



DEPARTMENT OF HEALTH & HUMAN SERVICES

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FEB 24 2006

**ADMINISTRATION FOR CHILDREN AND FAMILIES**

Office of the Assistant Secretary, Suite 600  
370 L'Enfant Promenade, S.W.  
Washington, D.C. 20447

Ms. Kim S. Aydlette  
State Director  
South Carolina Department of Social Services  
P.O. Box 1520  
Columbia, South Carolina 29202

Dear Ms. Aydlette:

This letter constitutes the official written notification, pursuant to 45 CFR Section 1355.38(a)(3), of enforcement actions that the Administration for Children and Families (ACF) is taking against the State of South Carolina pursuant to Section 471(a)(18) of the Social Security Act. Section 471(a)(18) prohibits a State that receives Federal funds from discriminating on the basis of race, color or national origin in making adoptive and foster care placements. This provision is enforced by ACF pursuant to 474(d) of the Social Security Act.

The Office for Civil Rights (OCR) issued a Letter of Findings (LOF) to the South Carolina Department of Social Services (SCDSS) on October 31, 2005. The LOF resulted from an investigation completed by OCR pursuant to its authority under Title VI of the Civil Rights Act of 1964 and Section 1808(c) of the Small Business Job Protection Act. After making its findings, OCR provided ACF with the LOF and other relevant information so that ACF could determine whether South Carolina had violated its Section 471(a)(18) State plan requirements. ACF has reviewed the foregoing and agrees with OCR's investigative findings as detailed in the LOF. Accordingly, ACF has determined that South Carolina has violated Section 471(a)(18) of the Social Security Act and hereby adopts and incorporates by reference the contents of the LOF in its entirety.

In particular, ACF finds that South Carolina, directly and through its SCDSS State office and seven regional offices, discriminated with respect to individual children and families in violation of Section 471(a)(18) and 45 CFR Section 1355.38(a)(2)(i) and (ii). ACF also finds that South Carolina maintained policies, procedures and practices that violated Section 471(a)(18) and 45 CFR Section 1355.38(a)(2)(iii). SCDSS is funded in part by Federal funds pursuant to title IV-E of the Social Security Act, 42 U.S.C. Section 670 *et seq.* As a result, ACF has determined that it must take enforcement actions against South Carolina based upon its review of OCR's investigation.

ACF has exclusive jurisdiction to take enforcement actions for violations of Section 471(a)(18), which includes imposing financial penalties and requiring a corrective action plan pursuant to 45 CFR Section 1355.38. This letter sets forth only ACF's enforcement activities, which are

independent of enforcement activities that OCR may pursue with South Carolina. However, both ACF and OCR are willing to coordinate with South Carolina to achieve an efficient remedy in this matter, especially insofar as developing and submitting a corrective action plan are concerned.

ACF notes that South Carolina violated Section 471(a)(18) by denying the opportunity of several prospective parents to adopt children on the basis of race, color or national origin, as well as by delaying or denying several children the opportunity to be adopted on the basis of race, color or national origin. ACF further notes that South Carolina's policies, procedures and practices include considering race in making placement decisions; using color matching in making placement decisions; subjecting parents who wish to adopt transracially to extra scrutiny and considering the racial preferences of prospective adopted children who are below the legal age of consent.

Finding of noncompliance with Section 471(a)(18) of the Social Security Act:

ACF determines South Carolina to be in noncompliance with Section 471(a)(18) of the Social Security Act. This determination is based on 1) OCR's investigation of violations with respect to individual children and families and 2) OCR's investigation of South Carolina's practices, policies and procedures. There is separate, two-pronged enforcement for the two components of this determination. ACF's enforcement action with respect to each of those components is delineated below.

1) Violations with respect to individual prospective parents and children in foster care:

For violations of Section 471(a)(18) with respect to specific children and families, ACF is obligated to impose an immediate financial penalty against the State of South Carolina. See 45 CFR Sections 1355.38(b)(1) and (g)(2). Pursuant to Section 474(d)(1) and 45 CFR Section 1355.38(h)(1)(i), we will reduce by two percent the amount of the title IV-E funds that South Carolina will receive in the first quarter of Fiscal Year (FY) 2006. This penalty begins in the fiscal year quarter in which South Carolina is notified of the finding of noncompliance. This letter constitutes South Carolina's notice of noncompliance.

ACF will continue to impose a penalty in accordance with 45 CFR Sections 1355.38(g)(2) and 1355.38(h)(1) against each successive quarter's amount of title IV-E funds throughout FY 2006 or until the State completes a corrective action plan and comes into compliance, whichever is earlier. We believe that a corrective action plan, which is required for violations arising from a State's policies, procedures and practices, as explained below, is the most effective way to address the individual violations and is required to cease the financial penalty.

ACF has estimated the initial two percent penalty for this quarter to be approximately \$107,481, based on the amount of Federal title IV-E funds that have been advanced to South Carolina to cover its estimated expenditures during the quarter beginning January 1, 2006. The enclosed worksheet provides the detailed computations for development of this estimate, including the specific amount of title IV-E funds advanced, by title IV-E funding category. The estimated penalty amount may be subject to later adjustment when the actual expenditures for the applicable quarter are determined.

2) Policies, procedures and practices that violate Section 471(a)(18):

We have found that SCDSS maintained policies, procedures and practices that violate Section 471(a)(18). These violations do not carry an immediate financial penalty. Instead, these violations require South Carolina to enter into a corrective action plan with ACF. See 45 CFR Sections 1355.38(a)(2)(iii) and (c)(1). Within 30 days of the receipt of this notice, South Carolina must submit a corrective action plan for ACF's review and approval. See 45 CFR Sections 1355.38(c)(1) and 1355.38(d). This plan must specify, in detail, the steps South Carolina will take to correct the violations identified in the LOF and to prevent any future violations of Section 471(a)(18) from occurring anywhere in the State of South Carolina. When South Carolina's proposed plan is approved by ACF, the State will then have six months to completely implement its plan and come into compliance. See 45 CFR Section 1355.38(c)(1). If South Carolina fails to complete its corrective action plan and come into compliance within six months, ACF will take further action in accordance with 45 CFR Sections 1355.38(g)(3) and 1355.38(h)(1).

Corrective action plan<sup>1</sup>:

We incorporate by reference herein each of the terms and remedies of the corrective action plan as delineated to South Carolina in the Office for Civil Rights' October 31, 2005, LOF. Compliance with the aforementioned terms and remedies, as well as the below terms and remedies, will satisfy 45 CFR Section 1355.38, which ACF is charged with enforcing:

1) SCDSS will establish policies, practices and procedures to ensure that at each point

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<sup>1</sup> Although the Paperwork Reduction Act (PRA), 44 U.S.C. Section 3501 *et seq.*, clearly does not apply to individualized corrective action plans prepared pursuant to Multiethnic Placement Act (MEPA) and 45 CFR Sections 1355.38(b), (d) and (g), we are notifying you that the Office of Management and Budget (OMB) has reviewed and approved any requirements for such corrective action plans under 45 CFR Section 1355.38 and issued OMB Control No. 0970-0214 to signal its approval. OMB approval is currently in effect through October 31, 2006, and subject to renewal at that time. In accordance with the PRA, an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB Control Number.

during the foster care and adoption decision making and placement process, SCDSS does not discriminate against current or prospective foster or adoptive parents or the children in SCDSS' care.

- 2) SCDSS shall train its staff on the Federal law and policy relating to the use of race, color or national origin in adoption and foster care placement decisions. Training shall emphasize how to apply Federal law and policy to caseworkers' day-to-day work. SCDSS shall submit all proposed training materials to ACF for review and approval no later than 45 days prior to using said materials to train staff.
- 3) ACF must approve any proposed changes to all policies, procedures and/or forms.
- 4) ACF must be provided with copies of any and all placement decision appeals stemming from an allegation(s) of race, color or national origin discrimination.
- 5) ACF must be provided with copies of any and all notices regarding the substance of OCR's findings that SCDSS sends to individuals who are waiting to adopt or who have applied to adopt since 1999. ACF must approve these notices.

The above, in conjunction with the remedies specified in the OCR LOF, constitute a basic outline of the minimal acceptable aspects of a corrective action plan for this case. The State of South Carolina should add to this outline as necessary and should include in its plan the mechanisms by which it intends to develop systems or processes to achieve statewide compliance with Section 471(a)(18). The corrective action plan must also conform to the requirements set forth at 45 CFR Section 1355.38(d).

As we have mentioned, ACF is prepared to assist South Carolina develop a foster care and adoption child welfare system that does not discriminate against families or children. The following specific observations about South Carolina's practices may provide more guidance on how to accomplish the goal:

- Cease collecting birth parents' preferences concerning the race, color or national origin of adoptive parents;
- Adopt a process to review placement decisions that consider the racial preferences of children, especially those who are younger than the age of consent for adoption in the State;
- Do not consider skin complexion when making foster care or adoption placement decisions or placements; and
- Establish documentation and supervisory requirements for SCDSS staff, so that if a caseworker believes that race, color or national origin must be considered, a supervisor must become involved in the case.

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Should you wish to discuss ACF's finding of noncompliance with Section 471(a)(18) or to seek further training or technical assistance regarding South Carolina's efforts to come into compliance with Section 471(a)(18), please feel free to contact Carlis Williams, ACF's Regional Administrator in Region IV at (404) 562-2900. We want South Carolina to minimize its financial penalties and serve the children and families in the State in a non-discriminatory manner. We are prepared to help you achieve these goals. However, any such discussions will not change the time limits set forth in the applicable regulations for submission of an acceptable corrective action plan.

As 45 CFR Section 1355.39 provides, South Carolina may appeal ACF's determination of noncompliance and reduction in funds to the U.S. Department of Health and Human Services Departmental Appeals Board pursuant to the procedures established in 45 CFR Part 16. You may not further contest this decision unless, within 60 days after you receive this decision, you deliver or send by certified or registered mail a written notice of appeal to the:

U.S. Department of Health and Human Services  
Departmental Appeals Board - MS 6127, Appellate Division  
Cohen Building – Room G-644  
330 Independence Avenue, S.W.  
Washington, D.C. 20201

You must attach to the notice of appeal a copy of this decision, note that you wish to appeal, and state specifically and in detail why you think that this decision is incorrect. The Board will notify you of further procedures. If you file an appeal, please send a copy of your notice of appeal to the undersigned, as well as to the Board.

Sincerely,

/s/

Wade F. Horn, Ph.D.  
Assistant Secretary  
for Children and Families

Enclosure

**Estimate of Funds to be Withheld from South Carolina for Non-Compliance with Section 471(a)(18) of the Act (Effective with Notice of Non-Compliance Dated \_\_\_\_\_)**

		Additional Potential Penalties During FY 06		
	Award <sup>1/</sup> for QE 03/06	1st Non- Compliance Penalty @ 2%	2nd Non- Compliance <sup>2/</sup> Penalty @ 2%	3rd Non- Compliance Penalty @ 2%
FC MA PMTS	\$ 920,698			
FC ADMIN COSTS	\$ 1,289,585			
FC TRAINING	\$ 555,280			
<b>SUB TOTAL FC</b>	<b>\$ 2,765,563</b>			
AA PAYMENTS	\$ 1,872,052			
AA ADMIN COSTS	\$ 118,285			
AA TRAINING	\$ 201,111			
<b>SUB TOTAL AA</b>	<b>\$ 2,191,448</b>			
CFCIP (including ETV)	\$ 417,043			
<b>SUB TOTAL CFCIP</b>	<b>\$ 417,043</b>			
<b>TOTAL ALL TITLE IV-E FUNDS</b>	<b>\$ 5,374,054</b>	<b>\$ 107,481</b>	<b>\$ 107,481</b>	<b>\$ 107,481</b>

1/ Since actual expenditures for the quarter in which the State received notification of the violation will not be available until April 30, 2006, the amount of the penalty or "funds to be withheld" has been determined based on the funds "advanced" to the State via a grant award for the Quarter Ending 03/31/06.

2/ For each succeeding quarter within the fiscal year of the notification, additional penalties will be imposed until the State comes into compliance.