

Administration for Children and Families

45 CFR Parts 1355, 1356, and 1357

RIN 0970-AB34

Foster Care Maintenance Payments, Adoption Assistance, Child and Family Services

AGENCY: Administration on Children, Youth and Families (ACYF), Administration for Children and Families (ACF), HHS.

ACTION: Final rule.

SUMMARY: This final rule amends existing regulations concerning comprehensive child and family services under titles IV-B (Child Welfare Services) and IV-E (Federal Payments for Foster Care and Adoption Assistance) of the Social Security Act. The rule, prepared in response to the enactment of the Family Preservation and Support Services Act in 1993, provides direction to the States and eligible Indian Tribes in accomplishing two goals: establishing comprehensive community-based family support programs and short-term crisis-intervention family preservation programs, and working across the child and family services system to design a continuum of services responsive to the diverse needs of families and children.

EFFECTIVE DATE: December 18, 1996. This rule contains information collection requirements in Sections 1357.15 and 1357.16 which are subject to review and approval by OMB. The information collection requirements in these sections will not become effective until they are approved by OMB and assigned a valid OMB control number. A document will be published in the Federal Register which contains the valid OMB control number for these requirements.

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I. Background

Title IV-B was added to the Social Security Act in 1935 to provide Federal formula grants to States to establish, extend and strengthen child welfare services. Major changes to the authorizing legislation were later made under the Adoption Assistance and Child Welfare Act of 1980 (Pub. L. 96-272), to prevent the unnecessary separation of children from their families; improve the quality of care and services to children and their families; and, ensure permanency for children through reunification with parents, through adoption, or through another permanent living arrangement.

Over the last 15 years, however, social, cultural, and economic changes have frustrated efforts to meet these goals. Increased numbers of families coming to the attention of child welfare agencies with problems of ever-increasing severity coupled with rising rates of child abuse and neglect reports, have resulted in an overwhelmed child welfare system. Unable to keep up with these increased demands, constrained by resource limitations and overburdened workers, service planning has largely been limited to activities that focus on crisis intervention and not prevention and treatment.

Acknowledging that the system was not working for some of our most vulnerable children and their families, Congress amended title IV-B in August, 1993, under the Omnibus Budget Reconciliation Act of 1993, Public Law 103-66. A new program, entitled family preservation and family support services, added as title IV-B, subpart 2, provides States and eligible Indian Tribes with new Federal funding for preventive services (family support services) and services to families at risk or in crisis (family preservation services).

This legislation set aside funds for planning in fiscal year 1994 as the basis for the development of a five-year comprehensive services plan. This planning effort also provided States and local communities and eligible Indian Tribes the opportunity to review their current strategies for meeting the service needs of children and their families, identify service gaps and barriers to coordination of services, and develop a plan for providing a continuum of services to families and their children.

The FY 1994 appropriation for this new program (subpart 2) was \$60 million. Of this amount, \$2 million was

reserved for Federal evaluation, research, and training and technical assistance; \$600,000 was reserved for grants to Indian Tribes. The balance was available for grants to States to fund planning and services for family support and family preservation.

For FY 1995, the authorization increased to \$150 million. Of this amount, \$6 million was reserved for Federal evaluation, research, and training and technical assistance and \$1.5 million for grants to Indian Tribes. A new program of grants to State courts was initiated at a funding level of \$35 million for FYs 1995-1998. The balance is available for grants to States for family preservation and family support services.

Shortly after the legislation was enacted, ACF convened a series of focus groups to learn about family preservation and family support services. Using information obtained from these discussions and building on existing literature, four goals for family support and family preservation services were identified:

- The safety of all family members must be assured.
- These programs should serve to enhance parents' ability to create safe, stable, and nurturing home environments that promote healthy child development.
- To assist children and families to resolve crises, connect with necessary and appropriate services, and remain safely together in their homes whenever possible.
- To avoid the unnecessary out-of-home placements of children, and help children already in out-of-home care to be returned to, and be maintained with, their families or in another planned, permanent family.

Based on these goals and other lessons learned through the focus groups, we issued a notice of proposed rulemaking on October 4, 1994 (59 FR 50646) to implement the new family preservation and family support provisions of the statute and integrate this new focus into a comprehensive continuum of child and family services.

The statute specified that five-year plans were due June 30, 1995 from all States and eligible Indian Tribes in order to receive Federal funding. Over the past two years, ACF has committed substantial resources to the provision of technical assistance to States and Tribes to assist in the development of these plans and the implementation of these provisions. Regional and national conferences, State and locality-specific interventions, our Regional Offices and Resource Centers all have assisted States and Indian Tribes during this period.

II. Summary of Major Changes in the Final Rule and Discussion of Major Issues

We received 80 letters of public comment regarding the Notice of Proposed Rulemaking (NPRM) from Federal, State and local agencies and governments; national, State, and local child and family service and advocacy organizations; and other interested parties. Over 150 of the specific comments within these letters were in total support of portions of, or the entirety of, the proposed rule.

The vast majority of commenters were extremely supportive of the NPRM and the focus group process employed in its development. The input from families, practitioners, researchers, and advocates is reflected in this rule and affirms the importance of collaboration and cooperation. The Administration for Children and Families is committed to using this inclusive process as a model approach in implementing future statutory changes of this nature.

Commenters noted that the tone of the NPRM captured the intent and spirit of the legislation. In particular, they cited support for the joint planning and consultation process and the importance of the flexibility provided which allowed States and Indian Tribes to prepare their plans to meet the needs of local communities. Strong support was voiced for the vision to achieve improved outcomes for children and families by helping States, Indian Tribes, and communities apply the principles of family support and family preservation across all child and family service programs.

Many commenters voiced support for the NPRM's emphasis on positive, supportive, and cooperative relationships between at-risk families and service providers and building on family strengths. They spoke to the importance of this rule in helping States expand the frontiers of child abuse treatment and prevention and strengthen the goals of family preservation and family support.

This final rule reflects the Department's honoring State and Tribal discretion in many areas of program administration. Through our experience in administering title IV-B and through our consultation with experts in the field, we have learned that flexibility in approach, along with strong outcome standards, is key to designing successful programs at the State and Tribal levels.

With this rule, we lay a framework by setting certain basic principles, standards, and processes while at the same time allowing for State and Tribal flexibility in accomplishing these goals.

Many commenters requested model Child and Family Services Plans (CFSPs), model goals and objectives, or a more extensive list of required stakeholders to the process. Despite these request for greater specificity and detail in various provisions of the rule, we remain committed to offering States and Tribes maximum flexibility in designing the content of their Child and Family Services Plans.

We have relaxed requirements where we have been too prescriptive. For example, we have relaxed the requirements of § 1357.15(1)(3)(viii) Consultation to allow for States and Tribes to determine the best set of specific stakeholders to participate in the design of their Child and Family Services Plans, offering an extensive suggested list. This section as a whole still requires a critical list of essential consultation partners to the decision-making process.

Technical revisions were made throughout the rule to: (1) Change the reference of section 427 to 422(b)(9) in accordance with Pub. L. 103-432; (2) reflect changes made in the Child Abuse Prevention and Treatment Act (CAPTA) as amended by the Child Abuse Prevention and Treatment Act Amendments of 1996, Pub. L. 104-235, which was signed into law on October 3, 1996: The CAPTA changes reflect that there is only one program, the Child Abuse and Neglect State Grant program, instead of two programs, and citations to specific sections have been corrected; and (3) change the title IV-A and IV-F references in the rule to reflect the passage of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (Pub.L. 104-193).

We have maximized flexibility in the fiscal area to facilitate the provision of family support services by encouraging the involvement of community-based organizations. The matching requirements for title IV-B programs have now been revised to allow States and Indian Tribes to meet the non-Federal program cost matching requirements using cash or in-kind contributions, including those that are donated. We made this change (consistent with existing regulations governing grants at 45 CFR 92.24) in response to compelling arguments in favor of this policy put forth by nearly 30 commenters. We feel strongly, and commenters agree, that this change was imperative to supporting broader opportunities for partnership with community-based organizations and critical to full implementation of the goals of family preservation and family support programs.

The prohibition of all in-kind contributions was perceived as a real barrier to the active involvement of communities. Non-Federal share may now include real estate and real property, volunteer time (at standard rates), and limited professional time for service delivery (at standard rates).

There was, however, dissent from this overall support of in-kind matching. There was concern that, from a budget and internal control perspective, the use of an in-kind match may lead to disallowances resulting from mismanagement. The administrative oversight, monitoring, and validation of documentation is resource intensive. Some commenters suggested that a determination on the allowability of in-kind contributions should be made on an individual State/Tribe basis to allow in-kind contributions only where funds are not otherwise available. It was argued that this safeguard would ensure that in-kind contributions are not used to shift resources away from children's services (in cases where financial revenues available to meet the matching requirements are not a problem). As a result of this concern, one that we share, we have added a component to the Joint Planning definition (§ 1357.10 (c)) to provide for Federal/State or Federal/Tribal consultation around fiscal issues such as matching.

A. Consolidation

With this rule, we require consolidating the planning and reporting requirements for title IV-B programs with information included from the Independent Living Program (ILP) and the Child Abuse Prevention and Treatment Act (CAPTA) program. Consolidation of plan requirements is imperative to the development over time of a comprehensive child and family service system which is accessible, coordinated, flexible, built on and linked to community services and supports, and able to serve children and their families in a more effective and responsive way.

The two title IV-B programs are being consolidated for several reasons: Child welfare services and family preservation and family support services are both a part of the child and family services continuum; both services are administered by the same agency and address common problems of the same population of children and families; input from the field, supported by commenters on the proposed rule, urged us to consolidate the plans, application requirements, and program reporting, where possible, and to reduce duplicative administrative burdens on States and Tribes.

Consolidation of the plan does not affect title IV-B, subpart 1 or ILP funding. In fact the practical consequence of submitting one plan is that in addition to paperwork reduction, the plan will be submitted three months prior to the start of the next fiscal year meaning that title IV-B, subpart 1 and ILP funds would be received earlier.

Information included from the ILP and the CAPTA program will facilitate ongoing coordination, consultation, and joint planning efforts among these programs and assist States to move toward a more comprehensive service delivery system. States and Indian Tribes are encouraged to include additional child and family services programs in the CFSP, at their option, to increase program integration.

We believe that comprehensive child and family services cannot be developed without considering information on services under CAPTA and the ILP. States still have the option of submitting the application for ILP with the CFSP or separately. If the State elects to submit the ILP application separately, information about the ILP must be contained in the CFSP.

Major changes have been made to CAPTA since the NPRM was published. There is now a requirement for a 5 year CAPTA State Plan to be coordinated, to the extent practicable, with the CFSP. Currently, we are reviewing the new requirements for CAPTA in an effort to consolidate these State Plans. The CFSP must contain information on the CAPTA program, however, we will work to ensure that there are not duplicate information requirements for these two Plans.

Opinions regarding consolidation were decidedly mixed. There was a significant positive reaction to consolidation and calls for an even more inclusive plan incorporating all services (health, mental health, education, etc.) under the jurisdiction of Federal and State agencies.

Whereas we heard strong support for consolidating the title IV-B, subparts 1 and 2 plans, suggestions were advanced that the process for inclusion of subpart 1 not be total consolidation, but independent development and inclusion of information. Difficulties were identified in producing an expanded plan with funds for only one portion of that plan. The fear was that this expansion would undermine quality in the planning process and service system development.

Alternative proposals involved suggestions under which the family preservation and family support services five-year plan and the subpart 1 plan can be considered as separate

elements of the overall CFSP and separately approvable on their own merits. However, a vast majority of commenters supported consolidation and we have decided to retain the consolidated plan requirement and suggest that our phase-in option (described below) and joint planning with the ACF Regional Offices should allow for any approval concerns a State or Indian Tribe may have to be resolved.

Some felt our position on consolidation was expansive and went beyond the statute by including CAPTA information. Some commenters did not believe information on ILP and CAPTA programs should be included in the CFSP since separate plans or applications will continue to be necessary.

Other commenters stated that while it seems useful to include information from the various programs in the plan it is not clear what future directions this would take since the populations served may be different. The commenters suggested that the final rule encourage maximum integration and coordination when those efforts enhance achievement of program goals.

Additionally, it is our view that the populations served by CAPTA and title IV-B and IV-E are indeed the same. While CAPTA provides preventive and protective services to children at risk of abuse or neglect, it is child welfare services which are provided for the care of children abused or neglected.

States will face challenges in implementing the new vision. The availability of technical assistance and the maintenance of flexibility will be vital to successful implementation. We believe that the rule is in keeping with statutory intent and will provide States and Indian Tribes with an effective strategy for providing a continuum of services to children and their families.

B. Phase-In

Closely related to the process and degree of consolidation is the issue of the timeframe within which a comprehensive plan must be developed. We have relaxed the requirements for plan consolidation to allow for a phase-in approach to the requirement. States and Indian Tribes will now have an extra two years (until June 30, 1997) to complete the consolidated planning requirements. Consolidation is complex and time-consuming. We want to support State and Tribal implementation to ensure that it is done thoughtfully and gradually, allowing time to work through the complications that are sure to arise and produce a quality working process.

We believe this strategy does not compromise either the intent or the spirit of the statute and the NPRM since it has always been our position that the process of planning, coordination, consultation, and goals and objectives setting is an on-going process which reaches beyond initial development of the plan. This added flexibility, coupled with the technical assistance which has been made available since issuance of the proposed rule, should eliminate any roadblock to full and successful implementation.

A number of factors were considered that led to this decision to phase in consolidation. There was a great deal of concern expressed by commenters about the expansive nature of the Child and Family Services Plan and State and Indian Tribe capacity to meet all the requirements by the June 30, 1995 submission date. Concerns centered around the timeframe for implementation as unrealistically ambitious. These commenters recommended that additional time be provided, especially to incorporate components of the child welfare service system into an integrated planning process. However, we want to clarify that a consolidated CFSP does not necessarily allow for pooled funding among the programs mentioned, inasmuch as separate funding streams and accountability are still required by statute.

With respect to any State or eligible Indian Tribe that elects the phase-in option, the plan submitted in June 1995 should have included information describing how the State or Indian Tribe is engaged in and will continue to be engaged in comprehensive planning and development of the consolidated plan encompassing the continuum of child and family services.

States and Indian Tribes choosing this option will be required to submit a consolidated plan with the submission of their second annual progress and services report on June 30, 1997. States and Indian Tribes have already made significant strides toward meeting these requirements.

C. Continuum/Linkages

The most effective means of serving children and families is to have a delivery continuum which directly provides and links with a wide variety of supports and services.

Throughout the rule we make references to this continuum and other related service systems. Respondents to the proposed rule expressed confusion about this terminology. We would like to clarify that, as used in this rule, the child and family services continuum

refers to the publicly-funded State child and family services continuum; including family support and family preservation services; child welfare services, including child abuse and neglect prevention, intervention, and treatment services; and services to support reunification, adoption, kinship care, foster care, independent living, or other permanent living arrangements.

This continuum is inclusive of all services provided under titles IV-B, IV-E, and CAPTA and is linked to other service support systems (e.g. health, mental health, education, etc.) to allow children and families to access services they need when they need them and as their needs change. Our primary focus in this rule is to support and build the capacity of the child and family services continuum. We do encourage, however, strong linkage with other systems that affect and serve the same population.

There was some preference for the use of the term "system of care" instead of "continuum" in the definition of Child and Family Service Plan (CFSP). These commenters also called for a definition of child and family services continuum, or the child and family services system of care, which incorporates the principles in § 1355.25. They asked that the definition make clear that the term does not refer to a prescribed sequence of services but rather an array of services or a system of care that ensures that families and children will have access to services and support as their needs change.

"Continuum" is not used in the sequential sense or to imply that children and families must otherwise progress from one step to the next. Families may enter and exit at any point in the continuum. We have not added a separate definition of the continuum in the regulatory language because we believe that the parenthetical list included within the definition of the Child and Family Services Plan sufficiently defines the range of services included.

Some commenters expressed confusion by stating that the rules were weakened by expecting the State child welfare agency to be responsible for other sectors and federally supported State agencies, questioning what the linkages to other agencies should entail. One commenter was concerned that the description of the service continuum leaves out critical health, economic and educational services.

The requirement for coordination of the provision of services with other Federal and federally assisted programs serving children and families is derived from statute. This rule does not add any new responsibility for these other

programs to the child welfare agency but rather, in an effort to improve the well-being of children, youth and families, we encourage program coordination among related programs to provide a holistic approach to services.

However, we recognize that the issue of coordination among various programs points to the need for similar regulations and policies in other Federal programs and agencies and we have been working to develop relationships across programs for effective service linkages.

More specificity was requested with regard to how States and Tribes are expected to nurture linkages. The term "linkages" as used throughout the rule means some method of joining or coordinating two otherwise separate entities or sets of services. We have not provided specific linkage criteria in order to allow States and Tribes maximum flexibility to meet their unique needs for planning and designing services.

D. Safety

Family preservation services were viewed by some as potentially jeopardizing the safety of children and it was suggested that the preamble statements, "If a child cannot be protected from harm without placement, family preservation services are not appropriate" and "Family preservation does not mean that the family must stay together or be preserved under all circumstances" be included in the regulatory language itself. This recommendation was seen as helping to put to rest the often-raised "child protection versus family preservation" argument and dispelling the myth that this new funding availability is a powerful financial incentive for child welfare workers and agencies to preserve the family unit at the expense of child safety.

We maintain that family preservation services are only appropriate in certain circumstances. It is true that some of the children who come into State care cannot be left safely in their homes. Whether in the child's home or in substitute care, a child's safety should never be compromised. A family preservation program is only one of a number of strategies to address the issue of safety for children.

An underlying tenet of child and family services is the protection and security of children as expressed in the principles under 45 CFR 1355.25(a). Because a number of comments addressed this issue, we revised the definition of family preservation at § 1357.10(c) to provide that family preservation services are also designed

"to protect children from harm * * *" and to state unequivocally that safety is paramount in the principles at § 1355.25(a).

We would argue that this new legislation and funding is not an incentive for child welfare workers and agencies to preserve families at the expense of child safety but rather creates the exact opposite result. By providing new funds with an emphasis on prevention and treatment, there is a greater likelihood that children will be better protected and have more service options available for protection than presently exist in most States and Tribes.

E. Indian Tribes

In FYs 1994 and 1995 41 Indian Tribes were eligible for direct funding under title IV-B, subpart 2. In FY 1996, more Indian Tribes were eligible for direct funding and were notified of their eligibility and of the application process. New Tribes which become eligible for this funding beginning with FY 1997 may submit either an application for planning funds or submit a five year plan. If a Tribe elects to submit an application for planning funds, those funds will be awarded with no match requirement in the first year of funding. We are committed to providing full support for planning consistent with the process used in the first year of funding for the originally funded States and Indian Tribes.

If a Tribe chooses to forego the planning process, it may submit a five year plan immediately on June 30 of the year in which the Indian Tribe expects to be funded. In this case, the Tribe would be subject to the match requirement for services funding.

We have accepted recommendations from Indian Tribes and other Indian advocacy groups to exempt the Tribes from certain statutory requirements. This exemption authority is based on the Secretary's discretion in section 432(b) of the Act to exempt any provision in section 432 that is determined to be inappropriate to Indian Tribes, taking into account the resources, needs, and other circumstances of the Indian Tribe. In paragraph (f), the Indian Tribes are exempted from three statutory requirements: the ten percent limit on administrative costs, the non-supplantation provision, and the requirement that a significant portion of funds must be used for both family preservation and family support services.

We received many comments regarding the Indian Child Welfare Act of 1978 (ICWA). It is our responsibility

to ensure that all State plans comply fully with the statutory mandates of ICWA, particularly the requirements for Tribal notification and the order of preferences for out-of-home placements involving ICWA eligible children and permanency planning. We issued a Program Instruction (ACYF-PI-CB-95-12 released August 11, 1995) that specifies reporting requirements and procedures related to the statutory requirement that States report on measures they have taken to comply with the Indian Child Welfare Act. Additionally we plan to address compliance issues, including ICWA, in a separate rule on the subject of child and family services monitoring.

We received requests for funding for Tribal consortia serving two or more Tribes and requests that the term "federally recognized Tribes" rather than "Indian Tribal Organizations" be used. We are bound by statute and have no authority to fund consortia under subpart 2. The language "Indian Tribal Organization" is also taken directly from the statute.

F. Disabilities

We received many comments expressing concern that the proposed rule did not speak expressly to the needs of parents and children with developmental disabilities and that the final rule include, throughout, specific mention of programs, services and support for preservation of families affected by disabilities. Related to this, another commenter questioned how the rule treats the provision of mental health services and services to children with developmental disabilities and the role of child welfare agencies in this regard.

We are aware of the special needs of families in which a child or other family member has a disability or has other special needs such as for mental health services. We believe that services should be designed and made available to all families, including families with disabilities, but we did not specifically identify any populations in order to avoid excluding any particular groups or individuals. We deliberately sought to provide enough flexibility for States and eligible Indian Tribes to design programs that would be responsive to the unique needs of the children and families in a particular State. We would underline the fact that the Americans with Disabilities Act requires accessibility to services by the disabled; this accessibility should accommodate both physical and emotional needs of the disabled.

III. Section-by-Section Discussion of Comments

The Department would like to express its gratitude to the many concerned individuals and organizations which took the time to prepare thoughtful and invaluable comments to our NPRM. The comments were very substantive and meaningful and we considered them seriously in preparing this final rule.

1. Part 1355—General

Section 1355.10 Scope

This section contains general requirements applicable to both title IV-B and title IV-E of the Social Security Act and is applicable to Indian Tribes, as well as States, unless otherwise specified.

Comment: Several commenters requested that the scope of the rules be revised to include a funding set-aside for Alaskan Native Organizations and Native Hawaiian Organizations.

Response: The statute defines the eligible grantees individually under titles IV-B and IV-E. While we are sympathetic to the concerns expressed, we have no statutory authority to require such a set-aside.

Section 1355.20 Definitions

This section provides general definitions taken from statute of the Federal entities responsible for administration of child welfare programs, and of eligible grantees.

Comment: Some commenters were concerned that the definition of "State agency" required that the titles IV-B and XX agency be the same.

Response: The definition of State agency derives from statute and we have no authority to change or waive this definition in this final rule. However, as indicated in the definition, there is some flexibility provided based on a State's pre-December 1, 1974 organizational structure. From a programmatic standpoint, we also note that in many States, title XX funds are used in support of child and family services.

Section 1355.21 State Plan Requirements for Titles IV-B and IV-E

This section is written to conform to the new requirements and clarify that the five-year CFSP and the Annual Progress and Services Reports, along with the title IV-E State Plan, must be made available for public review and inspection.

No comments were received on this section and therefore no changes are being made to the language proposed in the NPRM.

Section 1355.25 Principles of Child and Family Services

These principles, most often identified by practitioners and others as helping to ensure effective services, emphasize the paramount importance of the safety of all members of the family, including victims of child abuse and neglect and victims of domestic violence and their dependents. The service principles address the need for permanency for all children; the importance of accessibility, flexibility, and coordination; and cultural competence.

In addition, the principles provide guidance in bringing about changes in State, local, and Indian Tribal child and family service delivery. In response to comments on the proposed rule, accountability to clients and the community has been added.

As stated in the proposed rule, we reiterate that "family preservation" does NOT mean that the family must stay together or "be preserved" under all circumstances, or at the expense of the safety and well-being of the child.

Comment: One commenter asked that we continue to distinguish between the principles of child and family services as guidelines and the required CFSP vision, goals and objectives. The commenter believed that States should view these principles as an important communication tool to educate the public about the child and family services plan vision, goals and objectives and suggested that this be encouraged in the rule.

Several commenters suggested that the principles be cross-referenced throughout the rule and that States be required to articulate in their vision statement, the relationship between the principles and the goals and objectives and each year to specify in their annual progress and services reports the gains being made to bring the system into accord with the principles.

Response: We have retained the principles as guidelines (not requirements) but have revised § 1357.15(g), to provide that the vision statement should reflect the child and family service principles.

Comment: Some commenters recommended that the introductory paragraph to this section state explicitly that the principles apply not just to family support and family preservation but to the entire range of child and family services, including reunification, adoption, and kinship care.

Response: We believe that both the title of this section and the introductory paragraph clarify that the principles apply to all child and family services. In

response to these comments, we have made a technical revision to the introductory language in § 1355.25 to provide that the principles provide guidance allowing for improvements in the continuum of services.

Comment: One commenter thought the principles should note that the active involvement of different minorities and linguistically diverse groups in the planning and ongoing operation of services is an integral part of a community-based service system. This commenter suggested that States be required to specify how the principle of cultural and linguistic competence will be reflected in the vision and goals as well as in other areas. This commenter recommended that annual reports should specify the progress made in bringing the system more into accord with the cultural competence principle.

Response: We agree with the importance of actively involving minorities and linguistically diverse groups. We have adjusted the language at § 1357.15(l) Consultation, paragraph (3)(iv) to reflect that importance because it is in this section that the States and Tribes must commit to the inclusion of a broad range of stakeholders in their decision-making processes. States and Tribes may review annually their plan's consistency with the cultural competence principle as this would be an appropriate check for active involvement. However, this level of detail would not be necessary for reporting to ACF.

Comment: Two commenters asked that the NPRM be revised to make clear that domestic violence prevention is integral to a system of care for children and families. Alternatively, another commenter suggested that § 1355.25(a) be revised to recognize that some risk-taking with children and families is necessary by providing “* * * when safety can reasonably be assured and risk of harm minimized.”

Response: We believe the rule is clear that domestic violence prevention, identification, and intervention is of prime importance to child and family safety. The importance of these issues is indicated by their inclusion in the very first principle of assuring the safety and well-being of children and all family members. In fact, we have strengthened this principle to emphasize that one important way to keep children safe is to stop violence in the family including violence against their mothers. With respect to the second comment, while risk assessment is critical, we believe that a discussion of risk-taking would undermine our emphasis on working with the strengths of a family.

Comment: Some commenters were concerned that the language in paragraph (d) relevant to service focus is overly inclusive and confusing. They did not believe that family preservation and family support funds should be spent on services that are otherwise available. Another commenter suggested that this section might better state that services may be crisis-oriented, short-term interventions, or longer term services necessary to meet the needs of the family and the individual who may be placed in out-of-home care. Other commenters suggested that it would be more appropriate if the language spoke to the needs of the child and family, rather than the needs of the family and best interests of the child.

Response: We agree, in part, and have revised the language of paragraph (d) to provide that services may focus on prevention, protection or other short or long term interventions to meet the needs of the family and the best interests and needs of the individual(s) who may be placed in out-of-home care. We believe that the principle stated in paragraph (d) is intended as a statement of holistic services to children and families, whatever their needs may be.

Comment: A number of commenters suggested that the language in paragraph (e), related to accessibility, should be strengthened to say services are “principally delivered in the home or community.” Another commenter suggested that language be included to recognize the importance of timely services.

Response: We support the alternative language offered and have revised the language in paragraph (e) to provide that services are timely as well as flexible, coordinated, accessible and principally delivered in the home or community.

Comment: Many commenters felt that the language in paragraph (f) was subject to serious misinterpretation and should be revised. These commenters were concerned that the services listed parenthetically (e.g., housing, substance abuse treatment, mental health, etc.) were inaccurately portrayed as outside the continuum of child and family services.

Response: We agree that the services and supports listed parenthetically are part of the service systems to which the child and family service continuum must be linked since they are all necessary for families to be able to support and nurture their children, and we have revised this paragraph to remove the parenthesis as well as the reference to “outside the system.”

Comment: A number of commenters suggested that the language in paragraph (g) be strengthened to provide that

services are accountable to the community and to clients in meeting needs and demonstrating successful outcomes. Several commenters also asked that we revise the language of this paragraph to provide that “most” services are community-based rather than “many.”

Another commenter suggested that the reference to community-based services in paragraph (g) be cross-referenced to the definition of community-based services in § 1357.10(c) to clarify that community-based means that the services are accessible and responsive to the needs of the community and the individuals and families residing therein.

Response: We agree that accountability is of paramount importance to ensuring successful services. We have revised the language by adding at the end, “are accountable to the community and the client’s needs.” We revised the language to affirm that most child and family services are community-based. However, we did not make any changes in response to the last comment because we believe the guiding principles should stand alone and be regarded as introductory and applicable to the rule as a whole.

Section 1355.30 Other Applicable Regulations

This section provides an updated and corrected list of other regulations applicable to titles IV–B and IV–E.

In the NPRM, we limited the § 205.10 fair hearing provisions to title IV–E foster care and adoption assistance, excluding title IV–B. This limitation was an error, noted by several commenters, and § 205.10 now applies to all programs under title IV–B and IV–E of the Act. The language of paragraph (c) has been changed to conform to the provisions of the most recent amendments to 45 CFR Part 74.

Comment: One commenter asked that we add to the list, Part 35, Nondiscrimination on the Basis of Disability.

Response: The applicable regulation for all Departmental programs is 45 CFR part 84—Nondiscrimination on the Basis of Handicap in Programs and Activities Receiving Federal Financial Assistance and is listed at paragraph (g).

Comment: One commenter was concerned that in paragraph (k), exclusion of ILP from § 95.1, would be detrimental to the State’s program. According to the commenter, if the State were forced to submit a final report within the 90 day timeframe, the State would have to shorten its ILP program by 3 months.

Another commenter stated that currently ILP and title IV-B funding is subject to the two-year claiming limitation and restricting this to a maximum of one year following the year in which the funds were awarded would present a significant problem in how claims can be processed and would not allow for full use of the funds.

Response: This policy does not represent a change. The statute is explicit in section 477(f)(3) of the Act that ILP funds must be expended by September 30 of the fiscal year following the fiscal year they were awarded.

2. Part 1356—Requirements Applicable to Title IV-E

Section 1356.10 Scope

This section introduces the requirements applicable to the Independent Living Program.

No comments were received on this section and therefore no changes are being made to the language proposed in the NPRM.

Section 1356.80 Independent Living Program

This section summarizes the statutory provisions applicable to this program.

No comments were received on this section and therefore no changes are being made to the language proposed in the NPRM.

3. Part 1357—Requirements Applicable to Title IV-B

Section 1357.10 Scope and Definitions

This section sets out key definitions of the major programmatic areas under title IV-B. For example, the definition of "Child Welfare Services Plan (CWSP)" now reflects the broader, more comprehensive scope and content of the "Child and Family Services Plan (CFSP)." Within this definition, we include a definition of the child and family services continuum. We have added the term "permanency" to the definition of the Child and Family Services Plan in the final rule because it had been inadvertently omitted in the NPRM.

In response to comments, we changed the definitions of "child welfare services" and "family preservation services" to provide greater emphasis on the importance of child and family safety. The definition of "family preservation services" also was expanded from the statutory definition to reflect the provision of concrete services which can be a key part of the family preservation services package. We revised the definition of "family support services" to include

transportation services which provide access to key services.

Additionally, we felt it necessary to clarify the definition of "Joint planning" to emphasize an ongoing partnership process between ACF and an Indian Tribe or State for the review and analysis of child and family services, including analysis of the service needs of children, youth, and families; selection of unmet service needs that will be addressed; and development of goals and objectives that will result in improved outcomes for children and families and the development of a more comprehensive, coordinated and effective child and family services delivery system.

Comment: Several commenters asked that § 1357.10(b), Eligibility, be revised to specify that States may charge fees (on a sliding scale basis) for services to families in higher income categories to promote broader and more equitable distribution of services. Alternatively, another commenter stated the belief that charging for services would be contrary to statute. This commenter urged, however, that if an income-based standard is adopted, care be taken to look beyond the face of the family assets since families may possess financial resources to which children at risk and battered women may not have access.

Response: We have chosen to leave this issue to State discretion. We would, however, urge any State which chose to charge fees to be especially cognizant of the point made by the commenter opposed to such fees.

Comment: Several changes were recommended in the definition of child welfare services, for example, the word "handicapped" be replaced with "individual with disabilities;" the word "and" be added after the phrase "identifying family problems" in clause (3); and substituting the phrase, "in cases where the child cannot be returned home" for the phrase "in cases where restoration to the biological family is not possible or appropriate" in clause (5).

Other commenters suggested that the definition of child welfare services recognize family violence. Another commenter asked that the definition of child welfare services be revised to read "Reuniting with their families, children who have been removed and may be safely returned by the provision of services to the child and the family."

Response: The NPRM used the definition of child welfare services taken from section 425 of the Social Security Act which includes language as originally enacted in 1935. We have revised the definition of child welfare services in § 1357.10(c) in three ways:

To replace the reference to "handicapped" with "individuals with disabilities" in clause (1); to place greater emphasis on child and family safety in clauses (1) and (4); and to reflect the natural progression of services by reversing the order of clauses (5) and (6). We believe the rule taken as a whole emphasizes child and family safety and recognizes family violence, specifically in § 1355.25.

Comment: One commenter suggested that the definition of "Children" in paragraph (c) is not consistent with current Federal and State statutory definitions of a dependent child and was concerned that the proposed definition could be interpreted to require that all title IV-B services must be available to persons between the ages of 18 and 21.

Response: We agree and have revised the definition to recognize that State law on age of majority or State policy will dictate whether services will be provided to those between the ages of 18 and 21 years for title IV-B services.

Comment: One commenter thought that the definition of "Family" should include actual primary caretakers for children, recognizing the variety of family structures, whether or not they are biological relatives.

Response: We believe that the definition provided in the proposed rule is sufficiently broad to cover all possible family arrangements and have not changed this definition.

Comment: Several commenters asked that we revise the definition of "Family preservation services" to place more emphasis on family case planning. Other commenters suggested that the definition of family preservation was too vague, failing to emphasize concrete services; that dollars for respite care be fairly allocated between the parents and the foster family; and that the reference to improving parenting skills is too limiting, since this is the only definition concerned with parents' needs, the focus should be on enhancing parental caretaking capacity.

Response: This definition is based in statute. We have made only one substantive revision to this definition and added a new paragraph (6) to recognize that family preservation services include "case management services designed to stabilize families in crisis such as transportation, assistance with housing and utility payments, and access to adequate health care." This provision is incorporated in several of the CFSPs submitted in June, 1995 and is considered to be an important means of assisting families in crisis. The joint planning process is expected to forestall improper use of program funds.

We have not made any changes with respect to respite care because we believe that the allocation of dollars should be a State determination.

Comment: Also with respect to the definition of "family preservation services," commenters suggested that in the interest of clarity, the order of pre-placement preventive services and reunification/adoption/independent living services be reversed.

Response: In response to these comments, we have reversed the order of paragraphs (1) and (2).

Comment: One commenter asked that the definition of "family support services" be revised to provide "coping with limited resources" rather than "family budgeting."

Response: The family support services definition is based in statute. We believe the existing language more appropriately emphasizes long term success with the language "family budgeting."

Comment: One commenter asked that the definition of "Joint planning" be revised to state, "Joint planning is a process of discussion, consultation, and negotiation between the parties, and Federal technical assistance that must occur for the Child and Family Services Plan to be approved and for the development and approval of the Annual Progress and Service Reports."

Another commenter expressed agreement that Regional office staff should be involved, but was concerned that it would be inappropriate for regional staff to usurp the State's decision-making authority regarding development of the plan.

Response: In response to these comments, we have expanded the definition of joint planning to clarify the partnership and positive aspects of working together. There is no question that the State maintains final decision-making authority regarding the development of the plan.

Section 1357.15 Comprehensive Child and Family Services Plan Requirements

Paragraphs (a) through (v) of § 1357.15 contain the requirements for the development of the comprehensive five-year Child and Family Services Plan (CFSP). The paragraphs cover discrete topics such as general provisions related to scope, eligibility for funds, and required assurances; specific content of the CFSP, including a vision statement, goals, and objectives; requirements for the description of services to be provided, the populations to be served, and the geographic areas to be targeted; specific proposals for the planning process leading to the development of the CFSP; and other provisions focused

on the continuum of services, permanency planning efforts, and other statutory requirements.

We received both general and specific comments on the CFSP requirements. General comments on the requirements were addressed under section II of the preamble. The more specific comments are addressed in the following paragraphs.

Comment: We received comment requesting the guidance provided in the preamble of the NPRM under this section be incorporated into the rule. The commenter pointed out that the State planning groups would benefit from further clarity on key components of the Child and Family Services Plan.

Response: The preamble language is designed to provide further clarity to the rule. A rule is intended to make clear the requirements for implementing a program. We would recommend that planning groups utilize the preamble language when they develop their CFSP and the Annual Progress and Services Report.

Section 1357.15(a) Scope

In response to comments, we made two revisions to this section. One revision adds a new paragraph (a)(4) to allow a phase-in approach for consolidation of the plans for IV-B, subparts 1 and 2, including the information on CAPTA and the ILP. This approach will allow States and Indian Tribes sufficient time to complete the planning and consolidation process.

The first sentence of this paragraph has also been revised to acknowledge the benefits of consolidation by adding that the State's CFSP is an opportunity to establish a system of coordinated, integrated, culturally relevant, family focused services.

Comment: One commenter asked that we play a larger role in analyzing and disseminating the CFSP. The commenter felt that States would probably be interested in knowing how the process was working elsewhere and recommended that we consider developing a mechanism for sharing information with the States to facilitate a process whereby they serve as expert resources to one another.

Response: We are very sensitive to States' desire for nationwide information sharing and, toward this end, have concentrated on establishing an information clearinghouse, exploring additional training and technical assistance strategies as well as sharing State experiences at various national conferences and from national evaluations.

Section 1357.15(b) Eligibility for Funds

This section specifies the eligibility requirements for receipt of funds under title IV-B, subparts 1 and 2. Several changes were made to this section. Three new paragraphs have been added, and language was added to paragraph (b)(1), specifying the time frame for a phased-in approach of the CFSP, as discussed in section II of this preamble.

In addition, in order to provide additional clarification on what must be submitted, the new language incorporates the CFS-101 forms. Also, several improvements have been made in the Annual Summary of Child and Family Services (CFS-101, Part II) form published in the NPRM based on several comments. The CFS-101 will be distributed annually with guidance on submission and the States' allotment for title IV-B funds.

In response to comments we have made revisions to the CFS-101, including consolidating the budget request for subparts 1 and 2 onto one page. The information collected on the CFS-101, Part II includes information that was previously collected on the CWS-101 and the new requirements for the collection of family preservation and support services information as required by statute and 45 CFR 1357.15(n)(3).

Comment: One commenter recommended that the final rule be revised to require States and Indian Tribes to earmark funds for grantees currently operating a successful Family Support Community Development Program to continue receiving funds beyond the two-year grant period ending September 29, 1995. The reason for this continuation is the extension of funding would allow grantees to focus on developing a 1-5 year self-sufficiency program for targeted AFDC clients to transition off welfare and become self-sufficient.

Response: Based on our commitment to State flexibility, there is nothing to prohibit States from taking this action.

Section 1357.15(c) Assurances

Under § 1357.15(c), the CFSP must contain the assurances applicable to both title IV-B programs, now listed here. Once signed by the appropriate official, the assurances will remain in effect on an ongoing basis (not just during the period of the five-year plan) and will need to be resubmitted only if significant changes in the State's or the Indian Tribe's program affect an assurance. This section has been expanded to be responsive to commenters and include all assurances relating to programs covered under the CFSP.

Comment: The sole respondent asked that the rule specify the list of assurances applicable to title IV-B, subpart 1 and 2.

Response: The comprehensive list has been incorporated here and into the CFSP requirements. As the NPRM stated, we provided States and Indian Tribes with a comprehensive listing of assurances in a Program Instruction issued June 8, 1995 (ACYF-PI-CB-95-17) to facilitate the submission of the five year plans in the absence of a final rule. At this time, the assurances have all been incorporated into this final rule.

Section 1357.15(d) The Child and Family Services Plan: General

Section 1357.15(d) provides that the CFSP must be developed based on three important planning activities: Broad involvement and consultation; coordination of the provision of services under the plan with other Federal and federally assisted programs serving children and families; and collection of existing or available information to develop opportunities for bringing about more effective and accessible services for children and families.

Comment: A number of commenters were concerned with the relative vagueness of the coordination requirement and wanted a more precise list detailing the Federal programs that should be coordinated. Several respondents suggested a cross-reference to the listing of programs at § 1357.15(l)(3)(viii).

Response: The regulatory language is not being changed because this section is intended to generally encourage coordination across Federal programs. In § 1357.15(l) virtually all of the programs mentioned by the respondents are identified.

Comment: Four commenters wanted parental involvement clarified to include parents of children who have been directly involved with the child welfare system.

Response: Language has been revised in § 1357.15(d)(1) to clarify that the requirement for consultation with parents should involve those who have direct experience with the child welfare agency.

Section 1357.15(e) State Agency Administering the Programs

This section outlines which State agency is to be responsible for title IV-B administration.

Comment: One commenter asked that we specify that the organization chart include the name of the State agency's designated coordinators for Section 504 of the Rehabilitation Act and the Americans with Disabilities Act.

Response: We are committed to providing maximum flexibility in this rule and have not requested this level of specificity in any submission.

Section 1357.15(f) Indian Tribal Organization Administering the Program(s)

This section outlines the requirement for submission of the name and description of the organization responsible for administering the title IV-B programs.

No comments were received on this section and therefore no changes are being made to the language proposed in the NPRM.

Section 1357.15(g) Vision Statement

The new focus on family-based services and community linkages requires changes in vision, philosophy, and in the design and delivery of child and family services. In order for States and Indian Tribes to develop a realistic yet forward looking CFSP, we believe that they must first set forth their vision in providing services to children and their families.

Comment: Many commenters wanted stronger connections made between the Vision Statement and other elements of the CFSP.

Eight commenters requested a stronger linkage between the vision and related goals and objectives and the principles set forth in § 1355.25. Several of the eight respondents suggested cross-referencing the sections. One commenter asked that demonstration grants be awarded to States to make the link.

One commenter wanted to have the CFSP vision and related goals and objectives specify how the principle of cultural and linguistic competence will be accomplished. In a similar vein another respondent wanted the vision to incorporate diverse populations.

One respondent wanted to see baseline data tied more closely to the development of the vision, goals and objectives in the CFSP. At the same time, the commenter wanted the final rule to acknowledge both the expectations and the real limits of the planning process resulting in the development of the CFSP.

Response: The request for greater linkage of the Vision Statement with other sections of the CFSP is valuable. We encourage all States and Indian Tribes to make thematic and content connections. The comments have resulted in the adding of a requirement that the vision must reflect the child and family service principles described at § 1355.25. No other regulatory changes to this section are being made.

Comment: Two respondents raised issues about how to apply the Vision Statement.

One respondent questioned whether the Vision Statement will be more than an affirmation of ideals and become a basis for measuring success as well as a basis for holding legislators and administrators accountable.

Another commenter proposed that each service provider under the plan accept the vision statement.

Response: The Vision Statement is one critical aspect of the CFSP that provides States and Indian Tribes with the opportunity to create a positive and futuristic general image of how they will organize their child and family service system, who it should serve, what services are needed, and how those services will be delivered. The baseline data, goals, and objectives, that flow from the Vision Statement, and are a part of the CFSP, will establish the basis for measuring success and accountability. All States and Indian Tribes are encouraged to work toward reaching consensus with their particular set of service providers regarding the vision statement, since that will significantly contribute to the successful implementation of the CFSP.

Comment: Two commenters spoke to the importance of cultural issues in relation to the Vision Statement.

One commenter wanted to make sure the vision specified how principles of cultural and linguistic competence would be achieved.

The second respondent emphasized how important it was for diverse populations to be involved in the development of the vision.

Response: In § 1355.25(e) the importance of cultural factors in the design and delivery of child and family services is recognized. As noted above, a requirement that the vision must reflect the service principles at § 1355.25 has been added. It is our expectation that States and Indian Tribes will forge visions which lead to the creation and management of culturally sensitive and culturally competent programs and practices.

Section 1357.15(h) Goals

In order to translate a vision into service delivery systems, States and Indian Tribes must build on their vision statement and philosophy and develop goals for the next five years. Goals must be stated in terms of improved outcomes for the safety, permanency and well-being of children and families and in terms of the development of a more comprehensive, coordinated, and effective child and family service delivery system. We have added the

term "permanency" to the goals language in the final rule because it had been inadvertently omitted in the NPRM.

Comment: Four commenters supported the goal setting activity and pointed out how important it was for goals to be established in order to improve outcomes, reform service delivery, evaluate performance, and determine effectiveness.

Response: The value of quality goal setting within the context of the CFSP cannot be underestimated. It represents a commitment by the State or Indian Tribe to accomplish certain efforts during the CFSP five-year timeframe and is a statutory requirement. In order to reinforce this time orientation, the phrase "and by the end of" is being added to § 1357.15(h).

Comment: Four commenters identified the challenges and complexities inherent in the goal setting task.

One noted that indicators of child and family well-being don't change that rapidly and are affected by external factors beyond existing policies and programs.

Another cautioned that accurate information was not abundant and this could make the creation of "real" goals difficult.

One respondent pointed out that this is a new activity for States, and there will be a reluctance to a push for quick goal setting.

Finally, one commenter acknowledged the challenges around setting goals and asked for additional regulations to help guide the process.

Response: Establishing goals is a demanding and essential activity and remains crucial to States and Indian Tribes keeping track of their progress and accomplishments. Feedback from focus groups ACF conducted and comments received in response to this section of the NPRM affirmed the salience of goal setting. The NPRM was sensitive to the fact that States and Indian Tribes possess varying degrees of proficiency regarding goal setting, and an emphasis on making use of reliable and valid baseline data should contribute to the development of "real" goals. Moreover, States and Indian Tribes will have the opportunity to make revisions to their goals on a yearly basis. In order to allow States and Indian Tribes substantial discretion in developing goals consistent with their vision and philosophy, it would not be appropriate to generate additional regulations in this area.

Although we are not providing additional regulations in this area, we thought the following example of a

permanency goal, objectives, and indicators would be helpful:

Permanency Goal: Ensure permanency for children in foster care through timely placements in permanent homes.

Objectives: To increase by [x] percent the proportion of children who exit the foster care system through reunification, guardianship, or adoption within two years of placement.

To increase by [x] percent the proportion of children with special needs who are adopted annually.

Measures/Indicators

- The number of children who exit foster care through reunification, guardianship, or adoption provided through AFCARS data.
- The number of children with special needs who are adopted annually provided by AFCARS.

Comment: Several commenters addressed issues related to the breadth and emphasis of the goals themselves.

A respondent asked that the goals be expressed in terms of outcomes and the same respondent along with another commenter asked that the goals encompass matters of economic stability and independence.

A commenter argued that where applicable the goals should be specified for any targeted groups.

A commenter listed a set of issues such as substance exposed newborns, teen pregnancy rates, infant mortality, immunization rate, etc., which should be incorporated into the goals.

Response: ACF agrees that goals should be expressed in terms of outcomes. While outcomes addressing issues such as economic stability and independence, infant mortality, and teen pregnancy rates are important, ACF is currently emphasizing the outcome areas of safety, permanency, and well-being of children and families to measure child and family services. Specific outcomes will be discussed in greater detail in future regulations addressing the child and family services review process. State and Tribal discretion in developing specific goals based on philosophy, vision statement, and unique factors or circumstances must be preserved. Within this flexible framework States and Indian Tribes have the freedom to establish goals targeted to particular groups.

Comment: Three commenters either made requests for modifying the content in this section or questioned whether any modification was possible.

One commenter requested that § 1357.15 (h)–(k) be merged into one section in order to strengthen

integration among goals, objectives, and indicators of progress.

One respondent encouraged the inclusion of content from a particular document, developed by a non-governmental organization with expertise in family preservation and family support, on the topic of planning for family preservation and support service programs.

One commenter wanted to know if the goals specified in the preamble to the NPRM were the official set of goals and whether goals other than those listed were acceptable.

Response: There are a number of valuable documents that have been published by various organizations which States and Indian Tribes may find useful as they plan, revise and implement their five-year plans. States and Indian Tribes are encouraged to make use of all materials which they find suitable. Goals, objectives, measures of progress and baseline information have been treated in separate sections to ease understanding and emphasize the importance of each element in the CFSP. However, as explained later, the language in § 1357.15(j), Measures of Progress, has been revised to better link the measurement criteria to the accomplishment of goals and objectives. The goals set forth in the preamble to the NPRM are for illustrative purposes only. State and Indian Tribes have the latitude to develop goals germane to their situation.

Section 1357.15(i) Objectives

With a focus on outcomes for children, youth, and/or families or on elements of service delivery in the CFSP, objectives should include interim programmatic benchmarks, dates of accomplishment and a long-term timetable, as appropriate.

We recommend that family preservation and family support services be targeted on populations and in geographic areas of greatest need. Targeting may include a range of vulnerable populations (children, youth and/or families) in specific geographic regions, counties, cities, communities, census tracts, or neighborhoods. States should also consider targeting services to support community-based strategies which draw on multiple funding streams and which bring a critical mass of resources to bear in high-need communities.

Comment: Several commenters addressed the geographic scope of implementation of family preservation and family support services as spelled out in the Objectives section and reflected in the delivery of services. One

respondent called for making the requirements Statewide. Another commenter emphasized focusing on geographic areas and populations with the greatest need.

Response: There will be no change in regulatory language. There is no requirement that services be Statewide, although States are encouraged to move in that direction. States and Indian Tribes will retain authority to target in a manner they deem most appropriate.

Comment: We received four comments to our request on the advisability of developing model plan guidelines. Two commenters asked that we not issue model guidelines. Instead, they suggested ACF further support planning efforts by developing ways to encourage the State planning process to meet child and family service plan objectives and goals. Alternatively, two commenters indicated that model guidelines would be of great assistance.

Response: In light of the few comments received and our desire to provide maximum flexibility, we have decided not to pursue the development of model plan guidelines. However, we will continue to work in a collaborative partnership with States and Indian Tribes. A comprehensive technical assistance contract was awarded in 1995 to assist States and Indian Tribes in the development and implementation of the CFSP. In addition, we will continue to provide in-house technical assistance as part of the joint planning provisions to assist States and Tribes in developing and implementing the CFSP. While we will not publish model plan guidelines, we will disseminate exemplary State and Indian tribal plans that can be used as models.

Comment: One commenter asked that objectives be required to determine progress, as well as promote monitoring and ongoing assessment.

Response: We feel the existing regulatory language on objectives, when combined with the annual progress reports, will accomplish this.

Comment: Several commenters were concerned by various elements of the examples provided in the preamble to the proposed rule. One commenter recommended that we state instead, "reduce the number of children removed from poverty and/or substance abusing families through the use of family support type services."

Another commenter suggested that example 3, which speaks to reducing the number of reports of child abuse and neglect cases involving serious injury be revised to insert the word "substantiated" before "report," citing the concern that the number of reports

should not be used as a negative benchmark.

Still another commenter criticized the example objectives as very traditional and narrow that might encourage people to think in black and white and lead to bad practices. This commenter recommended we provide instead examples that are more "non-traditional" and that focus on elements of service delivery that are linked to outcomes in important ways. Finally, one commenter noted that the examples provided were all related to children and families and questioned whether objectives related to system changes would be acceptable as well.

Response: The respondents' comments are well taken and may be of assistance to other States in pursuing their objectives. However, since they speak only to the examples of objectives provided in the preamble of the proposed rule for illustrative purposes only, we are not making any changes to the rule at paragraph (i) of § 1357.15. States and Indian Tribes should establish objectives which reflect their own priorities, funding decisions and strategies for providing child and family services. However, we would like to highlight the importance of establishing objectives which focus on outcomes for children, youth and families or on elements of service delivery and system change that are linked to outcomes. We strongly believe that outcome based goals and objectives allow the State an opportunity to obtain better information about the safety, permanency and well-being of children and families.

Comment: Two commenters suggested technical changes to the language provided at paragraphs (i) (1) and (2) of § 1357.15. The first asked that we revise the language in (1) to add that the objectives focus on elements of service delivery including staff competencies and staff workloads and in paragraph (2) to add reference to improving the quality of existing services. The other commenter suggested in paragraph (1) that we should change the wording from "each objective *should* focus on outcomes" to "*must* focus on outcomes," since *should* fails to convey the necessary imperative.

Response: While we have no problem with the technical language raised by the commenters in the first two instances, we are not adding this language to the rule. We believe the rule is sufficiently broad to support these examples and should remain broad enough to allow States and Indian Tribes flexibility to set their own objectives. The rule will remain unchanged with regard to the focus on outcomes in developing objectives. A

focus on outcomes is not required, but certainly encouraged.

Section 1357.15(j) Measures of Progress

In response to comments we received, we have added a statement that the State, in its CFSP must assure that the data and information to measure progress will be collected, organized and analyzed in a quality manner, and that the data and information will ensure States' and Indian Tribes' ability to gauge progress towards achieving their goals and objectives.

Depending on the goals, objectives, and outcomes selected, measuring progress may be based, in part, on quantifiable indicator data (e.g., numbers of substantiated child abuse and neglect reports) or on the results of activities such as monitoring mechanisms, quality assurance efforts, other information collection activities, other planning processes, and internal evaluations.

Comment: Several respondents dealt with the relationship between information systems and measuring progress.

One commenter suggested that the initial outcome measures be the establishment of systems (SACWIS/AFCARS/NCANDS) and description of processes.

Another commenter noted that SACWIS will not be fully operational in time to gather baseline and program data. The same commenter noted that outcome evaluation/quality assurance determinations will be derived from SACWIS when it is operational and States will need increased flexibility on the part of the Department when demanding additional data.

Response: With respect to the first comment, unless the design and implementation of automated information systems is a specific plan goal, it cannot be viewed as appropriate indicators of progress toward meeting goals, objectives and outcomes of the CFSP, but rather as eventually a source for obtaining data and information to determine progress.

This rule has been written to provide States and Indian Tribes with the necessary flexibility to determine how they will measure progress and collect quantifiable data. While States are making enormous strides in developing and implementing automated information systems and there is a need to support and encourage these actions, we agree that these systems will not be operational in time to collect and report baseline data, and it will take a while before they are capable of ascertaining progress.

Comment: Two respondents considered factors related to the quality of the measures of progress.

One commenter recommended that the requirements of this section should go further and require the grantee to demonstrate the validity of the measure of progress it has chosen suggesting that we add: "The CFSP should describe how the measurement criterion selected to assess each goal and objective can be expected to gauge accurately the progress toward achieving that goal or objective."

Another commenter expressed concern that measures must be realistic and attainable.

Response: We agree and the regulatory language has been revised at § 1357.15(j) by adding a second sentence to incorporate their suggestions.

Section 1357.15(k) Baseline Information

In order to properly measure, monitor, and adjust activities, States and Indian Tribes must assemble baseline data, drawing first on what is existing and available. The specific collection of service data is important, and central to the CFSP development and implementation process.

The following suggestions of possible indicators of child and family well-being and service delivery status will be useful for setting goals and objectives, for targeting services geographically and to priority populations, for detailed service planning, and for assessing progress. Although these examples were included in the proposed rule, due to substantial interest in them from the public, we are repeating them here.

(1) *Examples of indicators on child and family well-being:* Number of substantiated reports of child abuse and neglect, percent of children born addicted or drug exposed, reducing child fatalities, incidence of domestic violence, number of children in out-of-home care, number of children in psychiatric placements, number of children awaiting adoption, and youth in stable living situations after exiting foster care.

(2) *Examples of indicators related to other services systems:* Percent of low birth-weight babies, percent of births that are to single teens, teen pregnancy rate, immunization rate, percent of children in poverty, percent of children in single-parent families, percent of families receiving title IV-A, runaway and homeless youth rate, child/youth suicide rates, juvenile violent crime arrest rate, teen violent death rate, percent of teens not in school and not in labor force, percent of teens graduating from high school on time,

high school dropout rate, and percent of eligible children in Head Start.

(3) *Examples of indicators on the State's (or the Indian Tribe's, as appropriate) service delivery capacity:* The extent to which child welfare, family preservation, and family support services are available and being provided (e.g., number and percentage of families served, waiting lists, etc.); the availability of out-of-home care and placement (including adoption) resources; the availability of prevention and intervention services; the availability of critically needed services such as housing and substance abuse treatment; the extent to which existing services are coordinated with the provision of other child and family services, particularly child protective services and independent living services (e.g., indicators of successful referrals); and the funding resources and expenditures, geographic availability, numbers of persons served, and insufficient service capacity (unmet needs) related to these services.

(4) *Examples of indicators States or Indian Tribes, as appropriate, might use or seek to develop relating to strengthening the delivery of services and accomplishing goals and objectives:* The extent to which resources are available for training, technical assistance, and consultation, including leadership development, staff development, and interdisciplinary training; the existence and utilization of quality assurance measures, program development and management and data analysis; and the implementation, expansion, and utilization of management information systems.

Comment: Several commenters responded to the value and importance of baseline information and what constitutes sufficient information and on the range of services needed by families being served by family preservation and support services including social, health, educational, and economic services. One respondent called for the gathering of information on all programs intended to meet the needs of families. One commenter argued that the identified needs should reflect "real" family concerns. In contrast, another commenter suggested that consideration be given to eliminating the baseline information collection requirement. Several commenters wanted clarification as to how much information is adequate and how the State and Indian Tribe and/or ACF will determine how much is enough.

Response: There is a statutory requirement for States and eligible Indian Tribes to develop a five-year plan

with goals and objectives and to review progress towards meeting those goals and objectives on a yearly basis. Information obtained from focus groups and respondents' comments have emphasized the importance of baseline data to developing responsive goals and objectives. In keeping with the approach of flexibility, we are not setting requirements regarding specific baseline information to be collected, except for our condition in § 1357.15(k)(3) that information about existing family preservation and family support services must be included. The determination of what constitutes adequate baseline information and specific family preservation and family support information for a particular CFSP will be made in the context of the joint planning process.

Clarification on what is acceptable documentation for submission by Indian Tribes is being provided by adding the following sentence to § 1357.15(k)(2): "An Indian Tribe may submit documentation prepared to satisfy the requirements of other Federal child welfare grants, or contracts (such as the section 638 reporting form), along with a descriptive addendum addressing specifically the family preservation and family support services available."

Comment: We received several responses to the request in the NPRM for public comment on the proposed indicators and the usefulness of defining indicators more concisely so that uniform definitions can be developed.

One commenter felt the suggested indicators were comprehensive, covered the priority areas, and that more concise definitions were not needed.

One commenter noted that specific guidelines would be preferable at some point in the future when all involved parties have more knowledge.

Another commenter recommended that a few indicators be selected and required across states, with other information remaining optional.

An additional respondent asked for flexibility, especially at the outset of the process.

Response: The comments we received have convinced us to maintain flexibility in this aspect of the proposed rule. No specific baseline indicators will be mandated and there will be no attempt to establish uniform definitions. The AFCARS and SACWIS should capture necessary national data and it serves no useful purpose to duplicate those requirements in this rule. States and eligible Indian Tribes will have full discretion in identifying, operationalizing and employing

baseline data elements responsive to their CFSP.

Comment: Several commenters were concerned that the breadth of information and unreasonable amounts of detail required for the five-year plan is burdensome.

One respondent pointed out that the prolific information being requested will be disorganized and the accuracy of the information dependent upon the sources of the information.

Among the commenters who raised the burden issue, one suggested a less detailed summary be used as an alternative for Federal purposes such as the review by regional offices during ongoing joint planning meetings between ACF and States and Tribes.

Another respondent argued for narrowing the focus of data collection on unmet needs, while a third called for selecting some representative services that are statewide, but keeping the data at the State level for review and not passing it on to the Federal government.

One respondent noted that data collection poses a particular burden for all Tribes, especially small ones, considering the modest amount of funds available to them under title IV-B, subpart 2. The respondent proposed that Tribes be allowed to submit data they collect for their Indian Child Welfare Act 638 reports with a description of additional services that will or have been provided or personnel employed through the use of additional title IV-B funding.

Response: We do not wish to place a burden on States or Indian Tribes to expend excessive energy and resources on preparing and presenting copious amounts of data. Nor do we wish to over-burden the joint planning process with an exhaustive review and analysis of data. Therefore, we have clarified paragraph (k)(3) to specify that a summary of the information used in developing the plan must be included. We expect States and Indian Tribes to conduct appropriate data collection activities to thoroughly and accurately inform their planning efforts.

We agree with the recommendation to reduce the reporting burden on Tribes and have amended paragraph (k)(2) to provide that Indian Tribes may submit other documentation, such as the 638 reporting form, with a descriptive addendum addressing specifically the family preservation and family support services available, as described above.

Comment: A number of commenters raised cost issues in relation to baseline data.

One commenter expressed concern that the costs associated with collecting baseline data would be counted as an

administrative cost and subject to the 10 percent cap.

Another commenter wanted to know if there would be additional funding to cover research or administrative costs associated with hiring professionals to identify and collect baseline data.

One respondent wanted flexibility regarding data collection in order to reduce costs.

One commenter argued that States may well confront tough decisions when trying to decide how to pay for the costs of data collection and this could lead to a number of complications.

Response: Given the fact that the baseline information process is integral to the development of the CFSP, we have modified § 1357.32(h)(3) to confirm that data collection is viewed as a program cost as it is a part of the preparation of the CFSP and is not subject to the 10 percent administrative cap limitation.

In light of our decision to allow a data collection process responsive to the unique needs of each jurisdiction and a summary submission of data in the CFSP, both of which are based on existing and available data, we believe any and all costs associated with baseline information will not place an undue financial burden on any State or eligible Indian Tribe.

Comment: A number of comments addressed the role of automated information systems in relation to baseline information. Several respondents saw the merits and urged continuation of the emphasis on requiring States to develop and use automated information systems to ensure availability of baseline data. Several commenters noted that the preamble speaks to systems being designed (SACWIS) that may serve as a source of valuable information, but were concerned that States may not have their systems operating in time to be a source of baseline data for the development of the CFSP. One of the commenters urged ACF to give the States flexibility when additional data is required.

Response: We fully recognize the value and importance of automated information systems to improve programs and practices and feel we have instituted flexible policies and regulations designed to increase their usage and improve their operation throughout the child and family service system. We recognize that a State's SACWIS may not be operational in time to provide baseline data for the first five-year plan. In fact, not all States plan to develop a SACWIS. However, AFCARS should eventually be available

to provide additional and updated data necessary to measure progress during the five-year period in accordance with § 1357.15(k)(1).

Comment: Several commenters dealt with the relationship between targeting and baseline data.

One commenter noted that the preamble speaks to targeting services to certain populations and/or geographic areas and asked, if services are targeted, whether targeted data collection would be allowed.

Another commentator suggested that language be included to allow States or Indian Tribes which may concentrate resources in a few targeted communities to use community-level rather than state-level data to track the process.

Several respondents suggested that the requirement that states gather and update statewide information on child and family well-being and on availability of services be clarified to explain that baseline data should help guide initial decisions about targeting and serve as the basis for tracking progress over time.

Response: A statewide or Tribal collection and analysis of data is necessary in order to conduct the strategic planning process and develop goals and objectives as spelled out in § 1357.15 (a) and (b) and to target service decisions. In paragraph (k)(2) of § 1357.15, we have required the State or Tribe to collect and analyze data on a Statewide or Tribal-wide basis only for Family Preservation and Family Support Services. However, if services are targeted, the focus of on-going data collection and analysis likely will be in those targeted areas in order to ascertain progress in accomplishing plan goals and objectives. Targeted data collection is acceptable and appropriate in these instances, provided that this data is collected with overall statewide information.

States and Indian Tribes also have an ongoing responsibility to keep a current statewide or Tribal-wide baseline data base in order to keep apprised of emerging problems, new populations experiencing new challenges, groups currently being served who are experiencing new challenges, and to track trends over time. These inevitable changes will likely result in modifications to the CFSP over its five-year life span.

Comment: Several commenters asked that we delete what was perceived as a vague statement in this section, "other services which impact on the ability to preserve and support families may be included in the assessment", and instead require baseline data on the full range of services needed by at-risk

children and families; specifically including mental health services, substance abuse services, etc.

Response: No changes are being made. The statement interpreted by commenters as being vague was intended as an acknowledgement of the enormous variety of programs and services in different State and Indian Tribes and a means of providing both groups with sufficient discretion to determine appropriate data sources. The request to require baseline data on the full range of services needed by at-risk children and families would be overly prescriptive. States and Indian Tribes are encouraged to include the collection of data from service systems other than the child and family service continuum, but it is not being required.

Comment: Several commenters addressed different facets of categorizing the baseline information.

One commenter suggested that States be required to gather baseline data on child and family well-being and service delivery capacity that is grouped by indicator specific to minority groups as well as information on the appropriateness of training, technical assistance, consultation and quality assurance of service delivery capacity for specific targeted groups.

Another commenter wanted to make sure that the categories of baseline information used in developing the plan be cited.

A respondent asked that the rule explicitly state certain categories of baseline information that must be included.

Response: The suggestions made by the respondents are reasonable and appropriate. Nevertheless, given the enormous diversity among States and Indian Tribes in terms of the needs of their various child and family populations, the services they are providing, as well as how they are organized to deliver the services to those in need, we are resistant to specifying categories of information or precise indicators that must be included. The categories of indicators cited in the preamble of the proposed rule and reiterated here are only meant to be illustrative. Each State and Indian Tribe with the ACF Regional Office will determine the appropriate schema for categorizing its baseline information.

Comment: One commenter indicated more technical assistance will be needed in this area since activity is likely to become fragmented.

Response: ACYF implemented a significant five-year technical assistance initiative in fiscal year 1995 which involved funding a set of national resource centers and a technical

assistance coordination contractor. States and Indian Tribes seeking assistance will be able to receive it by working with ACF and resource center staff.

Comment: A commenter recommended using positive language for our examples of indicators such as using "reducing child fatalities" as opposed to "child death rate".

Response: This is an excellent suggestion and we encourage all States and Indian Tribes to consider the commenter's recommendation about adopting a more positive orientation as they develop labels for their indicators.

Section 1357.15(l) Consultation

We received 22 comments to this section. Overall, the remarks were positive, expressing endorsement for the use of broad-based consultation with the public and private sectors.

As a condition of CFSP approval, Section 432 requires that the plan be developed by the State and the Indian Tribe after consultation with a wide range of appropriate public and nonprofit private agencies and community-based organizations with experience in administering services for children and families (including family preservation and family support services). In this section we are requiring States and Indian Tribes to describe their consultation process and we have included suggested lists of groups that may be involved in the process.

The Department believes that States and Indian Tribes will benefit from a broad, active consultation process in strengthening the planning and implementation of the CFSP. In keeping with State flexibility we have not mandated either a particular consultation process or a specific list of entities with which States and Indian Tribes would be required to consult.

We believe the suggested categories of participants in the consultation process provided in paragraph (l)(3) represent a minimal level, mandated by section 432(b) of the statute, of programmatic, political/administrative, and experiential involvement in this process. We continue to encourage States and Indian Tribes to go beyond the suggested list and include other categories of organizations and individuals based on State and local circumstances.

Comment: Three commenters raised concerns regarding the list of suggested agencies to be involved in the consultative process. The concerns focused on what happens if a State fails to consult with each of the groups listed and that the list of actors was overly

prescriptive and unnecessarily creates monitoring and compliance issues. It was felt that recommendations would be helpful but a defined list will not assure meaningful involvement.

A related comment suggested that in order to ensure that the range of consultative groups are seriously and consistently consulted, States should be held accountable for how and to what extent they included each category in the planning process. It was also suggested that we could clarify the different forms that consultation can take and that ACF include a requirement for a clearly defined beginning, middle and end to the consultation process.

Response: While the consultation process and a wide range of appropriate public and nonprofit private agencies and community-based organizations with experience in administering services for children and families are required by statute, we believe States and Indian Tribes should retain flexibility to determine both the form and the intensity of consultation and participation by various groups. Also, as stated above, the list is a suggested list and, while we feel all groups should be involved, we are not mandating that each one must be consulted. We would hope that over time each group will be brought into the process.

With respect to mandating a specific process for consultation with distinct closure, we have intentionally left this open to provide flexibility for such processes to be ongoing and to be developed at the State/Tribal level.

Comment: Several commenters asked that we amend paragraph (l)(3)(vii) to strongly emphasize the vital role that courts and legal advocates play in service planning. Specifically, they suggested that we replace "the courts" with "Representatives of the court systems (including, in States receiving grants under section 13712 of Pub. L. 103-66, a designee of the highest State court), attorneys representing parents, children and the State agency in dependency cases; and any guardian ad litem or court-appointed special advocate (CASA) programs operating in the State."

Response: We believe the existing references provided to courts, individual practitioners working with children, and law enforcement support our recognition of the important role of the judiciary and legal systems. We agree with the commenter and we encourage the states to consider seriously the merits of the involvement of the legal realm.

Comment: Many comments suggested additional specific categories of

required consultation, i.e., protection and advocacy organizations, professional organizations, Children's Trust Funds, mental health and developmental disabilities agencies, youth agencies which have not traditionally provided child welfare services, replace the general reference to "housing program" with reference to specific, "State agencies with regulatory authority over federally funded local housing agencies, State agencies administering section 8 housing programs, State housing financing agencies and State fair housing agencies," the local chapter of the American Academy of Pediatrics, and pediatricians among major actors listed to encourage States to include a family support and prevention focus in the planning process. One commenter argued that collaboration was the mainstay of this rule and they were perplexed at the lack of mention of the Community-Based Family Resource Program. This commenter believes it is critical that the Federal government seek to unify these potentially polarizing initiatives and provide guidance to the States through example.

Response: These are excellent suggestions, and we urge states and Tribes to consider them in the on-going consultation process. However, we have made three changes based on these comments. First, we have revised paragraph (l)(3)(viii) to include, as suggested by the commenters, the Children's Trust Funds and the Community-Based Family Resource Program in the list. The Community-Based Family Resource Program and the Family Preservation and Family Support programs are linked by common purpose and approach to serving children and families. Both programs are administered by ACYF with maximum coordination at the Federal level. The Community-Based Family Resource Program was not specifically mentioned in the NPRM as it had just been enacted. The program was reauthorized under Pub. L. 104-235, the Child Abuse Prevention and Treatment Act Amendments of 1996 which was signed into law on October 3, 1996. FY 1995 was the first year grants were made to States for this program. The other changes are technical corrections. One is to provide for "IV-F" employment and training. The other change removes redundant language in the introductory sentence, changing "including, but not limited to," to "which may include:".

Comment: Three commenters suggested that the CFSP be required to address measures to prevent planning groups and committees from being

dominated by agency officials and private service providers such as by limiting public and private agency personnel to no more than 50 percent. Another commenter suggested that the final rule be clear about the level of involvement appropriate for each of the actors.

Response: We believe that to limit the number of consultation partners in the final rule would represent a significant departure from our commitment to provide flexibility. However, we would note that the rule does provide States wishing to do so with sufficient flexibility to determine the intensity of participation.

Comment: One commenter asked that in paragraph (l)(1) we add that information be included that facilitates the active, informed involvement of parents and children previously impacted by the social service delivery system within the State.

Response: Parental involvement is addressed in paragraph (l)(3)(iv), thus additional language is not necessary here. However, in response to this comment, we have amended the language to include children involved with, and children not involved with, the child welfare system.

Section 1357.15(m) Services Coordination

Service coordination is critical to the improvement of access and appropriate delivery of a range of services to children and their families.

Examples of services and programs are:

- Within the State agency: Existing family support and family preservation; child abuse and neglect prevention, intervention, and treatment; foster care, reunification, adoption, and independent living services, and
- Other public and nonprofit private agencies, including community-based organizations, which provide Federal or federally assisted services or benefits.

Examples of major programs are: The social services block grant; title IV-A; child support; maternal and child health; title XIX (Medicaid, Early Periodic Screening, Diagnosis, and Treatment (EPSDT)); mental health and substance abuse services; Community-Based Family Resource programs and child abuse prevention (Children's Trust Funds); transitional living; runaway youth and youth gang prevention; education; developmental disabilities; juvenile justice; early childhood education and child development programs (Head Start); domestic violence; housing; nutrition (Food Stamps, Special Supplemental Food Program for Women, Infants and

Children (WIC)); child care and development block grant and other child care programs; the community services block grant; Empowerment Zones and Enterprise Communities program (EZ/EC); education (school-based services); and justice programs.

Comment: We received several comments to expand the list of service delivery providers here to include advocacy services, the mental health and developmental disabilities services system and the State agencies with regulatory authority over housing.

Response: In paragraph (m)(1) we have clarified those organizations which may be involved in the planning process by adding additional examples in parentheses.

Comment: Several commenters thought that more guidance should be provided here and the purpose of the coordination requirement made explicit. One of these commenters was concerned that without greater specificity regarding goals, service coordination will continue to be secondary and out of step with the "holistic approach" to serving children envisioned. This commenter suggested that the CFSP should be required to include specific, concrete steps toward service coordination and to specify when during the five year period these steps will be completed.

Response: We have not accepted all the suggestions made, but we have amended paragraph (m)(1) to add a statement of purpose—that is, that the services coordination process is to improve access to services and deliver a range of services to children and their families. Again, we believe that the process itself should be left to the discretion of individual States and Indian Tribes.

Comment: Several commenters asked that we revise paragraph (m)(2) to state, "coordinate * * * to ensure that at-risk children and families have access to all services necessary to protect the safety of family members, promote family stability and prevent out-of-home placement whenever possible, regardless of the boundaries. * * *" These commenters further suggested that the examples provided include developing compatible and linked computer systems.

Response: We have revised the language in paragraph (m)(2) to include "linked automated information systems" as an example of a process that will lead to additional coordination of services. In regard to the remaining comment, we feel that the purposes expressed by these commenters are captured throughout the rule and therefore have not revised the language.

Comment: One commenter recommended that the requirements for service coordination under paragraph (m) and family preservation and family support services and linkages to other social and health services under paragraph (o) be merged into a single section which clearly states that the ultimate purpose of service coordination is to improve the well-being of children, youth and families. This commenter stated that while the preamble is clear on the importance of system coordination, the rule is not; and they suggested the rule be revised to clearly specify that there should be coordination with service delivery systems providing social, health, education and economic services to children and their families but also with mental health, developmental disabilities and housing systems.

Response: While we agree that paragraphs (m) and (o) speak to coordination and linkages of services respectively, we do not believe these requirements should be merged as each paragraph also has a separate aim. The intent of paragraph (m) is to describe the overall coordination process for the full range of child and family services provided by the State. Whereas, paragraph (o) is focused on the expansion of family preservation and family support services and the linkages with other services and service delivery systems as well as within the child and family services continuum.

Section 1357.15(n) Services

At the heart of the State and Indian Tribal plans is the description of child and family services. We believe that the description of services required in this section is one of the most important aspects of the CFSP. Not only will it provide a comprehensive picture of the services provided and resources available, it can clearly illustrate State and Indian Tribal decision-making in directing services toward the goals and objectives in the CFSP and form the basis for discussion of future coordination of services and improved service delivery.

We have also noted in the rule that several of the requirements (providing information on child protective services, child welfare services, family preservation and support services, foster care, and adoption) of paragraph (n) can be met by completing the CFS-101, Part II—the Annual Summary of Child Welfare Services.

Comment: One commenter asked that we revise paragraph (n) to encourage States to specify private support as well as publicly supported family support programs in their child and family

services continuum, at least in targeted communities. This commenter also recommended that the rule provide that child abuse and neglect prevention, intervention and treatment should be reported separately and distinctly from foster care even though they are both included in the child and family services continuum.

Response: While information on private family support programs may be included in a State's CFSP and are important in helping States to determine where to target resources, for purposes of Federal reporting, States need only report information on publicly funded services. We believe it is clear that child abuse and neglect prevention, intervention and treatment are to be reported separately from foster care and we have not made any changes in response to this comment.

Section 1357.15(o) Family Preservation and Family Support Services and Linkages to Other Social and Health Services

In meeting this requirement, States will use, in part, the information gathered on the availability of family preservation and family support services (see § 1357.15(k)(2)). Since FY 1995 is the first year in which all States are implementing the new title IV-B, subpart 2 (family preservation and family support services,) we believe this information will provide a national overview of the development, operation, and/or expansion of family preservation and family support services in all States as well as identify the processes States are using to develop coordinated systems of care.

Comment: Commenters asked that States be specifically required to link family preservation and family support to mental health and education.

One commenter asked that the child and family services plan explain how Federal mental health funds under the Child and Adolescent Service System Program and the Child Mental Health Service Program, in addition to CAPTA and ILP will be coordinated with the State's child and family services system of care.

Response: While we do not require linkage to specific additional programs or services beyond those directly in the plan, we believe the language in paragraphs (m) and (o) is sufficiently broad to accommodate the services listed by the commenters.

Comment: One commenter recommended that we amend the service requirement to specify that the CFSP describe how the new family support and family preservation service programs will relate to privately funded

as well as publicly funded family support services.

Response: We believe the commenter's point is addressed in § 1357.15(o)(3) which requires the CFSP to describe the linkage and coordination of services in the continuum and other Federal and non-federally funded public and non-profit private programs.

Section 1357.15(p) Services in Relation to Service Principles

We included the child and family services principles in this rule at 45 CFR 1355.25 to assure that services designed with title IV-B funding would be consistent with a vision expressed by practitioners in the field, which we have embraced. We believe these principles are the basis for the development of effective, responsive, and quality services programs.

Comment: One commenter asked that reference to principles of child and family services be clearly distinct from the vision, goals and objectives that a CFSP contains. From the commenter's perspective, the CFSP's vision, goals and objectives are the factors against which progress should be measured while principles are to be used as guidelines.

Response: We agree with the respondent's interpretation of the distinction between the principles and the vision, goals and objectives and believe this distinction is clear in paragraphs (h) and (i).

Section 1357.15(q) Services in Relation to Permanency Planning

The "permanency provisions" enacted by the Adoption Assistance and Child Welfare Act of 1980 (Pub. L. 96-272) focused on the importance of providing preventive and crisis intervention services and establishing permanency for the children in foster care. Through permanency planning, children were to be placed in permanent living arrangements as quickly as possible. Permanency is still the cornerstone of child welfare practice with children.

In October 1994, Pub. L. 103-432 was passed, amending the Social Security Act. One of the amendments repealed section 427, effective October 1, 1996. The protections that were formerly under section 427 of the Act are now incorporated in section 422(b)(9) as title IV-B Plan requirements. Department policy has been and continues to be that the State, as required by statute, is responsible for providing these protections to all children, including Indian children. The specific arrangements with respect to Indian children under Tribal jurisdiction can

be effective only if they are discussed jointly by the State and the Tribe. We are accordingly requiring that the CFSP include a discussion of the arrangements that the State has made with Tribes for this purpose. It is expected that the States will take the initiative to contact all Tribes, if they have not done so already, for the purpose of ensuring that the 422(b)(9) protections are provided to Indian children. Likewise, a Tribe that wishes to receive direct funding must include in its Plan a discussion of the arrangements that have been made with the State (see § 1357.40).

Comment: One commenter requested that we illustrate that family preservation and family support services can and should be provided to families when children live apart from their families in order to achieve permanency for children.

Response: We agree with the thrust of the respondent's comment and believe that the definitions of family preservation and support services in § 1357.10 and the principles at § 1355.25 all support the use of family preservation and family support services with children living apart from their families as well as with families before children have been removed. Family preservation and family support are two critical strategies to be used to achieve permanency for children.

Section 1357.15(r) Decision-Making Process: Selection of Family Support Programs for Funding

In making funding decisions for family support services, we strongly recommend that States examine the work and accomplishments of community-based organizations and look to them as the providers of first resort of family support services. It is these organizations, based in and trusted by the community, which typically have the knowledge and expertise to effectively provide these services.

Comment: One commenter suggested that the requirement for decisionmaking be expanded to include information on how the State will select criteria for funding services over the five-year period.

Response: While we believe that States should establish such criteria to support decisionmaking, we believe that such requirements for selection are not required for Federal reporting purposes.

Comment: One commenter noted that the preamble recommended that States look to community-based organizations that are based in and trusted by the community as the highest priority potential providers of family support

services and was concerned that there is nothing in the rule to allow Federal officials to know the extent to which such community-based organizations are in fact the providers of these services. The commenter recommended that the CFSP be required to reflect in more detail the nature of the providers that are chosen and what percentage of the family support dollars are being provided by different types of community-based organizations.

Response: The Statute requires that family support services be community-based, not necessarily provided by community-based agencies. We support State efforts to set detailed guidelines or criteria regarding selection and the extent to which different types of community-based organizations should be involved. However, reporting of this nature would not be necessary for Federal purposes.

Section 1357.15(s) Significant Portion of Funds Used for Family Support and Family Preservation Services

A statutory requirement of section 432(a)(4) of the Act, this provision is designed to assure that both family preservation and family support services are developed within a State or Indian Tribe. While the statute does not define "significant," the State's rationale will need to be especially strong if the request for either percentage is below 25 percent.

Comment: While a number of commenters remarked positively on this section, there were some opposing comments. One commenter recommended that rather than provide that "there is no minimum percentage but a State's rationale will need to be strong if below 25 percent", we provide instead, "There will be no minimum percentage that defines significant. The States will provide the rationale for funding allocation method." The commenter was concerned that to insist on a specific percentage imposes a top-down insistence that may not be embraced positively in the communities.

Another commenter stated that the requirement that States indicate the specific percentage of Federal funds the State would expend for community-based family support services and for family preservation services and a rationale would be difficult if not impossible to determine since many services can be considered both, such as the State's new home visiting program. Instead, the commenter asked that the standard be revised to give the State flexibility in determining how best to use IV-B funds. One commenter indicated that they would not support

the inclusion of a minimum percentage to define significant portion of funds, stating that a planning process should be a forum for reform rather than for "dividing up the pie."

Response: We believe that this section, of all the options considered, best represents the approach for determining "significant portion." We believe we must provide some guidance to States on meeting this requirement, while remaining committed to providing maximum flexibility to accommodate a wide range of differences among States. While we understand that in some cases it may be difficult to categorize certain programmatic expenditures as either family preservation or family support services, we see the joint planning process as the mechanism by which States, Tribes and Regional Offices can reach agreement on these matters. We will support all reasonable determinations made and are available to provide technical assistance if requested.

Comment: One commenter was concerned about a perceived lack of emphasis on primary prevention, stating that while the child and family service plan is important, it may be difficult to coalesce treatment and prevention agencies without losing hard fought focus on prevention initiatives. The commenter was concerned that the rule did not provide guidance on the percentage of funds to devote to programs for family preservation and support and thought that without this, there may be less allocated to primary prevention efforts.

Response: We believe that it is important to note that even the limited focus on prevention provided in this rule is stronger than that addressed previously. We do not think it necessary, or within our authority, to provide restrictions on the percentage of funds for family support or family preservation services. Paragraph (s) of § 1357.15 requires States to include an explanation of distribution of funds and requires that States which spend less than 25 percent on family preservation or on family support have an especially strong rationale for the minimal funding level.

Section 1357.15(t) Staff Training, Technical Assistance and Evaluation

States and Indian Tribes consistently build staff expertise and organizational capacity for the design and delivery of family preservation and family support services as well as conduct self-evaluations. We want to emphasize that States are not required to conduct

evaluations and/or research activities related to the CFSP.

Comment: A number of comments were received on the general nature or specific aspects of the training and technical assistance portion of the CFSP as presented in the NPRM.

Two respondents were pleased to see training and technical assistance conceptualized as a program cost and not viewed as an administrative cost.

One commenter wanted the subsection strengthened by adding language from the preamble dealing with interdisciplinary training and continuous improvement.

Several respondents wanted standards for elements such as staffing qualifications, different types of training, training requirements, and coordination.

A commenter was disappointed that the NPRM failed to present a specific mechanism to teach staff how to work effectively within the new value base.

A few respondents perceived the preamble of the NPRM as recommending that the entire staff of the child welfare agency providing family preservation and family support services be trained and that specific types of training be proposed. They were concerned with what appeared to them to be insufficient Federal funds to support this approach to T&TA and one urged title IV-E training funds be allowed to be used.

Two commenters called for cross-disciplinary training.

Response: Although a number of focus group members convened to guide implementation of the Family Preservation and Support Services Program prior to the publication of the NPRM recommended training all child welfare system staff, a decision has been made to not transform that request into regulations. Decisions regarding the facets of training and specific training content can only be made by each State or Indian Tribe based upon their CFSP. In response to concerns raised about interdisciplinary training and continuous improvement, we added the following language to § 1357.15(t)(1): "Training must be an ongoing activity and must include content from various disciplines and knowledge bases relevant to child and family services, policies, programs, and practices. Training content must also support the cross-system coordination consultation basic to the development of the CFSP."

Training supported by various Federal funding streams should be linked together. The title IV-E training plan must be combined with the CFSP training plan submitted as part of the title IV-B plan to promote the

coordination of overall training and the integration of training in support of programmatic efforts. States and Indian Tribes are encouraged to make title IV-E training as complementary to and supportive of the CFSP as it can be. At the same time, title IV-E training has a unique focus and operates within a specific statutory and regulatory framework.

Comment: Several respondents either requested clarity regarding what was meant by evaluation, or proposed specific evaluation strategies to be incorporated into the rule.

A respondent requested additional funding support for evaluation.

One respondent felt the use of the term "evaluation" in this subsection was confusing.

Three commenters supported State administered evaluation efforts, self-evaluation practices tied to the unique circumstances each State or Indian Tribe has to contend with, or front-end evaluation.

One commenter asked that voluntary providers be involved in the evaluation of the T&TA effort.

Response: Evaluation is extremely important and although evaluation is not required and extra funds are not provided specifically, as indicated in § 1357.15(t)(3), there is support for any evaluation underway or planned in a State or Indian Tribe related to the goals and objectives of the CFSP. In addition to State and/or Tribal activities, the Department is conducting national evaluations which will help inform professional and policy audiences about the effects of the services. The Family Preservation and Support Services Program, title IV-B, subpart 2, remains a capped entitlement program, and no additional funds beyond the State or Tribal yearly allocation are available.

Comment: One respondent called for the inclusion of staff from voluntary agencies in training.

Response: There will be no change in regulatory language because it would be inappropriate to regulate any specific group that must be involved in training. It is assumed that when voluntary agencies are represented in the goals and objectives set forth in the CFSP and actively involved in the implementation of the CFSP, they will, of necessity, have to participate in appropriate training.

Comment: Two respondents raised cultural issues in relation to training.

One commenter urged that ICWA mandates and other American Indian cultural competence training materials be required for inclusion in training activities.

A second commenter asked for education and billing "waivers" to develop culturally sensitive providers for specific groups.

Response: In § 1355.25(e) we affirm the importance of cultural issues and factors in the design and delivery of child and family services. It would not be suitable to weave into the rule particular culturally-based items or resource materials that must be included in training. States which have American Indian or Alaskan Native populations and Tribal governments or other culturally or linguistically diverse populations will have the motivation and flexibility to develop and offer culturally relevant training. Also, since statutory provisions neither request nor require specific providers for specific groups, there is no basis for establishing regulations on the issue.

Section 1357.15(u) Quality Assurance

In designing, expanding, and implementing quality assurance activities, States and Indian Tribes may wish to refer to the principles in 45 CFR 1355.25.

Comment: We received several responses to our request for recommendations for model approaches, procedures and basic measures or measures of quality. One commenter urged that we continue to gather information for purposes of providing guidance and technical assistance to States but that quality assurance systems not be used as a measure of compliance with any minimal Federal standards. Another commenter remarked that an HHS Office of the Inspector General 1994 Report recommended that ACF require States to have quality assurance programs in place that look at the quality of casework and services provided, not just documentation of procedures.

The commenter recommended that States be required to spell out, at a minimum: Standards against which they will assess the quality and effectiveness of services provided, how various requirements described in this rule will be met, and procedures to discontinue services that do not meet certain standards of quality.

Response: We support the commenter's position that quality assessment can provide information to allow more meaningful Federal guidance and technical assistance to States. While this information will be helpful in determining compliance with Federal requirements, it will not serve as the sole tool for monitoring compliance. We considered establishing minimum Federal standards for quality

services, but recognizing the variance in individual State circumstances, we determined that States should have flexibility to design their own quality assurance systems.

Comment: One commenter asked that we strengthen the rule by including some examples of quality assessment techniques for cultural/linguistic competence.

Another commenter noted that the rule allows virtually unlimited discretion in designing a quality assurance system but offered that any effective system would normally be expected to include certain data collection and assessment methods such as case reading.

Response: We have decided not to expand on the examples or requirement of quality assessment techniques given in this rule to provide States with maximum flexibility. These examples were given for illustrative purposes only and we believe that States would be in the best position to design their own quality assurance systems.

Comment: One commenter stated that the requirements of this section could result in the submission of voluminous amounts of data since the commenter's State has an entire division responsible for quality assurance, performance/outcome measures.

The commenter suggested that the time spent to prepare an adequate description to accompany the plan would be better spent on the processes related to the plan itself.

Response: The requirement of § 1357.15(u) is that States submit a *description* of the quality assurance system it will use, and not the data produced by that system. Since quality improvements are vital to child and family services, we are committed to the importance of this requirement.

Section 1357.15(v) Distribution of the CFSP and the Annual Progress and Services Report

We believe it will be useful to States and Indian Tribes to share the CFSP and the Annual Progress and Services Reports, both with each other and with those individuals, agencies, and organizations which are a part of the ongoing consultation and coordination effort. Such dissemination can lead to increased support, knowledge and coordination of services.

Comment: One commenter suggested that the final rule should require the CFSP and annual progress report be made available to anyone upon request and require States to provide for similar availability of quality assurance data. The commenter further recommended that the grantee should be required to

document not only what it plans to do to accomplish its goals and objectives but also what it does not plan to do and why. For example, if a state decides to channel all or most of its funding into one or a limited number of services categories it should have to explain why.

Response: We agree that the annual progress report must be available to the public. We will not, however, further specify what a State or Indian Tribe must include in that review.

Section 1357.16 Annual Progress and Services Reports

Reports from States and Tribes will be key to ongoing learning and growth in practice of child and family services and the ongoing planning and implementation of child and family services. The reports from States and Tribes will be used to update the State's or Indian Tribe's goals and objectives of the child and family services programs.

We have added in paragraph (b) the requirements for the submission of the CFS-101. The directions for submitting the CFS-101 will vary depending upon where each State and eligible Indian Tribe is in terms of consolidating title IV-B, subparts 1 and 2, and the status of each eligible Indian Tribe regarding title IV-B, subpart 1.

Comment: One commenter suggested that we call for an inclusive planning process by requiring that those involved in the ongoing consultation and coordination process be involved in annual reviews of a State's activities and that the Annual Progress and Services Report specify any revisions necessary in goals, objectives, services or program design to reflect changed circumstances.

Response: We believe both recommendations are addressed in paragraph (a) of this section.

Comment: One commenter asked that we delete "review" from "Annual progress reviews and services report" for consistency with other references.

Response: We agree and have revised the wording of the section title accordingly.

Comment: Several commenters suggested that we include a requirement that the annual progress report explain what progress the State has made toward service coordination. Another commenter asked that the annual progress review and services report be required to identify specific accomplishments based on empirical data rather than personal and professional judgment and recommended deleting the "e.g." which implies that provided outcomes for children and families is merely an example of a goal or objective.

Response: We agree with these commenters and we believe that paragraph (a)(1) addresses the need for a requirement on the progress States and Indian Tribes have made toward service coordination for children and families and therefore have not made any changes. We have also revised the paragraph by deleting the "e.g."

Section 1357.20 Child Abuse and Neglect Programs

This section clarifies the titles and relevant citations of the Child Abuse and Neglect Program.

No comments were received on this section.

Section 1357.30 State Fiscal Requirements (Title IV-B, Subpart 1, Child Welfare Services)

In order to bring title IV-B, subpart 1 onto the same schedule as that provided for subpart 2, existing rules which have proven to be unnecessarily confusing to and burdensome on States, have been adjusted. We have deleted the requirement for an obligation period and require instead that subpart 1 funds must be expended (liquidated) by September 30 of the fiscal year following the fiscal year in which the funds were awarded. This will mean an identical expenditure period for funds under title IV-B, subparts 1 and 2, and the independent living program. As indicated previously, a conforming amendment was made in 45 CFR 1355.30 to clarify that 45 CFR part 95, subpart A, is not applicable to title IV-B programs.

In response to comments, a change was made in § 1357.30(e), § 1357.32(d), § 1357.40(d), and § 1357.42(g). We have decided to allow the use of non-public third-party cash, donations and in-kind contributions, in accordance with 45 CFR 92.24 (see the discussion of in-kind in Part II of this preamble).

A technical deletion has been made to paragraph (a) reflecting a statutory change discontinuing the transfer of title IV-E foster care funds to title IV-B child welfare services (Pub. L. 103-432).

Comment: One commenter was concerned that it will be problematic to obligate and liquidate funds in the time limit if subpart 1 is fully funded.

Response: Once the States and Indian Tribes submit their applications for subparts 1 and 2 funds by June 30 there will be a full two years to spend the money.

Comment: One commenter asked if States will have to submit an application for funds for reallocation or whether the Commissioner will reallocate any available funds independently on

the basis of the amount originally requested in the annual budget request.

Response: Since requests for reallocation are rare we will not be changing the rule on the process for reallocation. If funds become available for reallocation States will be notified and provided with instructions to apply for those funds.

Section 1357.32 State Fiscal Requirements (Title IV-B, Subpart 2, Family Preservation and Family Support Services)

In this section, we have defined administrative costs as those costs associated with auxiliary functions to support development and implementation of the Child and Family Services Plan and Annual Progress and Services Report (e.g., procurement, payroll, personnel functions, management, maintenance, operation of space and property, data processing and computer services, accounting, budgeting, auditing, and indirect costs.)

We have also added a clarification that costs directly associated with implementing the CFSP are not considered administrative costs (e.g., delivery of services, planning, consultation, coordination, training, quality assurance measures, data collection, evaluation, and supervision) and are considered program costs.

Comment: One commenter asked that in paragraph (d)(2), a definition of the term "donated funds" be provided. Another commenter recommended that the terminology, Federal, State, and local and private funds be used rather than Federal, State, local, and donated. This commenter went on to suggest that when referring to cash versus non cash, that the term cash alone be used. The term donated can apply to cash or in-kind but should be used in referring to contributions from third parties which are not the Family Preservation and Family Support grantee. The commenter suggested that the definition for cash and in-kind should be that found in 45 CFR 92.3 for cash contributions and third-party in-kind contributions.

Response: We are not providing a definition, per se, of "donated funds" in this rule but in response to this comment we clarify that the non-Federal match may be donated funds and may be in kind contributions. In addition to the cite to 45 CFR 92.3 provided by the commenter we would also refer readers to 45 CFR 92.24 as an additional reference on matching and cost sharing.

Comment: Two commenters stated that they had been given guidance that existing State general revenue expenditures for family preservation

and family support could be used to meet the match requirement for service expansion but were concerned that the rule was not clear on whether this is, in fact, permissible.

Response: Existing State general revenue expenditures can only be used as match if they are newly devoted to family preservation and family support purposes.

Comment: Several commenters recommended that non-Federal funds to meet the non-supplantation requirement be defined as State only, not local, public funds because of State difficulty in determining and collecting fiscal information from all local public agencies providing family preservation and family support services.

Response: We agree and have revised the language in paragraph (f) by deleting the reference to local public funds and have defined "non-Federal funds" as State funds.

Comment: One commenter suggested that at the State level, an agency other than the IV-B agency should be treated the same as local public entities with respect to maintenance of effort requirements to assure separate records are kept that non-supplantation has not occurred.

Response: While we are not addressing the issue explicitly in this rule, States have the authority to require assurances of their subrecipients.

Comment: One commenter voiced concern that the non-supplantation requirements are vague and largely unenforceable, since identification of FY 1992 costs in many cases will be infeasible as such costs were buried in titles IV-B, subpart 1; XX; IV-A EA; IV-A (administration) and State general revenue costs centers. The commenter recommended that State non-supplantation should be limited to an "assurance" and that definitive instructions should be developed as to what should be reported for the annual reporting requirement.

Response: While non-supplantation is an assurance, back-up documentation must still be maintained at the State level for auditing purposes.

Comment: Several comments were received regarding the 10 percent limitation on administrative costs.

One commenter suggested the limit be applied only to the title IV-B/IV-E agency and not the direct service provider, otherwise the policy may have the unintended consequence of prohibiting small, community-based agencies from participating in the initiative.

Another commenter asked that the limitation on administrative costs be increased to 15 percent.

Several commenters were concerned that the definition of administrative costs is unworkable since it goes beyond existing cost allocation procedures. Concern was voiced that to separate costs as suggested would be very time consuming, and inclusion of the general category of management in (ii) will mean that large portions of the cost of carrying out any such program will be ineligible for Federal funds. It was suggested that management be deleted from the list and a general definition of administrative expenditures based on existing cost allocation procedures be used.

Another commenter recommended that administrative costs be defined as indirect and other non-program support, as allocable in accordance with the agency approved cost allocation plan.

Response: The 10 percent administrative cost limitation is found in the statute at § 432(a)(4) and cannot be modified. In response to comments the 10 percent administrative cost limitation in paragraph (h) will be applied only to the Federal share of funds.

We believe the definition of administrative costs is consistent with existing regulations and procedures, including those governing agency approved cost allocation plans, and provides States increased flexibility.

We would also like to clarify that "administrative cost" and "program cost" are program relative terms which describe how costs relate to specific program activities. The definition of an administrative or programmatic cost will vary according to the nature of an individual program. "Indirect costs" and "direct costs" are general accounting terms which describe how costs are allocated to a program or activity budget. Program costs are costs of major functions such as delivery of services incurred in connection with developing and implementing the CFSP.

Comment: One commenter suggested that States be required to provide an explanation of how they will transfer administrative resources to communities.

Response: The distribution of administrative resources is undertaken at the discretion of the individual State and we are not making any changes to the rule to require an explanation of how these resources are transferred to communities.

Comment: Two commenters asked that a definition of subrecipient be included in the final rule.

Response: A definition of subrecipient has not been added to this rule. "Subrecipient," as used in this final rule, refers to a legal entity to which

funds have been awarded by a State or Tribal grantee. The term is intended to reflect the various kinds of funding relationships (e.g., grants, contracts, interagency agreements, etc.) which may exist between States/Indian Tribes and the agencies and organizations they fund.

Section 1357.40 Direct Payments to Indian Tribal Organizations (Title IV-B, Subpart 1, Child Welfare Services)

Previously, Indian Tribes could submit their title IV-B (subpart 1, child welfare services) plan at one, two, or three year intervals with annual updates. We believe a five-year plan will not only reduce administrative burden but will enable the Indian Tribe to deliver services in the context of a plan that includes both short-term objectives and long-term goals, supported by consultation and coordination activities, leading to more coordinated and effective services.

As previously stated in section 1357.15(q), section 427 of the Act was repealed by Pub. L. 103-432, effective October 1, 1996. The protections formerly embodied in section 427 are now incorporated in section 422(b)(9) as title IV-B Plan requirements. Department policy has been and continues to be that the State, as required by statute, is responsible for providing these protections to all children, including Indian children.

Tribes that wish to receive direct funding under title IV-B, in accordance with section 428 of the Act, are not required under current law or regulations to provide the protections that were specified previously in section 427 to receive direct funding. The provision of those protections is the legal responsibility of the State. However, a Tribe, by arrangement with the State, may choose to provide those protections itself. As set forth in the final regulation, a Tribe that wishes to receive direct funding under title IV-B, subpart 1, must include in its Plan a discussion of the arrangements that have been made with the State for the protection of children in accordance with section 422(b)(9). It is expected that the States will take the initiative to contact all Tribes, if they have not done so already, for the purpose of ensuring that the 422(b)(9) protections are provided to Indian children.

The NPRM, which was drafted prior to enactment of the Social Security Amendments of 1994, referred to the section 422 provisions in their entirety as a basis for direct funding of Tribes; now that the former section 427 protections have been incorporated in section 422(b)(9), this is no longer

accurate. Accordingly, the final rule has been corrected to make clear that, as is the case under the current regulation, Tribes are not required to provide the protections in section 422(b)(9) as a condition of receiving direct funding.

Comment: One commenter asked that the funding of Tribal consortia, which may serve more than one Tribe, be considered for funding.

Response: The NPRM sanctioned the eligibility of consortia. In order to make this point clearer, the language in § 1357.40 (a) and (b) has been modified.

Comment: Several respondents addressed either the content or duration of the plans to be submitted by Indian Tribal Organizations.

One respondent wanted to make sure the Indian Tribe would say in its plan how its title IV-B, subpart 1, money would be used.

Another commenter stated that a five-year plan was preferable to a plan of one, two or three years.

Response: The CFSP and the CFS-101 submitted by Indian Tribes will detail how title IV-B funds will be spent. There is a statutory basis for requiring five-year plans.

Comment: One commenter requested substituting the phrase "federally recognized Indian Tribe" for "Indian Tribal Organization" to avoid any confusion or misinterpretation.

Response: There will be no change in language because the respondent's request fails to consider a major distinction between "Federally recognized Indian Tribe" and "Indian Tribal Organization" (ITO) in relation to title IV-B, subpart 1. Prevailing statute and regulations grant Federally recognized Indian Tribes the authority to delegate authority to an ITO for purposes of securing title IV-B, subpart 1 funds. Therefore, it is conceivable that an Indian Tribe could have been given authority by a Federally recognized Indian Tribe to obtain title IV-B, subpart 1 funds. Use of the term "Federally recognized Indian Tribe" is too restrictive because it eliminates potential recipients of the title IV-B, subpart 1 funds.

Section 1357.50 Direct Payments to Indian Tribal Organizations (Title IV-B, Subpart 2, Family Preservation and Family Support Services)

We have made several changes in this section in response to comments, even though most comments were supportive. Changes have been made in the portions of this section dealing with (d) eligibility, (f) exemptions, and (g) matching.

In terms of eligibility, as described in Part II of this preamble, additional

Indian Tribes eligible for title IV-B, subpart 2 funding in FY 1996 and thereafter have been given in (d)(3), (4), and (5) a timeframe within which a five-year CFSP must be submitted that meets all of the criteria in § 1357.15. Also in § 1357.50(d)(5)(iii) Indian Tribes have been given the option of conducting planning activities or providing services during the first year in which the Indian Tribe receives title IV-B, subpart 2 funds.

In order to identify "the most current and reliable information available," required by statute in the selection of eligible Indian Tribes, we looked at the various sources of data available on the number of children in each Tribe, including children in the Alaska Regional Corporations, to determine the data set most reliable and valid. We concluded that the Census Bureau data—rather than Tribal documentation or BIA labor force statistics—is the best source. Census data is more uniform, objective, and based on sample design and the use of scientific methodology. In addition, the Census Bureau data defines "child" as a person from birth to age 20 while the BIA data defines a child as a person from birth to age 16. The Census Bureau also has data on child population in all Alaska Regional Corporations while the BIA has data on only two Regional Corporations.

Comment: One commenter supported the exemption of certain statutory requirements for Indian Tribes.

Response: The statute grants the Secretary exemption authority for Indian Tribes from any inappropriate requirements. We have provided three exemptions of statutory requirements in § 1357.50(f). They are: (1) 10% limitation on administrative costs; (2) the non-supplantation requirement; and (3) the requirement that a significant portion of funds must be used for family preservation and family support. Indian Tribes can make formal requests to ACF for exemptions of any other requirements.

Comment: Two respondents dealt with the match issue.

One commenter supported in-kind match for eligible Indian Tribes.

One respondent believed there should be no matching requirement for Indian Tribes.

Response: In § 1357.50(g) it is made clear that non-public third party in-kind contributions can be used toward the non-Federal share. The rules governing match have been designed in such a way that all eligible Indian Tribes should have no problem meeting the match requirements.

Comment: One commenter raised concern that the requirement to expend

all funds by September 30 of the following fiscal year is not needed and is inconsistent with the Indian Self-Determination Act.

Response: The Indian Self-Determination Act applies only to programs funded under that Act. We must adhere to the Social Security Act, section 434, in this case, which requires that all funds be expended by the close of the fiscal year following that in which funds were awarded.

Executive Order 12866

Executive Order 12866 requires that regulations be drafted to ensure that they are consistent with the priorities and principles set forth in the Executive Order. The Department has determined that this rule is consistent with these priorities and principles. This final rulemaking implements statutory authority for a broad consultation and coordination process leading to the development of five-year child and family services plan.

The Executive Order also encourages agencies, as appropriate, to provide the public with meaningful participation in the regulatory process. As described earlier in the preamble, ACF held focus group discussions with State, local, and Tribal officials, and a broad range of private nonprofit agencies, organizations, practitioners, researchers, parents, and others to obtain their views on planning and implementation issues for this new title IV-B program.

The input received during the consultation process on the new Family Preservation and Family Support Program was reflected in the NPRM. The vast majority of comments were extremely supportive of the NPRM—the flexibility provided to State and local agencies, the emphasis on collaboration and coordination in order to bring about improved outcomes for children and families, and the focus group process employed in the NPRM's development. Commenters particularly supported the rule's joint planning and consultation process and the emphasis on a vision and principles of child and family services leading to more responsive, proactive systems of care. We believe that this rule reflects, to a considerable degree, the recommendations of the focus group participants and the comments received in response to the NPRM.

Regulatory Flexibility Analysis

The Regulatory Flexibility Act (5 U.S.C. Ch. 6) requires the Federal government to anticipate and reduce the impact of rules and paperwork requirements on small businesses and other small entities. Small entities are

defined in the Act to include small businesses, small non-profit organizations, and small governmental entities. This rule will affect only States and certain Indian Tribes. Therefore, the Secretary certifies that this rule will not have a significant impact on a substantial number of small entities.

Paperwork Reduction Act

This rule contains information collection activities which are subject to review and approval by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995. Under the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays a valid OMB control number. We will be seeking comment from the public on these information collection activities in a separate Federal Register notice in the near future.

List of Subjects

45 CFR Part 1355

Adoption and foster care; Child abuse and neglect; Child and family services; Child welfare services; Data collection; Definitions—Grant Programs social programs; Family preservation and family support services.

45 CFR Part 1356

Adoption and foster care; Administrative costs; Child and family services; Child welfare services; Fiscal requirements (title IV-E); Grant Programs—Social programs; Independent living program; statewide information systems.

45 CFR Part 1357

Adoption and foster care; Child abuse and neglect; Child and family services; Child welfare services; Family preservation and family support services; Independent living program.

(Catalog of Federal Domestic Assistance Program No. 93.556—Family Preservation and Support Services; No 93.645—Child Welfare Services—State Grants; No. 93.669—Child Abuse and Neglect—State Grants; and No. 93-674—Independent Living)

Dated: March 22, 1996.

Mary Jo Bane,

Assistant Secretary for Children and Families.

Approved: July 30, 1996.

Donna E. Shalala,

Secretary.

For the reasons set forth in the preamble, 45 CFR Chapter XIII is amended as follows:

1. Subchapter G is amended by revising the heading to read as follows:

SUBCHAPTER G—THE ADMINISTRATION ON CHILDREN, YOUTH AND FAMILIES, FOSTER CARE MAINTENANCE PAYMENTS, ADOPTION ASSISTANCE, AND CHILD AND FAMILY SERVICES

PART 1355—GENERAL

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

Authority: 42 U.S.C. 620 et seq., 42 U.S.C. 670 et seq. and 42 U.S.C. 1301 and 1302.

3. Section 1355.10 is revised to read as follows:

§ 1355.10 Scope.

Unless otherwise specified, part 1355 applies to States and Indian Tribes and contains general requirements for Federal financial participation under titles IV-B and IV-E of the Social Security Act.

4. Section 1355.20(a) is amended by revising four definitions and by adding one definition to read as follows:

§ 1355.20 Definitions.

(a) * * *

ACYF means the Administration on Children, Youth and Families, Administration for Children and Families (ACF), U. S. Department of Health and Human Services.

* * * * *

Commissioner means the Commissioner on Children, Youth and Families, Administration for Children and Families, U.S. Department of Health and Human Services.

* * * * *

Independent Living Program (ILP) means the programs and activities established and implemented by the State to assist youth, as defined in section 477(a)(2) of the Act, to prepare to live independently upon leaving foster care. Programs and activities that may be provided are found in section 477(d) of the Act.

State means, for title IV-B, the 50 States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, the Virgin Islands, the Commonwealth of the Northern Mariana Islands, and American Samoa. For title IV-E, the term "State" means the 50 States and the District of Columbia.

State agency means the State agency administering or supervising the administration of the title IV-B and title IV-E State plans and the title XX social services block grant program. An exception to this requirement is permitted by section 103(d) of the Adoption Assistance and Child Welfare Act of 1980 (Pub. L. 96-272). Section 103(d) provides that, if on December 1, 1974, the title IV-B program (in a State or local agency) and the social services

program under section 402(a)(3) of the Act (the predecessor program to title XX) were administered by separate agencies, that separate administration of the programs could continue at State option.

* * * * *

5. Section 1355.21(c) is revised to read as follows:

§ 1355.21 State plan requirements for titles IV-B and IV-E.

* * * * *

(c) The State agency and the Indian Tribe must make available for public review and inspection the Child and Family Services Plan (CFSP) and the Annual Progress and Services Reports. (See 45 CFR 1357.15 and 1357.16.) The State agency also must make available for public review and inspection the title IV-E State Plan.

6. A new section 1355.25 is added to read as follows:

§ 1355.25 Principles of child and family services.

The following principles, most often identified by practitioners and others as helping to assure effective services for children, youth, and families, should guide the States and Indian Tribes in developing, operating, and improving the continuum of child and family services.

(a) The safety and well-being of children and of all family members is paramount. When safety can be assured, strengthening and preserving families is seen as the best way to promote the healthy development of children. One important way to keep children safe is to stop violence in the family including violence against their mothers.

(b) Services are focused on the family as a whole; service providers work with families as partners in identifying and meeting individual and family needs; family strengths are identified, enhanced, respected, and mobilized to help families solve the problems which compromise their functioning and well-being.

(c) Services promote the healthy development of children and youth, promote permanency for all children and help prepare youth emancipating from the foster care system for self-sufficiency and independent living.

(d) Services may focus on prevention, protection, or other short or long-term interventions to meet the needs of the family and the best interests and need of the individual(s) who may be placed in out-of-home care.

(e) Services are timely, flexible, coordinated, and accessible to families and individuals, principally delivered in the home or the community, and are

delivered in a manner that is respectful of and builds on the strengths of the community and cultural groups.

(f) Services are organized as a continuum, designed to achieve measurable outcomes, and are linked to a wide variety of supports and services which can be crucial to meeting families' and children's needs, for example, housing, substance abuse treatment, mental health, health, education, job training, child care, and informal support networks.

(g) Most child and family services are community-based, involve community organizations, parents and residents in their design and delivery, and are accountable to the community and the client's needs.

(h) Services are intensive enough and of sufficient duration to keep children safe and meet family needs. The actual level of intensity and length of time needed to ensure safety and assist the family may vary greatly between preventive (family support) and crisis intervention services (family preservation), based on the changing needs of children and families at various times in their lives. A family or an individual does not need to be in crisis in order to receive services.

7. Section 1355.30 is revised to read as follows:

§ 1355.30 Other applicable regulations.

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

(a) 45 CFR Part 16—Procedures of the Departmental Grant Appeals Board.

(b) 45 CFR Part 30—Claims Collection.

(c) 45 CFR Part 74—Administration of Grants (Applicable only to title IV-E foster care and adoption assistance, except that: (1) Section 74.23 Cost Sharing or Matching, and (2) section 74.52 Financial Reporting Requirements, will not apply.)

(d) 45 CFR Part 76—Governmentwide Debarment and Suspension (Nonprocurement) and Governmentwide Requirements for Drug-Free Workplace (Grants).

(e) 45 CFR Part 80—Nondiscrimination Under Programs Receiving Federal Assistance Through the Department of Health and Human Services Effectuation of Title VI of the Civil Rights Act of 1964.

(f) 45 CFR Part 81—Practice and Procedure for Hearings Under Part 80 of This Title.

(g) 45 CFR Part 84—Nondiscrimination on the Basis of Handicap in Programs and Activities Receiving Federal Financial Assistance.

(h) 45 CFR Part 91—Nondiscrimination on the Basis of Age in HHS Programs or Activities Receiving Federal Financial Assistance.

(i) 45 CFR Part 92—Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments (Applicable only to the title IV-B programs and the Independent Living Program under Section 477 of the Act).

(j) 45 CFR Part 93—New Restrictions on Lobbying.

(k) 45 CFR Part 95—General Administration—Grant Programs (Public Assistance and Medical Assistance). (Applicable to title IV-B and title IV-E except that, notwithstanding 45 CFR 95.1(a), Subpart A, Time Limits for States to File Claims, does not apply to title IV-B (subparts 1 and 2) and the Independent Living Program.)

(l) 45 CFR Part 97—Consolidation of Grants to the Insular Areas. (Applicable only to the title IV-B programs).

(m) 45 CFR Part 100—Intergovernmental Review of Department of Health and Human Services Programs and Activities. (Only one section is applicable: 45 CFR 100.12, How may a State simplify, consolidate, or substitute federally required State plans?).

(n) 45 CFR Part 201—Grants to States for Public Assistance Programs. Only the following sections are applicable:

(1) § 201.5—Grants. (Applicable to title IV-E foster care and adoption assistance only.)

(2) § 201.6—Withholding of payment; reduction of Federal financial participation in the costs of social services and training.

(3) § 201.7—Judicial review.

(4) § 201.15—Deferral of claims for Federal financial participation. (Applicable only to title IV-E foster care and adoption assistance.)

(5) § 201.66—Repayment of Federal funds by installments. (Applicable only to title IV-E foster care and adoption assistance.)

(o) 45 CFR Part 204.1—Submittal of State Plans for Governor's Review.

(p) 45 CFR Part 205—General Administration—Public Assistance Programs. Only the following sections are applicable:

(1) § 205.5—Plan amendments.

(2) § 205.10—Hearings.

(3) § 205.50—Safeguarding information for the financial assistance programs.

(4) § 205.100—Single State agency.

PART 1356—REQUIREMENTS APPLICABLE TO TITLE IV—E

8. The authority citation for Part 1356 continues to read as follows:

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

9. Section 1356.10 is revised to read as follows:

§ 1356.10 Scope.

This part applies to State programs for foster care maintenance payments, adoption assistance payments, related foster care and adoption administrative and training expenditures, and the independent living services program under title IV—E of the Act.

10. Section 1356.80 is added to part 1356 to read as follows:

§ 1356.80 Independent Living Program (ILP).

(a) *Scope.* To receive payments under section 477 of the Act, the State agency must meet the applicable requirements of sections 472, 474, 475, and 477 of the Act.

(b) *Application requirements.* Based on section 477 of the Act, each State must submit an annual application for funds under the Independent Living Program (ILP).

(c) *Allotments.* Payments to each State will be made in accordance with section 477(e)(1) of the Act.

(d) *Matching funds.* (1) States are entitled to their share of the basic amount of \$45 million of the ILP appropriation with no requirement for matching funds.

(2) States are required to match dollar-for-dollar any of the funds they receive, through additional or reallocated funds, over their share of the \$45 million basic amount.

(3) The State's contribution may be in cash, donated funds, or third-party in-kind contributions.

(4) Matching contributions must be for costs otherwise allowable under section 477 of the Act (e.g., matching contributions for the provision of room and board are not allowable.)

(e) *Reallocation of funds.* Basic funds and additional funds not requested by a State will be available for reallocation to other States under the provisions of section 477(e)(2) of the Act.

(f) *Expenditure of funds.* Section 477(f)(3) of the Act requires that funds must be expended by September 30 of the fiscal year following the fiscal year in which the funds were awarded.

(g) *Maintenance of effort.* Amounts payable under section 477 of the Act shall supplement and not replace:

(1) Title IV—E foster care funds available for maintenance payments and administrative and training costs; and

(2) Any other State funds available for independent living activities and services.

(h) *Prohibition.* ILP funds may not be used for room and board (section 477(e)(3) of the Act).

PART 1357—REQUIREMENTS APPLICABLE TO TITLE IV—B

11. The authority citation for part 1357 continues to read as follows:

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

12. Section 1357.10 is revised to read as follows:

§ 1357.10 Scope and definitions.

(a) *Scope.* This part applies to State and Indian Tribal programs for child welfare services under subpart 1, and family preservation and family support services under subpart 2 of title IV—B of the Act.

(b) *Eligibility.* Child and family services under title IV—B, subparts 1 and 2, must be available on the basis of need for services and must not be denied on the basis of income or length of residence in the State or within the Indian Tribe's jurisdiction.

(c) *Definitions.*

Child and Family Services Plan (CFSP) means the document, developed through joint planning, which describes the publicly-funded State child and family services continuum (family support and family preservation services; child welfare services, including child abuse and neglect prevention, intervention, and treatment services; services to support reunification, adoption, kinship care, foster care, independent living, or other permanent living arrangements). For Indian Tribes, the document describes the child welfare and/or family preservation and support services to be provided by the Indian Tribe; includes goals and objectives both for improved outcomes for the safety, permanency and well-being of children and families and for service delivery system reform; specifies the services and other implementation activities that will be undertaken to carry out the goals and objectives; and includes plans for program improvement and allocation of resources.

Child welfare services means public social services directed to accomplish the following purposes:

(1) Protecting and promoting the welfare and safety of all children, including individuals with disabilities; homeless, dependent, or neglected children;

(2) Preventing or remedying, or assisting in the solution of problems

which may result in the neglect, abuse, exploitation, or delinquency of children;

(3) Preventing the unnecessary separation of children from their families by identifying family problems and assisting families in resolving their problems and preventing the breakup of the family where the prevention of child removal is desirable and possible;

(4) Restoring to their families children who have been removed and may be safely returned, by the provision of services to the child and the family;

(5) Assuring adequate care of children away from their homes, in cases where the child cannot be returned home or cannot be placed for adoption; and

(6) Placing children in suitable adoptive homes, in cases where restoration to the biological family is not possible or appropriate.

Children refers to individuals from birth to the age of 21 (or such age of majority as provided under State law) including infants, children, youth, adolescents, and young adults.

Community-based services refers to programs delivered in accessible settings in the community and responsive to the needs of the community and the individuals and families residing therein. These services may be provided under public or private nonprofit auspices.

Families includes, but is not limited to, biological, adoptive, foster, and extended families.

Family preservation services refers to services for children and families designed to protect children from harm and help families (including foster, adoptive, and extended families) at risk or in crisis, including—

(1) Preplacement preventive services programs, such as intensive family preservation programs, designed to help children at risk of foster care placement remain with their families, where possible;

(2) Service programs designed to help children, where appropriate, return to families from which they have been removed; or be placed for adoption, with a legal guardian, or, if adoption or legal guardianship is determined not to be appropriate for a child, in some other planned, permanent living arrangement;

(3) Service programs designed to provide follow-up care to families to whom a child has been returned after a foster care placement;

(4) Respite care of children to provide temporary relief for parents and other caregivers (including foster parents);

(5) Services designed to improve parenting skills (by reinforcing parents' confidence in their strengths, and helping them to identify where improvement is needed and to obtain

assistance in improving those skills) with respect to matters such as child development, family budgeting, coping with stress, health, and nutrition; and

(6) Case management services designed to stabilize families in crisis such as transportation, assistance with housing and utility payments, and access to adequate health care.

Family support services means community-based services to promote the well-being of children and families designed to increase the strength and stability of families (including adoptive, foster, and extended families), to increase parents' confidence and competence in their parenting abilities, to afford children a stable and supportive family environment, and otherwise to enhance child development. Family support services may include:

(1) Services, including in-home visits, parent support groups, and other programs designed to improve parenting skills (by reinforcing parents' confidence in their strengths, and helping them to identify where improvement is needed and to obtain assistance in improving those skills) with respect to matters such as child development, family budgeting, coping with stress, health, and nutrition;

(2) Respite care of children to provide temporary relief for parents and other caregivers;

(3) Structured activities involving parents and children to strengthen the parent-child relationship;

(4) Drop-in centers to afford families opportunities for informal interaction with other families and with program staff;

(5) Transportation, information and referral services to afford families access to other community services, including child care, health care, nutrition programs, adult education literacy programs, legal services, and counseling and mentoring services; and

(6) Early developmental screening of children to assess the needs of such children, and assistance to families in securing specific services to meet these needs.

Joint planning means an ongoing partnership process between ACF and the State and between ACF and an Indian Tribe in the development, review, analysis, and refinement and/or revision of the State's and the Indian Tribe's child and family services plan. Joint planning involves discussions, consultation, and negotiation between ACF and the State or Indian Tribe in all areas of CFSP creation such as, but not limited to, identifying the service needs of children, youth, and families; selecting the unmet service needs that

will be addressed; developing goals and objectives that will result in improving outcomes for children and families; developing a plan to meet the matching requirements; and establishing a more comprehensive, coordinated and effective child and family services delivery system. The expectation of joint planning is that both ACF and the State or Indian Tribe will reach agreement on substantive and procedural matters related to the CFSP.

13. Section 1357.15 is revised to read as follows:

§ 1357.15 Comprehensive child and family services plan requirements.

(a) *Scope.* (1) The CFSP provides an opportunity to lay the groundwork for a system of coordinated, integrated, culturally relevant family focused services. This section describes the requirements for the development, implementation and phase-in of the five-year comprehensive child and family services plan (CFSP). The State's CFSP must meet the requirements of both of the following programs. The Indian Tribe's CFSP must meet the requirements of one or both of the following programs depending on the Tribe's eligibility:

(i) Child welfare services under title IV-B, subpart 1; and

(ii) Family preservation and family support services under title IV-B, subpart 2.

(2) For States only, the CFSP also must contain information on the following programs:

(i) The independent living program under title IV-E, section 477 of the Act; and

(ii) The Child Abuse and Neglect State grant program (known as the Basic State Grant) under the Child Abuse Prevention and Treatment Act (CAPTA) (42 U.S.C. 5101 et. seq.).

(3) States must meet all requirements of this section except those that apply only to Indian Tribes. Indian Tribes must meet the requirements of this section only as specified.

(4) States and eligible Indian Tribes have the option to phase-in the requirements for a consolidated CFSP. The consolidated CFSP requirements must be in place by June 30, 1997 and meet the requirements of 45 CFR 1357.16.

(b) *Eligibility for funds.* (1) In order to receive funding under title IV-B, subparts 1 and 2, each State and eligible Indian Tribe must submit and have approved a consolidated, five-year Child and Family Services Plan (CFSP) and a CFS-101, Budget Request and Estimated Expenditure Report that meets the requirements under 45 CFR 1357.16.

(2) States and Indian Tribes that are consolidating the requirements for a CFSP in FY 1995, in accordance with § 1357.15(a), must submit the CFSP and a CFS-101 for FY 1995 and 1996 by June 30, 1995.

(3) States and eligible Indian Tribes choosing to phase-in the requirements for a consolidated CFSP in FY 1996 and 1997 must submit the CFSP, the CFS-101 for FY 1995 for subpart 1 and 2, and the CFS-101 for subpart 2 for FY 1996 by June 30, 1995.

(4) The CFSP will be approved only if the plan was developed jointly by ACF and the State (or the Indian Tribe), and only after broad consultation by the State (and the Indian Tribe) with a wide range of appropriate public and non-profit private agencies and community-based organizations with experience in administering programs of services for children and families (including family preservation and support services).

(5) By June 30, 1996, each grantee must submit and have approved the first Annual Progress and Services Report and a CFS 101 for FY 1997 that meets the statutory and regulatory requirements of title IV-B, subparts 1 and 2.

(6) The Annual Progress and Services Report will be approved if it was developed jointly by ACF and the State (or the Indian Tribe) and if it meets the requirements of 45 CFR 1357.16.

(7) The five-year CFSP for FYs 1995-1999 may be submitted in the format of the State's or the Indian Tribe's choice and must be submitted no later than June 30, 1995, to the appropriate ACF Regional Office.

(c) *Assurances.* The following assurances will remain in effect on an ongoing basis and will need to be re-submitted only if a significant change in the State or the Indian Tribe's program affects an assurance:

(1) The State or Indian Tribe must assure that it will participate in any evaluations the Secretary of HHS may require.

(2) The State or Indian Tribe must assure that it will administer the CFSP in accordance with methods determined by the Secretary to be proper and efficient.

(3) The State or Indian Tribe must assure that it has a plan for the training and use of paid paraprofessional staff, with particular emphasis on the full-time or part-time employment of low-income persons, as community service aides; and a plan for the use of nonpaid or partially paid volunteers in providing services and in assisting any advisory committees established by the State or Tribe.

(4) The State or Indian Tribe must assure that standards and requirements imposed with respect to child care under title XX shall apply with respect to day care services, if provided under the CFSP, except insofar as eligibility for such services is involved.

(d) *The child and family services plan (CFSP): general.* The State and the Indian Tribe must base the development of the CFSP on a planning process that includes:

(1) broad involvement and consultation with a wide range of appropriate public and non-profit private agencies and community-based organizations, parents, including parents who are involved or have experience with the child welfare system, and others;

(2) coordination of the provision of services under the plan with other Federal and federally assisted programs serving children and families, including youth and adolescents; and

(3) collection of existing or available information to help determine vulnerable or at-risk populations or target areas; assess service needs and resources; identify gaps in services; select priorities for targeting funding and services; formulate goals and objectives; and develop opportunities for bringing about more effective and accessible services for children and families.

(e) *State agency administering the programs.* (1) The State's CFSP must identify the name of the State agency that will administer the title IV-B programs under the plan. Except as provided by statute, the same agency is required to administer or supervise the administration of all programs under titles IV-B and IV-E of the Act and the social services block grant program under title XX of the Act. (See the definition of "State agency" in 45 CFR 1355.20.)

(2) The CFSP must include a description of the organization and function of the State agency and organizational charts as appropriate. It also must identify the organizational unit(s) within the State agency responsible for the operation and administration of the CFSP, and include a description of the unit's organization and function and a copy of the organizational chart(s).

(f) *Indian Tribal organization administering the program(s).* (1) The Indian Tribe's CFSP must provide the name of the Indian Tribal organization (ITO) designated to administer funds under title IV-B, subpart 1, child welfare services and/or under subpart 2, family preservation and family support services. If the Indian Tribe receives

funds under both subparts, the same agency or organization must administer both programs.

(2) The Indian Tribe's CFSP must include a description of the organization and function of the office responsible for the operation and administration of the CFSP, an organizational chart of that office, and a description of how that office relates to Tribal and other offices operating or administering services programs within the Indian Tribe's service area (e.g., Indian Health Service.)

(g) *Vision Statement.* The CFSP must include a vision statement which articulates the grantee's philosophy in providing child and family services and developing or improving a coordinated service delivery system. The vision should reflect the service principles at section 1355.25.

(h) *Goals.* The CFSP must specify the goals, based on the vision statement, that will be accomplished during and by the end of the five-year period of the plan. The goals must be expressed in terms of improved outcomes for and the safety, permanency and well-being of children and families, and in terms of a more comprehensive, coordinated, and effective child and family service delivery system.

(i) *Objectives.* (1) The CFSP must include the realistic, specific, quantifiable and measurable objectives that will be undertaken to achieve each goal. Each objective should focus on outcomes for children, youth, and/or their families or on elements of service delivery (such as quality) that are linked to outcomes in important ways. Each objective should include both interim benchmarks and a long-term timetable, as appropriate, for achieving the objective.

(2) For States and Indian Tribes administering the title IV-B, subpart 1 program, the CFSP must include objectives to make progress in covering additional political subdivisions, reaching additional children in need of services, expanding and strengthening the range of existing services, and developing new types of services.

(j) *Measures of progress.* The CFSP must describe the methods to be used in measuring the results, accomplishments, and annual progress toward meeting the goals and objectives, especially the outcomes for children, youth, and families. Processes and procedures assuring the production of valid and reliable data and information must be specified. The data and information must be capable of determining whether or not the interim benchmarks and multiyear timetable for

accomplishing CFSP goals and objectives are being met.

(k) *Baseline information.* (1) For FY 1995, the State and the Indian Tribe must base the development of the CFSP vision, goals, objectives, and funding and service decisions on an analysis of available baseline information and any trends over time on indicators in the following areas: the well-being of children and families; the needs of children and families; the nature, scope, and adequacy of existing child and family and related social services. Additional and updated information on service needs and organizational capacities must be obtained throughout the five-year period to measure progress in accomplishing the goals and objectives cited in the CFSP. A description of how this process will continue to be carried out must be included in the CFSP, and any revisions should be provided in the Annual Progress and Services Report.

(2) The State must collect and analyze State-wide information on family preservation and family support services currently available to families and children, including the nature and scope of existing public and privately funded family support and family preservation services; the extent to which each service is available and being provided in different geographic areas and to different types of families; and important gaps in service, including mismatches between available services and family needs as identified through baseline data and the consultation process. Other services which impact on the ability to preserve and support families may be included in the assessment. The Indian Tribe must collect and analyze information on family preservation and family support services currently available within their service delivery area including the information in this paragraph as appropriate. An Indian Tribe may submit documentation prepared to satisfy the requirements of other Federal child welfare grants, or contracts (such as the section 638 reporting form), along with a descriptive addendum addressing specifically the family preservation and family support services available.

(3) The CFSP must include a summary of the information used in developing the plan; an explanation of how this information and analysis were used in developing the goals, objectives, and funding and service decisions, including decisions about geographic targeting and service mix; a description of how information will be used to measure progress over the five-year period; and how this information will

be used to facilitate the coordination of services.

(l) *Consultation.* (1) The State's CFSP must describe the internal and external consultation process used to obtain broad and active involvement of major actors across the entire spectrum of the child and family service delivery system in the development of the plan. The description should explain how this process was coordinated with or was a part of other planning processes in the State; how it led or will lead to improved coordination of services.

(2) The Indian Tribe's CFSP must describe the consultation process appropriate to its needs and circumstances used to obtain the active involvement of major actors providing child and family services within the Tribe's area of jurisdiction.

(3) For States and Indian Tribes, the consultation process must involve:

(i) All appropriate offices and agencies within the State agency or within the Indian Tribal service delivery system (e.g., child protective services (CPS), foster care and adoption, the social services block grant, reunification services, independent living, and other services to youth;)

(ii) In a State-supervised, county-administered State, county social services and/or child welfare directors or representatives of the county social services/child welfare administrators' association;

(iii) A wide array of State, local, Tribal, and community-based agencies and organizations, both public and private nonprofit with experience in administering programs of services for infants, children, youth, adolescents, and families, including family preservation and family support services;

(iv) Parents, including birth and adoptive parents, foster parents, families with a member with a disability, children both in and outside the child welfare system, and consumers of services from diverse groups;

(v) For States, representatives of Indian Tribes within the State;

(vi) For States, representatives of local government (e.g., counties, cities, and other communities, neighborhoods, or areas where needs for services are great;)

(vii) Representatives of professional and advocacy organizations (including, for example foundations and national resource centers with expertise to assist States and Indian Tribes to design, expand, and improve the delivery of services); individual practitioners working with children and families; the courts; representatives or other States or Indian Tribes with experience in administering family preservation and

family support services; and academicians, especially those assisting the child and family service agency with management information systems, training curricula, and evaluations;

(viii) Representatives of State and local agencies administering Federal and federally assisted programs which may include: Head Start; the local education agency (school-linked social services, adult education and literacy programs, Part H programs); developmental disabilities; nutrition services (Food Stamps, Special Supplemental Food Program for Women, Infants and Children (WIC)); Title IV-A; runaway youth, youth gang, juvenile justice programs and youth residential and training institutions; child care and development block grant (CCDBG) and respite care programs; domestic and community violence prevention and services programs; housing programs; the health agency (substance abuse, Healthy Start, maternal and child health, Early and Periodic Screening, Diagnosis, and Treatment (EPSDT), mental health, and public health nursing); law enforcement; Children's Trust Funds; Community-Based Family Resource Programs, and new Federal initiatives such as the Empowerment Zones and Enterprise Communities Program; and

(ix) Administrators, supervisors and front line workers (direct service providers) of the State child and family services agency.

(4) The CFSP must describe the ongoing consultation process that each grantee will use to ensure the continued involvement of a wide range of major actors in meeting the goals and objectives over the five-year operational period of the plan and developing the Annual Progress and Services Report.

(m) *Services coordination.* (1) States must include in the ongoing coordination process representatives of the full range of child and family services provided by the State agency as well as other service delivery systems providing social, health, education, and economic services (including mental health, substance abuse, developmental disabilities, and housing) to improve access and deliver a range of services to children and their families.

(2) The State's CFSP must describe how services under the plan will be coordinated over the five-year period with services or benefits under other Federal or federally assisted programs serving the same populations to achieve the goals and objectives in the plan. The description must include the participants in the process and examples of how the process led or will lead to additional coordination of

services (e.g., integrated service models, improved accessibility, use of a consolidated application or intake form, inter-disciplinary training, coordinated case management for several programs, pooled resources through blended financing, shared information across services providers and compatible and linked automated information systems, co-location of several services or programs.)

(3) The Indian Tribe must include in the coordination process representatives of other Federal or federally assisted child and family services or related programs. The Indian Tribe's CFSP must describe how services under the plan will be coordinated over the five-year period with services or benefits under other Federal or federally assisted programs serving the same populations to achieve the goals and objectives in the plan. The descriptions must include the participants in the process and any examples of how the process led or will lead to additional coordination of services.

(n) *Services.* (1) The State's CFSP must describe the publicly funded child and family services continuum: child welfare services (including child abuse and neglect prevention, intervention, and treatment services; and foster care); family preservation services; family support services; and services to support reunification, adoption, kinship care, independent living, or other permanent living arrangements.

(2) The Indian Tribe's CFSP must describe the child welfare services (including child abuse and neglect prevention, intervention, treatment services and foster care) and/or the family support and family preservation services to be provided.

(3) For each service described, the CFSP must include the following information, or it must be listed on the CFS-101, Part II:

(i) The population(s) to be served;

(ii) The geographic area(s) where the services will be available;

(iii) The estimated number of individuals and/or families to be served;

(iv) The estimated expenditures for these services from Federal, State, local, and donated sources, including title IV-B, subparts 1 and 2, the CAPTA program referenced in paragraph (a) of this section, and the independent living program.

(o) *Family preservation and family support services and linkages to other social and health services.* (1) The State's CFSP must explain how the funds under title IV-B, subpart 2 of the Act, will be used to develop or expand family support and family preservation services; how the family support and

family preservation services relate to existing family support and family preservation services; and how these family support and preservation services will be linked to other services in the child and family services continuum.

(2) The State's CFSP must explain whether and/or how funds under the CAPTA and independent living programs are coordinated with and integrated into the child and family services continuum described in the plan.

(3) The State's CFSP must describe the existing or current linkages and the coordination of services between the services in the child and family services continuum and the services in other public services systems (e.g., health, education, housing, substance abuse, the courts), and other Federal and non-federally funded public and nonprofit private programs (e.g., Children's Trust Funds, Community-Based Family Resource Programs, private foundations.)

(p) *Services in relation to service principles.* The CFSP must describe how the child and family services to be provided are designed to assure the safety and protection of children as well as the preservation and support of families, and how they are or will be designed to be consistent with the other service principles in 45 CFR 1355.25.

(q) *Services in relation to permanency planning.* For States administering both title IV-B programs (subparts 1 and 2), the CFSP must explain how these services will help meet the permanency provisions for children and families in sections 422(b)(9) and 471 of the Act (e.g., preplacement preventive services, reunification services, independent living services.) The CFSP must describe the arrangements, jointly developed with the Indian Tribes within its borders, made for the provision of the child welfare services and protections in section 422(b)(9) to Indian children under both State and Tribal jurisdiction.

(r) *Decision-making process: selection of family support programs for funding.* The State's CFSP must include an explanation of how agencies and organizations were selected for funding to provide family support services and how these agencies and organizations meet the requirement that family support services be community-based.

(s) *Significant portion of funds used for family support and family preservation services.* With each fiscal year's budget request, each State must indicate the specific percentage of family preservation and family support funds (title IV-B, subpart 2) that the

State will expend for community-based family support and for family preservation services, and the rationale for the decision. The State must have an especially strong rationale if the request for either percentage is below 25 percent. It must also include an explanation of how this distribution was reached and why it meets the requirements that a "significant portion" of the service funds must be spent for each service. Examples of important considerations might include the nature of the planning efforts that led to the decision, the level of existing State effort in each area, and the resulting need for new or expanded services.

(t) *Staff training, technical assistance, and evaluation.* (1) The State's CFSP must include a staff development and training plan in support of the goals and objectives in the CFSP which addresses both of the title IV-B programs covered by the plan. This training plan also must be combined with the training plan under title IV-E as required by 45 CFR 1356.60(b)(2). Training must be an on-going activity and must include content from various disciplines and knowledge bases relevant to child and family services policies, programs and practices. Training content must also support the cross-system coordination consultation basic to the development of the CFSP.

(2) The State's CFSP must describe the technical assistance activities that will be undertaken in support of the goals and objectives in the plan.

(3) The State's CFSP must describe any evaluation and research activities underway or planned with which the State agency is involved or participating and which are related to the goals and objectives in the plan.

(u) *Quality assurance.* The State must include in the CFSP a description of the quality assurance system it will use to regularly assess the quality of services under the CFSP and assure that there will be measures to address identified problems.

(v) *Distribution of the CFSP and the annual progress and services report.* The CFSP must include a description of how the State and the Indian Tribe will make available to interested parties the CFSP and the Annual Progress and Services Report. (See 45 CFR 1355.21(c) and 45 CFR 1357.16(d)). State agencies and Indian Tribal organizations within the State must exchange copies of their CFSPs and their annual services reports.

14. A new § 1357.16 is added to read as follows:

§ 1357.16 Annual progress and services reports.

(a) *Annual progress and services reports.* Annually, each State and each Indian Tribe must conduct an interim review of the progress made in the previous year toward accomplishing the goals and objectives in the plan, based on updated information. In developing paragraphs (a)(2) through (a)(4) of this section, the State and the Indian Tribe must involve the agencies, organizations, and individuals who are a part of the on-going CFSP-related consultation and coordination process. On the basis of this review, each State and Indian Tribe must prepare and submit to ACF, and make available to the public, an Annual Progress and Services Report which must include the following—

(1) A report on the specific accomplishments and progress made in the past fiscal year toward meeting each goal and objective, including improved outcomes for children and families, and a more comprehensive, coordinated, effective child and family services continuum;

(2) Any revisions in the statement of goals and objectives, or to the training plan, if necessary, to reflect changed circumstances;

(3) For Indian Tribes, a description of the child welfare and/or family preservation and family support services to be provided in the upcoming fiscal year highlighting any changes in services or program design and including the information required in 45 CFR 1357.15(n);

(4) For States, a description of the child protective, child welfare, family preservation, family support, and independent living services to be provided in the upcoming fiscal year highlighting any additions or changes in services or program design and including the information required in 45 CFR 1357.15(n);

(5) Information on activities in the areas of training, technical assistance, research, evaluation, or management information systems that will be carried out in the upcoming fiscal year in support of the goals and objectives in the plan;

(6) For States only, the information required to meet the maintenance of effort (non-supplantation) requirement in section 432(a) (7) and (8) of the Act;

(7) For States and eligible Indian Tribes phasing in requirements for a consolidated CFSP, information on activities and progress directed toward a consolidated plan by June 30, 1996 or 1997. The report must include information that demonstrates States' and eligible Indian Tribes' progress

toward the consolidation of a CFSP, including activities that have been accomplished and still need to be accomplished; and

(8) Any other information the State or the Indian Tribe wishes to include.

(b) *Submittal of the annual progress and services report and CFS-101.* (1) The State and the Indian Tribe must send the Annual Progress and Services Report and the CFS-101 to the appropriate ACF Regional Office no later than June 30 of the year prior to the fiscal year in which the services will be provided (e.g., the report submitted and made public by June 30, 1996 will describe the services to be provided in FY 1997. The report covering FY 1998 services must be submitted by June 30, 1997.)

(2) In order for States and eligible Indian Tribes to receive title IV-B, subparts 1 and 2 allocations a CFS-101 must be submitted for each fiscal year.

(3) States and Indian Tribes which have consolidated the requirements for title IV-B, subparts 1 and 2, must submit the CFS-101 to the appropriate ACF Regional Office no later than June 30 of the year prior to the fiscal year in which the services will be provided (e.g., for FY 1997 allocations, the CFS-101 must be submitted by June 30, 1996; for FY 1998 allocations, the CFS-101 must be submitted by June 30, 1997.)

(4) States and eligible Indian Tribes choosing to phase-in the requirements for a consolidated CFSP must:

(i) Submit by June 30, 1996 a CFS-101 for title IV-B, subpart 1 for FY 1996 allocations; a CFS-101 for title IV-B, subpart 2 for FY 1997 allocations; and, if a State or eligible Indian Tribe chooses, a CFS-101 for subpart 1 FY 1997 allocations.

(ii) Submit by June 30, 1997 a CFS-101 for title IV-B, subpart 1 for FY 1997 allocations, if not previously submitted by June 30, 1996; and a CFS-101 for FY 1998 for subparts 1 and 2 allocations.

(c) *Annual progress and services reports on FY 1994 family support and family preservation services.* Each State and Indian Tribe that used FY 1994 funds under title IV-B, subpart 2, for services must describe in the CFSP what services were provided, the population(s) served, and the geographic areas where services were available. The CFSP also must include the amount of FY 1994 funds used for planning, for family preservation services, for family support services, and a brief statement on how these services met the service priorities of the State or the Indian Tribe.

(d) *Availability of the annual progress and services report.* The State and the Indian Tribe must make the Annual

Progress and Services Report available to the public including the agencies, organizations, and individuals with which the State or the Indian Tribe is coordinating services or consulting and to other interested members of the public. Each State and eligible Indian Tribe within the State must exchange copies of their Annual Progress and Services Reports.

(e) *FY 1999 Final Review.* In FY 1999, each State and eligible Indian Tribe must conduct a final review of progress toward accomplishing the goals and objectives in the plan. On the basis of the final review, it must—

(1) Prepare a final report on the progress made toward accomplishing the goals and objectives; and

(2) Send the final report to the ACF Regional Office and make it available to the public.

(f) *FY 2000 Five-Year State Plan.* Based on the FY 1999 final review and final Annual Progress and Services Report, and in consultation with a broad range of agencies, organizations, and individuals, the States and eligible Indian Tribes must develop a new five-year CFSP following the requirements of 45 CFR 1357.15.

15. Section 1357.20 is revised to read as follows:

§ 1357.20 Child abuse and neglect programs.

The State agency must assure that, with regard to any child abuse and neglect programs or projects funded under title IV-B of the Act, the requirements of section 106(b) (1) and (2) of the Child Abuse Prevention and Treatment Act, as amended, are met. These requirements relate to the State plan and assurances required for the Child Abuse and Neglect State Grant Program.

16. Section 1357.30 is revised to read as follows:

§ 1357.30 State fiscal requirements (title IV-B, subpart 1, child welfare services).

(a) *Scope.* The requirements of this section shall apply to all funds allotted or reallocated to States under title IV-B, subpart 1.

(b) *Allotments.* Allotments for each State shall be determined in accordance with section 421 of the Act.

(c) *Payments.* Payments to States shall be made in accordance with section 423 of the Act.

(d) *Enforcement and termination.* In the event of a State's failure to comply with the terms of the grant under title IV-B, subpart 1, the provisions of 45 CFR 92.43 and 92.44 will apply.

(e) *Matching or cost-sharing.* Federal financial participation is available only

if costs are incurred in implementing sections 422, 423, and 425 of the Act in accordance with the grants

administration requirements of 45 CFR part 92 with the following conditions—

(1) The State's contribution may be in cash, donated funds, and non-public third party in-kind contributions.

(2) The total of Federal funds used for the following purposes under title IV-B, subpart 1 may not exceed an amount equal to the FY 1979 Federal payment under title IV-B:

(i) Child day care necessary solely because of the employment, or training to prepare for employment, of a parent or other relative with whom the child involved is living, plus;

(ii) Foster care maintenance payments, plus;

(iii) Adoption assistance payments.

(3) Notwithstanding paragraph (e)(2) of this section, State expenditures required to match the title IV-B, subpart 1 allotment may include foster care maintenance expenditures in any amount.

(f) *Prohibition against purchase or construction of facilities.* Funds awarded under title IV-B may not be used for the purchase or construction of facilities.

(g) *Maintenance of effort.* (1) A State may not receive an amount of Federal funds under title IV-B in excess of the Federal payment made in FY 1979 under title IV-B unless the State's total expenditure of State and local appropriated funds for child welfare services under title IV-B of the Act is equal to or greater than the total of the State's expenditure from State and local appropriated funds used for similar covered services and programs under title IV-B in FY 1979.

(2) In computing a State's level of expenditures under this section in FY 1979 and any subsequent fiscal year, the following costs shall not be included—

(i) Expenditures and costs for child day care necessary to support the employment of a parent or other relative;

(ii) Foster care maintenance payments; and

(iii) Adoption assistance payments.

(3) A State applying for an amount of Federal funds under title IV-B greater than the amount of title IV-B, subpart 1 funds received by that State in FY 1979 shall certify:

(i) The amount of their expenditure in FY 1979 for child welfare services as described in paragraphs (g) (1) and (2) of this section, and

(ii) The amount of State and local funds that have been appropriated and are available for child welfare services as described in paragraphs (g) (1) and (2)

of this section for the fiscal year for which application for funds is being made. Records verifying the required certification shall be maintained by the State and made available to the Secretary as necessary to confirm compliance with this section.

(h) *Reallotment.* (1) When a State certifies to the Commissioner that funds available to that State under its title IV-B, subpart 1 allotment will not be required, those funds shall be available for reallotment to other States.

(2) When a State, after receiving notice from the Commissioner of the availability of funds, does not certify by a date fixed by the Commissioner that it will be able to expend during the period stated in paragraph (i) of this section all of the funds available to it under its title IV-B, subpart 1 allotment, those funds shall be available for reallotment to other States.

(3) The Commissioner may reallot available funds to another State when it is determined that—

(i) The requesting State's plan requires funds in excess of the State's original allotment; and

(ii) the State will be able to expend the additional funds during the period stated in paragraph (i) of this section.

(i) *Time limit on expenditures.* Funds under title IV-B, subpart 1, must be expended by September 30 of the fiscal year following the fiscal year in which the funds were awarded.

17. A new § 1357.32 is added to read as follows:

§ 1357.32 State fiscal requirements (title IV-B, subpart 2, family preservation and family support services).

(a) *Scope.* The requirements of this section apply to all funds allocated to States under title IV-B, subpart 2, of the Act.

(b) *Allotments.* The annual allotment to each State shall be made in accordance with section 433 of the Act.

(c) *Payments.* Payments to each State will be made in accordance with section 434 of the Act.

(d) *Matching or cost sharing.* Funds used to provide services in FY 1994 and in subsequent years will be federally reimbursed at 75 percent of allowable expenditures. (This is the same Federal financial participation rate as title IV-B, subpart 1.) Federal funds, however, will not exceed the amount of the State's allotment.

(1) The State's contribution may be in cash, donated funds, and non-public third party in-kind contributions.

(2) Except as provided by Federal statute, other Federal funds may not be used to meet the matching requirement.

(e) *Prohibition against purchase or construction of facilities.* Funds

awarded under title IV-B may not be used for the purchase or construction of facilities.

(f) *Maintenance of effort.* States may not use the Federal funds under title IV-B, subpart 2, to supplant Federal or non-Federal funds for existing family preservation and family support services. For the purpose of implementing this requirement, "non-Federal funds" means State funds. ACF will collect information annually from each State on expenditures for family support and family preservation using the State fiscal year 1992 as the base year.

(g) *Time limits on expenditures.* Funds must be expended by September 30 of the fiscal year following the fiscal year in which the funds were awarded.

(h) *Administrative costs.* (1) States claiming Federal financial participation for services provided in FY 1994 and subsequent years may not claim more than 10 percent of expenditures under subpart 2 for administrative costs. There is no limit on the percentage of administrative costs which may be reported as State match.

(2) For the purposes of title IV-B, subpart 2, "administrative costs" are costs of auxiliary functions as identified through an agency's accounting system which are:

(i) Allocable (in accordance with the agency's approved cost allocation plan) to the title IV-B, subpart 2 program cost centers;

(ii) necessary to sustain the direct effort involved in administering the State plan for title IV-B, subpart 2, or an activity providing service to the program; and

(iii) centralized in the grantee department or in some other agency, and may include but are not limited to the following: Procurement; payroll; personnel functions; management, maintenance and operation of space and property; data processing and computer services; accounting; budgeting; auditing.

(3) Program costs are costs, other than administrative costs, incurred in connection with developing and implementing the CFSP (e.g., delivery of services, planning, consultation, coordination, training, quality assurance measures, data collection, evaluations, supervision).

18. Section 1357.40 is revised to read as follows:

§ 1357.40 Direct payments to Indian Tribal Organizations (title IV-B, subpart 1, child welfare services).

(a) *Who may apply for direct funding?* Any Indian Tribal Organization (ITO) that meets the definitions in section

428(c) of the Act, or any consortium or other group of eligible Tribal organizations authorized by the membership of the Tribes to act for them is eligible to apply for direct funding if the ITO, consortium or group has a plan for child welfare services that is jointly developed by the ITO and the Department.

(b) *Title IV-B Child and Family Services Plan (CFSP).* (1) In order to receive funds under title IV-B, subpart 1, beginning in FY 1995, the Indian Tribe or Tribal organization must have in effect an approved five-year child and family services plan that meets the applicable requirements of § 1357.15 of this part.

(2) The Indian Tribe or Tribal organization must also comply with section 422(b)(1-8) of the Act; 45 CFR part 1355 (except that the requirements in § 1355.30 for a single Tribal agency and Governor's review of the CFSP do not apply); and other applicable requirements of §§ 1357.10 and 1357.16.

(c) *Information related to the requirements of Section 422(b)(9) of the Act.* The following information must be submitted with the assurances required to be eligible for title IV-B, subpart 1 funds:

(1) A description of the arrangements, jointly developed with the State, made for the provision of the child welfare services and protections in section 422(b)(9) to Indian children under both State and Tribal jurisdiction;

(2) A statement of the legal responsibility, if any, for children who are in foster care on the reservation and those awaiting adoption;

(3) A description of Tribal jurisdiction in civil and criminal matters, existence or nonexistence of a Tribal court and the type of court and codes, if any;

(4) An identification of the standards for foster family homes and institutional care and day care;

(5) The Indian Tribal organization's political subdivisions, if any;

(6) Whether the Tribal organization is controlled, sanctioned or chartered by the governing body of Indians to be served and if so, documentation of that fact;

(7) Any limitations on authorities granted to the Indian Tribal organizations; and

(8) The Tribal resolution(s) authorizing an application for a direct title IV-B, subpart 1 grant under this Part.

(d) *Grants: General.* (1) Grants may be made to eligible Indian Tribal organizations in a State which has a jointly developed child and family services plan approved and in effect.

(2) Federal funds made available for a direct grant to an eligible ITO shall be paid by the Department, from the title IV-B allotment for the State in which the ITO is located. Should a direct grant be approved, the Department shall promptly notify the State(s) affected.

(3) If an eligible ITO includes population from more than one State, a proportionate amount of the grant will be paid from each State's allotment.

(4) The receipt of title IV-B funds must be in addition to and not a substitute for funds otherwise previously expended by the ITO for child welfare services.

(5) The following fiscal and administrative requirements apply to Indian Tribal grants under this section:

(i) *Enforcement and termination.* In the event of an Indian Tribe's failure to comply with the terms of the grant under title IV-B, subpart 1, the provisions of 45 CFR 92.43 and 92.44 will apply.

(ii) *Matching or cost-sharing.* Federal financial participation is available only if costs are incurred in implementing sections 422, 423, and 425 of the Act in accordance with the grants administration requirements of 45 CFR part 92 with the following conditions—

(A) The ITO's contribution may be in cash, donated funds, and non-public third party in-kind contributions.

(B) The total of Federal funds used for the following purposes under title IV-B, subpart 1 may not exceed an amount equal to the FY 1979 Federal payment under title IV-B:

(1) Child day care necessary solely because of the employment, or training to prepare for employment, of a parent or other relative with whom the child involved is living, plus;

(2) Foster care maintenance payments, plus;

(3) Adoption assistance payments.

(C) Notwithstanding paragraph (d)(5)(ii)(B) of this section, Tribal expenditures required to match the title IV-B, subpart 1 allotment may include foster care maintenance expenditures in any amount.

(iii) *Prohibition against purchase or construction of facilities.* Funds awarded under title IV-B may not be used for the purchase or construction of facilities.

(iv) *Time limit on expenditures.* Funds under title IV-B, subpart 1, must be expended by September 30 of the fiscal year following the fiscal year in which the funds were awarded.

19. A new § 1357.50 is added to read as follows:

§ 1357.50 Direct payments to Indian Tribal organizations (title IV-B, subpart 2, family preservation and support services).

(a) *Definitions.*

Alaska Native Organization means any organized group of Alaska Natives eligible to operate a Federal program under the Indian Self-Determination Act (Pub. L. 93-638) or such group's designee as defined in section 482(i)(7)(A) of the Act.

Indian Tribe means any Tribe, band, nation, or other organized group or community of Indians that is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians; and for which a reservation (including Indian reservations, public domain Indian allotments, and former Indian reservations in Oklahoma) exists.

Tribal organization means the recognized governing body of the Indian Tribe.

(b) *Eligibility for funds: FY 1994.* (1) Section 432(b)(2) of the Act provides that the Secretary may not approve a plan of an Indian Tribe whose FY 1995 allotment under subpart 2 would be less than \$10,000. Therefore, only those Indian Tribes whose FY 1995 allotment is \$10,000 or more are eligible to receive funds beginning in FY 1994.

(2) ACF will pay any amount to which an Indian Tribe is entitled to the Tribal organization of the Indian Tribe.

(c) *Eligibility for funds: FY 1995.* In order to receive funds under title IV-B, subpart 2, in FY 1995, an Indian Tribe that is eligible for planning funds in FY 1994 must submit a Child and Family Services Plan that meets the applicable requirements in section 1357.15 of this Part.

(d) *Eligibility for funds: FY 1996 through FY 1998.* (1) ACF will make grants to additional Indian Tribes in Fys 1996 through 1998 in the event that there are increased appropriations.

(2) Allotments will be calculated in Fys 1996, 1997, and 1998 as required in section 433 of the Act. Those Indian Tribes in each year whose allotment is at least \$10,000 will be notified of their eligibility to apply.

(3) In order to receive funds, additional Indian Tribes which become eligible for grants in FY 1996, 1997, and 1998 must submit either a five year Child and Family Services Plan (CFSP) that meets the applicable requirements of 45 CFR 1357.15 or an application for planning funds by June 30 of the year in which they first become eligible for grants. Those Indian Tribes which submitted an application for planning funds in their first year of funding must submit a five year CFSP that meets the applicable requirements of 45 CFR

1357.15 by June 30 of the second year they receive funding. For example, in order to receive funds, an Indian Tribe which becomes eligible to receive funding beginning in FY 1996 must submit either an application for planning funds or a CFSP by June 30, 1996. If the Indian Tribe submitted an application for planning funds in FY 1996, they must submit a CFSP by June 30, 1997.

(4) All Indian Tribes will be Federally reimbursed at 75 percent of allowable expenditures. Federal funds without match are available in the first year of receipt of funds for additional Indian Tribes meeting the following criteria:

(i) Submittal of an application for planning funds, and not a five year CFSP;

(ii) Receipt of an initial award in FY 1996 or 1997 or 1998; and

(iii) A proposal to spend the entire grant in the first year on planning.

(e) *Allotments.* Allotments to Indian Tribes are computed based on section 433 of the Act and are based on a ratio of the number of children in each Indian Tribe with an approved plan compared to the number of children in all Indian Tribes with approved plans, based on the most current and reliable data available.

(f) *Exemptions of requirements.* (1) ACF has exempted Indian Tribes from three statutory requirements:

(i) The limitation on administrative costs to 10 percent of total Federal and Tribal funds—Indian Tribes may use the indirect cost rate agreement in effect for the Tribe;

(ii) The requirement for maintenance of effort that funds under this program may not be used to supplant other Federal and non-Federal funds; and

(iii) The requirement that a significant portion of funds must be used for both family support and family preservation services.

(2) Specific exemptions from other statutory requirements may be requested by the Tribe in the course of its joint planning. Such a request must contain a compelling reason.

(g) *Matching requirement.* (1) Funds used to provide services in FY 1994 and in subsequent years will be federally reimbursed at 75 percent of allowable expenditures. (This is the same Federal financial participation rate as title IV-B, subpart 1.) The Indian Tribe's match must be at least 25 percent of the total project costs or one-third of the Federal share. Federal funds, however, will not exceed the amount of the Indian Tribe's allotment.

(2) The Indian Tribe's contribution may be in cash, donated funds, and non-public third party in-kind contributions.

(3) Indian Tribes, by statute, may use the following three Federal sources of funds as matching funds: Indian Child Welfare Act funds, Indian Self-Determination and Education Assistance Act funds, and Community Development Block Grant funds.

(h) *Time limits on expenditures.* An Indian Tribe must expend all funds by September 30 of the fiscal year following the fiscal year in which the funds were awarded.

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DEPARTMENT OF TRANSPORTATION

Maritime Administration

46 CFR Part 295

[Docket No. R-163]

RIN 2133-AB24

Maritime Security Program

AGENCY: Maritime Administration, Department of Transportation.

ACTION: Extension of comment period on interim final rule.

SUMMARY: Pursuant to the request of a vessel operator, the Maritime

Administration (MARAD) is extending the period for commenting on its interim final rule for the Maritime Security Program (MSP).

DATES: Comments must be received on or before December 2, 1996.

ADDRESSES: To be considered, comments must be mailed, delivered in person or telefaxed (in which case an original must subsequently be forwarded) to the Secretary, Maritime Administration, Room 7210, Department of Transportation, 400 Seventh Street, SW, Washington, D.C. 20590. All comments will be made available for inspection during normal business hours at the above address. Commenters wishing MARAD to acknowledge receipt of comments should enclose a stamped self-addressed envelope or postcard.

FOR FURTHER INFORMATION CONTACT: Raymond R. Barberesi, Director, Office of Sealift Support, Telephone 202-366-2323.

SUPPLEMENTARY INFORMATION: On October 16, 1996, MARAD issued an interim final rule providing procedures to implement the MSP contained in the Maritime Security Act of 1996 (MSA), which was signed by the President on October 8, 1996. Section 2 of the MSA

amends Title VI of the Merchant Marine Act, 1936 (Act) and adds a new Subtitle B. It authorizes the MSP to provide assistance for U.S.-flag operators and vessels that meet certain qualifications. Participating vessel operators are required to make their ships and other commercial resources available upon request by the Secretary of Defense during time of war or national emergency.

Sea-Land Services, Inc. has requested an extension of the 30-day comment period expiring on November 15, 1996. Sea-Land submits that the requested extension will allow the preparation of more deliberate comments to assist MARAD in fully implementing the provisions of the MSA. It further states that the expedited pace of the MSP application process has left little time to focus on assisting MARAD in this important rulemaking process.

Accordingly, MARAD is extending the comment period until December 2, 1996.

By Order of the Maritime Administrator.

Dated: November 14, 1996.

Joel C. Richard,

Secretary, Maritime Administration.

[FR Doc. 96-29596 Filed 11-15-96; 8:45 am]

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