

~~Todd: done? autopen OK? members on Monday/relevant ones alerted
date????~~

~~POTUS sign-off~~

~~Check w/Murguia/Hilley~~

~~-walker OK? when do members get it? Monday??~~

~~Janet: when can Vobejda call members???~~

✓ Fax to Vobejda -- along w/FL things: p334-1430; fax 334-6097

- ~~tell Vobejda that this will be signed on Sunday and sent to
members Monday a.m. (some sooner??)~~
- ~~some alerted~~

~~Email to Walker, Murguia, Todd~~

~~Email to Glynn, Dawn, Ken, Bruce, Jeremy, Jen
Rosewater???~~

Deliver to Melissa w/radio address, whatever faxed to Vobejda

✓ pull 2 letters from packet + replace

✓ Also pull replace
Vobejda fax sheet

✓ Fax Murguia 6-26-04

✓ Rosewater?

Melissa:

Attached is the letter as sent to Vobejda and the First Lady materials I sent to her, along with the radio address.

I also include some background on the bill in case you might need it (which I didn't give to Vobejda).

Leg Affairs here is saying this won't be autopenned and sent to congressional offices until Monday. They don't think it needs to go any sooner, because they are alerting the members they think matter (Molinari, Rangel, Shaw).

(A question we might want to think about is giving Metzenbaum a call Sunday night, if we think we have any hope of mending fences with him. But maybe such a call could backfire, I don't know.)

Regarding the tax questions you've raised, Annette Smith would be best to answer them, but here is what I know:

Is the first time we've had an adoption tax credit? There was a deduction, not a credit, in the law that was repealed in 1986, as part of Tax Reform.

How much will this cost the Treasury? \$3 billion over 10 years (although I would double check with Annette).

What percent of total revenue is the repeal of energy conservation tax incentive? Still not sure; check w/Annette.

Again, Annette Smith's home phone is 703-413-8112; but she is more likely to be on her pager, at 801-3076. Les Samuels' home number is 265-0422. The Treasury operator is 622-1260.

Good luck! I'll be on beeper and reachable through the WH operator.

Diana

EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
Washington, D.C. 20503-0001

LRM NO: 4305

FILE NO: 2226

URGENT

5/2/96

LEGISLATIVE REFERRAL MEMORANDUMTotal Page(s): 4

TO: Legislative Liaison Officer - See Distribution below:
FROM: Janet FORSGREN *Janet L. Forsgren* (for) Assistant Director for Legislative Reference
OMB CONTACT: Melinda HASKINS 395-3923 Legislative Assistant's Line: 395-3923
C=US, A=TELEMAIL, P=GOV+EOP, O=OMB, OU1=LRD, S=HASKINS, G=MELINDA, I=D
haskins_m@a1.eop.gov

SUBJECT: Executive Office of the President Proposed Statement of Administration
Policy RE: HR3286, To help families defray adoption costs, and to promote
the adoption of minority children

DEADLINE: 2 PM Friday, May 03, 1996

In accordance with OMB Circular A-19, OMB requests the views of your agency on the above subject before
advising on its relationship to the program of the President.

Please advise us if this item will affect direct spending or receipts for purposes of the
"Pay-As-You-Go" provisions of Title XIII of the Omnibus Budget Reconciliation Act of 1990.

COMMENTS: Please comment on the attached draft Statement of Administration Policy (SAP) on H.R. 3286.
The bill is scheduled for floor action May 8. Although title III of the bill, as introduced, was
removed at markup by the House Resources Committee, we expect that title III will be reinstated
by the House Rules Committee. An amendment to strike title III may be offered on the House
floor. This deadline is firm.

LEGISLATIVE REFERRAL MEMORANDUM
Distribution List**LRM NO: 4306****FILE NO: 2225**

SUBJECT: Executive Office of the President Proposed Statement of Administration Policy RE: HR3286, To help families defray adoption costs, and to promote the adoption of minority children

AGENCIES:

19-Council on Environmental Quality - Elisabeth Blaug - 2023955750
32-ENERGY - Bob Rabben - 2025866718
33-Environmental Protection Agency - Chris Hoff - 2022605414
52-HHS - Sondra S. Wallace - 2026907760
59-INTERIOR - Jane Lyder - 2022086706
61-JUSTICE - Andrew Fols - 2025142141
76-National Economic Council - Sonyia Matthews - 2024562174
118-TREASURY - Richard S. Carro - 2026221146

EOP:

Apfel_K
Cassell_M
Minarik_J
Glauthier_TJ
White_B
Fontenot_K
Cash_L
Ellertson_C
Peroff_K
Bennethum_G
Steer_R
Cogswell_R
Beard_B
James_I
Kodl_R
Lyon_R
Damus_R
Oliven_L
Haun_D
Fairweather_R
Jukes_J
Jones_R
OMB-LA
Murr-J
Forsgren_J
Barth_M
McConnell_B
Schmidt_M
Chirwa_D
Kagan_E
Kolaian_A
Fortuna_D
Reed_B
Ben-Ami_J
Murguia_J
Klein_J
O'Connor_J
Regas_D
Peterson_RK

LRM NO: 4305
FILE NO: 2225

☐ Concur
☐ No Objection
☐ No Comment
☐ See proposed edits on pages _____
☐ Other: _____
☐ FAX RETURN of _____ pages, attached to this response sheet

Draft
May 1996
(House)

H.R. 3286 - The Adoption Promotion and Stability Act of 1996
(Molinari (R) NY and 6 cosponsors)

The Administration is deeply committed to enhancing the adoption opportunities of American families and therefore strongly supports H.R. 3286. The Administration particularly applauds the \$5,000 per child adoption tax credit in title I of the bill. In addition, the adoption and foster care provisions in title II of the bill are consistent with the Administration's current policy and practices.

7 The Administration supports passage of a Young-Miller amendment to strike provisions of H.R. 3286 that would allow State courts to pre-empt Tribal Governments in decisions regarding the adoption of Native American children. These provisions raise serious ~~constitutional~~ concerns because they would seemingly impinge on Tribal sovereignty.

The Administration will work with Congress to identify more suitable offsets to the lost tax revenue resulting from the bill's adoption tax credit. The Administration is concerned that the bill's provision to eliminate the business exclusion for energy subsidies will repeal a powerful incentive for businesses to conserve energy. The bill's other offset -- tightening the reporting requirements for U.S. holders of foreign trusts -- is included in the President's balanced budget proposal and should be reserved for deficit reduction.

Pay-As-You-Go Scoring

[Treasury: Please provide estimates.]

★ ★ ★ ★ ★

Senate letter

A Good Mother's Day Gift: Pass the Adoption Bill

Howard Metzenbaum did something this week that should qualify for "Ripley's Believe It Or Not." The former liberal Democratic senator endorsed a Republican measure to overturn a bill that he pushed through two years ago and that even bears his name.

Specifically, Sen. Metzenbaum embraced legislation that would prohibit racial discrimination in adoption. This is an issue Howard Metzenbaum cares about so deeply that he has taken on both the Na-



Politics & People

By Albert R. Hunt

tional Association of Black Social Workers and the Clinton administration's Health and Human Services bureaucrats. He feels his bill has been undercut, so he's supporting House Republican efforts to achieve the same goal.

This is part of a broader pro-adoption bill that the Republicans are bringing to the floor next week, not coincidentally only a few days before Mother's Day. The legislation is laudable and Democrats and the Clinton administration should join Sen. Metzenbaum and get behind it.

Adoption isn't a panacea for abortion or child abuse or foster care. But a more aggressive pro-adoption policy, involving both the public and private sectors, would help. (The youngest of our three children is a seven-year-old—as of yesterday—adopted daughter from Korea, so absolutely nothing in this column is dispassionate.) The House bill, led by House Rules Committee Chairman Gerald Solomon (an adoptee), Rep. Susan Molinari and Rep. Clay Shaw, proposes a \$5,000 tax credit to help defray adoption expenses. Adoption can be prohibitively expensive; the National Council of Adoption figures the average cost of a do-

mestic adoption is \$20,000.

This has made it impossible for many middle class parents to adopt. Under the House bill, tax write-offs would be available for incomes up to \$115,000; in addition there would be an income tax exclusion for employer-provided adoption benefits. This provision is relatively cheap, costing the federal treasury less than \$2 billion over seven years, and has only one flaw: It isn't refundable. That's a retreat from the Republicans' Contract With America. Refundability ought to be restored to facilitate adoption for some lower-middle income families.

The most emotional provision concerns transracial adoption. This would prohibit states or anyone receiving federal assistance from discriminating against prospective parents because of race. If everything else is equal, preference may be given on the basis of race, but adoption agencies would not be allowed to delay the placement of a child for reasons of "racial matching."

The need here is clear. Of the almost half-million kids in foster care, about one-third are African-American and, on average, they wait for adoption more than twice as long. A University of California at Berkeley study found that 42% of African-American children wait more than four years to be adopted but only 17% of white children wait that long.

This is a conscious policy of many black social workers, who have assailed interracial adoption as "racial and cultural genocide." Sen. Metzenbaum, with the support of President Clinton, moved to change this in the last Congress. But despite denials by the Department of Health and Human Services, he says that agency "pulled the rug out from under my bill."

The politics of adoption unfortunately get twisted. Too many liberals, in particular, have a blind spot. One reason is abortion. Some pro-choice advocates mistakenly see adoption advocacy as undercut-

ting them. "This is an issue that should unite both sides of the abortion debate," correctly argues Rep. Molinari, who is pro-choice. In his 1992 acceptance speech at the Democratic Convention, Bill Clinton promised to make abortion "safe, legal and rare." One small way to make it rarer is to facilitate adoption.

A more fundamental problem may be an ideological attachment to the landmark

	CHILDREN IN FOSTER CARE	CHILDREN ADOPTED FROM FOSTER CARE	CHILD ABUSE FATALITIES
1985	278,000	18,000	810
1993	445,000	18,000	1,168

Sources: Administration for Children and Families (HHS); American Public Welfare Assoc. and the Nat'l Committee to Prevent Child Abuse

1980 Child Welfare Adoption and Assistance Act. This mandates states to make "reasonable efforts" to keep or reunite children with their biological parents under the laudable notion that intact families are better for children.

Unfortunately this well-intended effort may be harming more children than it's helping. Compared to the mid-1980s there are many more children today in foster care, and a much smaller percentage of them are adopted, while reported child abuse is soaring. The files are full of recidivist child abusers, yet as Michael Wald, a law professor and former top HHS official notes, all the research "indicates low levels of success in rehabilitating parents who seriously abuse very young children."

The horror stories are omnipresent. Tuesday's New York Times, for instance, had a front page piece on recriminations following the death of six-year-old Elisa Izquierdo, whose badly beaten body was discovered last November; her mother is charged with the death. Next to that ac-

count is a story about two little children testifying how their mother and father brutalized and killed their four-year-old sister—including beatings, tying her to chairs and burning her with cigarettes and hair curlers.

Eight years ago we had to hospitalize our oldest child. For four days his roommate was a 14-month-old boy who was tossed into a scalding hot tub by his mother's boyfriend because he was crying. The mother, apparently on drugs, visited the little guy only once. Yet in a few days he was slated to go back to that home.

This law needs to be changed. The emphasis on "preserving family" outrages Carol Statuto Bevan, a child welfare and adoption expert: "This risks the safety and welfare of too many children." Instead, she says, the focus should be "on preserving the child's welfare." Such a child-centered approach raises tough issues, especially how to take kids away from abusive parents and make them eligible for adoption. But it needs to be done.

These are issues that President Clinton cares about, and he's actually considering backing the current legislation. And the skepticism that more than a few in the adoption community express about Hillary Clinton is misplaced; in her speeches, her newspaper columns and her recent book she is a strong adoption advocate.

But the Clintons need to be more visible in marshaling support for more public resources (tax breaks and subsidies), reforming the legal system (changing the child welfare and family preservation standards and expediting adoption procedures), improving the private sector (pressure for more expansive employer adoption benefits) and increasing public awareness. It may be impossible in an election year, but here's a terrific idea: Bill Bennett, the conservative Mr. Virtues, and Mrs. Clinton team up to lead a nationwide campaign for adoption.

EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
Washington, D.C. 20503-0001

LRM NO: 4227

FILE NO: 2225

URGENT

4/26/96

LEGISLATIVE REFERRAL MEMORANDUM

Total Page(s): 26

TO: Legislative Liaison Officer - See Distribution below

FROM: Janet FORSGREN (for) Assistant Director for Legislative Reference

OMB CONTACT: Melinda HASKINS 395-3923 Legislative Assistant's Line: 395-3923
C=US, A=TELEMAIL, P=GOV+EOP, O=OMB, OU1=LRD, S=HASKINS, G=MELINDA, I=D
haskins_m@a1.eop.gov

SUBJECT: Executive Office of the President OMB Request for Views RE: HR3286. To help families defray adoption costs, and to promote the adoption of minority children

DEADLINE: 10 AM Friday, May 03, 1996

In accordance with OMB Circular A-19, OMB requests the views of your agency on the above subject before advising on its relationship to the program of the President.

Please advise us if this item will affect direct spending or receipts for purposes of the "Pay-As-You-Go" provisions of Title XIII of the Omnibus Budget Reconciliation Act of 1990.

COMMENTS: Please provide comments on H.R. 3286 in a form that we could use to prepare a Statement of Administration Position (SAP). The response deadline is firm. The bill has been referred to the House EEO, Resources, and Ways and Means committees. We understand that the bill may be considered by the House on May 8, and that the House Resources Committee deleted Title III of the bill at its markup on April 25. A copy of the Ways and Means Committee press release and the bill text, as introduced, is attached.

AGENCIES:

32-ENERGY - Bob Rabben - 2025866718
52-HHS - Sondra S. Wallace - 2026907760
59-INTERIOR - Jane Lyder - 2022086706
61-JUSTICE - Andrew Fois - 2025142141
76-National Economic Council - Sonya Matthews - 2024562174
118-TREASURY - Richard S. Carro - 2026221146

- Refundable (Hunt endorses; was ref. in Contract)
- Double dipping
- Energy

Solomon restore@Rules - Indian

* Imke Meekbaum - MV
* Do exec action at signing
* Thomas: like Arizona ??

* For - exclusion

* Nancy J - state agencies
100% too much a credit

* Indian - we
would sign it? -

BR (eventually)
unconstit'l

* HHS no go
examples of states
Grewine App?

* Letter on tax credit
Kodi_R

* Contract MEFA
exactly

(Lots to say re
pers int test)

EOP:

Apfel_K/Cassell_M
White_B
Fontenot_K
Ellertson_C
Cash_L
Lyons_R
Damus_R
Olive_L
Haun_D
James_I
Jukes_J
Jones_Ron
OMB-LA
Murr_J
Forsgren_J
Barth_M
Bernstein_M
Warnath_S
Schmidt_Mike
Schroeder_I
Kagan_E
Kolaian_A

Farkula - D

"This is consistent w/ current practice"

* Johnny (eventually) budget talks
on table if L endorses

LRM NO: 4227
FILE NO: 2225

If the response is short and you prefer to call, please call the branch-wide line shown below (NOT the analyst's line) to leave a message with a legislative assistant.

Please include the LRM number shown above, and the subject shown below.

- 1) OPM
- 2) Arizona
- 3) State goals HHS likes
- 4) FL: summit for comms
(bus, relig)
not just profs.
100,000

NEWS

FROM THE COMMITTEE ON WAYS AND MEANS

FOR IMMEDIATE RELEASE

April 24, 1996

CONTACT: Ari Fleischer or Scott Brenner

(202) 225-8933

The Adoption Promotion and Stability Act of 1996

Statement of Chairman Bill Archer

Good afternoon.

In America today, there is no reason why any child should be denied a loving family. Unfortunately, there are more than 500,000 children lingering in foster care waiting to be adopted. And there is little hope for these kids when only one in 10 will be cleared for adoption this year.

There are many parents who want to adopt these kids but can't because they either don't have the money to pay the adoption fees, or because a federal regulation says they will not be good parents because their skin color is different from the child they want to adopt.

It's simply not right to deny a child the opportunity to grow up in a loving home because his parents are poor or are of a different race.

For these reasons, we are introducing the Adoption and Promotion and Stability Act of 1996. This legislation will help parents who want to adopt by providing them with a \$5,000 adoption tax credit to help cover many of the expenses involved in the adoption process. It will also put an end to the practice of delaying adoption, often for years, until the States can find racially matched parents for the adopted children.

There are hundreds of thousands of kids who want to be adopted and there are probably an equal number of parents who want to adopt them. This legislation will help to bring these families together. Our bill will make adoption easier and help find loving homes for hundreds of thousands of children in need.

I would also add that the \$5,000 adoption tax credit is part of the Contract with America. Republicans remain committed to fulfilling the promises we made to the American people, one important step at a time.

Thank you.

690-8425

NEWS

FROM THE COMMITTEE ON WAYS AND MEANS

FOR IMMEDIATE RELEASE

April 24, 1996

CONTACT: Ari Fleischer or Scott Breaner
(202) 225-8933

Fact Sheet

The Adoption Promotion and Stability Act of 1996

"In America today, there is no reason why a child should be denied a loving family. There are many parents who want to adopt these kids but can't because they don't have the money to pay the adoption fees, or because some federal regulation says they will not be good parents because their skin color is different from the child they want to adopt. Our bill will make adoption easier and help find loving homes for hundreds of thousands of children in need."

-Chairman Bill Archer

Title I: Adoption Tax Credit

To give a helping hand to middle-income families that seek to adopt a child, the bill provides a tax credit of up to \$5,000 to help defray the cost of one-time adoption expenses. According to the National Council for Adoption, the average cost of adopting a child within the United States is \$20,000, while the cost of adopting a child abroad can reach as high as \$36,000.

The credit is phased out for incomes between \$75,000 and \$115,000. In addition, the bill would provide that employees may receive an income tax exclusion, up to \$5,000 per child, for employer-provided adoption assistance. Adopting families would have 5 years to claim their credit, thereby making it more likely that moderate income families would be able to use the credit. Except in the case of special needs adoptions, the credit is denied for expenses that are covered by any Federal, State, or local grant program. This title is effective after December 31, 1996.

double
dipping

Title II: Interethnic Adoption

No child should languish in foster care, not even for a day, if a loving family stands ready to adopt that child. Unfortunately, partly because current adoption policies place an inordinate emphasis on "race matching", minority children remain in foster care on average more than twice as long as white children.

According to the Institute for Justice, there are currently 500,000 children in the foster care system, 49% of whom are minorities. Of those, over 30 percent are black, 14 percent are Hispanic, and roughly 5 percent are of other, non-white backgrounds. (Minorities constitute 17 percent of the general population.) Race matching necessarily leaves minority children, primarily black children, languishing in foster care, sometimes never finding a permanent home. Although extensive efforts have been made at recruiting adoptive black families, including subsidies, recruiting programs, and different qualifications than those used for white families, tens of thousands of black children are still waiting for homes.

The Child Welfare Research Center of the University of California at Berkeley found that 41.2% of black children wait more than four years to be adopted while 17.2% of white children remain in foster care for over four years.

In order to find loving homes for all children as fast as reasonable, this title prohibits a State or other entity that receives Federal assistance from *denying* to any person the opportunity to become an adoptive or foster parent on the basis of race, color, or national origin. If two otherwise qualified families seek to adopt children, race may be a factor in placing the child, but adoption agencies may not *delay* the placement of a child by waiting for a "race matched" parent to come along.

Oh I've
under
MEPP?

Similarly, no State or other entity receiving Federal funds can delay or deny the placement of a child for adoption or foster care, or otherwise discriminate in making a placement decision, on the basis of the race, color, or national origin of the adoptive or foster parent. State compliance with this provision would be subject to review by HHS as part of the regular review of State foster care and adoption programs; States found to be out of compliance would have an opportunity to correct their violations. If compliance is not achieved within time limits specified by the Secretary, states would undergo a series of graduated fines of 2 percent, 5 percent, and 10 percent, applied to federal funds received by the State under Title IV-E foster care and adoption programs, for the first, second, and third violations respectively. Private entities found to be in violation would be required to return all funds received in the fiscal year.

Title III: Indian Adoption

This title exempts child custody proceedings that are the result of the voluntary placement of children for adoption by birthparents who do not maintain significant tribal affiliations from the application of the Indian Child Welfare Act (ICWA). ICWA would continue to be applied in the placement of children where at least one of the child's biological parents is of Indian descent and at least one of the child's biological parents maintains significant social, cultural, or political affiliation with the Indian tribe of which either parent is a member. In any child custody proceeding involving an Indian child, membership in an Indian tribe shall be effective from the actual date of admission to membership in the Indian tribe and shall not be given retroactive effect. This title is effective on the date of enactment and applies to all child custody proceedings that are not yet final.

Title IV: Revenue Provisions

Foreign Trusts. This provision, taken from the Balanced Budget Act of 1995, strengthens information reporting and anti-abuse rules directed at sophisticated tax planning techniques involving foreign trusts, their beneficiaries, and their grantors.

Energy Subsidies. Currently, businesses are allowed to exclude (i.e., are not taxed on) 65 percent of the amount of subsidies provided by a public utility for the purchase of any energy conservation measure. The bill would repeal this exclusion, generally for tax years after 1996. This provision was approved by the Congress as part of the Balanced Budget Act of 1995.

> 13

1 of 1 items

CQ's WASHINGTON ALERT 04/25/96

*** DETAIL REPORT -- LEGISLATIVE ACTION, AMENDMENTS, SPEECHES ***

MEASURE: HR3286

SPONSOR: Molinari (R-NY)

OFFICIAL TITLE: A bill to help families defray adoption costs, and to promote the adoption of minority children.

INTRODUCED: 04/23/96

COSPONSORS: 6 (Dems: 0 Reps: 6 Ind: 0)

COMMITTEES: House Ways and Means
House Resources
House Economic and Educational Opportunities

LEGISLATIVE ACTION:

04/23/96 Referred to Committee on Economic and Educational Opportunities, Committee on Resources, Committee on Ways and Means (to the Committee on Ways & Means for a period ending not later than May 3, 1996; to the remaining committees, for a period not ending later than April 30, 1996, in each case for such provisions as fall within the jurisdiction of the committee concerned) (CR p. H3730)

There are no more items to display.

Results: 1 items in BILLTRACK

Search criteria used:

BILL:HR3286

Results are: Bill number as entered

SEARCH/DISPLAY OPTIONS

1 NARROW your search

2 REFINE your search on prime topic

13 DETAIL action, amendments, speeches

14 ACTION detailed action (no speeches)

- | | |
|--------------------------------------|--------------------------------------|
| 3 SORT retrieved items | 15 SUMMARY major action only |
| 4 SAVE bill numbers in a list | 16 STATUS most recent major action |
| 5 GRAPH relevance ranking | 17 MILESTONE key action dates table |
| 6 SCAN select from bill citations | 18 COSPONSOR-ALL current cosponsors |
| 7 CITE display bill citations | 19 COSPONSOR-DATE cosponsors by date |
| 8 BROWSE peruse terms in context | 20 SCHEDULE hearing, markup, floor |
| 9 EXCERPT continuous context display | 21 BILLWATCH bill analysis by CQ |
| 10 READ bill analysis and all action | 22 REPORT for custom reports |
| 11 DIGEST bill analysis by CRS | 23 RESEARCH bills in other databases |
| 12 HISTORY all legislative action | |

Enter a number or a command, BACK, HELP or STOP

>

104th CONGRESS
2d Session

H. R. 3286

To help families defray adoption costs, and to promote the adoption of
minority children.

IN THE HOUSE OF REPRESENTATIVES

April 23, 1996

Ms. Molinari (for herself, Mr. Archer, Mr. Bunning of Kentucky, Ms. Pryce, Mr. Solomon, Mr. Tiahrt, and Mr. Shaw) introduced the following bill; which was referred to the Committee on Ways and Means for a period ending not later than May 3, 1996, and in addition to the Committees on Resources and Economic and Educational Opportunities for a period ending not later than April 30, 1996, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

A BILL

To help families defray adoption costs, and to promote the adoption of
minority children.

Be it enacted by the Senate and House of Representatives of the
United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "Adoption Promotion and Stability Act
of 1996".

SEC. 2. TABLE OF CONTENTS.

The table of contents of this Act is as follows:

Sec. 1. Short title.

Sec. 2. Table of contents.

TITLE I--CREDIT FOR ADOPTION EXPENSES

Sec. 101. Credit for adoption expenses.

TITLE II--INTERETHNIC ADOPTION

Sec. 201. Removal of barriers to interethnic adoption.

TITLE III--CHILD CUSTODY PROCEEDINGS AFFECTED BY THE INDIAN CHILD
WELFARE ACT OF 1978

Sec. 301. Inapplicability of the Indian Child Welfare Act of 1978 to

child custody proceedings involving a child
whose parents do not maintain affiliation
with their Indian tribe.

Sec. 302. Membership and child custody proceedings.

Sec. 303. Effective date.

TITLE IV--REVENUE OFFSETS

Sec. 400. Amendment of 1986 Code.

Subtitle A--Exclusion for Energy Conservation Subsidies Limited to
Subsidies With Respect to Dwelling Units

Sec. 401. Exclusion for energy conservation subsidies limited to
subsidies with respect to dwelling units.

Subtitle B--Foreign Trust Tax Compliance

Sec. 411. Improved information reporting on foreign trusts.

Sec. 412. Modifications of rules relating to foreign trusts having one
or more United States beneficiaries.

Sec. 413. Foreign persons not to be treated as owners under grantor
trust rules.

Sec. 414. Information reporting regarding foreign gifts.

Sec. 415. Modification of rules relating to foreign trusts which are
not grantor trusts.

Sec. 416. Residence of estates and trusts, etc.

TITLE I--CREDIT FOR ADOPTION EXPENSES

SEC. 101. CREDIT FOR ADOPTION EXPENSES.

(a) In General.--Subpart A of part IV of subchapter A of chapter 1
of the Internal Revenue Code of 1986 (relating to nonrefundable
personal credits) is amended by inserting after section 22 the
following new section:

vs Gats

SEC. 23. ADOPTION EXPENSES.

(a) Allowance of Credit.--In the case of an individual, there
shall be allowed as a credit against the tax imposed by this chapter
for the taxable year the amount of the qualified adoption expenses paid
or incurred by the taxpayer during such taxable year.

(b) Limitations.--

(1) Dollar limitation.--The aggregate amount of qualified
adoption expenses which may be taken into account under
subsection (a) with respect to the adoption of a child shall
not exceed \$5,000.

(2) Income limitation.--The amount allowable as a credit
under subsection (a) for any taxable year shall be reduced (but
not below zero) by an amount which bears the same ratio to the
amount so allowable (determined without regard to this
paragraph but with regard to paragraph (1)) as--

(A) the amount (if any) by which the taxpayer's
adjusted gross income (determined without regard to
sections 911, 931, and 933) exceeds \$75,000, bears to

(B) \$40,000.

(3) Denial of double benefit.--

(A) In general.--No credit shall be allowed under
subsection (a) for any expense for which a deduction or
credit is allowable under any other provision of this chapter.

(B) Grants.--No credit shall be allowed under
subsection (a) for any expense to the extent that funds
for such expense are received under any Federal, State,
or local program. The preceding sentence shall not
apply to expenses for the adoption of a child with

special needs.

“(C) Reimbursement.--No credit shall be allowed under subsection (a) for any expense to the extent that such expense is reimbursed and the reimbursement is excluded from gross income under section 137.

“(c) Carryforwards of Unused Credit.--If the credit allowable under subsection (a) for any taxable year exceeds the limitation imposed by section 26(a) for such taxable year reduced by the sum of the credits allowable under this subpart (other than this section), such excess shall be carried to the succeeding taxable year and added to the credit allowable under subsection (a) for such taxable year. No credit may be carried forward under this subsection to any taxable year following the fifth taxable year after the taxable year in which the credit arose. For purposes of the preceding sentence, credits shall be treated as used on a first-in first-out basis.

“(d) Definitions.--For purposes of this section--

“(1) Qualified adoption expenses.--The term ‘qualified adoption expenses’ means reasonable and necessary adoption fees, court costs, attorney fees, and other expenses--

“(A) which are directly related to, and the principal purpose of which is for, the legal adoption of an eligible child by the taxpayer, and

“(B) which are not incurred in violation of State or Federal law or in carrying out any surrogate parenting arrangement.

Such term shall include expenses for a foreign adoption only if the child is actually adopted.

“(2) Expenses for adoption of spouse's child not eligible.--The term ‘qualified adoption expenses’ shall not include any expenses in connection with the adoption by an individual of a child who is the child of such individual's spouse.

“(3) Eligible child.--The term ‘eligible child’ means any individual--

“(A) who has not attained age 18 as of the time of the adoption, or

“(B) who is physically or mentally incapable of caring for himself.

“(4) Child with special needs.--The term ‘child with special needs’ means any child if--

“(A) a State has determined that the child cannot or should not be returned to the home of his parents, and

“(B) such State has determined that there exists with respect to the child a specific factor or condition (such as his ethnic background, age, or membership in a minority or sibling group, or the presence of factors such as medical conditions or physical, mental, or emotional handicaps) because of which it is reasonable to conclude that such child cannot be placed with adoptive parents without providing adoption assistance.

“(e) Married Couples Must File Joint Returns.--Rules similar to the rules of paragraphs (2), (3), and (4) of section 21(e) shall apply for purposes of this section.”

(b) Exclusion of Amounts Received Under Employer's Adoption Assistance Programs.--Part III of subchapter B of chapter 1 of such Code (relating to items specifically excluded from gross income) is amended by redesignating section 137 as section 138 and by inserting after section 136 the following new section:

“SEC. 137. ADOPTION ASSISTANCE PROGRAMS.

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or foster care placements may--

(A) deny to any person the opportunity to become an adoptive or a foster parent, on the basis of the race, color, or national origin of the person, or of the child, involved; or

(B) delay or deny the placement of a child for adoption or into foster care, or otherwise discriminate in making a placement decision, on the basis of the race, color, or national origin of the adoptive or foster parent, or the child, involved.''

(b) Enforcement.--Section 474 of such Act (42 U.S.C. 674) is amended by adding at the end the following:

(d) (1) If a State's program operated under this part is found, as a result of a review conducted under section 1123, to have violated section 471(a)(18) during a quarter with respect to any person, then, notwithstanding subsection (a) of this section and any regulations promulgated under section 1123(b)(3), the Secretary shall reduce the amount otherwise payable to the State under this part, for the quarter and for each subsequent quarter before the 1st quarter for which the State program is found, as a result of such a review, not to have violated section 471(a)(18) with respect to any person, by--

(A) 2 percent of such otherwise payable amount, in the case of the 1st such finding with respect to the State;

(B) 5 percent of such otherwise payable amount, in the case of the 2nd such finding with respect to the State; or

(C) 10 percent of such otherwise payable amount, in the case of the 3rd or subsequent such finding with respect to the State.

(2) Any other entity which is in a State that receives funds under this part and which violates section 471(a)(18) during a quarter with respect to any person shall remit to the Secretary all funds that were paid by the State to the entity during the quarter from such funds.

(3) (A) Any individual who is aggrieved by a violation of section 471(a)(18) by a State or other entity may bring an action seeking relief from the State or other entity in any United States district court.

(B) An action under this paragraph may not be brought more than 2 years after the date the alleged violation occurred.

(4) This subsection shall not be construed to affect the application of the Indian Child Welfare Act of 1978.''

(c) Civil Rights.--

(1) Prohibited conduct.--A person or government that is involved in adoption or foster care placements may not--

(A) deny to any individual the opportunity to become an adoptive or a foster parent, on the basis of the race, color, or national origin of the individual, or of the child, involved; or

(B) delay or deny the placement of a child for adoption or into foster care, or otherwise discriminate in making a placement decision, on the basis of the race, color, or national origin of the adoptive or foster parent, or the child, involved.

(2) Enforcement.--Noncompliance with paragraph (1) is deemed a violation of title VI of the Civil Rights Act of 1964.

(3) No effect on the Indian child welfare act of 1978.-- This subsection shall not be construed to affect the application of the Indian Child Welfare Act of 1978.

(d) Conforming Repeal.--Section 553 of the Howard M. Metzenbaum Multiethnic Placement Act of 1994 (42 U.S.C. 5115a) is repealed.

TITLE III--CHILD CUSTODY PROCEEDINGS AFFECTED BY THE INDIAN CHILD WELFARE ACT OF 1978

SEC. 301. INAPPLICABILITY OF THE INDIAN CHILD WELFARE ACT OF 1978 TO
CHILD CUSTODY PROCEEDINGS INVOLVING A CHILD WHOSE PARENTS
DO NOT MAINTAIN AFFILIATION WITH THEIR INDIAN TRIBE.

Title I of the Indian Child Welfare Act (25 U.S.C. 1911 et seq.) is amended by adding at the end the following:

"Sec. 114. (a) This title does not apply to any child custody proceeding involving a child who does not reside or is not domiciled within a reservation unless--

"(1) at least one of the child's biological parents is of Indian descent; and

"(2) at least one of the child's biological parents maintains significant social, cultural, or political affiliation with the Indian tribe of which either parent is a member.

"(b) The factual determination as to whether a biological parent maintains significant social, cultural, or political affiliation with the Indian tribe of which either parent is a member shall be based on such affiliation as of the time of the child custody proceeding.

"(c) The determination that this title does not apply pursuant to subsection (a) is final, and, thereafter, this title shall not be the basis for determining jurisdiction over any child custody proceeding involving the child."

SEC. 302. MEMBERSHIP AND CHILD CUSTODY PROCEEDINGS.

Title I of the Indian Child Welfare Act (25 U.S.C. 1911 et seq.), as amended by section 301 of this title, is further amended by adding at the end the following:

"Sec. 115. (a) A person who attains the age of 18 years before becoming a member of an Indian tribe may become a member of an Indian tribe only upon the person's written consent.

"(b) For the purposes of any child custody proceeding involving an Indian child, membership in an Indian tribe shall be effective from the actual date of admission to membership in the Indian tribe and shall not be given retroactive effect."

SEC. 303. EFFECTIVE DATE.

The amendments made by this title shall take effect on the date of the enactment of this Act and shall apply with respect to any child custody proceeding in which a final decree has not been entered as of such date.

TITLE IV--REVENUE OFFSETS

SEC. 400. AMENDMENT OF 1986 CODE.

Except as otherwise expressly provided, whenever in this title an amendment or repeal is expressed in terms of an amendment to, or repeal of, a section or other provision, the reference shall be considered to be made to a section or other provision of the Internal Revenue Code of 1986.

Subtitle A--Exclusion for Energy Conservation Subsidies Limited to
Subsidies With Respect to Dwelling Units

SEC. 401. EXCLUSION FOR ENERGY CONSERVATION SUBSIDIES LIMITED TO
SUBSIDIES WITH RESPECT TO DWELLING UNITS.

(a) In General.--Paragraph (1) of section 136(c) (defining energy conservation measure) is amended by striking "energy demand--" and

all that follows and inserting "energy demand with respect to a dwelling unit."

(b) Conforming Amendments.--

(1) Subsection (a) of section 136 is amended to read as follows:

"(a) Exclusion.--Gross income shall not include the value of any subsidy provided (directly or indirectly) by a public utility to a customer for the purchase or installation of any energy conservation measure."

(2) Paragraph (2) of section 136(c) is amended--

(A) by striking subparagraph (A) and by redesignating subparagraphs (B) and (C) as subparagraphs (A) and (B), respectively, and

(B) by striking "and special rules" in the paragraph heading.

(c) Effective Date.--The amendments made by this section shall apply to amounts received after December 31, 1996, unless received pursuant to a written binding contract in effect on September 13, 1995, and at all times thereafter.

Subtitle B--Foreign Trust Tax Compliance

SEC. 411. IMPROVED INFORMATION REPORTING ON FOREIGN TRUSTS.

(a) In General.--Section 6048 (relating to returns as to certain foreign trusts) is amended to read as follows:

"SEC. 6048. INFORMATION WITH RESPECT TO CERTAIN FOREIGN TRUSTS.

"(a) Notice of Certain Events.--

"(1) General rule.--On or before the 90th day (or such later day as the Secretary may prescribe) after any reportable event, the responsible party shall provide written notice of such event to the Secretary in accordance with paragraph (2).

"(2) Contents of notice.--The notice required by paragraph (1) shall contain such information as the Secretary may prescribe, including--

"(A) the amount of money or other property (if any) transferred to the trust in connection with the reportable event, and

"(B) the identity of the trust and of each trustee and beneficiary (or class of beneficiaries) of the trust.

"(3) Reportable event.--For purposes of this subsection--

"(A) In general.--The term "reportable event" means--

"(i) the creation of any foreign trust by a United States person,

"(ii) the transfer of any money or property (directly or indirectly) to a foreign trust by a United States person, including a transfer by reason of death, and

"(iii) the death of a citizen or resident of the United States if--

"(I) the decedent was treated as the owner of any portion of a foreign trust under the rules of subpart E of part 1 of subchapter J of chapter 1, or

"(II) any portion of a foreign trust was included in the gross estate of the decedent.

"(B) Exceptions.--

"(i) Fair market value sales.--

Subparagraph (A)(ii) shall not apply to any transfer of property to a trust in exchange for consideration of at least the fair market value of the transferred property. For purposes of the preceding sentence, consideration other than cash shall be taken into account at its fair market value and the rules of section 679(a)(3) shall apply.

(ii) Deferred compensation and charitable trusts.--Subparagraph (A) shall not apply with respect to a trust which is--

(I) described in section 402(b), 404(a)(4), or 404A, or

(II) determined by the Secretary to be described in section 501(c)(3).

(4) Responsible party.--For purposes of this subsection, the term 'responsible party' means--

(A) the grantor in the case of the creation of an inter vivos trust,

(B) the transferor in the case of a reportable event described in paragraph (3)(A)(ii) other than a transfer by reason of death, and

(C) the executor of the decedent's estate in any other case.

(b) United States Grantor of Foreign Trust.--

(1) In general.--If, at any time during any taxable year of a United States person, such person is treated as the owner of any portion of a foreign trust under the rules of subpart E of part I of subchapter J of chapter 1, such person shall be responsible to ensure that--

(A) such trust makes a return for such year which sets forth a full and complete accounting of all trust activities and operations for the year, the name of the United States agent for such trust, and such other information as the Secretary may prescribe, and

(B) such trust furnishes such information as the Secretary may prescribe to each United States person (i) who is treated as the owner of any portion of such trust or (ii) who receives (directly or indirectly) any distribution from the trust.

(2) Trusts not having United States agent.--

(A) In general.--If the rules of this paragraph apply to any foreign trust, the determination of amounts required to be taken into account with respect to such trust by a United States person under the rules of subpart E of part I of subchapter J of chapter 1 shall be determined by the Secretary.

(B) United States agent required.--The rules of this paragraph shall apply to any foreign trust to which paragraph (1) applies unless such trust agrees (in such manner, subject to such conditions, and at such time as the Secretary shall prescribe) to authorize a United States person to act as such trust's limited agent solely for purposes of applying sections 7602, 7603, and 7604 with respect to--

(i) any request by the Secretary to examine records or produce testimony related to the proper treatment of amounts required to be taken into account under the rules referred to in subparagraph (A), or

(ii) any summons by the Secretary for such records or testimony.

The appearance of persons or production of records by

reason of a United States person being such an agent shall not subject such persons or records to legal process for any purpose other than determining the correct treatment under this title of the amounts required to be taken into account under the rules referred to in subparagraph (A). A foreign trust which appoints an agent described in this subparagraph shall not be considered to have an office or a permanent establishment in the United States, or to be engaged in a trade or business in the United States, solely because of the activities of such agent pursuant to this subsection.

(C) Other rules to apply.--Rules similar to the rules of paragraphs (2) and (4) of section 6038A(e) shall apply for purposes of this paragraph.

(c) Reporting by United States Beneficiaries of Foreign Trusts.--

(1) In general.--If any United States person receives (directly or indirectly) during any taxable year of such person any distribution from a foreign trust, such person shall make a return with respect to such trust for such year which includes--

(A) the name of such trust,

(B) the aggregate amount of the distributions so received from such trust during such taxable year, and

(C) such other information as the Secretary may prescribe.

(2) Inclusion in income if records not provided.--

(A) In general.--If adequate records are not provided to the Secretary to determine the proper treatment of any distribution from a foreign trust, such distribution shall be treated as an accumulation distribution includible in the gross income of the distributee under chapter 1. To the extent provided in regulations, the preceding sentence shall not apply if the foreign trust elects to be subject to rules similar to the rules of subsection (b)(2)(B).

(B) Application of accumulation distribution rules.--For purposes of applying section 668 in a case to which subparagraph (A) applies, the applicable number of years for purposes of section 668(a) shall be $\frac{1}{2}$ of the number of years the trust has been in existence.

(d) Special Rules.--

(1) Determination of whether United States person receives distribution.--For purposes of this section, in determining whether a United States person receives a distribution from a foreign trust, the fact that a portion of such trust is treated as owned by another person under the rules of subpart E of part I of subchapter J of chapter 1 shall be disregarded.

(2) Domestic trusts with foreign activities.--To the extent provided in regulations, a trust which is a United States person shall be treated as a foreign trust for purposes of this section and section 6677 if such trust has substantial activities, or holds substantial property, outside the United States.

(3) Time and manner of filing information.--Any notice or return required under this section shall be made at such time and in such manner as the Secretary shall prescribe.

(4) Modification of return requirements.--The Secretary is authorized to suspend or modify any requirement of this section if the Secretary determines that the United States has no significant tax interest in obtaining the required

information.''.

(b) Increased Penalties.--Section 6677 (relating to failure to file information returns with respect to certain foreign trusts) is amended to read as follows:

SEC. 6677. FAILURE TO FILE INFORMATION WITH RESPECT TO CERTAIN FOREIGN TRUSTS.

(a) Civil Penalty.--In addition to any criminal penalty provided by law, if any notice or return required to be filed by section 6048--

(1) is not filed on or before the time provided in such section, or

(2) does not include all the information required pursuant to such section or includes incorrect information, the person required to file such notice or return shall pay a penalty equal to 35 percent of the gross reportable amount. If any failure described in the preceding sentence continues for more than 90 days after the day on which the Secretary mails notice of such failure to the person required to pay such penalty, such person shall pay a penalty (in addition to the amount determined under the preceding sentence) of \$10,000 for each 30-day period (or fraction thereof) during which such failure continues after the expiration of such 90-day period. In no event shall the penalty under this subsection with respect to any failure exceed the gross reportable amount.

(b) Special Rules for Returns Under Section 6048(b).--In the case of a return required under section 6048(b)--

(1) the United States person referred to in such section shall be liable for the penalty imposed by subsection (a), and

(2) subsection (a) shall be applied by substituting '5 percent' for '35 percent'.

(c) Gross Reportable Amount.--For purposes of subsection (a), the term 'gross reportable amount' means--

(1) the gross value of the property involved in the event (determined as of the date of the event) in the case of a failure relating to section 6048(a),

(2) the gross value of the portion of the trust's assets at the close of the year treated as owned by the United States person in the case of a failure relating to section 6048(b)(1), and

(3) the gross amount of the distributions in the case of a failure relating to section 6048(c).

(d) Reasonable Cause Exception.--No penalty shall be imposed by this section on any failure which is shown to be due to reasonable cause and not due to willful neglect. The fact that a foreign jurisdiction would impose a civil or criminal penalty on the taxpayer (or any other person) for disclosing the required information is not reasonable cause.

(e) Deficiency Procedures Not To Apply.--Subchapter B of chapter 63 (relating to deficiency procedures for income, estate, gift, and certain excise taxes) shall not apply in respect of the assessment or collection of any penalty imposed by subsection (a).''

(c) Conforming Amendments.--

(1) Paragraph (2) of section 6724(d) is amended by striking 'or' at the end of subparagraph (S), by striking the period at the end of subparagraph (T) and inserting ', or', and by inserting after subparagraph (T) the following new subparagraph:

(U) section 6048(b)(1)(B) (relating to foreign trust reporting requirements).''

(2) The table of sections for subpart B of part III of subchapter A of chapter 61 is amended by striking the item relating to section 6048 and inserting the following new item:

Sec. 6048. Information with respect to certain foreign trusts.''.
''

(3) The table of sections for part I of subchapter B of chapter 68 is amended by striking the item relating to section 6677 and inserting the following new item:

Sec. 6677. Failure to file information with respect to certain foreign trusts.''.
''

(d) Effective Dates.--

(1) Reportable events.--To the extent related to subsection (a) of section 6048 of the Internal Revenue Code of 1986, as amended by this section, the amendments made by this section shall apply to reportable events (as defined in such section 6048) occurring after the date of the enactment of this Act.

(2) Grantor trust reporting.--To the extent related to subsection (b) of such section 6048, the amendments made by this section shall apply to taxable years of United States persons beginning after the date of the enactment of this Act.

(3) Reporting by United States beneficiaries.--To the extent related to subsection (c) of such section 6048, the amendments made by this section shall apply to distributions received after the date of the enactment of this Act.

SEC. 412. MODIFICATIONS OF RULES RELATING TO FOREIGN TRUSTS HAVING ONE OR MORE UNITED STATES BENEFICIARIES.

(a) Treatment of Trust Obligations, Etc.--

(1) Paragraph (2) of section 679(a) is amended by striking subparagraph (B) and inserting the following:

''(B) Transfers at fair market value.--To any transfer of property to a trust in exchange for consideration of at least the fair market value of the transferred property. For purposes of the preceding sentence, consideration other than cash shall be taken into account at its fair market value.''.
''

(2) Subsection (a) of section 679 (relating to foreign trusts having one or more United States beneficiaries) is amended by adding at the end the following new paragraph:

''(3) Certain obligations not taken into account under fair market value exception.--

''(A) In general.--In determining whether paragraph (2) (B) applies to any transfer by a person described in clause (ii) or (iii) of subparagraph (C), there shall not be taken into account--

''(i) except as provided in regulations, any obligation of a person described in subparagraph (C), and

''(ii) to the extent provided in regulations, any obligation which is guaranteed by a person described in subparagraph (C).

''(B) Treatment of principal payments on obligation.--Principal payments by the trust on any obligation referred to in subparagraph (A) shall be taken into account on and after the date of the payment in determining the portion of the trust attributable to the property transferred.

''(C) Persons described.--The persons described in this subparagraph are--

''(i) the trust,

''(ii) any grantor or beneficiary of the trust, and

''(iii) any person who is related (within

the meaning of section 643(i)(2)(B) to any grantor or beneficiary of the trust.''

(b) Exemption of Transfers to Charitable Trusts.--Subsection (a) of section 679 is amended by striking "section 404(a)(4) or 404A" and inserting "section 6048(a)(3)(B)(ii)".

(c) Other Modifications.--Subsection (a) of section 679 is amended by adding at the end the following new paragraphs:

"(4) Special rules applicable to foreign grantor who later becomes a United States person.--

"(A) In general.--If a nonresident alien individual has a residency starting date within 5 years after directly or indirectly transferring property to a foreign trust, this section and section 6048 shall be applied as if such individual transferred to such trust on the residency starting date an amount equal to the portion of such trust attributable to the property transferred by such individual to such trust in such transfer.

"(B) Treatment of undistributed income.--For purposes of this section, undistributed net income for periods before such individual's residency starting date shall be taken into account in determining the portion of the trust which is attributable to property transferred by such individual to such trust but shall not otherwise be taken into account.

"(C) Residency starting date.--For purposes of this paragraph, an individual's residency starting date is the residency starting date determined under section 7701(b)(2)(A).

"(5) Outbound trust migrations.--If--

"(A) an individual who is a citizen or resident of the United States transferred property to a trust which was not a foreign trust, and

"(B) such trust becomes a foreign trust while such individual is alive,

then this section and section 6048 shall be applied as if such individual transferred to such trust on the date such trust becomes a foreign trust an amount equal to the portion of such trust attributable to the property previously transferred by such individual to such trust. A rule similar to the rule of paragraph (4)(B) shall apply for purposes of this paragraph.''

(d) Modifications Relating to Whether Trust has United States Beneficiaries.--Subsection (c) of section 679 is amended by adding at the end the following new paragraph:

"(3) Certain United States beneficiaries disregarded.--A beneficiary shall not be treated as a United States person in applying this section with respect to any transfer of property to foreign trust if such beneficiary first became a United States person more than 5 years after the date of such transfer.''

(e) Technical Amendment.--Subparagraph (A) of section 679(c)(2) is amended to read as follows:

"(A) in the case of a foreign corporation, such corporation is a controlled foreign corporation (as defined in section 957(a)), ''.

(f) Regulations.--Section 679 is amended by adding at the end the following new subsection:

"(d) Regulations.--The Secretary shall prescribe such regulations as may be necessary or appropriate to carry out the purposes of this section.''

(g) Effective Date.--The amendments made by this section shall apply to transfers of property after February 6, 1995.

SEC. 413. FOREIGN PERSONS NOT TO BE TREATED AS OWNERS UNDER GRANTOR TRUST RULES.

(a) General Rule.--

(1) Subsection (f) of section 672 (relating to special rule where grantor is foreign person) is amended to read as follows:

(f) Subpart Not To Result in Foreign Ownership.--

(1) In general.--Notwithstanding any other provision of this subpart, this subpart shall apply only to the extent such application results in an amount being currently taken into account (directly or through 1 or more entities) under this chapter in computing the income of a citizen or resident of the United States or a domestic corporation.

(2) Exceptions.--

(A) Certain revocable and irrevocable trusts.--

Paragraph (1) shall not apply to any trust if--

(i) the power to revest absolutely in the grantor title to the trust property is exercisable solely by the grantor without the approval or consent of any other person or with the consent of a related or subordinate party who is subservient to the grantor, or

(ii) the only amounts distributable from such trust (whether income or corpus) during the lifetime of the grantor are amounts distributable to the grantor or the spouse of the grantor.

(B) Compensatory trusts.--Except as provided in regulations, paragraph (1) shall not apply to any portion of a trust distributions from which are taxable as compensation for services rendered.

(3) Special rules.--Except as otherwise provided in regulations prescribed by the Secretary--

(A) a controlled foreign corporation (as defined in section 957) shall be treated as a domestic corporation for purposes of paragraph (1), and

(B) paragraph (1) shall not apply for purposes of applying section 1296.

(4) Recharacterization of purported gifts.--In the case of any transfer directly or indirectly from a partnership or foreign corporation which the transferee treats as a gift or bequest, the Secretary may recharacterize such transfer in such circumstances as the Secretary determines to be appropriate to prevent the avoidance of the purposes of this subsection.

(5) Special rule where grantor is foreign person.--If--

(A) but for this subsection, a foreign person would be treated as the owner of any portion of a trust, and

(B) such trust has a beneficiary who is a United States person,

such beneficiary shall be treated as the grantor of such portion to the extent such beneficiary has made transfers of property by gift (directly or indirectly) to such foreign person. For purposes of the preceding sentence, any gift shall not be taken into account to the extent such gift would be excluded from taxable gifts under section 2503(b).

(6) Regulations.--The Secretary shall prescribe such regulations as may be necessary or appropriate to carry out the purposes of this subsection, including regulations providing that paragraph (1) shall not apply in appropriate cases."

(2) The last sentence of subsection (c) of section 672 of such Code is amended by inserting "subsection (f) and" before "sections 674".

(b) Credit for Certain Taxes.--Paragraph (2) of section 665(d) is amended by adding at the end the following new sentence: "Under rules or regulations prescribed by the Secretary, in the case of any foreign trust of which the settlor or another person would be treated as owner of any portion of the trust under subpart E but for section 672(f), the term 'taxes imposed on the trust' includes the allocable amount of any income, war profits, and excess profits taxes imposed by any foreign country or possession of the United States on the settlor or such other person in respect of trust gross income.'".

(c) Distributions by Certain Foreign Trusts Through Nominees.--

(1) Section 643 is amended by adding at the end the following new subsection:

"(h) Distributions by Certain Foreign Trusts Through Nominees.--For purposes of this part, any amount paid to a United States person which is derived directly or indirectly from a foreign trust of which the payor is not the grantor shall be deemed in the year of payment to have been directly paid by the foreign trust to such United States person.'".

(2) Section 665 is amended by striking subsection (c).

(d) Effective Date.--

(1) In general.--Except as provided by paragraph (2), the amendments made by this section shall take effect on the date of the enactment of this Act.

(2) Exception for certain trusts.--The amendments made by this section shall not apply to any trust--

(A) which is treated as owned by the grantor or another person under section 676 or 677 (other than subsection (a)(3) thereof) of the Internal Revenue Code of 1986, and

(B) which is in existence on September 19, 1995.

The preceding sentence shall not apply to the portion of any such trust attributable to any transfer to such trust after September 19, 1995.

(e) Transitional Rule.--If--

(1) by reason of the amendments made by this section, any person other than a United States person ceases to be treated as the owner of a portion of a domestic trust, and

(2) before January 1, 1997, such trust becomes a foreign trust, or the assets of such trust are transferred to a foreign trust,

no tax shall be imposed by section 1491 of the Internal Revenue Code of 1986 by reason of such trust becoming a foreign trust or the assets of such trust being transferred to a foreign trust.

SEC. 414. INFORMATION REPORTING REGARDING FOREIGN GIFTS.

(a) In General.--Subpart A of part III of subchapter A of chapter 61 is amended by inserting after section 6039E the following new section:

"SEC. 6039F. NOTICE OF LARGE GIFTS RECEIVED FROM FOREIGN PERSONS.

"(a) In General.--If the value of the aggregate foreign gifts received by a United States person (other than an organization described in section 501(c) and exempt from tax under section 501(a)) during any taxable year exceeds \$10,000, such United States person shall furnish (at such time and in such manner as the Secretary shall prescribe) such information as the Secretary may prescribe regarding each foreign gift received during such year.

"(b) Foreign Gift.--For purposes of this section, the term 'foreign gift' means any amount received from a person other than a United States person which the recipient treats as a gift or bequest. Such term shall not include any qualified transfer (within the meaning

of section 2503(e)(2)).

“(c) Penalty for Failure To File Information.--

“(1) In general.--If a United States person fails to furnish the information required by subsection (a) with respect to any foreign gift within the time prescribed therefor (including extensions)--

“(A) the tax consequences of the receipt of such gift shall be determined by the Secretary in the Secretary's sole discretion from the Secretary's own knowledge or from such information as the Secretary may obtain through testimony or otherwise, and

“(B) such United States person shall pay (upon notice and demand by the Secretary and in the same manner as tax) an amount equal to 5 percent of the amount of such foreign gift for each month for which the failure continues (not to exceed 25 percent of such amount in the aggregate).

“(2) Reasonable cause exception.--Paragraph (1) shall not apply to any failure to report a foreign gift if the United States person shows that the failure is due to reasonable cause and not due to willful neglect.

“(d) Cost-of-Living Adjustment.--In the case of any taxable year beginning after December 31, 1996, the \$10,000 amount under subsection (a) shall be increased by an amount equal to the product of such amount and the cost-of-living adjustment for such taxable year under section 1(f)(3), except that subparagraph (B) thereof shall be applied by substituting ‘1995’ for ‘1992’.

“(e) Regulations.--The Secretary shall prescribe such regulations as may be necessary or appropriate to carry out the purposes of this section.”.

(b) Clerical Amendment.--The table of sections for such subpart is amended by inserting after the item relating to section 6039E the following new item:

“Sec. 6039F. Notice of large gifts received from foreign persons.”.

(c) Effective Date.--The amendments made by this section shall apply to amounts received after the date of the enactment of this Act in taxable years ending after such date.

SEC. 415. MODIFICATION OF RULES RELATING TO FOREIGN TRUSTS WHICH ARE NOT GRANTOR TRUSTS.

(a) Modification of Interest Charge on Accumulation Distributions.--Subsection (a) of section 668 (relating to interest charge on accumulation distributions from foreign trusts) is amended to read as follows:

“(a) General Rule.--For purposes of the tax determined under section 667(a)--

“(1) Interest determined using underpayment rates.--The interest charge determined under this section with respect to any distribution is the amount of interest which would be determined on the partial tax computed under section 667(b) for the period described in paragraph (2) using the rates and the method under section 6621 applicable to underpayments of tax.

“(2) Period.--For purposes of paragraph (1), the period described in this paragraph is the period which begins on the date which is the applicable number of years before the date of the distribution and which ends on the date of the distribution.

“(3) Applicable number of years.--For purposes of paragraph (2)--

“(A) In general.--The applicable number of years with respect to a distribution is the number determined by dividing--

“(i) the sum of the products described in subparagraph (B) with respect to each undistributed income year, by

“(ii) the aggregate undistributed net income.

The quotient determined under the preceding sentence shall be rounded under procedures prescribed by the Secretary.

“(B) Product described.--For purposes of subparagraph (A), the product described in this subparagraph with respect to any undistributed income year is the product of--

“(i) the undistributed net income for such year, and

“(ii) the sum of the number of taxable years between such year and the taxable year of the distribution (counting in each case the undistributed income year but not counting the taxable year of the distribution).

“(4) Undistributed income year.--For purposes of this subsection, the term ‘undistributed income year’ means any prior taxable year of the trust for which there is undistributed net income, other than a taxable year during all of which the beneficiary receiving the distribution was not a citizen or resident of the United States.

“(5) Determination of undistributed net income.--Notwithstanding section 666, for purposes of this subsection, an accumulation distribution from the trust shall be treated as reducing proportionately the undistributed net income for undistributed income years.

“(6) Periods before 1996.--Interest for the portion of the period described in paragraph (2) which occurs before January 1, 1996, shall be determined--

“(A) by using an interest rate of 6 percent, and

“(B) without compounding until January 1, 1996.”.

(b) Abusive Transactions.--Section 643(a) is amended by inserting after paragraph (6) the following new paragraph:

“(7) Abusive transactions.--The Secretary shall prescribe such regulations as may be necessary or appropriate to carry out the purposes of this part, including regulations to prevent avoidance of such purposes.”.

(c) Treatment of Loans From Trusts.--

(1) In general.--Section 643 (relating to definitions applicable to subparts A, B, C, and D) is amended by adding at the end the following new subsection:

“(i) Loans From Foreign Trusts.--For purposes of subparts B, C, and D--

“(1) General rule.--Except as provided in regulations, if a foreign trust makes a loan of cash or marketable securities directly or indirectly to--

“(A) any grantor or beneficiary of such trust who is a United States person, or

“(B) any United States person not described in subparagraph (A) who is related to such grantor or beneficiary,

the amount of such loan shall be treated as a distribution by such trust to such grantor or beneficiary (as the case may be).

“(2) Definitions and special rules.--For purposes of this subsection--

“(A) Cash.--The term ‘cash’ includes foreign

currencies and cash equivalents.

“(B) Related person.--

“(i) In general.--A person is related to another person if the relationship between such persons would result in a disallowance of losses under section 267 or 707(b). In applying section 267 for purposes of the preceding sentence, section 267(c)(4) shall be applied as if the family of an individual includes the spouses of the members of the family.

“(ii) Allocation.--If any person described in paragraph (1)(B) is related to more than one person, the grantor or beneficiary to whom the treatment under this subsection applies shall be determined under regulations prescribed by the Secretary.

“(C) Exclusion of tax-exempts.--The term ‘United States person’ does not include any entity exempt from tax under this chapter.

“(D) Trust not treated as simple trust.--Any trust which is treated under this subsection as making a distribution shall be treated as not described in section 651.

“(3) Subsequent transactions regarding loan principal.--If any loan is taken into account under paragraph (1), any subsequent transaction between the trust and the original borrower regarding the principal of the loan (by way of complete or partial repayment, satisfaction, cancellation, discharge, or otherwise) shall be disregarded for purposes of this title.”

(2) Technical amendment.--Paragraph (8) of section 7872(f) is amended by inserting “, 643(i),” before “or 1274” each place it appears.

(d) Effective Dates.--

(1) Interest charge.--The amendment made by subsection (a) shall apply to distributions after the date of the enactment of this Act.

(2) Abusive transactions.--The amendment made by subsection (b) shall take effect on the date of the enactment of this Act.

(3) Loans from trusts.--The amendment made by subsection (c) shall apply to loans of cash or marketable securities after September 19, 1995.

SEC. 416. RESIDENCE OF ESTATES AND TRUSTS, ETC.

(a) Treatment as United States Person.--

(1) In general.--Paragraph (30) of section 7701(a) is amended by striking subparagraph (D) and by inserting after subparagraph (C) the following:

“(D) any estate or trust if--

“(i) a court within the United States is able to exercise primary supervision over the administration of the estate or trust, and

“(ii) in the case of a trust, one or more United States fiduciaries have the authority to control all substantial decisions of the trust.”

(2) Conforming amendment.--Paragraph (31) of section 7701(a) is amended to read as follows:

“(31) Foreign estate or trust.--The term ‘foreign estate’ or ‘foreign trust’ means any estate or trust other than an estate or trust described in section 7701(a)(30)(D).”

(3) Effective date.--The amendments made by this subsection

shall apply--

(A) to taxable years beginning after December 31, 1996, or

(B) at the election of the trustee of a trust, to taxable years ending after the date of the enactment of this Act.

Such an election, once made, shall be irrevocable.

(b) Domestic Trusts Which Become Foreign Trusts.--

(1) In general.--Section 1491 (relating to imposition of tax on transfers to avoid income tax) is amended by adding at the end the following new flush sentence:

"If a trust which is not a foreign trust becomes a foreign trust, such trust shall be treated for purposes of this section as having transferred, immediately before becoming a foreign trust, all of its assets to a foreign trust."

(2) Penalty.--Section 1494 is amended by adding at the end the following new subsection:

"(c) Penalty.--In the case of any failure to file a return required by the Secretary with respect to any transfer described in section 1491 with respect to a trust, the person required to file such return shall be liable for the penalties provided in section 6677 in the same manner as if such failure were a failure to file a return under section 6048(a)."

(3) Effective date.--The amendments made by this subsection shall take effect on the date of the enactment of this Act.

<all>

Talking It Over

By Hillary Rodham Clinton

Let's Make Adoption Easier, Less Costly

The first time I met Mother Teresa was not in an urban slum or a remote village in India but in the fancy ballroom of a Washington hotel. It was February, 1994, and she had just delivered a speech against abortion at the National Prayer Breakfast. When she finished her remarks, she pulled me aside for a chat.

She told me about her homes for orphaned children in New Delhi and Calcutta and asked for my help in setting up a similar home for abandoned and neglected babies in Washington. I agreed to work on the project. Although we differ on some issues, we found common ground on adoption. So we sat and talked about how to find homes for the hundreds of thousands of American children who need loving families.

A year later, my daughter and I visited Mother Teresa's home for children in New Delhi. There were too many cribs and too few toilets, and there was too little space. There was no way the place could ever pass inspection in any American city. But there were also dozens of beautiful babies, mostly girls, being fed, clothed, sheltered and loved until they could be adopted.

These images stayed with me when I returned home. I was even more determined to help Mother Teresa bring to Washington the compassion I had witnessed in India. But you cannot imagine how much red tape was getting in my way. Ironically, many regulations designed to protect children often overlook what kids need most: love and attention.

Finally, on a sweltering day this past June, the Mother Teresa Home for Children opened in an affluent residential neighborhood of the nation's capital. It is a two-story Tudor house with a swimming pool in the back yard, donated by a remarkably generous person who chose to remain anonymous. At the dedication ceremony, Mother Teresa walked me through brightly painted rooms filled with cribs, bassinets and stuffed animals.

Although it will accommodate only eight children, this home is a crucial step in awakening Americans to the crisis of adoption.

We should worry less about how many cribs can be placed in a room and more about how many children can be placed with loving families. And instead of yelling at one another about abortion, we should spend our energy making adoptions easier. If that were to happen, there would be far fewer abortions and far more children in happy homes.

Today, there are about 450,000 children in the United States who need permanent families. There are tens of thousands of parents seeking to adopt. Yet every day, complex regulations, outdated assumptions and wrong-headed laws stand in the way of bringing these parents and children together.

For some Americans, such as a woman who wrote to me recently, cost is the biggest barrier. She and her husband, both musicians, spent thousands of dollars adopting a little boy six years ago. When her cousin's daughter recently became pregnant at age 18 and could not afford to keep the child, the same couple volunteered to adopt again. As simple as this case should have been—the parents and baby were members of the same extended family and all parties agreed to the adoption—it still cost upward of \$4,000 because of legal fees and paper work.

For others, there is a fear factor. A 40-year-old newscaster I met recently in New Mexico was interested in adopting but was discouraged by highly publicized cases such as Baby Richard's, in which birth parents seek to reclaim custody of adopted children.

Decisions to give up children for adoption should be difficult to overturn; the decision to return the child to the biological parents or to uphold the adoption should be made as quickly as possible. No child should be left in limbo.

The process also is made more difficult because of a historical bias against interracial adoptions, which can mean endless waiting until children are matched with parents of the same race.

Today, there are far more minority children needing homes than are being placed for adoption. To prevent these children from languishing in foster care, new guidelines are now in place that will prohibit federally funded agencies from using race as a factor in placing children.

Wouldn't it be wonderful if we did something dramatic about adoption? Why not set a goal of placing 100,000 children each year for the next five years? To do this, we would have to make adoption easier and enlist volunteer lawyers and judges to speed up the legal process. And we should also follow Mother Teresa's model, in which considerations such as money, regulations and skin color do not outweigh the more important gift of love.

Hillary Rodham Clinton's column appears every Sunday in

TALKING IT OVER**BY HILLARY RODHAM CLINTON****RELEASE: WEEKEND, OCTOBER 28-29, 1995**

When I first began writing this column more than three months ago, I hoped to occasionally use this space to respond to the many people who write to me.

So far, I have received more heartwarming and thought-provoking letters than I can count. I also have received a few angry letters whose contents cannot be published in a family newspaper.

I've heard from a class of second- and third-graders in Kansas who are concerned about pollution, a man from Illinois who is campaigning against tobacco use, and a retiree in Florida worried about the high cost of health care.

A boy from Texas wanted to know what Socks eats (dried cat food) and a 10-year-old in Minnesota asked how many rooms are in the White House (132).

I wish I could respond to all of these letters in this column. Instead, I can only answer a few.

Many readers wrote in response to my column in July about our nation's complicated system of adoption and the thousands of needy children who are waiting for permanent, loving homes. Not surprisingly, I heard from lots of people who said they were eager to adopt children but had become overwhelmed by the long wait, red tape and high cost involved.

A Florida woman, frustrated by a lack of communication among adoption agencies and government social workers, summed up the feelings of many prospective adoptive parents: "I know there is a little girl in this country somewhere waiting for my home."

One couple from Oregon, trying to adopt through a county agency, was told that it might take several years before a child was available. Their alternative, to adopt through a private agency, could cost \$16,000 or more.

Because these problems are so widespread -- and because so many children continue to languish in foster care -- I recently got together a group of experts, adoption advocates and concerned parents to help people learn more about adoption and to make the process simpler and more efficient for waiting parents. There is no reason so many loving parents cannot be united with children desperate for their care and attention.

I also have received mailbags of letters about my trip to the United Nations Fourth World Conference on Women in Beijing in September. Some people were

HILLARY RODHAM CLINTON 10/28-29/95**Page 2**

concerned about my participation, and many others were enthusiastic about it. A few expressed their outrage over infanticide and coerced abortions in China, problems that people became more aware of because the conference was held there. Others wondered if the conference would really make a difference in improving women's rights around the world.

I believe the conference was an important and historic first step in giving women the tools they need to lead productive lives. More than 180 nations agreed for the first time that women are integral to the economic, political and social life of every country and that global peace and prosperity depend on the well-being of women.

However, the conference in Beijing will only be a lasting success if governments, institutions and each of us in our own lives work to ensure that women are full and equal partners in society. Here at home, for example, the President has created a special White House Council on Women that will enable government agencies to work together and reach out to private organizations to fulfill the goals of the women's conference.

Health issues were on the minds of many readers. I heard from scores of Gulf War veterans and their families, who were concerned about the government's response to illnesses commonly referred to as Gulf War Syndrome. I hope those families, many of whom have suffered greatly, know that the President has established an advisory committee to investigate Gulf War veterans' illnesses.

Perhaps the most gratifying health-related letter I received came from Miriam Murtha, a Virginia woman who got a mammogram as a result of our breast cancer awareness campaign that began earlier this year. Her screening found two malignant tumors before they could spread to other parts of her body. "I will be having regular checkups from now on," she wrote.

Children also wrote to me with suggestions and questions. Many wondered if I could raise their allowances, lower the voting age or send them free tickets to Washington. (Sorry, I can't.)

And quite a few offered their own editorial comments. "I think there should be no more drugs. I don't want any more guns and no more pollution," wrote Brandon Jackson, a second-grader from Kansas.

To Brandon and everyone else who wrote to me over these last few months, thanks for talking things over with me.

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PART E—MULTIETHNIC PLACEMENT**Subpart 1—Multieethnic Placement****SEC. 551. SHORT TITLE.**

This subpart may be cited as the "Howard M. Metzenbaum Multiethnic Placement Act of 1994".

SEC. 552. FINDINGS AND PURPOSE.

(a) **FINDINGS.**—The Congress finds that—

(1) nearly 600,000 children are in foster care in the United States;

(2) tens of thousands of children in foster care are waiting for adoption;

(3) 2 years and 8 months is the median length of time that children wait to be adopted;

(4) child welfare agencies should work to eliminate racial, ethnic, and national origin discrimination and bias in adoption and foster care recruitment, selection, and placement procedures; and

(5) active, creative, and diligent efforts are needed to recruit foster and adoptive parents of every race, ethnicity, and culture in order to facilitate the placement of children in foster and adoptive homes which will best meet each child's needs.

(b) **PURPOSE.**—It is the purpose of this subpart to promote the best interests of children by—

(1) decreasing the length of time that children wait to be adopted;

(2) preventing discrimination in the placement of children on the basis of race, color, or national origin; and

(3) facilitating the identification and recruitment of foster and adoptive families that can meet children's needs.

SEC. 553. MULTIETHNIC PLACEMENTS.

(a) **ACTIVITIES.**—

(1) **PROHIBITION.**—An agency, or entity, that receives Federal assistance and is involved in adoption or foster care placements may not—

(A) categorically deny to any person the opportunity to become an adoptive or a foster parent, solely on the basis of the race, color, or national origin of the adoptive or foster parent, or the child, involved; or

(B) delay or deny the placement of a child for adoption or into foster care, or otherwise discriminate in making a placement decision, solely on the basis of the race, color, or national origin of the adoptive or foster parent, or the child, involved.

(2) **PERMISSIBLE CONSIDERATION.**—An agency or entity to which paragraph (1) applies may consider the cultural, ethnic, or racial background of the child and the capacity of the prospective foster or adoptive parents to meet the needs of a child of this background as one of a number of factors used to determine the best interests of a child.

(3) **DEFINITION.**—As used in this subsection, the term "placement decision" means the decision to place, or to delay or deny the placement of, a child in a foster care or an adoptive home, and includes the decision of the agency or entity involved

to seek the termination of birth parent rights or otherwise make a child legally available for adoptive placement.

(b) **EQUITABLE RELIEF.**—Any individual who is aggrieved by an action in violation of subsection (a), taken by an agency or entity described in subsection (a), shall have the right to bring an action seeking relief in a United States district court of appropriate jurisdiction.

(c) **FEDERAL GUIDANCE.**—Not later than 6 months after the date of the enactment of this Act, the Secretary of Health and Human Services shall publish guidance to concerned public and private agencies and entities with respect to compliance with this subpart.

(d) **DEADLINE FOR COMPLIANCE.**—

(1) **IN GENERAL.**—Except as provided in paragraph (2), an agency or entity that receives Federal assistance and is involved with adoption or foster care placements shall comply with this subpart not later than six months after publication of the guidance referred to in subsection (c), or one year after the date of enactment of this Act, whichever occurs first.

(2) **AUTHORITY TO EXTEND DEADLINE.**—If a State demonstrates to the satisfaction of the Secretary that it is necessary to amend State statutory law in order to change a particular practice that is inconsistent with this subpart, the Secretary may extend the compliance date for the State a reasonable number of days after the close of the first State legislative session beginning after the date the guidance referred to in subsection (c) is published.

(e) **NONCOMPLIANCE DEEMED A CIVIL RIGHTS VIOLATION.**—Non-compliance with this subpart is deemed a violation of title VI of the Civil Rights Act of 1964.

(f) **NO EFFECT ON INDIAN CHILD WELFARE ACT OF 1978.**—Nothing in this section shall be construed to affect the application of the Indian Child Welfare Act of 1978 (25 U.S.C. 1901 et seq.).

SEC. 554. REQUIRED RECRUITMENT EFFORTS FOR CHILD WELFARE SERVICES PROGRAMS.

Section 422(b) of the Social Security Act (42 U.S.C. 822(b)) is amended—

(1) by striking "and" at the end of paragraph (7);

(2) by striking the period at the end of paragraph (8) and inserting "; and"; and

(3) by adding at the end the following:

"(9) provide for the diligent recruitment of potential foster and adoptive families that reflect the ethnic and racial diversity of children in the State for whom foster and adoptive homes are needed."

Subpart 2—Other Provision**SEC. 555. EFFECT OF FAILURE TO CARRY OUT STATE PLAN.**

(a) **IN GENERAL.**—Part A of title XI of the Social Security Act (42 U.S.C. 1301-1320b-13) is amended by inserting after section 1122 the following:

"SEC. 1123. EFFECT OF FAILURE TO CARRY OUT STATE PLAN.

"In an action brought to enforce a provision of the Social Security Act, such provision is not to be deemed unenforceable because of its inclusion in a section of the Act requiring a State plan

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Howard M.
Metzenbaum
Multiethnic
Placement Act
of 1994.
Adoption.
Foster care.
42 USC 5115a
note.

Publica

42 USC 5115a.

42 USC

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or specifying the required contents of a State plan. This section is not intended to limit or expand the grounds for determining the availability of private actions to enforce State plan requirements other than by overturning any such grounds applied in *Suter v. Artist M.*, 112 S. Ct. 1360 (1992), but not applied in prior Supreme Court decisions respecting such enforceability; provided, however, that this section is not intended to alter the holding in *Suter v. Artist M.* that section 471(a)(15) of the Act is not enforceable in a private right of action.

(b) **APPLICABILITY.**—The amendment made by subsection (a) shall apply to actions pending on the date of the enactment of this Act and to actions brought on or after such date of enactment.

42 USC 1320a-2
note.

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STATE OF MINNESOTA

OFFICE OF THE ATTORNEY GENERAL

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ST. PAUL, MN 55155-1002
TELEPHONE: (612) 296-6100

HUBERT H. HUMPHREY III
ATTORNEY GENERAL

November 21, 1995

The Honorable Janet Reno
U.S. Attorney General
U.S. Department of Justice
Room 4400
10th Street and Constitution Ave., N.W.
Washington, D.C. 20530

Dear Attorney General Reno:

I am writing to alert you to a serious disagreement between the Office of Civil Rights for the Department of Health and Human Services (OCR), and the State of Minnesota. This disagreement may result in a legal challenge by Minnesota of OCR's interpretation of the Multi-ethnic Placement Act of 1994 (MEPA).

Congress passed MEPA in response to concerns that thousands of children in foster care are waiting for adoption and that children of color wait longer than other children. MEPA prohibits agencies (state, or private agencies that receive federal funding) from delaying or denying placement of a child in foster care or for adoption on the basis of the race, color or national origin of the child, or of the adoptive or foster parents. MEPA allows an agency to consider the cultural, ethnic, or racial background of the child as one of a number of factors used to determine the best interests of a child. Noncompliance with MEPA is considered a violation of Title VI of the Civil Rights Act. OCR may penalize noncompliance with termination of federal funds.

MEPA instructed OCR to publish guidance to the agencies which would be responsible for implementing the law. OCR published the guidance in the Federal Register. Although the guidance is not a rule and OCR failed to employ any notice and comment procedures when it was developed, OCR is using the guidance as its enforcement tool to determine whether states are complying with MEPA.

Minnesota statutes concerning a child's heritage or background (the heritage act and related statutes) state that "the policy of the state of Minnesota is to ensure that the best interests of children are met by requiring due, not sole, consideration of the child's race or ethnic heritage" in making decisions about foster care or adoptive placements. This policy is implemented with a statutory requirement that, when placement decisions are being made, unless there is good cause to the contrary, the first preference for placement is with relatives of the child. If relatives are not available, a family with the same racial or ethnic heritage as the child is the second preference. If neither of the first two preferences can be met consistent with the child's best interests, then placement must be made with a family that is knowledgeable and appreciative of the child's heritage. Although there is currently a statutory

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*cc Chris Cery
fr Diane Fortner
I just saw this!*

The Honorable Janet Reno
November 21, 1995
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period during which a search must be made for a "matching" placement, Minnesota agrees that that is contrary to MEPA and intends to amend the statute to eliminate the search period. Recent statistics indicate that in Minnesota children of color do not wait longer than other children for permanent placements.

In its guidance as well as in communications (both written and oral) with Minnesota, OCR has said that Minnesota's heritage statutes violate MEPA. Minnesota disagrees strongly with OCR's interpretation of MEPA as it applies to Minnesota's heritage laws. Minnesota believes that its laws are consistent with the plain language, as well as the intent of MEPA; and that OCR's very restrictive interpretation of MEPA is an abuse of agency discretion.

The basis for the state's position comes from the language of MEPA itself, and from the legislative history of the Act. MEPA specifically permits consideration of the "cultural, ethnic, or racial background of the child and the capacity of the prospective foster or adoptive parents to meet the needs of a child of this background." It also requires states to "provide for the diligent recruitment of potential foster and adoptive families that reflect the ethnic and racial diversity of children in the State for whom . . . homes are needed."

When this bill was debated on the Senate floor, Minnesota Senator David Durenburger asked Senator Howard Metzenbaum (the author of the bill) whether Minnesota's policy would be consistent with the Act. Senator Metzenbaum replied that it would, as long as decisions are made in the best interests of children. Comments by other legislators reflected an agreement that same-race placements are generally preferable, but that transracial placements should be used when same-race placements are not available.

Prior to the passage of MEPA, Minnesota and OCR entered into an agreement concerning implementation of Minnesota's heritage act provisions. A copy of that agreement is attached to this letter. In the agreement, Minnesota agreed that each child's case record should contain specific documentation about why any placement decision is in the best interests of the child. OCR does not allege that Minnesota is failing to implement the law consistent with the agreement. Instead, OCR takes the position that the agreement was made invalid by the passage of MEPA because it is based upon laws which violate MEPA.

Our office, along with the Minnesota Department of Human Services, has attempted to negotiate this dispute with OCR. Numerous conversations have been held with the OCR staff in the Chicago Regional Office, their counsel, Zachary Tobin, and with George Lyon, in the Office of General Counsel for OCR in Washington, D.C. While OCR has been willing to discuss this issue, their position remains unchanged. They believe that unless Minnesota amends its heritage act statutes, it is in violation of MEPA and subject to federal sanctions under Title VI of the Civil Rights Act.

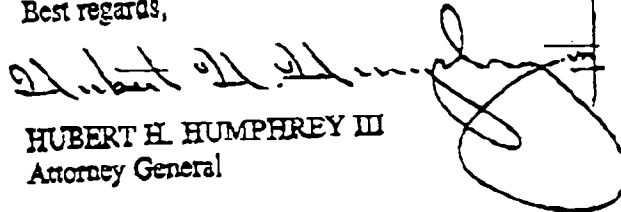
We have notified George Lyon with the Office of General Counsel for OCR in Washington that Minnesota does not intend to propose amendments to most of the heritage act statutes. He has asked for a statement of our position in writing by November 8, 1995.

The Honorable Janet Reno
November 21, 1995
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Thus, we find ourselves on the brink of a very public challenge to OCR. Based on contacts our office has made with attorneys in the Department of Justice, it appears that no one from DOJ reviewed the OCR guidance. I hope that you can look into this matter, to determine whether this can be resolved short of litigation.

I very much appreciate any help you can provide with this matter. Our concern is with the best interests of Minnesota's children, and we believe that Minnesota's heritage act is consistent with those interests. Thank you for your assistance.

Best regards,


HUBERT H. HUMPHREY III
Attorney General



U.S. Department of Justice

Civil Rights Division

Office of the Assistant Attorney General

Washington, D.C. 20035

FEB 13 1996

The Honorable Hubert H. Humphrey III
Attorney General
State of Minnesota
102 State Capitol
St. Paul, Minnesota, 55155-1002

Dear Attorney General Humphrey:

The Attorney General has asked me to respond to your letter regarding a disagreement between the State of Minnesota and the U.S. Department of Health and Human Services (HHS) regarding an interpretation of the Multiethnic Placement Act of 1994 (MEPA).

You write that the State's statutes and policies regarding placement of children in adoptive or foster homes are in compliance with the letter and spirit of MEPA, except for one statutory provision regarding a search period that you intend to eliminate.

As you know, MEPA was enacted to prevent the delay or denial of placement of children for adoption or in foster care on the basis of race, color or national origin of the child, or of the adoptive or foster parents. With respect to race and ethnicity, MEPA permits only the consideration of the specific cultural, ethnic, or racial needs of each individual child, and the ability of the prospective adoptive or foster parents to meet those needs, and then only as one of a number of factors used to determine whether such placement would be in the best interests of the child. Consequently, state statutes authorizing waiting periods and providing preferences are generally invalid under MEPA.

The State statutory provision at issue provides a general preference to a family with the same racial or ethnic heritage as the child, if relatives are not available to make a placement. This provision violates MEPA, and we concur with HHS's advice that this provision must be repealed if the State is to continue to receive federal funds.

Another State statute sets the State policy to ensure that the best interests of children are met by requiring due, not sole, consideration of the child's race or ethnic heritage. This policy is permissible if the State applies it exclusively by examining the specific cultural, ethnic or racial needs of the individual child and the ability of the prospective parents to

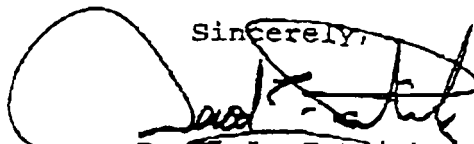
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The Honorable Hubert H. Humphrey III
Page 2.

meet those needs. Even then the State may consider it only as one of a number of factors in determining whether the placement is in the best interests of the child. The State may not implement this policy by replacing individualized determinations of need with generalizations about the needs of children of a particular cultural, racial or ethnic background.

I understand that the State has been granted a period until July 1996 to bring its statutes into compliance with MEPA, and I urge the State to continue to work with HHS to come to a resolution of this matter. The Department of Justice would be pleased to offer further assistance towards that end.

Sincerely,

A handwritten signature in black ink, appearing to read "Deval L. Patrick", is written over a horizontal line.

Deval L. Patrick
Assistant Attorney General
Civil Rights Division

from HHS

DRAFT

Talking Points for
Title II - Interethnic Adoption
of the
Adoption Promotion and Stability Act of 1996

Summary of Title II - Interethnic Adoption

- * Title II of the Act repeals Section 553 of the Multiethnic Placement Act of 1994 (MEPA).
- * The Act contains two substantive provisions relating to nondiscrimination in adoption and foster care placement.
 - The Act prohibits the denial to any person the opportunity to become an adoptive or a foster parent, on the basis of the race, color or national origin of the person, or of the child, involved.
 - The Act prohibits the delay or denial of a placement for a child for adoption or foster care, or other discrimination in making a placement decision, on the basis of the race, color, or national origin of the adoptive or foster parent, or the child, involved.
- * These two provisions of the Act would become a part of the title IV-E Adoption Assistance and Foster Care State plan.
- * The Adoption Act applies broadly to "any person or government involved in adoption or foster care." However, penalties of its enforcement would only apply to entities receiving Federal funds, which are covered under title VI of the Civil Rights Act.
- * Any violation of the Act's provisions would trigger a penalty. The penalty would reduce Federal title IV-E funding to States by 2-10%, increasing with time. The penalty would fully revoke Federal title IV-E funding to non-State grantees in each affected quarter.
- * The Act accords aggrieved individuals a right to bring an action in U.S. District Court.
- * The Act does not apply to the administration of the Indian Child Welfare Act of 1978 (ICWA) governing the placement of indian children in adoptive and foster homes.

Multiethnic Placement Act (MEPA) Implementation*and the P!*

- * With the enactment of MEPA in 1994, Congress recognized the urgent need to place waiting minority children and to utilize appropriate families, including those whose backgrounds are different from those of the waiting children.
- * HHS has taken aggressive action to implement MEPA since its enactment in 1994 to ensure that state laws, policies and practices conform to the statute's provisions regarding transracial adoption.
- * HHS issued Guidance to the States to implement MEPA in April of 1995, and subsequently notified 27 States and the District of Columbia of regulatory, procedural and/or statutory issues in non-compliance with MEPA.
- * By January of 1996, 46 States and the District of Columbia had statutes and policies that were in compliance with the Multiethnic Placement Act's prohibitions against the denial or delay of foster care or adoption placement on the basis of race or ethnicity. HHS expects 3 of the 4 remaining States (IA, KY and MN) to be in compliance by July 1996 and, because of its bi-annual legislative calendar, we expect Arkansas to be in compliance by April of 1997.
- * HHS has undertaken a variety of efforts to aggressively implement the letter and spirit of MEPA.

HHS issued the MEPA guidance within the short statutory time-frame, prepared extensive materials to assist states and conducted training on the new law.

HHS regional staff from OCR and ACF provided technical assistance and successfully worked with states in changing state statute, regulations and/or procedures to comply with MEPA.

MEPA requires states to develop plans which recruit foster and adoptive parents of all backgrounds who are capable of meeting the needs of children with various cultural, ethnic and racial background. HHS regional offices are reviewing State recruitment plans and working closely with the States.

New child welfare data collection system (AFCARS), which provides demographic information on children awaiting adoption and their adoptive parent, will allow HHS to track the number and percentage of children placed transracially. This data will be used in the monitoring of State child welfare programs for detecting biases in placements.

more

HHS regional staff from OCR and ACF have been trained on the provisions of MEPA and are handling complaints expeditiously.

Adoption Fact Sheet

Waiting Children

- * In December 1990, there were approximately 69,000 foster children in the country for whom state agencies had determined that adoption was the appropriate goal. Approximately 20,000 of these children were legally free to be adopted (their parents' legal rights to ever regain custody had been terminated) and were waiting to be adopted.
- * There are an equal number of white and African-American children, these children are primarily school age. Two out of three waiting children have special needs: medical, developmental, behavioral or psychological.
- * Of the children awaiting adoption at the end of 1990, approximately 46% had already waited two years. Minority children, older children and sibling groups wait longer.