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PROGRAM INSTRUCTION

To: State Agencies and Indian Tribes Administering the Indian Child Welfare Act

Related Laws and Regulations: P.L. 95-608 Indian Child Welfare Act of 1978; 25 CFR Ch.1, Part 23 Subparts A and B - Indian Child Welfare Act; P.L. 93-638, Indian self-determination and Education Assistance Act.

Overview: Public Law (P.L.) 103-432 requires States to report on measures taken to comply with the Indian Child Welfare Act in their title IV-B Plans beginning Federal Fiscal Year (FY) 1996 (October 1, 1995 to September 30, 1996).

Background: In 1978, the Federal Indian Child Welfare Act (ICWA) was passed. Under the Act, Indian Tribes were granted extensive jurisdiction in child welfare cases involving Indian children, recognizing "that there is no resource that is more vital to the continued existence and integrity of Indian Tribes than their children." The Act "established minimum standards for the removal of Indian children from their families and the placement of such children in foster or adoptive homes which will reflect the unique values of Indian culture." States are required to comply with this law in their child welfare practices. Many States have policies and procedures which address the specific elements laid out in the legislation. However, there were no federal requirements for State reporting on ICWA compliance in either the legislation or subsequent regulations.

In October 1994, P.L. 103-432 (H.R. 5252) was passed, which amended the Social Security Act. This change in the law requires that States, in consultation with Tribes and Tribal organizations, include compliance with the Indian Child Welfare Act in the State title IV-B subpart 1 Child Welfare Services plan.

Required Actions:

For the Federal fiscal years beginning on and after October 1, 1995, each State submitting a title IV-B subpart 1 plan must include a section which addresses specific measures the State will take to comply with the ICWA for the FY addressed by the title IV-B subpart 1 plan. P.L. 103-432 specifically indicates that this section of the plan must be developed **in consultation with** the Tribes and Tribal organizations. (Tribal organizations are defined in Section 4 of P.L. 93-638, the Indian self-determination and Education Assistance Act).

For FY 1996 (October 1, 1995 through September 30, 1996) States must develop a "plan-to-plan" which includes a description of the consultation process that will be used with the Tribes. If, however, a State title IV-B subpart 1 plan has already been submitted (either alone or in conjunction with the State title IV-B subpart 2 plan), States may choose to amend their plan with the required goals and activities. Amendments are due no later than 60 days following receipt of this issuance.

In subsequent State title IV-B plan annual updates, States must describe future goals and activities they will undertake to improve compliance with ICWA.

Consultation with Tribes:

A central element of the legislation is that the States' actions must be developed "after consultation with Tribal organizations." Tribes and Tribal organizations determine who speaks for them. The nature of the State/Tribal relationship should be reflected in appropriate persons of authority (high level leaders, officials or managers) from both the State and Tribe participating in consultations/meetings. A face-to-face contact with Tribes and Tribal organizations, providing an opportunity for everyone to speak, is seen as an optimal format. Existing forums for State/Tribal discussion may be used to meet this requirement. Flexibility must be allowed to meet individual situations.

In those States where there are no Federally recognized Tribes, other resources such as urban Indian organizations and national Indian organizations should be consulted.

Plan:

The States must make an overall statement of their approach to working with Tribes and Tribal organizations, including their philosophy and vision for this process. The plan should contain a description of the Indian population of the State, and their location(s) within the State (including on or near reservations as well as in urban areas). The plan must also contain a description of the consultation process used with all of the Tribes and Tribal organizations in the State, as well as procedures for addressing cases involving children from out-of-State Tribes. It must indicate all areas of concern that are raised by the Tribes and tribal organizations during this process, even though the plan may not address all the issues during that year. The purpose of this is to document the concerns and problems that are raised. Memoranda of Understanding may be used as a method to document any understandings, agreements, or unresolved issues.

Through the Joint Planning process, the ACF Regional Offices and the States will prioritize and address the areas that are of major concern to the Tribes, Tribal organizations and the States.

The expectation is that over time the States will improve their compliance with the ICWA requirements by establishing and accomplishing appropriate goals in consultation with the Tribes.

The major ICWA requirements are listed below to provide a clear understanding of what the law requires.

1. Identification of Indian children by the State child welfare services agency (P.L. 95-608 Sec. 4(4)).
2. Indian parents and Tribes have the right to notice of and to intervene in State proceedings involving Indian children (Sec. 102(a), Sec. 103(a)).
3. Special preference for placement of Indian children with: (1) a member of the child's extended family, (2) other members of the Indian child's Tribe, or (3) other Indian families and as specified by Sec. 105(b).
4. Active efforts to prevent the breakup of the Indian family (Sec. 102(d)), including use of Tribal community services and culturally appropriate programs.
5. Use of Tribal courts in child welfare matters. Tribal rights to intervene in State proceedings, or transfer the proceedings to the jurisdiction of the Tribe (Sec. 101(a), (b) & (c)).

In developing this program instruction, dialogue with the Tribes and States revealed several suggested activities that would be helpful in achieving State compliance with ICWA. Optional areas that States may choose to address in their title IV-B subpart 1 plan include: training programs about ICWA for State employees; development of State caseworker compliance expectations or measures; and State partnership agreements with Tribes and Tribal organizations, for example, Tribal-State agreements on training.

Other suggested activities include: developing culturally appropriate standards for American Indian foster home licensing, recruiting of Indian foster homes, promotion of relative placement of Indian children, and recognition and use of tribal licensed foster homes for placement of Indian children.

Inquiries to: ACF Regional Administrators

/s/

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Appendices:

Note: Not available in electronic format

Appendix A - P.L. 95-608 The Indian Child Welfare Act of 1978

Appendix B - P.L. 103-432 (HR 5252), Section 204