Senator MELCHER. The committee will come to order. We are having an oversight hearing today on the Indian Child Welfare Act of 1978, Public Law 95-608. The act is fairly new, and at this time we are trying to make sure that it is getting off to a good start. We think it is appropriate—to have an oversight hearing now—to correct any flaws that might be developing and to straighten out some obvious or apparent rough spots in the act itself and how it is implemented.

Today we are going to hear from the administration and the group of Indian leaders across the country who are trying to work with the act. Hopefully, after the completion of this oversight hearing, we will be able to develop a joint assessment of the Indian community and the administrators within the Bureau of Indian Affairs in the Division of Social Services that better reflects the purpose and intent of Congress in the 1978 act.

With the advice and comments of the tribal leaders throughout the Nation who are trying to work with it, we think Congress should be in a better position to advise the administration. I am sure the administration will want to have some input and some advice, both from the Indian nation and from Congress.

Without objection, the act, the staff memorandum, and the excerpt from the Federal Register will be included in the record at this point. [The material follows. Testimony begins on p. 34.]
PUBLIC LAW 95-608—NOV. 8, 1978

Public Law 95-608
95th Congress

An Act
To establish standards for the placement of Indian children in foster or adoptive homes, to prevent the breakup of Indian families, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Indian Child Welfare Act of 1978."

Sec. 2. Recognizing the special relationship between the United States and the Indian tribes and their members and the Federal responsibility to Indian people, the Congress finds—
(1) that clause 5, section 8, article I of the United States Constitution provides that "The Congress shall have Power —— To regulate Commerce * * * with Indian tribes" and, through this and other constitutional authority, Congress has plenary power over Indian affairs;
(2) that Congress, through statutes, treaties, and the general course of dealing with Indian tribes, has assumed the responsibility for the protection and preservation of Indian tribes and their resources;
(3) that there is no resource that is more vital to the continued existence and integrity of Indian tribes than their children and that the United States has a direct interest, as trustee, in protecting Indian children who are members of or are eligible for membership in an Indian tribe;
(4) that an alarmingly high percentage of Indian families are broken up by the removal, often unwarranted, of their children from them by nontribal public and private agencies and that an alarmingly high percentage of such children are placed in non-Indian foster and adoptive homes which will reflect the unique values of Indian culture, and by providing for assistance to Indian tribes in the operation of child and family service programs.

Sec. 3. The Congress hereby declares that it is the policy of this Nation to protect the best interests of Indian children and to promote the stability and security of Indian tribes and families by the establishment of minimum Federal standards for the removal of Indian children from their families and the placement of such children in foster or adoptive homes which will reflect the unique values of Indian culture, and by providing for assistance to Indian tribes in the operation of child and family service programs.

Sec. 4. For the purposes of this Act, except as may be specifically provided otherwise, the term—
(1) "child custody proceedings" shall mean and include—
(i) "foster care placement" which shall mean any action removing an Indian child from its parent or Indian custodian for temporary placement in a foster home or institution or the home of a guardian or conservator where the parent or Indian custodian cannot have the child returned upon demand, but where parental rights have not been terminated;

Definitions.
25 USC 1903.

43 USC 1602.

25 USC 1902.

43 USC 1606.

25 USC 1903.

43 USC 1606.
TITLE I—CHILD CUSTODY PROCEEDINGS

Sec. 101. (a) An Indian tribe shall have jurisdiction exclusive as to any State over any child custody proceeding involving an Indian child who resides or is domiciled within the reservation of such tribe, except where such jurisdiction is otherwise vested in the State by existing Federal law. Where an Indian child is a ward of a tribal court, the Indian tribe shall retain exclusive jurisdiction, notwithstanding the residence or domicile of the child.

(b) In any State court proceeding for the foster care placement of, or termination of parental rights to, an Indian child not domiciled or residing within the reservation of the Indian child's tribe, the court, in the absence of good cause to the contrary, shall transfer such proceeding to the jurisdiction of the tribe, absent objection by either parent, upon the petition of either parent or the Indian custodian or the Indian child's tribe: Provided, That such transfer shall be subject to declination by the tribal court of such tribe.

(c) In any State court proceeding for the foster care placement of, or termination of parental rights to, an Indian child, the Indian custodian of the child and the Indian child's tribe shall have a right to intervene at any point in the proceeding.

(d) The United States, every territory or possession of the United States, and every Indian tribe shall give full faith and credit to the public acts, records, and judicial proceedings of any Indian tribe applicable to Indian child custody proceedings to the same extent that such entities give full faith and credit to the public acts, records, and judicial proceedings of any other entity.

Sec. 102. (a) In any involuntary proceeding in a State court, where the court knows or has reason to know that an Indian child is involved, the party seeking the foster care placement of, or termination of parental rights to, an Indian child shall notify the parent or Indian custodian and the Indian child's tribe, by registered mail with return receipt requested, of the pending proceedings and of their right of intervention. If the identity or location of the parent or Indian custodian and the tribe cannot be determined, such notice shall be given to the Secretary in like manner, who shall have fifteen days after receipt to provide the requisite notice to the parent or Indian custodian and the tribe. No foster care placement or termination of parental rights proceeding shall be held until at least ten days after receipt of notice by the parent or Indian custodian and the tribe or the Secretary: Provided, That the parent or Indian custodian or the tribe shall, upon request, be granted up to twenty additional days to prepare for such proceeding.

(b) In any case in which the court determines indigency, the parent or Indian custodian shall have the right to court-appointed counsel in any removal, placement, or termination proceeding. The court may, in its discretion, appoint counsel for the child upon a finding that such appointment is in the best interest of the child. Where State law makes no provision for appointment of counsel in such proceedings, the court shall promptly notify the Secretary upon appointment of counsel, and the Secretary, upon certification of the presiding judge, shall pay reasonable fees and expenses out of funds which may be appropriated pursuant to the Act of November 2, 1961 (25 Stat. 506; 25 U.S.C. 13).

(11) "Secretary" means the Secretary of the Interior; and

(12) "tribal court" means a court with jurisdiction over child custody proceedings and which is either a Court of Indian Offenses, a court established and operated under the code or bylaws of an Indian tribe, or any other administrative body of a tribe which is vested with authority over child custody proceedings.

Parental rights, voluntary termination.

25 USC 1913.

Foster care placement, court proceedings.

25 USC 1912.

25 USC 1914.
petent jurisdiction to invalidate such action upon a showing that such action violated any provision of sections 101, 102, and 108 of this Act.

Sec. 105. (a) In any adoptive placement of an Indian child, where the Indian child was taken into custody or jurisdiction over the child, under the Act of April 11, 1968 (82 Stat. 588), or pursuant to any other Federal law, may be met. The child shall also be placed within reasonable proximity to his or her home, or adoptive placement, a preference shall be given, in the absence of good cause to the contrary, to a placement with—

(i) a member of the Indian child's extended family; or

(ii) a foster home licensed, approved, or supervised by the Indian child's tribe; or

(iii) an Indian foster home licensed or approved by an authorized non-Indian licensing authority; or

(iv) an institution for children approved by an Indian tribe or operated by an Indian organization which has a program suitable to meet the Indian child's needs.

(c) In the case of a placement under subsection (a) or (b) of this section, if the Indian child's tribe shall establish a different order of preference by resolution, the agency or court affecting the placement shall follow such order so long as the placement is the least restrictive setting appropriate to the particular needs of the child, as provided in this section. Where appropriate, the preference of a consent to adoption or custody proceedings.

Sec. 106. (a) Notwithstanding State law to the contrary, whenever a final decree of adoption of an Indian child has been vacated or of their parental rights to the child, a biological parent or prior Indian such petition unless there is a showing, in a proceeding subject to the provisions of section 102 of this Act, that such return of custody is in the best interests of the child.

(b) Whenever an Indian child is removed from a foster care home or institution for the purpose of another state or tribe placement, such placement shall be in accordance with the provisions of this Act, except in the case where an Indian child in the child was removed, and the original Indian child from whose custody removal from foster care home.

Sec. 107. Upon application by an Indian individual who has reached the age of eighteen and who was the subject of an adoptive placement, the court which entered the final decree shall inform such individual of the tribal affiliation, if any, of the individual's biological parents and provide such other information as may be necessary to protect any rights flowing from the individual's tribal relationship.

Sec. 108. (a) Any Indian tribe which became subject to State jurisdiction pursuant to the provisions of the Act of August 11, 1968 (82 Stat. 3074) shall be extended to Indian tribes, and any Indian tribe which has already assumed jurisdiction over the Indian child's tribe.

(b) In considering the petition and feasibility of the plan of a tribe to reassume jurisdiction under subsection (a), the Secretary may consider, among other things:

(i) whether or not the tribe maintains a membership roll or alternative provision for clearly identifying the persons who may be affected by the reassumption of jurisdiction by the tribe;

(ii) the size of the reservation or former reservation area which will be affected by retrocession and reassumption of jurisdiction by the tribe;

(iii) the population base of the tribe, or distribution of the population in homogenous communities or geographic areas; and

(iv) the feasibility of the plan in cases of multiracial occupation of a single reservation or geographic area.

(2) In those cases where the Secretary determines that the jurisdictional provisions of section 101(a) of this Act are not feasible, he is authorized to accept partial retrocession which will enable tribes to exercise referral jurisdiction as provided in section 101(b) of this Act, or, where appropriate, will allow them to exercise exclusive jurisdiction as provided in section 101(a) over limited community or geographic areas without regard for the reservation status of the area affected.

(c) If the Secretary approves any petition under subsection (a), the Secretary shall publish notice of such approval in the Federal Register and shall notify the affected State or States of such approval. The Indian tribe concerned shall reassume jurisdiction sixty days after publication in the Federal Register of notice of approval.

(d) Assumption of jurisdiction under this section shall not affect any action or proceeding over which a court has already assumed jurisdiction, except as may be provided pursuant to any agreement under section 109 of this Act.

Sec. 109. (a) States and Indian tribes are authorized to enter into agreements with each other respecting care and custody of Indian children and jurisdiction over child custody proceedings, including agreements which may provide for orderly transfer of jurisdiction on a case-by-case basis and agreements which provide for concurrent jurisdiction between States and Indian tribes.

(b) Such agreements may be revoked by either party upon one hundred and eighty days' written notice to the other party. Such agreements shall be subject to the approval of the Secretary, who shall notify the affected States or Indian tribes of all agreements entered into. In any Indian tribe which has already assumed jurisdiction over a child, the Secretary shall have the power to approve or disapprove any agreement entered into by the tribe. If the Secretary disapproves any agreement, notice of such disapproval shall be mailed to the tribe and affected States, and the tribe may appeal to the Secretary within sixty days after such notice is mailed. In any such appeal, the Secretary shall publish notice of such appeal in the Federal Register and shall notify the affected States or Indian tribes of all appeals filed.
revocation, shall not affect any action or proceeding over which a court has already assumed jurisdiction, unless the agreement provides otherwise.

Sec. 110. Where any petitioner in an Indian child custody proceeding before a State court has improperly removed the child from custody of the parent or Indian custodian or has improperly retained custody after a visit or other temporary relinquishment of custody, the court shall decline jurisdiction over such petition and shall forthwith return the child to the parent or Indian custodian unless returning the child to his parent or custodian would subject the child to a substantial and immediate danger or threat of such danger.

Sec. 111. In any case where State or Federal law applicable to a child custody proceeding under State or Federal law provides a higher standard of protection to the rights of the parent or Indian custodian of an Indian child than the rights provided under this title, the State or Federal court shall apply the State or Federal standard.

Sec. 112. Nothing in this title shall be construed to prevent the emergency removal of an Indian child who is a resident of or is domiciled on a reservation, but temporarily located off the reservation, from his parent or Indian custodian or the emergency placement of such child in a foster home or institution, under applicable State law, in order to prevent imminent physical damage or harm to the child. The State authority, official, or agency involved shall ensure that the emergency removal or placement terminates immediately when such removal or placement is no longer necessary to prevent imminent physical damage or harm to the child and shall expeditiously initiate a child custody proceeding subject to the provisions of this title, transfer the child to the jurisdiction of the appropriate Indian tribe, or restore the child to the parent or Indian custodian, as may be appropriate.

Sec. 113. None of the provisions of this title, except sections 101(a), 108, and 109, shall affect a proceeding under State law for foster care placement, termination of parental rights, pre-adoptive placement, or adoptive placement which was initiated or completed prior to one hundred and eighty days after the enactment of this Act, but shall apply to any subsequent proceeding in the same matter or subsequent proceedings affecting the custody or placement of the same child.

**TITLE II—INDIAN CHILD AND FAMILY PROGRAMS**

Sec. 901. (a) The Secretary is authorized to make grants to Indian tribes and organizations in the establishment and operation of Indian child and family service programs on or near reservations and in the preparation and implementation of child welfare codes. The objective of every Indian child and family service program shall be to prevent the breakup of Indian families and, in particular, to insure that the permanent removal of an Indian child from the custody of his parent or Indian custodian shall be a last resort. Such child and family service programs may include, but are not limited to:

1. a system for licensing or otherwise regulating Indian foster and adoptive homes;
2. the operation and maintenance of facilities for the counseling and treatment of Indian families and for the temporary custody of Indian children;
3. family assistance, including homemaker and home counselors, day care, after-school care, and employment, recreational activities, and respite care;
4. home improvement programs;
5. the employment of professional and other trained personnel to assist the tribal court in the disposition of domestic relations and child welfare matters;
6. education and training of Indians, including tribal court judges and staff, in skills relating to children and family assistance and service programs;
7. a subsidy program under which Indian adoptive children may be provided support comparable to that for which they would be eligible as foster children, taking into account the appropriate State standards of support for maintenance and medical needs; and
8. guidance, legal representation, and advice to Indian families involved in tribal, State, or Federal child custody proceedings.

(b) Funds appropriated for use by the Secretary in accordance with this section may be utilized as non-Federal matching share in connection with funds provided under titles IV-B and XX of the Social Security Act or under any other Federal financial assistance programs which contribute to the purpose for which such funds are authorized to be appropriated for use under this Act. The provision or possibility of assistance under this Act shall not be a basis for the denial or reduction of any assistance otherwise authorized under titles IV-B and XX of the Social Security Act or any other Federally assisted program. For purposes of qualifying for assistance under a federally assisted program, licensing or approval of foster or adoptive homes or institutions by an Indian tribe shall be deemed equivalent to licensing or approval by a State.

Sec. 902. The Secretary is also authorized to make grants to Indian organizations to establish and operate off-reservation Indian child and family service programs which may include, but are not limited to:

1. a system for regulating, maintaining, and supporting Indian foster and adoptive homes, including a subsidy program under which Indian adoptive children may be provided support comparable to that for which they would be eligible as Indian foster children, taking into account the appropriate State standards of support for maintenance and medical needs;
2. the operation and maintenance of facilities and services for counseling and treatment of Indian families and Indian foster children;
3. family assistance, including homemaker and home counselors, day care, after-school care, and employment, recreational activities, and respite care; and
4. guidance, legal representation, and advice to Indian families involved in child custody proceedings.

Funds. 25 USC 1931.

**PUBLIC LAW 95-608—NOV. 8, 1978**

25 USC 1931.
(b) Funds for the purposes of this Act may be appropriated pursuant to the provisions of the Act of November 5, 1951 (42 Stat. 209), as amended.

Sec. 204. For the purposes of sections 202 and 203 of this title, the term "Indian" shall include persons defined in section 4(c) of the Indian Health Care Improvement Act of 1976 (90 Stat. 1400, 1401).

TITLE III—RECORDKEEPING, INFORMATION AVAILABILITY, AND TIMETABLES

Sec. 301. (a) Any State court entering a final decree or order in any Indian child adoptive placement after the date of enactment of this Act shall provide the Secretary with a copy of such decree or order together with such other information as may be necessary to show—

(1) the name and tribal affiliation of the child;  
(2) the names and addresses of the biological parents;  
(3) the names and addresses of the adoptive parents; and  
(4) the identity of any agency having files or information relating to such adoptive placement.  

Where the court records contain an affidavit of the biological parent or parents that their identity remain confidential, the court shall include such affidavit with the other information. The Secretary shall insure that the confidentiality of such information is maintained and such information shall not be subject to the Freedom of Information Act (5 U.S.C. 552), as amended.

(b) Upon the request of the adopted Indian child over the age of eighteen, the adoptive or foster parents of an Indian child, or an Indian tribe, the Secretary shall disclose such information as may be necessary for the enrollment of an Indian child in the tribe in which the child may be eligible for enrollment or for determining any rights or benefits associated with that membership. Where the documents relating to such child contain an affidavit of the biological parent or parents requesting anonymity, the Secretary shall certify to the Indian child’s tribe, where the information warrants, that the child’s parentage and other circumstances of birth entitle the child to enrollment under the criteria established by such tribe.

Sec. 302. Within one hundred and eighty days after the enactment of this Act, the Secretary shall promulgate such rules and regulations as may be necessary to carry out the provisions of this Act.

Final decree, information to be included.

Effective date.  
Rules and regulations.  

25 USC 1951.  

25 USC 1952.  

Sec. 303. (a) The Secretary shall send to the Governor, chief justice of the highest court of each State, together with committee reports and an explanation of the provisions of this Act.  

Copies to each State.  


b) Funds for the purposes of this Act may be appropriated pursuant to the provisions of the Act of November 5, 1951 (42 Stat. 209), as amended.

25 USC 1934.  

25 USC 1603.  

25 USC 1962.  


25 USC 1951.  

25 USC 1952.  

Title IV—Miscellaneous

Sec. 401. (a) It is the sense of Congress that the absence of locally convenient day schools may contribute to the breakup of Indian families.

(b) The Secretary is authorized and directed to prepare, in consultation with appropriate agencies in the Department of Health, Education, and Welfare, a report on the feasibility of providing Indian children with schools located near their homes, and to submit such report to the Select Committee on Indian Affairs of the United States Senate and the Committee on Interior and Insular Affairs of the United States House of Representatives within two years from the date of this Act. In developing this report the Secretary shall give particular consideration to the provision of educational facilities for children in the elementary grades.

Sec. 402. Within sixty days after enactment of this Act, the Secretary shall send to the Governor, chief justice of the highest court of appeal, and the attorney general of each State a copy of this Act, together with committee reports and an explanation of the provisions of this Act.

Sec. 403. If any provision of this Act or the applicability thereof is held invalid, the remaining provisions of this Act shall not be affected thereby.

MEMORANDUM

To: John Melcher, Chairman
From: Peter Taylor, Spec. Counsel
Subj: Oversight hearings on Indian Child Welfare Act

The Indian Child Welfare Act was enacted into law November 8, 1978. The jurisdictional provisions of the Act took effect in May of 1979 and have now been in effect a little more than one year. For the most part it appears the Act has been well received by both tribal and state authorities although some bugs have been encountered and a few challenges to the Constitutionality of the Act have been made -- unsuccessfully to date.

The primary problem areas are in the funding of tribal family support and child welfare programs. There are two basic problems: (1) Adequacy of the funds appropriated in FY '80 and sought in FY '81, and (2) the manner in which the B.I.A. distributed the FY '80 funds among the tribes.

B.I.A. disbursement of FY '80 funds.

In FY '80 Congress earmarked $5.5 million for implementation of the new Indian Child Welfare Act (ICWA). These funds were distributed to tribes, urban Indian organizations, and off-reservation groups in the form of grants. The principal problem is that in determining the amount of funds to be awarded grant applicants, the Bureau used a "formula" based on a $15,000 base per applicant plus a per capita add-on based on a ratio of the number of people to be served calculated against the number of people to be served nationwide. An initial screening process was employed which culled out 90 applications as unsuitable for funding. Out of 247 applications filed, 157 were approved. However, after this initial screening process no effort was made to distinguish between the nature or quality of the grant proposals. The formula was simply applied and awards made on that basis. The result was that many tribes or groups with ongoing child welfare programs or who submitted comprehensive child welfare programs received no more than those tribes or groups who sought only a planning grant, i.e., approximately $15,000. Thus the Yakima tribe, the Crow tribe, and the Ft. Belknap Indian Community received only the minimum $15,000 grant. The Navajo tribe received only $45,000.

A second problem with the formula funding is that the $15,000 base does not consider the client population to be served. Thus, at Sault St. Marie, Michigan, three grant applications were received in apparent competition with each other, yet each got the minimum $15,000. Consortium of tribes and villages from California and Alaska received disproportionately high funding because they were comprised of numerous very small communities. Each tribe or village in the consortium was apparently counted in at $15,000 each. States or areas with larger tribes such as Billings, Montana, Aberdeen, South Dakota; and Phoenix, Arizona received commensurately less.

The formula funding approach was designed to eliminate complaints of favoritism. While this may be a problem, it is clear that the formula funding approach is unworkable and should either be junked entirely or radically redesigned for use in FY '81.
FY '81 budget proposal.
The B.I.A. FY '81 budget estimate for General Assistance, the program category from which funds for child welfare programs are drawn, is questionable on two grounds: (1) it appears to understate the service population or "case load", and (2) it appears to understate or distort the "unit cost" per child per month.

It must be remembered that the Indian Child Welfare Act was enacted in November of 1978 when the FY '79 budget was already in place. The ICWA expanded the traditional program functions which could be undertaken with appropriated funds and it also expanded the B.I.A. service population from children and families "on or near" Indian reservations to urban and off-reservation organisations and Indian tribes and groups such as terminated tribes included within the coverage of the Indian Health Care Improvement Act.

Despite this fact, the B.I.A. budget from FY '79 to FY '81 shows (1) no expansion of population to be served, and (2) a decrease of unit costs per child served. The following figures are taken from the B.I.A. budget presentation for FY '80 and FY '81:

<table>
<thead>
<tr>
<th>Funding levels:</th>
<th>FY '79</th>
<th>FY '80</th>
<th>FY '81</th>
</tr>
</thead>
<tbody>
<tr>
<td>Welfare Grants ($ in thousands)</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>General Assistance</td>
<td>51,101.0</td>
<td>51,101.0</td>
<td>33,356.0</td>
</tr>
<tr>
<td>Child Welfare</td>
<td>13,590.0</td>
<td>13,590.0</td>
<td>11,190.0</td>
</tr>
<tr>
<td>On-Going Child Welfare</td>
<td>3,800.0</td>
<td>3,800.0</td>
<td>3,800.0</td>
</tr>
<tr>
<td>Child Welfare Grants</td>
<td>---------</td>
<td>2,500.0</td>
<td>2,500.0</td>
</tr>
<tr>
<td></td>
<td>68,491.0</td>
<td>70,991.0</td>
<td>73,846.0</td>
</tr>
</tbody>
</table>

The increase in the child welfare grant is made up by the transfer of the "on-going child welfare" line item of $3,800.0. Both the 1980 budget and the 1981 budget are premised on a "case load" constant with that of the FY '79 budget. This despite enactment of the ICWA.

Case load:
<table>
<thead>
<tr>
<th></th>
<th>FY '79</th>
<th>FY '80</th>
<th>FY '81</th>
</tr>
</thead>
<tbody>
<tr>
<td>CW Children</td>
<td>3,300</td>
<td>3,300</td>
<td>3,300</td>
</tr>
</tbody>
</table>

Unit costs:
<table>
<thead>
<tr>
<th></th>
<th>FY '81</th>
</tr>
</thead>
<tbody>
<tr>
<td>CW $ per child per month</td>
<td>282.57</td>
</tr>
</tbody>
</table>

These figures seem inexplicable. The case load remains constant with the case load figure before enactment of the ICWA. The unit cost actually decreases by $60.61 for 1981. A partial explanation for this aberration lies in the fact that part of the costs of education of handicapped children ($2.4 million) was shifted to the Education budget. However, in both the FY '80 and FY '81 budgets the Bureau justifies increases in the General Assistance funds on the grounds that increases in state standards will result in higher costs.

The FY '81 budget proposal states: "The child welfare caseload has remained relatively constant for the past few years, and there is no projected caseload increase for FY '81." In the face of 157 grant applications, many of which were directed to $15,000 planning grants, this statement of the B.I.A. simply cannot be true.

Projection for FY '81:

Tribes and Indian organizations can derive funds for operation of child welfare programs through two sources: (1) child welfare grants under the ICWA, and (2) contracts with the B.I.A. under P.L. 93-638. Unless the funding level for the grants program is increased substantially and/or the formula allocation abandoned, the primary delivery vehicle for FY '81 will continue to be P.L 638 contracts at roughly the same level as presently exists. Alaska and California will be the primary beneficiaries of the ICWA.
DEPARTMENT OF THE INTERIOR
Bureau of Indian Affairs
25 CFR Part 13
Tribal Resumption of Jurisdiction Over Indian Child Custody Proceedings
July 31, 1979
AGENCY: Bureau of Indian Affairs.
ACTION: Final rule.
SUMMARY: The Bureau of Indian Affairs is adding a new part to its regulations to establish procedures by which an Indian tribe may reassume jurisdiction over Indian child custody proceedings as authorized by the Indian Child Welfare Act, Pub. L. 95-608, 92 Stat. 3009, 25 U.S.C. 1901 et seq.
DATE: This rule becomes effective August 30, 1979.
FOR FURTHER INFORMATION CONTACT: David Etheridge, Office of the Solicitor, Division of Indian Affairs, Department of the Interior, 18th and C Streets, NW., Washington, D.C. 20240; (202) 343-6967.
SUPPLEMENTARY INFORMATION: The authority for issuing these regulations is contained in 25 U.S.C. 1911(b) and 1903(12), and this new part was published as proposed in the Federal Register on April 13, 1979, at 44 FR 19550. The comment period on the proposed rules closed on May 21, 1979.
Comments were reviewed and considered, and changes were made where appropriate.
A. Changes made due to comments received:

(1) Section 13.3(a) has been modified to require additional clarification to ensure that tribes may reassume jurisdiction as provided without relinquishing any legal arguments they have already raised in a proceeding. The federal district court has ruled that Public Law 95-608 did not confer a tribe's right to install a federal court and deprive the tribe of the right to install an Indian court. Confederated Tribes of the Coeur d'Alene Reservation v. Beck, 573 F. Supp. 974 (D. Idaho 1983) (cited in comments).

(2) Subsection 13.5 has been modified to reflect the fact that some tribes have been awarded concurrent jurisdiction over Indian child custody disputes, the tribe may elect to install new jurisdiction for Indian child custody proceedings.

(3) In response to a comment, specific reference is made to 25 U.S.C. 1901(b)(6) and 1903(12) to reflect the intent of Congress, which is adequately stated in the legislative history, that the right to assume jurisdiction be available to Indian tribes.

(4) A comment that specific provision be included to authorize a tribe to install a court to assume jurisdiction as clearly stated in the legislative history, that the right to assume jurisdiction be available to Indian tribes.

B. Changes made due to requests by the tribe:

(5) Section 13.11 has been modified to reflect the use of the term "tribal court" in 25 U.S.C. 1903(12), rather than a "tribal court" as the final result is deemed infeasible.

C. Other changes made:

(6) Several commenters objected to the use of the term "tribal system" because it could be construed to be not as broad as the term "tribal court" as in 25 U.S.C. 1903(12). This term will be replaced with "tribal systems" to represent the "tribal systems" as intended by the enabling statute.

(7) One commenter pointed out that some tribes operate without any constitution or other form of governmental structure. Accordingly, the words "if a tribe has not a constitution or other governing document" have been changed to: "if a tribe has not a constitution or other governing document.

(8) One commenter pointed out that some tribes operate without any constitution or other form of governmental structure. Accordingly, the words "if a tribe has not a constitution or other governing document" have been changed to: "if a tribe has not a constitution or other governing document.

(9) Some commenters objected to the requirement that the plan be submitted to the state by the tribe. Accordingly, the words "the tribe shall submit a plan to the state" have been changed to: "the tribe may submit a plan to the state without the obligation to provide a plan to the state.

(10) One commenter pointed out that some tribes operate without any constitution or other form of governmental structure. Accordingly, the words "if a tribe has not a constitution or other governing document" have been changed to: "if a tribe has not a constitution or other governing document.

D. Other changes made:

(11) Comments were made regarding the use of the term "tribal court." Accordingly, the words "tribal court" have been changed to: "tribal system or the phrase "tribal court" has been changed to: "tribal system.

(12) One commenter pointed out that some tribes operate without any constitution or other form of governmental structure. Accordingly, the words "if a tribe has not a constitution or other governing document" have been changed to: "if a tribe has not a constitution or other governing document.

(13) Several commenters objected to the use of the term "tribal system" because it could be construed to be not as broad as the term "tribal court" as in 25 U.S.C. 1903(12). This term will be replaced with "tribal systems" to represent the "tribal systems" as intended by the enabling statute.

(14) One commenter pointed out that some tribes operate without any constitution or other form of governmental structure. Accordingly, the words "if a tribe has not a constitution or other governing document" have been changed to: "if a tribe has not a constitution or other governing document.

E. Other changes made:

(15) Several commenters objected to the use of the term "tribal system" because it could be construed to be not as broad as the term "tribal court" as in 25 U.S.C. 1903(12). This term will be replaced with "tribal systems" to represent the "tribal systems" as intended by the enabling statute.

(16) One commenter pointed out that some tribes operate without any constitution or other form of governmental structure. Accordingly, the words "if a tribe has not a constitution or other governing document" have been changed to: "if a tribe has not a constitution or other governing document.

F. Other changes made:

(17) Several commenters objected to the use of the term "tribal system" because it could be construed to be not as broad as the term "tribal court" as in 25 U.S.C. 1903(12). This term will be replaced with "tribal systems" to represent the "tribal systems" as intended by the enabling statute.

(18) One commenter pointed out that some tribes operate without any constitution or other form of governmental structure. Accordingly, the words "if a tribe has not a constitution or other governing document" have been changed to: "if a tribe has not a constitution or other governing document.

(19) Several commenters objected to the use of the term "tribal system" because it could be construed to be not as broad as the term "tribal court" as in 25 U.S.C. 1903(12). This term will be replaced with "tribal systems" to represent the "tribal systems" as intended by the enabling statute.

(20) One commenter pointed out that some tribes operate without any constitution or other form of governmental structure. Accordingly, the words "if a tribe has not a constitution or other governing document" have been changed to: "if a tribe has not a constitution or other governing document.

(21) Several commenters objected to the use of the term "tribal system" because it could be construed to be not as broad as the term "tribal court" as in 25 U.S.C. 1903(12). This term will be replaced with "tribal systems" to represent the "tribal systems" as intended by the enabling statute.

(22) One commenter pointed out that some tribes operate without any constitution or other form of governmental structure. Accordingly, the words "if a tribe has not a constitution or other governing document" have been changed to: "if a tribe has not a constitution or other governing document.

(23) Several commenters objected to the use of the term "tribal system" because it could be construed to be not as broad as the term "tribal court" as in 25 U.S.C. 1903(12). This term will be replaced with "tribal systems" to represent the "tribal systems" as intended by the enabling statute.

(24) One commenter pointed out that some tribes operate without any constitution or other form of governmental structure. Accordingly, the words "if a tribe has not a constitution or other governing document" have been changed to: "if a tribe has not a constitution or other governing document.

(25) Several commenters objected to the use of the term "tribal system" because it could be construed to be not as broad as the term "tribal court" as in 25 U.S.C. 1903(12). This term will be replaced with "tribal systems" to represent the "tribal systems" as intended by the enabling statute.

(26) One commenter pointed out that some tribes operate without any constitution or other form of governmental structure. Accordingly, the words "if a tribe has not a constitution or other governing document" have been changed to: "if a tribe has not a constitution or other governing document.

(27) Several commenters objected to the use of the term "tribal system" because it could be construed to be not as broad as the term "tribal court" as in 25 U.S.C. 1903(12). This term will be replaced with "tribal systems" to represent the "tribal systems" as intended by the enabling statute.

(28) One commenter pointed out that some tribes operate without any constitution or other form of governmental structure. Accordingly, the words "if a tribe has not a constitution or other governing document" have been changed to: "if a tribe has not a constitution or other governing document."
reservation is unequivocal if the tribe is petitioning only for relevant jurisdiction.

Therefore, the requirement for that information, for referral judgments on the
base that that information be provided concerning the tribe's current status as
subject to the tribe's jurisdiction and the number of children who have been
restrained or detained under any state or federal law...This provision has been
modified to ensure that only that information be provided that is reasonably
available to the tribe. This provision has been modified to ensure that only that
information be provided that is reasonably available to the tribe.

(3) One commenter objected to the
language in paragraph (a)(5) that provides
a definition of the term "tribal authority" as
inconsistent with the term used in the
statutes. The term "tribal authority" is
defined in the Act as any entity that has
been, or is in the process of acquiring, the
time, and by the tribe to deal with it.

(4) Another bill has been amended by
the term "tribal court", as defined in 25 U.S.C. 1905(d)." In
order to provide a meaningful dispute resolution process, this
adoption. The Act only authorizes
reservation in a specific context and
the right to... Legal decisions have caused a
transfer of jurisdiction only when there is a
change in the status of the child.

(5) A comment concerns whether the
language in paragraph (a)(5) that provides
a definition of the term "appropriate
plan" is consistent with the term defined in the
statutes. The term "appropriate plan" is
defined in the Act as an agency that has
been, or is in the process of acquiring, the
time, and by the tribe to deal with it.

(6) One commenter objected to the
language in paragraph (a)(5) that provides
a definition of the term "tribal authority" as
inconsistent with the term used in the
statutes. The term "tribal authority" is
defined in the Act as any entity that has
been, or is in the process of acquiring, the
time, and by the tribe to deal with it.

(7) One commenter objected to the
language in paragraph (a)(5) that provides
a definition of the term "tribal authority" as
inconsistent with the term used in the
statutes. The term "tribal authority" is
defined in the Act as any entity that has
been, or is in the process of acquiring, the
time, and by the tribe to deal with it.

(8) One commenter objected to the
language in paragraph (a)(5) that provides
a definition of the term "tribal authority" as
inconsistent with the term used in the
statutes. The term "tribal authority" is
defined in the Act as any entity that has
been, or is in the process of acquiring, the
time, and by the tribe to deal with it.

(9) One commenter objected to the
language in paragraph (a)(5) that provides
a definition of the term "tribal authority" as
inconsistent with the term used in the
statutes. The term "tribal authority" is
defined in the Act as any entity that has
been, or is in the process of acquiring, the
time, and by the tribe to deal with it.

(10) One commenter objected to the
language in paragraph (a)(5) that provides
a definition of the term "tribal authority" as
inconsistent with the term used in the
statutes. The term "tribal authority" is
defined in the Act as any entity that has
been, or is in the process of acquiring, the
time, and by the tribe to deal with it.

(11) One commenter objected to the
language in paragraph (a)(5) that provides
a definition of the term "tribal authority" as
inconsistent with the term used in the
statutes. The term "tribal authority" is
defined in the Act as any entity that has
been, or is in the process of acquiring, the
time, and by the tribe to deal with it.

(12) One commenter objected to the
language in paragraph (a)(5) that provides
a definition of the term "tribal authority" as
inconsistent with the term used in the
statutes. The term "tribal authority" is
defined in the Act as any entity that has
been, or is in the process of acquiring, the
time, and by the tribe to deal with it.

(13) One commenter objected to the
language in paragraph (a)(5) that provides
a definition of the term "tribal authority" as
inconsistent with the term used in the
statutes. The term "tribal authority" is
defined in the Act as any entity that has
been, or is in the process of acquiring, the
time, and by the tribe to deal with it.
45955 Federal Register / Vol. 44, No. 146 / Tuesday, July 31, 1979 / Rules and Regulations

45956 Federal Register / Vol. 44, No. 146 / Tuesday, July 31, 1979 / Rules and Regulations

PART 13—TRIBAL REASSUMPTION OF JURISDICTION OVER CHILD CUSTODY PROCEEDINGS

Subpart A—Purpose

Sec. 13.1 Purpose.

13.31 Contents of reassumption petitions.

Subpart B—Reassumption

13.32 Criteria for approval of reassumption petitions.

13.33 Technical requirements for petitions.

13.34 Secretarial review procedure.

13.35 Administrative review.

13.36 Technical assistance after approval.


Section

13.1 Purpose.

(a) The regulations of this part establish procedures by which an Indian tribe that operates a reservation in a state that has established, or which may establish, a state child custody law may file a petition for reassumption of jurisdiction over child custody matters.

(b) Each petition must be submitted to the State agency designated by the tribe as having the authority to receive such petitions.

13.2 Criteria for approval of reassumption petitions.

(a) The regulations of this part establish criteria by which petitions for reassumption shall be evaluated.

(b) The petition must be supported by a plan that defines the status of child custody matters as of the date the petition is filed.

(c) The petition must be supported by a plan that describes the status of child custody matters as of the date the petition is filed.

(d) The petition must be supported by a plan that describes the status of child custody matters as of the date the petition is filed.

13.3 Technical requirements for petitions.

(a) The petition must be supported by a plan that defines the status of child custody matters as of the date the petition is filed.

(b) The petition must be supported by a plan that describes the status of child custody matters as of the date the petition is filed.

(c) The petition must be supported by a plan that describes the status of child custody matters as of the date the petition is filed.

(d) The petition must be supported by a plan that describes the status of child custody matters as of the date the petition is filed.

13.4 Secretarial review procedure.

(a) The petition shall be reviewed by the Secretary of the Interior to determine if it meets the criteria set forth in section 13.2.

(b) The petition shall be reviewed by the Secretary of the Interior to determine if it meets the criteria set forth in section 13.2.

(c) The petition shall be reviewed by the Secretary of the Interior to determine if it meets the criteria set forth in section 13.2.

(d) The petition shall be reviewed by the Secretary of the Interior to determine if it meets the criteria set forth in section 13.2.

13.5 Administrative review.

(a) If the petition is not approved by the Secretary of the Interior, the petitioning tribe may request further review of the petition.

(b) The petition shall be reviewed by the Secretary of the Interior to determine if it meets the criteria set forth in section 13.2.

(c) The petition shall be reviewed by the Secretary of the Interior to determine if it meets the criteria set forth in section 13.2.

(d) The petition shall be reviewed by the Secretary of the Interior to determine if it meets the criteria set forth in section 13.2.

13.6 Technical assistance after approval.

(a) The petitioning tribe shall be provided with technical assistance to help it implement the plan approved by the Secretary of the Interior.

(b) The petition shall be reviewed by the Secretary of the Interior to determine if it meets the criteria set forth in section 13.2.

(c) The petition shall be reviewed by the Secretary of the Interior to determine if it meets the criteria set forth in section 13.2.

(d) The petition shall be reviewed by the Secretary of the Interior to determine if it meets the criteria set forth in section 13.2.

For definitions of terms used in this part, see 25 CFR part 23.

Sec. 13.13 Technical assistance prior to approval.

(a) Upon the request of a tribe, the Secretary of the Interior shall provide technical assistance to help the tribe implement the plan approved by the Secretary of the Interior.

(b) Upon the request of a tribe, the Secretary of the Interior shall provide technical assistance to help the tribe implement the plan approved by the Secretary of the Interior.

(c) Upon the request of a tribe, the Secretary of the Interior shall provide technical assistance to help the tribe implement the plan approved by the Secretary of the Interior.

(d) Upon the request of a tribe, the Secretary of the Interior shall provide technical assistance to help the tribe implement the plan approved by the Secretary of the Interior.

Sec. 13.14 Secretarial review procedure.

(a) Upon the request of the petitioning tribe, the Assistant Secretary—Indian Affairs shall provide the tribe with a petition for reassumption of jurisdiction over child custody matters.

(b) Upon the request of the petitioning tribe, the Assistant Secretary—Indian Affairs shall provide the tribe with a petition for reassumption of jurisdiction over child custody matters.

(c) Upon the request of the petitioning tribe, the Assistant Secretary—Indian Affairs shall provide the tribe with a petition for reassumption of jurisdiction over child custody matters.

(d) Upon the request of the petitioning tribe, the Assistant Secretary—Indian Affairs shall provide the tribe with a petition for reassumption of jurisdiction over child custody matters.

Sec. 13.15 Administrative appeal.

(a) If the petition is not approved by the Secretary of the Interior, the petitioning tribe may request further review of the petition.

(b) The petition shall be reviewed by the Secretary of the Interior to determine if it meets the criteria set forth in section 13.2.

(c) The petition shall be reviewed by the Secretary of the Interior to determine if it meets the criteria set forth in section 13.2.

(d) The petition shall be reviewed by the Secretary of the Interior to determine if it meets the criteria set forth in section 13.2.

Sec. 13.16 Technical assistance after approval.

(a) The petitioning tribe shall be provided with technical assistance to help it implement the plan approved by the Secretary of the Interior.

(b) The petition shall be reviewed by the Secretary of the Interior to determine if it meets the criteria set forth in section 13.2.

(c) The petition shall be reviewed by the Secretary of the Interior to determine if it meets the criteria set forth in section 13.2.

(d) The petition shall be reviewed by the Secretary of the Interior to determine if it meets the criteria set forth in section 13.2.

Sec. 13.17 Criteria for approval of reassumption petitions.

(a) The petitioning tribe shall submit a petition for reassumption of jurisdiction over child custody matters.

(b) The petitioning tribe shall submit a petition for reassumption of jurisdiction over child custody matters.

(c) The petitioning tribe shall submit a petition for reassumption of jurisdiction over child custody matters.

(d) The petitioning tribe shall submit a petition for reassumption of jurisdiction over child custody matters.

Sec. 13.18 Secretarial approval.

(a) Upon the request of the petitioning tribe, the Assistant Secretary—Indian Affairs shall provide the tribe with a petition for reassumption of jurisdiction over child custody matters.

(b) The petitioning tribe shall submit a petition for reassumption of jurisdiction over child custody matters.

(c) The petitioning tribe shall submit a petition for reassumption of jurisdiction over child custody matters.

(d) The petitioning tribe shall submit a petition for reassumption of jurisdiction over child custody matters.

Sec. 13.19 Reimbursement of costs.

(a) Reimbursement of costs may be provided to the tribe for any costs incurred in connection with the petition for reassumption of jurisdiction.

(b) Reimbursement of costs may be provided to the tribe for any costs incurred in connection with the petition for reassumption of jurisdiction.

(c) Reimbursement of costs may be provided to the tribe for any costs incurred in connection with the petition for reassumption of jurisdiction.

(d) Reimbursement of costs may be provided to the tribe for any costs incurred in connection with the petition for reassumption of jurisdiction.

Sec. 13.20 Final rules.
SUMMARY: The Bureau of Indian Affairs hereby adds a new set of its regulations to implement the provisions of the Indian Child Welfare Act of 1978 (Pub. L. 95-608). The Indian Child Welfare Act was passed to protect the best interest of Indian children by promoting the safety and welfare of the children and families and tribes by preventing the unnecessary and unwarranted removal of Indian children from their Indian homes, establishing procedures for transferring Indian child custody proceedings from state courts to the appropriate tribal court and providing a system of adjudication in state court proceedings of the child or child's parents, guardians, or custodian; and providing for the Secretaries, or their designees, to be made as authorized in the Indian Child Welfare Act.

The purpose of the regulations is to implement the provisions of the Indian Child Welfare Act of 1978 (Pub. L. 95-608)....
of the IS guidelines. I9no~. ch~nged with designated agents, for juvenile delinquency child custody limitation Offices. 23 added e 31.1979 -' Ruies and Regulations of designatio~ mex:amber~hip on tbe InSect~OD ~81{a1 Were regulations. Also. permitting an Y"0~d h!1v~ UnJik~ with of a funding the guidelines as exigencies of those cases the burden concluded..;':- that the grants additional Bureau shOuldpay. urging are on acts of and the reasons they were not adopted the following but 1979}. Section 23,43(a)is changed an for State Courts;' as a Federal Office mdly1dua1 pursuant to Chief criteria be published for the courts were betterpreparedto make Unlike 'the s_tatute involved in .. " referenced tennulransferred". and Welfare for use definition bas expressed. The Departmcnt clarify changed large number ana tribes and Comments to the. Register requested that a definition for children. and Identffled a felt need for e 23.2(b){5) be changed to reflect language wording (151A alked placements-not. to Office ~sking Act.'.':;:.r"' "' "' ",. minor unwed cause to believe beingmace n in that case held and apply'ne number wording hal been added to of the Act. in that case held and

23.11~ ~n in.

'~f

su~tUONS change::t number the definition of"Indian of Appeal,

c~~nge numbering the

dO~b{forceful to One commenter-obiected to the use of

VB.

sU~tUONS change::t numbering the

dO~b{forceful to One commenter-obiected to the use of

VB.

sU~tUONS change::t numbering the

dO~b{forceful to One commenter-obiected to the use of

VB.

sU~tUONS change::t numbering the

dO~b{forceful to One commenter-obiected to the use of

VB.
delinquency proceedings and dependency proceedings. But since delinquency proceedings have more clearly resembled the type of proceedings adjudicated at the Andera Office, and because delinquency proceedings for any other cases where tribes or states were represented were relegated to the Andera Office, no change has been made.

Some commenters recommended that the deadline for the Andera Office to act on the notice be reduced from 30 days to 15 days. This deadline has been reduced to ten days. This decision was based on a balancing of the need of attorneys to know promptly whether they are eligible to be paid and the Department's need for time to conclude a review to determine eligibility.

Some commenters pointed out that income from Indian claims, trust funds, and certain other sources may be considered in determining eligibility. Since this determination is the responsibility of the state court rather than the Department, that recommendation has not been adopted. For the same reason, the requirement in the proposed rule that eligibility be determined on the same basis as is used in in-state delinquency proceedings has been deleted. Those cases may be assisted in those guidelines, however.

Some commenters recommended that the regulations provide for tribal involvement in the appointment of counsel. This recommendation has not been adopted because under 25 U.S.C. (1970) it is the responsibility of the court to appoint counsel. This responsibility may also be delegated to either the Department or to tribes. The Department has the authority to ask the existence of either the Department or the tribe in qualifying attorneys with suitable expertise to undertake these cases. This matter may also be included in the guidelines.

In response to comments, the Bureau area office has been named the Bureau office of assistance and the office of assistance has been named assistance office. The comments requested that a provision be written into the regulations that a determination of eligibility as an attorney who is found to be ineligible by the Bureau office of assistance, if the determination is made after the payment before the deadline. This comment was not adopted. The Congress has authorized payments only in certain types of cases for certain types of representation. The Bureau is not authorized to pay money necessary as compensation for its services. A new subsection (d) has been added stating that the determination of eligibility as an attorney who is found to be ineligible by the Bureau office of assistance is a matter for the court to decide if the attorney is not eligible for Bureau payments. This comment was also rejected because the Act does not authorize payments based on the good faith of the attorney. If the case is not covered by the Act, the Bureau is entitled to keep the amount regardless of the attorney's good faith beliefs.

Another comment was that the Bureau pay for work done by an attorney at a cost per act, in good faith, believed was an eligible Indian child welfare case even to the point that the attorney is notified that he or she is not an eligible for Bureau payments. This comment was also rejected because the Act does not authorize payments based on the good faith of the attorney. If the case is not covered by the Act, the Bureau is entitled to keep the amount regardless of the attorney's good faith beliefs.

Another comment was that the Bureau pay for work done by an attorney at a cost per act, in good faith, believed was an eligible Indian child welfare case even to the point that the attorney is notified that he or she is not an eligible for Bureau payments. This comment was also rejected because the Act does not authorize payments based on the good faith of the attorney. If the case is not covered by the Act, the Bureau is entitled to keep the amount regardless of the attorney's good faith beliefs.

Another comment was that the Bureau pay for work done by an attorney at a cost per act, in good faith, believed was an eligible Indian child welfare case even to the point that the attorney is notified that he or she is not an eligible for Bureau payments. This comment was also rejected because the Act does not authorize payments based on the good faith of the attorney. If the case is not covered by the Act, the Bureau is entitled to keep the amount regardless of the attorney's good faith beliefs.

Another comment was that the Bureau pay for work done by an attorney at a cost per act, in good faith, believed was an eligible Indian child welfare case even to the point that the attorney is notified that he or she is not an eligible for Bureau payments. This comment was also rejected because the Act does not authorize payments based on the good faith of the attorney. If the case is not covered by the Act, the Bureau is entitled to keep the amount regardless of the attorney's good faith beliefs.

Another comment was that the Bureau pay for work done by an attorney at a cost per act, in good faith, believed was an eligible Indian child welfare case even to the point that the attorney is notified that he or she is not an eligible for Bureau payments. This comment was also rejected because the Act does not authorize payments based on the good faith of the attorney. If the case is not covered by the Act, the Bureau is entitled to keep the amount regardless of the attorney's good faith beliefs.

Another comment was that the Bureau pay for work done by an attorney at a cost per act, in good faith, believed was an eligible Indian child welfare case even to the point that the attorney is notified that he or she is not an eligible for Bureau payments. This comment was also rejected because the Act does not authorize payments based on the good faith of the attorney. If the case is not covered by the Act, the Bureau is entitled to keep the amount regardless of the attorney's good faith beliefs.
"Pursuant care provision"—any action removing an Indian child from its parent or Indian custodian for temporary placement in a foster home or institution or the home of a guardian or other person.

2. An Indian child cannot have the rights and duties of a Tribe denied, and no Indian child can be surrendered, dismissed, or admitted in any adoption proceedings, or in any such proceedings include any advice resulting in a final outcome adoption.

3. A temporary placement of an Indian child in a foster home or institution after the termination of parental rights, but prior to or in lieu of adoption placement and

4. "Adoptive placement"—permanent placement of an Indian child for adoption purposes, including any action resulting in a final outcome adoption.

29.12 Designated tribal agent to serve as Indian child custodian. Any Indian tribe notified to notice may exercise, in accordance with the Secretary's delegation or consent or current practice requires, an agent for the purpose of the custodian, the tribal chairman and serve a copy of the child and family services address of the Indian Child Welfare.

29.13 Payment for appropriated counsel. The Federal Register on an annual basis. A current listing of such agents will be maintained by the Secretary and will be published in the Federal Register.
§ 23.23 Grant approval — (a) Authority to approve — (1) Grant applications submitted under this section shall be reviewed by the Area Director for approval or disapproval. (b) The Bureau will follow the written response.

§ 23.27 Grant approval limitation — (a) Authority for approval of a grant application under this section shall be with the Area Director when the intent, purpose and scope of the grant proposal is made to an Indian tribe or tribe in a way which the Bureau can determine.

§ 23.16 Authority for approval of a grant application under this section shall be made by the Area Director when the intent, purpose and scope of the grant proposal is made to an Indian tribe or tribe in a way which the Bureau can determine.

§ 23.29 The notice of the receipt of an application for a grant under this section shall be the subject of the Area Director's decision and approval for the grant application.

§ 23.31 The notice of the Area Director's decision and approval for the grant application shall be in writing to the applicant within 30 days of receipt of the application.

§ 23.33 The notice of the Area Director's decision and approval for the grant application shall be in writing to the applicant within 30 days of receipt of the application.
$23.31 Appointment of application. (a) Upon receipt of an application for a grant requiring Central Office approval, the Area Director shall: (1) Review the application following the approval procedure prescribed in § 23.49. (2) Review Agency and Area Office recommendations in the application and notify the applicant in writing of the action to be taken. (3) Approve or disapprove the application. (b) In instances where a joint application is made by Indian nations whose legal status is changing from trust to self-governance, or vice versa, the Area Director shall submit his or her recommendation for approval or disapproval to that of the Commissioner under this part only as prescribed in § 23.49. (c) Upon taking action as prescribed in paragraph (a) and (b) of this section, the Area Director shall notify the Commissioner in writing of the action to be taken. If the action taken is disapproval or recommendation for disapproval of the application, the Area Director will include in the written notice the specific reasons therefor.

§ 23.32 Deadline for action. Within 30 days of receipt of an application for a grant under this part, the Superintendent shall take action as prescribed in § 23.34. Upon receipt of such an application, the Superintendent shall notify the applicant in writing of the action to be taken. If the action taken is disapproval or recommendation for disapproval of the application, the Superintendent will include in the written notice the specific reasons therefor.

§ 23.34 Deadline for Central Office action. Within 30 days of receipt of an application for a grant under this part, the Commissioner shall take action as prescribed in § 23.35. In the event of the Commissioner's failure to act within the specified time period, the Assistant Secretary shall take action as prescribed in § 23.35. Failure to act by the Assistant Secretary within the time period specified in § 23.35 shall be deemed disapproval of the application.

§ 23.54 Deadlines for Central Office action. Within 30 days of receipt of an application for a grant under this part, the Commissioner shall take action as prescribed in § 23.55. In the event the Commissioner fails to act within the specified time period, the Assistant Secretary shall take action as prescribed in § 23.55. Failure to act by the Assistant Secretary within the time period specified in § 23.55 shall be deemed disapproval of the application.

§ 23.64 Performance of personal services. Any grant provided under this part may include provisions for the performance of personal services which would otherwise be performed by Federal employees.

Subpart D—General Grant Requirements

§ 23.61 Eligibility. The general requirements for grant administration in this part are applicable to all Bureau grants provided to tribal governing bodies and to Indian organizations under this part, except to the extent inconsistent with an applicable Federal statute or regulation.

§ 23.62 Reports and availability of information. Any tribe, governing body or Indian organization receiving a grant under this part shall make information and records necessary to support the cost to the Indian people which it serves available in writing and be made available within 30 days of receipt of such request to the Superintendent, as provided for in the Freedom of Information Act (U.S.C. 552), as amended by the Act of November 29, 1974 (Pub. L. 93-502, 88 Stat. 1551).
Mr. KRENZKE. Good morning, Mr. Chairman. 

I am pleased to be here today to testify in behalf of the Department of the Interior at this oversight hearing on the Indian Child Welfare Act of 1978.

With me are Mr. Raymond Butler, Chief of the Bureau’s Division of Social Services, and Ms. Louise Zokan, child welfare specialist on our central office social services staff.

With your permission, I would like to highlight my statement which has been submitted for the record.

Senator MELCHER. Without objection, it will be included in the record at the end of your testimony.

Mr. KRENZKE. In particular, I am pleased to be here today because it was largely through the efforts of this committee that the Indian Child Welfare Act came into being. This fact is, in my judgment, truly a landmark piece of Indian legislation.

In brief, this legislation, in the first place, provides protection for Indian children and their families through the establishment of certain judicial requirements placed on State judicial systems and public and private child placement agencies in relation to the placement of Indian children. Second, it authorizes several options for Indian tribes to exercise certain authorities over Indian child custody proceedings. Finally, it further authorizes Indian tribes and Indian organizations to provide child welfare and family services programs to the Indian people.

All of these are aimed at helping Indian children to remain with their own families, if at all possible, and otherwise to remain within their own culture.

First, I would like to briefly focus on actions taken by the Department relative to the implementation of the act. In the first place, as prescribed by the law, copies of the act, the committee reports, and an explanation of the act were mailed in a timely fashion to all State attorneys general, Governors, chief justices, and State public welfare directors. Second, by January 30, 1979, a working draft of the regulations was widely distributed to all tribes, States, and Indian organizations. Third, during the month of March 1979, 12 public hearings were conducted throughout the country to elicit comments and suggestions for the proposed regulations. Fourth, the proposed regulations were then published for comment on April 23, 1979, and the final regulations were published on July 31, 1979.

Based on an Interior Department Solicitor’s opinion, the judicial requirements imposed upon State courts were issued as guidelines rather than regulations. These were published in the Federal Register on November 26, 1979.

Although we lack solid data at this point, it appears from the number of notices received, from inquiries on Indian identification, and 223 adoption reports received from 26 States, that States generally have been well informed about the act and are conforming to its requirements.

From what we hear from the Indian country, we believe that the most important and critical issue pertaining to implementation of the act is the administration and funding of the title II Indian child and family services program.

In this first year, the Bureau had a total of $5.5 million available to implement the grant program. In contrast, it received 247 grant applications requesting nearly $20 million. Of these, 157 were approved as meeting the criteria of the act and the regulations, these having a total of $11.1 million in requested funds.

Of the approved applications, 74 percent were from Indian tribes, and 26 percent were from Indian organizations. Our written statement goes into more detail concerning the distribution of the grant funds.

However, a few points relating to the grants are worthy of special mention.

First, the grant process was a competitive one, and through this process 90 applications were disapproved; 22 of those disapproved appealed this action, thus adding to a delay in getting the funds out to the approved applicants.

Second, it should also be noted that under the act the Bureau has accepted responsibility for a new service population: those served by Indian organizations in urban communities.

Additionally, under the act a number of tribes will be reexamining jurisdiction over child custody proceedings. Two have already been approved for this purpose, and three more will be approved by the Department shortly.

Third, under the formula distribution method, 42 percent did receive the amounts requested in their proposal, indicating a realistic understanding by them of this process. The Bureau recognizes that in future years the formula distribution will undoubtedly need to be adjusted. It is certainly our intent to seek to improve the formula in order to provide the best possible level of service to the most Indian children and families in need of such services within available funds.

In conclusion, one other point I would like to make is that we recognize that Congress envisioned close cooperation between the Bureau of Indian Affairs and the Department of Health and Human Services to assure maximum use and benefits from all available resources.

This concludes my testimony, and I will be happy to respond to any questions that you might have.

Senator MELCHER. Fiscal years 1980 and 1981 show a unit cost per child per month during fiscal 1979 and fiscal 1980 at $343, but decreasing in fiscal 1981 to $282. The Department of Education and HEW apparently picked up $2.4 million of costs for handicapped children, but the decrease in unit costs does not look realistic. What happened?

Mr. KRENZKE. These child welfare service funds, that are being referred to, relate to the cost of care for Indian children who are either institutionalized or in individual foster homes, and in this case a number of those children were handicapped children who had, in previous years, the total amount of their care in institutions paid by
the social services funding within the Bureau of Indian Affairs. As a result of the relatively new Education for the Handicapped Act, the educational costs of their care are now being picked up, not by HEW, but by the Office of Indian Education Services within the Bureau of Indian Affairs.

So, a proportion that was formerly relating to the education of the handicapped is not reflected in that figure for fiscal year 1980. I just might add one additional thing on that. This does not relate to the $5.5 million in any way that is being used to fund the Indian Child Welfare Act; this is another aspect of the Bureau's child welfare activities.

Senator Melcher. I do not think I have gotten an answer to my question at all. My question relates to the figure in fiscal 1979 and 1980 being $343 and a few pennies; and then in fiscal 1981 it went down to $282 and a few pennies; and you have said, "Well, we are taking out the handicapped portion of it." My question is right to the point, I think. If you do not understand my point, I will keep going after it.

Education costs are rising. You have a base figure here that remained constant in 2 fiscal years, which is entirely beyond my understanding because I know educational costs were rising between those 2 fiscal years. The child support costs were rising between those 2 fiscal years, but now you have them reduced, and you have said it is just because of the handicapped funds. I think you are locked into a base figure, and you are not changing it even though the costs are changing.

Mr. KRENZKE. Maybe I have missed the point, but I certainly agree with you that the total cost of care of children in institutions, both the handicapped and the nonhandicapped, has risen. The only point that we are making in relation to this is that our per-unit costs have decreased because a portion of those costs no longer show up in Indian services, but a portion of those costs is also reflected in the education.

We certainly have no disagreement with you, that the total cost has risen. If these had been separated out in previous years, this would certainly reflect that. We certainly do agree with you, but we do not feel that we are locked into a number and that our appropriations requests have continued to reflect the increasing cost of care, particularly in institutional types of situations. We are endeavoring to provide a service that meets the specific needs of the handicapped.

Senator Melcher. Taking the 1979 figure and separating out whatever could have been charged against the handicapped, how much difference is this $282 for fiscal 1981?

Mr. BUTLER. Mr. Chairman, in 1979 the cost of the education portion for the handicapped Indian students who were in institutional care was about $1.8 million.

Senator Melcher. How much per capita? How much of the $343 was represented by that $1.8 million, when you divided it out?

Mr. BUTLER. That would represent approximately $50 per child.

Senator Melcher. Subtract $50 from $343, and you come down to $293.

Mr. BUTLER. For 1981 it is estimated to be around $61.

Senator Melcher. So you are still using the base figure.

If you are not meeting these costs, just tell me. That is the point of my question.

Mr. KRENZKE. OK. I think the answer to that is that we are meeting the costs of children who require either group placement in institutions and group homes or in individual foster care. I am not aware of any children needing foster or institutional care who have been turned down by the Bureau for lack of funds.

Senator Melcher. I am going to refresh your memory. When you gave us the figures in 1979 for fiscal 1980, you were estimating $401.52 instead of $343.18; that was for fiscal 1980. You did not get it; you did not clear that through OMB; it did not show up in your budget request. So what happened? The costs did not go down; the cost continued to rise.

If you are just telling me what the administration's position is, I can understand; but if you are just trying to tell me that the costs did not go up and that you are meeting everything that you planned to meet, I cannot understand it.

Mr. KRENZKE. I think the basic response to your question is that we have received the funding that is necessary to provide for the care of children needing placement outside of their own homes and to provide the kind of care that these children need.

I admit that I am somewhat confused by some of those numbers there; and if you would permit us, we would be pleased to provide some additional detailed information on that.

Senator Melcher. I am referring to the Bureau's statement to the Congress. It was a budget request for fiscal year 1980. Obviously, it was made in 1979, but I do not have what date that was. It showed that $401.52 was the estimated amount that you needed. That did not show up in your budget request for 1980. This is just what you provided for Congress as an estimate and you could not clear it through OMB because when your budget came up it was still based on $343.18 for fiscal year 1980. Is that not correct?

Mr. BUTLER. Yes, sir, for the fiscal 1980–81 request.

Senator Melcher. What do you mean, "for the fiscal 1980–81 request"?

Mr. BUTLER. In the fiscal year 1981 budget request, the unit cost for fiscal year 1980 is reflected as $343.

Senator Melcher. That is right. But just exactly a year before that, your estimate for fiscal year—

Mr. BUTLER. 1981 was going to be $401.

Senator Melcher. No; do not misunderstand me, I am reading off this, and this is your estimate for your request in fiscal year 1980. This is what you said in 1979. It was going to be $401.52 for this fiscal year, but when you got the budget for this fiscal year, it was $343.18.

Mr. BUTLER. And the reason for that, Mr. Chairman, is that in the Senate report we were cut $7.5 million in our welfare grants. The Senate report restored $2.5 million of the House cut and left us with a $5 million reduction in welfare assistance grants over that, which was originally requested.

Senator Melcher. Then when you came up for your request for fiscal year 1981, you went back to $343.

1 Not received at time of printing.
Mr. BUTLER. That was in accordance with the funds that were actually appropriated to us by the Congress for fiscal year 1980.

Senator MELCHER. Yes; and your request was for the same thing for fiscal year 1981.

Mr. BUTLER. That is correct, Mr. Chairman.

Senator MELCHER. The point that I am trying to arrive at is, that does not reflect the increase. Were you going to use that figure only because that became the position of OMB and the administration?

Mr. BUTLER. That is basically correct, Mr. Chairman.

Senator MELCHER. Thank you.

We come across this in every Department. If it is not really what you think you need, we have to know that, despite what OMB’s and what it is, and we are skeptical that what we have now for fiscal year 1982 is really going to be adequate. We will go over that very carefully because we think that is still based on the $285—or whatever it is—the $343 less handicapped costs.

The formula grant allocation you used to distribute the fiscal year 1980 grant money really looks like it favored the very small units: the villages in Alaska and some of the tribal units in California. I am not denying that they probably needed it, but what about the bigger tribes? They probably have more problems.

Can you justify the grant awards for California and Alaska? I think you can probably justify any of them, but can you justify a system that seems to treat the minority of native communities, that are really tiny in their units, better than the bigger reservations.

Mr. KRENZKE. I would like to ask Mr. Butler if he would go into some detail, as he has spent a great deal of time working on that, but I would like to say this at the outset.

The basic intent of it was to the effect that all tribes should have an opportunity to apply for it, and a further factor was that it was recognized that there needed to be a kind of bottom to the grant fund—basic level of service. But let me ask Mr. Butler to go into detail on that.

Mr. BUTLER. Mr. Chairman, there is no question about that. The basic initial formula was designed for this, the first year of the grants, with the basic purpose in mind that as many of the Indian tribes and Indian organizations who desired to do so could at least get into the grant system.

In the hearings that were held in March 1979 in regard to the development of the regulations, there were several comments received, many of which were received from the smaller tribes saying that the larger tribes get the lion’s share of the money and we always get left out.

There was, likewise, considerable testimony at those hearings from the urban Indian organizations who were very fearful that the Indian tribes were going to get all the money and that they were going to be left out.

Therefore, the purpose in mind in designing this formula distribution system in the first year was to afford as many of those groups an opportunity to compete and be awarded grants as possible.

It is very true, Mr. Chairman, that, for example, in the State of California the Bureau of Indian Affairs has had no child welfare services program. This is the first year. There are a number of those small groups in California. The same is true in Alaska.

Senator MELCHER. I think we understand that point, and I appreciate your bringing up that point for both Alaska and California because they were not organized as a tribe and the setup just did not fit. They did not get anything.

Now the question is: What are you going to do after this first year? How do we blend this out?

Mr. BUTLER. I would also comment, Mr. Chairman, that with respect to some of the larger tribes, a number of them did have some funding under our previously existing 1978 congressionally mandated $3.8 million ongoing child welfare program funding.

A good example of that, Mr. Chairman, was the Navajo Tribe which was receiving 25 percent of those available funds already.

But certainly it is our judgment that the formula distribution system, as the Indian tribes and the Indian organizations develop their programs, introduce specific programs that we will be going to in consultation with them—unit cost type of formula distribution. In other words, a determination will be made for, example, of what is the average unit cost of daycare. If a tribe or Indian organization provides a daycare program for their working families, we will then have a cost designed for that type of program.

The same will be true, Mr. Chairman, if some of the court systems that will undoubtedly be desired by a number of the Indian tribes, develop a cost formula based on the actual costs of delivering the type of service that they deem desirable to meet the needs of their people.

Senator MELCHER. I am sure that the testimony we are going to get from the tribes themselves will help in arriving at this. I understand you have been discussing how best to formulate a plan with the committee staff during the past several weeks; is that correct?

Mr. BUTLER. Yes, sir.

Senator MELCHER. Most of the $15,000 grant awards were for purposes of developing child welfare programs. In light of the budget request for fiscal 1981, it does not appear that any of these grant recipients are going to be able to institute the programs they have planned during this next budget cycle.

As thin as grant money is spread, it appears questionable just what can be achieved in fiscal 1981. That, of course, begins pretty promptly on October 1. It is questionable what can be achieved during that period, other than more planning grants. Can you comment on that?

Mr. BUTLER. Mr. Chairman, I think we only need to reflect back on the applications that were received this year—in the first year. As Mr. Krenzke testified, 247 applications totaling $20 million were received.

There is no question, Mr. Chairman, but that in 1981, as the Indian tribes and Indian organizations develop their programs which will be more costly, that with the limited funding available they will become more competitive. There is no question about it.

Given the interest in this—and my boss may chastise me for saying this, but I will say it anyway—and given the cost of services and inflationary rates alone, I would suggest to the committee that a more realistic figure for 1981 would be in the neighborhood of $14 or $15 million to adequately fulfill them. Now, you may have to protect me for saying that, Mr. Chairman, but I am being realistic.
Mr. Chairman and Members of the Committee, I am pleased to appear before you because it was largely through the efforts of this Committee that we have the Indian Child Welfare Act which is the subject of our discussion today. The Indian Child Welfare Act, enacted into law on November 8, 1978, is, in our judgment, truly a landmark piece of legislation in the field of Indian Affairs. It provides protection for Indian children and their families through the establishment of certain judicial requirements imposed upon the state judicial system, and establishes certain placement and service requirements upon the public and private child placement and family services agencies. The Act also provides several proceedings, and authorizes Indian tribes and Indian organizations to provide Indian child and family services programs for their people.

Let me first speak to the implementation stages of the Act. The requirements of section 402 were met on December 6, 1978, in which copies of the Act, Committee reports, and an explanation of the Act were mailed to Secretary Andrus to all state Attorneys General, Governors, Chief Justices, and State Public Welfare Directors. An initial working draft of regulations was widely distributed to all tribes, states, and Indian organizations on January 30, 1979. During the month of March 1979 series of 12 public hearings were held throughout the country by the National Congress of American Indians and the National American Indian Court Judges Association, under contract with the Bureau, to solicit comments and suggestions for the development of proposed regulations. The proposed regulations were published for comment on April 23, 1979, and the final regulations were published on July 31, 1979.

There was some controversy over the issue of whether the Department could provide funds to Indian organizations to implement the Bureau of Indian Affairs and would the Department determine that the Act did not authorize the Bureau of Indian Affairs to regulate state courts except in a few limited areas where the Act gave specific responsibilities to the Department (such as keeping adoption records supplied by the state courts).

Therefore, only regulations that governed how the Department would carry out the responsibilities specifically assigned to it under the Act were published as mandatory regulations. The Department also published Guidelines for State Courts on November 26, 1979, setting forth the Department's interpretations of the statutory requirements imposed on state courts.

Although we have no solid data, based on the number of notices received, inquiries on Indian identification, and 225 adoption reports received from 26 states as required by Title III, it appears that the states have been well informed and are conforming to the requirements of the Act.

Now, let me turn to what we consider, and what we hear from the Indian tribes and Indian organizations to be the most critical and important issue related to the full implementation of the Act, namely the administration and funding of the Title II Indian Child and Family Services Programs. In this first year, 1980, we received carryover authority of fiscal year 1979 monies of $5 million and $2.5 million in new money, for a $5.5 million grant program. In addition, $3.8 million is available in 1980 from on-going child welfare programs. We received 247 grant applications totaling $19,827,035 in funding requests. Grants were funded on a formula basis which allocated for approved grants a base of $15,000, plus an add-on in relationship to the percentage of the total Indian client population to be served by the applicant, multiplied by the remaining funds available after all approved grants received their initial base. Thirty-eight percent of the applications were for grants under $25,000 and 71 percent of these grants were funded at the level they requested. The smallest grant funded was for the IndianPhoenix Area for $8,666. The largest grant was a consortium of 41 villages from the Jemez Area at a cost of $634,227. Both grant applicants received 90% of the level of funding requested. It should further be noted that 20% consortia consisting of 28 tribes made grant applications, and were approved for funding. As you may have discerned from my earlier statements, 90 grant applications were disapproved by our Area Offices. This grant process was a competitive process as it is to the large number of applications. There were twenty appeals from disapproved grant applicants, which was the primary reason for the delay in the funding to applicants during this initial period.

The Congress, in enacting this legislation, realized that full implementation of the Indian Child Welfare Act would be dependent upon a close cooperation between the Bureau of Indian Affairs and the Department of Health and Human Services. Therefore, concerted efforts are being made at the administrative levels of the Bureau and Health and Human Services to ensure that Indian people receive maximum benefit from, and utilization of, all available resources.

This concludes my prepared statement, and I will be pleased to respond to any questions the Committee may have.

Senator Melcher. I would now like to call on our next witness: Bobby George, director of social welfare, Navajo Nation, Window Rock, Ariz.

STATEMENT OF ANSLEM ROANHORSE, SUPERVISORY SOCIAL WORKER, BISTATE PROJECT DEPARTMENT, DIVISION OF SOCIAL WELFARE, NAVAO NATION; ACCOMPANIED BY PATRICIA MARKS

Mr. Roanhorse. Good morning, Mr. Chairman.

Senator Melcher. Good morning.
Before you give us your statement, is it my understanding that Chairman MacDonald and the Navajo Nation support the Navajo-Hopi bill as it is, lying on the President's desk.

Mr. ROANHORSE. Mr. Chairman, I am not fully aware of the bill.

Senator MELCHER. You are not fully aware of it?

Mr. ROANHORSE. No, sir.

Senator MELCHER. Could you get an answer for me by noon?

Mr. ROANHORSE. Yes, sir.

Senator MELCHER. If you are not fully aware of it, we have been fully aware of it on this committee for about 5 years now. Of course, this committee has not been in existence for 5 years, but going back to when it was in the Senate Interior Committee and going back to when I served on the House Subcommittee on Indian Affairs, I have been very much aware of the Navajo-Hopi issue. We have been spending an awful lot of time on this committee over the past year trying to make that acceptable to the Navajo Nation.

I thought it was acceptable when we had the bill in front of us, and it is now on the President's desk. If the Navajo Nation has some problem with it, I want to know personally, directly, myself.

Please proceed.

Mr. ROANHORSE. Thank you, Mr. Chairman.

My name is Ansel Roanhorse, and I am here representing Mr. Bobby George and will present testimony on the Indian Child Welfare Act on behalf of the Navajo Tribe of Window Rock, Ariz. With me is Ms. Patty Marks.

Senator MELCHER. Could we get those names again, please, because they are substituted for Bobby George?

Mr. ROANHORSE. I am Ansel Roanhorse.

Ms. MARKS. I am Patricia Marks.

Senator MELCHER. Thank you very much. Please continue.

Mr. ROANHORSE. The passage of the Indian Child Welfare Act, Public Law 95-608, was welcomed and supported by Indian tribes throughout the country including the Navajo Tribe. Since the passage of this legislation several States have reported and referred Indian child welfare cases to the Navajo Tribe, and subsequently some families have been reunited, and some are in the process of being reunited, or other arrangements are being made in light of the best interests of the Indian child.

Nonetheless, as the Indian tribes proceed with the implementation of the act, some ambiguities begin to emerge, such as the amount of funding, mechanism, or regard for tribal priority and authority in child welfare.

The Navajo Tribe is concerned about the incorporation of ongoing child welfare moneys with funds authorized under title II of the Indian Child Welfare Act. Our understanding is that the two program funding sources should be administered under one process; namely, the permanently authorized grant process of Public Law 95-608. However, the fact of the matter is that the ongoing child welfare funds will be transferred from tribal programs already in operation.

Apparently the Navajo Area Bureau of Indian Affairs officials and Navajo tribal leaders were not consulted before the Bureau of Indian Affairs officials at the Washington level made a decision to transfer ongoing child welfare moneys into title II of the Indian Child Welfare Act. This decision undoubtedly affects some ongoing child welfare related programs. The consideration and respect for tribal priorities, policies, and defined needs are essential if the intent of the Indian Child Welfare Act is to be fully carried out.

The new application and grant process of Public Law 95-608 allows for competition between Indian tribes and Indian organizations from off-reservation settings. The increased number of applications for very limited funds only decreased possible appropriations to Indians in reservation settings where the majority of the Indian children are, where the needs most exist, and where the greatest challenge and responsibility lie for the fullest implementation of the Indian Child Welfare Act. The intent to protect the best interest of Indian children and to promote the stability of Indian tribes and families is minimized when the availability of funds to Indian tribes is reduced.

The procedure and regulations for awarding grants should be revised to allow for more Public Law 93-638 contracting mechanism which will assure tribal priority and authority in child welfare.

The grant formula, as developed by the central office of the Bureau of Indian Affairs to assure that approved applicants receive a proportionally equitable share sufficient to fund an effective program, does not and will not truly reflect the needs, especially on reservations. The formula as developed does not take into account the total population to be served and the high cost of various services associated with Indian child welfare such as legal services, transportation costs, foster care, day care, medical costs, etcetera.

The $47,005 that the Navajo Tribe received under the Indian Child Welfare Act title II grant is not enough for a population that numbers over 130,000 people, where the number of children aged under 18 exceeds 70,000, and where the land base covers 125,000 square miles. The Navajo Tribe's initial request amounted to $2.7 million. The allocation of $47,005 is not sufficient for the Navajo Tribe to even use this allocation as the non-Federal matching share for title XX of the Social Security Act, as provided for in the Indian Child Welfare Act.

Presently, the Navajo Tribal Bi-State Social Services Department contracts for title XX services from the States of Arizona and New Mexico, and any financial assistance pursuant to the act will further the role and responsibility for Navajo Tribal Bi-State Social Services activities in child welfare. Several other programs from the Navajo Nation, which submitted applications to provide needed child welfare services and other services to prevent family breakups, may not be considered for funding under Public Law 95-608 grants if additional funds are not made available.

In closing, we ask that the Congress of the United States give its complete support and assistance to the Indian tribes and Indian organizations in making sufficient resources available.

Thank you.
Senator Melcher. Thank you.

Without objection, we are now going to insert in the record the June 27, 1980, letter signed by Frank E. Paul, vice chairman, Navajo Tribal Council, along with correspondence from the Inter-Tribal Council of Arizona, the Department of the Interior, and the Navajo Nation.

[The material follows. Testimony resumes on p. 75.]

Passage of the Indian Child Welfare Act came as a welcomed support to the Navajo Tribe, its children and families. There have already been many heartwarming success stories about the reunification of Navajo families. The testimony today, regarding some of these incidents, will show how family members are directly affected and how tribal social workers and frequently social workers from the various states have worked together cooperatively under the Act to reunite families.

There is one primary concern - that the Indian Child Welfare Act, through its application and funding processes not undermine the goals of the Indian Self-Determination Act.

While the Indian Child Welfare Act serves to strengthen the Navajo family, and grants authority to the Tribe to regain jurisdiction over its members -- the Navajo child, the funding application process for Indian Child Welfare grants does not utilize any 93-638 procedures. While these procedures are not applicable to the off-reservation organizations, they should remain applicable on the reservation.

I hope that your review of the Act and its regulations will include changes in these areas.

Frank E. Paul
Vice Chairman
Navajo Tribal Council.
Dear Commissioner Hallet:

We are writing to protest recent actions of the B.I.A. Washington office that will have serious adverse effects on tribally operated child welfare programs on Indian Reservations.

Without consulting B.I.A. Area office personnel or tribal leaders about the possible effects of the change, your Washington office has announced that $3.8 million dollars of "ongoing child welfare" funds will be transferred from tribal programs already in operation to a grant award program under Title II of the Indian Child Welfare Act, effective October 1, 1980.

The action clearly subverts the intent of Congress expressed in the Act: "to promote the security and stability of Indian tribes and families":
- by preventing unwarranted removal of Indian children from their Indian homes;
- by establishing recognition of the authority of tribal courts; and
- by establishing standards for the placement of Indian children in foster or adoptive homes. It undermines the development of tribal courts and of family support services that tribal governments must be able to sustain if they are to assume greater responsibility for preventing the breakup of Indian families.

We are attaching a fact sheet that illustrates the effect that the Bureau directive will have on tribally operated child welfare programs in the Phoenix Area.

Sincerely yours,

[Name]
President, Inter-Tribal Council of Arizona/Chairman, San Carlos Apache Tribe

Enclosures
We urge you to rescind the recent Bureau action affecting child welfare services; and we urge you to consult tribal leaders and your own field staff before proceeding further to implement Title II of the Indian Child Welfare Act.

Sincerely yours,

Ned Anderson
President

cc: President Carter
Secretary of Interior
Congressional Delegations of Arizona, Nevada, Utah, and California

FACTS AND TRIBAL ISSUES ON BIA
DISCONTINUANCE OF ON-GOING CHILD WELFARE FUNDING

Child Welfare Programs Under "Ongoing Child Welfare" Funds

In 1977, at the insistence of the Congress, the Washington office of the Bureau of Indian Affairs set aside $5,800,000 to be used for "ongoing child welfare" programs on Indian reservations. The "ongoing child welfare" funds were not drawn from new appropriations, but were transferred from existing BIA programs, such as General Assistance.

BIA Area social service offices were instructed to encourage tribes to develop their own child welfare programs, emphasizing family support services, delinquency prevention programs and programs of support to tribal courts in the disposition of child custody and child protection cases. All parties were led to believe that the funds for tribal programs would be available on an "ongoing" basis, hence the term "ongoing child welfare" funds.

In the Phoenix Area, the following programs were established:

Delinquency Prevention
- Fort McDowell - Year-round Youth Support Program
- Gila River - Year-round Youth Recreation Program
- Fort Mohave - Summertime Delinquency Prevention Programs
- Uintah & Ouray Ute Tribe

Family Support
- White Mountain Apache - Crisis Intervention and Protective Services for Families at Risk
- Salt River Pima-Maricopa - Parent Training Program
- Hualapai - Quadrupled a small amount of "ongoing child welfare" money by using it as match for Title XX funds for a family support program.

Court Support
- Salt River Pima-Maricopa - Foster Home Recruitment, Training and Supervision; Counselor for the Youth Home
- San Carlos Apache - Indian Court Services, emphasizing support for the Juvenile Court
- Cocopah - Tribal Court Coordinator
- Nevada Inter-Tribal Council - Indian Court Services and Community Organization

Grants under Title II of the Indian Child Welfare Act

When an announcement was issued of grants to be made under Title II of the Indian Child Welfare Act, many Phoenix area tribes submitted applications for programs designed to enhance or strengthen those already
established with "ongoing child welfare" funds. In the Phoenix Area, 28 applications were submitted. Phoenix BIA Area Office and Phoenix Area tribes were not informed that the "ongoing child welfare" funds would be transferred to the grant program under Title II of the Indian Child Welfare Act. Tribes assumed they would be competing for new money.

In a letter dated March 25, 1980 and received by tribes around April 7, 1980, tribes were informed by the Bureau of Indian Affairs that beginning in Fiscal Year 1981, "ongoing child welfare" funds will no longer be available. Funds for programs of family support, delinquency prevention, or court support services will have to be obtained in competition with other tribes and with off-reservation organizations under Title II of the Indian Child Welfare Act. The Title II grant award competition is already over for 1981. Phoenix Area tribes will be faced with scrapping innovative programs that are already being operated successfully.

What does the recent directive mean for Child Welfare Services on Indian Reservations?

Indian Child Welfare Act

The Washington Office of BIA has set up a competitive grant award program with:

- $2,000,000 - New money
- $3,800,000 - Taken from existing "ongoing Child Welfare" programs
- $3,200,000 - Transferred from General Assistance and other existing BIA programs

Effect on Phoenix Area

Phoenix Area tribes now receive $660,000 in "ongoing child welfare funds."

In 1981, nine Phoenix Area tribes and two Indian organizations will receive less than $300,000 for programs under the Indian Child Welfare Act. The other 17 applications for Indian Child Welfare funds (or 60% of the total) were rejected.

Phoenix Area BIA will return to paying only for out-of-home placement of Indian children. Family support, delinquency prevention, and court support services can no longer be encouraged. Tribes that used their "ongoing child welfare" funds as match for other social service funds will lose both resources.

ITCA, Inc.
14MAY80