



Memorandum

Date · DEC - 1 2000

From June Gibbs Brown
Inspector General *June G Brown*

Subject Review of Costs Claimed for Federal Financial Participation Under the Title IV-A
Emergency Assistance Program by the Pennsylvania Department of Public Welfare for
Children in Allegheny County from October 1, 1994 to September 30, 1996
(A-03-99-00596)

To

Olivia A. Golden
Assistant Secretary
for Children and Families

This is to alert you to the issuance of our final report on Tuesday, December 5, 2000. A copy is attached. The objective of our review was to determine if Emergency Assistance (EA) claims submitted by Department of Public Welfare (DPW) for Federal financial participation (FFP) complied with Federal statutes, regulations and guidelines. During the period of our review October 1, 1994 to September 30, 1996, DPW experienced a tremendous growth in the number of claims and the amount of FFP reimbursed under the EA program. In a period of just 2 years, FFP increased dramatically from about \$2.9 million in Fiscal Year (FY) 1994 to about \$250.3 million in FY 1996. In total, DPW was reimbursed \$445.4 million in FFP during our 2-year audit period. Our review covered claims of Allegheny County totaling \$61.7 million of \$445.4 million.

We determined that \$42.4 million of the \$61.7 million FFP reviewed, or about 69 percent, was unallowable under Federal criteria. We made this determination based on three different audit methodologies:

- We questioned \$4.33 million in FFP for probation and truant services provided for more than 12 consecutive months or that were claimed twice or services provided to delinquent children after December 31, 1995.
- We questioned \$30.90 million in FFP for direct claims based on our statistical sample of claims invoiced by Allegheny's Department of Human Services and Family Court.
- We questioned \$7.15 million in FFP for administrative claims on the basis of the violations found in the computer analysis and statistical sample of direct claims.

The EA program was eliminated by the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, which created the Temporary Assistance for Needy Families block grant. We are, therefore, not making any procedural recommendations. We are recommending that DPW:

1. Refund to the Federal Government \$42.4 million associated with unallowable direct and administrative EA claims invoiced by Allegheny County during our audit period.
2. Conduct a review of all quarterly claims invoiced by Allegheny County for succeeding periods and determine if the same conditions noted in the audit report continued. Summarized results should be provided to the Administration for Children and Families and a refund to the Federal Government for all costs inappropriately claimed.

By letter dated June 14, 2000, DPW responded to our draft report. The DPW generally disagreed with our findings and recommendations. However, the DPW did not provide any information that caused us to change our position.

Any questions or comments on any aspect of this memorandum are welcome. Please call me or have your staff contact Joseph J. Green, Acting Assistant Inspector General for Administrations of Children, Family, and Aging Audits, at (301) 443-3582.

Attachment

Department of Health and Human Services

**OFFICE OF
INSPECTOR GENERAL**

**COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF PUBLIC WELFARE**

**COSTS CLAIMED UNDER TITLE IV-A
EMERGENCY ASSISTANCE FOR
CHILDREN IN ALLEGHENY COUNTY**

OCTOBER 1, 1994 - SEPTEMBER 30, 1996



**JUNE GIBBS BROWN
Inspector General**

**DECEMBER 2000
A-03-99-00596**



DEPARTMENT OF HEALTH & HUMAN SERVICES
OFFICE OF INSPECTOR GENERAL
OFFICE OF AUDIT SERVICES
150 S. INDEPENDENCE MALL WEST
SUITE 316
PHILADELPHIA, PENNSYLVANIA 19106-3499

Our Reference: Common Identification Number A-03-99-00596

Mr. Michael Stauffer
Deputy Secretary for Administration
Pennsylvania Department of Public Welfare
Health and Welfare Building
P.O. Box 2675
Harrisburg, Pennsylvania 17105-2675

Dear Mr. Stauffer:

Enclosed for your information and use are two copies of an OIG final audit report entitled **"REVIEW OF COSTS CLAIMED FOR FEDERAL FINANCIAL PARTICIPATION (FFP) UNDER THE TITLE IV-A EMERGENCY ASSISTANCE (EA) PROGRAM BY THE PENNSYLVANIA DEPARTMENT OF PUBLIC WELFARE (DPW) FOR CHILDREN IN ALLEGHENY COUNTY FROM OCTOBER 1, 1994 TO SEPTEMBER 30, 1996."** Your attention is invited to the audit findings and recommendations contained in the report.

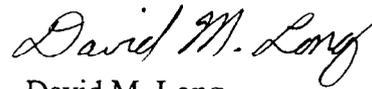
Final determination as to actions to be taken on all matters reported will be made by the HHS official named below. The HHS action official will contact you to resolve the issues in this audit report. Any additional comments or information that you believe may be bearing on the resolution of this audit may be presented at that time. Should you have any questions, please direct them to the HHS official named below.

In accordance with the principles of the Freedom of Information Act (Public Law 90-23), HHS/OIG Office of Audit Services reports issued to the Department's grantees and contractors are made public to the extent information contained therein is not subject to the exemptions in the Act, which the Department chooses to exercise. (See Section 5.71 of the Department's Public Information Regulation, dated August 1974, as revised.)

Page 2 - Mr. Michael Stauffer

To facilitate identification, please refer to the above common identification number in all correspondence pertaining to this report.

Sincerely yours,

A handwritten signature in cursive script that reads "David M. Long".

David M. Long
Regional Inspector General
for Audit Services

Enclosure

Reply direct to:

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Administration for Children and Families, Region III
U.S. Department of Health and Human Services
Suite 864, Public Ledger Building
150 S. Independence Mall West
Philadelphia, PA 19106-3499

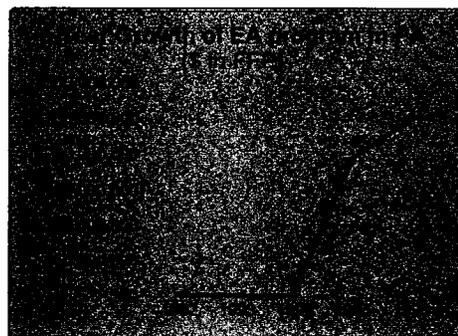
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EXECUTIVE SUMMARY

This audit report presents the results of an Office of Inspector General (OIG) **REVIEW OF COSTS CLAIMED FOR FEDERAL FINANCIAL PARTICIPATION (FFP) UNDER THE TITLE IV-A EMERGENCY ASSISTANCE (EA) PROGRAM BY THE PENNSYLVANIA DEPARTMENT OF PUBLIC WELFARE (DPW) FOR CHILDREN IN ALLEGHENY COUNTY FROM OCTOBER 1, 1994 TO SEPTEMBER 30, 1996.**

The objective of our review was to determine if EA claims submitted by DPW for FFP complied with Federal statutes, regulations and guidelines (hereafter referred to as Federal criteria). During the period of our review, DPW experienced a tremendous growth in the number of claims and the amount of FFP reimbursed under the EA program. As shown in the chart to the right, the FFP reimbursed to DPW was relatively insignificant until Fiscal Year (FY) 1995 when the FFP increased dramatically. In a period of just 2 years, FFP increased from about \$2.9 million in FY 1994 to about \$250.3 million in FY 1996. In total, DPW was reimbursed \$445.4 million in FFP during our 2-year audit period.



Our review covered \$61.7 million (\$51.3 million for direct claims and \$10.4 for administrative costs) of the \$445.4 million. The FFP we reviewed was for 92,426 claims submitted by DPW for EA services provided to children in Allegheny County (Allegheny), one of 67 counties within the Commonwealth. The FFP consisted of:

- ✓ \$40.2 million for 81,576 Children and Youth (C&Y) claims invoiced by the Allegheny Department of Human Services (DHS);
- ✓ \$5.5 million for 6,094 Shuman Juvenile Detention Center (SC) claims invoiced by DHS;
- ✓ \$5.6 million for 4,756 children who received Probation and Truant Services (P&TS) invoiced by the Fifth Judicial District of the Pennsylvania Court of Common Pleas, Family Court Division (hereafter referred to as Family Court); and
- ✓ \$10.4 million for DHS administrative costs associated with processing the EA claims.

We determined that \$42.4 million of the \$61.7 million FFP reviewed, or about 69 percent, was unallowable under Federal criteria. We made this determination based on different audit methodologies:

- ☛ ***We questioned \$1,457,838 in FFP for direct claims on the basis of our computer analysis of P&TS provided to 4,756 children.*** We made this analysis to identify children who received services for more than 12 consecutive months, which is contrary to Title IV-A regulations. We identified 2,126 children who received services for more than 12 consecutive months. The FFP totaled \$1,457,838 for the services provided after the 12-month period.
- ☛ ***We questioned \$2,815,286 in FFP for direct claims on the basis of our analysis of C&Y foster care services provided on 27,314 claims that were invoiced under Title IV-E.*** We made this analysis based upon the review of retroactive claims made for children who were also claimed under the Title IV-E foster care program. The FFP totaled \$2,815,286 for foster care provided to children who resided in an institution where the maximum per diem rates allowed under the Title IV-E program were exceeded. Both the Social Security Act and the State plan preclude payment for costs of foster care that exceed the funds reimbursed under Title IV-E.
- ☛ ***We questioned \$53,872 in FFP for direct claims on the basis of our analysis of services provided after December 31, 1995 to delinquent children on 35 claims.*** There were 35 claims after December 31, 1995 for delinquent children who were misidentified as dependents on C&Y claims. The 35 misidentified claims totaled \$53,872 in FFP. The claims were for juvenile justice related costs contrary to ACF Action Transmittal 95-9, which states that costs associated with delinquent behavior are not allowable for FFP after December 31, 1995.
- ☛ ***We questioned \$30,899,741 in FFP for direct claims on the basis of our statistical sample of 65,077 EA claims invoiced by DHS and Family Court.*** Of the 300 claims reviewed in our sample, 251 had at least one violation of Federal criteria -- 141 had 2 to 4 violations.
- ☛ ***We questioned \$7,147,841 in FFP for administrative claims on the basis of the violations found in the computer analysis and the statistical sample.*** The combined results of our analysis and statistical sample showed that at least \$35,226,737 of the \$51,292,655 (68.67 percent) in direct claims for specific children violated Federal laws and regulations. The administrative costs associated with the direct claims that contained violations were not allowable.

Types of Claims in Statistical Sample

Our statistical projection was based on our review of 300 randomly selected claims that were invoiced by the Allegheny DHS and the Family Court and submitted for FFP by DPW. We stratified the claims reviewed into three distinct types: C&Y claims, Shuman Center claims, and P&TS claims. We found widespread violations of Federal criteria in all three types of claims reviewed, with the lowest error rate being 77 percent and the highest error rate being 88 percent. Overall, 251 of the 300 claims reviewed had at least one violation, with 141 of the claims having two or more violations. As shown in the following table, the 251 claims contained a total of 430 violations of Federal criteria.

CLAIMS WITH VIOLATIONS OF FEDERAL CRITERIA						
Violations Per Claim	C&Y	SC	P&TS	Total Claims	Percent	Total Violations
1	28	34	48	110	44%	110
2	44	36	26	106	42%	212
3	15	14	3	32	13%	96
4	1	2	0	3	1%	12
Total	88	86	77	251	100%	430
Claims Reviewed	100	100	100	300		

Types of Violations Associated with Claims in Statistical Sample

All 300 claims involved children under the age of 21, who were therefore age-eligible for the EA program. However, as shown in the following table, we identified 7 types of violations of Federal criteria associated with the 251 claims that contained at least one violation.

TYPES OF VIOLATIONS		
Violations	Number of Violations	Projected Amount (FFP)
Ineligibility of the Child		
Child Did Not Live With Specified Relative	29	\$7,448,298
Ineligibility of the Service		
No Signed Application by Parent or Guardian	229	\$34,491,057
Improper Authorization	72	\$9,105,614
Service Provided Outside the 12-Month Service Window	37	\$7,011,634
Unrelated Claim Within 12-Month Service Window	34	\$2,122,938
Lack of Support for Claim	26	\$2,225,704
Duplicate Billing for Same Service	3	Not Estimated
Total	430	

The projected amounts shown in the above table can be used only to show the estimated effect of the individual violations on DPW claims for FFP. The amounts do not reconcile with our recommended financial adjustment of \$30,899,741 based on the results of the statistical sample because: (1) about 56 percent of the claims with a violation had more than one and our recommended financial adjustment does not duplicate the violations, and (2) the above amounts are the statistical mid-point estimates while our recommended financial adjustment is based on the lower limit estimate.

Conclusions and Recommendations

In our opinion, the tremendous growth in the claims for FFP during the 2 years of our review resulted from expanding the definition of an emergency accompanied by widespread noncompliance with Federal criteria. We believe the noncompliance by DPW, DHS and the Family Court was caused by DPW's desire to maximize FFP. The DPW circumvented Federal criteria by disregarding such fundamental principles of the EA program as the child's living arrangements prior to applying for assistance, the role of parents/guardians in the application process, and the 12-month time period in which services could be provided. A clear indication of DPW's motivation was the use of a computer program that was used to generate 8,193 applications by Allegheny County consultants which made ineligible claims appear to be eligible for FFP. The 8,193 EA applications were generated from November 1996 through December 1997 to cover claims made by DHS back to April 1, 1994. We estimate that at least \$35,226,737 in FFP reimbursed to DPW during this period was for unallowable direct claims. The DHS

claimed an additional \$7,147,841 in FFP for administrative costs to process the claims that violated Federal laws and regulations.

The EA program was eliminated by the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, which created the Temporary Assistance for Needy Families (TANF) block grant. We are, therefore, not making any procedural recommendations. We recommend that DPW:

1. Refund to the Federal Government \$35,226,737 for FFP associated with unallowable EA claims invoiced by the Allegheny DHS and Family Court in FYs 1995 and 1996.
2. Conduct a review using statistical sampling techniques of all quarterly claims submitted by Allegheny DHS and Family Court (including Adjusting and Supplemental claims) and reimbursed for FFP after October 1, 1996, and determine if the same conditions we noted in this report continued. Summarized results should be provided to the Administration for Children and Families (ACF), and a refund to the Federal Government should be made for all costs inappropriately claimed.
3. Refund to the Federal Government \$7,147,841 for FFP claimed for administrative costs allocated to the EA program for processing claims that violated Federal laws and regulations.

By letter dated June 14, 2000, DPW responded to a draft of this report. The DPW generally disagreed with or did not comment on our findings and recommendations. We have reviewed DPW's response and have included it as Appendix C to this report. We have also summarized their response, and presented our comments after each applicable finding area in this report. However, we have not made any significant changes to the findings contained in the report as a result of DPW's response.

INTRODUCTION

BACKGROUND

EA Program

Title IV-A, Section 406(e) of the Social Security Act (amended by Public Law 90-248) established the EA program as an optional supplement to the Aid to Families with Dependent Children (AFDC) program. The EA program was a Federally sponsored State-administered program. The purpose of the program was to provide temporary financial assistance and supportive services to eligible families experiencing an emergency. Services provided under the EA program were reimbursed at a 50 percent FFP rate.

The 45 CFR 233.120 stated that EA services could only be provided to or on behalf of a needy child under the age of 21 and any member of the household in which: (1) such child was living (or had been living in the prior 6 months) with a specified relative, (2) the child was without available resources to meet the emergency, (3) the assistance was necessary to avoid destitution of such child or to provide living arrangements in a home for such child, and (4) the destitution or need for living arrangements did not arise because such child or relative refused without good cause to accept employment or training for employment.

The Personal Responsibility and Work Opportunity Reconciliation Act of 1996 eliminated AFDC, EA, and the Job Opportunity and Basic Skills programs as of FY 1997 and created the TANF block grant.

Pennsylvania's State Plan

The DPW was the single State agency designated to administer the EA program. In the spring of 1994, DPW submitted and ACF approved amendments to the EA portion of the Title IV-A State plan. State plan transmittal No. TN-94-01-AFDC, effective April 1, 1994, expanded Pennsylvania's EA program to cover shelter care, foster care, or residential group care (including juvenile detention services and secure residential services at a private or public facility) for children separated from their parents, unless the child had such assistance provided under Title IV-E. After DPW implemented their 1994 State plan amendment, EA costs rose from about \$5.7 million in 1994 to over \$500.6 million in 1996. In the same period, the FFP reimbursement increased from about \$2.9 million to about \$250.3 million, an increase of 8,531 percent.

The ACF issued Action Transmittal ACF-AT-95-9 on September 12, 1995 to State agencies notifying them that effective January 1, 1996, FFP was not available under the EA program for costs associated with providing benefits or services to children removed from the household as a result of the child's alleged, charged, or adjudicated delinquent behavior. Any claims for juvenile justice system costs incurred after January 1, 1996 were to be disallowed.

Types of Claims

Allegheny's DHS submitted Quarterly Summary Invoices to DPW for EA services. The types of claims listed on the Quarterly Summary Invoices included the DHS Children and Youth Division (C&Y) claims and the Shuman Center (SC) claims. The C&Y claims were for placement costs for delinquent children, foster care, counseling services, group homes, day care and emergency shelter. The DHS officials requested EA and determined eligibility for the EA services. Administration costs associated with the EA program were claimed separately. The DHS administered the EA program for the SC and submitted claims for the costs of housing children and running a detention center. Allegheny's SC provided short-term secure detention services to adolescents alleged to have committed delinquent acts.

The Family Court submitted Quarterly Summary Invoices to Pennsylvania's Juvenile Court Judges Commission (JCJC). The JCJC consolidated the Quarterly Summary Invoices (QSIs) for Pennsylvania's 67 counties and submitted the QSIs to DPW. Family Court claims were for probation and truant related costs such as salaries, travel and office expenses for probation and truant officer's services.

The DPW consolidated the QSIs from the 67 counties in Pennsylvania and the JCJC and submitted a Quarterly Statement of Expenditures (ACF-231) report to ACF for FFP.

Pennsylvania Emergency Assistance Program System

The Pennsylvania Emergency Assistance Program System (PEAPS) was developed by the Commonwealth to track children eligible to receive EA benefits. The DHS and Family Court officials entered data from EA applications into the PEAPS. The Family Court used PEAPS to summarize the number of children with EA applications who received probation or truant services each quarter and to prepare the QSIs that it sent to the JCJC. The Family Court billed the JCJC on a flat rate basis, billing all children the same rate per month without regard to the number of probation officer visits received by each child.

The EA applications in Allegheny were entered into PEAPS by DHS caseworkers or Family Court probation officers. Allegheny maintained its own PEAPS database and sent data to DPW's Information Systems Department, which updated a statewide PEAPS database.

OBJECTIVE, SCOPE AND METHODOLOGY

OBJECTIVE

The objective of our audit was to determine if EA costs of \$123.4 million reported by the Allegheny DHS and Family Court for FYs 1995 and 1996 and subsequently claimed by DPW met Federal criteria pertinent to the Title IV-A EA program. The FFP claimed totaled about \$61.7 million.

SCOPE

As shown in the table below, our audit covered 92,426 claims for which DPW was reimbursed about \$51.3 million in FFP for services between October 1, 1994 and September 30, 1996 (FYs 1995 and 1996).

ALLEGHENY EMERGENCY ASSISTANCE CLAIMS REVIEWED			
(\$ in millions)			
Type of Claim	# of Claims	Total Cost (Millions)	FFP (Millions)
Children and Youth (C&Y)	81,576	\$80.4	\$40.2
Shuman Center (SC)	6,094	11.1	5.5
Family Court Probation / Truant Services	4,756 *	11.1	5.6
Total Reviewed	92,426	\$102.6	\$51.3

* number of children that were claimed

In addition, Allegheny DHS claimed \$10.4 million in FFP for administrative costs associated with processing the 92,426 claims.

METHODOLOGY

We conducted our audit in accordance with generally accepted government auditing standards. We reconciled costs claimed by Allegheny's DHS and the Family Court on FY's 1995 and 1996 Quarterly Summary Invoices to the ACF-231 reports prepared by DPW and submitted to the Federal government. We also reviewed financial accounting records, EA Quarterly Summary Invoices, PEAPS, Federal and State laws and regulations, Departmental Appeals Board Decisions, and DPW, DHS and Family Court policies and procedures.

We conducted the audit using different audit methodologies. We used the PEAPS database to identify all children who received P&TS services for more than 12 consecutive months. We reviewed claims to identify 27,314 children placed in a residential setting who were also claimed

under the Title IV-E program. We tracked accounting records to insure claims for delinquent children were posted to delinquent accounts after January 1, 1996. Claims for 35 delinquent children were identified as posted to dependent accounts. We also selected a scientific random sample of 300 of the 65,077 individual EA claims submitted in FYs 1995 and 1996. Our sample universe consisted of C&Y claims listed on 52 claim rosters attached to Quarterly Summary Invoices, SC claims listed on seven claim rosters attached to Quarterly Summary Invoices and Family Court claims listed on the PEAPS. Appendix A explains our methodology to develop our sample. Appendix B details the projection of sample results.

For each of the 300 claims reviewed, we obtained supporting information, which typically included EA applications and authorizations, vendor vouchers to support EA claim amounts, criminal records, and C&Y service histories. We compared the information obtained for each claim against Federal criteria for the EA program. We also performed other auditing procedures we considered necessary under the circumstances.

Some of the claims that we reviewed were partially allowable. For example, if the claim period exceeded 12 consecutive months in violation of Federal criteria, the claimed amount representing the initial 12 months could have been allowable, while the portion of the claim representing the 13th month forward was unallowable. Also, if the county had support for a portion of the claim but not the entire claim, we accepted the portion that could be supported.

We performed fieldwork at DPW and JCJC both located in Harrisburg, Pennsylvania. We also performed fieldwork at the Allegheny County DHS, Children and Youth Division; the Shuman Juvenile Detention Center and the Fifth Judicial District of the Pennsylvania Court of Common Pleas in Pittsburgh, Pennsylvania. Our fieldwork was conducted between February 1999 and October 1999.

RESULTS OF REVIEW

Our review of claims invoiced by the Allegheny DHS and the Family Court and submitted by DPW for FFP disclosed widespread violations of Federal criteria.

Of the \$51,292,655 in FFP reimbursed to DPW for direct claims, we estimate that at least \$35,226,737 was based on unallowable claims. Our estimate is based on: (1) a computer analysis of Family Court P&TS claims that identified children who received services for more than 12 consecutive months, (2)

our review of claims to identify 27,314 claims for children placed in residential settings who were also claimed under the Title IV-E program, (3) tracking of accounting records to insure claims were properly posted, and (4) a statistical sample selected from the 65,077 EA claims invoiced by DHS and the Family Court for FYs 1995 and 1996.

We estimate that at least \$7,147,841 of the \$10,408,972 in FFP reimbursed to DPW for administrative claims in Allegheny County was associated with the processing of unallowable claims. The combined results of our analyses and statistical sample showed that at least \$35,226,737 of the \$51,292,655 (68.67 percent) in direct claims for specific children violated Federal laws and regulations. The administrative costs associated with the direct claims that contained violations are not allowable.

By letter dated June 14, 2000, DPW responded to a draft of this report. The DPW generally disagreed with or did not comment on our findings and recommendations. However, the DPW did comment on most of the individual error classifications. The DPW has challenged the OIG's authority to conduct the audit, claiming that the audit was prohibited by Federal law. The DPW also charged that the OIG applied audit criteria that had never been communicated to the States. We have summarized DPW's response in the following paragraphs along with our comments. The entire DPW response is included as Appendix C to this report.

The OIG Audit Was Prohibited by Federal Law

DPW Response

The DPW stated that when welfare reform was enacted into law in 1996, Congress provided Federal instructions for winding up the outstanding accounts related to the repealed Title IV-A programs including Emergency Assistance (EA). The DPW said that Section 116 of the Personal Responsibility and Work Opportunity Reconciliation Act (PRWORA) explicitly stated that the head of each Federal Agency "shall use the single audit procedure to review and resolve any claims in connection with the close out of programs" under Title IV-A. While the Single Audit

The OIG estimates that widespread violations of Federal criteria by DPW, DHS and Family Court resulted in DPW being reimbursed at least \$42,374,578 in FFP for unallowable claims for services and associated administrative costs under the Title IV-A EA program.

Act does not ordinarily limit the authority of OIG to conduct additional audits, 31 U.S.C. §7503(c), PRWORA clearly states that the closing out of accounts between the State and Federal governments is to be accomplished via the single audit procedure, not an exception to that procedure.

OIG Comment

The OIG audit was not prohibited by Federal law. The DPW's response to our draft report acknowledges "the Single Audit Act does not ordinarily limit the authority of the OIG to conduct additional audits." The President's Council on Integrity and Efficiency Policy Statement Number 6, dated May 1992, states that in addition to A-133 requirements, organizations are still subject to other audits. The Office of Management and Budget (OMB) Circular A-133 does not limit Federal authority to perform additional audits or reviews. Furthermore, the OIG retains the right to conduct audits and access records as set forth in the Inspector General Act, as amended, 5 U.S.C. App.

Also, we believe that the audit we performed does not constitute a "close-out" of the Title IV-A grant but instead concerns the allowability of claims made during the latter stages of that program.

OIG Applied Audit Criteria Which Was Never Communicated to the States

DPW Response

The DPW's response indicated that the EA criteria were not communicated to the States. The DPW stated that Federal law is clear that the propriety of expenditures made under a Federal grant-in-aid program such as EA must be judged "by the law in effect when the grants were made." *Bennett v. New Jersey*, 470 U.S. 632, 105 S.Ct. 1555 (1985). The DPW also said that under the Freedom of Information Act (FOIA), States may not be bound by Federal interpretations unless they are either published, properly indexed, or the State has "actual and timely notice of the terms thereof" 5 U.S.C. §552(a)(1). It is the DPW's position that FOIA divides interpretations into those of general applicability, which must be published in the Federal Register [5 U.S.C. §552(a)(1)(D)], and those of lesser status, which must be indexed and distributed by sale or otherwise [5 U.S.C. §552(a)(2)]. If an interpretation is neither published nor indexed, the interpretation may not be "used or cited as precedent against a party" unless the party has actual and timely notice of the terms thereof. 5 U.S.C. §552(a)(2)(ii). In the words of the Department of Health and Human Services' (HHS) Departmental Appeals Board (DAB): "the State cannot be fairly held to the Agency's interpretation if the State did not receive adequate, timely notice of that interpretation in the context where there was another reasonable interpretation relied on by the State." Illinois Department of Children and Family Services, DAB No. 1335 (1992).

The DPW believed that under the foregoing basic principles of Federal grant law, OIG had a duty to validate the legal effectiveness of the audit criteria it applied to Pennsylvania by insuring that each criterion was both officially adopted as policy by the ACF and was communicated to the States in a timely fashion. The DPW stated that validation of the audit criteria is part of the basic obligations imposed by the planning, due professional care, and independence requirements of Government Audit Standards (GAS). Without such validation, the DPW believes that OIG was not conducting a bona fide professional audit and the audit becomes a political and rhetorical document which shows only the amounts of money that might have been saved had more restrictive criteria been legally adopted and communicated to the states.

The DPW referred to the draft report's citation to a conversation with an unidentified ACF official as the source for OIG's conclusion that "longstanding Office of Family Assistance policy required that the individual family, not the State agency, had to file an application for EA benefits and services." The DPW believes that the ACF official's interpretation plainly conflicts with the cited underlying regulation which expressly states that an application can be filed by an authorized representative or someone acting responsibly for the applicant. The DPW alleges the ACF official's interpretation has never been communicated to the States or even officially adopted by ACF. It is the DPW's position that OIG is citing Pennsylvania for a \$34 million overpayment based upon an interpretation that is inconsistent with the language of the underlying regulation, and which interpretation was provided by an ACF official whose name is not even disclosed in the report.

OIG Comment

We believe that the State misinterpreted a provision of the FOIA at 5 USC 552(a)(1). The Act does not provide, as submitted by the State, that "States may not be bound by Federal interpretations unless they are either published, properly indexed, or the State has 'actual and timely notice of the terms thereof.'" Rather, Section 522(a)(1) requires that "[e]xcept to the extent that a person has actual and timely notice of the terms thereof, a person may not in any manner be required to resort to, or be adversely affected by, a matter required to be published in the Federal Register and not so published." A threshold question in determining whether this provision applies is whether requirements are "required to be published in the Federal Register." In conducting the audit, we relied on the Title IV-A statute, related published regulations and formal guidelines such as ACF Action Transmittals. The law, regulations and guidelines were in effect and valid when the claims were filed and the binding nature of ACF guidelines has not been questioned by the Departmental Appeals Board or the courts.

Before beginning this audit and related EA audits in other States, we confirmed with ACF program officials the applicability of the eligibility criteria we would be using throughout these audits. Our Office of Counsel to the Inspector General also assisted in this effort.

We agree with DPW that criteria need to be communicated to the States. The EA criteria were communicated to the states using the CFRs and action transmittals. Our audit was part of an

overall audit that was conducted in several states. The ACF officials confirmed that the laws and regulations that were applied were in effect and valid when the claims were filed. For example, 45 CFR 234.120 and Action Transmittal SSA-AT-78-44 state that eligibility must be based on an application. An application indicates the applicant's personal intent to apply for assistance. The ACF official's statement cited in the report did not conflict with the regulation but supported the regulation. In no event can the terms and conditions of statements or negotiated agreements be more liberal than Federal Laws, Departmental Regulations, or OMB government wide policies. Moreover, it is OIG audit policy not to identify specific individuals by name in our reports.

Although our report relied on Federal Criteria for authorizing EA services, Pennsylvania's own State Code, Title 55, Subpart I, Chapter 289 Emergency Assistance elaborates on some of the Federal criteria contained in this report. The Pennsylvania Code Chapter 289.4 (b) Procedures for Authorizing Emergency Assistance states that

"A basic finding must be made that an emergency, as defined in § 289.2 (relating to definitions) does exist and that the individual or family qualifies for Emergency Assistance as provided in § 289.3." (55 Pa. Code § 289.4).

Pennsylvania's State Code, Title 55 Chapter 125.1 The Application Process addresses the issue of who must sign an application form. The Pennsylvania Code requirements for signing an application form are as follows:

"Application is made on an application form approved by the Department ... The applicant, regardless of age, shall sign prior to filing the form ... Failure to sign shall result in the ineligibility of the person required to sign the form." (55 Pa. Code § 125.1).

The DPW response did not accurately represent what it cites as the "underlying regulation" concerning the application process. That regulation (45 CFR 206.10(a)(1)(ii)) states that an agency "shall require a written application, signed under penalty of perjury, on a form prescribed by the State agency, from the applicant himself, or his authorized representative, or where the applicant is incompetent or incapacitated, [emphasis added] someone acting responsibly for him."

Also, DPW did not indicate which regulations or guidelines they did not receive nor how our specific findings are inconsistent with the regulations or guidelines.

We have responded further throughout the report to the State's particular concerns regarding the application of those criteria and believe all our findings are fully supported.

RESULTS OF ANALYTICAL REVIEWS

PEAPS Analysis of P&TS Submission - Claims Beyond 12-Month Service Window

We are questioning FFP of \$1,457,838 based on our analysis of the PEAPS. The PEAPS showed that the Family Court invoiced P&TS claims for FFP of \$1,457,838 for services provided to 2,126 children after the expiration of the 12-month service window established by Federal criteria.

The Allegheny Family Court used the PEAPS database to identify children on probation or receiving truant services who had an EA application information on file. During FYs 1995 and 1996, the Family Court identified 4,756 children as EA eligible. The FFP claimed and reimbursed for these children totaled \$5.6 million. These claims represented costs associated with salaries of Allegheny probation officers and other operating costs including supplies and travel costs for the probation officers to visit children. Since quarterly P&TS claims were made based on data contained in PEAPS, we were able to use PEAPS to review the total claim for a child regardless of how many quarters the child was claimed. We analyzed the PEAPS data to identify claims made for services beyond the 12-month window.

Our reviews of P&TS claims recorded on the PEAPS showed that 2,126 of 4,756 children claimed by the Family Court received services that extended beyond the 12-month service window established by Federal criteria. The EA authorizations are valid for only 12 consecutive months according to the Social Security Act, Section 406 (e)(1), and 45 CFR Section 233.120(b)(3). The FFP reimbursed totaled \$1,457,838 for services provided to the 2,126 children beyond the 12-month service window. We excluded these costs from our statistical sample. The children were included in our sample since the FFP reimbursed on their behalf during the initial 12-month period may also have been unallowable.

DPW Response

The DPW disagreed with this audit finding and stated that ACF never established a 12-month limit on the length of the EA benefit period.

It is the DPW's position that ACF policy has long distinguished between the period of time during which benefits can be authorized and the period of time during which benefits can be provided. The DPW stated that under the interpretation adopted by ACF, benefits may only be authorized during 30 days in any 12-month period and ACF does not interpret the 30-day language, 42 U.S.C. §406(e) and 45 CFR §233.120(b)(3), as applying to the benefit period. Over the years, ACF gradually expanded the length of the allowable benefit period from 30 days to 90

days, and then from 90 days to one year. In a memorandum dated January 5, 1993, ACF's Director of the Office of Family Assistance stated that none of the official policy statements previously issued by the ACF "establishes a specific time standard for determining when a particular type of assistance may no longer be viewed as addressing an emergency. Accordingly, a Federal determination that a proposed time limit for providing EA is too long would have to be based on a finding that the proposed duration of assistance is longer than necessary to respond to the emergency." The DPW stated that consistent with the January 3, 1993 memorandum, the DPW's approved State plan language permits service benefit periods in excess of one year, and expressly states that "services will be provided until the emergency is alleviated..."

The DPW stated they do not dispute that Congress originally intended EA to provide only temporary financial assistance. However, the DPW believes that as evidenced by the January 3, 1993 memorandum, the ACF made a conscious and deliberate decision to eliminate any durative limitation for the EA benefit period. The DPW added that the ACF and the OIG appear to agree that EA could effectively be furnished indefinitely and continuously, so long as applications were taken and benefits re-authorized every 12 months. The DPW believes that only issue here is whether new paperwork had to be completed every 12 months. Based on the January 3, 1993 memorandum, they do not believe that new paperwork was required.

The DPW stated that OIG has cited no document that overruled the January 3, 1993 memorandum, or which imposed a maximum 12-month limit on the length of the benefit period. The DPW adds that they received no notice of a contrary interpretation.

OIG Comment

Emergency Assistance authorizations are valid for only a 12-month period. The purpose of the EA program was to provide temporary financial assistance and supportive services to eligible families experiencing an emergency. Section 406(e)(1) of the Social Security Act states that EA can be "furnished for a period not in excess of 30 days in any 12-month period." The 45 CFR 233.120(b)(3) states Federal matching is available during one period of 30 consecutive days in any 12 consecutive months.

The State agency claimed FFP under the EA program for service provided to clients more than 12 months after the date of the clients' application. For example, the State agency claimed FFP for adjudicated juvenile delinquents detained at detention centers for more than a year. Some of the claims that the OIG disallowed were for children who had committed serious crimes and had subsequently been sentenced to detention for many years.

The Social Security Act Section 406(e)(1) allows EA services to be furnished for a period not in excess of 30 days in any 12-month period. The 45 CFR 233.120(b)(3) likewise required that EA services be authorized in a 30-day period. If any need for EA occurs after the 30-day period, the applicant must wait a minimum of 12 months from the date of the last EA application submission before submitting another EA application.

Pennsylvania's approved State plan language follows the regulation closely on this issue. The plan reads as follows: "services will be provided until the emergency condition is alleviated and must be authorized during a single 30-day period no less than 12 months after the beginning of the family's last EA authorization period."

Although our report relied on Federal Criteria, Pennsylvania's own State Code, Title 55, Subpart I, Chapter 289.1 (b) Policy states that

"Federal financial participation is available only for emergency assistance (EA) to families with children under age 21 for a period not to exceed 30 consecutive days within a 12 consecutive month period." (55 Pa. Code § 289.1).

The Pennsylvania State Code Title 55 Subpart I Chapter 289.3 (c) Requirements is specific regarding the period of eligibility for EA:

"(c) Period of eligibility. Emergency assistance will be authorized only for one period of 30 consecutive days in any 12-consecutive months. The 30-day period begins on the date emergency assistance is authorized. During the 30-day period following the authorization date, shelter costs as described in §289.4(a)(2) (relating to procedures) may be authorized when required to meet an emergency situation. Although more than one payment may be authorized during the 30-day period, no emergency assistance may be authorized after the 30-day period has expired. An individual or family may again be eligible for emergency assistance 12 months from the date emergency assistance was first authorized.

(1) Exception. Non-AFDC or non-AFDC-CU families with children under age 21, who receive family cash assistance under the provisions of § 289.4(a)(1) for 30 days within a 12-month period, may also be granted emergency shelter need under the provisions of §289.4(a)(2) for one 30-day period within the same 12-consecutive months. The second emergency assistance authorization in any 12-consecutive month period is solely State funded. However, if a family receives the family cash assistance payment under the provisions of § 289.4(a)(1) and an emergency shelter expense payment under the provisions of § 289.4(a)(2) during the same consecutive 30-day period, a second emergency shelter expense payment may not be authorized until 12 months have elapsed from the date of authorization.

(2) Applicants. Emergency assistance may be authorized at time of initial application for a period not to exceed 30 consecutive days within a 12-consecutive month period.

(3) Recipients. Emergency assistance may be authorized at the time the emergency arises, at the time of redetermination or reapplication if an emergency condition is determined to exist, for a period not to exceed 30 consecutive days provided 12-consecutive months have passed since the date Emergency Assistance was last authorized." (55 Pa. Code § 289.3).

**Claim Roster Analysis - EA Claims
Supplemented the Title IV-E Foster Care
Program**

We are questioning \$2,815,286 in FFP that DPW was reimbursed for EA claims associated with children enrolled in the Title IV-E program. Federal criteria and Pennsylvania's own State plan prohibited payments under EA that supplement the

percentage of costs not reimbursed under the Title IV-E Foster Care program. Because these costs were strictly unallowable under the EA program criteria this population was audited without sampling.

The DPW considered the portion of costs unallowable under the Title IV-E foster care program as claimable under the Title IV-A Emergency Assistance Program. Under Pennsylvania's Title IV-E program, room and board costs are capped on a daily basis. The caps are based on factors such as a child's age, race and health. The DHS retroactively invoiced the unallowable portion of Foster care costs to the Title IV-A, Emergency Assistance program. We compared the children's names on the C&Y Title IV-A claim rosters and compared them to names on the Title IV-E claim rosters and found that the amount exceeding the Title IV-E room and board cap was claimed under Title IV-A as an emergency.

Both the Social Security Act and the State plan preclude payment for the costs of foster care that exceed the funds reimbursed under Title IV-E. The Social Security Act, Section 472 authorizes foster care maintenance payments "with respect to a child who would meet the requirements of §406(a) or of §407 but for his removal from the home of a relative (specified in §406(a)), " so long as four criteria are met. Section 409 of the Social Security Act states, "a child with respect to whom foster care maintenance payments or adoption assistance payments are made under Part E or under State or local law shall not, for the period for which such payments are made, be regarded as a member of a family for purposes of determining the amount of benefits of the family under this part", that is, Title IV-A. The 45 CFR 233.90 (c)(2)(ii) stated that FFP is available: "... provided payments are not made for a concurrent period for the same child in the home of another relative or as foster care under Title IV-E;..." Therefore, a child cannot be eligible for Title IV-A and Title IV-E at the same time (they are mutually exclusive).

The Pennsylvania State plan (Transmittal No. 94-01-AFDC, Section C (3)(4)) that authorizes shelter care and foster family care under its EA program was in accordance with this exclusion as it specifically excluded EA if a child had assistance provided under Title IV-E.

The Office of Management and Budget Circular A-87, Cost Principles for State, Local and Indian Tribal Governments also applies. Section (C) (3)(c) states that "any cost applicable to a particular grant or cost objective under the principles provided in this Circular may not be shifted to other Federal grant programs to overcome fund deficiencies, to avoid restrictions imposed by law or terms of the Federal awards, or for other reasons."

Of the 81,576 C&Y claims in our population, 27,314 were for children for whom DHS was also claiming FFP under the Title IV-E Foster Care program. The 27,314 C&Y claims were listed

separately on 13 claim rosters. The 27,314 claims totaled \$5,630,572 for which DPW was reimbursed FFP of \$2,815,286. We are questioning the entire \$2,815,286. One example of Title IV-A funds used to supplement the Title IV-E program involved a child who received foster care services during January 1995. The DHS claimed \$2,673 for board provided to this child during January 1995. According to the claim, the child spent the entire month (31 days) in foster care at \$86.22 per day, or \$2,673. The actual cost of the foster care board, however, was shown as being \$2,948, or \$275 more than that reimbursed under the Title IV-E foster care program. We reviewed the Title IV-A claim for the same quarter and found that DHS claimed for the same child the \$275 for board that was not reimbursed by Title IV-E.

DPW Response

The DPW stated that Federal policy did not prohibit the DPW from billing unallowable Title IV-E costs to EA, and that the OIG's reliance upon Section 409 of the Social Security Act is misplaced.

The DPW stated that Section 409 provides that a Title IV-E child shall not be regarded as a member of a family "for purposes of determining the amount of benefits of the family" under Title IV-A. The DPW position is that the EA statute draws a clear distinction between aid provided to the "child" and aid provided to "other members of the household in which he is living" (i.e., the family). The DPW believes the statute prohibits the State from using income and resources of the Title IV-E child to determine the amount of EA provided to the family, but says nothing about prohibiting the Title IV-E child from also receiving EA.

The DPW also asserts that the OIG's reliance on the OMB Circular and the DPW's State plan provision is erroneous. The DPW argues that the draft audit cites only the first sentence of the circular provision. The next sentence specifically states that the prohibition "would not preclude governmental units from shifting costs that are allowable under two or more awards in accordance with existing program agreements." OMB Circular A-87, §C(3)(c). The DPW's State plan says that foster care services will be paid for under EA, unless the child has "such assistance provided under Title IV-E." The DPW's position is that this language does not prohibit the State from billing costs not charged to Title IV-E to EA.

The DPW stated that ACF has never issued definitive guidance to the States on how Section 409 is to be applied and that DPW's reasonable interpretation of the statute must be accepted by the OIG. The DPW believes that this result is not only required by the DAB [e.g., Illinois Department of Children and Family Services, DAB No. 1335 (1992)], it is also required by Executive Order 13132 (Federalism). With respect to Federal statutes and regulations administered by the States, the OIG is required to allow the States the "maximum administrative discretion possible." E.O. 13132 §3(c).

OIG Comment

A child cannot be eligible for Title IV-A and Title IV-E at the same time; the programs are mutually exclusive. The 45 CFR 233.90 states that FFP is available: "... provided payments are not made for a concurrent period for the same child in the home of another relative or as foster care under Title IV-E; ..." (45 CFR 233.90(c)(2)(ii))

This is also recognized in the Social Security Act and in the Pennsylvania State plan, which authorizes shelter care and foster family care under its EA program. The State plan defines the services provided to meet emergency situations, which include emergency protective services for children. The following statement from the plan confirms that it excludes emergency assistance for children receiving IV-E assistance:

Emergency protective services for children [include] "Shelter care, foster family care, or residential group care (including juvenile detention services and secure residential services at a private or public facility) for children separated from their parents, unless the child has such assistance under Title IV-E."

It appears that DPW takes the position that the same child at the same time can be claimed as a member of a family for EA but not for Title IV-E purposes. This position seems to be contradictory. We believe the criteria clearly indicate that a child's family situation can make him or her eligible for either Title IV-E or EA, but not both at the same time.

Furthermore, Transmittal Memorandum--SSA-AT-82-28, in effect since November 5, 1982, states that it is not permissible to authorize Emergency Assistance to supplement an inadequate public assistance grant. Our review showed that when the cost of foster care exceeded funds available under the Title IV-E program, DPW invoiced EA claims for the difference. In effect, DPW shifted costs that exceeded maximum per diem rates under the foster care program and declared them Emergency Assistance costs. This is not allowable.

Invoicing Analysis - EA Claims for Delinquent Children After December 31, 1995

We are questioning \$53,872 in FFP that DPW was reimbursed for services provided to children in the

Allegheny County juvenile justice system after January 1, 1996. Claims for delinquent children were excluded from the EA program effective January 1, 1996, and DPW did not accurately report these costs to ACF. Our review identified three juvenile court claims totaling \$107,744 that were incorrectly posted to program measure accounts for dependent children rather than to accounts for delinquent children. All three summary vouchers were clearly marked by Allegheny County as being juvenile court related costs for delinquent children. However, DPW accounting personnel posted the vouchers to the dependent accounts. The FFP for these claims is \$53,872 as shown in the following table.

Juvenile Court Supplemental EA Claims for Delinquents						
Voucher #	Dates of Service	Number of Children Claimed	Juvenile Court Costs	FFP	Incorrect Dependent Account # posted to	Correct Delinquent Account #
62111871	01/01/96 03/31/96	4	\$ 23,854	\$ 11,927	76272	76284
62112987	04/01/96 06/30/96	27	62,476	31,238	76271	76283
62111865	04/01/96 06/30/96	4	21,414	10,707	76271	76283
Total		35	\$ 107,744	\$ 53,872		

Had the costs been properly recorded, no FFP would have been reimbursed for these claims.

The ACF issued Action Transmittal ACF-AT-95-9 dated September 12, 1995 stating that FFP was not available under EA for costs associated with providing benefits or services to children in the juvenile justice system who have been removed from the home as a result of the child's alleged, charged or adjudicated delinquent behavior. Pennsylvania, which had an approved State plan amendment that covered such children, was allowed to continue to claim FFP through December 31, 1995. Effective January 1, 1996, FFP was not available, and any claims for such costs were to be disallowed. The ACF's position on this issue was upheld in Departmental Appeals Board Decision No. 1631 (dated September 19, 1997).

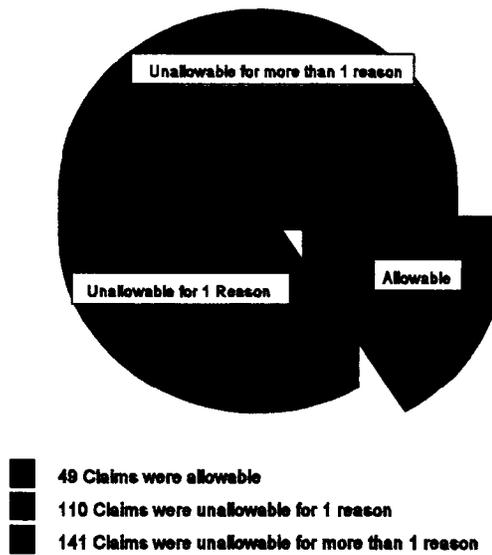
DPW Response

The DPW did not comment on this finding.

RESULTS OF STATISTICAL SAMPLE

We statistically sampled 65,077 EA claims invoiced by the Allegheny DHS and the Family Court. The FFP for these claims totaled \$46,965,660. Using a standard scientific estimation process, we estimate with 95 percent confidence that DPW claimed and was reimbursed FFP of at least \$30,899,741 for claims that violated provisions of the Federal criteria (this estimate is the lower limit of the 90 percent two-sided confidence interval). Our projection was based on our review of 300 statistically selected claims out of the sample universe. Our projection is an unduplicated error projection and, therefore, does not take into account the fact that 47 percent of

the claims reviewed were not in compliance with two to four provisions of the Federal criteria as shown in the following chart.



Types of Claims in Sample

Our sample consisted of 100 C&Y claims and 100 SC claims invoiced by DHS, and 100 P&TS claims invoiced by the Family Court. Widespread violations of Federal criteria were found in all types of claims as shown in the following table.

TYPES OF CLAIMS				
Type	Number of Claims Sampled	Value of Claims Sampled (FFP)	Total Number of Violations	Value of Violations (FFP)
C&Y	100	\$55,273	165	\$51,815
SC	100	90,610	156	76,371
P&TS	100	81,441	109	67,417
Total	300	\$227,324	430	\$195,603

C&Y Claims

We randomly selected our statistical sample of 100 C&Y claims from a population of 54,227 claims made on 52 claim rosters submitted to DPW for FYs 1995 and 1996. These claims totaling \$37.4 million in FFP were for Placement Costs for Delinquent Children, Foster Care, Counseling, Group Homes, Day Care and Emergency Shelter services. The 100 C&Y claims reviewed totaled \$55,273 in FFP. We determined that 88 of the claims totaling \$51,815, or 94 percent of the amount reimbursed, violated one or more of the provisions of Federal criteria. The 88 erroneous claims had 165 specific violations.

SC Claims

We randomly selected our statistical sample of 100 SC claims from a population of 6,094 claims made on 7 quarterly claim rosters submitted to DPW for FYs 1995 and 1996. These claims totaling \$5.5 million in FFP were for juvenile justice system housing costs associated with operating a detention center. Children entered a detention center as a result of alleged, charged, or adjudicated delinquent behavior. The 100 SC claims reviewed totaled \$90,610 in FFP. We determined that 86 of the claims totaling \$76,371, or 84 percent of the amount reimbursed, violated one or more provisions of Federal criteria. The 86 erroneous claims had 156 specific violations.

P&TS Claims

We randomly selected a statistical sample of 100 P&TS claims from a population of 4,756 children claimed on quarterly claims based on PEAPS data. These claims, totaling \$4.1 million in FFP, were for probation and truant related costs such as salaries, travel and office expenses of probation and truant officers. The 100 claims reviewed totaled \$81,441 in FFP. We determined that 77 of the claims totaling \$67,417, or 83 percent of the amount reimbursed, violated one or more provisions of Federal criteria. The 77 claims contained 109 specific violations.

Types of Violations in Sample

We found no violations of Federal criteria involving the age of the children. All the children were under the age of 21 and, therefore, age-eligible for the EA program.

We did identify several other types of violations, however, of which one pertained to the ineligibility of the child and six to the ineligibility of the service, as shown in the following chart.

TYPES OF VIOLATIONS			
VIOLATIONS	Number of Violations	FFP in Violations	Projected Amount (FFP)
Ineligibility of the Child			
Child Did Not Live With Specified Relative	29	\$26,540	\$7,448,298
Ineligibility of the Service			
No Signed Application by Parent or Guardian	229	\$179,490	\$34,491,057
Improper Authorization	72	\$55,823	\$9,105,614
Service Provided Outside the 12-Month Service Window	37	\$29,955	\$7,011,634
Unrelated Claim Within 12-Month Service Window	34	\$32,532	\$2,122,938
Lack of Support for Claim	26	\$9,654	\$2,225,704
Duplicate Billing for Same Service	3	\$920	Not Estimated
Total	430		

Because most of the erroneous claims had multiple violations, our estimates for the individual violations are not mutually exclusive of each other and should not be added together. The individual estimates are presented only to show the possible effect the individual violations had on DPW's claims for FFP.

Child Did Not Live With Specified Relative

Twenty-nine claims in our statistical sample of 300 claims involved children who did not live with a specified relative at least 6 months prior to their applications for EA and who were therefore ineligible for EA services. The 29 children were either incarcerated in State-operated forestry camps or detention centers or were living in residential settings for the 6-month period preceding the EA application date. Projecting these errors to the universe of claims, we estimate that DPW was reimbursed \$7,448,298 in FFP for claims for ineligible children. Aside from this violation, 28 of the 29 claims violated at least 1 other provision of the Federal criteria.

Sample Strata	Sample Population	# of Claims with Violation	Error %
C&Y	100	17	17.0%
SC	100	7	7.0%
Family Court	100	5	5.0%
Totals	300	29	

Federal Criteria

A valid claim requires that a child live with a specified relative 6 months prior to an application for an EA service. The 45 CFR 233.120 (b)(1)(i) states such child is (or within 6 months prior to the month in which such assistance is requested has been) living with any of the relatives specified in Section 406(a)(1) of the Act in a place of residence maintained by one or more of such relatives as his or their own home.

Section 406(a)(1) of the Social Security Act defines “dependent child” as a needy child who has been deprived of parental support or care by reason of the death, continued absence from the home (other than absence occasioned solely by reason of the performance of active duty in the uniformed services of the United States), or physical or mental incapacity of a parent, and who is living with his father, mother, grandfather, grandmother, brother, sister, stepfather, stepmother, stepbrother, stepsister, uncle, aunt, first cousin, nephew, or niece, in a place of residence maintained by one or more of such relatives as his or their own home.

Audit Results

Of the 300 claims sampled, 29 were for children who did not live with a specified relative during the 6 months prior to the EA application. The 29 claims totaled \$53,080 for which DPW was reimbursed FFP of \$26,540. We are questioning the entire amount of the FFP.

Fourteen claims involved children who were incarcerated during the entire 6 months prior to the EA application. For example, a child was arrested for criminal conspiracy and possession with intent to deliver a controlled substance. He was committed to an institution for delinquents where he remained from January 27, 1994 to January 26, 1995. On October 13, 1994, a juvenile probation representative prepared an EA application for this child authorizing EA services as of April 27, 1994, the effective month of the State plan amendment that expanded the EA program. At the time the application was prepared, the child had already been institutionalized for about 9 months and, therefore, could not have lived with a specified relative during the 6 months prior to the application. The probation representatives stated that the child and his family were unavailable to sign, even though the child was incarcerated at the time of the application.

Fifteen claims were for children in residential settings. For example, on February 24, 1994, the court gave permission for a child to live with her boyfriend and the boyfriend’s parents. At the time, the child was pregnant and was on probation for assault. On November 2, 1994 the probation officer applied for Emergency Assistance on the child’s behalf. Since the child did not live with a specified relative 6 months prior to the date of application, the child was not eligible for EA.

We noted that the EA application form used by both DHS and Family Court required the official determining eligibility to ascertain if the child lived with a parent or specified relative. However, the EA form training instructions stated that it was not necessary for the child to have been removed from the home but only that the child resided with a specified relative as briefly as a

single overnight stay within the last 6 months. In our opinion, visiting with a specified relative for just 1 night over a 6-month period is not living with a specified relative, particularly when the child spent the remainder of the time incarcerated or in a residential setting.

Our review showed that officials determining eligibility did not even follow the relaxed instructions that they had been trained to follow. For example, a child was detained in the Shuman Center on April 1, 1994 for various serious offenses. The child remained at the Shuman Center until June 9, 1994 when he was committed to a group home where he remained until June 1998. The EA application was prepared on October 5, 1994, and indicated that the child lived with a specified relative for the 6 months prior to the application.

Emergency Assistance services were authorized for one child even though the application form had the box checked that the applicant had not lived with a specified relative during the 6 months prior to EA application. Allegheny officials who prepared many of the EA applications told us that they had no contact with the children or parents. The officials that we interviewed who authorized many of these application did not check to determine if the child lived with a specified relative. These officials stated they merely handled the paperwork.

We found that 28 of the 29 claims violated other provisions of the Federal criteria. The most prevalent of the violations pertained to the lack of a proper signature on the application form supporting the claim. Twenty-seven of the claims were not supported by properly signed EA applications. In total, the 29 claims contained 41 other violations.

DPW Response

The DPW stated that the OIG determined a case to be erroneous whenever the child was in residential care more than 6 months prior to the date EA was authorized.

The DPW stated that OIG ignored Federal regulations at 45 CFR 233.90(c)(1)(v), which provide that a child is considered to be "living with" a specified relative even though the child is temporarily absent from the customary family setting. It is the DPW's position that the regulation specifically states that a child is "living with" his family even if he is under the jurisdiction of the court.

The DPW believed that the OIG ignored Federal policy that establishes the date of a report of abuse or neglect as the date of application for EA. The DPW references a memorandum sent by ACF's Director of the Office of Family Assistance to ACF's Region II on November 12, 1992. The DPW's position is that this memorandum, Issue No. 4, page 3, states that a report of suspected child abuse "may serve as the application for EA."

OIG Comment

An EA application is required for all emergencies according to 45 CFR 206.10(a)(1)(ii). Federal Policy at 45 CFR 233.120 (b)(1)(i) is clear that a child must have lived with a parent or specified relative 6 months prior to the month in which assistance is requested. Pennsylvania's own EA authorization form contains this requirement. Although our audit relied on Federal Criteria, Pennsylvania's own State Code, Title 55, Subpart I, Chapter 289.3 states that a child is only eligible for EA if *"The child is, or has been within 6 months prior to application for assistance, residing with relatives specified in § 151.42 (relating to definitions)."* Chapter 125.1 of the Pennsylvania State Code also requires that *"Application is made on an application form approved by the Department."* The OIG relied on dates contained on DPW's State designated EA applications and authorizations.

In their response, the DPW quotes only a portion of 45 CFR 233.90(c)(1)(v)(B)(1-2)) which further states that:

"A home exists so long as the relative exercises responsibility for the care and control of the child, even though either the child or the relative is temporarily absent from the customary family setting. Within this interpretation, the child is considered to be 'living with' his relative even though:

- (1) He is under the jurisdiction of the court (e.g., receiving probation services or protective supervision); or*
- (2) Legal custody is held by an agency that does not have physical possession of the child."*

A child who is incarcerated in a correctional institution for delinquency purposes or is living in a foster care setting does not meet either of these criteria. In the cases we disallowed, the youths were incarcerated, living with a boyfriend/girlfriend, or were in residential settings. We found no evidence that their relatives were exercising responsibility for their care.

The ACF memorandum cited by DPW refers to allegations of child abuse and neglect that are received by the New York State Central Register of Child Abuse and Maltreatment.

The memorandum was merely spelling out the limited exception when an EA application could be signed by a State worker if immediate intervention were necessary to protect a child from life threatening abuse or neglect by his caregiver.

In the cases we disallowed because the child was not living with a specified relative 6 months prior to the EA claim, the EA case files contained no reports of child abuse or neglect. Furthermore, we requested that the Statewide Child Abuse and Neglect Hotline (otherwise known as Child Line) match the children in our sample to their database of reported abuse and neglect cases. The Child Line did not provide us with information that showed someone had reported any of the children as being abused or neglected. Most of the cases contained in this

finding were for children who were incarcerated or were in a residential foster care setting for an extended period of time (up to several years). Most of the claims we reviewed for these emergencies were as a result of a child's delinquent act and not as the result of abuse.

No Signed Application by Parent or Guardian

A total of 229 claims in our statistical sample of 300 claims were not supported by properly signed applications for EA. Only 69 of the 300 claims in our sample contained the proper signature of a parent or guardian. There were also 2 claims for dependent children who may have been abused or neglected. In these cases we accepted an authorized representative's signature in place of a parent's signature. For the remaining 229 claims: 20 had no applications, 82 had unsigned applications, and 127 had applications signed by representatives of the Allegheny DHS or Family Court. With 1 exception, there was no evidence for the 229 claims that parents or guardians were contacted to obtain their signatures, to determine if they were incompetent or incapacitated, or to notify them of the authorization of EA services.

Sample Strata	Sample Population	# of Claims with Violation	Error %
C&Y	100	85	85.0%
SC	100	76	76.0%
Family Court	100	68	68.0%
Totals	300	229	

Projecting these errors to the universe of claims, we estimate that DPW was reimbursed \$34,491,057 in FFP for claims that were not supported by an EA application signed by a parent or guardian. Aside from this violation, 137 of the 229 claims violated at least 1 other provision of the Federal criteria.

Federal Criteria

The process for obtaining EA benefits began with a valid application for assistance. The process required an application filed by an adult member of the family on behalf of a child under 21 years old. The Federal criteria listed below deal with the application in terms of intent and signature. The criteria also deal with notifying the applicant upon authorization of services and the need to support eligibility or ineligibility in the case record.

- The 45 CFR 206.10(a)(1)(ii) states the Agency "shall require a written application, signed under penalty of perjury, on a form prescribed by the State agency, from the applicant himself, or his authorized representative, or, where the applicant is incompetent or incapacitated, someone acting responsibly for him."
- The 45 CFR 234.120 and Action Transmittal SSA-AT-78-44 state that eligibility must be based on an application. An application indicates the applicant's personal

intent to apply for assistance. A determination must be made that the individual meets the conditions of eligibility for EA under the State Plan.

- The 45 CFR 206.10(b)(2) states that “An application is the action by which an individual indicates in writing to the agency administering public assistance (on a form prescribed by the State Agency) his desire to receive assistance.”
- The 45 CFR 206.10 (a)(4) states that “Adequate notice shall be sent to applicants and recipients to indicate that assistance has been authorized (including the amount of financial assistance) or that it has been denied or terminated. Under this requirement, adequate notice means a written notice that contains a statement of the action taken, and the reasons for and specific regulations supporting such action, and an explanation of the individual’s right to request a hearing.”
- The 45 CFR 206.10(a)(8) states “Each decision regarding eligibility or ineligibility will be supported by facts in the applicant’s or recipient’s case record.”

A longstanding Office of Family Assistance (OFA) policy required that the individual family, not the State agency, had to file an application for EA benefits and services. The applicant had to be able to choose to either apply or not apply for assistance. In the EA program, OFA allowed a limited exception to the individual or family filing the application in child abuse and neglect cases. In situations where immediate intervention was necessary to protect the child from abuse or neglect and where the parent or another responsible adult member in the household was incompetent or incapacitated to apply for EA, a designated State agency official could complete and sign an application on behalf of the child and eligible family members. However, upon completion of such an application, the State agency had to notify the child’s parents or other responsible adults of the State’s action.

Audit Results

Of the 300 EA claims sampled, only 69 claims were properly supported by EA applications signed by parents or guardians. There were also 2 claims for dependent children who may have been abused or neglected. In these cases we accepted an authorized representative signature in place of a parents signature. The 229 claims not supported by an application signed by a parent or guardian totaled \$358,979 for which DPW was reimbursed FFP of \$179,490. We are questioning the entire amount of the FFP.

Of the 229 claims that we are questioning:

- 20 applications were missing,
- 82 contained no signature whatsoever, and

- 127 were signed by a DHS or Family Court representative and not a parent or guardian.

We are questioning all 229 claims. The fact that 20 claims were not supported by an application is a clear violation of Federal criteria that require that eligibility be based on the application. We believe lack of a parent or guardian signature on an application form prepared by a DHS or Family Court representative is an equally clear violation. There was no indication that the children or their parents wanted to receive emergency assistance. To the contrary, one case file reported that a child drew a gun and stated to an EA service provider that he was not returning for services under any circumstances. The applications were, in fact, prepared by a contractor who used a computer program to generate applications for those children claimed for EA who did not have an application. One contractor prepared 8,193 EA applications on 5 different runs as follows:

Contractor Generated EA Applications	
Computer Run Date	# of Applications Prepared
November 1, 1996	212
December 1996 (date(s) unknown)	5,500
January 31, 1997	245
May 13, 1997	236
December 1997 (date(s) unknown)	2,000
Total	8,193

The contractor stated that the computerized runs were made from databases that were used to prepare listings to support the Emergency Assistance Summary Invoices. The contractor said that if a claim was made, there must have been an emergency. The contractor programmed the computer to print under the signature blocks that the parents and DHS officials were not available to sign. The parents and caseworkers may not have been available because the applications were prepared with EA authorization dates backdated to April 1, 1994, thus the emergencies were long over. The contractor stated that the computerized applications were run because personnel at C&Y determined that caseworkers were not preparing and forwarding applications to their office. In at least two instances the contractor prepared applications for vacated rooms. In these cases the contractor who ran the computer program gave the applications to another contractor who authorized the EA applications for the vacated rooms. The contractors could not associate the vacant room with any child, so they prepared applications for children named "vacated" and stated that the parents were not available.

The State plan provides that the application generally must be filed by an adult member of the family. The only exception to that requirement is if both parents are absent or unwilling to apply on behalf of children who meet all other eligibility conditions. In such a case another adult relative or the county agency acting on behalf of children may file the application. We believe the exception dealing with a parent's unwillingness to apply for EA is contrary to Federal criteria that require a demonstration of the applicant's intent to apply or, in the case of children, the intent of the parent or guardian. Unless the parent or guardian is incompetent or incapacitated, the parent's or guardian's unwillingness to apply should end the matter, and neither DHS nor Family Court should be allowed to apply for services contrary to the stated wishes of the parent or guardian.

We found, however, little evidence that attempts were made to contact the parent or guardians to obtain approval and signature on the applications. Of the 229 applications that were not signed by a parent or guardian, only 5 contained any indication that a parent or guardian was contacted. For these five cases, the parents refused to sign the application. A Family Court representative noted on the EA applications that the parents declined to apply for assistance by refusing to sign the application. The representatives then signed the EA applications even though the parents declined to apply for the EA assistance. For example, on October 17, 1994, a juvenile probation representative noted on an EA application that the parent refused to apply for assistance by refusing to sign the application. The juvenile probation representative then prepared and signed the application. The application was sent to a DHS representative who backdated the service authorization start date to April 12, 1994, the date the child was arrested. The DHS claimed FFP for this child from April 12, 1994 to November 18, 1996.

In not a single case did we find any indication that either DHS or Family Court determined that the parent or guardian was incompetent or incapacitated. Nor were we provided any evidence that the children were in need of the immediate intervention of DHS or Family Court staff because of abuse or neglect. Many of these children, in fact, were already incarcerated or in a residential setting at the time the applications were prepared. Nevertheless, we accepted DHS or Family Court representative's applying for EA for two claims for dependent children. These two claims for counseling and related services may have resulted from abuse or neglect. For the delinquent children, the crimes committed were the reason why the juvenile justice services were provided. It is clear that parents or children are required to apply for EA when the claimed emergency results from the child's delinquent behavior and not as the result of parental neglect or abuse.

Allowing the DHS Contractor and Family Court representatives to prepare applications without input from parents contributed to several other violations. We found that of the 229 claims in our sample without properly signed applications, 137 contained other violations as well. For instance, 34 claims were for services provided outside the 12-month authorization period, and 64 claims were supported by applications that were not properly authorized. Allowing a contractor to generate 8,193 applications, in some cases years after the "emergencies" occurred, is a clear violation of Federal criteria. In total, the 229 claims contained 175 other violations.

DPW Response

The DPW stated they could not comment on the 102 sample cases that had missing application forms or had forms without a signature because DPW needed to review the work papers and source documents in Allegheny County. The DPW also stated that they could not comment on the details of the two cases where applications were allegedly prepared for vacated rooms. The DPW did not agree with the OIG finding on the remaining 125 sample cases.

The DPW asserted that the ACF's position is that the Federal regulation at 45 C.F.R. §206.10 applies to EA. However, the DPW claims the OIG has refused to apply that portion of the regulation that states that an application may be filed by an "authorized representative" or "where the applicant is incompetent or incapacitated, someone acting responsibly for him." 45 C.F.R. §206.10(a)(1)(ii). It is the DPW's position that this language plainly includes a social service agency acting on behalf of a minor child.

The DPW acknowledged that the ACF currently takes the position that an application for EA must be filed by the family, not the State. However, the DPW stated that ACF's position was never formally communicated to the States. The DPW stated that the only documents that the ACF could cite in support of their position were an Action Transmittal SSA-AT-78-44, which references an application but does not say who must sign it, and an internal memorandum from 1989 that was never given to the DPW. The DPW's position is that ACF's interpretation of the regulation cannot be enforced against them because they never had fair notice of its terms.

The DPW stated that even though their own State plan calls for a parent signature, they interpreted their plan to allow agency employees to sign whenever a parent was not readily available. They also argued that there is precedent for allowing agency employees to sign EA applications. The DPW asserted that in the early 1990s, the ACF expressly approved a procedure by which the Connecticut Commissioner of the Department of Children and Families applied on behalf of each foster child by sending a request for EA in the form of a memo. The DPW also stated that in North Carolina Department of Human Services, DAB No. 1631 (1997), the DAB stated that the ACF agreed that the EA "application may be submitted by the child's parent or a responsible adult or by a social service agency acting on behalf of the child." The DPW believes the right of a social service agency to sign an application for a child in the custody of the county is also confirmed in prior DAB decisions. They add that in Louisiana Department of Health and Human Services, DAB No. 989 (1988), the Appeals Board interpreted the companion Medicaid regulation to §206.10 and stated that: "it would be unreasonable to expect a very young child to sign the form, and the caseworker, representing the State, is a likely person to verify the information on the form. Neither the regulation (42 C.F.R. §435.907) nor the State plan mandate that the child or parent must sign, and there apparently is no bar to the caseworker being the sole signatory."

The DPW noted that the form reviewed by the auditors was not necessarily the application form for purposes of EA. The form was sometimes used as the application, while in other instances it served merely to authorize benefits based on information and applications already in the case file.

Under appropriate circumstances, the public assistance common application form or the child welfare family services plan may be considered the EA application.

The DPW argued that parental signature requirements only make sense in the context of a child who is living in a family situation. When a child is taken into custody, the local agency acts in loco parentis and does everything the parent would do, including making application for government benefits. The DPW stated that OIG audit criterion of a parent signature on the EA application is not only contrary to the plain language of the regulation and ACF's prior interpretations, it is nonsensical.

OIG Comment

The 45 CFR 206.10(a)(1)(ii) states that the Agency “shall require a written application, signed under penalty of perjury, on a form prescribed by the State agency, from the applicant himself, or his authorized representative, or, where the applicant is incompetent or incapacitated, someone acting responsibly for him.”

There was no evidence to show that 224 of the 229 EA applicants whose claims we questioned even knew that the Counties applied for EA on their behalf. Five applicants who did know all refused to apply for EA. The 45 CFR 234.120 and Action Transmittal SSA-AT-78-44 state that eligibility must be based on an application. An application indicates the applicant’s personal intent to apply for assistance. The DPW also failed to comply with 45 CFR 206.10 (a)(4) which states that “Adequate notice shall be sent to applicants and recipients to indicate that assistance has been authorized (including the amount of financial assistance) or that it has been denied or terminated. Under this requirement, adequate notice means a written notice that contains a statement of the action taken, and the reasons for and specific regulations supporting such action, and an explanation of the individual’s right to request a hearing.”

The DPW stated that ACF expressly approved a procedure by which the Connecticut Commissioner of the Department of Children and Families could apply on behalf of each foster child by sending a request for EA in the form of a memo. The EA claims we disallowed were made as a result of a child committing a delinquent act that resulted in the child being incarcerated or placed on probation, and not as the result of someone abusing a child and thereby creating the need for a foster care situation. The OIG accepted two claims in which an authorized representative applied for the children in foster care where abuse or neglect may have been the cause of the placement. In the cases disallowed by the OIG for lack of a signed application by the applicant, parent or guardian, there were no reports of child abuse or neglect included in the EA case files. As mentioned previously, we requested that Child Line match the children in our sample to their database of reported abuse and neglect cases. The Child Line did not provide us with any information that showed that anyone reported any of the children as being abused or neglected. If DPW could have provided us with conclusive evidence that Emergency Assistance was needed because the children were removed from the home due to abuse or neglect, we would have accepted a caseworker’s signature.

Although our report relied on Federal criteria, Pennsylvania’s own State Code, Title 55 Chapter 125.1 addresses the issue of who must sign an application form. The Pennsylvania Code requirements for signing of an application form are as follows:

“Application is made on an application form approved by the Department ... The applicant, regardless of age, shall sign prior to filing the form ... Failure to sign shall result in the ineligibility of the person required to sign the form.” (55 Pa. Code § 125.1).

The Pennsylvania State Code Title 55, Chapter 289.4 Emergency Assistance Procedures also states that *“Emergency assistance grants are always paid directly to the client.”* Our audit showed that DPW did not notify most of the clients that DPW applied for EA grants on their behalf. The clients never received the money, because DPW did not forward the funds to the applicant as required by the Pennsylvania Administrative Law.

Improper Authorization

Seventy-two claims in our statistical sample of 300 claims were never authorized for EA program participation or were authorized beyond the 12-month service window allowed by Federal criteria. Projecting these errors to the universe of claims, we estimate that DPW was reimbursed \$9,105,614 in FFP for these claims. Aside from this violation, 66 of the 72 claims violated at least 1 other provision of the Federal criteria.

Sample Strata	Sample Population	# of Claims with Violation	Error %
C&Y	100	27	27.0%
SC	100	23	23.0%
Family Court	100	22	22.0%
Totals	300	72	

Federal Criteria

The period in which EA can be furnished to a recipient is not open-ended. The 45 CFR 233.120(b)(3) states that Federal matching is available only for emergency assistance that the State authorizes during one period of 30 consecutive days in any 12 consecutive months. That does not mean that the services are limited to 30 days but rather that they must be authorized within a 30-day period and that the services could be rendered over a 12-month window. If an emergency extends beyond the 12-month service window, EA could continue only if it was re-authorized at the 12-month point.

The 45 CFR 205.100 states “The State agency will not delegate to other than its own officials its authority for exercising administrative discretion in the administration or supervision of the plan” ... “In the event that any services are performed for the single State agency by other State or local agencies or offices, such agencies and offices must not have authority to review, change, or disapprove any administrative decision of the single State agency, or otherwise substitute their

judgement for that of the agency as to the application of policies, rules, and regulations promulgated by the State agency.”

According to 45 CFR 234.120, FFP is available in assistance payments made in accordance with a State plan under titles I, IV-A, X, XIV, or XVI of the Social Security Act to any family or individual for periods beginning with the month in which they meet all eligibility conditions under the plan and for which an application has been received by the agency.

Part IV-5214 of the Handbook of Public Assistance Administration states that all disbursements of assistance payments must be supported by a prior (or simultaneous) authorization of award. The Pennsylvania State plan recognizes the need for authorizations within a 30-day time frame.

Audit Results

Of the 300 claims sampled, 72 were not supported by applications that were properly authorized by DHS or Family Court representatives. The 72 claims totaled \$111,646 for which DPW was reimbursed FFP of \$55,823. We are questioning the entire FFP.

Thirty-Eight claims totaling \$24,432 in FFP were supported by applications that were generated by a computer program that a contractor ran for the most part more than a year after the service authorization dates that were listed on the authorization form. Officials from 2 other contracting firms authorized the 38 applications. The ACF did not approve nor did the single State agency authorize the contractors to make authorization decisions. There was no indication that the contractor even talked to the families or that the families even knew that assistance was requested. In December 1996, a contractor generated 5,500 EA applications by matching EA claims files with the PEAPS database. Those claims, which were not supported by an application on file, had one computer generated. For example, the contractor generated an application for one child that stated everyone, the parents, the C&Y representatives and the juvenile probation representatives were all unavailable to sign. The application was then given to a different contractor to authorize the application. The contractor signed the authorization that indicated that the EA service was authorized as of April 16, 1994, more than 2 years before the application for EA was generated. The authorizing contractor official did not attach any information to show how he determined that the child was eligible for EA. There was nothing in the case file to show that the contractor talked to the child's family or the child about the \$2,089 of assistance applied for and granted by the probation department.

Twenty claims totaling \$15,859 in FFP were not supported by authorization documents. There was no evidence that authorization forms were ever prepared. The EA applications for these claims were also missing.

Eleven claims totaling \$13,768 in FFP were supported by applications prepared by Family Court representatives. In three cases, the parents signed the applications. These applications, however, were never authorized for the EA program.

Three claims totaling \$1,764 in FFP were supported by applications for which the authorizations were completed more than 12 months after the dates of the applications. This was contrary not only to Federal criteria that stipulated a 12-month service window but also to the State Plan.

We found that 66 of the 72 claims violated other provisions of the Federal criteria. In total, the 72 claims contained 88 other violations.

DPW Response

The DPW could not address the 20 claims for which no authorization form was provided. They did not agree with the OIG finding for the remaining 52 cases.

The DPW's position is that Federal regulations provide that EA may be authorized to meet needs that arose before the 30-day window during which benefits may be authorized. The DPW says they know of no ACF policy clarification that limited the retroactive period for which benefits may be authorized to 12 months. By logical extension, there is no limit on the retroactive period for which benefits may be authorized, so long as the same emergency existed on the date of authorization. For abused and neglected children, the DPW believed a single emergency may last for years.

The DPW also believed that the OIG failed to apply ACF policy regarding use of common application forms. It is the DPW's position that subsequent to the decision of the DAB in New York Department of Social Services, Decision No. 585 (1984), the ACF adopted a policy that allowed states to retroactively transfer cases to a Federal category based upon the existence of a common application form. Where a common application form exists, the DPW believed that Federal policy allows the State to transfer the client to EA retroactively. The DPW stated that the OIG did not consider common application forms in their review.

OIG Comment

The DPW's position that there is no time limit on authorizing EA and that they could retroactively authorize and provide EA services indefinitely is not in accordance with Federal or State regulations. The 45 CFR 233.120 (b)(3) required that EA services be authorized in a 30-day period. If any need for EA occurs after the 30-day period, the applicant must wait a minimum of 12 months from the date of the last EA application submission before submitting another EA application.

Pennsylvania's approved State plan language follows the regulation closely on this issue. The plan reads as follows: "services will be provided until the emergency condition is alleviated and must be authorized during a single 30-day period no less than 12 months after the beginning of the family's last EA authorization period."

Although our audit relied on Federal criteria, Pennsylvania's own State Code Title 55, Subpart I, Chapter 289.3 (c) was also violated. The Pennsylvania Code states:

“Period of eligibility. Emergency assistance will be authorized only for one period of 30 consecutive days in any 12-consecutive months. The 30-day period begins on the date emergency assistance is authorized. During the 30-day period following the authorization date, shelter costs as described in § 289.4(a)(2) (relating to procedures) may be authorized when required to meet an emergency situation. Although more than one payment may be authorized during the 30-day period, no emergency assistance may be authorized after the 30-day period has expired. An individual or family may again be eligible for emergency assistance 12 months from the date emergency assistance was first authorized.” (55 Pa. Code § 289.3).

That same Chapter 289.3(c) of the Pennsylvania Code further states:

“(2) Applicants. Emergency assistance may be authorized at time of initial application for a period not to exceed 30 consecutive days within a 12-consecutive month period.

(3) Recipients. Emergency assistance may be authorized at the time the emergency arises, at the time of redetermination or reapplication if an emergency condition is determined to exist, for a period not to exceed 30 consecutive days provided 12-consecutive months have passed since the date Emergency Assistance was last authorized.” (55 Pa. Code § 289.3 (c)).

The DPW position that other forms could be used in place of the EA application (which we received from County officials) is not in compliance with DPW’s own Policy. The DPW’s Children, Youth, and Families Bulletin #3140-96-05 states that EA eligibility forms CY-887 and JCJC-EA-1 should be used to determine eligibility. During our audit we asked County officials for complete EA case files. The “common application forms,” which may or may not exist for the 52 cases, were not provided to us and were not part of the EA case files or the documents attached to the EA applications we reviewed. However, we would have accepted an alternative application form that contained the required information including signatures and dates.

Service Provided Outside the 12-Month Service Window

There were 37 claims in our statistical sample of 300 claims that were for services provided outside the authorized 12-month service window. Projecting these errors to the universe of claims, we estimate that DPW was reimbursed \$7,011,634 in FFP for services provided outside the 12-month period. Aside from this violation, 34 of these claims violated at least 1 other provision of the Federal criteria.

Sample Strata	Sample Population	# of Claims with Violation	Error %
C&Y	100	18	18.0%
SC	100	17	17.0%
Family Court	100	2	2.0%
Totals	300	37	

Federal Criteria

Timing of the application and the authorization for services is critical to FFP reimbursement. According to 45 CFR 234.120, FFP is available in assistance payments made under a State plan under titles I, IV-A, X, XIV, or XVI of the Social Security Act to any family or individual for periods beginning with the month in which they meet all eligibility conditions under the plan and in which an application has been received by the agency. In addition, the 45 CFR 206.10(a)(1)(ii) states the Agency “shall require a written application, signed under penalty of perjury.” Part IV-5214 of the Handbook of Public Assistance Administration states that all disbursements of assistance payments must be supported by a prior or simultaneous authorization of award. And, House Committee Report Number 544, 90th Congress, 1st Session 109 (1967) states that “the payment of services must be necessary in order to meet an immediate need that would not otherwise be met.”

Under the EA program, services could be provided up to 12 consecutive months from the date of the EA application authorization. Claims made for services provided beyond this 12-month service window without the benefit of a new authorization, were not allowable. Pertinent criteria follow.

- Section 406(e)(1) of the Social Security Act stated that EA can be “furnished for a period not in excess of 30 days in any 12-month period”.
- The 45 CFR 233.120(b)(3) states Federal matching is available only for emergency assistance that the State authorizes during one period of 30 consecutive days in any 12 consecutive months.

The ACF’s practice was that EA services could be authorized and provided for a period not to exceed 12 consecutive months. A new application and authorization was required to continue EA services beyond the original 12-month window. The Pennsylvania State plan stated that the EA services were to be provided until the emergency condition was alleviated. We believe that this provision in the State plan must be taken in conjunction with the Federal criteria and ACF practice which was to allow the services to be continued within the 12-month window and beyond only if there was a re-authorization.

Audit Results

Of the 300 claims sampled, 37 were for services that were outside the 12-month authorized service window. The 37 claims totaled \$60,905 for which DPW was reimbursed FFP of \$30,452. We are questioning FFP of \$29,955 (the difference represents FFP for services provided during the 12-month service window).

We found 4 claims where the reported emergency on which the claim was based had ceased and services halted before the application was even prepared. The 4 claims totaled \$3,412 for which DPW was reimbursed FFP of \$1,706. We are questioning FFP of \$1,209 (the difference

represents FFP for services provided during the 12-month service window). In these cases the EA application and authorization were prepared more than 12 months after the services were provided. For example, a child was placed in an extended foster care facility from December 3, 1993 to May 27, 1994. Not until August 5, 1996, nearly 27 months after the child was released from the foster care facility, did a DHS representative request that a parent make an EA application. On August 5, 1996, the EA application was authorized for the service, effective August 2, 1996. However on August 12, 1996, DHS made the EA application effective as of April 1, 1994, a clear violation of congressional intent as indicated in the House Committee Report cited above.

Thirty-three DHS claims¹ were for services provided beyond the 12-month service window. The 33 claims totaled \$57,492 for which DPW was reimbursed FFP of \$28,746. We are questioning all of the FFP since none of the services reviewed was provided during the 12-month service window.

In determining if the claims were for services provided within the 12-month service window, we obtained the dates of services for all claims in our sample and compared them to the dates of the EA applications. If the service was provided within 12 months of the authorized period we accepted the claim. Services provided outside the 12-month service window were not allowable. Most of the costs claimed beyond the 12-month authorization period were due to the practice of continuing claims for children in institutions or foster homes for as long as they remained in those settings, without any regard for the 12-month service window.

We spoke to four DHS officials who authorized most of the applications that we reviewed. Two officials who authorized applications stated that they were not involved with Title IV-A; this was not their area. The four officials stated that they signed the authorizations under the direction of their supervisor and that no checks were made to determine if children were really eligible for EA. A contractor who also signed EA authorizations stated that he did not receive training on handling the applications. The contractor stated that DHS applications were computer generated, and had been prepared well before DPW reviewed them. After the DPW review, fiscal department personnel were instructed to sign the authorization section of the applications.

We found that 34 of the 37 claims violated other provisions of the Federal criteria. For example, applications for 34 claims did not contain the proper signatures, and 7 of the claims were not properly authorized. In total, the 37 claims contained 55 other violations.

¹ The Family Court also submitted claims for services provided beyond the 12-month service window, but we did not include these claims in our statistical sample. Because of the computer system used by Family Court, we were able to identify 100 percent of these claims, making a sample unnecessary.

DPW Response

The DPW disagreed with our finding that services were provided outside the 12-month service window. They stated that in a memorandum dated January 5, 1993, ACF's Director of the Office of Family Assistance declined to establish an artificial limitation on the period of time benefits could be provided based on a single authorization. The memorandum stated that "a Federal determination that a proposed time limit for providing EA is too long would have to be based on a finding that the proposed duration of assistance is longer than necessary to respond to the emergency."

The DPW stated that the OIG cited an unnamed ACF official as authority for the statement that "ACF's practice was that EA services could be authorized and provided for a period not to exceed 12 months." The DPW also stated the "ACF practice" conflicts with policy established by the Director of the Office of Family Assistance and DPW was never advised of a contrary policy.

OIG Comment

Emergency Assistance authorizations are valid for only a 12-month period. The purpose of the EA program was to provide temporary financial assistance and supportive services to eligible families experiencing an emergency. Section 406(e)(1) of the Social Security Act states that EA can be "furnished for a period not in excess of 30 days in any 12-month period." The 45 CFR 233.120(b)(3) states Federal matching is available during one period of 30 consecutive days in any 12 consecutive months. If any need for EA occurs after the 30-day period, the applicant must wait a minimum of 12 months from the date of the last EA application submission before submitting another EA application.

Pennsylvania's approved State plan language follows the regulation closely on this issue. The State plan reads as follows:

"services will be provided until the emergency condition is alleviated and must be authorized during a single 30-day period no less than 12 months after the beginning of the family's last EA authorization period."

Although our audit relied on Federal criteria, Pennsylvania's own State Code Title 55, Subpart I, Chapter 289.3(c) Emergency Assistance Requirements was also violated. The Pennsylvania Code states:

"Period of eligibility. Emergency assistance will be authorized only for one period of 30 consecutive days in any 12-consecutive months. The 30-day period begins on the date emergency assistance is authorized. During the 30-day period following the authorization date, shelter costs as described in § 289.4(a)(2) (relating to procedures) may be authorized when required to meet an emergency situation. Although more than one payment may be authorized during the 30-day period, no emergency assistance may

be authorized after the 30-day period has expired. An individual or family may again be eligible for emergency assistance 12 months from the date emergency assistance was first authorized.” (55 Pa. Code § 289.3 (c)).

Unrelated Claim Within 12-Month Service Window

Thirty-four claims in our statistical sample of 300 claims were for children with a prior unrelated EA claim during the same 12-month service window. Projecting these errors to the universe of claims, we estimate that DPW was reimbursed \$2,122,938 in FFP for claims for these children. Aside from this violation, 29 of the 34 claims violated at least 1 other provision of the Federal criteria.

Sample Strata	Sample Population	# of Claims with Violation	Error %
C&Y	100	2	2.0%
SC	100	32	32.0%
Family Court	100	0	0.0%
Totals	300	34	

Federal Criteria

The 45 CFR 233.120(b)(3) states that Federal matching is available only for emergency assistance that the State authorizes during one period of 30 consecutive days in any 12 consecutive months. Part IV-5214 of the Handbook of Public Assistance Administration states all disbursements of assistance payments must be supported by a prior or simultaneous authorization of award.

The ACF provided additional clarification of the criteria as follows:

- States must properly authorize emergency assistance. There can be only one 30-day authorization period for EA services in a 12-month period. One or more authorization actions related to the emergency can occur within this period.
- Additional EA services within the 12-month period that were not authorized during the original 30-day authorization period are not eligible for Federal reimbursement. This is because these additional services constitute a second emergency within the 12-month period.

The DPW State plan recognized that a second emergency within 12 consecutive months of a prior unrelated emergency was not eligible for EA services. In a Children, Youth and Families Bulletin dated April 21, 1995, DPW stated that verification of the 12-month minimum requirement for service authorization would be done through use of the PEAPS. When matches occur, there must be a review made to determine if the current situation is a continuation of the initial emergency or if it is a new emergency for the child. New emergencies would not be eligible for EA services.

Audit Results

Of the 300 claims sampled, 34 were for children with a prior unrelated EA claim during the same 12-month service window. In our opinion, these claims represent second emergencies and are not eligible for FFP under the EA program. The 34 claims total \$65,065 for which DPW was reimbursed FFP of \$32,532. We are questioning all of the FFP.

There were 32 claims for which we were not provided copies of prior applications. We found, however, that other EA services were provided to the children for whom the 32 claims were submitted. The other EA services were provided:

- ▶ prior to the dates of the applications for the 32 claims in our sample; and
- ▶ within the same 12 month service window as the 32 claims in our sample.

The other EA services were unrelated to the claims that we sampled as evidenced by either separate arrests, unrelated services, or breaks in stay for the 32 claims in our sample. For example, a SC claim in our sample was for a child's 12-day stay in a detention center from January 1, 1995 to January 12, 1995. The child was arrested for possession of 26 pieces of crack cocaine with intent to deliver, and criminal conspiracy. The EA application for this incident was prepared by DHS on October 7, 1994 and authorized initially for the same date but then changed to April 1, 1994. Although we were not provided another EA application, we noted that this child was claimed for a different stay at the SC after a previous arrest on April 1, 1994 for aggravated assault. The arrests for aggravated assault and selling drugs were not related.

Based on DPW's instruction, the 34 claims should have been identified as "matches" in PEAPS and reviewed manually to determine if they were second emergencies. We found no indication that any of the claims were so identified probably because SC did not make full use of PEAPS, and 32 of the 34 claims questioned were SC claims.

We found that 29 of these 34 claims violated other provisions of the Federal criteria. We noted applications for 28 of the claims did not contain the proper signatures, and 8 of the claims were for services provided outside the 12-month authorization period. In total, the 34 claims contained 45 other violations.

There were 2 claims for which we were provided copies of prior applications for separate emergencies unrelated to the emergencies involved in our sample claims. The other applications were prepared within the same 12-month service window as were our sample claims. For example, a SC claim in our sample was for a child's 23-day stay in a detention center from January 1, 1995 to January 23, 1995. The child was arrested for carrying a firearm without a license. The EA application for this incident was dated October 22, 1994. We determined, however, that there was one other application for services authorized by a DHS representative on June 3, 1994, well within the 12-month service window established by Federal criteria. The

June 3, 1994 application corresponds to the date of a previous arrest, again for carrying a firearm without a license. Since there were two applications within the 12-month service window, we concluded that there were two separate emergencies, and that the second emergency--our sample claim--was ineligible.

DPW Response

The DPW believed that their approved State plan provided for a single authorization of a continuum of EA services. They refer to a policy clarification dated August 24, 1994 by ACF's Director of the Office of Family Assistance which advised that New Jersey's provision of juvenile detention care or foster care following failed preventive family preservation services did not violate the single authorization requirement of Federal law. The Director noted that "the precedent for this type of authorization is the current practice of many States in authorization of EA for very general family preservation and reunification services."

The DPW believes that OIG ignored the continuum of services concept and the definition of an emergency in the State Plan. An emergency is a breakdown in family functioning, and continues until the family's problems are resolved. They assert the OIG disregarded this definition when OIG decided that the mere receipt of two types of payments for EA services in a single 12-month period was an error.

OIG Comment

In addition to the Federal criteria cited in the report, we found that the DPW State plan recognized that a second emergency within 12 consecutive months of a prior unrelated emergency was not eligible for EA services. In a Children, Youth and Families Bulletin dated April 21, 1995, DPW stated that verification of the 12-month minimum requirement for service authorization would be done through use of the PEAPS. When matches occur, there must be a review made to determine if the current situation is a continuation of the initial emergency or if it is a new emergency for the child. New emergencies would not be eligible for EA services.

Although our audit relied on Federal criteria, Pennsylvania's own State Code Title 55, Subpart I, Chapter 289.3 (c)(1) Emergency Assistance Requirements, Period of Eligibility was violated. The Pennsylvania Code states:

"The second emergency assistance authorization in any 12-consecutive month period is solely State funded." (55 Pa. Code § 289.3 (c)(1)).

We allowed claims for all services related to a single emergency within a 12-month period. Such services could include: a claim for an arrest, placement in a detention facility, and subsequent probation. However we disallowed claims for a second emergency within a 12-month period. Emergencies we questioned were the result of new emergencies occurring after the 30-day authorization window. Two of the cases we cited had more than one EA application prepared by

county officials. This is a clear sign that the county official believed that the emergencies were not related.

Lack of Support for Claim

Twenty-six claims in our statistical sample of 300 claims were not fully supported. We questioned 15 claims in total because we were not provided any support to show that the children for whom the claims were made existed or that the services were rendered. We partially questioned an additional 11 claims because services were not rendered during a portion of the time periods for which the claims were made or the vendor invoice was less than the claimed amount. Projecting these errors to the universe of claims, we estimate that DPW was reimbursed \$2,225,704 in FFP for services that may not have been provided. Aside from this violation, 23 of the 26 claims violated at least 1 other provision of the Federal criteria.

Sample Strata	Sample Population	# of Claims with Violation	Error %
C&Y	100	14	14.0%
SC	100	0	0.0%
Family Court	100	12	12.0%
Totals	300	26	

Federal Criteria

The 45 CFR 206.10 (a)(8) states “Each decision regarding eligibility or ineligibility will be supported by facts in the applicant’s or recipient’s case record.” The ACF provided specific guidance concerning EA claim costs, which stated that costs not supported by documentation were unallowable. A policy information memorandum, dated February 8, 1973 issued by the previous Health, Education, and Welfare Department (Policy #21) prescribes adequate documented evidence of program costs as necessary to receive FFP. Fiscal records must support the expenditures. Agency records must identify separately each AFDC-EA case, just as required in all the Federally aided programs, to facilitate State and Federal review.

Audit Results

Of the 300 claims sampled, 26 were not adequately supported. The 26 claims totaled \$34,625 for which DPW was reimbursed FFP of \$17,313. We are questioning FFP of \$9,654.

For our analysis, we requested evidence of vendor documentation to support the EA costs claimed by the DHS for FFP reimbursement. The C&Y claims were supported by a detailed Family & Children Tracking Sheet and vendor bills, which listed the number of days, billing rate, and type of service a child received. The SC claims were supported by a Resident Unit Record that identified the child’s admission date, and a juvenile history file that listed the child’s arrest dates and court dispositions. Family Court claims were also supported by a juvenile history file.

We questioned fifteen claims in total. The FFP reimbursed for these claims totaled \$4,530. For 11 claims, DHS was unable to find a vendor invoice, and the payment history for the child on whose behalf the claim was made showed that no services were provided for the period claimed. For two DHS claims, the services claimed were not rendered. For example, one therapist billed \$273 for 3 hours of family counseling for which the child never attended. Another therapist for a different child billed \$114, called the mother, and the mother refused services. The other two claims were Family Court claims for which the Family Court was unable to locate any juvenile history for the children on whose behalf the claims were made. A Family Court representative stated that this can happen if a child's name is misspelled or if a child uses a different name, but could provide no additional support for the two claims.

We partially questioned 11 claims. The FFP for these claims totaled \$10,249, of which we questioned \$5,124. One of the claims was from DHS. The DHS provided a bill to support the C&Y claim, but the bill was for an amount less than what was actually claimed. The child care provider billed DHS 31 days at \$132.50 a day for a total \$4,107 for the month. The DHS's summary EA invoice claimed the monthly cost was \$5,871, thus there was no evidence that \$1,763 in costs were incurred.

Ten of the partially questioned claims were from Family Court. The children on whose behalf the claims were made had ended probation services during the period claimed, but the PEAPS, which was used by Family Court to generate claims, was not updated to show that the services were halted. For example, Family Court claimed probation provided to a child from January 24, 1995 to December 31, 1995. However, the Family Court's juvenile history file showed that all charges against the child were dismissed on February 2, 1995 thus no probation services were provided after the dismissal.

We found that 23 of the 26 claims violated other provisions of the Federal criteria. For example, only 6 of the applications for the 26 claims contained the proper signatures, and 7 of the claims were not properly authorized. In total, the 26 claims contained 32 other violations.

DPW Response

The DPW did not comment on this finding.

Duplicate Billing

There were three claims in our statistical sample of 300 claims that represented duplicate billings. One of the claims was for the same bill that had been billed and paid under the Title IV-E program. The other two claims were for residential services that were already furnished and simultaneously claimed under the Title IV-E program by different providers. The three claims were for \$1,840. The FFP for these duplicate claims was \$920. Aside from this violation, these claims violated three other provisions of the Federal criteria.

Sample Strata	Sample Population	# of Claims with Violation	Error %
C&Y	100	2	2.0%
SC	100	1	1.0%
Family Court	100	0	0.0%
Totals	300	3	

Because of the small number of claims identified as duplicated in our sample, we did not make an individual projection for this violation.

Federal Criteria

The OMB Circular A-87, (effective for costs incurred after September 1, 1995 or the beginning of the State's fiscal year) describes allowable billing practices. Similar language was contained in the earlier version of A-87, which covered costs incurred prior to September 1, 1995. Essentially a valid claim for EA can only be billed to the Federal Government once. Double billings for the same service are not allowable, since the duplicate costs were not incurred.

Audit Results

Of the 300 claims sampled, 3 represented a duplicate charge to the EA program. For example, our review of the CYS Quarterly Emergency Assistance Summary Invoice for one claim for the quarter ended March 31, 1996 showed that DHS claimed \$549 under the EA program for dependent per diem foster care for the month of January 1996. The review also showed that DHS made the same claim and was paid \$549 under the Title IV-E foster care program. Thus, this claim for EA was for the same bill that had been billed and paid under the Title IV-E program.

These three claims also contained four other violations concerning the lack of a parent or guardian signature on the application, lack of evidence for the claim, and service not within 365 days of the application authorization.

DPW Response

The DPW did not comment on this finding.

ADMINISTRATIVE COSTS

Under the EA program, the Allegheny DHS reported \$20,817,944 of allowable administrative costs to DPW from July 1, 1994 to June 30, 1996. The DPW, in turn, claimed and was reimbursed \$10,408,972 in FFP. The combined results of our analysis and statistical sample showed that at least \$35,226,737 of the \$51,292,655 (68.67 percent) in direct claims for specific children violated Federal laws and regulations. Based on the results of our analysis and statistical sample, we estimate that at least \$7,147,841 of the \$10,408,972 in FFP reimbursed to DPW for administrative claims in Allegheny County were associated with the processing of unallowable claims. The administrative costs associated with the direct claims that contained violations of Federal laws and regulations are not allowable.

CONCLUSIONS AND RECOMMENDATIONS

Widespread violations of Federal regulations by DPW and the Allegheny DHS and Family Court occurred in FYs 1995 and 1996 with the result that at least \$35.2 million of the \$51.3 million of FFP reimbursed to DPW during that period was for unallowable claims. The majority of the claims reviewed contained multiple violations of Federal criteria, ranging from children not living with a specified relative within 6 months of the application for EA, to parents or guardians being excluded from the application process, to widespread backdating of documents by DHS and Family Court personnel. An additional \$7.1 million in FFP was claimed for administrative costs to process the claims that violated Federal laws and regulations.

The EA program was eliminated by the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, which created the TANF block grant. We are, therefore, not making any procedural recommendations. We recommend that DPW:

1. Refund to the Federal Government \$35,226,737 for FFP associated with unallowable EA claims invoiced by the Allegheny DHS and Family Court in FYs 1995 and 1996.
2. Conduct a review using statistical sampling techniques of all quarterly claims submitted by Allegheny DHS and Family Court (including Adjusting and Supplemental claims) and reimbursed for FFP after October 1, 1996, and determine if the same conditions we noted in this report continued. Summarized results should be provided to ACF, and a refund to the Federal Government should be made for all costs inappropriately claimed.

3. Refund to the Federal Government \$7,147,841 for FFP claimed for administrative costs allocated to the EA program for processing claims that violated Federal laws and regulations.

SAMPLING METHODOLOGY

Review Objective:

The objective of our review was to determine if EA claims submitted for FFP by DPW for FY's 1995 and 1996 for costs incurred in Allegheny County complied with Federal criteria.

Population:

The population of EA claims we statistically sampled totaled 65,077. These claims consisted of:

- 54,227 claims invoiced by the Allegheny DHS Children and Youth Division;
- 6,094 claims by DHS Division of Juvenile Justice Services for Children detained at the Shuman Center;
- 4,756 children claimed by the Fifth Judicial District of Pennsylvania Court of Common Pleas, Family Court Division for probation and truant services.

We identified these claims based on quarterly claim rosters and the PEAPS database. These EA claims were submitted for FFP for the period October 1, 1994 through September 30, 1996 and reimbursed by the Federal government.

Sampling Frame:

In total we had a sample population of 65,077 EA claims totaling \$93.9 million (\$47 million Federal share).

- Fifty-two C&Y alphabetical claims rosters from the Allegheny DHS Family and Children Tracking System. These lists contained 54,227 claims valued at \$74.7 million (\$37.3 million FFP).

- Seven alphabetical quarterly SC rosters contained 6,094 claims valued at \$11 million (\$5.5 million FFP).
- The PEAPS database contained 4,756 children that received P&TS services. The claims totaled \$8.2 million (\$4.1 million FFP)

Sample Unit:

The sampling unit for the DHS claims (both C&Y and SC claims) was an individual EA claim for a child and one type of service on a quarterly claim; the sampling unit for Family Court claims was an individual child claimed for all quarters.

Sample Design:

We utilized stratified variable random sampling techniques for 52 quarterly C&Y claim rosters, 7 quarterly SC claim rosters, and the Family Courts PEAPS database.

Sample Size:

We selected a sample of 300 claims for review, consisting of:

- 100 C&Y claims from eight quarterly rosters.
- 100 SC claims from six quarterly rosters.
- 100 Family Court claims from PEAPS.

Source of Random Numbers:

The random numbers for selecting the sample items were generated using an approved Department of Health and Human Services, Office of Inspector General, Office of Audit Services, statistical software package that has been validated using the National Bureau of Standards methodology. The numbers were generated for each of the three strata independently.

Method of Selecting Sample Items:

The sample claims contained in the 52 C&Y rosters and the 7 SC quarterly rosters were numbered sequentially and independently. Sample claims for the Family Court were selected from children claimed through the PEAPS database after arranging the names alphabetically on a last name, first name basis.

Three sets of 100 random numbers were drawn; the first 100 were for the 52 C&Y rosters, the second 100 were for the 7 SC rosters, the third 100 were for the Family Courts PEAPS database. The random numbers were correlated to the numbered sample items in each roster or database.

SAMPLE PROJECTIONS

Results of Sample:

The results of our review of 300 sample claims are as follows:

Sample Results					
Stratum Number	Number of Claims in Universe	FFP Value of Universe	Sample Size	Number of Claims with Errors	FFP Value of Errors
1 (C&Y)	54,227	\$37,347,916	100	88	\$51,815
2 (SC)	6,094	\$5,524,248	100	86	\$76,371
3 (Family Court / Probation)	4,756	\$4,093,495	100	77	\$67,417
Total	65,077	\$46,965,659	300	251	\$195,603

Variable Appraisal Projections:

- Number of claims with errors identified in the sample: 251
- Value of errors identified in the sample: \$195,603

- Point estimate unallowable FFP (Difference Estimator): \$35,958,421
- Upper limit unallowable FFP (90 percent confidence level): \$41,017,100
- Lower limit unallowable FFP (90 percent confidence level): \$30,899,741

Using statistically valid sampling techniques, we estimate with 95 percent confidence that at least \$30,899,741 of the \$46,965,659 claimed was unallowable for Federal reimbursement. Our point estimate was \$71,916,842 (\$35,958,421 Federal share) with a precision of plus or minus \$10,177,359 (\$5,088,679 Federal share).



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Mr. David M. Long
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Dear Mr. Long:

This is in response to your draft report entitled "Costs Claimed Under Title IV-A Emergency Assistance for Children in Allegheny County" (CIN #A-03-99-00596) for the period October 1, 1994 to September 30, 1996.

The OIG Audit Was Prohibited by Federal Law

When welfare reform was enacted into law in 1996, Congress provided federal agencies with instructions for winding up the outstanding accounts related to the repealed Title IV-A programs, including Emergency Assistance (EA). Section 116 of the Personal Responsibility and Work Opportunity Reconciliation Act (PRWORA) explicitly stated that the head of each federal agency "shall use the single audit procedure to review and resolve any claims in connection with the close out of programs" under Title IV-A. While the Single Audit Act does not ordinarily limit the authority of the Office of Inspector General (OIG) to conduct additional audits, 31 U.S.C. §7503(c) of the PRWORA specifically directs that the closing out of accounts between the state and federal governments is to be accomplished via the single audit procedure, not an exception to that procedure. Accordingly, the OIG cannot rely upon the exceptions contained in the Single Audit Act as authority to review claims submitted under the EA program.

Your audit was initiated almost one year after the Pennsylvania Department of Public Welfare's (DPW's) termination of its old Title IV-A program, and was conducted outside of the parameters of the Single Audit Act. Therefore, it was conducted in express contravention to federal law. Moreover, as is more fully explained below, we believe that the OIG applied erroneous audit criteria to determine that those sample cases were in error. Accordingly, we not only reject the audit as illegal, we reject its findings as both factually and legally wrong.

OIG Applied Audit Criteria That Was Never Communicated to the States

Federal law is clear that the propriety of expenditures made under a federal grant-in-aid program such as EA must be judged "by the law in effect when the grants were made." Bennett v. New Jersey, 470 U.S. 632, 105 S.Ct. 1555 (1985). Under the Freedom of Information Act (FOIA), states may not be bound by federal interpretations, unless they are either published, properly indexed, or the state has "actual and timely notice of the terms thereof." 5 U.S.C. §552(a)(1). In the words of the Department of Health and Human Services' (DHHS') own Departmental Appeals Board, "the State cannot be fairly held to the Agency's interpretation if the State did not receive adequate, timely notice of that interpretation in the context where there was another reasonable interpretation relied on by the State." Illinois Department of Children and Family Services, DAB No. 1335 (1992).

Under the foregoing basic principles of federal grant law, the OIG had a duty to validate the legal effectiveness of the audit criteria it applied to the DPW by insuring that each criterion was both officially adopted as policy by the Administration for Children and Families (ACF) and was communicated to the states in a timely fashion. Such validation of the audit criteria is part of the basic obligations imposed by the planning, due professional care, and independence requirements of the Government Audit Standards (GAS). Without such validation, the OIG is not conducting a bona fide professional audit. The audit becomes a political and rhetorical document that shows only the amounts of money that might have been saved had more restrictive criteria been legally adopted and communicated to the states.

In a prior EA audit raising the same concern, CIN #A-03-98-00592 (hereinafter the "prior audit"), the OIG responded to our concern by stating that "the State misinterprets a provision of the Freedom of Information Act at 5 U.S.C. §552(a)(1)." However, it is the OIG that is misconstruing the law. The FOIA divides interpretations into those of general applicability, which must be published in the Federal Register [5 U.S.C. §552(a)(1)(D)], and those of lesser status, which must be indexed and distributed by sale or otherwise [5 U.S.C. §552(a)(2)]. If an interpretation is neither published nor indexed, the interpretation may not be "used or cited as precedent against a party" unless the party has actual and timely notice of the terms thereof. 5 U.S.C. §552(a)(2)(ii).

The OIG concluded in its prior audit that the state had actual and timely notice of all guidelines on which it relied. However, the DPW strenuously disputes this assertion. There was no attempt by the OIG to validate that the DPW received actual and timely notice of the various unpublished interpretations and guidelines on which the audit relies. The OIG failed its fundamental responsibility to validate the legal effectiveness of the audit criteria applied in this matter. As a result, the audit here is not an audit at all in the professional sense of the word. As noted above, the audit only shows the amounts of money that might have been saved had the program been run differently by the ACF.

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The OIG's failure to validate the audit criteria is, perhaps, best illustrated by the draft report's citation to a conversation with an unidentified ACF official as the source for the OIG's conclusion that "longstanding Office of Family Assistance policy required that the individual family, not the State agency, had to file an application for EA benefits and services." Draft Report, p. 15. The anonymous official's interpretation plainly conflicts with the cited, underlying regulation that expressly states that an application can be filed by an authorized representative, or someone acting responsibly for the applicant. 45 C.F.R. §206.10(a)(1)(ii). Moreover, the anonymous official's interpretation has never been communicated to the states or even officially adopted by the ACF. The fact that the OIG cited the DPW for a \$34 million overpayment based upon an interpretation that is facially inconsistent with the language of the underlying regulation, and which interpretation was provided by an ACF official whose name is not even disclosed in the report, demonstrates why we reject the findings of the audit as unreliable and wrong. Moreover, the OIG's response in the prior audit that it "consulted as appropriate with legal counsel and ACF with officials" does not address the DPW's fundamental complaint that it never received fair notice of the interpretation of the anonymous ACF official being applied by the OIG.

We also wish to express our concern regarding the OIG's erroneous statement of the contents of Action Transmittal SSA-78-14 and the repealed regulation at 45 C.F.R. §233.120. The draft report states that the transmittal and the regulation require an applicant's "personal intent" to apply for assistance. Draft Report, p. 14. However, the words "personal intent" appear nowhere in the transmittal, and the cited regulation does not even contain a reference to an application requirement. The OIG's misstatement of the contents of the transmittal and the regulation again highlights why we reject the audit findings as unreliable and wrong.

PEAPS ANALYSIS OF P&TS SUBMISSION – CLAIMS BEYOND 12-MONTH SERVICE WINDOW

DPW Response: The draft audit claims that federal law limited the state to a 12-month service window and questions \$1.4 million based on a violation of this alleged limitation. The DPW disagrees with this audit finding because the ACF never established a 12-month limit on the length of the EA benefit period.

ACF policy has long distinguished between the period of time during which benefits can be authorized and the period of time during which benefits can be provided (the "benefit period"). Under the interpretation adopted by the ACF, benefits may only be authorized during 30 days in any 12-month period. The ACF does not interpret the 30-day language, 42 U.S.C. §406(e) and 45 C.F.R. §233.120(b)(3), as applying to the benefit period. Over the years, the ACF gradually expanded the length of the allowable benefit period from 30 days to 90 days, and then from 90 days to one year. Finally, in a memorandum dated January 5, 1993, which had been explicitly authorized by the Assistant Secretary for Children and Families, the Director of the Office of Family Assistance stated that none of the official policy statements previously issued by the

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ACF "establishes a specific time standard for determining when a particular type of - assistance may no longer be viewed as addressing an emergency. Accordingly, a Federal determination that a proposed time limit for providing EA is too long would have to be based on a finding that the proposed duration of assistance is longer than necessary to respond to the emergency." Consistent with the January 3, 1993 memorandum, the DPW's approved State Plan language permits service benefit periods in excess of one year, and expressly states that "services will be provided until the emergency is alleviated...."

We do not dispute that Congress originally intended EA to provide only temporary financial assistance. However, as evidenced by the January 3, 1993 memorandum, the ACF made a conscious and deliberate decision to eliminate any durative limitation for the EA benefit period. Both the ACF and the OIG appear to agree that EA could effectively be furnished indefinitely and continuously, so long as applications were taken and benefits reauthorized every 12 months. The only issue here is whether new paperwork had to be completed every 12 months. Based on the January 3, 1993 memorandum, we do not believe that new paperwork was required.

The OIG has cited no document that overruled the January 3, 1993 memorandum, or which imposed a maximum 12-month limit on the length of the benefit period. We received no notice of a contrary interpretation. Accordingly, we reject the audit finding.

CLAIM ROSTER ANALYSIS - EA CLAIMS SUPPLEMENTED THE TITLE IV-E FOSTER CARE PROGRAM

DPW Response: The OIG cited the DPW for \$2.8 million in errors because Allegheny County billed the unallowable portion of foster care maintenance costs to the EA program. The OIG's position is based upon the now-repealed §409 of the Social Security Act, OMB Circular A-87, and the DPW's State Plan language.

The OIG's reliance upon §409 is misplaced. Section 409 provides that a Title IV-E child shall not be regarded as a member of a family "for purposes of determining the amount of benefits of the family" under Title IV-A. The EA statute draws a clear distinction between aid provided to the "child" and aid provided to "other members of the household in which he is living" (i.e., the family). The statute prohibits the state from using income and resources of the Title IV-E child to determine the amount of EA provided to the family. However, it says nothing about prohibiting the Title IV-E child from also receiving EA.

Likewise, the OIG's reliance on the OMB Circular and the DPW's State Plan provision is erroneous. The draft audit cites only the first sentence of the circular provision. The next sentence specifically states that the prohibition "would not preclude governmental units from shifting costs that are allowable under two or more awards in accordance

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with existing program agreements." OMB Circular A-87, §C(3)(c). The DPW's State Plan says that foster care services will be paid for under EA, unless the child has "such assistance provided under Title IV-E." This language does not prohibit the state from billing costs not charged to Title IV-E to EA.

As far as we can determine, the ACF has never issued definitive guidance to the states on how §409 is to be applied. Accordingly, our reasonable interpretation of the statute must be accepted by the OIG. This result is not only required by DHHS Departmental Appeals Board decisions [e.g., Illinois Department of Children and Family Services, DAB No. 1335 (1992)], it is also required by Executive Order 13132 (Federalism). With respect to federal statutes and regulations administered by the states, the OIG is required to allow the states the "maximum administrative discretion possible." E.O. 13132, §3(c).

Federal policy did not prohibit the DPW from billing unallowable Title IV-E costs to EA. Accordingly, we reject the OIG's finding relative to this issue.

INVOICING ANALYSIS – EA CLAIMS FOR DELINQUENT CHILDREN AFTER DECEMBER 31, 1995

DPW Response: The OIG questioned \$53,872 in FFP relating to services provided to children in the Allegheny County juvenile justice system after January 1, 1996. As you know, the ACF's decision to prohibit FFP for services rendered to delinquent children after January 1, 1996 is being litigated. Our position on this issue will need to await the outcome of this litigation. Accordingly, we have no further comment.

CHILD DID NOT LIVE WITH SPECIFIED RELATIVE

DPW Response: The OIG concluded that the DPW spent \$7.4 million on claims for children who did not live with specified relatives within six months of the date of application. The OIG appears to have determined a case to be erroneous whenever the child was in residential care more than six months prior to the date EA was authorized.

The OIG ignored federal regulations at 45 C.F.R. 233.90(c)(1)(v), which provide that a child is considered to be "living with" a specified relative even though the child is temporarily absent from the customary family setting. The regulation specifically states that a child is "living with" his family even if he is under the jurisdiction of the court. Accordingly, we reject the OIG's finding on this issue.

Additionally, the OIG ignored federal policy that establishes the date of a report of abuse or neglect as the date of application for EA. In the prior audit, the OIG stated it was not aware of any such policy. Accordingly, we refer you to ACF Policy Memorandum FY93-OFA-03, Issue No. 4, page 3, issued by the OFA Director to Region II on November 12, 1992. That memorandum states a report of suspected child abuse "may serve as the application for EA."

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NO SIGNED APPLICATION BY PARENT OR GUARDIAN

DPW Response: The OIG finds an overpayment of \$34.5 million based on lack of a parent signature on the EA application. We cannot comment on the 102 sample cases that had missing application forms or had forms without a signature because we need to review the work papers and source documents in Allegheny County. We also cannot comment on the details of the two cases where applications were allegedly prepared for vacated rooms. However, we reject the OIG finding on the remaining 125 sample cases.

As suggested by your report, the ACF's position is that the federal regulation at 45 C.F.R. §206.10 applies to EA. However, the OIG has refused to apply that portion of the regulation that states that an application may be filed by an "authorized representative" or "where the applicant is incompetent or incapacitated, someone acting responsibly for him." 45 C.F.R. §206.10(a)(1)(ii). This language plainly includes a social service agency acting on behalf of a minor child.

We are aware that the ACF currently takes the position that an application for EA must be filed by the family, not the state. However, ACF's position was never formally communicated to the states. When pressed on this issue by the DPW through Freedom of Information Act proceedings, the only documents that the ACF could cite in support of its position were an Action Transmittal SSA-AT-78-44, which references an application but does not say who must sign it, and an internal memorandum from 1989 that was never given to the DPW. The ACF's interpretation of the regulation cannot be enforced against the DPW because we never had fair notice of its terms (see 5 U.S.C. §552).

The DPW's State Plan calls for a parent signature, but we interpreted our plan to allow agency employees to sign whenever a parent was not readily available. There is ample precedent for allowing agency employees to sign EA applications. In the early 1990s, the ACF expressly approved a procedure by which the Connecticut Commissioner of the Department of Children and Families applied on behalf of each foster child by sending a request for EA in the form of a memo. We pointed this out in the prior audit and the OIG failed to explain why a similar procedure was unacceptable in Pennsylvania. In North Carolina Department of Human Services, DAB #1631 (1997), the DHHS Departmental Appeals Board stated that the ACF agreed that the EA "application may be submitted by the child's parent or a responsible adult or by a social service agency acting on behalf of the child." The right of a social service agency to sign an application for a child in the custody of the county is also confirmed in prior Departmental Appeals Board decisions. Thus, for example, in Louisiana Department of Health and Human Services, DAB No. 989 (1988), the Appeals Board interpreted the companion Medicaid regulation to §206.10 and stated that "it would be unreasonable to expect a very young child to sign the form, and the caseworker, representing the State, is a likely person to verify the information on the form. Neither the regulation (42 C.F.R. §435.907) nor the State Plan mandate that the child or parent must sign, and there apparently is no bar to the caseworker being the sole signatory."

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We also note that the form reviewed by the auditors was not necessarily the application form for purposes of EA. The form was sometimes used as the application. In other instances, it served merely to authorize benefits based on information and applications already in the case file. Under appropriate circumstances, the public assistance common application form or the child welfare family services plan may be considered the EA application. The OIG did not review these other forms.

Parental signature requirements only make sense in the context of a child who is living in a family situation. When a child is taken into custody, the local agency acts in loco parentis and does everything the parent would do, including making application for government benefits. The OIG audit criterion of a parent signature on the EA application is not only contrary to the plain language of the regulation and ACF's prior interpretations, it is also nonsensical. The interpretation advances no sound public policy in the context of children who have been removed from the home setting. Accordingly, we reject the OIG finding.

IMPROPER AUTHORIZATION

DPW Response: The OIG cited the DPW for \$9.1 million in errors for claims that were allegedly never authorized or were authorized beyond "the 12-month service window allowed by Federal criteria." We cannot address the 20 claims for which no authorization form was provided. These cases will have to be researched. However, we reject the OIG finding for the remaining cases.

Federal regulations provide that EA may be authorized to meet needs that arose before the 30-day window during which benefits may be authorized. We know of no ACF policy clarification that limited the retroactive period for which benefits may be authorized to 12 months. The OIG's error here is similar to that discussed above under the heading of "PEAPS Analysis of P&TS Submission – Claims Beyond 12-Month Service Window." ACF policy recognized that an emergency could last indefinitely and benefits under a single authorization could continue indefinitely until the emergency was resolved. By logical extension, there is no limit on the retroactive period for which benefits may be authorized, so long as the same emergency existed on the date of authorization. For abused and neglected children, a single emergency may last for years.

Moreover, the OIG failed to apply ACF policy regarding use of common application forms. Subsequent to the decision of the DHHS Departmental Appeals Board in New York Department of Social Services, Decision No. 585 (1984), the ACF adopted a policy that allowed states to retroactively transfer cases to a federal category based upon the existence of a common application form. Where a common application form exists, federal policy allows the state to transfer the client to EA retroactively. As noted above, the OIG did not consider common application forms in their review.

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SERVICE PROVIDED OUTSIDE THE 12-MONTH SERVICE WINDOW

DPW Response: The OIG found \$7 million in errors relating to claims provided beyond a 12-month service window. We reject this finding for the same reasons discussed above under the heading "PEAPS Analysis of P&TS Submission – Claims Beyond 12-Month Service Window." In a memorandum dated January 5, 1993, the Director of the Office of Family Assistance declined to establish an artificial limitation on the period of time benefits could be provided based on a single authorization. The January 5, 1993 memorandum further stated that "a Federal determination that a proposed time limit for providing EA is too long would have to be based on a finding that the proposed duration of assistance is longer than necessary to respond to the emergency."

The OIG cites an unnamed ACF official as authority for the statement that "ACF's practice was that EA services could be authorized and provided for a period not to exceed 12 months." Draft Report, p. 20. However, the OIG can cite no document communicating that interpretation to the states. Moreover, as noted above, the "ACF practice" conflicts with policy established by the Director of the Office of Family Assistance in his memorandum dated January 5, 1993, and we were never advised of a contrary policy. Accordingly, we reject this finding.

UNRELATED CLAIM WITHIN 12-MONTH SERVICE WINDOW

DPW Response: The OIG cited the DPW for over \$2.1 million in errors arising out of unrelated EA claims within a single 12-month authorization period. The DPW rejects this audit finding because, again, it is based upon a clear misapplication of federal policy.

The DPW's approved State Plan provided for a single authorization of a continuum of EA services. This approach was approved by the ACF. In a policy clarification dated August 24, 1994, the Director of the Office of Family Assistance specifically advised that New Jersey's provision of juvenile detention care or foster care following failed preventive family preservation services did not violate the single authorization requirement of federal law. The Director noted that "the precedent for this type of authorization is the current practice of many States in authorization of EA for very general family preservation and reunification services."

The OIG misapplied federal policy by ignoring the continuum of services concept and the definition of an emergency in the State Plan. An emergency is a breakdown in family functioning, and continues until the family's problems are resolved. The OIG disregarded this definition and decided that the mere receipt of two types of payments for EA services in a single 12-month period was an error. Accordingly, we reject this finding.

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Remaining Errors

We are unable to comment on the remaining errors relating to duplicate billings and lack of documentation because the sample cases require individualized research.

I would like to thank you for the opportunity to comment on your draft audit. We hope you will take these comments into consideration and revise your audit recommendation appropriately.

Sincerely,

Michael Stauffer

cc: Mr. Leon Skros