

influences PPE design. TIL testing is intended to quantify the ability of respirators to fit a range of individuals; however, it is not intended to replace individual fit testing as mandated by the Occupational Safety and Health Administration (OSHA).

**STATUS:** This meeting will be open to the public, limited only by the space available. The meeting room will accommodate approximately 75 people. Interested parties should make hotel reservations directly with the Embassy Suites Hotel at 412-269-9070 (ask for Lauren) before the cut-off date of June 11, 2007. A special group rate of \$100 per night for meeting guests has been negotiated for this meeting. The NIOSH-NPPTL Public Meeting must be referenced to receive this rate.

Interested parties should confirm their attendance to this meeting by completing a registration form and forwarding it by e-mail ([npptlevents@cdc.gov](mailto:npptlevents@cdc.gov)) or fax (304-225-2003) to the NPPTL Event Management Office. A registration form may be obtained from the NIOSH Homepage (<http://www.cdc.gov/niosh>) by selecting conferences and then the event.

**ADDRESSES:** Comments on the topics presented in this notice and at the meeting should be mailed to: NIOSH Docket Office, Robert A. Taft Laboratories, M/S C34, 4676 Columbia Parkway, Cincinnati, Ohio 45226, telephone 513-533-8303, fax 513-533-8285. Comments may also be submitted by e-mail to [niocindocket@cdc.gov](mailto:niocindocket@cdc.gov). E-mail attachments should be formatted in Microsoft Word.

**Comments regarding the TIL program should reference Docket Number NIOSH-036.**

**FOR FURTHER INFORMATION CONTACT:** NPPTL Event Management, 3604 Collins Ferry Road, Suite 100, Morgantown, West Virginia 26505-2353, Telephone 304-225-5138, Fax 304-225-2003, E-mail [npptlevents@cdc.gov](mailto:npptlevents@cdc.gov).

Dated: May 21, 2007.

**James D. Seligman,**  
Chief Information Officer, Centers for Disease Control and Prevention.

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## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers for Medicare & Medicaid Services

[CMS-2241-N]

RIN 0938-AO28

#### State Children's Health Insurance Program (SCHIP); Redistribution of Unexpended SCHIP Funds From the Appropriations for Fiscal Year 2004 and Fiscal Year 2005 To Eliminate SCHIP Fiscal Year 2007 Funding Shortfalls; and Provisions for Continued Authority for Qualifying States To Use a Portion of Certain SCHIP Funds for Medicaid Expenditures

**AGENCY:** Centers for Medicare & Medicaid Services (CMS), HHS.

**ACTION:** Notice

**SUMMARY:** This notice describes, in accordance with the provisions of the National Institutes of Health Reform Act of 2006 (NIHRA), the methodology and process used for determining the amounts of unexpended Federal fiscal year (FY) 2004 SCHIP allotments remaining at the end of FY 2006, and the amounts of unexpended FY 2005 SCHIP allotments available mid-FY 2007, to be redistributed to certain States to eliminate these States' SCHIP funding shortfalls in FY 2007. In accordance with this methodology, this notice also contains the amounts of States' redistributed FY 2004 and FY 2005 allotments.

This notice also describes the amendments to the SCHIP statute, in accordance with the NIHRA, relating to the provisions for "qualifying States" to elect to receive a portion of their available SCHIP allotments as increased Federal matching funds for certain expenditures in their Medicaid programs.

#### SUPPLEMENTARY INFORMATION:

**FOR FURTHER INFORMATION CONTACT:** Richard Strauss, (410) 786-2019.

#### I. Background

##### A. Availability and Redistribution of SCHIP Fiscal Year Allotments

Title XXI of the Social Security Act (the Act) sets forth the State Children's Health Insurance Program (SCHIP) to enable States, the District of Columbia, and specified Commonwealths and Territories to initiate and expand health insurance coverage to uninsured, low-income children. The 50 States, the District of Columbia, and the Commonwealths and Territories may

implement SCHIP through a separate child health program under title XXI of the Act, an expanded program under title XIX of the Act, or a combination of both.

Section 2104(e) of the Act specifies that SCHIP allotments for a Federal fiscal year are available for payment to States' for their expenditures under an approved State child health plan for an initial 3-fiscal year period of availability, including the fiscal year for which the allotment was provided. Section 2104(f) of the Act specifies that the amounts of States' allotments, which are not expended during the initial 3-year period of availability, are to be redistributed to those States that have fully spent these fiscal year allotments during this period of availability in accordance with an appropriate procedure determined by the Secretary. Furthermore, section 2104(e) of the Act specifies that the amounts of the redistributed allotments continue to be available for expenditure by the States receiving these redistributions to the end of the fiscal year in which these funds are redistributed.

B. Enactment of the NIHRA and Special Rules for Addressing FY 2007 SCHIP Funding Shortfalls

In general, under section 2104(e) and (f) of the Act, any unexpended SCHIP allotments remaining following the end of the initial 3-year period of availability would otherwise be redistributed in accordance with an appropriate procedure determined by the Secretary. However, section 201(a) of the recently enacted National Institutes of Health Reform Act of 2006 (Pub. L. 109-482) (NIHRA) amended the SCHIP statute to add a new section 2104(h) of the Act. This new subsection provides for special rules to address States' FY 2007 SCHIP funding shortfalls. Specifically, in order to address States' FY 2007 SCHIP funding shortfalls, section 2104(h) of the Act provides for the redistribution in FY 2007 of the unexpended FY 2004 allotments remaining at the end of FY 2006, and the redistribution of certain amounts of unexpended FY 2005 allotments which are available for redistribution in months after March 31, 2007. This notice describes the implementation of section 201(a) of the NIHRA and contains the amounts of the States' redistributed FY 2004 and FY 2005 allotments determined in accordance with these provisions.

*C. Expenditures, Authority for Qualifying States To Use Available SCHIP Allotments for Medicaid Expenditures*

Under section 2105(a)(1)(A) through (D) and (a)(2) of the Act, and before enactment of Public Law 108–74 (Extension of Availability of SCHIP Allotment Act, enacted on August 15, 2003), only Federal payments for the following Medicaid and SCHIP expenditures were applied against States' available SCHIP allotments: (1) Medical assistance provided under title XIX (Medicaid) to targeted low-income children in a SCHIP-related Medicaid expansion, for which the enhanced SCHIP Federal Medical assistance program (FMAP) rate is available; (2) medical assistance provided on behalf of a child during a period of presumptive eligibility under section 1920A of the Act (these funds are matched at the regular Medicaid FMAP rate); (3) child health assistance to targeted low income children that meets minimum benefit requirements under SCHIP; and (4) expenditures in the SCHIP that are subject to the 10-percent limit on non-primary expenditures (including other child health assistance for targeted low-income children, health services initiatives, outreach, and administrative costs).

Section 1(b) of Public Law 108–74, as amended by Public Law 108–127 (Social Security Act, Technical corrections, enacted November 17, 2003), added new section 2105(g) to the Act under which certain "qualifying States" that met prescribed criteria could elect to use up to 20 percent of any of the States' available SCHIP allotments for FY 1998, 1999, 2000, or 2001 to increase the FMAP rate for regular Medicaid expenditures to the enhanced FMAP rate available under SCHIP. As described in the **Federal Register** published on July 23, 2004 (69 FR 44013), if a qualified State submitted both 20 percent allowance expenditures and other "regular" SCHIP expenditures at the same time in a quarter, the 20 percent allowance expenditures would be applied first against the available fiscal year reallocations. However, the 20 percent allowance expenditures could be applied only against the specified fiscal year allotment funds (upon which the 20 percent allowances were based) and which would remain available. Under section 2104(g)(1)(B)(iii) of the Act, the amounts of States' FY 2001 reallocations would only be available through the end of FY 2005; therefore, the FY 2001 20 percent allowances for the qualifying States are

only available through the end of FY 2005.

Section 6103 of the Deficit Reduction Act of 2005 (Pub.L. 109–171, enacted on February 8, 2006) amended section 2105(g) of the Act to provide for continued authority for qualifying States to use a portion of their available FY 2004 and FY 2005 SCHIP allotments to allow the use of the enhanced (FMAP) rate (as determined under section 2105(b) of the Act) for certain expenditures made under the Medicaid program.

Section 201(b) of the NIHRA amended section 2105(g) of the Act to provide for continued authority for qualifying States to use a portion of their available FY 2006 and FY 2007 SCHIP allotments to allow the use of the enhanced Federal Medical assistance percentage (FMAP) rate (as determined under section 2105(b) of the Act) for certain expenditures made under the Medicaid program.

## II. Provisions of This Notice

The purpose of this notice is to set forth our procedure for redistributing unexpended FY 2004 and FY 2005 allotments in accordance with section 2104(h) of the Act as added by the NIHRA. In this regard, this notice applies solely to the redistribution of unexpended FY 2004 and FY 2005 allotments and does not describe the procedure for the redistribution of any other unexpended fiscal year allotments. This notice also implements the continued authority for "qualifying States" to elect to receive a portion of certain of their available FY 2006 and FY 2007 SCHIP allotments as increased Federal matching funds for certain expenditures in their Medicaid programs.

### *A. Methodology for Redistribution of the FY 2004 SCHIP Allotments for the Period Ending March 2007 To Eliminate FY 2007 SCHIP Funding Shortfalls*

Section 2104(f) of the Act provides for the Secretary to determine an appropriate procedure to redistribute the entire amount of States' unexpended SCHIP allotments following the end of the related initial 3-year period of availability only to those States that fully expended the allotments by the end of the initial 3-year period of availability. However, section 2104(h)(1) of the Act as added by section 201(a) of the NIHRA, specifies the application of special rules for the redistribution of the unexpended FY 2004 allotments in FY 2007 with respect to certain "shortfall States." As described below, the procedure for redistribution of States' unexpended FY 2004 allotments

remaining at the end of FY 2006 will be in accordance with the provisions of section 2104(h)(1) of the Act relating to the elimination of funding shortfalls in the SCHIP in FY 2007.

Under section 2104(h)(7) of the Act as amended by the NIHRA, the special rules for the redistribution of the unexpended FY 2004 and FY 2005 allotments in FY 2007 to address FY 2007 SCHIP funding shortfalls apply only to the 50 States and the District of Columbia; that is, this provision refers only to States which received an allotment under section 2104(b) of the Act, and under this section a State means only the 50 States and the District of Columbia, as appropriate. Therefore, section 2104(h)(1) of the Act does not apply to the Commonwealths and Territories, which received SCHIP allotments for FY 2007 under the authority of section 2104(c) of the Act. Accordingly, unless otherwise indicated in this notice in referring to the redistribution of the FY 2004 allotments the term "State" means only the 50 States and the District of Columbia, as applicable.

Under section 2104(h)(1)(B) of the Act, a shortfall State is a State with an approved child health plan under title XXI of the Act, for which the Secretary estimates, on a monthly basis using the most recent data available to the Secretary, that the State's projected FY 2007 expenditures under this plan will exceed the sum of:

- i. The amount of the State's allotments for each of FY's 2005 and 2006 that were not expended by the end of FY 2006;
- ii. The amount of the State's allotment for FY 2007.

Furthermore, in determining whether a States' estimated FY 2007 expenditures are in excess of the State's available allotment funds specified above, these expenditures are determined subject to the provisions of section 2104(h)(4) of the Act. In the context of the FY 2004 redistributed allotments, section 2104(h)(4) of the Act indicates that these redistributed funds may only be used to make payments to States with respect to expenditures for (1) providing child health assistance or other health benefits coverage for populations eligible under the State child health plan (including under a waiver of this plan) on October 1, 2006; and (2) providing child health assistance or other health benefits coverage to an individual who is not a child or a pregnant woman at the regular FMAP only (not the enhanced FMAP). The redistributed FY 2004 allotments would be available for making payments to States for

expenditures for a child or a pregnant woman at the enhanced FMAP rate.

In determining the amount of any unexpended FY 2004 allotments that might be redistributed to address a State's FY 2007 SCHIP funding shortfall, we first determined the amount, if any, of each State's FY 2004 allotments that were not expended by the end of FY 2006 based on States' quarterly expenditure reports (Forms CMS-21 and CMS-64) as submitted and certified by States through November 30, 2006. We also determined the amounts of each States' unexpended FY 2005 and FY 2006 allotments that were not expended by the end of FY 2006, also based on States' quarterly expenditure reports (Forms CMS-21 and CMS-64) as submitted and certified by States through November 30, 2006. The amounts of the States' allotments for FY 2007 are as published in the **Federal Register** on July 28, 2006 (71 FR 42854). We then determined the amounts of States' projected FY 2007 expenditures using the States' most recent estimates. In that regard, the most recent estimates of States' FY 2007 expenditures were obtained from the States' certified submissions of their February 2007 quarterly report forms CMS-21b and CMS-37. From these submissions we were able to determine States' projected expenditures for FY 2007 on a yearly and quarterly basis. For those States that cover adults in their SCHIP programs, we also obtained further breakdowns of these expenditures between children, pregnant women, and adults (other than pregnant women, that is, parents and childless adults). Using this information, we determined the States that met the definition of Shortfall State in section 2104(h)(1)(B) of the Act.

The next step was to determine on a monthly basis, beginning with October 2006, whether these shortfall States had sufficient allotment funds available to meet their estimated SCHIP expenditures. As indicated previously, this determination was made subject to the provisions of section 2104(h)(4)(B) of the Act, under which the FY 2004 redistributed funds are only available for expenditures for populations eligible on October 1, 2006 and for an individual other than a child or pregnant woman at the regular FMAP rate. Under the standard operational procedures in the SCHIP program, States report their actual expenditures on a quarterly basis, and only after the end of the quarter. This process has been explicitly recognized in the SCHIP statute with respect to previous fiscal year allotment determinations (for example, see section 2104(g)(3) of the Act, which references a November 30th

date (that is, 2 months following the end of the associated fiscal year)).

Accordingly, we have used 2 months as a reasonable time period for States to report their expenditures following the end of a fiscal year quarter. The most recent quarterly expenditure report submitted by States was for the fourth quarter of FY 2006, and as indicated previously, we obtained the final States' submissions for this quarter/fiscal year by November 30, 2006. Using the 2 month period, the next expenditure report for the first quarter of FY 2007 (October 1, 2006 through December 31, 2006) would be expected as of the end of February 2007.

With respect to States' estimated expenditures, a quarterly reporting process also applies. The most recent expenditure estimates for FY 2007 were submitted by States through their February 2007 submissions of the Forms CMS-37 and CMS-21B. Typically, the reports of States' quarterly estimates are completed/certified by States before the beginning of the following quarter; for example, the States' submissions of their February 2007 quarterly estimate reports were completed/certified by the end of March 2007. The next scheduled quarterly estimate reports due from States would be the May 2007 quarterly submission which would not be completed/certified by States until mid to late June 2007.

Because of the timing and availability of the States' quarterly expenditure reports and the States' quarterly expenditure estimate reports, and in order to comply timely with the provisions of section 2104(h)(1) of the Act (which requires that States' FY 2007 SCHIP funding shortfalls be addressed on a monthly basis), we propose to use the States' submissions of their February 2007 quarterly expenditure estimate reports to determine and estimate the amounts of the States' monthly SCHIP funding shortfalls through March 2007. That is, the February 2007 quarterly expenditure estimate reports submitted by States represent the most recent official/certified estimates that States have submitted and that were available through the end of March 2007.

In order to determine States' monthly SCHIP funding shortfalls, and in order to address the "varying FMAP" provision (in section 2104(h)(4)(B) of the Act), we used the States' expenditure estimates for FY 2007 to determine an expenditure per diem amount for shortfall States; this was calculated by dividing the total projected expenditures for the first two quarters of FY 2007 by 182, the number of days in the period October 1, 2007 through March 31, 2007, the period

ending with the date specified in section 2104(h)(2) of the Act as amended by NIHRA, and which is the end of the second quarter FY 2007. Furthermore, in applying the States' estimates for determining the monthly SCHIP funding shortfalls, we assumed that the expenditures represented by these fiscal year estimates would be presented for payment to the State in each quarter without regard to the type of individual the expenditure is associated with. Finally, we determined two different expenditure per diem amounts. The first expenditure per diem amount was determined as if payment for the entire amount of a State's estimated expenditures for the first two quarters of FY 2007 were available at the enhanced FMAP rate, without regard to the type of populations (children/pregnant women or non-pregnant adults) such expenditures represented. Therefore, the first expenditure per diem amount was determined by dividing the States' projected FY 2007 expenditures through March 31, 2007 (representing the first two quarters of FY 2007), with no adjustment for the type of individual (child/pregnant woman or non-pregnant adult) for whom the expenditure was associated, by 182. This expenditure per diem amount is applied under the premise that payment for a State's expenditures prior to a SCHIP funding shortfall occurring (the point in time when all allotments have been exhausted) for the State would be made from the State's other allotments available in FY 2007 (specifically, the States' available FY 2005, 2006 and 2007 allotments, not including any FY 2004 redistribution). The varying FMAP provision is not applicable with respect to the other fiscal year allotment funds available to the State (the allotments other than the FY 2004 allotments).

The second expenditure per diem amount is determined by adjusting the States' projected expenditures for the first two quarters of FY 2007 to reflect the provision under section 2104(h)(4) of the Act, as amended by NIHRA, that payment for expenditures for an individual who is not a child or pregnant woman (that is, a non-pregnant adult) which is made from the FY 2004 redistribution amounts available to the shortfall States would be at the regular FMAP rate. This reflects the premise that once a State experiences a SCHIP funding shortfall situation during a month, that is, the point in time when all other available allotments (other than the potential FY 2004 redistribution amounts) have been exhausted, payment for the State's expenditures could only

be made from the FY 2004 redistributed amounts that might be made available to the State. Since application of the FY 2004 redistributed allotments are conditioned by the varying FMAP provision in section 2104(h)(4)(B) of the Act, the second expenditure per diem amount was determined by dividing the estimated expenditures for the period ending March 31, 2007 by 182, after these expenditures were adjusted to reflect that adult expenditures are only matched at the regular FMAP rate (for States that have expenditures affected by this provision).

For each shortfall state, we then divided its total allotments available in FY 2007 (not including any FY 2004 redistribution amounts) by the unadjusted expenditure per diem amount to determine the total number of days funded by the other allotments available to the State before it would experience a SCHIP funding shortfall. Again, in this regard, "other allotments" refers to the allotments available to the State not including any FY 2004 redistributed allotments. Using this approach, we determined the month and the day on which each shortfall state would no longer have any other SCHIP allotment funds available during the period ending March 31, 2007. Then, for days in the month after the shortfall occurred, the State would be in a shortfall situation and as available, amounts of unexpended FY 2004 allotment would be redistributed to these State(s) in amounts intended to eliminate this shortfall. Using this approach, on a month by month basis for the period ending March 31, 2007, we determined the FY 2004 redistribution amounts for shortfall States for months in the first two quarters of FY 2007. This monthly amount is equal to the SCHIP funding shortfall amounts in the month, unless there were not sufficient FY 2004 allotments remaining available to meet this monthly SCHIP funding shortfall. The SCHIP funding shortfall amount for a month is equal to the number of days in the month in which the State is estimated to experience a shortfall multiplied by the adjusted per diem rate. In a month when the amounts of the unexpended FY 2004 allotment available for redistribution is less than the total allotment funds needed by shortfall States, per section 2104(h)(1)(D) of the Act, these amounts available for redistribution in this month would need to be prorated, based on the shortfall expenditures in this month for the identified shortfall States.

Using the approach described above, we identified the shortfall States in FY 2007, determined the amounts of these

States' monthly shortfalls through the end of March 2007, and the amounts of the redistributed unexpended FY 2004 allotments determined to meet these shortfalls for the period ending March 2007. The monthly amounts of the redistributed FY 2004 allotments are included in this notice.

*B. Methodology for Redistribution of the Remaining Unexpended FY 2004 Allotments and Certain Amounts of Unexpended FY 2005 SCHIP Allotments to Eliminate FY 2007 SCHIP Funding Shortfalls in the Months After March 31, 2007*

Under section 2104(f) of the Act, the Secretary is required to determine an appropriate procedure to redistribute the entire amount of States' unexpended SCHIP allotments following the end of the associated initial 3-year period of availability only to those States that fully expended the allotments by the end of the initial 3-year period of availability. However, section 2104(h)(2) of the Act as amended by the NIHRA, provides for an earlier redistribution of certain amounts of States' FY 2005 allotments. Specifically, this section requires the redistribution in FY 2007 of certain amounts of States' unexpended FY 2005 allotments estimated to be available in months following March 31, 2007, in order to address and reduce certain identified States' SCHIP funding shortfalls occurring in FY 2007.

Under section 2104(h)(7) of the Act as amended by the NIHRA, the special rules for the redistribution of the unexpended FY 2004 and FY 2005 allotments in FY 2007 to address FY 2007 SCHIP funding shortfalls apply only to the 50 States and the District of Columbia. That is, this provision refers only to States which received an allotment under section 2104(b) of the Act, and under this section a State means only the 50 States and the District of Columbia, as appropriate. Therefore, section 2104(h)(2) of the Act does not apply to the Commonwealths and Territories, which received SCHIP allotments for FY 2007 under the authority of section 2104(c) of the Act. Accordingly, unless otherwise indicated in this notice in referring to the redistribution of the FY 2005 allotments the term "State" means only the 50 States and the District of Columbia, as applicable.

Under section 2104(h)(2)(B) of the Act, a shortfall State is a State with an approved child health plan under title XXI of the Act, for which the Secretary estimates, subject to paragraph (4)(B) and on a monthly basis using the most recent data available to the Secretary as of March 31, 2007, that its projected FY

2007 expenditures under this plan will exceed the sum of:

i. The amount of the State's allotments for each of FYs 2005 and 2006 that were not expended by the end of FY 2006;

ii. The amount, if any, of the State's FY 2004 redistribution, as determined above, in accordance with section 2104(h)(1) of the Act; and

iii. The amount of the State's allotment for FY 2007.

In determining whether a State's estimated FY 2007 expenditures are in excess of the State's allotment funds available in FY 2007, these expenditures are determined, in accordance with section 2104(h)(4) of the Act. Section 2104(h)(4) of the Act indicates that Federal payments to a State from the FY 2005 redistributed allotment amounts with respect to expenditures for providing child health assistance or other health benefits coverage is for populations eligible under the State child health plan (including under a waiver of this plan) on October 1, 2006 and payment to an individual who is not a child or a pregnant woman, using the FY 2005 redistributed allotments may only be at the regular FMAP (not the enhanced FMAP). Federal payments from the FY 2005 redistributed allotments for expenditures for a child or a pregnant woman using the redistributed FY 2005 allotments would be available at the enhanced FMAP.

Section 2104(h)(2) of the Act provides for a redistribution of States' unexpended FY 2005 allotments in FY 2007. However, section 2104(h)(3) of the Act limits the amounts and the States from which these unexpended FY 2005 allotments would be redistributed. Specifically, the States from which these unexpended FY 2005 allotment funds would be redistributed are identified as follows, based on the most recent data as of March 31, 2007:

i. The States have not expended all of their FY 2005 allotments by March 31, 2007.

ii. The total of these States' estimated available allotments (as of March 31, 2007) is at least equal to 200 percent of the States' total projected SCHIP expenditures for FY 2007.

In the case of States identified as meeting the above conditions, the amount of the FY 2005 allotments that would be redistributed from them is limited to the lesser of:

i. 50 percent of their unexpended FY 2005 allotments available as of March 31, 2007, or

ii. \$20 million.

By March 31, 2007, all States submitted their first quarter FY 2007 expenditure reports; however, at that

time the second quarter of FY 2007 had only just ended, and the associated expenditure reports have not yet been submitted by States. However, the States' February 2007 quarterly submissions of estimated expenditure reports for FY 2007 were submitted by March 31, 2007. In that regard, in accordance with section 2104(h)(2) of the Act, we used the States' submissions of their February 2007 quarterly expenditure estimate reports of their FY 2007 expenditures in order to determine the following:

- The amounts of SCHIP allotment funds (including the FY 2005 allotments and any redistributed amounts of unexpended FY 2004 allotments) that would be available as of March 31, 2007; and
- The amounts of States' estimated expenditures for FY 2007 on an annual basis and for each quarter of the fiscal year.

Using this information we were able to determine projected estimates of States' SCHIP funding shortfalls for months after March 31, 2007, and the amount of the unexpended FY 2005 allotments available as of that date to be used to address these SCHIP funding shortfalls.

In order to determine States' monthly SCHIP funding shortfalls after March 31, 2007, and in order to address the "varying FMAP" provision (referenced in section 2104(h)(4)(B) of the Act), we used the States' expenditure estimates for FY 2007 obtained from the February 2007 quarterly expenditure estimate reports to determine expenditure per diem amounts for the FY 2007 shortfall States, identified as discussed in section A above. The per diem amounts for the period after March 31, 2007 were calculated by dividing the total projected expenditures for the period April 1, 2007 through September 30, 2007 (as provided by States' February 2007 submission) by 183, the number of days in that period. Furthermore, in applying the States' estimates for determining the monthly SCHIP funding shortfalls after March 31, 2007, we assume that the expenditures represented by these estimates would be presented for payment to the State without regard to the type of individual (child/pregnant woman or non-pregnant adult) with which the expenditure is associated. Finally, we determined two different expenditure per diem amounts. The first per diem amount was determined as if payment for all of the State's estimated expenditures for the period April 1, 2007 through September 30, 2007 were available at the enhanced FMAP rate. Therefore, the first expenditure per diem amount is

determined by dividing the States' projected FY 2007 expenditures for the period after March 31, 2007, with no adjustment made for the type of individual (child/pregnant woman or adult) for whom the expenditure was associated, by 183. This first expenditure per diem amount is applied under the premise that a State's expenditures prior to a shortfall occurring for the State (the point in time when all allotments have been exhausted) would be matched with the other (if any) fiscal year allotments available to the State in FY 2007 (that is, the States' available FY 2005, 2006 and 2007 allotments, and also including any FY 2004 redistribution amounts available to the State). The varying FMAP provision would not be applicable for these other allotment funds available to the State (not including the FY 2004 and FY 2005 redistributions).

The second expenditure per diem amount is determined by adjusting the States' projected FY 2007 expenditures to reflect the condition that payment for expenditures for an individual who is not a child or pregnant woman would be made at the regular FMAP rate using any FY 2005 redistribution amounts available to the shortfall State. This reflects the premise that once a State reaches a shortfall situation during a month (that is, all other available allotments, other than the FY 2005 redistribution amounts have been exhausted), payment for the FY 2007 shortfall State's expenditures would only be made from the FY 2005 redistributed amounts that might be made available. Since application of the FY 2005 redistributed allotments is conditioned by the varying FMAP provision (refer to section 2104(h)(4)(B) of the Act), the second expenditure per diem amount is determined by dividing the estimated expenditures for FY 2007 for the period after March 31, 2007 (as adjusted to reflect the adult expenditures affected by the varying FMAP provision for States that have these expenditures) by 183.

For each shortfall state, we divided its total available allotments (other than the potential FY 2005 redistributed amounts, if any) by the unadjusted expenditure per diem amount to determine the total number of funded days the State had before it was in a shortfall situation. This would determine the month and the day on which the shortfall State would no longer have any (other) allotment funds available. For days in the month beginning with the day the SCHIP funding shortfall occurs, the State is in shortfall and as available, amounts of

the unexpended FY 2004 allotments (remaining after the redistributions for the months prior to April 2007) and the unexpended FY 2005 allotments (estimated to be unexpended at the end of March 2007 and available for redistribution on April 1, 2007) would be redistributed to these State(s). On a month by month basis, we determined the FY 2004 and FY 2005 redistribution amounts to be provided to shortfall States for months after March 31, 2007.

In particular, beginning with April 1, 2007, we determined the amount of the remaining unexpended FY 2004 allotments to be redistributed to each shortfall state with a shortfall projected for April by determining the April 2007 shortfall amount. The April shortfall amount for each shortfall State was determined by multiplying the State's number of shortfall days in April by the adjusted expenditure per diem amount. The remaining unexpended FY 2004 allotments were then prorated by the April shortfall amounts for each State (since the amounts of the remaining unexpended FY 2004 allotments were not sufficient to meet the entire April shortfall). That is, per section 2104(h)(1)(D) of the Act, unexpended FY 2004 allotment amounts available for redistribution in a month must be prorated or reduced proportionally, based on the shortfall expenditures in the month. From the unexpended FY 2005 allotments determined to be available as of April 1, 2005 to meet the remaining April shortfall, we then redistributed to each shortfall state with a projected April shortfall an amount equal to the remaining April shortfall after the provision of the FY 2004 redistribution for April.

Finally, we determined the redistribution of FY 2005 allotments for May 2007. This was determined by multiplying the number of shortfall days in May for each shortfall State by the adjusted per diem amount. Since the remaining unexpended FY 2005 allotments available for redistribution in May 2007 (after the April redistribution) were projected to be insufficient to meet the total projected May 2007 shortfall, the final FY 2005 redistribution amounts for May were prorated, based on the total shortfall for the month. That is, per section 2104(h)(2)(D) of the Act, FY 2005 allotment amounts available for redistribution in a month must be prorated or reduced proportionally, based on the shortfall expenditures in the month.

#### *C. Retrospective Adjustment*

Section 2104(h)(5) of the Act provides discretion for the Secretary to adjust the estimates and determinations of FY

2004 and FY 2005 redistributions following the end of FY 2007 under sections 2104(h)(1), (2) and (3) of the Act, on the basis of the actual expenditures reported by States no later than November 30, 2007. However, in no case may the amounts of the FY 2005 allotments redistributed from States exceed the amounts that were determined based on the most recent data available as of March 31, 2007. As described, above, these amounts were determined based on the States' submissions of the February 2007 quarterly estimate reports of their FY 2007 expenditures, and using these estimates would not exceed the lesser of 50 percent of the States' available FY 2005 allotments as would be available as of March 31, 2007 or \$20 million. Furthermore, under section 2104(h)(5)(B) of the Act, only the actual unexpended FY 2005 allotments remaining at the end of FY 2007 (as determined following the submission of States' fourth quarter FY 2007 expenditure reports submitted by November 30, 2007) may be available for any retrospective adjustments that may be made under this provision. Finally, under section 2104(h)(5)(C) of the Act, any retrospective adjustment may not provide for the reduction of any States' FY 2006 or FY 2007 allotments.

#### *D. Ordering of Expenditures*

In applying State's expenditures against their available SCHIP allotments, we follow the order of expenditures as provided under section 2105(a)(1)(A) through (D) and (a)(2) of the Act as follows:

- (i) Title XIX SCHIP-related expenditures for which payment is made at the enhanced FMAP (section 2105(a)(1)(A) of the Act);
- (ii) Title XIX expenditures for medical assistance provided during a presumptive eligibility period under section 1920A of the Act (section 2105(a)(1)(B) of the Act);
- (iii) Child health assistance for targeted low-income children in the form of providing health benefits coverage that meets the requirements of section 2103 (per section 2105(a)(1)(C) of the Act);
- (iv) Expenditures listed in section 2105(a)(1)(D)(i) through (iv) of the Act, respectively: Other child health assistance for targeted low-income children; health services initiatives under the plan for improving the health of children (including targeted low-income children and other low-income children); expenditures for outreach activities; and administration expenditures.

As discussed previously, Public Law 108-74, as amended by Public Law 108-127, also added a new section 2105(g) to the Act, under which a "qualifying State" meeting specified criteria could, at its option, elect to use up to 20 percent of any of the state's available SCHIP allotments for FY 1998, 1999, 2000, or 2001 for payments under the State's Medicaid program, instead of expenditures under the State's SCHIP. Furthermore, as amended by section 6103 of the DRA, qualifying States may elect to use up to 20 percent of their available FY 2004 and FY 2005 allotments for this purpose. Finally, as amended by section 201(b) of the NIHRA, qualifying States may elect to use up to 20 percent of their available FY 2006 and FY 2007 allotments. As described in the **Federal Register** published on July 23, 2004 (69 FR 44026), if a qualified State submits both 20 percent allowance expenditures and other "regular" SCHIP expenditures at the same time in a quarter (based on the allotment priority order they both must apply against any available fiscal year allotments), the 20 percent allowance expenditures will be applied first against any remaining 20 percent allowance allotments amounts. We will apply the same approach with respect to the FY 2006 and FY 2007 20 percent allowances determined in accordance with section 201(b) of the NIHRA.

In general, in accordance with the ordering of allotments and expenditures provisions, the expenditures of States eligible for the FY 2004 and FY 2005 redistribution amounts will be applied against the FY 2004 and FY 2005 redistribution amounts.

#### *E. No Ordering Election for FY 2004 and FY 2005 Redistributed Amounts*

In the past, for purposes of applying States' expenditures against the redistributed allotments, States receiving redistributed allotment amounts were given flexibility to decide the ordering of the redistributed allotments with respect to the States' other available allotments. This allowed the redistribution States to optimize the use of these redistributed funds. However, because of the statutory provisions made by the NIHRA related to the determination of shortfall States and the amount of the funding shortfalls on a monthly basis, and the requirement that these redistributed allotments be available only after the States' other SCHIP allotment funds have been exhausted, we believe that the FY 2004 and FY 2005 redistributed allotments must be ordered after the States' other available allotments are exhausted. Therefore, shortfall States must spend

their available FY 2005, FY 2006 and FY 2007 allotments first, before any redistributed FY 2004 and FY 2005 allotment amounts. Furthermore, since the unexpended FY 2004 allotments must be redistributed before any redistribution of the FY 2005 allotments, the FY 2004 redistributed allotment amounts must be ordered prior to any FY 2005 redistributed allotment amounts.

As specified in section 2104(h)(6) of the Act, as added by section 201(a) of the NIHRA, the amounts of the unexpended FY 2004 and FY 2005 allotments redistributed to a State in FY 2007 are only available for expenditure by the State through September 30, 2007; and any amounts of these redistributed allotments remaining at the end of FY 2007, shall not be subject to redistribution under section 2104(f) of the Act.

As part of the redistribution process, prior to making the FY 2004 and FY 2005 redistribution funds actually available, we contacted all of the States we estimated to be eligible for these fiscal year redistributions and all of the States contributing towards the FY 2005 redistribution (as identified in section 2104(h)(3) of the Act) in order to explain the redistribution process and associated SCHIP allotment amounts as described in this notice. The amounts of such States' FY 2004 and FY 2005 redistributed allotment amounts and the reduction of the FY 2005 allotments, will be incorporated into the Form CMS-21C (Allocation of Title XIX and Title XXI Expenditures to the SCHIP Fiscal Year Allotment). Form CMS-21C is used for tracking States' expenditures against their available SCHIP allotments. The amounts of the FY 2004 and the FY 2005 redistributed allotments and the reduction to the FY 2005 allotments will be entered on this form, and the Medicaid and SCHIP expenditure system will automatically apply expenditures reported on the quarterly expenditure reports for FY 2007 against the FY 2004 and FY 2005 redistributed amounts and the revised FY 2005 allotments available in FY 2007, and the other SCHIP allotments available in FY 2007.

#### *F. Special Rule for Coverage for Populations Eligible on October 1, 2006*

Under section 2104(h)(4)(A) of the Act, as added by the NIHRA, a State may use amounts of FY 2004 allotments or FY 2005 allotments, redistributed under section 2104(h) of the Act, only for expenditures for providing child health assistance or other health benefits coverage for populations eligible for assistance or benefits under

its approved State child health assistance plan (including a waiver of this plan) as in effect on October 1, 2006. During FY 2007, if a State which received amounts of redistributed FY 2004 or FY 2005 allotments does not provide eligibility for any populations in addition to those eligible under its approved plan (including a waiver of this plan) as in effect on October 1, 2006, we will deem this requirement to be met and no special/separate reporting of expenditures related to the populations eligible in accordance with the State's plans (or waiver of this plan) as in effect on October 1, 2006 would be required. However, if a State receiving amounts of redistributed FY 2004 or FY 2005 allotments does provide eligibility for any populations in addition to those eligible under its approved plan (including a waiver of this plan) as in effect on October 1, 2006, this State will need to separately report the FY 2007 expenditures it reports to CMS for these additional populations, in accordance with reporting requirements determined by CMS. Separately reporting these expenditures will ensure that none of the FY 2007 expenditures for these additional populations will be applied against the FY 2004 or FY 2005 redistributed allotments.

*G. Continued Authority for Qualifying States To Use Certain Funds for Medicaid Expenditures*

Section 1(b) of Public Law 108-74, as amended by Public Law 108-127, added new section 2105(g) to the Act under which certain "qualifying States" that met prescribed criteria could elect to use up to 20 percent of the States' available SCHIP allotments for FY 1998, 1999, 2000, or 2001 as additional Federal financial participation for expenditures under the State's Medicaid program, instead of expenditures under the State's SCHIP. The **Federal Register** published on July 23, 2004 (69 FR 44026) described the definition of qualifying State and indicated how the 20 percent allowances for these States would be calculated and applicable expenditures tracked against them. Section 6103 of the DRA amended section 2105(g)(1)(A) of the Act to provide for continued authority for qualifying States to use a portion of their available FY 2004 and FY 2005 SCHIP allotments. Finally, section 201(b) of the NIHRA amended section 2105(g)(1)(A) of the Act to provide for continued authority for qualifying States to use a portion of their available FY 2006 and FY 2007 SCHIP allotments. The 20 percent allowances for qualifying States associated with the FY 2006 and FY 2007 allotments have been

calculated in the same way as we determined and tracked the 20 percent allowances associated with the FY 1998 through FY 2002 fiscal years. The availability of the 20 percent allowances for FY 2006 and FY 2007, and the application of expenditures against these allowances, will be in accordance with the same provisions as in the July 23, 2004 **Federal Register**.

*H. Tables for FY 2004 Unexpended Allotments, Calculation of FY 2004 and FY 2005 Redistribution, and Determination of Available FY 2005 Allotments for Redistribution*

In Table 1 of this notice we set forth the unexpended FY 2004 SCHIP allotments remaining at the end of FY 2006. We established the amount of States' unexpended FY 2004 allotments at the end of the initial 3-year period of availability, based on the SCHIP-related expenditures, as reported and certified by States to us on the quarterly expenditure reports (Form CMS-64 and/or Form CMS-21) by November 30, 2006. These expenditures are applied and tracked against the States' FY 2004 allotments (as published in the **Federal Register** on August 22, 2003 (68 FR 50784)) and other available allotments, on Form CMS-21C, Allocation of the Title XIX and Title XXI Expenditures to SCHIP Fiscal Year Allotment.

By November 30, 2006, all States reported and certified their FY 2006 fourth quarter expenditures (representing the last quarter of the 3-year period of availability for FY 2004). Expenditures reflected in Table 1 below were taken from our Medicaid Budget and Expenditure System/State Children's Health Program Budget and Expenditure System (MBES/CBES) "master file," which represents the State's official certified SCHIP and Medicaid expenditure reporting system records related to the determination of the amounts of the unexpended FY 2004 allotments. Based on States' expenditure reports submitted and certified through November 30, 2006, the total amount of States' FY 2004 SCHIP allotments that were unexpended at the end of the 3-year period ending September 30, 2006, is \$146,879,932. These amounts were used to determine the States' FY 2004 redistributed allotment amounts set forth in Table 3 of this notice.

*Tables for Calculating the SCHIP FY 2004 Redistributed Allotments*

The following describes Tables 1 through Table 3, which together presents the redistributed amounts of the unexpended FY 2004 and FY 2005 SCHIP allotments for purposes of

eliminating FY 2007 SCHIP funding shortfalls.

A total of \$3,175,200,000 was allotted nationally for FY 2004, representing \$3,142,125,000 in allotments to the 50 States and the District of Columbia, and \$33,075,000 in allotments to the Commonwealths and Territories. Based on the quarterly expenditure reports, submitted and certified by November 30, 2006, 44 States and the District of Columbia fully expended their FY 2004 allotments, 7 States did not fully expend their FY 2004 allotments, and all 5 of the Commonwealths and Territories fully expended their FY 2004 allotments. For the 7 States that did not fully expend their FY 2004 allotments, the total unexpended FY 2004 allotments is \$146,879,932; this amount is available for redistribution to States with shortfalls in FY 2007, in accordance with the provisions of the NIHRA in FY 2007. The calculation of the total unexpended FY 2004 allotments remaining at the end of FY 2006 is detailed in Table 1 below.

Based on the States' February 2007 projections of their FY 2007 SCHIP expenditures, there are 11 States projected to have a SCHIP shortfall in FY 2007 totaling about \$932 million. However, only 5 of these States are projected to have a shortfall for the period October 1, 2006 through March 31, 2007 (Illinois, Maryland, Massachusetts, New Jersey, and Rhode Island); in particular, we projected that the shortfalls for these states begin in January 2007. In accordance with the provisions of section 2104(h)(1) of the Act, as amended by NIHRA, we estimated the shortfalls for the 5 States for the months of January through March 2007 total about \$86.5 million. Since there is a total of about \$146.9 million in unexpended FY 2004 allotments available for redistribution in FY 2007, the entire shortfall for months prior to April 2007 can be met. The redistribution of unexpended FY 2004 allotments for the months of January through March 2007 shortfalls is included in Table 3 below.

There were 13 States identified under section 2104(h)(3) of the Act, as amended by NIHRA, as having unexpended FY 2005 allotment amounts available as of March 31, 2007 and that also had total available allotments equal to at least 200 percent of their projected FY 2007 expenditures available as of March 31, 2007. We determined this using the States' February 2007 submissions of their FY 2007 projected expenditures. For these States, the lesser of \$20 million, or fifty percent of their unexpended FY 2005 allotments, available as of March 31,



2007, is available for redistributions for states with FY 2007 shortfalls in months after March 2007. Based on this, we determined that a total of \$137,832,296 in unexpended FY 2005 allotments from these 13 states is available for redistribution to the shortfall States in FY 2007 for months after March 2007. Table 3 below provides details regarding this determination.

Of the 11 States projected to have shortfalls in FY 2007, 6 of them are projected to have shortfalls in April and May 2007 (Georgia, Illinois, Maryland, Massachusetts, New Jersey, and Rhode Island). Based on the February 2007 estimates of States' projected FY 2007 expenditures, the total shortfall for these 6 States for the month of April is estimated at about \$96.9 million. About \$60.3 million in unexpended FY 2004 allotments remained after the redistribution for the months prior to April 2007; therefore, this amount is available to meet the FY 2007 shortfall for the month of April. The remaining April shortfall after the FY 2004 redistribution is about \$36.6 million (\$96.9 million minus \$60.3 million). This remaining April shortfall is fully covered by the \$137.8 million in unexpended FY 2005 allotments available for redistribution for months after March 2007. The remaining \$101.2 million in unexpended FY 2005 allotments is available to be applied to projected May 2007 shortfall amounts. The projected May 2007 shortfall for the 6 states projected to have shortfalls in May is about \$116.6 million; therefore, the remaining \$101.2 million in FY 2005 allotments available for redistribution to address May 2007 shortfalls has been prorated among the 6 May shortfall States, based on the May shortfall projections. The amounts of the remaining redistributed FY 2004 allotments and the redistribution of the FY 2005 allotments for the April and May 2007 shortfalls is included in Table 3 below.

#### Key to Table 1—Unexpended SCHIP Allotments for Fiscal Year 2004

Table 1 presents the amounts of the unexpended FY 2004 allotments remaining at the end of FY 2006 and available for redistribution in FY 2007 to address the FY 2007 SCHIP funding shortfalls for the 50 States and the District of Columbia.

##### Column/Description

Column A = State. Name of State, District of Columbia, the Commonwealth or Territory.

Column B = FY 2004 Allotments. This column contains the FY 2004 SCHIP allotments for all States, which were

published in the **Federal Register** on October 22, 2003 (68 FR 50784).

Column C = Expenditures Applied Against FY 2004 Allotment. This column contains the cumulative expenditures applied against the FY 2004 allotments, as reported and certified by all States through November 30, 2006.

Column D = Unexpended FY 2004 Allotments or "None". This column contains the amounts of unexpended FY 2004 SCHIP allotments for States that did not fully expend the allotments during the 3-year period of availability for FY 2004 (FYs 2004 through 2006), and is equal to the difference between the amounts in Column B and Column C. For States that did fully expend their FY 2004 allotments during the 3-year period of availability, the entry in this column is "None." The total of the entries in Column D, \$146,879,932, represents the total amount of unexpended FY 2004 allotments remaining at the end of FY 2006 and available for redistribution in FY 2007.

#### Key to Table 2—Determination of Amounts of Unexpended FY 2005 Allotments Available Mid-FY2007 for Redistribution

Table 2 reflects the amounts of unexpended FY 2005 allotments determined to be available as of March 31, 2007 based on the States' February 2007 submissions of their FY 2007 estimated expenditures, determined in accordance with the provisions of section 2104(h)(3) of the Act, as amended by the NIHRA and as described in this **Federal Register** notice. These amounts will be used to eliminate the States' FY 2007 SCHIP funding shortfalls occurring in the period beginning April 2007 through the redistribution process described in this **Federal Register** notice; the amounts of this FY 2005 redistribution is contained in Table 3 along with the redistributed amounts of the FY 2004 allotments.

##### Column/Description

Column A = STATE. Column A contains the name of the State or the District of Columbia.

Column B = Total Allots. Remaining 3/31/2007. Column B contains the total allotments remaining available to each State in FY 2007 as of March 31, 2007. These amounts were determined by applying the projected expenditures for each State for the first two quarters of FY 2007 (October 1, 2006 through March 31, 2007) against the State's available allotments in that period (including the State's unexpended FY 2005 allotments carried over from FY 2006, unexpended FY 2006 allotments

carried over from FY 2006, and FY 2007 allotments).

Column C = FY 2005 Allots.

Remaining 3/31/2007. Column C contains the total FY 2005 allotments remaining available to each State in FY 2007 as of March 31, 2007. These amounts were determined by applying the projected expenditures for each State for the first two quarters of FY 2007 (October 1, 2006 through March 31, 2007) against the State's available allotments in that period (including the State's unexpended FY 2005 allotments carried over from FY 2006, unexpended FY 2006 allotments carried over from FY 2006, and FY 2007 allotments).

Column D = Total Yearly Projected FY 2007 Expenditures. Column D contains the total Federal share projected SCHIP expenditures for FY 2007, as projected by the State and submitted to CMS in its February 2007 submission.

Column E = 200 Percent of FY 2007 Proj. Expend. 2 x D. Column E contains 200 percent of the amount of the State's projected Federal share SCHIP FY 2007 expenditures contained in Column D.

Column F = 2104(h)(3)(B) Test, Tot. Mid-FY07 Est. Exp., B >= E. Column F contains the results of the test applied under section 2104(h)(3)(B) of the Act. That test, is whether the total available SCHIP allotments projected to be available as of March 31, 2007 (indicated in Column B) is at least equal to 200 percent of the State's projected FY 2007 SCHIP expenditures (indicated in Column E). If the amounts for the State meet this test, the entry in Column E will indicate "YES". If the amounts for the State do not meet this test, the entry in Column E will indicate "Not Met".

Column G = Amount Contributed to FY 05 Redist., Min (.5xC, \$20M). For the States that Column F indicates the test is met (Column F indicates "YES"), Column G contains the portion of that State's FY 2005 allotment that is available as of March 31, 2007 which will be adjusted applied to the FY 2007 SCHIP funding shortfalls. For the States meeting the test, the amount in Column G is determined as the lesser of \$20 million, or 50 percent of the amount of the State's available FY 2005 allotment as of March 31, 2007 (indicated in Column C).

#### Key to Table 3—Amounts of Unexpended FY 2004 and FY 2005 Allotments Redistributed in FY 2007

Table 3 contains the redistributed amounts of unexpended FY 2004 allotments and FY 2005 allotments for addressing States' funding shortfalls in FY 2007, determined in accordance with section 2104(h) of the Act, as



amended by NIHRA. These amounts were determined using States' SCHIP expenditure projections for FY 2007 as provided by the States in their February 2007 CMS-37 and CMS-21B quarterly submissions.

*Column/Description*

Column A = STATE. Column A contains the name of the State or the District of Columbia.

Column B = FY 2007 Tot. Avail. Allots NOT Including Redist. Amounts. Column B contains the total allotments available to each State in FY 2007, not including any potential unexpended fiscal year allotments a State may receive in FY 2007 as a redistribution such as the FY 2004 or FY 2005 redistributed allotments. Specifically, this amount includes, if any, the sum of the amounts of each State's: Unexpended FY 2005 allotments carried over from FY 2006, unexpended FY 2006 allotments carried over from FY 2006, and FY 2007 allotments.

Column C = FY 2007 Projected Fed. Share Expenditures. Column C contains the Federal share amount of each State's projected FY 2007 SCHIP expenditures, as contained in the February 2007 States' quarterly budget submissions of the CMS-37 and CMS-21B. These amounts reflect the availability of a Federal matching rate for the State's expenditures equal to the full SCHIP enhanced FMAP rate for all individuals.

Column D = FY 2007 Projected Shortfall. Col C—B. Column D contains the amount, if any, of the State's shortfall for the entire FY 2007, calculated as the amount in Column C minus the amount in Column B. If the amount in Column B is greater than or equal to the amount in Column C, there would be no shortfall in FY 2007 and the entry in Column D is "No SF".

*Columns E Through L, General.* Columns E through L contain the

amounts of the unexpended FY 2004 and FY 2005 allotments redistributed for States with projected shortfalls in FY 2007, and in particular, with projected shortfalls for the indicated months of January through May 2007, determined in accordance with the methodology for such redistributions described in this **Federal Register**. Redistributed allotment amounts in these columns reflect the amounts of the estimated shortfalls; specifically, these amounts were determined based on the number of projected shortfall days in the indicated month funded at the "adjusted per diem" expenditure amount (reflecting that non-pregnant adults may only be funded from the redistributed FY 2004 or FY 2005 allotments at the regular FMAP rate), and proportionally prorated, if appropriate. For States not projected to have shortfalls in FY 2007, the entry in these columns is "na". For States that are projected to have a shortfall in FY 2007 which occurs after May 2007, the entry in this column is also \$0 since the FY 2004 and FY 2005 redistribution amounts are exhausted by May 2007. For States projected to have funding shortfalls through May 2007, but are not projected to experience a shortfall in the particular month, the entry in these columns would also be \$0.

Column E = FY 04 SF Redist. For JAN. 2007. Column E contains the amount of the unexpended FY 2004 allotments redistributed to address estimated SCHIP funding shortfalls for the State for January 2007.

Column F = FY 04 SF Redist. For FEB. 2007. Column F contains the amount of the unexpended FY 2004 allotments redistributed to address estimated SCHIP funding shortfalls for the State for February 2007.

Column G = FY 04 SF Redist. For Mar. 2007. Column G contains the

amount of the unexpended FY 2004 allotments redistributed to address estimated SCHIP funding shortfalls for the State for March 2007.

Column H = FY 04 SF Redist. For Apr. 2007. Column H contains the amount of the unexpended FY 2004 allotments redistributed to address estimated SCHIP funding shortfalls for the State for April 2007.

Column I = Total FY 2004 Redist. E+F+G+H. Column I contains the total unexpended FY 2004 allotments redistributed to each State for January, February, March, and April 2007, respectively, calculated as the sum of the amounts in Column E, F, G, and H. With respect to States for which there is no redistribution of FY 2004 allotments for these months, the entry in Column I is \$0.

Column J = FY 05 SF Redist. For Apr. 2007. Column J contains the amount of the estimated FY 2005 allotments available as of March 31, 2007 and redistributed to address estimated SCHIP funding shortfalls for the State for April 2007.

Column K = FY 05 SF Redist. For May 2007. Column K contains the amount of the estimated FY 2005 allotments available as of March 31, 2007 and redistributed to address estimated SCHIP funding shortfalls for the State for May 2007.

Column L = Total FY 2005 Redist. J + K. Column L contains the total estimated FY 2005 allotments available as of March 31, 2007 and redistributed to each State for April and May 2007, respectively, calculated as the sum of the amounts in Column J and K. With respect to States for which there is no redistribution of FY 2005 allotments for these months, the entry in Column L is \$0.

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TABLE 1 - UNEXPENDED FY 2004 ALLOTMENTS			
State	FY 2004 Allotment	Expenditures Applied Against FY 2004 Allotment	Unexpended FY 2004 Allotments or "None"
A	B	C	D
Alabama	\$54,679,333	\$54,679,333	None
Alaska	\$7,156,891	\$7,156,891	None
Arizona	\$87,023,654	\$87,023,654	None
Arkansas	\$35,073,372	\$35,073,372	None
California	\$533,990,797	\$533,990,797	None
Colorado	\$44,865,429	\$44,865,429	None
Connecticut	\$27,975,129	\$20,492,297	\$7,482,832
Delaware	\$7,817,461	\$6,997,354	\$820,107
District of Columbia	\$7,198,952	\$7,198,952	None
Florida	\$193,614,837	\$193,614,837	None
Georgia	\$103,892,954	\$103,892,954	None
Hawaii	\$9,647,963	\$9,647,963	None
Idaho	\$16,958,002	\$16,958,002	None
Illinois	\$120,969,643	\$120,969,643	None
Indiana	\$54,026,680	\$54,026,680	None
Iowa	\$19,703,423	\$19,703,423	None
Kansas	\$23,541,920	\$23,541,920	None
Kentucky	\$39,286,749	\$39,286,749	None
Louisiana	\$64,523,178	\$64,523,178	None
Maine	\$9,474,540	\$9,474,540	None
Maryland	\$36,121,348	\$36,121,348	None
Massachusetts	\$46,201,047	\$46,201,047	None
Michigan	\$89,138,280	\$89,138,280	None
Minnesota	\$30,626,504	\$30,626,504	None
Mississippi	\$36,897,326	\$36,897,326	None
Missouri	\$41,923,481	\$41,923,481	None
Montana	\$10,193,881	\$10,193,881	None
Nebraska	\$13,872,884	\$13,872,884	None
Nevada	\$31,163,957	\$27,466,356	\$3,697,601
New Hampshire	\$8,013,366	\$8,013,366	None
New Jersey	\$64,389,677	\$64,389,677	None
New Mexico	\$32,788,606	\$31,432,329	\$1,356,277
New York	\$216,455,790	\$216,455,790	None
North Carolina	\$85,753,907	\$85,753,907	None
North Dakota	\$5,436,695	\$5,436,695	None
Ohio	\$103,803,316	\$103,803,316	None
Oklahoma	\$44,621,756	\$44,621,756	None
Oregon	\$38,056,795	\$38,056,795	None
Pennsylvania	\$98,747,809	\$98,747,809	None
Rhode Island	\$7,379,988	\$7,379,988	None
South Carolina	\$43,355,057	\$43,355,057	None
South Dakota	\$5,790,144	\$5,790,144	None
Tennessee	\$57,957,983	\$0	\$57,957,983
Texas	\$330,851,514	\$269,367,729	\$61,483,785
Utah	\$24,091,106	\$24,091,106	None
Vermont	\$3,813,156	\$3,813,156	None
Virginia	\$55,714,814	\$55,714,814	None
Washington	\$50,326,484	\$36,245,137	\$14,081,347
West Virginia	\$18,760,354	\$18,760,354	None
Wisconsin	\$43,504,958	\$43,504,958	None
Wyoming	\$4,952,110	\$4,952,110	None
<b>TOTAL STATES ONLY</b>	<b>\$3,142,125,000</b>	<b>\$2,995,245,068</b>	<b>\$146,879,932</b>
<b>COMMONWEALTHS AND TERRITORIES</b>			
Puerto Rico	\$30,296,700	\$30,296,700	None
Guam	\$1,157,625	\$1,157,625	None
Virgin Islands	\$859,950	\$859,950	None
American Samoa	\$396,900	\$396,900	None
N. Mariana Islands	\$363,825	\$363,825	None
<b>TOTAL</b>	<b>\$33,075,000</b>	<b>\$33,075,000</b>	<b>\$0</b>
<b>NATIONAL TOTAL</b>	<b>\$3,175,200,000</b>	<b>\$3,028,320,068</b>	<b>\$146,879,932</b>

**TABLE 2 - DETERMINATION OF AMOUNTS OF UNEXPENDED FY 2005 ALLOTMENTS AVAILABLE MID-FY 2007 FOR REDISTRIBUTION**

STATE	Total Allots. Remaining 3/31/2007	FY 2005 Allots. Remaining 3/31/2007	Total Yearly Projected FY 2007 Expenditures	200 Percent of FY 2007 Proj. Expenditures 2 x D	2104(h)(3)(B) Test >=2 x FY07 Est. Exp. B >= E	Amount Contributed to FY 05 Redist. Min(.5 x C, \$20M)
A	B	C	D	E	F	G
Alabama	\$93,120,112	\$0	\$97,233,000	\$194,466,000	Not Met	\$0
Alaska	\$6,321,064	\$0	\$20,969,000	\$41,938,000	Not Met	\$0
Arizona	\$95,148,464	\$0	\$112,171,000	\$224,342,000	Not Met	\$0
Arkansas	\$97,666,689	\$4,663,778	\$56,738,000	\$117,476,000	Not Met	\$0
California	\$767,715,985	\$1,392,541,000	\$1,392,541,000	\$2,785,082,000	Not Met	\$0
Colorado	\$140,911,976	\$11,415,891	\$62,501,000	\$125,002,000	YES	\$6,707,946
Connecticut	\$98,642,264	\$24,216,695	\$26,530,000	\$53,060,000	YES	\$12,106,298
Delaware	\$25,267,693	\$5,164,320	\$8,462,000	\$16,924,000	YES	\$2,582,460
District of Columbia	\$26,099,643	\$4,833,984	\$9,342,000	\$18,684,000	YES	\$2,416,992
Florida	\$592,877,804	\$47,481,165	\$259,931,000	\$517,862,000	YES	\$20,000,000
Georgia	\$17,888,665	\$0	\$352,564,000	\$705,128,000	Not Met	\$0
Hawaii	\$23,735,482	\$0	\$17,356,000	\$34,712,000	Not Met	\$0
Idaho	\$50,129,159	\$5,202,008	\$28,067,000	\$56,134,000	Not Met	\$0
Illinois	\$0	\$0	\$449,186,000	\$898,372,000	Not Met	\$0
Indiana	\$166,479,908	\$10,025	\$69,844,000	\$139,688,000	Not Met	\$0
Iowa	\$14,932,950	\$0	\$56,248,000	\$112,496,000	Not Met	\$0
Kansas	\$40,726,292	\$0	\$46,113,000	\$92,226,000	Not Met	\$0
Kentucky	\$104,399,358	\$0	\$78,824,000	\$157,648,000	Not Met	\$0
Louisiana	\$102,470,239	\$0	\$107,329,000	\$214,658,000	Not Met	\$0
Maine	\$13,471,113	\$0	\$22,060,564	\$44,121,327	Not Met	\$0
Maryland	\$0	\$0	\$154,106,000	\$308,210,000	Not Met	\$0
Massachusetts	\$0	\$0	\$215,893,000	\$431,786,000	Not Met	\$0
Michigan	\$126,014,053	\$0	\$173,085,000	\$346,170,000	Not Met	\$0
Minnesota	\$33,908,824	\$0	\$66,889,500	\$133,779,000	Not Met	\$0
Mississippi	\$43,764,889	\$0	\$120,460,000	\$240,920,000	Not Met	\$0
Missouri	\$53,612,416	\$0	\$84,571,000	\$169,142,000	Not Met	\$0
Montana	\$24,777,768	\$0	\$16,092,000	\$32,184,000	Not Met	\$0
Nebraska	\$17,201,136	\$0	\$32,877,000	\$65,754,000	Not Met	\$0
Nevada	\$121,179,786	\$27,227,249	\$29,799,000	\$59,598,000	YES	\$13,613,626
New Hampshire	\$23,006,942	\$3,035,413	\$7,574,719	\$15,149,437	YES	\$1,517,706
New Jersey	\$0	\$0	\$306,386,000	\$610,772,000	Not Met	\$0
New Mexico	\$118,005,964	\$23,803,779	\$36,863,000	\$73,706,000	YES	\$11,901,890
New York	\$600,357,011	\$0	\$344,277,000	\$688,554,000	Not Met	\$0
North Carolina	\$101,064,005	\$0	\$167,961,000	\$335,922,000	Not Met	\$0
North Dakota	\$6,537,167	\$0	\$11,867,000	\$23,734,000	Not Met	\$0
Ohio	\$152,229,292	\$0	\$195,453,000	\$390,906,000	Not Met	\$0
Oklahoma	\$85,942,434	\$0	\$85,566,000	\$171,132,000	Not Met	\$0
Oregon	\$100,121,202	\$0	\$66,988,000	\$133,976,000	Not Met	\$0
Pennsylvania*	\$0	\$0	\$66,988,000	\$133,976,000	Not Met	\$0
Rhode Island	\$0	\$0	\$188,148,000	\$376,296,000	Not Met	\$0
South Carolina	\$199,998,809	\$13,602,120	\$77,964,000	\$155,928,000	Not Met	\$0
South Dakota	\$8,954,484	\$0	\$46,963,000	\$93,926,000	Not Met	\$0
Tennessee	\$246,333,054	\$68,466,574	\$26,526,000	\$53,052,000	YES	\$20,000,000
Texas	\$1,289,330,933	\$276,609,119	\$417,160,000	\$834,320,000	YES	\$20,000,000
Utah	\$59,500,025	\$0	\$38,520,000	\$77,040,000	Not Met	\$0
Vermont	\$12,735,384	\$2,164,638	\$3,563,000	\$7,126,000	YES	\$1,082,319
Virginia	\$123,960,525	\$0	\$106,597,750	\$213,195,500	Not Met	\$0
Washington	\$196,140,266	\$51,551,479	\$27,607,000	\$55,214,000	YES	\$20,000,000
West Virginia	\$40,541,242	\$0	\$36,758,000	\$73,516,000	Not Met	\$0
Wisconsin	\$50,422,130	\$0	\$96,726,445	\$193,452,890	Not Met	\$0
Wyoming	\$13,806,923	\$983,456	\$7,827,000	\$15,654,000	Not Met	\$0
TOTAL STATES ONLY	\$6,510,708,873	\$670,532,193	\$6,237,932,077	\$12,475,464,154		\$137,832,296

TABLE 3 - AMOUNTS OF UNEXPENDED FY 2004 AND FY 2005 ALLOTMENTS REDISTRIBUTED IN FY 2007

: States with SFs through May 31, 2007\*

STATE	FY 2007 Tot. Avail. Allots NOT Including Redist. Amounts	FY 2007 Projected Fed. Share Expenditures	FY 2007 Projected Shortfall C - B	FY 04 SF Redist. For JAN. 2007	FY 04 SF Redist. For FEB. 2007	FY 04 SF Redist. For MAR. 2007	FY 04 SF Redist. For APR. 2007	TOTAL FY 2004 REDIST. E-F-G-H-I	FY 05 SF Redist. For APR. 2007	FY 05 SF Redist. For MAY 2007	TOTAL FY 2005 REDIST. J+K+L
Alabama	\$141,039,112	\$97,233,000	No SF	na	na	na	na	\$0	na	na	\$0
Alaska	\$16,805,054	\$20,969,000	\$4,163,946	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
Arizona	\$150,766,464	\$112,171,000	No SF	na	na	na	na	\$0	na	na	\$0
Arkansas	\$125,275,689	\$58,738,000	No SF	na	na	na	na	\$0	na	na	\$0
California	\$1,276,822,586	\$1,139,541,000	No SF	na	na	na	na	\$0	na	na	\$0
Colorado	\$171,314,976	\$62,501,000	No SF	na	na	na	na	\$0	na	na	\$0
Connecticut	\$110,988,264	\$26,530,000	No SF	na	na	na	na	\$0	na	na	\$0
Delaware	\$29,148,593	\$8,462,000	No SF	na	na	na	na	\$0	na	na	\$0
District of Columbia	\$30,013,643	\$9,342,000	No SF	na	na	na	na	\$0	na	na	\$0
Florida	\$734,807,804	\$258,931,000	No SF	na	na	na	na	\$0	na	na	\$0
Georgia	\$183,255,353	\$332,554,000	\$150,298,647	\$0	\$0	\$0	\$7,033,401	\$7,033,401	\$4,286,716	\$24,369,903	\$28,693,319
Hawaii	\$32,682,482	\$17,356,000	No SF	na	na	na	na	\$0	na	na	\$0
Idaho	\$64,124,159	\$28,067,000	No SF	na	na	na	na	\$0	na	na	\$0
Illinois	\$233,025,189	\$449,786,000	\$236,760,811	\$0	\$0	\$18,159	\$18,086,417	\$18,116,878	\$10,979,167	\$26,092,469	\$37,071,617
Indiana	\$207,347,950	\$53,844,000	No SF	na	na	na	na	\$0	na	na	\$0
Iowa	\$41,699,950	\$56,248,000	\$14,548,050	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
Kansas	\$64,554,292	\$46,113,000	No SF	na	na	na	na	\$0	na	na	\$0
Kentucky	\$144,083,958	\$78,824,000	No SF	na	na	na	na	\$0	na	na	\$0
Louisiana	\$156,828,239	\$107,329,000	No SF	na	na	na	na	\$0	na	na	\$0
Maine	\$24,499,802	\$22,060,664	No SF	na	na	na	na	\$0	na	na	\$0
Maryland	\$71,873,127	\$154,105,000	\$82,231,873	\$0	\$0	\$3,149,873	\$7,624,625	\$10,794,498	\$4,631,441	\$11,006,827	\$16,638,268
Massachusetts	\$73,355,132	\$215,893,000	\$142,537,868	\$0	\$12,473,522	\$7,616,946	\$10,353,093	\$40,642,821	\$6,401,958	\$15,214,226	\$21,616,188
Michigan	\$215,279,053	\$173,085,000	No SF	na	na	na	na	\$0	na	na	\$0
Minnesota	\$62,920,824	\$66,889,500	\$3,968,676	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
Mississippi	\$96,926,889	\$120,460,000	\$23,533,111	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
Missouri	\$95,368,416	\$94,571,000	No SF	na	na	na	na	\$0	na	na	\$0
Montana	\$32,287,788	\$16,092,000	No SF	na	na	na	na	\$0	na	na	\$0
Nebraska	\$33,598,136	\$32,877,000	No SF	na	na	na	na	\$0	na	na	\$0
Nevada	\$134,339,336	\$29,799,000	No SF	na	na	na	na	\$0	na	na	\$0
New Hampshire	\$27,393,336	\$7,574,719	No SF	na	na	na	na	\$0	na	na	\$0
New Jersey	\$107,834,569	\$365,395,000	\$197,501,431	\$0	\$14,375,152	\$22,561,524	\$19,527,938	\$80,484,174	\$8,205,233	\$19,502,466	\$27,707,720
New Mexico	\$136,359,964	\$35,653,000	No SF	na	na	na	na	\$0	na	na	\$0
New York	\$771,328,011	\$344,277,000	No SF	na	na	na	na	\$0	na	na	\$0
North Carolina	\$182,381,005	\$167,961,000	No SF	na	na	na	na	\$0	na	na	\$0
North Dakota	\$12,393,167	\$11,867,000	No SF	na	na	na	na	\$0	na	na	\$0
Ohio	\$249,327,292	\$195,453,000	No SF	na	na	na	na	\$0	na	na	\$0
Oklahoma	\$130,156,434	\$85,566,000	No SF	na	na	na	na	\$0	na	na	\$0
Oregon	\$130,485,202	\$65,988,000	No SF	na	na	na	na	\$0	na	na	\$0
Pennsylvania	\$339,146,938	\$188,148,000	No SF	na	na	na	na	\$0	na	na	\$0
Rhode Island	\$20,211,483	\$7,954,000	\$8,742,517	\$5,249,595	\$5,268,791	\$5,822,233	\$3,487,822	\$19,818,422	\$2,115,828	\$5,028,333	\$7,144,107
South Carolina	\$160,793,909	\$45,953,000	No SF	na	na	na	na	\$0	na	na	\$0
South Dakota	\$15,645,484	\$13,666,000	No SF	na	na	na	na	\$0	na	na	\$0
Tennessee	\$256,771,054	\$25,626,000	No SF	na	na	na	na	\$0	na	na	\$0
Texas	\$1,462,693,933	\$417,160,000	No SF	na	na	na	na	\$0	na	na	\$0
Utah	\$79,238,025	\$39,620,000	No SF	na	na	na	na	\$0	na	na	\$0
Vermont	\$14,496,384	\$3,563,000	No SF	na	na	na	na	\$0	na	na	\$0
Virginia	\$176,094,475	\$105,697,750	No SF	na	na	na	na	\$0	na	na	\$0
Washington	\$209,294,266	\$27,607,000	No SF	na	na	na	na	\$0	na	na	\$0
West Virginia	\$58,719,242	\$36,758,000	No SF	na	na	na	na	\$0	na	na	\$0
Wisconsin	\$96,235,163	\$96,725,443	\$490,282	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
Wyoming	\$17,529,923	\$7,827,000	No SF	na	na	na	na	\$0	na	na	\$0
TOTAL	\$9,389,778,439	\$6,237,732,077	\$3,197,000	\$5,249,595	\$32,107,465	\$49,188,135	\$60,334,736	\$146,879,932	\$36,601,241	\$101,231,055	\$137,832,296

\* Although, other States have shortfalls projected for FY 2007 (as indicated in Column D), the total available unexpended FY 2004 and FY 2005 redistributed allotments were exhausted by May 2007 through the redistribution to States with shortfalls that were projected to occur through May 2007.

BILLING CODE 4120-01-C

III. Regulatory Impact Statement

We have examined the impact of this rule as required by Executive Order 12866 (September 1993, Regulatory Planning and Review), the Regulatory Flexibility Act (RFA) (September 19, 1980 Pub. L. 96-354), section 1102(b) of

the Social Security Act, the Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4) and Executive Order 13132.

Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential

economic, environmental, public health and safety effects, distributive impacts, and equity). A regulatory impact analysis (RIA) must be prepared for major rules with economically significant effects (\$100 million or more in any one year). We have determined that with respect to the FY 2004 and FY 2005 redistribution amounts, totaling

about \$146.9 million and \$137.8 million, respectively, this notice is economically significant. However, because this notice only announces the redistribution of funds based on the formulae specified in statute and does not put forward any administrative policies, we have not performed an analysis beyond that which is presented in section II. (H) above. The 50 States and the District of Columbia's FY 2004 SCHIP allotments (totaling \$3,142,125,000) and FY 2005 allotments (totaling \$4,039,875,000), were originally published in a notice in the **Federal Register** (68 FR 50784 and 69 FR 52700, respectively) and allotted to States in FY 2004 and FY 2005, respectively. This notice does not revise the amounts of the FY 2004 and FY 2005 allotments originally made available to the States, but rather, sets forth the procedure for redistributing the amounts of those FY 2004 and FY 2005 allotments which were unexpended at the end of FY 2004 (the end of the 3-year period of availability referenced in section 2104(e) of the Act) or available mid FY 2007 (under the provision of section 2104(h) of the Act), and announces the amounts of the FY 2004 and FY 2005 allotments to be redistributed to the redistribution States, the methodology for determining the amounts of the FY 2005 allotments to be redistributed in FY 2007 and announces these amounts determined in accordance with this methodology, and indicates the availability of these redistributed allotment amounts to the end of 2007, in accordance with SCHIP statute, as amended by the NIHRA.

Because State participation in the SCHIP program is voluntary, any payments and expenditures States make or incur on behalf of the program that are not reimbursed by the Federal Government are made voluntarily.

The RFA requires agencies to analyze options for regulatory relief of small businesses. For purposes of the RFA, small entities include small businesses, nonprofit organizations, and small governmental jurisdictions. Most hospitals and most other providers and suppliers are small entities, either by nonprofit status or by having revenues of \$6 million to \$29 million in any 1 year. Individuals and States are not included in the definition of a small entity. We are not preparing an analysis for the RFA because we have determined that this notice will not have a significant economic impact on a substantial number of small entities.

In addition, section 1102(b) of the Act requires us to prepare a regulatory impact analysis if a rule may have a significant impact on the operations of

a substantial number of small rural hospitals. This analysis must conform to the provisions of section 604 of the RFA. For purposes of section 1102(b) of the Act, we define a small rural hospital as a hospital that is located outside of a Core-Based Statistical Area and has fewer than 100 beds. We are not preparing an analysis for section 1102(b) of the Act because we have determined that this notice will not have a significant impact on the operations of a substantial number of small rural hospitals.

Section 202 of the Unfunded Mandates Reform Act of 1995 also requires that agencies assess anticipated costs and benefits before issuing any rule whose mandates require spending in any 1 year of \$100 million in 1995 dollars, updated annually for inflation. That threshold level is currently approximately \$120 million. This notice will not create an unfunded mandate on States, tribal, or local governments. Therefore, we are not required to perform an assessment of the costs and benefits of this notice.

Executive Order 13132 establishes certain requirements that an agency must meet when it publishes a proposed rule (and subsequent final rule) that imposes substantial direct requirement costs on State and local governments, preempts State law, or otherwise has Federalism implications. We have reviewed this notice and have determined that it does not significantly affect States' rights, roles, and responsibilities.

Low-income children will benefit from payments under this program through increased opportunities for health insurance coverage. We believe this notice will have an overall positive impact by informing States, the District of Columbia, and Commonwealths and Territories of the extent to which they are permitted to expend funds under their child health plans using the FY 2004 or FY 2005 allotment's redistribution amounts.

In accordance with the provisions of Executive Order 12866, this notice was reviewed by the Office of Management and Budget.

#### **IV. Waiver of Notice of Proposed Rulemaking and Delay in Effective Date**

We ordinarily publish a proposed notice in the **Federal Register** to provide a period of public comment before the provisions of a notice, such as this, are effective in accordance with section 553(b) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). We also ordinarily provide a 30-day delay in the effective date of the provisions of a notice in accordance with section 553(d)

of the APA (5 U.S.C. 553(d)). However, we can waive both the notice of proposed rulemaking and the 30-day delay in effective date if the Secretary finds, for good cause, that it is impracticable, unnecessary, or contrary to the public interest, and incorporates a statement of the finding and the reasons in the notice.

We find there is good cause to waive notice of proposed rulemaking and the delay in the effective date of this issuance of the FY 2004 redistributed allotments and the methodology for determining the FY 2005 redistributed allotment amounts to eliminate the FY 2007 funding shortfalls in SCHIP because a comment period and delay in effective date are unnecessary because: (1) States were already given informal notice of proposed amounts; and (2) redistribution was carried out in accordance with a statutory formula that permitted limited discretion.

We determined the amounts of the FY 2004 redistributed allotments and the amounts of the FY 2005 redistributed allotments to eliminate the FY 2007 SCHIP funding shortfall as expeditiously as possible in order to make them available to the States as soon as possible. To that end, all States had until November 30, 2006 to submit their required fourth quarter FY 2006 expenditure reports. In determining both the FY 2004 redistributed amounts and the FY 2005 redistributed amounts we used State FY 2007 projected expenditures as contained in the most recent (February 2007) States' quarterly budget report submissions. The redistributed FY 2004 and FY 2005 allotments make available Federal funds to the recipient redistribution States, which is especially important for those redistribution States that may need these funds.

Furthermore, under section 2104(h)(6) of the Act, the FY 2004 and FY 2005 redistributed allotments to eliminate the FY 2007 shortfalls in SCHIP funding, are only available through September 30, 2007. We believe it is important that we issue these redistributed allotments and additional allotments as soon as possible. Delay in States receiving those funds could result in disruption of program operations. Therefore, in the interest of ensuring that the FY 2004 and FY 2005 redistributed allotments to eliminate the FY 2007 shortfall in SCHIP funding are made available without delay to those States that need these funds, we are waiving notice of proposed rulemaking and the 30-day delay in effective date, and are publishing this issuance of the **Federal Register** as a notice.

In accordance with the provisions of this notice, we have determined the amounts of the FY 2004 and FY 2005 redistributed allotment funds to eliminate the FY 2007 shortfalls in SCHIP funding available to shortfall States effective immediately upon publication of this notice. These FY 2004 and FY 2005 redistributed allotment funds are subject to final adjustment based on comments received in response to this notice.

**Authority:** (Section 1102 of the Social Security Act (42 U.S.C. 1302) (Catalog of Federal Domestic Assistance Program No. 93.767, State Children's Health Insurance Program))

Dated: February 16, 2007.

**Leslie V. Norwalk,**

*Acting Administrator, Centers for Medicare & Medicaid Services.*

Dated: February 26, 2007.

**Michael O. Leavitt,**

*Secretary.*

[FR Doc. 07-2607 Filed 5-25-07; 8:45 am]

**BILLING CODE 4120-01-P**

**DEPARTMENT OF HEALTH AND HUMAN SERVICES**

**Administration for Children and Families**

**Proposed Information Collection Activity; Comment Request**

*Proposed Projects:*

*Title:* Title V Section 510 Abstinence Education Grant Program-Annual Program Application and Annual Performance Progress Report.

*OMB No.:* 0970-0271 (formerly 0915-0291 when in HRSA).

*Description:* The Title V Section 510 Abstinence Education Grant Program (Section 510 program) is a formula block grant program, authorized through June 30, 2007, by the Tax Relief and Health Care Act of 2006.

The Section 510 *Annual Program Application* requires basic application information that will be used by the Administration for Children and Families (ACF) to establish applicant eligibility, determine each applicant's compliance with Federal law, review

and evaluate each applicant's proposed plans, and to develop any conditions to be placed on grant awards. Projects must meet the legislative priorities as described in Section 510 of Title V of the Social Security Act.

The Section 510 *Annual Performance Progress Report* includes four forms through which grantees report basic performance information, which is used by ACF to determine each grantee's compliance with Federal law and to review and evaluate each applicant's progress toward achieving its goals. Basic performance information includes the unduplicated count of clients served, hours of service received by clients, program completion data, and communities served.

*Respondents:* The 50 States, the District of Columbia, and the following 8 Territories: American Samoa, Guam, Republic of the Marshall Islands, Federated States of Micronesia, Commonwealth of the Northern Mariana Islands, Republic of Palau, Commonwealth of Puerto Rico, and the U.S. Virgin Islands.

**ANNUAL BURDEN ESTIMATES**

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
Annual Program Application .....	59	1	40	2,360
Annual Performance Progress Report .....	59	1	130	7,670

Estimated Total Annual Burden Hours: 10,030.

In compliance with the requirements of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Administration for Children and Families is soliciting public comment on the specific aspects of the information collection described above. Copies of the proposed collection of information can be obtained and comments may be forwarded by writing to the Administration for Children and Families, Office of Administration, Office of Information Services, 370 L'Enfant Promenade, SW., Washington, DC 20447, Attn: ACF Reports Clearance Officer. E-mail address: [infocollectn@acf.hhs.gov](mailto:infocollectn@acf.hhs.gov). All requests should be identified by the title of the information collection.

The Department specifically requests comments on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c)

the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted within 60 days of this publication.

Dated: May 20, 2007.

**Robert Sargis,**

*Reports Clearance Officer.*

[FR Doc. 07-2628 Filed 5-25-07; 8:45 am]

**BILLING CODE 4184-01-M**

**DEPARTMENT OF HEALTH AND HUMAN SERVICES**

**Food and Drug Administration**

[Docket No. 2006N-0420]

**Agency Information Collection Activities; Submission for Office of Management and Budget Review; Comment Request; Orphan Drugs**

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA) is announcing that a proposed collection of information has been submitted to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995.

**DATES:** Fax written comments on the collection of information by June 28, 2007.

**ADDRESSES:** To ensure that comments on the information collection are received, OMB recommends that written comments be faxed to the Office of Information and Regulatory Affairs,