

**DEPARTMENT OF THE INTERIOR****Bureau of Indian Affairs****25 CFR Part 20**

RIN 1076-AD95

**Financial Assistance and Social Services Programs****AGENCY:** Bureau of Indian Affairs, Interior.**ACTION:** Final rule.

**SUMMARY:** The Bureau of Indian Affairs (Bureau) is amending the existing Financial Assistance and Social Services Program regulations to incorporate rules for Adult Care Assistance, Burial Assistance, Child Assistance, Disaster Assistance, Emergency Assistance, General Assistance, Services to Children, Elderly and Families, Tribal Welfare Reform, and Tribal Work Experience Program. All other sections are revised and renumbered to conform to existing programmatic and budgetary statutes and conditions. Also, these regulations have been rewritten in Plain English as required by Executive Order 12866. In keeping with the intent of Plain English, we added more subparts for easier use in reference.

**EFFECTIVE DATE:** These regulations take effect on November 20, 2000.

**FOR FURTHER INFORMATION CONTACT:** Larry Blair, Chief, Division of Social Services, Department of the Interior, Bureau of Indian Affairs, 1849 C Street, NW., MS-4660-MIB, Washington, DC 20240 at telephone (202) 208-2721.

**SUPPLEMENTARY INFORMATION:** We last revised the financial assistance and social services regulations in 25 CFR part 20 in 1985. Since that time, a number of important changes have occurred that are not reflected in the existing regulations. These actions present an opportunity to review the current priorities and policies contained in the regulations and propose changes that conform to existing conditions. We published a proposed rule in the *Federal Register* on May 6, 1999 (64 FR 24296). We considered the following factors in proposing changes in the current regulations:

- The primary purpose of the amendments is to provide clear, concise regulations that will improve program implementation;
- Congress has enacted a cap on the level of financial assistance funding;
- Existing financial assistance and social services regulations do not provide for the development of tribal welfare reform/redesign plans in

accordance with tribal desires and existing law;

- Given fluctuations in financial assistance caseloads and emergencies, it has been difficult to plan and refine the existing service delivery framework;
- The Department of Health and Human Services (HHS) has made a policy decision to allow Temporary Assistance for Needy Families (TANF) payments to be included as one of the grants under Public Law 102-477;
- Public Law 104-193 Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA) reduced funding level authorizations and required General Assistance (GA) payments to be equal to the level of state TANF payments; and
- The Indian Child Protection and Family Violence Prevention Act and the Adoption and Safe Families Act have established new standards in child welfare. The regulations need revision to incorporate and consolidate additional child protection and permanency planning requirements.

The Bureau continues to support the policy that Indian people are eligible and should receive financial assistance and social services from local state, county, and city resources on the same basis as non-Indians. For the purposes of simplifying the locations where we will provide the financial assistance and social services program, we use the term "service area" in these regulations and tell you how to get a service area if one does not yet exist.

**Summary of the Rule**

The rule provides tribes the option of operating their own general assistance program through a redesign plan which incorporates welfare reform or utilizing the Bureau's revised regulations on general assistance as a program standard for operation. In addition, the rule provides clear concise guidance for operation of other program components including Adult Care Assistance, Burial Assistance, Child Assistance, Disaster Assistance, Emergency Assistance, Services to Children, Elderly and Families and Tribal Work Experience Program. These Bureau programs do not replace any existing services, but in many instances interface with existing federal, state, county and tribal programs. Many of these governmental public assistance programs have been modified and revised as a result of PRWORA and the Bureau has the task of distinguishing and describing its programs to prevent duplication of services. Much tribal input was received both during the comment period and in prior meetings with tribal leaders and program officials.

The final rule reflects this input and provides tribes with choices as to how they might proceed with their own versions of welfare reform. In addition, the rule clarifies specific eligibility criteria for applicants and describes where services may be provided for eligible applicants. The program will continue to be based upon need and the annual distribution of funds is based upon the number of cases and lack of other resources to meet need.

**Review of Public Comments**

*Appeal* means a written request for correction of an action or decision of a specific program decision by a Bureau official (§ 20.700) or a tribal official (§ 20.705).

No comments were received on this definition.

*Applicant* means an Indian individual or person by or on whose behalf an application for financial assistance and/or social services has been made under this part.

One commenter recommended an applicant be an "enrolled Indian."

*Response:* This recommendation was not adopted. The definition of "Indian" states that an Indian is a member of a federally recognized tribe that is recognized by the Bureau of Indian Affairs to receive service. The definition was not changed because the term "Indian" indicates the applicant is a member of a tribe that is recognized by the Federal Government to receive service.

*Application* means the written or oral process through which a request is made for financial assistance or social services.

One commenter stated the requirement of a written application was in conflict with § 20.600(a) which states an application may be written or oral. This section was renumbered as § 20.601 in the final rule.

*Response:* This recommendation was adopted. The language was changed to state that an application can be oral or written.

*Area Director* means the Bureau official in charge of an Area Office.

One commenter stated that Area Director had changed to Regional Director.

*Response:* This recommendation was adopted and the definition was changed to Regional Director.

*Assistant Secretary* means the Assistant Secretary—Indian Affairs.

No comments were received on this definition.

*Authorized representative* means a parent or other caretaker relative, conservator, legal guardian, foster parent, attorney, paralegal acting under

the supervision of an attorney, friend or other spokesperson duly authorized and acting on behalf or representing the applicant or recipient.

No comments were received on this definition.

*Bureau* means the Bureau of Indian Affairs of the United States Department of the Interior.

No comments were received on this definition.

*Bureau Standard of Assistance* means payment standards established by the Assistant Secretary—Indian Affairs for Burial, Disaster, Emergency, and Adoption and Guardianship subsidy. In accordance with Pub. L. 104–193, the Bureau Standard of Assistance for General Assistance is the state rate for TANF in the state where the applicant lives. Child Assistance and Foster Care rates are in accordance with Title IV of the Social Security Act (49 Stat. 620) and Pub. L. 104–193.

Some commenters raised the following questions: (1) What authority under Pub. L. 104–193 is used as the basis for the Bureau Standard of Assistance for General Assistance and Foster Care? (2) Why is the Bureau required to use Foster Care rates in accordance with Title IV of the Social Security Act? (3) What Bureau Standard of Assistance is used for multi-state tribes? (4) Why shouldn't the Bureau Standard of Assistance be an amount equal to the larger of either the state or tribal TANF amount? (5) Why should the Bureau set their own Standard of Assistance? (6) What is the Bureau's definition for financial assistance?

*Response:* These recommendations were partially adopted. Pub. L. 104–193 does require the Bureau General Assistance payment levels be tied to the state TANF rate including ratable reduction. Child Assistance was deleted from the reference to rates as Foster Care rates should have been the only service referenced. By tradition, the Bureau has used state Foster Care rates for Indian children requiring care. Based on the Bureau's experience, this is the most equitable payment level for Foster Care, and the Bureau continues to use the state established Foster Care rates for this purpose. The Bureau acknowledges the need to explain service delivery where a reservation extends into more than one state and added language to that effect. There may be instances when the General Assistance rate would be a larger amount than the state TANF rate if the tribe has chosen to redesign their General Assistance program. The Bureau Standard of Assistance for Adult Care Assistance and TWEF will be added to the definition because these services were added under financial

assistance. Additionally, adult and adult care will be added as definitions. The Bureau has the discretion to establish payment standards for unmet needs that it does not routinely provide, such as Emergency Assistance, Adoption or Guardianship subsidy; therefore, these rates will be established by the Assistant Secretary. The Burial Assistance payment level will also remain an indigent Burial Assistance rate, and the rate will continue to be established by the Assistant Secretary. The Bureau has limited experience in dealing with natural disasters, but has coordinated assistance with Red Cross and Federal Emergency Management Assistance (FEMA) when disaster occurs on Indian reservations. The Assistant Secretary will establish payment rates for allowable expense(s) when disaster strikes an Indian reservation. The payment levels established by the Assistant Secretary will be reviewed and updated periodically. The Bureau will add a definition for financial assistance to add clarity.

*Burial Assistance* means a financial assistance payment made on behalf of an indigent eligible Indian person who meets the eligibility criteria to provide minimum burial expenses according to the Bureau payment standards established by the Assistant Secretary—Indian Affairs.

One commenter requested deletion of "indigent." Other commenters recommended the tribe establish their own Burial Assistance payment level. One commenter recommended judgement funds not be counted as income toward the Burial Assistance payment.

*Response:* These recommendations were not adopted. The Bureau's Burial Assistance has always been used for eligible Indians who are "indigent," and who have no resources available to be used for Burial Assistance. The Bureau will continue to make this assistance for "indigent" Indians, only, and will retain the discretion to establish an indigent burial rate. Judgement funds that are exempted by federal law(s) are not counted as income by the Bureau for the purpose of federal assistance.

*Case* means all individuals in the household.

Some commenters stated that the definition for case was too simplified and needed to be further defined.

*Response:* The recommendations were adopted and the definition was changed.

*Case management* means the activity of a social services worker in assessing client and family problem(s), case planning, coordinating and linking services for clients, monitoring service

provisions and client progress, advocacy, tracking and evaluating services provided, such as evaluation of child's treatment being concurrent with parent's treatment, and provision of aftercare service. Activities may also include resource development and providing other direct services such as accountability of funds, data collection, reporting requirements, and documenting activities in the case file.

Some commenters stated that social services staff cannot perform this function without additional resources, and one commenter stated that this is a practice issue, and should not be part of the Bureau's definitions.

*Response:* These recommendations were not adopted. The need for additional resources to accomplish case management was not addressed as this is not a regulatory issue. The Bureau disagreed with the comment that this definition is primarily a practice issue. The Bureau views this definition as a quality control method used by a social services worker and his/her supervisor to track cases to ensure appropriate services are provided. In addition, a review system is established to determine client progress and link resources that may be needed to institute change. This definition will be of assistance to case managers for maintaining data collection and/or information required by federal laws and for documenting the need for welfare assistance funds.

*Case plan* means a signed written plan with time limited goals which is developed and signed by the service recipient and social services worker. The plan will include documentation of referral and ineligibility for other services. The plan must incorporate the steps needed to assist individuals and families to resolve social, economic, psychological, interpersonal, and/or other problems, to achieve self-sufficiency and independence. All plans for children in Foster Care must include a time specific goal of the return of the child to the home or initiation of a guardianship/adoption.

Some commenters requested explanation as to when permanency plans should be included in case plans. One wanted a clarification as to how the case plan differed from the Individual Self-sufficiency Plan (ISP).

*Response:* These recommendations were partially adopted. Permanency plans should be developed and included in case plans for all out of home placements including residential care. The definition of "Permanency Plan" includes language that allows tribes to establish a permanency plan for children that are consistent with their

tribal codes. ISP is specific action(s) which a General Assistance recipient must accomplish in order to become employed and retain employment. The definition for the ISP states that this plan will be incorporated into the Case Plan, or in essence, the ISP is only one part of the Case Plan.

*Child* means an Indian person under the age of 18 or such other age of majority as may be established for purposes of parental support by tribal or state law (if any) applicable to the person at his or her residence, except that no person who has been emancipated by marriage will be deemed a child.

One commenter recommended that children should be exempted from employment as indicated in § 20.315.

*Response:* This recommendation was not adopted. Section 20.315 states that the employment policy does not apply to a full time student under the age of 19. The definition was revised to provide clarity.

*Child Assistance* means financial assistance provided on behalf of an Indian child, or an Indian under age 18, who is not eligible for any other state or federal assistance as documented in the case file and who requires placement in a foster home or specialized non-medical care facility, in accordance with standards of payments established by the state in which they reside pursuant to the foster care program under Title IV of the Social Security Act (49 Stat. 620), or has special needs as specified in § 20.100.

Some commenters requested that the term "Child Welfare Assistance" be retained, and some stated the Bureau should retain the current Child Welfare Assistance language that allows assistance to be provided to Indian children until they reach age 22. Some commenters stated that this definition should include payments for adoption subsidies, guardianship subsidies, homemaker, day care, and other out of home placements that use child assistance funds. One commenter stated that the change in terminology emphasizes service to children and moves away from the idea that this is not "welfare."

*Response:* These recommendations were partially adopted. The Bureau provides child assistance to eligible Indian children who are under age 18, because this is the age recognized nationally when a child is considered to be an adult. The Bureau retained the new terminology "Child Assistance" because the emphasis of this program component is upon the well-being of children within the family unit. When the family encounters difficulties, a

temporary out-of-home placement or respite assistance may be necessary to preserve the family. The cost associated with guardianship subsidy and adoption subsidy is addressed under the Bureau Standard of Assistance, and the expenses related to homemaker, day care and respite service are considered "Special Needs" as specified in § 20.100. The definition was revised to include all the types of services that are provided under child assistance.

*Designated representative* means an official of the Bureau who is designated by a Superintendent to hold a hearing as prescribed in §§ 20.700 through 20.705 and who has had no prior involvement in the proposed decision under § 20.602 and whose hearing decision under §§ 20.700 through 20.705 will have the same force and effect as if rendered by the Superintendent.

Some commenters requested the addition of a "designated tribal official" for tribal contracts or compacts.

*Response:* This recommendation was not adopted. This recommendation was not added because tribes have authority to develop their own policies and procedures to handle appeals at § 20.705.

*Disaster* means a situation where a tribal community is adversely affected by a natural disaster or other forces which pose a threat to life, safety, or health as specified in §§ 20.327 and 20.328.

One commenter recommended the addition of "man made" disasters, and another recommended the addition of a tribal community disaster definition which would describe economic failures in the fishing and agriculture industries. Another commenter stated that tribal communities should declare their own disasters.

*Response:* These recommendations were not adopted. The Bureau retained the disaster assistance definition, because there is no limit as to how man made disasters may be interpreted. As indicated in other areas of this regulation, the Bureau's financial resources are residual. The primary responsibility for service delivery for natural disasters is the Red Cross and the Federal Emergency Management Agency (FEMA), and state agencies and tribes should contact them to request disaster assistance. In the event assistance and/or services cannot be obtained from other resources, the tribe can make a request to the Bureau for disaster assistance. The process to be used by a tribe to declare a disaster is addressed at § 20.328. The recommendation to include economic disasters was not accepted because

general assistance, and other state assistance such as TANF are available to meet economic hardships of individuals needing financial assistance.

*Emergency* means a situation where an individual or family's home and personal possessions are either destroyed or damaged through forces beyond their control as specified in § 20.329.

Some commenters stated that Emergency Assistance is too narrowly defined and should include conditions for emergency food, transportation and loss of heat in a winter storm.

*Response:* These recommendations were not adopted. The Bureau's General Assistance and other assistance (TANF and Food Stamps) should be used to meet food needs, and transportation needs. If the winter storm is extensive in nature and poses a threat to life, safety or health, then such a request for assistance should be handled as a disaster as specified in §§ 20.327 and 20.328.

*Employable* means an eligible Indian person who is physically and mentally able to obtain employment, and who is not exempt from seeking employment in accordance with the criteria specified in § 20.315.

One commenter stated that in addition to being physically and mentally able to obtain employment, the person should have a high school diploma or General Equivalency Diploma (GED) to be considered employable.

*Response:* This recommendation was not adopted. This recommendation is not accepted because an individual is not required to have a high school diploma or GED to be considered employable. The purpose of this regulation is to work with general assistance recipients and help them to become employed. It is preferable that individuals have a high school diploma or GED, but this is not a requirement to be considered employable.

*Essential needs* means shelter, food, clothing and utilities, as included in the standard of assistance in the state where the eligible applicant lives.

One commenter recommended that tribes establish their own definition for essential needs.

*Response:* This recommendation was not adopted. Nationwide, the need determination for any state standard of assistance at a minimum includes food, shelter, clothing and utilities; therefore, the Bureau will retain the definition of essential needs.

*Extended family* means persons related by blood, marriage or as defined by Indian custom.

Some commenters requested that "tradition" replace the word "custom," and one commenter wanted language to insure that where tribal codes for family existed they would take precedence. Some commenters requested the inclusion of "Kinship care" into this definition. One commenter recommended revising the definition as follows: Extended family will be defined by tribal law or custom, or in the absence of such law or custom, means a grandparent, grandchild, aunt or uncle, brother or sister, brother-in-law or sister-in-law, niece or nephew, first or second cousin, or stepparent or stepchild.

*Response:* These recommendations were partially adopted. The inclusion of kinship care was not accepted, because kinship care is related to placement of children with relatives and/or the placement practice of a social service agency; however, the Bureau will include a reference to tribal law to ensure that existing tribal laws take precedence.

*Family assessment* means a social services evaluation of a family's abilities and resources to provide the necessary care and supervision for the children, and individuals within the family's current living situation and is included in the case file.

Some commenters stated that the definition is limited and the language "is included in the file" is not a definition. Some commenters recommended the addition of clinical or social service evaluation to this definition to clarify what should be included in the assessment.

*Response:* These recommendations were partially adopted. The definition of family assessment was revised to include social services assessment. In addition, § 20.404 was added to specify the minimum requirements needed in a social services assessment.

*Foster Care Services* means those social services provided when an Indian child lives away from the family home.

Some commenters stated that the definition is vague and too general.

*Response:* This recommendation was adopted. The definitions of foster care services was revised to provide clarity and examples were provided.

*General Assistance* means a secondary or residual source of financial assistance payments to eligible Indian individuals for essential needs as provided and pursuant to §§ 20.300 through 20.319.

One commenter stated that the regulation must specify that general assistance is "temporary," and another stated that general assistance should be provided only to "enrolled eligible

Indians" of a federally recognized tribe. Another commenter suggested simplifying the definition.

*Response:* These recommendations were partially adopted. General Assistance is temporary assistance and eligibility is reviewed periodically. There is a process for review of recipient eligibility every 3 months for employables and every 6 months for unemployables. The language "eligible Indian individuals" in the definition in § 20.100 indicates that enrolled Indians of a federally recognized tribe may apply for general assistance. The reference to secondary or residual source was deleted.

*Head of household* means the persons in the household with whom the household members live and who makes application for benefits.

Some commenters stated that this definition needs to be redefined and clarified. One commenter stated that the definition should include language stating that one person can be the head of household, rather than a number of persons.

*Response:* These recommendations were adopted. The definition was changed to clarify that one person was the head of household and financially responsible for the other members.

*Homemaker services* means those non-medical services purchased or contracted for individuals who are not eligible for any other programs such as Medicaid/Medicare as documented in the case file. These individuals must be under the supervision of a social services agency which is administered by a person trained in such skills as child care and home management to prevent out-of-home placement.

Some commenters recommended the deletion of the second sentence in the definition and deletion of "Medicaid/Medicare," because this is a "policy" statement rather than a definition. One commenter stated that the definition is vague and needs clarity and should include homemaker services for adults and children and a reference should be made to residential care.

*Response:* These recommendations were partially adopted. References to Medicaid/Medicare were deleted as they were unnecessary and the addition of adults and children was not accepted as the use of individuals implies both adults and children as beneficiaries of this service. Residential Care was added and referenced and the definition was rewritten.

*Household* means persons living together who may or may not be related to the "head of household."

Some commenters requested that the definition be revised taking into

consideration the existence of multiple households and the practice of accepting roommates when determining payment amounts. Another commenter stated that there is a need for the language "who function as members of a family unit."

*Response:* These recommendations were not adopted. The process for calculation of payments in a multiple household is addressed at § 20.313. The recommendation to include, "who function as members of a family unit" is not necessary because there is a legal obligation to support family members. There are circumstances when individuals who are not related to the head of household may be considered as additional persons in a general assistance household.

*Indian* means any person who is a member of any of those tribes listed in the **Federal Register**, pursuant to 25 CFR part 83, as recognized by and receiving services from the Bureau of Indian Affairs.

Some commenters stated that this definition should specify enrolled member or be simplified.

*Response:* This recommendation was partially adopted. Membership is determined by tribes, and eligible members can receive services. The definition was revised and simplified.

*Indian court* means Indian tribal court or court of Indian offenses.

Some commenters recommended the deletion of "Court of Indian Offenses."

*Response:* This recommendation was not adopted. Court of Indian Offenses was not deleted because this is the official name of a court operated by the United States Government.

*Indian tribe* means an Indian or Alaska Native tribe, band, nation, pueblo, village, or community that the Secretary of the Interior acknowledges to exist as an Indian tribe pursuant to Public Law 103-454, 108 Stat. 4791.

Some commenters requested retention of the current definition which states Alaska Native Village or regional or village corporation and asked that the definition be simplified.

*Response:* This recommendation was adopted. The definition was revised and simplified.

*Individual Self-Sufficiency Plan (ISP)* means a plan designed to meet the goal of employment through specific action steps and is incorporated within the case plan. The plan is jointly developed and signed by the general assistance recipient and social services worker.

Some commenters stated that they objected to the addition of an ISP because this requirement will be burdensome. One commenter stated the self-sufficiency may be in conflict with

the state's self-sufficiency plan if the applicant is coming to general assistance from a TANF program.

*Response:* These recommendations were not adopted. We acknowledge the development and implementation of an ISP may be burdensome, but it is good social work practice to have ISP's for employable general assistance recipients. Both the general assistance and TANF programs' expectation is to attain employment in order to become self-sufficient, and although the specific action steps to be taken to obtain employment for general assistance may not be the same as TANF, the ultimate goal is the same.

*Need* means the deficit after consideration of income and other resources necessary to meet the cost of essential need items and special need items as defined by the Bureau standard of assistance for the state in which the applicant or recipient resides.

No comments were received on this definition.

*Non-medical care* means financial assistance for room and board services for individuals in non-medical care facilities. These individuals must not be eligible for SSI or any other federal or state programs and this information must be documented in the case file.

Some commenters asked if "non-medical service" is the same as "non-medical care" as the definition was confusing and should be revised or deleted. One commenter requested changing the words "must not" to "should not." Another commenter requested clarification in terms of what was considered as residential care services.

*Response:* This recommendation was adopted. This definition was deleted to avoid confusion and the definition of residential care services was added.

*Permanency plan* means the documentation in a case plan which provides for permanent living alternatives for the child in foster care who is not eligible for any other federal or state program. Permanency plans are developed in accordance with tribal, cultural, and tribal/state legal standards when the parent or guardian is unable to resolve the issues that require out-of-home placement of the children.

Some commenters recommended permanency plans be developed in accordance with ICWA language.

*Response:* This recommendation was partially adopted. Reference to ICWA was unnecessary in this definition. The definition was revised to include a description of the circumstances where a permanency plan may be required and language indicating that a plan has been developed and implemented.

*Protective services* means those services necessary to protect an individual who is the victim of an alleged and/or substantiated incident of abuse, neglect or exploitation. In coordination with law enforcement and tribal courts, this may include placement of the individual out of the home to assure the safety of the individual while the allegations are being investigated. Social workers will not remove individuals from their homes without a court order except in life threatening situations. Protective services can also include provision of social services in the home, the coordination and referral to other programs/services and the involvement of Child Protection and/or Multi-Disciplinary Teams.

Some commenters objected to the sentence, "Social Workers will not remove individuals from their homes without a court order except in life or death situations." One commenter requested additional clarity in explaining responsibility under protective services.

*Response:* These recommendations were adopted. The justification for changing this language to read that social services workers can remove individuals in life threatening situations was accepted by the Bureau and the language was revised. Repetitive language was deleted and language was added to clarify that social services has responsibility for supervision of Individual Indian Money accounts.

*Public assistance* means those programs of financial assistance provided by state, tribal, county, local and federal organizations including programs under Title IV of the Social Security Act (49 Stat. 620), as amended, and Public Law 104-193.

No comments were received on this definition.

*Recipient* is an individual or person who has been determined as eligible through documentation in the case file and is receiving financial assistance under this part.

No comments were received on this definition. This definition was revised for simplification.

*Recurring income* means any cash or in-kind payment, earned or unearned, received on a monthly, quarterly, semiannual, or annual basis.

No comments were received on this definition.

*Resources* means income and other liquid assets available to an Indian person or household to meet current essential needs, unless otherwise specifically excluded by federal statute. Liquid assets are those items in the form of cash or other financial instruments

which can be converted to cash, such as savings or checking accounts, promissory notes, mortgages and similar properties, and retirements and annuities.

One commenter recommended the deletion of "other financial instruments which can be converted to cash." Another commenter requested the exclusion of the value of the "primary residence."

*Response:* These recommendations were not adopted. This definition is the same definition of resources in the current regulations, 25 CFR part 20, and deletion of this language would lead to confusion. The value of the primary residence of individuals applying for assistance/services is not a countable resource.

*Secretary* means the Secretary of the Interior.

No comments were received on this definition.

*Service area* means:

- (1) Reservations;
- (2) Areas adjacent or adjoining reservations;
- (3) Allotments outside the reservations;
- (4) Areas defined as reservations or service areas by statute; and/or
- (5) Other defined areas designated by the Assistant Secretary—Indian Affairs pursuant to this part.

Some commenters requested that this definition be simplified. Other commenters recommended that near reservation and reservation be added to the definition.

*Response:* These recommendations were adopted. A new definition was developed for service area and the definitions for near reservation and reservation were added.

*Services to children, elderly and families* means social services, including protective services, not including money payments, provided through the social work skills of casework, group work or community development to assist in solving social problems involving children, elderly and families.

One commenter requested the retention of existing language at 25 CFR 20.24 (Family and Community Services), and one commenter recommended deletion of the word "elderly" in the title. Another commenter stated that they wanted clarification of what services will be provided to the elderly population.

*Response:* These recommendations were not adopted. The title, "Services to Children, Elderly and Families" is used in the budget justification and the title was retained as it accurately describes the program. The services to be

provided under this part are non-money payment social services to children, elderly, and families.

*Special needs* means a financial assistance payment made to/on behalf of individuals who have extenuating, non-medical circumstances which warrant a one-time annual financial assistance payment when other resources are not available and the circumstances are documented in the case files.

Some commenters recommended the deletion of "one-time annual financial assistance payment" and requested clarification whether this category of assistance applied to both adults and children.

*Response:* These recommendations were adopted. The one-time annual financial assistance payment limitation was deleted to allow greater flexibility. In addition, examples were provided to clarify the types of services that are considered to be special needs. Special needs have historically been limited to children's special needs, and not adults.

*Subsidized guardianship* means a payment of a monthly subsidy, not to exceed 2 years, for the child in long-term, court approved guardianship placements. The child must not be eligible for any other federal or state program and this must be documented in the case file.

Some commenters requested deletion of the 2-year limitation and requested an additional reference to social services.

*Response:* This recommendation was adopted. We are in agreement with the recommendation and deleted the 2-year limitation. The definition was revised for simplification and was termed "guardianship" and a reference was added for social services.

*Substitute care* means the provision of foster care or any in-home, out-of-home, or relative placement of the children by someone other than a parent.

Some commenters stated this definition was confusing because it appeared to be interchangeable with the foster care at § 20.509 which was renumbered in the final rule as § 20.507.

*Response:* This recommendation was adopted. This definition was deleted because it was unnecessary.

*Superintendent* means the Bureau official in charge of an agency office.

No comments were received on this definition.

*Supplemental Security Income (SSI)* means cash assistance provided under Title XVI of the Social Security Act (49 Stat. 620), as amended.

Some commenters requested deletion of "those programs of," and replaced with "cash."

*Response:* This recommendation was adopted. This definition was revised to provide clarity.

*Temporary Assistance for Needy Families (TANF)* means one of the programs of financial assistance provided under the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA).

No comments were received on this definition.

*Tribal governing body* means the federally recognized governing body of an Indian tribe.

No comments were received on this definition.

*Tribal redesign plan* means a tribally designed method for changing general assistance eligibility and/or payment levels in accordance with appropriation language so as to reduce dependence on general assistance as specified in §§ 20.203 through 20.211.

No comments were received on this definition. This definition was revised to accurately reflect that this authority is codified and no longer limited to appropriation language.

*Tribal Work Experience Program (TWEP)* means a program operated by tribal contract/grant or self-governance annual funding agreement, which provides eligible participants with work experience and training that promotes and preserves work habits and develops work skills aimed toward self-sufficiency. The Bureau payment standard is established by the Assistant Secretary—Indian Affairs.

Some commenters recommended that the TWEP definition include: gaining special experience, training and acquiring skills and knowledge necessary to qualify, access and retain employment.

*Response:* This recommendation was not adopted. These goals and objectives are already part of the ongoing General Assistance/TWEP program.

*Unemployable* means a person who meets the criteria specified in § 20.315.

Some commenters stated the definition was "demeaning," and others recommended clarification. One commenter suggested that this definition be reworded to specify that Unemployable means a person that is exempted from the employment policy at § 20.314.

*Response:* These recommendations were not adopted. The definition conveys the meaning and does not need rewording.

#### *Section 20.101 What Is the Purpose of This Part?*

Several commenters stated that other Bureau program entities such as TWEP and Adult Services should be added to

this section to better explain the types of services available.

*Response:* This recommendation was adopted. Financial assistance and social services were added to this section and described in terms of kinds of service.

#### *Section 20.102 What Is the Bureau's Policy in Providing Financial Assistance and Social Services Under This Part?*

Some commenters stated that the Bureau program descriptions should be expanded to include employment and educational activity and that it be clarified that in some instances the Bureau programs were supplementing other agency programs on behalf of certain individuals. Some other commenters requested that the language be expanded to clarify that in certain states the Bureau programs are not comparable to county or state services and therefore should be of a primary nature. One commenter recommended adding a reference to self-sufficiency.

*Response:* These recommendations were not adopted. The Bureau regulations encompass financial assistance and social services and language that would address employment and educational activity would unjustly imply that the Bureau was revising parts 26 and 27 and folding them into part 20 and that is not the case. The Bureau's policy has always been that the social services program is secondary and is not to be used to supplement or supplant other programs and any language allowing the funds to be used otherwise would endanger the integrity of these funds and could lead to misuse of these limited funds. In response to the request for exemptions where there are variations in public assistance programs by county or state, existing regulations in part 1 provide a process for waiver if there is an unusual situation which requires special attention because applicants are being deprived of services. Reference to self-sufficiency is not necessary in the context of this section as references are made in subsequent sections. The Bureau renumbered (a) and (b) for clarity.

#### *Section 20.103 Have the Information Collection Requirements in This Part Been Approved by the Office of Management and Budget?*

No comments were received on this section.

## Subpart B—Welfare Reform

### *Section 20.200 What Contact Will the Bureau Maintain With State, Tribal, County, Local, and Other Federal Agency Programs?*

Some commenters stated that the Bureau should work closer with all other public assistance service providers to insure that there is no duplication and that individual client's needs are being met without limiting services to existing financial resources. One commenter suggested that "will" be deleted from the first sentence. Another commenter recommended language referencing tribes in the statement.

*Response:* These recommendations were not adopted. The Bureau has been and will continue to work with all federal and state agencies responsible for the provision of services to Indian people. Additional language to emphasize this point was not necessary. Although it is ideal to have funding available to meet all of the needs of every applicant, in reality all programs are limited by the funds they have and must adhere to the specific criteria for their own programs. The use of "will" in the first sentence effectively conveys the intent of the Bureau and was not deleted. The reference to "we" in the statement above implies all providers of services and remains in the regulations.

### *Section 20.201 How Does the Bureau Designate a Service Area and What Information Is Required?*

Some commenters stated that the Bureau should ensure that all eligible Indian members within the reservation, near reservation or service area be provided services and that language to that effect should be placed in the regulations and that tribes be sanctioned if they do not comply. Another commenter stated that limiting services to only tribal members was necessary for budgetary purposes. Some commenters requested that time frames be placed upon the Bureau to process requests for designation as near reservation or service area. Some commenters asked that "Indian community" be defined in more specific terms. One commenter requested that service area be defined as places where tribal members reside with no specific geographic area designated. Another commenter stated that tribes should have the flexibility to define their own service area. One commenter stated that they wanted service area to remain the same unless tribal governments request a change. Another commenter stated that it was unreasonable to require tribes to provide documentation for evaluation when they submit their

request for service area designation. Another commenter stated that this section should be deleted and tribes should be allowed to accomplish this by tribal resolution. Another commenter requested that the definition of reservation which is in the current regulations and which contains reference to Alaska Native regions established pursuant to the Alaska Native Claims Settlement Act (85 Stat. 688) and Indian Allotments be retained. Another commenter recommended that "can" in (b) be replaced with "will" to make it mandatory. One commenter stated that the language in (c)(2) which was renumbered as (a)(2) in the final rule was too vague in that comparable services between California counties and the Bureau programs is a point of contention and needs to be resolved before the regulations can be put in final. Another commenter questioned (d)(1) which was renumbered as (b)(1) in the final rule as to whether "administratively feasible" applied to the tribe or the Bureau. Another commenter questioned the use of the language that tribes had to document that the proposed service area would not include counties or parts thereof that have reasonably available comparable services. Another commenter requested clarification whether tribes having reservations and near reservation designations would be required to obtain a service area designation.

*Response:* These recommendations were partially adopted. The Bureau added language to ensure that all eligible Indian members within the reservation, near reservation or service area receive services. Time frames were not necessary for processing these requests as the number of requests for designation are very limited and will not require significant staff time. The term "Indian community" was deleted because it is unnecessary as a requirement for designation. Service area cannot be defined as any place where a tribal member resides in the United States or by any means that a tribe chooses because operation of the program would not be administratively or financially feasible if this language was accepted. Service areas do not change unless and until a tribe requests the change and documentation must be provided to give the Bureau sufficient facts to approve the request. This section was not deleted because this designation is a significant action with budgetary and policy ramifications. The Bureau added the definition for reservation which includes reference to the Alaska Native Claims Settlement Act

(85 Stat. 688) and Indian Allotments. In addition, the definition for near reservation was added. The language stating that the Assistant Secretary can designate or modify service areas for a tribe in (b) was retained in the final rule as this conveys the intent of this section. The Bureau retained the language of reasonably available comparable services in (c)(2) and this subsection was renumbered as (a)(2) in the final rule to avoid duplication of services. The requirement of documentation for evaluation to support the service area designation as being "administratively feasible" was retained. The tribe requesting the designation is responsible for making sure the proposed area can be served within available funding constraints. Those tribes with reservations and near reservations as existing service areas are not required to request designation unless they request a modified geographic location as a service area.

### *Section 20.202 What Does Financial Assistance Include?*

Some commenters requested that financial assistance be included in § 20.100 as a definition.

*Response:* This recommendation was accepted and the definition for financial assistance was added in § 20.100 and this section was deleted.

### *Section 20.203 What Is a Tribal Redesign Plan?*

Some commenters asked why the Bureau was implementing the redesign at this time and asked what authority did the Bureau have to allow changes in general assistance eligibility criteria and payment levels. One commenter requested that the section include language giving approval for the redesign of child assistance. This commenter also requested language to the effect that redesigned programs may be expanded if appropriation language in the future expands the number of programs that could be redesigned. One commenter stated that redesign plans in Oklahoma would require additional funds. Another commenter requested further clarification of this section. Another commenter stated that tribes already have authority to redesign the general assistance program.

*Response:* These recommendations were not adopted. Congress specifically gave tribes the authority to redesign general assistance. No similar specific authority currently exists for tribes to redesign additional programs; therefore, no additional language was added to include child assistance. The language stating that the redesign will not result in additional expenses for the Bureau if

additional expenses are solely the result of increased payment levels is statutory. This section provides clarity as to the intent of the Bureau.

*Section 20.204 Can a Tribe Incorporate Assistance From Other Sources Into a Tribal Redesign Plan?*

One commenter stated that the Bureau should add language to the effect that all welfare assistance programs should be allowed to be included with a Pub. L. 102-477 grant, a Public Law 103-413 self-governance annual funding agreement, or a tribal redesign plan. Another commenter stated that tribes needed flexibility to use these funds to meet members' needs according to how the tribes identified these needs. Another commenter stated that this section should be rewritten to better describe the redesign in relation to Pub. L. 102-477. Another commenter asked if TANF could be included as a part of the tribal redesign plan.

*Response:* These recommendations were partially adopted. The Bureau does not have the authority to include all of the welfare assistance programs in a redesign. Adequate flexibility is available for tribes to redesign their programs. Tribal redesign and Pub. L. 102-477 are separate tools for tribes to use while exercising self-determination. The section was rewritten to better convey the concept of funding from other sources.

*Section 20.205 Must All Tribes Submit a Tribal Redesign Plan?*

One commenter stated that the table of contents mistakenly worded this section by using the word "develop" instead of "submit."

*Response:* This recommendation was adopted. The Table of Contents will be corrected to read "submit" rather than "develop."

*Section 20.206 Can Tribes Change Eligibility Criteria or Levels of Payments for General Assistance?*

Some commenters requested clarification in terms of who is to provide technical assistance and what level of funding would be used for the redesign plans. Another commenter wanted it clarified that tribes are not required to do a redesign if they did not want to pursue it. One commenter requested clarification as to how this section might affect Oklahoma. One commenter requested inclusion of child and adult assistance in this section. One commenter suggested deletion of (d) as it was redundant.

*Response:* These recommendations were partially adopted. The Bureau or Office of Self-Governance will provide

technical assistance on redesigned plans. The existing language is sufficient to convey that the redesign is not mandatory. It is unknown how this section might affect the State of Oklahoma, because tribes propose redesign plans and it is unknown whether any tribes in Oklahoma will attempt redesign plans. In answer to the comment made about the funding level to be used, the Bureau will add language that the funding for the program will be the same funding received in the most recent fiscal or calendar year, whichever applies.

*Section 20.207 Must a Tribe Get Approval for a Tribal Redesign Plan?*

Some commenters pointed out that existing procedures are in effect whereby self-governance tribes routinely obtain approval for their annual funding agreements through the Office of Self-Governance and changing this process for redesign plans would be disruptive and counterproductive and that this language requiring approval by the Regional Director should be deleted. One commenter recommended that criteria be added specifying what is needed to obtain approval.

*Response:* These recommendations were partially adopted. The Bureau did not delete this section but added language that clarifies who will approve the tribal redesign plan. The Office of Self-Governance will continue to be the point of contact for self-governance tribes. The Bureau plans to develop a technical assistance package that will assist tribes in formulating redesign plans; however, technical assistance documentation will not be codified in regulation.

*Section 20.208 Can a Tribe Use Savings From a Tribal Redesign Plan To Meet Other Priorities of the Tribe?*

One commenter questioned how a general assistance program could remain a need-based program if there were savings which could be used for other priorities. Another commenter requested the Bureau to explain the different types of TPA funding in this section. Another commenter stated that an equitable level of funding should be established before the start-up of the redesign plan.

*Response:* These recommendations were not adopted. The regulation and statutory language give tribes the ability to use cost savings for other priorities only in the case of the general assistance redesign. A discussion of the TPA and the Bureau's budget process is not appropriate for this regulation. The level of funding for the start-up of the redesign has been added in § 20.205.

*Section 20.209 What If the Tribal Redesign Plan Leads to Increased Costs?*

One commenter stated that with a redesigned program there may be increased costs and if that were the case, the Bureau should assume the additional costs.

*Response:* This recommendation was not adopted. The Bureau is prohibited from assuming additional costs resulting solely from increased payment levels.

*Section 20.210 Can a Tribe Operating Under a Tribal Redesign Plan Go Back to Operating Under This Part?*

No comments were received on this section. This section was renumbered as § 20.209 in the final rule.

*Section 20.211 Can Eligibility Criteria or Payments for Burial Assistance, Child Assistance, and Disaster Assistance Change?*

Some commenters requested an explanation as to why the general assistance program was the only program eligible for redesign. One commenter asked if their tribe could redesign their program eligibility criteria so as to exclude those members who are less than one-quarter blood quantum. Some commenters stated that under part 900 they already had authority to redesign programs. One commenter suggested that the section be deleted. Another commenter stated that tribes financially support, with their own funds, similar programs to the Bureau's welfare assistance programs and requested clarification as to whether they could supplement their programs with the Bureau funds.

*Response:* These recommendations were not adopted. The Bureau has no Congressional authority or statute to allow programs including child assistance, disaster assistance, emergency assistance, and burial assistance to be redesigned. The tribes do have the flexibility to restrict services to certain populations of clients in the general assistance program if they choose to do so through a redesign plan and follow § 20.206. This section was retained because language is needed to clarify how tribes may operate their programs under the redesign process. The Bureau cannot supplement tribal programs which are similar in nature because this is a duplication and Bureau funds are a limited resource.

**Subpart C—Direct Assistance**

*Section 20.300 What Are the Basic Eligibility Criteria?*

Several commenters stated that (a) of this section is not consistent with § 20.100, definition of an Indian, and

both need to be changed to include "enrolled" and "federally recognized Indians of the United States." Other commenters stated that (a) would result in an increase in cases in Oklahoma because the existing regulations required one-fourth or more blood quantum in addition to being a member in the States of Alaska and Oklahoma. One commenter stated that the basic eligibility criteria contained in (b) of this section means that children and elderly needing protection, and families faced with emergencies must meet income requirements.

*Response:* These recommendations were not adopted. The Bureau does not agree that (a) is inconsistent with the definition of Indian. The tribes determine eligibility for enrollment and membership in their respective tribes and the tribes listed in the **Federal Register**, pursuant to 25 CFR part 83, are recognized as eligible to receive services from the Bureau. Because tribal membership is the responsibility of the tribe, the Bureau is unable to determine the effect upon caseloads in Alaska and Oklahoma. Applicants are required to meet all the basic eligibility criteria of § 20.300 including (b) to receive services.

#### *Section 20.301 What Is the Goal of General Assistance?*

One commenter questioned how the Bureau general assistance goals and objectives compared to those of the National PRWORA. They asked if the Bureau supported the goals of reducing out of wedlock pregnancies and increasing collection of child support payments. One commenter requested deletion of "meeting the goal of employment." One commenter stated that elder assistance should be available nationwide not just in a selective Region and stated that existing services should not be dropped.

*Response:* These recommendations were partially adopted. The Bureau did not delete the statement about self-sufficiency from the regulations as it is a goal of the General Assistance Program to increase self-sufficiency. TANF goals and objectives are similar to general assistance but not identical. It is the social services worker's responsibility and the individual's right to develop a Self-Sufficiency Plan which maintains the individual's and program's integrity. The Bureau agreed with the comments about the need for adult services and established an Adult Care Program under §§ 20.331 through 20.335.

#### *Section 20.302 Are Indian Applicants Required To Seek Assistance Through TANF?*

Several commenters stated that all Indian applicants with dependent children are required to apply for TANF because general assistance is a secondary source. One commenter stated that applicants whose TANF benefits have been reduced due to TANF sanctions may not be eligible to receive general assistance as tribally determined. Another commenter stated these regulations require individuals to follow TANF regulations, and requested deletion of "and follow TANF regulations."

*Response:* These recommendations were not adopted. The Bureau agreed with the comments that state that all applicants with dependent children are required to apply for TANF as general assistance is a secondary source. The Bureau agrees with the statement that applicants whose TANF benefits have been reduced due to TANF sanctions may not be eligible to receive general assistance even though the tribe is operating a tribal General Assistance program in a Public Law 102-477 grant. The Bureau did not agree with the comment that these regulations cannot force individuals to comply with TANF regulations or the recommendation to delete the requirement to follow TANF regulations. The Bureau was not attempting to regulate TANF. General Assistance is a secondary program; therefore, the applicants must apply and follow the regulations of the primary resource of cash benefits which is TANF.

#### *Section 20.303 When Is an Applicant Eligible for General Assistance?*

Two commenters stated that in (d) of this section which was renumbered as (c) in the final rule, the statement "Not receive TANF" should be changed to state "If not directly receiving TANF Cash Aid" and the word "entitlement" be changed to "cash assistance" because it is not the intent of the General Assistance regulations to prohibit a recipient from receiving general assistance while they are receiving other non-cash forms of assistance such as food stamps, surplus commodities, etc. One commenter stated that the ISP/Employment strategy development for each recipient is burdensome for tribes, who receive very little administrative money to administer general assistance and requested section (e) which was renumbered as (d) in the final rule be changed to read "whenever possible."

*Response:* These recommendations were partially adopted. The Bureau

revised (c) to include language referring to any comparable public assistance to avoid duplication of service. The Bureau did not agree with the recommendation to change section (e) which was renumbered as (d) in the final rule to read "whenever possible" because ISP/employment strategy is necessary for applicants to become self-sufficient.

#### *Section 20.304 When Will the Bureau Review Eligibility for General Assistance?*

One commenter stated time limits are not feasible in Alaska.

*Response:* This recommendation was not adopted. The Bureau did not agree with the statement about time limits in Alaska. At the time of interviewing the applicant and developing the ISP, the social services worker and applicant agree on a plan which documents when eligibility will be redetermined.

#### *Section 20.305 What Does Redetermination Involve?*

Some commenters stated that home visits should not be included in redetermining program eligibility. One commenter stated that ISP's were not included in this section.

*Response:* These recommendations were partially adopted. The Bureau did not agree that home visits should be deleted from this section. The Bureau agreed to add ISP.

#### *Section 20.306 What Is the Payment Standard for General Assistance?*

One commenter asked how the Bureau was going to deal with states that pay \$100 in TANF funds and recommended provisions to supplement amounts in states having low payment levels for TANF.

*Response:* This recommendation was not adopted. The Bureau must follow Public Law 104-193 for determining levels of payment; however, the tribe has the option of contracting the TANF Program and/or redesigning the eligibility and payment levels of the General Assistance Program.

#### *Section 20.307 What Resources Does the Bureau Consider When Determining Need?*

No comments were received on this section.

#### *Section 20.308 What Does Earned Income Include?*

Two commenters stated they would like to have art work, crafts and beading struck from (a) of this section if the applicant/recipient performs the work as a hobby, but the language should remain for professionals.

*Response:* This recommendation was adopted. If applicant/recipient are professionals, these activities should be considered as earned income for individuals who are self-employed. The Bureau agreed that if the applicant/recipient performs this as a hobby it should be eliminated from consideration as earned income.

**Section 20.309 What Does Unearned Income Include?**

One commenter stated that "or 25 percent of the state standard, whichever is less" be deleted. One commenter stated that (c) be deleted in its entirety. One commenter questioned how shelter could be provided as in-kind income. One commenter stated that workman compensation settlement payments should be considered as income. One commenter stated that trust dollars should not be included.

*Response:* These recommendations were not adopted. The Bureau retained the language in (c) and (e) as these subsections convey the policy of the Bureau which is to include all available items as unearned income. All agencies providing public assistance must consider all sources of income unless there is a specific federal disregard. Income generated from trust land was also retained because it is not included as a federal disregard. Workman compensation would be considered as a resource as defined in § 20.100 rather than unearned income.

**Section 20.310 What Recurring Income Must Be Prorated?**

No comments were received on this section.

**Section 20.311 What Deducted Amounts Will Be Disregarded From the Gross Amount of Earned Income?**

One commenter stated that there are instances where general assistance recipients may receive income tax refunds. The commenter stated that language should be added to insure that income tax refunds are counted as income rather than disregarded.

*Response:* This recommendation was not adopted. Federal and state tax refunds are considered as a resource. This section was revised to clarify that child care costs are deducted for children under the age of 6.

**Section 20.312 What Amounts Will Be Disregarded From Income or Other Resources?**

One commenter asked if the \$2,000 cited in subsection (a) is the statutory disregard of trust resources or an increase of the \$1,000 disregard currently in 25 CFR 20.21(g)(2)(i). This

commenter stated that this section is unclear and may reduce eligibility requirements making additional individuals eligible for the program. Another commenter requested a list of federal disregards be published in the regulations. One commenter requested that this disregard also apply to children. Another commenter requested addition of (d) to clarify that vehicles are a disregarded resource.

*Response:* These recommendations were not adopted. The \$2,000 disregard was an increase over the existing \$1,000 disregard and does not financially impact the program. A list of federal disregards was not listed in the regulations as these change periodically. The disregard does apply to children as well as adults. The Bureau's program has never included vehicles nor has the issue arisen in the past; therefore, there was no need to clarify this as a resource.

**Section 20.313 How Will the Bureau Compute Financial Assistance Payments?**

Some commenters requested clarification as to how the Bureau will compute financial assistance payments. Another commenter stated General Assistance grants should be prorated from the date of application. Another commenter stated language needs to be developed for tribal redesign plans. Another commenter stated that the procedure in (b) for prorating shelter costs when two households reside in the same shelter is unclear and may reduce eligibility requirements and thus make additional individuals eligible for the program.

*Response:* These recommendations were not adopted. The process for computing financial assistance payments and prorating is clearly explained. For tribes using tribal redesign plans, the same proration described here must be used to determine the amount of approved payments.

**Section 20.314 What Is the Policy on Employment?**

One commenter stated that for a period of 60 days but not more than 90 days be changed to "for a period of at least 30 days" because the sanction was too severe. Another commenter asked if job search will be eliminated once an ISP is established and agreed upon by the social services worker and recipient.

*Response:* These recommendations were not adopted. The length of sanction remains 60-90 days as this was considered to be equitable. The number of job search contacts depends upon what was documented in the ISP.

**Section 20.315 When Is the Employment Policy Not Applicable?**

One commenter requested more descriptive information in (c) to fully describe the example. Another commenter suggested changing (c) to the recipient must make satisfactory progress in an ISP that leads to employment and add language that states that continued eligibility for the program is also based on satisfactory progress. Another commenter recommended deleting language in (c) that states that "he/she was an active general assistance recipient." Another commenter suggested in (g) changing the age to 5 and under if they do not attend school/head start. Another commenter asked if educational opportunity was limited to those under 19 and to those that have been active general assistance recipients. Another asked for an explanation of section 5404 of Public Law 100-297. Another commenter suggested deletion of (h) and eliminating the minimum commuting time of one hour each way and replacing it with reasonable travel time. Another commenter recommended adding language stating the employment policy would not apply for a person for whom employment is not accessible in a commuting time that is reasonable and comparable with others in similar circumstances.

*Response:* These recommendations were not adopted. Examples were not needed as the language clearly describes all of the exceptions. Public Law 100-297 cannot be fully explained in these regulations just as other pertinent public laws referenced cannot be fully explained. The temporary medical injury which exceeds 3 months was clarified in terms of eligibility and referral. The commuting time was not changed as it is reasonable.

**Section 20.316 What Must a Person Covered by the Employment Policy Do?**

One commenter suggested the following change: "If you are covered by the employment policy in § 20.314, you must seek employment in accordance with your ISP." This will make § 20.316 consistent with § 20.319.

*Response:* This recommendation was not adopted. The language in § 20.316 is consistent with existing policy in § 20.319 which requires a general assistance recipient to actively seek employment and provide the social services worker with evidence of job search activities.

**Section 20.317 How Will the Ineligibility Period Be Implemented?**

One commenter asked how the ineligibility period would be

implemented and requested additional language as an explanation.

*Response:* This recommendation was not adopted. This section clearly describes how the ineligibility period is to be implemented by describing why the ineligibility will continue, how the suspension can be reduced, and who is affected by the suspension.

**Section 20.318** *What Case Management Responsibilities Does the Social Services Worker Have?*

One commenter stated social services workers should not have to supervise recipients because of lack of funds and staff and that case managers should help recipients get the services needed to meet their goals in their ISP. Another commenter recommended that social services worker be changed to a family advocate.

*Response:* These recommendations were partially adopted. Social services workers do have responsibility for assisting recipients to meet their goals in their ISP's and monitoring work related activities. The funding or lack of funding cannot be dealt within the regulations. The term "social services worker" was retained.

**Section 20.319** *What Responsibilities Does the General Assistance Recipient Have?*

One commenter stated that the language "Performs successfully" needs to be explained in (b) and (c) and substitute words like "satisfactory progress." Another commenter questioned why a recipient must be in treatment and counseling.

*Response:* These recommendations were not adopted. The Bureau retained the existing language as it describes participation in a positive context and success or lack of success is evaluated by each social services worker on a case by case basis. Participation in treatment and counseling services are appropriate for some recipients needing these types of services. The policy of the Bureau arranging supportive services and requiring recipient participation is consistent with other social services programs operating at the state and county levels.

**Section 20.320** *What Is TWEPE?*

No comments were received on this section.

**Section 20.321** *Does TWEPE Allow an Incentive Payment?*

One commenter requested that the payment standards be tribally determined. Another commenter asked whether TWEPE was considered an incentive payment.

*Response:* These recommendations were not adopted. The payment standard will be determined by the Bureau as this is a budgetary concern. TWEPE payments are considered to be incentives.

**Section 20.322** *Who Is Eligible To Receive a TWEPE Incentive Payment?*

One commenter recommended deletion of the following language "in situations where the participation is mandatory." Another commenter suggested the following change: "Where there are multiple family units in one household" to "Where there are more than one household in a dwelling."

*Response:* These recommendations were not adopted. Since tribes do have the option of making TWEPE mandatory, the language was retained. The existing language regarding family units was retained as it accurately conveys the intent of the section which is where there are multiple family units in one household, one member of each family unit will be eligible to receive the TWEPE incentive payment.

**Section 20.323** *Will the Local TWEPE Be Required To Have Written Program Procedures?*

One commenter suggested inclusion of language that states local TWEPE must have specific written program procedures that cover progress.

*Response:* This recommendation was not adopted. Progress is documented in the ISP for TWEPE participants.

**Section 20.324** *When Can the Bureau Provide Burial Assistance?*

No comments were received on this section.

**Section 20.325** *What Is the Process for Making Application for Burial Assistance for Eligible Indians?*

One commenter suggested changing SSI to SSA lump sum death benefits. Another commenter stated that the standard of payments for burials is currently \$1,300 and is not enough to take care of a proper burial and updating these standards should be considered. Another commenter stated, "A tribal cultural wake in accordance to the tribe's culture" should be added. Another suggested that a payment standard should be recommended by the Regional Director or Central Office. Another commenter recommended changing the language to state that requests and applications for Burial Assistance must be submitted within 30 days after the issuance of a Death Certificate rather than following death.

*Response:* These recommendations were not adopted. Social Security lump

sums are considered as a resource and additional language was not needed. Payment rates which include cultural wakes will be reviewed periodically and raised if warranted. The Bureau retained existing language that applications need to be submitted within 30 days following death. The Assistant Secretary will establish the standard payment referred to in this section within 60 days after this rule is published in final.

**Section 20.326** *When Are the Related Transportation Expenses Covered by Burial Assistance?*

One commenter stated that it should be up to the tribe to determine when transportation expenses could be paid particularly in those instances when the individual is gone for more than 6 months. Another commenter stated that they were opposed to this section because they had tribal members who have resided outside of the service area for a period of time exceeding 6 consecutive months and this regulation prohibits them from helping these members with burial assistance.

*Response:* These recommendations were not adopted. The Bureau has limited eligibility to eligible members who resided in the service area for at least the last 6 consecutive months of his/her life because of budgetary concerns.

**Section 20.327** *When Can the Bureau Provide Disaster Assistance?*

One commenter suggested tribal resolutions should be used to request disaster assistance. Another commenter recommended deletion of "provided" and insertion of the word "available."

*Response:* These recommendations were not adopted. The language was adequate in stating that disaster assistance can be provided in absence of FEMA and Red Cross.

**Section 20.328** *How Can a Tribe Apply for Disaster Assistance?*

One commenter stated that a tribal resolution requesting disaster assistance should be adequate rather than a Presidential declaration. Another commenter stated that there should be a time limit for response by the Bureau and that (b) should be deleted. One commenter suggested the tribal requests go directly to the Assistant Secretary for a final decision.

*Response:* These recommendations were not adopted. The Bureau does not agree that only a tribal resolution should be required, and retained the entire section because the reporting requirements must be met in order to avoid duplication of services and to obtain projections of total need for

services. The request for disaster assistance must be processed by the local Bureau office to insure that all necessary documentation is included.

*Section 20.329 When Can the Bureau Provide Emergency Assistance Payments?*

One commenter suggested language establishing a disaster contingency fund.

*Response:* This recommendation was not adopted. It is unnecessary to set up such a fund given the limited need for these funds.

*Section 20.330 What Is the Payment Standard for Emergency Assistance?*

One commenter recommended raising the rates and another stated that this section should only apply to tribes that have their own standards/guidelines for emergency assistance. Another commenter recommended that this section be deleted.

*Response:* These recommendations were not adopted. The Assistant Secretary will establish the payment standard referred to in this section within 60 days after this rule is published in final.

**Subpart D—Services to Children, Elderly, and Families**

*Section 20.400 For Whom Should Services to Children, Elderly, and Families Be Provided?*

One commenter requested clarification as to the meaning of services to children, elderly and families.

*Response:* This recommendation was not adopted. The term replaces the category formerly called, "Family and Community Services" which is the non-payment category of services. It was revised in the budget justification at the request of budget analysts because it provides a better description of recipients for whom services are provided.

*Section 20.401 What Services Are Included Under Services to Children, Elderly and Families?*

One commenter stated that adult care service should be included in this section. Another commenter suggested that chore services should be included in this section. Other commenters recommended that additional funds be distributed to tribes as the work described in this section required more personnel. Another commenter stated that coordination with law enforcement and the courts could not be completed before removal of individuals needing protective services. Some commenters stated that there was confusion as the

word "elderly" was used in the section title but within the body of the section "adult" was used consistently. One commenter stated that language should be added to explain that referrals could be made for adults in addition to children. Another commenter stated that language in (b)(4)(ii) which was renumbered as § 20.403(d)(2) was troublesome, specifically the language, "treatment of the identified conditions that are within the competence of social services." Another commenter made a comparison of this section with the Bureau's current regulation in § 20.24 and stated that in his/her opinion the following services which are included in § 20.24 would be unavailable: Services to responsible family members or guardians to seek appropriate court protections for the child or adult; investigation and reporting of adult abuse and neglect and of delinquency and runaways; and provisions of services by court order for marriage and divorce counseling, child custody, probation, foster care and supervision of children and adults in the home. Another commenter suggested that protective services be explained in more detail.

*Response:* These recommendations were partially adopted. Adult care assistance was added in subpart C § 20.331–20.335 and explained as a service. Chore service was not added as homemaker adequately describes the service to be provided. Additional funding for social service administration funding was not addressed in the regulations as the budget process is a separate issue from programmatic rulemaking. In response to the comment that in certain instances law enforcement and courts cannot be involved before removal for protective services, the Bureau made an adequate exception in terms of life threatening situations. The Bureau included a definition for "adult" which should clarify who is to be served. The Bureau made a change by adding § 20.403 to make sure that elderly are included in referrals for homemaker services. The Bureau did not change (b)(4)(ii) as it accurately conveys that social service workers will limit services to the profession of social work. The Bureau did not add those sections referenced above in § 20.24 as these are services that a tribe may choose to provide on its own initiative but they are not required by regulation. The Bureau added separate sections §§ 20.402 and 20.403 which explained when protective services are provided and clarified what types of services are provided. The Bureau added § 20.404 to provide

further explanation to the term "social services assessment" which was used in § 20.403.

**Subpart E—Child Assistance**

*Section 20.500 What Are the Eligibility Criteria for Child Assistance?*

One commenter stated that this section was not consistent with the Indian Child Welfare Act. Another commenter stated that the eligibility criteria should be deleted. Another commenter asked the question if tribes receive Title IV–E funding for foster care will their current Bureau funding for foster care be reduced. One commenter questioned why a documented family assessment was required in (a) which was renumbered as (b)(3) in the final rule. Another commenter stated that special needs in (a) which was renumbered as (b)(2) in the final rule should be defined. Another commenter requested clarification that courts do not make requests but instead issue orders. Another commenter requested an explanation of (d) which was renumbered as (f) in the final rule in terms of what is the meaning of all income accruing to children. Another commenter asked if relative care givers under (d) which was renumbered as (c) in the final rule would have to apply to state TANF and be denied payments or other assistance. Another commenter asked for language to allow general assistance to supplement TANF. Some commenters stated that in (e) where the word "must" was used that it should be replaced by the word "will" and another commenter stated that (e) should be deleted. One commenter stated that some of the services in subpart E are duplicated in subpart D and should be consolidated in subpart D. Another commenter noted a typographic error because "and" was not inserted after (a), (b) and (d). One commenter recommended that the residential care rate be computed the same way as the foster care rate.

*Response:* These recommendations were partially adopted. This regulation did not address the Indian Child Welfare Act as that is addressed in part 23. Eligibility criteria were not deleted as criteria are needed to determine eligibility. In response to the question as to whether child assistance funding would be decreased if tribes received Title IV–E funding for foster care, the Bureau continues to operate the program as a need-based program. A documented family assessment is required so that the social services worker can make the best decision possible for eligibility and placement. "Special needs" was defined in

§ 20.100. There is no confusion in (a) that courts issue orders rather than make requests. The Bureau deleted (c), (d) and (e) and renumbered (f) to (c) for the purpose of clarity. The Bureau services described in subparts D and E remain where they are located because they are differentiated by payment or non-payment services. The typographic errors were corrected. The residential care rate was modified to be consistent with the foster care rate.

*Section 20.501 What Are the Rates of Payment for Foster Care?*

One commenter questioned why the Bureau used Title IV of the Social Security Act as the payment rate for foster care and did not either set a Bureau rate or allow tribes to set their own rate.

*Response:* This recommendation was not adopted. The Bureau has used this rate for many years and has found that it is the most appropriate rate to use for this service. This section was renamed and rewritten in the final rule in the form of a table for clarification purposes.

*Section 20.502 Can Child Assistance Funds Be Used for Placement of Indian Children in Treatment Centers?*

One commenter stated that the requirement of a written agreement to be approved by the Regional Director, should be changed to the local Bureau official for approval. Another commenter requested clarification that this service was out of the home. Another commenter requested deletion of the requirement that placements had to be in facilities licensed by the tribe or state. Another commenter requested deletion of the requirement that a written agreement be signed between the various funding sources to identify the services each will pay before the actual placement. Another commenter requested that child assistance be used for other services other than room and board.

*Response:* These recommendations were partially adopted. The approval by the Regional Director was changed to the Bureau line officer. The service provided in a treatment center is clearly a service that cannot be provided in the home. Treatment Center was revised to read residential care facilities in the final rule. Placements in licensed facilities insures a minimum level of service and was retained. Use of a written agreement specifying who is paying for specific services was retained as it is necessary to have a specific budget to work with because funds are limited. The Bureau retained the language that specifies use of funds for

only room and board as the Bureau has limited funds and other agencies having primary service responsibility should be involved in payment for services.

*Section 20.503 Can Child Assistance Funds Be Used for Indian Adoption Subsidies or Subsidized Guardianships?*

One commenter suggested that the 2-year limit for adoption and guardianship subsidies should be eliminated and that the Regional Director approval be changed.

*Response:* This recommendation was adopted. The Bureau eliminated the 2-year limitation and changed the approval to the Bureau line officer. The redetermination for eligibility was clarified as being conducted on a yearly basis.

*Section 20.504 What Eligibility Requirements Must Be Met for an Indian Adoption Subsidy or Subsidized Guardianship?*

One commenter requested explanation as to why children must be under the age 18 to be eligible for adoption subsidy or subsidized guardianship. Another commenter questioned the eligibility requirement for children to have been in foster care previously to be eligible for adoption subsidy or subsidized guardianship. Another commenter stated that this section prevented placement of children on temporary basis without permanency planning. Another commenter asked what the special circumstances were in (a). This section was combined with § 20.503 in the final rule.

*Response:* These recommendations were not adopted. The requirement to be under the age of 18 (with regard to special circumstances as defined by tribal standards) and to have been in foster care previously to be eligible for adoption subsidy or subsidized guardianship was included to focus upon long-term cases which have the highest priority. The language in this section facilitates temporary placement if there is a need for this service. The tribes have flexibility to interpret special circumstances.

*Section 20.505 What Is the Payment Standard for Adoption and Guardianship?*

Some commenters stated that the payment standard should be decided by the tribes operating the programs. This section was combined with § 20.501 in the final rule.

*Response:* This recommendation was not adopted. The Bureau needs to establish the rate as this is a budgetary concern. The Assistant Secretary will establish the payment standard referred

to in this section within 60 days after this rule is published in final.

*Section 20.506 Can Homemaker Services Be Provided With Child Assistance?*

One commenter stated that homemaker services should stay short term not to exceed 3 months. Another commenter requested that it not be limited to 3 months but language should be added to state it would be reviewed every 6 months. This section was renumbered as § 20.504 in the final rule.

*Response:* These recommendations were not adopted. Limiting services to 3 months accurately conveys the intent of this service which is to keep it short term.

*Section 20.507 What Services Are Provided Jointly With the Child Assistance Program?*

One commenter requested that a written agreement signed among the various funding sources should be deleted. Another commenter requested that (b) protective services be explained in more detail. This section was renumbered as § 20.505 in the final rule.

*Response:* These recommendations were not adopted. The requirement for a written agreement was retained as this is an important planning and budgetary requirement which will clarify responsibilities before placement. Protective services were described in § 20.401 which was renumbered as §§ 20.402 and 20.403 and it was unnecessary to repeat them in this section.

*Section 20.508 What Information Is Required in the Foster Care Case File?*

One commenter suggested that this section be deleted as it was unnecessary. One commenter suggested the addition of language at the end of (d) if available and at the end (h) if applicable after Medicaid. Another commenter suggested a rewrite of the section because (e) which references a payment plan with parental agreement may not be applicable where parents do not agree to contribute financial support. This section was renumbered as § 20.506 in the final rule.

*Response:* These recommendations were not adopted because the information requirements are critical for a successful foster care placement and specifying them in regulations ensures that the dates will be provided. Even if a parent does not agree to contribute financial support, there should be a plan which involves their participation as they are not relieved of responsibility. The parents' cooperation is needed

particularly if reunification is the ultimate goal.

*Section 20.509 What Are The Requirements For Foster Care?*

One commenter asked if the intent of this section was to require social services workers to enforce child support collection. Another commenter asked whether homemaker services could be used for handicapped children. Another commenter pointed out that in many instances there was a poor relationship between tribes and state courts. One commenter stated that background checks conducted on foster home providers were not legal. One commenter stated that (a) implied that the court had a role in selecting the placement rather than social services and recommended language deleting the reference to courts. Another commenter questioned the use of state standards of payment for necessary care in (e) and recommended establishing the rates at the local level. Another commenter suggested a problem in (f) in gaining parental agreement and recommended addition of the phrase "when possible." This section was renumbered as § 20.507 in the final rule.

*Response:* These recommendations were not adopted. The Bureau is not requiring social services workers to pursue child support enforcement; however, they are required to cooperate with other service delivery systems that have responsibility for enforcement of child support. Section 20.501 describes use of homemaker services for children which could include handicapped children but it is only short term in nature. Working relationships between tribes and states is not a subject that can be addressed in regulations. The Bureau retained the requirement of background checks as this is in compliance with part 63 and Public Law 101-630.

*Section 20.510 How Is the Court Involved in Foster Care Placements?*

One commenter stated that there was an inconsistency because § 20.508(i) stated that a court needed to be involved if a placement goes beyond 30 days and therefore the language in § 20.510 needed rewording because there were instances where the court may not be involved. This section was renumbered § 20.508(i) in the final rule.

*Response:* This recommendation was not adopted. The Bureau language did not need to be changed to clarify the intent because § 20.508(i) gives flexibility in those instances where a court may not be involved by stating the placement will be in accordance with tribal codes and standards authorized by

a court of competent jurisdiction and is not in conflict with § 20.510.

*Section 20.511 Should Permanency Plans Be Developed?*

Some commenters stated that the requirement to have permanency planning developed within 6 months was not possible or realistic and suggested that it be changed to 12 months.

*Response:* This recommendation was not adopted. The Bureau retained the 6-month requirement as this is realistic and conveys that this should be a high priority.

*Section 20.512 Can the Bureau/Tribal Contractors Make Indian Adoptive Placements?*

No comments were received on this section.

*Section 20.513 Should Interstate Compacts Be Used for the Placement of Children?*

One commenter suggested changing "must" to "should."

*Response:* This recommendation was adopted. The Bureau changed the wording.

*Section 20.514 What Assistance Can the Courts Request From Social Services on Behalf of Children?*

One commenter stated that this section conflicted with § 20.510.

*Response:* This recommendation was not adopted. The Bureau did not agree that there was a conflict between § 20.510 and § 20.514, because § 20.510 explains the courts authority in terms of expenditure of funds and § 20.514 explains the types of social services that can be requested by the courts.

*Section 20.515 What Is Required for Case Management?*

One commenter stated that in some instances there was not enough staff for a supervisor to complete case reviews every 90 days.

*Response:* This recommendation was not adopted. The Bureau feels that reviewing cases every 90 days is both important and reasonable.

*Section 20.516 How Are Child Abuse and Neglect Cases To Be Handled?*

One commenter suggested replacing "must" with the word "will" and also noted that there were insufficient funds to handle child abuse and neglect cases. One commenter questioned the requirement of child protection teams as their reading of Public Law 99-570 and Public Law 101-630 did not specify child protection teams.

*Response:* These recommendations were partially adopted. The Bureau

replaced "must" with "will." The lack of administrative funding cannot be addressed in the regulations. The Bureau has issued guidance on child protection teams for many years and there has never been any question raised about the legality of child protection teams, which are referenced under Pub. L. 99-570 and Pub. L. 101-630 to handle child protection issues. Therefore, the language was retained.

**Subpart F—Administrative Procedures**

*Section 20.600 How Is an Application for Financial Assistance or Social Services Made?*

One commenter stated that there was confusion as to whether an application was required to be in writing. One commenter stated that there was confusion between applications and referrals. Another commenter stated that language was needed to clarify that contractors should forward applications to the appropriate tribal staff.

*Response:* These recommendations were partially adopted. All applications must be in writing. The language should have stated that oral applications would need to be reduced to writing at a later date if an oral application was taken originally. Referrals are clearly for the purpose of making application so this language remained unchanged. The current regulations in place for the past 15 years have included reference to the Superintendent and there has never been confusion among tribes as to where applications must go when tribes operate the Social Service program. This particular language was retained. This section was rewritten in the final rule for clarification purposes.

*Section 20.601 From Whom Is Eligibility Information Collected?*

Some commenters stated that when there was a change in the recipient's circumstances which affected payment level that a process for overpayment should be described and the direct service providers should be able to refer this matter to administrative staff for follow up. One commenter stated that this section was in conflict with § 20.304 because it stated a recipient was required to immediately inform social services of any changes rather than within 30 days.

*Response:* These recommendations were partially adopted. The overpayment process is more appropriately addressed in internal procedures. The Bureau changed § 20.601 which was renumbered as § 20.602 to require the recipient to immediately inform the social services office of any change in status affecting

eligibility or amount of assistance. This section was rewritten in the final rule for clarification purposes.

*Section 20.602 How Is an Application Approved or Denied?*

One commenter stated that the proper reference in this section was §§ 20.300 through 20.516 and also suggested the section should be rewritten to state that the Bureau is the approving or denying authority and that an additional section should be added for tribes to outline how they approve or deny an application. This section was renumbered as § 20.603 in the final rule.

*Response:* These recommendations were partially adopted. The Bureau changed the section reference number to add better clarity. However, the Bureau did not change the remainder of the section because there is no confusion as to tribes' responsibilities when they contract for the service.

*Section 20.603 How Is an Applicant or Recipient Notified That Benefits or Services Are Denied?*

One commenter noted that under (5) "not" had been deleted and thus allowing an appeal under part 2 when the intent was to make the decision final and not subject to appeal if there was no request for a hearing within 20 days of the date of the notice. Another commenter suggested an additional section for contractors and inclusion of language in the original section stating that this section applied to the Bureau only. This section was renumbered as § 20.604 in the final rule.

*Response:* These recommendations were partially adopted. The Bureau agreed that under (5) "not" was incorrectly deleted and this was corrected. Additional language was not needed for contractors.

*Section 20.604 How Is an Incorrect Payment Adjusted or Recovered?*

One commenter suggested an additional section for contractors and inclusion in the original section which specified that this section applied to the Bureau only. This section was renumbered as § 20.606 in the final rule.

*Response:* This recommendation was not adopted. A separate section for contractors was not added as it is not necessary because part 900 explains the responsibilities of contractors.

*Section 20.605 What Happens When Applicants or Recipients Knowingly and Willfully Provide False, Fictitious, or Fraudulent Information?*

No comments were received on this section. This section was renumbered as

§ 20.607 in the final rule and rewritten for clarification purposes.

**Subpart G—Hearings and Appeals**

*Section 20.700 Can an Applicant or Recipient Appeal the Decision of a Bureau Official?*

No comments were received on this section.

*Section 20.701 Does an Applicant or Recipient Receive Financial Assistance while an Appeal is Pending?*

One commenter stated that an applicant should not receive assistance if they have not been determined eligible for assistance.

*Response:* This recommendation was not adopted. The section conveys the intent in that financial assistance will continue while the Superintendent makes a final decision on an appeal which is pending. Recovery for overpayments was addressed in the section.

*Section 20.702 When Is an Appeal Hearing Scheduled?*

One commenter stated that the section should be rewritten to explain that the recipient has a right to request an extension of 10 days for the date of the hearing.

*Response:* This recommendation was not adopted. The Bureau did not make this change because this section does not guarantee an extension of 10 days for the hearing to the recipient nor was the section designed to provide such an extension.

*Section 20.703 What Must the Written Notice of Hearing Include?*

No comments were received on this section.

*Section 20.704 Who Conducts the Hearing or Appeal From a Bureau Decision or Action and What Is the Process?*

No comments were received on this section.

*Section 20.705 Can an Applicant or Recipient Appeal a Tribal Decision?*

One commenter stated that there should be a process for applicants or recipients to appeal tribal decisions. Another commenter stated that this section violated tribal sovereignty.

*Response:* These recommendations were not adopted. This process for appeals of a tribe's decisions should be an internal procedure which is specified in the tribe's own policy and procedure manual. This section was not changed because it clarifies the Bureau's role in terms of applicant or recipient appeals of tribal decisions.

**Regulatory Planning and Review (E.O. 12866)**

This document is not a significant rule and is not subject to review by the Office of Management and Budget under Executive Order 12866.

(1) This rule will not have an effect of \$100 million or more on the economy. It will not adversely affect in a material way the economy, productivity, competition, jobs, the environment, public health or safety, or state, local, or tribal governments or communities. Tribes have been operating this financial assistance program for 30 years and the amount of funding is dependent upon the local economy in terms of unemployment and extent of need for funds. Approximately 400 tribes receive some form of financial assistance yearly and the amount of funds varies according to caseload increases and decreases. The Bureau's total expenditure for social service programs is \$94 million.

(2) This rule will not create a serious inconsistency or otherwise interfere with an action taken or planned by another agency.

(3) This rule does not alter the budgetary effects of entitlements, grants, user fees, or loan programs or the rights or obligations of their recipients. It establishes procedures for various social services programs, but does not alter the amounts that will be awarded.

(4) This rule does not raise novel legal or policy issues.

**Regulatory Flexibility Act**

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) specifically excludes Indian tribes from its coverage.

**Small Business Regulatory Enforcement Fairness Act (SBREFA)**

This rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. This rule:

(a) Does not have an annual effect on the economy of \$100 million or more. The financial assistance funds available total \$94 million and are divided up between 400 Indian communities based upon need.

(b) Will not cause a major increase in costs or prices for consumers, individual industries, federal, state, or local government agencies, or geographic regions. This rule provides guidance for a welfare benefit program and will not affect payment levels of eligible clients nor cause increases or decreases in existing caseloads or total expenditures.

(c) Does not have significant adverse effects on competition, employment,

investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises. This program is a welfare benefit program and does not affect local enterprises.

#### Unfunded Mandates Reform Act

This rule does not impose an unfunded mandate on state, local, or tribal governments or the private sector of more than \$100 million per year. The rule does not have a significant or unique effect on state, local, or tribal governments or the private sector. A statement containing the information required by the Unfunded Mandates Reform Act (1 U.S.C. 1531, *et seq.*) is not required.

#### Takings (E.O. 12630)

In accordance with Executive Order 12630, the rule does not have significant takings implications. A takings implication assessment is not required.

#### Federalism (E.O. 13132)

In accordance with Executive Order 13132 this rule does not have significant Federalism effects. Consultation was not conducted with state and local officials because the rule does not affect state and local entities but does affect tribal communities. Consultation was conducted with tribal officials at three separate locations and their recommendations were considered in the preparation of the final rule.

#### Civil Justice Reform (E.O. 12988)

In accordance with Executive Order 12988, the Office of the Solicitor has determined that this rule does not unduly burden the judicial system and meets the requirements of sections 3(a) and 3(b)(2) of the Order.

#### Paperwork Reduction Act

This regulation requires an information collection from 10 or more parties and a submission under the Paperwork Reduction Act is required. An OMB Form 83-I and an information collection packet were reviewed by the Department and were sent to OMB for approval on March 31, 1999. Subsequently, OMB provided approval on June 8, 1999, for form number OMB 1076-0017 for the Bureau Financial and Social Services Program.

The Bureau has reviewed the information needed and reduced the amount of information being collected. The information collection takes 15 minutes for 200,000 respondents for a burden of 50,000 hours. The information collection is used to make decisions within the framework of the financial assistance program, such as

determining eligibility, ensuring uniformity of services, and maintaining current records for audit purposes. The information collection is required to obtain or retain a benefit. Information covered by the Privacy Act will be kept confidential as required by regulation. Please note that an agency may not collect or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

#### National Environmental Policy Act

This rule does not constitute a major Federal action significantly affecting the quality of the human environment. A detailed statement under the National Environmental Policy Act of 1969 is not required.

#### List of Subjects in 25 CFR Part 20

Administrative practice and procedures, Child welfare, Indians—social welfare, Public assistance programs.

For the reasons set out in the preamble, we are revising part 20 in chapter I of title 25 of the Code of Federal Regulations as follows.

### PART 20—FINANCIAL ASSISTANCE AND SOCIAL SERVICES PROGRAMS

#### Subpart A—Definitions, Purpose and Policy

- Sec.
- 20.100 What definitions clarify the meaning of the provisions of this part?
- 20.101 What is the purpose of this part?
- 20.102 What is the Bureau's policy in providing financial assistance and social services under this part?
- 20.103 Have the information collection requirements in this part been approved by the Office of Management and Budget?

#### Subpart B—Welfare Reform

- 20.200 What contact will the Bureau maintain with State, tribal, county, local, and other Federal agency programs?
- 20.201 How does the Bureau designate a service area and what information is required?
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- 20.203 Can a tribe incorporate assistance from other sources into a tribal redesign plan?
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- 20.210 Can eligibility criteria or payments for Burial Assistance, Child Assistance, and Disaster Assistance and Emergency Assistance change?

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- 20.301 What is the goal of General Assistance?
- 20.302 Are Indian applicants required to seek assistance through Temporary Assistance for Needy Families?
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##### Determining Need and Income

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##### Tribal Work Experience Program (TWEP)

- 20.320 What is TWEP?
- 20.321 Does TWEP allow an incentive payment?
- 20.322 Who can receive a TWEP incentive payment?
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##### Burial Assistance

- 20.324 When can the Bureau provide Burial Assistance?
- 20.325 Who can apply for Burial Assistance?
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##### Disaster Assistance

- 20.327 When can the Bureau provide Disaster Assistance?
- 20.328 How can a tribe apply for Disaster Assistance?

##### Emergency Assistance

- 20.329 When can the Bureau provide Emergency Assistance payments?

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#### Adult Care Assistance

20.331 What is Adult Care Assistance?

20.332 Who can receive Adult Care Assistance?

20.333 How do I apply for Adult Care Assistance?

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20.335 What is the payment standard for Adult Care Assistance?

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20.401 What is included under Services to Children, Elderly, and Families?

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#### Subpart E—Child Assistance

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#### Foster Care

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20.508 What must the social service agency do when a child is placed in foster care, residential care or guardianship home?

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20.510 How is the court involved in child placements?

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#### Subpart F—Administrative Procedures

20.600 Who can apply for financial assistance or social services?

20.601 How can applications be submitted?

20.602 How does the Bureau verify eligibility for social services?

20.603 How is an application approved or denied?

20.604 How is an applicant or recipient notified that benefits or services are denied or changed?

20.605 What happens when an applicant or recipient appeals a decision under this subpart?

20.606 How is an incorrect payment adjusted or recovered?

20.607 What happens when applicants or recipients knowingly and willfully provide false, or fraudulent information?

#### Subpart G—Hearings and Appeals

20.700 Can an applicant or recipient appeal the decision of a Bureau official?

20.701 Does an applicant or recipient receive financial assistance while an appeal is pending?

20.702 When is an appeal hearing scheduled?

20.703 What must the written notice of hearing include?

20.704 Who conducts the hearing or appeal from a Bureau decision or action and what is the process?

20.705 Can an applicant or recipient appeal a tribal decision?

**Authority:** 25 U.S.C. 13; Pub. L. 93–638; Pub. L. 98–473; Pub. L. 102–477; Pub. L. 104–193; Pub. L. 105–83.

#### Subpart A—Definitions, Purpose and Policy

##### § 20.100 What definitions clarify the meaning of the provisions of this part?

*Adult* means an Indian person age 18 or older.

*Adult assistance care* means financial assistance provided on behalf of an Indian adult who is not eligible for any other state, federal, or tribal assistance as documented in the case file and who requires non-medical personal care and supervision due to advanced age, infirmity, physical condition or mental impairment.

*Appeal* means a written request for correction of an action or decision of a specific program decision by a Bureau official (§ 20.700) or a tribal official (§ 20.705).

*Applicant* means an Indian individual by or on whose behalf an application for financial assistance and/or social services has been made under this part.

*Application* means the written or oral process through which a request is made for financial assistance or social services.

*Assistant Secretary* means the Assistant Secretary—Indian Affairs.

*Authorized representative* means a parent or other caretaker relative, conservator, legal guardian, foster parent, attorney, paralegal acting under the supervision of an attorney, friend or other spokesperson duly authorized and acting on behalf or representing the applicant or recipient.

*Bureau* means the Bureau of Indian Affairs of the United States Department of the Interior.

*Bureau Standard of Assistance* means payment standards established by the Assistant Secretary for burial, disaster, emergency, TWEF and adoption and guardian subsidy. In accordance with Public Law 104–193, the Bureau standard of assistance for general assistance is the state rate for TANF in the state where the applicant resides. Where the Bureau provides general assistance on a reservation that extends into another state, the Bureau will provide general assistance to eligible Indians based on the standard of assistance where the applicant resides if the applicant is not eligible for state general assistance or TANF. The Bureau standard of assistance for adult care assistance is the state rate for adult care assistance in the state where the applicant resides. The Bureau standard of assistance for foster care is the state rate for foster care in the state where the applicant resides as provided by Title IV of the Social Security Act (49 Stat. 620).

*Burial assistance* means a financial assistance payment made on behalf of an indigent Indian who meets the eligibility criteria to provide minimum burial expenses according to Bureau payment standards established by the Assistant Secretary.

*Case* means a single type of assistance and/or service provided to an individual or household in response to an identified need which requires intervention by social services.

*Case management* means the activity of a social services worker in assessing client and family problem(s), case planning, coordinating and linking services for clients, monitoring service provisions and client progress, advocacy, tracking and evaluating services provided, such as evaluation of child's treatment being concurrent with parent's treatment, and provision of aftercare service. Activities may also include resource development and providing other direct services such as accountability of funds, data collection, reporting requirements, and documenting activities in the case file.

*Case plan* means a written plan with time limited goals which is developed and signed by the service recipient and social services worker. The case plan will include documentation of referral and disapproval of eligibility for other services. The plan must incorporate the steps needed to assist individuals and families to resolve social, economic, psychological, interpersonal, and/or other problems, to achieve self-sufficiency and independence. All plans for children in foster care or residential

care must include a permanency plan which contains a time specific goal of the return of the child to the natural parents or initiation of a guardianship/adoption.

*Child* means an Indian person under the age of 18 except that no person who has been emancipated by marriage will be deemed a child.

*Child assistance* means financial assistance provided on behalf of an Indian child, who has special needs as specified in § 20.100. In addition, assistance includes services to a child who requires placement in a foster home or a residential care facility in accordance with standards of payment levels established by the state or county in which the child resides. Further, assistance includes services to a child in need of adoption or guardianship in accordance with payment levels established by the Assistant Secretary.

*Designated representative* means an official of the Bureau who is designated by a Superintendent to hold a hearing as prescribed in §§ 20.700 through 20.705 and who has had no prior involvement in the proposed decision under § 20.603 and whose hearing decision under §§ 20.700 through 20.705 will have the same force and effect as if rendered by the Superintendent.

*Disaster* means a situation where a tribal community is adversely affected by a natural disaster or other forces which pose a threat to life, safety, or health as specified in §§ 20.327 and 20.328.

*Emergency* means a situation where an individual or family's home and personal possessions are either destroyed or damaged through forces beyond their control as specified in § 20.329.

*Employable* means an eligible Indian person who is physically and mentally able to obtain employment, and who is not exempt from seeking employment in accordance with the criteria specified in § 20.315.

*Essential needs* means shelter, food, clothing and utilities, as included in the standard of assistance in the state where the eligible applicant lives.

*Extended family* means persons related by blood, marriage or as defined by tribal law or custom.

*Family assessment* means a social services assessment of a family's history and present abilities and resources to provide the necessary care, guidance and supervision for individuals within the family's current living situation who may need social service assistance and/or services.

*Financial Assistance* means any of the following forms of assistance not

provided by other federal, state, local or tribal sources:

(1) Adult Care Assistance for adults who require non-medical personal care and supervision;

(2) Burial Assistance for indigent burials;

(3) Child Assistance for any child with special needs, in need of placement in a foster home or residential care facility, or in need of adoption or guardianship;

(4) Disaster Assistance;

(5) Emergency Assistance for essential needs to prevent hardship caused by burnout, flooding of homes, or other life threatening situations that may cause loss or damage of personal possessions;

(6) General Assistance for basic essential needs; or

(7) Tribal Work Experience Program for participants in work experience and training.

*Foster care services* means those social services provided to an eligible Indian child that is removed from his or her home due to neglect, abandonment, abuse or other maltreatment and placed in a foster home. Services must also be extended to the affected family members and foster parent(s) with a goal of reuniting and preserving the family.

*General Assistance* means financial assistance payments to an eligible Indian for essential needs provided under §§ 20.300 through 20.319.

*Guardianship* means long-term, social services and court approved placement of a child.

*Head of household* means a person in the household that has primary responsibility and/or obligation for the financial support of others in the household. In the case of a two parent household, one will be considered the head of household for the purpose of making an application for benefits.

*Homemaker services* means non-medical services provided by social services, in the absence of other resources, to assist an eligible Indian in maintaining self-sufficiency, and preventing placement into foster care or residential care. Examples of services included in homemaker services are: cleaning an individual's home, preparing meals for an individual, and maintaining or performing basic household functions.

*Household* means persons living together who may or may not be related to the "head of household."

*Indian* means any person who is a member of an Indian tribe.

*Indian court* means Indian tribal court or Court of Indian Offenses.

*Indian tribe* means an Indian or Alaska Native tribe, band, nation, pueblo, village, or community which is

recognized as eligible for the special programs and services provided by the United States because of their status as Indians.

*Individual Self-sufficiency Plan (ISP)* means a plan designed to meet the goal of employment through specific action steps and is incorporated within the case plan for the general assistance recipient. The plan is jointly developed and signed by the recipient and social services worker.

*Near Reservation* means those areas or communities designated by the Assistant Secretary that are adjacent or contiguous to reservations where financial assistance and social service programs are provided.

*Need* means the deficit after consideration of income and other resources necessary to meet the cost of essential need items and special need items as defined by the Bureau standard of assistance for the state in which the applicant or recipient resides.

*Permanency plan* means the documentation in a case plan which provides for permanent living alternatives for the child in foster care, a residential care facility, or in need of adoption or guardianship. Permanency plans are developed and implemented in accordance with tribal, cultural, and tribal/state legal standards when the parent or guardian is unable to resolve the issues that require out-of-home placement of the child.

*Protective services* means those services necessary to protect an Indian who is the victim of an alleged and/or substantiated incident of abuse, neglect or exploitation or who is under the supervision of the Bureau in regard to the use and disbursement of funds in his or her Individual Indian Money (IIM) account.

*Public assistance* means those programs of financial assistance provided by state, tribal, county, local and federal organizations including programs under Title IV of the Social Security Act (49 Stat. 620), as amended, and Public Law 104-193.

*Recipient* is an eligible Indian receiving financial assistance or social services under this part.

*Recurring income* means any cash or in-kind payment, earned or unearned, received on a monthly, quarterly, semiannual, or annual basis.

*Regional Director* means the Bureau official in charge of a Regional Office.

*Reservation* means any federally recognized Indian tribe's reservation, pueblo, or colony.

*Residential care services* means those rehabilitation services provided to an eligible Indian child that is removed from his or her home due to lack of

resources in the home to care for him or her and placed in a residential care facility.

*Resources* means income, both earned and unearned, and other liquid assets available to an Indian person or household to meet current living costs, unless otherwise specifically excluded by federal statute. Liquid assets are those properties in the form of cash or other financial instruments which can be converted to cash, such as savings or checking accounts, promissory notes, mortgages and similar properties, and retirements and annuities.

*Secretary* means the Secretary of the Interior.

*Service area* means a geographic area designated by the Assistant Secretary where financial assistance and social services programs are provided. Such a geographic area designation can include a reservation, near reservation, or other geographic location.

*Services to children, elderly and families* means social services, including protective services provided through the social work skills of casework, group work or community development to assist in solving social problems involving children, elderly and families. These services do not include money payments.

*Special needs* means a financial assistance payment made to or on behalf of children under social services supervision for circumstances that warrant financial assistance that is not included in the foster care rates; for example, respite care, homemaker service, day care service, and may include basic needs (special diets) which are not considered as a medical need where other resources are not available.

*Superintendent* means the Bureau official in charge of an agency office.

*Supplemental Security Income (SSI)* means cash assistance provided under Title XVI of the Social Security Act (49 Stat. 620), as amended.

*Temporary Assistance for Needy Families (TANF)* means one of the programs of financial assistance provided under the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA).

*Tribal governing body* means the federally recognized governing body of an Indian tribe.

*Tribal redesign plan* means a tribally designed method for changing general assistance eligibility and/or payment levels in accordance with 25 U.S.C.A. § 13d-3.

*Tribal Work Experience Program (TWEPE)* means a program operated by tribal contract/grant or self-governance annual funding agreement, which

provides eligible participants with work experience and training that promotes and preserves work habits and develops work skills aimed toward self-sufficiency. The Bureau payment standard is established by the Assistant Secretary.

*Unemployable* means a person who meets the criteria specified in § 20.315.

#### **§ 20.101 What is the purpose of this part?**

The regulations in this part govern the provision to eligible Indians of the following kinds of financial assistance and social services:

- (a) Adult Care Assistance;
- (b) Burial Assistance;
- (c) Child Assistance;
- (d) Disaster Assistance;
- (e) Emergency Assistance;
- (f) General Assistance;
- (g) Services to Children, Elderly and Families; and
- (h) Tribal Work Experience Program.

#### **§ 20.102 What is the Bureau's policy in providing financial assistance and social services under this part?**

(a) Bureau social services programs are a secondary, or residual resource, and must not be used to supplement or supplant other programs.

(b) The Bureau can provide assistance under this part to eligible Indians when comparable financial assistance or social services are either not available or not provided by state, tribal, county, local or other federal agencies.

(c) Bureau financial assistance and social services are subject to annual Congressional appropriations.

#### **§ 20.103 Have the information collection requirements in this part been approved by the Office of Management and Budget?**

The information collection requirements contained in §§ 20.300, 20.400, and 20.500 were submitted for clearance to the Office of Management and Budget under 44 U.S.C. 35d *et seq.* This information collection was approved by OMB with OMB Control #1076-0017. The expiration date is on the form. The information is collected to determine applicant eligibility for services. The information will be used to determine applicant eligibility and to insure uniformity of services. Response is required to obtain a benefit. The public reporting burdens for this form are estimated to average 15 minutes per response including time for reviewing the instructions, gathering and maintaining data, and completing and reviewing the form.

### **Subpart B—Welfare Reform**

#### **§ 20.200 What contact will the Bureau maintain with State, tribal, county, local, and other Federal agency programs?**

We will coordinate all financial assistance and social services programs with state, tribal, county, local and other federal agency programs to ensure that the financial assistance and social services program avoids duplication of assistance.

#### **§ 20.201 How does the Bureau designate a service area and what information is required?**

The Assistant Secretary can designate or modify service areas for a tribe. If you are a tribe requesting a service area designation, you must submit each of the following:

- (a) A tribal resolution that certifies that:
  - (1) All eligible Indians residing within the service area will be served; and
  - (2) The proposed service area will not include counties or parts thereof that have reasonably available comparable services.

(b) Additional documentation showing that:

- (1) The area is administratively feasible (that is, an adequate level of services can be provided to the eligible Indians residing in the area.);
- (2) No duplication of services exists; and
- (3) A plan describing how services will be provided to all eligible Indians can be implemented.

(c) Documentation should be sent to the Regional Director or Office of Self-Governance.

The Director or office will evaluate the information and make recommendations to the Assistant Secretary. The Assistant Secretary can make a determination to approve or disapprove and publish notice of the designation of service area and the Indians to be served in the **Federal Register**. Tribes currently providing services are not required to request designation for service areas unless they make a decision to modify their existing service areas.

#### **§ 20.202 What is a tribal redesign plan?**

If you are a tribe administering a general assistance program, you can develop and submit to us a tribal redesign plan to change the way that you administer the program.

(a) A tribal redesign plan allows a tribe to:

- (1) Change eligibility for general assistance in the service area; or
- (2) Change the amount of general assistance payments for individuals within the service area.

(b) If you develop a tribal redesign plan it must:

- (1) Treat all persons in the same situation equally; and
- (2) Will not result in additional expenses for the Bureau solely because of any increased level of payments.

**§ 20.203 Can a tribe incorporate assistance from other sources into a tribal redesign plan?**

Yes, when a tribe redesigns its general assistance program, it may include assistance from other sources (such as Public Law 102-477 federal funding sources) in the plan.

**§ 20.204 Must all tribes submit a tribal redesign plan?**

No, you must submit a tribal redesign plan under § 20.206 only if you want to change the way that the General Assistance program operates in your service area.

**§ 20.205 Can tribes change eligibility criteria or levels of payments for General Assistance?**

Yes, if you have a redesign plan, you can change eligibility criteria or levels of payment for general assistance.

(a) The funding level for your redesigned general assistance program will be the same funding received in the most recent fiscal or calendar year, whichever applies.

(b) If you do not have a prior year level of funding, the Bureau or Office of Self-Governance will establish a tentative funding level based upon best estimates for caseload and expenditures.

(c) A Bureau servicing office can administer a tribal redesign plan as requested by a tribal resolution.

**§ 20.206 Must a tribe get approval for a tribal redesign plan?**

If you have a Public Law 93-638 contract or receive direct services from us, you must obtain our approval before implementing a redesign plan. You can apply for approval to the Regional Director or through the Bureau servicing office.

(a) You must submit your redesign plan for approval at least 3 months before the effective date.

(b) If you operate with a self-governance annual funding agreement, you must obtain the approval of the redesign from the Office of Self-Governance.

(c) If you operate with a Public Law 102-477 grant, you must obtain approval from the Bureau Central Office.

**§ 20.207 Can a tribe use savings from a tribal redesign plan to meet other priorities of the tribe?**

Yes, you may use savings from a redesign of the general assistance program to meet other priorities.

**§ 20.208 What if the tribal redesign plan leads to increased costs?**

The tribe must meet any increase in cost to the General Assistance program that results solely from tribally increased payment levels due to a redesign plan.

**§ 20.209 Can a tribe operating under a tribal redesign plan go back to operating under this part?**

Yes, a tribe operating under a tribal redesign plan can choose to return to operation of the program as provided in §§ 20.300 through 20.323.

**§ 20.210 Can eligibility criteria or payments for Burial Assistance, Child Assistance, and Disaster Assistance and Emergency Assistance change?**

No, unless otherwise provided by law, the Bureau nor a tribe may change eligibility criteria or levels of payment for Burial Assistance, Child Assistance, Disaster Assistance, and Emergency Assistance awarded in Public Law 93-638 contracts, Public Law 102-477 grants, or Public Law 103-413 self-governance annual funding agreements.

**Subpart C—Direct Assistance**

**Eligibility for Direct Assistance**

**§ 20.300 Who qualifies for Direct Assistance under this subpart?**

To be eligible for assistance or services under this part, an applicant must meet all of the following criteria:

- (a) Be a member of an Indian tribe;
- (b) Not have sufficient resources to meet the essential need items defined by the Bureau standard of assistance for those Bureau programs providing financial payment;
- (c) Reside in the service area as defined in § 20.100; and
- (d) Meet the additional eligibility criteria for each of the specific programs of financial assistance or social services in §§ 20.301 through 20.516.

**§ 20.301 What is the goal of General Assistance?**

The goal of the General Assistance program is to increase self-sufficiency. Each General Assistance recipient must work with the social services worker to develop and sign an Individual Self-Sufficiency Plan (ISP). The plan must outline the specific steps the individual will take to increase independence by meeting the goal of employment.

**§ 20.302 Are Indian applicants required to seek assistance through Temporary Assistance for Needy Families?**

Yes, all Indian applicants with dependent children are required to apply for Temporary Assistance for Needy Families (TANF) and follow TANF regulations.

**§ 20.303 When is an applicant eligible for General Assistance?**

To be eligible for General Assistance an applicant must:

- (a) Meet the criteria contained in § 20.300;
- (b) Apply concurrently for financial assistance from other state, tribal, county, local, or other federal agency programs for which he/she is eligible;
- (c) Not receive any comparable public assistance; and
- (d) Develop and sign an employment strategy in the ISP with the assistance of the social services worker to meet the goal of employment through specific action steps including job readiness and job search activities.

**§ 20.304 When will the Bureau review eligibility for General Assistance?**

The Bureau will review eligibility for General Assistance:

- (a) Every 3 months for individuals who are not exempt from seeking or accepting employment in accordance with § 20.315 or the ISP;
- (b) Every 6 months for all recipients; and
- (c) Whenever there is a change in status that can affect a recipient's eligibility or amount of assistance. Recipients must immediately inform the social services office of any such changes.

**§ 20.305 What is redetermination?**

Redetermination is an evaluation by a social services worker to assess the need for continued financial assistance as outlined in § 20.304. It includes:

- (a) A home visit;
- (b) An estimate of income, living circumstances, household composition for the month(s) for which financial assistance is to be provided; and
- (c) Appropriate revisions to the case plan and the ISP.

**§ 20.306 What is the payment standard for General Assistance?**

(a) Under Public Law 104-193, the Bureau must use the same TANF payment standard (and any associated rateable reduction) that exists in the state or service area where the applicant or recipient resides. This payment standard is the amount from which the Bureau subtracts net income and resources to determine General Assistance eligibility and payment levels;

(b) If the state does not have a standard for an adult, we will use either the difference between the standard for a child and the standard for a household of two, or one-half of the standard for a household of two, whichever is greater; and

(c) If the state does not have a TANF program, we will use the AFDC payment standard which was in effect on September 30, 1995, in the State where the applicant or recipient resides.

#### Determining Need and Income

##### § 20.307 What resources does the Bureau consider when determining need?

When the Bureau determines General Assistance eligibility and payment levels, we consider income and other resources as specified in §§ 20.308 and 20.309.

(a) All income, earned or unearned, must be calculated in the month it is received and as a resource thereafter, except that certain income obtained from the sale of real or personal property may be exempt as provided in § 20.309.

(b) Resources are considered to be available when they are converted to cash.

##### § 20.308 What does earned income include?

Earned income is cash or any in-kind payment earned in the form of wages, salary, commissions, or profit, from activities by an employee or self-employed individual. Earned income includes:

(a) Any one-time payment to an individual for activities which were sustained over a period of time (for example, the sale of farm crops, livestock, or professional artists producing art work); and

(b) With regard to self-employment, total profit from a business enterprise (i.e., gross receipts less expenses incurred in producing the goods or services). Business expenses do not include depreciation, personal business and entertainment expenses, personal transportation, capital equipment purchases, or principal payments on loans for capital assets or durable goods.

##### § 20.309 What does unearned income include?

Unearned income includes, but is not limited to:

(a) Income from interest; oil and gas and other mineral royalties; gaming income per capita distributions; rental property; cash contributions, such as child support and alimony, gaming winnings; retirement benefits;

(b) Annuities, veteran's disability, unemployment benefits, and federal and state tax refunds;

(c) Per capita payments not excluded by federal statute;

(d) Income from sale of trust land and real or personal property that is set aside for reinvestment in trust land or a primary residence, but has not been reinvested in trust land or a primary residence at the end of one year from the date the income was received;

(e) In-kind contributions providing shelter at no cost to the individual or household, this must equal the amount for shelter included in the state standard, or 25 percent of the state standard, whichever is less; and

(f) Financial assistance provided by a state, tribal, county, local, or other federal agency.

##### § 20.310 What recurring income must be prorated?

The social services worker will prorate the following recurring income:

(a) Recurring income received by individuals over a 12-month period for less than a full year's employment (for example, income earned by teachers who are not employed for a full year);

(b) Income received by individuals employed on a contractual basis over the term of a contract; and

(c) Intermittent income received quarterly, semiannually, or yearly over the period covered by the income.

##### § 20.311 What amounts will the Bureau deduct from earned income?

(a) The social services worker will deduct the following amounts from earned income:

(1) Other federal, state, and local taxes;

(2) Social Security (FICA);

(3) Health insurance;

(4) Work related expenses, including reasonable transportation costs;

(5) Child care costs for children under the age of 6 except where the other parent in the home is unemployed and physically able to care for the children; and

(6) The cost of special clothing, tools, and equipment directly related to the individual's employment.

(b) For self-employed individuals, the social services worker will deduct the costs of conducting business and all of the amounts in paragraph (a) of this section.

##### § 20.312 What amounts will the Bureau deduct from income or other resources?

The social services worker will deduct the following amounts from income, or other resources:

(a) The first \$2,000 of liquid resources annually available to the household;

(b) Any home produce from a garden, livestock, and poultry used by the applicant or recipient and his/her household for their consumption; and

(c) Resources specifically excluded by federal statute.

##### § 20.313 How will the Bureau compute financial assistance payments?

(a) The social services worker will compute financial assistance payments by beginning with the Bureau standard of assistance and doing the following:

(1) Subtracting from all resources calculated under §§ 20.307 through 20.310;

(2) Subtracting the rateable reduction or maximum payment level used by the state where the applicant lives;

(3) Subtracting an amount for shelter (see paragraph (b) of this section for details on how to calculate a shelter amount); and

(4) Rounding the result down to the next lowest dollar.

(b) The social services worker must calculate a shelter amount for purposes of paragraph (a)(3) of this section. To calculate the shelter amount:

(1) The shelter amount must not exceed the amount for shelter in the state TANF standard;

(2) If the state TANF does not specify an amount for shelter, the social services worker must calculate the amount as 25 percent of the total state TANF payment; and

(3) If there is more than one household in a dwelling, the social services worker must prorate the actual shelter cost among the households receiving General Assistance; this amount cannot exceed the amount in the standard for individuals in similar circumstances. The head of each household is responsible for his/her portion of the documented shelter cost.

(c) The social services worker must not provide General Assistance payments for any period before the date of the application for assistance.

#### Employment Requirements

##### § 20.314 What is the policy on employment?

(a) An applicant or recipient must:

(1) Actively seek employment, including the use of available state, tribal, county, local or Bureau-funded employment services;

(2) Make satisfactory progress in an ISP; and

(3) Accept local and reasonable employment when it is available.

(b) A head of household who does not comply with this section will not be eligible for General Assistance for a period of at least 60 days but not more than 90 days. This action must be documented in the case file.

(c) The policy in this section does not apply to any person meeting the criteria in § 20.315.

**§ 20.315 Who is not covered by the employment policy?**

The employment policy in § 20.314 does not apply to the persons shown in the following table.

The employment policy in §20.314 does not apply to . . .	if . . .	and . . .
(a) Anyone younger than 16.		
(b) A full-student under the age of 19 .....	He/she is attending an elementary or secondary school or a vocational or technical school equivalent to a secondary school.	He/she is making satisfactory progress.
(c) A person enrolled at least half-time in a program of study under Section 5404 of Pub. L. 100-297.	He/she is making satisfactory progress .....	He/she was an active General Assistance recipient for a minimum of 3 months before determination/redetermination of eligibility.
(d) A person suffering from a temporary medical injury or illness.	It is documented in the case plan that the illness or injury is serious enough to temporarily prevent employment.	He/she must be referred to SSI if the disability status exceeds 3 months.
(e) An incapacitated person who has not yet received Supplemental Security Income (SSI) assistance.	A physician, psychologist, or social services worker certifies that a physical or mental impairment (either by itself, or in conjunction with age) prevents the individual from being employed.	The assessment is documented in the case plan.
(f) A caretaker who is responsible for a person in the home who has a physical or mental impairment.	A physician or certified psychologist verifies the condition.	The case plan documents that: the condition requires the caretaker to be home on a virtually continuous basis; and there is no other appropriate household member available to provide this care.
(g) A parent or other individual who does not have access to child care.	He/she personally provides full-time care to a child under the age of 6.	
(h) A person for whom employment is not accessible.	There is a minimum commuting time of one hour each way.	

**§ 20.316 What must a person covered by the employment policy do?**

(a) If you are covered by the employment policy in § 20.314, you must seek employment and provide evidence of your monthly efforts to obtain employment in accordance with your ISP.

(b) If you do not seek and accept available local and seasonal employment, or you quit a job without good cause, you cannot receive General Assistance for a period of at least 60 days but not more than 90 days after you refuse or quit a job.

**§ 20.317 How will the ineligibility period be implemented?**

(a) If you refuse or quit a job, your ineligibility period will continue as provided in § 20.316(b) until you seek and accept appropriate available local and seasonal employment and fulfill your obligations already agreed to in the ISP;

(b) The Bureau will reduce your suspension period by 30 days when you show that you have sought local and seasonal employment in accordance with the ISP; and

(c) Your eligibility suspension will affect only you. The Bureau will not apply it to other eligible members of the household.

**§ 20.318 What case management responsibilities does the social services worker have?**

In working with each recipient, you, the social services worker must:

- (a) Assess the general employability of the recipient;
- (b) Assist the recipient in the development of the ISP;
- (c) Sign the ISP;
- (d) Help the recipient identify the service(s) needed to meet the goals identified in their ISP;
- (e) Monitor recipient participation in work related training and other employment assistance programs; and
- (f) Document activities in the case file.

**§ 20.319 What responsibilities does the general assistance recipient have?**

In working with the social services worker, you, the recipient, must:

- (a) Participate with the social services worker in developing an ISP and sign the ISP;

(b) Perform successfully in the work related activities, community service, training and/or other employment assistance programs developed in the ISP;

(c) Participate successfully in treatment and counseling services identified in the ISP;

(d) Participate in evaluations of job readiness and/or any other testing required for employment purposes; and

(e) Demonstrate that you are actively seeking employment by providing the social services worker with evidence of job search activities as required in the ISP.

**Tribal Work Experience Program (TWEP)**

**§ 20.320 What is TWEP?**

TWEP is a program that provides work experience and job skills to enhance potential job placement for the general assistance recipient. TWEP programs can be incorporated within Public Law 93-638 self-determination contracts, Public Law 102-477 grants, and Public Law 103-413 self-governance annual funding agreements at the request of the tribe.

**§ 20.321 Does TWEP allow an incentive payment?**

Yes, incentive payments to participants are allowed under TWEP.

(a) Incentive payments are separate. The Bureau will not consider incentive payments as wages or work related expenses, but as grant assistance payments under §§ 20.320 through 20.323.

(b) The approved payment will not exceed the Bureau maximum TWEP payment standard established by the Assistant Secretary.

**§ 20.322 Who can receive a TWEP incentive payment?**

(a) The head of the family unit normally receives the TWEP assistance payment.

(b) The social services worker can designate a spouse or other adult in the assistance group to receive the TWEP assistance payment. The social services worker will do this only if:

(1) The recognized head of the family unit is certified as unemployable; and  
(2) The designation is consistent with the ISP.

(c) Where there are multiple family units in one household, one member of each family unit will be eligible to receive the TWEP incentive payment.

**§ 20.323 Will the local TWEP be required to have written program procedures?**

Yes, the local TWEP must have specific written program procedures that cover hours of work, acceptable reasons for granting leave from work, evaluation criteria and monitoring plans and ISP's for participants. Work readiness progress must be documented in each ISP.

**Burial Assistance****§ 20.324 When can the Bureau provide Burial Assistance?**

In the absence of other resources, the Bureau can provide Burial Assistance for eligible indigent Indians meeting the requirements prescribed in § 20.300.

**§ 20.325 Who can apply for Burial Assistance?**

If you are a relative of a deceased Indian, you can apply for burial assistance for the deceased Indian under this section.

(a) To apply for burial assistance under this section, you must submit the application to the social services worker. You must submit this application within 30 days following death.

(b) The Bureau will determine eligibility based on the income and resources available to the deceased in accordance with § 20.100. This includes

but is not limited to SSI, veterans' death benefits, social security, and Individual Indian Money (IIM) accounts.

Determination of need will be accomplished on a case-by-case basis using the Bureau payment standard.

(c) The Bureau will not approve an application unless it meets the criteria specified at § 20.300.

(d) The approved payment will not exceed the Bureau maximum burial payment standard established by the Assistant Secretary.

**§ 20.326 Does Burial Assistance cover transportation costs?**

Transportation costs directly associated with burials are normally a part of the established burial rate. If a provider adds an additional transportation charge to the burial rate because of extenuating circumstances, the social services worker can pay the added charge. To do this, the social services worker must ensure and document in the case plan that:

(a) The charges are reasonable and equitable;

(b) The deceased was an eligible indigent Indian who was socially, culturally, and economically affiliated with his or her tribe; and

(c) The deceased resided in the service area for at least the last 6 consecutive months of his/her life.

**Disaster Assistance****§ 20.327 When can the Bureau provide Disaster Assistance?**

Disaster assistance is immediate and/or short-term relief from a disaster and can be provided to a tribal community in accordance with § 20.328.

**§ 20.328 How can a tribe apply for Disaster Assistance?**

(a) The tribe affected by the disaster is considered the applicant and must submit the following to the Regional Director through the local Superintendent:

(1) A tribal resolution requesting disaster assistance;  
(2) A copy of county, state, or Presidential declaration of disaster; and  
(3) The projected extent of need in the service area not covered by other federal funding sources.

(b) The Regional Director must forward the above tribal documents and his/her recommendation to the Assistant Secretary for final decision on whether disaster assistance will be provided and to what extent.

**Emergency Assistance****§ 20.329 When can the Bureau provide Emergency Assistance payments?**

Emergency Assistance payments can be provided to individuals or families

who suffer from a burnout, flood, or other destruction of their home and loss or damage to personal possessions. The Bureau will make payments only for essential needs and other non-medical necessities.

**§ 20.330 What is the payment standard for Emergency Assistance?**

The approved payment will not exceed the Bureau's maximum Emergency Assistance payment standard established by the Assistant Secretary.

**Adult Care Assistance****§ 20.331 What is Adult Care Assistance?**

Adult care assistance provides non-medical care for eligible adult Indians who:

(a) Have needs that require personal care and supervision due to advanced age, infirmity, physical condition, or mental impairments; and

(b) Cannot be cared for in their own home by family members.

**§ 20.332 Who can receive Adult Care Assistance?**

An adult Indian is eligible to receive adult care assistance under this part if he/she:

(a) Is unable to meet his/her basic needs, including non-medical care and/or protection, with his/her own resources; and

(b) Does not require intermediate or skilled nursing care.

**§ 20.333 How do I apply for Adult Care Assistance?**

To apply for adult care assistance, you or someone acting on your behalf must submit an application form to the social services worker.

**§ 20.334 What happens after I apply?**

(a) The Bureau will determine eligibility based upon the income and available resources of the person named in the application.

(b) Upon approval by the social services worker, payments will be approved under purchase of service agreements for adult care provided in state or tribally licensed or certified group settings, or by individual service providers licensed or certified for homemaker service.

**§ 220.335 What is the payment standard for Adult Care Assistance?**

The approved payment for adult care assistance will not exceed the applicable state payment rate for similar care.

## Subpart D—Services to Children, Elderly, and Families

### § 20.400 Who should receive Services to Children, Elderly, and Families?

Services to Children, Elderly, and Families will be provided for Indians meeting the requirements prescribed in § 20.300 who request these services or on whose behalf these services are requested.

### § 20.401 What is included under Services to Children, Elderly, and Families?

Services to Children, Elderly, and Families include, but are not limited to, the following:

- (a) Assistance in solving problems related to family functioning and interpersonal relationships;
- (b) Referral to the appropriate resource for problems related to illness, physical or mental handicaps, drug abuse, alcoholism, and violation of the law; and
- (c) Protective services.

In addition, economic opportunity and money management may also be provided.

### § 20.402 When are protective services provided?

Protective services are provided when children or adults:

- (a) Are deprived temporarily or permanently of needed supervision by responsible adults;
- (b) Are neglected, abused or exploited;
- (c) Need services when they are mentally or physically handicapped or otherwise disabled; or
- (d) Are under the supervision of the Bureau in regard to the use and disbursement of funds in the child's or adult's Individual Indian Money (IIM) account. Those IIM accounts that are established for children will be supervised by the Bureau until the child becomes an adult as defined in 25 CFR 115.

### § 20.403 What do protective services include?

Protective services provided to a child, family or elderly person will be documented in the case files and:

- (a) Can include, but are not limited to, any of the following:
  - (1) Providing responses to requests from members of the community on behalf of children or adults alleged to need protective services;
  - (2) Providing services to children, elderly, and families, including referrals for homemaker and day care services for the elderly and children;
  - (3) Coordinating with Indian courts to provide services, which may include, but are not limited to, the following:

- (i) Investigating and reporting on allegations of child abuse and neglect, abandonment, and conditions that may require referrals (such as mental or physical handicaps);

- (ii) Providing social information related to the disposition of a case, including recommendation of alternative resources for treatment; and
- (iii) Providing placement services by the court order before and after adjudication.

- (4) Coordinating with other community services, including groups, agencies, and facilities in the community. Coordination can include, but are not limited to:

- (i) Evaluating social conditions that affect community well-being;
- (ii) Treating conditions identified under paragraph (d)(1) of this section that are within the competence of social services workers; and

- (iii) Working with other community agencies to identify and help clients to use services available for assistance in solving the social problems of individuals, families, and children.

- (5) Coordinating with law enforcement and tribal courts, to place the victim of an alleged and/or substantiated incident of abuse, neglect or exploitation out of the home to assure safety while the allegations are being investigated. Social services workers may remove individuals in life threatening situations. After a social services assessment, the individual must be either returned to the parent(s) or to the home from which they were removed or the social services worker must initiate other actions as provided by the tribal code; and

- (6) Providing social services in the home, coordinating and making referrals to other programs/services, including Child Protection, and/or establishing Multi-Disciplinary Teams.

- (b) Must include, where the service population includes IIM account holders:

- (1) Conducting, upon the request of an account holder or other interested party, a social services assessment to evaluate an adult account holder's circumstances and abilities and the extent to which the account holder needs assistance in managing his or her financial affairs; and

- (2) Managing supervised IIM accounts of children and adults (in conjunction with legal guardians), which includes, but is not limited to, the following:

- (i) Evaluating the needs of the account holder;

- (ii) Developing, as necessary and as permitted under 25 CFR 115, a one-time or an annual distribution plan for funds held in an IIM account along with any

amendments to the plan for approval by the Bureau;

- (iii) Monitoring the implementation of the approved distribution plan to ensure that the funds are expended in accordance with the distribution plan;

- (iv) Reviewing the supervised account every 6 months or more often as necessary if conditions have changed to warrant a recommendation to change the status of the account holder, or to modify the distribution plan;

- (v) Reviewing receipts for an account holder's expenses and verifying that expenditures of funds from a supervised IIM account were made in accordance with the distribution plan approved by the Bureau, including any amendments made to the plan; and

- (vi) Petitioning a court of competent jurisdiction for the appointment of, or change in, a legal guardian for a client, where appropriate.

### § 20.404 What information is contained in a social services assessment?

A social services assessment must contain, but is not limited to, the following:

- (a) Identifying information about the client (for example, name, address, age, gender, social security number, telephone number, certificate of Indian blood, education level), family history and medical history of the account holder;

- (b) Description of the household composition: information on each member of the household (e.g., name, age, and gender) and that person's relationship to the client;

- (c) The client's current resources and future income (e.g., VA benefits, retirement pensions, trust assets, employment income, judgment funds, general assistance benefits, unemployment benefits, social security income, supplemental security income and other governmental agency benefits);

- (d) A discussion of the circumstances which justify special services, including ability of the client to handle his or her financial affairs and to conduct day-to-day living activities. Factors to be considered should include, but are not limited to:

- (1) Age;
- (2) Developmental disability;
- (3) Chronic alcoholism or substance abuse;
- (4) Lack of family assistance or social support systems, or abandonment;
- (5) Self-neglect;
- (6) Financial exploitation or abuse;
- (7) Physical exploitation, neglect or abuse;
- (8) Senility; and
- (9) Dementia.

(e) Documentation supporting the need for assistance (e.g., medical reports, police reports, court orders, letters from interested parties, prior assessments or evaluations, diagnosis by psychologist/psychiatrist); and  
 (f) Summary of findings and proposed services to meet the identified needs of the client.

**Subpart E—Child Assistance**

**§ 20.500 Who is eligible for Child Assistance?**

A child is eligible for Child Assistance under this subpart if all of the following criteria are met:

- (a) The child must meet the requirements in § 20.300.
- (b) The child’s legally responsible parent, custodian/guardian, or Indian court having jurisdiction must:
  - (1) Request assistance under this part in writing;
  - (2) State that they are unable to provide necessary care and guidance for the child, or to provide for the child’s special needs in his/her own home; and
  - (3) Provide a documented social services assessment from the social services worker of whether parent(s), custodian, guardian(s) are able to care for their child.

(c) All income accruing to the child, except income exempted by federal statute, must be used to meet the cost of special needs, foster home or residential care facility as authorized and arranged by social services.

**How Child Assistance Funds Can Be Used**

**§ 20.501 What services can be paid for with Child Assistance funds?**

The social services program can use Child Assistance funds to pay for services as shown in the following table.

Service that can be paid	Conditions that must be met	Maximum payment level
(a) Room and board at residential care facilities licensed by the tribe or state.	There must be no other resources available to pay these costs. See § 20.502 for other conditions that must be met.	The state or county residential care rate in the state in which the child resides.
(b) Adoption or guardianship subsidies .....	There must be no other resources available to pay for this service. See § 20.503 for other conditions that must be met.	The Bureau’s maximum adoption and guardianship payment standard.
(c) Short-term homemaker services .....	There must be no other resources (such as Medicaid) available to pay for this service. Services can be purchased for a maximum of 3 months. See § 20.504 for other conditions that must be met.	As approved by the Bureau line officer.
(d) Temporary foster care .....	See § 20.509 for conditions that must be met	The state or county foster care rate in the state in which the child resides.

**§ 20.502 Can Child Assistance funds be used to place Indian children in residential care facilities?**

You, the social service program, can use Child Assistance funds to purchase or contract for room and board in licensed residential care facilities.

(a) You can use Child Assistance funds to pay only for room and board. You must pay for other services that may be needed, including mental health, education, and physical therapy from other sources.

(b) Before placement the various funding sources must sign an agreement that specifies the services each source will pay. The Bureau Line Officer must approve this agreement.

**§ 20.503 When can Child Assistance funds be used for Indian adoption or guardianship subsidies?**

You, the social services program, can use Child Assistance funds to provide either adoption or guardianship subsidies if all of the following are true:

- (a) The child is 17 or younger;
- (b) The child has been in foster care prior to approval of the subsidy;
- (c) The social services worker has considered all other available resources, attempted permanency planning, and documented in the case file that

placement was in the best interest of the child; and

(d) The Bureau Line Officer approves the subsidy before it is authorized and redetermines eligibility on a yearly basis.

**§ 20.504 What short-term homemaker services can Child Assistance pay for?**

You, the social services program, can use Child Assistance funds to pay for homemaker services as specified in § 20.501 and this section. While housekeeping services are covered, homemaker services must focus on training household members in such skills as child care and home management. Homemaker services are provided for:

- (a) A child who would otherwise need foster care placement or who would benefit from supportive (protective) supervision;
- (b) A severely handicapped or special needs child whose care places undue stress on the family; or
- (c) A child whose care would benefit from specialized training and supportive services provided to family members.

**§ 20.505 What services are provided jointly with the Child Assistance Program?**

The services listed in this section are provided by Services to Children, Elderly, and Families under this subpart jointly with the Child Assistance Program.

(a) Social services provided for children in their own home aimed at strengthening the family’s ability to provide for and nurture their child. These supportive services can include:

- (1) Social work case management;
- (2) Counseling for parents and children;
- (3) Group work, day care; and
- (4) Homemaker services, when necessary.

(b) Protection of Indian children from abuse, neglect or exploitation in coordination with law enforcement and courts.

(c) A written case plan must be established within 30 days of placement and reviewed within 60 days of placement or as outlined in tribally established standards, when temporary placement outside the home is necessary. The case plan must contain a written agreement signed among the various funding sources to identify the services that will be paid by each source in those instances where the child

requires services outside the authority of the Child Assistance program.

### Foster Care

#### § 20.506 What information is required in the foster care case file?

At a minimum the following information is required:

- (a) Tribal enrollment verification in accordance with § 20.100;
- (b) A written case plan (established within 30 days of placement), which would include a permanency plan detailing the need for and expected length of placement;
- (c) Information on each child's health status and school records, including medications and immunization records;
- (d) Parental consent(s) for emergency medical care, school, and transportation;
- (e) A signed plan for payment, including financial responsibility of parents and use of other appropriate resources;
- (f) A copy of the certification/license of the foster home;
- (g) A current photo of each child;
- (h) A copy of the social security card, birth certificate, Medicaid card and current court order;
- (i) For a placement beyond 30 days, copy of the action taken or authorized by a court of competent jurisdiction that documents the need for protection of the child;
- (j) For an involuntary placement, a social services assessment completed by a social services worker within 30 days of placement;
- (k) Documentation of a minimum of one visit to the placement setting per month by the social services worker with each child; and
- (l) A list of all prior placements, including the names of the foster parents and dates of placements.

#### § 20.507 What requirements must foster care providers meet?

If a child needs foster care, the social services worker must select care that meets the physical, behavioral, and emotional needs of the child. Foster care is intended to be short-term. The case plan must show that all of the requirements in paragraphs (a) through (c) of this section are met:

- (a) All foster homes must be certified or licensed by the tribe or other appropriate authority. Foster care placements beyond 30 days must be made through a court of competent jurisdiction to ensure that:
  - (1) Federal background checks are completed prior to placement as required by Public Law 101-630; and
  - (2) Training (optional for placements with relatives) is provided to the foster family.

(b) If the child is placed with relatives in an adoption and guardian placement, the case file must contain an approved current home study.

(c) An off-reservation foster home, or residential care facility under contract must meet the licensing standards of the state in which it is located or tribally established certifying/licensing standards.

#### § 20.508 What must the social services agency do when a child is placed in foster care, residential care or guardianship home?

The social services agency must make efforts to secure child support for the child in foster care or residential care through a court of competent jurisdiction.

#### § 20.509 What must the social services worker do when a child is placed in foster care or residential care facility?

When a child is placed in foster care or a residential care facility the social services worker must do all of the following:

- (a) Discuss with foster parents or caretakers, the child's special needs, including disabilities;
- (b) Provide counseling or referral to available resources;
- (c) Refer any child requiring medical, substance abuse, or behavioral (mental) health services to an appropriate health services to be assessed and to receive services;
- (d) Ensure that the case plan provides for all necessary costs of care (including clothing, incidentals, and personal allowance) in accordance with established state standards of payments;
- (e) Develop a foster family agreement signed and dated by the parties involved that specifies the roles and responsibilities of the biological parents, foster parents, and placing agency; the terms of payment of care; and the need for adherence to the established case plan;
- (f) Immediately report any occurrences of suspected child abuse or neglect in a foster home or residential care facility to law enforcement and protective services in accordance with tribal standards and reporting requirements under Public Law 101-630; and
- (g) Complete a yearly assessment of each tribal or state licensed foster home or residential care facility evaluating how the home has fulfilled its function relative to the needs of the child placed in the home.

#### § 20.510 How is the court involved in child placements?

The court retains custody of a child in placement and the care and supervision

must be given to the appropriate social services agency. While the court can issue any court order consistent with tribal law, the courts do not have the authority to require expenditure of federal funds to pay for specifically prescribed or restrictive services or out-of-home placements of children. Case plans must be reviewed with the appropriate court at least every 6 months and a permanency hearing held within 12 months after a child enters foster care or residential care, or according to established tribal standards. These standards can be established in the tribal code and can be in accordance with available funding source requirements.

#### § 20.511 Should permanency plans be developed?

Permanency planning must be developed for all child placements within 6 months after initial placement of the child. Every reasonable effort will be made to preserve the family and/or reunify the children with the family and relatives when developing permanency plans. However, the child's health and safety are the paramount concern.

#### § 20.512 Can the Bureau/tribal contractors make Indian adoptive placements?

The Bureau is not an authorized adoption agency and staff must not arrange adoptive placements. However, long-term permanency planning can involve the Bureau social services workers cooperating with tribal courts to provide an adoption subsidy. Tribal contractors will provide adoption services as authorized by the tribal courts in accordance with tribal codes/law.

#### § 20.513 Should Interstate Compacts be used for the placement of children?

Interstate compact agreements should be used when appropriate for foster care, adoption and guardianship to protect the best interests of the child and to assure the availability of the funding resources and services from the originating placement source.

#### § 20.514 What assistance can the courts request from social services on behalf of children?

The courts can request the following:

- (a) Investigations of law enforcement reports of child abuse and neglect;
- (b) Assessment of the need for out-of-home placement of the child; and
- (c) Provision of court-related services following adjudication, such as monitoring, foster care, or residential care, or pre/post placement services.

**§ 20.515 What is required for case management?**

Social services workers must document regular contact with children and families in accordance with specific program requirements. The social services agency is responsible for implementation of quality case management; this requires the supervisor's review of case plans every 90 days.

**§ 20.516 How are child abuse, neglect or exploitation cases to be handled?**

Reported child abuse, neglect or exploitation cases and the requirement for background clearances will be handled in accordance with the Indian Child Protection and Family Violence Prevention Act of 1990, Public Law 101-630, 25 CFR part 63, federal and/or state laws where applicable, and tribal codes which protect Indian children and victims of domestic violence. This includes developing and maintaining Child Protection Teams in accordance to Public Law 101-630 and collection of child abuse, neglect and exploitation data according to Public Law 99-570. Those cases referred by the state will be handled according to the Indian Child Welfare Act, Public Law 95-608, and 25 CFR part 23.

**Subpart F—Administrative Procedures****§ 20.600 Who can apply for financial assistance or social services?**

(a) You can apply for financial assistance or social services under this part if you:

- (1) Believe that you are eligible to receive benefits; or
- (2) Are applying on behalf of someone who you believe is eligible to receive benefits.

(b) Under paragraph (a) of this section, any of the following may apply for benefits on behalf of another person: relatives, interested individuals, social services agencies, law enforcement agencies, courts, or other persons or agencies.

**§ 20.601 How can applications be submitted?**

You can apply for financial assistance or social services under this part by:

- (a) Completing an application that you can get from your social services worker or tribe; or
- (b) Through an interview with a social services worker who will complete an application for you based on the oral interview.

**§ 20.602 How does the Bureau verify eligibility for social services?**

(a) You, the applicant, are the primary source of information used to determine

eligibility and need. If it is necessary to secure information such as medical records from other sources, you must authorize the release of information.

(b) You must immediately report to your social services worker any changes in circumstances that may affect your eligibility or the amount of financial assistance that you receive.

**§ 20.603 How is an application approved or denied?**

(a) Each application must be approved if the applicant meets the eligibility criteria in this part for the type of assistance requested. Financial assistance will be made retroactive to the application date.

(b) An application must be denied if the applicant does not meet the eligibility criteria in §§ 20.300 through 20.516.

(c) The Superintendent must approve or deny an application within 30 days of the application date. The local social services worker must issue written notice of the approval or denial of each application within 45 days of the application date.

(d) If for a good reason the Superintendent cannot meet the deadline in paragraph (c) of this section, he or she must notify the applicant in writing of:

- (1) The reasons why the decision cannot be made; and
- (2) The deadline by which the Superintendent will send the applicant a decision.

**§ 20.604 How is an applicant or recipient notified that benefits or services are denied or changed?**

If the Bureau increases, decreases, suspends, or terminates financial assistance, the social services worker must mail or hand deliver to the applicant or recipient a written notice of the action. The notice must:

- (a) State the action taken, the effective date, and the reason(s) for the decision;
- (b) Inform the applicant or recipient of the right to request a hearing if dissatisfied with the decision;
- (c) Advise the applicant or recipient of the right to be represented by an authorized representative at no expense to the Bureau;
- (d) Include the address of the local Superintendent or his/her designated representative to whom the request for a hearing must be submitted;
- (e) Advise the applicant or recipient that failure to request a hearing within 20 days of the date of the notice will cause the decision to become final and not subject to appeal under 25 CFR part 2; and

(f) Be delivered to the applicant 20 days in advance of the effective date of the action.

**§ 20.605 What happens when an applicant or recipient appeals a decision under this subpart?**

If you are an applicant or recipient and appeal a decision made under § 20.604, you can continue to receive your assistance while your appeal is pending. For this to happen, you must submit your appeal by the deadline in § 20.604(e).

**§ 20.606 How is an incorrect payment adjusted or recovered?**

(a) When an incorrect payment of financial assistance has been made to an individual or family, a proper adjustment or recovery is required.

(b) The proper adjustment or recovery is based upon individual need as appropriate to the circumstances that resulted in an incorrect payment.

(c) Before adjustment or recovery, the recipient will be notified of the proposal to correct the payment and given an informal opportunity to resolve the matter.

(d) If an informal resolution cannot be attained, the recipient must be given a written notice of decision and the procedures of § 20.604 will apply.

(e) If a hearing is requested, the hearing will be conducted in accordance with the procedures under §§ 20.700 through 20.705.

**§ 20.607 What happens when applicants or recipients knowingly and willfully provide false or fraudulent information?**

Applicants or recipients who knowingly and willfully provide false or fraudulent information are subject to prosecution under 18 U.S.C. § 1001, which carries a fine of not more than \$10,000 or imprisonment for not more than 5 years, or both. The social services worker will prepare a written report detailing the information considered to be false and submit the report to the Superintendent or his/her designated representative for appropriate investigative action.

**Subpart G—Hearings and Appeals****§ 20.700 Can an applicant or recipient appeal the decision of a Bureau official?**

Yes, if you are an applicant or recipient, and are dissatisfied with a Bureau decision made under this part, you can request a hearing before the Superintendent or his/her designated representative. You must submit your request by the deadline in § 20.604. The Superintendent or his/her designated representative can extend the deadline if you show good cause.

**§ 20.701 Does an applicant or recipient receive financial assistance while an appeal is pending?**

Yes, if you appeal under this subpart, financial assistance will be continued or reinstated to insure there is no break in financial assistance until the Superintendent or his/her designated representative makes a decision. The Superintendent or his/her designated representative can adjust payments or recover overpayments to conform with his/her decision.

**§ 20.702 When is an appeal hearing scheduled?**

The Superintendent or his/her designated representative must set a date for the hearing within 10 days of the date of request for a hearing and give written notice to the applicant or recipient.

**§ 20.703 What must the written notice of hearing include?**

The written notice of hearing must include:

- (a) The date, time and location of the hearing;
- (b) A statement of the facts and issues giving rise to the appeal;

(c) The applicant's or recipient's right to be heard in person, or to be represented by an authorized representative at no expense to the Bureau;

(d) The applicant or recipient's right to present both oral and written evidence during the hearing;

(e) The applicant's or recipient's right to confront and cross-examine witnesses at the hearing;

(f) The applicant's or recipient's right of one continuance of not more than 10 days with respect to the date of hearing; and

(g) The applicant's or recipient's right to examine and copy, at a reasonable time before the hearing, his/her case record as it relates to the proposed action being contested.

**§ 20.704 Who conducts the hearing or appeal of a Bureau decision or action and what is the process?**

(a) The Superintendent or his/her designated representative conducts the hearing in an informal but orderly manner, records the hearing, and provides the applicant or recipient with a transcript of the hearing upon request.

(b) The Superintendent or his/her designated representative must render a

written decision within 10 days of the completion of the hearing. The written decision must include:

(1) A written statement covering the evidence relied upon and reasons for the decision; and

(2) The applicant's or recipient's right to appeal the Superintendent or his/her designated representative's decision pursuant to 25 CFR part 2 and request Bureau assistance in preparation of the appeal.

**§ 20.705 Can an applicant or recipient appeal a tribal decision?**

Yes, the applicant or recipient must pursue the appeal process applicable to the Public Law 93-638 contract, Public Law 102-477 grant, or Public Law 103-413 self-governance annual funding agreement. If no appeal process exists, then the applicant or recipient must pursue the appeal through the appropriate tribal forum.

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**Kevin Gover,**

*Assistant Secretary—Indian Affairs.*

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