

<h1 style="margin: 0;">ACF</h1> <p style="margin: 0;">Administration for Children and Families</p>	<b>U.S. DEPARTMENT OF HEALTH AND HUMAN SERVICES</b> <b>Administration on Children, Youth and Families</b>	
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	<b>3. Originating Office:</b> Children’s Bureau	
	<b>4. Key Words:</b> Title IV-E, Foster Care, Adoption Assistance, Guardianship Assistance; Tax Relief, Unemployment Insurance Reauthorization, and Job Creation Act of 2010; Public Law 111-312	

### PROGRAM INSTRUCTION

**TO:** State, Tribal and Territorial Agencies Administering or Supervising the Administration of Titles IV-B and IV-E of the Social Security Act, Indian Tribes and Indian Tribal Organizations

**SUBJECT:** The Tax Relief, Unemployment Insurance Reauthorization, and Job Creation Act of 2010 (Public Law (P.L.) 111-312)

**LEGAL AND RELATED REFERENCES:** Tax Relief, Unemployment Insurance Reauthorization, and Job Creation Act of 2010 (P.L. 111-312)

**PURPOSE:** To provide information about the implementation of the Tax Relief, Unemployment Insurance Reauthorization, and Job Creation Act of 2010

**BACKGROUND:**

The Tax Relief, Unemployment Insurance Reauthorization, and Job Creation Act of 2010 (the law) (P.L. 111-312) was signed into law on December 17, 2010. The law includes a provision that disregards tax refunds received after December 31, 2009 as income and as resources (for a period of 12 months) in programs funded in whole or in part with Federal funds, including those operated by States, localities, or others. The law is not retroactive, but applies as of the date of enactment and, thus, States must move expeditiously to implement the provision.

Section 728 of the law states:

“(a) IN GENERAL.—Notwithstanding any other provision of law, any refund (or advance payment with respect to a refundable credit) made to any individual under this title shall not be taken into account as income, and shall not be taken into account as resources for a period of 12 months from receipt, for purposes of determining the eligibility of such individual (or any other individual) for benefits or assistance (or the amount or extent of benefits or assistance) under any Federal

program or under any State or local program financed in whole or in part with Federal funds.

“(b) TERMINATION.—Subsection (a) shall not apply to any amount received after December 31, 2012.”

Under the new law:

- The total amount of a refund received after December 31, 2009 – regardless of whether the refund is the result of a refundable credit, over-withholding, or both – is disregarded as income and resources in the month received.
- The resource exclusion lasts for 12 months for all programs.

## **INSTRUCTION:**

### Programs Affected

Under the statute, tax refunds must be excluded from consideration as income in the month received and as a resource for 12 months in any program that is funded in whole or in part by Federal funds. This includes all major means-tested programs that consider income and may consider assets when determining eligibility, such as (but not limited to) the title IV-E foster care maintenance payment program; the title IV-E adoption assistance program (until 9/30/2017) and the title IV-E guardianship assistance program.

### Compliance with the Provision

To comply with the requirement that a Federal tax refund be disregarded as income in the month the refund is received, the program must ensure that the income information being sought and that individuals are providing, does not include a Federal tax refund that may have been received.

The asset limit for title IV-E eligibility remains intact, but it must be implemented so as to comply with the disregard provision included in P.L. 111-312. An assistance unit may not be determined ineligible for title IV-E on the basis of having assets above the limit, if the assistance unit would have met the resource limit if the tax refund was disregarded.

While States have flexibility on how compliance with this provision is achieved, one method for implementing this provision that is consistent with title IV-E’s rules would be to subtract any Federal tax refund an individual, family, or household received in the last 12 months from the reported assets of the eligibility unit. If the difference between the unit’s reported assets and the amount received from the tax refund is less than the resource limit, the assistance unit would meet the resource-related eligibility criteria. This simplified approach will minimize administrative burdens on States and families alike.

To ensure compliance with the provision, it is important for States to ensure that their eligibility determination process and interview protocols are designed such that an assistance unit has the opportunity to provide information about a tax refund if receipt of such a refund may affect eligibility for benefits. This opportunity must be afforded regardless of the manner in which an individual, family or household provides information that will be used to determine eligibility, including those who submit information in person, by phone, or online and those who do and do not have an interview with an eligibility worker. This is particularly important when assistance units are reporting on their assets and simply may be asked for the amount of money in a bank account. Eligibility for title IV-E benefits should not be denied on the basis of the eligibility unit having assets above the resource limit unless the assistance unit has been asked whether anyone in the unit has received a tax refund in the last 12 months and those refunds have been properly disregarded. We recognize that the timeframe presents challenges to States and understand that States may not be able to revise automated systems immediately. However, States must find a mechanism to ensure that assistance units who exceed the asset level due to a tax refund received in the last 12 months are not denied.

#### Filing Season

Families will begin to file their 2010 tax returns very shortly and will, in turn, begin to receive tax refunds soon. Low-income families that had earnings in 2010 can receive sizable refunds on the basis of refundable tax credits such as the Earned Income Tax Credit. Thus, swift implementation of this provision is important to ensure that tax refunds are properly disregarded in eligibility decisions.

Our Regional Office staff are available to provide assistance you may need.

**INQUIRIES TO:** CB Regional Offices.

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Bryan Samuels  
Commissioner