



SEP 17 2007

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

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

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

Attached is an advance copy of our final report on Pennsylvania's claims paid under the Title IV-E foster care program for children in Castille contracted detention facilities. We will issue this report to the Pennsylvania Department of Public Welfare (the State agency) within 5 business days.

The State agency administers a Philadelphia County court-ordered program for the placement of children convicted of a delinquent act, which we refer to as the "Castille program," by contracting with seven private facilities. The contracts specify per diem rates negotiated with the respective facilities to cover the costs of their services.

Our objective was to determine whether the State agency claimed retroactive Title IV-E maintenance and associated administrative costs for Philadelphia County's Castille program from October 1997 through September 2002 in accordance with Federal requirements.

The State agency did not always claim retroactive Title IV-E maintenance and associated administrative costs for Philadelphia County's Castille program in accordance with Federal requirements. Of the 100 maintenance claims sampled, 52 were unallowable. Ten of these claims included costs for services that were not provided, and 47 claims (including 5 claims with costs for services not provided) included costs for services that were provided to ineligible children.

Based on the sample results, we estimated that the State agency improperly claimed \$7,090,323 in Title IV-E maintenance costs. Including associated administrative costs of \$4,521,499, we estimated that the State agency improperly claimed at least \$11,611,822 of the total \$28,424,124 (Federal share) claimed for Title IV-E reimbursement on behalf of the Castille program. We were unable to determine the allowability of the remaining \$16,812,302 claimed by the State agency because the Castille contract per diem rates did not distinguish between services that

were eligible or ineligible for Title IV-E reimbursement. However, the Castille contracts and other documentation indicated that the facilities provided some services, such as education, rehabilitation, and job training, that were not eligible for Title IV-E foster care maintenance payments. Accordingly, we have set aside the \$16,812,302 for resolution by ACF.

We recommend that the State agency:

- refund to the Federal Government \$11,611,822, including \$7,090,323 in unallowable maintenance costs and \$4,521,499 in unallowable administrative costs, for the period October 1997 through September 2002;
- work with ACF to determine the allowability of the remaining \$16,812,302 claimed;
- work with ACF to identify and resolve any unallowable Castille program claims made after September 2002 and refund the appropriate amount; and
- discontinue claiming Title IV-E reimbursement for ineligible services and children.

In its comments on our draft report, the State agency disagreed with our findings and recommendations and provided additional documentation on 45 of the 72 claims questioned in our draft report. Based on this documentation, we determined that 20 of these claims were allowable. We have revised this report, including our recommended refund and set-aside amounts, accordingly.

If you have any questions or comments about this report, please do not hesitate to call me, or your staff may contact Joseph J. Green, Assistant Inspector General for Grants, Internal Activities, and Information Technology Audits, at (202) 619-1175 or through e-mail at Joe.Green@oig.hhs.gov or Stephen Virbitsky, Regional Inspector General for Audit Services, Region III, at (215) 861-4470 or through e-mail at Stephen.Virbitsky@oig.hhs.gov. Please refer to report number A-03-05-00550.

Attachment



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Report Number: A-03-05-00550

SEP 20 2007

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

Dear Ms. Richman:

Enclosed is the U.S. Department of Health and Human Services (HHS), Office of Inspector General (OIG), final report entitled "Claims Paid Under Title IV-E Foster Care Program for Children in Castille Contracted Detention Facilities from October 1, 1997, to September 30, 2002." We will forward a copy of this report to the HHS action official noted on the following page for review and any action deemed necessary.

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

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

If you have any questions or comments about this report, please do not hesitate to call me, or contact Michael Walsh, Audit Manager, at (215) 961-4480 or through e-mail at Michael.Walsh@oig.hhs.gov. Please refer to report number A-03-05-00550 in all correspondence.

Sincerely,

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

Stephen Virbitsky
Regional Inspector General
for Audit Services

Enclosure

Direct Reply to HHS Action Official:

Grants Officer
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Philadelphia, PA 19106-3499

Department of Health and Human Services

**OFFICE OF
INSPECTOR GENERAL**

**CLAIMS PAID UNDER THE TITLE
IV-E FOSTER CARE PROGRAM
FOR CHILDREN IN CASTILLE
CONTRACTED DETENTION
FACILITIES FROM OCTOBER 1,
1997, TO SEPTEMBER 30, 2002**



Daniel R. Levinson
Inspector General

September 2007
A-03-05-00550

Office of Inspector General

<http://oig.hhs.gov>

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OAS FINDINGS AND OPINIONS

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



EXECUTIVE SUMMARY

BACKGROUND

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

The State agency claimed Title IV-E foster care costs for a Philadelphia County court-ordered program for the placement of children convicted of a delinquent act. The State agency administers the program, which we refer to as the "Castille program," by contracting with seven private facilities. The contracts specify per diem rates negotiated with the respective facilities to cover the costs of their services. From October 1997 through September 2002, the State agency claimed \$28,424,124 (Federal share) in retroactive Title IV-E maintenance and associated administrative costs for the Castille program.

OBJECTIVE

Our objective was to determine whether the State agency claimed retroactive Title IV-E maintenance and associated administrative costs for Philadelphia County's Castille program from October 1997 through September 2002 in accordance with Federal requirements.

SUMMARY OF FINDINGS

The State agency did not always claim retroactive Title IV-E maintenance and associated administrative costs for Philadelphia County's Castille program in accordance with Federal requirements. Of the 100 maintenance claims sampled, 52 were unallowable, and many of the 52 claims contained multiple errors.

- Ten claims included costs for services that were not provided.
- Forty-seven claims (including five claims with costs for services not provided) included costs for services that were provided to ineligible children.

Based on the sample results, we estimated that the State agency improperly claimed \$7,090,323 in Title IV-E maintenance costs. Including associated administrative costs of \$4,521,499, we estimated that the State agency improperly claimed at least \$11,611,822 of the total \$28,424,124 (Federal share) claimed for Title IV-E reimbursement on behalf of the Castille program. We were unable to determine the allowability of the remaining \$16,812,302 claimed by the State agency because the Castille contract per diem rates did not distinguish between services that were eligible or ineligible for Title IV-E reimbursement. However, the Castille contracts and other documentation indicated that the facilities provided some services, such as education, rehabilitation, and job training, that were not eligible for Title IV-E foster care maintenance payments. Accordingly, we have set aside the \$16,812,302 for resolution by ACF.

RECOMMENDATIONS

We recommend that the State agency:

- refund to the Federal Government \$11,611,822, including \$7,090,323 in unallowable maintenance costs and \$4,521,499 in unallowable administrative costs, for the period October 1997 through September 2002;
- work with ACF to determine the allowability of the remaining \$16,812,302 claimed;
- work with ACF to identify and resolve any unallowable Castille program claims made after September 2002 and refund the appropriate amount; and
- discontinue claiming Title IV-E reimbursement for ineligible services and children.

STATE AGENCY'S COMMENTS

In its comments on our draft report (Appendix D), the State agency disagreed with our findings and recommendations. The State agency questioned our authority to conduct the audit and stated that our recommendations were without merit and contrary to law. The State agency also provided additional documentation on 45 of the 72 claims questioned in our draft report.

OFFICE OF INSPECTOR GENERAL'S RESPONSE

After reviewing the additional documentation provided by the State agency, we determined that 20 of the 45 claims were allowable. We have revised this report to reflect that we are questioning 52 claims. We have also revised our recommended refund and set-aside amounts. Our audit evidence clearly supports our recommendations, as well as our conclusion that the State agency did not always comply with Federal requirements in claiming Title IV-E costs for the Castille program.

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INTRODUCTION

BACKGROUND

Title IV-E Foster Care Program

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

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

- Maintenance costs cover room and board payments to licensed foster parents, group homes, and residential childcare facilities. The Federal share of maintenance costs is based on each State's Federal rate for Title XIX (Medicaid) expenditures. During our audit period, the Federal share of Pennsylvania's maintenance costs ranged from 52.85 percent to 54.76 percent.
- Administrative costs cover staff activities such as case management and supervision of children placed in foster care and children considered to be Title IV-E candidates, preparation for and participation in court hearings, placements of children, recruitment and licensing for foster homes and institutions, and rate setting. Also reimbursable under this category is a proportionate share of overhead costs. The Federal share of administrative costs allocable to the Title IV-E program is 50 percent.
- Training costs cover the training of State or local staff to perform administrative activities and the training of current or prospective foster care parents, as well as personnel of childcare institutions. Certain State training costs qualify for an enhanced 75-percent Federal funding rate.

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

Castille Program

In 1988, in response to a Commonwealth Court Order (No. 2533 C.D. [Commonwealth Docket] 1988), Pennsylvania established a program to alleviate overcrowding in Philadelphia County's detention facility, the Youth Study Center. We refer to this program as the "Castille program." The court order stated that adjudicated children held in the Youth Study Center must be placed in a State facility or an equivalent facility within 10 days of the commitment order.¹ Because State facilities were also overcrowded, the State agency contracted with seven private facilities to place children in accordance with the court order.

¹Adjudicated children are those who have been convicted of a delinquent act by a judge.

The State agency's contracts specify per diem rates negotiated with the seven Castille facilities to cover the costs of their services. The State agency receives invoices from the facilities based on those per diem rates and pays the contractors on behalf of Philadelphia County. Initially, the State agency charged the invoices to non-Federal program funds. Subsequently, the State agency coordinated with the county to determine the Title IV-E eligibility of the children claimed by the Castille facilities. The State agency then submitted to its Comptroller's Office expenditure adjustments to transfer Castille program expenditures from State-only appropriations to Title IV-E accounts eligible for Federal funding.

According to the ACF "Child Welfare Manual," section 8.3A.1, adjudicated children may be eligible for Title IV-E maintenance payments provided that they meet the requirements of section 472 of the Act. These requirements specify, among other things, that the child's care be provided by an approved facility other than one operated primarily for the detention of delinquent children, such as a detention facility or forestry camp. The State agency did not claim Title IV-E costs for children housed at the Philadelphia County Youth Study Center or equivalent State-run facilities because these facilities were detention centers or forestry camps.

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

We are performing a series of audits of the State agency's Title IV-E foster care claims. Our first report, issued in October 2005, identified improper Castille program claims submitted due to clerical errors.² This report, the second in the series, focuses on the eligibility of Castille program services and children. The three expenditure adjustments reviewed in the prior audit are not included in this report.

OBJECTIVE, SCOPE, AND METHODOLOGY

Objective

Our objective was to determine whether the State agency claimed retroactive Title IV-E maintenance and associated administrative costs for Philadelphia County's Castille program from October 1997 through September 2002 in accordance with Federal requirements.

Scope

Our review covered 15 expenditure adjustments for Title IV-E maintenance costs and associated administrative costs totaling \$28,424,124 (Federal share) that the State agency claimed for the Castille program from October 1997 through September 2002. The State agency was unable to produce all Castille facility invoices to support the expenditure adjustments but provided detailed lists totaling 4,902 claim lines (which we refer to as "claims"). Each claim listed the child's name and the maintenance costs for the child during the quarterly claim period based on the facility's per diem rate.

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

From the universe of 4,902 claims, we randomly selected a statistical sample of 100 claims totaling \$350,546 (Federal share) for Title IV-E maintenance costs. The 100 claims were submitted on behalf of four of the seven Castille facilities. Appendix A explains our sampling methodology, and Appendix B details the sample results and projections.

The State agency provided limited original eligibility records for the children in our sample. In addition, we requested but did not receive information about the development of the Castille contract per diem rates. Specifically, we requested details on the costs for each service included in the rates.

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

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

We performed our fieldwork at the Philadelphia Family Courthouse in Philadelphia, Pennsylvania, and at the State agency in Harrisburg, Pennsylvania, from June 2005 to May 2006.

Methodology

To accomplish our objective, we:

- reviewed Federal and State criteria related to Title IV-E foster care claims, as well as Commonwealth Court Order No. 2533 C.D. 1988;
- interviewed State agency personnel regarding the State agency's claims;
- reviewed the State agency's accounting system to identify all maintenance costs claimed for Federal reimbursement;
- obtained from the State agency the names of the children for whom costs were claimed on the 4,902 claims;
- reviewed documentation provided by the State agency in support of the 100 sampled claims and reconciled maintenance costs to the amounts posted in the State agency's accounting records; and
- reviewed contracts between the State agency and the Castille facilities.

State agency officials directed us to address all requests for information to the State agency. Initially, we requested Philadelphia County's social worker case files and any other documentation to support the State agency's claims. The State agency provided us with juvenile

justice case files and a limited number of social worker case files and case management files.³ The State agency also contracted with MAXIMUS, Inc. (MAXIMUS), to gather and compile documentation to support the children's Title IV-E eligibility, including court orders, Client Information System and Income Eligibility Verification System data, provider information, and other data.⁴

After reviewing the information supplied by the State agency, we provided the State agency with a list of the documentation that we requested but did not receive. To date, the State agency has not supplied this information.

We questioned each unallowable claim only once regardless of how many errors it contained. We used a variable appraisal program to project the sample errors to the universe of claims.

We conducted our audit in accordance with generally accepted government auditing standards.

FINDINGS AND RECOMMENDATIONS

The State agency did not always claim retroactive Title IV-E maintenance and associated administrative costs for Philadelphia County's Castille program in accordance with Federal requirements. Of the 100 maintenance claims sampled, 52 were unallowable.

- Ten claims included costs for services that were not provided.
- Forty-seven claims (including five claims with costs for services not provided) included costs for services that were provided to ineligible children.

Many of the 52 claims contained multiple errors, as shown in Appendix C.

Based on the sample results, we estimated that the State agency improperly claimed \$7,090,323 in Title IV-E maintenance costs. Including associated administrative costs of \$4,521,499, we estimated that the State agency improperly claimed at least \$11,611,822 of the total \$28,424,124 (Federal share) claimed for Title IV-E reimbursement on behalf of the Castille program. We were unable to determine the allowability of the remaining \$16,812,302 claimed by the State agency because the Castille contract per diem rates did not distinguish between costs for individual services that were eligible or ineligible for Title IV-E reimbursement. However, the Castille contracts and other documentation indicated that the facilities provided some services, such as education, rehabilitation, and job training, that were not eligible for Title IV-E foster care maintenance payments.

³The juvenile justice case file is a shared file that gathers police, court, probation, and social service information on the adjudicated child. The case management file is shared by probation officers and social workers.

⁴The Client Information System is a statewide database of individuals who participate in social service programs. The Income Eligibility Verification System is a statewide wage-reporting system that documents earned and unearned income. Income and eligibility verification is required under section 1137 of the Act.

COSTS CLAIMED FOR SERVICES NOT PROVIDED

Attachment A, section C.1, of Office of Management and Budget (OMB) Circular A-87, “Cost Principles for State, Local, and Indian Tribal Governments,” establishes the basic guidelines for determining allowable costs for Federal reimbursement through grants, cost reimbursement contracts, and other agreements with State and local governments. Section C.1 states that, among other factors, costs must be necessary, reasonable, and adequately documented.

The State agency submitted 10 claims totaling \$29,089 for services that were not provided and therefore not necessary and reasonable. Eight claims were for children who had been discharged from Castille facilities before the start of the claim period, and two claims were for children who were discharged during the claim period. For example, the State made a claim for an entire quarter for a child who was discharged 57 days before the end of the quarterly claim period. We questioned the portion of the claim associated with the 57 days.

Juvenile justice case files for these 10 claims documented that the children had been discharged from the facilities prior to or during the claim period. Six case files contained judicial orders showing the discharge dates, and four case files referenced judicial orders containing the discharge dates. According to probation officers’ notes, nine of the children received probation officer visits and telephone calls after their discharge dates. The remaining child failed to report for probationary visits, and a bench warrant was issued for his apprehension during the claim period.

COSTS CLAIMED FOR SERVICES PROVIDED TO INELIGIBLE CHILDREN

The State agency submitted 47 claims totaling \$167,017 for services provided to children who did not meet Title IV-E foster care eligibility requirements.⁵ We questioned many of these claims for multiple reasons.

- For 33 claims, the State agency did not document that remaining in the home was contrary to the children’s welfare.
- For 27 claims, the State agency did not document that it had made reasonable efforts to prevent the children’s removal from the home or that such efforts were not required.
- For 24 claims, the children did not meet Title IV-E age requirements.
- For 10 claims, the State agency did not document annual redeterminations of the children’s Title IV-E eligibility.
- For five claims, the State agency did not document computation of the children’s family incomes.

⁵The 47 claims included 5 claims totaling \$15,491 for services that also were not provided.

- For one claim, the child did not meet Title IV-E residency requirements.

Remaining in the Home Contrary to the Welfare of the Child

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

For 33 claims, the State agency did not provide the necessary documentation to meet these requirements. Specifically, the State agency did not provide any documentation to indicate that it had entered into voluntary placement agreements with the children’s parents or legal guardians, nor did it provide court orders or transcripts to document that remaining in the home would be contrary to the children’s welfare.

- Documentation for 19 claims included court orders for the commitment of the children, but the court orders did not show that continuation in the home would be contrary to the children’s welfare.
- Documentation for 14 claims did not include any court orders or transcripts.

Reasonable Efforts To Prevent Removal From the Home

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

For 27 claims, the State agency did not provide the necessary documentation to meet these requirements. Specifically, the State agency did not provide court orders or transcripts to document judicial determinations that reasonable efforts had been made to prevent the children’s removal from the home or that reasonable efforts were not required.

- Documentation for 16 claims included court orders for the commitment of the children, but the court orders did not show judicial determinations that reasonable efforts to prevent removal from the home had been made or were not required.
- Documentation for 11 claims did not include any court orders or transcripts.

Age Requirements

Section 472(a) of the Act states that children for whom States claim Title IV-E funding must meet the eligibility requirements for Aid to Families With Dependent Children (AFDC) as established in section 406 or section 407 (as in effect on July 16, 1996).⁶ Section 406(a)(2), as in effect on July 16, 1996, stated that the child must be “(A) under the age of eighteen, or (B) at the option of the State, under the age of nineteen and a full-time student in a secondary school (or in the equivalent level of vocational or technical training), if, before he attains age nineteen, he may reasonably be expected to complete the program of such secondary school (or such training).”

The State agency submitted 24 claims for children who were at least 18 years of age and who could not reasonably have been expected to complete a secondary education program before age 19. According to juvenile justice case files and documentation in the MAXIMUS-reconstructed eligibility files, including Client Information System data, birth certificates, and school records, 5 claims were for children who were at least age 19 at the beginning of the claim period, 16 claims were for children who were age 18 during the entire claim period, and 3 claims were for children who turned 18 during the claim period.

School transcripts and discharge records showed that the 19 children who had not yet reached the age of 19 could not have completed secondary school or training before the age of 19. For example, one child charged with juvenile and adult crimes was sent to a Castille facility 5 days before his 18th birthday. He left his home high school in the 10th grade and progressed at or below the average rate during his year in the Castille facility. Although the child did not meet Title IV-E age requirements, the State agency continued to claim Title IV-E costs on his behalf until he was transferred to prison.

Annual Redeterminations of Eligibility

Federal regulations (45 CFR §§ 206.10(a)(9)(iii)) require that the State conduct at least one face-to-face redetermination of AFDC program eligibility for each Title IV-E child every 12 months.

Our sample of 100 claims included 38 claims for children for whom eligibility redeterminations were required because the children had been removed from the home for more than 1 year. For 10 of the 38 claims, the State agency did not provide documentation in the juvenile justice case files, MAXIMUS-reconstructed eligibility files, or other records to indicate that the State agency had performed annual redeterminations of the children’s continued Title IV-E eligibility. For example, in October 1996, a child was arrested, removed from the home, and sent to a Castille facility. As of March 31, 1998, the end of the quarterly claim period for our sampled claim, 18 months had passed without an eligibility redetermination.

⁶The Personal Responsibility and Work Opportunity Reconciliation Act of 1996 repealed AFDC and established in its place the Temporary Assistance for Needy Families (TANF) block grant. However, Title IV-E foster care requirements look back to the 1996 AFDC criteria for eligibility.

Income Requirements

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

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

For five claims, the State agency did not document that it had computed countable family incomes. However, Social Inquiry reports⁷ and Income Eligibility Verification System data from MAXIMUS-reconstructed eligibility files showed that each of the five families had a primary wage earner in the home who was employed and providing financial support during the claim period. Based on our analysis of the wage documentation that the State agency provided for the five claims, the family incomes appeared to exceed the State plan’s standard of need. For example, the Social Inquiry report for one child showed that the child had one sibling and that his mother, a single parent, had been employed since 1981. The mother had an income of \$25,000 a year, which exceeds the standard of need.

Residency Requirements

Section 472(a)(4) of the Act states that, but for removal from the home, children for whom States claim Title IV-E funding must meet AFDC eligibility requirements as established in section 406(a) (as in effect on July 16, 1996). Section 406(a)(1) defines the needy child as one 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.”

Section 472(a)(4)(B)(ii), as in effect during the audit period,⁸ allowed Title IV-E foster care funding provided that the child “had been living with a relative specified in section 406(a) of this title (as in effect on July 16, 1996) within six months prior to the month in which such [voluntary placement] agreement was entered into or such [court] proceedings were initiated, and would have received such aid in or for such month if in such month he had been living with such a relative and application therefor had been made.”

⁷Probation officers typically complete a Social Inquiry report after a youth is arrested to help plan for future placements and services.

⁸Section 472(a) of the Act was amended effective October 1, 2005. The applicable section is now 472(a)(3), which provides a substantially similar definition of the needy child.

The State agency submitted one claim for services provided to a child who did not meet these requirements. The State agency provided no documentation to show that the child had lived with a specified relative within 6 months of the initiation of court proceedings. Juvenile justice case files, on the other hand, showed that the child had been detained in a facility for 17 months before initially being claimed for Title IV-E foster care.

COSTS CLAIMED FOR INELIGIBLE SERVICES

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

. . . payments to cover the cost of (and the cost of providing) food, clothing, shelter, daily supervision, school supplies, a child’s personal incidentals, liability insurance with respect to a child, and reasonable travel to the child’s home for visitation. In the case of institutional care, such term shall include the reasonable costs of administration and operation of such institution as are necessarily required to provide the items described in the preceding sentence.

We were unable to determine whether the maintenance costs covered by the Castille contract per diem rates were limited to allowable Title IV-E costs. The State agency, which claimed these costs on a per diem rate basis, did not provide information about which services were used to develop the rates. In addition, the State agency did not require the Castille facilities to itemize charges for services claimed. However, as explained below, the Castille contracts and case files revealed that the facilities provided some ineligible services under section 475(4)(A) of the Act. These services included education, rehabilitation, and job training, which are not specified in section 475(4)(A).⁹

Specifically, the “Service Definitions” in three of the four contracts represented in our sampled claims included rehabilitation services. Further, juvenile justice case files, including facility placement summaries, facility discharge summaries, program plans, and progress reviews, showed that all four Castille facilities provided education services, rehabilitation services such as counseling and therapy, and job training to the adjudicated children. For example, the discharge summary for a child in our sample showed that the child attended the facility’s high school 5 days a week. The child also attended counseling sessions once a week, group sessions five times a week, and treatment education seminars twice a week and participated in family therapy through regular telephone contact.

Because the State agency’s per diem rates used for purposes of Federal reimbursement did not distinguish between services that were eligible or ineligible for Title IV-E reimbursement, we were unable to determine the reasonableness of the per diem rates or the costs of ineligible services included in the 100 sampled claims.

⁹Some of these services may be allowable under other Federal programs or under State and local programs. However, determining the allowability of services under other programs was beyond the scope of this audit.

SUMMARY OF UNALLOWABLE AND POTENTIALLY UNALLOWABLE TITLE IV-E COSTS

Of the 100 claims sampled, 52 claims totaling \$180,615 were unallowable because they included maintenance costs for services that were not provided or services that were provided to ineligible children. Projecting our sample results, we estimated that the State agency improperly claimed at least \$7,090,323 (Federal share) in maintenance costs. (See Appendix B.) In addition, we estimated that the State agency claimed at least \$4,521,499 (Federal share) in administrative costs associated with the unallowable maintenance costs.¹⁰ These administrative costs also were unallowable.

We requested but were not provided with information about the services included in the contract per diem rates and their relative costs. Because of this limitation, we were not able to determine the allowability of the remaining \$16,812,302 claimed by the State agency for maintenance (\$10,265,801) and associated administrative costs (\$6,546,501). Therefore, we have set aside these costs for resolution by ACF.

RECOMMENDATIONS

We recommend that the State agency:

- refund to the Federal Government \$11,611,822, including \$7,090,323 in unallowable maintenance costs and \$4,521,499 in unallowable administrative costs, for the period October 1997 through September 2002;
- work with ACF to determine the allowability of the remaining \$16,812,302 claimed;
- work with ACF to identify and resolve any unallowable Castille program claims made after September 2002 and refund the appropriate amount; and
- discontinue claiming Title IV-E reimbursement for ineligible services and children.

STATE AGENCY'S COMMENTS AND OFFICE OF INSPECTOR GENERAL'S RESPONSE

In its April 16, 2007, comments on our draft report, the State agency disagreed with our findings and recommendations. The State agency questioned our authority to conduct the audit and stated that our recommendations were without merit and contrary to law. The State agency also said that we had interfered with its ability to respond to the draft report by refusing to produce our workpapers and that we had singled out Pennsylvania for an audit of unprecedented size and scope, unlawfully assumed ACF's program operating responsibilities, and conducted the audit improperly.

¹⁰We calculated unallowable administrative costs by dividing the State agency's total Title IV-E claims for administrative costs (\$593,233,356) by its total Title IV-E claims for maintenance costs (\$857,954,391) plus training costs (\$72,252,983). We then applied the resultant percentage to the estimated \$7,090,323 in unallowable Castille maintenance costs.

The State agency provided additional documentation on 45 of the 72 claims questioned in our draft report. After reviewing this documentation, we determined that 20 of the 45 claims were allowable. We have revised this report to reflect that we are questioning 52 claims. We also have revised our recommended refund and set-aside amounts.

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

Access to Workpapers

State Agency's Comments

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

Office of Inspector General's Response

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

During the audit, we provided the State agency with documentation on our analysis and conclusions for the 100 sampled claims. We did not provide the case file documentation behind each sampled claim because we had received this documentation from the State agency and MAXIMUS, both of which made copies of the information provided to us. We also provided the State agency with copies of workpapers that supported the sampling plan and statistical projections, as well as a prior audit's workpapers on accounting data, criteria, and background related to the findings in this report. We will provide copies of the remaining workpapers (except for those protected by attorney-client privilege) after issuance of this final report.

Scope of Audit

State Agency's Comments

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

Office of Inspector General's Response

We did not single out Pennsylvania for this audit. We are currently conducting a multistate review of juvenile justice placement costs claimed under Title IV-E. Pennsylvania was the first State selected for this series of reviews.

Program Operating Responsibilities

State Agency's Comments

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

Office of Inspector General's Response

There is no basis for the State agency's argument that we unlawfully assumed program operating responsibilities. The IG Act, as interpreted by the applicable case law, may in some cases restrict OIG from conducting "regulatory" audits that are the responsibility of the program agency. However, our audit was not regulatory in nature. Rather, we conducted a compliance audit designed to identify the improper expenditure of Federal dollars for the Pennsylvania foster care program. None of the court cases on which the State agency based its objection questioned OIG's authority and responsibility to conduct such audits. In the more recent decision of University of Medicine and Dentistry of New Jersey v. Corrigan, 347 F.3d 57, 67 (3rd Cir. 2003), involving the expenditure of Medicare funds, the U.S. Court of Appeals for the Third Circuit held that "routine compliance audits" that are designed to "enforc[e] the rules" are a proper OIG function even if the ability to conduct such audits is shared with that of the program agency. Moreover, the U.S. Court of Appeals for the Fifth Circuit stated in its opinion that, under section 9(a)(2) of the IG Act, "for a transfer of function to occur, the agency would have to relinquish its own performance of that function" (Winters Ranch Partnership v. Viadero, 123 F.3d 327, 334 (5th Cir. 1997); see also United States v. Chevron, 186 F.3d 644, 648 (5th Cir. 1999)). ACF has continued to perform its own periodic reviews of eligibility in State programs, as required by ACF regulations, and thus at no time did it relinquish its program operating function.

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

Record Retention Period

State Agency's Comments

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

Office of Inspector General's Response

The record retention period does not preclude our review of records the State agency provides, or has in its possession, during the audit. Federal regulations provide that “[t]he rights of access . . . are not limited to the required retention period, but shall last as long as records are retained” (45 CFR § 74.53(e)). Moreover, Federal regulations specifically oblige the State agency to retain records beyond the record retention period in certain circumstances and states: “If any litigation, claim, financial management review, or audit is started before the expiration of the three-year period, the records shall be retained until all litigation, claims or audit findings involving the records have been resolved and final action has been taken” (45 CFR § 74.53(b)(1)). OIG has the right to access records in the State agency’s possession beyond the record retention period. We also note that section 5.7 of the Supreme Court of Pennsylvania’s “Record Retention and Disposition Schedule With Guidelines” requires that the court permanently retain court orders relating to both dependent and delinquent juvenile cases. The guidelines also require that the court retain other court records until the child is 25 years old or 10 years after the last action, if later.

However, the audit did not extend beyond the retention period because the State was engaged in negotiations to resolve claim issues with ACF and was on notice of OIG’s planned audit of Title IV-E foster care claims. We issued an audit commencement letter in 2000 outlining our planned review of Pennsylvania’s Title IV-E foster care claims for fiscal years 1998 and 1999. Pennsylvania subsequently entered into negotiations with ACF to settle a Title IV-A audit as well as to resolve Title IV-E claims at issue. We did not terminate our audit during this period; rather, we suspended action pending resolution of the Title IV-E issues. The Title IV-E issues were not resolved through settlement efforts, and in 2003, we announced our intention to move forward with the audit announced in 2000, expanding the scope to cover fiscal years 1998 through 2002.

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

Associated Administrative Costs

State Agency's Comments

The State agency said that we had improperly recommended the disallowance of “non-identifiable” associated administrative costs. The State agency explained that Philadelphia County submitted all Title IV-E claims for administrative costs on a consolidated basis, not only for children in the Castille program. According to the State agency, our calculation of Castille-related administrative costs was unsound because it applied “a crude State-wide average to the Castille claims, which were incurred only by Philadelphia County,” and the county’s administrative costs might be significantly lower than those of other counties with fewer eligible children. The State agency also said that because Pennsylvania identified and allocated administrative costs through a random-moment timestudy, it is incorrect to assume that a disallowance of a Title IV-E maintenance claim would necessarily result in a proportionate decrease in associated administrative costs.

Office of Inspector General's Response

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

OMB Circular A-87 allows States to identify administrative costs related to a specific cost objective or to allocate the costs according to an approved allocation methodology, such as a random-moment timestudy or another quantifiable measure. The State agency allocated those costs based on an approved allocation methodology. Similarly, we determined the unallowable administrative costs associated with the ineligible maintenance claims by applying a proportionate share of the administrative costs to the total costs, including both maintenance and training costs. We maintain that our approach was reasonable. The State agency did not offer an alternative method of calculating administrative costs on either a statewide or county-specific basis.

Sampling and Estimation

State Agency's Comments

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

Office of Inspector General's Response

Our sampling and estimation methodology is statistically valid. Our sample unit was an individual line item claimed for a child for a specific quarter. Each sample unit had a known,

equal, non-zero chance of selection. Therefore, the sample design did not provide a larger chance of selection for sample units with a higher probability of error.

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

Ineligible Services

State Agency’s Comments

The State agency said that we had erroneously concluded that Pennsylvania may have sought Federal financial participation for ineligible services. Noting that Pennsylvania explicitly distinguished between Title IV-E and non-Title IV-E services, the State agency provided additional documentation that reflected each facility’s total per diem rate and Title IV-E rate for each year of the audit period. The State agency said that it made all of its claims to ACF using the lower Title IV-E rate.

Office of Inspector General’s Response

The additional documentation showed that facilities charged an average per diem rate of \$103.08 for the 100 sampled claims. Of this amount, an average of \$94.32 (91.5 percent) was charged to the Title IV-E program. The documentation explained the difference for only one facility. This documentation showed that the facility charged a daily rate of \$79.22 to the State agency and that the State agency claimed \$76.98 in Title IV-E funding. According to the documentation, the difference of \$2.24 pertained to medical costs. However, the documentation did not itemize the costs claimed as part of the Title IV-E per diem rate, nor did it show where costs associated with education services, rehabilitation services such as counseling and therapy, and job training provided to the adjudicated children were charged if these costs were not included in the Title IV-E per diem rate. Therefore, we continue to recommend that the State agency work with ACF to determine the allowability of the set-aside costs.

APPENDIXES

SAMPLING METHODOLOGY

OBJECTIVE

Our objective was to determine whether the State agency claimed retroactive Title IV-E maintenance and associated administrative costs for Philadelphia County's Castille program from October 1997 through September 2002 in accordance with Federal requirements.

UNIVERSE

The universe consisted of 4,902 Castille claim lines submitted by the State agency on 15 detailed lists in support of expenditure adjustments totaling \$17,356,124 (Federal share) for maintenance costs. The 15 detailed lists contained alphabetical lists of children located at Castille facilities. The lists covered 15 quarters from October 1, 1997, through September 30, 2002.

SAMPLE UNIT

The sample unit was an individual claim line for a child listed on a detailed list submitted in support of expenditure adjustments.

SAMPLE DESIGN

We used an unrestricted variable random sample.

SAMPLE SIZE

We selected for review a sample of 100 claim lines listed on the 15 detailed lists.

SOURCE OF RANDOM NUMBERS

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

METHOD OF SELECTING SAMPLE ITEMS

We numbered each claim line on the 15 detailed lists. We selected a claim line for review when the random number value equaled the assigned value.

SAMPLE RESULTS AND PROJECTIONS

SAMPLE RESULTS

The results of our review of 100 sampled claim lines were as follows:

Sample Results

Number of Claim Lines in Universe	Value of Universe (Federal Share)	Sample Size	Number of Claim Lines With Errors	Value of Errors (Federal Share)
4,902	\$17,356,124	100	52 ¹	\$180,615

ESTIMATES OF UNALLOWABLE FEDERAL SHARE

Point estimate (90-percent two-sided confidence interval)	\$8,853,757
Upper limit (90-percent two-sided confidence interval)	\$10,617,190
Lower limit (90-percent two-sided confidence interval)	\$7,090,323

Using statistically valid sampling techniques, we estimated, using a one-sided 95-percent confidence interval, that at least \$7,090,323 of the \$17,356,124 claimed was unallowable for Federal reimbursement. Our point estimate was \$8,853,757 with a precision of plus or minus \$1,763,433.

¹Although all 100 claims had errors, we were unable to quantify the errors for 48 claims due to data limitations.

Claim Number	1	2	3	4	5	6	7	8	Number of Deficiencies
26								X	1
27				X				X	2
28	X							X	2
29		X		X				X	3
30	X							X	2
31	X							X	2
32				X				X	2
33		X	X		X			X	4
34								X	1
35	X	X	X	X	X			X	6
36								X	1
37								X	1
38								X	1
39		X	X					X	3
40								X	1
41	X							X	2
42						X		X	2
43								X	1
44								X	1
45								X	1
46						X		X	2
47				X				X	2
48				X				X	2
49				X				X	2
50								X	1
51								X	1
52								X	1
53								X	1
54								X	1
55								X	1
56				X				X	2
57		X	X		X			X	4
58								X	1
59								X	1
60								X	1
61								X	1
62								X	1
63				X				X	2
64						X		X	2
65								X	1
66		X						X	2

Claim Number	1	2	3	4	5	6	7	8	Number of Deficiencies
67								X	1
68								X	1
69								X	1
70								X	1
71								X	1
72								X	1
73		X	X					X	3
74		X	X	X				X	4
75		X	X					X	3
76								X	1
77								X	1
78		X	X		X	X		X	5
79		X		X				X	3
80		X	X	X				X	4
81		X	X	X				X	4
82		X	X		X			X	4
83		X	X	X				X	4
84								X	1
85								X	1
86	X	X						X	3
87								X	1
88		X	X	X				X	4
89								X	1
90	X	X	X	X				X	5
91								X	1
92		X	X	X	X			X	5
93								X	1
94	X							X	2
95								X	1
96		X	X		X		X	X	5
97								X	1
98								X	1
99								X	1
100	X	X	X		X			X	5
Total	10	33	27	24	10	5	1	100	

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April 16, 2007

Via Hand Delivery

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

Re: Report Number: A-03-05-00550

Dear Mr. Virbitsky:

I am writing on behalf of the Commonwealth of Pennsylvania, Department of Public Welfare to respond to the draft report of the Department of Health and Human Services (HHS), Office of Inspector General (OIG) entitled "Claims Paid Under Title IV-E Foster Care Program for Children in Castille Contracted Detention Facilities from October 1, 1997, to September 30, 2002" (Draft Report). In the Draft Report, OIG recommends, among other things, that Pennsylvania "refund" to the federal government \$9,804,084 in allegedly improper foster care maintenance placement costs, plus an additional \$6,252,064 in what OIG characterizes as "associated administrative costs," for a total "refund" of \$16,056,148. (Draft Report at 10.) OIG further recommends that Pennsylvania "work with ACF" to determine the allowability of the remaining \$12,367,976 in maintenance placement costs and "associated administrative costs" purportedly claimed for the children in question. (*Id.*)

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

- OIG has singled out Pennsylvania for an audit of unprecedented size and scope without basis and in contravention of federal law;
- OIG has unlawfully assumed HHS' "program operating responsibilities" in violation of the Inspector General Act of 1978;

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- OIG conducted the audit improperly and prejudicially to Pennsylvania by, among other things, extending the scope of the audit beyond the federal records retention period, recommending the disallowance of non-identifiable "associated administrative costs," and engaging in several substantial sampling and extrapolation errors; and
- OIG erroneously concluded that Pennsylvania submitted claims for ineligible services and improperly rejected numerous sample claims.

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

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

As an initial matter, OIG has unjustifiably interfered with Pennsylvania's ability to provide a full and complete response to the Draft Report by refusing to produce its audit workpapers. By email dated February 21, 2007, OIG Audit Manager Michael Walsh refused our request for a copy of the workpapers, stating that the papers had been prepared in a proprietary software package, TeamMate, that could not be distributed without procurement of a software license. (See 2/21/07 E-mail from Michael Walsh attached as Exhibit A.) However, we understand that OIG can convert TeamMate files to standard .tif or .pdf files and, in fact, previously did so to produce the Phase I workpapers (prepared with the same software) to our predecessor counsel. Therefore, OIG's sole proffered basis for refusing to produce the audit workpapers is without merit.

On March 2, 2007, as a result of OIG's refusal to produce the audit workpapers, Pennsylvania sent three separate Freedom of Information Act (FOIA) requests seeking the workpapers and other critical documents related to this audit. (Copies of the three FOIA requests are collectively attached as Exhibit B.) Because HHS has not substantively responded to the requests to date, Pennsylvania has been forced to initiate litigation to obtain copies of the necessary documents. We, of course, reserve the right to supplement or otherwise amend this response upon receipt and review of all documents responsive to the FOIA requests.

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

By letter dated November 19, 2003, OIG first announced its intention to conduct an audit "of the Commonwealth of Pennsylvania's claims for payments made under the Title IV-E Foster Care Program for Federal Fiscal Years 1998 through 2002." (See 11/19/03 Letter from Stephen Virbitsky, attached as Exhibit C.) In accordance with that notice, OIG is currently auditing the entirety of Pennsylvania's Title IV-E claims for a full five-

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year period, putting at issue more than \$1.5 billion in public funds that have already been spent to provide critical services to Pennsylvania's needy children.

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

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

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

More fundamentally, between the 1998 submission of the probe sample and OIG's 2003 initiation of this audit, Pennsylvania regularly submitted quarterly claim reports to ACF for all Title IV-E placement maintenance and administrative claims. ACF paid such claims. If ACF had concern about any aspect of Pennsylvania's Title IV-E claims at that time – either because of the probe sample results, the amount of the claims, or for any other legitimate reason – it could have requested additional information, conducted a financial

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review, or disallowed such claims. *See, e.g.,* 42 U.S.C. § 674(b)(4). Instead, after presumably reviewing all claims as they were submitted during this period, ACF paid Pennsylvania's claims in full. For OIG now – as long as a decade later – to subject these very same Title IV-E claims to an extensive federal audit due exclusively to unique and non-comparable factors of which ACF was well aware at the time it reviewed and approved such claims is unlawful and represents arbitrary and capricious government action.¹

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

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

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

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In direct conflict with that Congressional intent, OIG recommends here that Pennsylvania be required to repay tens of millions of dollars for claims submitted up to a decade earlier under a different administration, even though it is undisputed that Pennsylvania's Title IV-E program is currently operating in "substantial compliance" with federal requirements. Notably, in September 2004 – nearly a year after OIG initiated the current audit – ACF conducted its own review of Pennsylvania's compliance with Title IV-E eligibility requirements. Pennsylvania passed the review with flying colors. By letter dated October 19, 2004, ACF informed Pennsylvania that it had achieved substantial compliance (100% eligibility compliance) with Title IV-E program requirements and would not be subject to another eligibility review until 2007. (See 10/19/04 Letter, attached as Exhibit F.) Thus, there was no legitimate basis for OIG or ACF to have believed that Pennsylvania's Title IV-E program was failing to comply with federal law.

In light of the above undisputed facts, it is plain that OIG is singling Pennsylvania out for selective, arbitrary and unlawful treatment. See, e.g., *Burlington Northern and Santa Fe Ry. Co. v. Surface Transp. Bd.*, 403 F.3d 771, 777 (D.C. Cir. 2005) ("Where an agency applies different standards to similarly situated entities and fails to support this disparate treatment with a reasoned explanation and substantial evidence in the record, its action is arbitrary and capricious and cannot be upheld."); *Petroleum Communications, Inc. v. F.C.C.*, 22 F.3d 1164, 1172 (D.C. Cir. 1994) ("We have long held that an agency must provide adequate explanation before it treats similarly situated parties differently."). Neither OIG nor ACF has provided any evidence suggesting that Pennsylvania's Title IV-E program had a significantly greater error rate than was present in any other State program; yet OIG is subjecting only Pennsylvania – without justification – to an intensive multi-phase audit of its regularly-filed Title IV-E maintenance claims over a five-year period.

These factors, as well as additional circumstances discussed below, strongly suggest that the OIG audit may have been sought by ACF for retaliatory or other equally improper reasons wholly unrelated to the administration of Pennsylvania's successful Title IV-E program. In any event, it is clear that no basis exists for OIG arbitrarily to subject Pennsylvania to this all-encompassing multi-phase audit. For that reason alone, the Draft Report should be withdrawn.

C. ACF Unlawfully Transferred Program Operating Responsibilities to OIG

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

The Inspector General Act (Act) established the Office of Inspector General in order to facilitate "objective inquiries into bureaucratic waste . . . and mismanagement."

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NASA v. Fed. Labor Relations Auth., 527 U.S. 229, 240 (1999). Congress created OIG “to consolidate existing auditing and investigative resources to more effectively combat fraud, abuse, waste and mismanagement in the programs and operations of [various executive] departments and agencies.” S. Rep. No. 1071, 95th Cong., 2d Sess. 1 (1978), reprinted in 1978 U.S.C.C.A.N. 2676, 2676. While Congress gave OIG broad audit and investigative authority to carry out its oversight function, see, e.g., 5 U.S.C.App. 3 § 6(a), it required OIG to remain “independent and objective” from the federal agencies it oversees, providing that Inspector Generals “shall be appointed by the President, by and with the advice and consent of the Senate, without regard to political affiliation and solely on the basis of integrity and demonstrated ability in accounting, auditing, financial analysis, law, management analysis, public administration, or investigations.” 5 U.S.C.App. 3 § 3(a).

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

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

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

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

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

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

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

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

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

(continued...)

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

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

D. OIG Conducted the Audit Improperly and Prejudicially to Pennsylvania

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

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

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

(continued...)

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

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

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

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

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

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

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

This issue is of significant importance to this case because the majority of claims OIG audited in the Draft Report were submitted prior to November 19, 2000; thus, Pennsylvania was under no legal obligation to retain supporting documentation as to those claims. Indeed, only 41 of the 100 audited sample cases involve periods within the federal record retention policy. Despite this fact, OIG’s recommendation that ACF disallow more than \$16 million is due almost exclusively to Pennsylvania’s inability to produce certain documents, some from as long as a decade ago. In light of the existing federal retention policy, the HHS Grants Administration Manual limiting disallowances to the retention period, and OIG’s own usual auditing practices, it was a critical error for OIG to extend the scope of this audit to include – and to recommend the disallowance of claims filed in – Federal Fiscal Years 1998, 1999 and 2000.

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

The Draft Report covers 15 expenditure adjustments (EAs) for Title IV-E maintenance costs that Pennsylvania claimed for the *Castille* program from October 1997 through September 2002. (Draft Report at 2.) The 15 EAs under review contain a total of 4,902 claim lines (which OIG refers to as “claims”) that total \$17,356,124. (*Id.* at Appendix B.) Thus, the entire universe of *Castille* maintenance claims audited by OIG total just over \$17 million. In the Draft Report, however, OIG repeatedly contends it audited a total of \$28,424,124 in maintenance claims and “associated administrative costs.” (*See id.* at i., 2, 4.) Although the Draft Report does not address or explain this critical contention, OIG apparently added \$11,068,000 in “associated administrative costs” to the total amount of maintenance claims contained in the 15 EAs under review. It then recommended that ACF disallow and demand a “refund” of \$6,252,064 of these “associated administrative costs.” (*Id.* at 10.)

There is a least one enormous problem with this approach: The “associated administrative costs” to which OIG refers simply do not exist; they are a mathematical invention of OIG which has no basis in fact and cannot legally form the basis of any recommended disallowance. Pennsylvania never submitted claims for Title IV-E

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

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administrative costs associated only with children in the *Castille* program during any period under review (FFY 1998-2002). The *Castille* program children represent only one small subset of children in the Philadelphia County foster care system and, in accordance with Pennsylvania's federally-approved cost claiming methodology, Philadelphia County submitted all claims for Title IV-E administrative costs on a consolidated basis (*i.e.*, administrative costs associated with *all* children in the county foster care system). It is therefore completely inaccurate to suggest that Pennsylvania sought from ACF readily-identifiable administrative costs that Philadelphia County incurred in connection with the *Castille* population.

Perhaps not surprisingly, nowhere in the Draft Report does OIG describe how it identified and calculated the purported \$11 million in "associated administrative costs" that it added to the *Castille* maintenance claims under review. In fact, the body of the Draft Report – which consistently combines the maintenance claims and "associated administrative costs" together into a single figure of \$28,424,124 – does not even acknowledge this \$11 million as an addition to the universe of *Castille* maintenance claims under review. Instead, the sole reference as to how the purported "associated administrative costs" were apparently calculated appears in footnote 10, which provides:

We calculated unallowable administrative costs by dividing the State agency's total Title IV-E claims for administrative costs (\$593,233,356) by its total Title IV-E claims for maintenance costs (\$857,954,391) plus training costs (\$72,252,983). We then applied the resultant percentage to the estimated \$9,804,084 in unallowable *Castille* maintenance costs.

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

OIG's wholesale creation and calculation of non-identifiable *Castille*-related "administrative costs" is fundamentally unsound and falls woefully short of being an appropriate legal basis for disallowance of federal funds. As an initial matter, OIG makes no attempt to explain why it is appropriate to apply a crude State-wide five-year average to the *Castille* claims, which were incurred only by Philadelphia County. Philadelphia has the largest population of Title IV-E-eligible children anywhere in the State; as such, its eligible administrative costs on a per-child basis might well be significantly less than those counties with a much smaller number of eligible children. In any event, it is far from

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apparent that the makeshift State-wide ratio OIG identified in footnote 10 is even arguably applicable to Philadelphia's administrative claims.

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

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

For these reasons, OIG's recommendation that ACF disallow \$6,252,064 in purported "associated administrative costs" is without legal or factual support and should be withdrawn.

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3. OIG Engaged in Significant Sampling and Extrapolation Errors

Although the universe of *Castille* maintenance claims under review in this audit phase contains 4,902 claim lines totaling more than \$17 million, OIG selected and reviewed only 100 claims with an aggregate value of \$350,546. (Draft Report at 2-3.) OIG then applied the results of the 100 claim sample to the overall universe of claims through statistical extrapolation. (*Id.* at 3, 4, 10.) In the process, however, OIG engaged in significant sampling and extrapolation errors that tainted the critical data and rendered the Draft Report's conclusions highly unreliable in several respects.

First, OIG's unrestricted variable random sample design resulted in a selection bias in favor of children who had remained in the foster care system for a longer period and thereby skewed the sample results by creating a greater probability of disallowance. Each claim line from which the 100 sample claims were generated represented the placement costs for a single child for a calendar quarter. (*Id.* at Appendix A.) Therefore, any child who remained in a *Castille* facility for more than three months would have multiple claim lines and thus a greater probability of being selected as part of the sample frame. Children who remained in the foster care system long-term, however, have a statistically greater chance of being deemed ineligible for Title IV-E benefits because of their increasing age, the need for ongoing redeterminations of eligibility, and other increasingly burdensome documentation requirements. OIG's sample design thus resulted in a bias favoring selection of claims with a greater likelihood of documentation difficulties. This flaw significantly tainted the sample review and subsequent extrapolation.

Second, separate and apart from the selection bias, OIG's own internal Variable Unrestricted Appraisal calculations (attached as Exhibit I) amply demonstrate that the standard deviation of the point estimate used to determine the amount of unallowable claims is so wide as to make the calculations virtually useless as a measure of anything. OIG's calculations show that the mean and standard deviation of the "difference" data (*i.e.*, the difference between the 100 sample claims extrapolated to the universe of claims and those sample claims that OIG would accept extrapolated to the universe of claims) is nearly identical: the mean is \$2,339.48 and the standard deviation is \$2,065.64. This extremely wide distribution of numbers makes OIG's calculations unstable and unusable under any level of statistical rigor. Further, and even more strikingly, OIG's calculations demonstrate the standard deviation of the "audited" claims (\$1,919.82) is nearly double the mean of those same claims (\$1,165.98), signifying that no reliable or supportable conclusion can be drawn from the data. Put simply, the calculations that supposedly support OIG's

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recommended disallowances in the Draft Report are neither statistically valid nor legally supportable.⁵

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

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

In addition to the selective and arbitrary nature of the audit, OIG's lack of statutory authority to conduct the audit, and the numerous ways in which OIG improperly and prejudicially conducted the audit, OIG committed numerous errors in its review and examination of each of the 100 sample claims. In the Draft Report, OIG concluded that all 100 sample claims were deficient for the reason they purportedly sought federal financial participation for ineligible services. (Draft Report at i, 4.) OIG also concluded that 72 of the 100 sample claims (totaling \$233,948 of the \$350,546 sample universe) were unallowable for additional reasons, largely due to Pennsylvania's inability to provide certain paperwork (that dated from as long as a decade ago) supporting the Title IV-E eligibility of the child. (*Id.*) For the following reasons, both conclusions are erroneous and should be withdrawn.

1. OIG Erroneously Concluded that Pennsylvania May Have Sought Federal Financial Participation for Ineligible Services

OIG found that each of the 100 sampled claims was deficient on the ground that it purportedly includes "Costs Claimed for Ineligible Services."⁶ (Draft Report at Appendix C.) The text of the Draft Report justifies this finding by asserting that Pennsylvania's "*per diem* rates used for purposes of federal reimbursement did not distinguish between services that were eligible or ineligible for Title IV-E reimbursements"

⁵ In addition to these flaws, OIG reported its financial estimates using the lower 90% confidence level rather than the standard 95% confidence level. Had OIG properly reported its conclusions using the standard 95% confidence level, the lower limit of its calculations using OIG's own flawed analysis would have been \$9,479,548 rather than the \$9,804,084 it used as the basis for the recommended disallowance.

⁶ While Appendix C characterizes each of the 100 sample claims as deficient for seeking costs for ineligible services, the text of the Draft Report takes a facially more moderate approach, contending only that OIG could not tell "the costs of ineligible services included in the 100 sampled claims" and that therefore it could not determine one way or the other the allowability of those claims. (Draft Report at 10.) The following textual analysis and attached exhibits are fully applicable regardless of which reading is adopted. The critical point is that Pennsylvania's Title IV-E claims were made not at the facilities' full *per diem* rate but rather at the reduced IV-E rate to ensure that only eligible services were claimed.

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and noting that “three of the four contracts represented in the sampled claims included rehabilitation services.” (*Id.* at 9-10.)

Put simply, the premise on which the OIG’s conclusion rests – *i.e.*, that Pennsylvania did not distinguish during the audit period between services that are compensable under Title IV-E and those that are not – is simply wrong. To the contrary, during the entire audit period, Pennsylvania explicitly distinguished between Title IV-E and non-Title IV-E services with respect to the contracting facilities represented in the 100 sampled claims.

To be specific, each of the four facilities represented in the sample claims (Abraxas, Clarinda Academy, Glen Mills and VisionQuest) had a full *per diem* rate – *i.e.*, a rate that included both IV-E and non-IV-E services – and a lesser “IV-E rate,” which, by contrast, was limited to those services eligible for Title IV-E participation. Although Pennsylvania received and paid invoices from each facility at the full *per diem* rate, it invariably made all of its claims to ACF for federal financial participation using the lower IV-E rate for the facility in question. Thus, despite OIG’s conclusion to the contrary, it is clear that none of the 100 samples included costs for ineligible services.

As discussed *supra* in this response, the availability of source documents has been seriously limited by the passage of time since the beginning of the audit period; implementation of routine document retention and destruction policies undoubtedly has meant that a significant number of highly probative documents have been destroyed. Nevertheless, the attached tables and supporting exhibits clearly demonstrate that Pennsylvania consistently distinguished between IV-E and non-IV-E services when filing claims with ACF for maintenance costs:

- Exhibit J-1, labeled Table A, lists each of the four facilities represented in the sample claims for each quarter for which the facility provided IV-E compensable services to “Castille children” from October 1996 through June 2002. (The number next to each facility name Table A is the number DPW has used to identify the facility.) For each facility, Table A sets forth the full *per diem* rate and the lower IV-E rate for the quarter in question. The *per diem* rate is the rate at which Pennsylvania paid the facility, while the IV-E rate is the lower rate at which Pennsylvania calculated its claim for federal financial participation.
- Exhibit J-2, labeled Table B, identifies each of the 100 sample children by sample number, name, facility and covered quarter. Drawing on the information from Table A above, Table B sets forth both the full *per diem* rate and the lower IV-E rate for each child in the covered quarter.

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- Exhibits J-3 through J-8 represent a significant portion of the source documents for Tables A and B. Each exhibit spans a single fiscal year and provides information by quarter on the IV-E rate claimed by Pennsylvania from ACF (e.g., documents confirming Title IV-E maintenance claims submitted by Pennsylvania to ACF) and the higher *per diem* rate that the facility charged to Pennsylvania (e.g., contract rider provisions identifying full *per diem* rates, representative invoices from each quarter presented by the facility to Pennsylvania).
- Exhibit J-9 is an assortment of communications between Pennsylvania and the facilities with respect to the setting and identification of Title IV-E rates. Containing examples from the facilities, the exhibit demonstrates that both Pennsylvania and the facilities fully understood and complied with the requirement to distinguish between the full *per diem* rate and the lower IV-E rate covering only Title IV-E eligible services.
- Finally, Exhibit J-10 is Pennsylvania's Children, Youth and Families Bulletin 3140-84-02, which discusses in detail the distinctions between IV-E and non-IV-E services. The Bulletin was fully available to each of the four facilities and is referred to in some of the facility documents in Exhibit J-9.

OIG's asserted deficiency of "Costs Claimed for Ineligible Services" is, in practical terms, a very serious one. The Draft Report finds the deficiency in every one of the 100 sampled claims and it is the only purported deficiency with 28 of the claims. In light of the discussion above and the accompanying exhibits, however, there is plainly no basis for OIG to continue to find this deficiency. The record is clear that Pennsylvania consistently distinguished between IV-E and non-IV-E services in its claiming process and there is absolutely nothing in the record to suggest otherwise.

2. OIG Improperly Rejected Numerous Sample Claims

OIG also improperly rejected 72 sample claims on additional grounds.

As an initial matter, it is wholly improper for OIG to recommend disallowances of previously submitted claims based solely upon a lack of documentation. Congress has expressly and consistently indicated that it is improper to disallow claims for federal financial participation due to missing documents or missing language in documents, which is sometimes outside the control of the States, because such disallowances do little to address the quality of child care. See, e.g., 63 FR 50058-01 (noting that Congress was concerned with review practices because they "relied heavily on case documentation and process" and thus "did little to address quality of care for children"); Committee on Ways and Means, U.S. House of Representatives, 2000 Green Book, Background Material and Data on Programs within the Jurisdiction of the Committee on Ways and Means (2000)

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(explaining that Congress was concerned with reviews that “focused on paper compliance with legal requirements” rather than seeking to achieve “improved services for children and their families” and noting that the review process often improperly held States “accountable for circumstances beyond their control, such as the schedule or actions of the courts”). Indeed, OIG itself has been critical of a review process that “automatically sanction[s] States financially in response to adverse review findings” rather than using “the results of reviews to develop corrective action plans” to allow States to improve their programs and comply with federal requirements. See Office of Inspector General, Department of Health and Human Serv., Oversight of State Child Welfare Programs 21 (1994).

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

For the numerous reasons set forth earlier in this response, OIG should withdraw the Draft Report and repudiate all of the recommended disallowances in their entirety. Subject to and without waiver of those arguments, Pennsylvania makes the following additional arguments on the merits of individual sample claims:⁷

Claim 1

OIG states that this claim from the October-December 1997 quarter is unallowable because of Reason 6 (income eligibility). However, the CIS Individual Detail Inquiry forms demonstrate that from July 3, 1997 through October 2, 1997, the child’s mother, from whom the child was removed, had an earned income amount of \$0.00. (See Exhibit K-1.) Therefore, Pennsylvania’s claim is clearly allowable.

⁷ To maintain confidentiality, Pennsylvania will refer to the sample claims solely by number. The attached tables and exhibits, however, necessarily include child-specific information that must remain confidential. Pennsylvania respectfully requests that OIG take any and all steps necessary to avoid releasing child-specific information about the children in Pennsylvania’s foster care system throughout the audit and reporting process.

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Claim 2

OIG states that this claim from the October-December 1997 quarter is unallowable because of Reasons 2 (reasonable efforts), 3 (contrary to the welfare), and 6 (income eligibility). However, substantial evidence exists in the file to demonstrate that this claim is allowable.

The petition seeking placement of the child states that placement is in the best interests of the child and that the child is in need of treatment, supervision, and rehabilitation. (See Exhibit K-2.) Moreover, the Philadelphia Department of Human Services Family Service Plan Review dated November 26, 1997 establishes that the child was having home visits with his mother and states that the mother "is becoming better able to exercise her parental authority and that their relationship is improving." (*Id.*) These documents collectively establish that the agency made reasonable efforts to prevent removal and, ultimately, to reunify the child with his mother. The documents also establish that, at the time of placement, it would have been contrary to the welfare of the child to remain in the home.

As to income eligibility, the petition seeking placement and the probation officer's notes each reflect that, from February 13, 1997 until his removal on June 20, 1997, the child was residing with his mother. The CIS Individual Detail Inquiry forms establish that the child's mother received no earned or unearned income (other than public assistance) from May 2, 1997 to September 2, 1997. (*Id.*) Therefore, Pennsylvania's claim is clearly allowable.

Claim 4

OIG states that this claim from the October-December 1997 quarter is unallowable because of Reasons 1 (costs claimed for services not provided), 2 (reasonable efforts) and 3 (contrary to welfare). However, substantial evidence exists in the file to demonstrate that this claim is allowable.

First, court orders of April 23, 1997 and September 18, 1997 state that the child shall remain placed at VisionQuest "since the Court finds that such placement is appropriate and necessary." (See Exhibit K-4.) These orders also state: "The Court finds that the Petitioner has taken reasonable efforts to re-unify the child with his[] family. . . ." (*Id.*) In addition, the March 23, 1996 petition seeking placement of the child states that placement is in his best interests and that the child is in need of treatment, supervision, and rehabilitation. (*Id.*) These documents collectively establish that the "reasonable efforts" and "contrary to the welfare" requirements were satisfied.

Further, while documents in the file suggest that the child may have been discharged from the facility on November 4, 1997, that should result in only a partial

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disallowance of the submitted claim – not the entire disallowance that OIG recommends. Therefore, a substantial portion of Pennsylvania's claim is clearly allowable.

Claim 6

OIG states that this claim from the January-March 1998 quarter is unallowable because of Reasons 2 (reasonable efforts) and 3 (contrary to welfare). However, substantial evidence exists in the file to demonstrate that this claim is allowable.

The Philadelphia Department of Human Services Case Record reflects that, among other reasons, the case was accepted for services because “[t]here were problems with truancy” and “the court ordered residential placement *in the best interests of the child.*” (See Exhibit K-6 (emphasis added).) The Case Record also identifies “efforts [that were taken by the State] to prevent placement” and “circumstances that precluded [additional] prevention efforts.” (*Id.*) Moreover, the Case Record identifies the placement goal as “return the child to his family,” thus indicating reunification efforts. (*Id.*) Finally, the June 26, 1997 petition seeking placement of the child states that placement is in the best interests of the child and that the child is in need of treatment, supervision, and rehabilitation. (*Id.*) These documents collectively establish that the “reasonable efforts” and “contrary to the welfare” requirements were satisfied and that Pennsylvania's claim is allowable.

Claim 7

OIG states that this claim from the January-March 1998 quarter is unallowable because of Reasons 2 (reasonable efforts) and 3 (contrary to welfare). However, substantial evidence exists in the file to demonstrate that this claim is allowable.

The Philadelphia Department of Human Services Case Record reflects that, among other reasons, the case was accepted for services because “[t]here were problems with truancy”, “[y]outh did not adjust well to previous counseling/probation,” and “the court ordered residential placement *in the best interests of the child.*” (See Exhibit K-7 (emphasis added).) The Case Record also establishes that, in an effort to prevent placement, the child received counseling, day treatment and probation services, but all such efforts were unsuccessful. (*Id.*) Moreover, the Case Record identifies the placement goal as returning the child to his family, thus demonstrating reunification efforts. (*Id.*) Finally, the November 13, 1996 petition seeking placement of the child states that placement is in the best interests of the child and that the child is in need of treatment, supervision, and rehabilitation. (*Id.*) These documents collectively establish that the “reasonable efforts” and “contrary to the welfare” requirements were satisfied and that Pennsylvania's claim is allowable.

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Claim 9

OIG states that this claim from the January-March 1998 quarter is unallowable because of Reasons 2 (reasonable efforts) and 3 (contrary to welfare). However, substantial evidence exists in the file to demonstrate that this claim is allowable.

The Philadelphia Department of Human Services Case Record reflects that, among other reasons, the case was accepted for services because “[t]here were problems with truancy” and “[y]outh did not adjust well to previous counseling/probation.” (See Exhibit K-9.) The Case Record also establishes that, in an effort to prevent placement, the child received community mental health services, counseling, day treatment, probation services and intervention of family and friends. (*Id.*) Finally, the Case Record reflects that “the court ordered residential placement in the best interests of the child” and identifies the placement goal as returning the child to his home, thus indicating reunification efforts. (*Id.*) This document therefore establishes that the “reasonable efforts” and “contrary to the welfare” requirements were satisfied and that Pennsylvania’s claim is allowable.

Claim 10

OIG states that this claim from the January-March 1998 quarter is unallowable because of Reason 4 (age). However, substantial evidence exists in the file to demonstrate that this claim is allowable.

At the time of the claim, the child was eighteen years of age, was receiving a secondary school education at Glen Mills, and could reasonably be expected to graduate by December 25, 1998 (the child’s nineteenth birthday). The child’s transcript as of December 19, 1997 demonstrates that he had completed the 11th grade and, while he was placed at Glen Mills, he was required to continue his education. (See Exhibit K-10.) Pennsylvania reasonably expected the child to complete the final two semesters of his secondary education during the spring and fall semesters of 1998. As such, the claim is clearly allowable.

Claim 14

OIG states that this claim from the January-March 1998 quarter is unallowable because of Reasons 2 (reasonable efforts) and 3 (contrary to welfare). However, substantial evidence exists in the file to demonstrate that this claim is allowable.

First, court orders of July 17, 1997 and November 13, 1997 state that the child should remain at the VisionQuest facility “since the Court finds that such placement is appropriate and necessary.” (See Exhibit K-14.) The orders also state: “The Court finds that the Petitioner has taken reasonable efforts to re-unify the child with [h]er family. . . .” (*Id.*) Further, the probation officer’s notes detail numerous non-placement treatments provided

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to the child prior to placement on August 23, 1996. (*Id.*) These documents collectively establish that the “reasonable efforts” and “contrary to the welfare” requirements were satisfied and that Pennsylvania’s claim is allowable.

Claim 16

OIG states that this claim from the April-June 1998 quarter is unallowable because of Reasons 2 (reasonable efforts), 3 (contrary to the welfare), and 6 (income eligibility). However, substantial evidence exists in the file to demonstrate that this claim is allowable.

First, the file contains a July 10, 1998 court order which states that “the Court finds that such placement is appropriate and necessary and that return home would be *contrary to the welfare of the child.*” (See Exhibit K-16 (emphasis added).) The same order states: “The Court finds that the Petitioner has taken *reasonable efforts* to re-unify the child with his[] family.” (*Id.* (emphasis added).) In addition, the Philadelphia Department of Human Services Case Record establishes that, in an effort to prevent placement, the child received day treatment, probation services and intervention of family and friends (*Id.*); however, the services were unsuccessful and the child was removed with the “[r]eturn to own home” as the placement goal (*Id.*). Notes of the child’s probation officer dating from May 29, 1996 – well before the child’s placement on February 20, 1998 – further detail efforts made to prevent placement. (*Id.*) These documents collectively establish that the “reasonable efforts” and “contrary to the welfare requirements” were satisfied.

As to income eligibility, the CIS Individual Detail Inquiry form shows that the child’s father from whom the child was removed had an earned income of \$0.00 in 1998. (*Id.*) Also, the Income Eligibility Verification System, a statewide wage reporting system that documents earned and unearned income, reflects that the child’s father and mother had no income during the first quarter 1998. (*Id.*) Thus, Pennsylvania’s claim is clearly allowable.

Claim 18

OIG states that this claim from the April-June 1998 quarter is unallowable because of Reasons 2 (reasonable efforts) and 3 (contrary to welfare). However, substantial evidence exists in the file to demonstrate that this claim is allowable.

First, the Philadelphia Department of Human Services Case Record states that, among other reasons, the child was placed because “[h]e did not adjust well to previous counseling/probation” and “the court ordered residential placement in the best interests of the child.” (See Exhibit K-18.) The Case Record also establishes that, in an effort to prevent placement, the child received counseling, probation services, and intervention of family and friends, all of which were unsuccessful. (*Id.*) Moreover, the Case Record identifies the placement goal of “[r]eturn to own home,” thus indicating reunification

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efforts. (*Id.*) Additionally, the April 23, 1997 petition seeking placement of the child states that placement is *in the best interests of the child* and that the child is in need of treatment, supervision, and rehabilitation. (*Id.* (emphasis added).) The detailed notes of the child's probation officer further document the extensive efforts made to prevent placement of the child. (*Id.*) These documents collectively establish that the "reasonable efforts" and "contrary to the welfare" requirements were satisfied and that Pennsylvania's claim is allowable.

Claim 20

OIG states that this claim from the April-June 1998 quarter is unallowable because of Reason 4 (age). However, the file indicates that the child was performing well in his schooling at VisionQuest and that Pennsylvania reasonably expected him to complete his secondary education prior to reaching nineteen years of age. (See Exhibit K-20.) Therefore, Pennsylvania's claim is clearly allowable.

Claim 23

OIG states that this claim from the July-September 1998 quarter is unallowable because of Reason 6 (income eligibility). However, the Income Eligibility Verification System reflects that the child's father and mother had no income during the relevant period. (See Exhibit K-23.) Therefore, Pennsylvania's claim is clearly allowable.

Claim 26

OIG states that this claim from the October-December 1998 quarter is unallowable because of Reasons 2 (reasonable efforts) and 3 (contrary to the welfare). However, Pennsylvania has obtained an Order dated September 3, 1998, in which the court finds that the State had made reasonable efforts to prevent the child's placement and that allowing the child to remain in his home would be contrary to his welfare. (See Exhibit K-26.) Therefore, Pennsylvania's claim is clearly allowable.

Claim 29

OIG states that this claim from the October-December 1998 quarter is unallowable because of Reasons 2 (reasonable efforts), 3 (contrary to the welfare), and 4 (age). However, substantial evidence exists in the file to demonstrate that this claim is allowable.

First, contrary to OIG's conclusion, a November 10, 1997 order transferring the child to Glen Mills contains judicial findings that the State had made reasonable efforts to prevent the child's removal from the home and that it would be contrary to the child's welfare to remain in the home. (See Exhibit K-29.) In addition, the Philadelphia Department

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of Human Services Case Record establishes that, in an effort to prevent placement, the child received day treatment and probation services. (*Id.*) Notes of the child's probation officer further document that the child received alcohol counseling and training to promote positive behavior and consistent school attendance. (*Id.*) These documents collectively establish that the "reasonable efforts" and "contrary to the welfare requirements" were satisfied.

Further, although the child turned 18 before the claim review period began, he was a full-time student taking pre-college courses while he was in care and therefore remained eligible for Title IV-E benefits. The child's January 5, 1999 discharge summary from Glen Mills indicates that during the claim review period, the child was receiving instruction in the pre-GED level classroom where his curriculum included Algebra I, Literature, Science, Reading, Writing Skills, and Health. (*Id.*) In addition, a July 31, 1998 report confirms that the child was enrolled full-time in college prep-level classes and that the goal was for him to complete these classes to enable him to develop the academic skills to go to college. (*Id.*) Therefore, Pennsylvania's claim is clearly allowable.

Claim 32

OIG states that this claim from the October-December 1998 quarter is unallowable because of Reason 4 (age). However, the file indicates that the child was performing well at VisionQuest and that Pennsylvania reasonably expected the child to complete secondary schooling prior to reaching 19 years of age. (See Exhibit K-32.) Therefore, Pennsylvania's claim is clearly allowable.

Claim 33

OIG states that this claim from the January-March 1999 quarter is unallowable because of Reasons 2 (reasonable efforts), 3 (contrary to the welfare), and 5 (annual redetermination). However, substantial evidence exists in the file to demonstrate that this claim is allowable.

First, the Philadelphia Department of Human Services Case Record establishes that, in an effort to prevent placement, the child received counseling, day treatment, and probation services, all of which were unsuccessful. (See Exhibit K-33.) The Case Record also notes that the child's parents requested that the child be placed due to the child's bad behavior and poor school attendance record. (*Id.*) Notes of the child's probation officer state that the child's parents feared for the child's safety because he was not coming home and was associating with drug dealers and people who carried weapons. (*Id.*) These documents collectively establish that the "reasonable efforts" and "contrary to the welfare" requirements were satisfied.

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Moreover, OIG's disallowance based upon a purported lack of annual redetermination is erroneous. In its own Criteria Governing Title IV-E Foster Care Claims (attached to the Sampling Plan), OIG expressly acknowledged that a State's failure to conduct an annual redetermination of eligibility does not render the case ineligible for federal financial participation. (See Criteria at 13 ("However, if the State agency misses the twelve month eligibility redetermination schedule in certain cases, those cases would not be considered ineligible for Federal financial participation for that reason alone.") *citing* ACYF-CB-PIQ-85-06 (6/5/85).) In any event, notes of the child's probation officer establish that: (i) the court issued additional orders continuing the child's placement at Glen Mills on May 19, 1998 and September 21, 1998; (ii) the probation officer regularly spoke to the child about the child's expectations and the goals for the Glen Mills program, which included attending school, improving his social growth and development, and improving the child's relationship with his parents; (iii) the child was demonstrating consistent positive behavior and was working on his leadership skills; and (iv) the Glen Mills staff believed that the child should remain in care. (*Id.*) All this evidence shows that the State was making reasonable efforts to finalize the child's permanency plan during the child's placement at Glen Mills.

For the foregoing reasons, this claim is clearly allowable.

Claim 36

OIG states that this claim from the January-March 1999 quarter is unallowable because of Reasons 2 (reasonable efforts), 3 (contrary to the welfare), 4 (age) and 5 (annual redetermination). However, substantial evidence exists in the file to demonstrate that this claim is allowable.

First, Pennsylvania has obtained a court order dated February 10, 1998 in which the court finds that the State had made reasonable efforts to prevent the child's placement and that allowing the child to remain in his home would be contrary to his welfare. (See Exhibit K-36.) Moreover, although the child turned 18 before the claim review period began, he was a full-time student while he was in care and he was reasonably expected to complete his secondary schooling before he turned 19 years of age. According to the child's March 10, 1999 transcript from Glen Mills, he was taking full-time classes in the 12th grade prior to his discharge. (*Id.*) The child's discharge summary from Glen Mills also confirms that he was taking full-time classes to complete his secondary education at the time of his discharge. (*Id.*)

Finally, OIG's disallowance based upon a purported lack of annual redetermination is erroneous. In its own Criteria Governing Title IV-E Foster Care Claims (attached to the Sampling Plan), OIG expressly acknowledged that a State's failure to conduct an annual redetermination of eligibility does not render the case ineligible for federal financial participation. (See Criteria at 13 ("However, if the State agency misses the

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twelve month eligibility redetermination schedule in certain cases, those cases would not be considered ineligible for Federal financial participation for that reason alone.”) *citing* ACYF-CB-PIQ-85-06 (6/5/85).) In any event, Pennsylvania has obtained a court order dated November 3, 1998, in which the court concludes that the child should remain at Glen Mills after finding that the State has made reasonable efforts to reunite the child with his family, and that it would be contrary to the child’s welfare to return home. (*Id.*) Therefore, Pennsylvania’s claim is clearly allowable.

Claim 38

OIG states that this claim from the January-March 1999 quarter is unallowable because of Reasons 2 (reasonable efforts) and 3 (contrary to the welfare). However, Pennsylvania has obtained a court order dated February 20, 1998, in which the court finds that the State had made reasonable efforts to prevent placement and that it would be contrary to the child’s welfare to remain in his home. (See Exhibit K-38.) Pennsylvania has also obtained a court order dated November 19, 1998, in which the court states that the child should remain in VisionQuest after finding that reasonable efforts have been made to reunite him with his family and that it would be contrary to the child’s welfare to return home. (*Id.*) Therefore, the claim is clearly allowable.

Claim 39

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

The Philadelphia Department of Human Services Case Record establishes that, in an effort to prevent placement, the child received mental health services, counseling, and probation services, all of which were unsuccessful. (See Exhibit K-39.) A November 25, 1997 petition seeking placement of the child states that placement is in the best interests of the child and that the child is in need of treatment, supervision, and rehabilitation. (*Id.*) Additionally, notes of the child’s probation officer state that he had been suspended five times for disruptions at school, that he was forced to live with his aunt because his mom was a drug addict and he gave his sister trouble, and that his behavior was uncontrollable. (*Id.*) These documents collectively establish that the “reasonable efforts” and “contrary to the welfare” requirements were satisfied. Therefore, Pennsylvania’s claim is clearly allowable.

Claim 42

OIG states that this claim from the April-June 1999 quarter is unallowable because of Reason 6 (income eligibility). However, the Income Eligibility Verification System reflects that the three members of the AFDC unit – namely, the child, his sister, and

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his mother – had no income during the second quarter of 1998 when the child entered care. (See Exhibit K-42.) Thus, Pennsylvania's claim is clearly allowable.

Claim 46

OIG states that this claim from the July-September 1999 quarter is unallowable because of Reason 6 (income eligibility). However, the CIS Individual Detail Inquiry forms show that during the relevant period the child's mother, from whom the child was removed, had an earned income of \$0.00. (See Exhibit K-46.) Thus, Pennsylvania's claim is clearly allowable.

Claim 47

OIG states that this claim from the July-September 1999 quarter is unallowable because of Reason 4 (age). However, information in the file establishes that the child did not turn 18 until a week into the final month of the claim review period. (See Exhibit K-47.) Moreover, the child's transcript from VisionQuest establishes that he was performing well in school and that Pennsylvania reasonably expected the child to complete his secondary education prior to reaching 19 years of age. (*Id.*) Therefore, the claim is clearly allowable.

Claim 48

OIG states that this claim from the July-September 1999 quarter is unallowable because of Reason 4 (age). However, although the child was 18 years old during the claim review period, Pennsylvania reasonably expected the child to complete secondary schooling prior to reaching 19 years of age. Indeed, the child's official school transcript from VisionQuest notes that the child had taken numerous classes and was performing well. (See Exhibit K-48.) Therefore, the claim is clearly allowable.

Claim 49

OIG states that this claim from the October-December 1999 quarter is unallowable because of Reason 4 (age). However, although the child turned 18 during the claim review period, Pennsylvania reasonably expected the child to complete secondary schooling prior to reaching 19 years of age. The child's official transcript from VisionQuest shows that the child was working towards completing his high school degree while in care. (See Exhibit K-49.) Therefore, the claim is clearly allowable.

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Claim 51

OIG states that this claim from the October-December 1999 quarter is unallowable because of Reasons 2 (reasonable efforts), 3 (contrary to the welfare) and 6 (income eligibility). However, substantial evidence exists in the file to demonstrate that this claim is allowable.

First, Pennsylvania has obtained a court order dated October 6, 1999, in which the court finds that the State had made reasonable efforts to prevent the child's placement and that allowing the child to remain in his home would be contrary to his welfare. (See Exhibit K-51.) The Philadelphia Department of Human Services Case Record also establishes that, in an effort to prevent placement, the child received counseling, supervision, and probation services, all of which were unsuccessful. (*Id.*) Notes of the child's probation officer confirm that the State made numerous efforts to prevent placement. (*Id.*) Further, the June 18, 1999 petition seeking placement of the child states that placement is in the best interests of the child and that he is in need of treatment, supervision, and rehabilitation. (*Id.*) These documents collectively establish that the "reasonable efforts" and "contrary to the welfare" requirements were satisfied.

Moreover, although OIG rejected the claim due to the purported lack of income eligibility, the Income Eligibility Verification System reflects that the three members of the AFDC unit – namely, the child, his minor sibling, and his mother – had no income when the child entered care. (*Id.*) Thus, Pennsylvania's claim is clearly allowable.

Claim 52

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

Pennsylvania has obtained a court order dated January 25, 1999, in which the court finds that the State had made reasonable efforts to prevent the child's placement and that placement was in the best interests of the child. (See Exhibit K-52.) Pennsylvania has also obtained two additional review orders, dated July 1, 1999 and September 17, 1999, in which the court finds the child should remain at VisionQuest and that the state has made reasonable efforts to reunify the child with his family. (*Id.*) Additionally, the Philadelphia Department of Human Services Case Record establishes that, in an effort to prevent placement, the child received counseling and probation services, which were unsuccessful. (*Id.*) These documents collectively establish that the "reasonable efforts" and "contrary to the welfare" requirements were satisfied. Accordingly, Pennsylvania's claim is clearly allowable.

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Claim 53

OIG states that this claim from the October-December 1999 quarter is unallowable because of Reasons 2 (reasonable efforts) and 3 (contrary to the welfare). However, Pennsylvania has obtained a court order dated January 28, 1999, in which the court finds that the State had made reasonable efforts to prevent the child's placement and that allowing the child to remain in his home would be contrary to his welfare. (See Exhibit K-53.) Therefore, Pennsylvania's claim is clearly allowable.

Claim 55

This claim is an exact duplicate of Claim 51. For the reasons set forth *supra* in response to Claim 51, the claim is proper and clearly allowable. Moreover, it was clear error for OIG to double-count this single disallowed claim in the sample results and in the subsequent extrapolation to the universe of audited claims.

Claim 56

OIG states that this claim from the October-December 1999 quarter is unallowable because of Reason 4 (age). However, the child did not turn 18 until November 29, 1999. (See Exhibit K-56.) Further, Pennsylvania reasonably expected the child to complete secondary schooling prior to reaching 19 years of age and, thus, he remained eligible for Title IV-E benefits. Indeed, the child's discharge summary from Glen Mills and notes of the child's probation officer confirm that the child was enrolled in pre-GED classes and was performing satisfactorily. (*Id.*) Therefore, the entire claim is clearly allowable and, at the very least, the claim is allowable for costs incurred through November 29, 1999.

Claim 57

OIG states that this claim from the October-December 1999 quarter is unallowable because of Reasons 2 (reasonable efforts), 3 (contrary to the welfare), and 5 (annual redetermination). However, substantial evidence exists in the file to demonstrate that this claim is allowable.

The Philadelphia Department of Human Services Case Record establishes that, in an effort to prevent placement, the child received counseling and probation services but that such efforts were unsuccessful. (See Exhibit K-57.) Moreover, the referral form and notes from the child's probation officer record that the child: (i) had been arrested on several charges and had been suspended for cutting class; (ii) belonged to a gang and had previously been shot; and (iii) had conflicts with area gangs and was afraid to attend an Indo-Chinese American Program required under his probation. (*Id.*) These documents collectively establish that the "reasonable efforts" and "contrary to the welfare" requirements were satisfied.

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OIG's disallowance based upon a purported lack of annual redetermination is also erroneous. In its own Criteria Governing Title IV-E Foster Care Claims (attached to the Sampling Plan), OIG expressly acknowledged that a State's failure to conduct an annual redetermination of eligibility does not render the case ineligible for federal financial participation. (See Criteria at 13 ("However, if the State agency misses the twelve month eligibility redetermination schedule in certain cases, those cases would not be considered ineligible for Federal financial participation for that reason alone.") citing ACYF-CB-PIQ-85-06 (6/5/85).) In any event, notes of the child's probation officer confirm that the court issued additional orders continuing the child's placement on August 31, 1999 and September 23, 1999. (*Id.*) Additionally, the Family Service Plan Review and probation officer's notes state that: (i) the child was attending school regularly at Glen Mills, that he had improved his social skills and grade average, and that the child's parents were involved in his care; (ii) the child's adjustment to Glen Mills was positive, and that the plan was to encourage the child to earn his GED and to cooperate at school and at home; and (iii) although the child was doing well in placement, there was room for improvement. (*Id.*) The above evidence collectively shows that the State was making reasonable efforts to finalize the child's permanency plan during his placement at Glen Mills.

For the foregoing reasons, Pennsylvania's claim is clearly allowable.

Claim 58

OIG states that this claim from the January-March 2000 quarter is unallowable because of Reasons 2 (reasonable efforts) and 3 (contrary to the welfare). However, Pennsylvania has obtained a court order dated January 5, 2000, in which the court finds that the State had made reasonable efforts to prevent the child's placement and that allowing the child to remain in his home would be contrary to his welfare. (See Exhibit K-58.) Therefore, Pennsylvania's claim is clearly allowable.

Claim 62

OIG states that this claim from the January-March 2000 quarter is unallowable because of Reasons 2 (reasonable efforts), 3 (contrary to the welfare), and 4 (age). However, substantial evidence exists in the file to demonstrate that this claim is allowable.

First, contrary to OIG's conclusions, the file contains court orders dated June 21, 1999 and March 17, 2000, in which the court find that the child should remain at Glen Mills and that the State has made reasonable efforts to reunify the child with his family. (See Exhibit K-62.) The Philadelphia Department of Human Services Case Record also establishes that, in an effort to prevent placement, the child received counseling and probation services, but such efforts were unsuccessful. (*Id.*) Notes of the child's probation officer and certain other reports show that the child: (i) was not obeying his curfew and was missing school; (ii) was tense, unhappy and frustrated, and needed intensive monitoring of

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his social, emotional and academic adjustments; and (iii) was violating his probation, staying away from his home for weeks, and not obeying curfew. (*Id.*) These documents collectively establish that the “reasonable efforts” and “contrary to the welfare” requirements were satisfied.

Further, although OIG rejected the claim on the basis of age, documents in the file show that the child did not turn 18 until March 29, 2000 – two days before the end of the claim review period. (*Id.*) Moreover, Pennsylvania reasonably expected the child to complete secondary schooling prior to reaching 19 years of age and, thus, he remained eligible for Title IV-E benefits. Indeed, the child’s transcript from Glen Mills confirms that the child was taking 12th grade classes in February 2000. (*Id.*) Thus, the claim is clearly allowable in its entirety and, in any event, is clearly allowable for costs incurred through March 29, 2000.

Claim 63

OIG states that this claim from the January-March 2000 quarter is unallowable because of Reason 4 (age). However, although the child was 18 years old during the claim review period, Pennsylvania reasonably expected the child to complete secondary schooling prior to reaching 19 years of age. Indeed, documents in the file establish that he was enrolled in a GED program at Glen Mills, which he enjoyed, and that he was working toward completion of the program. (See Exhibit K-63.) Therefore, the claim is clearly allowable.

Claim 64

OIG states that this claim from the January-March 2000 quarter is unallowable because of Reasons 4 (age) and 6 (income eligibility). However, substantial evidence exists in the file to demonstrate that this claim is allowable.

First, although the child was 18 years old during the claim review period, Pennsylvania reasonably expected him to complete secondary schooling prior to reaching 19 years of age. Documentation in the file clearly establishes that the child was taking GED and college prep level classes during the claim review period and, in fact, actually earned his GED before turning 19. (See Exhibit K-64.)

Moreover, although OIG rejected the claim due to the purported lack of income eligibility, the Income Eligibility Verification System reflects that the three members of the AFDC unit – namely, the child, his minor sibling, and his mother – had no income during the second, third and fourth quarters of 1999. (*Id.*) Thus, Pennsylvania’s claim is clearly allowable.

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Claim 66

OIG states that this claim from the April-June 2000 quarter is unallowable because of Reasons 2 (reasonable efforts) and 3 (contrary to the welfare). However, substantial evidence exists in the file to demonstrate that this claim is allowable.

First, the file contains court orders dated May 21, 1999 and February 3, 2000, in which the court finds that the child should remain in placement and that the State has made reasonable efforts to reunify the child with the family. (See Exhibit K-66.) The Philadelphia Department of Human Services Case Record also establishes that residential placement is in the best interest of the child that the State made reasonable efforts to prevent placement. (*Id.*) Further, a February 3, 1999 petition seeking placement of the child states that placement is in his best interests and that he is in need of treatment, supervision or rehabilitation. (*Id.*) These documents collectively establish that the "reasonable efforts" and "contrary to the welfare" requirements were satisfied. Accordingly, Pennsylvania's claim is clearly allowable.

Claim 67

OIG states that this claim from the April-June 2000 quarter is unallowable because of Reasons 2 (reasonable efforts) and 3 (contrary to the welfare). However, substantial evidence exists in the file to demonstrate that this claim is allowable.

First, contrary to OIG's conclusions, the file contains a court order dated November 23, 1999, in which the court finds that it was contrary to the child's welfare to remain in his home. (See Exhibit K-67.) In addition, the Philadelphia Department of Human Services Case Record establishes that, in an effort to prevent placement, the child received SCOH services, probation services and supervision, but that those services were unsuccessful. (*Id.*) These documents collectively establish that the "reasonable efforts" and "contrary to the welfare" requirements were satisfied. Therefore, the claim is clearly allowable.

Claim 68

OIG states that this claim from the October-December 1996 quarter is unallowable because of Reasons 2 (reasonable efforts), 3 (contrary to the welfare), and 6 (income eligibility). However, substantial evidence exists in the file to demonstrate that this claim is allowable.

First, contrary to OIG's conclusion, the file contains a court order dated November 6, 1996, in which the court finds that the State had made reasonable efforts to prevent the child's placement and that allowing the child to remain in his home would be contrary to his welfare. (See Exhibit K-68.) OIG's finding that no order was produced is

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simply incorrect. Moreover, although OIG also rejected the claim due to the purported lack of income eligibility, the Philadelphia Department of Human Services' CY-61 Eligibility Determination Form indicates that the child was AFDC eligible at the time of his removal from the home and, thus, automatically qualified for Title IV-E benefits. (*Id.*) Therefore, Pennsylvania's claim is clearly allowable.

Claim 70

OIG states that this claim from the October-December 1996 quarter is unallowable because of Reason 5 (annual redetermination). However, OIG's own Criteria Governing Title IV-E Foster Care Claims (attached to the Sampling Plan) provide that a State's failure to conduct an annual redetermination of eligibility does not render the case ineligible for federal financial participation. (See Criteria at 13 ("However, if the State agency misses the twelve month eligibility redetermination schedule in certain cases, those cases would not be considered ineligible for Federal financial participation for that reason alone.") *citing* ACYF-CB-PIQ-85-06 (6/5/85).) In any event, the file contains a court order dated April 30, 1996 – which was approximately 6 months after the child entered placement – in which the court finds that the child should remain at Glen Mills and that the state has made reasonable efforts to reunify the child with his family. (See Exhibit K-70.) OIG's conclusion to the contrary is simply incorrect. Therefore, Pennsylvania's claim is clearly allowable.

Claim 76

OIG states that this claim from the January-March 1997 quarter is unallowable because of Reason 5 (annual redetermination). However, OIG's own Criteria Governing Title IV-E Foster Care Claims (attached to the Sampling Plan) provide that a State's failure to conduct an annual redetermination of eligibility does not render the case ineligible for federal financial participation. (See Criteria at 13 ("However, if the State agency misses the twelve month eligibility redetermination schedule in certain cases, those cases would not be considered ineligible for Federal financial participation for that reason alone.") *citing* ACYF-CB-PIQ-85-06 (6/5/85).) In any event, the file contains court orders dated April 9, 1996 and October 18, 1996 in which such redeterminations took place. (See Exhibit K-76.) OIG's conclusion to the contrary is simply incorrect. Pennsylvania's claim is clearly allowable.

Claim 79

OIG states that this claim from the January-March 1997 quarter is unallowable because of Reasons 2 (reasonable efforts), 3 (contrary to the welfare), and 4 (age). However, substantial evidence exists in the file to demonstrate that this claim is allowable.

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First, the file contains court orders dated August 12, 1996 and December 13, 1996, in which the court finds the State had made reasonable efforts to prevent the child's placement and that allowing the child to remain in his home would be contrary to his welfare. (See Exhibit K-79.) In addition, the July 8, 1996 petition seeking placement of the child states that placement is in the best interests of the child. (*Id.*) These documents collectively establish that the "reasonable efforts" and "contrary to the welfare" requirements were satisfied.

Moreover, although the child was 18 years old during the claim review period, Pennsylvania reasonably expected the child to complete secondary schooling prior to reaching 19 years of age. Indeed, notes of the child's probation officer confirm that, as of July 30, 1996, the child was "making reasonable progress towards eligibility for the GED examination." (*Id.*) Therefore, the claim is clearly allowable.

Claim 84

This claim is for the same child as Claim 68, although for a different claim review period (April-June 1997). OIG's asserted reasons for disallowing this claim are the same as those asserted for Claim 68. For the reasons set forth *supra* in response to Claim 68, this claim is proper and clearly allowable.

Claim 85

OIG states that this claim from the April-June 1997 quarter is unallowable because of Reasons 2 (reasonable efforts) and 3 (contrary to the welfare). However, Pennsylvania has obtained a court order dated July 2, 1996, in which the court finds that the State had made reasonable efforts to prevent the child's placement and that allowing the child to remain in his home would be contrary to his welfare. (See Exhibit K-85.) Therefore, Pennsylvania's claim is clearly allowable.

Claim 86

OIG states that this claim from the April-June 1997 quarter is unallowable because of Reasons 1 (services not provided), 2 (reasonable efforts), 3 (contrary to the welfare), and 5 (annual redetermination). However, substantial evidence exists in the file to demonstrate that this claim is allowable.

First, although the child was discharged from the facility on June 9, 1997, Pennsylvania only claimed for the 69 days he was in the facility (69 days @ \$76.98 per day = \$5,311.62). Therefore, OIG's conclusion that Pennsylvania submitted a claim for services that were not provided is simply incorrect.

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Moreover, the file contains court orders dated July 23, 1996 and January 6, 1997, in which the court finds that placement at Glen Mills was appropriate and necessary and that the State had made reasonable efforts to re-unify the child with his family. (See Exhibit K-86.) Additionally, the January 2, 1996 petition seeking placement of the child states that placement is in the best interests of the child, who is in need of treatment, supervision, or rehabilitation. (*Id.*) These documents collectively establish that the "reasonable efforts" and "contrary to the welfare" requirements were satisfied.

Finally, OIG's disallowance based upon a purported lack of annual redetermination is erroneous. In its own Criteria Governing Title IV-E Foster Care Claims (attached to the Sampling Plan), OIG expressly acknowledged that a State's failure to conduct an annual redetermination of eligibility does not render the case ineligible for federal financial participation. (See Criteria at 13 ("However, if the State agency misses the twelve month eligibility redetermination schedule in certain cases, those cases would not be considered ineligible for Federal financial participation for that reason alone.") *citing* ACYF-CB-PIQ-85-06 (6/5/85).) In any event, the file contains court orders dated July 23, 1996 and January 6, 1997 in which those redeterminations were made. Accordingly, Pennsylvania's claim is clearly allowable.

Claim 89

OIG states that this claim from the July-September 1997 quarter is unallowable because of Reasons 2 (reasonable efforts), 3 (contrary to the welfare), and 5 (annual redetermination). However, substantial evidence exists in the file to demonstrate that this claim is allowable.

First, contrary to OIG's conclusions, the file contains a court order dated November 20, 1995, in which the court finds that to allow this child to remain in the home would be contrary to his welfare. (See Exhibit K-89.) Moreover, a second court order – the date of which is unknown due to the erosion of photocopying quality – contains a judicial finding that the State took reasonable efforts to re-unify the child with his family and that continuing placement is both appropriate and necessary. (*Id.*) Finally, the October 12, 1995 petition seeking placement of the child states that placement is in the best interest of the child, who is in need of treatment, supervision, or rehabilitation. (*Id.*) These documents collectively establish that the "reasonable efforts" and "contrary to the welfare" requirements were satisfied.

Further, OIG's disallowance based upon a purported lack of annual redetermination is erroneous. In its own Criteria Governing Title IV-E Foster Care Claims (attached to the Sampling Plan), OIG expressly acknowledged that a State's failure to conduct an annual redetermination of eligibility does not render the case ineligible for federal financial participation. (See Criteria at 13 ("However, if the State agency misses the

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twelve month eligibility redetermination schedule in certain cases, those cases would not be considered ineligible for Federal financial participation for that reason alone.”) *citing* ACYF-CB-PIQ-85-06 (6/5/85).) In any event, the child was discharged less than two years after his initial placement, meaning that only one redetermination would have been appropriate. The court order whose date is unreadable due to photocopying erosion clearly evidences that a redetermination of this child’s placement situation was in fact made. Accordingly, Pennsylvania’s claim is clearly allowable.

Claim 91

OIG states that this claim from the July-September 1997 quarter is unallowable because of Reasons 2 (reasonable efforts) and 3 (contrary to the welfare). However, Pennsylvania has obtained a court order dated January 23, 1997, in which the court finds that the State had made reasonable efforts to prevent the child’s placement and that allowing the child to remain in his home would be contrary to his welfare. (See Exhibit K-91.) In addition, a December 10, 1997 court order similarly found that the State had taken reasonable efforts to re-unify the child with his family and that continued placement was both appropriate and necessary. (*Id.*) Therefore, Pennsylvania’s claim is clearly allowable.

F. Pennsylvania Rejects All Recommendations of the Draft Report

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

Beyond all of that, OIG conducted the audit improperly and prejudicially to Pennsylvania by: (a) extending the scope of the audit to more than double the applicable federal record retention period, (b) creating “associated administrative costs” that are not readily identifiable and were not claimed as such by Pennsylvania and then recommending that a substantial percentage of those “claims” be disallowed, and (c) engaging in such critical sampling and extrapolation errors as to eviscerate the reliability of any of the Draft Report’s financial estimates and conclusions. OIG then proceeded to find deficiencies with all 100 sample claims and recommend that ACF disallow at least \$16 million – if not the

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entirety of the \$28 million under review – in funds Pennsylvania already spent years ago to provide essential services to needy children.

To put it bluntly, the Draft Report is lacking in substance. It is rife with errors, statistically unreliable calculations, and wholly unsupportable conclusions. There is no factual or legal basis for any disallowance of *Castille* maintenance claims. There is no factual or legal basis for any disallowance of purported “associated administrative costs.” And there is no reason for Pennsylvania to “work with ACF” on anything that has to do with this arbitrary and seemingly punitive course of events. The Draft Report should be withdrawn in its entirety and all aspects of the multi-phase audit should be immediately terminated.

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

Very truly yours,



Mark A. Aronchick

Enclosures

cc: Estelle B. Richman, Secretary of Public Welfare