

technical rules of evidence. Instead, it is an informal administrative proceeding convened for the purpose of gathering and clarifying information. The regulations that govern the hearing, and the pre-hearing guidelines issued for the hearing, will ensure that participants are treated fairly and have due process. This approach will facilitate the development of a clear, accurate, and complete record. Accordingly, application of these rules and guidelines will be such that questions of relevance, procedures, and participation will be decided in favor of developing a complete record.

Conduct of the hearing. Conduct of the hearing will conform to the provisions of 29 CFR 1911.5. Although the ALJ presiding over the hearing makes no decision or recommendation on the merits of the NPRM or the final rule, the ALJ has the responsibility and authority to ensure that the hearing progresses at a reasonable pace and in an orderly manner. To ensure that interested parties receive a full and fair informal hearing, the ALJ has the authority and power to: Regulate the course of the proceedings; dispose of procedural requests, objections, and similar matters; confine the presentations to matters pertinent to the issues raised; use appropriate means to regulate the conduct of the parties who are present at the hearing; question witnesses, and permit others to question witnesses; and limit the time for such questions. At the close of the hearing, the ALJ will establish a post-hearing comment period for parties who participated in the hearing. During the first part of this period, the participants may submit additional data and information to OSHA, and during the second part of this period, they may submit briefs, arguments, and summations.

Notice of intention to appear to provide testimony at the informal public hearings. Hearing participants must file a notice of intention to appear that provides the following information: The name, address, and telephone number of each individual who will provide testimony; the capacity in which the individual will testify (e.g., name of the establishment/organization the individual is representing; the individual's occupational title and position); approximate amount of time requested for the individual's testimony; specific issues the individual will address, including a brief description of the position that the individual will take with respect to each of these issues; and any documentary evidence the individual will present, including a brief summary of the evidence.

OSHA emphasizes that, while the hearing is open to the public and interested parties are welcome to attend, only a party who files a proper notice of intention to appear may ask questions and participate fully in the hearing. A party who did not file a notice of intention to appear may be allowed to testify at the hearing if time permits, but this determination is at the discretion of the presiding ALJ.

Hearing testimony and documentary evidence. OSHA will review each submission and determine if the information it contains warrants the amount of time requested. OSHA then will allocate an appropriate amount of time to each presentation, and will notify the participants of the time allotted to their presentations. Prior to the hearing, the Agency will notify participants if the allotted time is less than the requested time, and will provide the reasons for this action. OSHA may limit to 10 minutes the presentation of any participant who fails to comply substantially with these procedural requirements. The Agency also may request a participant to return for questions at a later time.

Certification of the record and final determination after the informal public hearing. Following the close of the hearing and post-hearing comment period, the ALJ will certify the record to the Assistant Secretary of Labor for Occupational Safety and Health. This record will consist of all of the written comments, oral testimony, documentary evidence, and other material received during the hearing. Following certification of the record, OSHA will review the proposed provisions in light of all the evidence received as part of the record, and then will issue the final determinations based on the entire record.

Authority and Signature

This document was prepared under the authority of Thomas M. Stohler, Acting Assistant Secretary of Labor for Occupational Safety and Health, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210, pursuant to Sections 6(b) of the Occupational Safety and Health Act of 1970 (29 U.S.C. 655), Secretary of Labor's Order 5-2007 (72 FR 31160), and 29 CFR part 1911.

Signed at Washington, DC, on January 14, 2009.

Thomas M. Stohler,

Acting Assistant Secretary of Labor for Occupational Safety and Health.

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

45 CFR Parts 1355 and 1356

Request for Public Comment Concerning Regulations for Transferring Children From the Placement and Care Responsibility of a State Title IV-E Agency to a Tribal Title IV-E Agency and Tribal Share of Title IV-E Administration and Training Expenditures

AGENCY: Administration on Children, Youth and Families, Administration for Children and Families, Department of Health and Human Services.

ACTION: Proposed rule; request for public comment and Tribal consultation meetings.

SUMMARY: Effective October 1, 2009, Public Law 110-351 provides Indian Tribes with the option to operate a foster care, adoption assistance and, at tribal option, a kinship guardianship assistance program under title IV-E of the Social Security Act (the Act). The Federal government would share in the costs of Tribes operating an ACF-approved title IV-E program. Public Law 110-351 requires that ACF develop interim final rules after consulting with Tribes and affected States on the implementation of the tribal plan requirements in section 479B of the Act and other amendments made by the Tribal provisions in section 301 of Public Law 110-351. The law requires that such regulations include: (1) Procedures to ensure that a transfer of State or Tribal responsibility for the placement and care of a child under a State title IV-E plan to a Tribal title IV-E plan occurs in a manner that does not affect the child's eligibility for title IV-E or title XIX Medicaid and such services or payments; and, (2) the in-kind expenditures from third-party sources permitted for the Tribal share of administration and training expenditures under title IV-E. This notice is designed to provide a written opportunity for comment to all interested persons and notify Tribal leaders of in-person opportunities to consult with the Children's Bureau on the development of these regulations.

DATES: Written comments must be submitted to the office listed in the **ADDRESSES** section below on or before April 27, 2009. Please see **SUPPLEMENTARY INFORMATION** for additional details on the Tribal consultation meetings.

ADDRESSES: Interested persons may submit written comments by any of the following methods:

- *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the instructions for submitting comments.

- *E-mail:* CBComments@acf.hhs.gov. Please include "Comments on Tribal IV-E Regulations" in the subject line of the message.

- *Mail or Courier Delivery:* Miranda Lynch, Division of Policy, Children's Bureau, Administration on Children, Youth and Families, Administration for Children and Families, 1250 Maryland Avenue, SW., 8th Floor, Washington, DC 20024.

Instructions: Please be aware that mail sent to us may take an additional 3–4 days to process due to changes in mail handling resulting from the anthrax crisis of October 2001. If you choose to use an express, overnight, or other special delivery method, please ensure first that they are able to deliver to the above address. We urge you to submit comments electronically to ensure they are received in a timely manner. All comments received will be posted without change to www.regulations.gov including any personal information provided. Comments provided to us during a meeting or in-writing in response to this **Federal Register** notice will receive equal consideration by ACF.

FOR FURTHER INFORMATION CONTACT: Miranda Lynch, Children's Bureau, 1250 Maryland Avenue, SW., 8th Floor, Washington, DC 20024; (202) 205–8138, miranda.lynch@acf.hhs.gov.

SUPPLEMENTARY INFORMATION:

Title IV–E Background

The Fostering Connections to Success and Increasing Adoption Act of 2008, Public Law 110–351 was enacted on October 7, 2008. Prior to the law's enactment, the title IV–E program provided States and territories with Federal funds to support eligible children in foster care, eligible children with special needs in adoptions, and to assist the State with the administrative expenses of operating the title IV–E program. The law, as amended, permits Federally-recognized Indian Tribes, tribal organizations or consortia (hereafter, "Tribes") to apply to ACF to operate a title IV–E program beginning October 1, 2009. By law, the requirements of the title IV–E statute apply to such Tribes "in the same manner as this part applies to a State" (section 479B(b) of the Act), with limited exceptions. Public Law 110–351 also provides limited funding, beginning in Federal fiscal year (FY)

2009, for Tribes that intend to submit an application to ACF for direct funding of the title IV–E program to also apply for a grant to assist in developing a title IV–E plan. Finally, the law codifies a Tribe's ability to enter into agreements and contracts with State title IV–E agencies to share in the administration of the title IV–E programs on behalf of Indian children in their placement and care responsibility.

In addition to creating this opportunity for Tribes, the law permits title IV–E agencies who choose to do so to administer a new kinship guardianship assistance program under title IV–E, revises the eligibility criteria for the title IV–E adoption assistance program, allows title IV–E agencies to choose to extend title IV–E foster care, adoption assistance, and kinship guardianship payments to youth who meet certain conditions up to age 21, among other changes to the title IV–B and IV–E requirements. The entire law and issuances related to the new provisions can be found on the Children's Bureau's Web site at <http://www.acf.hhs.gov/programs/cb>.

Implementation of the Tribal Title IV–E Plan

The law limits exceptions or modifications to the title IV–E statutory requirements for Tribes that will directly operate a title IV–E program to those granted in the law (i.e., the ability for Tribes to define their own service areas, tribal licensing standards and flexibility to use nunc pro tunc and affidavits to meet judicial determination requirements in the first 12 months of operation of the tribal title IV–E plan). This means that Tribes wishing to operate their own title IV–E plan must adhere to the following requirements:

- Secretary approval of a plan to operate a title IV–E foster care (per section 472 of the Act) and adoption assistance program (per section 473 of the Act) that complies with the applicable title IV–E plan requirements in sections 471(a) and definitions in section 475 of the Act.
- Tribal title IV–E plan provisions in section 479B of the Act;
- Regulations in 45 CFR parts 1355 and 1356 or incorporated by cross-reference, to the extent that such regulations have not been superseded by Public Law 110–351 or are not applicable to directly-funded Tribes at this time (e.g., title IV–E eligibility reviews and Child and Family Services Reviews); and,
- Federal reporting requirements as required by the Secretary (section 471(a)(6) of the Act).

Transfer of Placement and Care of Title IV–E Indian Children

The law requires the Secretary to issue interim final rules on the transfer of children in foster care under a State title IV–E plan, to the placement and care responsibility of a Tribe under a directly-funded Tribal title IV–E plan to ensure that a child maintains his eligibility for title IV–E and title XIX Medicaid. We note that the Indian Child Welfare Act (ICWA) of 1978 provides existing statutory direction for State courts to transfer certain child custody proceedings—including foster care—involving Indian children to the jurisdiction of Indian courts. The Bureau of Indian Affairs, Department of the Interior, has also issued guidelines regarding such transfers in "Guidelines for State Courts—Indian Child Custody Proceedings" (see 44 FR 67584, November 26, 1979).

Tribal Share of Title IV–E Administration and Training Expenditures

Tribes whose title IV–E plans are approved by the Secretary may receive Federal reimbursement of a share of title IV–E allowable administrative and training costs (section 479B(c)(1)(D) of the Act). As of October 1, 2009, the law permits such Tribes, but not States, to use in-kind funds from third-party sources in contributing their Tribal share of such costs. The law establishes initial provisions for permitted third-party sources and sets specific limits on the percentage of the Tribal share that may be used for title IV–E purposes. The law requires HHS to develop interim final regulations on the tribal share provisions to apply beginning in FY 2012.

Opportunity To Comment

Interim final rules are final rules that have immediate effect without the Federal agency first issuing and inviting public comment on a notice of proposed rule. Because the law requires us to use the interim final rule process on the limited topics of the procedures to effect the transfer of children from State to directly-funded Tribal title IV–E plans and the in-kind third party match sources and percentages, we are seeking comments from Tribes, affected States and other stakeholders through this **Federal Register** notice and the Tribal consultation meetings. Specifically, we are seeking comments on the following:

- Considering that the Secretary is to apply title IV–E of the Act to Tribes in the same manner as to States except where directed by law, what, if any, provisions and clarifications related to

the title IV–E program for directly-funded Tribes should be in regulations?

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

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

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

Any other comments regarding the development of an interim final rule per section 301(e) of Public Law 110–351 are welcome. Please note, however, that this request is limited in scope and is not intended to solicit comments on the remaining provisions of Public Law 110–351.

Tribal Consultation

We invite Tribal leaders and/or their representatives of Federally recognized tribes to attend consultation meetings that will be held in certain ACF Regional Offices to provide their input on the issues subject to regulations as explained below. Tribal leaders and/or their representatives who choose to attend a consultation session must register at least one week in advance of the meeting date by contacting the applicable Children's Bureau (CB) Regional Program Manager. Registered participants for the consultation session may submit written remarks in advance, or present them in oral or written form at the consultation session. Tribal leaders and/or their representatives, regardless of whether they participate in the consultation session, may provide written comments as noted in the **ADDRESSES** section. Finally, please note that Federal representatives attending the consultation sessions will not be able to respond directly during the

session to the concerns or questions raised by participants. The consultation sessions and contact information are listed below:

Thursday, February 12, 2009—Region VII

Federal Office Building, 601 E 12th Street, Kansas City, MO 64106. Contact: Rosalyn Wilson, CB Regional Program Manager, phone (816) 426–3981 or e-mail rosalyn.wilson@acf.hhs.gov.

Region includes: Iowa, Kansas, Missouri and Nebraska.

Friday, February 20, 2009—Region VI

1301 Young Street, Room 1119, Dallas, TX 75202. Contact: June Lloyd, CB Regional Program Manager, phone (214) 767–9648 or e-mail june.lloyd@acf.hhs.gov.

Region includes: Arkansas, Louisiana, New Mexico, Oklahoma and Texas.

Friday, February 20, 2009—Region IX

90 7th Street—Conf. Rm. B040 and B020, San Francisco, CA, 94103. Contact: Sally Flanzer, CB Regional Program Manager, phone (415) 437–8400 or e-mail sally.flanzer@acf.hhs.gov.

Region includes: Arizona, California, Hawaii, Nevada, Outer Pacific—American Samoa, Commonwealth of the Northern Marianas, Federated States of Micronesia (Chuuk, Pohnpei, Yap) Guam, Marshall Islands and Palau.

Wednesday, February 25—Region I

JFK Federal Building 21st Floor, Rm. 2100, Boston, MA 02203. Contact: Bob Cavanaugh, CB Regional Program Manager, phone (617) 565–1020 or e-mail bob.cavanaugh@acf.hhs.gov.

Region includes: Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, and Vermont.

Wednesday, February 25, 2009—Region VIII

Byron Rogers Federal Building, 1961 Stout Street, Denver, CO 80294. Contact: Marilyn Kennerson, CB Regional Program Manager, phone (303) 844–3100 or e-mail marilyn.kennerson@acf.hhs.gov.

Region includes: Colorado, Montana, North Dakota, South Dakota, Utah and Wyoming.

Thursday, February 26, 2009—Region II

Leo O'Brien Federal Building, Room 826A, 1 Clinton Square, Albany, NY 12207. Contact: Junius Scott, CB Regional Program Manager, phone (212) 264–2890 or e-mail junius.scott@acf.hhs.gov.

Region includes: New Jersey, New York, Puerto Rico and the Virgin Islands.

Thursday, February 26, 2009—Region IV

Sam Nunn Atlanta Federal Center, Conf. Rm. A & B, 61 Forsyth Street SW., Suite 4M60, Atlanta, GA 30303. Contact: Ruth Walker, CB Regional Program Manager, phone (404) 562–2900 or e-mail ruth.walker@acf.hhs.gov.

Region includes: Alabama, Mississippi, Florida, North Carolina, Georgia, South Carolina, Kentucky and Tennessee.

Friday, February 27, 2009—Region X

2201 Sixth Avenue, Seattle, WA 98121–1827. Contact: John Henderson, CB Regional Program Manager, phone (206) 615–2482 or e-mail john.henderson@acf.hhs.gov.

Region includes: Alaska, Idaho, Oregon and Washington.

Thursday, March 5, 2009—Region V

ACF Tower Conference Room, 233 N Michigan Avenue, Suite 400, Chicago, IL 60601. Contact: Carolyn Wilson-Hurey, CB Regional Program Manager, phone (312) 353–4237 or e-mail carolyn.wilson-hurey@acf.hhs.gov.

Region includes: Illinois, Indiana, Michigan, Minnesota, Ohio and Wisconsin.

Dated: January 14, 2009.

Joan E. Ohl,

Commissioner, Administration on Children, Youth and Families.

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