

110TH CONGRESS
1ST SESSION

H. R. 4688

To amend part E of title IV of the Social Security Act to provide equitable access for foster care and adoption services for Indian children in tribal areas, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

DECEMBER 13, 2007

Mr. POMEROY (for himself, Mr. WELLER of Illinois, Mr. BLUMENAUER, and Mr. CAMP of Michigan) introduced the following bill; which was referred to the Committee on Ways and Means

A BILL

To amend part E of title IV of the Social Security Act to provide equitable access for foster care and adoption services for Indian children in tribal areas, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Tribal Foster Care
5 and Adoption Access Act of 2007”.

1 **SEC. 2. EQUITABLE ACCESS FOR FOSTER CARE AND ADOPT-**
2 **ION SERVICES FOR INDIAN CHILDREN IN**
3 **TRIBAL AREAS.**

4 (a) AUTHORITY FOR INDIAN TRIBES TO RECEIVE
5 DIRECT FEDERAL TITLE IV-E FUNDS.—Section
6 472(a)(2)(B) of the Social Security Act (42 U.S.C.
7 672(a)(2)(B)) is amended—

- 8 (1) in clause (i), by striking “or” at the end;
9 (2) in clause (ii), by striking “and” after the
10 semicolon and inserting “or”; and
11 (3) by adding at the end the following:

12 “(iii) an Indian tribe or a tribal orga-
13 nization (as defined in section 479B(a)) or
14 a tribal consortium, if the Indian tribe,
15 tribal organization, or tribal consortium—

16 “(I) operates a program under
17 section 479B;

18 “(II) has a cooperative agree-
19 ment with a State under section
20 479B(d); or

21 “(III) submits to the Secretary a
22 description of the arrangements
23 (jointly developed in consultation with
24 the State) made by the Indian tribe or
25 tribal consortium for the payment of
26 funds and the provision of the child

1 welfare services and protections re-
2 quired by this title; and”.

3 (b) PROGRAMS OPERATED BY INDIAN TRIBAL ORGA-
4 NIZATIONS.—Part E of title IV of the Social Security Act
5 (42 U.S.C. 670 et seq.) is amended by adding at the end
6 the following:

7 **“SEC. 479B. PROGRAMS OPERATED BY INDIAN TRIBAL OR-**
8 **GANIZATIONS.**

9 “(a) DEFINITIONS OF INDIAN TRIBE; TRIBAL ORGA-
10 NIZATIONS.—In this section:

11 “(1) IN GENERAL.—Except as provided in para-
12 graph (2), the terms ‘Indian tribe’ and ‘tribal orga-
13 nization’ have the meanings given those terms in
14 section 4 of the Indian Self-Determination and Edu-
15 cation Assistance Act (25 U.S.C. 450b).

16 “(2) SPECIAL RULE FOR ALASKAN TRIBES.—
17 The term ‘Indian tribe’ means, with respect to the
18 State of Alaska, only the Metlakatla Indian Commu-
19 nity of the Annette Islands Reserve and the fol-
20 lowing Alaska Native regional nonprofit corpora-
21 tions: (A) Artice Slope Native Association. (B)
22 Kawerak, Inc. (C) Maniilaq Association. (D) Asso-
23 ciation of Village Council Presidents. (E) Tanana
24 Chiefs Conference. (F) Cook Inlet Tribal Council.
25 (G) Bristol Bay Native Association. (H) Aleutian

1 and Pribilof Island Association. (I) Chugachmuit.
2 (J) Tlingit Haida Central Council. (K) Kodiak Area
3 Native Association. (L) Cooper River Native Asso-
4 ciation.

5 “(b) APPLICATION.—Except as provided in sub-
6 sections (c) and (e), this part shall apply to an Indian
7 tribe, tribal organization, or a tribal consortium that elects
8 to operate a program under this part in the same manner
9 as this part applies to a State.

10 “(c) MODIFICATION OF PLAN AND OTHER REQUIRE-
11 MENTS.—

12 “(1) IN GENERAL.—In the case of an Indian
13 tribe, a tribal organization, or a tribal consortium
14 submitting a plan for approval under section 471,
15 the plan—

16 “(A) shall—

17 “(i) in lieu of the requirements of sec-
18 tion 471(a)(3), identify the service area or
19 areas and population to be served by the
20 Indian tribe, tribal organization, or tribal
21 consortium; and

22 “(ii) in lieu of the requirements of
23 section 471(a)(10), provide for the estab-
24 lishment and application of standards for
25 foster family homes and child care institu-

1 tions pursuant to tribal standards and in a
2 manner that ensures the safety of, and ac-
3 countability for, children placed in foster
4 care; and

5 “(B) may, at the option of the Indian
6 tribe, tribal organization, or tribal consortium,
7 in lieu of the requirements of section
8 471(a)(20), provide procedures for conducting
9 background checks in accordance with the re-
10 quirements of section 408 of the Indian Child
11 Protection and Family Violence Prevention Act
12 (25 U.S.C. 3207) and regulations issued there-
13 under, and for conducting checks of child abuse
14 and neglect registries maintained by the Fed-
15 eral government, by a State, and by an Indian
16 tribe, tribal organization, or tribal consortium
17 in a manner that ensures the safety of, and ac-
18 countability for, children placed in foster care
19 or who are being placed for adoption.

20 “(2) DETERMINATION OF FEDERAL SHARE;

21 SOURCES OF NON-FEDERAL SHARE.—

22 “(A) PER CAPITA INCOME.—

23 “(i) IN GENERAL.—For purposes of
24 determining the Federal medical assistance
25 percentage applicable to an Indian tribe, a

1 tribal organization, or a tribal consortium
2 under paragraphs (1) and (2) of section
3 474(a) (and for purposes of payments
4 made under an arrangement described in
5 section 472(a)(2)(B)(iii)(III)), the calcula-
6 tion of the per capita income of the Indian
7 tribe, tribal organization, or tribal consor-
8 tium shall be based upon the service popu-
9 lation of the Indian tribe, tribal organiza-
10 tion, or tribal consortium as defined in the
11 plan of the Indian tribe, tribal organiza-
12 tion, tribal consortium, in accordance with
13 paragraph (1)(A), except that in no case
14 shall an Indian tribe, a tribal organization,
15 or a tribal consortium receive less than the
16 Federal medical assistance percentage for
17 any State in which the tribe is located.

18 “(ii) CONSIDERATION OF OTHER IN-
19 FORMATION.—Before making a calculation
20 under clause (i), the Secretary shall con-
21 sider any information submitted by an In-
22 dian tribe, a tribal organization, or a tribal
23 consortium that the Indian tribe, tribal or-
24 ganization, or tribal consortium considers
25 relevant to making the calculation of the

1 per capita income of the Indian tribe, trib-
2 al organization, or tribal consortium.

3 “(B) ADMINISTRATIVE, TRAINING, AND
4 DATA COLLECTION EXPENDITURES.—The Sec-
5 retary shall, by regulation, determine the pro-
6 portions to be paid to Indian tribes, tribal orga-
7 nizations, and tribal consortiums pursuant to
8 section 474(a)(3) for purposes of this section
9 (and for purposes of payments made under an
10 arrangement described in section
11 472(a)(2)(B)(iii)(III)), except that in no case
12 shall an Indian tribe, a tribal organization, or
13 a tribal consortium receive a lesser proportion
14 than the corresponding amount specified for a
15 State in that section.

16 “(C) SOURCES OF NON-FEDERAL
17 SHARE.—An Indian tribe, tribal organization,
18 or tribal consortium may use Federal, State,
19 tribal, or private funds, which may be in kind,
20 fairly evaluated, including plant, equipment, ad-
21 ministration, and services, to match payments
22 for which the tribe, organization, or consortium
23 is eligible under section 474.

24 “(3) MODIFICATION OF OTHER REQUIRE-
25 MENTS.—On the request of an Indian tribe, tribal

1 organization, or a tribal consortium, the Secretary
2 may modify any requirement under this part if, after
3 consulting with the Indian tribe, tribal organization,
4 or tribal consortium, the Secretary determines that
5 modification of the requirement would advance the
6 best interests and the safety of children served by
7 the Indian tribe, tribal organization, or tribal con-
8 sortium.

9 “(4) CONSORTIUM.—The participating Indian
10 tribes or tribal organizations of a tribal consortium
11 may develop and submit a single plan under section
12 471 that meets the requirements of this section.

13 “(d) COOPERATIVE AGREEMENTS.—

14 “(1) IN GENERAL.—An Indian tribe, a tribal
15 organization, or a tribal consortium and a State may
16 enter into a cooperative agreement for the adminis-
17 tration or payment of funds under this part.

18 “(2) APPLICATION AND ENFORCEMENT OF IN-
19 CORPORATED PROVISIONS OF THIS SECTION.—If an
20 Indian tribe, a tribal organization, or a tribal con-
21 sortium and a State enter into a cooperative agree-
22 ment that incorporates any of the provisions of this
23 section, those provisions shall be valid and enforce-
24 able.

1 “(3) PRIOR AGREEMENTS IN EFFECT.—Any co-
2 operative agreement described in paragraph (1) that
3 is in effect as of the date of enactment of this sec-
4 tion, shall remain in full force and effect subject to
5 the right of either party to the agreement to revoke
6 or modify the agreement pursuant to the terms of
7 the agreement.

8 “(e) JOHN H. CHAFEE FOSTER CARE INDEPEND-
9 ENCE PROGRAM.—Except as provided in section 477(j),
10 subsection (b) shall not apply with respect to the John
11 H. Chafee Foster Care Independence Program established
12 under section 477 (or with respect to payments made
13 under section 474(a)(4) or grants made under section
14 474(e)).”.

15 (c) APPLICATION OF FEDERAL MATCHING RATE
16 THAT WOULD APPLY TO INDIAN TRIBES, TRIBAL ORGA-
17 NIZATIONS, OR TRIBAL CONSORTIA TO EXPENDITURES
18 UNDER STATE AGREEMENTS OR AN AGREEMENT WITH
19 THE SECRETARY.—

20 (1) FOSTER CARE MAINTENANCE AND ADOP-
21 TION ASSISTANCE PAYMENTS.—Paragraphs (1) and
22 (2) of section 474(a) of the Social Security Act (42
23 U.S.C. 674(a)) are each amended by inserting “(or,
24 with respect to such payments made during such
25 quarter under an agreement entered into by the

1 State and an Indian tribe, tribal organization, or
2 tribal consortium, or under an arrangement de-
3 scribed in section 472(a)(2)(B)(iii)(III), an amount
4 equal to the Federal medical assistance percentage
5 that would apply under subsection (c)(2)(A) of sec-
6 tion 479B (in this paragraph referred to as the ‘trib-
7 al FMAP’) if such Indian tribe, tribal organization,
8 or tribal consortium made such payments under a
9 program operated under that section, unless the
10 tribal FMAP is less than the Federal medical assist-
11 ance percentage that applies to the State)” before
12 the semicolon.

13 (2) ADMINISTRATIVE EXPENDITURES.—Section
14 474(a)(3) of such Act (42 U.S.C. 674(a)(3)) is
15 amended—

16 (A) in the matter preceding subparagraph
17 (A), by striking “section 472(i)” and inserting
18 “subparagraph (E) and section 472(i)”;

19 (B) in subparagraph (D), by striking
20 “and” at the end;

21 (C) by redesignating subparagraph (E) as
22 subparagraph (F); and

23 (D) by inserting after subparagraph (D),
24 the following new subparagraph:

1 “(E) in the case of a State that has en-
2 tered into an agreement with an Indian tribe,
3 tribal organization, or tribal consortium (or an
4 Indian tribe, tribal organization, or tribal con-
5 sortium with an arrangement described in sec-
6 tion 472(a)(2)(B)(iii)(III)), an amount equal to
7 the proportions that would be paid to such
8 tribe, organization, or consortium pursuant to
9 regulations issued under section 479B(c)(2)(B)
10 if the tribe, organization, or consortium oper-
11 ated a program under that section; and”.

12 (d) HOLD HARMLESS FOR INDIAN FAMILIES RE-
13 CEIVING FOSTER CARE MAINTENANCE PAYMENTS OR
14 ADOPTION ASSISTANCE.—Nothing in the amendments
15 made by this Act shall be construed as authorization to
16 terminate funding to any Indian or Indian family cur-
17 rently receiving foster care maintenance payments or
18 adoption assistance on behalf of a child and for which the
19 State receives Federal matching payments under para-
20 graph (1) or (2) of section 474(a) of the Social Security
21 Act (42 U.S.C. 674(a)), regardless of whether a coopera-
22 tive agreement between the State and an Indian tribe,
23 tribal organization, or tribal consortium is in effect pursu-
24 ant to subsection (d) of section 479B of such Act, or an
25 Indian tribe, tribal organization, or tribal consortium

1 elects to operate a foster care and adoption assistance pro-
2 gram directly under such section 479B.

3 (e) NONAPPLICATION OF CERTAIN ELIGIBILITY RE-
4 QUIREMENTS FOR INDIAN CHILDREN.—Section 472(a) of
5 the Social Security Act (42 U.S.C. 672(a)) is amended
6 by adding at the end the following new paragraph:

7 “(5) NONAPPLICATION OF CERTAIN REQUIRE-
8 MENTS FOR INDIAN CHILDREN.—In the case of an
9 Indian tribe, tribal organization, or tribal consortium
10 that assumes responsibility for administering the
11 program under this part through a cooperative
12 agreement with the State under subsection (d) of
13 section 479B, or that elects to operate a foster care
14 and adoption assistance program directly under sec-
15 tion 479B, the following rules shall apply:

16 “(A) USE OF AFFIDAVITS, ETC.—The re-
17 quirement in paragraph (1) shall not be inter-
18 preted so as to prohibit the use of affidavits or
19 nunc pro tunc orders as verification documents
20 in support of the reasonable efforts and con-
21 trary to the welfare of the child judicial deter-
22 minations required under such paragraph.

23 “(B) RESIDENCY REQUIREMENT IMPOSED
24 UNDER AFDC STATE PLAN.—Notwithstanding
25 paragraph (3)(A), any residency requirement

1 imposed under the State plan referred to in
2 such paragraph shall not apply with respect to
3 a child for whom an Indian tribe, tribal organi-
4 zation, or tribal consortium assumes responsi-
5 bility.”.

6 (f) AUTHORITY TO RECEIVE PORTION OF STATE AL-
7 LOTMENT AS PART OF AN AGREEMENT TO OPERATE THE
8 JOHN H. CHAFEE FOSTER CARE INDEPENDENCE PRO-
9 GRAM.—

10 (1) IN GENERAL.—Section 477 of such Act (42
11 U.S.C. 677) is amended by adding at the end the
12 following new subsection:

13 “(j) AUTHORITY FOR AN INDIAN TRIBE, TRIBAL OR-
14 GANIZATION, OR TRIBAL CONSORTIUM TO RECEIVE AN
15 ALLOTMENT.—

16 “(1) IN GENERAL.—An Indian tribe, tribal or-
17 ganization, or tribal consortium with a plan ap-
18 proved under section 479B, which is receiving fund-
19 ing to provide foster care under this part pursuant
20 to a cooperative agreement with a State, or that pro-
21 vides child welfare services and protections in ac-
22 cordance with an arrangement submitted to the Sec-
23 retary under section 472(a)(2)(B)(iii)(III), may
24 apply for an allotment out of any funds authorized
25 by paragraph (1) or (2) (or both) of subsection (h).

1 “(2) APPLICATION.—An Indian tribe, tribal or-
2 ganization, or tribal consortium desiring an allot-
3 ment under paragraph (1) shall submit an applica-
4 tion to the Secretary to directly receive such allot-
5 ment that includes a plan that satisfies such require-
6 ments of paragraphs (2) and (3) of subsection (b)
7 as the Secretary determines are appropriate.

8 “(3) PAYMENTS.—The Secretary shall pay an
9 Indian tribe, tribal organization, or tribal consortium
10 with an application and plan approved under this
11 subsection from the allotment determined for the
12 tribe, organization, or consortium under paragraph
13 (4) in the same manner as is provided in section
14 474(a)(4) (and, where requested, and if funds are
15 appropriated, section 474(e)) with respect to a
16 State, or in such other manner as is determined ap-
17 propriate by the Secretary, except that in no case
18 shall an Indian tribe, tribal organization, or a tribal
19 consortium receive a lesser proportion of such funds
20 than a State is authorized to receive under those
21 sections.

22 “(4) ALLOTMENT.—From the amounts allotted
23 to a State under subsection (c) for a fiscal year, the
24 Secretary shall allot to each Indian tribe, tribal or-
25 ganization, or tribal consortium with an application

1 and plan approved under this subsection for that fis-
2 cal year an amount equal to the tribal foster care
3 ratio determined under paragraph (5) for such tribe,
4 organization, or consortium multiplied by the allot-
5 ment amount of the State within which such tribe,
6 organization, or consortium is located. The allotment
7 determined under this paragraph shall be deemed to
8 be a part of the allotment determined under section
9 477(c) for the State in which the Indian tribal orga-
10 nization, or tribal consortium is located.

11 “(5) TRIBAL FOSTER CARE RATIO.—For pur-
12 poses of paragraph (4), the tribal foster care ratio
13 means, with respect to an Indian tribe, tribal organi-
14 zation, or tribal consortium, the ratio of—

15 “(A) the number of children in foster care
16 under the responsibility of the Indian tribe,
17 tribal organization, or tribal consortium (either
18 directly or under supervision of the State), in
19 the most recent fiscal year for which the infor-
20 mation is available; to

21 “(B) the sum of—

22 “(i) the total number of children in
23 foster care under the responsibility of the
24 State within which the Indian tribe, tribal

1 organization, or tribal consortium is lo-
2 cated; and

3 “(ii) the number of children in foster
4 care under the responsibility of the Indian
5 tribe, tribal organization, or tribal consor-
6 tium (either directly or under supervision
7 of the State).”.

8 (2) AUTHORITY TO RECEIVE PORTION OF
9 STATE ALLOTMENT AS PART OF A COOPERATIVE
10 AGREEMENT ENTERED INTO WITH RESPECT TO THE
11 CHAFEE PROGRAM.—Section 477(b)(3)(G) of such
12 Act (42 U.S.C. 677(b)(3)(G)) is amended—

13 (A) by striking “and that” and inserting
14 “that”; and

15 (B) by striking the period and inserting “;
16 and that each Indian tribe, tribal organization,
17 or tribal consortium in the State that does not
18 receive an allotment under subsection (j)(4) for
19 a fiscal year may enter into a cooperative agree-
20 ment or contract with the State to administer,
21 supervise, or oversee the programs to be carried
22 out under the plan with respect to the Indian
23 children who are eligible for such programs and
24 who are under the authority of the Indian tribe
25 and to receive from the State an appropriate

1 portion of the State allotment under subsection
2 (c) for the cost of such administration, super-
3 vision, or oversight.”.

4 (g) RULE OF CONSTRUCTION.—Nothing in the
5 amendments made by this Act shall be construed as affect-
6 ing the responsibility of a State—

7 (1) as part of the plan approved under section
8 471 of the Social Security Act (42 U.S.C. 671), to
9 provide foster care maintenance payments and adop-
10 tion assistance for Indian children who are eligible
11 for such payments or assistance and who are not
12 otherwise being served by an Indian tribe, tribal or-
13 ganization, or tribal consortium pursuant to a foster
14 care and adoption assistance program operated
15 under section 479B of such Act; or

16 (2) as part of the plan approved under section
17 477 of such Act (42 U.S.C. 677) to administer, su-
18 pervise, or oversee programs carried out under that
19 plan on behalf of Indian children who are eligible for
20 such programs if such children are not otherwise
21 being served by an Indian tribe, tribal organization,
22 or tribal consortium pursuant to an approved plan
23 under section 477(j) or a cooperative agreement or
24 contract entered into under section 477(b)(3)(G) of
25 such Act.

1 (h) REGULATIONS.—Not later than 1 year after the
2 date of enactment of this section, the Secretary, in con-
3 sultation with Indian tribes, tribal organizations, tribal
4 consortia, and affected States, shall promulgate regula-
5 tions to carry out the amendments made by this Act.

6 (i) EFFECTIVE DATE.—The amendments made by
7 this section take effect on the date of enactment of this
8 Act.

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