



DEPARTMENT OF HEALTH & HUMAN SERVICES

Office of Inspector General

Washington, D.C. 20201

MAY 19 2008

TO: Daniel C. Schneider
Acting Assistant Secretary for Children and Families

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

SUBJECT: Philadelphia County's Title IV-E Claims Based on Contractual Per Diem Rates of \$300 or Less for Foster Care Services From October 1997 Through September 2002 (A-03-07-00560)

Attached is an advance copy of our final report on Philadelphia County's Title IV-E claims based on contractual per diem rates of \$300 or less for foster care services from October 1997 through September 2002. We will issue this report to the Pennsylvania Department of Public Welfare (the State agency) within 5 business days.

Philadelphia County's Department of Human Services (DHS) determines Title IV-E eligibility and contracts with institutional care facilities to provide foster care services and with firms that place children in foster family and group homes. The contracts specify per diem rates negotiated with the respective contractors. DHS submits quarterly summary invoices to the State agency for reimbursement of its foster care maintenance costs and claims administrative costs separately. The State agency submits claims for Federal funds to the Administration for Children and Families (ACF).

Our objective was to determine, for claims based on per diem rates of \$300 or less, whether the State agency claimed Title IV-E maintenance and associated administrative costs for Philadelphia County in accordance with Federal requirements from October 1997 through September 2002.

The State agency did not always claim Title IV-E maintenance and associated administrative costs for Philadelphia County in accordance with Federal requirements. Of the 200 maintenance claims sampled, which were based on per diem rates of \$300 or less, 154 were allowable. However, 30 claims were unallowable: 27 claims included costs for services provided to ineligible children, and 3 claims included costs for services provided by facilities that were not licensed or approved foster care providers. Based on these sample results, we estimated that the State agency improperly claimed \$34,507,809 for Title IV-E maintenance costs. Including associated administrative costs of \$22,005,630, we estimated that the State agency improperly claimed at least \$56,513,439 of the total \$562,280,094 (Federal share) claimed for Title IV-E

reimbursement on behalf of Philadelphia County children for whom the per diem rates were \$300 or less.

We were unable to determine the allowability of 16 sampled claims because the contractors' per diem rates did not distinguish between services that were eligible or ineligible for Title IV-E reimbursement. However, individualized educational programs, social workers' progress notes, and other documentation indicated that the facilities provided some services, such as medical, educational, and rehabilitative services, that were not eligible for Title IV-E foster care maintenance payments. Based on these sample results, we set aside \$100,024,423 for resolution by ACF.

We recommend that the State agency:

- refund to the Federal Government \$56,513,439, including \$34,507,809 in unallowable maintenance costs and \$22,005,630 in unallowable administrative costs, for the period October 1997 through September 2002;
- work with ACF to determine the allowability of \$100,024,423 related to claims that included both allowable and unallowable services;
- work with ACF to identify and resolve any unallowable claims for maintenance payments at per diem rates of \$300 or less made after September 2002 and refund the appropriate amount;
- discontinue claiming Title IV-E reimbursement for ineligible children, unlicensed facilities, and ineligible services; and
- direct Philadelphia County to develop rate-setting procedures that separately identify maintenance and other costs, including related administrative costs, so that claims are readily allocable to the appropriate Federal, State, and local funding sources.

In its comments on our draft report, the State agency disagreed with our findings and recommendations and provided additional documentation on 38 of the 44 claims questioned in our draft report. Based on this documentation, we determined that 14 claims were for eligible children but that 2 of these claims contained costs for ineligible services. We have revised this report, including our recommended refund and set-aside amounts, accordingly.

If you have any questions or comments about this report, please do not hesitate to call me, or your staff may contact Lori S. Pilcher, Assistant Inspector General for Grants, Internal Activities, and Information Technology Audits, at (202) 619-1175 or through e-mail at Lori.Pilcher@oig.hhs.gov or Stephen Virbitsky, Regional Inspector General for Audit Services, Region III, at (215) 861-4470 or through e-mail at Stephen.Virbitsky@oig.hhs.gov. Please refer to report number A-03-07-00560.

Attachment



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OFFICE OF INSPECTOR GENERAL
OFFICE OF AUDIT SERVICES
150 S. INDEPENDENCE MALL WEST
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MAY 22 2008

Report Number: A-03-07-00560

Ms. Estelle B. Richman
Secretary of Public Welfare
Pennsylvania Department of Public Welfare
P.O. Box 2675
Harrisburg, Pennsylvania 17105

Dear Ms. Richman:

Enclosed is the U.S. Department of Health and Human Services (HHS), Office of Inspector General (OIG), final report entitled "Philadelphia County's Title IV-E Claims Based on Contractual Per Diem Rates of \$300 or Less for Foster Care Services From October 1997 Through September 2002." We will forward a copy of this report to the HHS action official noted on the following page for review and any action deemed necessary.

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

Pursuant to the principles of the Freedom of Information Act, 5 U.S.C. § 552, as amended by Public Law 104-231, OIG reports generally are made available to the public to the extent the information is not subject to exemptions in the Act (45 CFR part 5). Accordingly, within 10 business days after the final report is issued, it will be posted on the Internet at <http://oig.hhs.gov>.

If you have any questions or comments about this report, please do not hesitate to call me, or contact Michael Walsh, Audit Manager, at (215) 861-4480 or through e-mail at Michael.Walsh@oig.hhs.gov. Please refer to report number A-03-07-00560 in all correspondence.

Sincerely,

A handwritten signature in black ink, appearing to read "Stephen Virbitsky", with a long horizontal flourish extending to the right.

Stephen Virbitsky
Regional Inspector General
for Audit Services

Enclosure

Direct Reply to HHS Action Official:

Mr. Ron Gardner
Grants Officer
Administration for Children and Families, Region III
U.S. Department of Health and Human Services
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Philadelphia, Pennsylvania 19106-3499

Department of Health and Human Services

**OFFICE OF
INSPECTOR GENERAL**

**PHILADELPHIA COUNTY'S
TITLE IV-E CLAIMS BASED ON
CONTRACTUAL PER DIEM RATES
OF \$300 OR LESS FOR FOSTER
CARE SERVICES FROM
OCTOBER 1997 THROUGH
SEPTEMBER 2002**



Daniel R. Levinson
Inspector General

May 2008
A-03-07-00560

Office of Inspector General

<http://oig.hhs.gov>

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The Office of Audit Services (OAS) provides auditing services for HHS, either by conducting audits with its own audit resources or by overseeing audit work done by others. Audits examine the performance of HHS programs and/or its grantees and contractors in carrying out their respective responsibilities and are intended to provide independent assessments of HHS programs and operations. These assessments help reduce waste, abuse, and mismanagement and promote economy and efficiency throughout HHS.

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THIS REPORT IS AVAILABLE TO THE PUBLIC
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Pursuant to the principles of the Freedom of Information Act, 5 U.S.C. § 552, as amended by Public Law 104-231, Office of Inspector General reports generally are made available to the public to the extent the information is not subject to exemptions in the Act (45 CFR part 5).

OFFICE OF AUDIT SERVICES FINDINGS AND OPINIONS

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

EXECUTIVE SUMMARY

BACKGROUND

Title IV-E of the Social Security Act, as amended, authorizes Federal funds for State foster care programs. For children who meet Title IV-E requirements, the Administration for Children and Families (ACF) provides the Federal share of States' costs, including maintenance (room and board) costs and administrative and training costs. In Pennsylvania, the Department of Public Welfare (the State agency) supervises the Title IV-E program.

Philadelphia County's Department of Human Services (DHS) determines Title IV-E eligibility and contracts with institutional care facilities to provide foster care services and with firms that place children in foster family and group homes. The contracts specify per diem rates negotiated with the respective contractors. DHS submits quarterly summary invoices to the State agency for reimbursement of its foster care maintenance costs and claims administrative costs separately. From October 1997 through September 2002, the State agency claimed \$562,280,094 (Federal share) in Title IV-E maintenance and associated administrative costs on behalf of Philadelphia County children for whom the per diem rate was \$300 or less.

OBJECTIVE

Our objective was to determine, for claims based on per diem rates of \$300 or less, whether the State agency claimed Title IV-E maintenance and associated administrative costs for Philadelphia County in accordance with Federal requirements from October 1997 through September 2002.

SUMMARY OF FINDINGS

The State agency did not always claim Title IV-E maintenance and associated administrative costs for Philadelphia County in accordance with Federal requirements. Of the 200 maintenance claims sampled, which were based on per diem rates of \$300 or less, 154 were allowable. However, 30 claims were unallowable, and some of these claims contained multiple errors.

- Twenty-seven claims included costs for services provided to ineligible children.
- Three claims included costs for services provided by facilities that were not licensed or approved foster care providers.

Based on these sample results, we estimated that the State agency improperly claimed \$34,507,809 for Title IV-E maintenance costs. Including associated administrative costs of \$22,005,630, we estimated that the State agency improperly claimed at least \$56,513,439 of the total \$562,280,094 (Federal share) claimed for Title IV-E reimbursement on behalf of Philadelphia County children for whom the per diem rates were \$300 or less.

We were unable to determine the allowability of 16 sampled claims because the contractors' per diem rates did not distinguish between services that were eligible or ineligible for Title IV-E

reimbursement. However, individualized educational programs, social workers' progress notes, and other documentation indicated that the facilities provided some services, such as medical, educational, and rehabilitative services, that were not eligible for Title IV-E foster care maintenance payments. Based on these sample results, we set aside \$100,024,423 for resolution by ACF.

RECOMMENDATIONS

We recommend that the State agency:

- refund to the Federal Government \$56,513,439, including \$34,507,809 in unallowable maintenance costs and \$22,005,630 in unallowable administrative costs, for the period October 1997 through September 2002;
- work with ACF to determine the allowability of \$100,024,423 related to claims that included both allowable and unallowable services;
- work with ACF to identify and resolve any unallowable claims for maintenance payments at per diem rates of \$300 or less made after September 2002 and refund the appropriate amount;
- discontinue claiming Title IV-E reimbursement for ineligible children, unlicensed facilities, and ineligible services; and
- direct Philadelphia County to develop rate-setting procedures that separately identify maintenance and other costs, including related administrative costs, so that claims are readily allocable to the appropriate Federal, State, and local funding sources.

STATE AGENCY COMMENTS

In its comments on our draft report (Appendixes D and E), the State agency disagreed with our findings and recommendations. The State agency questioned our authority to conduct the audit and stated that our recommendations were without merit and contrary to law. The State agency also provided additional documentation on 38 of the 44 claims questioned in our draft report.

OFFICE OF INSPECTOR GENERAL RESPONSE

After reviewing the additional documentation provided by the State agency, we determined that 14 claims were for eligible children but that 2 of these claims contained costs for ineligible services. We have revised this report to reflect that we are questioning 30 claims and were unable to determine the allowability of 16 claims. We have also revised our recommended refund and set-aside amounts. Our audit evidence clearly supports our recommendations, as well as our conclusion that the State agency did not always comply with Federal requirements in claiming Title IV-E costs for Philadelphia County children for whom the per diem rates were \$300 or less.

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INTRODUCTION

BACKGROUND

Title IV-E Foster Care Program

Title IV-E of the Social Security Act (the Act), as amended, authorizes Federal funds for States to provide foster care for children under an approved State plan. At the Federal level, the Administration for Children and Families (ACF) administers the program.

For children who meet Title IV-E foster care requirements, Federal funds are available to States for maintenance, administrative, and training costs:

- Maintenance costs cover room and board payments to licensed foster parents, group homes, and institutional care facilities. The Federal share of maintenance costs is based on each State's Federal rate for Title XIX (Medicaid) expenditures. During our audit period, the Federal share of Pennsylvania's maintenance costs ranged from 52.85 percent to 54.21 percent.
- Administrative costs cover staff activities such as case management and supervision of children placed in foster care and children considered to be Title IV-E candidates, preparation for and participation in court hearings, placement of children, recruitment and licensing for foster homes and institutions, and rate setting. Also reimbursable under this category is a proportionate share of overhead costs. The Federal share of administrative costs allocable to the Title IV-E program is 50 percent.
- Training costs cover the training of State or local staff to perform administrative activities and the training of current or prospective foster care parents, as well as personnel of childcare institutions. Certain State training costs qualify for an enhanced 75-percent Federal funding rate.

In Pennsylvania, the Department of Public Welfare (the State agency) supervises the Title IV-E foster care program through its Office of Children, Youth, and Families. The State agency administers the program through the counties.

Federal and State Licensing Requirements

Section 472(c) of the Act requires that foster homes and childcare institutions be licensed or approved as meeting the standards established for such licensing by the State to receive Title IV-E reimbursement. The Pennsylvania State plan incorporates by reference Pennsylvania Code requirements for licensing and approving Title IV-E reimbursable institutions (55 PA. CODE Chapters 3680, 3700, and 3800). The State agency grants licenses in accordance with Federal and State requirements, including standards related to admission policies, safety, sanitation, and the protection of civil rights.

Philadelphia County's Title IV-E Program

In Philadelphia County, the Department of Human Services (DHS), Children and Youth Division, administers the Title IV-E program, which includes services for children supervised by Juvenile Justice Services. DHS determines Title IV-E eligibility and contracts with institutional care facilities to provide foster care services and with firms that place children in foster family and group homes. The contracts specify per diem rates negotiated with the respective contractors. Per diem rates vary by location and the type and extent of services provided.

Contractors submit invoices to DHS based on the negotiated per diem rates. DHS pays the invoices and then submits quarterly summary invoices to the State agency. DHS claims administrative costs separately. The State agency consolidates the claims from all 67 counties, including Philadelphia County, and submits Quarterly Reports of Expenditures and Estimates (Forms ACF-IV-E-1) to ACF to claim Federal funding.

Audits of the State Agency's Title IV-E Claims

We are performing a series of audits of the State agency's Title IV-E foster care claims. Our first report, issued in October 2005, identified improper Castille program¹ claims submitted due to clerical errors.² The second report focused on the eligibility of Castille program services and children.³ The third report focused on Philadelphia County's foster care claims based on per diem rates exceeding \$300.⁴ This report, the fourth in the series, focuses on Philadelphia County's foster care claims based on per diem rates of \$300 or less.

OBJECTIVE, SCOPE, AND METHODOLOGY

Objective

Our objective was to determine, for claims based on per diem rates of \$300 or less, whether the State agency claimed Title IV-E maintenance and associated administrative costs for Philadelphia County in accordance with Federal requirements from October 1997 through September 2002.

¹This program is a Philadelphia County court-ordered program for the placement of children convicted of a delinquent act. We refer to this program as the "Castille program."

²"Costs Claimed Under Title IV-E Foster Care Program for Children in Castille Contracted Detention Facilities From October 1, 1997, to September 30, 2002" (A-03-04-00586).

³"Claims Paid Under the Title IV-E Foster Care Program for Children in Castille Contracted Detention Facilities From October 1, 1997, to September 30, 2002" (A-03-05-00550).

⁴"Philadelphia County's Title IV-E Claims for Children for Whom the Contractual Per Diem Rate for Foster Care Services Exceeded \$300 From October 1997 Through September 2002" (A-03-06-00564).

Scope

Our review covered a universe of 157,873 claims for Title IV-E maintenance and associated administrative costs totaling \$562,280,094 (Federal share). These claims were based on per diem rates of \$300 or less. During the audit period, DHS submitted 20 quarterly summary invoices to the State agency for Title IV-E maintenance and associated administrative costs totaling \$595,562,585 (Federal share). DHS provided the State agency with detailed lists in support of the summary invoices. Each line on the detailed lists showed a child's name and the per diem rate, number of days, and maintenance costs claimed for the child. (We refer to these lines as "claims" in this report.) From the detailed lists, we identified the claims that were based on per diem rates of \$300 or less.⁵

From the universe of 157,873 claims, we randomly selected a statistical sample of 200 claims totaling \$398,647 (Federal share) for Title IV-E maintenance costs. Fifty-two contractors provided the services for the 200 sampled claims at 180 facilities, primarily foster family homes, as well as some group homes and institutional care facilities. Appendix A explains our sampling methodology, and Appendix B details the sample results and estimates.

We requested but did not receive information about the development of the contractors' per diem rates, including details on the costs for each service included in the rates.

Some services that we identified as unallowable for reimbursement as Title IV-E foster care costs, or for which we were unable to express an opinion, may have been allowable for reimbursement through other Federal programs. However, determining the allowability of costs for other Federal programs was not within the scope of this audit.

We reviewed only those internal controls considered necessary to achieve our objective.

We performed our fieldwork at the Philadelphia Family Courthouse and at DHS in Philadelphia, Pennsylvania, from October 2006 to August 2007.

Methodology

To accomplish our objective, we:

- reviewed Federal and State criteria related to Title IV-E foster care claims,
- interviewed State agency personnel regarding the State agency's claims,
- reviewed the State agency's accounting system to identify all maintenance costs claimed for Federal reimbursement,

⁵Included in the 20 summary invoices were another 1,512 claims totaling \$33,282,491 for Title IV-E services paid at per diem rates in excess of \$300 and associated administrative costs. These costs were covered in a separate report (A-03-06-00564).

- obtained from the State agency DHS's quarterly summary invoices and detailed lists supporting the invoices,
- identified all Title IV-E maintenance claims based on per diem rates of \$300 or less,
- reviewed documentation provided by the State agency in support of the 200 sampled claims and reconciled maintenance costs to the amounts posted in the State agency's accounting records,
- reviewed licensing or approval information received from the State agency or from the contractors for 178 of the 180 facilities included in our sample, and
- requested all 52 contracts between DHS and the contractors included in our sample and reviewed the 14 contracts that the State agency provided.

State agency officials directed us to address all requests for information to the State agency instead of going directly to the social workers or the courts. Initially, we requested Philadelphia County's social worker case files and any other documentation to support the State agency's claims. The State agency provided us with social worker case files and a limited number of juvenile justice case files.⁶ The State agency also contracted with MAXIMUS, Inc. (MAXIMUS), to gather and compile documentation to support the children's Title IV-E eligibility, including court orders, Client Information System and Income Eligibility Verification System data, contractor information, social worker notes, and other data.⁷

After reviewing the information supplied by the State agency, we provided the State agency with a list of the documentation that we had requested but did not receive. As of November 21, 2007, the State agency had not supplied this information.

We questioned each unallowable claim only once regardless of how many errors it contained. Based on the errors in the sample, we estimated the dollar value of errors in the universe of claims.

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

⁶The juvenile justice case file is a shared file that gathers police, court, probation, and social service information for each child whom a judge has found guilty of a delinquent act and placed under the supervision of the court.

⁷The Client Information System is a statewide database of individuals who participate in social service programs. The Income Eligibility Verification System is a statewide wage-reporting system that documents earned and unearned income. Income and eligibility verification is required under section 1137 of the Act.

FINDINGS AND RECOMMENDATIONS

The State agency did not always claim Title IV-E maintenance and associated administrative costs for Philadelphia County in accordance with Federal requirements. Of the 200 maintenance claims sampled, which were based on per diem rates of \$300 or less, 154 were allowable. However, 30 claims were unallowable.

- Twenty-seven claims included costs for services provided to ineligible children.
- Three claims included costs for services provided by facilities that were not licensed or approved foster care providers.

Some of the 30 claims contained multiple errors, as shown in Appendix C.

Based on these sample results, we estimated that the State agency improperly claimed \$34,507,809 for Title IV-E maintenance costs. Including associated administrative costs of \$22,005,630, we estimated that the State agency improperly claimed at least \$56,513,439 of the total \$562,280,094 (Federal share) claimed for Title IV-E reimbursement on behalf of Philadelphia County children for whom the per diem rates were \$300 or less.

We were unable to determine the allowability of 16 sampled claims because the contractors' per diem rates did not distinguish between services that were eligible or ineligible for Title IV-E reimbursement. However, individualized educational programs, social workers' progress notes, and other documentation indicated that the facilities provided some services, such as medical, educational, and rehabilitative services, that were not eligible for Title IV-E foster care maintenance payments. Based on these sample results, we set aside \$100,024,423 for resolution by ACF.

COSTS CLAIMED FOR SERVICES PROVIDED TO INELIGIBLE CHILDREN

The State agency submitted 27 claims totaling \$59,310 for services provided to children who did not meet Title IV-E foster care eligibility requirements. We questioned many of these claims for multiple reasons.

- For 14 claims, the State agency did not document that remaining in the home was contrary to the children's welfare or that placement would be in the best interest of the children.
- For 10 claims, the State agency did not document computation of the children's family incomes.
- For nine claims, the State agency did not document that it had made reasonable efforts to prevent the children's removal from the home or that such efforts were not required.
- For six claims, the children did not meet Title IV-E age requirements.

Remaining in the Home Contrary to the Welfare of the Child

Section 472(a)(1) of the Act requires that “the removal from the home occurred pursuant to a voluntary placement agreement entered into by the child’s parent or legal guardian, or was the result of a judicial determination to the effect that continuation therein would be contrary to the welfare of such child”⁸ Pursuant to 45 CFR § 1356.21(d), judicial determinations that remaining in the home would be contrary to the welfare of the child or that placement would be in the best interest of the child must be documented by a court order or a transcript of the court proceedings.

For 14 claims, the State agency did not provide the necessary documentation to meet these requirements. Specifically, the State agency did not provide any documentation to indicate that it had entered into voluntary placement agreements with the children’s parents or legal guardians, nor did it provide court orders or transcripts to document that remaining in the home would be contrary to the children’s welfare.

- Documentation for 13 claims did not include any voluntary placement agreements, court orders, or transcripts.
- Documentation for one claim included a court order for the commitment of the child, but the court order did not show that continuation in the home would be contrary to the child’s welfare or that placement would be in the best interest of the child.

Income Requirements

Section 472(a)(4)(A) of the Act defines the needy child, in part, as one who “would have received aid [Aid to Families with Dependent Children (AFDC)] under the State plan approved under section 402 (as in effect on July 16, 1996) in or for the month in which such [voluntary placement] agreement was entered into or court proceedings leading to the removal of such child from the home were initiated”⁹

Section 2 of Pennsylvania’s State plan incorporates, by reference to Office of Children, Youth and Families Bulletin 3140-01-01, the “standard of need” for each county based on the countable family income and number of family members. Countable income considers various expenses and payments, as well as earned wages and other household income. For Philadelphia County, the standard of need was based on a maximum countable income ranging from \$298 per month for a family of one to \$976 per month for a family of six, with an additional allowance of \$121 per family member over six.

⁸Section 472(a) of the Act was amended effective October 1, 2005. The applicable section is now 472(a)(2), which provides substantially similar requirements for removal of the child from the home.

⁹Section 472(a) of the Act was amended effective October 1, 2005. The applicable section is now 472(a)(3), which provides a substantially similar definition of the needy child. The Personal Responsibility and Work Opportunity Reconciliation Act of 1996 repealed AFDC and established in its place the Temporary Assistance for Needy Families block grant. However, Title IV-E foster care requirements look back to the 1996 AFDC criteria for eligibility.

For 10 claims, the State agency did not document that it had computed countable family incomes or determined how the families were supporting themselves.

- For nine claims, the documentation that the State agency provided did not identify wages or other household incomes and resources.
- For one claim, Social Inquiry reports¹⁰ and documentation in the MAXIMUS-reconstructed eligibility file showed that the child’s mother had an annual income of \$19,000, which exceeded the standard of need, and that the child had held a job prior to the arrest that led to foster care placement. The documentation also showed that the father had refused to disclose whether he had an income.

Reasonable Efforts To Prevent Removal From the Home

Section 471(a)(15)(B) of the Act states: “Except as provided in subparagraph (D), reasonable efforts shall be made to preserve and reunify families—(i) prior to the placement of a child in foster care, to prevent or eliminate the need for removing the child from the child’s home” Regulations (45 CFR § 1355.20) require a permanency hearing “no later than 12 months after the date the child is considered to have entered foster care . . . or within 30 days of a judicial determination that reasonable efforts to reunify the child and family are not required.” Pursuant to 45 CFR § 1356.21(d), judicial determinations that reasonable efforts have been made or are not required must be “explicitly documented” and stated in the court order or a transcript of the court proceedings.

For nine claims, the State agency did not provide the necessary documentation to meet these requirements. Specifically, the State agency did not provide any court orders or transcripts to document judicial determinations that reasonable efforts had been made to prevent the children’s removal from the home or that reasonable efforts were not required.

Age Requirements

Section 472(a) of the Act states that children for whom States claim Title IV-E funding must meet the eligibility requirements for AFDC as established in section 406 or section 407 (as in effect on July 16, 1996). Section 406(a)(2), as in effect on July 16, 1996, stated that the children must be “(A) under the age of eighteen, or (B) at the option of the State, under the age of nineteen and a full-time student in a secondary school (or in the equivalent level of vocational or technical training), if, before he attains age nineteen, he may reasonably be expected to complete the program of such secondary school (or such training).”

The State agency submitted six claims for children who were at least 18 years of age and either were not full-time students in secondary school or the equivalent or could not reasonably have been expected to complete a secondary education program before age 19. According to juvenile justice case files; social worker case files; and documentation in the MAXIMUS-reconstructed eligibility files, including Client Information System data, birth certificates, progress reports, and

¹⁰Probation officers typically complete a Social Inquiry report after a youth is arrested to help plan for future placements and services.

other documentation, the six claims were for children who were age 18 during the entire claim period.

Progress reports and discharge records showed that the six children either had already graduated from secondary school or could not reasonably have completed secondary school or training before age 19. For example, an 18-year-old child had graduated from high school prior to the claim period in our sample. Although the child did not meet Title IV-E age requirements, the State agency continued to claim Title IV-E costs on his behalf.

COSTS CLAIMED FOR CHILDREN IN UNLICENSED FACILITIES

Section 472(c)(2) of the Act requires that a childcare institution be “licensed by the State in which it is situated or has been approved, by the agency of such State responsible for licensing or approval of institutions of this type, as meeting the standards established for such licensing” The Federal regulation (45 CFR § 1355.20) implementing section 472(c) of the Act states that a foster family home is “the home of an individual or family licensed or approved by the State licensing or approval authority . . . that provides 24-hour out-of-home care for children. The term may include group homes, agency operated boarding homes or other facilities licensed or approved for the purpose of providing foster care by the State agency responsible for approval or licensing such facilities.”

Pursuant to section 472 of the Act, Pennsylvania’s State plan requires that facilities be licensed or approved for foster care. Section 5 of the State plan establishes standards as required by section 471(a)(10) of the Act. The State plan also incorporates by reference Pennsylvania Code requirements for licensure and approval of foster homes and childcare institutions (55 PA. CODE Chapters 3680, 3700, and 3800).¹¹

The State agency submitted three claims totaling \$16,171 for services provided by two facilities for which neither the State agency nor the facilities could provide documentation that the facilities were licensed to provide foster care services or approved as meeting the standards established for such licensing. Further, we reviewed lists of Title IV-E eligible facilities, which the State agency had provided to ACF, as additional documentation in the absence of a license. Neither of the two facilities appeared on the lists.¹²

COSTS CLAIMED FOR INELIGIBLE SERVICES

Section 475(4)(A) of the Act defines “foster care maintenance payments” as:

. . . payments to cover the cost of (and the cost of providing) food, clothing, shelter, daily supervision, school supplies, a child’s personal incidentals, liability insurance with respect to a child, and reasonable travel to the child’s home for

¹¹By reference to State Office of Children, Youth and Families Bulletin 3140-01-01, the State plan provides that medical facilities, such as psychiatric or general hospitals, are non-Title IV-E reimbursable placement facilities.

¹²The facilities may not have been on these lists because they appeared to be psychiatric residential treatment facilities.

visitation. In the case of institutional care, such term shall include the reasonable costs of administration and operation of such institution as are necessarily required to provide the items described in the preceding sentence.

ACF Policy Announcement 87-05, under “Unallowable Cost,” provides examples of services that are not reimbursable under Title IV-E, including “physical or mental examinations, counseling, homemaker or housing services and services to assist in preventing placement and reuniting families.” ACF Policy Interpretation Question 97-01 states that “education is not in the definition found at section 475 (4)(A).”

The maintenance costs included on the 200 sampled claims were based on per diem rates that ranged from \$8.48 to \$252.81. For 28 of the 200 claims, we were unable to determine whether the maintenance costs were limited to costs for allowable Title IV-E services. The State agency did not provide information about which services were used to develop the per diem rates on which these claims were based and did not require the contractors to itemize charges for services claimed. However, children’s individualized educational programs, social workers’ progress notes, and other documentation for the 28 claims indicated that the facilities provided some services that are not specified in section 475(4)(A) of the Act and that are therefore not eligible for Title IV-E maintenance funding. These services included medical, educational, and rehabilitative services, such as counseling and physical, occupational, or speech therapy.¹³

For example, two children in our sample were sent to the same facility. The State agency claimed maintenance costs for one child based on a per diem rate of \$212.36 and for the other child based on a per diem rate of \$65.41. We were unable to determine the allowability of the claim at the first per diem rate, which was coded as the “medical assistance full rate,” but allowed the claim at the second rate, which was coded as the “room and board rate.” Title IV-E does not pay medical assistance costs but does pay a Federal share of costs for room and board.

For another child who had been sent to a facility in Texas, the claim was based on a per diem rate of \$220.80. The facility’s discharge summary described the services provided as follows:

. . . Individual educational program. Individual therapy once a week. Group therapy three times a week. Medical services as clinically indicated. Case management. Individual and group rehabilitative stabilization. Crisis intervention. Client-centered consultation/treatment review. Patient also received specialized therapeutic services which included ROPES, Substance Abuse, and Sexual Trauma.¹⁴

We were unable to determine the reasonableness of the per diem rates for the 28 sampled claims because the rates did not distinguish between services that were eligible or ineligible for

¹³Some of these services may be allowable under other Federal programs or under State and local programs. However, determining the allowability of services under other programs was beyond the scope of this audit.

¹⁴ROPES is an outdoor challenge program that places high importance on using experiential activities across all disciplines.

Title IV-E reimbursement. Of the 28 claims, 12 were unallowable because they included costs for services provided to ineligible children. We were unable to determine the costs for ineligible services included on the remaining 16 claims.

SUMMARY OF UNALLOWABLE AND POTENTIALLY UNALLOWABLE TITLE IV-E COSTS

Of the 200 sampled claims, 30 claims totaling \$75,481 were unallowable because they included maintenance costs for services that were provided to ineligible children or services that were provided by unlicensed facilities. Based on these sample results, we estimated that the State agency improperly claimed at least \$34,507,809 (Federal share) in maintenance costs. In addition, we estimated that the State agency claimed at least \$22,005,630 (Federal share) in administrative costs associated with the unallowable maintenance costs.¹⁵ These administrative costs also were unallowable.

We were unable to determine the allowability of 16 sampled claims totaling \$77,371 because the State agency did not provide information about the services included in the contractors' per diem rates and their relative costs.¹⁶ Based on these sample results, we set aside \$100,024,423 (Federal share consisting of \$61,074,130 in maintenance costs and \$38,950,293 in associated administrative costs) for resolution by ACF.¹⁷

RECOMMENDATIONS

We recommend that the State agency:

- refund to the Federal Government \$56,513,439, including \$34,507,809 in unallowable maintenance costs and \$22,005,630 in unallowable administrative costs, for the period October 1997 through September 2002;
- work with ACF to determine the allowability of \$100,024,423 related to claims that included both allowable and unallowable services;
- work with ACF to identify and resolve any unallowable claims for maintenance payments at per diem rates of \$300 or less made after September 2002 and refund the appropriate amount;

¹⁵We calculated unallowable administrative costs by dividing the State agency's total Title IV-E claims for administrative costs (\$593,233,356) by its total Title IV-E claims for maintenance costs (\$857,954,391) plus training costs (\$72,252,983). We then applied the resultant percentage to the estimated \$34,507,809 in unallowable maintenance costs.

¹⁶A total of 28 claims appeared to include costs for ineligible services, including 12 claims that were unallowable because they included costs for services provided to ineligible children.

¹⁷We calculated the set-aside administrative costs by dividing the State agency's total Title IV-E claims for administrative costs (\$593,233,356) by its total Title IV-E claims for maintenance costs (\$857,954,391) plus training costs (\$72,252,983). We then applied the resultant percentage to the estimated \$61,074,130 in maintenance costs for which we could not determine the allowability.

- discontinue claiming Title IV-E reimbursement for ineligible children, unlicensed facilities, and ineligible services; and
- direct Philadelphia County to develop rate-setting procedures that separately identify maintenance and other costs, including related administrative costs, so that claims are readily allocable to the appropriate Federal, State, and local funding sources.

STATE AGENCY COMMENTS AND OFFICE OF INSPECTOR GENERAL RESPONSE

In its January 31 and February 29, 2008, comments on our draft report, the State agency disagreed with our findings and recommendations. The State agency questioned our authority to conduct the audit and stated that our recommendations were without merit and contrary to law. The State agency also said that we had interfered with its ability to respond to the draft report by refusing to produce our workpapers and that we had singled out Pennsylvania for an audit of unprecedented size and scope, unlawfully assumed ACF's program operating responsibilities, and conducted the audit improperly.

The State agency provided additional documentation on 38 of the 44 claims questioned in our draft report. After reviewing this documentation, we determined that 14 claims were for eligible children but that 2 of these claims contained costs for ineligible services. We have revised this report to reflect that we are questioning 30 claims and were unable to determine the allowability of 16 claims. We also have revised our recommended refund and set-aside amounts.

We have summarized the State agency's comments, along with our response, below, and we have included those comments as Appendixes D and E. We have excluded the exhibits accompanying the State agency's comments because of their volume and because some contained personally identifiable information.

Access to Workpapers

State Agency Comments

The State agency said that we had unjustifiably interfered with Pennsylvania's ability to respond to the draft report by refusing to produce the audit workpapers.

Office of Inspector General Response

Because the draft report was not a final opinion, we had no obligation to produce our workpapers (5 U.S.C. § 552(a)(2)(A)). However, we maintained a policy of open and transparent cooperation with the State agency throughout the audit. We initially suggested that the State agency participate with us in a joint audit, sharing all documentation equally during the audit process. The State agency declined and preferred to have its audit staff observe us as we reviewed documentation and attended meetings.

During the audit, we provided the State agency with documentation on our analysis and conclusions for the 200 sampled claims. We did not provide the case file documentation behind each sampled claim because we had received this documentation from the State agency and MAXIMUS, both of which made copies of the information provided to us. We also provided the State agency with copies of workpapers that supported the sampling plan and statistical estimates, as well as prior audits' workpapers on accounting data, criteria, and background related to the findings in this report. We will provide copies of the remaining workpapers (except for those protected by attorney-client privilege) after issuance of this final report.

Scope of Audit

State Agency Comments

The State agency said that Pennsylvania was being singled out for an unprecedented audit. According to the State agency, "Pennsylvania stands alone among the fifty States in being subjected to such a far-reaching, overly-detailed, and multi-year review of its Title IV-E claims."

Office of Inspector General Response

We did not single out Pennsylvania for this audit. ACF requested this review after Pennsylvania's large retroactive claims raised concerns. We often conduct extensive audits of programs. For example, recent multiyear audits of comparable scope included audits of Medicaid school-based services and Medicaid costs under a waiver agreement in California. We also conduct audits of relatively comparable scope in States with smaller total claim amounts.

Program Operating Responsibilities

State Agency Comments

The State agency said that ACF had unlawfully transferred, and the Office of Inspector General (OIG) had wrongfully assumed, program operating responsibilities in violation of the Inspector General (IG) Act of 1978, as amended (5 U.S.C. App. § 9(a)(2)). The State agency also said that we lacked the requisite independence and objectiveness in deciding to initiate and conduct this audit.

Office of Inspector General Response

There is no basis for the State agency's argument that we unlawfully assumed program operating responsibilities. The IG Act, as interpreted by the applicable case law, may in some cases restrict OIG from conducting "regulatory" audits that are the responsibility of the program agency. However, our audit was not regulatory in nature. Rather, we conducted a compliance audit designed to identify the improper expenditure of Federal dollars for the Pennsylvania foster care program. None of the court cases on which the State agency based its objection questioned OIG's authority and responsibility to conduct such audits. In the more recent decision of University of Medicine and Dentistry of New Jersey v. Corrigan, 347 F.3d 57, 67 (3rd Cir. 2003), involving the expenditure of Medicare funds, the U.S. Court of Appeals for the Third Circuit

held that “routine compliance audits” that are designed to “enforc[e] the rules” are a proper OIG function even if the ability to conduct such audits is shared with that of the program agency. Moreover, the U.S. Court of Appeals for the Fifth Circuit stated in its opinion that, under section 9(a)(2) of the IG Act, “for a transfer of function to occur, the agency would have to relinquish its own performance of that function” (Winters Ranch Partnership v. Viadero, 123 F.3d 327, 334 (5th Cir. 1997); see also United States v. Chevron, 186 F.3d 644, 648 (5th Cir. 1999)). ACF has continued to perform its own periodic reviews of eligibility in State programs, as required by ACF regulations, and thus at no time did it relinquish its program operating function.

We also do not agree that we lacked the requisite independence and objectivity for this audit. ACF did request this audit; however, OIG regularly responds to requests from Members of Congress, States, ACF, and other program agencies, as well as the general public. There is no basis to conclude that the source of a request undermines the independence with which an audit or other project is performed. The State agency cited U.S. v. Montgomery County Crisis Center, 676 F. Supp. 98, 99 (D. Md. 1987) to support its position. In this case, however, the U.S. District Court refused to enforce a subpoena issued by the Department of Defense OIG because it was issued at the behest of another agency and because it related to a security matter that “was outside the Inspector General’s area of regular responsibility.” The expenditure of Federal funds for foster care is neither a security issue nor outside the IG’s area of regular responsibility.

Record Retention Period

State Agency Comments

The State agency stated that the audit improperly extended beyond the Federal record retention period. Citing 45 CFR § 74.53, the State agency said that a State generally is not required to retain financial records or supporting documents for more than 3 years and therefore should not be subject to disallowance for an audit of claims beyond the 3-year record retention period.

Office of Inspector General Response

The record retention period does not preclude our review of records that the State agency provides, or has in its possession, during the audit. Federal regulations provide that “[t]he rights of access . . . are not limited to the required retention period, but shall last as long as records are retained” (45 CFR § 74.53(e)). Moreover, Federal regulations specifically oblige the State agency to retain records beyond the record retention period in certain circumstances and states: “If any litigation, claim, financial management review, or audit is started before the expiration of the three-year period, the records shall be retained until all litigation, claims or audit findings involving the records have been resolved and final action has been taken” (45 CFR § 74.53(b)(1)). OIG has the right to access records in the State agency’s possession beyond the record retention period.

We also note that section 5.7 of the Supreme Court of Pennsylvania’s “Record Retention and Disposition Schedule With Guidelines” requires that the court permanently retain court orders relating to both dependent and delinquent juvenile cases. The guidelines also require that the

court retain other court records until the child is 25 years old or 10 years after the last action, if later.

However, the audit did not extend beyond the retention period because the State was engaged in negotiations to resolve claim issues with ACF and was on notice of OIG's planned audit of Title IV-E foster care claims. We issued an audit commencement letter in 2000 outlining our planned review of Pennsylvania's Title IV-E foster care claims for fiscal years 1998 and 1999.

Pennsylvania subsequently entered into negotiations with ACF to settle a Title IV-A audit as well as to resolve Title IV-E claims at issue. We did not terminate our audit during this period; rather, we suspended action pending resolution of the Title IV-E issues. The Title IV-E issues were not resolved through settlement efforts, and in 2003, we announced our intention to move forward with the audit announced in 2000, expanding the scope to cover fiscal years 1998 through 2002.

We maintain that Pennsylvania's negotiations and our audit notices suspended the record retention period as described above. Further, nothing in 45 CFR § 74.53 prohibits an agency from taking a disallowance based on documentation or records produced by the grantee that are retained beyond the 3-year retention period (Community Health and Counseling Services, DAB No. 557 (Aug. 2, 1984)). Our audit identified unallowable costs based on our review of documentation and case files provided by the State agency and MAXIMUS.

Associated Administrative Costs

State Agency Comments

The State agency said that we had improperly recommended the disallowance of "non-identifiable" associated administrative costs. The State agency explained that Philadelphia County submitted all Title IV-E claims for administrative costs on a consolidated basis, not only for children for whom the contractual per diem rate was "less than \$300." According to the State agency, our calculation of administrative costs associated with the maintenance claims under review was unsound because it applied "a crude State-wide five-year average to the maintenance claims at issue in this audit, which were incurred only by Philadelphia County," and the county's administrative costs might be significantly lower than those of other counties with fewer eligible children. The State agency also said that because Pennsylvania identified and allocated administrative costs through a random-moment time study, it is incorrect to assume that a disallowance of a Title IV-E maintenance claim would necessarily result in a proportionate decrease in associated administrative costs.

Office of Inspector General Response

When maintenance costs are not eligible for Title IV-E funding, the administrative costs associated with the ineligible maintenance costs are likewise ineligible.

OMB Circular A-87 allows States to identify administrative costs related to a specific cost objective or to allocate the costs according to an approved allocation methodology, such as a random-moment time study or another quantifiable measure. The State agency allocated those

costs based on an approved allocation methodology. Similarly, we determined the unallowable administrative costs associated with the ineligible maintenance claims by applying a proportionate share of the administrative costs to the total costs, including both maintenance and training costs. We maintain that our approach was reasonable. The State agency did not offer an alternative method of calculating administrative costs on either a statewide or county-specific basis.

Sampling and Estimation

State Agency Comments

The State agency said that we had made significant sampling and extrapolation errors: (1) the sample design resulted in a selection bias and was more likely to include claims for children who were in the system longer and therefore more likely to have documentation or other errors and (2) the standard deviation of the point estimate was so wide that it made the estimate of ineligible payments virtually useless.

Office of Inspector General Response

Our sampling and estimation methodology is statistically valid. Our sample unit was an individual line item claimed for a child for a specific quarter. Each sample unit had a known, equal, non-zero chance of selection. Therefore, the sample design did not provide a larger chance of selection for sample units with a higher probability of error.

There is no fixed “acceptable level of precision” that makes a sample valid. The sampling variation is included in the calculations of the confidence interval. If there were better precision, the lower limit of the confidence interval would increase. Any lack of precision means that the amount of the lower limit is less than it would be if the estimate were more precise. This lower limit works in favor of the State agency.

Ineligible Services and Set-Aside Calculation

State Agency Comments

For 14 of the 28 claims that included ineligible services, the State agency provided additional documentation reflecting the Title IV-E per diem rates established by the facilities. The State agency said that it had based its claims on Title IV-E per diem rates that were either at or below the rates calculated as allowable by the facilities.

The State agency also said that we had miscalculated the amount set aside for claims with per diem rates that may have included ineligible services. The State agency said that we had erroneously relied on the point estimate of questioned claims rather than the lower limit. The State agency calculated a set-aside amount of \$44,454,672 at the lower limit.

Office of Inspector General Response

The State agency's additional documentation on 14 claims pertained to the service dates in our sample for only 7 claims. This documentation showed that the facilities charged an average per diem rate of \$118.13. Of this amount, an average of \$106.15 (90 percent) was charged to the Title IV-E program. The documentation did not itemize the costs claimed as part of the Title IV-E per diem rate, nor did it show where costs associated with medical, educational, and rehabilitative services provided to children were charged if these costs were not included in the Title IV-E per diem rate. Therefore, we continue to recommend that the State agency work with ACF to determine the allowability of the set-aside costs.

The State agency is incorrect in stating that the use of the point estimate fundamentally miscalculates the estimate of the set-aside amount. The point estimate is a valid estimate of the total value of claims that included ineligible costs and for which the State agency did not provide information about the services included in the contractors' per diem rates and their relative costs. In Appendix B, we reported the lower limit, the point estimate, and the upper limit. There is no requirement to report only the lower limit. Using the 90-percent confidence interval, we are 95-percent confident that the actual value of claims with ineligible costs is greater than the lower limit. By providing the point estimate and the confidence interval, the values used in our report are balanced and reliable.

APPENDIXES

SAMPLING METHODOLOGY

OBJECTIVE

Our objective was to determine, for claims based on per diem rates of \$300 or less, whether the State agency claimed Title IV-E maintenance and associated administrative costs for Philadelphia County in accordance with Federal requirements from October 1997 through September 2002.

UNIVERSE

The universe consisted of 157,873 claim lines totaling \$343,335,223 (Federal share) submitted by the State agency on 20 detailed lists in support of 20 summary invoices for maintenance costs. These claim lines were based on per diem rates of \$300 or less. The 20 detailed lists contained alphabetical lists of children and the per diem rate, number of days, and maintenance costs claimed for each child. The lists covered claims paid from October 1, 1997, through September 30, 2002.

SAMPLE UNIT

The sample unit was an individual claim line for a child for whom the per diem rate was \$300 or less based on detailed lists submitted in support of the 20 summary invoices.

SAMPLE DESIGN

We used an unrestricted random sample.

SAMPLE SIZE

We selected for review a sample of 200 claim lines from the detailed lists.

SOURCE OF RANDOM NUMBERS

We generated the random numbers for selecting the sample items using an approved Office of Inspector General, Office of Audit Services, statistical software package.

METHOD OF SELECTING SAMPLE ITEMS

We obtained the summary invoices related to 20 voucher transactions listed on the State agency's accounting records and detailed lists of Title IV-E foster care children. We identified from the detailed lists all claim lines on behalf of children for whom the per diem rate was \$300 or less, and we numbered each of these lines. We generated a list of random numbers from 1 to 157,873 and selected for our sample the corresponding line on the detailed lists.

SAMPLE RESULTS AND ESTIMATES

UNALLOWABLE COSTS

Sample Results

Number of Claim Lines in Universe	Value of Universe (Federal Share)	Sample Size	Number of Claim Lines With Errors	Value of Unallowable Costs (Federal Share)
157,873	\$343,335,223	200	30 ¹	\$75,481

Estimates of Unallowable Costs (Federal Share)
(Limits Calculated for a 90-Percent Confidence Interval)

Point estimate	\$59,582,438
Upper limit	84,657,068
Lower limit	34,507,809

POTENTIALLY UNALLOWABLE COSTS

Sample Results

Number of Claim Lines in Universe	Value of Universe (Federal Share)	Sample Size	Number of Claim Lines With Errors	Value of Potentially Unallowable Costs (Federal Share)
157,873	\$343,335,223	200	16	\$77,371

Estimates of Potentially Unallowable Costs (Federal Share)
(Limits Calculated for a 90-Percent Confidence Interval)

Point estimate	\$61,074,130
Upper limit	89,268,978
Lower limit	32,879,281

¹Although 46 claims had errors, we were unable to quantify the errors for 16 claims because of data limitations.

DEFICIENCIES OF EACH SAMPLED CLAIM

Costs Claimed for Services Provided to Ineligible Children

- 1 *Remaining in the Home Not Contrary to the Welfare of the Child*
- 2 *Income Requirements Not Met*
- 3 *Reasonable Efforts To Prevent Removal From the Home Not Made*
- 4 *Age Requirements Not Met*

5 Costs Claimed for Children in Unlicensed Facilities**6 Costs Claimed for Ineligible Services****Office of Inspector General Review Determinations on the 200 Sampled Claims**

Claim Number	1	2	3	4	5	6	No. of Deficiencies
1							0
2							0
3							0
4							0
5							0
6							0
7	X		X			X	3
8					X	X	2
9		X					1
10							0
11						X	1
12							0
13							0
14							0
15							0
16		X				X	2
17					X	X	2
18							0
19							0
20							0
21							0
22							0
23							0
24	X	X	X				3
25							0
26							0

Claim Number	1	2	3	4	5	6	No. of Deficiencies
27							0
28							0
29							0
30						X	1
31						X	1
32	X						1
33							0
34							0
35							0
36							0
37	X		X			X	3
38							0
39	X						1
40	X		X				2
41						X	1
42		X					1
43							0
44							0
45							0
46							0
47					X	X	2
48							0
49						X	1
50							0
51		X		X			2
52							0
53							0
54							0
55							0
56						X	1
57							0
58							0
59							0
60							0
61							0
62							0
63							0
64							0
65							0
66							0

Claim Number	1	2	3	4	5	6	No. of Deficiencies
67							0
68							0
69							0
70							0
71							0
72						X	1
73							0
74							0
75							0
76							0
77							0
78							0
79							0
80							0
81							0
82							0
83							0
84	X						1
85							0
86							0
87							0
88	X					X	2
89							0
90							0
91		X					1
92							0
93						X	1
94							0
95							0
96							0
97		X				X	2
98							0
99							0
100							0
101							0
102							0
103							0
104							0
105							0
106							0

Claim Number	1	2	3	4	5	6	No. of Deficiencies
107							0
108							0
109							0
110							0
111							0
112							0
113							0
114							0
115							0
116		X					1
117							0
118						X	1
119							0
120							0
121							0
122							0
123				X		X	2
124							0
125	X		X				2
126							0
127							0
128							0
129							0
130							0
131							0
132							0
133						X	1
134							0
135							0
136							0
137						X	1
138						X	1
139							0
140							0
141							0
142							0
143							0
144							0
145							0
146				X			1

Claim Number	1	2	3	4	5	6	No. of Deficiencies
147							0
148							0
149				X			1
150							0
151							0
152							0
153							0
154							0
155							0
156							0
157							0
158							0
159							0
160							0
161							0
162							0
163							0
164							0
165				X			1
166							0
167						X	1
168							0
169							0
170							0
171							0
172	X						1
173							0
174							0
175							0
176	X		X				2
177							0
178							0
179		X				X	2
180							0
181	X		X			X	3
182	X		X				2
183							0
184							0
185							0
186							0

Claim Number	1	2	3	4	5	6	No. of Deficiencies
187							0
188							0
189						X	1
190	X		X				2
191							0
192							0
193						X	1
194		X		X		X	3
195							0
196							0
197						X	1
198							0
199							0
200							0
Total	14	10	9	6	3	28	

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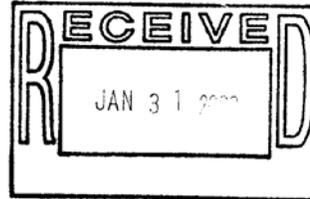
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January 31, 2008

Via Hand Delivery

Stephen Virbitsky, Regional Inspector General for Audit Services
United States Department of Health and Human Services
Office of Inspector General
Office of Audit Services
150 South Independence Mall West, Suite 316
Philadelphia, PA 19106-3499



Re: Report Number: A-03-07-00560

Dear Mr. Virbitsky:

I am writing on behalf of the Commonwealth of Pennsylvania, Department of Public Welfare to provide a partial response to the draft report of the Department of Health and Human Services (HHS), Office of Inspector General (OIG) entitled "Philadelphia County's Title IV-E Claims Based on Contractual *Per Diem* Rates of \$300 or Less for Foster Care Services from October 1997 to September 2002" (Draft Report). Pennsylvania intends to provide a supplemental response to the Draft Report by February 29, 2008, and expects that OIG will not take any action on the Draft Report until it has reviewed and considered all information and supporting materials contained in both the original and supplemental responses.

In the Draft Report, OIG recommends, among other things, that Pennsylvania "refund" to the federal government \$52,437,512 in allegedly improper foster care maintenance placement costs, plus an additional \$33,432,882 in what OIG characterizes as "associated administrative costs," for a total "refund" of \$85,870,394. (Draft Report at 11.) OIG further recommends that Pennsylvania "work with" the Administration for Children and Families (ACF) to determine the allowability of an additional \$88,401,319 (consisting of \$53,870,394 in maintenance placement costs and \$34,418,134 in "associated administrative costs" purportedly claimed for the children in question). (*Id.*)

OIG's recommendations are without merit and contrary to law. As set forth in detail below:

Stephen Virbitsky, Regional Inspector General for Audit Services
January 31, 2008
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- OIG has singled out Pennsylvania for an audit of unprecedented size and scope without basis and in contravention of federal law;
- OIG has unlawfully assumed HHS' "program operating responsibilities" in violation of the Inspector General Act of 1978;
- OIG conducted the audit improperly and prejudicially to Pennsylvania by, among other things, extending the scope of the audit beyond the federal records retention period, recommending the disallowance of phantom "associated administrative costs," and making substantial sampling and extrapolation errors; and
- OIG improperly rejected numerous sample claims and, regardless of merit, erroneously calculated the amount to be "set aside" for further review due to concern over the *per diem* rates.

For the following reasons, OIG should withdraw the Draft Report in its entirety and immediately terminate any and all aspects of the audit.

A. OIG Has Unjustifiably Interfered with Pennsylvania's Ability to Respond to the Draft Report By Refusing to Produce Its Audit Workpapers

As an initial matter, OIG has unjustifiably interfered with Pennsylvania's ability to provide a complete response to the Draft Report by refusing to produce its audit workpapers. By email to OIG Audit Manager Michael Walsh dated December 3, 2007, Pennsylvania formally requested copies of all OIG workpapers associated with the audit. (See 12/3/07 E-Mail from Peter H. LeVan, Jr. to Michael Walsh, attached as Exhibit A.) On December 10, 2007, OIG provided copies of Sample Element Review Sheets and the Phase IV sampling plan (with data support) but refused to provide a complete set of its working papers. (See 12/10/07 Letter from Michael Walsh to Peter H. LeVan, Jr., attached (without enclosures) as Exhibit B.) Pennsylvania continues to seek a complete set of OIG's audit workpapers and, of course, reserves the right to supplement or otherwise amend this response upon receipt and review of such materials.

B. Pennsylvania is Being Unlawfully Singled Out for an Unprecedented Audit

By letter dated November 19, 2003, OIG first announced its intention to conduct an audit "of the Commonwealth of Pennsylvania's claims for payments made under the Title IV-E Foster Care Program for Federal Fiscal Years 1998 through 2002." (See 11/19/03 Letter from Stephen Virbitsky to Michael L. Stauffer, attached as Exhibit C.) In accordance with that notice, OIG is currently auditing the entirety of Pennsylvania's Title IV-E claims for a full five-year period, putting at issue more than \$1.5 billion in public funds that have already been spent to provide critical services to Pennsylvania's needy children.

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This audit is both draconian and unprecedented. Pennsylvania stands alone among the fifty States in being subjected to such a far-reaching, overly-detailed, and multi-year review of its Title IV-E claims. Notably, OIG's published work plans do not identify any national audit program to conduct the type of broad review it is performing in Pennsylvania. Further, OIG's response to a recent FOIA request establishes that Pennsylvania is the only State in which OIG is auditing regularly-filed foster care maintenance claims for any period – let alone for a full five-year period beginning nearly a decade ago.

In response to repeated inquiries by Pennsylvania, OIG explained that it initiated the audit because of a general concern over the increasing amount of claims and because of “an ACF probe sample of 50 Title IV-E statewide foster care cases conducted in 1998, of which 44 cases had multiple errors.” (See 3/9/04 Letter from Stephen Virbitsky to Michael L. Stauffer, attached as Exhibit D.) OIG further stated that it was conducting the audit “based on requests from the highest levels of this Department.” (*Id.*)

OIG's purported reliance upon a small and statistically unreliable sample of unique claims submitted in 1998 as the basis for launching a comprehensive audit of *all* Title IV-E claims Pennsylvania submitted during a five-year period (1998-2002) is unjustified and lacks foundation. Notably, the 1998 probe sample did not involve Pennsylvania's general Title IV-E population but, as expressly acknowledged by ACF Regional Administrator David J. Lett, involved a retroactive claim for a narrow group of “children who were determined ineligible for [Title] IV-A Emergency Assistance” by virtue of the juvenile justice restrictions belatedly imposed on that program and who were “redetermined eligible by the Department of Public Welfare under the Foster Care and Adoption Assistance Program . . . [under] Title IV-E. . . .” (See 2/10/99 Letter from David J. Lett to Feather O. Houston, attached as Exhibit E.) That this highly unique claim – involving a group of children who were reclassified after a change in federal law – was found to have certain errors in a statistically unreliable probe sample is neither surprising nor a reason to question the operation of Pennsylvania's overall Title IV-E program. Nor can any review of that unique claim justify the initiation of a highly burdensome and unprecedented audit that is outside the parameters of the normal Title IV-E review process.

More fundamentally, between the 1998 submission of the probe sample and OIG's 2003 initiation of this audit, Pennsylvania regularly submitted quarterly claim reports to ACF for all Title IV-E placement maintenance and administrative claims. ACF paid such claims. If ACF had concern about any aspect of Pennsylvania's Title IV-E claims at that time – either because of the probe sample results, the amount of the claims, or for any other legitimate reason – it could have requested additional information, conducted a financial review, or disallowed such claims. See, e.g., 42 U.S.C. § 674(b)(4). Instead, after presumably reviewing all claims as they were submitted during this period, ACF paid Pennsylvania's claims in full. For OIG now – as long as a decade later – to subject these

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very same Title IV-E claims to an extensive federal audit due exclusively to unique and non-comparable factors of which ACF was well aware at the time it reviewed and approved such claims is unlawful and represents arbitrary and capricious government action.¹

OIG's audit of these dated claims also runs afoul of the concerns that led Congress to enact the 1994 amendments to the Social Security Act concerning review of State-submitted claims. Prior to the enactment of the amendment (codified at 42 U.S.C. § 1320a-2a), States were subjected to a fragmented and inconsistent system of financial reviews and audits of their Title IV-E programs that improperly focused on documentation for previously submitted claims rather than on quality of child care. See, e.g., Committee on Ways and Means, U.S. House of Representatives, 2000 Green Book: Background Material and Data on Programs within the Jurisdiction of the Committee on Ways and Means (2000) (noting that "child welfare advocates, State and Federal officials, and members of Congress" were unsatisfied with the previous review process because HHS was performing the reviews in an untimely manner, because HHS was relying too heavily on documentation that was outside the control of the States, and because the review process did little to address the quality of care for children); see also 63 FR 50058-01.² In response to these concerns, Congress enacted Section 1320a-2a, which provides that review processes should focus on improving the quality of State Title IV-E programs rather than generating refunds to the federal government. Among other things, the amendment prohibits HHS from assessing liability on a State for past-submitted claims without first allowing the State the opportunity to correct any errors through a program improvement plan. See, e.g., 42 U.S.C. § 1320a-2a(b)(4).

In an earlier phase of this ongoing audit, OIG denied that it had singled out Pennsylvania and claimed that it was "currently conducting a multistate review of juvenile

¹ Both Congress and OIG itself have recognized that such outdated reviews are improper and should not be conducted. See Committee on Ways and Means, U.S. House of Representatives, 2000 Green Book: Background Material and Data on Programs Within the Jurisdiction of the Committee on Ways and Means (2000) (noting that one reason for Congress' enactment of 42 U.S.C. § 1320a-2a, which required HHS to enact a new review process for monitoring States' Title IV-E programs, was because HHS had been conducting reviews "retrospectively, sometimes for fiscal years that had long passed, so that current practices were not examined" and that any reports or recommendations based on such reviews were "irrelevant by the time they were issued"); Office of Inspector General, Dep't of Health and Human Serv., Oversight of State Child Welfare Programs 14-15 (1994) (auditing HHS's review processes and finding that "Regional and State officials considered the retrospective nature of reviews to be a significant weakness of the oversight process because it focuses attention on past rather than current practice [and in] some cases, States have been left wondering about the outcomes or bases for disallowances").

² Indeed, prior to the enactment of 42 U.S.C. § 1320a-2a, OIG authored its own report in which it criticized the HHS review process and recommended that certain changes (ultimately incorporated into the statutory amendment) be made. See Office of Inspector General, Department of Health and Human Serv., Oversight of State Child Welfare Programs (1994).

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justice placement costs claimed under Title IV-E” and that “Pennsylvania was the first State selected for this series of reviews.” (See OIG Report No. A-03-05-00550, entitled “Claims Paid Under the Title IV-E Foster Care Program for Children in *Castille* Contracted Detention Facilities from October 1, 1997 to September 30, 2002” (Final Phase II Report), at 12.) OIG’s multi-phase audit of the entirety of Pennsylvania’s Title IV-E claims over a five-year period, however, is *not* limited to the “juvenile justice placement costs” referred to by OIG. Indeed, as discussed in the following section of this response, OIG has expressly acknowledged that, although it originally intended to audit only juvenile justice placement costs, ACF requested that it expand the scope of the audit to cover the entirety of Pennsylvania’s Title IV-E claims over a multi-year period. (See *infra* at 7-8 and n.3.) OIG obviously granted that request. Thus, the purported existence of a “multistate review of juvenile justice placement costs” in no way explains why Pennsylvania alone is being subjected to such a draconian and all-encompassing audit of the entirety of its Title IV-E claims over a five-year period. In addition, OIG notably failed to identify any State that is facing even the more limited “review of juvenile justice placement costs” – let alone the type of all-encompassing audit of all Title IV-E claims over a multi-year period that Pennsylvania faces here.

It appears plain that, notwithstanding OIG’s protestations to the contrary, OIG has singled out Pennsylvania for selective, arbitrary and unlawful treatment. See, e.g., *Burlington Northern and Santa Fe Ry. Co. v. Surface Transp. Bd.*, 403 F.3d 771, 777 (D.C. Cir. 2005) (“Where an agency applies different standards to similarly situated entities and fails to support this disparate treatment with a reasoned explanation and substantial evidence in the record, its action is arbitrary and capricious and cannot be upheld.”); *Petroleum Communications, Inc. v. F.C.C.*, 22 F.3d 1164, 1172 (D.C. Cir. 1994) (“We have long held that an agency must provide adequate explanation before it treats similarly situated parties differently.”). Neither OIG nor ACF has provided *any* evidence suggesting that Pennsylvania’s Title IV-E program had a significantly greater error rate than was present in any other State program; yet OIG is subjecting only Pennsylvania – without justification – to an intensive multi-phase audit of its regularly-filed Title IV-E maintenance claims over a five-year period. These factors, as well as additional circumstances discussed below, strongly suggest that ACF may have sought the OIG audit for retaliatory or other equally improper reasons wholly unrelated to the administration of Pennsylvania’s Title IV-E program. In any event, it is clear that no basis exists for OIG arbitrarily to subject Pennsylvania to this all-encompassing multi-phase audit. For this reason alone, the Draft Report should be withdrawn.

C. ACF Unlawfully Transferred Program Operating Responsibilities to OIG

OIG should also withdraw the Draft Report because ACF wrongfully transferred, and OIG wrongfully assumed, ACF’s program operating responsibilities in violation of Section 9(a)(2) of the Inspector General Act of 1978, 5 U.S.C.App. 3.

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The Inspector General Act (Act) established the Office of Inspector General in order to facilitate “objective inquiries into bureaucratic waste . . . and mismanagement.” *NASA v. Fed. Labor Relations Auth.*, 527 U.S. 229, 240 (1999). Congress created OIG “to consolidate existing auditing and investigative resources to more effectively combat fraud, abuse, waste and mismanagement in the programs and operations of [various executive] departments and agencies.” S. Rep. No. 1071, 95th Cong., 2d Sess. 1 (1978), *reprinted in* 1978 U.S.C.C.A.N. 2676, 2676. While Congress gave OIG broad audit and investigative authority to carry out its oversight function, *see, e.g.*, 5 U.S.C.App. 3 § 6(a), it required OIG to remain “independent and objective” from the federal agencies it oversees. *See, e.g.*, 5 U.S.C.App. 3 § 3(a).

To ensure that OIG retains its critical independence, the Act expressly prohibits OIG from assuming “program operating responsibilities.” 5 U.S.C.App. 3 § 9(a)(2). “Program operating responsibilities may be defined as those activities which are central to an agency’s statutory mission versus those which are purely internal or administrative.” *United States v. Hunton & Williams*, 952 F. Supp. 843, 850 (D.D.C. 1997). Thus, the federal courts have consistently held that OIG is not authorized to conduct “regulatory compliance audits” that do not further the oversight purposes set forth in the Act but, instead, are of the type within the responsibilities of the federal agency itself. *See, e.g.*, *Truckers United for Safety v. Mead*, 251 F.3d 183 (D.C. Cir. 2001); *Burlington Northern R.R. Co. v. Office of Inspector General, Railroad Retirement Bd.*, 983 F.2d 631 (5th Cir. 1993). For instance, in *Truckers United for Safety*, the United States Court of Appeals for the D.C. Circuit held that OIG had acted outside the scope of its authority in conducting investigations of motor carriers’ compliance with federal safety regulations. 251 F.3d at 189. In so ruling, the Court concluded that “Congress did not intend to grant the IG authority to conduct investigations constituting an integral part of DOT programs” and that the IG “is not authorized to conduct investigations as part of enforcing motor carrier safety regulations – a role which is central to the basic operations of the agency.” *Id.*

Similarly, in *Burlington Northern*, the United States Court of Appeals for the Fifth Circuit concluded that the OIG lacked statutory authority to conduct “regulatory compliance investigations or audits,” which it defined as “those investigations or audits which are most appropriately viewed as being within the authority of the agency itself.” 983 F.2d at 642.

[A]s a general rule, when a regulatory statute makes a federal agency responsible for ensuring compliance with its provisions, the Inspector General of that agency will lack the authority to make investigations or conduct audits which are designed to carry out that function directly.

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Id. The Court reasoned that if an Inspector General were to assume an agency's regulatory compliance function, "his independence and objectiveness – qualities that Congress has expressly recognized are essential to the function of combating fraud, abuse, waste, and mismanagement – would . . . be compromised." *Id.*

In this case, OIG's multi-phase audit of Pennsylvania's Title IV-E claims over a five-year period falls squarely within the bounds of a prohibited regulatory compliance audit. OIG is not auditing Pennsylvania's claims "for the purpose of evaluating [ACF's] programs in terms of their management, efficiency, rate of error, and vulnerability to fraud, abuses, and other problems," *Winters Ranch Partnership v. Viadero*, 123 F.3d 327, 333 (5th Cir. 1997); indeed, OIG is not focused on ACF's performance or the ongoing operation of the federal Title IV-E program at all. Instead, OIG's Draft Report focuses solely and exclusively on whether Pennsylvania strictly complied with all of the statutory, regulatory, and ACF-imposed requirements on the submission and documentation of claims under Title IV-E of the Social Security Act.

Pennsylvania's compliance with the plethora of federal statutory and regulatory claiming requirements is not a proper focus of OIG's oversight responsibilities; the Social Security Act places that program responsibility squarely on the shoulders of HHS. See, e.g., 42 U.S.C. § 674(b). ACF, a division of HHS, is responsible for reviewing all Title IV-E claim submissions; where it finds claims of questionable allowability, it may defer or disallow such claims. See *id.*; 45 C.F.R. § 201.15(c). Thus, much like the improper activities at issue in the *Truckers United for Safety* and *Burlington Northern* decisions, OIG's audit represents an improper regulatory compliance audit that is within the responsibility of ACF itself.

OIG also clearly lacked the requisite "independence and objectiveness" in deciding to initiate and conduct this oppressive audit of Pennsylvania's Title IV-E claims. To the contrary, OIG, by its own admission, did not independently decide to initiate the audit of Pennsylvania's Title IV-E claims; it apparently acceded to a request from ACF Regional Office staff that it do so. OIG has stated that it decided to audit Pennsylvania because ACF – not OIG – was purportedly concerned that the errors ACF identified in the 1998 probe sample of unique reclassified children might also have somehow occurred in later periods in the general population of Title IV-E children. (See 3/9/04 Letter, Ex. D.)³ Initiating an audit in

³ Further, in an earlier audit that OIG announced in 2000 but never started, OIG expressly acknowledged that it was auditing Pennsylvania's Title IV-E claim in response to the specific request of ACF Region III officials:

Our audit was scheduled in the HHS Inspector General's FY 2000 Workplan with emphasis on whether juvenile justice related costs were shifted to the Title IV-E program. However, the Region III Office of the Administration for Children and Families requested that we expand our review to include all

(continued...)

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response to an agency request hardly qualifies as “independent and objective” oversight. *See, e.g., U.S. v. Montgomery County Crisis Center*, 676 F. Supp. 98, 99 (D. Md. 1987) (finding OIG’s issuance of subpoena to be improper because, among other reasons, it “did not initiate the investigation on its own but . . . at the behest of the [Naval Investigation Service] on a matter well outside [OIG’s] areas of regular responsibility”).

Far from acting in the “independent and objective” manner required by the Inspector General Act, OIG has operated as an arm of ACF throughout this process. OIG initiated the broad audit not of its own accord but at ACF’s request; it undertook ACF’s statutory responsibility for ensuring compliance with regulatory requirements by conducting a massive review to determine whether Pennsylvania complied with all of the statutory and regulatory requirements for claiming federal participation under the Social Security Act; and it engaged in a “regulatory compliance audit” that is not an appropriate focus of OIG’s oversight responsibility but, instead, is a central responsibility of ACF itself. Under such circumstances, it is clear that ACF has improperly transferred, and OIG has wrongfully assumed, program operating responsibilities in violation of Section 9(a)(2) of the Inspector General Act. For that reason alone, OIG lacks statutory authority to conduct this audit and the Draft Report should be withdrawn.

D. OIG Conducted the Audit Improperly and Prejudicially to Pennsylvania

Separate and apart from the issues over the selective and arbitrary nature of the audit and OIG’s lack of statutory authority for its actions, OIG improperly conducted the audit in a number of respects.

1. The Audit Improperly Extends Beyond the Federal Record Retention Period

OIG first informed Pennsylvania of the audit on November 19, 2003. (See 11/19/03 Letter, Ex. C.) The audit nevertheless extends to claims filed as early as October 1, 1996 – more than six years prior to the notice date. Pursuant to 45 C.F.R. § 74.53, a State is

(continued...)

aspects of Pennsylvania’s claim as the result of an inspection sample that indicated a high rate of error for the claim.

(See 4/5/2000 Letter from David M. Long to John H. Bungo, attached as Exhibit F (emphasis added).) Strikingly, the audit that OIG announced in 2000 was of Pennsylvania’s Title IV-E claims for Federal Fiscal Years 1998 and 1999. (See *id.*) The scope of OIG’s current audit is precisely the same but for the inclusion of three additional years (Federal Fiscal Years 2000-2002). Thus, OIG’s decision in 2003 to engage in the current audit appears to track directly back to its non-independent and non-objective decision to announce a similar audit in 2000.

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generally not required to retain financial records or supporting documents for more than three years after the submission of the expenditure report in question. Moreover, HHS Grants Administration Manual § 1-105-60(C)(3) expressly limits disallowances to the federal record retention period. In accordance with these authorities, OIG should not have audited any claims – or, at the very least, should not have recommended the disallowance of any claims – that Pennsylvania submitted prior to November 19, 2000 (three years before Pennsylvania was informed of the audit). The Draft Report, however, audits and recommends the disallowance of claims submitted *more than three years prior to that date*.

In your letter of March 9, 2004, you acknowledged that OIG generally limits its work to the federal record retention period but alleged that the retention period in this case had somehow been extended by OIG's announcement of a different audit in 2000. (See 3/9/04 Letter, Ex. D.) That position is incorrect, both as a matter of fact and law.

First, OIG's suggestion that the current audit is a mere continuation or re-initiation of the audit that it announced (but never began) in 2000 is belied by OIG's own written communications. OIG's letter of November 19, 2003 announcing the current audit is entirely devoid of any reference to the separate audit OIG had announced in 2000. (See 11/19/03 Letter, Ex. C.) Further, and most strikingly, you personally acknowledged in your letter of March 9, 2004 that OIG had announced a "*similar audit*" in 2000 – *i.e.*, *not* the same audit that it was now undertaking. (See 3/9/04 Letter, Ex. D (emphasis added).) OIG never asserted that the current audit was a mere continuation of the prior announced audit in any of these early communications; indeed, it did not take that position until many months later and then only in response to Pennsylvania's argument that the audit should be limited to the three-year federal retention period.

Second, even if the current audit had merely been a continuation of the separate audit announced in 2000 (which, of course, it was not), that fact, standing alone, would be an insufficient basis upon which to extend the scope of the current audit beyond claims filed after November 19, 2000. Federal law does not require a State to retain records beyond the three-year period simply upon a threat of litigation, review, or audit; instead, that extended obligation is triggered only if litigation, review, or audit has "started" during the retention period. See 45 C.F.R. § 74.53(b)(1) ("If any litigation, claim, financial management review, or audit is *started* before the expiration of the 3-year period, the records shall be retained until all litigation, claims or audit findings involving the records have been resolved and final action taken." (emphasis added)). Although OIG announced an audit in March 2000, it took no steps to "start" the audit. OIG never held an entrance conference; Pennsylvania never opened its books and records for OIG to review; and OIG never conducted any type of auditing analysis. Thus, the mere announcement in 2000 of an audit that never began cannot allow OIG to capture for review an otherwise unreachable

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audit period. To conclude otherwise would allow OIG unilaterally to vitiate the three-year record retention period simply by “announcing” audits that it never conducts.⁴

This issue is of significant importance to this case because the many of the claims OIG audited in the Draft Report were submitted prior to November 19, 2000; thus, Pennsylvania was under no legal obligation to retain supporting documentation as to those claims. Despite this fact, OIG’s recommendation that ACF disallow nearly \$86 million, and potentially disallow up to an additional \$88 million, is due almost exclusively to Pennsylvania’s inability to produce certain documents, some from as long as a decade ago. In light of the existing federal retention policy, the HHS Grants Administration Manual limiting disallowances to the retention period, and OIG’s own usual auditing practices, it was a critical error for OIG to extend the scope of this audit to include – and to recommend the disallowance of claims filed in – Federal Fiscal Years 1998, 1999 and 2000.

**2. OIG Improperly Recommends the Disallowance of
Non-Identifiable “Associated Administrative Costs”**

The Draft Report covers all Title IV-E placement maintenance claims incurred by Philadelphia County from October 1997 through September 2002 where the contractual *per diem* rate was less than \$300. (Draft Report at 2-3.) Philadelphia County’s placement maintenance claims were submitted in 20 quarterly summary invoices that collectively contain 157,873 claim lines (which OIG refers to as “claims”) totaling \$343,335,223. (*Id.* at Appendix B.) Thus, the universe of Philadelphia County’s placement maintenance claims audited by OIG in this phase total just over \$343 million. Throughout the Draft Report, however, OIG repeatedly contends it audited a total of \$562,280,094 in maintenance claims and “associated administrative costs.” (*See id.* at i., 2, 5.) Although the Draft Report fails to explain this critical contention, OIG apparently added \$218,944,871 in what it characterizes as “associated administrative costs” to the total amount of maintenance claims contained in the 20 quarterly summary invoices under review. It then recommends that ACF disallow and demand a “refund” of \$33,432,882 of these purported “associated administrative costs.” (*Id.* at 10.)

The phantom “associated administrative costs” that OIG created out of whole cloth solely for the purpose of recommending additional disallowances do not in fact exist; they are a mathematical invention of OIG that, as a matter of law, cannot form the basis of

⁴ Further, the audit announced in 2000 included only Federal Fiscal Years 1998 and 1999 – not Federal Fiscal Year 2000. (*See* 3/22/00 Letter from David M. Long to Feather O. Houston, attached as Exhibit G.) Therefore, any audit of FFY 2000 cannot, under any circumstances, be considered a “continuation” of the prior announced audit. Because FFY 2000 ended more than three-years before OIG’s announcement of the current audit, it should never have been included in the Draft Report and any and all disallowances based in whole or part on claims submitted during FFY 2000 must be removed.

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any recommended disallowance. To be clear, Pennsylvania *never* submitted claims for Title IV-E administrative costs associated only with children in Philadelphia County where the contractual *per diem* rate was less than \$300 during any period under review (FFY 1998-2002). In accordance with Pennsylvania's federally-approved cost claiming methodology, Philadelphia County submitted *all* claims for Title IV-E administrative costs on a consolidated basis (*i.e.*, administrative costs associated with *all* children in the county foster care system – not simply for the certain subset of children at issue in this phase of the audit). It is therefore completely inaccurate for OIG to assume that Pennsylvania claimed readily-identifiable administrative costs that Philadelphia County incurred in connection with the population at issue in this audit.

Notably, the Draft Report is silent as to how, or even why, OIG identified and calculated the purported \$219 million in “associated administrative costs” that it added to the maintenance claims under review. In fact, the body of the Draft Report – which consistently combines the maintenance claims and “associated administrative costs” together into a single figure of \$562,280,094 – does not even acknowledge the addition of this \$219 million figure to the universe of maintenance claims under review. Instead, the sole reference as to how these purported “associated administrative costs” were apparently calculated appears in footnote 15:

We calculated unallowable administrative costs by dividing the State agency's total Title IV-E claims for administrative costs (\$593,233,356) by its total Title IV-E claims for maintenance costs (\$857,954,391) plus training costs (\$72,252,983). We then applied the resultant percentage to the estimated \$52,437,512 in unallowable maintenance costs.

(*Id.* at 10 n.15.) Thus, in determining the amount which it characterizes as the “unallowable administrative costs,” OIG apparently totaled all State-wide Title IV-E administrative costs submitted during the relevant period (FFY 1998-2002), divided that number by the total of all State-wide Title IV-E maintenance and training costs during the same period, and multiplied the resulting ratio by the maintenance costs that OIG concluded should be disallowed.

OIG's wholesale creation and calculation of non-identifiable “administrative costs” for a subset of children in Philadelphia County is fundamentally unsound and falls woefully short of being an appropriate legal basis for disallowance of federal funds. As an initial matter, OIG makes no attempt to explain why it is appropriate to apply a crude State-wide five-year average to the maintenance claims at issue in this audit, which were incurred only by Philadelphia County. Philadelphia has the largest population of Title IV-E-eligible children anywhere in the State; as such, its eligible administrative costs on a per-child basis differs significantly from those counties with a much smaller number of eligible children.

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There is no evidence that the makeshift State-wide ratio OIG utilized is even arguably applicable to Philadelphia's administrative claims.

Just as fundamentally, the entire premise of OIG's argument – *i.e.*, that disallowances of a certain number of a subset of maintenance claims incurred by Philadelphia County should necessarily result in a proportionate decrease in "associated" administrative costs – is incorrect in light of Pennsylvania's federally-approved administrative cost claiming methodology. Like most States, Pennsylvania identifies, measures and allocates administrative costs for Title IV-E eligible programs through a random moment time study ("RMTS"), which monitors and analyzes the activities of county case workers throughout the Commonwealth. Each quarter, approximately 3,000 "moment in time" requests are randomly sent to county case workers throughout Pennsylvania. Each recipient of an RMTS request identifies what type of activity he or she is conducting at that precise moment and documents the activity on the observation form. The Commonwealth then aggregates the information from all forms, calculates the percentage of time an average Pennsylvania case worker spends on certain activities, and applies the applicable percentage to each county's actual administrative cost pool. Pennsylvania has used this same administrative cost claiming methodology, with the knowledge and approval of HHS, since 1989.

Because Pennsylvania's federally-approved administrative cost claiming methodology is purely activity-driven (meaning that its result is dependent upon county caseworkers' average activities rather than calculated on a child-by-child basis), it is incorrect to assume that a disallowance of a Title IV-E placement maintenance claim would necessarily result in *any* significant reduction – let alone a proportionate reduction – of Title IV-E administrative costs for which Pennsylvania seeks federal financial participation. Indeed, it is entirely possible that even significant disallowances of a subset of placement maintenance claims would have little appreciable effect on the overall administrative claims submitted during the same period. Thus, there is no factual or legal basis for OIG's unstated (and wholly unsupported) assumption that disallowances of certain placement maintenance claims, if imposed by ACF, should necessarily result in additional disallowances of administrative claims. And there certainly is no basis for OIG's recommendation of specific disallowances of "associated administrative costs" that Pennsylvania never submitted as such based upon a rough State-wide multi-year average that has no applicability to Philadelphia County.

In an earlier phase of this ongoing audit, OIG maintained (without explanation or support) that its approach to identifying and calculating these "associated administrative costs" was "reasonable." (See Final Phase II Report at 14.) It also noted that Pennsylvania "did not offer an alternative method of calculating administrative costs on either a statewide or county-specific basis." (*Id.*) But Pennsylvania is not required to identify alternative methodologies that OIG could employ to manufacture phantom costs; rather, because

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Pennsylvania *never claimed the specific costs that OIG recommends be disallowed*, it is OIG that bears the burden of establishing that the manner in which it identified and calculated these so-called “associated” costs was reasonable and appropriate. *Cf.* HHS DAB Appellate Division Practice Manual FAQ, available at <http://www.hhs.gov/dab/appellate/manual.html> (“[W]hen the disallowance amount results from extrapolation from a sample measurement, the respondent must detail the statistical methodology used and be prepared to substantiate the validity of the methodology upon inquiry.”) For the reasons set forth above, OIG cannot make any such showing.

For all of these reasons, OIG’s recommendation that ACF disallow \$33,432,882 in purported “associated administrative costs” is without legal or factual support and should be withdrawn.

3. OIG Made Significant Sampling and Extrapolation Errors

Although the universe of placement maintenance claims under review in this audit phase contains 157,873 claim lines totaling more than \$343 million, OIG selected and reviewed only 200 claims with an aggregate value of \$398,647 (Draft Report at 3.) OIG then applied the results of the 200 claim sample to the overall universe of claims through statistical extrapolation. (*Id.* at 3-5, 11-12.) In the process, however, OIG made significant sampling and extrapolation errors that taints the critical data and renders the Draft Report’s conclusions highly unreliable in several respects.

First, OIG’s unrestricted variable random sample design resulted in a selection bias in favor of children who had remained in the foster care system for a longer period and thereby skewed the sample results by creating a greater probability of disallowance. Each claim line from which the 200 sample claims were generated represented the placement costs for a single child for a calendar quarter. (*Id.* at Appendix A.) Therefore, any child who remained in the foster care system for more than three months would have multiple claim lines and thus a greater probability of being selected as part of the sample frame. Children who remained in the system long-term, however, have a statistically greater chance of being deemed ineligible for Title IV-E benefits because of their increasing age, the need for ongoing redeterminations of eligibility, and other increasingly burdensome documentation requirements. OIG’s sample design thus resulted in a bias favoring selection of claims with a greater likelihood of documentation difficulties. This flaw significantly tainted the sample review and subsequent extrapolation.

Second, separate and apart from the selection bias, OIG’s own internal Variable Unrestricted Appraisal calculations (attached as Exhibit H) amply demonstrate that the standard deviation of the point estimate used to determine the amount of unallowable claims is so wide as to make the calculations virtually useless as a measure of anything. OIG’s calculations show that standard deviation of the “difference” data (*i.e.*, the difference

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between the 200 sample claims extrapolated to the universe of claims and those sample claims that OIG would accept extrapolated to the universe of claims) is nearly three times the mean of that same data: the mean is \$501.86 but the standard deviation is \$1,453.25. This extremely wide distribution of numbers makes OIG's calculations volatile and unstable under any level of statistical rigor. Further, and even more strikingly, OIG's calculations demonstrate that the standard deviation of the "audited" claims (\$1,606.90) is greater than the mean of those same claims (\$1,491.38), signifying that no reliable or supportable conclusion can be drawn from the data. Put simply, the calculations that supposedly support OIG's recommended disallowances in the Draft Report are neither statistically valid nor legally supportable.⁵

Therefore, it is clear that OIG's sampling design and extrapolation methodology were fundamentally flawed, resulting in inaccurate and biased financial estimates that are statistically unsound, highly unreliable, and legally insupportable. For these additional reasons, the Draft Report should be withdrawn.

E. OIG Committed Numerous Errors in Its Review and Examination of the Merits of the Sample Claims

In addition to the selective and arbitrary nature of the audit, OIG's lack of statutory authority to conduct the audit, and the numerous ways in which OIG improperly and prejudicially conducted the audit, OIG committed numerous errors in its review and examination of the 200 sample claims. In the Draft Report, OIG concluded that 44 of the 200 sample claims (totaling \$100,372 of the \$398,647 sample universe) were unallowable, largely due to Pennsylvania's purported inability to provide certain paperwork (that dated from as long as a decade ago) supporting the Title IV-E eligibility of the child. (Draft Report at i-ii, 4-5, 10-11.) In addition, OIG claimed it was unable to determine the allowability of an additional 14 claims, purportedly because the rates did not adequately distinguish between services that were eligible for Title IV-E reimbursement and those that were not. (*Id.*) For the following reasons, both conclusions are erroneous and should be withdrawn.

1. OIG Improperly Rejected Numerous Sample Claims

As an initial matter, it is wholly improper for OIG to recommend disallowances of previously submitted claims based solely upon a lack of documentation. Congress has

⁵ In addition to these flaws, OIG reported its financial estimates using the lower 90% confidence level rather than the standard 95% confidence level. Had OIG properly reported its conclusions using the standard 95% confidence level, the lower limit of its calculations using OIG's own flawed analysis would have been \$47,258,986 rather than the \$52,437,512 it used as the basis for the recommended disallowance.

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expressly and consistently indicated that it is improper to disallow claims for federal financial participation due to missing documents or missing language in documents, which is sometimes outside the control of the States, because such disallowances do little to address the quality of child care. See, e.g., 63 FR 50058-01 (noting that Congress was concerned with review practices because they “relied heavily on case documentation and process” and thus “did little to address quality of care for children”); Committee on Ways and Means, U.S. House of Representatives, 2000 Green Book: Background Material and Data on Programs within the Jurisdiction of the Committee on Ways and Means (2000) (explaining that Congress was concerned with reviews that “focused on paper compliance with legal requirements” rather than seeking to achieve “improved services for children and their families” and noting that the review process often improperly held States “accountable for circumstances beyond their control, such as the schedule or actions of the courts”). Indeed, OIG itself has been critical of a review process that “automatically sanction[s] States financially in response to adverse review findings” rather than using “the results of reviews to develop corrective action plans” to allow States to improve their programs and comply with federal requirements. See Office of Inspector General, Dep’t of Health and Human Serv., Oversight of State Child Welfare Programs 21 (1994).

In light of these concerns, OIG’s review of the sample claims – and its automatic rejection of any claim that did not strictly comply with any aspect of the federal documentation standards – is entirely improper. The focus of OIG’s review should have been substantive rather than formulaic. OIG should have determined whether the sample file contains evidence showing that the State took all necessary actions prior to placement and that the child was eligible for Title IV-E benefits – not simply whether the State could, for example, locate a specific court order containing special language from as long as a decade ago. The use of any reasonable review standard would result in a dramatic reduction of rejected claims. In any event, as discussed in detail below, OIG misapplied its own improperly restrictive standard with respect to a number of sample files and those errors must be rectified.

Pennsylvania is continuing its diligent search for supporting documents and reserves the right to supplement or amend this response in its forthcoming supplemental response. For the numerous reasons set forth *supra*, OIG should withdraw the Draft Report and repudiate all of the recommended disallowances in their entirety. Subject to and without waiver of those arguments, Pennsylvania makes the following additional arguments on the merits of individual sample claims:⁶

⁶ To maintain confidentiality, Pennsylvania will refer to the sample claims solely by number. The attached tables and exhibits, however, necessarily include child-specific information that must remain confidential. Pennsylvania respectfully requests that OIG take any and all steps necessary to avoid releasing (continued...)

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Claim 3

OIG states that this claim from the April-June 1997 quarter is unallowable because of Reasons 1 (contrary to the welfare) and 2 (reasonable efforts). However, substantial evidence exists in the file to demonstrate that this claim is allowable.

A July 13, 1995 Dependency Review Order states: "For the child entering placement the court finds that reasonable efforts were made to prevent removal or that it was not reasonable nor in the best interests of the child to prevent removal." (See Exhibit I-3.) The Order further states that "the Petitioners [are] taking reasonable efforts to reunify the child with [her] family . . . and if the goal is not to return home, the absence of efforts to make it possible for the child to return home is reasonable." (*Id.*) Therefore, Pennsylvania's claim is clearly allowable.

Claim 7

OIG states that this claim from a two-day period in March 1997 is unallowable because of Reasons 1 (contrary to the welfare) and 2 (reasonable efforts). However, substantial evidence exists in the file to demonstrate that this claim is allowable.

A CY-61 Eligibility Determination form dated April 23, 1997 expressly refers to a November 13, 1996 "COURT ORDER – Removing the child and authorizing placement in substitute care." (See Exhibit I-7.) A Philadelphia Department of Human Services Case Record ("Case Record") dated December 4, 1996 further reflects that "[d]ue to youth's arrest record, the court ordered residential placement in the best interests of the child and the community," that the placement goal continued to be "[r]eturn to own home," and that prior non-placement efforts to prevent placement were unsuccessful. (*Id.*) Additionally, a Delinquency Review Order dated March 31, 1998 states that "[t]he court finds that the Petitioner has taken reasonable efforts to re-unify the child with his[] family" and that he would remain committed "since the Court finds that such placement is appropriate and necessary and that return home would be contrary to the welfare of the child." (*Id.*) Therefore, substantial evidence clearly exists in the file establishing that the requisite judicial findings were in fact made prior to placement of the child. The fact that Pennsylvania has thus far been unable to locate a court order from more than eleven years ago is not an appropriate basis for finding such claim to be unallowable. This claim should be allowed.

(continued...)

child-specific information about the children in Pennsylvania's foster care system throughout the audit and reporting process.

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Claim 8

OIG states that this claim from March 14, 1997 to March 31, 1997 is unallowable because of Reasons 1 (contrary to the welfare) and 2 (reasonable efforts), among others. However, Pennsylvania has obtained a court order dated March 16, 1994, in which the court finds that the State had made reasonable efforts to prevent the child's placement and that allowing the child to remain in his home would be contrary to his welfare. (See Exhibit I-8.) Therefore, Pennsylvania's claim should be allowed.

Claim 9

OIG states that this claim from the April-June 1997 quarter is unallowable because of Reasons 1 (contrary to the welfare), 2 (reasonable efforts) and 3 (income eligibility). However, substantial evidence exists in the file to demonstrate that this claim is allowable.

Pennsylvania has obtained a court order dated June 16, 1994, in which the court finds that the State had made reasonable efforts to prevent the child's placement and that allowing the child to remain in his home would be contrary to his welfare. (See Exhibit I-9.) Pennsylvania has also obtained a CY-61 Eligibility Determination dated May 25, 1994 stating that the child was receiving or was eligible for AFDC at the time of removal. (*Id.*) Therefore, this claim is clearly allowable.

Claim 11

OIG states that this claim from the July-September 1997 quarter is unallowable because of Reason 7 (costs claimed for ineligible services), asserting that it was unclear whether the claimed costs, incurred at a George Junior Republic facility, were limited to costs for allowable Title IV-E services. However, while the allowable IV-E *per diem* rate, as calculated by George Junior Republic after subtraction of non-allowable expenses, was \$104.03, the *per diem* rate claimed by Pennsylvania for this child was only \$83.39. (See Exhibit I-11) Therefore, costs were not claimed for ineligible services and this claim is clearly allowable.

Claim 14

OIG states that this claim from the July-August 1997 quarter is unallowable because of Reason 1 (contrary to the welfare). However, Pennsylvania has obtained a court order dated November 22, 1995, in which the court finds that allowing the child to remain in his home would be contrary to his welfare. (See Exhibit I-14.) Therefore, this claim is clearly allowable.

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Claim 16

OIG states that this claim from the July-August 1997 quarter is unallowable because of Reasons 3 (income eligibility) and 7 (costs claimed for ineligible services). However, substantial evidence exists in the file demonstrating that this claim is allowable.

The child was placed on July 23, 1981, subsequently returned to the home, and then removed again on May 12, 1997. Pennsylvania has obtained a Philadelphia Department of Human Services ("DHS") Eligibility Determination which states that the child was "receiving placement maintenance of SSI at the time the adoption petition was filed." (See Exhibit I-16.) Further, OIG's own notes on the Sample Element Review Sheet recognize that "[Adoptive] Mother works as school district lunch aid, and [adoptive] father is unable to work, due to heart attack. . . . Child was neglected by his birth parents when he was 9-months old. They could not take care of him due to financial reasons." (*Id.*)

OIG also states that it is unclear whether the claimed costs, incurred at a Vision Quest facility, were limited to costs for allowable Title IV-E services. However, while the allowable IV-E *per diem* rate, as calculated by Vision Quest after subtraction of unallowable Title IV-E expenses, was \$117.38, the *per diem* rate claimed by Pennsylvania for this child was only \$103.04. (*Id.*) Therefore, costs were not claimed for ineligible services and this claim is clearly allowable.

Claim 17

OIG states that this claim from the July-September 1997 quarter is unallowable because of Reason 3 (income eligibility) among others. However, Pennsylvania has obtained a CY-61 Eligibility Determination dated June 23, 1995 stating that the child was receiving or was eligible to receive AFDC at the time of placement or removal. (See Exhibit I-17.) Therefore, this claim is allowable.

Claim 30

OIG states that this claim from the January-March 1998 quarter is unallowable because of Reason 7 (costs claimed for ineligible services), asserting that it was unclear whether the claimed costs, incurred at Bethany Children's Home, were limited to costs for allowable Title IV-E services. However, while the allowable IV-E *per diem* rate, as calculated by Bethany, for 1997-1998 was \$99.00 and for 1998-1999 was \$100.00, the *per diem* rate claimed by Pennsylvania for this child was only \$75.00. (See Exhibit I-30.) Moreover, for both 1997-1998 and 1998-1999, Bethany has identified and subtracted costs not charged to the county and has verified that all costs charged to the county are "allowable under Title IV-E Regulations." (*Id.*) Therefore, costs were not claimed for ineligible services and this claim is clearly allowable.

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Claim 31

OIG states that this claim from January 1, 1998 to February 16, 1998 is unallowable because of Reasons 1 (contrary to the welfare), 2 (reasonable efforts) and 7 (costs claims for ineligible services). However, substantial evidence exists in the file to demonstrate that this claim is allowable.

Pennsylvania has obtained a court order dated April 30, 1997, in which the court finds that the State had made reasonable efforts to prevent the child's placement and that allowing the child to remain in his home would be contrary to his welfare. (See Exhibit I-31.) Further, as to the rate issue, although the allowable IV-E *per diem* rate, as calculated by St. Michael's School facility, was \$102.29,⁷ the *per diem* rate claimed by Pennsylvania for this child was only \$90.47. (*Id.*) Therefore, costs were not claimed for ineligible services and this claim is clearly allowable.

Claim 32

OIG states that this claim from the January-March 1998 quarter is unallowable because of Reasons 1 (contrary to the welfare) and 2 (reasonable efforts). However, Pennsylvania has obtained a court order dated November 18, 1991, in which the court makes sufficient findings. (See Exhibit I-32.) Accordingly, this claim should be allowed.

Claim 40

OIG states that this claim from the April-June 1998 quarter is unallowable because of Reasons 1 (contrary to the welfare) and 2 (reasonable efforts). However, substantial evidence exists in the file to demonstrate that this claim is allowable.

This child was placed on or about January 12, 1998 at the Learning Experience facility. The child was born on September 18, 1996 to a sixteen year old mother, who herself had been adjudicated dependent and was removed from her home on November 4, 1991. A Philadelphia DHS Notice of Child's Placement form recognizes that the child was placed as of January 12, 1998 as a result of a "Court Order." (See Exhibit I-40.) Although Pennsylvania has not been able to obtain a copy of this order issued a decade ago, it has obtained a court order dated December 2, 1991 adjudicating the child's mother as dependent, as well as numerous orders through 1998 that maintain the mother's commitment to DHS based on the court's finding that "the Petitioner is taking reasonable efforts to reunify the child with

⁷ The allowable *per diem* calculation in Exhibit I-31 covers the period 1999-2000. Although Pennsylvania is continuing to seek responsive documents from St. Michael's, the January-March 1998 quarter is well beyond the federal records retention period and, in any event, Pennsylvania should not be penalized for its inability to date to locate these decade-old records.

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[her family . . . , and if the goal is not to return home, the absence of efforts to make it possible for the child to return home is reasonable.” (*Id.* (compendium of Dependency Review Orders from December 2, 1991 through July 6, 1998).) In addition, Pennsylvania has obtained a Memorandum dated August 23, 2000 written by the mother’s social worker stating that the mother’s children “are in placement with her at Learning Experience.” (*Id.*) Therefore, this claim is clearly allowable.

Claim 47

OIG states that this claim from the April-June 1998 quarter is unallowable because of Reason 1 (contrary to the welfare) among others. However, Pennsylvania has obtained a court order dated May 12, 1998, in which the court found that the placement “is appropriate and necessary and that return home would be contrary to the welfare of the child.” (See Exhibit I-47.) Accordingly, this claim should be allowed.

Claim 49

OIG states that this claim from the July-September 1998 quarter is unallowable because of Reason 7 (costs claimed for ineligible services), asserting that it was unclear whether the claimed costs, incurred at a Devreux Foundation facility, were limited to costs for allowable Title IV-E services. However, while the allowable IV-E *per diem* rate, as calculated by Devreux after subtraction of unallowable Act 148 and Title IV-E expenses, was \$80.62,⁸ the *per diem* rate claimed by Pennsylvania for this child was only \$66.24. (See Exhibit I-49.) Therefore, costs were not claimed for ineligible services and the claim is clearly allowable.

Claim 50

OIG states that this claim from September 1998 is unallowable because of Reasons 1 (contrary to the welfare), 2 (reasonable efforts) and 5 (annual redetermination). However, substantial evidence exists in the file demonstrating that this claim is allowable.

Pennsylvania has obtained a court order dated January 14, 1994, in which the court finds that the State had made reasonable efforts to prevent the child’s placement and that allowing the child to remain in his home would be contrary to his welfare. (See Exhibit I-50.) Moreover, contrary to OIG’s findings concerning the lack of annual redeterminations, Pennsylvania has obtained numerous orders between January 14, 1994 and September 8,

⁸ The allowable *per diem* calculation in Exhibit I-49 covers the period July 2001-June 2002. Although Pennsylvania is continuing to seek responsive documents from the Devreux Foundation, the July-September 1998 quarter is well beyond the federal records retention period and, in any event, Pennsylvania should not be penalized for its inability to date to locate these decade-old records.

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1998 which demonstrate that annual redeterminations of eligibility were in fact made. (*Id.* (compendium of court orders from January 1994 through November 1998).) Regardless, in OIG's own Criteria Governing Title IV-E Foster Care Claims (attached to the Sampling Plan for the earlier Phase II audit), OIG expressly acknowledged that a State's failure to conduct an annual redetermination of eligibility does not render the case ineligible for federal financial participation. (See Criteria at 13 ("However, if the State agency misses the twelve month eligibility redetermination schedule in certain cases, those cases would not be considered ineligible for Federal financial participation for that reason alone.") *citing* ACYF-CB-PIQ-85-06 (6/5/85).)⁹ Therefore, this claim is clearly allowable.

Claim 88

OIG states that this claim from April 1, 1999 to April 26, 1999 is unallowable because of Reasons 1 (contrary to the welfare), 3 (income eligibility), and 7 (costs claims for ineligible services). However, substantial evidence exists in the file to demonstrate that this claim is allowable.

First, a court order dated March 23, 1999, states that placement of the child is necessary and appropriate. (See Exhibit I-88.) In addition, the March 12, 1999 petition seeking placement of the child states that the child is at risk of further neglect if left in his mother's care at home because she has not been taking him to therapy appointments, has not been administering his mental health medications, and is unavailable for scheduled appointments. (*Id.*) The petition also states that the child appeared to be afraid of his mother. (*Id.*) A March 23, 1999 Court Hearing Report also states that the mother has been "overall uncooperative with all services." (*Id.*) These documents collectively establish that, at the time of placement, it would have been contrary to the child's welfare to remain in the home.

As to income eligibility, Pennsylvania has obtained a CIS Individual Detail Inquiry form for the child which indicates that he was eligible for child food stamps at the time of his placement in March 1999. (*Id.*)

Finally, as to the rate issue, although the allowable IV-E *per diem* rate for shelter care being received by the child, as calculated by Bethany Homes, Inc. after subtraction of unallowable costs, was \$129.00, the *per diem* rate claimed by Pennsylvania

⁹ Although OIG provided Pennsylvania with a copy of the Phase IV Sampling Plan Document, it failed to provide copies of the numerous exhibits that were attached to that document. Notwithstanding this omission, Pennsylvania reasonably believes that the same Criteria Governing Title IV-E Foster Care Claims that was attached to the Phase II Sampling Plan Document applies equally to this audit phase. Notably, Phase II and Phase IV each involves claims filed by Pennsylvania during the same period under review (FY1998-FY2002); thus, the claims should be examined and reviewed under the same criteria.

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for the child was only \$122.30. (*Id.*) Moreover, for 1998-1999, Bethany has identified and subtracted costs not charged to the county and verified that all costs charged to the county are "allowable under Title IV-E Regulations." (*Id.*) Therefore, costs were not claimed for ineligible services and this claim is clearly allowable.

Claim 91

OIG states that this claim from April-June 1999 quarter is unallowable because of Reasons 2 (reasonable efforts) and 3 (income eligibility). However, substantial evidence exists in the file to demonstrate that the claim is allowable.

A March 12, 1999 petition seeking placement of the child states that DHS has made reasonable efforts to prevent the placement of the child and that the child's mother signed a Voluntary Placement Agreement concerning the child on March 2, 1999. (See Exhibit I-91.) In addition, a court order dated March 23, 1999 reflects that the mother and father did not contest the March 12, 1999 petition. (*Id.*) These documents collectively establish that DHS made reasonable efforts to prevent the child's placement.

As to income eligibility, the CY-61 Eligibility Determination form states that the child was eligible for AFDC at the time of his placement. (*Id.*) Pennsylvania has also obtained a CIS Individual Detail Inquiry form for the child, which shows that the child had no income. (*Id.*) Therefore, Pennsylvania's claim is clearly allowable.

Claim 97

OIG states that this claim from the April-June 1999 quarter is unallowable because of Reasons 3 (income eligibility) and 7 (costs claimed for ineligible services). However, the CY-61 Eligibility Determination form establishes that the child was eligible for AFDC at the time of his placement. (See Exhibit I-97.) Further, although the allowable IV-E *per diem* rate, as calculated by St. Frances-St. Joseph Homes (Residential Child Care Corporations of the Archdiocese of Philadelphia) after subtraction of unallowable expenses, was \$115.63, the *per diem* rate claimed by Pennsylvania for this child was only \$85.14. (*Id.*) Therefore, costs were not claimed for ineligible services and this claim is clearly allowable.

Claim 116

OIG states that this claim from the October-December 1999 quarter is unallowable because of Reason 3 (income eligibility). However, Pennsylvania has obtained several CY-61 Eligibility Determination forms which establish that there was no income or resources available to the child and that the child was eligible for placement maintenance. (See Exhibit I-116.) Therefore, this claim is clearly allowable.

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Claim 120

OIG states that this claim from the January-March 2000 quarter is unallowable because of Reasons 1 (contrary to welfare), 2 (reasonable efforts), and 5 (annual redetermination). However, substantial evidence exists in the file to demonstrate that this claim is allowable.

First, Pennsylvania has obtained a court order dated March 4, 1998 in which the court finds that the state has made reasonable efforts to prevent the child's placement and that allowing the child to remain in his home would be contrary to his welfare. (See Exhibit I-120.) In addition, the petition seeking placement for the child states that DHS has made reasonable efforts to prevent placement, that the child was placed because he was left home alone, and that the child's mother was at a facility for mental health and substance abuse treatment. (*Id.*)

Further, OIG's disallowance based upon a purported lack of annual redeterminations is erroneous. In its own Criteria Governing Title IV-E Foster Care Claims (attached to the Phase II Sampling Plan; see *supra* n. 9), OIG expressly acknowledged that a State's failure to conduct an annual redetermination of eligibility does not render the case ineligible for federal financial participation. (See Criteria at 13 ("However, if the State agency misses the twelve month eligibility redetermination schedule in certain cases, those cases would not be considered ineligible for Federal financial participation for that reason alone.") citing ACYF-CB-PIZ-85-06 (6/5/85).) Therefore, this claim is clearly allowable.

Claim 122

OIG states that this claim from the January-March 2000 quarter is unallowable because of Reason 4 (age). However, Pennsylvania has obtained a diploma showing that the child graduated from high school in June 2000, which was at least three months before her nineteenth birthday in September 2000. (See Exhibit I-122.) Therefore, this claim is clearly allowable.

Claim 123

OIG states that this claim from the January-March 2000 quarter is unallowable because of Reasons 1 (contrary to welfare) and 2 (reasonable efforts) among others. However, Pennsylvania has obtained a court order dated December 15, 1998, in which the court finds that the State has made reasonable efforts to prevent the child's placement and that allowing the child to remain in his home would be contrary to his welfare. (See Exhibit I-123.) The State has also obtained Orders dated May 7, 1999 and October 20, 1999 which contain reasonable effort and contrary to the welfare determinations. (*Id.*) Therefore, this claim should be allowed.

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Claim 125

OIG states that this claim from the January-March 2000 quarter is unallowable because of Reasons 1 (contrary to welfare) and 2 (reasonable efforts). However, substantial evidence exists in the file to demonstrate that the claim is allowable.

The infant child was born in February 1999 to a mother who was in the care of DHS during the claim review period. The file contains an October 23, 1985 order committing the mother to DHS, which states that the State has made reasonable efforts to prevent her placement and that it was contrary to her welfare to remain in the home. (See Exhibit I-125.) The file also contains a July 28, 1999 order maintaining the mother's commitment to DHS, which states that the State has made reasonable efforts to prevent the child's removal. (*Id.*) Documents in the file further establish that the child was living with the mother while she was under the custody of DHS. (*Id.*) Therefore, documentation in the file clearly shows that this claim should be allowed.

Claim 133

OIG states that this claim from the April-June 2000 quarter is unallowable because of Reason 1 (contrary to welfare) among others. However, the file contains a court order dated September 9, 1993 stating that it is not in the child's best interests to remain in the home and that the child's mother has signed a voluntary placement agreement to place the child in the care of the DHS. (See Exhibit I-133.) Therefore, the "contrary to the welfare" requirement was clearly satisfied and this claim should be allowed.

Claim 135

OIG states that this claim from the July-September 1999 quarter is unallowable because of Reasons 1 (contrary to welfare) and 2 (reasonable efforts). However, Pennsylvania has obtained a court order dated January 21, 1994, in which the court finds that the State has made reasonable efforts to prevent the child's placement and that placement was in the best interests of the child. (See Exhibit I-135.) The file also contains a second order dated March 4, 1994 containing similar language (*Id.*) Additionally, the January 13, 1994 petition seeking placement of the child states that the State has made reasonable efforts to prevent placement and that the child's mother was a drug addict, was not properly caring for the child, and that the child was left home alone in the house which had no heat or refrigeration. (*Id.*) These documents collectively establish that the "reasonable efforts" and "contrary to the welfare" requirements were satisfied. Accordingly, this claim is clearly allowable.

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Claim 137

OIG states that this claim from the July-September 2000 quarter is unallowable because of Reason 7 (costs claimed for ineligible services), asserting that it was unclear whether the claimed costs, incurred at a Devreux Foundation facility, were limited to costs for allowable Title IV-E services. However, while the allowable IV-E *per diem* rate, as calculated by Devreux after subtraction of unallowable Act 148 and Title IV-E expenses, was \$80.62,¹⁰ the *per diem* rate claimed by Pennsylvania for this child was only \$66.24. (See Exhibit I-137.) Therefore, costs were not claimed for ineligible services and the claim clearly should be allowed.

Claim 146

OIG states that this claim from the June-August 2000 quarter is unallowable because of Reason 4 (age). However, the file indicates that the child was taking classes during the summer of 2000 to finish her senior year of high school. (See Exhibit I-146.) Because Pennsylvania reasonably expected the child to graduate before turning nineteen years of age, this claim is clearly allowable.

Claim 165

OIG states that this claim from October 17, 2001 to November 6, 2001 is unallowable because of Reason 4 (age). However, documents in the file show that the child was in the 12th grade at the time of review and that Pennsylvania reasonably expected him to graduate before turning nineteen years of age. (See Exhibit I-165.) Therefore, this claim is clearly allowable.

Claim 167

OIG states that this claim from the April-June 2001 quarter is unallowable because of Reason 7 (costs claimed for ineligible services), asserting that it was unclear whether the claimed costs, incurred at a Woods Services facility (Crestwood), were limited to costs for allowable Title IV-E services. However, while the allowable IV-E *per diem* rate, as

¹⁰ Although the allowable *per diem* calculation in Exhibit I-137 covers the period July 2001-June 2002, it relies upon data from the prior fiscal year and, in any event, exceeds the rate claimed by Pennsylvania in Claim 137 by more than \$14 per day. Pennsylvania is continuing to seek responsive documents from the Devreux Foundation but, regardless, is clearly justified in relying upon these records from the immediately following fiscal year.

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calculated by Woods after subtraction of unallowable Title IV-E expenses, was \$208.11,¹¹ the *per diem* rate claimed by Pennsylvania for this child was only \$201.57 (See Exhibit I-167.) Therefore, costs were not claimed for ineligible services and this claim is clearly allowable.

Claim 172

OIG states that this claim from the April-June 2000 quarter is unallowable because of Reasons 1 (contrary to welfare) and 2 (reasonable efforts). However, Pennsylvania has obtained a court order dated October 24, 1996 in which the court finds that the State has made reasonable efforts to prevent the child's placement and that allowing the child to remain in the home would be contrary to his welfare. (See Exhibit I-172.) The file also contains orders dated June 9, 1999 and September 20, 1999 containing similar language. (*Id.*) Therefore, this claim is clearly allowable.

Claim 179

OIG states that this claim from September 2, 2001 to September 27, 2001 is unallowable because of Reason 3 (income eligibility) among others. However, the file contains a CY-61 Eligibility Determination form which states that there were no resources or income available to the child and that the child met all of the requirements for AFDC. (See Exhibit I-179.) Therefore, this claim is clearly allowable.

Claim 181

OIG states that this claim from July 11, 2001 to July 18, 2001 is unallowable because of Reasons 1 (contrary to welfare) and 2 (reasonable efforts) among others. However, the file includes a court order dated July 10, 2001, in which the court finds that the State has made reasonable efforts to prevent the child's removal from the home and that the placement of the child is necessary and appropriate. (See Exhibit I-181.) In addition, a Court Hearing Record dated January 13, 1989 states that the Court has committed the child to DHS's care and notes that the child's parents cannot care for her. (*Id.*) These documents collectively establish that the "reasonable efforts" and "contrary to the welfare" requirements were satisfied. Therefore, the claim should be allowed.

¹¹ Although the allowable *per diem* calculation in Exhibit I-167 covers the period July 2001-June 2002, it relies upon data from the prior fiscal year. Pennsylvania is continuing to seek responsive documents from Woods but, regardless, is clearly justified in relying upon records from the immediately following quarter.

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2. OIG Improperly Calculated the “Set Aside” Amount Relating to Claims That Purportedly Require Further Review by ACF

In addition to rejecting 44 of the 200 sample claims, OIG further claims it was unable to determine the allowability of an additional 14 claims, purportedly because the *per diem* rates at issue did not adequately distinguish between services that were eligible for Title IV-E reimbursement and those that were not. (See Draft Report at i-ii, 4-5, 10-11.) Based upon this issue, OIG recommends that an additional \$88,401,319 (consisting of \$53,983,185 in maintenance costs and \$34,418,134 in “associated administrative costs”) be “set aside” for further review by ACF. (*Id.*)

Many of the sample-specific rate-related issues are addressed immediately above in Section E(1). However, in light of the age of the claims under review (as well as the number of issues raised in the Draft Report and the intervening holidays), the process of identifying and gathering all supportive documentation has not been completed to date. Pennsylvania is diligently continuing with its efforts and intends to provide additional supporting information and documentation in its supplemental response to be served by February 29, 2008.

Separate and apart from the merits of the *per diem* rate issue, OIG fundamentally miscalculated the amount that purportedly should be “set aside” for further review by ACF. As shown on Appendix B to the Draft Report, OIG calculated the “set aside” figure of \$88,401,319 by erroneously relying on the “point estimate” of questioned claims (which it calculated as \$53,983,185) and then adding flawed “associated administrative costs” of \$34,418,134.¹² However, in calculating the amount of maintenance costs that should be “set aside” due to the *per diem* rate issues OIG identified in only 14 of the 200 sample claims, OIG should have used the lower limit figure of the questioned claims to extrapolate the sample findings to the universe of claims – *i.e.*, the much lower figure of \$27,143,861 (assuming a 90-percent confidence level) – just as it did when extrapolating from the 44 claims that it rejected outright. (See Draft Report at Appendix B.) Had OIG properly used the lower limit figure of \$27,143,861, the amount to be “set aside” for resolution by ACF on account of rate issues – even assuming the merit of OIG’s concern and the applicability of its flawed methodology for calculating purported “associated administrative costs” – would be **\$44,454,672** (\$27,143,861 in maintenance costs and \$17,310,811 in “associated administrative costs”), not \$88,401,319. Therefore, regardless of the merit of OIG’s concern over rates or of the methodology it employed in calculating the purported “associated administrative costs,” OIG must reduce the recommended “set aside” amount to \$44,454,672.

¹² In calculating the administrative costs purportedly “associated” with the questioned claims, OIG used the same flawed and inapplicable methodology that, for the reasons set forth *supra* in Section D(2), is neither factually nor legally supportable.

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F. Pennsylvania Rejects All Recommendations of the Draft Report

Pennsylvania does not concur with any of the recommendations OIG makes in the Draft Report. Pennsylvania has been unlawfully singled out for an audit of enormous size and scope – putting more than \$1.5 billion under review – based upon the results of a small and statistically unreliable sample of unique reclassified claims from more than a decade ago at the apparent request of ACF regional staff with whom Pennsylvania has had a long-standing contentious relationship. By acceding to ACF's request, OIG acted outside of its statutory authority, failed to maintain the independence and objectivity required by the Inspector General Act, and improperly assumed ACF's own program operating responsibilities for ensuring States' compliance with all requirements for federal financial participation under the Social Security Act and implementing regulations.

In addition to those independent failings, OIG conducted the audit improperly and prejudicially to Pennsylvania by: (a) extending the scope of the audit to more than double the applicable federal record retention period, (b) creating and recommending the disallowance of phantom "associated administrative costs" that are not readily identifiable and were not claimed as such by Pennsylvania, and (c) making such critical sampling and extrapolation errors as to eviscerate the reliability of any of the Draft Report's financial estimates and conclusions. OIG then proceeded to find deficiencies with a substantial number of the 200 sample claims and recommend that ACF disallow more than \$85 million – and set aside an additional \$88 million for further review by ACF – in funds Pennsylvania already spent years ago to provide essential services to needy children.

The Draft Report lacks substance. It is rife with errors, statistically unreliable calculations, and wholly unsupported conclusions. There is no factual or legal basis for the recommended disallowances and there is no reason for Pennsylvania to "work with ACF" on anything that has to do with this arbitrary and seemingly punitive course of events. The Draft Report should be withdrawn in its entirety and any and all aspects of this audit should be immediately terminated.

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Thank you for providing Pennsylvania with the opportunity to comment on the
Draft Report.

Very truly yours,

A handwritten signature in black ink, appearing to read "Mark A. Aronchick". The signature is fluid and cursive, with a large initial "M" and "A".

Mark A. Aronchick

Enclosures

cc: Estelle B. Richman, Secretary of Public Welfare

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February 29, 2008

Via Hand Delivery

Stephen Virbitsky, Regional Inspector General for Audit Services
United States Department of Health and Human Services
Office of Inspector General
Office of Audit Services
150 South Independence Mall West, Suite 316
Philadelphia, PA 19106-3499

Re: Report Number: A-03-07-00560

Dear Mr. Virbitsky:

I am writing on behalf of the Commonwealth of Pennsylvania, Department of Public Welfare to provide a supplemental response to the draft report of the Department of Health and Human Services, Office of Inspector General (OIG) entitled "Philadelphia County's Title IV-E Claims Based on Contractual *Per Diem* Rates of \$300 or Less for Foster Care Services from October 1997 to September 2002" (Draft Report). Pennsylvania submitted a partial opening response to the Draft Report on January 31, 2008 ("Opening Response"). By email dated February 5, 2008, OIG authorized Pennsylvania to submit this supplemental response to the Draft Report and agreed to review and consider both the Opening Response and this Supplemental Response (as well as all attachments) before finalizing its report. (Copies of OIG's E-Mail dated February 5, 2008, as well as Pennsylvania's request dated January 29, 2008, are collectively attached hereto as Exhibit A.)

Rather than restating the arguments and facts set forth in Pennsylvania's Opening Response, all of which are incorporated and reasserted herein, this Supplemental Response presents additional information regarding specific sample claims that reinforces Pennsylvania's position that the conclusions of the Draft Report are deeply flawed:

Claim 3

Since submitting its Opening Response, which attached documents in support of this claim, Pennsylvania has located additional documents demonstrating that

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the claim is clearly allowable. The child was adjudicated dependent and committed to Philadelphia Department of Human Services ("DHS") pursuant to a Dependency Review Order dated October 7, 1986. (See Exhibit B-3.) This adjudication of dependency was based on a signed voluntary placement agreement executed by the child's mother on August 11, 1986. (See *id.*) Therefore, this claim is clearly allowable.

Claim 9

Since submitting its Opening Response, which attached documents in support of this claim, Pennsylvania has located additional documents demonstrating that the claim is clearly allowable. The Dependency Review Order dated June 16, 1994 was based on a signed voluntary placement agreement executed by the child's father on May 17, 1994. (See Exhibit B-9.) Therefore, this claim is clearly allowable.

Claim 17

Since submitting its Opening Response, which attached documents in support of this claim, Pennsylvania has located additional documents demonstrating that the claim is clearly allowable. Pennsylvania has confirmed, through a "CIS Individual Detail Inquiry" ("CIS Detail Printout"), that the child was receiving or was eligible for food stamp assistance at the time of removal. (See Exhibit B-17.) Accordingly, Pennsylvania's claim is clearly allowable.

Claim 37

OIG states that this claim from the April-June 1998 quarter is unallowable because of Reason 7 (costs claimed for ineligible services) among others, asserting that it was unclear whether the claimed costs, incurred at a Vision Quest facility, were limited to costs for allowable Title IV-E services. However, while the allowable IV-E *per diem* rate, as calculated by Vision Quest after subtracting unallowable Title IV-E expenses, was \$119.73, the *per diem* rate Pennsylvania claimed for this child was only \$103.04. (See Exhibit B-37.) Therefore, costs were not claimed for ineligible services and the claim should be allowed.

Claim 39

OIG states that this claim from the April-June 1998 quarter is unallowable because of Reasons 1 (contrary to welfare), 2 (reasonable efforts), and 5 (annual redetermination). However, substantial evidence exists in the file to demonstrate that this child was eligible.

This child was placed on July 3, 1990. Pennsylvania has located a Dependency Review Order dated July 27, 1990 in the court finds that petitioner "is taking reasonable efforts to reunify the child with his/her family, if applicable and if the goal is not

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to return home, the absence of efforts to make it possible for the child to return home is reasonable." (See Exhibit B-39.) This Order is based on a petition for dependency filed by DHS on July 3, 1990, which averred, among other things, that the child "be adjudicated dependent under the Juvenile Act a neglected and/or abused under the Child Protective Services Act and committed to DHS." (*Id.*) In addition, Pennsylvania has located additional court orders dating from August 8, 1990 through November 19, 1997 that demonstrate that annual redeterminations of eligibility were in fact made and the court consistently found that "it was not reasonable nor in the best interests of the child to prevent removal." (*Id.*) Therefore, Pennsylvania's claim clearly is allowable.

Claim 42

OIG states that this claim from the July-September 1998 quarter is unallowable because of Reason 3 (income eligibility). However, substantial evidence exists in the file demonstrating that this child was eligible.

The child was placed on December 14, 1993. Pennsylvania has located a DHS Eligibility Determination form dated December 21, 1993 which specifically states "Child meets AFDC criteria." (See Exhibit B-42.) Therefore, this claim is clearly allowable.

Claim 58

OIG states that this claim from the January-March 1999 quarter is unallowable because of Reasons 1 (contrary to welfare) and 2 (reasonable efforts). However, substantial evidence exists in the file to demonstrate that this child was eligible.

The child was removed from the home on August 12, 1999. Pennsylvania has located a Dependency Review Order dated August 13, 1996 in which the court adjudicated the child dependent and committed him to DHS, finding that "reasonable efforts were made to prevent removal or that it was not reasonable nor in the best interests of the child to prevent removal." (See Exhibit B-58.) The order further states that "[t]he court finds that the Petitioner is taking reasonable efforts to reunify the child with his[] family, if applicable, and if the goal is not to return home, the absence of efforts to make it possible for the child to return home is reasonable." (*Id.*) Therefore, this claim is allowable.

Claim 70

OIG states that this claim from the January-March 1999 quarter is unallowable because of Reasons 1 (contrary to welfare) and 2 (reasonable efforts). However, substantial evidence exists in the file to demonstrate that this child was eligible.

The child was removed on August 12, 1998 pursuant to a Temporary Restraining Order in which the court expressly found that "continuation in the home would

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be contrary to the welfare of the child and that appropriate reasonable efforts to prevent placement were made." (See Exhibit B-70.) In addition, after a series of dependency review hearings on August 14, 17 and 27, 1998, the court found in an August 27, 1998 Dependency Review Order that "reasonable efforts were made to prevent removal or that it was not reasonable nor in the best interests of the child to prevent removal." (*Id.*) The order further found "that the Petitioner is taking reasonable efforts to reunify the child with his[] family, if applicable, and if the goal is not to return home, the absence of efforts to make it possible for the child to return home is reasonable." (*Id.*) Therefore, the claim is clearly allowable.

Claim 72

OIG states that this claim from the January-March 1999 quarter is unallowable because of Reason 7 (costs claimed for ineligible services), asserting that it was unclear whether the claimed costs, incurred at a facility of Learning Experience, Inc., were limited to costs for allowable Title IV-E services. However, while the allowable IV-E *per diem* rate, as calculated by Learning Experience, was \$99.00, the *per diem* rate Pennsylvania claimed for this child was only \$91.08. (See Exhibit B-72.) Therefore, costs were not claimed for ineligible services and the claim clearly should be allowed.

Claim 85

OIG states that this claim from the January-March 1999 quarter is unallowable because of Reason 3 (income eligibility). However, substantial evidence exists in the file demonstrating that this child was eligible. Pennsylvania has confirmed, through a CIS Detail Printout, that the child was receiving or was eligible for food stamp assistance at the time of removal. (See Exhibit B-85.) Therefore, the claim is clearly allowable.

Claim 88

Since submitting its Opening Response, which attached documents in support of this claim, Pennsylvania has located additional documents demonstrating that the claim is clearly allowable. Specifically, Pennsylvania has obtained a February 23, 1999 order in which the court finds that the state has made reasonable efforts to prevent the child's placement. (See Exhibit B-88.) Pennsylvania has also located a February 12, 1999 urgent petition filed by DHS regarding the child. (*Id.*) The petition indicates that the child was exhibiting self-destructive behaviors, the mother was not caring for the child, and the child's father was deceased. This petition along with the subsequent order establishes that it was contrary to the child's welfare to remain in the home. Therefore, this claim is clearly allowable.

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Claim 101

OIG states that this claim from the July-September 1999 quarter is unallowable because of Reasons 1 (contrary to the welfare) and 2 (reasonable efforts). However, Pennsylvania has located documents which show that the child was eligible. Specifically, Pennsylvania has obtained an August 25, 1999 order, in which the court finds that the state has made reasonable efforts to prevent the child's removal from the home, and that it was not reasonable nor in the child's best interests to prevent removal. (See Exhibit B-101.) Pennsylvania has also located the August 5, 1999 petition seeking placement of the child, which states that the child's mother was unable to care for him and that the whereabouts of the child's father were unknown. (*Id.*) This petition along with the subsequent order establish that it was contrary to the child's welfare to remain in the home. Therefore, this claim is clearly allowable.

Claim 103

OIG states that this claim from the July-September 1999 quarter is unallowable because of Reasons 1 (contrary to welfare), 2 (reasonable efforts), and 5 (annual redeterminations). However, Pennsylvania has located documents which show that the child was eligible. Specifically, Pennsylvania has obtained a January 13, 1997 order temporarily committing the child to DHS, in which the court finds that the state has made reasonable efforts to prevent placement, and that it would be contrary to the child's welfare to remain in the home. (See Exhibit B-103.) Pennsylvania has also located a January 16, 1997 order stating that the child shall remain committed to DHS, that the state has made reasonable efforts to prevent the child's placement, and that it was not reasonable nor in the child's best interests to prevent removal. (*Id.*) In addition, Pennsylvania has obtained a January 13, 1997 request for a restraining order, which states that the child was dirty, hungry, and not in school, and a January 23, 1997 petition containing the same allegations. (*Id.*) These petitions along with the two other orders clearly establish that it was contrary to the child's welfare to remain in the home.

OIG's disallowance based upon a purported lack of annual redeterminations is also erroneous. In its own Criteria Governing Title IV-E Foster Care Claims (attached to the Sampling Plan), OIG expressly acknowledged that a State's failure to conduct an annual redetermination of eligibility does not render the case ineligible for federal financial participation. (See Criteria at 13 ("However, if the State agency misses the twelve month eligibility redetermination schedule in certain cases, those cases would not be considered ineligible for Federal financial participation for that reason alone.") citing ACYF-CB-PIZ-85-06 (6/5/85).) In any event, the file contains a series of eight orders issued between January 1997 and August 1999, in which the court concluded that the state was making reasonable efforts to prevent the child's removal and that it was not reasonable nor in the best interests of the child to prevent removal. (See Exhibit B-103.) These documents therefore collectively

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establish that annual redeterminations were made and thus, Pennsylvania's claim is clearly allowable.

Claim 133

Since submitting its Opening Response, which attached documents in support of this claim, Pennsylvania has located additional documents demonstrating that the claim is clearly allowable. Specifically, Pennsylvania has obtained a series of orders from between October 19, 1993 and September 10, 1998 in which the court finds that reasonable efforts were made to prevent the child's removal from the home, and that it was not in the best interests of the child to prevent removal. (See Exhibit B-133.) Therefore, this claim is clearly allowable.

Claim 135

Since submitting its Opening Response, which attached documents in support of this claim, Pennsylvania has located additional documents demonstrating that Pennsylvania's claim is allowable. Specifically, Pennsylvania has obtained a series of orders from between June 10, 1994 and January 12, 1998 in which the court finds that reasonable efforts were made to prevent the child's removal from the home, and that it was not in the best interests of the child to prevent removal. (See Exhibit B-135.) Therefore, this claim is clearly allowable.

Claim 187

OIG states that this claim from the July-September 2001 quarter is unallowable because of Reasons 1 (contrary to welfare), 2 (reasonable efforts), and 5 (annual redetermination). However, Pennsylvania has located documents which show that the child was eligible. Specifically, Pennsylvania has obtained an October 10, 1998 order temporarily committing the child to DHS, in which the court finds that the state has made reasonable efforts to prevent placement, and that it would be contrary to the child's welfare to remain in the home. (See Exhibit B-187.) Pennsylvania has also located an October 13, 1998 order stating that the child shall remain committed to DHS, that the state has made reasonable efforts to prevent the child's placement, and that it was not reasonable nor in the child's best interests to prevent removal. (*Id.*) In addition, Pennsylvania has obtained an October 10, 1998 request for a restraining order, which states that the child was left alone in a house in deplorable conditions, and an October 27, 1998 petition containing the same allegations. (*Id.*) These petitions along with the two other orders clearly establish that it was contrary to the child's welfare to remain in the home.

OIG's disallowance based upon a purported lack of annual redeterminations is also erroneous. In its own Criteria Governing Title IV-E Foster Care Claims (attached to the

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Sampling Plan), OIG expressly acknowledged that a State's failure to conduct an annual redetermination of eligibility does not render the case ineligible for federal financial participation. (See Criteria at 13 ("However, if the State agency misses the twelve month eligibility redetermination schedule in certain cases, those cases would not be considered ineligible for Federal financial participation for that reason alone.") citing ACYF-CB-PIZ-85-06 (6/5/85).) In any event, the file contains a series of orders issued between October 1998 and May 2001, in which the court concluded that the state was making reasonable efforts to prevent the child's removal and that it was not reasonable nor in the best interests of the child to prevent removal. (See Exhibit B-103.) These documents therefore collectively establish that annual redeterminations were made and thus, Pennsylvania's claim is clearly allowable.

Claim 190

OIG states that this claim from September 13 to September 30, 2001 is unallowable because of Reasons 1 (contrary to welfare) and 2 (reasonable efforts). However, Pennsylvania has located documents which show that the child was eligible. Specifically, Pennsylvania has obtained a March 26, 1997 order committing the child temporarily to DHS, in which the court finds that the state has made reasonable efforts to prevent the child's removal from the home, and that it was not reasonable nor in the child's best interests to prevent removal. (See Exhibit B-190.) Pennsylvania has also located a May 7, 1997 order adjudicating the child dependent, and finding that the state has made reasonable efforts to prevent removal, and that it was not reasonable nor in the child's best interests to prevent removal. (*Id.*) Pennsylvania has additionally located a March 10, 1997 petition seeking placement of the child, which states that the child's mother could not care for the child and had signed a voluntary placement agreement for the child. (*Id.*) This petition along with the other orders establish that it was contrary to the child's welfare to remain in the home. Therefore, this claim is clearly allowable.

Claim 193

OIG states that this claim from the January-March 2002 quarter is unallowable because of Reason 7 (costs claimed for ineligible services), asserting that it was unclear whether the claimed costs, incurred at Summit Academy, were limited to costs for allowable Title IV-E services. However, while the allowable IV-E *per diem* rate, as calculated by Summit after subtracting unallowable Title IV-E expenses, was between \$98.48 and \$120.56 (depending on the program), the *per diem* rate Pennsylvania claimed for this child was only

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\$88.00.¹ (See Exhibit B-193). Therefore, costs were not claimed for ineligible services and the claim clearly should be allowed.

Claim 194

OIG states that this claim from the January-March 2002 quarter is unallowable because of Reason 7 (costs claimed for ineligible services) among others, asserting that it was unclear whether the claimed costs, incurred at Summit Academy – Sleepy Hollow, were limited to costs for allowable Title IV-E services. However, while the allowable IV-E *per diem* rate, as calculated by Summit after subtracting unallowable Title IV-E expenses, was \$111.13, the *per diem* rate Pennsylvania claimed for this child was only \$104.86.² (See Exhibit B-194.) Therefore, costs were not claimed for ineligible services and the claim should be allowed.

Claim 197

OIG states that this claim from the January-March 2002 quarter is unallowable because of Reason 7 (costs claimed for ineligible services), asserting that it was unclear whether the claimed costs, incurred at Summit Academy, were limited to costs for allowable Title IV-E services. However, while the allowable IV-E *per diem* rate, as calculated by Summit after subtracting unallowable Title IV-E expenses, was between \$98.48 and \$120.56 (depending on the program), the *per diem* rate Pennsylvania claimed for this child was only \$88.00.³ (See Exhibit B-197.) Therefore, costs were not claimed for ineligible services and the claim should be allowed.

* * * * *

¹ Although the allowable *per diem* calculation in Exhibit B-193 covers the 2001 period, it exceeds the rate claimed by Pennsylvania in Claim 193 by \$10.48 per day. Pennsylvania is continuing to seek responsive documents from Summit Academy but, regardless, is clearly justified in relying upon these records from the immediately preceding year.

² Although the allowable *per diem* calculation in Exhibit B-194 covers the 2001 period, it exceeds the rate claimed by Pennsylvania in Claim 194 by more than \$7.50 per day. Pennsylvania is continuing to seek responsive documents from Summit Academy but, regardless, is clearly justified in relying upon these records from the immediately preceding year.

³ Although the allowable *per diem* calculation in Exhibit B-197 covers the 2001 period, it exceeds the rate claimed by Pennsylvania in Claim 197 by \$10.48 per day. Pennsylvania is continuing to seek responsive documents from Summit Academy but, regardless, is clearly justified in relying upon these records from the immediately preceding year.

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The above discussion and attached materials substantially bolster the positions set forth in Pennsylvania's Opening Response. For OIG to go back more than ten years to review claims that have already been processed and paid by the Administration for Children and Families, and then to conclude that millions of dollars should be disallowed and refunded due to allegedly inadequate documentation, is profoundly unfair to Pennsylvania and to the disadvantaged population it is currently serving.

As set forth above and in the Opening Response, the Draft Report should be withdrawn and all aspects of this audit should be immediately terminated.

Very truly yours,



Mark A. Aronchick

Enclosures

cc: Estelle B. Richman, Secretary of Public Welfare