Tribal law). \* \* \*

\* \* \* \* \*

(2) The title IV-E agency may elect not to file or join a petition to terminate the parental rights of a parent per paragraph (i)(1) of this section if:

(i) At the option of the title IV-E agency, the child is being cared for by a relative;

(ii) The title IV-E agency has documented in the case plan (which must be available for court review) a compelling reason for determining that filing such a petition would not be in the best interests of the individual child.

\* \* \*

(iii) The title IV-E agency has not provided to the family, consistent with the time period in the case plan, services that the title IV-E agency deems necessary for the safe return of the child to the home, when reasonable efforts to reunify the family are required.

(3) When the title IV-E agency files or joins a petition to terminate parental rights in accordance with paragraph (i)(1) of this section, it must concurrently begin to identify, recruit, process, and approve a qualified adoptive family for the child.

\* \* \* \* \*

(k) \* \* \*

(2) A removal has not occurred in situations where legal custody is removed from the parent or relative and the child remains with the same relative in that home under supervision by the title IV-E agency.

\* \* \* \* \*

(1) *Living with a specified relative.* For purposes of meeting the requirements for living with a specified relative prior to removal from the home under section 472(a)(1) of the Act, all of the conditions under section 472(a)(3), and for Tribal title IV-E agencies section 479B(c)(1)(C)(ii)(II) of the Act, one of the two following situations must apply:

\* \* \* \* \*

(m) *Review of payments and licensing standards.* In meeting the requirements of section 471(a)(11) of the Act, the title IV-E agency must review at reasonable, specific, time-limited periods to be established by the agency:

\* \* \* \* \*

(n) *Foster care goals.* The specific foster care goals required under section 471(a)(14) of the Act must be incorporated into State law or Tribal law by statute, code, resolution, Tribal proceedings or administrative regulation with the force of law.

(o) *Notice and right to be heard.* The title IV-E agency must provide the

foster parent(s) of a child and any preadoptive parent or relative providing care for the child with timely notice of and the opportunity to be heard in any proceedings held with respect to the child during the time the child is in the care of such foster parent, preadoptive parent, or relative caregiver. Notice of and opportunity to be heard does not include the right to standing as a party to the case.

■ 27. In § 1356.22 revise paragraphs (a) introductory text, (a)(2) and (c) to read as follows:

**§ 1356.22 Implementation requirements for children voluntarily placed in foster care.**

(a) As a condition of receipt of Federal financial participation (FFP) in foster care maintenance payments for a dependent child removed from his home under a voluntary placement agreement, the title IV–E agency must meet the requirements of:

\* \* \* \* \*

(2) Sections 422(b)(8) and 475(5) of the Act;

\* \* \* \* \*

(c) The title IV–E agency must establish and maintain a uniform procedure or system, consistent with State or Tribal law, for revocation by the parent(s) of a voluntary placement agreement and return of the child.

■ 28. In § 1356.30, revise paragraphs (a), (b) introductory text, and (c) introductory text, remove and reserve paragraph (d) and revise paragraph (e) to read as follows:

**§ 1356.30 Safety requirements for foster care and adoptive home providers.**

(a) The title IV–E agency must provide documentation that criminal records checks have been conducted with respect to prospective foster and adoptive parents.

(b) The title IV–E agency may not approve or license any prospective foster or adoptive parent, nor may the title IV–E agency claim FFP for any foster care maintenance or adoption assistance payment made on behalf of a child placed in a foster home operated under the auspices of a child placing agency or on behalf of a child placed in an adoptive home through a private adoption agency, if the title IV–E agency finds that, based on a criminal records check conducted in accordance with paragraph (a) of this section, a court of competent jurisdiction has determined that the prospective foster or adoptive parent has been convicted of a felony involving:

\* \* \* \* \*

(c) The title IV–E agency may not approve or license any prospective

foster or adoptive parent, nor may the title IV–E agency claim FFP for any foster care maintenance or adoption assistance payment made on behalf of a child placed in a foster home operated under the auspices of a child placing agency or on behalf of a child placed in an adoptive home through a private adoption agency, if the title IV–E agency finds, based on a criminal records check conducted in accordance with paragraph (a) of this section, that a court of competent jurisdiction has determined that the prospective foster or adoptive parent has, within the last five years, been convicted of a felony involving:

\* \* \* \* \*

(d) [Reserved]

(e) In all cases where the State opted out of the criminal records check requirement, as permitted prior to the amendments made by section 152 of Public Law 109–248, the licensing file for that foster or adoptive family must contain documentation which verifies that safety considerations with respect to the caretaker(s) have been addressed.

\* \* \* \* \*

■ 29. In § 1356.40 revise paragraphs (a), (b)(4), (d), (e) and (f) to read as follows:

**§ 1356.40 Adoption assistance program: Administrative requirements to implement section 473 of the Act.**

(a) To implement the adoption assistance program provisions of the title IV–E plan and to be eligible for Federal financial participation in adoption assistance payments under this part, the title IV–E agency must meet the requirements of this section and section 471(a), applicable provisions of section 473, and section 475(3) of the Act.

(b) \* \* \*

(4) Specify, with respect to agreements entered into on or after October 1, 1983, that the agreement shall remain in effect regardless of the place of residence of the adoptive parents at any given time.

\* \* \* \* \*

(d) In the event an adoptive family moves from one place of residence to another, the family may apply for social services on behalf of the adoptive child in the new place of residence. If a needed service(s) specified in the adoption assistance agreement is not available in the new place of residence, the title IV–E agency making the original adoption assistance payment remains financially responsible for providing the specified service(s).

(e) A title IV–E agency may make an adoption assistance agreement with adopting parent(s) who reside in

another State or a Tribal service area. If so, all provisions of this section apply.

(f) The title IV–E agency must actively seek ways to promote the adoption assistance program.

■ 30. In § 1356.41 revise the first sentence of paragraph (a), paragraph (b), paragraphs (d), (e), paragraphs (f)(1) and (2), the second sentence of paragraph (g), paragraph (h), the first sentence of paragraph (i), paragraphs (j) and (k) to read as follows:

**§ 1356.41 Nonrecurring expenses of adoption.**

(a) The amount of the payment made for nonrecurring expenses of adoption shall be determined through agreement between the adopting parent(s) and the title IV–E agency administering the program. \* \* \*

(b) The agreement for nonrecurring expenses may be a separate document or a part of an agreement for either State, Tribal, or Federal adoption assistance payments or services.

\* \* \* \* \*

(d) For purposes of payment of nonrecurring expenses of adoption, the title IV–E agency must determine that the child is a “child with special needs” as defined in section 473(c) of the Act, and that the child has been placed for adoption in accordance with applicable laws; the child need not meet the categorical eligibility requirements at section 473(a)(2).

(e)(1) The title IV–E agency must notify all appropriate courts and all public and licensed private nonprofit adoption agencies of the availability of funds for the nonrecurring expenses of adoption of children with special needs as well as where and how interested persons may apply for these funds. This information should routinely be made available to all persons who inquire about adoption services.

(2) The agreement for nonrecurring expenses must be signed at the time of or prior to the final decree of adoption. Claims must be filed with the title IV–E agency within two years of the date of the final decree of adoption.

(f)(1) Funds expended by the title IV–E agency under an adoption assistance agreement, with respect to nonrecurring adoption expenses incurred by or on behalf of parents who adopt a child with special needs, shall be considered an administrative expenditure of the title IV–E Adoption Assistance Program. Federal reimbursement is available at a 50 percent matching rate, for title IV–E agency expenditures up to \$2,000, for any adoptive placement.

(2) Title IV–E agencies may set a reasonable lower maximum which must be based on reasonable charges,

consistent with State, Tribal, and local practices, for special needs adoptions within the State or Tribal service area. The basis for setting a lower maximum must be documented and available for public inspection.

\* \* \* \* \*

(g) \* \* \* Payments for nonrecurring expenses shall be made either directly by the title IV-E agency or through another public or licensed nonprofit private agency.

(h) When the adoption of the child involves a placement outside the State or Tribal service area, the title IV-E agency that enters into an adoption assistance agreement under section 473(a)(1)(B)(ii) of the Act or under a State or Tribal subsidy program will be responsible for paying the nonrecurring adoption expenses of the child. In cases where there is placement outside the State or Tribal service area but no agreement for other Federal, Tribal, or State adoption assistance, the title IV-E agency in the jurisdiction in which the final adoption decree is issued will be responsible for reimbursement of nonrecurring expenses if the child meets the requirements of section 473(c).

(i) The term "nonrecurring adoption expenses" means reasonable and necessary adoption fees, court costs, attorney fees and other expenses which are directly related to the legal adoption of a child with special needs, which are not incurred in violation of State, Tribal or Federal law, and which have not been reimbursed from other sources or other funds. \* \* \*

(j) Failure to honor all eligible claims will be considered non-compliance by the title IV-E agency with title IV-E of the Act.

(k) A title IV-E expenditure is considered made in the quarter during which the payment was made by a title IV-E agency to a private nonprofit agency, individual or vendor payee.

■ 31. In § 1356.50 revise the section heading and paragraphs (a) and (b) to read as follows:

**§ 1356.50 Withholding of funds for non-compliance with the approved title IV-E plan.**

(a) To be in compliance with the title IV-E plan requirements, a title IV-E agency must meet the requirements of the Act and 45 CFR 1356.20, 1356.21, 1356.30, and 1356.40 of this part.

(b) To be in compliance with the title IV-E plan requirements, a title IV-E agency that chooses to claim FFP for voluntary placements must meet the requirements of the Act, 45 CFR 1356.22 and paragraph (a) of this section; and

\* \* \* \* \*

■ 32. In § 1356.60 revise paragraphs (a)(1)(i) and (a)(2), the heading of paragraph (b), paragraphs (b)(1)(i), (b)(2), (c) introductory text, and (e) to read as follows:

**§ 1356.60 Fiscal requirements (title IV-E).**

(a) \* \* \*

(1) Federal financial participation (FFP) is available to title IV-E agencies under an approved title IV-E plan for allowable costs in expenditures for:

(i) Foster care maintenance payments as defined in section 475(4) of the Act, made in accordance with 45 CFR 1356.20 through 1356.30, section 472 of the Act, and for a Tribal title IV-E agency, section 479B of the Act;

(ii) Adoption assistance payments made in accordance with 45 CFR 1356.20 and 1356.40, applicable provisions of section 473, section 475(3) and, for a Tribal title IV-E agency, section 479B of the Act.

(2) Federal financial participation is available at the rate of the Federal medical assistance percentage as defined in section 1905(b), 474(a)(1) and (2) and 479B(d) of the Act as applicable, definitions, and pertinent regulations as promulgated by the Secretary, or his designee.

(b) *Federal matching funds for title IV-E agency training for foster care and adoption assistance under title IV-E.*

(1) \* \* \*

(i) Training personnel employed or preparing for employment by the title IV-E agency administering the plan, and;

\* \* \* \* \*

(2) All training activities and costs funded under title IV-E shall be included in the agency's training plan for title IV-B.

\* \* \* \* \*

(c) *Federal matching funds for other title IV-E agency administrative expenditures for foster care and adoption assistance under title IV-E.*

Federal financial participation is available at the rate of fifty percent (50%) for administrative expenditures necessary for the proper and efficient administration of the title IV-E plan. The State's cost allocation plan shall identify which costs are allocated and claimed under this program.

\* \* \* \* \*

(e) *Federal matching funds for SACWIS/TACWIS.* All expenditures of a title IV-E agency to plan, design, develop, install and operate the Statewide or Tribal automated child welfare information system approved under § 1355.52 of this chapter, shall be treated as necessary for the proper and efficient administration of the title IV-

E plan without regard to whether the system may be used with respect to foster or adoptive children other than those on behalf of whom foster care maintenance or adoption assistance payments may be made under this part.

■ 33. Add new § 1356.67 and § 1356.68 to read as follows:

**§ 1356.67 Procedures for the transfer of placement and care responsibility of a child from a State to a Tribal title IV-E agency or an Indian Tribe with a title IV-E agreement.**

(a) Each State with a title IV-E plan approved under section 471 of the Act must establish and maintain procedures, in consultation with Indian Tribes, for the transfer of responsibility for the placement and care of a child under a State title IV-E plan to a Tribal title IV-E agency or an Indian Tribe with a title IV-E agreement in a way that does not affect a child's eligibility for, or payment of, title IV-E and the child's eligibility for medical assistance under title XIX of the Act.

(b) The procedures must, at a minimum, provide for the State to:

(1) Determine, if the eligibility determination is not already completed, the child's eligibility under section 472 or 473 of the Act at the time of the transfer of placement and care responsibility of a child to a Tribal title IV-E agency or an Indian Tribe with a title IV-E agreement.

(2) Provide essential documents and information necessary to continue a child's eligibility under title IV-E and Medicaid programs under title XIX to the Tribal title IV-E agency, including, but not limited to providing:

(i) All judicial determinations to the effect that continuation in the home from which the child was removed would be contrary to the welfare of the child and that reasonable efforts described in section 471(a)(15) of the Act have been made;

(ii) Other documentation the State has that relates to the child's title IV-E eligibility under sections 472 and 473 of the Act;

(iii) Information and documentation available to the agency regarding the child's eligibility or potential eligibility for other Federal benefits;

(iv) The case plan developed pursuant to section 475(1) of the Act, including health and education records of the child pursuant to section 475(1)(C) of the Act; and

(v) Information and documentation of the child's placement settings, including a copy of the most recent provider's license or approval.

**§ 1356.68 Tribal title IV–E agency requirements for in-kind administrative and training contributions from third-party sources.**

(a) *Option to claim in-kind expenditures from third-party sources for non-Federal share of administrative and training costs.* A Tribal title IV–E agency may claim allowable in-kind expenditures from third-party sources for the purpose of determining the non-Federal share of administrative or training costs subject to paragraphs (b) through (d) of this section.

(b) *In-kind expenditures for fiscal years 2010 and 2011—(1) Administrative costs.* A Tribal title IV–E agency may claim allowable in-kind expenditures from third-party sources of up to 25 percent of the total administrative funds expended during a fiscal quarter pursuant to section 474(a)(3)(C), (D) or (E) of the Act.

(2) *Training costs.* A Tribal title IV–E agency may claim in-kind training expenditures of up to 12 percent of the total training funds expended during a fiscal year quarter pursuant to section 474(a)(3)(A) and (B) of the Act, but only from the following sources:

- (i) A State or local government;
- (ii) An Indian Tribe, Tribal organization, or Tribal consortium other than the Indian Tribe, organization, or consortium submitting the title IV–E plan;
- (iii) A public institution of higher education;
- (iv) A Tribal College or University (as defined in section 316 of the Higher Education Act of 1965 (20 U.S.C. 1059c)); and
- (v) A private charitable organization.

(c) *In-kind expenditures for fiscal years 2012 and thereafter—(1) Administrative costs.* A Tribal title IV–E agency may claim in-kind expenditures from third-party sources of up to 50 percent of the total administrative funds expended during a fiscal quarter pursuant to section 474(a)(3)(C), (D) or (E) of the Act.

(2) *Training costs.* A Tribal title IV–E agency may claim in-kind training expenditures of up to 25 percent (or 30 percent consistent with section 203(b) of Pub. L. 110–351) of the total training funds expended during each quarter of fiscal year 2012 pursuant to section 474(a)(3)(A) and (B) of the Act. For fiscal year 2013 and thereafter, a Tribal title IV–E agency may claim in-kind training expenditures of up to 25 percent of the total training funds expended during a fiscal quarter pursuant to section 474(a)(3)(A) and (B) of the Act.

(3) *Third-party sources.* A Tribal title IV–E agency may claim in-kind training

expenditures for training funds from any allowable third-party source.

■ 34. In § 1356.71 revise paragraphs (a)(1) and (a)(2), (a)(3)(i), the heading and first sentence of (a)(3)(ii), (b)(1) and (b)(2), (c)(1), the second and fourth sentence of paragraph (c)(4), the first sentence of (c)(5), paragraph (d) introductory text, paragraphs (d)(1)(i), (d)(1)(iii), (d)(1)(v), (d)(2), paragraph (g)(1) introductory text, paragraphs (g)(2) and (3), (h)(1), (h)(3), (h)(4), (i)(1) introductory text, paragraph (i)(1)(i) and (i)(1)(ii), the second and third sentences of paragraph (i)(1)(iii), (i)(2) through (4), paragraph (j) introductory text, the first sentence of paragraph (j)(1) and paragraphs (j)(2) through (4) to read as follows:

**§ 1356.71 Federal review of the eligibility of children in foster care and the eligibility of foster care providers in title IV–E programs.**

(a) \* \* \*

(1) This section sets forth requirements governing Federal reviews of compliance with the title IV–E eligibility provisions as they apply to children and foster care providers under paragraphs (a) and (b) of section 472 of the Act.

(2) The requirements of this section apply to title IV–E agencies that receive Federal payments for foster care under title IV–E of the Act.

(3) \* \* \*

(i) *Title IV–E agencies in substantial compliance.* Title IV–E agencies determined to be in substantial compliance based on the primary review will be subject to another review in three years.

(ii) *Title IV–E agencies not in substantial compliance.* Title IV–E agencies that are determined not to be in substantial compliance based on the primary review will develop and implement a program improvement plan designed to correct the areas of noncompliance. \* \* \*

(b) \* \* \*

(1) The review team must be composed of representatives of the title IV–E agency, and ACF’s Regional and Central Offices.

(2) The title IV–E agency must provide ACF with the complete payment history for each of the sample and oversample cases prior to the on-site review.

(c) \* \* \*

(1) The list of sampling units in the target population (*i.e.*, the sampling frame) will be drawn by ACF statistical staff from the Adoption and Foster Care Analysis and Reporting System (AFCARS) data which are transmitted by the title IV–E agency to ACF. The

sampling frame will consist of cases of children who were eligible for foster care maintenance payments during the reporting period reflected in a title IV–E agency’s most recent AFCARS data submission. For the initial primary review, if these data are not available or are deficient, an alternative sampling frame, consistent with one AFCARS six-month reporting period, will be selected by ACF in conjunction with the title IV–E agency.

\* \* \* \* \*

(4) \* \* \* When the total number of ineligible cases does not exceed eight, ACF can conclude with a probability of 88 percent that in a population of 1000 or more cases the population ineligibility case error rate is less than 15 percent and the title IV–E agency will be considered in substantial compliance. \* \* \* A title IV–E agency which meets this standard is considered to be in “substantial compliance” (see paragraph (h) of this section). \* \* \*

(5) A title IV–E agency which has been determined to be in “noncompliance” (*i.e.*, not in substantial compliance) will be required to develop a program improvement plan according to the specifications discussed in paragraph (i) of this section, as well as undergo a secondary review. \* \* \*

\* \* \* \* \*

(d) *Requirements subject to review.* Title IV–E agencies will be reviewed against the requirements of title IV–E of the Act regarding:

(1) \* \* \*

(i) Judicial determinations regarding “reasonable efforts” and “contrary to the welfare” in accordance with § 1356.21(b) and (c), respectively;

\* \* \*

(iii) Responsibility for placement and care vested with the title IV–E or other public agency per section 472(a)(2)(B) of the Act;

\* \* \*

(v) Eligibility for AFDC under such State plan as it was in effect on July 16, 1996 per section 472(a)(3) or 479B(c)(1)(C)(ii)(II) of the Act, as appropriate.

(2) Allowable payments made to foster care providers who comport with sections 471(a)(10), 471(a)(20), 472(b) and (c), and 479B(c)(2) of the Act and § 1356.30.

\* \* \* \* \*

(g) \* \* \*

(1) For each case being reviewed, the title IV–E agency must make available a licensing file which contains the licensing history, including a copy of the certificate of licensure/approval or

letter of approval, for each of the providers in the following categories:

\* \* \* \* \*

(2) The licensing file must contain documentation that the title IV–E agency has complied with the safety requirements for foster and adoptive placements in accordance with § 1356.30.

(3) If the licensing file does not contain sufficient information to support a child’s placement in a licensed facility, the title IV–E agency may provide supplemental information from other sources (e.g., a computerized database).

(h) \* \* \*

(1) Disallowances will be taken, and plans for program improvement required, based on the extent to which a title IV–E agency is not in substantial compliance with recipient or provider eligibility provisions of title IV–E, or applicable regulations in 45 CFR parts 1355 and 1356.

\* \* \* \* \*

(3) ACF will notify the title IV–E agency in writing within 30 calendar days after the completion of the review of whether the title IV–E agency is, or is not, operating in substantial compliance.

(4) Title IV–E agencies which are determined to be in substantial compliance must undergo a subsequent review after a minimum of three years.

(i) \* \* \*

(1) Title IV–E agencies which are determined to be in noncompliance with recipient or provider eligibility provisions of title IV–E, or applicable regulations in 45 CFR Parts 1355 and 1356, will develop a program improvement plan designed to correct the areas determined not to be in substantial compliance. The program improvement plan will:

(i) Be developed jointly by title IV–E agency and Federal staff;

(ii) Identify the areas in which the title IV–E agency’s program is not in substantial compliance;

(iii) \* \* \* A title IV–E agency will have a maximum of one year in which to implement and complete the provisions of the program improvement plan unless State/Tribal legislative action is required. In such instances, an extension may be granted with the title IV–E agency and ACF negotiating the terms and length of such extension that shall not exceed the last day of the first

legislative session after the date of the program improvement plan; and

\* \* \* \* \*

(2) Title IV–E agencies determined not to be in substantial compliance as a result of a primary review must submit the program improvement plan to ACF for approval within 90 calendar days from the date the title IV–E agency receives written notification that it is not in substantial compliance. This deadline may be extended an additional 30 calendar days when a title IV–E agency submits additional documentation to ACF in support of cases determined to be ineligible as a result of the on-site eligibility review.

(3) The ACF Regional Office will intermittently review, in conjunction with the title IV–E agency, the title IV–E agency’s progress in completing the prescribed action steps in the program improvement plan.

(4) If a title IV–E agency does not submit an approvable program improvement plan in accordance with the provisions of paragraphs (i)(1) and (2) of this section, ACF will move to a secondary review in accordance with paragraph (c) of this section.

(j) *Disallowance of funds.* The amount of funds to be disallowed will be determined by the extent to which a title IV–E agency is not in substantial compliance with recipient or provider eligibility provisions of title IV–E, or applicable regulations in 45 CFR parts 1355 and 1356.

(1) Title IV–E agencies which are found to be in substantial compliance during the primary or secondary review will have disallowances (if any) determined on the basis of individual cases reviewed and found to be in error. \* \* \*

(2) Title IV–E agencies which are found to be in noncompliance during the primary review will have disallowances determined on the basis of individual cases reviewed and found to be in error, and must implement a program improvement plan in accordance with the provisions contained within it. A secondary review will be conducted no later than during the AFCARS reporting period which immediately follows the program improvement plan completion date on a sample of 150 cases drawn from the title IV–E agency’s most recent AFCARS data. If both the case ineligibility and dollar error rates exceed 10 percent, the title IV–E agency is not in compliance and an additional disallowance will be

determined based on extrapolation from the sample to the universe of claims paid for the duration of the AFCARS reporting period (i.e., all title IV–E funds expended for a case during the quarter(s) that case is ineligible, including administrative costs). If either the case ineligibility or dollar rate does not exceed 10 percent, the amount of disallowance will be computed on the basis of payments associated with ineligible cases for the entire period of time the case has been determined to be ineligible.

(3) The title IV–E agency will be liable for interest on the amount of funds disallowed by the Department, in accordance with the provisions of 45 CFR 30.18.

(4) Title IV–E agencies may appeal any disallowance actions taken by ACF to the HHS Departmental Appeals Board in accordance with regulations at 45 CFR part 16.

■ 35. In § 1356.83 revise the fifth and sixth sentences of paragraph (g)(55) and add a parenthetical OMB information collection statement at the end of the section, to read as follows:

**§ 1356.83 Reporting requirements and data elements.**

\* \* \* \* \*

(g) \* \* \*

(55) \* \* \* Indicate “yes”, “no”, or “don’t know” as appropriate. If the youth does not answer this question, indicate “declined.”

\* \* \* \* \*

(This requirement has been approved by the Office of Management and Budget under OMB Control Number OMB 0970–0340. 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.)

■ 36. In § 1356.86 revise paragraph (e) to read as follows:

**§ 1356.86 Penalties for noncompliance.**

\* \* \* \* \*

(e) *Interest.* The State agency will be liable for interest on the amount of funds penalized by the Department, in accordance with the provisions of 45 CFR 30.18.

\* \* \* \* \*

■ 37. Revise Appendixes A and B to Part 1356 to read as follows:

**Appendix A to Part 1356—NYTD Data Elements**

Element No.	Element name	Responses options	Applicable population
1 .....	State .....	2 digit FIPS code.	
2 .....	Report date .....	CYYMM.	

Element No.	Element name	Responses options	Applicable population	
3	Record number	CC = century year (i.e., 20). YY = decade year (00–99). MM = month (01–12). Encrypted, unique person identification number.	All youth in served, baseline and follow-up populations.	
4	Date of birth	CCYYMMDD. CC = century year (i.e., 20). YY = decade year (00–99). MM = month (01–12). DD = day (01–31).		
5	Sex	Male. Female.		
6	Race—American Indian or Alaska Native	Yes		
7	Race—Asian	No. Yes.		
8	Race—Black or African American	No. Yes.		
9	Race—Native Hawaiian or Other Pacific Islander.	No. Yes.		
10	Race—White	No. Yes.		
11	Race—Unknown	No. Yes.		
12	Race—Declined	No. Yes.		
13	Hispanic or Latino Ethnicity	No. Unknown. Declined.		
14	Foster care status—services	Yes		Served population only.
15	Local agency	No. FIPS code(s). Centralized unit.		
16	Federally-recognized tribe	Yes. No.		
17	Adjudicated delinquent	Yes. No.		
18	Education level	Less than 6th grade 6th grade. 7th grade. 8th grade. 9th grade. 10th grade. 11th grade. 12th grade. Postsecondary education or training. College, at least one semester.		Served population only.
19	Special education	Yes. No.		
20	Independent living needs assessment	Yes. No.		
21	Academic support	Yes. No.		
22	Post-secondary educational support	Yes. No.		
23	Career preparation	Yes. No.		
24	Employment programs or vocational training.	Yes. No.		
25	Budget and financial management	Yes. No.		
26	Housing education and home management training.	Yes. No.		
27	Health education and risk prevention	Yes. No.		
28	Family Support/Healthy Marriage Education.	Yes. No.		
29	Mentoring	No. Yes.		

Element No.	Element name	Responses options	Applicable population
30 .....	Supervised independent living .....	No. Yes.	
31 .....	Room and board financial assistance .....	No. Yes.	
32 .....	Education financial assistance .....	No. Yes.	
33 .....	Other financial assistance .....	No. Yes.	
34 .....	Outcomes reporting status .....	Youth Participated .....	Baseline and follow-up populations (with the exception of the response option "not in sample" which is applicable to 19-year olds in the follow-up only).
		Youth Declined.	
		Parent Declined.	
		Youth Incapacitated.	
		Incarcerated.	
		Runaway/Missing.	
		Unable to locate/invite.	
		Death.	
		Not in sample.	
35 .....	Date of outcome data collection .....	CCYYMMDD .....	Baseline and follow-up populations.
		CC = century year (i.e., 20).	
		YY = decade year (00–99).	
		MM = month (01–12).	
		DD = day (01–31).	
36 .....	Foster care status-outcomes .....	Yes.	
		No.	
37 .....	Current full-time employment .....	Yes.	
		No.	
38 .....	Current part-time employment .....	Declined.	
		Yes.	
		No.	
		Declined.	
39 .....	Employment-related skills .....	Yes.	
		No.	
		Declined.	
40 .....	Social Security .....	Yes.	
		No.	
		Declined.	
41 .....	Educational aid .....	Yes.	
		No.	
		Declined.	
42 .....	Public financial assistance .....	Yes .....	Follow-up population not in foster care.
		No.	
		Not applicable.	
		Declined.	
43 .....	Public food assistance .....	Yes.	
		No.	
		Not applicable.	
		Declined.	
44 .....	Public housing assistance .....	Yes.	
		No.	
		Not applicable.	
		Declined.	
45 .....	Other financial support .....	Yes .....	Baseline and follow-up population.
		No.	
		Declined.	
		High school diploma/GED.	
		Vocational certificate.	
		Vocational license.	
		Associate's degree.	
		Bachelor's degree.	
		Higher degree.	
		None of the above.	
		Declined.	
47 .....	Current enrollment and attendance .....	Yes.	
		No.	
		Declined.	
48 .....	Connection to adult .....	Yes.	
		No.	
		Declined.	
49 .....	Homelessness .....	Yes.	
		No.	
		Declined.	
50 .....	Substance abuse referral .....	Yes.	
		No.	

Element No.	Element name	Responses options	Applicable population
51 .....	Incarceration .....	Declined. Yes. No.	Baseline and follow-up population.
52 .....	Children .....	Declined. Yes. No.	
53 .....	Marriage at child's birth .....	Declined. Yes. No.	
54 .....	Medicaid .....	Not applicable. Declined. Yes. No.	
55 .....	Other health insurance .....	Don't know. Declined. Yes .....	
56 .....	Health insurance type—medical .....	No. Don't know. Declined.	
57 .....	Health insurance type—mental health ....	Not Applicable. Declined. Yes. No.	
58 .....	Health insurance type—prescription drugs.	Don't know. Not applicable. Declined. Yes. No. Don't know. Not applicable. Declined.	

**Appendix B to Part 1356—NYTD Youth Outcome Survey**

Topic/element No.	Question to youth and response options	Definition
<b>INFORMATION TO COLLECT FROM ALL YOUTH SURVEYED FOR OUTCOMES, WHETHER IN FOSTER CARE OR NOT</b>		
Current full-time employment (37) ..	Currently are you employed full-time? _ Yes _ No _ Declined	“Full-time” means working at least 35 hours per week at one or multiple jobs.
Current part-time employment (38)	Currently are you employed part-time? _ Yes _ No _ Declined	“Part-time” means working at least 1–34 hours per week at one or multiple jobs.
Employment-related skills (39) .....	In the past year, did you complete an apprenticeship, internship, or other on-the-job training, either paid or unpaid? _ Yes _ No _ Declined	This means apprenticeships, internships, or other on-the-job trainings, either paid or unpaid, that helped the youth acquire employment-related skills (which can include specific trade skills such as carpentry or auto mechanics, or office skills such as word processing or use of office equipment).
Social Security (40) .....	Currently are you receiving social security payments (Supplemental Security Income (SSI), Social Security Disability Insurance (SSDI), or dependents' payments)? _ Yes _ No _ Declined	These are payments from the government to meet basic needs for food, clothing, and shelter of a person with a disability. A youth may be receiving these payments because of a parent or guardian's disability, rather than his/her own.

Topic/element No.	Question to youth and response options	Definition
Educational Aid (41) .....	Currently are you using a scholarship, grant, stipend, student loan, voucher, or other type of educational financial aid to cover any educational expenses? <input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Declined	Scholarships, grants, and stipends are funds awarded for spending on expenses related to gaining an education. "Student loan" means a government-guaranteed, low-interest loan for students in post-secondary education.
Other financial support (45) .....	Currently are you receiving any periodic and/or significant financial resources or support from another source not previously indicated and excluding paid employment? <input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Declined	This means periodic and/or significant financial support from a spouse or family member (biological, foster or adoptive), child support that the youth receives or funds from a legal settlement. This does not include occasional gifts, such as birthday or graduation checks or small donations of food or personal incidentals, child care subsidies, child support for a youth's child or other financial help that does not benefit the youth directly in supporting himself or herself.
Highest educational certification received (46).	What is the highest educational degree or certification that you have received? <input type="checkbox"/> High school diploma/GED <input type="checkbox"/> Vocational certificate <input type="checkbox"/> Vocational license <input type="checkbox"/> Associate's degree (e.g., A.A.) <input type="checkbox"/> Bachelor's degree (e.g., B.A. or B.S.) <input type="checkbox"/> Higher degree <input type="checkbox"/> None of the above <input type="checkbox"/> Declined	"Vocational certificate" means a document stating that a person has received education or training that qualifies him or her for a particular job, e.g., auto mechanics or cosmetology. "Vocational license" means a document that indicates that the State or local government recognizes an individual as a qualified professional in a particular trade or business. An Associate's degree is generally a two-year degree from a community college, and a Bachelor's degree is a four-year degree from a college or university. "Higher degree" indicates a graduate degree, such as a Masters or Doctorate degree. "None of the above" means that the youth has not received any of the above educational certifications.
Current enrollment and attendance (47).	Currently are you enrolled in and attending high school, GED classes, post-high school vocational training, or college? <input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Declined	This means both enrolled in and attending high school, GED classes, or postsecondary vocational training or college. A youth is still considered enrolled in and attending school if the youth would otherwise be enrolled in and attending a school that is currently out of session (e.g., Spring break, summer vacation, etc.).
Connection to adult (48) .....	Currently is there at least one adult in your life, other than your caseworker, to whom you can go for advice or emotional support? <input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Declined	This refers to an adult who the youth can go to for advice or guidance when there is a decision to make or a problem to solve, or for companionship to share personal achievements. This can include, but is not limited to, adult relatives, parents or foster parents. The definition excludes spouses, partners, boyfriends or girlfriends and current caseworkers. The adult must be easily accessible to the youth, either by telephone or in person.
Homelessness (49) .....	Have you ever been homeless? OR In the past two years, were you homeless at any time? <input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Declined	"Homeless" means that the youth had no regular or adequate place to live. This includes living in a car, or on the street, or staying in a homeless or other temporary shelter.
Substance abuse referral (50) .....	Have you ever referred yourself or has someone else referred you for an alcohol or drug abuse assessment or counseling? OR In the past two years, did you refer yourself, or had someone else referred you for an alcohol or drug abuse assessment or counseling? <input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Declined	This includes either self-referring or being referred by a social worker, school staff, physician, mental health worker, foster parent, or other adult for an alcohol or drug abuse assessment or counseling. Alcohol or drug abuse assessment is a process designed to determine if someone has a problem with alcohol or drug use.
Incarceration (51) .....	Have you ever been confined in a jail, prison, correctional facility, or juvenile or community detention facility, in connection with allegedly committing a crime? OR	This means that the youth was confined in a jail, prison, correctional facility, or juvenile or community detention facility in connection with a crime (misdemeanor or felony) allegedly committed by the youth.

Topic/element No.	Question to youth and response options	Definition
Children (52) .....	<p>In the past two years, were you confined in a jail, prison, correctional facility, or juvenile or community detention facility, in connection with allegedly committing a crime?</p> <p><input type="checkbox"/> Yes  <input type="checkbox"/> No  <input type="checkbox"/> Declined</p>	
Marriage at Child's Birth (53) .....	<p>Have you ever given birth or fathered any children that were born?</p> <p>OR</p> <p>In the past two years, did you give birth to or father any children that were born?</p> <p><input type="checkbox"/> Yes  <input type="checkbox"/> No  <input type="checkbox"/> Declined</p>	This means giving birth to or fathering at least one child that was born. If males do not know, answer "No."
Medicaid (54) .....	<p>If you responded yes to the previous question, were you married to the child's other parent at the time each child was born?</p> <p><input type="checkbox"/> Yes  <input type="checkbox"/> No  <input type="checkbox"/> Declined</p>	This means that when every child was born the youth was married to the other parent of the child.
Other Health insurance Coverage (55).	<p>Currently are you on Medicaid [or use the name of the State's medical assistance program under title XIX]?</p> <p><input type="checkbox"/> Yes  <input type="checkbox"/> No  <input type="checkbox"/> Don't know  <input type="checkbox"/> Declined</p>	Medicaid (or the State medical assistance program) is a health insurance program funded by the government.
Health insurance type—medical (56).	<p>Currently do you have health insurance, other than Medicaid?</p> <p><input type="checkbox"/> Yes  <input type="checkbox"/> No  <input type="checkbox"/> Don't know  <input type="checkbox"/> Declined</p>	"Health insurance" means having a third party pay for all or part of health care. Youth might have health insurance such as group coverage offered by employers or schools, or individual policies that cover medical and/or mental health care and/or prescription drugs, or youth might be covered under parents' insurance. This also could include access to free health care through a college, Indian Tribe, or other source.
Health insurance type—mental health (57).	<p>Does your health insurance coverage include coverage for medical services?</p> <p><input type="checkbox"/> Yes  <input type="checkbox"/> No  <input type="checkbox"/> Don't know  <input type="checkbox"/> Not Applicable  <input type="checkbox"/> Declined</p>	This means that the youth's health insurance covers at least some medical services or procedures. This question is for only those youth who responded "yes" to having health insurance.
Health insurance type—prescription drugs (58).	<p>Does your health insurance include coverage for mental health services?</p> <p><input type="checkbox"/> Yes  <input type="checkbox"/> No  <input type="checkbox"/> Don't know  <input type="checkbox"/> Not Applicable  <input type="checkbox"/> Declined</p>	This means that the youth's health insurance covers at least some mental health services. This question is for only those youth who responded "yes" to having health insurance with medical coverage.
	<p>Does your health insurance include coverage for prescription drugs?</p> <p><input type="checkbox"/> Yes  <input type="checkbox"/> No  <input type="checkbox"/> Don't know  <input type="checkbox"/> Declined</p>	This means that the youth's health insurance covers at least some prescription drugs. This question is for only those youth who responded "yes" to having health insurance with medical coverage.

Topic/element No.	Question to youth and response options	Definition
<b>ADDITIONAL OUTCOMES INFORMATION TO COLLECT FROM YOUTH OUT OF FOSTER CARE</b>		
Public financial assistance (42) .....	Currently are you receiving ongoing welfare payments from the government to support your basic needs? [The State may add and/or substitute the name(s) of the State's welfare program]. <input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Declined	This refers to ongoing welfare payments from the government to support your basic needs. Do not consider payments or subsidies for specific purposes, such as unemployment insurance, child care subsidies, education assistance, food stamps or housing assistance in this category.
Public food assistance (43) .....	Currently are you receiving public food assistance? <input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Declined	Public food assistance includes food stamps, which are government-issued coupons or debit cards that recipients can use to buy eligible food at authorized stores. Public food assistance also includes assistance from the Women, Infants and Children (WIC) program.
Public housing assistance (44) .....	Currently are you receiving any sort of housing assistance from the government, such as living in public housing or receiving a housing voucher? <input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Declined	Public housing is rental housing provided by the government to keep rents affordable for eligible individuals and families, and a housing voucher allows participants to choose their own housing while the government pays part of the housing costs. This does not include payments from the child welfare agency for room and board payments.

[FR Doc. 2011-32911 Filed 1-5-12; 8:45 am]

**BILLING CODE P**