OCT - 2 2009

TO: David Hansell
Acting Assistant Secretary
for Children and Families

FROM: Daniel R. Levinson Daniel R. Levinson
Inspector General

SUBJECT: Review of California's Title IV-E Claims for Payments Made by Los Angeles County to Foster Homes of Relative Caregivers (A-09-06-00023)

Attached is an advance copy of our final report on California's Title IV-E claims for payments made by Los Angles County to foster homes of relative caregivers (relative homes). We will issue this report to the California Department of Social Services (the State agency) within 5 business days. The Administration for Families and Children (ACF) requested that we review the State agency's Title IV-E claims for payments that the Los Angeles County Department of Children and Family Services (the county agency) made to relative homes for the period October 1, 2000, through November 30, 2001.

The ACF final rule of January 25, 2000, amended the definition of "foster family home" in Federal regulations to require States to apply the same licensing standards to all foster family homes that receive Title IV-E funding, including relative homes. States were allowed 6 months, beginning March 27, 2000, to approve relative homes based on State licensing standards. As of September 28, 2000, payments to relative homes that had not been approved based on those standards could not be claimed for Federal reimbursement.

California's approved State plan required that the licensing standards for foster family homes be applied to all foster family homes receiving Title IV-E funds. Although California regulations contained detailed licensing standards for ensuring the safety of children in foster family homes, the regulations exempted relative homes from the standards. ACF disallowed approximately $45 million of California's payments to relative homes for 2002. In 2005, the Departmental Appeals Board upheld the majority of ACF's disallowance.

Our objective was to determine whether the State agency claimed Federal reimbursement for county agency payments only to those relative homes that had been approved based on State licensing standards.

For the period October 1, 2000, through November 30, 2001, the State agency improperly claimed Federal reimbursement for county agency payments to relative homes that had not been

approved based on State licensing standards. Specifically, for 87 of the 100 relative homes in our sample, the case files showed that the county agency had not used State licensing standards in its approval process. For the remaining 13 relative homes, the case file documentation was either missing or substantially incomplete. As a result, there was no assurance that these homes had been approved based on State licensing standards.

These deficiencies occurred because the State agency disagreed that the licensing standards used for nonrelative homes were required to be used for relative homes and had not instructed the county agency to discontinue claiming payments as of September 28, 2000, for approved relative homes to which those standards had not been applied. For the 100 sampled relative homes, the State agency improperly claimed $1,268,450 ($650,324 Federal share) in Title IV-E foster care maintenance payments. Based on our sample results, we estimated that the State agency improperly claimed a total of $88,787,673 ($45,520,603 Federal share) for county agency payments to relative homes

We recommend that the State agency refund to the Federal Government $45,520,603 in unallowable foster care payments to relative homes.

In its comments on our draft report, the State agency said that it did not believe that any payments were made in error and that any process concerns that resulted in a lack of documentation had been corrected. The State agency did not provide any information that would cause us to change our finding or recommendation.

If you have any questions or comments about this report, please do not hesitate to call me, or your staff may contact Lori S. Pilcher, Assistant Inspector General for Grants, Internal Activities, and Information Technology Audits, at (202) 619-1175 or through email at Lori.Pilcher@oig.hhs.gov or Lori A. Ahlstrand, Regional Inspector General for Audit Services, Region IX, at (415) 437-8360 or through email at Lori.Ahlstrand@oig.hhs.gov. Please refer to report number A-09-06-00023.

Attachment

DEPARTMENT OF HEALTH & HUMAN SERVICES

Office of Inspector General

Region IX
Office of Audit Services
90 – 7th Street, Suite 3-650
San Francisco, CA 94103

OCT - 8 2009

Report Number: A-09-06-00023

Mr. John A. Wagner
Director
California Department of Social Services
744 P Street
Sacramento, California 95814

Dear Mr. Wagner:

Enclosed is the U.S. Department of Health and Human Services (HHS), Office of Inspector General (OIG), final report entitled "Review of California's Title IV-E Claims for Payments Made by Los Angeles County to Foster Homes of Relative Caregivers." We will forward a copy of this report to the HHS action official noted on the following page for review and any action deemed necessary.

The HHS action official will make final determination as to actions taken on all matters reported. We request that you respond to this official within 30 days from the date of this letter. Your response should present any comments or additional information that you believe may have a bearing on the final determination.

Pursuant to the Freedom of Information Act, 5 U.S.C. § 552, OIG reports generally are made available to the public to the extent that information in the report is not subject to exemptions in the Act. Accordingly, this report will be posted on the Internet at http://oig.hhs.gov.

If you have any questions or comments about this report, please do not hesitate to call me at (415) 437-8360, or contact James Kenny, Audit Manager, at (415) 437-8370 or through email at James.Kenny@oig.hhs.gov. Please refer to report number A-09-06-00023 in all correspondence.

Sincerely,

Lori A. Ahlstrand
Regional Inspector General
for Audit Services

Enclosure

Direct Reply to HHS Action Official:

Ms. Pat Colonnese
Region IX Grants Officer
Administration for Children and Families, Region IX
U.S. Department of Health and Human Services
90 Seventh Street, Ninth Floor
San Francisco, California 94103

Department of Health and Human Services

OFFICE OF INSPECTOR GENERAL

REVIEW OF CALIFORNIA'S TITLE IV-E CLAIMS FOR PAYMENTS MADE BY LOS ANGELES COUNTY TO FOSTER HOMES OF RELATIVE CAREGIVERS

Daniel R. Levinson
Inspector General

October 2009
A-09-06-00023

Office of Inspector General

http://oig.hhs.gov

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Pursuant to the Freedom of Information Act, 5 U.S.C. § 552, Office of Inspector General reports generally are made available to the public to the extent that information in the report is not subject to exemptions in the Act.

OFFICE OF AUDIT SERVICES FINDINGS AND OPINIONS

The designation of financial or management practices as questionable, a recommendation for the disallowance of costs incurred or claimed, and any other conclusions and recommendations in this report represent the findings and opinions of OAS. Authorized officials of the HHS operating divisions will make final determination on these matters.

EXECUTIVE SUMMARY

BACKGROUND

Title IV-E of the Social Security Act (the Act), as amended, authorizes Federal funding for State foster care programs. The Administration for Children and Families (ACF) final rule of January 25, 2000, amended the definition of "foster family home" in Federal regulations to require States to apply the same licensing standards to all foster family homes that receive Title IV-E funding, including the homes of caregivers who are relatives of the children (relative homes). States were allowed 6 months, beginning March 27, 2000, to approve relative homes based on State licensing standards. As of September 28, 2000, payments to relative homes that had not been approved based on those standards could not be claimed for Federal reimbursement.

In California, the Department of Social Services (the State agency) supervises the county welfare departments that administer the Title IV-E Foster Care program. The Title IV-E State plan, which ACF approved effective October 1, 1998, required that the licensing standards for foster family homes be applied to all foster family homes receiving Title IV-E funds. Although California regulations contained detailed licensing standards for ensuring the safety of children in foster family homes, the regulations exempted relative homes from the standards.

In 1999, ACF began expressing concern that relative homes in California had been approved based on different standards than those used for licensed homes in which the caregivers were not relatives (nonrelative homes). ACF subsequently disallowed approximately $45 million of California's payments to relative homes for 2002. In 2005, the Departmental Appeals Board (DAB) upheld the majority of ACF's disallowance.

ACF requested that we review the State agency's Title IV-E claims for payments that the Los Angeles County Department of Children and Family Services (the county agency) made to relative homes for the period October 1, 2000, through November 30, 2001. For that period, the State agency claimed $104,441,698 for the county agency's payments to approved relative homes.

OBJECTIVE

Our objective was to determine whether the State agency claimed Federal reimbursement for county agency payments only to those relative homes that had been approved based on State licensing standards.

SUMMARY OF FINDING

For the period October 1, 2000, through November 30, 2001, the State agency improperly claimed Federal reimbursement for county agency payments to relative homes that had not been approved based on State licensing standards. Specifically, for 87 of the 100 relative homes in our sample, the case files showed that the county agency had not used State licensing standards in its approval process. For the remaining 13 relative homes, the case file documentation was

either missing or substantially incomplete. As a result, there was no assurance that these homes had been approved based on State licensing standards.

These deficiencies occurred because the State agency disagreed that the licensing standards used for nonrelative homes were required to be used for relative homes and had not instructed the county agency to discontinue claiming payments as of September 28, 2000, for approved relative homes to which those standards had not been applied. For the 100 sampled relative homes, the State agency improperly claimed $1,268,450 ($650,324 Federal share) in Title IV-E foster care maintenance payments. Based on our sample results, we estimated that the State agency improperly claimed a total of $88,787,673 ($45,520,603 Federal share) for county agency payments to relative homes.

RECOMMENDATION

We recommend that the State agency refund to the Federal Government $45,520,603 in unallowable foster care payments to relative homes.

STATE AGENCY COMMENTS

In its comments on our draft report, the State agency said that it did not believe that any payments were made in error and that any process concerns that resulted in a lack of documentation had been corrected. The State agency also commented that its process for obtaining fingerprint clearances, though not identical to criminal record checks, was substantially in compliance with Federal laws. Finally, the State agency commented that the recommended refund was unnecessary from both a policy and fiscal perspective and should be waived. The State agency's comments are included in their entirety as Appendix C.

OFFICE OF INSPECTOR GENERAL RESPONSE

During the audit period, the State agency did not comply with Federal law requiring it to apply the same licensing standards to all foster family homes that receive Title IV-E funding, including relative homes. The DAB's 2005 decision made it clear that the Act requires States to apply the same licensing standards to all foster family homes. Even if we had been able to verify that criminal record checks of relative caregivers took place, the State agency did not apply to relative homes numerous other California licensing standards, such as those related to sleeping arrangements. Homes approved based on other standards do not meet the statutory definition of a "foster family home" and are not eligible for Federal funding. With respect to the State agency's requested waiver, we do not have legal authority to waive the refund of unallowable payments.

TABLE OF CONTENTS

INTRODUCTION

BACKGROUND

Title IV-E Foster Care Program

Title IV-E of the Social Security Act (the Act), as amended, authorizes Federal funding for States to provide foster care for children under an approved State plan. Within the U.S. Department of Health and Human Services, the Administration for Children and Families (ACF) administers the Title IV-E Foster Care program. In California, the Department of Social Services (the State agency) supervises the 58 county welfare departments that administer the program. For the period October 1, 2000, through November 30, 2001, California's Federal reimbursement rate for the program ranged from 51.25 percent to 51.40 percent.

The Adoption and Safe Families Act of 1997, P.L. No. 105-89, amended the Act to strengthen the child welfare system's response to children's need for safety and permanency. Section 471(a)(10) of the Act (42 U.S.C. § 671(a)(10)) provides that standards for foster family homes "shall be applied by the State to any foster family home or child care institution receiving funds under this part . . . ." (Emphasis added.) Section 472(c) of the Act (42 U.S.C. § 672(c)) defines a "foster family home" as "a foster family home for children which is licensed by the State in which it is situated or has been approved, by the agency of such State having responsibility for licensing homes of this type, as meeting the standards established for such licensing."

Based on the plain language of these provisions, ACF's longstanding interpretation of these provisions, and the emphasis in the Adoption and Safe Families Act on child safety, ACF's final rule of January 25, 2000 (65 Fed. Reg. 4020) amended the definition of "foster family home" at 45 CFR § 1355.20(a). The amended definition requires States to apply the same licensing standards to all foster family homes that receive Title IV-E funding, including the homes of caregivers who are relatives of the children (relative homes). States were allowed 6 months, beginning March 27, 2000, to approve relative homes based on the State licensing standards for foster family homes. As of September 28, 2000, payments to relative homes that had not been approved based on those standards could not be claimed for Federal reimbursement.

California Licensing Standards for Foster Family Homes

The California Health and Safety Code (HSC) contains provisions to ensure that community care facilities, including foster family homes, are safe and sanitary. HSC § 1530 requires the State agency to adopt standards for foster family homes. The licensing standards that the State agency adopted were contained in the California Code of Regulations (CCR), Title 22, Division 6, chapter 7.5. The CCR licensing standards included requirements for the physical environment of the homes, California Department of Justice and Federal Bureau of Investigation (FBI) criminal background checks and clearances for all adults in the homes, and initial onsite inspections and periodic reassessments of the homes. The Title IV-E State plan, which ACF approved effective October 1, 1998, required that these licensing standards be applied to any foster family home receiving Title IV-E funds. However, HSC § 1505(k) and CCR § 87007(a)(10) exempted relative homes from the standards.

Administration for Children and Families Actions

Prior to the 2000 final rule, ACF published a notice of proposed rulemaking in 1998 clarifying that the Act makes no distinction between approved and licensed foster homes and that a two-tiered system for approving relative and nonrelative homes was incorrect (63 Fed. Reg. 50058 (Sept. 18, 1998)). In 1999, ACF began expressing concern that relative homes in California had been approved based on different standards than those used for licensed homes in which the caregivers were not relatives (nonrelative homes). The State agency maintained that California was in substantial compliance with the Act and disagreed with ACF that it should discontinue claiming Federal reimbursement for relative homes or adjust its foster care claims.

In an April 24, 2001, letter to the State agency, ACF reiterated the requirement of the January 25, 2000, final rule by stating: "[P]lease note that homes that are not approved as meeting the State's licensing standards (whatever standards are in effect) would be, and have been as of September 28, 2000, ineligible for [Federal reimbursement]." The letter also stated: "Please ensure that the State's [claims] do not reflect foster care payments made to homes that are not licensed or approved as meeting the license requirements as of September 28, 2000."

To address California's failure to apply State licensing standards to relative homes, ACF deferred a portion of California's claims for 2002 pending documentation from the State agency demonstrating that the claims for relative homes were allowable. ACF subsequently disallowed approximately $45 million of the payments to relative homes for 2002. California appealed the disallowance. The Departmental Appeals Board (DAB) upheld the majority of ACF's disallowance in California Department of Social Services, DAB No. 1959 (2005). The DAB stated:

> The regulation [45 CFR § 1355.20(a)] codifies ACF's longstanding interpretation of section 472(c), an interpretation that has been reflected in several Board decisions over the years. . . . The regulation sets forth a facially valid interpretation of the statutory language of section 472(c) of the Act, which specifically provides that "approved" but non-licensed foster family homes must be determined "as meeting the standards established for . . . licensing" . . . (and consequently, homes that are approved based on other standards do not meet the statutory definition of a "foster family home").

Administration for Children and Families Request

ACF requested that we review the State agency's Title IV-E claims for payments that the Los Angeles County Department of Children and Family Services (the county agency) made to relative homes for the period October 1, 2000, through November 30, 2001.[1] For that period,

[1]The audit period was based on the requirement of ACF's final rule that relative homes be approved as meeting State licensing standards by September 28, 2000, and on ACF's disallowance, which applied to payments claimed beginning in January 2002. Because the county agency payments in December 2001 were claimed in January 2002 and would have been included in ACF's disallowance, our audit included payments to relative homes only for the months of October 2000 through November 2001.

Los Angeles County had the most relative home placements of any county in California, accounting for more than 40 percent of the statewide total.

OBJECTIVE, SCOPE, AND METHODOLOGY

Objective

Our objective was to determine whether the State agency claimed Federal reimbursement for county agency payments only to those relative homes that had been approved based on State licensing standards.

Scope

The State agency initially claimed $104,441,698[2] for Title IV-E foster care maintenance payments that the county agency made to 11,931 approved relative homes for the period October 1, 2000, through November 30, 2001.[3] This amount did not include payments to out-of-State relative homes or to in-State relative homes that received only clothing allowance payments. We reviewed a sample of 100 of the 11,931 relative homes.

We limited our review of internal controls to obtaining a general understanding of the controls related to the county agency's approval of relative homes, the county agency's submission of claims to the State agency for Title IV-E foster care maintenance payments to relative homes, and the State agency's claims for Federal reimbursement of payments to relative homes.

We conducted fieldwork at the State agency in Sacramento, California, and at various county agency locations in Los Angeles, California.

Methodology

To accomplish our objective, we:

- reviewed Federal and State laws, regulations, and other requirements related to Title IV-E foster family homes;
- reviewed correspondence between the State agency and ACF related to relative homes;
- interviewed State agency personnel about the standards used to approve relative homes and to license nonrelative homes;
- interviewed county agency personnel about the approval process for relative homes;

[2]This amount represented payments made by the county agency to relative homes and did not include the county agency's later adjustments. These adjustments reclassified certain payments from Federal to non-Federal funding sources and were reflected in subsequent claims by the State agency.

[3]Section 475(4)(A) of the Act (42 U.S.C. § 675(4)(A)) defines a "foster care maintenance payment" as one that covers the costs of such things as "food, clothing, shelter, daily supervision, school supplies, a child's personal incidentals, liability insurance with respect to a child, and reasonable travel to the child's home for visitation."

- reviewed county agency standards used to approve relative homes and compared the standards with California foster family home licensing standards;

- reconciled the county agency's monthly foster care claims to the State agency's quarterly claims submitted to ACF for Federal reimbursement;

- obtained an understanding of the data on relative home placements in the county agency's Child Welfare Services/Case Management System;

- obtained an understanding of the payment data in the county agency's Automated Provider Payments System;

- obtained a data file from the county agency that identified all of the relative home placements for our audit period;

- obtained a data file from the county agency that identified all of the monthly payments made for our audit period for the relative home placements that the county agency had identified;

- compiled the placement and payment data to identify the relative homes that received one or more Title IV-E foster care maintenance payments for the audit period;

- on a limited basis, matched the county agency's payment data to its supporting documentation for foster care maintenance payments;

- selected a stratified random sample of 100 relative homes;

- reviewed case file documentation for the sampled homes, including, but not limited to, social worker reports to the Los Angeles County juvenile court, service logs and notes, criminal background checks and clearances, and "Child Placement Needs Assessment" documents; and

- estimated the total amount and Federal share of improper Title IV-E maintenance payments that the State agency claimed for the 11,931 relative homes in our sampling frame.

For each of the sampled homes, we determined whether the case file documented that the county agency had used California foster family home licensing standards to approve the relative home. We primarily focused on the licensing standards related to the physical environment of the home, criminal background checks and clearances, and onsite inspection and reassessment of the home. We also reviewed each case file to determine whether a waiver to the licensing standards had been granted. If the case file did not contain a waiver or documentation that the licensing standards had been used to approve the relative home, we questioned the associated payments. See Appendix A for our sample design and methodology and Appendix B for our sample results and estimates.

We conducted this performance audit in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our finding and conclusions based on our audit objective.

FINDING AND RECOMMENDATION

For the period October 1, 2000, through November 30, 2001, the State agency improperly claimed Federal reimbursement for county agency payments to relative homes that had not been approved based on State licensing standards. Specifically, for 87 of the 100 relative homes in our sample, the case files showed that the county agency had not used State licensing standards in its approval process. For the remaining 13 relative homes, the case file documentation was either missing or substantially incomplete. As a result, there was no assurance that these homes had been approved based on State licensing standards.

These deficiencies occurred because the State agency disagreed that the licensing standards used for nonrelative homes were required to be used for relative homes and had not instructed the county agency to discontinue claiming payments as of September 28, 2000, for approved relative homes to which those standards had not been applied. For the 100 sampled relative homes, the State agency improperly claimed $1,268,450 ($650,324 Federal share) in Title IV-E foster care maintenance payments. Based on our sample results, we estimated that the State agency improperly claimed a total of $88,787,673 ($45,520,603 Federal share) for county agency payments to relative homes.[4]

FEDERAL REQUIREMENTS

Pursuant to section 471(a)(10) of the Act, to be eligible for Title IV-E foster care payments, a State must have a plan approved by the Secretary that "provides for the establishment or designation of a State authority or authorities which shall be responsible for establishing and maintaining standards for foster family homes . . . and provides that the standards so established shall be applied by the State to any foster family home . . . receiving [Title IV-E] funds. . . ."

Section 472(c) of the Act defines a foster family home that is eligible for Federal reimbursement as "a foster family home for children which is licensed by the State in which it is situated or has been approved, by the agency of such State . . ., as meeting the standards established for such licensing. . . ."

Federal regulations (45 CFR § 1355.20(a)) state that approved foster family homes must be held to the same standards as licensed foster family homes and that anything less than full licensure or full approval is insufficient for meeting Title IV-E eligibility requirements. The preamble to the final rule (65 Fed. Reg. 4020, 4032–4033) for 45 CFR § 1355.20 stated:

[4]The $88,787,673 is the lower limit of the 90-percent confidence interval and reflects subsequent county agency adjustments to the payments.

> Clearly, the statute did not intend that there be separate standards for licensing and approval . . . . It also is clear from the language in section 471(a)(10) of the Act that the State licensing standards must be applied to "any" foster family home that receives funding under titles IV-E or IV-B. The licensing provisions of the Act make no exceptions for different categories of foster care providers, including relative caretakers. . . .
>
> We will allow States a grace period to bring homes currently operating with less than a full license or full approval to full licensure/approval status. Accordingly, if a State is currently claiming title IV-E foster care for a foster family home that does not meet fully the State licensing standards, the State has no more than six months from the effective date of this final rule to grant a full license or approval for these homes. After that date, a State may not claim title IV-E funds for any child in a home that does not meet the State's full licensing or approval standards.

In its "Policy Interpretation Question" issued November 21, 1985, ACF stated that, in special situations, there may be grounds for the State to waive a licensing requirement for a relative foster parent but that the reason must be documented and the certification of approval must indicate the applicability to the specific relative child.

CALIFORNIA LICENSING STANDARDS NOT APPLIED TO RELATIVE HOMES

The case files showed that, in approving 87 of the 100 sampled relative homes, the county agency did not apply California foster family home licensing standards. Many of the sampled homes housed children in placement before October 2000. However, as of the end of our audit period, the county agency still had not approved the 87 relative homes as meeting State licensing standards as required by section 472(c) of the Act and 45 CFR § 1355.20(a). Our review of the case files for the 87 homes disclosed that no waivers to the licensing standards had been granted.

For the remaining 13 sampled relative homes, the case file documentation was missing or substantially incomplete. As a result, there was no assurance that these homes had been approved based on California licensing standards.

In approving relative homes, the county agency used standards that met the requirements in the California Welfare and Institutions Code for relative home placements[5] instead of the required California foster family home licensing standards. Unlike California licensing standards, the standards used did not require that relative caregivers provide written documentation of their qualifications, nor did the standards require FBI criminal background checks on relative caregivers and other adults in the home. The standards used also had no requirements for bedrooms and sleeping arrangements for children and adults; fixtures, furniture, equipment, and supplies; safety release devices for security window bars; or periodic reassessments of the homes.

[5]Sections 361.3 and 361.4 of the California Welfare and Institutions Code.

In addition, the standards used for transportation were less restrictive than California licensing standards because they did not require that a relative home's motor vehicle be maintained in a safe operating condition, that only licensed drivers transport children, or that children over age 4 who weigh more than 40 pounds wear seatbelts. Also, the standards used for storage space were less restrictive than California licensing standards because they did not require that storage areas for poisons be locked.

These deficiencies occurred because the State agency disagreed that the licensing standards used for nonrelative homes were required to be used for relative homes. The State agency relied on HSC § 1505(k) and CCR § 87007(a)(10), which exempted relative caregivers from the licensing provisions for foster family homes. In addition, county agency officials stated that California foster family home licensing standards had not been used to assess relative homes because the State agency had not required that they be used. Because the State agency disagreed that California was not in compliance with the Act, the State agency informed counties that they were to continue following established procedures until the State agency issued new instructions.[6]

UNALLOWABLE PAYMENTS CLAIMED FOR RELATIVE HOMES

Because the county agency did not apply California foster family home licensing standards to relative homes, the State agency claimed $1,268,450 ($650,324 Federal share) in unallowable Title IV-E foster care maintenance payments for children placed in the 100 sampled homes. Based on our sample results, we estimated that the State agency improperly claimed a total of $88,787,673 ($45,520,603 Federal share) for county agency payments to relative homes.

RECOMMENDATION

We recommend that the State agency refund to the Federal Government $45,520,603 in unallowable foster care payments to relative homes.

STATE AGENCY COMMENTS

In its comments on our draft report, the State agency said that it did not believe that any payments were made in error and that any process concerns that resulted in a lack of documentation had been corrected. The State agency also commented that its process for obtaining fingerprint clearances, though not identical to criminal record checks, was substantially in compliance with Federal laws. Finally, the State agency commented that the recommended refund was unnecessary from both a policy and fiscal perspective and should be waived. The State agency's comments are included in their entirety as Appendix C.

OFFICE OF INSPECTOR GENERAL RESPONSE

During the audit period, the State agency did not comply with Federal law requiring it to apply the same licensing standards to all foster family homes that receive Title IV-E funding, including

[6]On December 14, 2001, the State agency issued interim licensing standards applicable to both relative and nonrelative homes and instructed county agencies to use those standards prospectively to approve relative homes. The interim standards were subsequently codified in the CCR, Title 22, Division 6, chapter 9.5.

relative homes. The DAB's 2005 decision made it clear that the Act requires States to apply the same licensing standards to all foster family homes. Even if we had been able to verify that criminal record checks of relative caregivers took place, the State agency did not apply to relative homes numerous other California licensing standards, such as those related to sleeping arrangements. Homes approved based on other standards do not meet the statutory definition of a "foster family home" and are not eligible for Federal funding. With respect to the State agency's requested waiver, we do not have legal authority to waive the refund of unallowable payments.

APPENDIXES

SAMPLE DESIGN AND METHODOLOGY

POPULATION AND SAMPLING FRAME

The population and sampling frame consisted of 11,931 approved homes in which children had been placed with caregivers who were relatives (relative homes) and for which one or more Title IV-E foster care maintenance payments were claimed by the Los Angeles County Department of Children and Family Services (the county agency) for the period October 1, 2000, through November 30, 2001. The county agency claimed a total of $104,441,698 in foster care maintenance payments for the 11,931 relative homes. The California Department of Social Services (the State agency) claimed these payments for Federal reimbursement.

The population and sampling frame did not include out-of-State relative homes or in-State relative homes that received only clothing allowance payments. For purposes of the population and sampling frame, a relative home was a relative caregiver to whom the county agency had issued a unique caregiver identification number (i.e., vendor identification).

SAMPLE UNIT

The sample unit was a relative home for which the county agency claimed one or more Title IV-E foster care maintenance payments for the audit period. For each sampled home, we included all of the federally eligible foster care children in the home during the audit period and all of the Title IV-E foster care maintenance payments claimed for those children.

SAMPLE DESIGN

We used a stratified random sample consisting of three strata. The total foster care maintenance payment to the relative home was the basis for stratification.

We calculated the total payment for our audit period by adding all of the foster care payments to the relative home that were in the Automated Provider Payments System data file. We stratified the sampling frame as follows:

Stratum	Range of Payments for Audit Period	Total Payments	Number of Relative Homes	Percentage of Relative Homes
1	$1–$6,599	$20,589,882	6,297	53%
2	$6,600–$16,799	43,464,118	4,096	34%
3	$16,800–$84,299	40,387,698	1,538	13%
Total		**$104,441,698**	**11,931**	**100%**

SAMPLE SIZE

We selected a sample of 100 relative homes as follows:

Stratum	Sample Size
1	32
2	31
3	37
Total	**100**

SOURCE OF RANDOM NUMBERS

Our source of random numbers was the Office of Inspector General, Office of Audit Services (OIG/OAS), statistical software. We used the single-stage random number generator for our stratified random sample.

METHOD OF SELECTING SAMPLE ITEMS

We sequentially numbered the relative homes in each stratum. Using the OIG/OAS statistical software, we generated single-stage random numbers for each stratum based on the sequential numbers assigned to each stratum. The relative homes selected in the stratum were the ones for which the sequential numbers matched the random numbers generated.

ESTIMATION METHODOLOGY

We used the OIG/OAS statistical software to estimate (1) the total amount of Title IV-E maintenance payments that the State agency claimed for relative homes that were not approved based on State licensing standards and (2) the Federal share of that amount.

SAMPLE RESULTS AND ESTIMATES

TOTAL UNALLOWABLE PAYMENTS CLAIMED

Sample Results by Stratum

Stratum	Sample Size	Value of Sample	No. of Ineligible Relative Homes	Value of Unallowable Payments
1	32	$95,822	32	$95,822
2	31	300,328	31	300,328
3	37	872,300	37	872,300
Total	**100**	**$1,268,450**	**100**	**$1,268,450**

Estimate of Sample Results
(Limits Calculated for a 90-Percent Confidence Interval)

Point estimate	$94,797,329
Lower limit	88,787,673
Upper limit	100,806,986

FEDERAL SHARE OF UNALLOWABLE PAYMENTS CLAIMED

Sample Results by Stratum

Stratum	Sample Size	Value of Sample (Federal Share)	No. of Ineligible Relative Homes	Value of Unallowable Payments (Federal Share)
1	32	$49,129	32	$49,129
2	31	153,967	31	153,967
3	37	447,228	37	447,228
Total	**100**	**$650,324**	**100**	**$650,324**

Estimate of Sample Results
(Limits Calculated for a 90-Percent Confidence Interval)

Point estimate	$48,601,472
Lower limit	45,520,603
Upper limit	51,682,342

CDSS
JOHN A. WAGNER
DIRECTOR

STATE OF CALIFORNIA—HEALTH AND HUMAN SERVICES AGENCY
DEPARTMENT OF SOCIAL SERVICES
744 P Street • Sacramento, CA 95814 • *www.cdss.ca.gov*

ARNOLD SCHWARZENEGGER
GOVERNOR

March 2, 2009

Ms. Lori A. Ahlstrand
Regional Inspector General
for Audit Services
Department of Health and Human Services
Office of Audit Services
90 7th Street, Suite 3-650
San Francisco, CA 94103

Dear Ms. Ahlstrand:

This letter provides the California Department of Social Services' (CDSS) response to the U.S. Department of Health and Human Services, Office of Inspector General (OIG) draft report entitled "Review of California's Title IV-E Claims for Payments Made by Los Angeles County to Foster Homes of Relative Caregivers" (review). The stated objective of the review was to determine if Title IV-E federal reimbursements were based upon state licensing standards. Based on 100 Los Angeles County sample cases, the OIG determined that CDSS improperly claimed Title IV-E foster care maintenance payments to relative homes from October 1, 2000 through November 30, 2001. As a result, the review recommends that CDSS refund to the Federal Government $45,520,603 for unallowable foster care payments to relative homes.

The CDSS does not believe that any payments were made in error. The process concerns that resulted in the lack of paper work in the files have been corrected.

The CDSS had an agreement with the California Department of Justice (DOJ) to use its California Law Enforcement Telecommunications System (CLETS) for finger print clearances of relative caregivers. The CDSS believed that this process, though not identical to the criminal records check process for licensed foster family homes represented substantial compliance with federal law. Unfortunately, DOJ indicated in its forms sent directly to counties that counties should destroy the documents to protect the confidentiality of the information. Once CDSS was made aware of this practice, it swiftly responded by instructing counties to stop destroying these materials. The prior practice, however, resulted in a lack of documentation in the case files dating from the audit period verifying that finger print clearances were in fact completed for relative caregivers. As a result of this, we believe that these audit findings merely identify a technical shortcoming during the audit period, and that California was in fact

substantively in compliance with the federal laws necessary to enable claiming the Title IV-E funding.

As detailed in our attached response to this draft OIG report, we believe that the proposed refund request is unnecessary from both a policy and fiscal perspective, and that it therefore should be waived in its entirety. It serves no legitimate public or fiscal purpose for the federal government to request refunds from California for technical compliance issues that occurred many years ago and have subsequently been resolved, while at the same time injecting funds into California to assist in economic recovery. Additionally, California has passed two federal reviews of this program that verified compliance, in 2003 and 2006, which could be viewed as successful implementation of a corrective action plan should the OIG disagree that California was in substantive compliance during the audit period.

If you have any questions concerning the enclosed CDSS response, please contact me at (916) 657-2598 or have staff contact Karen Ruiz, Deputy Director for the Information Systems Division, at (916) 654-1039.

Sincerely,

JOHN A. WAGNER
Director

Enclosure

The following are the U.S. Department of Health and Human Services, Office of Inspector General audit report (report) findings and the California Department of Social Services (CDSS) responses (including responses addressing the audit methodology and legal concerns).

Finding #1: *For the period October 1, 2000, through November 30, 2001, the State agency improperly claimed Federal reimbursement for county agency payments to relative homes that had not been approved based on State licensing standards. Specifically, for 87 of the 100 relative homes in our sample, the case files showed that the county agency had not used State licensing standards in its approval process.*

CDSS RESPONSE:
The CDSS has resolved this audit finding but disputes the substantive impact of the finding as discussed below in the section titled "*Meeting the Needs of Children Placed with Relatives on the Emergency Basis".* California has subsequently passed a federally conducted Title IV-E review in 2006 regarding the approval of relative homes to licensing standards. The CDSS also initiated its own random sample review of children placed with relatives in 2007 and found that counties were in substantial compliance with relative approval standards in over 90 percent of cases.

Despite a lack of documentation, and at all times during the audit period, children who were determined to be Title IV-E eligible were receiving care and supervision from their relative caregivers. The CDSS continues to properly claim federal reimbursement only for the county agency payments for children placed in relative homes to which California is entitled.

The CDSS has implemented a comprehensive and successful strategy to ensure compliance with the Adoptions and Safe Families Act (ASFA) and has been resolute in its commitment to ensure safe placements of children in relative homes and to comply with all of the technical requirements associated with ASFA.

Finding #2: *For the remaining 13 relative homes, the case file documentation was either missing or substantially incomplete. As a result, there was no assurance that these homes had been approved based on State licensing standards.*

CDSS RESPONSE:
The CDSS has resolved this audit finding.

California passed a federally conducted Title IV-E review in 2006 regarding the approval of relative homes to licensing standards. The CDSS initiated its own random sample review of children placed with relatives in 2007 and found that counties were in substantial compliance with relative approval standards in over 90 percent of cases.

California disputes the substantive impact of the findings, as discussed below in the section titled *"Meeting the Needs of Children Placed with Relatives on an Emergency Basis".*

Background on ASFA Compliance in California

Meeting the Needs of Children Placed with Relatives on an Emergency Basis. When the Adoptions and Safe Families Act of 1997 (ASFA) rules went into effect in October of 2000, California realized that its most important challenge in achieving full compliance with the same-same standards requirement for approval of relative homes and licensure of foster family homes, was in the area of criminal records clearances. The challenge was to reconcile the need for immediate access to criminal records information maintained by California's Department of Justice (DOJ) and the need to make fast decisions upon receipt of that information for emergency placement of children placed with relatives, with the existing criminal records review standards used by the Community Care Licensing Division (CCL). At that time, the criminal records clearance process used by CCL involved a manual process involving hard copy fingerprint cards that were submitted to the DOJ, a process that often took months to complete. This time-consuming process was not a problem in the licensing of foster family homes, which did not have children waiting at the doorstep.

On the other hand, relative placements often involved emergency placement without prior notice to the relative in the middle of the night. In a good faith effort to reconcile relative approval standards with the CCL, which continues to be a national leader in ensuring that licensed facilities are safe for needy children and adults, California pursued a cooperative arrangement between the counties and DOJ whereby prior to making placement relatives would undergo criminal records screening by telephonic and computer means through the California Law Enforcement Telecommunications System (CLETS) system. This process was followed by the standard fingerprint based criminal records clearance check. If DOJ reported to the county that a relative had a conviction, placement was not made until the criminal record was cleared or exemption granted. No child was placed in the care of a relative without the CLETS check of every adult in the home. Due to the high workload demands this process placed on DOJ, it was willing to participate in this process only for relative placement, and not for standard CCL license applications. In good faith California believes that this process, though not identical to the criminal records check for licensed foster family homes, represented substantial compliance with federal law, and protected children in substantially the same way.

While it is true that many if not all of these cases lack case file documentation which validates the criminal records clearance, this is merely a technical deficiency that largely was the result of confusing and unfortunate language that DOJ included in its formal criminal records response to counties DOJ indicated in its forms to counties that once the criminal records clearances were reviewed, they should be destroyed to protect the confidentiality of the information provided to the counties by DOJ. Accordingly, many counties, including Los Angeles, had a uniform practice of destroying the criminal records clearances provided by DOJ. Unfortunately, CDSS was not apprised of this practice until 2003, and we swiftly responded by instructing counties to cease destroying these materials. The lack of paperwork supporting criminal records clearances during the audit period therefore should not suggest that children were put at risk of placement with relatives who had committed crimes. Rather, the lack of paperwork available to the OIG auditors was due to not preserving this paperwork.

Title IV-E Funds Were Expended Only for Children in Care.
At all times during the audit period in question, Title IV-E eligible children were receiving needed care and supervision from relative caretakers who were screened for criminal convictions. This was not a situation in which federal payments were made for time periods in which children were not cared for in the home.

History of Federal Claim Adjustments
In 2002, ACF instituted deferral of Title IV-E federal funding for relative placements beginning March 2002 quarter through June 2003, and adjustments were subsequently made to restore funding to a negotiated amount. The State ultimately paid $45 million in disallowed funds. In 2003, a $33.8 million disallowance was paid by the State resulting from a 150 case review agreement with ACF. The disallowance was paid between September 2004 and June 2005.

California's ASFA Compliance Efforts
From the effective date of ASFA to the present, California has been fully committed to ensuring that relatives approved by counties to provide care to Title IV-E eligible children were approved using the same standards for the licensure of foster family homes. The CDSS has taken significant steps in the almost 10 years since the period on which the audit findings are based on to provide written instruction and technical assistance to all California counties regarding the assessment and approval of relative homes for adherence to licensing standards. The following is a summary of steps taken by California to achieve ASFA compliance:

- In October of 2001, A.B. 1695, (Welfare and Institutions Code Sections 309(d) and 361.4) clarified that existing approval standards for relative placements were the same standards used for licensing of foster family homes.
- In December of 2001, CDSS issued county instructions to implement A.B. 1695.
- In 2005 CDSS added five staff to the Children's Services Operations Bureau with the primary purpose of ensuring that counties are complying with State law which requires that relative placement homes meet required safety standards. In conjunction with fiscal staff these additional workers are verifying Federal Title IV-E eligibility claiming criteria. Staff within the unit, conduct these reviews and prepare county oversight reports. Additionally, staff provides technical assistance to counties on relative assessment issues and corrective action plan compliance as needed.
- Since December 2000 CDSS has issued ASFA compliance instructions to counties that set forth the common standards be used to assess/approve relative and non-relative caregivers, that establish the required criminal records clearance requirements, that provide required forms for assessment/approval of relative/NREFM homes, and a host of other instructions and directives. CDSS has issued no fewer than 13 All County Letters and 5 All County Information Notices regarding ASFA compliance since 2001.
- In 2002 and in 2003, CDSS amended existing regulations to provide direction to counties regarding ASFA required relative approval standards.
- From January 2003 to June 2004, CDSS provided ASFA compliance training by contracted vendors to over 1,113 county staff at various locations throughout the State.
- CDSS participated and passed both the 2003 and the 2006 Title IV-E reviews which examined a number of relative placement cases.

- CDSS has completed a review of a statistical sample of 2007 relative approval cases. That review demonstrated compliance rates that exceed 90%.

The 2000/2001 Federal Audit
The DHHS has prepared a draft audit report based on Los Angeles County's relative placement process and claiming of IV-E funds for the period of October 1, 2000 through November 30, 2001. The audit found that none of the reviewed cases documented 100% compliance with federally required "same-same" standards for relative home approval and the licensure of foster family homes. One audit finding notes the absence of documentation supporting criminal records clearances. The audit finds that California is not eligible for $45 million in federal funds due to non-compliance with ASFA.

The Proposed Refund Request is Unnecessary from Both a Policy and Fiscal Perspective, and Should be Waived.
The imposition of a refund request of this magnitude will not incentivize future program change because California has already made the changes needed to demonstrate and document ASFA compliance. California's efforts and past enforcement steps taken by ACF, including a deferral of federal payments and the adjustment of federally eligible costs have achieved their intended objectives of ensuring ASFA compliance. Additionally, despite a lack of documentation in the audit period case files, we believe that California was substantively in compliance with federal requirements even during the audit period, as discussed above in the section titled *"Meeting the Needs of Children Placed with Relatives on an Emergency Basis".*

California, like the nation as a whole, is in the grips of a severe economic recession that is having devastating effects on the State budget. Current estimates indicate that California's budget deficit ***exceeds $42 billion*** over the next 17 months. In response to this crisis, the California Legislature last week enacted a budget which includes significant funding reductions for social services programs administered by CDSS.

More broadly, the Obama Administration and Congress have initiated an aggressive fiscal stimulus plan which includes desperately needed funds for California. It serves no legitimate public or fiscal purpose for the federal government to request refunds from California for technical compliance issues that occurred many years ago and have subsequently been resolved, while at the same time injecting funds into California to assist in economic recovery. The proposed disallowance will worsen California's financial crisis. The conditions at the time of the audit period have been the subject of intense scrutiny by counties and CDSS, and significant manpower and financial resources have been expended to correct these deficiencies. California's efforts to correct ASFA compliance issues have resulted in compliance levels that exceed 90%.

The results of the OIG's audit would be to shift AFDC-FC funds which are desperately needed to ensure safe placement of children in California from the State to the federal government. To avoid a result which is contrary to the interests of Title IV-E eligible children in California, we request that the overpayment identified by the OIG be entirely waived by ACF.

The OIG's Draft Audit Report Should Not be Finalized Because it is Untimely
This draft audit report involves ASFA compliance issues that occurred seven to eight years in the past. OIG provides no explanation for this significant time lapse. This unreasonable delay in issuing its draft audit report is prejudicial to California's ability to develop a comprehensive response to the draft audit report. In the intervening time period, documents may be lost, memories have faded, and witnesses including county staff have long since moved to other jobs, retired, or are otherwise unavailable to provide relevant information to CDSS regarding the time period under review. Many county staff and supervisors who were actively engaged in approving relative homes in 2000 and 2001 are not currently available to discuss what approval records were kept, or what activities were conducted that may not have been adequately documented in the case files.

OIG's failure to act in a timely fashion has prejudiced California's ability to produce evidence to defend itself against the proposed refund. Accordingly, this draft audit report should not be finalized.

STATE OF CALIFORNIA - HEALTH AND HUMAN SERVICES AGENCY ARNOLD SCHWARZENEGGER, Governor

DEPARTMENT OF SOCIAL SERVICES
744 P Street, Sacramento, California 95814

December 30, 2003

REASON FOR THIS TRANSMITTAL
[ ] State Law Change
[X] Federal Law or Regulation Change
[ ] Court Order
[ ] Clarification Requested by One or More Counties
[ ] Initiated by CDSS

ALL COUNTY LETTER NO. 03-55

TO: ALL COUNTY WELFARE DIRECTORS
ALL ELIGIBILITY SUPERVISORS
ALL CHILD WELFARE SERVICES PROGRAM MANAGERS
ALL COUNTY LICENSING PROGRAM MANAGERS
ALL CHIEF PROBATION OFFICERS

SUBJECT: RETENTION AND STORAGE OF CRIMINAL BACKGROUND AND CHILD ABUSE CENTRAL INDEX CLEARANCE RESULTS

REFERENCE: 45 Code of Federal Regulations 74.53, Health and Safety Code Sections 1522 and 1522.1, Manual Policies and Procedures (MPP), Division 31, Sections 31-075.3(j) and 31-075(s)(9)

The purpose of this letter is to inform all counties that they must retain criminal background and Child Abuse Central Index (CACI) clearance results obtained on foster parents and other individuals living in homes licensed and approved by county welfare departments **for at least three years after the home is no longer in use**.

Findings made in the recent federal Title IV-E Review indicated that some counties were destroying criminal background (i.e, California Law Enforcement Telecommuncations System, Department of Justice (DOJ) and Federal Bureau of Investigation fingerprint checks) and CACI clearance results immediately following the issuance of a license or approval. Their decision to do this was based on a DOJ Information Bulletin dated December 19, 2002, which stated in part:

"Retention of CORI [Criminal Offender Record Information] is permissible if, after making its initial employment, licensing, or certification decision, the agency has a legitimate business need for the information and there are no statutory requirements to destroy such information…The DOJ recommends that agencies destroy CORI when the business need has been fulfilled."

The Health and Safety Code Sections 1522 and 1522.1 require that as a condition of licensure individuals must undergo a criminal background and CACI clearance check. The federal Department of Health and Human Services, Administration for Children and Families has maintained that criminal background and CACI clearance information should be retained for at least three years after the home is no longer in use pursuant to 45 CFR 74.53.

California Department of Social Services (CDSS) staff met with DOJ personnel to discuss this matter and was informed by DOJ that CDSS has the discretion to determine when there is no longer a business need for maintaining criminal background results. The actual intent of the DOJ Information Bulletin dated December 19, 2002, was to provide agencies with the option to set their own retention period based upon their own individual needs. Therefore, CDSS is requiring that all counties retain criminal background and CACI clearance results for at least three years after the home is no longer in use pursuant to 45 CFR 74.53.

STORAGE OF INFORMATION

According to MPP, Division 31, Sections 31-075(j) and 31-975(s)(9), counties may store criminal background and CACI clearance results of foster parents and other individuals licensed and approved by the county in the child's case file. Counties also have the option to store the information in the child's caregiver's licensing or approval file.

Files containing criminal background and CACI clearance results shall be located in a secure environment only to be accessed by authorized personnel and to be used for the performance of their official duties. Authorized personnel are those that have completed a fingerprint background/record check pursuant to California Code of Regulations, Title 11, Division 1, Sections 701 and 707(b). Files are to be locked outside of normal business hours. This storage policy was developed in conjunction with DOJ.

If you have any questions regarding this letter, please contact your Foster Care Eligibility representative at (916) 657-1912.

Sincerely,

Original Document Signed By:

SYLVIA PIZZINI
Deputy Director
Children and Family Services Division

SECURITY OF CRIMINAL OFFENDER RECORD INFORMATION

Criminal Offender Record Information (CORI) is information identified through fingerprint submission to the DOJ with a criminal record or "No Record". It is confidential information disseminated to applicant agencies authorized by California statute for the purposes of employment, licensing, certification and volunteer clearances. The following information describes each agency's responsibility toward accessing, storage, handling, dissemination and destruction of CORI.

Background

Penal Code Sections 11105 and 13300 identify who may have access to criminal history information and under what circumstances it may be released.

The California Department of Justice (DOJ) maintains the California Law Enforcement Telecommunications System (CLETS) that provides law enforcement agencies with information directly from federal, state and local computerized information files. However, restrictions have been placed on the user to ensure that the rights of all citizens of California are properly protected.

Article 1, Section 1 of the California Constitution grants California citizens an absolute right to privacy. Individuals or agencies violating these privacy rights place themselves at both criminal and civil liability. Laws governing Californian's right-to-privacy were created to curb, among other things, the excessive collection and retention of personal information by government agencies, the improper use of information properly obtained for a proper purpose, and lack of a reasonable check on the accuracy of existing records. *(White v. Davis (1975) 13 Cal. 3d 757,775.)*

Employment Background Checks

It is only through the submission of fingerprints to the DOJ that the true identity of an individual can be established. In a 1977 lawsuit *(Central Valley v. Younger)*, the court ruled that only arrest entries resulting in conviction, and arrest entries that indicate active prosecution, may be provided for evaluation for employment, licensing, or certification purposes.

Exceptions

Some statutory provisions, such as those relating to youth organizations, schools and financial institutions, further limit information dissemination to conviction for specific offenses. Records provided for criminal justice agency employment as defined in Section 13101 of the Penal Code are exempt from these limitations. In addition, arrest information for certain narcotic and sex crimes, irrespective of disposition, will be provided for employment with a human resource agency as defined in Section 1250 of the Health and Safety Code. Other exceptions are listed in the CLETS Policies, Practices and Procedures (Section 1.6.1).

Unauthorized Access and Misuse

The unauthorized access and misuse of CORI may affect an individual's civil rights. Additionally, any person intentionally disclosing information obtained from personal or confidential records maintained by a state agency or from records within a system of records maintained by a governmental agency has violated various California statutes. There are several code sections which provide penalties for misuse or unauthorized use of CORI.

Authorized Access

Criminal Offender Record Information shall be accessible only to the Records Custodian and/or hiring authority charged with determining the suitability for employment or licensing of an applicant. The information received shall be used by the requesting agency solely for the purpose for which it was requested and shall not be reproduced for secondary dissemination to any other employing or licensing agency.

The retention and sharing of information between employing and licensing agencies are strictly prohibited. The retention and sharing of information infringe upon the right of privacy as defined in the California Constitution, and fails to meet the compelling state interest defined in *Loder v. Municipal Court (1976) 17 Cal. 3d 859.* In addition, maintenance of CORI separate from the information maintained by the DOJ precludes subsequent record updates and makes it impossible for DOJ to control dissemination of CORI as outlined in Section 11105 of the Penal Code.

CLETS Policies, Practices and Procedures states that any information transmitted or received via CLETS is confidential and for official use only by authorized personnel (Section 1.6.4). The California Code of Regulations, Article 1, Section 703, addresses the "right and need" to know CLETS-provided information.

The Bureau of Criminal Identification and Information recommends that state summary criminal history records obtained for employment, licensing or certification purposes are to be destroyed, once a decision is made to employ, license of certify the subject of the record. Agencies should retain the State Identification Number (SID) for the purpose of "No Longer Interested" for subsequent arrest notification services pursuant to Penal Code Section 11105.2.

Retention of criminal history records beyond this time should be based on documented legal authority and need. Any records retained must be stored in a secured, confidential file. The agency should designate a specific person responsible for the confidentiality of the record and have procedures to prevent further dissemination of the record, unless such dissemination is specifically provided for by law or regulation.

As an agency receiving background clearance information in response to the submission of applicant fingerprint cards to DOJ you are aware of the regulations regarding the security of the hard copy information which you currently receive. The purpose of this Subscriber Agreement is to restate existing regulations and clarify how they apply to the electronic receipt of this same information via fax or e-mail There are no new regulations. Items 1, 2, 4, 5, and 7 restate existing regulations relative to receiving hard copy information; item 2 has been expanded to include electronic information. Items 3 and 6 are intended to clarify these regulations relative to electronic information.

APPLICANT FINGERPRINT RESPONSE

SUBSCRIBER AGREEMENT

In accordance with section 11077 of the Penal Code, the Attorney General is responsible for the security of criminal offender record information. Section 707(a) of the California Code of Regulations requires that **"Automated systems handling criminal offender record information and the information derived therefrom shall be secure from unauthorized access, alteration, deletion or release. The computer terminals shall be located in secure premises".**

This agreement is between the (name of agency)_____
and the California Department of Justice for the purposes of the exchange of criminal offender record information. The above agrees that:

1. Criminal offender record information and the information derived therefrom shall be accessible only to the records custodian and/or hiring authority charged with determining the suitability of the applicant.

2. Confidential information received electronically or via mail shall be used solely for the purpose for which it was requested and shall not be reproduced for secondary dissemination.

3. Notwithstanding other statutory authority, information received shall not be stored electronically and will be destroyed after the hiring or licensing determination. Destruction of this information shall be to the extent that the identity of the individual can no longer be reasonably ascertained.

4. Criminal history background checks have been completed on all individuals with access or proximity to terminals or fax machines receiving criminal offender record information.

5. Staff with access to criminal offender record information have received training and counseling on the handling of criminal offender record information and have signed employment statement forms acknowledging an understanding of the criminal penalties for the misuse of criminal offender record information (Penal Code Sections 502, 11142 and 11143).

DEPARTMENT OF HEALTH & HUMAN SERVICES

Administration for
Children & Families

Region IX
50 United Nations Plaza
San Francisco, CA 94102

Refer to:

November 3, 2003

Sylvia Pizzini, Deputy Director
Children and Family Services Division
California Department of Social Services
744 P Street
Sacramento, California 95814

Dear Ms. Pizzini:

I am issuing this letter as an addendum to the July 2, 2003 report of findings from the June 2 through June 5, 2003 title IV-E Foster Care Eligibility Review. That report identified ten cases found in error and six non-error cases that had ineligible payments.

On October 15, 2003, I reversed the error finding for case sample number 66 based on documentation submitted on October 8th that substantiated the provider's eligibility and reduced the disallowance amount accordingly. On October 20, 2003, we received documentation sufficient for me to reverse the error finding for an additional case – case sample number 33. The court order submitted demonstrates that the agency had obtained the timely judicial determination that reasonable efforts were made to finalize permanency. This reduces the number of cases found in error to eight.

Therefore, I hereby deem California's title IV-E foster care maintenance program to be in substantial compliance with Federal child and provider eligibility requirements for the period April 1, 2002 through September 30, 2002. Consequently, pursuant to 45 CFR 1356.71(i), California is not required to develop a Program Improvement Plan (PIP). Also, pursuant to 45 CFR Section 1356.71(j)(2), a secondary review will not be held and, pursuant to 45 CFR 1356.71(h)(4), the next primary review will be conducted no sooner than June 2006, three years following the June 2003 review.

The financial penalty taken for this primary review will be for the payments, including the administrative costs, associated with the eight error cases and the six non-error cases that had ineligible payments. This letter constitutes our formal notice of disallowance of $176,950 in Federal Financial Participation (FFP) for title IV-E foster care maintenance payments and related administrative costs. We revised the charts included with our original report of findings to reflect the revisions made as a result of these decisions; the revised charts are enclosed.

The State submitted a PIP on October 6, 2003 and my staff provided feedback to your staff on October 16, 2003 via email. Since the State is no longer required to implement a PIP, this letter will also confirm our understanding that the State withdraws the PIP. Nevertheless, I encourage the State to implement the planned improvements to help

ensure a substantial compliance finding results from the next primary review that will be more rigorous given that the error tolerance level is reduced to no more than five cases.

If you have any questions about this decision, please call John Kersey at (415) 437-8415 or Pat Pianko at (415) 437-8462. Questions concerning the disallowance should be directed to John McGee at (415) 437-8408.

Sincerely,
/s/

Sharon M. Fujii
Regional Administrator

Enclosures

cc: Pat Aguiar, CDSS
Paul Johnson, Office of the General Counsel
Joe Bock, Children's Bureau
Emily Cooke, Children's Bureau

Error Cases - Revised October 2003

	Sample Number	Reason for Error	Social Security Act (SSA) and Code of Federa Regulations (CFR) Citation
		Child Ineligible due to Lack of Requisite Judicial Determinations	
1	29	Judicial determination regarding **reasonable efforts to prevent removal** not obtained within 60 days from removal.	SSA 472(a)(1) and 471(a)(15)(B)(i) & 45 CFR 1356.21(b)(1)
2	65	Judicial determination regarding **reasonable efforts to finalize permanency** not timely. (Due March 2001. Completed November 2002. Earlier court order language that indicates "read and considered" report was insufficient.)	SSA 472(a)(1) and 471(a)(15)(B)(ii) and (C) & 45 CF 1356.21(b)(2)
		Child Ineligibility – Lack Requisite Judicial Determinations. Provider Ineligibility – Lack Background Clearances	
3	70	(1) Judicial determination regarding **reasonable efforts to finalize permanency** not completed. (Due March 2001. None completed.) (2) Background clearances not obtained prior to placement. (Child placed October 2000. Clearances obtained November 2002.)	(1) SSA 472(a)(1) and 471(a)(15)(B)(ii) and (C) & 45 1356.21(b)(2); (2) 45 CFR 1356.30(e)
		Child Ineligible due to Nonbinding Voluntary Placement Agreement	
4	37	Voluntary Placement Agreement not signed by Child Welfare Agency	SSA 472(f)
		Child Ineligible due to Not Meeting AFDC Linkage Requirements	
5	20	Child did not live with specified relative (mom) from whom removed within six months of petition. (Child had been living with a relative guardian at the time of removal.)	SSA 472(a)(4)
		Provider Ineligible Because Not Licensed/Approved	
6	19	Foster Family Home not approved/licensed. (The Foster Family Agency (FFA) **de-certified** the home effective March 2002 when related caretaker started receiving Adoption Assistance Program payments. IV-E foster care maintenance was paid for one day in Sept	SSA 472(c) & 45 CFR 1355.20(a)
		Provider Ineligible Because "Other Safety Considerations" Not Met	
7	30	Child placed with **relatives** (9/15/99) before background clearances obtained (Foster mother clearances obtained 11/02. Foster father never cleared or exempted.)	SSA 471(a)(20) & 1356.30
		Provider Ineligible Because Not Licensed/Approved and "Other Safety Considerations" Not Met	
8	69	(1) Foster Family Home not approved/licensed. (Non-Relative Extended Family Member approved December 2002. Child placed September 2002.) (2) Background clearances not obtained prior to claiming IV-E	(1) SSA 472(c) & 45 CFR 1355.20(a); (2) SSA 471(a)(20) & 45 CFR 1356.30(e)

	CASE SAMPLE NUMBERS ERROR CASES								SAMPLE CASE NUMI		
FISCAL YEAR AMOUNTS	29	65	70	37	20	19	30	69	27	47	60
1998 Maintenance Disallowance	0										
1998 Federal Admin Disallowance	0										
1999 Maintenance Disallowance	0				10,032		249				
1999 Federal Admin Disallowance	0				5,270		725				
2000 Maintenance Disallowance	0				5,027		3,762				
2000 Federal Admin Disallowance	0				9,308		9,035				
2001 Maintenance Disallowance	0	1,636	1,607	1,850	7,018		3,814	0			
2001 Federal Admin Disallowance	0	722	3,111	4,666	2,222		9,332				
2002 Maintenance Disallowance	1,766	3,527	3,368	8,407	9,659	0	3,143	140	796	691	1,808
2002 Federal Admin Disallowance	2,357	4,713	9,427	9,427	3,867	786	6,284	2,357		786	
2003 Maintenance Disallowance	1,190		1,403		8,299			561			
2003 Admin Disallowance	0				1,268						
TOTAL MAINTENANCE DISALLOWANCE	2,956	5,163	6,378	10,257	40,035	0	10,968	701	796	691	1,808
TOTAL ADMIN DISALLOWANCE	2,357	5,435	12,538	14,093	21,935	786	25,376	2,357	0	786	0
PLEASE NOTE ALL AMOUNTS ARE FED SHARE											
TOTAL DISALLOWANCE	176,950										

DEPARTMENT OF HEALTH & HUMAN SERVICES

ADMINISTRATION FOR CHILDREN AND FAMILIES
Administration on Children, Youth and Families
1250 Maryland Avenue, S.W.
Washington, D.C. 20024

OCT 17 2006

CERTIFIED MAIL – Return Receipt Requested

Mary Ault, Deputy Director
Children and Family Services Division
California Department of Social Services
744 P Street
Sacramento, California 95814

Dear Ms. Ault:

During the week of July 31 through August 4, 2006, the Administration for Children and Families (ACF), in collaboration with the California Department of Social Services (CDSS), conducted California's title IV-E Foster Care Eligibility Review. The period under review (PUR) was October 1, 2005 through March 31, 2006. Enclosure A is the final report. This was California's second primary review; the initial primary review was conducted in May 2003.

We appreciate the exemplary efforts of your staff, county child welfare agency staff, and the California Judicial Council staff in preparing for and carrying out this review. In particular, Linda Shill's industrious efforts in ensuring the successful completion of this review are commendable. Please also extend our sincere gratitude to Los Angeles County for hosting the review again, making ample space available for the reviewers, and providing additional staff to assist, including Jung Hae Lee whose help as the case file gatekeeper ensured an orderly review so that cases were not inadvertently misplaced or mislabeled. The complete list of the team members engaged on-site to review cases is found in Enclosure E.

Purposes

The purposes of the title IV-E Foster Care Eligibility Review are (1) to determine whether title IV-E foster care maintenance payments were made on behalf of eligible children and to eligible homes and institutions in accordance with 45 CFR 1356.71 and Sections 471 and 472 of the Social Security Act (SSA); (2) to identify erroneous payments (e.g., overpayments, underpayments, etc.); and (3) to identify promising practices and/or needs for training and technical assistance.

Error Cases

A case was determined to be in error if a title IV-E payment was made on behalf of a title IV-E ineligible child and/or to a title IV-E ineligible provider during the PUR. Of the 80 cases reviewed (77 child welfare and 3 juvenile justice), 4 cases were found in error (Case Sample #s 13, 55, 66, and 69). The error cases are addressed in the enclosed report (Enclosure A) and summarized in Enclosure B.

Non-Error Cases with Ineligible Payments and/or Overpayments
In addition to ascertaining whether a case was in error, the reviewers also determined whether there were other unallowable title IV-E payments for any of the cases reviewed. Specifically, a case was determined to be a "non-error case with ineligible payments" if there were title IV-E payments made on behalf of a child, and/or made to a provider, who were ineligible for title IV-E for a period of time solely outside the PUR -- there were three such cases (Case Sample #s 17, 40, and 51).

The review also surfaced overpayments, e.g., foster care maintenance payments made to two out-of-home care providers on behalf of a child for the same period of time – there were 11 such cases (Case Sample #s 4, 12, 27, 33, 34, 35, 46, 47, 54, 59, and 68). Two error cases (Sample Case #s 55 and 66) also had ineligible payments and/or overpayments. One non-error case with ineligible payments (Sample Case # 40) also had an overpayment. Additionally, although for Sample Case # 14 a title IV-E payment was improperly made during the PUR in February 2006 to a group home provider on behalf of a child who had left the group home in mid-January 2006 and placed in a title IV-E ineligible facility (a juvenile detention facility); we decided not to consider this as an error case. The January payment issued to the group home provider was properly pro-rated and the case was placed in a zero payment status in the automated system. The County converted to another automated System, CalWIN, in February which, because the zero payment status was not recognized by the new system, caused an additional payment to be inadvertently issued to the group home even though the child continued to reside at the juvenile detention facility. The county discovered the error when verifying the automated system conversion and initiated corrective action prior to our undertaking the title IV-E review. Thus, because action was taken to recoup the funds prior to the review and as shown by the group home not cashing the check, we are not citing this case in error, but rather as a case with an overpayment, bringing the total number of cases with overpayments to 15. The non-error cases with ineligible payments and/or overpayments are also addressed in the enclosed report (Enclosure A) and summarized in Enclosure C.

Determination of Compliance
Since no more than four cases were in error, I am pleased to inform you that California's title IV-E foster care maintenance program is in substantial compliance with Federal child and provider eligibility requirements for the period October 1, 2005 through March 31, 2006. Pursuant to 45 CFR 1356.71(h) (4), we will conduct the State's next primary review in approximately three years.

Although California is not required to develop a Program Improvement Plan (PIP) pursuant to 45 CFR 1356.71(i), the enclosed report includes recommendations for further strengthening the State's title IV-E foster care maintenance program.

Disallowance
The financial disallowance taken as a result of this primary review will be for the foster care maintenance payments and, if applicable, administrative costs associated with the error cases and the non-error cases with ineligible payments. Administrative cost disallowances are not associated with the overpayments. Enclosure D identifies the disallowed Federal financial participation (FFP) associated with each case. **This letter constitutes our formal notice of disallowance of $122,015 in FFP for title IV-E foster care maintenance payments and related administrative costs.**

Since the amount of the disallowed funds was previously included in Federal payments made to the State, you must repay these funds by including a prior period decreasing adjustment on the Quarterly Report of Expenditures (Form ACF-IV-E-1), Part 1, Line 1, Columns (c) and (d). A supplemental IV-E-1 form must be submitted to us within 30 days of the date of this letter in order to avoid the assessment of interest. A supplemental submission must contain only the adjustment described above and identified in Enclosure D; other claims or revisions must not be included and will not be accepted.

Please note that there are two error cases (Case Sample #s 66 and 69) in which the children continued to be in foster care following the PUR. Therefore, in addition to the disallowance, we expect the State to assure us that FFP has not been claimed for these cases in the fiscal claims beginning with May 2006. For Sample Case # 66, claims for FFP may resume for payments made beginning with the month in which the foster family home fully meets the State's safety requirements. For Sample Case # 69, payments beyond April 2006 must never be claimed for FFP because the child is ineligible for the entire foster care episode.

Appeal Rights
This letter constitutes our final decision. Pursuant to 45 CFR Part 16, you have an opportunity to appeal this decision to the Departmental Appeals Board (DAB). This decision shall be the final decision of the Department of Health and Human Services unless, within 30 days of receiving this decision, you deliver or mail (using registered or certified mail to establish the date) a written notice of appeal to the DAB at the following address:
Department of Health and Human Services
Departmental Appeals Board, MS 6127
Appellate Division
330 Independence Ave., SW
Cohen Building, Room G-644
Washington, D.C. 20201

You must attach to the notice a copy of this decision, note that you intend to appeal, state the amount in dispute, and briefly state why you think this decision is wrong. A copy of your appeal should also be sent to the attention of Sharon Fujii in the ACF Regional Office. The Board will notify you of further procedures.

Page 4 - Mary Ault, Deputy Director

If you appeal, you may elect to repay the amount at issue pending a decision by the DAB or you may retain the funds pending that decision. An adjustment to return the disallowed funds for the purposes of avoiding the interest assessment must be made through the use of a supplemental submission of the IVE-1 form, as described above. If you retain the funds and the DAB sustains all or part of the disallowance, interest will be charged starting from the date of this letter on the funds the DAB decides were properly disallowed. Regulations at 45 CFR Part 30 explain how interest will be computed.

In the event you choose to take no action to return the funds, it will be assumed you have elected to retain the funds either to appeal or to delay recumbent of the funds until the next issued grant award. Interest will continue to accrue on the Federal funds retained by the State during this period.

We again want to thank you, your staff, the counties, and the Judicial Council for the efforts made in conducting this review. Please extend our appreciation to Los Angeles County for hosting the review. We look forward to working with you and your staff to continue to strengthen State implementation of the Federal title IV-E requirements and to improve services to children and families.

Please call Pat Pianko at (415) 437-8462 if you have any questions about the review or the enclosed report. Questions concerning the disallowed amounts should be directed to Debi O'Leary at (415) 437-8464.

Sincerely,

Susan Orr, Ph.D.
Associate Commissioner
Children's Bureau

Enclosures:
Final Report (Enclosure A)
Summary of Error Cases (Enclosure B)
Summary of Cases with Ineligible Payments/Overpayments (Enclosure C)
Summary of FFP Disallowed (Enclosure D)
Review Team Roster (Enclosure E)

cc: Barbara Eaton, CDSS
Linda Shill, CDSS
Don Will, Judicial Council
Joe Bock, Children's Bureau
Paul Kirisitz, Children's Bureau
Sharon Fujii, Region IX