Child Welfare Policy Manual

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May 16, 2018

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Policy/Program Issuances

Once a bill becomes a law, an authorized unit within the federal government becomes responsible to develop guidance and procedures for the administration of the new program. The primary source of information is the legislation on which the program is based; the next source is in regulations. Finally, the authorized unit may issue supplemental policy, instructional and informational documents related to implementing the program. The Children's Bureau issues guidance to the States on the administration of State grant programs, in the following formats:

Child Welfare Policy Manual - The manual conveys mandatory policies that have their basis in Federal Law and/or program regulations. It also provides interpretations of Federal Statutes and program regulations initiated by inquiries from State Child Welfare agencies or ACF Regional Offices.

Action Transmittals (AT) - These issuances convey program guidance information to grantees of actions they are expected or required to take. They clarify and explain procedures and methods for operationalizing program policies and add details to program regulations or policy guide requirements.

Information Memorandum (IM) - These issuances are used as the primary means for program and staff offices to communicate with State agencies and grantees or potential grantees on a variety of matters, such as program activities and priorities, progress reports, research findings, funds available, related regulations, and proposed and pending Federal legislation affecting human service programs. Information memoranda may also provide States with program tools, models, and techniques which States may use for program development or reporting purposes.

Policy Guides and Manuals (PGM) - These issuances may be program regulation guides, grants administration manuals, and any other policy, program and grants related guides or manuals. They provide comprehensive guidance to clarify, explain, and expand upon the meaning of the related program and grant administration rules and regulations. They may incorporate previously issued interpretation of program regulations; they may also set forth applicable grant administration policies and procedures to recipients of discretionary project grants or cooperative agreements awarded by ACF program offices. They do not add to or change the nature of the requirements as stated in the regulations and do not provide new interpretations of regulations

Program Instructions (PI) - These issuances clarify and explain procedures and methods for operationalizing program policies, add details to program regulations or policy guide requirements, and convey program guidance information to grantees of actions they are expected or required to take. They may also reiterate policy that has already been transmitted by previous policy issuances but they are not used as vehicles for conveying new program policy. Program instructions may also be used to transmit State plan preprints, financial reports, program allotment tables, and non-regulatory materials on which comments are solicited, and other kind of materials.

Program Regulations (PR) - These issuances are used to transmit final regulations, interim final rules, and notices of proposed rulemaking. The regulations are basic requirements, rules, standards, and procedures for program implementation, based on specific legislative authority. Final regulations have the force and effect of law. They are published in the Federal Register and codified in the Code of Federal Regulations.

Child Welfare Policy Manual

The Child Welfare Policy Manual conveys mandatory policies that have their basis in Federal Law and/or program regulations. It also provides interpretations of Federal Statutes and program regulations initiated by inquiries from State Child Welfare agencies or ACF Regional Offices. This manual replaces the Children's Bureau's former policy issuance system. This Child Welfare Policy Manual updates and reformats all of the existing relevant policy issuance's (Policy Announcements and Policy Interpretation Questions) into an easy to use question and answer format. This manual is broken down into nine main policy areas (with detailed subsections): AFCARS, CAPTA, Independent Living, MEPA/IEAP, Monitoring, CCWIS, Title IV-B, Title IV-E, Tribes/Indian Tribal Organizations. Future policy guidance will be disseminated in this format and announced as "Updates!" to the manual. This web-based manual ensures that the most current policy information is available to the States in the quickest and most accurate way. All questions/comments should be directed to the ACF Regional Offices.

How to use the manual: The table of contents (full text) is the guide to the entire manual. It provides a detailed topical breakdown of all the included policy information. The nine main policy areas provide shortcuts to the same targeted policy information. Each main area is then broken down into detailed subsections. There are sections of the manual that are empty of any policy information. These sections are being used as placeholders for future announcements. They are designated by an asterisk (*) following the section title in the Table of Contents. For example: 6. CCWIS *

All of the policy information appears in a question and answer format. For example (from 8.1 TITLE IV-E, Administrative Functions/Costs):

> Question: Is the cost of conducting criminal records checks for prospective foster and adoptive parents an allowable administrative cost under title IV-E?
> Answer: The regulations at section 1356.60 (c)(2) allow States to claim costs associated with recruitment and licensing as administrative costs under title IV-E. Since the criminal records check provision is a condition of licensure or approval in States that do not opt out of the provision, costs associated with criminal records checks for prospective foster and adoptive parents are allowable under title IV-E when claimed pursuant to an approved cost allocation plan.
>
> - Source/Date: Preamble to the Final Rule (65 FR 4020) (1/25/00)
> - Legal and Related References: 45 CFR 1356.30 and 1356.60

How to cite the manual: Each section and subsection of the manual has a unique number that identifies it. Each Question/Answer set is numbered as well. When citing the manual, either cite the section or the relevant Question/Answer set within that section or subsection. For example, guidance and requirements with respect to permanency hearings is contained at section 8.3C.2c of the manual. When seeking clarification on a specific policy regarding permanency hearings, users may refer to that section of the manual or to a specific Question/Answer set within that section; i.e., section 8.3C.2c, Question 2.

How to recognize updates and deletions: The information within the manual will change as the Children's Bureau announces new policy. Additions and deletions to the manual will be announced on the policy manual main page under Updates!

- In the question and answer text, updated policy will be indicated by a NEW / UPDATED announcement. For example:
  NEW/Updated [Date question added or updated] [Text of Question]
- Furthermore, any new policy changes that remove a question and answer from the manual will be indicated by a DELETED announcement. For example:
  DELETED [Date question deleted] [Text of question]

How the manual was developed: Using a detailed table of contents as the basis for constructing a database to house all existing policy, the Children's Bureau began by reviewing every Policy Interpretation Question (PIQ) and Policy Announcement (PA), assigning the content to the appropriate sections of the database. While the manual was constructed using existing policy, some of the information is not presented in exactly the same format as it appeared in the original issuance because:

- Policy Announcements are not constructed in a Question/Answer format, so the information in these documents was reformatted for inclusion in the manual.

- Some of the early PIQs identified the State that posed the questions addressed. We now maintain the anonymity of a State that raises questions of national significance by removing all State-specific references.

- We updated some early policy to be consistent with recent statutory amendments. For example, some of the early policy guidance addressing the Title IV-E case review system requirements is still relevant but we updated certain terms to be consistent with the Adoption and Safe Families Act of 1997 (ASFA); i.e., "permanency hearing" rather than "dispositional hearing." For that reason, a policy whose source was a 1980s issuance may contain terminology that is consistent with the ASFA amendments to the Social Security Act.

- We found some redundancy across and within policy issuances. We consolidated redundant information when appropriate to increase efficiency. When the "Source/Date" field contains more than one policy issuance, that is an indication that the information in that Question/Answer came from multiple sources.

- Where appropriate, we consolidated information from issuances that modified, clarified, or elaborated on an earlier issuance. For example, PIQ-88-03 clarifies the guidance in PIQ-82-10 with respect to identifying facilities that are primarily for the detention of children who are adjudicated delinquent. We consolidated the guidance from these two issuances into a single Question/Answer set. The "Source/Date" field for that Question/Answer set contains both PIQs, indicating that the information therein came from those two issuances.

- When we found Question/Answer sets in PIQs that addressed multiple topics, we placed those Question/Answer sets in all appropriate sections of the manual and then struck the irrelevant material leaving a Question/Answer set that pertains to only the section in which it resides. For example, ACYF-CB-PIQ-82-04 explained State's options for funding foster parent insurance. Some of the responses in the PIQ addressed options under titles IV-B and IV-E simultaneously. Those Question/Answer sets were placed in the appropriate sections under titles IV-B and IV-E in the manual and edited accordingly.

- We reviewed superseded issuances and, on rare occasion, found policy guidance that could be reinstated. For example, ACYF-PIQ-83-07 dealt with unaccompanied refugee minors' eligibility for title IV-E. It was superseded as a result of Title IV of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA). In reviewing the issuance, we found that, if updated to be consistent with the PRWORA, the information therein is still relevant.

After reviewing the PAs and PIQs, we turned to other sources to identify policy guidance for inclusion in the manual. These sources include:

- The preamble to the September 18, 1998 Notice of Proposed Rulemaking (63 FR, 50058 - 50098) and the preamble to the January 25, 2000 Final Rule (65 FR, 4020 - 4093);

- The Questions and Answers on the January 25, 2000 Final Rule that were published on our web site; and

- Information Memoranda (IM) and Program Instructions (PI). While the purpose of IMs and PIs is respectively, to transmit useful information to the field and provide instruction with respect to the implementation of the programs the Children's Bureau administers, occasionally policy guidance was transmitted through an IM or PI. We did not, however, remove these IMs and PIs from the searchable directory of Program Implementation Issuances available on the our web site at http://www.acf.dhhs.gov/programs/cb/laws/search.htm.

Effective date of the manual: The manual is effective 09/24/01.
How to access the old system: Every PA and PIQ was officially replaced 09/24/01, the date the manual became operational. The National Adoption Information Clearinghouse has archived the PAs and PIQs and will make them available to the public upon request. Please contact the Clearinghouse by telephone at (888) 251-0075 or email at naic@calib.com.

Child Welfare Policy Manual References

Commonly Used Acronyms

AFCARS - Adoption and Foster Care Analysis and Reporting System
AFDC - Aid to Families with Dependent Children
APD - Advance Planning Document
ASFA - Adoption and Safe Families Act
CAP - Cost allocation plan
CAPTA - Child Abuse Prevention and Treatment Act
CFSR - Child and Family Services Review
CPS - Child Protective Services
FFP - Federal financial participation
GAL - Guardian Ad Litem
ICWA - Indian Child Welfare Act
IEAP - Interethnic Adoption Provisions (Small Business Job Protection Act)
MEPA - Multiethnic Placement Act
PRWORA - Personal Responsibility and Work Opportunity Reconciliation Act
CCWIS - Comprehensive Child Welfare Information System
SSI - Supplemental Security Income
TPR - Termination of parental rights

Major Child Welfare Legislation
Public Law 93-247 Child Abuse Prevention and Treatment Act
Public Law 96-272 Adoption Assistance and Child Welfare Act
Public Law 103-66 Omnibus Budget Reconciliation of 1993
Public Law 103-432 Social Security Act Amendments of 1994
Public Law 103-382 Multiethnic Placement Act
Public Law 104-188 Small Business Job Protection Act
Public Law 104-193 The Personal Responsibility and Work Opportunity Act of 1996
Public Law 104-235 Child Abuse Prevention and Treatment Act Amendments of 1996
Public Law 105-89 The Adoption and Safe Families Act of 1997
Public Law 106-169 The Foster Care Independence Act of 1999

THOMAS - Legislative Information on the Internet
Acting under the directive of the leadership of the 104th Congress to make Federal legislative information freely available to the Internet public, a Library of Congress team brought the THOMAS World Wide Web system online in January 1995, at the inception of the 104th Congress.
http://thomas.loc.gov/

National Archives and Records Administration - Code of Federal Regulations
The Code of Federal Regulations (CFR) is a codification of the general and permanent rules published in the Federal Register by the Executive departments and agencies of the Federal Government. The CFR online is a joint project authorized by the publisher, the National Archives and Records Administration's Office of the Federal Register, and the Government Printing Office (GPO) to provide the public with enhanced access to Government information.
http://www.access.gpo.gov/nara/cfr/

1. AFCARS

1.1 AFCARS, Compliance and Penalties

1 ***Q:*** How are the penalties calculated for a submission (e.g., the 90% accuracy requirement)?

(Deleted 07/05/2002)

1.2 AFCARS, Data Elements and Definitions

1 ***Q:*** What procedures should a child welfare worker follow in order to most effectively obtain accurate information on the racial and ethnic status of children and adults?

A: AFCARS requires the reporting of race and Hispanic/Latino Origin on children in foster care, children who have been adopted, foster care providers, and adoptive parents. As noted in Appendices A and B of the Federal regulations at 45 CFR 1355, in the sections related to the instructions for foster care and adoption data elements, race and Hispanic/Latino origin information is based on how a client/adult perceives him/herself, or in the case of young children, how the parent identifies the child. This means the information on race and Hispanic/Latino Origin is to be self-reported by the individual. Additionally, racial and ethnic information should be collected and stored as separate pieces of information about the client.

Workers must ask clients this information and not make assumptions on which and how many races a person may be and whether the client is Hispanic or Latino or not. When a worker, rather than the client, makes this determination, he or she may be under-representing all possible races.

For AFCARS extraction and submission purposes, information not collected or not available for a particular client record (for whatever reason) is mapped as all blanks (not all zeros, all 9?s, etc.). Missing information should never be mapped to a valid AFCARS value.

Source: 7/19/04

Reference: Section 479 of title IV-E of the Social Security Act; 45 CFR 1355, Appendix A, Section II Definitions and Instructions for Foster Care Data Elements, II. Child¿s Demographic Information, c. Race/Ethnicity and Appendix B, Section II Definitions and Instructions for Adoption Data Elements, II. Child¿s Demographic Information, c.

Race/Ethnicity

1.2A AFCARS, Data Elements and Definitions, Adoption Specific Elements

1 ***Q:*** In terms of reporting adoptions it is not clear whether States are required to submit data on adoptions for which an agency may have limited involvement, such as only performing a home study. The agency's data on these adoptions may be very limited. Does the Department want information on such adoptions submitted to AFCARS?

A: The regulations encourage, but do not require, States to report data on children adopted without the types of State involvement indicated in the "Reporting Population" section in Appendix B to 45 CFR 1355. The State is required to report an adoption if : 1) the child was in foster care under the responsibility and care of the State child welfare agency and subsequently adopted; 2) the child has special needs and on whose behalf the State provided reimbursement for non-recurring expenses of adoption; or 3) an adoption service or payment is being provided by way of an arrangement with the State agency. Because a State that has performed only a home study does not fall within one of these three categories, the State is not required to report information on such a child. If the State chooses to report information on such a child, or other children adopted without State involvement as indicated above, - the appropriate response is to enter a "No" for adoption element 4 "Did the State Agency Have any Involvement in This adoption?"

Source: ACYF-CB-PIQ-94-01 (7/8/94); updated (5-28-02)

Reference: 45 CFR 1355.40; Appendix B to 45 CFR 1355

2 **Q:** What procedures should a child welfare worker follow in order to most effectively obtain accurate information on the racial and ethnic status of children and adults?

A: AFCARS requires the reporting of race and Hispanic/Latino Origin on children in foster care, children who have been adopted, foster care providers, and adoptive parents. As noted in Appendices A and B of the Federal regulations at 45 CFR 1355, in the sections related to the instructions for foster care and adoption data elements, race and Hispanic/Latino origin information is based on how a client/adult perceives him/herself, or in the case of young children, how the parent identifies the child. This means the information on race and Hispanic/Latino Origin is to be self-reported by the individual. Additionally, racial and ethnic information should be collected and stored as separate pieces of information about the client.

Workers must ask clients this information and not make assumptions on which and how many races a person may be and whether the client is Hispanic or Latino or not. When a worker, rather than the client, makes this determination, he or she may be under-representing all possible races.

For AFCARS extraction and submission purposes, information not collected or not available for a particular client record (for whatever reason) is mapped as all blanks (not all zeros, all 9?s, etc.). Missing information should never be mapped to a valid AFCARS value.

Source: 7/19/04

Reference: Section 479 of title IV-E of the Social Security Act; 45 CFR 1355, Appendix A, Section II Definitions and Instructions for Foster Care Data Elements, II. Child¿s Demographic Information, c. Race/Ethnicity and Appendix B, Section II Definitions and Instructions for Adoption Data Elements, II. Child¿s Demographic Information, c. Race/Ethnicity

1.2A.1 AFCARS, Data Elements and Definitions, Adoption Specific Elements, Adoptive parents

1 ***Q:*** What procedures should a child welfare worker follow in order to most effectively obtain accurate information on the racial and ethnic status of children and adults?

A: AFCARS requires the reporting of race and Hispanic/Latino Origin on children in foster care, children who have been adopted, foster care providers, and adoptive parents. As noted in Appendices A and B of the Federal regulations at 45 CFR 1355, in the sections related to the instructions for foster care and adoption data elements, race and Hispanic/Latino origin information is based on how a client/adult perceives him/herself, or in the case of young children, how the parent identifies the child. This means the information on race and Hispanic/Latino Origin is to be self-reported by the individual. Additionally, racial and ethnic information should be collected and stored as separate pieces of information about the client.

Workers must ask clients this information and not make assumptions on which and how many races a person may be and whether the client is Hispanic or Latino or not. When a worker, rather than the client, makes this determination, he or she may be under-representing all possible races.

For AFCARS extraction and submission purposes, information not collected or not available for a particular client record (for whatever reason) is mapped as all blanks (not all zeros, all 9?s, etc.). Missing information should never be mapped to a valid AFCARS value.

Source: 7/19/04

Reference: Section 479 of title IV-E of the Social Security Act; 45 CFR 1355, Appendix A, Section II Definitions and Instructions for Foster Care Data Elements, II. Child¿s Demographic Information, c. Race/Ethnicity and Appendix B, Section II Definitions and Instructions for Adoption Data Elements, II. Child¿s Demographic Information, c. Race/Ethnicity

1.2A.2 AFCARS, Data Elements and Definitions, Adoption Specific Elements, Birth parents

1 **Q:** When an adoption is dissolved and the child is then re-adopted, should the State submit the information on the first adoptive (legal) parents or the birth parents?

A: The AFCARS report should always include information on the legal parents. Therefore, in this case, the State should submit information on the previous adoptive parents.

Source: ACYF-CB-PIQ-95-01 (3/8/95)

Reference: Social Security Act - section 479; 45 CFR Parts 1355, 1356 and 1357

2 **Q:** What if a State has information on both the legal as well as one or more putative fathers? For whom should information be provided?

A: Information should be provided on the legal father; however, if a child has one or more putative fathers and a legal father is not established, the year of birth used should be that of the putative father whose parental rights were terminated last. (See: 45 CFR 1355, Appendix B, Section I, Roman Numeral IV, Question A2. Also see: Appendix D, Detailed Adoption, Element Number 17.)

Source: ACYF-CB-PIQ-94-01 (7/8/94)

Reference: Social Security Act - section 479; 45 CFR Parts 1355, 1356 and 1357

1.2A.3 AFCARS, Data Elements and Definitions, Adoption Specific Elements, Child's demographics

1 **Q:** AFCARS reporting requires all data submissions to be in numeric format, however, the data element definitions, both for foster care and adoption, indicate the use of the U.S. Postal Service's two letter State abbreviation. What should be used?

A: A numeric code is to be used for the State identification. It is the first two digits of the State's Federal Information Processing Standard (FIPS). (See: 45 CFR 1355, Appendix B, Section I, Roman Numeral I, Question A. Also see: Appendix D, Detailed Adoption, Element Number

01.)

Source: ACYF-CB-PIQ-94-01 (7/8/94)

Reference: Social Security Act - section 479; 45 CFR Parts 1355, 1356 and 1357

2 ***Q:*** What procedures should a child welfare worker follow in order to most effectively obtain accurate information on the racial and ethnic status of children and adults?

A: AFCARS requires the reporting of race and Hispanic/Latino Origin on children in foster care, children who have been adopted, foster care providers, and adoptive parents. As noted in Appendices A and B of the Federal regulations at 45 CFR 1355, in the sections related to the instructions for foster care and adoption data elements, race and Hispanic/Latino origin information is based on how a client/adult perceives him/herself, or in the case of young children, how the parent identifies the child. This means the information on race and Hispanic/Latino Origin is to be self-reported by the individual. Additionally, racial and ethnic information should be collected and stored as separate pieces of information about the client.

Workers must ask clients this information and not make assumptions on which and how many races a person may be and whether the client is Hispanic or Latino or not. When a worker, rather than the client, makes this determination, he or she may be under-representing all possible races.

For AFCARS extraction and submission purposes, information not collected or not available for a particular client record (for whatever reason) is mapped as all blanks (not all zeros, all 9?s, etc.). Missing information should never be mapped to a valid AFCARS value.

Source: 7/19/04

Reference: Section 479 of title IV-E of the Social Security Act; 45 CFR 1355, Appendix A, Section II Definitions and Instructions for Foster Care Data Elements, II. Child¿s Demographic Information, c. Race/Ethnicity and Appendix B, Section II Definitions and Instructions for Adoption Data Elements, II. Child¿s Demographic Information, c. Race/Ethnicity

1.2A.4 AFCARS, Data Elements and Definitions, Adoption Specific Elements, Court actions

No questions and answers are available at this time.

1.2A.5 AFCARS, Data Elements and Definitions, Adoption Specific Elements, Financial information

No questions and answers are available at this time.

1.2A.6 AFCARS, Data Elements and Definitions, Adoption Specific Elements, Placement

No questions and answers are available at this time.

1.2B AFCARS, Data Elements and Definitions, Foster Care Specific Elements

1 *Q:* What procedures should a child welfare worker follow in order to most effectively obtain accurate information on the racial and ethnic status of children and adults?

A: AFCARS requires the reporting of race and Hispanic/Latino Origin on children in foster care, children who have been adopted, foster care providers, and adoptive parents. As noted in Appendices A and B of the Federal regulations at 45 CFR 1355, in the sections related to the instructions for foster care and adoption data elements, race and Hispanic/Latino origin information is based on how a client/adult perceives him/herself, or in the case of young children, how the parent identifies the child. This means the information on race and Hispanic/Latino Origin is to be self-reported by the individual. Additionally, racial and ethnic information should be collected and stored as separate pieces of information about the client.

Workers must ask clients this information and not make assumptions on which and how many races a person may be and whether the client is Hispanic or Latino or not. When a worker, rather than the client, makes this determination, he or she may be under-representing all possible races.

For AFCARS extraction and submission purposes, information not collected or not available for a particular client record (for whatever reason) is mapped as all blanks (not all zeros, all 9?s, etc.). Missing information should never be mapped to a valid AFCARS value.

Source: 7/19/04

Reference: Section 479 of title IV-E of the Social Security Act; 45 CFR 1355, Appendix A, Section II Definitions and Instructions for Foster Care Data Elements, II. Child¿s Demographic Information, c. Race/Ethnicity and Appendix B, Section II Definitions and Instructions for Adoption Data Elements, II. Child¿s Demographic Information, c. Race/Ethnicity

1.2B.1 AFCARS, Data Elements and Definitions, Foster Care Specific Elements, Case plan goal

1 ***Q:*** Some States require that parental rights must be terminated before a child's case plan can reflect a goal of adoption. What should be indicated as a goal, if this is a State's policy?

A: The child's goal should be reflective of the "actual" goal; adoption. (See: 45 CFR 1355, Appendix A, Section I, Roman Numeral VI. Also see: Appendix D, Detailed Foster Care, Element Number 43.)

Source: ACYF-CB-PIQ-94-01 (7/8/94)

Reference: Social Security Act - section 479; 45 CFR Parts 1355, 1356 and 1357

2 ***Q:*** If a child's case plan goal is Independent Living how is it indicated on the AFCARS questionnaire?

A: Any child with a case plan goal of independent living should be indicated as having a goal of emancipation. (See: 45 CFR 1355, Appendix A, Section I, Roman Numeral VI. Also see: Appendix D, Detailed Foster Care, Element Number 43.)

Source: ACYF-CB-PIQ-94-01 (7/8/94)

Reference: Social Security Act - section 479; 45 CFR Parts 1355, 1356 and 1357

1.2B.2 AFCARS, Data Elements and Definitions, Foster Care Specific Elements, Child's demographics

1 ***Q:*** What if a parent refuses to disclose whether or not a child has been previously adopted?

A: If a parent refuses to answer this question, "Unable to Determine" would represent the correct response. (See: 45 CFR 1355, Appendix A, Section I, Roman Numeral II. Also see: Appendix D, Detailed Foster Care, Element Number 16.)

Source: ACYF-CB-PIQ-94-01 (7/8/94)

Reference: Social Security Act - section 479; 45 CFR Parts 1355, 1356 and 1357

2 **Q:** AFCARS requires race/ethnicity information on all children. But if a child is identified as Hispanic, what information is entered for the race question?

A: If a child is identified as Hispanic or "Latino" in element number 09, then his/her ethnicity should also be further clarified, using element number 08, according to how the child or the child's parents define him/her. (See: 45 CFR 1355, Appendix A, Section I, Roman Numeral II, Questions C.1 and C.2. Also see: Appendix D, Detailed Foster Care, Element Numbers 8 and 9.)

Source: ACYF-CB-PIQ-94-01 (7/8/94)

Reference: Social Security Act - section 479; 45 CFR Parts 1355, 1356 and 1357

3 **Q:** Should the FIPS code be that of the child's place of residence or that of the agency responsible for the case?

A: The FIPS code should be the agency's not the child's place of residence. (See: 45 CFR 1355, Appendix D, Detailed Foster Care, Element Number 3)

Source: ACYF-CB-PIQ-95-01 (3/8/95)

Reference: Social Security Act - section 479; 45 CFR Parts 1355, 1356 and 1357

4 **Q:** AFCARS reporting requires all data submissions to be in numeric format, however, the data element definitions, both for foster care and adoption, indicate the use of the U.S. Postal Service's two letter State abbreviation. What should be used?

A: A numeric code is to be used for the State identification. It is the first two digits of the State's Federal Information Processing Standard (FIPS). (See: 45 CFR 1355, Appendix A, Section I, Roman Numeral I, Question D. Also see: Appendix D, Detailed Foster Care, Element Number

4.)

Source: *ACYF-CB-PIQ-94-01 (7/8/94)*

Reference: *Social Security Act - section 479; 45 CFR Parts 1355, 1356 and 1357*

5 ***Q:*** In the AFCARS regulation at section 1355.40 (b)(2) there is a reference to the most recent date of a periodic review (either administrative or court) being entered for children who have been in foster care for nine months or more and other references indicate seven months. Is this a typographical error?

A: No. It is not a typographical error. Section 422 of the Social Security Act requires periodic reviews at least every six months; in practice, a 30 day grace period has been allowed, resulting in a seven month period in which to complete a review without penalty. For AFCARS reporting this fact, coupled with the intention to allow 60 days to enter the date associated with the review, results in a nine month time frame for entry of information about the periodic review. Therefore, any child in foster care at least nine months must have a periodic review date entered into the AFCARS report.

In summary, the review must take place within seven months of the child's entry into the foster care system (or of the last periodic review). The review date must be entered into the system within 60 days of the review date. This results in the nine month time frame referenced in the regulation.

Source: *ACYF-CB-PIQ-94-01 (7/8/94)*

Reference: *Social Security Act - section 479; 45 CFR Parts 1355, 1356 and 1357*

6 ***Q:*** What procedures should a child welfare worker follow in order to most effectively obtain accurate information on the racial and ethnic status of children and adults?

A: AFCARS requires the reporting of race and Hispanic/Latino Origin on children in foster care, children who have been adopted, foster care providers, and adoptive parents. As noted in Appendices A and B of the Federal regulations at 45 CFR 1355, in the sections related to the instructions for foster care and adoption data elements, race and Hispanic/Latino origin information is based on how a client/adult perceives him/herself, or in the case of young children, how the parent identifies the child. This means the information on race and Hispanic/Latino Origin is to be self-reported by the individual. Additionally, racial and ethnic information should be collected and stored as separate pieces of information about the client.

Workers must ask clients this information and not make assumptions on which and how many races a person may be and whether the client is Hispanic or Latino or not. When a worker, rather than the client, makes this determination, he or she may be under-representing all possible races.

For AFCARS extraction and submission purposes, information not collected or not available for a particular client record (for whatever reason) is mapped as all blanks (not all zeros, all 9?s, etc.). Missing information should never be mapped to a valid AFCARS value.

Source: 7/19/04

Reference: Section 479 of title IV-E of the Social Security Act; 45 CFR 1355, Appendix A, Section II Definitions and Instructions for Foster Care Data Elements, II. Child¿s Demographic Information, c. Race/Ethnicity and Appendix B, Section II Definitions and Instructions for Adoption Data Elements, II. Child¿s Demographic Information, c. Race/Ethnicity

1.2B.3 AFCARS, Data Elements and Definitions, Foster Care Specific Elements, Episode and removal circumstances

1 ***Q:*** Following a trial home visit which extends beyond six months and where the child is considered "discharged," what happens if the child returns to a group home? Is this a new placement, a new episode, or an entirely new removal?

A: The return to a group home or any other substitute care setting will represent a removal and the removal is the start of a new episode.

Source: ACYF-CB-PIQ-95-01 (3/8/95)

Reference: Social Security Act - section 479; 45 CFR Parts 1355, 1356 and 1357

2 ***Q:*** If a child is removed from a home in which a sibling was alleged to have been abused, but the child being removed from the home was not abused, should physical abuse (alleged/reported) be marked as a condition associated with the child's removal?

A: A record should only indicate conditions associated with the removal of the child who is the subject of the record. In the context of AFCARS, and using the above example of alleged abuse of the child's sibling, if physical abuse is alleged/reported for the child who is the subject of the record then that condition is considered to be associated with the decision to remove that child from home and Element #26 should be coded as 1 (yes). If physical abuse has not been alleged/reported for the child who is the subject of the record, physical abuse does NOT apply and element #26 should be answered as 0 (does not apply). (See: 45 CFR 1355, Appendix D, Detailed Foster Care, Element numbers 26 - 40.)

Source: ACYF-CB-PIQ-95-01 (3/8/95)

Reference: Social Security Act - section 479; 45 CFR Parts 1355, 1356 and 1357

3 **Q:** What if the only reason for a child's removal from home is mental abuse? How do you code this for AFCARS?

A: You should mark "Neglect (Alleged/Reported)" (Foster Care, element number #28) with a "1". (See: 45 CFR 1355, Appendix D, Detailed Foster Care, Element Numbers 26 - 40.)

Source: ACYF-CB-PIQ-95-01 (3/8/95)

Reference: Social Security Act - section 479; 45 CFR Parts 1355, 1356 and 1357

4 **Q:** Please clarify the meaning of the terms removal, placement, episode, and discharge.

A: A Removal is either the physical act of a child being taken from his or her normal place of residence, by court order or a voluntary placement agreement and placed in a substitute care setting, or the removal of custody from the parent or relative guardian pursuant to a court order or voluntary placement agreement which permits the child to remain in a substitute care setting.

Placement occurs after removal and is the physical setting in which a child finds himself or herself, that is, the resultant foster care setting. A new Placement setting results when the foster care setting changes, for example, when a child moves from one foster family home to another or to a group home or institution.

An Episode is a removal with one or more placement settings. A previous episode is one that has been completed by a discharge. A current episode is a removal and one or more placement settings without a discharge.

A Discharge represents that point in time when the child is no longer in foster care under the care and responsibility or supervision of the State agency. For AFCARS purposes, situations in which the State retains supervision of a child and the child returns home on a trial basis, for an unspecified period of time, are considered a discharge from foster care after a six month period. (See: 45 CFR 1355, Appendix A, Section I, Roman Numeral III, Questions A and B. Also see: Appendix D, Detailed Foster Care, Element Numbers 18, 20, and 23.))

Source: ACYF-CB-PIQ-94-01 (7/8/94); Final Rule (65 FR 4020) (1/25/00)

Reference: Social Security Act - section 479; 45 CFR Parts 1355, 1356 and 1357

5 **Q:** Does the definition of Neglect include cases of failure to provide supervision (non-supervision)?

A: Yes. Neglect is alleged or substantiated negligent treatment or maltreatment, including failure to provide adequate food, clothing, shelter or care and includes failure to provide supervision (non-supervision). (See: 45 CFR 1355, Appendix A, Section I, Roman Numeral IV, Question B. Also see: Appendix D, Detailed Foster Care, Element Number 28.)

Source: ACYF-CB-PIQ-94-01 (7/8/94)

Reference: Social Security Act - section 479; 45 CFR Parts 1355, 1356 and 1357

6 **Q:** For both of the computer-generated transaction dates: should the date be generated on the date that the data was first entered or the date that the data was last updated?

A: This date should represent the date that the data was FIRST entered. The reason for this element is to insure that the record is entered into the system in a timely fashion. (See: 45 CFR 1355, Appendix D, Detailed Foster Care, Element Number 22 and 57.)

Source: ACYF-CB-PIQ-95-01 (3/8/95)

Reference: Social Security Act - section 479; 45 CFR Parts 1355, 1356 and 1357

7 **Q:** For a child who is in and out of the foster care system over a period of several years, what does the State report for foster care element 18 "Date of first removal from home" if it does not have the date of the first removal?

A: This information is required by the regulations at appendix A to 45 CFR 1355 and should exist in the case record or a court record. As is the case for all missing data, if the date of the child's first removal from home is not available, the date should be left blank.(See: 45 CFR1355,

Appendix D, Detailed Foster Care, Element Number 18.)

Source: *ACYF-CB-PIQ-95-01 (3/8/95), updated (5-28-02)*

Reference: *45 CFR 1355.40; Appendix A to 45 CFR 1355*

8 **Q:** A State title IV-E agency has an agreement in effect pursuant to section 472(a)(2)(B)(ii) of the Social Security Act with the State juvenile justice agency. As such, the State reports to AFCARS children who are in the placement and care responsibility of the State juvenile justice agency and receiving title IV-E foster care maintenance payments in a foster family home or child care institution. When such a child is no longer receiving title IV-E foster care maintenance payments because the child is placed in an unallowable facility (e.g., in detention), should the State stop reporting the child to AFCARS?

A: It depends. Children in foster care who are placed in a juvenile justice facility and who are expected to be returned to a foster care setting should continue to be included in the AFCARS reporting population (see Child Welfare Policy Manual Section 1.3 QA# 12). This means that the State will report to AFCARS the date the child was placed in the unallowable facility as the date of placement in current foster care setting (foster care element #23) and indicate that the child?s current placement setting (foster care element #41) is an institution. The State will also increment the number of previous placement settings (foster care element #24).

If, however, the State does not expect the child to return to a foster care setting, the State may enter the child as discharged (foster care element #56) as of the date the child left the foster family home or child care institution and indicate the reason for discharge (foster care element #58).

Source: *8/21/2006*

Reference: *Social Security Act - section 479*

1.2B.4 AFCARS, Data Elements and Definitions, Foster Care Specific Elements, Financial elements

1 **Q:** Should a State report that a child is eligible for, but not actually receiving title IV-E foster care maintenance payments in foster care element 59, "Sources of Federal Financial Support/Assistance for Child?"

A: No. The State should only indicate whether a child received a title IV-E foster care maintenance payment during the reporting period in answering foster care element 59.

Source: (5-28-02)

Reference: Appendix A to 45 CFR 1355.40

1.2B.5 AFCARS, Data Elements and Definitions, Foster Care Specific Elements, Foster family home

1 **Q:** What procedures should a child welfare worker follow in order to most effectively obtain accurate information on the racial and ethnic status of children and adults?

A: AFCARS requires the reporting of race and Hispanic/Latino Origin on children in foster care, children who have been adopted, foster care providers, and adoptive parents. As noted in Appendices A and B of the Federal regulations at 45 CFR 1355, in the sections related to the instructions for foster care and adoption data elements, race and Hispanic/Latino origin information is based on how a client/adult perceives him/herself, or in the case of young children, how the parent identifies the child. This means the information on race and Hispanic/Latino Origin is to be self-reported by the individual. Additionally, racial and ethnic information should be collected and stored as separate pieces of information about the client.

Workers must ask clients this information and not make assumptions on which and how many races a person may be and whether the client is Hispanic or Latino or not. When a worker, rather than the client, makes this determination, he or she may be under-representing all possible races.

For AFCARS extraction and submission purposes, information not collected or not available for a particular client record (for whatever reason) is mapped as all blanks (not all zeros, all 9?s, etc.). Missing information should never be mapped to a valid AFCARS value.

Source: 7/19/04

Reference: Section 479 of title IV-E of the Social Security Act; 45 CFR 1355, Appendix A, Section II Definitions and Instructions for Foster Care Data Elements, II. Child¿s Demographic Information, c. Race/Ethnicity and Appendix B, Section II Definitions and Instructions for Adoption Data Elements, II. Child¿s Demographic Information, c. Race/Ethnicity

1.2B.6 AFCARS, Data Elements and Definitions, Foster Care Specific Elements, Outcome information

1 ***Q:*** Some States do not capture information about outcomes except when the children not only are discharged from agency custody, but also the case is closed and the agency is no longer providing any type of services to the family. If this is the case for a particular State, how will penalties be assessed for lack of information?

(Deleted 07/05/2002)

1.2B.7 AFCARS, Data Elements and Definitions, Foster Care Specific Elements, Placements

1 ***Q:*** How does a State code a record where the status of the placement changes? For example, if a child is in a foster family home placement setting and that family decides to adopt the child, thus becoming a pre-adoptive home placement setting, how do States record the placement setting, the date of placement, and the number of placements?

A: The State should change the placement setting to pre-adoptive home. However, the number of placements should not change nor should the date of placement. There is no internal consistency check among these elements and therefore, there will be no error detected with the change of placement even though the number of placements has not increased. (See: 45 CFR 1355, Appendix D, Detailed Foster Care, Element Numbers 23, 24, and 41.)

Source: ACYF-CB-PIQ 95-01 (3/8/95)

Reference: Social Security Act - section 479; 45 CFR Parts 1355, 1356 and 1357

2 ***Q:*** The internal consistency check for date of placement in current foster care setting states that it must be later than the date of latest removal from home. Can't it also be equal to the date of latest removal?

A: Yes. The system will not consider it an error if the date of placement in current foster care setting is the same day as the date of latest removal from home. (See: 45 CFR 1355, Appendix D, Detailed Foster Care, Element Number 23.)

Source: ACYF-CB-PIQ-95-01 (3/8/95)

Reference: Social Security Act - section 479; 45 CFR Parts 1355, 1356 and 1357

3 ***Q:*** If a child is on a trial home visit or has run away as of the end of the reporting period, what is to be reported in the "Date of placement in current foster care setting" field?

(Deleted 07/05/2002)

4 ***Q:*** How do States indicate emergency shelter care - as "institution" or "group home?"

A: Generally, the shelter should be coded as the type of placement that it most closely resembles. Therefore, the size of the facility should determine whether the shelter care is considered as an institution or a group home. It is also possible for an emergency shelter to be coded as relative or non-relative foster care if the shelter is a home.

Source: ACYF-CB-PIQ-95-01 (3/8/95)

Reference: Social Security Act - section 479; 45 CFR Parts 1355, 1356 and 1357

5 ***Q:*** Please provide a more inclusive definition of Pre-Adoptive Home, Foster Family Home (Non-Relative), Institution and Trial Home Visit.

A: A Pre-Adoptive Home is a home in which the family has been approved to adopt the child. The family may or may not be receiving a foster care payment or an adoption subsidy on behalf of the child. The child is considered in foster care until the adoption has been finalized, that is, a judge has signed the adoption decree.

A Foster Family Home (Non-Relative) is a licensed or approved foster family home regarded by the State as a foster care living arrangement. This placement setting also includes what are referred to in some States as receiving foster homes.

An Institution is a child care facility operated by a public or private agency and providing 24-hour care and/or treatment for children who require separation from their own homes and group living experience. These facilities may include: child care institutions, residential treatment facilities, maternity homes, nursing homes, hospitals, etc.

A Trial Home Visit occurs when the child has been in a foster care placement, but, under continuing State agency supervision, is then returned to the principal caretaker for a limited and specified period of time. If a time period is not specified the child should be identified as having been returned home at the point at which the trial home visit exceeds six months. (See: 45 CFR 1355, Appendix A, Section I, Roman Numeral V, Question A. Also see: Appendix D, Detailed Foster Care, Element Number 41.)

Source: ACYF-CB-PIQ-94-01 (7/8/94)

Reference: Social Security Act - section 479; 45 CFR Parts 1355, 1356 and 1357

6 **Q:** "Group homes" as they are called in some States may more closely match the AFCARS definition of "institutions" by their size, so the data reported may look like the State has foster homes and institutions as placements, and nothing much else. Won't this be a problem?

A: For AFCARS' reporting purposes "Group Homes" are defined as substitute care settings which house 12 or fewer children, whereas, an "Institution" provides care for more than 12 children. Given this distinction of size, and if States are consistent in their use of size as a distinguishing factor, it should be clear as to the types of substitute care children are in and should not pose a major problem.

Source: ACYF-CB-PIQ-95-01 (3/8/95)

Reference: Social Security Act - section 479; 45 CFR Parts 1355, 1356 and 1357

7 **Q:** Please clarify the meaning of the terms removal, placement, episode, and discharge.

A: A Removal is either the physical act of a child being taken from his or her normal place of residence, by court order or a voluntary placement agreement and placed in a substitute care setting, or the removal of custody from the parent or relative guardian pursuant to a court order or voluntary placement agreement which permits the child to remain in a substitute care setting.

Placement occurs after removal and is the physical setting in which a child finds himself or herself, that is, the resultant foster care setting. A new Placement setting results when the foster care setting changes, for example, when a child moves from one foster family home to another or to a group home or institution.

An Episode is a removal with one or more placement settings. A previous episode is one that has been completed by a discharge. A current episode is a removal and one or more placement settings without a discharge.

A Discharge represents that point in time when the child is no longer in foster care under the care and responsibility or supervision of the State agency. For AFCARS purposes, situations in which the State retains supervision of a child and the child returns home on a trial basis, for an unspecified period of time, are considered a discharge from foster care after a six month period. (See: 45 CFR 1355, Appendix A, Section I, Roman Numeral III, Questions A and B.

Also see: Appendix D, Detailed Foster Care, Element Numbers 18, 20, and 23.)

Source: ACYF-CB-PIQ-94-01 (7/8/94)

Reference: Social Security Act - section 479; 45 CFR Parts 1355, 1356 and 1357

8 **Q:** For AFCARS reporting purposes what information is entered for a child who returns to a placement setting different than the placement setting from which he/she ran away or left for a trial home visit?

A: If the child, after having run away or experienced a trial home visit, returns to a placement setting different than the one he/she ran away from or left for a trial home visit, then the "Date of Placement in Current Foster Care Setting," "Current Placement Setting," and "Number of Previous Placement Settings during this Removal Episode" will be changed. The following information should be entered, "Date of Placement in Current Foster Care Setting" will be changed to the date the child enters the "different" placement setting, "Current Placement Setting" will be changed to the appropriate setting, and "Number of Previous Placement Settings during this Removal Episode" will be increased by one (+1). (See: 45 CFR 1355, Appendix D, Detailed Foster Care, Element Number 23, 41, and 24, respectively.)

Source: ACYF-CB-PIQ-95-01 (3/8/95)

Reference: Social Security Act - section 479; 45 CFR Parts 1355, 1356 and 1357

9 **Q:** Why are trial home visits (which count as placements for element 41 and may last up to 6 months or more) not counted as placements for element 24 - number of placements?

A: Trial home visits and Runaway are the same in that they are recorded as placement settings. This allows the State to more accurately show the physical setting that the child is in at the time the report period ends. However, they are not counted in the number of placements in order to guard against misleading data. For example, in the case of a child in a group home who runs away for one week and then returns to the group home, if the runaway were counted as a placement it would appear that the child had three placements, when actually the agency had only placed the child once. Likewise, if the child was placed in a trial home visit with the intent that the child would be discharged back to the family the trial home visit should not be

considered a placement. The number of placements element is meant to gather information on how many times the agency found it necessary to move the child while in foster care. (See: 45 CFR 1355, Appendix D, Detailed Foster Care, Element Number 24.)

Source: ACYF-CB-PIQ-95-01 (3/8/95)

Reference: Social Security Act - section 479; 45 CFR Parts 1355, 1356 and 1357

10 Q: "Runaway" is an option for a child's "Current Placement Setting"; should it be counted when calculating the answer to, "Number of Previous Placements During This Removal Episode"?

A: No. While it is important for ACF to know the number of children in runaway status at a particular time, "runaway" is not a placement setting and should not be counted as such. (See: 45 CFR 1355, Appendix D, Detailed Foster Care, Element Numbers 41 and 24, respectively).

Source: ACYF-CB-PIQ-95-01 (3/8/95)

Reference: Social Security Act - section 479; 45 CFR Parts 1355, 1356 and 1357

11 Q: For AFCARS reporting purposes what information is entered for a child who returns to the same placement setting from which he/she ran away or left for a trial home visit?

A: If the child returns to the same placement setting they were in, prior to running away or having the trial home visit, only the "Current Placement Setting" will be changed and it will be changed to the placement setting he/she was in prior to running away or leaving for their trial home visit. (See: 45 CFR 1355, Appendix D, Detailed Foster Care, Element Number 41.)

Source: ACYF-CB-PIQ-95-01 (3/8/95)

Reference: Social Security Act - section 479; 45 CFR Parts 1355, 1356 and 1357

12 Q: The data element, "Number of Previous Placement Settings During This Removal Episode" clearly indictes previous placement settings; however, the definition in the regulation says to include the current placement setting in this count. This seems to be contradictory. Which is correct?

A: When answering the question, "Number of Previous Placement Settings During This Removal Episode", include the current placement setting. (See: 45 CFR 1355, Appendix D, Detailed Foster Care, Element Number 24. Also see: Appendix A, Section II, Roman Numeral III, Removal/Placement Setting Indicators.)

Source: ACYF-CB-PIQ-95-01 (3/8/95)

Reference: Social Security Act - section 479; 45 CFR Parts 1355, 1356 and 1357

13 Q: Mental health institutions and jails are not normally considered to be the same type of facility. Some States expressed concern with counting them as the same for AFCARS. Why are they counted all the same as "institutions?"

A: "Institution," as it is used for AFCARS reporting, generally indicates large groups of children, even though we acknowledge that this could represent children in mental health facilities, nursing homes, long-term hospital care, juvenile justice facilities, and many other placement settings serving large numbers of individuals. To assist ACF in clarifying placements, we encourage States to footnote significant percentages, for example, 25% of children in institutional care are in juvenile justice facilities.

Source: ACYF-CB-PIQ-95-01 (3/8/95)

Reference: Social Security Act - section 479; 45 CFR Parts 1355, 1356 and 1357

14 *Q:* If a child goes home on a regular basis (e.g., the child is placed in an institution, but goes home to his or her family on weekends), is this considered two placements each week?

(Deleted 07/05/2002)

15 *Q:* Occasionally a child may be placed in the home of a neighbor or family friend who is in the process of being licensed but is not licensed at the end of the reporting period. In this case, how should that placement setting be coded?

A: ACF hopes that it will be a rare occasion when a child is placed in an unlicensed facility. But in those rare cases, code the placement setting as the definition that most closely resembles the placement setting. For this case, the placement setting should be coded as a non-relative foster home. (See: 45 CFR 1355, Appendix D, Detailed Foster Care, Element Number 41).

Source: ACYF-CB-PIQ-95-01 (3/8/95)

Reference: Social Security Act - section 479; 45 CFR Parts 1355, 1356 and 1357

16 *Q:* How are children in shelter care indicated on the AFCARS questionnaire?

(Deleted 07/05/2002)

17 *Q:* If the provider changes status (e.g. was a county service foster home and changes to a child placement service) and the child remains with the same family is this 1 placement setting or 2 placement settings?

A: AFCARS reporting is not concerned with the status of the substitute care provider, only the number of placement setting changes a child experiences. Consequently, the child in the above question does not experience a placement setting change, therefore, no change will be made to "Number of Previous Placement Settings during this Removal Episode", (See: 45

CFR 1355, Appendix D, Detailed Foster Care, Element Number 24.)

If a child's placement setting status changes to a setting as defined for AFCARS reporting, e.g., a group home becomes licensed as an institution, then for AFCARS reporting purposes we would request that the child's "Current Placement Setting" be changed as appropriate. However, there would be no change in the "Date of Placement in the Current Foster Care Setting" nor in the "Number of Previous Placements During this Removal Episode". (See: 45 CFR 1355, Appendix D, Detailed Foster Care, Element Number 41, 23, and 24 respectively.)

Source: ACYF-CB-PIQ-95-01 (3/8/95)

Reference: Social Security Act - section 479; 45 CFR Parts 1355, 1356 and 1357

18 Q: If a child is in a foster family home and then goes to a different foster family home, is this one placement or two placements?

A: Two placement settings in the current episode. (See: 45 CFR 1355, Appendix D, Detailed Foster Care, Element Number 24.)

Source: ACYF-CB-PIQ-95-01 (3/8/95)

Reference: Social Security Act - section 479; 45 CFR Parts 1355, 1356 and 1357

19 Q: If a foster family moves to another city or county or State, is the move considered to be a new placement for the child living with the family?

A: If the child remains with the same family, it should not be considered a new placement if the family moves. (See: 45 CFR 1355, Appendix D, Detailed Foster Care, Element Numbers 23, 24, and 41.)

Source: ACYF-CB-PIQ-95-01 (3/8/95)

Reference: Social Security Act - section 479; 45 CFR Parts 1355, 1356 and 1357

20 **Q:** The AFCARS definition of "institution" seems different from the definition used for IV-E and adoption programs. Why?

A: The definitional use of institutional care setting for AFCARS was purposely broadened to make it applicable to situations which cannot be recorded in any other manner. But it remains the same for purposes other than AFCARS reporting.

Source: ACYF-CB-PIQ-95-01 (3/8/95)

Reference: Social Security Act - section 479; 45 CFR Parts 1355, 1356 and 1357

21 **Q:** How should the State count *brief* periods spent away from the child's foster care provider in foster care element 24, " Number of previous placement settings during the removal episode"?

A: In general, the State is required to count a placement that lasts more than 24 hours while the child is in foster care under the placement, care or supervision responsibility of the State agency. See 45 CFR 1355.40 and CWPM 1.2B.7 and 1.3. This includes moves that may be made on an emergency or unplanned basis, such as shelter care placements, treatment facility placements, and certain placements for juvenile justice purposes. See CWPM 1.3. However, there are certain temporary living conditions that are not placements, but rather represent a temporary absence from the child's ongoing foster care placement. As such, the State must exclude the following temporary absences from the calculation of the number of previous placement settings for foster care element 24.

- Visitation with a sibling, relative, or other caretaker (i.e., preplacement visits with a subsequent foster care provider or preadoptive parents)
- Hospitalization for medical treatment, acute psychiatric episodes or diagnosis
- Respite care
- Day or summer camps
- Trial home visits
- Runaway episodes

Source: (5-28-02)

Reference: Social Security Act - section 479; 45 CFR 1355.40 & appendices; Child Welfare Policy Manual Sections 1.2B.7 and 1.3

22 Q: How should a State count a child's placement back into a previous foster home in foster care element 24, "Number of previous placement settings during the removal episode"? Should a State only increase the number of previous placement settings if the child is placed in a foster care setting in which he has not been placed before?

A: Foster care element 24 is meant to gather information on how many times the agency found it necessary to move the child while in foster care. Therefore, the number of previous placement settings during the removal episode must reflect all placement moves including the current placement and placements into a previous foster care setting, regardless of whether the child was previously placed in that setting. The exception to this policy is with regard to a child who returns to the same foster care setting following a temporary absence that is specifically excluded from the calulation of previous placment settings.(see CWPM 1.2B.7).

Source: (5-28-02)

Reference: Appendix A to 45 CFR 1355.40

23 Q: If a child is on a trial home visit or has run away how should the State report this child in AFCARS?

A: The State must indicate the date the child was placed on the trial home visit, or known to have run away from the last placement setting as the "Date of placement in current foster care setting" (foster care element 23). The State must also change the "Current Placement Setting" (foster care element 41) to either "Runaway" or "Trial Home Visit", as appropriate. The State should not increase the "number of previous placement settings during this removal episode" (foster care element 24).

Source: (5-28-02)

Reference: Social Security Act - section 479; 45 CFR 1355.40 & appendices

24 **Q:** Should a State report in AFCARS a child who is under the placement and care responsibility of the State title IV-B/IV-E agency but who has not yet been placed in a foster care setting because the child ran away prior to placement?

A: Yes. The State should report to AFCARS children who are under the placement and care responsibility of the title IV-E agency but who ran away prior to the child?s placement in a foster care setting. In this situation, the State should report the child as having a current placement setting (foster care element #41) of runaway and indicate the date the child ran away as the date of placement in current foster care setting (foster care element #23). Since there has not been an actual placement, the State should indicate a placement count (foster care element #24) of zero.

Source: 8/21/2006

Reference: Social Security Act - section 479

25 **Q:** If a child in foster care moves within a child care institution at a single location (e.g., from one building, dorm, cottage, or wing to another within the institution) should a State report this to AFCARS as a change in placement? Is it relevant whether the child is moving within the institution because of a change in the level of care necessary?

A: No to both questions. The child remains at a single child care institution and placement and the State must not indicate a change in the date of placement in current foster care setting (foster care element 23), number of previous placement settings (foster care element 24) or the current placement setting (foster care element 41) due to such a move.

Source: 8/21/2006

Reference: Social Security Act - section 479

1.2B.8 AFCARS, Data Elements and Definitions, Foster Care Specific Elements, Principal caretaker

1 ***Q:*** When an adoption is dissolved and the child is then re-adopted, should the State submit the information on the first adoptive (legal) parents or the birth parents?

A: The AFCARS report should always include information on the legal parents. Therefore, in this case, the State should submit information on the previous adoptive parents.

Source: ACYF-CB-PIQ-95-01 (3/8/95)

Reference: Social Security Act - section 479; 45 CFR Parts 1355, 1356 and 1357

2 ***Q:*** What if a State has information on both the legal as well as one or more putative fathers? For whom should information be provided?

A: Information should be provided on the legal father; however, if a child has one or more putative fathers and a legal father is not established, the year of birth used should be that of the putative father whose parental rights were terminated last. (See: 45 CFR 1355, Appendix B, Section I, Roman Numeral IV, Question A2. Also see: Appendix D, Detailed Adoption, Element Number 17.)

Source: ACYF-CB-PIQ-94-01 (7/8/94)

Reference: Social Security Act - section 479; 45 CFR Parts 1355, 1356 and 1357

3 ***Q:*** If a child's principal caretakers are a same sex couple how is it indicated for AFCARS reporting?

A: The couple should be entered as either an unmarried or married couple depending on how State law views them. (See: 45 CFR 1355, Appendix B, Section I, Roman Numeral VII, Question A. Also see: Appendix D, Detailed Foster Care, Element Numbers 44 and 49.)

Source: ACYF-CB-PIQ-94-01 (7/8/94)

Reference: Social Security Act - section 479; 45 CFR Parts 1355, 1356 and 1357

1.2B.9 AFCARS, Data Elements and Definitions, Foster Care Specific Elements, Termination of parental rights

No questions and answers are available at this time.

1.3 AFCARS, Reporting Population

1 ***Q:*** Please clarify the definition of the AFCARS foster care reporting population, that is, the children States are to submit AFCARS data on.

A: Foster care is defined in 45 CFR 1355.20 and 1355.40. Section 1355.20 gives the general definition of foster care as 24 hour substitute care for all children placed away from their parent(s) or guardian(s) and for whom the State agency has placement and care responsibility. Section 1355.40 (a)(2), defines the foster care population for AFCARS reporting purposes. Each State's data transmission must include all children in foster care, as defined in section 1355.20, for whom the State title IV-B/IV-E agency has responsibility for placement, care or supervision.

Source: ACYF-CB-PIQ-94-01 (7/8/94)

Reference: Social Security Act - section 479; 45 CFR Parts 1355, 1356 and 1357

2 ***Q:*** Should children who are still receiving funding from the State agency be reported on in AFCARS even if they are age 18 or over?

A: In general, States are to report all children in foster care and under the placement, care of supervision of the State agency to AFCARS. In the case of youth 18 years of age or over, State must report to AFCARS:

- youth who have not yet reached the State's legal age of majority; and
- youth who have attained 18 years of age, but not yet 19 years of age on whose behalf the State is providing title IV-E foster care maintenance payments.

Pursuant to long-standing Departmental policy, States are instructed to exclude those youth who are considered to be adults in a State from the child protection requirements in section 422 of the Act and AFCARS reporting requirements. However, youth who receive title IV-E foster care maintenance payments must be reported to AFCARS and be provided the section 422 protections regardless of whether they have reached the legal age of majority in the State.

Source: *ACYF-CB-PIQ-95-01 (3/8/95); updated (5-28-02)*

Reference: *Social Security Act - section 479; 45 CFR Part 1355*

3 **Q:** Are past placement histories to be included or only current active cases?

A: All cases which are open at any time during the reporting period, whether or not there have been any changes in the file, need to be reported. Any cases which are closed, that is, the child is discharged from care, etc., need to be included in the current report only if the closure activity was entered into the system during the current reporting period.

Source: *ACYF-CB-PIQ-95-01 (3/8/95)*

Reference: *Social Security Act - section 479; 45 CFR Parts 1355, 1356 and 1357*

4 **Q:** Do States report on the children in State custody even though the State has no placement or financial responsibility?

A: Yes. Children who are under State custody and in foster care are included in AFCARS regardless of whether or not a payment is made.

Source: *ACYF-CB-PIQ-95-01 (3/8/95)*

Reference: *Social Security Act - section 479; 45 CFR Parts 1355, 1356 and 1357*

5 ***Q:*** Do States report on children whose care is in the control of tribal courts?

A: What court the child goes through is not of particular importance. The determining factor is whether the State title IV-B/IV-E agency has placement and care responsibility and/or supervision.

Source: ACYF-CB-PIQ-95-01 (3/8/95)

Reference: Social Security Act - section 479; 45 CFR Parts 1355, 1356 and 1357

6 ***Q:*** What guidelines or qualifiers, if any, exist as to the inclusion of American Indian children in the AFCARS reporting population?

A: There are no guidelines or qualifiers related to American Indian children. They are to be included in AFCARS as any other child under the care and responsibility or supervision of the State child welfare agency.

Source: ACYF-CB-PIQ-94-01 (7/8/94)

Reference: Social Security Act - section 479; 45 CFR Parts 1355, 1356 and 1357

7 ***Q:*** Do States report on children in private agency care?

A: If the care of the child is under the State child welfare agency (e.g., the private agency is providing care by contract with the State), that child should be included in AFCARS reporting; if it is strictly private, that is, there is no contractual relationship with the IV-B/IV-E agency, do not report on the child.

Source: ACYF-CB-PIQ-95-01 (3/8/95)

Reference: Social Security Act - section 479; 45 CFR Parts 1355, 1356 and 1357

8 **Q:** What is the relationship between State and tribal organizations to access client data, especially non-IV-E funded clients?

A: Children affiliated with Tribes which have title IV-E agreements with a State are to be included in the AFCARS reporting population. Any child in substitute care in which joint custody exists between the tribal court and IV-B/IV-E agency, is included in the AFCARS reporting population. If an agreement exists the title IV-B/IV-E agency should have access to the necessary records.

Source: ACYF-CB-PIQ-95-01 (3/8/95)

Reference: Social Security Act - section 479; 45 CFR Parts 1355, 1356 and 1357

9 **Q:** What agency submits data on adoption for children placed out of State (i.e., cooperative placement agreements)?

A: The State which has/had custody of the child or is party to the adoption assistance agreement must submit the AFCARS data.

Source: ACYF-CB-PIQ-94-01 (7/8/94)

Reference: Social Security Act - section 479; 45 CFR Parts 1355, 1356 and 1357

10 **Q:** Under what circumstances, if any, should children in emergency care be included in the AFCARS reporting population?

A: The reporting population includes children in emergency care, if the emergency care exceeds 24 hours, regardless of whether the placement and care responsibility or supervision is on the basis of a court order, legislation or regulation.

Source: ACYF-CB-PIQ-94-01 (7/8/94)

Reference: Social Security Act - section 479; 45 CFR Parts 1355, 1356 and 1357

11 Q: Are children at home (i.e., trial home visits) to be included in the AFCARS reporting population?

A: Yes. Any child who is returned home on a trial home visit, for a specifically limited period of time and for whom the State agency continues to maintain placement and care responsibility or supervision should be included in AFCARS. If a child is returned home on a trial basis with no specific time period indicated, and the State agency maintains placement and care responsibility or supervision, he or she should be indicated as in foster care for a period of up to six months. After six months such child should be indicated as discharged from foster care and returned home and should not be included in subsequent AFCARS reports unless the child is returned to foster care.

Source: ACYF-CB-PIQ-94-01 (7/8/94)

Reference: Social Security Act - section 479; 45 CFR Parts 1355, 1356 and 1357

12 Q: Are children in juvenile justice facilities included in AFCARS reporting?

A: Children who are removed from their home and initially placed in a juvenile justice facility are not to be included in AFCARS reporting.

For children already in a juvenile justice facility with respect to whom a subsequent court order is signed giving placement, care or supervision to the title IV-E/IV-B agency, the date of the court order will be used as the date of removal from the home.

Children in a foster care setting who are moved to a juvenile justice facility and who are expected to be returned to a foster care setting should continue to be included in the AFCARS reporting population. The child's move into the juvenile justice facility should be reported as a placement change and recorded as an institutional foster care setting.

Children in a foster care setting who are moved to a juvenile justice facility and who become the responsibility of another agency should not be included in the AFCARS reporting population. The date the court order was signed will serve as the date of discharge from foster care and the reason for discharge would be reported as transfer to another agency.

Source: *ACYF-CB-PIQ-94-01 (7/8/94); ACYF-CB-PIQ-95-01 (3/8/95)*

Reference: *Social Security Act - section 479; 45 CFR Parts 1355, 1356 and 1357*

13 **Q:** What if a child in care is known to two different State agencies? Which agency should report on the child?

A: The agency which currently has placement and care responsibility or supervision should report on the child. If there is joint responsibility (e.g., both the juvenile justice agency and the child welfare agency) then the child welfare agency should report on the child.

Source: *ACYF-CB-PIQ-94-01 (7/8/94)*

Reference: *Social Security Act - section 479; 45 CFR Parts 1355, 1356 and 1357*

14 **Q:** If the State has placement and financial payment responsibility for some children, but the State does not have custody, do we report them?

A: Yes. These children should be included in the AFCARS reporting population.

Source: *ACYF-CB-PIQ-95-01 (3/8/95)*

Reference: *Social Security Act - section 479; 45 CFR Parts 1355, 1356 and 1357*

1.4 AFCARS, Technical Requirements

1 **Q:** For programming purposes, are "6 months" and "180 days" supposed to be literally the same? Automated systems must be programmed precisely as to what date to use.

A: The reference to 6 months is 6 calendar months, whereas, 180 days equals 180 days, irrespective of calendar months.

Source: *ACYF-CB-PIQ-95-01 (3/8/95)*

Reference: *Social Security Act - section 479; 45 CFR Parts 1355, 1356 and 1357*

2 **Q:** What links are States to maintain between children in the AFCARS foster care data transmission and the AFCARS adoption data transmission? If the State uses encrypted numbers, the child's number will appear the same on both the foster care and the adoption reports. Does this violate confidentiality?

A: No link may be maintained in the AFCARS transmissions for children who leave foster care and are adopted. If the State is still concerned about possible linkage of the foster care and adoption records, it should adopt a different encryption algorithm for the adoption data report.

Source: *ACYF-CB-PIQ-95-01 (3/8/95)*

Reference: *Social Security Act - section 479; 45 CFR Parts 1355, 1356 and 1357*

2. CAPTA

2.1 CAPTA, Assurances and Requirements

1 ***Q:*** Must the policies that are the subject of the CAPTA assurances be embodied in State statutes?

A: There are five assurances in CAPTA that require provisions in State law. Those are: 1) a law for mandatory reporting by individuals required to report child abuse and neglect (section 106(b)(2)(B)(i)); 2) provisions for immunity from prosecution under State and local laws and regulations for individuals making good faith reports of suspected or known instances of child abuse or neglect (section 106(b)(2)(B)(vii)); 3) upon implementation of provisions, procedures or mechanisms to assure that the State does not require reunification of a surviving child with a parent who has committed certain felonies, that conviction of any one of those felonies constitute grounds under State law for the termination of parental rights of the convicted parent as to the surviving children (section 106(b)(2)(B)(xvii)); 4) authority under State law for the State CPS system to pursue any legal remedies, including the authority to initiate legal proceedings in a court of competent jurisdiction, as may be necessary to prevent the withholding of medically indicated treatment from disabled infants with life-threatening conditions (section 106(b)(2)(C)(iii)); and 5) authority under State law to permit the State's CPS system to pursue any legal remedies, including the authority to initiate legal proceedings in a court of competent jurisdiction, to provide medical care or treatment for a child when such care or treatment is necessary to prevent or remedy serious harm to the child, or to prevent the withholding of medically indicated treatments from disabled infants with life-threatening conditions (section 113(b)).

However, if a State has a law in effect which conflicts with the provisions in any assurance, or the State's statutory definitions of "child abuse and neglect" and "sexual abuse" do not meet the minimum standards in sections 3(2) and 111(4) of CAPTA, it must modify its statute to correspond with the CAPTA requirements.

Source: ACYF-NCCAN-PIQ-97-01 (3/4/97); updated 12/9/11

Reference: Child Abuse Prevention and Treatment Act (CAPTA), as amended (42 U.S.C. 5101 et seq.) - sections 3, 106, 111 and 113

2 ***Q:*** Does the Administration on Children, Youth and Families (ACYF) intend to do in-depth reviews of State statutes and policies to determine State eligibility under the CAPTA Amendments of 1996?

A: CAPTA, as amended in the 1996 reauthorization, made a shift from eligibility requirements to submission of a State plan with assurances in the form of certifications by the State's Chief Executive Officer that certain provisions, procedures, or programs are in place in the State. Legislative history confirms that it was Congressional intent to simplify and streamline the administration of CAPTA at the Federal, State and local levels (Congressional Record - House, September 25, 1996, p. H11148). Accordingly, the primary responsibility for review of State statutes and policies rests with the States.

If there are instances in which ACYF is presented with evidence of potential deficiencies (e.g., through the new child and family services program reviews being conducted by the Children's Bureau, or other sources), action will be taken to verify whether a problem actually exists. If a deficiency is verified, the State will be notified in writing and will be required to take corrective action within a specified timeframe. Funds will not be jeopardized unless the State fails to correct the deficiency within the specified timeframe.

Source: ACYF-NCCAN-PIQ-97-01 (3/4/97); updated 2/3/05

Reference: Child Abuse Prevention and Treatment Act (CAPTA), as amended (42 U.S.C. 5101 et seq.)

2.1A CAPTA, Assurances and Requirements, Access to Child Abuse and Neglect Information

No questions and answers are available at this time.

2.1A.1 CAPTA, Assurances and Requirements, Access to Child Abuse and Neglect Information, Confidentiality

1 *Q:* What are the Child Abuse Prevention and Treatment Act (CAPTA) confidentiality requirements?

A: In general, CAPTA requires that a State preserve the confidentiality of all child abuse and neglect reports and records in order to protect the rights of the child and the child's parents or guardians (section 106(b)(2)(B)(viii) of CAPTA). However, CAPTA allows the State to release information to certain individuals and entities.

The State may share confidential child abuse and neglect reports and records that are made and maintained in accordance with CAPTA with any of the following:

- Individuals who are the subject of a report (section 106(b)(2)(B)(viii)(I));
- A grand jury or court, when necessary to determine an issue before the court or grand jury (section 106(b)(2)(B)(viii)(V)); and
- Other entities or classes of individuals who are authorized by statute to receive information pursuant to a legitimate State purpose (section 106(b)(2)(B)(viii)(VI)).

In addition, States have the option to allow public access to court proceedings that determine child abuse and neglect cases, so long as the State, at a minimum, can ensure the safety and well-being of the child, parents and families (see the last paragraph of section 106(b)(2) of CAPTA).

The State must provide certain otherwise confidential child abuse and neglect information to the following:

- Any Federal, State, or local government entity, or any agent of such entity, that has a need for such information in order to carry out its responsibilities under law to protect children from

abuse and neglect (permitted by 106(b)(2)(B)(viii)(II) but required by section 106(b)(2)(B)(ix));

- Child abuse citizen review panels, if such panels are established to comply with section 106(c) of CAPTA (permitted by 106(b)(2)(B)(viii)(III) but required by section 106(c)(5)(A));

- Public disclosure of the findings or information about the case of child abuse or neglect that results in a child fatality or near fatality (required by section 106(b)(2)(B)(x)), in accordance with section 2.1A.4, Q/A #8 of the CWPM; and

- Child fatality review panels. Although disclosure to such panels is merely permissible under the language of section 106(b)(2)(B)(viii)(IV), section 106(b)(2)(B)(x) of CAPTA requires disclosure of findings or information about the case of child abuse or neglect that results in a child fatality or near fatality. Accordingly, disclosure to a child fatality review panel is required.

Authorized recipients of confidential child abuse and neglect information are bound by the same confidentiality restrictions as the child protective services agency. Thus, recipients of such information must use the information only for activities related to the prevention and treatment of child abuse and neglect. Further disclosure is permitted only in accordance with the CAPTA standards.

There may be other Federal confidentiality restrictions for the State to consider when implementing the confidentiality provisions under CAPTA.

Source: ACYF-NCCAN-PIQ-97-01 (3/4/97); updated 9/27/11; updated 9/12/12

Reference: CAPTA section 106(b)(2)(B) and 106(c)(5)(A)

2 Q: Would legislation that protects the identity of the reporter, but would otherwise open child abuse and neglect reports and records to the public, meet the confidentiality provisions in section 106 (b)(2)(B)(viii) of the Child Abuse Prevention and Treatment Act (CAPTA)?

A: In general, such broad public access to child abuse and neglect reports and records is not consistent with CAPTA. States must preserve the confidentiality of all reports and records in order to protect the rights of the child and the child's parents or guardians, except in certain specified circumstances.

There are two circumstances in which information contained in child abuse and neglect reports and records, which are typically kept confidential, may be shared with the public. First, a State must release findings or information to the public about a case of child abuse or neglect which results in a child's death or near fatality consistent with section 106(b)(2)(B)(x) of CAPTA and in accordance with section 2.1A.4, Q/A #8 of the CWPM. Additionally, a State may open court proceedings that determine child abuse and neglect to the public (see the last paragraph of section 106(b)(2) of CAPTA).

There may be other Federal confidentiality restrictions for the State to consider when implementing the confidentiality provisions under CAPTA.

Source: ACYF-NCCAN-PIQ-97-01 (3/4/97); updated 9/27/11; 9/12/12

Reference: Child Abuse Prevention and Treatment Act (CAPTA), as amended (42 U.S.C. 5101 et seq.) - sections 106(b)(2) and 106(b)(2)(B)

3 **Q:** Do States have the authority to release otherwise confidential child abuse and neglect information to researchers for the purpose of child abuse and neglect research?

A: Yes. Consistent with section 106(b)(2)(B)(viii)(II) and (VI) of CAPTA, States have authority to release information to researchers of child abuse and neglect in either of two ways: (1) the CPS agency may contract with a researcher, thereby making the researcher its "agent;" or (2) States may statutorily authorize release of such information to researchers as a legitimate State purpose, since research involving data in CPS records can provide important information that will help government officials plan programs for abused and neglected children and develop future policy directions.

Source: ACYF-NCCAN-PIQ-97-04 (3/4/97); updated 9/27/11

Reference: Child Abuse Prevention and Treatment Act (CAPTA), as amended (42 U.S.C. 5101 et seq.) - section 106(b)(2)(B)(viii)

4 **Q:** The confidentiality provision at section 106(b)(2)(B)(viii) of the Child Abuse Prevention and Treatment Act (CAPTA) requires that States have a State law or operate a statewide program that includes methods to preserve the confidentiality of all child abuse and neglect records and reports and provides for exceptions in certain circumstances. The statutory language states that such records "shall only be made available to" a specified list of persons and entities. Are States required to disclose child abuse and neglect records to the persons and entities enumerated in subsections (I)-(VI) under section (viii)?

A: In general, States are permitted, but not required, to disclose otherwise confidential information to the persons or entities in the enumerated categories in subsections (I)-(VI) under section (viii). However, the disclosure described in subsections (II), (III) and (IV), is required by subsequent provisions in CAPTA. Specifically, subsection (ix) requires disclosure to any Federal, State or local entity, or agent of such entity, that has a need for the information in order to carry out its responsibilities under law to protect children from abuse and neglect, so that disclosure as described under subsection (viii)(II) is mandatory. Likewise, in accordance with section 106(c)(5)(A), the State must provide a citizen review panel with access to information on cases that the panel needs to review if the information is necessary for the panel to carry out its functions. Further, section 106(b)(2)(B)(x) of CAPTA requires States to allow for public disclosure of the findings or information of the case of child abuse or neglect that results in a child fatality or near fatality. Thus, the disclosure described in subsection (viii)(IV) also is required. Otherwise, States are permitted, but not required, to disclose

information to the persons or entities in the enumerated categories.
There may be other Federal confidentiality restrictions for the State to consider when implementing the confidentiality provisions under CAPTA.

Source: ACYF-NCCAN-PIQ-97-03 (9/26/97); updated 9/27/11

Reference: Child Abuse Prevention and Treatment Act (CAPTA), as amended (42 U.S.C. 5101 et seq.) - sections 106(b)(2)(B)(viii) and (b)(2)(B)(x)

5 **Q:** Is there a prohibition against redisclosure of confidential child abuse and neglect information?

A: Yes. Authorized recipients of otherwise confidential child protective services (CPS) information are bound by the same confidentiality restrictions as the CPS agency. Thus, recipients of such information must use the information only for activities related to the prevention and treatment of child abuse and neglect. Further disclosure is permitted only in accordance with the CAPTA standards.

Source: ACYF-NCCAN-PIQ-97-03 (9/26/97); updated 2/3/05

Reference: Child Abuse Prevention and Treatment Act (CAPTA), as amended (42 U.S.C. 5101 et seq.) - section 106

6 **Q:** Will States compromise compliance with titles IV-B and IV-E of the Social Security Act if they comply with the confidentiality requirements in sections 106(b)(2)(B)(viii), (ix) and (x) of CAPTA?

A: Title IV-E requires that States provide safeguards restricting the use and/or disclosure of information regarding children served by title IV-E foster care. Records maintained under both title IV-E and IV-B (both of which are subject to the Department's confidentiality provisions in 45 CFR 205.50) are to be safeguarded against unauthorized disclosure. The regulation at 45 CFR 205.50 states that the release or use of information concerning individuals applying for or receiving financial assistance is restricted to certain persons or agencies that require it for specified purposes. Such recipients of information are in turn subject to standards of confidentiality comparable to those of the agency administering the financial assistance programs.

There may be instances where CPS information is subject both to disclosure requirements under CAPTA and to the confidentiality requirements under title IV-E and 45 CFR 205.50. To the extent that the CAPTA provisions require disclosure (such as in section 106(b)(2)(B)(ix) to other governmental entities and in section 106(b)(2)(B)(x) in the case of a child fatality or near fatality), the CAPTA disclosure provision would prevail in the event of a conflict since the CAPTA confidentiality provisions were most recently enacted. However, where the CAPTA provision is permissive (such as in sections 106(b)(2)(B)(viii)(I), (V) & (VI)), it allows States to disclose such information without violating CAPTA, but it does not make such disclosure permissible in other programs if it is not otherwise allowed under the other program's governing statute or regulations.

Source: ACYF-NCCAN-PIQ-97-03 (9/26/97); updated 9/27/11; 9/12/12

Reference: Social Security Act - sections 471 (a)(8) and (c); Child Abuse Prevention and Treatment Act (CAPTA), as amended (42 U.S.C. 5101 et seq.) - section 106; 45 CFR 205.50, 45 CFR 1355.21 (a)

7 ***Q:*** Do the confidentiality requirements in the Child Abuse Prevention and Treatment Act apply to the members of citizen review panels?

A: Citizen review panel members are bound by the confidentiality restrictions in section 106 (c)(4)(B)(i) of CAPTA. Specifically, members and staff of a panel may not disclose identifying information about any specific child protection case to any person or government official, and may not make public other information unless authorized by State statute to do so. Further, section 106 (c)(4)(B)(ii) of CAPTA requires States to establish civil sanctions for violations of these confidentiality restrictions. States that have civil sanctions in place for breaches of confidentiality need not enact new legislation, so long as their existing provisions encompass the CAPTA requirements.

Source: ACYF-CB-PI-98-01 (1/7/98); updated 2/3/05

Reference: Child Abuse Prevention and Treatment Act (CAPTA), as amended (42 U.S.C. 5101 et seq.) section 106(c)

8 ***Q:*** Is it permissible under the Child Abuse Prevention and Treatment Act (CAPTA) for the State to disclose to the public information in the child abuse and neglect record that does not pertain to the case of child abuse and neglect that results in a child fatality or near fatality?

A: No. Except as discussed below, States must preserve the confidentiality of all child abuse and neglect reports and records in order to protect the rights of the child and family. Consistent with section 106(b)(2)(B)(viii) of CAPTA, reports and records made and maintained pursuant to the purposes of CAPTA shall be made available only to the entities and under the circumstances described in section 106(b)(2)(B)(viii)(I - VI) of CAPTA.

As the question implies, a State must release findings or information to the public about a case of child abuse or neglect which results in a child's fatality or near fatality consistent with section 106(b)(2)(B)(x) of CAPTA in accordance with section 2.1A.4, Q/A #8 of the CWPM. In addition, a State may open court proceedings that determine child abuse and neglect to the public if the safety and well-being of the child, parents and families involved are protected (see the last paragraph of section 106(b)(2) of CAPTA).

Source: updated 9/27/11; 9/12/12

Reference: Child Abuse Prevention and Treatment Act section 106(b)(2)

2.1A.2 CAPTA, Assurances and Requirements, Access to Child Abuse and Neglect Information, Expungement

1 ***Q:*** How will States be able to determine whether a pattern of abuse or neglect exists if unsubstantiated records must be expunged? While the statute allows these records to be kept in casework files, if the files are not maintained in a central location, previous unsubstantiated report(s) may go undetected if a subsequent report comes into another office, or even another worker.

A: The impetus behind the expungement requirement was the concern of Congress that families are negatively and sometimes unjustly affected by maintenance of public records of unsubstantiated allegations of abuse or neglect. However, it was not the intent of Congress to prevent CPS agencies from keeping information on unsubstantiated reports for use in future risk and safety assessments (Senate Report 104-117, dated July 10, 1995, p. 14). While CAPTA requires prompt expungement of records that are accessible to the general public or are used for purposes of employment or other background checks in cases determined to be unsubstantiated, it also allows CPS agencies to retain information on unsubstantiated reports in their casework files.

Since the issue for Congress is disclosure of information regarding cases that are unsubstantiated or unfounded, this requirement should not adversely affect a State's ability to determine possible cumulative harm. For instance, a State could choose to implement a system which would consider an unsubstantiated case "expunged" for any purpose other than investigation of a new report. This should be possible even in States where casework files are computerized.

Source: ACYF-NCCAN-PIQ-97-01 (3/4/97); updated 9/27/11

Reference: Child Abuse Prevention and Treatment Act (CAPTA), as amended (42 U.S.C. 5101 et seq.) - section 106(b)(2)(B)(xii)

2 **Q:** How does the CAPTA expungement requirement affect States that have a three-tier system which includes a middle category that indicates a reasonable basis for concern?

A: This requirement relates only to unsubstantiated or unfounded cases and would not affect retention of records for a middle category which indicates that there is reason to suspect that child abuse or neglect has occurred.

Source: ACFY-NCCAN-PIQ-97-01 (3/4/97); updated 9/27/11

Reference: Child Abuse Prevention and Treatment Act (CAPTA), as amended (42 U.S.C. 5101 et seq.) - section 106(b)(2)(B)(xii)

2.1A.3 CAPTA, Assurances and Requirements, Access to Child Abuse and Neglect Information, Open courts

1 **Q:** Would there be a conflict with the Child Abuse Prevention and Treatment Act (CAPTA) confidentiality requirements if a State chooses to open proceedings relating to child abuse and neglect to the public?

A: No. The 2003 amendments to CAPTA specifically give States the flexibility to determine State policies with respect to open courts, so long as such policies ensure the safety and well-being of the child, parents and families (last paragraph of section 106(b)(2)). There may be other Federal confidentiality restrictions for the State to consider when implementing this CAPTA provision.

Source: ACYF-NCCAN-PIQ-97-01 (3/4/97); updated 3/22/06

Reference: Child Abuse Prevention and Treatment Act (CAPTA), as amended (42 U.S.C. 5101 et seq.) - section 106(b)(2); Titles IV-E and IV-B of the Social Security Act

2 ***Q:*** Some States have enacted laws that allow open courts for juvenile protection proceedings, including child in need of protection or services hearings, termination of parental rights hearings, long-term foster care hearings and in courts where dependency petitions are heard. Questions have arisen about whether courts that are open to the public and allow a verbal exchange of confidential information meet the confidentiality requirements under CAPTA. Do the confidentiality provisions in CAPTA restrict the information that can be discussed in open court?

(Deleted 04/17/2006)

3 ***Q:*** How widely should the "open courts" provision in the last paragraph of section 106(b)(2) of the Child Abuse Prevention and Treatment Act (CAPTA) be applied considering the "open courts" provision in title IV-E of the Social Security Act?

A: The "open courts" provision in CAPTA applies to court proceedings that determine whether child abuse and neglect has occurred. However, section 471(c) of the Social Security Act permits States to provide the public with access to court proceedings that determine child abuse and neglect, or other court hearings held pursuant to titles IV-B or IV-E. In doing so, States must at a minimum, ensure the safety and well-being of the child, parents and family. Since this later-enacted law allows open courts in a broader range of court proceedings, a State may allow open courts in any of the proceedings authorized by section 471(c) of the Act and not be considered out of compliance with CAPTA.

Finally, States also should ensure that they are complying with any other relevant State or Federal confidentiality laws. In particular, entities that are subject to the Health Insurance Portability and Accountability Act of 1996 (HIPAA) must ensure that they do not disclose confidential information in violation of HIPAA?s privacy regulations. [*]

^{* For more detailed information about the circumstances under which State agencies or other covered entities can disclose confidential information under HIPAA's privacy regulations, contact the U.S. Department of Health and Human Services' Office for Civil Rights or the State Attorney General's Office.}

Source: 10/24/2006

Reference: Child Abuse Prevention and Treatment Act (CAPTA), as amended (42 U.S.C. 5101 et seq.) ¿ section 106(b)(2); Social Security Act ¿ section 471(c)

2.1A.4 CAPTA, Assurances and Requirements, Access to Child Abuse and Neglect Information, Public disclosure

1 **Q:** Section 106(b)(2)(B)(x) of CAPTA requires States to provide for the public disclosure of findings or information about a case of child abuse or neglect which results in a child fatality or near fatality. For the purposes of this requirement, what is considered a "near fatality"?

A: A "near fatality" is defined under section 106 (b)(4)(A) as "...an act that, as certified by a physician, places the child in serious or critical condition." For example, if hospital records reflect that the child's condition is "serious" or "critical", this would be considered a "near fatality" under CAPTA.

Source: ACYF-NCCAN-PIQ-97-01 (3/4/97); updated 9/27/11

Reference: Child Abuse Prevention and Treatment Act (CAPTA), as amended (42 U.S.C. 5101 et seq.) - 106(b)(4)(A)

2 **Q:** The requirement for public disclosure states that "findings or information" about a case must be disclosed. Does this mean that States have the option to disclose either the findings of the case, or information which may be general in nature and address such things as practice issues rather than provide case-specific information?

A: No. The intent of this provision was to assure that the public is informed about cases of child abuse or neglect which result in the death or near death of a child. As with the use of the other "or's" in this provision ("child abuse or neglect" and "child fatality or near fatality"), we understand the language to be inclusive and not limiting. Specifically, the reference to "findings or information" requires the disclosure of information about such a case even if there are no findings, in accordance with section 2.1A.4, Q/A #8 of the CWPM. Thus, when child abuse or neglect results in the death or near death of a child, the State must provide for the disclosure of the information required by section 2.1A.4, Q/A #8 of the CWPM. However, nothing in this provision should be interpreted to require disclosure of information which would fall within the specific exceptions that states are allowed to establish under section 2.1A.4, Q/A #8 of the CWPM.

Source: ACYF-NCCAN-PIQ-97-01 (3/4/97); updated 9/27/11; updated and reissued 8/06/13

Reference: Child Abuse Prevention and Treatment Act (CAPTA), as amended (42 U.S.C. 5101 et seq.) - section

106(b)(2)(B)(x)

3 **Q:** One State has child fatality review panels that are charged with the review and evaluation of child fatalities and near fatalities in the State. In this process, they evaluate the extent to which the agency is effectively discharging its child protection responsibilities. The child fatality review panels publish an annual report that includes information, findings and recommendations on each case, and this report is made public. Would this process meet the requirement in section 106(b)(2)(B)(x) for public disclosure of findings or information about cases of child abuse or neglect that result in child fatality or near fatality?

A: If the minimum information that must be released per section 2.1A.4, Q/A #8 of the CWPM is included in the report, this process would meet the CAPTA requirement.

Source: ACYF-NCCAN-PIQ-97-03 (9/26/97); updated 9/27/11; 9/12/12

Reference: Child Abuse Prevention and Treatment Act (CAPTA), as amended (42 U.S.C. 5101 et seq.) - section 106(b)(2)(B)(x)

4 **Q:** Section 106(b)(2)(B)(x) of the Child Abuse Prevention and Treatment Act (CAPTA) requires a State to provide an assurance that it will have provisions which "allow" for public disclosure when child abuse or neglect results in a child fatality or near fatality. Yet section 2.1A.1, Q/A #1 of the Child Welfare Policy Manual (CWPM) "requires" public disclosure in such cases. Can you explain the requirements for this State plan assurance?

A: "Provisions which allow for public disclosure" in section 106(b)(2)(B)(x) of CAPTA means that the State must have procedures or provisions that allow the public to access information when child abuse or neglect results in a child fatality or near fatality. The State does not have discretion in whether to allow the public access to the child fatality or near fatality information; rather, the public has the discretion as to whether to access the information. In other words, the State is not required to provide the information to the public unless requested. However, once a request has been made, the State must provide the information in accordance with section 2.1A.4, Q/A #8 of the CWPM.

Finally, States also should ensure that they are complying with any other relevant Federal confidentiality laws. In particular, entities that are subject to the Health Insurance Portability

and Accountability Act of 1996 (HIPAA) must ensure that they do not disclose confidential information in violation of HIPAA's privacy regulations. *

* For more detailed information about the circumstances under which State agencies or other covered entities can disclose confidential information under HIPAA's privacy regulations, contact the U.S. Department of Health and Human Services' Office for Civil Rights or the State Attorney General's Office.

Source: updated 9/27/11; 9/12/12

Reference: Child Abuse Prevention and Treatment Act (CAPTA), as amended (42 U.S.C. 5101 et seq.) ¿ section 106; Child Welfare Policy Manual - sections 2.1A.1 Q/A #1, 2 & 4 and 2.1A.4 Q/A #2

5 **Q:** Section 106(b)(2)(B)(x) of the Child Abuse Prevention and Treatment Act (CAPTA) requires a State to have provisions that allow for public disclosure of the findings or information about the case of child abuse or neglect that results in a child's fatality or near fatality. Is the State required to turn over all of the information in the entire case record, when requested?

A: No. The State is not required to release all of the information in the entire case record. Rather, the State must provide for the disclosure of findings and information in accordance with section 2.1A.4, Q/A #8 of the CWPM. As such, the State may determine its procedures in accordance with these parameters, and can release the full investigation; a summary of the investigation; or a statement of findings and information about the incident among other options. Finally, States also should ensure that they are complying with any other relevant Federal confidentiality laws. In particular, entities that are subject to the Health Insurance Portability and Accountability Act of 1996 (HIPAA) must ensure that they do not disclose confidential information in violation of HIPAA's privacy regulations. *

* For more detailed information about the circumstances under which State agencies or other covered entities can disclose confidential information under HIPAA's privacy regulations, contact the U.S. Department of Health and Human Services' Office for Civil Rights or the State Attorney General's Office.

Source: updated 9/27/11; 9/12/12

Reference: Child Abuse Prevention and Treatment Act (CAPTA), as amended (42 U.S.C. 5101 et seq.) - section 106;

6 ***Q:*** When child abuse or neglect results in a child fatality or near fatality, is the State required to disclose to the public personal information about the child, including name, date of birth and date of death?

A: As required by CWPM section 2.1A.4 Q/A #8, the State is required to provide the child's age and gender when child abuse or neglect results in a child's death or near fatality; disclosure of the child's name, date of birth, date of death or other personal information is not a Federal requirement. However, a State is not prohibited by CAPTA from having procedures or policies that release such information.

Finally, States also should ensure that they are complying with any other relevant Federal confidentiality laws. In particular, entities that are subject to the Health Insurance Portability and Accountability Act of 1996 (HIPAA) must ensure that they do not disclose confidential information in violation of HIPAA's privacy regulations. *

* For more detailed information about the circumstances under which State agencies or other covered entities can disclose confidential information under HIPAA's privacy regulations, contact the U.S. Department of Health and Human Services' Office for Civil Rights or the State Attorney General's Office.

Source: *updated 9/27/11; 9/12/12*

Reference: *Child Abuse Prevention and Treatment Act (CAPTA), as amended (42 U.S.C. 5101 et seq.) - section 106*

7 **Q:** In a case of child abuse or neglect that results in a child fatality or near fatality, is the State required to provide information on the child's siblings, or other children in the household?

A: Generally no. The information about another child in the household who is not a fatality or near fatality victim is not subject to the CAPTA public disclosure requirement unless this information is pertinent to the child abuse or neglect that led to the fatality or near fatality. This information in fact may be protected by the confidentiality requirements applicable to titles IV-B/IV-E of the Social Security Act. Finally, States also should ensure that they are complying with any other relevant Federal confidentiality laws. In particular, entities that are subject to the Health Insurance Portability and Accountability Act of 1996 (HIPAA) must ensure that they do not disclose confidential information in violation of HIPAA's privacy regulations. *

* For more detailed information about the circumstances under which State agencies or other covered entities can disclose confidential information under HIPAA's privacy regulations, contact the U.S. Department of Health and Human Services' Office for Civil Rights or the State Attorney General's Office.

Source: *10/24/2006; updated 9/12/12*

Reference: *Child Abuse Prevention and Treatment Act (CAPTA), as amended (42 U.S.C. 5101 et seq.) - section 106*

8 ***Q:*** Section 106(b)(2)(B)(x) of CAPTA requires states to provide for the public disclosure of findings or information about a case of child abuse or neglect which results in a child fatality or near fatality. Under this provision, is there information that a state must disclose to the public?

A: Yes. States must develop procedures for the release of information including, but not limited to: the cause of and circumstances regarding the fatality or near fatality; the age and gender of the child; information describing any previous reports or child abuse or neglect investigations that are pertinent to the child abuse or neglect that led to the fatality or near fatality; the result of any such investigations; and the services provided by and actions of the State on behalf of the child that are pertinent to the child abuse or neglect that led to the fatality or near fatality.

State policies must ensure compliance with any other relevant federal confidentiality laws, including the confidentiality requirements applicable to titles IV-B and IV-E of the Social Security Act. States may allow exceptions to the release of information in order to ensure the safety and well-being of the child, parents and family or when releasing the information would jeopardize a criminal investigation, interfere with the protection of those who report child abuse or neglect or harm the child or the child's family.

Source: 09/12/12

Reference: Child Abuse Prevention and Treatment Act (CAPTA), as amended (42 U.S.C. 5106a et seq.) ¿ section 106

2.1B CAPTA, Assurances and Requirements, Appeals

1 ***Q:*** Please explain the requirements in the Child Abuse Prevention and Treatment Act (CAPTA) for appealing findings of child abuse or neglect.

A: States are required to have in place an appeals process by which an individual who is officially found to have committed child abuse or neglect can appeal such a finding. States have some flexibility in determining the type of appeals process that best meets their needs. For example, the appeals process can be established through the courts, through some other external appeals process, or through an internal appeals process.

The appeals process, however, must meet the following minimum conditions in order to satisfy the CAPTA requirements:

1) The process must afford the individual with a finding of child abuse or neglect an opportunity for due process.

2) The office or individual(s) hearing such appeals cannot be involved in any other stage of the case.

3) The office or individual(s) established to hear such appeals must have the authority to overturn a previous finding of child abuse or neglect.

4) Individuals must be given written notification of their right to appeal, and the method by which they may appeal, at the time they are notified of the official finding of child abuse or neglect.

Source: ACYF-CB-PI-98-08 (6/29/98); updated 9/27/11

Reference: Child Abuse Prevention and Treatment Act (CAPTA), as amended (42 U.S.C. 5101 et seq.) - section 106(b)(2)(B)(xv)

2 ***Q:*** To whom does the appeals process under 106(b)(2)(B)(xv)(II) apply?

A: CAPTA requires States to establish provisions, procedures and mechanisms by which individuals who disagree with an official finding of abuse and neglect can appeal such finding. We understand this provision to apply to the perpetrator; however, individuals with standing under State law are not precluded from participating in the appeals process should such individuals disagree with a finding of abuse or neglect.

Source: ACYF-NCCAN-PIQ-97-03 (9/26/97); updated 9/27/11

Reference: Child Abuse Prevention and Treatment Act (CAPTA), as amended (42 U.S.C. 5101 et seq.) - section 106(b)(2)(B)(xv)(II)

3 ***Q:*** The Department has stated that an appeals process under CAPTA should include steps to assure that individuals with appeal rights receive timely notification of the right to appeal a finding of child abuse and neglect. What is considered timely notification (e.g., at the time individuals come to the attention of the agency or after the finding of abuse and/or neglect)?

A: While there is nothing in Federal statute or regulation which defines "timely notification" for this purpose, we believe that the term is directly related to an official finding of abuse or neglect. Therefore, States should implement processes and procedures to assure that individuals are notified of their right to appeal upon a final finding of abuse or neglect.

Source: ACYF-NCCAN-PIQ-97-03 (9/26/97) ; updated 9/27/11

Reference: Child Abuse Prevention and Treatment Act (CAPTA), as amended (42 U.S.C. 5101 et seq.) - section 106(b)(2)(B)(xv)(II)

4 **Q:** Must States set up an administrative appeals process if they do not maintain a central registry?

A: Yes. Pursuant to section 106 (b)(2)(B)(xv)(II) of the Child Abuse Prevention and Treatment Act (CAPTA), States must have a process to hear appeals from individuals who disagree with an official finding of child abuse or neglect. There is nothing in the statutory language or legislative history that indicates that this requirement is limited to only those States with central registries. Additionally, in order for an appeals process to be complete, it must include steps to assure that individuals with such rights receive timely notification.

Source: ACYF-NCCAN-PIQ-97-01 (3/4/97); updated 9/27/11

Reference: Child Abuse Prevention and Treatment Act (CAPTA), as amended (42 U.S.C. 5101 et seq.) - section 106(b)(2)(B)(xv)(II)

2.1C CAPTA, Assurances and Requirements, Expedited Termination of Parental Rights

1 **Q:** The provision at section 106(b)(2)(B)(xv)(I) of CAPTA requires that States provide for expedited termination of parental rights for abandoned infants. What is considered "expedited" for this purpose?

A: The intent of this provision was to assure that infants who have been abandoned by their parents do not end up in "foster care limbo" (Congressional Record - House, September 25, 1996, p. H11148). To meet this requirement, States are expected to establish procedures to assure that termination of parental rights for abandoned infants is handled more expeditiously than terminations would normally be handled in the State. One approach might be to prescribe a specific period of time by which a termination must be initiated for abandoned infants. The American Bar Association's Center on Children and the Law published a monograph in 1996 entitled, "Early Termination of Parental Rights: Developing Appropriate Statutory Grounds", which may be of assistance to States as they implement this provision of CAPTA.

Source: ACYF-NCCAN-PIQ-97-01 (3/4/97); updated 9/27/11

Reference: Child Abuse Prevention and Treatment Act (CAPTA), as amended (42 U.S.C. 5101 et seq.) - section 106(b)(2)(B)(xv)(I)

2.1D CAPTA, Assurances and Requirements, Guardian Ad Litems

1 ***Q:*** What is the meaning of the requirement in section 106(b)(2)(B)(xiii) of CAPTA for guardians ad litem, including the requirement that they obtain a first-hand understanding of the situation and needs of the child?

A: In order to provide States with more flexibility in appointing a guardian ad litem, the CAPTA clarifies that such guardian does not have to be an attorney, but also may be a court-appointed special advocate for the child. The Congress (in 1996) noted that, under the current system, there are more and more cases where an appointed guardian ad litem has no contact with the child and makes uninformed recommendations to the court. Therefore, language was added to clarify that the role of such individuals include obtaining a first-hand understanding of the situation in order to make an informed recommendation to the court (Congressional Record - House, September 25, 1996, p. H11149). In addition, Congress added language to this provision in 2003 via Public Law 108-36 to require that States train guardians ad litem appropriate to their role in representing children. Public law 111-320 (2010) further amended section 106(b)(2)(B)(xiii) to require that the training include early childhood, child, and adolescent development.

Source: ACYF-NCCAN-PIQ-97-01 (3/4/97); updated 2/3/05; 12/9/11

Reference: Child Abuse Prevention and Treatment Act (CAPTA), as amended (42 U.S.C. 5101 et seq.) - section 106(b)(2)(B)(xiii)

2 ***Q:*** The Child Abuse Prevention and Treatment Act (CAPTA) provision at section 106(b)(2)(B)(xiii) requires that attorneys or court-appointed special advocates who are appointed as guardians ad litem (GAL) receive training appropriate to their role. What are the minimum conditions for this requirement?

A: The statute is clear that the State must have provisions and procedures in place to assure that every child who is the subject of an abuse or neglect proceeding is appointed a GAL, and that the GAL receive training appropriate to the role, including training that addresses early childhood, child, and adolescent development, prior to being appointed to represent the child in the proceeding regardless of whether the GAL is an attorney or court-appointed special advocate. The specifics of a State's plan for training its guardians ad litem may vary, depending upon individual State circumstances and needs. So long as the GAL is trained before s/he is appointed to represent a child, the CAPTA requirement will be met.

Source: 05/02/06; updated 12/9/11

Reference: Child Abuse Prevention and Treatment Act (CAPTA), as amended (42 U.S.C. 5101 et seq.) - section 106(b)(2)(B)(ix)

2.1E CAPTA, Assurances and Requirements, Reunification

1 ***Q:*** If a State does not "require" reunification, in general, must it do anything further regarding the mandate in section 106(b)(2)(B)(xvi) which requires that provisions, procedures, and mechanisms be implemented to assure that the State does not require reunification with a parent who has been convicted of murder, manslaughter, felonious assault or sexual abuse of the surviving child or another child of the parent, or who is required to register with a sex offender registry?

A: Yes. To comply with this section of CAPTA, States must have provisions, procedures, and mechanisms in place which address the fact that reunification is not required in the circumstances enumerated under 106(b)(2)(B)(xvi).

Source: ACYF-NCCAN-PIQ-97-01 (3/4/97); updated 2/3/05; 12/9/11

Reference: Child Abuse Prevention and Treatment Act (CAPTA), as amended (42 U.S.C. 5101 et seq.) - section 106(b)(2)(B)(xvi)

2 **Q:** Section 106(b)(B)(xvi) of CAPTA requires that provisions, procedures, and mechanisms be implemented to assure that a State does not require reunification with a parent who has been convicted of certain felonious acts, a parent who has been convicted of sexual abuse against the surviving child or another child of the parent, or a parent who is required to register with a sex offender registry. On the other hand, the Indian Child Welfare Act (ICWA) requires that "any party seeking to effect a foster care placement of, or termination of parental rights to, an Indian child under State law shall satisfy the court that active efforts have been made to provide remedial services and rehabilitative programs designed to prevent the breakup of the Indian family and that these efforts have been unsuccessful" (25 U.S.C §1912(d)). Does a conflict exist between the two statutes?

A: No. There is no conflict between the CAPTA provision and the ICWA requirement noted above. The CAPTA provision does not prohibit States from making reasonable efforts to reunify families as required under ICWA (as well as under title IV-E); it merely ensures that States not require reunification under certain circumstances. Therefore, it does not conflict with the ICWA requirement regarding efforts to prevent the breakup of Indian families.

Source: ACYF-NCCAN-PIQ-97-03 (9/26/97); updated 2/3/05; 12/9/11

Reference: Child Abuse Prevention and Treatment Act (CAPTA), as amended (42 U.S.C. 5101 et seq.) - section 106 (b)(2)(B)(xvi); Indian Child Welfare Act (25 U.S.C §1912(d))

3 **Q:** Does section 106(b)(2)(B)(xvii) of CAPTA mean that children cannot be reunified with a parent who has committed the specific crimes therein or must be registered with a sex offender registry pursuant to section 113(a) of the Adam Walsh Child Protection and Safety Act of 2006?

A: No. This provision is not a prohibition against reunification, but rather assures that reunification is not required in cases where the parent has committed the crimes listed in 106(b)(2)(B)(xvii) or had to register with the Adam Walsh sex offender registry. The decision as to whether to reunify or seek termination of parental rights is within the sole discretion of the State and is determined on a case-by-case basis.

Source: ACYF-NCCAN-PIQ 97-01 (3/4/97); updated 2/3/05; 12/9/11

Reference: Child Abuse Prevention and Treatment Act (CAPTA), as amended (42 U.S.C. 5101 et seq.) - section 106(b)(2)(B)(xvii)

2.1F CAPTA, Assurances and Requirements, Infants Affected by Substance Abuse

1 ***Q:*** We understand section 106(b)(2)(B)(ii) of the Child Abuse Prevention and Treatment Act (CAPTA) to mean that health care providers must notify Child Protective Services (CPS) of all infants born and identified as affected by substance abuse, withdrawal symptoms resulting from prenatal drug exposure, or a Fetal Alcohol Spectrum Disorder. We do not believe that this provision requires the health care provider to refer such children and families to CPS as a report of suspected child abuse or neglect. Is this interpretation accurate?

A: Yes, this interpretation is accurate. CAPTA requires that the health care provider must notify CPS of all infants born and identified as affected by substance abuse, withdrawal symptoms resulting from prenatal drug exposure, or a Fetal Alcohol Spectrum Disorder. Such notification need not be in the form of a report of suspected child abuse or neglect. It is ultimately the responsibility of CPS staff to assess the level of risk to the child and other children in the family and determine whether the circumstance constitutes child abuse or neglect under State law. There may be Federal confidentiality restrictions for the State to consider when implementing this CAPTA requirement.

Source: 05/02/06; updated 12/9/11, 10/11/16

Reference: Child Abuse Prevention and Treatment Act (CAPTA), as amended (42 U.S.C. 5101 et seq.) ¿ section 106(b)(2)(B)(ii)

2 **Q:** If drug-exposure is not defined as child abuse or neglect in the State's reporting statute, are health care providers still required to "notify" child protective services under section 106(b)(2)(B)(ii) of the Child Abuse Prevention and Treatment Act (CAPTA)?

A: Yes. The State is required to have policies and procedures to implement section 106(b)(2)(B)(ii) of CAPTA regardless of how child abuse and neglect is defined in the State. Health care providers must notify CPS of all infants born and identified as affected by substance abuse, withdrawal symptoms resulting from prenatal drug exposure, or a Fetal Alcohol Spectrum Disorder. There may be Federal confidentiality restrictions for the State to consider when implementing this CAPTA provision.

Source: 05/02/06; updated 12/9/11, 10/11/16

Reference: Child Abuse Prevention and Treatment Act (CAPTA), as amended (42 U.S.C. 5101 et seq.) - section 106(b)(2)(B)(ii).

3 **Q:** The Child Abuse Prevention and Treatment Act (CAPTA) provision at section 106(b)(2)(A)(ii) requires States to adopt policies and procedures to address the needs of infants identified as being affected by illegal substance abuse or withdrawal symptoms resulting from prenatal drug exposure. Does this requirement include an infant who is affected by prenatal exposure to alcohol?

(Deleted 05/03/2016)

2.1F.1 CAPTA, Assurances and Requirements, Infants Affected by Substance Abuse, Plan of Safe Care

1 **Q:** Which agency is responsible for developing the plan of safe care and what is a plan of safe care, as required by section 106(b)(2)(B)(iii) of the Child Abuse Prevention and Treatment Act (CAPTA)?

A: The statute does not specify which agency or entity (such as hospitals or community-based organizations) must develop the plan of safe care; therefore, the State may determine which agency will develop it. The development of a plan of safe care for infants born and identified as being affected by substance abuse or withdrawal symptoms or Fetal Alcohol Spectrum

Disorder must ensure the safety and well-being of infants following the release from the care of health care providers by:
<ul style="list-style-type:Disc; margin-left: 2em;">
addressing the health and substance use disorder treatment needs of the infant and family; and
monitoring these plans to determine whether and how local entities are making referrals and delivering appropriate services to the infant and affected family or caregiver (in accordance with state requirements).
The development of plans of safe care is required for infants affected by all substance abuse, not just illegal substance abuse.
There may be Federal confidentiality restrictions for the State to consider when implementing this CAPTA provision.

Source: updated 9/27/11, 10/11/16

Reference: Child Abuse Prevention and Treatment Act (CAPTA), as amended (42 U.S.C. 5101 et seq.) ¿ section 106(b)(2)(B)(iii).

2.1G CAPTA, Assurances and Requirements, Triage

1 ***Q:*** Section 106(b)(2)(B)(v) of the Child Abuse Prevention and Treatment Act (CAPTA) requires the State to have triage procedures, including the use of differential response, for the appropriate referral of a child not at risk of imminent harm to a community organization or voluntary protective service. At what point must the State Child Protective Services (CPS) agency refer a child ¿ at the point there is a report of abuse or neglect on a child; at the point the child is screened out of CPS; or after the results of the investigation determine that there is no imminent risk of harm to the child?

A: The statute does not prescribe a point in time in which a referral to a community organization must be made. Thus, the State has the flexibility to determine appropriate procedures for when and how to refer a child it determines is not at imminent risk to a community organization or voluntary protective services provider. There may be Federal confidentiality restrictions for the State to consider when implementing this CAPTA provision.

Source: 05/02/06; updated 12/9/11

Reference: Child Abuse Prevention and Treatment Act (CAPTA), as amended (42 U.S.C. 5101 et seq.) ¿ section 106(b)(2)(B)(v); Sections 1171 through 1179 of the Social Security Act; and 45 CFR Parts 160 and 164, Subpart E

2 **Q:** What is the expected scope of public outreach the citizen review panels are supposed to undertake per the Child Abuse Prevention and Treatment Act (CAPTA) provision at section 106(c)(4)(C)? In one State, one panel is interested in surveying foster parents while another is interested in surveying some of their local community service providers. Is either of these too narrow?

A: At a minimum, we expect the panels to reach out to the immediate community. In doing so, individual panels have discretion as to whom in the community to survey, depending on the issues for which the panel feels it needs input in order to meet its obligation to evaluate the extent to which State and local CPS agencies are effectively discharging their child protection responsibilities as required by section 106(c)(4)(C) of CAPTA. For example, one panel may evaluate issues related to recruiting and retaining foster parents. In that case, it would be appropriate for the panel to survey foster parents. Surveying foster parents, however, would not necessarily help the panel meet its obligations if the issue of concern was the high number of child deaths in the State. The public outreach should be tailored to meet the needs of the panel in achieving its goals.

Source: 05/02/06

Reference: Child Abuse Prevention and Treatment Act (CAPTA), as amended (42 U.S.C. 5101 et seq.) ¿ section 106(c)(4)(C)

2.1H CAPTA, Assurances and Requirements, Notification of Allegations

1 **Q:** The provision at section 106(b)(2)(B)(xviii) of the Child Abuse Prevention and Treatment Act (CAPTA) requires the State to have provisions or procedures to advise the individual subject to a child abuse or neglect investigation of the complaints or allegations made against him or her at the time of the initial contact. Would a State be out of compliance with CAPTA if it implemented a rule to specify that "initial contact" in the CAPTA provision at section 106(b)(2)(B)(xviii) meant "face-to-face" contact only?

A: Yes. The CAPTA provision requires that the State notify the individual of the complaints or allegations made against him or her at the initial time of contact regardless of how that contact is made. There may be Federal confidentiality restrictions for the State to consider when implementing this CAPTA provision.

Source: updated 9/27/11

Reference: Child Abuse Prevention and Treatment Act (CAPTA), as amended (42 U.S.C. 5101 et seq.) ¿ section 106(b)(2)(B)(xviii)

2 **Q:** The provision at section 106(b)(2)(B)(xviii) of the Child Abuse Prevention and Treatment Act (CAPTA) requires the State to have provisions or procedures to advise the individual subject to a child abuse or neglect investigation of the complaints or allegations made against him or her at the time of the initial contact. One State employs an alternative response system, which is a non-adversarial approach to assess low- and moderate-risk level reports of child abuse and neglect. Does the Federal requirement at section 106(b)(2)(B)(xviii) of CAPTA apply only to child maltreatment investigations or does it also apply to child maltreatment alternative response assessments?

A: The State must advise the individual subject to a child abuse or neglect investigation of the complaint or allegation against him/her whether the State is investigating the complaint through a formal investigation or an alternate response system. The method by which the State assesses the complaint against a person is not the issue. There may be Federal confidentiality restrictions for the State to consider when implementing this CAPTA provision.

Source: updated 9/27/11

Reference: Child Abuse Prevention and Treatment Act (CAPTA), as amended (42 U.S.C. 5101 et seq.) - section 106(b)(2)(B)(xviii)

3 **Q:** The provision at section 106(b)(2)(B)(xviii) of the Child Abuse Prevention and Treatment Act (CAPTA) requires the State to have provisions or procedures to advise the individual subject to a child abuse or neglect investigation of the complaints or allegations made against him or her at the time of the initial contact. Would a State be out of compliance with CAPTA if it provided notification only to parents who have an allegation of child abuse or neglect?

A: Yes. The provision requires notification to "an individual subject to a child abuse or neglect investigation" and does not limit this notification to parents only.

Source: updated 9/27/11

Reference: Child Abuse Prevention and Treatment Act (CAPTA), as amended (42 U.S.C. 5101 et seq.) ¿ section 106(b)(2)(B)(xviii)

2.1I CAPTA, Assurances and Requirements, Referrals to IDEA, Part C

1 **Q:** Must a State refer every child under the age of three in a substantiated case of child abuse or neglect to the Individuals with Disabilities Education Act (IDEA) Part C agency, or may the State first screen these children to determine whether such a referral is needed?

A: The Child Abuse Prevention and Treatment Act (CAPTA) provision at section 106(b)(2)(B)(xxi) requires that States have provisions and procedures for the referral of children under the age of three who are involved in substantiated cases of child abuse or neglect to early intervention services funded by Part C of the Individual with Disabilities Act (IDEA). Part C of the IDEA, which was reauthorized on December 3, 2004 by Public Law 108-446, contains a provision very similar to the one in CAPTA. The Conference Report accompanying the IDEA legislation indicates that the conferees did not intend the IDEA provision to require every child under the age of three who is involved in a substantiated case of child abuse or neglect to receive an evaluation. Rather, the intention was that such children be screened to determine whether a referral to early intervention services is warranted (House Report 108-779, p. 241).

CAPTA does not specifically require that every child under the age of three who is involved in a substantiated case of child abuse or neglect must be referred to Part C services. Therefore, States have the discretion as to whether to refer every such child under the age of three for early intervention services, or to first employ a screening process to determine whether a referral is needed. We believe that this is consistent with the purpose of the provision, which is to assure that all children who have a substantiated case of child abuse

or neglect will be given special attention to determine whether they need early intervention services and to assure referral when such services are warranted.

It is up to the State to determine how children referenced in section 106(b)(2)(B)(xxi) of CAPTA will be screened and, if appropriate, referred to the Part C early intervention program in the State. The IDEA regulations at 34 CFR 303.321(d) provide procedures for use by primary referral sources for referring a child to a Part C agency for evaluation and assessment or appropriate services. Under 34 CFR 303.321(d)(3) primary referral sources include hospitals, physicians and social service agencies, which can include the Child Protective Services (CPS) agency, as well as other sources. Some State CPS agencies are using other primary referral sources to assist in screening a child (after substantiation), while other State IDEA Part C programs are working with CPS agencies and training CPS social workers to conduct appropriate screenings. Both approaches meet the CAPTA requirements. There may be Federal confidentiality restrictions for the State to consider when implementing this CAPTA provision.

Source: updated 9/27/11

Reference: Child Abuse Prevention and Treatment Act (CAPTA), as amended (42 U.S.C. 5101 et seq.) ¿ section 106(b)(2)(B)(xxi); Public Law 108-446; House Report 108-779, p. 241; 34 CFR 303.321(d).

2 **Q:** Can the provision at section 106(b)(2)(B)(xxi) of the Child Abuse Prevention and Treatment Act (CAPTA), which requires referral of a child under the age of three who is involved in a substantiated case of child abuse or neglect to early intervention services, be read to mean that children who are wards of the State must be so referred?

A: No. The statute specifically requires the State to refer children under the age of three who are involved in substantiated cases of child abuse and neglect to early intervention services funded under Part C of the Individuals with Disabilities Education Act (IDEA). Therefore, since many children who are involved in substantiated cases of child abuse and neglect never come into foster care, we cannot narrow the requirement to children who are wards of the State. There may be Federal confidentiality restrictions for the State to consider when implementing this CAPTA provision.

Source: updated 9/27/11

Reference: Child Abuse Prevention and Treatment Act (CAPTA), as amended (42 U.S.C. 5101 et seq.) ¿ section 106(b)(2)(B)(xxi)

3 **Q:** Does the "child" as mentioned in section 106(b)(2)(B)(xxi) of the Child Abuse Prevention and Treatment Act (CAPTA) include only those children under the age of three who are involved in a substantiated case of child abuse or neglect or does this include any child in the family or household who is under the age of three?

A: CAPTA requires the State to refer any child under the age of three who is the subject of a substantiated case of child abuse or neglect to early intervention services under Part C of the Individuals with Disabilities Education Act. The State is not required to refer other children in the household under the CAPTA provision. However, we encourage States to refer all children who are suspected of having a disability and warranting a referral to early intervention services, taking into consideration Federal confidentiality restrictions when implementing this CAPTA provision.

Source: updated 9/27/11

Reference: Child Abuse Prevention and Treatment Act (CAPTA), as amended (42 U.S.C. 5101 et seq.) ¿ section 106(b)(2)(B)(xxi).

2.1J CAPTA, Assurances and Requirements, Criminal Background Checks

1 *Q:* Are fingerprints required as part of the criminal background check requirement in section 106(b)(2)(B)(xxii) of CAPTA?

A: Yes. Public Law 111-320 amended section 106(b)(2)(B)(xxii) of CAPTA in 2010 to require that States have provisions and procedures that require criminal background checks for prospective foster and adoptive parents and other adults residing in the household that meet the title IV-E criminal background check requirements. The title IV-E requirements in section 471(a)(20) of the Social Security Act require fingerprint-based criminal record checks of national crime information databases.

Source: 05/02/06; updated 12/9/11

Reference: Social Security Act ¿ section 471(a)(20); Child Abuse Prevention and Treatment Act (CAPTA), as amended (42 U.S.C. 5101 et seq.) ¿ section 106(b)(2)(B)(xxii)

2 *Q:* Does the requirement at section 106(b)(2)(A)(xxii) of the Child Abuse Prevention and Treatment Act (CAPTA) for criminal background checks for prospective foster and adoptive parents and other adults living in the household apply if no title IV-E foster care or adoption assistance payments are made?

(Deleted 02/09/2012)

2.2 CAPTA, Citizen Review Panels

1 *Q:* How will States know how many citizen review panels they must establish to meet the requirements of section 106(c)(1)(A)-(B) since that number is dependent upon the amount of funds received by the State under the Community-Based Grants for the Prevention of Child Abuse and Neglect Program under Title II of CAPTA?

A: CAPTA requires that States establish a minimum of three citizen review panels. The only exception to this requirement is for States that receive the minimum allotment of $175,000 under Title II of CAPTA, and they are required to establish no less than one citizen review panel.

The Department has notified States in writing regarding whether one or three panels will be required in each State.

Source: ACYF-NCCAN-PIQ-97-01 (3/4/97); updated 2/3/05

Reference: Child Abuse Prevention and Treatment Act (CAPTA), as amended (42 U.S.C. 5101 et seq.) - section 106(c)(1)(A)-(B) and Title II

2 **Q:** Do States have the flexibility to determine how to implement the citizen review panels requirement in section 106(b)(2)(B)(xiv) of CAPTA?

A: Yes. States have the flexibility to implement the citizen review panel requirement in ways that best meet their needs, so long as the panels meet the requirements set forth under section 106 (c) of CAPTA.

States should pay particular note to section 106 (c)(2) of CAPTA which specifies the requirements for membership of the panel. We encourage the States to give special attention to the qualifications of the panelists to review complex cases of child maltreatment, including a balance among children's attorneys, child advocates and CASA volunteers who are familiar with the difficulties of the child protection system.

Source: ACYF-NCCAN-PIQ-97-01 (3/4/97); updated 9/27/11

Reference: Child Abuse Prevention and Treatment Act (CAPTA), as amended (42 U.S.C. 5101 et seq.) - sections 106(b)(2)(B)(xiv) and (c)(2)

3 ***Q:*** What are the functions that citizen review panels must perform?

A: Pursuant to sections 106(c)(4)(A)(i) and (ii) of the Child Abuse Prevention and Treatment Act (CAPTA), each panel must evaluate the extent to which the State is fulfilling its child protection responsibilities in accordance with its CAPTA State plan by: (1) examining the policies, procedures and practices of State and local child protection agencies, and (2) reviewing specific cases, where appropriate. In addition, consistent with section 106(c)(4)(A)(iii) of CAPTA, a panel may examine other criteria that it considers important to ensure the protection of children, including the extent to which the State and local CPS system is coordinated with the title IV-E foster care and adoption assistance programs of the Social Security Act. This provision also authorizes the panels to review the child fatalities and near fatalities in the State.

In order to assess the impact of current procedures and practices upon children and families in the community and fulfill the above requirements, citizen review panels must provide for public outreach and comment (section 106(c)(4)(C) of CAPTA). Finally, each panel must prepare an annual report that summarizes the activities of the panel and makes recommendations to improve the CPS system at the State and local levels, and submit it to the State and the public (section 106(c)(6) of CAPTA).

Source: ACYF-CB-PI-99-09 (6/2/99); updated 3/22/06

Reference: Child Abuse Prevention and Treatment Act (CAPTA), as amended (42 U.S.C. 5101 et seq.) - section 106(c)

4 **Q:** Section 106 (c)(5) of CAPTA requires States to provide citizen review panels with access to information on cases that the panel wants to review "if such information is necessary for the panel to carry out its functions". Who determines what confidential information is necessary for these functions?

A: The Congress intended that citizen review panels be established to evaluate the extent to which States are meeting the goals of protecting children and their responsibilities related to the State plan. In carrying out these responsibilities, it is important for the review panels to have access to confidential information, as necessary, to assist in their duties. The intent of section 106 (c)(5) was to direct States to provide the review panels with information that the panel determines is necessary to carry out these functions (Congressional Record - House, September 25, 1996, p. H11149).

Source: ACYF-NCCAN-PIQ-97-01 (3/4/97); updated 2/3/05

Reference: Child Abuse Prevention and Treatment Act (CAPTA), as amended (42 U.S.C. 5101 et seq.) - section 106(c)(5)

5 **Q:** Do the confidentiality requirements in the Child Abuse Prevention and Treatment Act apply to the members of citizen review panels?

A: Citizen review panel members are bound by the confidentiality restrictions in section 106 (c)(4)(B)(i) of CAPTA. Specifically, members and staff of a panel may not disclose identifying information about any specific child protection case to any person or government official, and may not make public other information unless authorized by State statute to do so. Further, section 106 (c)(4)(B)(ii) of CAPTA requires States to establish civil sanctions for violations of these confidentiality restrictions. States that already have civil sanctions in place for breaches of confidentiality need not enact new legislation, so long as their existing provisions encompass the CAPTA requirements.

Source: ACYF-BC-PI-98-01 (1/7/98); updated 9/27/11

Reference: Child Abuse Prevention and Treatment Act (CAPTA), as amended (42 U.S.C. 5101 et seq.) - section 106(c)(4)(B)

6 **Q:** Must a State include families who are involved with the Child Protective Services (CPS) agency as members of its citizen review panels?

A: The provision at section 106(c)(2) of the Child Abuse Prevention and Treatment Act requires that members of the citizen review panels be broadly representative of the community in which the panel is established and include members with expertise in the prevention and treatment of child abuse and neglect. There is no requirement that families involved with CPS be part of the citizen review panel.

Source: 05/02/06

Reference: Child Abuse Prevention and Treatment Act (CAPTA), as amended (42 U.S.C. 5101 et seq.) ¿ section 106(c)(2)

2.3 CAPTA, Definitions

1 **Q:** We find the "rape" and "statutory rape" language in the definition of sexual abuse found at section 111 (4)(B) of CAPTA confusing, especially within the context of the general definition of child abuse and neglect at section 3 (2). Please clarify.

A: The provision at section 3 (2) defines child abuse and neglect as "at a minimum, any recent act or failure to act on the part of a parent or caretaker, which results in death, serious physical or emotional harm, sexual abuse or exploitation, or an act or failure to act which presents an imminent risk of serious harm." Section 111 (4)(B) goes on to say that the term sexual abuse includes "the rape, and in the cases of caretaker or inter-familial relationships, statutory rape, molestation, prostitution, or other form of sexual exploitation of children, or incest with children." We understand section 111 (4)(B) to define the circumstances in which a parent or caretaker, although not the perpetrator, is chargeable with child abuse and neglect because of sexual acts committed by a third party.

For the purposes of CAPTA, child abuse and neglect, by definition, is limited to a recent act or failure to act on the part of a parent or caretaker. Thus, if a child is raped due to a failure to act on the part of a parent or caretaker, such failure to act would be considered child abuse by the parent or caretaker under CAPTA, regardless of the identity of the perpetrator. In addition, the definition at section 111 (4)(B) means that action or failure to act by a parent or caretaker that results in statutory rape by another caretaker or family member is considered to be sexual abuse.

Source: ACYF-NCCAN-PIQ-97-03 (9/26/97); updated 9/27/11

Reference: Child Abuse Prevention and Treatment Act (CAPTA), as amended (42 U.S.C. 5101 et seq.) - sections 3 and 111

2 **Q:** Definitions are found in sections 106(b)(4), as well as in sections 3 and 111. What is the difference between the definitions found in these sections?

A: The differences in the definitions found in these sections is in what they govern. The definitions of "near fatality" and "serious bodily injury" in sections 106 (b)(4) of CAPTA refer to those specific terms as used in subsection (b) of section 106 of CAPTA. For instance, whenever the terms "near fatality" or "serious bodily injury" are used in subsection (b), the definitions found in section 106(b)(4) would apply.

Section 111, on the other hand, provides the broader definitions of "sexual abuse" and "infant or toddler with a disability," which are used for all other purposes of Title I of CAPTA.

The definitions in section 3 provide still broader definitions such as "child abuse and neglect" and "child with a disability," which are used throughout all of CAPTA.

Source: ACYF-NCCAN-PIQ-97-01 (3/4/97); updated 2/3/05; 12/9/11

Reference: Child Abuse Prevention and Treatment Act (CAPTA), as amended (42 U.S.C. 5101 et seq.) - sections 3, 106(b) and 111

3 ***Q:*** Section 106(b)(2)(B)(x) of CAPTA requires a State to provide for the public disclosure of findings or information about a case of child abuse or neglect which results in a child fatality or near fatality. For the purposes of this requirement, what is considered a "near fatality"?

A: A "near fatality" is defined under section 106 (b)(4)(A) as "an act that, as certified by a physician, places the child in serious or critical condition." For example, if hospital records reflect that the child's condition is "serious" or "critical," this would be considered a "near fatality" under CAPTA.

Source: ACYF-NCCAN-PIQ-97-01 (3/4/97); updated 9/27/11

Reference: Child Abuse Prevention and Treatment Act (CAPTA), as amended (42 U.S.C. 5101 et seq.) - sections 106(b)(2)(B)(x) and (b)(4(A)

4 ***Q:*** Test Question
Field Update

(Deleted 09/26/2017)

3. INDEPENDENT LIVING

3. INDEPENDENT LIVING

1 *Q:* Does title IV-E preclude a State agency from passing on to the child title IV-E funds for his use for his maintenance in an independent living program?

(Deleted 02/25/2011)

3.1 INDEPENDENT LIVING, Certifications and Requirements

1 *Q:* Will States need to make any specific changes in their legislation and policy to comply with the Chafee Foster Care Independence Program (CFCIP)?

A: States should review their laws and make changes, as appropriate, to assure consistency with the expanded purposes of the CFCIP program. We anticipate that some State policy changes will be necessary. In particular, States should look for possible legal or regulatory conflicts around age limits for services (both the removal of a lower age limit and serving youth between ages 18 and 21), age issues concerning room and board provisions, and Medicaid eligibility requirements.

Source: Questions and Answers on the Chafee Foster Care Independence Program

Reference: Social Security Act - section 477(b)(3)

2 *Q:* Who is considered the Chief Executive Officer (CEO) of the State for purposes of signing the certifications?

A: Section 477 (b)(3) of the Social Security Act requires the CEO of the State to certify that the State will adhere to various provisions of the program. The highest ranking official is considered the Chief Executive Officer, that is, the governor of each State and Territory and the mayor of the District of Columbia. If the governor has the legal authority under state law to delegate the responsibility to someone else and makes such a legal delegation, that person may sign the certifications for the governor.

Source: *Questions and Answers on the Chafee Foster Care Independence Program*

Reference: *Social Security Act - section 477(b)(3)*

3.1A INDEPENDENT LIVING, Certifications and Requirements, Adolescent Participation

1 ***Q:*** Is there a Federal requirement for the State to formulate a life skills assessment or enter into a personal responsibility contract with each youth receiving services under the CFCIP?

A: No. The certification at section 477(b)(3)(H) requires the State to ensure that "adolescents" participate directly in designing their own program activities "and accept personal responsibility for living up to their part of the program." There is no specific requirement for States to utilize life skills assessments or personal responsibility contracts to comply with this certification. However, various assessment tools and personal responsibility contracts are currently used by some States to assist youth to make the transition from adolescence to adulthood and we believe that this is a good approach to determining needs and developing appropriate services.

Source: *7/25/02*

Reference: *Social Security Act - section 477(b)(3)(H)*

3.1B INDEPENDENT LIVING, Certifications and Requirements, Age

1 ***Q:*** Is it correct that there is no minimum age requirement for youths to receive Chafee Foster Care Independence Program (CFCIP) services?

A: Yes. It is correct that there is no minimum age requirement for the CFCIP program. The CFCIP legislation gives States broad discretion to define the population of children who are "likely to remain in foster care until age 18."

Source: *Questions and Answers on the Chafee Foster Care Independence Program*

Reference: *Social Security Act - section 477(a)*

2 **Q:** Who must the State serve in the age 18-21 category in independent living services?

A: Section 477(b)(3)(A) of the Social Security Act requires States to provide services to youth between ages 18 and 21 who left foster care because they attained 18 years of age. Therefore, States must serve youth between ages 18 and 21 who left foster care because they turned 18 ("aged out" of foster care) and may serve other former foster care youth who did not "age-out" of foster care.

Source: Questions and Answers on the Chafee Foster Care Independence Program

Reference: Social Security Act - section 477(b)(3)(A)

3 **Q:** At what age do independent living services have to be provided to foster care youth?

A: Pursuant to section 475 of the Social Security Act, the State is required to develop and implement a case plan that, for children age 16 and older, identifies those programs and services that will be provided to assist the youth in transitioning from foster care to independence. The Chafee Foster Care Independence Program (CFCIP) is a funding resource for independent living programs and services, with no lower age limit requirements, and is available for youth who meet the State's eligibility requirements for CFCIP. However, the requirements at Section 475 of the Act must be met even for those youth who are not eligible for CFCIP.

Source: 7/25/02

Reference: Social Security Act - section 475(1)(B) and (1)(D), section 477

3.1C INDEPENDENT LIVING, Certifications and Requirements, Coordination

1 ***Q:*** What is specifically being asked of the State regarding the coordination requirement at 477(b)(3)(F) of the Social Security Act?

A: The law requires each State to coordinate its Independent Living Program and services with other agencies and providers that serve youth. Programs listed in the legislation (transitional living programs, abstinence education programs, local housing programs, programs for disabled youth and school-to-work programs) must be included in the State's coordination effort; however, we encourage States to coordinate with an even broader range of youth-oriented agencies and programs such as health-related programs, local job training and employment programs, community colleges and youth shelters. Regulations at 45 CFR 1357 offer guidance on how the State must consult and coordinate with other public/private entities for the title IV-B program that might be useful to the State in implementing the CFCIP program.

Source: Questions and Answers on the Chafee Foster Care Independence Program

Reference: Social Security Act - section 477(b)(3)(F); 45 CFR 1357

3.1D INDEPENDENT LIVING, Certifications and Requirements, Fraud and Abuse

No questions and answers are available at this time.

3.1E INDEPENDENT LIVING, Certifications and Requirements, Miscellaneous Requirements

1 ***Q:*** Does the court have to approve the youth's case plan that describes the services needed for him/her to transition from adolescence to adulthood?

A: No. The Social Security Act at sections 475(1) and (5) addresses case plan and case review system requirements for titles IV-E and IV-B. There is no statutory requirement for judicial approval. The court's role is to exercise oversight of the permanency plan, review the State agency's reasonable efforts to prevent removal from the home, reunify the child with the family, conduct permanency hearings and finalize permanent placements. Although approval is not required, the court must address, as part of the permanency hearing, the services needed to assist youth ages 16 and over to make the transition from foster care to independent living.

Source: 7/25/02

Reference: Social Security Act - section 475(1) and (5)

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3.1F INDEPENDENT LIVING, Certifications and Requirements, Objective Eligibility Criteria

1 ***Q:*** What are the program eligibility requirements for programs and services provided by the State?

A: The State determines, within the purposes defined in the statute at section 477(a) of the Social Security Act (the Act), the assistance and services that will be made available to all youth whom the State defines as eligible for the program.

In defining the program eligibility requirements, the State is required:
1) to ensure that the programs serve children of various ages and at various stages of achieving independence (section 477(b)(2)(C) of the Act);
2) to use objective criteria for determining eligibility for benefits and services under the programs (section 477(b)(2)(E) of the Act); and
3) to ensure fair and equitable treatment of benefit recipients (section 477(b)(2)(E) of the Act).

The Department supports positive youth development, which values youth and an individual youth's involvement in planning his/her activities and goals. Furthermore, we view independent living as part of the developmental process critical to the well-being of all children and youth. States are expected to develop or locate services and training that are appropriate to the individual's age, circumstances and developmental needs.

Source: Questions and Answers on the Chafee Foster Care Independence Program

Reference: Social Security Act - section 477

2 **Q:** If a foster care youth (under age 18) is placed in another State, which State is responsible for providing the funding for CFCIP services?

A: The sending State is responsible for foster care maintenance payments, case planning, including a written description of the programs and services which will help a child 16 or over prepare for the transition from foster care to independence, as required by section 475(1)(D) of the Social Security Act (the Act) and a case review system as required by section 475(5)(C) of the Act. The sending State must also fund the identified independent living services for foster care youth ages 16-18 because the sending state has placement and care responsibility for the youth.

Source: *7/25/02*

Reference: *Social Security Act - section 475*

3 **Q:** If a former foster care youth (between the ages of 18-21) moves from the State in which he or she aged out of foster care to another State, which State is responsible for providing CFCIP services?

A: Section 477(b)(3)(A) requires States to certify that they will provide assistance and federally-funded CFCIP services to youth who have left foster care because they have attained 18 years of age. It is irrelevant where the youth "aged out" of foster care. The State in which the youth resides is responsible for services if the State provides the services needed by the youth.

Source: *7/25/02*

Reference: *Social Security Act - section 477(b)(3)(A)*

4 **Q:** Does marriage have any impact on a youth's eligibility for CFCIP?

A: Section 477(b)(2)(E) of the Act requires the State to use objective criteria for determining eligibility for the CFCIP program. The State may decide that marriage will be considered in determining a youth's eligibility for CFCIP. Once the eligibility criteria are set, all youth must be treated equitably.

Source: *7/25/02*

Reference: *Social Security Act - section 477(b)(2)(E)*

5 **Q:** Can former foster care youth be required by the court to participate in the CFCIP?

A: The court may order a youth to participate in independent living services, however, the youth must meet the State's eligibility requirements to be eligible for services. Additionally, section 477(b)(3)(H) requires the State to ensure that youth participate directly in designing their own program activities that prepare them for independent living and that the youth accept personal responsibility for living up to their part of the program. If a youth is unwilling to participate or accept personal responsibility, he/she cannot receive services.

Source: *7/25/02*

Reference: *Social Security Act - section 477(b)(3)(H)*

6 **Q:** Are youth who do not age out of the foster care system because permanency was attained prior to age 18 eligible for CFCIP services? For example, a youth was in foster care but reunited with his/her family and is living at home or was adopted before attaining 18 years of age. Would such a youth be eligible for CFCIP services at age 18?

A: Section 477(b)(3)(A) requires States to provide federally-funded CFCIP services to youth between ages 18 and 21 who left foster care because they attained 18 years of age. The State may also provide assistance and services to other former foster care youth whom the State defines as eligible, consistent with the statutory purposes defined in section 477(a). The

youth in the example could receive federally-funded CFCIP services if the State included former foster care youth who did not "age out" of foster care at age 18 in its eligibility criteria. However, room and board is available only to the extent consistent with the limitation in section 477(b)(3)(B).

Source: *7/25/02*

Reference: *Social Security Act - section 477*

3.1G INDEPENDENT LIVING, Certifications and Requirements, Room and Board

1 ***Q:*** What is meant by "room and board" as used in section 477(b)(3)(B) of the Social Security Act? Is it intended to cover all cost items included in the title IV-E foster care maintenance payment definition? Would it also include such costs as rental deposits, rent, utilities, and household start-up purchases?

A: "Room and board" has no statutory definition, but typically includes shelter and food. These are the most expensive and essential items that youth ages 18-21 may not be able to cover with their own incomes. The term does not include all items covered by the title IV-E foster care maintenance payment definition. States may set a reasonable definition of room and board that may include rent deposits, utilities and other household start-up purchases. In setting the definition, States should be cautioned that the number of items that are covered in the definition of "room and board" may impact the number of youth the State can actually assist.

Source: *Questions and Answers on the Chafee Foster Care Independence Program*

Reference: *Social Security Act - section 477(b)(3)(B)*

2 **Q:** Does the law at 477 (b)(3)(A) and (B) of the Social Security Act (the Act) allow "room and board" payments for youth between 18-21 years of age who are in a higher education situation?

A: Yes. The law allows it, but does not mandate it. Section 477(b)(3)(A) and (B) of the Act provide that no more than 30 percent of Federal funds from the allotted amount can be used for room and board for youth 18-21 who have aged out of foster care. States may set criteria for the use of these funds that may or may not include college attendance.

Source: Questions and Answers on the Chafee Foster Care Independence Program

Reference: Social Security Act - section 477(b)(3)

3 **Q:** Can a State provide Chafee Foster Care Independence Program (CFCIP) funds to an organization for the purpose of acquiring real property under the statutory provision that permits limited room and board expenditures for former foster care children between the ages of 18 and 21?

A: Federal funds are generally unavailable for the acquisition of real property in the absence of express statutory authority and there is no such authority in the CFCIP legislation. Accordingly, neither States themselves nor the organizations they fund may purchase real property with CFCIP funds. Additionally, States may not use purchased property to qualify for the match to CFCIP funds.

Source: Questions and Answers on the Chafee Foster Care Independence Program

Reference: Social Security Act - section 477; 42 Comptroller General 480 (1963)

4 **Q:** May a State use Chafee funds to provide room and board for youth (between the ages of 18-21) who voluntarily remain in foster care?

A: Although the law does not expressly contemplate youth ages 18-21 in foster care, allowing room and board for these youth accords with the statutory purposes identified in sections 477(a)(1-5) of the Act. Therefore, it is permissible to expend Chafee funds for youth between the ages of 18-21 who voluntarily remain in State foster care including room and board services. However, a State may not require youth to remain in foster care over the age 18 in order to receive CFCIP services. The certification at section 477(b)(3)(A) stipulates that the State will serve youth who have left foster care because they have attained 18 years of age. Requiring a youth to remain in foster care to receive services contravenes this certification. The State must also meet the Federal non-supplantation requirement for youth ages 18-21. Federal funds spent for room and board for youth 18-21, both in and out of foster care, are subject to the 30 percent expenditure limitation found at section 477(b)(3)(B).

Source: 7/25/02

Reference: Social Security Act - section 477

3.1H INDEPENDENT LIVING, Certifications and Requirements, Training

1 **Q:** What funds under section 477(b)(3)(D) of the Social Security Act (the Act) will be used for training the individuals listed there and whose responsibility is it to train them?

A: The certification at section 477(b)(3)(D) of the Act requires the State or Tribe receiving Chafee funds to train the categories of people enumerated therein and to utilize the funds that are available for this purpose. The funds specified at section 474(a)(3) of the Act are the administrative dollars which can be claimed for such training. Under that section of the Act, the cost of training certain individuals is reimbursable from title IV-E administrative funds at the rate of up to 75 percent Federal Financial Participation (FFP). If the State/Tribe with an approved title IVE plan contracts with private entities to perform case management functions, it may claim the percent reimbursement permitted by statute for training the contractor's staff to perform the contracted functions. The certification for training in the CFCIP law simply adds independent living training to the pool of allowable title IV-E training activities; it has no general impact on the FFP match for training costs. In addition, regulations at 45 CFR 1356.60 (b)(2) require that all training activities and costs funded under title IV-E shall be included in the title IV-E agency's training plan for title IV-B. The certification at section 477(b)(3)(D) of the Act also

encourages such training to be coordinated with the Chafee Foster Care Independence Program training conducted for youth participants.

Source: *Questions and Answers on the Chafee Foster Care Independence Program; revised 08/31/09*

Reference: *Social Security Act - sections 474 and 477*

2 **Q:** Does the law permit training to be directly charged to title IV-E or must the training costs be cost allocated?

A: States and Tribes receiving Chafee funds should treat independent living training for foster parents, adoptive parents, case managers and workers in group homes on independent living issues like any other training costs under title IV-E and allocate appropriately.

Source: *Questions and Answers on the Chafee Foster Care Independence Program; revised 08/31/09*

Reference: *Social Security Act - sections 477 and 474; 45 CFR 235, 45 CFR 1356.60*

3 **Q:** May States claim the costs of training foster parents under their CFCIP funds?

A: No. The certification at 477(b)(3)(D) specifies that States "will use training funds provided under the program of Federal payments for foster care and adoption assistance" to provide training to help foster parents, adoptive parents, workers in group homes, and case managers understand and address issues confronting adolescents. Since the statute expressly directs that title IV-E administrative funds be used for training, Chafee funds are not permitted for this use.

Source: *7/25/02*

Reference: *Social Security Act - section 477(b)(3)(D)*

3.1I INDEPENDENT LIVING, Certifications and Requirements, Tribal

1 **Q:** Must the Tribes participate in the title IV-E program in order to access Chafee Foster Care Independence Program (CFCIP) funds and services? Is their participation in the title IV-E program a prerequisite for soliciting their input?

A: The answer to both of these questions is "no." Section 477(b)(3)(G) of the Social Security Act requires each State to consult with each Indian Tribe within the State. States must certify that each Indian Tribe in the State has been consulted on the programs to be carried out under the State plan, that the State made efforts to coordinate programs with the Tribes and that benefits and services under the programs will be made available to Indian children in the State on the same basis as to other children in the State. Whether or not a Tribe has a title IV-E agreement with the State is immaterial.

Source: Questions and Answers on the Chafee Foster Care Independence Program

Reference: Social Security Act - section 477(b)(3)(G)

2 **Q:** Are entities other than "tribes" included in the requirements at section 477(b)(3)(G) of the Social Security Act?

A: Yes. Any Indian Tribal Organization that is federally recognized is included.

Source: Questions and Answers on the Chafee Foster Care Independence Program

Reference: Social Security Act - section 477(b)(3)(G)

3 **Q:** How will the State document its compliance with the requirements to consult and coordinate with the Tribes?

A: Section 477 (b)(3)(G) of the Social Security Act requires the CEO of the State to certify that the State has consulted with every Tribe within the State. The certification form (Attachment B of ACYF-CB-PI-01-02) also requires the State to provide the dates of consultations with the Tribes.

Source: *Questions and Answers on the Chafee Foster Care Independence Program*

Reference: *Social Security Act - section 477(b)(3)(G); ACYF-CB-PI-01-02*

4 **Q:** Why is the requirement for States to consult with Tribes in the Chafee Foster Care Independence Act?

A: The original bill, HR 1802, which required States to inform Tribes about the enhanced independent living program, was strengthened in the final law to require consultation with the Tribes about the programs to be carried out under the State plan. Included in the Congressional Record of the House, dated June 25, 1999 are remarks from one representative concerning the upgrading of this provision. "Tribes are in the best position to know the needs of Indian children and of possible local resources available for assistance, and this amendment is a first step in recognizing the level of communication and coordination that is necessary for the provision of independent living services." The Department expects that consultation with Tribes will take place as explicitly required, that there have been efforts to coordinate the programs with such Tribes, and that benefits and services will be made available to Tribal youth as specified at section 477(b)(3)(G) of the Social Security Act.

Source: *Questions and Answers on the Chafee Foster Care Independence Program*

Reference: *Social Security Act - section 477(b)(3)(G)*

5 **Q:** Some Tribal representatives feel the wording for the assurance at 477(b)(3)(G) should indicate that "benefits and services under the programs will be made available to Indian youth in the State on *"an equal basis"* rather than on "the same basis" as to other youth in the State. Is the change in wording allowable?

A: No. The certifications are taken directly from the law. "On the same basis" means that the State will provide program services equitably to both State and Indian children who meet the State's eligibility criteria. This is further supported by section 477(b)(2)(E) of the Act with the requirement that States must ensure fair and equitable treatment of benefit recipients.

Source: 7/25/02

Reference: Social Security Act - section 477(b)(3)(E) and (G)

3.2 INDEPENDENT LIVING, Data Collection

No questions and answers are available at this time.

3.2A INDEPENDENT LIVING, Data Collection, Data Elements

1 **Q:** Do tribal youth, youth involved with the juvenile justice system, youth who receive services through the staff of a group home or child care institution, and youth no longer in foster care fall within the served population as defined in 45 CFR 1356.81(a)?

A: In general, as required in 45 CFR 1356.81(a), a youth is in the served population if during the report period, the youth received at least one independent living service paid for or provided by the State agency. An independent living service is provided by the State agency if it is delivered by State agency staff or an agent of the State, including a foster parent, group home staff, child care institution staff or the service is provided pursuant to a contract between the State agency and a provider, agency or any other entity regardless of whether the contract includes funding for the particular service. The served population is not limited on the Federal level by age, foster care status or placement type, although State eligibility rules for their independent living programs may restrict which youth receive independent living services. Therefore, tribal youth, youth involved with the juvenile justice system, youth who receive services through foster care providers and youth no longer in foster care are a part of the served population if they receive an independent living service paid for or provided by the State agency during the report period.

Source: 73 FR 10340 (February 26, 2008); (01/26/10)

Reference: Social Security Act ¿ section 477(f)(1)(B)(i);

45 CFR 1356.81(a)

2 Q: How is the served population as defined in 45 CFR 1356.81(a) distinct from or related to the baseline and follow-up population as defined in 45 CFR 1356.81(b) and (c)?

A: The National Youth in Transition Database (NYTD) has two separate but related components: independent living services and youth outcomes. The reporting populations are separate for each component, although not mutually exclusive.

States are to collect and report independent living services information on youth who fall within the served population, as defined by 45 CFR 1356.81(a). The served population is made up of youth who have received at least one independent living service that is paid for or provided by the State agency during a six-month report period. The youth?s age and foster care status is not relevant to whether he or she is in the served population.

States are to collect and report outcomes information on youth who are in the baseline and follow-up populations, as defined by 45 CFR 1356.81(b) and (c) respectively. The baseline population is comprised of all 17-year-olds in foster care during a year in which such outcomes data is due (beginning in Federal Fiscal Year (FFY) 2011), regardless of whether the youth receives any services. The follow-up population is a subgroup of the baseline population: youth who participated in the outcomes data collection when they were 17 years old, but who are now 19 or 21 years old. A few simple examples (that do not address sampling) illustrate how the reporting populations may overlap or diverge:

- <u>Example 1</u>. In December 2010, a youth turns 17 years old while in foster care and takes a budgeting class that is paid for by the State agency in January 2011. This youth would be part of the served population for the first report period of FFY 2011 (October 1, 2010 through March 31, 2011) and reported as receiving the? budget and financial management? service. The same youth would also be a part of the baseline population for whom the State must administer the outcomes survey. This is because FFY 2011 is a year in which the States must collect data on the baseline population, which is comprised of those youth in foster care

who reach their 17th birthday in the FFY.
- <u>Example 2</u>. In November 2011, a different 17-year-old in foster care takes a budgeting class that is paid for by the State agency. This youth would be part of the served population for the first report period of FFY 2012. However, there is no outcomes data collection due in FFY 2012. Therefore, the youth is not in the baseline population.
- <u>Example 3</u>. In December 2012, the same youth from example 1 reaches 19 years old. By the end of March 2013, this youth had not received any independent living services that were paid for or provided by the State agency during the first report period (October 1, 2012 through March 31, 2013), so the youth is not a part of the served population. However, two years ago, this youth completed the outcomes survey as part of the baseline population. Therefore, the youth is a part of the follow-up population and the State is required to collect and report outcomes data for this youth.

Source: 73 FR 10341 (February 26, 2008); (01/26/10)

Reference: Social Security Act ¿ section 477(f)(1)(B)(i);

45 CFR 1356.81(a), (b), and (c)

3 **Q:** Does a youth have to be in foster care on their 17th birthday to be included in the baseline population?

A: A youth does not need to have his or her 17th birthday while in foster care, but consistent with the data collection rule in 45 CFR 1356.82(a)(2), the youth must have been in foster care within 45 days following his or her 17th birthday during the specified reporting year.

Source: 73 FR 10342 (February 26, 2008); (01/26/10)

Reference: Social Security Act ¿ section 477(f)(1)(B);

45 CFR 1356.82(a)(2)

4 **Q:** Who is included in the follow-up population as defined in 45 CFR 1356.81(c)? Are youth who remain in foster care at ages 19 and 21 in the follow-up population? Would youth in the follow-up population at age 19 need to have participated in the outcomes data collection to be a part of the follow-up population at age 21?

A: The follow-up population as defined in 45 CFR 1356.81(c) is comprised solely of youth who are either 19 or 21 years old who participated in the outcomes data collection as part of the baseline population at age 17. A youth is considered to have participated at age 17 if he or she provided at least one valid answer to a question in the outcomes survey. A youth who participated in the data collection at age 17, but not at age 19 for a reason other than being deceased remains a part of the follow-up population at age 21. A youth is in the follow-up population as described regardless of the youth?s foster care status at ages 19 or 21 and regardless of whether the youth ever received independent living services.

Source: 73 FR 10342 (February 26, 2008); (01/26/10)

Reference: Social Security Act ¿ section 477(f)(1)(B);

45 CFR 1356.81(c), 45 CFR 1356.82(a)(3)

5 **Q:** Are States that sample required, per 45 CFR 1356.83(e), to identify the 19-year-old youths who participated in the outcomes data collection as part of the baseline population at age 17, and who are not in the sample?

A: Yes. This information is required so that ACF can determine whether the State meets the outcomes universe and participation rate standards (45 CFR 1356.85(b)). A State must identify such youth in the two semi-annual report periods for the Federal fiscal year in which the State reports actual outcomes information on 19-year-old youth who are in the sample (45 CFR 1356.83(g)(34)). States will not report information on non-sampled youth again when the youth reach the age of 21 years old.

Source: 73 FR 10344 (February 26, 2008); (01/26/10)

Reference: Social Security Act ¿ section 477(f);

45 CFR 1356.82(b), 45 CFR 1356.83(e) and (g)

3.2B INDEPENDENT LIVING, Data Collection, Outcome Measures

1 **Q:** Regarding the data element required in 45 CFR 1356.83(g)(6), does the race category of American Indian or Alaska Native include youth who have an attachment or affiliation with a non-Federally recognized Tribe?

A: The race category does include youth who identify with an American Indian or Alaska Native Tribe regardless of whether that Tribe is recognized by the Federal government. This race category is per the Office of Management and Budget's Provisional Guidance on the Implementation of the 1997 Standards for Federal Data on Race and Ethnicity, at http://www.whitehouse.gov/omb/inforeg/re_guidance2000update.pdf

(See 73 FR 10345).

Source: 73 FR 10345 (February 26, 2008); (01/26/10)

Reference: Social Security Act ¿ section 477(f);

45 CFR 1356.83(g)(6)

2 **Q:** What is the difference between ¿educational financial assistance¿ as required in 45 CFR 1356.83(g)(32) and ¿educational aid¿ as referenced in 45 CFR 1356.83(g)(41)?

A: ?Educational financial assistance? is a <u>service</u> element that refers to financial supports that the State agency pays for or provides for the youth; ?educational aid? is an <u>outcome</u> element and refers to monies or other types of educational financial aid, from any source, that helps cover the youth?s educational expenses as an indicator of their financial self-sufficiency. The intention is to obtain data on both concepts (See 73 FR 10349-10350).

Source: 73 FR 10349-50 (February 26, 2008); (01/26/10)

Reference: Social Security Act ¿ section 477(f);

45 CFR 1356.83(g)(32) and (41)

3 **Q:** Is the State permitted to conduct data cross-matching with other administrative databases to gather data on youth, such as those maintained by States to support corrections, Temporary Assistance for Needy Families, Medicaid, employment, education, and child support?

A: For outcomes data collection, ACF is requiring that the States use the survey method prescribed in 45 CFR 1356.82(a)(2). The State must administer the outcomes survey in Appendix B of 45 CFR Part 1356 to youth directly. Therefore, the State may not provide information in the data elements described in paragraphs 45 CFR 1356.83(g)(37) ? (g)(58) from any other source. On the other hand, information on the youth?s characteristics (e.g., adjudicated delinquent, educational level, or foster care status) does not need to be collected from the youth directly and may come from a source of administrative data.

Source: 73 FR 10350 (February 26, 2008); (01/26/10)

Reference: Social Security Act ¿ section 477(f);

45 CFR 1356.82(a)(2), 45 CFR 1356.83(g)(34) ¿ (58)

4 **Q:** Regarding the data required in 45 CFR 1356.83(g)(40), should a State report a youth who receives Supplemental Security Income/Social Security Disability Insurance (SSI/SSDI) payments which are applied to the cost of foster care or only those that are paid to the youth directly? What if a youth does not know he/she was an SSI/SSDI recipient if such payments were applied to the cost of foster care? Should a State ¿correct¿ a youth¿s response accordingly?

A: If the youth is a SSI/SSDI beneficiary but his or her payment is going towards the cost of foster care, then the youth is receiving social security payments consistent with the description for the data element in 45 CFR 1356.83(g)(40). However, the State is not to correct a youth?s response if the youth is a beneficiary but responds in the negative to the social security survey question. Although this may result in some cases of a youth answering the question incorrectly, it is important to the integrity of the survey and data to represent the youth?s understanding of his or her own circumstances.

Source: 73 FR 10351-52 (February 26, 2008); (01/26/10)

Reference: Social Security Act ¿ section 477(f)(1);

45 CFR 1356.83(g)(40)

5 **Q:** Please explain the calculation of the participation rate, as required in 45 CFR 1356.85(b)(3), to exclude youth who are deceased or institutionalized.

A: The regulation at 45 CFR 1356.85(b)(3) excludes youth who are reported by the State as deceased, incapacitated or incarcerated in the follow-up population in our calculation of the participation rate. Excluding individuals who should not participate due to the nature of the survey from the calculation of response rates is a standard practice. ACF will use the data States report in the outcomes reporting status element described in 45 CFR 1356.83(g)(34) in calculating the participation rate. For example, for a State that does not sample there are 215 17-year-old youth in the baseline population who participate in the outcomes survey. Two years later, none of the 215 youth are in foster care and five of these youth become incapacitated, incarcerated or deceased. In another two years, 10 more of the original baseline youth become incapacitated, incarcerated or deceased. ACF will calculate whether the State has reported some outcomes information on 60% of the remaining 200 youth in the follow-up population at age 21 to determine whether the State has met its participation rate.

However, please note that even though outcomes information for incapacitated, incarcerated and deceased youth will be unavailable for the report period, a State must still report all other information for such youth. For example a State may not report outcome data for an incarcerated youth during a report period, but must report service information if she received independent living services that were paid for or provided by the State agency at some point in the report period.

Source: 73 FR 10357 (February 26, 2008); (01/26/10)

Reference: Social Security Act ¿ section 477(f);

45 CFR1356.83(g)(34) and 45 CFR 1356.85(b)(3)

3.2C INDEPENDENT LIVING, Data Collection, Penalties for Noncompliance

No questions and answers are available at this time.

3.2D INDEPENDENT LIVING, Data Collection, Systems Requirements

1 ***Q:*** Please provide guidance on the Federal funding sources States may use to pay for the costs related to the NYTD and whether title IV-E reimbursement is available for States that do not incorporate NYTD functionality into their Statewide automated child welfare information systems (SACWIS).

A: A State may use Chafee Foster Care Independence Program (CFCIP) funds for any and all costs associated with implementing the NYTD. A State with a SACWIS must incorporate NYTD information collection and reporting activities related to children in foster care into their SACWIS and may claim such information system costs as administrative costs under title IV-E pursuant to section 474(a)(3)(C) and (D) of the Social Security Act to the extent they are allowable and consistent with a State's advanced planning document (APD) and cost allocation plan (45 CFR 1355.50 - 1355.57 and 1356.60(e)).

A State may not claim reimbursement under title IV-E for NYTD information system costs that are not incorporated into an approved APD for a SACWIS. The authority to claim information systems costs under title IV-E in 45 CFR 1356.60(d) is limited to collecting and reporting data necessary to meet the AFCARS requirements in 45 CFR 1355.40 and those necessary for the proper and efficient administration of the title IV-E State plan and not the CFCIP plan (See 73 FR 10361).

Source: 73 FR 10361 (February 26, 2008); (01/26/10)

Reference: Social Security Act ¿ sections 474(a)(3)(C), (D) and 477(f); 45 CFR 1355.40, 45 CFR 1355.50 - 1355.57 and 45 CFR 1356.60(e)

3.3 INDEPENDENT LIVING, Fiscal

No questions and answers are available at this time.

3.3A INDEPENDENT LIVING, Fiscal, Administrative Costs

1 ***Q:*** May a State use funds under section 477 of the Social Security Act (the Act) for administrative costs and information system costs?

A: Yes. Section 477(d)(1) of the Act permits a State to use its Chafee allocation in a manner that is resonably calculated to accomplish the purposes of the program. States, therefore, have flexibility in using their funds for administrative activities to assist former foster care youth and youth who are expected to age out of foster care in achieving self-sufficiency. This includes using Chafee funds for any information system development and operations cost that is consistent with the purposes in section 477(a) of the Act and to comply with any requirements promulgated under section 477(f)of the Act.

States should note, however, that pursuant to section 477(b)(3)(D) of the Act, Chafee funds may not be used to train foster parents, workers in group homes, and case managers in issues confronting adolescents. The statute provides that States must claim such training, to the extent allocable to title IV-E, as a title IV-E administrative cost (see Child Welfare Policy Manual Section 3.1H).

Source: 6/09/04

Reference: Sections 477(b)(3)(D) and 477(d)(1) of the Social Security Act, Child Welfare Policy Manual Section 3.1H.

3.3B INDEPENDENT LIVING, Fiscal, Allocations

1 ***Q:*** Will the Department allow reallocation of State unspent funds to other States that could match the additional amount?

A: Section 477(d)(4) of the statute, enacted by the Promoting Safe and Stable Families Act, provides for the reallocation of CFCIP funds for which States have not applied. If a State does not apply for its entire CFCIP allocation in a given year, the funds will be reallocated to other States. The Department will give further guidance and instructions in its yearly program instruction regarding funding and State plan updates.

Source: 7/25/02

Reference: Social Security Act 477; Public Law 107-133

2 ***Q:*** Which fiscal year and data source is being used for determining Chafee Foster Care Independence Program allocations for each State?

A: The Adoption and Foster Care Analysis and Reporting System (AFCARS) data will be used to determine allocations. The law requires that data available from the most recent fiscal year be used to determine annual allocation amounts. AFCARS reports are not available for immediate use at the end of the fiscal year; therefore, allocations will be based on AFCARS data that are two full fiscal years behind the fiscal year for which States will be receiving funds, i.e., funds allocated for FY 2001 will be based on FY 1999 data.

Source: Questions and Answers on the Chafee Foster Care Independence Program

Reference: Social Security Act - section 477(c)

3 ***Q:*** How will the fact that the Chafee Foster Care Independence Program allotment will be based on the most recent AFCARS data on the number of children in State foster care as a proportion of the number of children in foster care nationwide affect States that have lowered their foster care caseloads over the last several years?

A: The Social Security Act (the Act) at section 474 (4) sets a formula, similar to that of other programs, that allows the Department to allocate the funds as equitably as possible among the States. Through the "hold harmless" clause in section 477(c)(2)(A) of the Act, a State is eligible to receive, at a minimum, its allocation for FY 1998 under the former ILP program or $500,000, whichever is greater. With these provisions in the legislation, no State will receive less funds than it received previously for the Independent Living Program. In FY 2000, only two entities received no increase in funding while others received increases in funding between two percent and 3,700+ percent.

Source: Questions and Answers on the Chafee Foster Care Independence Program

Reference: Social Security Act - sections 474(a) and 477(c)

3.3C INDEPENDENT LIVING, Fiscal, Match

1 ***Q:*** Will all expenditures of Chafee funds require a match?

A: Yes. Section 474(a)(4) of the Social Security Act has been amended to make payments to the State at 80 percent of the total amount expended by the State. Therefore, a 20 percent State match is required. Federal reimbursement ends once the State expends its allotted amount.

Source: Questions and Answers on the Chafee Foster Care Independence Program

Reference: Social Security Act - section 474(a)(4)

2 ***Q:*** Can in-kind expenditures related to room and board for qualified youth be used as State match just like any other in-kind expenditure or will there be limitations on in-kind expenditures for room and board?

A: The current Chafee Foster Care Independence Program follows the regulations at 45 CFR Part 75, Uniform Administrative Requirements ...for HHS Awards. These regulations define in-kind match, its uses and its prohibitions. When "room and board" was not allowed, those expenditures could not to be used for matching purposes. Now that "room and board" is allowed, such expenditures may be used as a match.

Note: This answer previously referenced 45 CFR Part 92. 45 CFR Part 75 supersedes 45 CFR Part 92 effective December 26, 2014 (79 FR 75871 , Dec. 19, 2014).

Source: Questions and Answers on the Chafee Foster Care Independence Program (updated 11/2/2016)
Reference: 45 CFR Part 75; 79 FR 75871, Dec. 19, 2014; 81 FR 3022, Jan. 20, 2016

3 Q: How much of the State's funds for "room and board" can be used as matching funds?

A: The State can use any amount of its "room and board" expenditures to meet the State match requirements.

Source: Questions and Answers on the Chafee Foster Care Independence Program
Reference: Social Security Act - section 474(c)(4)

4 Q: Private agencies have stepped forward to offer CFCIP training at no cost to the State. Can the State use private agency provided training as its State match?

A: There are two types of training offered pursuant to Chafee, each with different match requirements.

Section 477(b)(3)(D) requires training for foster and adoptive parents, case managers and workers in group homes on topics and issues confronting adolescents preparing for independent living to conform to section 474(a)(3)(A) and (B) of the Social Security Act. Longstanding Federal policy prohibits third party, in-kind contributions from qualifying as the State share under Federal matching requirements for the title IV-E program.

The second category of training under CFCIP is for youth who are participating in the program. Training provided to these youth is a service within the purposes of section 477 of the Act. The match requirements for section 477 are codified at 45 CFR 75.306 and permit the use of third party, in- kind contributions.

Note: This answer previously referenced 45 CFR Part 92. 45 CFR Part 75 supersedes 45 CFR Part 92 effective December 26, 2014 (79 FR 75871, Dec. 19, 2014).

Source: 7/25/02 (revised 11/2/2016)

Reference: Social Security Act - section 477(b)(3)(D), section 474 of the Social Security Act, 45 CFR Part 9275, 79 FR 75871, Dec. 19, 2014; 81 FR 3022, Jan. 20, 2016; Child Welfare Policy Manual, Section 8.1F

3.3D INDEPENDENT LIVING, Fiscal, Non-supplantation

1 ***Q:*** If States have utilized other Federal sources of funds (e.g., Title XX), under the former ILP, can Chafee funds be used to replace them?

A: According to section 477(d)(2), States may not supplant any funds (i.e., Federal and non-Federal) that are available for the same general purposes in the State. Chafee funds are to supplement the funds which were used for the general purposes described at sections 477(a)(1-5). States may shift funds or change priorities within the general purposes of the Chafee legislation.

Source: 7/25/02

Reference: Social Security Act - section 477

3.3E INDEPENDENT LIVING, Fiscal, Use of Funds

1 **Q:** Does the Chafee legislation allow States to develop and utilize trust funds for youth?

A: Yes. Trust funds are consistent with the purposes of the legislation at sections 477(a)(1) and (5), which provide for financial, as well as other appropriate support and services designed to help youth transition to adulthood. If a State chooses to establish a trust fund program for youth, the State must describe the design and delivery of the trust fund program in the State's CFCIP plan as required by section 477(b)(2)(A).

Source: 7/25/02

Reference: Social Security Act - section 477

2 **Q:** Can Chafee funds be used to rehabilitate buildings to house youth that are in the independent living program?

A: According to a long-standing Comptroller General decision, appropriated funds ordinarily may not be used for improvements to private property unless specifically authorized by law. While major improvements are not permitted, minor renovation is allowed.

Major improvements involve structural changes to the foundation, roof, floor, exterior or load-bearing walls of a facility, or the extension of a facility to increase its floor area. Major improvements also include any extensive alteration of a facility such as to significantly change its function and purpose, even if such renovation does not include any structural change.

Minor renovation may include window replacements, the addition of a wall, painting, plumbing and other minor repairs. Criteria for minor repairs include: improvements which are determined to be incidental to and essential for the effective accomplishment of the authorized purposes of the appropriations, the expenditures are in reasonable amounts, the improvements are used for the principal benefit of the Government, and the interests of the Government are fully protected.

The ACF Regional Office can provide additional guidance to States in this area.

Source: 7/25/02

Reference: Social Security Act - section 477, Controller General Decision B-141832, DHHS Grants Policy Directives (GPD) 3.04

3 **Q:** If a State currently offers a program for homeless youth, can the Chafee Foster Care Independence Program (CFCIP) be used to fund such a program?

A: The statute at section 477(d)(2) of the Social Security Act requires that CFCIP funds be used to supplement and not supplant any funds that are available for the same general purposes in the State. However, two examples of how Chafee funds might be used are: 1) CFCIP funds could expand an existing homeless youth program by funding additional beds for youth who have aged out of foster care and are thereby eligible for the program; or 2) CFCIP funds could fund an existing homeless youth program, for those who are Chafee eligible, so long as the non-supplantation requirement is met. Any funds diverted from this particular housing program must be used for services and programs that meet the purposes of the CFCIP program at section 477(a) of the Act.

Source: 7/25/02

Reference: Social Security Act - section 477(d)(2)

3.4 INDEPENDENT LIVING, Related Foster Care Requirements

1 **Q:** Can the permanency plan for a child when s/he is "placed in another planned permanency living arrangement" include independent living and/or emancipation in accordance with 475(5)(C) of the Social Security Act?

A: Yes. On a case-by case basis only. If the State identifies independent living as the permanency plan, it must document to the court a "compelling reason" that it is not in the best interest of the child to return home, be referred for termination of parental rights, or be placed for adoption, with a fit and willing relative, or with a legal guardian. An example of a compelling reason found in the regulation at 45 CFR 1356.21(h)(3)(i) is the case of an older teen who requests that emancipation be established as his/her permanency plan.

Source: Questions and Answers on the Chafee Foster Care Independence Program

Reference: Social Security Act - section 475, 45 CFR 1356.21(h)

2 **Q:** What is the definition of "foster care" to be used in connection with the Chafee Foster Care Independence Program?

A: In general, the definition of foster care at 45 CFR 1355.20 applies. It defines foster care as "24 hour substitute care for all children placed away from their parents or guardians and for whom the State agency has placement and care responsibility..." However, in light of the requirement from the Social Security Act in section 477(b)(3)(G) that States make benefits and services available to Indian children on the same basis as other children in the State, children in Tribal or BIA placements who are otherwise eligible are considered to have been "in foster care" for purposes of this program.

Source: 7/25/02

Reference: Social Security Act - section 477(b)(3)(G), 45 CFR 1355.20

3 **Q:** Can foster care include non-paid relative care where a foster care maintenance payment is not being made?

A: Yes. The definition of foster care at 45 CFR 1355.20 does not require a payment.

Source: Questions and Answers on the Chafee Foster Care Independence Program

Reference: 45 CFR 1355.20

4 **Q:** Is an Indian boarding school considered a foster care setting for the purposes of eligibility for Chafee Independent Living services? Would it matter if the boarding school were outside the U.S., e.g., in Canada?

A: If the Indian youth is placed in the boarding school as his/her foster care placement, the youth is eligible for the services of the Chafee program. This answer is the same whether or not the Indian boarding school is in Canada.

Source: *7/25/02*

Reference: *Social Security Act - section 477, 45 CFR 1355.20*

5 ***Q:*** Are youth who have been dually adjudicated with both delinquent and abuse/ neglect determinations, but are placed only in a detention facility eligible for Chafee services?

A: No. According to the definition of a child care institution, which is a foster care placement option at 45 CFR 1355.20, "detention facilities, forestry camps, training schools, or any other facility operated primarily for the detention of children who are determined to be delinquent" are not considered foster care placements. Therefore, a youth who is placed in a detention facility is not considered to be in foster care. If the youth has never been in foster care, Chafee funds cannot be used to serve him/her.

Source: *7/25/02*

Reference: *Social Security Act - section 477, 45 CFR 1355.20*

3.5 Independent Living, Educational and Training Vouchers

1 ***Q:*** If a youth ages out of foster care in one State and then changes his or her State of residency, which State is responsible for providing a youth with an educational and training voucher?

A: For a youth in foster care, the State with placement and care responsibility is responsible for providing a voucher to an eligible youth. The State in which a former foster youth resides is responsible for providing such an eligible youth with a voucher. This provision, however, does not apply to a former foster care youth who already is receiving a voucher and moves to another State for the sole purpose of attending an institution of higher education. In that instance, we expect that the youth?s original State of residence will continue to provide a voucher to the youth for as long as the youth remains eligible for the program.

Source: *4/4/05*

Reference: *Social Security Act ¿ Section 475 and 477(b)(3)(A); Child Welfare Policy Manual Section 3.1F Q&A 2 and 3*

2 **Q:** Is the amount of a youth¿s educational and training voucher exempt from Federal taxes?

A: Nothing in section 477 of the Social Security Act exempts Chafee Educational and Training Vouchers or scholarships financed with general Chafee funds from Federal taxes. Under certain conditions, however, scholarships may be tax exempt. Since the Administration for Children and Families cannot provide authoritative advice on Federal taxes, the State and/or student should contact the Internal Revenue Service directly for more information.

Source: 4/4/05

Reference: Social Security Act ¿ Section 477

3 **Q:** Since one of the purposes of the Chafee Independent Living program is to provide educational services to former foster care recipients between the ages of 18 and 21 (section 477(a)(5)), can general Chafee funds be used to supplement the $5,000 per-year ceiling for a youth in the Chafee Educational and Training Voucher (ETV) program?

A: No. Appropriations law precludes the use of general Chafee funds to supplement the $5,000 per-year ceiling. When an agency has a specific appropriation for a particular item (such as ETVs), and also has a general appropriation broad enough to cover the same item (such as general Chafee funds), only the more specific appropriation may be used. Therefore, expenditures for the ETV program must be made for the specific purposes set forth in the law and limited to expenses associated with institutions of higher education. General Chafee funds may not be used for voucher expenses associated with institutions of higher education, but may be used for other non-higher education-based learning activities (such as General Equivalency Degree programs, mentoring programs and other supportive services for eligible youth). General Chafee funds may also be used for activities that are outside the scope of an institution's definition of "cost of attendance," and are not covered by the ETV program.

Source: 4/4/05

Reference: Social Security Act ¿ Sections 477(a)(5) and 477(i); GAO/OGC-91-5 Appropriations Law-Vol. 1, Chapters 2 and 4

3.5A Youth Eligibility

1 **Q:** Must a youth be 18 years of age to receive a Chafee Educational and Training Voucher?

A: No. The statute does not place any minimum age restrictions for the Chafee Educational and Training Voucher program.

Source: 4/4/05

Reference: Social Security Act - Section 477(i)(1)

2 **Q:** If a State amends its title IV-E State plan to define youth at age 14 as eligible for Chafee services, can the State also make foster care youth who are adopted at age 14 eligible for Educational and Training Vouchers (ETV) under the "youth otherwise eligible" criteria in section 477(i)(1) of the Social Security Act (the Act)?

A: No. For purposes of the ETV program, section 477(i)(2) of the Act permits former foster youth who have been adopted from foster care to be considered as "youth otherwise eligible" for services. However, it restricts eligibility to youth who are adopted on or after the youth's 16th birthday.

Source: 4/4/05

Reference: Social Security Act - Section 477(i)(1) and (2)

3 **Q:** Must students attend school full-time to receive a Chafee Educational and Training Voucher?

A: No. Federal law does not require that students attend school on a full-time basis to receive a voucher.

Source: 4/4/05

Reference: Social Security Act - Section 477(i); Higher Education Act of 1965, as amended - Section 472.

4 **Q:** If a youth has been receiving a Chafee voucher to attend college, but is not taking classes during the semester the youth turns age 21, will the youth continue to be eligible for a voucher through age 23?

A: If the State determines that the youth is still enrolled, based on the academic institution's definition of "enrollment," in a postsecondary education or training program and has been making satisfactory progress toward completing the program, despite not actually taking classes at the time the youth turns 21, the State may continue the youth's eligibility for a voucher until age 23 (section 477(i)(3) of the Social Security Act). The State should consult the individual institution's policy on enrollment and standards for satisfactory academic progress to make this determination.

Source: 4/4/05

Reference: Social Security Act - Section 477(i)(3)

5 **Q:** Would a voucher be available for a youth to get an adult high school certificate or General Equivalency Degree (GED) at a community college?

A: Typically, no, because Chafee requires that a youth attend an institution of higher education, as defined in section 102 of the Higher Education Act (HEA) of 1965, as amended. Among other things, HEA defines what constitutes an "institution of higher learning" based on certain criteria. We encourage the State to consult the specific community college or institution of higher education about whether such a youth is considered a student for whom the institution can calculate the cost of attendance and whether the college or institution of higher education meets the criteria in sections 101 and 102 of HEA.

Source: 4/4/05

Reference: Social Security Act - Section 477(i); Higher Education Act of 1965, as amended - Section 472

3.5B Coordination and Duplication

1 **Q:** The Chafee voucher program requires States to describe how they will avoid duplication of benefits under this and any other Federal assistance program. Does this mean that an award of an educational and training voucher precludes a youth from also receiving a Pell grant award?

A: No. A youth may receive both a Pell grant and a voucher. "Avoiding duplicated benefits" means that the youth cannot receive a combination of Federal educational assistance and vouchers that totals more than the actual cost of attendance, or otherwise claim for the same expense under multiple Federal programs.

Source: 4/4/05

Reference: Social Security Act ¿ Section 477(b)(3)(J), Section 477(i)(5)

3.5C Eligible Expenses and Institutions

1 **Q:** What type of institutions fall within the definition of "institution of higher education" for the purposes of the educational and training voucher program under section 477 of the Social Security Act?

A: The term "institution of higher education" is defined in Sections 101 and 102 of the Higher Education Act (HEA) of 1965, as amended. The U.S. Department of Education, Office of Postsecondary Education, can help States determine which institutions meet the law?s criteria. In general, the term includes three different types of institutions: public and nonprofit institutions of higher education; proprietary institutions of higher education; and postsecondary vocational institutions.

A public or nonprofit institution of higher education must meet the following criteria (section 101(a) and (b) of HEA):

(1) admits as regular students only persons with a high school diploma or General Equivalency Degree (GED), OR students above the age of compulsory school attendance in the State where the institution is located;

(2) is authorized by the State to provide postsecondary education;

(3) provides an educational program for which the institution awards a bachelor?s degree or at least a two-year program (e.g., an associate degree) that is acceptable for full credit toward such a degree OR provides at least a one-year training program to prepare students for gainful

employment in a recognized occupation; and

(4) is accredited by a nationally recognized accrediting agency or association, recognized by the Department of Education, or has been granted pre-accreditation status by the agency or association, and the Secretary has determined that there is a satisfactory assurance that the institution will meet the accreditation standards of the agency or association within a reasonable time.

A proprietary (for-profit) institution of higher education must provide a training program to prepare students for gainful employment in a recognized occupation and meet the same criteria as described in (1) and (2) above for public or nonprofit schools. In addition, the institution must: be accredited by an agency or association recognized by the Department of Education; be in existence for at least two years; and, have at least 10 percent of its funding come from sources other than title IV of HEA (section 102(a)(1)(A) and 102(b) of HEA).

A postsecondary vocational institution must be a public or nonprofit school in existence for at least two years, which provides a training program to prepare students for gainful employment in a recognized occupation. The school must also meet the criteria described in (1), (2) and (4) above (section 102(a)(1)(B)) and 102(c) of HEA).

Certain institutions may not be considered an "institution of higher education" without obtaining special Secretarial approval if they have a high percentage of distance learning classes or students, incarcerated students and students without a high school degree, or have previously filed for bankruptcy or have been convicted of fraud using HEA funds (section 102(a)(3) and (a)(4) of HEA). Schools outside of the United States cannot be considered institutions of higher education for the purposes of the Educational and Training Voucher program (section 102(a)(1)(C) of HEA).

Source: 4/4/05

Reference: HEA of 1965 ¿ Section 101 and 102

2 **Q:** Section 477(i)(4) of the Social Security Act allows States to use educational and training vouchers to pay for the "cost of attendance" up to $5,000 per year. What is included in the definition of "cost of attendance?"

A: The definition of "cost of attendance" is in section 472 of the Higher Education Act of 1965, as amended. The cost of attendance is calculated by the institution of higher education in establishing a youth?s financial need and can vary depending on the student?s full-time or

part-time status and where the student is receiving instruction (i.e., in jail, study-abroad or distance learning).

In general, the definition includes a student's:
? Tuition, fees and other equipment or materials required of all students in the same course of study
? Books, supplies and an allowance for transportation costs and miscellaneous personal expenses, including computers
? Room and board (which may vary depending on whether the student lives at home, in student-housing or an apartment)
? Child care expenses for a student who is a parent
? Accommodations related to the student's disability, such as a personal assistant or specialized equipment that is not paid for by another source
? Expenses related to the youth's work experience in a cooperative education program
? Student loan fees or insurance premiums on the student loan

Source: 4/4/05

Reference: Higher Education Act of 1965, as amended ¿ Section 472; Social Security Act ¿ Section 477(i)(4)

3 **Q:** What child care expenses are included in the definition of "cost of attendance" for the voucher program?

A: According to the Higher Education Act of 1965, as amended, if the youth has at least one child, the cost of attendance includes an allowance for child care expenses. The institution must determine the actual allowance, if any, for child care expenses. The institution's determination must be based on the number and age of the youth's child(ren) and may not exceed the reasonable cost for child care in the community where the youth lives. The expenses may cover, but are not limited to, child care necessary for class attendance, periods of study, field-work, internships, and commuting time.

Source: 4/4/05

Reference: Higher Education Act of 1965 ¿ Section 472

4 **Q:** If the State is paying for the "cost of attendance" for a student under the Educational and Training Voucher program, what are allowable transportation expenses under the definition of "cost of attendance?" May the State use funds from the voucher program to pay for expenses related to a student's personal vehicle?

A: There is no statutory definition of allowable transportation expenses. The institution may determine the amount of transportation expenses, if any, to allow in determining the cost of attendance. The State should consult with the institution to determine which expenses are allowable and appropriate.

If expenses related to the student's personal vehicle are not a part of the cost of attendance, they are not an allowable expense under the voucher program. The State may pay for costs, such as a youth's car insurance or car repairs, that are reasonable and necessary for the youth to become independent or attend classes out of regular Chafee program funds.

Source: 4/4/05

Reference: Social Security Act ¿ Section 477

5 ***Q:*** Can the State use funds awarded in the current fiscal year for the Educational and Training Voucher (ETV) program to pay all or a portion of a youth¿s educational or vocational student loans from previous years?

A: No. Fundamental principles of both appropriations law and grants management policy dictate that funds are not available for expenditure or obligation by the grantee (in this case, the State) until they are awarded to the grantee. Accordingly, funds cannot be expended by a grantee for costs incurred prior to the effective date of the grant award. The use of a current fiscal year's ETV funds to finance a youth's educational or vocational loans that were incurred prior to the awarding of grant funds is prohibited.

Source: 4/4/05

Reference: Social Security Act ¿ Section 477; GAO/OGC-91-5, Vol. 1, Chapter 5

6 ***Q:*** There is a $5,000 per year maximum per youth for the Educational and Training Voucher fund. Does this maximum apply only to Federal funds? If so, can the State spend additional dollars from all-State funds or other sources for this purpose?

A: Yes to both questions. Consistent with section 474(a)(4) of the Social Security Act, a State will be reimbursed for 80 percent of the amount of a youth?s voucher, up to the $5,000 per year/per youth maximum. The State is responsible for a 20 percent match up to that limit. The State is free to use additional State or other funds for this purpose.

Source: 4/4/05

Reference: Social Security Act ¿ Section 474(a)(4)

7 **Q:** Section 477(i)(4)(B) of the Social Security Act states that a voucher or vouchers provided for an individual "shall not exceed the lesser of $5,000 per year or the total cost of attendance, as defined in the Act." Does the $5,000 ceiling apply to an academic year, a Federal or State fiscal year, a calendar year or any 12-month period?

A: Since the law does not define the term "year" as applied to the $5,000 ceiling, the State has the discretion to decide the 12-month period to which to apply the ceiling. Accordingly, the voucher amount of up to $5,000 per year/per youth may be for any 12-month period of the State?s choosing. It should be noted, however, that the funds must be spent within the two-year expenditure period that is based on the Federal fiscal year.

Source: 4/4/05

Reference: Social Security Act ¿ Section 474(i)(B)(4)

8 **Q:** Would a voucher be available for a youth to get an adult high school certificate or General Equivalency Degree (GED) at a community college?

A: Typically, no, because Chafee requires that a youth attend an institution of higher education, as defined in section 102 of the Higher Education Act (HEA) of 1965, as amended. Among other things, HEA defines what constitutes an "institution of higher learning" based on certain criteria. We encourage the State to consult the specific community college or institution of higher education about whether such a youth is considered a student for whom the institution can calculate the cost of attendance and whether the college or institution of higher education meets the criteria in sections 101 and 102 of HEA.

Source: 4/4/05

Reference: Social Security Act - Section 477(i); Higher Education Act of 1965, as amended - Section 472

3.5D Administrative Costs

1 **Q:** Can a State claim the administrative costs under the title IV-E Foster Care program (section 474(a)(3) of the Social Security Act (the Act)) for implementing the Educational and Training Voucher program?

A: No. Only costs that are closely related to the administration of the title IV-E foster care maintenance payments or adoption assistance programs may be claimed under section 474(a)(3) of the Act.

Source: 4/4/05

Reference: Social Security Act ¿ Section 474

2 **Q:** Can Chafee voucher program funds be used to pay for staffing?

A: Yes. States may use funds from the voucher program to pay for the salaries, expenses and training of staff who administer the State's voucher program. States must properly allocate costs to all benefiting programs, and the allocation of such costs must be included in the State?s approved cost allocation plan.

Source: 4/4/05

Reference: Social Security Act ¿ Section 477

3.5E Independent Living, Educational and Training Vouchers, Match

1 **Q:** Can non-State funds (e.g., private dollars, in-kind) be used to match the voucher funds?

A: Yes. States may use third-party, in-kind sources to match Chafee funds consistent with 45 CFR Part 75.306.

Note: This answer previously referenced 45 CFR Part 92. 45 CFR Part 75 supersedes 45 CFR Part 92 effective December 26, 2014 (79 FR 75871, Dec. 19, 2014).

Source: *4/4/05 (revised 11/2/2016)*

Reference: *45 CFR Part 75; 79 FR 75871, Dec. 19, 201492; 81 FR 3022, Jan. 20, 2016*

2 ***Q:*** Must State or in-kind funds used to match the voucher program follow the same program rules as the Federal dollars?

A: Yes. States may not use matching funds for unallowable costs of the voucher program or to otherwise serve youth who are ineligible for the vouchers in accordance with 45 CFR 75.306.

Note: This answer previously referenced 45 CFR Part 92. 45 CFR Part 75 supersedes 45 CFR Part 92 effective December 26, 2014 (79 FR 75871, Dec. 19, 2014).

Source: *4/4/05 (revised 11/2/2016)*

Reference: *45 CFR Part 75; 79 FR 75871, Dec. 19, 2014; 81 FR 3022, Jan. 20, 2016*

3.5F Use of Funds

1 ***Q:*** Can funds for the voucher program be used for non-voucher related expenses, i.e., mentoring programs or other supportive activities for eligible youth?

A: No. Section 477(h)(2) of the Social Security Act (the Act) restricts funds under the voucher program to "education and training vouchers for youths who age out of foster care." Therefore, States may use voucher funds only to provide the vouchers and conduct administrative activities necessary to provide the vouchers. States may, however, use the regular Chafee program funds authorized under section 477(h)(1) of the Act to support these and other activities not allowable under the Educational and Training Voucher program.

Source: *4/4/05*

Reference: *Social Security Act ¿ Section 477*

4. MEPA/IEAP

4.1 MEPA/IEAP, Diligent Recruitment

1 ***Q:*** Can you give us some guidance with respect to satisfying the diligent recruitment requirements of the Multiethnic Placement Act (MEPA)?

A: As recognized in the MEPA, in order to achieve timely and appropriate placement of all children, placement agencies need an adequate pool of families capable of promoting each child's development and case goals. This requires that each agency's recruitment process focuses on developing a pool of potential foster and adoptive parents willing and able to foster or adopt the children needing placement. The failure to conduct recruitment in a manner that seeks to provide all children with the opportunity for placement, and all qualified members of the community an opportunity to adopt is inconsistent with the goals of MEPA and could create circumstances which would constitute a violation of Title VI of the Civil Rights Act of 1964 and section 471(a)(18) of the Social Security Act.

An adequate recruitment process has a number of features. Recruitment efforts should be designed to provide to potential foster and adoptive parents throughout the community information about the characteristics and needs of the available children, the nature of the foster care and adoption processes, and the supports available to foster and adoptive families.

Both general and targeted recruiting are important. Reaching all members of the community requires use of general media--radio, television, and print. In addition, information should be disseminated to targeted communities through community organizations, such as religious institutions and neighborhood centers. The dissemination of information is strengthened when agencies develop partnerships with groups from the communities from which children come, to help identify and support potential foster and adoptive families and to conduct activities which made the waiting children more visible.

To meet MEPA's diligent efforts requirements, an agency should have a comprehensive recruitment plan that includes:

1) a description of the characteristics of waiting children; 2) specific strategies to reach all parts of the community; 3) diverse methods of disseminating both general and child specific information; 4) strategies for assuring that all prospective parents have access to the home study process, including location and hours of services that facilitate access by all members of the community; 5) strategies for training staff to work with diverse cultural, racial, and economic communities; 6) strategies for dealing with linguistic barriers; 7) non-discriminatory fee structures, and 8) procedures for a timely search for prospective parents for a waiting child, including the use of exchanges and other interagency efforts, provided that such procedures must insure that placement of a child in an appropriate household is not delayed by the search for a same race or ethnic placement.

Agencies receiving Federal funds may not use standards related to income, age, education, family structure, and size or ownership of housing, which include groups of prospective parents on the basis of race, color, or national origin, where those standards are arbitrary or unnecessary or where less exclusionary standards are available.

Source:

Reference: Social Security Act - Section 471(a)(18); The Multiethnic Placement Act (MEPA) of 1994 (PL 103-382); Title VI of the Civil Rights Act of 1964; The Small Business Job Protection Act of 1996 (Public Law 104-188).

2 ***Q:*** Is it permissible under the Multiethnic Placement Act (MEPA) to target minority families that

are representative of the children in foster care in our recruitment of potential foster and adoptive parents?

A: To comply with the "diligent recruitment" provision, MEPA allows for targeted recruitment to increase the number of minority families in the pool of families available to provide adoptive or foster family homes. A title IV-E agency may conduct targeted recruitment activities for a special population itself and/or it may utilize the services of a private recruitment agency based on that agency's understanding of the needs of a specific community. However, targeted recruitment activities cannot be the only vehicle used by a title IV-E agency for identifying families for minority children. The overall recruitment program of the title IV-E agency must be open to all qualified families regardless of race, color, or national origin.

Source: ACYF-CB-PI-95-23 (10/11/95) (revised 07/14/10)

Reference: Social Security Act - section 422(b)(9); The Multiethnic Placement Act (MEPA) of 1994 (PL 103-382); The Small Business Job Protection Act of 1996 (PL104-188)

4.2 MEPA/IEAP, Enforcement of Section 471 (a)(18) of the SSA

1 *Q:* What criteria will be used to determine if a violation of section 471(a)(18) of the Act has occurred?

A: We have not developed any specific "criteria" for determining if a violation of section 471(a)(18) of the Social Security Act (the Act) has occurred. We will determine on a case-by-case basis whether the title IV-E agency has delayed or denied a child's adoptive or foster care placement or denied a person the opportunity to become an adoptive or foster parent based on race, color, or national origin. It is impossible to define every situation and circumstance that would result in a civil rights violation. Thus, the ACF Regional office will review the specific facts of each case to determine if a title IV-E agency or entity is in violation of section 471(a)(18) or if a policy or practice is consistent with previously issued guidance.

Source: Preamble to the Final Rule (65 FR 4020) (1/25/00) (revised 07/14/10)

Reference: Social Security Act - section 471 (a)(18); 45 CFR 1355.38

2 **Q:** Section 474(a) of the Social Security Act restricts the application of penalties for MEPA violations to one fiscal year. By what authority can ACF continue a penalty into the next fiscal year?

A: The regulations do not provide for a continuation of a penalty into the subsequent fiscal year if a title IV-E agency fails to come into compliance. ACF may and has the authority to initiate a full or partial review in a subsequent fiscal year for those title IV-E agencies that are in violation of section 471(a)(18) of the Act and have failed to complete corrective action to come into compliance. Thus, any statute, regulation, policy, procedure or practice that remains uncorrected from a previous fiscal year may result in a new finding of a violation of noncompliance with section 471(a)(18) of the Act. We will not disregard an uncorrected violation simply because a fiscal year has ended. It is part of the Department's oversight responsibility to ensure that all title IV-E agencies are in compliance with section 471(a)(18) of the Act at any given time and any uncorrected violation may be subject to a review at the beginning of a new fiscal year.

Source: Preamble to the Final Rule (65 FR 4020) (1/25/00) (revised 07/14/10)

Reference: Social Security Act - section 471 (a)(18); 45 CFR 1355.38

3 **Q:** Does section 471(a)(18) of the Social Security Act (the Act) apply to a private international adoption agency that receives Federal funds, but not title IV-E funds?

A: No. Section 471(a)(18) of the Act is a title IV-E plan requirement. Therefore, private agencies that do not receive title IV-E funds are not subject to the title IV-E plan provisions, even if such agencies receive Federal funds from a source other than title IV-E and are involved in adoption or foster care placements of any type. However, these private agencies still must ensure that they do not violate Title VI of the Civil Rights Act of 1964 (Title VI) by delaying or denying a foster care or adoption placement decision on the basis of race, color or national origin (Section 1808(c) of Public Law 104-188). Title IV-E agencies should note that all entities, both public and private, that receive any Federal funds, regardless of the source, and regardless of whether those funds are used for child welfare purposes, must comply with title VI. Title VI broadly prohibits all federally funded entities from discriminating, denying benefits or excluding an individual from participating in an activity or program on the basis of race, color, or national origin. The U.S. Department for Health and Human Services Office for Civil Rights (OCR) enforces title VI. For more information on Title VI, please refer to the OCR Title VI fact sheet:

https://archive.hhs.gov/ocr/title6.html.

Source: *12/31/07 (revised 07/14/10)*

Reference: *Social Security Act section 471(a)(18); P.L. 104-188 section 1808(c)*

4.3 MEPA/IEAP, Guidance for Compliance

1 ***Q:*** What are examples of some impermissible activities under the Multiethnic Placement Act (MEPA)?

A: MEPA reflects Congress' judgement that children are harmed when placements are delayed for a period longer than is necessary to find qualified families. The legislation seeks to eliminate barriers that delay or prevent the placement of children into qualified homes. In particular, it focuses on the possibility that policies with respect to matching children with families of the same race, culture, ethnicity may result in delaying, or even preventing, the adoption of children by qualified families. It also is designed to ensure that every effort is made to develop a large and diverse pool of potential foster and adoptive families, so that all children can be quickly placed in homes that meet their needs.

In the context of child placement decisions, the United States Constitution and Title VI of the Civil Rights Act of 1964 (Title VI) forbid decision making on the basis of race or the ethnicity unless the consideration advances a compelling governmental interest. The only compelling governmental interest, in this context, is protecting the "best interests" of the child who is to be placed. Moreover, the consideration must be narrowly tailored to advancing the child's interests and must be made as an individualized determination for each child. An adoption agency may take race into account only if it has made an individualized determination that the facts and circumstances of the specific case require the consideration of race in order to advance the best interests of the specific child. Any placement policy that takes race or ethnicity into account is subject to strict scrutiny by the courts to determine whether it satisfies these tests.

Practices that clearly violate MEPA or Title VI include statutes or policies that:

1) establish time periods during which only a same race/ethnicity search will occur;
2) establish orders of placement preferences based on race, culture, or ethnicity;
3) require caseworkers to specially justify transracial placements; or
4) otherwise have the effect of delaying placements, either before or after termination of parental rights, in order to find a family of a particular race, culture, or ethnicity.

Other rules, policies, or practices that do not meet the constitutional strict scrutiny test would also be illegal.

Source: "Policy Guidance: Race, Color, or National Origin As Considerations in Adoption and Foster Care Placements," United States Department of Health and Human Services (4/20/95)

Reference: The Multiethnic Placement Act (MEPA) of 1994 (PL 103-382; Title VI of the Civil Rights Act of 1964

2 ***Q:*** May public agencies allow foster or adoptive parents to specify the race, color, national origin, ethnicity or culture of children for whom they are willing to provide care?

A: In making decisions about placing a child, whether in an adoptive or foster setting, a public agency must be guided by considerations of what is in the best interests of the child in question. The public agency must also ensure that its decisions comply with statutory requirements. Where it comes to the attention of a public agency that particular prospective parents have attitudes that relate to their capacity to nurture a particular child, the agency may take those attitudes into consideration in determining whether a placement with that family would be in the best interests of the child in question.

The consideration of the ability of prospective parents to meet the needs of a particular child should take place in the framework of the general placement decision, in which the strengths and weaknesses of prospective parents to meet all of a child's needs are weighed so as to provide for the child's best interests, and prospective parents are provided the information they need realistically to assess their capacity to parent a particular child. An important element of good social work practice in this process is the individualized assessment of a prospective parent's ability to serve as a foster or adoptive parent. This assessment can include an exploration of the kind of child with whom a prospective parent might comfortably form an attachment. It is appropriate in the context of good practice to allow a family to explore its limitations and consider frankly what conditions (for example, disabilities in children, the number of children in a sibling group, or children of certain ages) family members would be able or willing to accept. The function of assessing the needs and limitations of specific prospective foster or adoptive parents in order to determine the most appropriate placement considering the various individual needs of a particular child is an essential element of social work practice, and critical to an agency's ability to achieve the best interests of that child. The assessment function is also critical, especially in adoptive placements, to minimizing the risk that placements might later disrupt or dissolve. The assessment function must not be misused as a generalized racial or ethnic screen; the assessment function cannot routinely include considerations of race or ethnicity.

The Department generally does not distinguish between foster and adoptive settings in terms of an agency's consideration of the attitudes of prospective parents. However, it is possible that a public agency may attach different significance in assessing the best interests of a child in need of short term or emergency placement.

Agencies are not prohibited from discussing with prospective adoptive and foster parents their feelings, capacities and preferences regarding caring for a child of a particular race or ethnicity, just as they discuss other individualized issues related to the child. However, as the

Department has emphasized, any consideration of race or ethnicity must be done in the context of individualized placement decisions. An agency may not rely on generalizations about the needs of children of a particular race or ethnicity, or on generalizations about the abilities of prospective parents of one race or ethnicity to care for a child of another race or ethnicity.

Source: ACYF-CB-IM-98-03 (5/11/98)

Reference: Social Security Act - Titles IV-B and IV-E; The Small Business Job Protection Act of 1996 (PL104-188); The Multiethnic Placement Act of 1994 (PL 103-382)

3 ***Q:*** May public agencies assess the racial, national origin, ethnic and/or cultural needs of all children in foster care, either by assessing those needs directly or as part of another assessment such as an assessment of special needs? May they do this for a subset of all children in foster care?

A: Public agencies may not routinely consider race, national origin and ethnicity in making placement decisions. Any consideration of these factors must be done on an individualized basis where special circumstances indicate that their consideration is warranted. A practice of assessing all children for their needs in this area would be inconsistent with an approach of individually considering these factors only when specific circumstances indicate that it is warranted.

Assessment of the needs of children in foster care, and of any special needs they may have that could help to determine the most appropriate placement for a child, is an essential element of social work practice for children in out-of-home care, and critical to an agency's ability to achieve the best interests of the child.

Section 1808 of Public Law 104-188 by its terms addresses only race, color, or national origin, and does not address the consideration of culture in placement decisions. There are situations where cultural needs may be important in placement decisions, such as where a child has specific language needs. However, a public agency's consideration of culture would raise Section 1808 issues if the agency used culture as a proxy for race, color or national origin. Thus, while nothing in Section 1808 directly prohibits a public agency from assessing the cultural needs of all children in foster care, Section 1808 would prohibit an agency from using routine cultural assessments in a manner that would circumvent the law's prohibition against the routine consideration of race, color or national origin.

Source: ACYF-CB-IM-98-03 (5/11/98)

Reference: Social Security Act - Titles IV-B and IV-E; The Small Business Job Protection Act of 1996 (PL104-188); The Multiethnic Placement Act of 1994 (PL 103-382)

4 ***Q:*** May public agencies assess the racial, national origin, ethnic and/or cultural capacity of all foster or adoptive parents, either by assessing that capacity directly or as part of another assessment such as an assessment of strengths and weaknesses?

A: No. Race, color and national origin may not routinely be considered in assessing the capacity of particular prospective foster or adoptive parents to care for specific children. However, assessment by an agency of the capacity of particular adults to serve as foster or adoptive parents for specific children is at the heart of the placement process, and essential to determining what would be in the best interests of a particular child.

Source: ACYF-CB-IM-98-03 (5/11/98)

Reference: Social Security Act - Titles IV-B and IV-E; The Small Business Job Protection Act of 1996 (PL104-188); The Multiethnic Placement Act of 1994 (PL 103-382)

5 Q: May public agencies honor the request of birth parents to place their child, who was involuntarily removed, with foster parents of a specific racial, national origin, ethnic and/or cultural group? What if the child was voluntarily removed?

A: No, not even if the child is voluntarily removed.

Source: ACYF-CB-IM-98-03 (5/11/98)

Reference: Social Security Act - Titles IV-B and IV-E; The Small Business Job Protection Act of 1996 (PL104-188); The Multiethnic Placement Act of 1994 (PL 103-382)

6 Q: If an action by a public agency will not delay or deny the placement of a child, may that agency use race to differentiate between otherwise acceptable foster/adoptive placements?

A: No.

Source: ACYF-CB-IM-98-03 (5/11/98)

Reference: Social Security Act - Titles IV-B and IV-E; The Small Business Job Protection Act of 1996 (PL104-188); The Multiethnic Placement Act of 1994 (PL 103-382)

7 ***Q:*** May public agencies decline to transracially place any child with a foster/adoptive parent who has unsatisfactory cultural competency skills?

A: Good practice requires an assessment of the capacity of potential foster/adoptive parents to accommodate all the needs of a particular child. It is conceivable that in a particular instance race, color or national origin would be a necessary consideration to achieve the best interests of the child. However, any placement decision must take place in a framework that assesses the strengths and weaknesses of prospective parents to meet all of a child's needs so as to provide for the child's best interests. Prospective parents should be offered, typically through training provided by an agency, information sufficient to confirm or broaden their understanding of what types of children for whom they might most appropriately provide a home.

Source: ACYF-CB-IM-98-03 (5/11/98)

Reference: Social Security Act - Titles IV-B and IV-E; The Small Business Job Protection Act of 1996 (PL104-188); The Multiethnic Placement Act of 1994 (PL 103-382)

8 ***Q:*** How can public agencies assure themselves that they have identified an appropriate placement for a child for whom racial, national origin, ethnic and/or cultural needs have been documented?

A: Adoption agencies must consider all factors that may contribute to a good placement decision for a child, and that may affect whether a particular placement is in the best interests of the child. Such agencies may assure themselves of the fitness of their work in a number of ways, including case review conferences with supervisors, peer reviews, judicial oversight, and quality control measures employed by title IV-E agencies and licensing authorities. In some instances it is conceivable that, for a particular child, race, color or national origin would be such a factor. Permanency being the sine qua non of adoptive placements, monitoring the rates of disruption or dissolution of adoptions would also be appropriate. Where it has been established that considerations of race, color or national origin are necessary to achieve the best interests of a child, such factor(s) should be included in the agency's decision-making, and would appropriately be included in reviews and quality control measures such as those described above.

Source: ACYF-CB-IM-98-03 (5/11/98)

Reference: Social Security Act - Titles IV-B and IV-E; The Small Business Job Protection Act of 1996 (PL104-188); The Multiethnic Placement Act of 1994 (PL 103-382)

9 Q: May a home finding agency that contracts with a public agency, but that does not place children, recommend only homes that match the race of the foster or adoptive parent to that of a child in need of placement?

A: No. A public agency may contract with a home finding agency to assist with overall recruitment efforts. Some home finding agencies may be used because of their special knowledge and/or understanding of a specific community and may even be included in a public agency's targeted recruitment efforts. Targeted recruitment cannot be the only vehicle used by a title IV-E agency to identify families for children in care, or any subset of children in care, e.g., older or minority children. Additionally, a home finding agency must consider and include any interested person who responds to its recruitment efforts.

Source: ACYF-CB-IM-98-03 (5/11/98) (revised 07/14/10)
Reference: Social Security Act - Titles IV-B and IV-E; The Small Business Job Protection Act of 1996 (PL104-188); The Multiethnic Placement Act of 1994 (PL 103-382)

10 Q: May a home finding agency that contracts with a public agency, but that does not place children, dissuade or otherwise counsel a potential foster or adoptive parent who has unsatisfactory cultural competency skills to withdraw an application or not pursue foster parenting or adoption?

A: No. No adoptive or foster placement may be denied or delayed based on the race of the prospective foster or adoptive parent or based on the race of the child. Dissuading or otherwise counseling a potential foster or adoptive parent to withdraw an application or not pursue foster parenting or adoption strictly on the basis of race, color or national origin would be a prohibited delay or denial.

The term "cultural competency," as we understand it, is not one that would fit in a discussion of adoption and foster placement. However, agencies should, as a matter of good social work practice, examine all the factors that may bear on determining whether a particular placement is in the best interests of a particular child. That may in rare instances involve consideration of

the abilities of prospective parents of one race or ethnicity to care for a child of another race or ethnicity.

Source: ACYF-CB-IM-98-03 (5/11/98)

Reference: Social Security Act - Titles IV-B and IV-E; The Small Business Job Protection Act of 1996 (PL104-188); The Multiethnic Placement Act of 1994 (PL 103-382)

11 Q: May a home finding agency that contracts with a public agency, but that does not place children, assess the racial, national origin, ethnic and/or cultural capacity of all adoptive parents, either by assessing that capacity directly or as part of another assessment such as an assessment of strengths and weaknesses? May they do this for a subset of adoptive parents, such as white parents?

A: No. There should be no routine consideration of race, color or national origin in any part of the adoption process. Any assessment of an individual's capacity to be a good parent for any child should be made on an individualized basis by the child's caseworker and not by a home finding agency. Placement decisions should be guided by the child's best interest. That requires an individualized assessment of the child's total needs and an assessment of a potential adoptive parent's ability to meet the child's needs.

Source: ACYF-CB-IM-98-03 (5/11/98)

Reference: Social Security Act - Titles IV-B and IV-E; The Small Business Job Protection Act of 1996 (PL104-188); The Multiethnic Placement Act of 1994 (PL 103-382)

12 Q: How does HHS define "culture" in the context of MEPA guidance?

A: HHS does not define culture. Section 1808 of Public Law 104-188 addresses only race, color, or national origin, and does not directly address the consideration of culture in placement decisions. A public agency is not prohibited from the nondiscriminatory consideration of culture in making placement decisions. However, a public agency's consideration of culture must comply with Section 1808 in that it may not use culture as a replacement for the prohibited consideration of race, color or national origin.

Source: ACYF-CB-IM-98-03 (5/11/98)

Reference: Social Security Act - Titles IV-B and IV-E; The Small Business Job Protection Act of 1996 (PL104-188); The Multiethnic Placement Act of 1994 (PL 103-382)

13 Q: Please provide examples of what is meant by delay and denial of placement in foster care, excluding situations involving adoption.

A: Following are some examples of delay or denial in foster care placements:

1) A white newborn baby's foster placement is delayed because the social worker is unable to find a white foster home; the infant is kept in the hospital longer than would otherwise be necessary and is ultimately placed in a group home rather than being placed in a foster home with a minority family.

2) A minority relative with guardianship over four black children expressly requests that the children be allowed to remain in the care of a white neighbor in whose care the children are left. The title IV-E agency denies the white neighbor a restricted foster care license, which will enable her to care for the children. The agency's license denial is based on its decision that the best interests of the children require a same-race placement, which will delay the permanent foster care placement. There was no individualized assessment or evaluation indicating that a same-race placement is actually in the best interests of the children.

3) Six minority children require foster placement, preferably in a family foster home. Only one minority foster home is available; it is only licensed to care for two children. The children remain in emergency shelter until the agency can recertify and license the home to care for the six children. The children remain in an emergency shelter even though a white foster home with capacity and a license to care for six children is available.

4) Different standards may be applied in licensing white versus minority households resulting in delay or denial of the opportunity to be foster parents.

5) Foster parent applicants are discouraged from applying because they are informed that waiting children are of a different race.
6) There are placement delays and denials when title IV-E agencies expend time seeking to honor the requests of biological parents that foster parents be of the same race as the child.

Source: ACYF-CB-IM-98-03 (5/11/98) (revised 07/14/10)

Reference: Social Security Act - Titles IV-B and IV-E; The Small Business Job Protection Act of 1996 (PL104-188); The Multiethnic Placement Act of 1994 (PL 103-382)

14 Q: If a Tribal title IV-E agency places an Indian child in accordance with the Indian Child Welfare Act (ICWA), does that violate section 471(a)(18) of the Social Security Act (the Act)?

A: No. The Indian Child Welfare Act of 1978 (ICWA), Public Law 95-608, was passed in response to concerns about the large number of Indian children who were being removed from their families and Tribes and the failure of States to recognize the culture and tribal relations of Indian people. ICWA, in part, creates procedural protections and imposes substantive standards on the removal, placement, termination of parental rights and consent to adoption of children who are members of or are eligible for membership in an Indian tribe. ICWA and section 471(a)(18) of the Act work together to provide important protections for children. When a Tribal title IV-E agency places an Indian child (as defined by ICWA) according to the placement preferences established in ICWA, the agency is acting in accordance with section 474(d)(4) of the Act and 45 CFR 1355.38(a)(5). Therefore, it does not violate section 471(a)(18) of the Act.

However, Tribal title IV-E agencies must ensure that children achieve permanency in a timely manner (see section 471(a)(15)(C) of the Act). This is consistent with the Bureau of Indian Affairs' (BIA) guidance to State courts. The BIA has explained that if, after a diligent search has been completed for families in accordance with the ICWA preference criteria, and a suitable prospective foster care, preadoptive, or adoptive family has not been identified, the agency has good cause to expand the search beyond the order of preference (BIA Guidelines for State Courts; Indian Child Custody Proceedings; 44 FR 67584).

As with State agencies, if a Tribal title IV-E agency places a child to whom the ICWA protections do not apply, then the agency must comply with section 471(a)(18) of the Act, which prohibits agencies from:

- delaying or denying a child's foster care or adoptive placement on the basis of the child's or the prospective parent's race, color, or national origin; and
- denying to any individual the opportunity to become a foster or adoptive parent on the basis of the prospective parent's or the child's race, color, or national origin.

Source: 03/06/2012

Reference: Social Security Act - sections 471(a)(18) and 474; 45 CFR 1355.38(a)(5); The Indian Child Welfare Act of 1978; BIA Guidelines for State Courts on Indian Child Custody Proceedings; 44 FR 67584 (November 26, 1979)

5. MONITORING

5.1 MONITORING, Child and Family and Services Review (CFSR)

1 ***Q:*** The child and family services review assesses compliance with only certain State plan requirements rather than all State plan requirements. How will you ensure compliance with those State plan requirements not addressed in the child and family services review?

A: We have selected those requirements for the child and family services review that are most directly related to the achievement of successful outcomes in the areas of safety, permanence and child and family well-being. However, the State remains responsible for complying with all State plan requirements for titles IV-B and IV-E, even if each requirement is not subject to review in the child and family services review. The regulations at 45 CFR Section 1355.32 (d) clarify that we will use a partial review to determine conformity with State plan requirements outside the scope of the child and family services reviews. Because defining the variety of State plan compliance issues in advance is not possible, we will approach each circumstance on a case-by-case basis. Consistent with section 1123A, the necessary elements of the program improvement plan and, if necessary, the amount of the withholding, will be commensurate with the extent of the State's non-conformity.

Source: Preamble to the Final Rule (65 FR 4020) (1/25/00)

Reference: Social Security Act - section 1123A; 45 CFR 1355.32 (d)

2 **Q:** How will the child and family service reviews work in county-administered systems?

A: We did not make separate provisions for State-administered and county-administered systems. The State title IV-B and IV-E plan requirements subject to review are applicable to all counties in the State, and the statewide data indicators used in the reviews reflect statewide practice. The statewide assessment is designed to be completed by the State, not by individual counties, and responses should reflect official State policies and the most typical State practice, while noting where outstanding exceptions exist. It is only the locations of the on-site review that focus on specific counties, but that is true regardless of whether the State is county-administered or State-administered. The locations are determined based on the regulation, which requires that the State's largest city be a site, and by the statewide assessment, which provides information relevant to deciding the location of the other two review sites. Ultimately, we have no authority to hold individual counties accountable for compliance or non-compliance with the requirements being reviewed. It is the State that is accountable, and responsible for assuring that counties administering their own programs operate in compliance with applicable requirements.

Source: *Questions and Answers on the Final Rule (65 FR 4020) (1/25/00)*

Reference: *45 CFR 1355.33*

3 **Q:** At 45 CFR 1355.33 (b) are there special requirements or criteria for the "external partners" who are supposed to be included in the child and family services review team? Can these individuals be paid or compensated?

A: In the regulation, we identified agencies/entities external to the State that participated in the development of the State's Child and Family Services plan as appropriate partners to include on the review team. The State may cover per diem and travel expenses for its external partners' participation to the extent that it so chooses. Moreover, the State may, pursuant to an approved cost allocation plan, allocate the cost of conducting a child and family services review, which may include compensation for the State's external partners, to title IV-E.

Source: *Questions and Answers on the Final Rule (65 FR 4020) (1/25/00)*

Reference: *45 CFR 1355.33*

4 ***Q:*** What are the requirements for ensuring confidentiality during the case review portion of the review?

A: All case-specific information disclosed during a child and family services review is confidential. Both titles IV-B and IV-E have restrictive disclosure provisions (found at section 471 (a)(8) of the Act and 45 CFR 205.50). One of the purposes for which a State is authorized to disclose such information, however, is for an audit or similar activity conducted by the Department in connection with the State plan. Further, Federal regulations at 45 CFR 205.50 require that recipients of information concerning children and families receiving assistance and/or services from the title IV-B/IV-E agency be held to the same standards of confidentiality as the agency. The confidentiality standards for case-specific information are addressed in the procedures manual for use in conducting the child and family services review. In addition, the confidentiality of case records routinely will be reinforced during reviewer training prior to each review.

States have complete flexibility in establishing procedures to ensure that confidentiality requirements are met. States may choose to require the reviewers who are not State or Federal employees to sign confidentiality agreements prior to reviewing confidential information.

Source: Preamble to the Final Rule (65 FR 4020) (1/25/00)

Reference: Social Security Act - section 471 (a)(8); 45 CFR 205.50 and 1355.33 (c)

5 ***Q:*** For the on-site portion of the review, does including the State's largest metropolitan area impact the representativeness of the sample?

A: Urban areas often provide a disproportionate number of families who have contact with the child welfare system. In order to serve its stated purpose of improving outcomes for children and families, the review process must include this population of children and families. For example, the reviews could not accurately claim to represent statewide issues in Illinois without reviewing Chicago, in New York without reviewing New York City, or in California without reviewing Los Angeles. In selecting the locations for the on-site review, it is also important to represent the range of other environments in the State including rural and suburban areas with their unique family and resource issues. However, since the reviews will only permit on-site activities in a limited number of locations, we did not regulate geographic sites other than the largest metropolitan area. Beyond that, the statewide assessment guides the State and Regional ACF Offices in determining the most appropriate review sites given each State's unique characteristics, issues and population.

Source: Preamble to the Final Rule (65 FR 4020) (1/25/00)

Reference: 45 CFR 1355.33 (c)

6 ***Q:*** Do the child and family services reviews cover the title IV-E State plan requirement that prohibits States to delay or deny interjurisdictional adoptions?

A: Compliance with the requirement regarding interjurisdictional adoptions at 471 (a)(23) of the Act is not a specific factor covered in the child and family services reviews. However, because of the intensity of the CFS reviews, we may identify possible violations of this provision of the Act, as well as others not specifically covered in the CFS reviews. The requirement regarding interjurisdictional adoptions at section 471 (a)(23) has its own specific penalty and corrective action structure at section 474 (d) of the Act. In the child and family service reviews, we examine the State plan assurance, at section 422 (b)(12) of the Act, that the States will develop plans for the effective use of cross-jurisdictional resources to facilitate timely adoptive or permanent placements for waiting children. We do this through inquiries in our interviews with community stakeholders and through the statewide assessment regarding the ways in which States encourage or support interjurisdictional adoptions. In the on-site review, we also determine on a case-by-case basis if delays in adoptions are present and the factors that contribute to delays. If a child and family service review indicates a possible violation of the

requirement, the regulation at section 1355.32 (d) includes provisions for reviewing for compliance with State plan requirements that are outside the scope of the child and family services review, such as section 471 (a)(23).

Source: *Questions and Answers on the Final Rule (65 FR 4020) (1/25/00)*

Reference: *Social Security Act - sections 422 (b)(12), 471 (a)(23) and 474 (d); 45 CFR 1355.32 (d) and 1355.33*

7 ***Q:*** Certain performance indicators do not seem to be applicable to their related outcomes. For example, the performance indicators associated with Well-Being Outcome #1, Families have enhanced capacity to provide for their children's needs, are measures of process and do not equate with enhanced capacity for parents. Please explain the rationale for the choice of these performance indicators.

A: For each outcome to be reviewed, we selected indicators that, if met, are both within the scope of the State agency's range of responsibilities and are likely to promote outcome achievement. Each of the on-site indicators includes a subset of questions and issues that permits reviewers to explore the indicator below the surface level. We believe that this type of exploration during the on-site review is necessary to evaluate the quality of work and the successful achievement of outcomes for children and families. It is unlikely that individual performance indicators, in isolation, can be used to evaluate the outcomes accurately. In combination, however, the set of performance indicators associated with each outcome will provide a balanced perspective on the outcome.

Source: *Preamble to the Final Rule (65 FR 4020) (1/25/00)*

Reference: *45 CFR 1355.34 (b)*

8 **Q:** Well-Being Outcome #2, "Children receive appropriate services to meet their educational needs," is not an outcome that can necessarily be achieved by the child welfare system. Moreover, we question whether this outcome, as it is stated, meets the definition of an outcome. Please explain the rationale for its inclusion as an outcome.

A: The outcome delineated at 45 CFR 1355.34 (b)(1)(iii)(B), addresses the responsibilities of public child welfare agencies in regard to the educational needs of children in their care and custody. Certain aspects of the educational status of children are not within the control of the public child welfare agency. We do not think it appropriate to describe the outcome in more definitive terms and hold the State accountable for educational outcomes that must be addressed primarily through the State's educational agencies. Rather, we will review those responsibilities that the State child welfare agency legitimately has in this area: considering and addressing educational needs for children in case planning; obtaining and considering educational records for children in its care; and, where appropriate, advocating for children's educational needs with the education authorities in the State.

Source: Preamble to the Final Rule (65 FR 4020) (1/25/00)

Reference: 45 CFR 1355.34 (b)

9 **Q:** In enforcing the national standard for the statewide data indicators, will some States automatically fail to meet the standard, by definition, since the standard is set at the 75th percentile of State performance?

A: No. The national standards for the statewide data indicators will be established on the basis of all jurisdictions' submissions of data over several time periods. When the standard is set, it remains constant and, when the State is reviewed, the statewide data indicators are compared to the standard to determine conformity. It is possible, theoretically, that every State could submit data for the year under review that would be at or above the national standard. It is also possible that all States' submissions would fall below the standard or that any combination of States will meet or not meet the standard.

Source: Questions and Answers on the Final Rule (65 FR 4020) (1/25/00)

Reference: 45 CFR 1355.34 (b)

10 *Q:* Is a two year time period (plus the opportunity for a one year extension) for completing a program improvement plan excessive?

A: Not all program improvement plans will require two years to implement and the specific time frame for each State's plan will be negotiated and agreed upon between the State and ACF. In many States, complex issues are being litigated or settled on behalf of their child welfare systems. Therefore, some improvements will require extensive periods of time to implement. Systemic changes that lead to identifiable improvements in the outcomes for children and families cannot always be achieved by simply modifying a policy, creating new tracking procedures or implementing new standards. The following requirements are in place to ensure expeditious implementation and completion of program improvement plans:

(1) Time frames for a program improvement plan must be consistent with the seriousness and complexity of the remedies required for any areas determined not in substantial conformity.

(2) Particularly egregious areas of nonconformity impacting the safety of children in the State's responsibility must receive priority in both the content and time frames of the program improvement plans and must be satisfactorily addressed in less than two years.

(3) The Secretary must approve any extensions of deadlines in the program improvement plans and any requests to extend the program improvement plan by a third year. The circumstances under which requests for extensions would be approved are expected to be very rare and will require compelling documentation. Requests for extensions must be received by ACF at least 60 days prior to the affected completion date.

(4) Finally, in monitoring the implementation of program improvement plans, States must submit quarterly status reports to ACF, unless the State and ACF agree to less frequent reports. These reports will inform ACF of the State's progress in implementing the plan.

Source: *Preamble to the Final Rule (65 FR 4020) (1/25/00)*

Reference: *45 CFR 1355.35 (a) and (d)*

11 *Q:* Will you ensure that program improvement plans are consistent with any consent degrees by which States may be bound?

A: We are responsible for reviewing compliance with State plan requirements, and we must assure that the program improvement plan addresses applicable requirements. States are not required to include the provisions of consent decrees into program improvement plans because there is no assurance that the provisions of a State's consent decree do not conflict with Federal requirements. It is the States' responsibility to ensure that no such conflict exists. We are willing to work with States to minimize such conflict within our statutory and regulatory mandates.

Source: Preamble to the Final Rule (65 FR 4020) (1/25/00)

Reference: 45 CFR 1355.35 (a) and (d)

12 Q: What are the differences among calculating the amount of the penalty, suspending penalties, and rescinding penalties in the child and family service reviews?

A: The amount of the penalty is determined at the point that a determination of non-conformity is made and the State is notified of applicable penalties for the areas of non-conformity. If the State engages in a program improvement plan designed to correct the areas of non-conformity, the penalties are suspended pending the completion of the plan, or specific benchmarks within the plan. In that situation, no actual withholding of funds occurs while the State is actively engaging in and adhering to the provisions of the approved plan. If the State successfully completes the plan, the penalty is rescinded, meaning that no funds are actually withheld at any point. If the State fails to complete the plan successfully, we will withhold the penalty.

Source: Questions and Answers on the Final Rule (65 FR 4020) (1/25/00)

Reference: 45 CFR 1355.36

13 **Q:** During a child and family services review, a State must meet certain thresholds to be determined in substantial conformity (i.e., achievement of the outcomes in 90% or 95% of the cases (as applicable) and the national standards for the statewide data indicators). Must the State meet those same standards post-review in order to successfully complete a program improvement plan and for the penalty to be rescinded?

A: Not necessarily. One of the primary objectives of the child and family services reviews is to promote continued quality improvement. Therefore, the Administration for Children and Families (ACF) has structured the reviews so that a State has an opportunity to improve through a program improvement plan (PIP) before we withhold Federal funds (45 CFR 1355.35(a)).

Taking into consideration unique circumstances, ACF and the State may negotiate a level of improvement in the PIP that results in performance less than the applicable standards required for substantial conformity at 45 CFR 1355.34. For example, with respect to outcome achievement, the State and Regional Office may agree on a percentage of cases that meet the criteria for substantial conformity that is different from that defined for the CFS reviews in 45 CFR 1355.34(b)(3)(ii). Additionally, progress may be measured through an alternate method such as a special study or a quality assurance review. The State may also be permitted to use methods for determining the effectiveness of its improvement efforts in ways other than evaluating cases for substantial conformity.

The regulations require ACF to terminate the penalty if the State either completes a program improvement plan successfully or is determined by ACF to be in substantial conformity (45 CFR 1355.36(b)(3) and 1355.36(d)). If the State achieves the negotiated level of improvement, the associated penalties will be rescinded.

To promote continuous improvement, a State that does not achieve the regulatory standards for substantial conformity in the subsequent CFS review will again be determined to be not in substantial conformity and will be required to develop a new PIP that builds on past program improvement efforts (45 CFR 1355.35(a)(vi)). In addition, the associated penalty for each outcome or systemic factor that continues to be out of substantial conformity in a second full CFS review increases to two percent, or three percent in the third or subsequent full CFS review (45 CFR 1355.36(b)(7) and (8)).

Source: 8/16/02

Reference: 45 CFR 1355.34 - 1355.36

5.2 MONITORING, Title IV-E Eligibility Reviews

1 **Q:** Under what authority may the Department review closed or sealed foster care records, particularly for those children who have been adopted?

A: Section 471(a)(8) of the Social Security Act (the Act) requires a State Plan to provide safeguards restricting use and disclosure of information concerning individuals assisted by the foster care and adoption assistance programs. It also indicates that a State Plan must provide: Safeguards which restrict the use of information concerning individuals assisted under the State Plan to purposes directly connected with... (C) the administration of any other federal or federally assisted program which provides assistance, in cash or in kind, or services, directly to individuals on the basis of need, and (D) any audit or similar activity conducted in connection with the administration of any such plan or program by any governmental agency which is authorized by law to conduct such audit or activity; and the safeguards so provided shall prohibit disclosure, to any committee or legislative body (other than an agency referred to in (D), with respect to any activity referred to in such clause), of any information which identifies by name or address any such applicant or recipients except that nothing contained herein shall preclude a State from providing standards which restrict disclosures to purposes more limited than those specified herein, or which in the case of adoptions, prevent disclosure entirely.

While the language of section 471(a) (8) (D) provides that States may restrict disclosure entirely of adoption assistance records, that subsection, read in its entirety and in harmony with other sections of the Act, indicates that Congress did not intend to restrict access to federal auditors of information essential for audits under the title IV-E foster care and adoption assistance programs.

In particular, section 471(a) (8) (D) itself provides for disclosure of information concerning individuals assisted by the foster care and adoption assistance programs for purposes directly connected with audits conducted by the Federal Government and otherwise authorized by law.

The authority for Federal audits of the foster care and adoption assistance programs is expressly provided for under section 471 (a)(6) of the Act. That section requires that a State Plan, in order to qualify for Federal financial participation (FFP) for foster care and adoption assistance, provide that the appropriate State agency will make such reports, in such form and containing such information as the Secretary may from time to time find necessary to assure the correctness and verification of such reports.

The legislative history of section 471(a)(8) also reveals that while Congress was concerned about providing safeguards which limited access to information on individuals assisted by the

title IV-E programs, it did not intend to hinder the essential function of Federal audits. Thus, while Congress extended to States the option of imposing restrictions broader than those imposed in the past on the disclosure of information for the protection of the confidentiality of recipients of adoption assistance, it did not impede essential auditing functions by those authorized to conduct such audits.

Accordingly, in the case of reviews of the eligibility of foster care and adoption assistance claims, the State Agency must make available foster care and adoption records (including sealed foster care and adoption records) in order to document the eligibility of the beneficiaries (children) and related costs of administration. If the requested records cannot or are not made available, all payments made on behalf of the children whose records have not been made available for review and associated costs will be disallowed.

Source: ACYF-CB-PA-85-02 (12/19/85)

Reference: Social Security Act - section 471 (a)(6) and (8); H.R. Rep. Conf. No. 96-900, 96th Congress 2nd Session 44 (1980)

2 **Q:** Since only States, and not tribes, are reviewed, how do we assure that title IV-E eligibility requirements are met for children served by the tribes in foster care?

A: States and tribes that enter into agreements whereby the tribes access title IV-E foster care maintenance payments for children must determine between themselves how the roles and responsibilities for meeting title IV-E requirements will be shared. While tribes that enter into such agreements with States have the latitude to develop their own procedures for satisfying title IV-E requirements, the State child welfare agency is ultimately responsible for the proper administration of the title IV-E program and for assuring compliance. Children served by tribes who are receiving title IV-E foster care maintenance payments as part of a State/tribal agreement will be included in the sample of cases reviewed.

Source: Questions and Answers on the Final Rule (65 FR 4020) (1/25/00)

Reference: 45 CFR 1356.71

3 **Q:** Doesn't the requirement for the State to submit the complete payment history records for each sample case fail to comport with the regulation governing records retention at 45 CFR 74?

A: There is no inconsistency between the requirement that a State provide the complete payment history and the regulation at 45 CFR 74.53 (b) which, in pertinent part, states that "Financial records . . . shall be retained for a period of three years from the date of submission of the final expenditure report . . .". For a child in out-of-home care, the final expenditure report would not be submitted to ACF until such child is discharged from foster care.

Source: Preamble to the Final Rule (65 FR 4020) (1/25/00)

Reference: 45 CFR 1356.71(b)

4 **Q:** How will the eligibility of children receiving title IV-E foster care maintenance payments where the State or tribe is operating under a IV-E waiver demonstration be reviewed?

A: We will not review the files of children whose title IV-E eligibility would be affected by a waiver demonstration project. We pull a large enough oversample of cases for the title IV-E eligibility reviews to exclude those children from the sample of cases reviewed.

Source: Questions and Answers on the Final Rule (65 FR 4020) (1/25/00)

Reference: Social Security Act - section 1130 (A); 45 CFR 1356.71

5 **Q:** Should the review title IV-E foster care eligibility team include representatives that are external to the agency such as State foster care review board members, child advocates, etc.?

A: The purpose of the title IV-E financial review is to assess payment accuracy through an examination of case record documentation. Those individuals identified above possess expertise that would be utilized more effectively on a review of service delivery issues, such as the child and family services review. The Federal/State team combination is used to assist States in identifying strategies for training, technical assistance and corrective action, and to augment the knowledge of State staff about title IV-E eligibility requirements. For these

reasons, we see no benefit in expanding the review team composition to include external representatives. The State may, however, exercise its discretion in deciding the range of State and/or local staff to include on the team.

Source: Preamble to the Final Rule (65 FR 4020) (1/25/00)

Reference: 45 CFR 1356.71 (b)

6 **Q:** For title IV-E eligibility reviews, what is the expectation for determining whether a provider is properly licensed when a child is placed in foster care in another State?

A: Provider documentation requirements are the same for all children. The child must be placed in a licensed or approved foster family home, regardless of the State in which the home is located. The State must provide documentation that the home is licensed or approved and evidence that safety considerations with respect to the caretakers have been addressed.

Source: September 29, 2005

Reference: 45 CFR 1356.30 and 1356.71(g); Social Security Act ¿ Sections 471(a)(10) and 471(a)(20); Title IV-E Foster Care Eligibility On-Site Instrument and Instructions, Sections H and I.

7 **Q:** When a child is placed in foster care outside the State that has placement and care responsibility, must the foster family home be licensed by the State in which it is situated for title IV-E eligibility purposes? Will it be considered an error case on a title IV-E eligibility review if a foster family home is not licensed by the State in which it is situated?

A: Yes to both questions. In order for a child to be eligible for title IV-E foster care maintenance payments, the statute requires that the foster family home or child care institution be licensed by the State licensing authority in the State in which the home is situated. Section 472(c)(1) of the Social Security Act (the Act) defines foster family home as "a foster family home for children which is licensed by the State in which it is situated or has been approved, by the agency of such State having responsibility for licensing homes of this type, as meeting the standards established for such licensing." The definition for a child care institution in 472(c)(2) of the Act similarly requires licensing or approval by the State in which it is situated. See the CWPM Section 8.3A.8c, Q/A #2 for the situations in which a Federally-recognized Indian tribal

licensing authority may license a foster family homes for title IV-E purposes.

If during a title IV-E eligibility review, we find that a foster care maintenance payment has been made during the period under review for a child placed in a home (or child care institution) not licensed or approved by the State in which it is situated, the case will be found in error. If we find such payments were made outside the period under review, the ineligible payments will be disallowed.

Source: 11/14/07

Reference: Social Security Act ¿ section 472(c)

6. CCWIS

6.1 CCWIS Definitions

1 ***Q:*** 1355.52(b)(1)(iv) requires the title IV-E agency's CCWIS to maintain "Case management data to support federal audits, reviews, and other monitoring activities." What does "case management" mean?

A: ACF has not specifically defined the term "case management" because states and tribes define case management differently due to varying laws, policies, and practices.

ACF does, however, provide examples of case management activities. The CCWIS Notice of Proposed Rulemaking identifies activities considered "case management" to include the collection and updating of information such as child and family histories, assessments, contact notes, calendars, services recommended and delivered, eligibility for programs and services, and client outcomes.

Source: (9/14/16)

Reference: Section 474 of title IV-E of the Social Security Act; Section 106 CAPTA; 45 CFR 1355.52(b)(1)(iv); 80 FR 48200 at 48213 (August 11, 2015); 58 FR 67939 at 67946 (December 22, 1993); ACYF-CB-PI-13-06.

2 ***Q:*** Is a foster family agency that provides for the daily care and supervision of foster children considered a child welfare contributing agency (CWCA)?

A: It depends. If a foster family agency has a contract or agreement with the title IV-E agency and provides child abuse and neglect investigations, placements, or child welfare case management services, this is a CWCA.

Source: (9/14/16)

Reference: 45 CFR 1355.51(a); 81 FR 35450 at 35453 (June 2, 2016)

3 ***Q:*** Are county public entities, in county-administered states (such as County Children and Youth agencies), that provide child abuse and neglect investigations, placements, or child welfare case management services defined as child welfare contributing agencies (CWCAs)?

A: No. Counties are political subdivisions of the state, and the single state title IV-E agency designated in the state's title IV-B and title IV-E plan supervises the administration of county-administered title IV-B and IV-E programs. Therefore, counties in county-administered states are not considered CWCAs. Section 471(a)(2) of the Act and 45 CFR 205.100 provide the authority and parameters by which a single state title IV-E agency may delegate the administration of the title IV-E program to the state's political subdivisions and local agencies or offices.

Source: (9/14/16)

Reference: Section 471(a)(2) of the Act; 45 CFR 205.100 and 1355.51(a); 81 FR 35450 at 35453 (June 2, 2016)

4 ***Q:*** Both a S/TACWIS and non-S/TACWIS project is defined in section 1355.51 as being "an 'active' automated data processing system or project." What does "active" mean in this context?

A: "Active" means a system that the state or tribe is using as of the effective date of these regulations (August 1, 2016), or the state or tribe is designing, developing or implementing the system as of the effective date of the regulations.

Source: (9/14/16)

Reference: 45 CFR 1355.51: 80 FR 48200 at 48205 (August 11, 2015)

5 ***Q:*** Is a public or private entity that provides child abuse and neglect investigations, placement, or child welfare case management (or any combination of these) to children and families through contract or agreement with a county child welfare agency, considered a "child welfare contributing agency" (CWCA) as defined in section 1355.51?

A:

Yes. CWCAs include public or private entities providing child abuse and neglect investigations, placement, or child welfare case management (or any combination of these) that have contracts or agreements with county child welfare agencies that are administering the IV-E program.

Source: 4/24/2017

Reference: 45 CFR 1355.51; 81 FR 35450 at 35453 (issued June 2, 2016); 80 FR 48200 at 48205 (issued August 11, 2015)

6.2 Efficient, economical, and effective

No questions and answers are available at this time.

6.3 CCWIS data

1 ***Q:*** What does it mean in paragraph 1355.52(b) that CCWIS must "maintain" data?

A: The CCWIS must "maintain" data by storing and sharing data with other appropriate child welfare automated data processing systems. The CCWIS must also "maintain" data by consistently applying data quality processes and procedures to the data no matter where the data may have been initially collected.

Source: 10/27/2016

Reference: 45 CFR 1355.52(b); 81 FR 35450 at 35454 (issued June 2, 2016); 80 FR 48200 at 48207 (issued August 11, 2016)

2 ***Q:*** Does the requirement of paragraph 1355.52(b) to maintain all CCWIS data in the CCWIS allow child welfare contributing agency (CWCA) systems to collect CCWIS data?

A: Yes. CWCA systems may collect CCWIS data if the data is electronically exchanged with CCWIS, per paragraph 1355.52(e)(1)(ii).

Source: 10/27/2016

Reference: 45 CFR 1355.52(b); 45 CFR 1355.52(e)(1)(ii); 81 FR 35450 at 35454 and 35463 (issued June 2, 2016); 80 FR 48200 at 48203, 48207 and 48212 (issued August 11, 2016)

3 **Q:** Is the use of a centralized data warehouse (in addition to a CCWIS production database) permitted as part of the overall CCWIS design?

A: Yes. The title IV-E agency may maintain CCWIS data in a CCWIS production database (which is a database processing CCWIS transactions) and a data warehouse (which is a database used for reporting and data analysis) provided all CCWIS automated functions seamlessly access data from both the database and data warehouse. For example, when generating a report or completing a task that requires data from both the database and data warehouse, CCWIS must be able to immediately access needed data.

Source: 10/27/2016

Reference: 45 CFR 1355.52(b); 81 FR 35450 at 35454 (issued June 2, 2016)

6.3A Federal data

1 **Q:** What federal data are required to be maintained in CCWIS per paragraph 1355.52(b)?

A: The federal data required to be maintained in CCWIS are described in federal child welfare laws and policies. Because the required federal data may change as laws and policies change, paragraph 1355.52(b) lists categories of data from these laws and policies rather than specify a comprehensive set of federal data. ACF will use the federal laws, regulations, and policies effective at the time of a CCWIS review to determine compliance with paragraph 1355.52(b). Below are examples of required federal data, based on laws and policies in effect at the time the CCWIS final rule was published.

Examples of federal data required to be maintained in CCWIS for ongoing federal child welfare reports include:

<ul style="list-style-type:Disc; margin-left: 2em;">

All AFCARS data;

For state title IV-E agencies, NYTD case management data must be maintained in CCWIS, although NYTD outcomes information collected from periodic surveys may be maintained in external systems;

Financial information for the CB-496, such as training costs, demonstration project costs, and administrative costs may be maintained in a separate financial system that exchanges data with CCWIS per paragraph 1355.52 (e)(1)(i). Other data, such as the average monthly number of children receiving title IV-E Foster Care maintenance assistance payments, may be derived from CCWIS case management and placement records.

Examples of federal data required for title IV-E eligibility determinations, authorizations of services, and expenditures under titles IV-B and IV-E include:

<ul style="list-style-type:Disc; margin-left: 2em;">

Data necessary for title IV-E eligibility determinations includes data such as the factors used to demonstrate the child would qualify for AFDC under the 1996 plan, placement licensing and background check information, and court findings.

Data required for authorizations of services and other expenditures under titles IV-B and IV-E includes data such as documentation of services authorized, records that the services were delivered, payments processed, and payment status, including whether the payment will be allocated to one or more federal, state, or tribal programs for reimbursement, and the payment amount allocated.

Financial information may be maintained in a financial system exchanging data with CCWIS.

Examples of federal data documenting interactions with and on behalf of clients that the title IV-E agency determines is needed to support federal child welfare laws, regulations, and policies include:

<ul style="list-style-type:Disc; margin-left: 2em;">

case management information,

recommended services,

placement data, and

licensing information on foster care providers.

Examples of federal case management data collected in the course of casework with clients that may be needed for a Child and Family Services Review (CFSR) includes:

<ul style="list-style-type:Disc; margin-left: 2em;">

abuse and neglect reports,

case plans, and

placement histories.

Source: 10/27/2016

Reference: Section 474(a)(3)(C)(i) of the Social Security Act; 45 CFR 1355.52(b); 81 FR 35450 at35454 - 35455 (issued June 2, 2016); 80 FR 48200 at 48206 - 48207 (issued August 11, 2016); ACYF-CB-PI-10-04 (issued April 2, 2010)

6.3B State data

1 ***Q:*** Is substance abuse treatment and parenting class information considered data that the title IV-E agency's CCWIS is required to maintain "to support state or tribal child welfare laws, regulations, policies, practices, reporting requirements, audits, program evaluations, and reviews" in accordance with paragraph 1355.52(b)(2)?

A: It depends. Title IV-E agencies must maintain substance abuse treatment and parenting class data in its CCWIS if the IV-E agency has determined that such data supports a data need based on the agency's specific circumstances, populations, title IV-B and IV-E plans, and business practices.

We do not require title IV-E agencies to maintain this specific data to allow agencies flexibility to implement a CCWIS tailored to their needs.

Source: 10/27/2016

Reference: 45 CFR 1355.52(b); 81 FR 35450 at 35455 (issued June 2, 2016); 80 FR 48200 at 48207 (issued August 11, 2016)

2 **Q:** How will ACF determine title IV-E agency compliance with the requirement that CCWIS maintain data "to support state or tribal child welfare laws, regulations, policies, practices, reporting requirements, audits, program evaluations, and reviews" per paragraph 1355.52(b)(2)?

A: ACF will determine compliance with this requirement by reviewing state and tribal laws, regulations, policies, practices, reporting requirements and audit, program evaluation, and CCWIS review requirements in consultation with title IV-E agency representatives. For example, to determine if CCWIS maintains the data necessary to support state or tribal practices, we will consider the information needs of child welfare contributing agencies (CWCAs). If we document a pattern of CWCAs re-entering information clients provided to other CWCAs, that may suggest that the data should be in CCWIS and shared with CWCAs to prevent the duplicate entry of needed data. In such circumstances, we will consult with the title IV-E agency before determining if the data should be classified as CCWIS data and exchanged with the title IV-E agency's CCWIS.

Source: 10/27/2016

Reference: 45 CFR 1355.52(b)(2); 81 FR 35450 at 35455 (issued June 2, 2016); 80 FR 48200 at 48207 (issued August 11, 2016)

6.3C ICWA

1 **Q:** Are state title IV-E agencies required to build electronic data exchanges with federally recognized Indian tribes, tribal organizations, and tribal consortia to comply with the Indian Child Welfare Act (ICWA) requirements of paragraph 1355.52(b)(3)?

A: No. The regulations do not require a data exchange between CCWIS and federally recognized Indian tribes, tribal organizations, and tribal consortia. However, section 1355.54 permits this optional data exchange. Optional data exchanges proposed by a title IV-E agency and approved by ACF may quality for CCWIS cost allocation as described at section 1355.57.

Source: 10/27/2016

Reference: 45 CFR 1355.52(b)(3); 45 CFR 1355.54; 45 CFR 1355.57; 81 FR 35450 at 35455, 35471 and 35473 - 35475 (issued June 2, 2016); 80 FR 48200 at 48207 - 48208, 48218 - 48219, and 48220 - 58222 (issued August 11, 2016)

6.3D NCANDS

No questions and answers are available at this time.

6.4 Reporting

1 **Q:** May a title IV-E agency use a centralized data warehouse and a CCWIS production database to generate a report or complete a task using data?

A: Yes. However when generating a report that requires data from both the database and data warehouse, CCWIS must be able to immediately access needed data.

Source: 10/27/2016

Reference: 45 CFR 1355.52(c); 81 FR 35450 at 35456 (issued June 2, 2016) 80 FR 48200 at 48208 (issued August 11, 2016)

2 **Q:** Can an agency use non-CCWIS data sources to produce reports under paragraph 1355.52(c)?

A: CCWIS must provide CCWIS data as needed for reports per paragraph 1355.52(c)(1), however, CCWIS is not required to produce every agency report. If CCWIS maintains a subset of a required report's data, CCWIS is not required to generate the complete report, but must provide the data maintained in the CCWIS for incorporation into the report.

Agencies may decide how to provide the data. For example:

<ul style="list-style-type:Disc; margin-left: 2em;">

CCWIS may transmit available National Youth in Transition Database (NYTD) data to a system that collects NYTD survey data and generates the federal report.

CCWIS may support financial audits by providing data on authorized placements and services that may be merged with non-CCWIS data to create audit trails.

CCWIS may provide a hardcopy summary of demographic and placement statistics that staff add to a narrative report demonstrating progress on Child and Family Service Review (CFSR) goals.

Data analysts may use a spreadsheet of CCWIS data to develop reports on trends in child welfare.

If, however, CCWIS maintains all the data required for a report, the report must be generated entirely from that data. For example, even if child welfare contributing agencies (CWCAs) collect Adoption and Foster Care Analysis and Reporting System (AFCARS) data, the AFCARS report must be generated from the data provided by CWCAs and maintained in CCWIS.

Source: 10/27/2016

Reference: 45 CFR 1355.52(c); 81 FR 35450 at 35456 (issued June 2, 2016); 80 FR 48200 at (issued August 11, 2016)

6.4A Federal reports

No questions and answers are available at this time.

6.4B State and tribal reports

No questions and answers are available at this time.

6.5 Data quality

1 **Q:** What are the data security, archiving, and purging requirements for CCWIS?

A: These requirements are addressed in paragraphs 1355.30(i) and (k) and 1355.52(j) as follows:

Paragraph 1355.30(i) applies the requirements at 45 CFR 75.361 to programs funded under titles IV-B and IV-E of the Social Security Act.
Paragraph 1355.30(k) applies 45 CFR 95.621(f) to CCWIS projects meeting the thresholds at 45 CFR 95.611.
Paragraph 1355.52(j) applies 45 CFR 95.621(f) to CCWIS projects below the thresholds at 45 CFR 95.611.

Source: 10/27/2016

Reference: 45 CFR 92.42; 45 CFR 95.611; 45 CFR 95.621(f); 45 CFR 1355.30(i); 45 CFR 1355.30(k); 81 FR 35450 at 35457 (issued June 2, 2016)

6.5A Standards and confidentiality

1 **Q:** Are missing or unknown data elements permitted by the CCWIS data quality requirements and standards of paragraph 1355.52(d)(1)(i)?

A: It depends. CCWIS data quality requirements and standards are defined in federal, state and tribal program regulations, laws, and policies related to specific data elements and their use. Paragraph 1355.52(d)(1)(i) mandates data quality standards for completeness, timeliness, and accuracy of CCWIS data, but does not specify the data quality standard applicable to specific data elements.

Some data quality standards, such as the ones applicable to AFCARS data, define specific values for AFCARS data elements that may require only known values for certain data or set limits for missing data. But a different data quality program or reporting standard may specify conditions where data is not required or permit "unknown" as a data value.

In cases where two or more data quality standards apply to the same data element, the most rigorous standard applies, per paragraph 1355.52(d)(1)(i).

Source: 10/27/2016

Reference: 45 CFR 1355.52(d)(1)(i); 81 FR 35450 at 35457 (issued June 2, 2016); 80 FR 48200 at 48208 - 48209 (issued August 11, 2016)

2 **Q:** May a title IV-E agency automatically prefill CCWIS data fields with known information?

A: It depends. The automatic calculation of data based on information previously known to the system, such as the name of a worker's supervisor or a zip code for an entered address, is allowable. Use of system-calculated data, such as system generated time stamps to capture the time of record entry or to accurately calculate current age from birth date data known to the system, is allowable.

However, the automated generation of default data, such as classifying all citizenship values as U.S. citizenship, is prohibited because users may not uniformly verify or correct inaccuracies in the default value pursuant to 1355.52(d)(1)(v).

Source: 10/27/2016

Reference: 45 CFR 1355.52(d)(1)(v); 81 FR 35450 at35457 (issued June 2, 2016); 80 FR 48200 at 48209 (issued August 11, 2016)

6.5B Automated support for data quality

1 **Q:** Under paragraph 1355.52(d)(2)(iii), what data may CCWIS request through the required exchange with child welfare contributing agency systems?

A: Per paragraph 1355.52(d)(2)(iii), the electronic requests are for current and historical CCWIS data. The electronic requests may include data meeting any of the requirements of paragraph 1355.52(b), which describes the CCWIS data requirements.

Source: 10/27/2016

Reference: 45 CFR 1355.52(b); 45 CFR 1355.52(d)(2)(iii); 81 FR 35450 at 35454 - 35456 and 35458 (issued June 2, 2016); 80 FR 48200 at 48206 - 48208 and 48210 (issued August 11, 2016)

2 **Q:** How is duplicate data entry defined?

A: Duplicate data entry is the manual reentry of data already captured by either the CCWIS or another system required to provide data to CCWIS.

Source: 10/27/2016

Reference: 45 CFR 1355.52(d)(2)(iv); 81 FR 35450 at 35458 (issued June 2, 2016)

6.5C Data quality reviews

1 **Q:** Are there other CCWIS data quality reviews in addition to the biennial data quality reviews?

A: No. Paragraph 1355.52(d)(3) describes the biennial data quality review, which is the only required CCWIS data quality review.

Source: 10/27/2016

Reference: 45 CFR 1355.52(d)(3); 81 FR 35450 at 35458 (issued June 2, 2016)

2 **Q:** Are the data quality reviews described at paragraph 1355.52(d)(3) conducted by ACF central or regional office staff, the title IV-E agency, or another party?

A: The title IV-E agency conducts the data quality review. However, paragraph 1355.52(d)(3) does not prohibit the agency from seeking assistance, such as from another agency or a vendor of data quality services, with the data quality review.

Source: 10/27/2016

Reference: 45 CFR 1355.52(d)(3); 81 FR 35450 at 35458 (issued June 2, 2016); 80 FR 48200 at 48210 (issued August 11, 2016)

3 **Q:** What activities and processes must be part of the biennial data quality review described in paragraph 1355.52(d)(3)?

A: The activities and processes for the data quality review established by the title IV-E agency and approved by ACF must meet the requirements of paragraph 1355.52(d)(3). Title IV-E agencies have flexibility to select a review process most suitable for their circumstances. Examples of activities in biennial review processes include: reviewing a sample of case records, interviewing select state/tribal and child welfare contributing agency staff, evaluating automated edit checks, and a reviewing of data quality reports. Some data quality activities, such as automated processes, may be continuous while other activities may occur one time during the biennial review period.

Source: 10/27/2016

Reference: 45 CFR 1355.52(d)(3); 81 FR 35450 at 45458 (issued June 2, 2016); 80 FR 48200 at 48210 (issued August 11, 2016)

4 **Q:** Is CCWIS cost allocation available for staff time spent planning and conducting the data quality review?

A: It depends. Planning and conducting the data quality review is an approved activity as defined at section 1355.51 and qualifies for CCWIS cost allocation as described in section 1355.57(c). Data correction and related program activities do not qualify for CCWIS funding.

Source: 10/27/2016

Reference: 45 CFR 1355.51; 45 CFR 1355.52(d); 45 CFR 1355.57(c); 81 FR 35450 at 35459 (issued June 2, 2016); 80 FR 48200 at 48204, 48210, and 48221 (issued August 11, 2016)

5 ***Q:*** Are title IV-E agencies required to include child welfare contributing agencies (CWCAs) that have contracts or agreements with county child welfare agencies in the biennial data quality reviews required by paragraph 1355.52(d)(3)?

A: Yes. The title IV-E agency must include all CWCAs in the biennial data quality reviews, pursuant to paragraph 1355.52(d)(3)(i).

Source: 4/24/2017

Reference: 45 CFR 1355.52(d)(3); 81 FR 35450 at 35458 - 35460 (issued June 2, 2016); 80 FR 48200 at 48210 (issued August 11, 2015)

6.5D Data quality findings

1 ***Q:*** What actions must the title IV-E agency take to address findings from the data quality reviews described in paragraph 1355.52(d)(3)?

A: Title IV-E agencies must correct the factors contributing to poor quality data, such as data collection procedures and training, CCWIS programing errors, or problems with bi-directional data exchanges, per paragraph 1355.52(d)(4). Agencies must propose how they will address review findings and demonstrate improvement in data quality in their data quality plans, per paragraph 1355.52(d)(5).

Source: 10/27/2016

Reference: 45 CFR 1355.52(d)(3) - (5); 81 FR 35450 at 35458 - 35461 (issued June 2, 2016); 80 FR 48200 at 48210 - 48211 (issued August 11, 2016)

2 **Q:** Does the requirement to address CCWIS data quality review findings in paragraph 1355.52(d)(4) require title IV-E agencies to correct previously collected data?

A: No. The regulation permits, but does not require, agencies to correct previously collected data.

Source: 10/27/2016

Reference: 45 CFR 1355.52(d)(4); 81 FR 35450 at 35460 (issued June 2, 2016); 80 FR 48200 at (issued August 11, 2016)

3 **Q:** Are there deadlines for the title IV-E agency to correct findings from a data quality review?

A: No. The title IV-E agency will propose timeframes to correct findings for ACF approval as part of the data quality plan per paragraph 1355.52(d)(5) or an Advance Planning Document (APD) per 45 CFR 95, Subpart F.

Source: 10/27/2016

Reference: 45CFR 95, Subpart F; 45 CFR 1355.52(d)(3) - (5); 81 FR 35450 at 35458 - 35461 (issued June 2, 2016); 80 FR 48200 at 48210 - 48211 (issued August 11, 2016)

6.5E Data quality plans

1 **Q:** Are title IV-E agencies that do not implement a CCWIS required to develop a CCWIS data quality plan?

A: No.

Source: 10/27/2016

Reference: 45 CFR 1355.52(d)(5); 81 FR 35450 at 35461 (issued June 2, 2016)

2 **Q:** When must the title IV-E agency submit the first CCWIS data quality plan?

A: Title IV-E agencies must include the CCWIS data quality plan as part of the first Annual or Operational Advance Planning Documents (APDs) submitted to ACF after the agency formally notifies ACF that it will implement a CCWIS.

Source: 10/25/2017

Reference: 45 CFR 95.610; 45 CFR 1355.52(d)(5); 45 CFR 1355.52(i)(1); 81 FR 35450 at 35460 - 35461 and 35467 - 35468 (issued June 2, 2016); 80 FR 48200 at 48211 and 48216 - 48217 (issued August 11, 2015)

3 **Q:** Is a title IV-E agency required to include child welfare contributing agencies (CWCAs) in its data quality plan?

A: Yes. The data quality plan must describe how the title IV-E agency ensures the quality of data collected by CWCAs pursuant to 1355.52(d)(5)(i) and 1355.52(d)(3)(i).

Source: 02/12/2018

Reference: 45 CFR 1355.52(d)(3)(i); 45 CFR 1355.52(d)(5)(i); 81 FR 35450 at 35458 - 35461 (issued June 2, 2016); 80 FR 48200 at 48210 - 48211 (issued August 11, 2015)

6.6 Data exchanges

1 **Q:** Are title IV-E agencies only able to claim federal financial participation (FFP) for the bi-directional data exchanges described in paragraph 1355.52(e)?

A: No. In addition to the eleven mandatory bi-directional data exchanges required under 1355.52(e), a title IV-E agency may request approval to claim FFP for additional optional data exchanges, including uni-directional data exchanges, per section 1355.54.

Source: 11/07/16

Reference: 45 CFR 1355.52(e); 45 CFR 1355.54; 81 FR 35450 at 35461 and 35471 (issued June 2, 2016); 80 FR

48200 at 48211 and 48218 - 48219 (issued August 11, 2016)

2 **Q:** Are title IV-E agencies required to track the source of data provided by bi-directional data exchanges per paragraph 1355.52(e)?

A: No. The CCWIS regulations do not require title IV-E agencies to track the source of data provided by data exchanges.

Source: 11/07/16

Reference: 45 CFR 1355.52(e); 81 FR 35450 at 35461 (issued June 2, 2016)

3 **Q:** Can a title IV-E agency's CCWIS that obtains data from a data warehouse instead of exchanging data through a bi-directional data exchange, satisfy a data exchange requirement of paragraph 1355.52(e)?

A: Yes, data obtained from a data warehouse may satisfy the data exchange requirement per paragraph 1355.52(e) if the data available in the data warehouse is complete, timely, accurate, and consistent.

Source: 11/07/16

Reference: 45 CFR 1355.52(e); 81 FR 35450 at 35462 (issued June 2, 2016); 80 FR 48200 at 48214 (issued August 11, 2016)

4 **Q:** Is title IV-E funding available to support the costs other programs incur in developing and operating the data exchanges described under 45 CFR 1355.52(e)(2)?

A: No. Title IV-E funding is not available for the data exchange costs of programs that are not title IV-E related, such as those described in 45 CFR 1355.52(e)(2)(ii) through (vi).

Source: 11/07/16

Reference: Section 474(a)(3)(C) and (D) of the Social Security Act; 45 CFR 1355.52(e)(2); 45 CFR 1355.57(e); 81 FR 35450 at 35464 - 35466 and 35475 (June 2, 2016); 80 FR 48200 at 48212 - 48215 and 48222 (issued August 11, 2016); Action Transmittal ACF-OSS-05 (issued August 21, 1998)

5 **Q:** Paragraph 1355.52(e)(2) requires bi-direction data exchanges "to the extent practicable." What are the reasons that a title IV-E agency may cite to demonstrate that a bi-directional data exchange is not practicable?

A: Title IV-E agencies may present a business case in an Advance Planning Document (APD) describing the circumstances rendering a data exchange impracticable. These circumstances include, but are not limited to: (1) the other system is not capable of conducting an exchange; or (2) the exchange is not feasible due to cost constraints. Title IV-E agencies may cite any circumstances they deem relevant for ACF's consideration.

Source: 11/07/16

Reference: 45 CFR 1355.52(e)(2); 81 FR 35450 at 35464 (issued June 2, 2016); 80 FR 48200 at 48212 - 48213 (issued August 11, 2016)

6 **Q:** If a title IV-E agency is only able to establish a partial data exchange, is the agency in compliance with the requirements of paragraph 1355.52(e)(2)? For example, if some child welfare courts are able to establish a bi-directional data exchange with CCWIS but other courts are unable to participate, does this meet the requirement to have a bi-directional data exchange with courts per paragraph 1355.52(e)(2)(v)?

A: It depends. Title IV-E agencies may present a business case in an Advance Planning Document (APD) describing the circumstances rendering a data exchange impracticable. For example, if some courts participated in the data exchange while others did not, ACF would consider a business case explaining that the partial exchange met the requirements under 1355.52(e)(2)(v).

Source: 11/07/16

Reference: 45 CFR 1355.52(e)(2); 81 FR 35450 at 35464 (issued June 2, 2016); 80 FR 48200 at 48212 - 48213 (issued August 11, 2016)

7 **Q:** Are title IV-E agencies transitioning from a S/TACWIS or non-S/TACWIS system to CCWIS, required to implement data exchanges consistent with CCWIS design requirements of paragraph 1355.53(a)?

A: It depends. If the data exchange was developed prior to, or during the CCWIS transition period, it may be exempted from one or more of the CCWIS design requirements if the CCWIS project meets the requirements of paragraphs 1355.56(b) or (f)(1). If the data exchange was developed after the CCWIS transition period, then it must meet the CCWIS design requirements in order to qualify for CCWIS developmental cost allocation unless ACF approves, on a case-by-case basis, an alternative design proposed by a title IV-E agency that is determined by ACF to be more efficient, economical, and effective, pursuant to 1355.53(b)(2).

This question and answer is repeated in the Automated Functions Requirements section.

Source: 01/11/2017

Reference: 45 CFR 1355.53(b); 45 CFR 1355.57(a); 81 FR 35450 at 35470 and 35473 - 35474 (issued June 2, 2016); 80 FR 48200 at 48217 - 48218 and 48220 - 48221 (issued August 11, 2015)

6.6A Financial systems

No questions and answers are available at this time.

6.6B Child welfare contributing agencies

1 **Q:** Does paragraph 1355.52(e)(1)(ii) require a CCWIS to have real-time access to child welfare contributing agency (CWCA) databases?

A: No. Title IV-E agencies are not required to view CWCA databases in real-time.

Source: 11/07/16

Reference: 45 CFR 1355.52(e)(1)(ii); 81 FR 35450 at 35463 (issued June 2, 2016); 80 FR 48200 at 48212 (issued August 11, 2016)

2 **Q:** Paragraph 1355.52(e)(1)(ii) requires CCWIS to have a data exchange with "Systems operated by child welfare contributing agencies that are collecting or using data described in paragraph (b) of this section, if applicable." What is the meaning of the phrase "if applicable"?

A: For paragraph 1355.52(e)(1)(ii), "if applicable" means that CCWIS must have a data exchange with a child welfare contributing agency (CWCA) if that CWCA uses a system other than CCWIS for child abuse and neglect investigations, placements, or child welfare case management. It is not applicable if a CWCA is entering data directly into a title IV-E agency's CCWIS.

Source: 11/07/16

Reference: 45 CFR 1355.52(e); 81 FR 35450 at 35463 (issued June 2, 2016); 80 FR 48200 at 48212 (issued August 11, 2016)

3 **Q:** Is the title IV-E agency responsible for assuring the quality of data submitted by child welfare contributing agencies (CWCAs) to CCWIS, per paragraph 1355.52(e)(1)(ii)?

A: Yes. The title IV-E agency is responsible for assuring data quality in compliance with the requirements described in paragraph 1355.52(d).

Source: 11/07/16

Reference: 45 CFR 1355.52(d); 45 CFR 1355.52(e)(1)(ii); 81 FR 35450 at 35456 - 35461 and 35463 (issued June 2, 2016); 80 FR 48200 at 48208 - 48212 (issued August 11, 2016)

4 **Q:** If a county has a contract with a child welfare contributing agency (CWCA), may the required bi-directional data exchange with CCWIS "go through" a county system?

A: Yes, with ACF approval.

This question and answer is repeated in the external child welfare systems section.

Source: 4/24/2017

Reference: 45 CFR 1355.52(e)(1)(ii), (iv); 81 FR 35450 at 35463 - 35464 (issued June 2, 2016); 80 FR 48200 at 48212 (issued August 11, 2015); CWPM 6.1 #3 and 6.6D #1 and #2.

5 **Q:** How frequently must data be electronically exchanged between CCWIS and CWCA systems?

A: The title IV-E agency has discretion to determine the frequency of data exchanges that support the requirement to provide data in a timely manner, pursuant to paragraph 1355.52(d)(1)(i).

Source: 4/24/2017

Reference: 45 CFR 1355.52(d)(1)(i), (e)(1)(ii); 81 FR 35450 at 35456 - 35457 and 35463 - 35464 (issued June 2,

2016); 80 FR 48200 at 48208 - 48209 and 48212 (issued August 11, 2015).

6.6C Title IV-E determinations

1 ***Q:*** In order to qualify for CCWIS cost allocation, paragraph 1355.57(e)(1)(iii) requires that activities and automated functions must benefit federal, state or tribal funded participants in programs and allowable activities described in title IV-E of the Act to the title IV-E program. What programs and activities qualify for CCWIS cost allocation under paragraph 1355.57(e)(1)(iii)?

A: A title IV-E agency may cost allocate CCWIS activities and automated functions that benefit participants in programs such as foster care, adoption assistance or guardianship programs, pursuant to 1355.57(e)(1)(iii). Activities and automated functions supporting other health and human service programs, such as Temporary Assistance to Needy Families (TANF), Child Care, Child Support, Supplemental Nutrition Assistance Program (SNAP), Medicaid and related state or tribal health and human service programs do not qualify for CCWIS cost allocation pursuant to 1355.57(e)(1)(iii). If a title IV-E agency would like to include some other program not listed here, then the title IV-E agency may present a business case for allocating the cost of activities and automated functions benefiting such program in accordance with 1355.57(e)(1). ACF will review and determine the appropriate cost allocation in accordance with 45 CFR 95 Subpart F.

Source: 11/10/16

Reference: 45 CFR 1355.57(e)(1)(iii); 81 FR 35450 at 35475 (issued June 2, 2016); 80 FR 48220 at 48222 (issued August 11, 2015)

6.6D External child welfare systems

1 **Q:** Paragraph 1355.52(e)(1)(iv) requires CCWIS to have a data exchange with "Each system external to CCWIS used by title IV-E agency staff to collect CCWIS data, if applicable." What is the meaning of the phrase "if applicable"?

A: For paragraph 1355.52(e)(1)(iv), "if applicable" means that CCWIS must have a data exchange with any external system used by agency staff to collect CCWIS data, however, it is not applicable if there are no such external systems.

Source: 11/07/16

Reference: 45 CFR 1355.52(e); 81 FR 35450 at 35463 (issued June 2, 2016); 80 FR 48200 at 48212 (issued August 11, 2016)

2 **Q:** Are child welfare information systems used by counties in county administered states required to have a bi-directional exchange with the state CCWIS under 1355.52(e)(1)(iv)?

A: Yes. Counties are political subdivisions of the state, and the single state title IV-E agency designated in the state's title IV-B and title IV-E plan supervises the administration of county administered title IV-B and IV-E programs. Section 471(a)(2) of the Social Security Act and 45 CFR 205.100 provide the authority and parameters by which a single state title IV-E agency may delegate the administration of the title IV-E program to the state's political subdivisions and local agencies or offices. Therefore, a county system external to CCWIS and used by title IV-E agency staff to collect CCWIS data must, per paragraph 1355.52(e)(1)(iv), have a bi-directional data exchange with CCWIS.

Source: 11/07/16

Reference: Section 471(a)(2) of the Social Security Act; 45 CFR 205.100; 45 CFR 1355.52(e)(1)(iv); 81 FR 35450 at 35453 and 35463 - 35464 (June 2, 2016); 80 FR 48200 at 48212 (issued August 11, 2016)

3 ***Q:*** If a title IV-E agency operating a CCWIS wants to exchange data with the National Electronic Interstate Compact Enterprise (NEICE) Case Management System (CMS) is a bidirectional data exchange required, per paragraph 1355.52(e)(1)(iv)?

A: Yes. A bi-directional data exchange is required because the NEICE CMS is considered an external system to CCWIS, per paragraph 1355.52(e)(1)(iv).

Source: 11/07/16

Reference: 45 CFR 1355.52(e)(1)(iv); 81 FR 35450 at 35463 - 35464 (June 2, 2016); 80 FR 48200 at 48212 (issued August 11, 2016)

4 ***Q:*** Would a web-portal external to CCWIS that is used to enter information that is then sent to the National Electronic Interstate Compact Enterprise (NEICE) Clearinghouse comply with the CCWIS bi-directional data exchange requirements?

A: No. CCWIS bi-direction data exchanges must be capable of both sending data to, and receiving data from the other system. A web-portal used by child welfare workers only to access the NEICE Clearinghouse does not meet the automation requirements for CCWIS data exchanges.

Source: 11/07/16

Reference: 45 CFR 1355.52(e)(1)(iv); 81 FR 35450 at 35463 - 35464 (June 2, 2016); 80 FR 48200 at 48211 - 48212 (issued August 11, 2016); Action Transmittal ACF-OSS-05 (issued August 21, 1998)

5 ***Q:*** If a county has a contract with a child welfare contributing agency (CWCA), may the required bi-directional data exchange with CCWIS "go through" a county system?

A: Yes, with ACF approval.This question and answer is repeated in the child welfare contributing agencies section.

Source: 4/24/2017

Reference: 45 CFR 1355.52(e)(1)(ii), (iv); 81 FR 35450 at 35463 - 35464 (issued June 2, 2016); 80 FR 48200 at 48212 (issued August 11, 2015); CWPM 6.1 #3 and 6.6D #1 and #2.

6 **Q:** How frequently must data be electronically exchanged between CCWIS and county child welfare information systems?

A: The title IV-E agency has discretion to determine the frequency of data exchanges that support the requirement to provide data in a timely manner, pursuant to paragraph 1355.52(d)(1)(i).

Source: 4/24/2017

Reference: 45 CFR 1355.52(d)(1)(i), (e)(1)(iv); 81 FR 35450 at 35456 - 35457 and 35463 - 35464 (issued June 2, 2016); 80 FR 48200 at 48208 - 48209 and 48212 (issued August 11, 2015).

7 **Q:** If a title IV-E agency modifies the National Electronic Interstate Compact Enterprise (NEICE) Case Management System (CMS) so it is integrated as an automated function in the CCWIS, is the modified and integrated NEICE CMS considered an external system requiring a bi-directional data exchange with CCWIS as described in paragraph 1355.52(e)(1)(iv)?

A: No. An automated function integrated into CCWIS is not considered an external system as described in paragraph 1355.52(e)(1)(iv).

Source: 02/12/2018

Reference: 45 CFR 1355.52(e)(1)(iv); 81 FR 35450 at 35463 – 35464 (June 2, 2016); 80 FR 48200 at 48211 – 48212 (issued August 11, 2016); Action Transmittal ACF-OSS-05 (issued August 21, 1998)

6.6E Child abuse and neglect systems

1 **Q:** If automated functions that support the reporting and investigation of child abuse and neglect reside exclusively in a CCWIS, how must the title IV-E agency cost allocate development costs for those automated functions?

A: Pursuant to 1355.57(a) - (e), the title IV-E agency may allocate development costs using a CCWIS cost allocation methodology unless the automated functions in the CCWIS are:

<ul style="list-style-type:Disc; margin-left: 2em;">

<LI>Duplicated in other systems supporting the state or tribe's title IV-E or title IV-B programs, pursuant to 1355.57(a)(2)(ii) and (b)(2)(ii);</LI>

<LI>Not used consistently by all child welfare users responsible for the area supported by the automatic function, pursuant to 1355.57(a)(2)(ii) and (b)(2)(ii);</LI>

<LI>Unique child welfare related program functions (such as juvenile justice and adult protective services) not used by the title IV-E program, pursuant to 1355.57(e) and (f) and 45 CFR 95.631; and</LI>

<LI>Common or unique functions benefiting other health and human service programs (such as child support, child care, Supplementary Nutritional Assistance Program, Temporary Assistance to Needy Families, Medicaid, courts and/or education programs), pursuant to 1355.57(e) and (f) and 45 CFR 95.631.</LI>

</UL>

This question and answer is repeated in the Cost Allocation section.

Source: 10/26/2017

Reference: 45 CFR 95.631; 45 CFR 1355.52(e)(2)(i); 45 CFR 1355.57; 81 FR 35450 at 35473 - 35475 (issued June 2, 2016); 80 FR 48200 at 48213 and 48220 - 48222 (issued August 11, 2015)

2 **Q:** If automated functions that support the reporting and investigation of child abuse and neglect reside in an external system and are not duplicated in CCWIS, how must the agency cost allocate development costs for those automated functions?

A: Pursuant to 1355.57(e), the title IV-E agency must allocate development costs using a non-CCWIS cost allocation methodology if the automated functions reside in an external system.

This question and answer is repeated in the Cost Allocation section.

Source: 10/26/2017

Reference: 45 CFR 95.631; 45 CFR 1355.52(e)(2)(i); 45 CFR 1355.57; 81 FR 35450 at 35473 - 35475 (issued June 2, 2016); 80 FR 48200 at 48213 and 48220 - 48222 (issued August 11, 2015)

3 Q: If automated functions that support the reporting and investigation of child abuse and neglect reside in both a CCWIS and an external system, how must the agency cost allocate development costs for those automated functions?

A: Pursuant to 1355.57(e), the title IV-E agency must allocate development costs using a non-CCWIS cost allocation methodology if the automated functions reside in both a CCWIS and an external system. The duplicated development costs are allocated to the benefiting program or programs. All programs pay their share of an automated function under a non-CCWIS cost allocation methodology.

This question and answer is repeated in the Cost Allocation section.

Source: 10/26/2017

Reference: 45 CFR 95.631; 45 CFR 1355.52(e)(2)(i); 45 CFR 1355.57; 81 FR 35450 at 35473 - 35475 (issued June 2, 2016); 80 FR 48200 at 48213 and 48220 - 48222 (issued August 11, 2015)

6.6F Title IV-A systems

No questions and answers are available at this time.

6.6G Title XIX eligibility systems

No questions and answers are available at this time.

6.6H Title XIX claims processing

1 **Q:** What data are title IV-E agencies required to maintain in CCWIS from the data exchange with the Medicaid Management Information System (MMIS), per paragraph 1355.52(e)(2)(iii)(B)?

A: Paragraph 1355.52(e)(2)(iii)(B) requires title IV-E agencies to maintain in CCWIS the available medical record information received from the MMIS, which would include the Medicaid claims history or, for those enrolled in managed care, provider encounter data.

Source: 11/07/16

Reference: 45 CFR 1355.52(e)(2)(iii)(B); 81 FR 35450 at 35465 (issued June 2, 2016); 80 FR 48200 at 48213 - 48214 (issued August 11, 2016)

2 **Q:** Does paragraph 1355.52(e)(2)(iii)(B) require a title IV-E agency to maintain a foster child's entire medical record in CCWIS?

A: No.

Source: 11/07/16

Reference: 45 CFR 1355.52(e)(2)(iii)(B); 81 FR 35450 at 35465 (issued June 2, 2016); 80 FR 48200 at 48213 - 48214 (issued August 11, 2016)

3 ***Q:*** If the title IV-E agency already has a process in place to enter current health information on children in foster care into CCWIS, is the title IV-E agency still required to implement a data exchange between CCWIS and the Medicaid Management Information system?

A: Yes, to the extent practicable. The bi-directional data exchange is required to provide CCWIS with all relevant data to serve clients and improve outcomes, including information on prior medical services, such as immunization histories, therapies, and prescriptions. Although the title IV-E agency may already have access to some of this information, implementing a bi-direction data exchange also improves efficiency by reducing duplicate data entry and provides the state title XIX program with data collected by the title IV-E agency that it may use in serving foster children.

Source: 2/12/2018

Reference: 45 CFR 1355.52(e)(2)(iii)(B); 81 FR 35450 at 35461 and 35464 - 35465 (June 2, 2016); 80 FR 48200 at 48211 - 48214 (issued August 11, 2016)

6.6I Title IV-D systems

No questions and answers are available at this time.

6.6J Court systems

No questions and answers are available at this time.

6.6K Education systems

No questions and answers are available at this time.

6.7 Data exchange standard

1 ***Q:*** Is the title IV-E agency that is implementing a CCWIS project required to comply with the data exchange standard requirements of paragraph 1355.52(f) for data exchanges implemented before the rule's effective date of August 1, 2016?

A: Yes. Upon implementation of a CCWIS, the title IV-E agency must use a single data exchange

standard with child welfare contributing agencies (CWCAs) and external systems as described in paragraph 1355.52(f), including exchanges that were implemented before the rule's effective date.

Source: *11/08/16*

Reference: *45 CFR 1355.52(f); 81 FR 35450 at 35466 (issued June 2, 2016); 80 FR 48200 at 48215 - 48216 (issued August 11, 2016)*

2 **Q:** Is a title IV-E agency required to specify the technology used to transfer data in the data exchange standard?

A: No. Paragraph 1355.52(f) requires the title IV-E agency to describe in the data exchange standard applicable data, definitions, formats, and other specifications. Although the data exchange standard may include specifications for the technology used to transfer data, it is not required.

Source: *11/08/16*

Reference: *45 CFR 1355.52(f); 81 FR 35450 at 35466 (issued June 2, 2016); 80 FR 48200 at 48215 (issued August 11, 2016)*

3 **Q:** Is a title IV-E agency required to specify a single communication protocol for the data exchange in the data exchange standard required by paragraph 1355.52(f)?

A: No. Paragraph 1355.52(f) requires the title IV-E agency to describe in the data exchange standard applicable data, definitions, formats, and other specifications. The title IV-E agency is not required to specify a single communication protocol.

Source: *11/08/16*

Reference: *45 CFR 1355.52(f); 81 FR 35450 at 35466 (issued June 2, 2016); 80 FR 48200 at 48215 (issued August 11, 2016)*

4 **Q:** Who selects the data exchange standard required by paragraph 1355.52(f)? Is it a federal agency such as ACF, or does the state or tribe select the data exchange standard?

A: The state or tribe implementing the CCWIS selects the data exchange standard for its CCWIS project.

Source: 11/08/16

Reference: 45 CFR 1355.52(f); 81 FR 35450 at 35466 (issued June 2, 2016); 80 FR 48200 at 48215 (issued August 11, 2016)

5 **Q:** Can the title IV-E agency's data exchange standard change over time?

A: Yes, the data exchange standard can change over time. For example, standards often add nuanced and precise conditions to accommodate new and varied circumstances or expand to standardize new areas to address changing policies or practices. The title IV-E agency may change standards consistent with Advance Planning Document (APD) rules at 45 CFR 95.610(c)(2).

Source: 11/08/16

Reference: 45 CFR 1355.52(f); 81 FR 35450 at 35466 - 35467 (issued June 2, 2016); 80 FR 48200 at 48215 - 48216 (issued August 11, 2016)

6 **Q:** May child welfare contributing agencies (CWCAs) that have data exchange standards different from the title IV-E agency data exchange standard use their own standard when exchanging data with CCWIS?

A: No. Paragraph 1355.52(f) specifies a single data exchange standard for data exchanges with CWCAs and systems external to CCWIS used by title IV-E agency staff to collect CCWIS data.

Source: 11/08/16

Reference: 45 CFR 1355.52(f); 81 FR 35450 at 35467 (issued June 2, 2016); 80 FR 48200 at 48215 - 48216 (issued August 11, 2016)

7 ***Q:*** Is a title IV-E agency required to ensure that a CWCA system exchanging data with a county agency's external child welfare information system uses the single data exchange standard pursuant to 1355.52(f)?

A: Yes. The title IV-E agency must ensure that CWCA systems comply with the data exchange standard required pursuant to 1355.52(f)(2), and support the efficient, economical, and effective administration of the title IV-B and IV-E plans, pursuant to 1355.52(a).

Source: 4/24/2017
Reference: 45 CFR 1355.52(a) and (f); 81 FR 35450 at 35453 - 35454 and 35466 - 35467 (issued June 2, 2016); 80 FR 48200 at 48206 and 48215 - 48216 (issued August 11, 2015)

8 ***Q:*** May a title IV-E agency switch from one data exchange standard to a different data exchange standard?

A: Yes, provided all bi-directional data exchanges described in paragraph 1355.52(f) use the same data exchange standard.

Source: 2/12/2018
Reference: 45 CFR 1355.52(f); 81 FR 35450 at 35466 - 35467 (June 2, 2016); 80 FR 48200 at 48215 - 48216 (issued August 11, 2016)

6.8 Title IV-E determinations

1 ***Q:*** Is a CCWIS required to contain the automated functions that determine title IV-E eligibility?

A: No. The automated functions that determine title IV-E eligibility may be:
<ul style="list-style-type:Disc; margin-left: 2em;">

Wholly provided by the CCWIS;
Wholly provided by another system such as a larger system that determines eligibility for multiple programs; or
Provided by different systems that have different steps of the title IV-E eligibility determination process. For example, the automated support for determining if a child meets the AFDC requirements may be located in the system supporting the title IV-A program while the remaining automated support is in the CCWIS.

Source: 10/27/2016

Reference: 45 CFR 1355.52(g); 81 FR 35450 at 35467 (issued June 2, 2016); 80 FR 48200 at 48216 (issued August 11, 2015)

2 **Q:** May a title IV-E agency use two or more automated functions to support one part of title IV-E eligibility determinations, such as using one system to determine Aid to Families with Dependent Children (AFDC) eligibility for some children and another system to determine AFDC eligibility for the remaining children?

A: A state title IV-E agency operating a CCWIS is prohibited from using two or more automated functions to support one part of title IV-E eligibility determinations, per 1355.52(g)(1). A state title IV-E agency must use the same automated function or the same group of automated functions for all title IV-E eligibility determinations.

However, if it is not practicable to use a single automated function, or the same group of automated functions per 1355.52(g)(2), a tribal IV-E agency may use multiple automated functions or manual processes to support one part of the title IV-E eligibility determinations. For example, tribes are required by section 479B(c)(C)(ii)(II) of the Social Security Act to use the AFDC plan that was in effect on July 16, 1996 of the state in which the child resides at the time of removal from the home to determine if the child meets the AFDC eligibility requirement. This means that tribal title IV-E agencies may need to use the AFDC plan from different states for different children, depending on the child's location at the time of removal. Therefore, it may not be cost effective for tribal title IV-E agencies to build an automated function to accommodate AFDC eligibility requirements of all states from which tribal children may be removed.

Source: 10/27/2016

Reference: 45 CFR 1355.52(g); 81 FR 35450 at 35467 (issued June 2, 2016); 80 FR 48200 at 48216 (issued August 11, 2015)

3 ***Q:*** Must CCWIS be the "system of record" for title IV-E eligibility determinations, since paragraph 1355.52(g) permits other information systems to support eligibility determinations?

A: Yes. CCWIS must maintain the calculated outcome of the title IV-E eligibility determination process including the data contributing to the determination of title IV-E eligibility per paragraph 1355.52(b)(1)(ii).

Source: 10/27/2016

Reference: 45 CFR 1355.52(g); 45 CFR 1355.52(b)(1)(ii); 81 FR 35450 at 35455 and 35467 (issued June 2, 2016); 80 FR 48200 at 48207 and 48216 (issued August 11, 2015)

4 ***Q:*** How must title IV-E eligibility data collected by other information system be transmitted to CCWIS?

A: Title IV-E eligibility data collected by other information systems must be provided to CCWIS via a bi-directional electronic data exchange, per paragraph 1355.52(e)(1)(iii).

Source: 10/27/2016

Reference: 45 CFR 1355.52(e)(1)(iii); 80 FR 48200 at 48212 (issued August 11, 2015)

6.8A State title IV-E determinations

No questions and answers are available at this time.

6.8B Tribal title IV-E determinations

No questions and answers are available at this time.

6.9 Software provision

1 **Q:** Does paragraph 1355.52(h), which requires title IV-E agencies to provide a copy of the agency-owned software that is designed, developed, or installed with federal financial participation (FFP) and associated documentation to the designated federal repository, apply only to software developed once an agency implements a new CCWIS or transitions another system to CCWIS?

A: No. The title IV-E agency may be required to provide ACF software from legacy systems developed with FFP per 45 CFR 95.617(b).

Source: 10/27/2016

Reference: 45 CFR 1355.52(h); 45 CFR 95.617(b); 81 FR 35450 at 35467 (issued June 2, 2016); 80 FR 48200 at 48216 (issued August 11, 2015)

2 **Q:** In county administered states, may counties directly access software and associated documentation from the federal repository described in paragraph 1355.52(h) or must the state title IV-E agency make such a request?

A: County administered agencies may ask that the state title IV-E agency request software and associated documentation from the federal repository. Title IV-E agencies must receive federal approval to provide the materials to the county administered agency.

Source: 10/27/2016

Reference: 45 CFR 1355.52(h); 81 FR 35450 at 35467 (issued June 2, 2016); 80 FR 48200 at 48216 (issued August 11, 2015)

3 ***Q:*** Must title IV-E agencies submit commercial off-the-shelf (COTS) products or third party utilities to the federal repository described in paragraph 1355.52(h)?

A: No. Agencies are not required to submit these products because ACF is not granted a license to COTS products or third party utilities that are not owned by the title IV-E agency per 45 CFR 95.617.

However, COTS software enhanced or modified with federal financial participation is owned by the title IV-E agency. This includes extensions to connect the COTS product to, or use it with other modules of the CCWIS. ACF has regulatory authority to add these products to the federal registry.

Source: 10/27/2016

Reference: 45 CFR 1355.52(h); 45 CFR 95.617; 81 FR 35450 at 35467 (issued June 2, 2016); 80 FR 48200 at 48216 (issued August 11, 2015)

4 ***Q:*** Must title IV-E agencies provide automated functions that support multiple programs within an agency to ACF for inclusion in the federal repository described in paragraph 1355.52(h)?

A: It depends. If an automated function is designed, developed, or installed with any federal financial participation (FFP), ACF has the regulatory authority to add it to the federal repository per paragraph 1355.52(h).

Source: 10/27/2016

Reference: 45 CFR 1355.52(h); 81 FR 35450 at 35467 (issued June 2, 2016); 80 FR 48200 at 48216 (issued August 11, 2015)

5 **Q:** If a title IV-E agency provided agency-owned software and documentation to the federal repository described at 1355.52(h), is the agency required to provide updates made to the software or documentation to the federal repository?

A: Yes, if ACF requests the updated software or documentation, pursuant to 1355.52(h).

Source: 10/25/2017

Reference: 45 CFR 1355.52(h); 81 FR 35450 at 35467 (issued June 2, 2016); 80 FR 48200 at 48216 (issued August 11, 2015)

6 **Q:** If a title IV-E agency receives a copy of software from the federal repository and enhances it, is the agency required to provide the enhanced software to the federal repository?

A: Yes, if ACF requests the enhanced software, pursuant to 1355.52(h).

Source: 10/25/2017

Reference: 45 CFR 1355.52(h); 81 FR 35450 at 35467 (issued June 2, 2016); 80 FR 48200 at 48216 (issued August 11, 2015)

7 **Q:** If ACF requests that a title IV-E agency provide the federal repository with an automated function requiring a specific configuration to run (such as a specific database product or interfaces to proprietary products), is the agency required to provide the configuration requirements to the federal repository?

A: Yes. The title IV-E agency is required to provide a copy of the agency-owned software and associated documentation pursuant to 1355.52(h).

Source: 10/25/2017

Reference: 45 CFR 1355.52(h); 81 FR 35450 at 35467 (issued June 2, 2016); 80 FR 48200 at 48216 (issued August 11, 2015)

8 **Q:** Is a title IV-E agency required to provide proprietary products to the federal repository when it provides the agency-owned software?

A: No. Title IV-E agencies are not required to submit proprietary products when submitting agency-owned software to the federal repository pursuant to 45 CFR 95.617(c).

Source: 10/25/2017

Reference: 45 CFR 1355.52(h); 45 CFR 95.617; 81 FR 35450 at 35467 (issued June 2, 2016); 80 FR 48200 at 48216 (issued August 11, 2015); CWPM 6.9 #3

9 **Q:** May ACF add vendor owned software products to the federal repository described in paragraph 1355.52(h)?

A: No. ACF will only add software and associated documentation that is owned by a title IV-E agency and designed, developed, or installed with federal financial participation to the federal repository, pursuant to paragraph 1355.52(h).

Source: 2/12/2018

Reference: 45 CFR 1355.52(h); 81 FR 35450 at 35467 (issued June 2, 2016); 80 FR 48200 at 48216 (issued August 11, 2015)

10 **Q:** Must title IV-E agencies provide open source software to the federal repository upon ACF's request, pursuant to paragraph 1355.52(h)?

A: Yes. Upon ACF request, title IV-E agencies must provide open source software that was designed, developed, or installed with federal financial participation to the federal repository.

Source: 2/12/2018

Reference: 45 CFR 1355.52(h); 81 FR 35450 at 35467 (issued June 2, 2016); 80 FR 48200 at 48216 (issued August 11, 2015)

6.10 Submission

No questions and answers are available at this time.

6.10A Initial submission

1 ***Q:*** If the agency elects not to transition a S/TACWIS project to a CCWIS, is the title IV-E agency required to submit the documents listed in paragraph 1355.52(i)(1) to ACF when submitting an Advance Planning Document (APD) or Notice of Intent during the transition period?

A: No. A record from the title IV-E agency signed by the governor, tribal leader, or designated state or tribal official notifying ACF that the title IV-E agency elects not to transition a S/TACWIS project to a CCWIS project is sufficient. However, the IV-E agency must continue to submit applicable APDs for the non-CCWIS project.

Source: 10/27/2016
Reference: 45 CFR 95 Subpart F; 45 CFR 1355.51; 45 CFR 1355.52(i)(1); 45 CFR 1355.56(d)(1) 81 FR 35450 at 35467 - 35468 and 35473 (issued June 2, 2016); 80 FR 48200 at 48205, 48216 - 48217, and 48220 (issued August 11, 2015)

2 ***Q:*** What is the "start date" of a CCWIS project?

A: The start date of a CCWIS project is the date ACF indicates in its response letter to an approvable submission from the title IV-E agency.

Source: 10/27/2016
Reference: 45 CFR 95 Subpart F; 45 CFR 1355.51; 45 CFR 1355.52(i)(1); 81 FR 35450 at 35467 - 35468 (issued June 2, 2016); 80 FR 48220 at 48205 and 48216 - 48217 (issued August 11, 2015)

3 **Q:** What documents must a title IV-E agency submit when notifying ACF that the agency intends to build a CCWIS?

A: The submission must meet the requirements of 1355.52(i)(1), which means that the title IV-E agency must submit an Advance Planning Document (APD) or, if below the APD submission thresholds defined at 45 CFR 95.611, a Notice of Intent. The APD or Notice of Intent must include:

<ul style="list-style-type:Disc; margin-left: 2em;">

A description of how the CCWIS will meet the requirements in1355.52 (a) through (h) and, if applicable 1355.54;

A list of all automated functions included in the CCWIS; and

A notation of whether each automated function included in the CCWIS meets, or when implemented will meet, the following requirements:

<ul style="list-style-type:Circle; margin-left: 4em;"> The automated function supports at least one requirement of 1355.52 or, if applicable,1355.54;

The automated function is not duplicated within the CCWIS or systems supporting child welfare contributing agencies and is consistently used by all child welfare users responsible for the area supported by the automated function; and

The automated function complies with the CCWIS design requirements at 1355.53(a), unless exempted in accordance with 1355.53(b).

Source: 10/27/2016

Reference: 45 CFR 95 Subpart F; 45 CFR 1355.51; 45 CFR 1355.52(i)(1); 81 FR 35450 at 35467 - 35468 (issued June 2, 2016); 80 FR 48220 at 48205 and 48216 - 48217 (issued August 11, 2015)

4 **Q:** Does paragraph 1355.52(i)(1)(iii)(B) require a title IV-E agency that elects to allow Child Welfare Contributing Agencies to use their systems to note if a CCWIS automated function is duplicated in a system used by a contract service provider?

A: Yes, if the contract service provider meets the definition of a child welfare contributing agency, any automated functions in the provider's system that duplicate automated functions in CCWIS must be included in the automated function list described in paragraph 1355.52(i)(1)(ii). Per section 1355.51, a child welfare contributing agency is a public or private entity that, by contract or agreement with the title IV-E agency, provides child abuse and neglect investigations, placement, or child welfare case management (or any combination of these) to children and families.

Source: 10/27/2016

Reference: 45 CFR 1355.51; 45 CFR 1355.52(i)(1); 81 FR 35450 at 35453 and 35468 (issued June 2, 2016); 80 FR 48220 at 48205 and 48216 - 48217 (issued August 11, 2015)

5 Q: When notifying ACF that a title IV-E agency intends to transition an existing S/TACWIS or non-S/TACWIS to CCWIS, does paragraph 1355.52(i)(1)(ii) require the agency to list existing automated functions of the transitioning system that will be used in the CCWIS?

A: Yes. The list includes existing automated functions of the transitioning system that will be used in the CCWIS as well as newly developed automated functions that will be part of the CCWIS. Providing this list in addition to the more detailed information required in paragraph 1355.52(i)(1)(iii) at the start of a CCWIS project will help both ACF and the title IV-E agency to more reliably estimate project costs.

Source: 10/27/2016

Reference: 45 CFR 1355.52(i)(1); 80 FR 48220 at 4648216 - 48217 (issued August 11, 2015)

6 Q: When a title IV-E agency submits an Advance Planning Document (APD) notifying ACF of the agency's plan to implement a CCWIS, is the agency required to include the description of how the planned system will meet the CCWIS requirements and the automated function list as separate documents?

A: No. While the title IV-E agency is required to include the system description and automated function list as specified in 1355.52(i)(1)(i) - (iii) when submitting an APD notifying ACF of the agency's plan to implement a CCWIS, the information may be integrated into the APD project

documentation described at 45 CFR 95.610.

Source: 2/12/2018

Reference: 45 CFR 95.610; 45 CFR 1355.52(i)(1); 81 FR 35450 at 35467 - 35468 (issued June 2, 2016); 80 FR 48200 at 48216 - 48217 (issued August 11, 2015)

6.10B On-going submission

No questions and answers are available at this time.

6.11 Other APD requirements

1 **Q:** Which Advance Planning Document (APD) regulations apply to CCWIS projects below the APD thresholds described at 45 CFR 95.611?

A: A title IV-E agency claiming title IV-E federal financial participation (FFP) for CCWIS projects below the APD submission thresholds at 45 CFR 95.611 is subject to certain portions of the APD rules that are necessary for effective project management per paragraph 1355.52(j), including:

<ul style="list-style-type:Disc; margin-left: 2em;">

 95.613 - Procurement standards;

 95.615 - Access to systems and records;

 95.617 - Software and ownership rights;

 95.619 - Use of Automated Data Processing (ADP) systems;

 95.621 - Automated Data Processing (ADP) Reviews;

 95.626 - Independent Verification and Validation;

 95.627 - Waivers;

 95.631 - Cost identification for purpose of FFP claims;

 95.633 - Nondiscrimination requirements;

 95.635 - Disallowance of FFP for automated systems that fail to comply substantially with requirements; and

 95.641 - Applicability of rules for charging equipment in Subpart G.

Source: 11/09/16

Reference: 45 CFR 95, Subpart F; 45 CFR 1355.52(j); 80 FR 48200 at 48217 (issued August 11, 2016)

2 **Q:** Which Advance Planning Document (APD) regulations apply to CCWIS projects at or above the APD thresholds described at 45 CFR 95.611?

A: CCWIS projects claiming title IV-E federal financial participation (FFP) with costs above the thresholds in 45 CFR 95.611 (currently $5 million total project cost) continue to be subject to all of the provisions of 45 CFR part 95, subpart F, including submission of APDs. For these over threshold projects, application of the APD rules does not change.

Source: 11/07/16

Reference: 45 CFR 95, Subpart F; 45 CFR 1355.30(k); 45 CFR 1355.52(j); 80 FR 48200 at 48217 (issued August 11, 2016)

6.12 Design requirements

1 **Q:** Are title IV-E agencies that transition S/TACWIS and non-S/TACWIS systems to CCWIS required to rebuild existing system components to comply with the CCWIS design requirements?

A: No. Paragraph 1355.53(b)(1) exempts CCWIS automated functions from one or more of the CCWIS design requirements in paragraph 1355.53(a) if the CCWIS project meets the submission requirements of paragraph 1355.56(b) or paragraph 1355.56(f)(1). This will reduce the costs of transitioning these systems to CCWIS.

Source: 01/11/2017

Reference: 45 CFR 1355.53; 81 FR 35450 at 35468 - 35469 (issued June 2, 2016); 80 FR 48200 at 48217 - 48218 (issued August 11, 2015)

6.12A Automated function requirements

1 **Q:** If the title IV-E agency uses commercial-off-the-shelf (COTS) software or a Software-as-a-Service (SaaS) system owned or maintained by a vendor, must it meet the CCWIS design requirements of paragraph 1355.53(a)?

A: No. Paragraph 1355.53(a) does not apply to proprietary COTS or SaaS systems owned or maintained by vendors. Federal financial participation is not available to develop proprietary COTS products or SaaS systems pursuant to 45 CFR 95.617(c), therefore, they are not required to be developed in accordance with the design requirements at 1355.53(a).

Source: 01/11/2017

Reference: 45 CFR 1355.53; 81 FR 35450 at 35470 (issued June 2, 2016); 80 FR 48200 at 48217 - 48218 (issued August 11, 2015)

2 **Q:** May a title IV-E agency propose an alternative design for their CCWIS that does not meet one or more of the CCWIS design requirements of paragraph 1355.53(a)?

A: Yes. A title IV-E agency may propose an alternative CCWIS design for ACF review pursuant to paragraph 1355.53(b)(2). If ACF determines that the alternative design is more efficient, economical, and effective than what is found in paragraph 1355.53(a), then the CCWIS automated function may be exempted from one or more of the CCWIS design requirements of paragraph 1355.53(a).

Source: 01/11/2017

Reference: 45 CFR 1355.53; 81 FR 35450 at 35470 (issued June 2, 2016); 80 FR 48200 at 48217 - 48218 (issued August 11, 2015)

3 **Q:** Are title IV-E agencies transitioning from a S/TACWIS or non-S/TACWIS system to CCWIS, required to implement data exchanges consistent with CCWIS design requirements of paragraph 1355.53(a)?

A: It depends. If the data exchange was developed prior to, or during the CCWIS transition period, it may be exempted from one or more of the CCWIS design requirements if the CCWIS project meets the requirements of paragraphs 1355.56(b) or (f)(1). If the data exchange was developed after the CCWIS transition period, then it must meet the CCWIS design requirements in order to qualify for CCWIS developmental cost allocation unless ACF approves, on a case-by-case basis, an alternative design proposed by a title IV-E agency that is determined by ACF to be more efficient, economical, and effective, pursuant to 1355.53(b)(2).

This question and answer is repeated in the Data Exchanges section.

Source: 01/11/2017

Reference: 45 CFR 1355.53(b); 45 CFR 1355.57(a); 81 FR 35450 at 35470 and 35473 - 35474 (issued June 2, 2016); 80 FR 48200 at 48217 - 48218 and 48220 - 48221 (issued August 11, 2015)

4 ***Q:*** We understand that a title IV-E agency that is transitioning from a S/TACWIS to CCWIS receives S/TACWIS development funding for automated functions developed during the transition period per paragraph 1355.56(a), regardless of whether the automated function meets the CCWIS design requirements of paragraph 1355.53(a). However, if the title IV-E agency has not completed developing the automated function by the end of the transition period, may the title IV-E agency continue to receive CCWIS development funding for completing work on the automated function after the transition period?

A: It depends. All development of automated functions done after the transition period on a S/TACWIS transitioning to CCWIS must meet the CCWIS design requirements of paragraph 1355.53(a) unless, pursuant to paragraph 1355.53(b)(2), ACF determines that the alternative design proposed by the agency is more efficient, economical, and effective than the CCWIS design requirements. If ACF makes such a determination, the automated functions may qualify for CCWIS development cost allocation.

Source: 01/11/2017

Reference: 45 CFR 1355.53; 45 CFR 1355.57(a) and (e); 81 FR 35450 at 35470 and 35473 - 35475 (issued June 2, 2016); 80 FR 48200 at 48217 - 48218 and 48220 - 48222 (issued August 11, 2015)

5 ***Q:*** Must a title IV-E agency design CCWIS automated functions to reside on specific hardware, such as individual user workstations?

A: No. The CCWIS design requirements at 1355.53(a) do not specify how automated functions must be configured.

Source: 10/25/2017

Reference: 45 CFR 1355.53(a); 81 FR 35450 at 35468 - 35470 (issued June 2, 2016); 80 FR 48200 at 48217 - 48218 (issued August 11, 2015)

6 ***Q:*** If the title IV-E agency uses an automated function that allow users to access CCWIS from other devices, such as mobile phones, would those functions qualify for CCWIS development cost allocation?

A: Yes, provided the automated function is documented in the automated function list pursuant to 1355.52(i)(1)(ii) - (iii), and:

1. is included in the CCWIS;

2. supports at least one requirement of section 1355.52 or, if applicable section 1355.54;

3. is not duplicated within the CCWIS or systems supporting child welfare contributing agencies and is consistently used by all child welfare users responsible for the area supported by the automated function; and

4. complies with the CCWIS design requirements of paragraph 1355.53(a), unless exempted in accordance with paragraph 1355.53(b).

Source: 2/12/2018

Reference: 45 CFR 95.610; 45 CFR 1355.52(i)(1); 45 CFR 1355.53; 81 FR 35450 at 35467 - 35471 (issued June 2, 2016); 80 FR 48200 at 48216 - 48218 (issued August 11, 2015)

7 **Q:** If ACF approves a title IV-E agency's plan to transition an existing system to CCWIS prior to July 31 2018, must all development work done after ACF's approval comply with the CCWIS design requirements of 1355.53(a)?

A: No. A title IV-E agency's compliance with CCWIS design requirements is based on the transition period end date of July 31, 2018, not the date of ACF's approval of the plan to transition an existing system to CCWIS.

Development work completed on a transitioning system on or before July 31, 2018 is exempt from the CCWIS design requirements of paragraph 1355.53(a).

Development work performed on a transitioning system after July 31, 2018 must meet the CCWIS design requirements unless exempted by 1355.53(b)(2), pursuant to paragraph 1355.57(a).

This question and answer is repeated in the transition period section.

Source: 2/12/2018

Reference: 45 CFR 1355.52(i)(1); 45 CFR 1355.53; 45 CFR 1355.57(a); 81 FR 35450 at 35467 - 35471 and 35473 - 35474 (issued June 2, 2016); 80 FR 48200 at 48216 - 48218 and 48220 - 48221 (issued August 11, 2015)

8 **Q:** Must a title IV-E agency apply for a waiver to receive federal financial participation (FFP) if it wants to use commercial-off-the-shelf (COTS) software products described in paragraph 45 CFR 95.617(c)?

A: Yes. In order to receive FFP for COTS products described in paragraph 45 CFR 95.617(c), the agency must request a waiver pursuant to 45 CFR 95.627.

Source: 2/12/2018

Reference: 45 CFR 1355.30(k); 45 CFR 1355.52(j); 45 CFR 95.617(c); 45 CFR 95.627; 80 FR 48200 at 48217 (issued August 11, 2015)

6.12A.1 Modularity

No questions and answers are available at this time.

6.12A.2 Plain language

No questions and answers are available at this time.

6.12A.3 Development standard

1 **Q:** Is a title IV-E agency required to use one development standard for all automated functions per paragraph 1355.53(a)(3) (which could limit the agency's flexibility in implementing CCWIS) or is it permissible for the title IV-E agency to use different development standards for different automated functions?

A: The title IV-E agency is required per paragraph 1355.53(a)(3) to use a single development standard. However, title IV-E agencies may select a development standard that accommodates variations in their development approach. For example, the development standard may apply certain requirements for one set of conditions and other requirements for other conditions.

Source: 01/11/2017

Reference: 45 CFR 1355.53; 81 FR 35450 at 35470 (issued June 2, 2016); 80 FR 48200 at 48217 - 48218 (issued August 11, 2015)

6.12A.4 Reuse

1 **Q:** Paragraph 1355.53(a)(4) requires that automated functions are "capable of being shared"? What are the processes by which title IV-E agencies share components?

A: There are two general processes by which title IV-E agencies may share components.

First, ACF may request software and associated documents for the federal repository per requirements at paragraph 1355.52(h). ACF may then share these products with title IV-E agencies at the agency's request.

Second, title IV-E agencies may directly share products with other agencies.

Source: 01/11/2017

Reference: 45 CFR 1355.53; 81 FR 35450 at 35470 (issued June 2, 2016); 80 FR 48200 at 48217 - 48218 (issued August 11, 2015)

2 **Q:** Paragraph 1355.53(a)(4) requires that automated functions be capable of reuse. Does this mean title IV-E agencies are required to make automated functions "plug and play"?

A: No, paragraph 1355.53(a)(4) does not require title IV-E agencies to make automated functions adaptable to different hardware configurations without manual configuration (plug and play).

Source: 01/11/2017

Reference: 45 CFR 1355.53; 81 FR 35450 at 35470 (issued June 2, 2016); 80 FR 48200 at 48217 - 48218 (issued August 11, 2015)

3 **Q:** If ACF places a CCWIS automated function in the federal repository described in paragraph 1355.52(h) and it is not selected by another agency for re-use, does that mean the automated function did not comply with the reuse requirement of paragraph 1355.53(a)(4)?

A: No. Paragraph 1355.53(a)(4) requires that automated functions be "capable of being shared, leveraged, and reused." The regulation does not require modules be reused when it is not appropriate, such as when a module does not support an agency's business processes.

Source: 01/11/2017

Reference: 45 CFR 1355.53; 81 FR 35450 at 35470 (issued June 2, 2016); 80 FR 48200 at 48217 - 48218 (issued August 11, 2015)

6.12B Design waivers

No questions and answers are available at this time.

6.13 CCWIS options

1 **Q:** Are all CCWIS data exchanges required to be bi-directional?

A: No. Paragraph 1355.52(e) requires eleven mandatory bi-directional data exchanges. However, optional data exchanges approved by ACF pursuant to section 1355.54 may be uni-directional data exchanges. Exchanges benefiting the title IV-B or IV-E programs may be eligible for CCWIS funding, but exchanges not benefiting the title IV-B or IV-E programs must be cost allocated to the benefiting program or programs.

Source: 4/24/2017

Reference: 45 CFR 1355.54; 81 FR 35450 at 35471 (issued June 2, 2016); 80 FR 48200 at 48218 - 48219 (issued August 11, 2015)

2 **Q:** May title IV-E agencies establish data exchanges with private entities that are not defined as child welfare contributing agencies (CWCAs), such as providers of substance abuse, mental health and other treatment services pursuant to section 1355.54?

A: Yes, with ACF approval.

Source: 4/24/2017

Reference: 45 CFR 1355.54; 81 FR 35450 at 35453 and 35471 (issued June 2, 2016); 80 FR 48200 at 48218 - 48219 (issued August 11, 2015)

3 **Q:** May title IV-E agencies build data exchanges with other Federal entities such as the Social Security Administration or with state or tribal agencies, such as departments of labor and employment pursuant to section 1355.54?

A: Yes, with ACF approval.

Source: 4/24/2017

Reference: 45 CFR 1355.54; 81 FR 35450 at 35471 (issued June 2, 2016); 80 FR 48200 at 48218 - 48219 (issued August 11, 2015)

4 **Q:** Are state title IV-E agencies required to build electronic data exchanges with federally recognized Indian tribes to comply with the requirements of paragraph 1355.52(b)(3) regarding the Indian Child Welfare Act (ICWA)?

A: No. State title IV-E agencies are not required to build a data exchange between CCWIS and federally recognized Indian tribes. However, a state title IV-E agency may propose such a data exchange for ACF approval pursuant to section 1355.54.

Source: 4/24/2017

Reference: 45 CFR 1355.52(b)(3); 45 CFR 1355.54; 45 CFR 1355.57; 81 FR 35450 at 35455, 35471 and 35473 -

35475 (issued June 2, 2016); 80 FR 48200 at 48207 - 48208, 48218 - 48219, and 48220 - 48222 (issued August 11, 2015)

5 **Q:** How must the title IV-E agency cost allocate development, operational and equipment costs for portions of a CCWIS that benefit the juvenile justice program?

A: Pursuant to 1355.57 (e) and (f) and as described at 80 FR 48200 at 48220, development costs that benefit both the title IV-E program and the juvenile justice program may be allocated to the title IV-E program.

Pursuant to 1355.57 (e) and (f) and 45 CFR 95.631(a), development costs must be allocated to the juvenile justice program for:

<ul style="list-style-type:Disc; margin-left: 2em;">

<LI>Enhancements made to automated functions benefitting a juvenile justice program, but not the title IV-E program.</LI>

<LI>Automated functions only benefitting the juvenile justice program.</LI>

</UL>

Pursuant to 45 CFR 95.631(b), operational costs may be allocated to the title IV-E program in proportion to the use of the CCWIS by the title IV-E program versus use by the juvenile justice program. Operational costs must be allocated to the juvenile justice program in proportion to the use of the system to support the non-title IV-E juvenile justice program.

Equipment costs are allocated to the title IV-E program in proportion to its use by workers of the title IV-E program versus the juvenile justice program.

Source: 10/26/2017

Reference: 45 CFR 1355.54; 45 CFR 1355.57; 45 CFR 95.631 81 FR 35450 at 35471 and 35473 - 35475 (issued June 2, 2016); 80 FR 48200 at 48218 - 48222 (issued August 11, 2015)

6 **Q:** If a title IV-E agency elects to support the Interstate Compact on the Placement of Children (ICPC) with a bi-directional data exchange between CCWIS and the National Electronic Interstate Compact Enterprise (NEICE) Clearinghouse, must this data exchange comply with the single data exchange standard requirements of 1355.52(f)?

A: No. Only CCWIS bi-directional data exchanges with child welfare contributing agencies (CWCAs) and/or external systems used by IV-E agency staff to collect CCWIS data are required to comply with the single data exchange standard requirements of 1355.52(f). The NEICE Clearinghouse is not a CWCA, as defined at paragraph 1355.51, because the Clearinghouse does not provide the services of "child abuse and neglect investigations, placement, or child welfare case management (or any combination of these) to children and families." The Clearinghouse is not an external system as described in the regulation at 1355.52(e)(1)(iv) because it lacks features that enable workers to directly enter CCWIS data.

Source: 2/12/2018

Reference: 45 CFR 1355.51; 45 CFR 1355.52(e)(1)(iv); 45 CFR 1355.52(f); 81 FR 35450 at 35453, 35461 - 35464, and 35466 - 35467 (issued June 2, 2016); 80 FR 48200 at 48205, 48211 - 48212, and 48215 - 48216 (issued August 11, 2015)

6.14 CCWIS reviews

1 **Q:** Will ACF review CCWIS projects over Advance Planning Document (APD) thresholds and CCWIS projects under these thresholds in accordance with the same review and assessment process described in section 1355.55?

A: Yes. ACF will review, assess and inspect the planning, design, development, installation, operation and maintenance of each CCWIS project on a continuing basis to determine the extent to which the project meets CCWIS requirements, regardless of whether the project was over or under the $5 million APD threshold.

Source: 4/24/2017

Reference: 45 CFR 95.611, 45 CFR 1355.55; 81 FR 35450 at 35471 (issued June 2, 2016); 80 FR 48200 at 48219 (issued August 11, 2015)

2 ***Q:*** What data quality metrics will ACF use during the CCWIS reviews described at paragraph 1355.55?

A: ACF will use the standards in federal laws, regulations, and policies for evaluating data quality for federally required data described in section 1355.52(b)(1). We will apply the standards established by the state or tribe when evaluating the quality of required data described in section 1355.52 (b)(2). If two or more standards apply to the same data, ACF will apply the more rigorous standard, per 1355.52(d)(1)(i) in reviewing data quality. For example, if one standard required updating certain CCWIS data in seven days and a second standard set a two-day limit, we will hold the title IV-E agency to the two-day limit.

Source: 4/24/2017

Reference: 45 CFR 1355.52(b)(1) - (2); 1355.52(d)(1); 45 CFR 1355.55; 81 FR 35450 at 35454 - 35455, 35457 and 35471 (issued June 2, 2016); 80 FR 48200 at 48207 - 48209 and 48219 (issued August 11, 2015)

3 ***Q:*** Will ACF conduct CCWIS reviews as described in section 1355.55 solely based on the title IV-E agency's CCWIS data quality plan submitted per paragraph 1355.52(d)(5)?

A: No. During a CCWIS review described by section 1355.55, ACF will review the extent to which the CCWIS project meets requirements in sections 1355.52, 1355.53, 1355.56, and, if applicable, 1355.54 which will include, but is not limited to a review of the title IV-E agency's data quality plan.

Source: 4/24/2017

Reference: 45 CFR 1355.52(d)(5); 45 CFR 1355.55; 81 FR 35450 at 35460 - 35461 and 35471 (issued June 2, 2016); 80 FR 48200 at 48211 and 48219 (issued August 11, 2015)

4 **Q:** Are title IV-E agencies required to conduct an independent verification and validation (IV&V) review for CCWIS design, implementation, and data quality reviews as part of the CCWIS review process?

A: No. Section 1355.55 does not specifically require title IV-E agencies to conduct an IV&V review as part of the CCWIS review process. However, ACF may require a title IV-E agency to complete an IV&V per Advance Planning Document (APD) regulations at 45 CFR 95.626.

Source: 4/24/2017

Reference: 45 CFR 95.626; 45 CFR 1355.55; 81 FR 35450 at 35471 - 35472 (issued June 2, 2016); 80 FR 48200 at 48219 (issued August 11, 2015)

6.15 Transition Period

1 **Q:** What requirements must a title IV-E agency with a S/TACWIS meet if the agency does not build a CCWIS?

A: A title IV-E agency with a S/TACWIS project that elects not to transition to a CCWIS must:

1. notify ACF by July 31, 2018 in an Advance Planning Document (APD) or Notice of Intent that it will not transition the S/TACWIS project to CCWIS; and
2. continue to use the S/TACWIS through its life expectancy in accordance with 45 CFR 95.619.

The title IV-E agency must also continue to meet the APD requirements at 45 CFR 95, Subpart F per 1355.30(k).

Source: (9/14/16)

Reference: 45 CFR 95, Subpart F; 45 CFR 1355.30(k); 45 CFR 1355.56(d); 81 FR 35450 at 35473 (June 2, 2016); 80 FR 48200 at 48220 (August 11, 2015)

2 **Q:** What are the consequences if a title IV-E agency with a S/TACWIS fails to notify ACF by July 31, 2018 that the agency will not transition to CCWIS?

A: The title IV-E agency may be subject to recoupment of all title IV-E funds for the project per 45 1355.56(e)

Source: (9/14/16)

Reference: 45 CFR 1355.56(e); 45 CFR 1358; 45 CFR 95.635(b); 81 FR 35450 at 35473 (June 2, 2016); 80 FR 48200 at 48220 and 48222 (August 11, 2015)

3 **Q:** Are CCWIS projects subject to all Advance Planning Document (APD) regulations at 45 CFR 95 Subpart F?

A: It depends on whether the CCWIS project is at, above, or below the APD thresholds.
CCWIS projects at or above the APD thresholds at 45 CFR 95.611 are subject to all the APD regulations at 45 CFR 95 Subpart F.
CCWIS projects below the APD thresholds at 45 CFR 95.611 are subject to only the APD regulations at 45 CFR 95.613 through 95.621 and 95.626 through 95.641.

Source: (9/14/16)

Reference: 45 CFR 1355.30(k); 45 CFR 1355.52(j); 80 FR 48200 at 48217 (August 11, 2015)

4 **Q:** Is there specific language that a title IV-E agency must use to notify ACF that the agency does not intend to transition a S/TACWIS to CCWIS?

A: No. 1355.56(d) requires the agency to notify ACF in an APD or Notice of Intent submitted during the transition period that the agency does not elect to transition a S/TACWIS project to CCWIS. The required notification must convey the message that the IV-E agency does not elect to transition the S/TACWIS project to CCWIS.

Source: (9/14/16)

Reference: 45 CFR 1355.56(d)(1); 81 FR 35450 at 35473 (issued June 2, 2016)

5 Q: What requirements must a title IV-E agency with a non-S/TACWIS meet if the agency does not build a CCWIS?

A: The title IV-E agency must continue to meet the APD requirements at 45 CFR 95, Subpart F.

Source: (9/14/16)

Reference: Section 474(a)(C) of title IV-E of the Social Security Act

6 Q: Are there financial consequences for using a former S/TACWIS as a non-CCWIS beyond the 24 month transition period ending on July 31, 2018?

A: It depends. There are no consequences in the CCWIS regulations for using a former S/TACWIS as a non-CCWIS provided the title IV-E agency:

<ul style="list-style-type:number; margin-left: 1em;">
notifies ACF by July 31, 2018 in an APD or Notice of Intent, that it will not transition the S/TACWIS project to CCWIS; and

continues to use the S/TACWIS through its life expectancy in accordance with 45 CFR 95.619.

The title IV-E agency must also continue to meet the APD requirements at 45 CFR 95, Subpart F per 1355.30(k).

However, if the title IV-E agency does not meet these requirements, the agency may be subject to funding recoupment.

Source: (9/14/16)

Reference: 45 CFR 95, Subpart F; 45 CFR 1355.30(k); 45 CFR 1355.56(d) and (e); 45 CFR 1358; 81 FR 35450 at 35473 (June 2, 2016); 80 FR 48200 at 48220 and 48222 (August 11, 2015)

7 ***Q:*** If a S/TACWIS does not transition to CCWIS and meets the notification and continued-use requirements of 1355.56(d), what cost allocation does the S/TACWIS qualify for both during and after the transition period?

A: Through July 31, 2018, the S/TACWIS may continue to claim title IV-E funding according to the cost allocation methodology approved by ACF for the development or the operational cost allocation plan approved by the Department or both.

After July 31, 2018, ACF will classify the system as a non-CCWIS. The non-CCWIS may qualify for non-CCWIS cost allocation.

Source: (9/14/16)

Reference: 45 CFR 1355.56(a); 45 CFR 1355.57(f); 45 CFR 1356.60(d); 81 FR 35450 at 35472 - 35473 and 35475 (June 2, 2016); 80 FR 48200 at 48219 - 48220 and 48222 (August 11, 2016)

8 ***Q:*** If a title IV-E agency decides to build a new CCWIS, transition a S/TACWIS to CCWIS, or transition a non-S/TACWIS to CCWIS, what CCWIS requirements must the agency meet before claiming funding in accordance with a CCWIS cost allocation?

A: A title IV-E agency must notify ACF of the decision before claiming funding in accordance with a CCWIS cost allocation. The agency must meet the requirements of 1355.52(i)(1) when formally conveying the decision to ACF. Paragraph 1355.52(i)(1) requires that the agency provide the following documents:

<ul style="list-style-type:number; margin-left: 1em;">
an Advance Planning Document (APD) (if the CCWIS project is over the APD thresholds defined at 45 CFR 95.611) or a Notice of Intent (if the CCWIS project is under APD thresholds);

a description of how the planned CCWIS will meet the CCWIS project requirements found in 1355.52(a) - (h), and if applicable, any optional exchanges or functions included in the CCWIS as allowed under 1355.54; and

a list of all automated functions planned for the CCWIS including, for each automated function:

<ul style="list-style-type:Disc; margin-left: 2em;">
if the automated function supports a requirement of section 1355.52 (CCWIS Project Requirements) or section 1355.54 (CCWIS Options);

if the automated function is not duplicated within the CCWIS or systems supporting child welfare contributing agencies and is consistently used by all child welfare users responsible for the area supported by the automated function; and,

if the automated function complies with paragraph 1355.53(a) (CCWIS Design Requirements), unless exempted from the design requirements by one of the conditions described in paragraph1355.53(b).

The title IV-E agency must provide the above documents to ACF by July 31, 2018 (the end of the transition period) if transitioning a S/TACWIS to CCWIS or transitioning a non-S/TACWIS to CCWIS.

Source: (9/15/16)

Reference: 45 CFR 1355.52(i)(1); 45 CFR 1355.56(b); 45 CFR 1355.56(f)(1); 80 FR 48216 - 48217 and 48219 - 48220 (August 11, 2016)

9 **Q:** Do the CCWIS design requirements listed in 1355.53(a) apply to a S/TACWIS or non-S/TACWIS project transitioning to CCWIS?

A: It depends. For S/TACWIS or non-S/TACWIS projects, the CCWIS design requirements do not apply to automated functions developed on or before July 31, 2018 (the end of the transition period).

The CCWIS design requirements apply to automated functions developed after July 31, 2018 unless ACF approves technical advances in design proposed by the title IV-E agency that ACF determines to be more efficient, economical and effective than the CCWIS design requirements listed in paragraph 1355.53(a).

Source: (9/15/16)

Reference: 45 CFR 1355.53; 45 CFR 1355.57(a); 80 FR 48200 at 48217 - 48218 and 48221; 81 FR 35450 at 35468 - 35471 and 35474 - 35475

10 Q: Must a S/TACWIS or non-S/TACWIS transitioning to CCWIS meet all CCWIS project requirements described at 1355.52?

A: Yes.

Source: (9/15/16)

Reference: 45 CFR 1355.52

11 Q: Do the CCWIS design requirements listed in 1355.53(a) apply to a new CCWIS?

A: It depends. The CCWIS design requirements apply to all automated functions of a new CCWIS unless ACF approves technical advances in design proposed by the title IV-E agency that ACF determines to be more efficient, economical and effective than the CCWIS design requirements listed in paragraph 1355.53(a).

Source: (9/15/16)

Reference: 45 CFR 1355.53; 45 CFR 1355.57(b); 80 FR 48200 at 48217 - 48218 and 48221; 81 FR 35450 at 35468 - 35471 and 35474 - 35475

12 Q: Must CCWIS projects be operational by the end of the transition period on July 31, 2018?

A: No. CCWIS projects are not required to be operational by the end of the transition period on July 31, 2018.

July 31, 2018 is the deadline by which a title IV-E agency with a S/TACWIS or non-S/TACWIS must notify ACF of the decision to either transition or not transition the system to a CCWIS.

Source: (9/15/16)

Reference: 45 CFR 1355.56(b), (d), and (f)(1); 80 FR 48200 at 48204 and 48219 - 48220; 81 FR 35472 - 35473

13 **Q:** If a title IV-E agency transitions a S/TACWIS or non-S/TACWIS to CCWIS, can it replace this CCWIS with a new CCWIS at a later date?

A: Yes. A title IV-E agency may initiate a new CCWIS project at any time.

Source: (9/15/16)

Reference: 45 CFR 1355.56(c) and (f)(2); 80 FR 48200 at 48204 and 48219

14 **Q:** If a title IV-E agency does not have the resources to begin a new CCWIS project during the transition period, may the agency begin a new CCWIS project after the transition period?

A: Yes. A title IV-E agency may begin a new CCWIS project after the transition period. The CCWIS regulations do not establish deadlines for starting a new CCWIS project.

Source: (9/15/16)

Reference: 45 CFR 1355.56(c) and (f)(2); 80 FR 48200 at 48204 and 48219

15 **Q:** May a title IV-E agency make changes to the list of automated functions submitted per 1355.52(i)(1)?

A: Yes. The title IV-E agency must submit an updated list of CCWIS automated functions in their Annual Advance Planning Document (APD) or Operational APD, as appropriate, that identifies any revisions to the CCWIS automated functions.

Source: (9/15/16)

Reference: 45 CFR 1355.52(i)(2); 80 FR 48200 at 48217

16 **Q:** During the 24 month transition period (August 1, 2016 - July 31, 2018), must a title IV-E agency get ACF approval before implementing enhancements to its S/TACWIS project?

A: It depends. Depending on the scope of the change and the status of the Implementation Advance Planning Document (APD), the agency would either seek approval or report changes in an As Needed, Annual or Operational APD in accordance with 45 CFR 95, Subpart F.

Source: (9/15/16)

Reference: 45 CFR 95, Subpart F

17 **Q:** Must title IV-E agencies with a S/TACWIS that is not compliant with all S/TACWIS requirements continue to work toward S/TACWIS compliance?

A: No. As of August 1, 2016, the CCWIS regulations are effective and replace S/TACWIS regulations. Therefore, the S/TACWIS regulations are no longer applicable.

Source: (9/15/16)

Reference: 81 CFR 35450 at 35450 and 35473

18 **Q:** What federal financial participation (FFP) rate are S/TACWIS projects eligible for during the August 1, 2016 - July 31, 2018 transition period?

A: S/TACWIS projects are eligible for 50% FFP for the share of project costs allocable to title IV-E during the August 1, 2016 - July 31, 2018 transition period.

This question and answer is repeated in the Cost Allocation for Transitioning Systems section.

Source: 11/09/16

Reference: Section 474(a)(3)(C) and (D) of the Social Security Act; 45 CFR 1355.56(a); 80 FR 48200 at 48291 (issued August, 11, 2015); 81 FR 35450 at 35472 (issued June 2, 2016)

19 Q: What cost allocation methodologies are S/TACWIS projects eligible for during the August 1, 2016 - July 31, 2018 transition period for development and operational costs?

A: During the August 1, 2016 - July 31, 2018 transition period, title IV-E agencies with a S/TACWIS project may claim title IV-E funding according to the cost allocation methodology approved by ACF for development or the operational cost allocation plan approved by the Department, or both, per paragraph 1355.56(a).

Activities and costs must be eligible for title IV-E funding and be described in an applicable APD, per 46 CFR 95.610.

This question and answer is repeated in the Cost Allocation for Transitioning Systems section.

Source: 11/09/16

Reference: Section 474(c) of the Social Security Act; 45 CFR 1355.56(a); 45 CFR 95.610; 81 FR 35472 (issued June 2, 2016); 80 FR 48219 (issued August 11, 2015)

20 ***Q:*** May a title IV-E agency use their existing S/TACWIS cost allocation methodology for continued S/TACWIS work after the 24-month transition period?

A: No. The existing S/TACWIS cost allocation methodology is only available for S/TACWIS projects and related project costs during the 24-month transition period from August 1, 2016 - July 31, 2018, per paragraph 1355.56(a).

After the transition period ends on July 31, 2018, S/TACWIS projects that have transitioned to CCWIS may receive CCWIS cost allocation per 1355.57(a). S/TACWIS projects that have been classified as non-CCWIS may receive non-CCWIS cost allocation per 1355.57(f).

This question and answer is repeated in the Cost Allocation for Transitioning Systems section.

Source: 11/09/16

Reference: 45 CFR 1355.56(a); 45 CFR 1357(a), (c), (e), and (f); 81 FR 35472, 35474 - 35475 (issued June 2, 2016); 80 FR 48219, 48221 - 48222 (issued August 11, 2015)

21 ***Q:*** What requirements must a S/TACWIS or non-S/TACWIS system transitioning to CCWIS meet to qualify for CCWIS cost allocation?

A: The transitioning system as a whole must 1) meet the CCWIS project requirements at section 1355.52; and, 2) all automated functions developed after July 31, 2018 must meet the CCWIS design requirements of section 1355.53.

If the system as a whole meets the above two requirements, ACF separately evaluates each automated function. An automated function may qualify for CCWIS cost allocation if it meets three conditions. Those conditions are: 1) the automated function supports programs authorized under titles IV-B or IV-E, and at least one requirement of section 1355.52 or, if applicable section 1355.54; 2) the automated function is not duplicated within the CCWIS or systems supporting child welfare contributing agencies and 3) the automated function is consistently used by all child welfare users responsible for the area supported by the automated function.

This question and answer is repeated in the Cost Allocation for Transitioning Systems section.

Source: 11/09/16

Reference: 45 CFR 1355.52(i)(1); 45 CFR 1355.57(a); 81 FR 35450 at 35467 - 35468 and 35474 - 35475 (issued June 2, 2016) 80 FR 48200 at 48216 - 48217 and 48200 - 48221 (issued August 11, 2015)

22 Q: We understand that an automated function that is part of a S/TACWIS transitioning to CCWIS may receive S/TACWIS cost allocation for development during the transition period, even if the automated function does not meet the CCWIS design requirements of 1355.53(a), pursuant to paragraph 1355.56(a). However, if the development on this automated function continues after the transition period, may the title IV-E agency claim CCWIS developmental cost allocation for this automated function?

A: No. For transitioning projects, all CCWIS development that occurs after the transition period must meet the CCWIS design requirements described under paragraph 1355.53(a) unless ACF approves, on a case-by-case basis, an alternative design proposed by a title IV-E agency that is determined by ACF to be more efficient, economical, and effective than what is found in paragraph 1355.53(a), pursuant to paragraph 1355.53(b)(2).

Source: 4/24/2017

Reference: 45 CFR 1355.53, 1355.56(a) and 1355.57(a)(1); 81 FR 35450 at 35468 - 35472 and 35473 - 35475 (issued June 2, 2016); 80 FR 48200 at 48217 - 48222 (issued August 11, 2015)

23 Q: For a S/TACWIS transitioning to a CCWIS, may a title IV-E agency claim CCWIS operational funding after July 31, 2018 for the maintenance of automated functions that were developed by July 31, 2018 and do not meet the CCWIS design requirements of paragraph 1355.53(a)?

A: Yes, a title IV-E agency may claim operational funding for these automated functions provided the title IV-E agency has an approved cost allocation plan, pursuant to 45 CFR 95.631(b).

This question and answer is repeated in the cost allocation for transitioning systems section.

Source: 4/24/2017

Reference: 45 CFR 95.631(b), 1355.53(a) and 1355.57(a); 81 FR 35450 at 35468 - 35470 and 35473 - 35475 (issued June 2, 2016); 80 FR 48200 at 48217 - 48217 and 48220 - 48221 (issued August 11, 2015)

24 **Q:** If ACF approves a title IV-E agency's plan to transition an existing system to CCWIS prior to July 31 2018, must all development work done after ACF's approval comply with the CCWIS design requirements of 1355.53(a)?

A: Pursuant to long-standing policy, title IV-E agencies were prohibited from suspending adoption assistance payments because a suspension was the equivalent of terminating adoption assistance payments. See ACYF-CB-PIQ-98-02, as incorporated into 8.2 of the Child Welfare Policy Manual (CWPM). Title IV-E agencies advised us that our adoption assistance suspension policy did not allow them the latitude to act when the agency was unsure or doubted that the parent was continuing to provide support to the child/youth. Consequently, we issued a Request for Comment in the Federal Register, 80 FR 17058 (March 31, 2015) asking agencies and other stakeholders to comment on our adoption assistance suspension policy. Informed by the comments we received, we have revised our adoption assistance suspension policy to allow title IV-E agencies to suspend adoption assistance payments in accordance with the guidance provided below.

A title IV-E agency may suspend adoption assistance payments if the agency cannot establish that the adoptive parent is providing any support to the child/youth (including individuals up to age 21 as per an approved title IV-E plan) because the agency has not been able to establish contact with the parent to make such a determination. Any support includes various forms of financial support, as determined by the title IV-E agency. Payments for family therapy, tuition, clothing, maintenance of special equipment in the home, or services for the child's special needs are acceptable forms of financial support. See 473(a)(4)(A)(iii) of the Social Security Act (the Act); CWPM, 8.2D.5, Question and Answer #2.

Similarly, a title IV-E agency may suspend adoption assistance payments if the agency cannot establish that the adoptive parent is legally responsible for the support of the child under age 18 because the agency has not been able to establish contact with the parent to make a determination. A parent is considered no longer legally responsible for the support of a child when parental rights have been terminated or when the child becomes an emancipated minor, marries, or enlists in the military. See 473(a)(4)(A)(ii) of the Act; the Child Welfare Policy Manual at 8.2D.5, Question and Answer #2.

Note that a title IV-E agency cannot reduce or suspend adoption assistance solely because the adoptive parents fail to reply to the agency s request for information, renewal, or recertification of the adoption assistance agreement.

A title IV-E agency only may suspend adoption assistance payments in accordance with the fair hearing requirements at 45 C.F.R. 205.10. Before suspending a payment, the title IV-E

agency must ensure that notice to the adoptive parents is both timely and adequate, as described at 45 C.F.R. 205.10(a)(4). As such, the title IV-E agency must mail notice of intent to suspend the adoption assistance payments at least ten days before the agency plans to suspend the payments. It also must describe that the agency intends to suspend payments, the reasons for the intended suspension and the title IV-E basis as outlined above for the intended suspension. Finally, the agency must describe the adoptive parent s right to request a fair hearing and the circumstances under which assistance is continued if a hearing is requested.

In order to be able to suspend adoption assistance payments in accordance with the guidance above, the title IV-E agency must first amend its title IV-E plan and have the Children s Bureau approve the change. Note also that each new adoption assistance agreement must include the circumstances under which the title IV-E agency may suspend adoption assistance payments. Similarly, the title IV-E agency may try to re-negotiate existing adoption assistance agreements with the adoptive parent to include the circumstances under which the title IV-E agency may suspend payments; however, the terms of an existing adoption assistance agreement only may be changed with the concurrence of the adoptive parent. If an adoptive parent declines to include such a term in the existing agreement, the title IV-E agency may not suspend adoption assistance payments under that agreement.

If the title IV-E agency suspends adoption assistance as described above, the child/youth remains title IV-E eligible, and the title IV-E adoption assistance agreement remains in effect while the payment is suspended.

Although an agency may suspend a child s adoption assistance payment under the circumstances described above, the child s eligibility for, and receipt of, Medicaid may not be suspended while the adoption assistance agreement is in effect. See 473(b) of the Social Security Act. The title IV-E agency also may claim any title IV-E adoption assistance administrative costs on behalf of a child whose title IV-E adoption assistance is suspended in accordance with its approved cost allocation plan.

Source: 02/12/2018

Reference: 45 CFR 1355.52(i)(1); 45 CFR 1355.53; 45 CFR 1355.57(a); 81 FR 35450 at 35467 - 35471 and 35473 - 35474 (issued June 2, 2016); 80 FR 48200 at 48216 - 48218 and 48220 - 48221 (issued August 11, 2015)

6.16 Cost allocation

1 ***Q:*** Is the federal financial participation (FFP) rate for CCWIS mandated by statute?

A: Yes. Section 474(a)(3)(C) and (D) of the Social Security Act mandates the 50% FFP rate.

Source: 11/09/16

Reference: Section 474(a)(3)(C) and (D) of the Social Security Act.

2 Q: Is FFP available for both CCWIS development and operational costs?

A: Yes. FFP is available for CCWIS development and operational costs.

Source: 11/09/16

Reference: Section 474(a)(3)(C) and (D) of title IV-E of the Social Security Act; 45 CFR 1355.57(e); 81 FR 35450 at 35475 (issued June 2, 2016); 80 FR 48220 at 48222 (issued August 11, 2015)

3 Q: Is CCWIS cost allocation available for the costs for commercial off-the-shelf (COTS) products?

A: It depends.

Federal financial participation is not available to develop COTS products. Software developed using a CCWIS cost allocation must be owned by the state or tribe. The federal government must be granted a royalty-free, nonexclusive, and irrevocable license to reproduce, publish, or otherwise use and authorize others to use for federal government purposes, the software, modifications, and other documents produced.

However, CCWIS cost allocation may be available for COTS licensing fees for the use of COTS products. CCWIS cost allocation may also be available to configure and install COTS products.

Source: 11/09/16

Reference: 45 CFR 1355.57(e)(1); 45 CFR 95.617; 81 FR 35450 at 35475 (issued June 2, 2016); 80 FR 48220 at 48222 (issued August 11, 2015); ACF-OA-PI-31-01 (issued June 11, 2013)

4 **Q:** Are county, external IV-E agency, or private agency systems that collect CCWIS data eligible for CCWIS cost allocation?

A: No. These systems are not eligible for funding under the CCWIS cost allocation methodology.

Source: 11/09/16

Reference: 45 CFR 1355.57(f); 45 CFR 1356.60(d); 81 FR 35450 at 35475 (issued June 2, 2016); 80 FR 48200 at 48222 (issued August 11, 2015)

5 **Q:** If automated functions that support the reporting and investigation of child abuse and neglect reside exclusively in a CCWIS, how must the title IV-E agency cost allocate development costs for those automated functions?

A: Pursuant to 1355.57(a) - (e), the title IV-E agency may allocate development costs using a CCWIS cost allocation methodology unless the automated functions in the CCWIS are:
<ul style="list-style-type:Disc; margin-left: 2em;">
<LI>Duplicated in other systems supporting the state or tribe's title IV-E or title IV-B programs, pursuant to 1355.57(a)(2)(ii) and (b)(2)(ii);</LI>
<LI>Not used consistently by all child welfare users responsible for the area supported by the automatic function, pursuant to 1355.57(a)(2)(ii) and (b)(2)(ii);</LI>
<LI>Unique child welfare related program functions (such as juvenile justice and adult protective services) not used by the title IV-E program, pursuant to 1355.57(e) and (f) and 45 CFR 95.631; and</LI>
<LI>Common or unique functions benefiting other health and human service programs (such as child support, child care, Supplementary Nutritional Assistance Program, Temporary Assistance to Needy Families, Medicaid, courts and/or education programs), pursuant to 1355.57(e) and (f) and 45 CFR 95.631.</LI></UL>

This question and answer is repeated in the Child Abuse and Neglect Systems section.

Source: 10/26/2017

Reference: 45 CFR 95.631; 45 CFR 1355.52(e)(2)(i); 45 CFR 1355.57; 81 FR 35450 at 35473 - 35475 (issued June 2, 2016); 80 FR 48200 at 48213 and 48220 - 48222 (issued August 11, 2015)

6 **Q:** If automated functions that support the reporting and investigation of child abuse and neglect reside in an external system and are not duplicated in CCWIS, how must the agency cost allocate development costs for those automated functions?

A: Pursuant to 1355.57(e), the title IV-E agency must allocate development costs using a non-CCWIS cost allocation methodology if the automated functions reside in an external system.

This question and answer is repeated in the Child Abuse and Neglect Systems section.

Source: 10/26/2017

Reference: 45 CFR 95.631; 45 CFR 1355.52(e)(2)(i); 45 CFR 1355.57; 81 FR 35450 at 35473 - 35475 (issued June 2, 2016); 80 FR 48200 at 48213 and 48220 - 48222 (issued August 11, 2015)

7 **Q:** If automated functions that support the reporting and investigation of child abuse and neglect reside in both a CCWIS and an external system, how must the agency cost allocate development costs for those automated functions?

A: Pursuant to 1355.57(e), the title IV-E agency must allocate development costs using a non-CCWIS cost allocation methodology if the automated functions reside in both a CCWIS and an external system. The duplicated development costs are allocated to the benefiting program or programs. All programs pay their share of an automated function under a non-CCWIS cost allocation methodology.

This question and answer is repeated in the Child Abuse and Neglect Systems section.

Source: 10/26/2017

Reference: 45 CFR 95.631; 45 CFR 1355.52(e)(2)(i); 45 CFR 1355.57; 81 FR 35450 at 35473 - 35475 (issued June 2, 2016); 80 FR 48200 at 48213 and 48220 - 48222 (issued August 11, 2015)

6.16A Cost allocation for transitioning systems

1 ***Q:*** What federal financial participation (FFP) rate are S/TACWIS projects eligible for during the August 1, 2016 - July 31, 2018 transition period?

A: S/TACWIS projects are eligible for 50% FFP for the share of project costs allocable to title IV-E during the August 1, 2016 - July 31, 2018 transition period.

This question and answer is repeated in the Transition Period section.

Source: 11/10/16

Reference: Section 474(a)(3)(C) and (D) of the Social Security Act; 45 CFR 1355.56(a); 80 FR 48200 at 48291 (issued August, 11, 2015); 81 FR 35450 at 35472 (issued June 2, 2016)

2 ***Q:*** What cost allocation methodologies are S/TACWIS projects eligible for during the August 1, 2016 - July 31, 2018 transition period for development and operational costs?

A: During the August 1, 2016 - July 31, 2018 transition period, title IV-E agencies with a S/TACWIS project may claim title IV-E funding according to the cost allocation methodology approved by ACF for development or the operational cost allocation plan approved by the Department, or both, per paragraph 1355.56(a).

Activities and costs must be eligible for title IV-E funding and be described in an applicable APD, per 46 CFR 95.610.

This question and answer is repeated in the Transition Period section.

Source: 11/10/16

Reference: Section 474(c) of the Social Security Act; 45 CFR 1355.56(a); 45 CFR 95.610; 81 FR 35472 (issued June 2, 2016); 80 FR 48219 (issued August 11, 2015)

3 ***Q:*** May a title IV-E agency use their existing S/TACWIS cost allocation methodology for continued S/TACWIS work after the 24-month transition period?

A: No. The existing S/TACWIS cost allocation methodology is only available for S/TACWIS projects and related project costs during the 24-month transition period from August 1, 2016 - July 31, 2018, per paragraph 1355.56(a).

After the transition period ends on July 31, 2018, S/TACWIS projects that have transitioned to CCWIS may receive CCWIS cost allocation per 1355.57(a). S/TACWIS projects that have been classified as non-CCWIS may receive non-CCWIS cost allocation per 1355.57(f).

This question and answer is repeated in the Transition Period section.

Source: 11/10/16

Reference: 45 CFR 1355.56(a); 45 CFR 1357(a), (c), (e), and (f); 81 FR 35472, 35474 - 35475 (issued June 2, 2016); 80 FR 48219, 48221 - 48222 (issued August 11, 2015)

4 ***Q:*** What requirements must a S/TACWIS or non-S/TACWIS system transitioning to CCWIS meet to qualify for CCWIS cost allocation?

A: The transitioning system as a whole must 1) meet the CCWIS project requirements at section 1355.52; and, 2) all automated functions developed after July 31, 2018 must meet the CCWIS design requirements of section 1355.53.

If the system as a whole meets the above two requirements, ACF separately evaluates each automated function. An automated function may qualify for CCWIS cost allocation if it meets three conditions. Those conditions are: 1) the automated function supports programs authorized under titles IV-B or IV-E, and at least one requirement of section 1355.52 or, if applicable section 1355.54; 2) the automated function is not duplicated within the CCWIS or systems supporting child welfare contributing agencies and 3) the automated function is consistently used by all child welfare users responsible for the area supported by the automated function.

This question and answer is repeated in the Transition Period section.

Source: 11/10/16

Reference: 45 CFR 1355.52(i)(1); 45 CFR 1355.57(a); 81 FR 35450 at 35467 - 35468 and 35474 - 35475 (issued June 2, 2016) 80 FR 48200 at 48216 - 48217 and 48200 - 48221 (issued August 11, 2015)

5 **Q:** For a S/TACWIS transitioning to a CCWIS, may a title IV-E agency claim CCWIS operational funding after July 31, 2018 for the maintenance of automated functions that were developed by July 31, 2018 and do not meet the CCWIS design requirements of paragraph 1355.53(a)?

A: Yes, a title IV-E agency may claim operational funding for these automated functions provided the title IV-E agency has an approved cost allocation plan, pursuant to 45 CFR 95.631(b).

This question and answer is repeated in the transition period section.

Source: 4/24/2017

Reference: 45 CFR 95.631(b), 1355.53(a) and 1355.57(a); 81 FR 35450 at 35468 - 35470 and 35473 - 35475 (issued June 2, 2016); 80 FR 48200 at 48217 - 48217 and 48220 - 48221 (issued August 11, 2015)

6.16B Cost allocation for new CCWIS

1 **Q:** What requirements must a new system meet to be classified as a new CCWIS and qualify for CCWIS cost allocation?

A: A new system may be classified as a CCWIS if 1) the system as a whole meets, or when completed will meet, the CCWIS project requirements at section 1355.52; and, 2) all of the system's automated functions meet the CCWIS design requirements of section 1355.53.

If the system as a whole meets the above two requirements, ACF separately evaluates each automated function. An automated function may qualify for CCWIS cost allocation if it meets three conditions. Those conditions are: 1) the automated function supports programs authorized under titles IV-B or IV-E, and at least one requirement of section 1355.52 or, if applicable section 1355.54; 2) the automated function is not duplicated within the CCWIS or systems supporting child welfare contributing agencies and 3) the automated function is consistently used by all child welfare users responsible for the area supported by the automated function.

Source: 11/09/16

Reference: 45 CFR 1355.51; 45 CFR 1355.57(b); 81 FR 35450 at 35474 - 35475 (issued June 2, 2016); 80 FR 48200 at 48205 and 48220 - 48221 (issued August 11, 2015)

6.16C CCWIS cost allocation

1 ***Q:*** In order to qualify for CCWIS cost allocation, paragraph 1355.57(e)(1)(iii) requires that activities and automated functions must benefit federal, state or tribal funded participants in programs and allowable activities described in title IV-E of the Act to the title IV-E program. What programs and activities qualify for CCWIS cost allocation under paragraph 1355.57(e)(1)(iii)?

A: A title IV-E agency may cost allocate CCWIS activities and automated functions that benefit participants in programs such as foster care, adoption assistance or guardianship programs, pursuant to 1355.57(e)(1)(iii). Activities and automated functions supporting other health and human service programs, such as Temporary Assistance to Needy Families (TANF), Child Care, Child Support, Supplemental Nutrition Assistance Program (SNAP), Medicaid and related state or tribal health and human service programs do not qualify for CCWIS cost allocation pursuant to 1355.57(e)(1)(iii). If a title IV-E agency would like to include some other program not listed here, then the title IV-E agency may present a business case for allocating the cost of activities and automated functions benefiting such program in accordance with 1355.57(e)(1). ACF will review and determine the appropriate cost allocation in accordance with 45 CFR 95 Subpart F.

Source: 11/11/16

Reference: 45 CFR 1355.57(e)(1)(iii); 81 FR 35450 at 35475 (issued June 2, 2016); 80 FR 48220 at 48222 (issued August 11, 2015)

6.16C.1 Development

No questions and answers are available at this time.

6.16C.2 Operations

1 ***Q:*** May title IV-E agencies allocate CCWIS operational costs benefiting title IV-B to title IV-E?

A: No. CCWIS operational costs benefiting title IV-B may not be allocated to title IV-E.

Source: 11/09/16

Reference: 80 FR 48200 at 48220 (issued August 11, 2015); Action Transmittal ACF-OSS-05, Section III (issued February 24, 1995)

6.17 Failure to comply

1 ***Q:*** What corrective measures will ACF require a title IV-E agency to implement to end a suspension and reinstate funding per paragraph 1355.58(c)?

(Deleted 09/22/2017)

6.17A Suspension

No questions and answers are available at this time.

6.17B Ending suspension

1 ***Q:*** What corrective measures will ACF require a title IV-E agency to implement to end a suspension and reinstate funding per paragraph 1355.58(c)?

A: ACF determines the appropriate corrective measures for a title IV-E agency on a case-by-case basis depending on the reasons for the suspension and other relevant factors. In some cases, ACF may require a title IV-E agency to implement a corrective action plan per paragraph 1355.58(c)(2).

Source: 4/24/2017

Reference: 45 CFR 1355.58; 81 FR 35450 at 35475-35476 (issued June 2, 2016); 80 FR 48200 at 48222 (issued August 11, 2015)

6.17C Recoupment

No questions and answers are available at this time.

7. TITLE IV-B

7.1 TITLE IV-B, Citizenship/Alienage Requirements

1 ***Q:*** It is our understanding that qualified aliens, regardless of whether they entered the United States before or after the date of enactment of the Personal Responsibility and Work Opportunity Reconciliation Act (PRWORA) August 22, 1996, are eligible for Federal foster care maintenance and adoption assistance payments (including those funded through title IV-B). Is this a correct interpretation?

A: Not entirely. If the child is a qualified alien who is placed with a qualified alien or United States citizen, the date the child entered the United States is irrelevant. However, if the child is a qualified alien who entered the United States on or after August 22, 1996 and is placed with an unqualified alien, the child would be subject to the five-year residency requirement for Federal means-tested public benefits at section 403 (a) of the PRWORA unless the child is in one of the excepted groups identified at section 403 (b) of that Act. As a general matter, we do not expect these situations to arise very often. In the event such situations do arise, State or local funds may be used to support these children.

Source: ACYF-CB-PIQ-99-01 (1/14/99)

Reference: Social Security Act - Title IV-B; Public Law 104-193 (PRWORA)

2 ***Q:*** Are States required to verify the citizenship or immigration status of individuals receiving child welfare services funded under title IV-B?

A: States are not required to verify the citizenship or immigration status of individuals receiving child welfare services funded under title IV-B, subparts 1 and 2, because those services do not meet the Federal definition of Federal public benefit (see 63 Fed. Reg. 41657 (August 4, 1998)). Therefore, child welfare services are not subject to the verification requirements at section 432 of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA).

Source: ACYF-CB-PIQ-99-01 (1/14/99)

Reference: Social Security Act -Title IV-B; Title IV of PRWORA; PL 104-193; 63 Fed Reg 41657

7.2 TITLE IV-B, Confidentiality

1 ***Q:*** What are the title IV-B confidentiality requirements?

A: In accordance with 45 CFR 1355.30 (p)(3) records maintained under title IV-B of the Act are subject to the confidentiality provisions in 45 CFR 205.50. Among other things, 45 CFR 205.50 restricts the release or use of information concerning individuals receiving financial assistance under the programs governed by this provision to certain persons or agencies that require the information for specified purposes. The authorized recipients of this information are in turn subject to the same confidentiality standards as the agencies administering those programs. To the extent that the records of the title IV-B agency contain information regarding child abuse and neglect reports and records, such information is subject to the confidentiality requirements at section 106 of the Child Abuse Prevention and Treatment Act (CAPTA).

Source: ACYF-NCCAN-PIQ-97-03 (9/27/97); ACYF-CB-PIQ-98-01 (6/29/98); updated 9/27/11

Reference: Social Security Act - section 471 (a)(8); 45 CFR 205.50Child Abuse Prevention and Treatment Act (CAPTA), as amended (42 U.S.C. 5101 et seq.) - sections 106 (b)(2)(B) (viii), (ix), and (x) and 106(c)(4)(B)

2 ***Q:*** Who can release information? In particular, can parties other than the State title IV-B agency (such as the court) release information?

A: The release of information which was obtained from the child welfare agency by any party (including the court), except in the same circumstances as identified in 45 CFR 205.50(a)(1)(i), would result in State violation of the State Plan requirements for Foster Care and Adoption.

Source: ACYF-CB-PIQ-95-02 (6/7/95)

Reference: Social Security Act - section 471 (a)(8); 45 CFR 205.50

3 ***Q:*** Do the title IV-E confidentiality requirements apply to court records of children served by the title IV-B agency?

A: Yes. While the State Plan requirements for Child and Family Services in Section 422 of the

Social Security Act do not identify confidentiality restrictions, title IV-B services are subject to the confidentiality regulations identified in 45 CFR 205.50. See 45 CFR 1355.30 (p)(3).

The regulation prohibits redisclosure of information gained from the child welfare agency in 45 CFR 205.50 (a)(2)(ii), except for the purposes identified in 45 CFR 205.50 (a)(1)(i). This prohibition covers any information gained from the child welfare agency. The information to be safeguarded may be either written information or oral testimony. In addition to the types of information listed in 45 CFR 205.50(a)(2)(i), examples of child welfare information to be safeguarded include but are not limited to the following: referrals from other agencies to the child welfare agency, services provided by the child welfare agency to the child or family, referrals by the child welfare agency to other parties requesting services be provided to the child or family.

Source: ACYF-CB-PIQ-95-02 (6/7/95)

Reference: Social Security Act - section 471 (a)(8); 45 CFR 205.50

4 **Q:** Is any information contained in the child welfare record protected from redisclosure by a court in accordance with title IV-B confidentiality requirements?

A: No. The prohibition covers information that is gained from the child welfare agency. The provisions of confidentiality of information cannot be extended to information that the court has gained from sources other than the child welfare agency.

For example, if the police, school officials, or some other party refers a child to the child welfare agency, the child welfare agency must treat information about the referral as confidential. If the child welfare agency informed the court about this referral, court redisclosure of this information would result in a violation of State plan requirements. If the police, the school official, or some other party went to the court directly, then the confidentiality provisions would not apply. If the court became aware of the police, the school, or other party involvement through a source other than the child welfare agency, the confidentiality provisions in 45 CFR 205.50 would not apply.

Source: ACYF-CB-PIQ-95-02 (6/7/95)

Reference: Social Security Act - section 471 (a)(8); 45 CFR 205.50

5 ***Q:*** Will States compromise compliance with title IV-B of the Social Security Act if they comply with the confidentiality requirements in sections 106 (b)(2)(B)(viii), (ix), and (x) of CAPTA?

A: Records maintained under title IV-B (which is subject to the Department's confidentiality provisions in 45 CFR 205.50) are to be safeguarded against unauthorized disclosure. The regulation at 45 CFR 205.50 states that the release or use of information concerning individuals applying for or receiving financial assistance is restricted to certain persons or agencies that require it for specified purposes. Such recipients of information are in turn subject to standards of confidentiality comparable to those of the agency administering the financial assistance programs. There may be instances where CPS information is subject both to disclosure requirements under CAPTA and to the confidentiality requirements under 45 CFR 205.50. To the extent that the CAPTA provisions require disclosure (such as in section 106 (b)(2)(B)(ix), the CAPTA disclosure provision would prevail in the event of a conflict since the CAPTA confidentiality provisions were most recently enacted. Whereas the CAPTA provision is permissive (such as in sections 106 (b)(2)(B)(viii)(I)-(VI)), it allows States to disclose such information without violating CAPTA, but it does not make such disclosure permissible in other programs if it is not otherwise allowed under the other program's governing statute or regulations.

Source: ACYF-NCCAN-PIQ-97-03 (9/26/97); updated 9/27/11

Reference: Child Abuse Prevention and Treatment Act (CAPTA), as amended (42 U.S.C. 5101 et seq.) - section 106

6 ***Q:*** Some States have enacted laws that allow open courts for juvenile protection proceedings, including child in need of protection or services hearings, termination of parental rights hearings, long-term foster care hearings and in courts where dependency petitions are heard. Questions have arisen about whether courts that are open to the public and allow a verbal exchange of confidential information meet the confidentiality requirements under title IV-B. Do the confidentiality provisions for title IV-B restrict the information that can be discussed in open court?

A: No. Section 471(c) of the Social Security Act allows States to set their own policies relating to public access to court proceedings to determine child abuse and neglect or other court hearings held pursuant to titles IV-B or IV-E. Such policies must, at a minimum, ensure the safety and well-being of the child, his or her parents and family.

Source: 06/19/08

Reference: Social Security Act - section 471 (a)(8) and (c)

7.3 TITLE IV-B, Programmatic Requirements

1 ***Q:*** For what population of children must the section 422 protections be provided?

A: Section 422 of the Social Security Act requires that all of the protections set forth therein be provided to all children in foster care. "Foster care" is defined at 45 CFR 1355.20 as:

"24 hour substitute care for all children placed away from their parents or guardians and for whom the State agency has placement and care responsibility. This includes but is not limited to foster family homes, foster homes of relatives, group homes, emergency shelters, residential facilities, child-care institutions, and pre-adoptive homes regardless of whether the foster care facility is licensed and whether payments are made by the State or local agency for the care of the child or whether there is Federal matching of any payments that are made."

Situations exist in which a child who, while s/he may have been removed from her/his home and placed in 24 hour substitute care, is not considered to be in "foster care" because of the nature of the facility in which s/he is placed. In accordance with the statute, we have not

considered detention facilities, forestry camps, training schools, facilities that are primarily for the detention of children who are adjudicated delinquent, and facilities like medical or psychiatric hospitals as foster care placements. Therefore, children placed in facilities of the type described here are not, by definition, in foster care and the State is not required to provide the protections to them while they are placed in such facilities.

Source: Questions and Answers on the Final Rule (65 FR 4020) (1/25/00)

Reference: Social Security Act - section 422 (22); 45 CFR 1355.20

2 Q: Do the regulations at 45 CFR 205.10 require fair hearings for appeals related to services as well as financial claims?

A: Yes. The regulations at 1355.30 (p)(2) provide that the procedures for hearings found in 45 CFR 205.10 shall apply to all programs funded under titles IV-B and IV-E of the Social Security Act. Fair hearings in relation to services as well as financial claims are therefore covered under this regulation. The Department believes that the close programmatic and fiscal relationship between titles IV-E and IV-B makes a fair hearings requirement appropriate. The process for fair hearings under section 205.10 is essentially the same for services hearings as for financial hearings. However, because the substantive portion of the regulations provides no examples of service issues, the State has the option of modifying the context of the hearing to accommodate services program complaints. The hearing process under either situation requires that recipients be advised of their right to a hearing, that they may be represented by an authorized representative, and that there be a timely notice of the date and place of the hearing.

The following paragraphs, excerpted from the now obsolete section 1392.11, may be used as guidance for the hearings related to services issues. "The State must have a provision for a fair hearing, under which applicants and recipients may appeal denial of or exclusion from a service program, failure to take account of recipient choice of service or a determination that the individuals must participate in the service program. The results of appeals must be formally recorded and all applicants and recipients must be advised of their right to appeal and the procedures for such appeal. There must be a system through which recipients may present grievances about the operation of the service program."

Examples of service issues in title IV-B that might result in a grievance or request for a hearing include: Agency failure to offer or provide appropriate pre-placement preventive services or reunification services; Agency may not have placed child in the most family-like

setting in close proximity to his parents; Parents were not informed of their rights to participate in periodic administrative reviews; Agency failed to provide services agreed to in case plan; A request for a specific service is denied or not acted upon; and Agency failure to carry out terms of adoption assistance agreements.

Source: ACYF-CB-PIQ-83-04 (10/26/83)

Reference: 45 CFR 1355.30 (k), 205.10 and 1392.11

3 **Q:** Will States jeopardize their title IV-B funding if they choose not to apply for the CAPTA Basic State Grant (BSG)?

A: No. A State's IV-B funding will not be affected if it does not apply for a CAPTA BSG. In order to receive CAPTA BSG funds, States must provide an assurance in their CAPTA Plans that the child abuse and neglect projects the State is funding under title IV-B comply with the CAPTA Plan (section 106 (b)(2)(E)). If a State does not apply for the CAPTA BSG, there would not be a CAPTA Plan, nor any such assurance.

Source: ACYF-NCCAN-PIQ-97-01 (3/4/97) updated 9/27/11

Reference: Child Abuse Prevention and Treatment Act (CAPTA), as amended (42 U.S.C. 5101 et seq.) - section 106

4 **Q:** Can you clarify which children must be included in the State's report to ACF on overseas adoption disruptions and dissolutions under section 422(b)(12) of the Social Security Act?

A: The Intercountry Adoption Act (IAA) of 2000, which amends title IV-B at section 422(b)(12), is intended to protect the rights of children and families involved in intercountry adoption and to standardize and regulate the practices of adoption agencies to protect the best interests of children. One of the ways in which the IAA accomplishes this purpose is to require that an adoption agency's current and past placement practices and records be fully disclosed to prospective adoptive parents. The law, therefore, requires both adoption agencies and States to report certain information on unsuccessful overseas adoptions. In particular, section 422(b)(12) of the Act, among other things, requires that States collect and report certain information to ACF on children who enter foster care because the adoption placement disrupted or the adoption dissolved. The State must report the specific agency that handled the adoptive placement, the reasons for the disruption or dissolution, and the plans for the child in its Annual Progress and Services Report.

States must report as a "disruption" a child who came to the United States for the purpose of adoption but entered foster care prior to the finalization of the adoption regardless of the reason for the foster care placement. Such disruptions typically occur after a child enters the United States under the guardianship of the prospective adoptive parents or an adoption agency with an "IR-4 visa" for the purposes of completing the adoption process domestically. States must report such disruptions even if the child's plan is reunification with the prospective

adoptive parents and the stay in foster care is brief.

States must report as a "dissolution" a child who was previously adopted from overseas (whether the full and final adoption occurred in the foreign country or domestically) but entered foster care as a result of a court terminating the parents' rights or the parents' relinquishing their rights to the child. Since the child's legal relationship with his or her parents may not be severed until some time after the child enters foster care, States must also report to ACF children adopted from overseas who are already in foster care at the time that the adoption is dissolved.

A State need not report a child who enters foster care after a finalized adoption if the parents' legal rights to the child remain intact. In sum, the State need only report those children who enter foster care as defined in 45 CFR 1355.20 as a result of a disruption or dissolution.

Source: 06/09/04

Reference: Social Security Act - Section 422(b)(12); Intercountry Adoption Act of 2000 (Public Law 106-279) - Section 205; 45 CFR 1355.20.

5 **Q:** Section 424(f) of the Social Security Act (the Act) require the State to provide data on monthly visits between a child in foster care and "the caseworker handling the case of the child" and to make progress toward 90 percent of children in foster care in the State being visited by "their caseworkers." Which caseworkers can fill these roles?

A: The caseworkers referred to in section 424(f) of the Act could be any caseworker to whom the State or local title IV-B/IV-E agency has assigned or contracted case management or visitation responsibilities. Within these parameters, the State may determine which caseworkers are appropriate to conduct the visits in accordance with the provisions of the Act.

Source: 04/27/07

Reference: Social Security Act - section 424(f)

6 **Q:** Are youth 18 and older who are in foster care included in the monthly caseworker visits requirements in sections 424(e)(2)(A) and 436(b)(4) of the Social Security Act?

(Deleted 12/23/2011)

7 **Q:** Must a State's standards for ensuring monthly caseworker visits as required by section 422(b)(17) of the Social Security Act (the Act) be applied to children placed in foster care outside the State?

A: Yes. A State's standards must ensure monthly caseworker visits for children who are placed in foster care outside of the State. There are no exceptions permitted for State standards for at least monthly visits to children in foster care per section 422(b)(17) of the Act.

Source: 07/09/08

Reference: Social Security Act - section 422(b)(17)

8 **Q:** Does video conferencing between a child in foster care and his/her caseworker meet the Federal statutory provisions at 422(b)(17) for caseworker visits on a monthly basis?

A: No. Videoconferencing or any other similar form of technology between the child and caseworker does not serve as a monthly caseworker visit for the purposes of meeting the requirements of section 422(b)(17) of the Social Security Act (the Act). Rather, a monthly caseworker visit must be conducted face-to-face and held in person. Furthermore, the Act requires State and Tribal title IV-B agencies to describe standards for monthly caseworker visits with children in foster care that are well-planned and focused on issues pertinent to case planning and service delivery to ensure the safety, permanency and well-being of the child.

Source: 5/04/11

Reference: Social Security Act ¿ section 422(b)(17); ACYF-CB-PI-10-01

7.4 TITLE IV-B, Use of Funds

1 **Q:** May States use title IV-B funds to pay for adoptive parents to attend adoption conferences?

A: States may utilize title IV-B funds for purposes consistent with those specified in section 421 of the Social Security Act. This may include paying for the costs of adoptive parents' attendance at conferences which have training components or which include discussions of significant issues covering adoption and the needs of children.

Costs for adoptive parents to attend such conferences under title IV-B would be reimbursable at the 75% matching rate (section 424(a)).

The placement of children in adoptive homes when they cannot return to their biological family is an essential child welfare service. Today's emphasis on placing children with special needs in adoption poses many problems and needs for adoptive parents. By attending and participating in conferences which have training components related to adoption and discussions of adoption issues, adoptive parents may better learn how to deal with special problems and enhance their parenting skills by sharing experiences with others in similar circumstances. Active participation of adoptive parents in such conferences may result in improved adoption planning and policy development through their advisory relationships with public agencies, and thereby assist in extending and strengthening adoption services to children and adoptive parents.

Source: ACYF-CB-PA-82-03 (10/14/82)

Reference: Social Security Act - sections 421 and 424(a).

2 **Q:** Is foster parent insurance allowable as an administrative cost under title IV-B?

A: This cost may be claimed under title IV-B, but is included in the limitation on maintenance expenditures described in section 424(c)of the Act because "liability insurance" is not considered to be a service and is primarily related to foster care maintenance. However, States may select Insurance protection for foster parents as an activity to be funded under the Social Services Block Grant (amended title XX). The State chooses the title of the Social Security Act under which it will claim Federal financial participation (FFP) in the costs of insurance.

Some States include payment for insurance coverage in the monthly foster care payment to foster parents; others provide the protection through a group insurance policy or through the State's self-insuring procedures. Using self-insurance, the State may be able to provide broad coverage at low cost.

Source: ACYF-CB-PIQ-82-04 (1/29/82)

Reference: : Social Security Act - sections 424(a) and (c), 475 (4)

3 **Q:** There appears to be no agreement between insurers on the meaning of "liability insurance". Is the interpretation to include coverage of damages to the home or property of the foster parents as well as coverage for harm done by the child to another party, or accidental harm done by the foster parents to the child?

A: The terminology may be misleading, because foster parents are interested in more than "liability insurance". The correct interpretation includes coverage of damages to the home or property of the foster parents, as well as liability for harm done by the child to another party. In addition, protection against suit for possible malpractice or situations such as alienation of affection are often realistic concerns of persons who care for the children of others.

Several States have responded to these concerns by providing coverage for foster parents under a "pooled" liability program which provides in effect a self-insurance for departments of State government. Other States have legislated or otherwise defined foster parents as employees or as persons acting on behalf of the State, thus providing protection to those persons for claims made against them as agents of the State. Some States have purchased insurance coverage for foster parents, although the policies available often do not cover all of

the risks incurred.

Source: *ACYF-CB-PIQ-82-04 (1/29/82)*

Reference: *Social Security Act - section 424(a)*

4 **Q:** Are educational costs for foster children eligible for reimbursement under title IV-B?

A: Educational costs for foster children are not ordinarily considered social services and, therefore, are not eligible for reimbursement under title IV-B.

Source: *ACYF-CB-PIQ-82-01 (1/19/82)*

Reference: *Social Security Act - section 425*

5 **Q:** Are medical expenses an allowable cost under title IV-B?

A: No. The definition of the term "child welfare services" in section 425 (a)(1) of the Act does not include the provision of medical or health care, including prescription drugs, as one of the purposes for which expenditures may be reimbursed with title IV-B funds.

Source: *ACYF-CB-PIQ-84-01 (2/10/84)*

Reference: *Social Security Act - section 425 (a)(1)*

6 **Q:** May a State use its title IV-B, subpart 1 funds to pay for services to children in interstate placements?

A: Yes, States may use title IV-B, subpart 1 funds to provide services to children who are in interstate placements. The title IV-B, subpart 1 services can be provided to 1) a child who is living in a State outside the State of jurisdiction, or 2) a child from a different State who is placed in the State.

Source: *7/7/2006*

Reference: *45 CFR 1357.10(b)*

7 ***Q:*** Are laptop computers purchased for caseworkers allowable as a program cost under section 436(b)(4) of the Social Security Act (the Act)?

A: Yes. A State's expenditures under section 436(b)(4) of the Act for laptop computers (and associated costs for training staff and operating such computers) for caseworkers is a program cost to the extent that it is consistent with the purposes specified in section 436(b)(4)(B) of the Act. The 10 percent limit on administrative costs in section 434(d) of the Act does not apply to these purchases.

Source: *04/27/07*

Reference: *Social Security Act ¿ sections 436(b)(4) and 434(d)*

8. TITLE IV-E

8.1 TITLE IV-E, Administrative Functions/Costs

1 ***Q:*** Is the cost of conducting criminal records checks for prospective foster and adoptive parents an allowable administrative cost under title IV-E?

A: The regulations at section 1356.60 (c)(2) allow States to claim costs associated with recruitment and licensing as administrative costs under title IV-E. Since the criminal records check provision is a condition of licensure or approval in States that do not opt out of the provision, costs associated with criminal records checks for prospective foster and adoptive parents are allowable under title IV-E when claimed pursuant to an approved cost allocation plan.

Source: Preamble to the Final Rule (65 FR 4020) (6/14/90)

Reference: 45 CFR 1356.30 and 1356.60 (ACYF-CB-PA-90-01)

2 ***Q:*** Can a case assessment be considered an allowable administrative cost?

A: Yes, a case assessment is an allowable administrative cost in the context of case planning. Section 471(a)(16) of the Social Security Act (the Act) requires the State to develop a case plan as defined at section 475(1) of the Act. The development of and ongoing updates to the case plan are allowable costs pursuant to 45 CFR 1356.60(c)(2)(iv). A critical component of case planning is the worker's assessment of the child and family. A case assessment might consider information regarding psychological, developmental, behavioral and educational factors; explore underlying or disguised issues such as family violence or substance abuse; examine the child and the family s needs, strengths, resources and existing support systems; and explore whether it is safe for the child to remain in or return to the home. Furthermore, it could include information on the child's past history, current adjustment, direct observations, and family history.

Specialized assessments such as psychiatric, medical or educational assessments are medical or educational services, respectively, and are not, therefore, allowable under title IV-E (45 CFR 1356.60(c) and Child Welfare Policy Manual Section 8.1B). Time spent analyzing specialized assessments to inform the case plan, however, is allowable.

Source:

Reference: Social Security Act - section 471(a)(16), section 475(1) and (5); 45 CFR 1356.60(c); Child Welfare Policy Manual Section 8.1B

3 **Q:** May a State use title IV-E administrative funds for such items as beds or smoke detectors to help prospective foster family homes meet licensing standards?

A: Yes. A State may claim title IV-E administrative costs for items such as beds, cribs, and smoke detectors that are needed in order to license or approve a foster family home. These costs are closely related to foster family home recruitment, which is an example of an allowable title IV-E administrative cost in 45 CFR 1356.60. In many States, there are not enough foster family homes to meet the needs of the children in foster care. Therefore, increasing the number of foster family homes through the allowable use of title IV-E administrative funds is appropriate.

Any such costs must be allocated through an approved cost allocation plan. Please note that under general appropriations law, the costs of construction and renovation are not allowable without specific affirmative authorization. Title IV-E does not have that affirmative authorization.

Source: 06/09/04

Reference: Section 474 of the Social Security Act and 45 CFR 1356.60(c)(2)(vii).

4 **Q:** Are the costs of medical exams necessary for a prospective foster parent to obtain and retain a foster family home license or approval an allowable administrative cost under title IV-E?

A: Yes. 45 CFR 1356.60(c)(2)(vii) specifically identifies recruitment and licensing of foster family homes as an example of allowable administrative costs necessary for the administration of the foster care program. If medical exams are necessary for prospective foster parents to obtain or retain a foster family home license or approval, then these costs are allowable as they are directly related to the administration of the program.

Any such costs must be allocated through an approved cost allocation plan.

Source: 06/09/04

Reference: Section 474 of the Social Security Act, 45 CFR 1356.60(c)(2)(vii).

5 **Q:** May a State that receives a request for an out-of-State home study from another State pursuant to section 471(a)(26) of the Social Security Act (the Act) claim title IV-E administrative costs to comply with the request?

A: Yes. The requirement in section 471(a)(26) of the Act for a State to conduct an out-of-State home study if requested by another State is a requirement of the State's title IV-E State plan. As such, the costs of performing the home study are 100% allocable to title IV-E and do not have to be allocated to other benefiting programs.

Source: 04/24/07

Reference: Social Security Act ¿ sections 471(a)(26) and 474(a)(3)(E)

6 **Q:** May a State claim administrative costs on behalf of an otherwise eligible child for an entire month when the child is placed in a licensed or approved foster family home or child care institution for less than an entire month?

A: Yes. A State may claim administrative costs from the beginning of the month in which the child meets all eligibility criteria, if the criteria are met for the child at any point during that month. The State is not required to prorate administrative cost claims based on the number of days the child is placed in the foster family home or child care institution.

Source: 04/26/07

Reference: Social Security Act ¿ section 474(a)(3)(E)

7 **Q:** May a title IV-E agency claim title IV-E foster care administrative costs for the identification of sex trafficking and for associated case management as administration in accordance with sections 471(a)(9) and (34) of the Social Security Act (Act)?

A: Yes. Allowable costs for title IV-E administration under sections 471(a)(9) and (34) of the Act may be claimed on behalf of any child or youth in the placement, care or supervision of the title IV-E agency who is at-risk of becoming a sex trafficking victim or who is determined as a sex trafficking victim in accordance with section 471(a)(9) of the Act. This includes those individuals not removed from home; those who have run away from foster care and are under age 18 or such higher age elected under section 475(8) of the Act; and youth not in foster care who are receiving services under the Chafee Foster Care Independence Program (CFCIP), and at the option of the agency, youth under age 26 who were or were never in foster care. In general, the title IV-E administrative costs that are allowable for this population of children and youth to implement these provisions are those necessary for the title IV-E agency to administer the title IV-E plan requirements in sections 471(a)(9) and 471(a)(34) of the Act. This consists of the following activities (or those closely related) that are title IV-E allowable as administration related to victims of sex trafficking beginning in federal fiscal year (FFY) 2015:

• Developing and implementing policies and procedures to identify, document in agency records, and determine appropriate services for victims of sex trafficking;

• Conducting sex trafficking screenings and documenting victims of sex trafficking in agency files;

• Determining appropriate services for individuals identified as such victims, including referrals to services; and

• Completing reports required for law enforcement and ACF of children or youth who the agency identifies as being a sex trafficking victim.

Title IV-E agencies may also claim allowable title IV-E administrative costs on behalf of any child missing from foster care for the purpose of administering section 471(a)(35) of the Act. This would include developing and implementing protocols to locate and assess children missing from foster care, including screening the child to identify if the child is a possible sex trafficking victim.

Since the title IV-E agency is not limited to performing the activities described above on behalf of individuals meeting title IV-E eligibility requirements, there is no need to apply a title IV-E foster care participation rate in allocating allowable administrative costs to the title IV-E foster care program.

Title IV-E funding may not be claimed for the costs of conducting investigations of allegations of sex trafficking or other forms of child abuse or neglect or for providing social services, such as counseling or treatment, to victims of sex trafficking or other children or youth.

Source: 8/26/15

Reference: Social Security Act - Sections 471(a)(9) and (34)

8.1A TITLE IV-E, Administrative Functions/Costs, Allowable Costs - Adoption Assistance Program

1 ***Q:*** What are the allowable administrative costs in the title IV-E Adoption Assistance Program?

A: The Social Security Act, at section 474(a)(3)(B), permits States with approved title IV-E plans to be reimbursed at a 50 percent matching rate for the costs of administrative activities as found necessary by the Secretary for the proper and efficient administration of the State plan.

45 CFR 1356.60 (c), entitled "Federal matching funds for other State and local administrative expenditures for foster care and adoption assistance under title IV-E" interprets section 474 (a)(3)(B) of the Act. All of the sections of that regulatory section apply to the administrative expenditures of both the Foster Care and Adoption Assistance Programs.

In paragraph (1) of 45 CFR 1356.60 (c), certain identified costs are deemed allowable administrative costs of the Adoption Assistance Program under title IV-E. Federal financial participation for these costs may not be claimed under any other section of Federal regulations or Federal program. They are: the determination and redetermination of eligibility; fair hearings and appeals; rate setting; and other costs directly related only to the administration of the adoption assistance program.

In addition, the following administrative costs are also considered to be directly related only to the administration of the Adoption Assistance Program, and are therefore also allowable under 45 CFR1356.60 (c)(1): grievance procedures; negotiation and review of adoption agreements; and post-placement management of subsidy payments.

The following are examples provided by 45 CFR 1356.60 (c)(2) of allowable administrative costs considered necessary for the administration of the Adoption Assistance Program for which Federal financial participation may be claimed under title IV-E: recruitment of adoptive homes; placement of the child in the adoptive home; case reviews conducted during a specific preadoptive placement for children who are legally free for adoption; case management and supervision prior to a final decree of adoption; a proportionate share of related agency overhead; referral to services; and development of the case plan.

The following administrative costs are also considered to be necessary for the proper and efficient operation of the Adoption Assistance Program and are therefore allowable under 45 CFR 1356.60 (c): home studies, and a proportionate share of the development and use of adoption exchanges.

Attention is also called to paragraph (3) of 45 CFR 1356.60 (c) and 45 CFR 1356.60 (b)(1)(ii) regarding restrictions on certain types of costs, i.e., social services and limitations on training costs for adoptive parents.

Source: ACYF-CB-PA-83-01 (10/1/80)

Reference: Social Security Act - sections 473 and 474; 45 CFR 1356.60

2 ***Q:*** Under the Adoption Assistance Program, is Federal financial participation (FFP) for administrative costs associated with case review, case management, and supervision prior to a final decree of adoption available only for children in preadoptive placements?

A: Yes. Federal financial participation is available in the costs of the administration of the Adoption Assistance Program beginning when the State determines that: (1) an eligible child (section 473 (a)) cannot or should not be returned to the home of his parents; (2) the goal for the child is adoption (section 473 (c)(1)); and (3) the child has been determined by the State or local agency to be a 'child with special needs' (section 473 (c)).

In addition, the child must be legally free for adoption and that the goal of adoption must be documented in the case plan for the child and in the report of the periodic review. Case

reviews, case management and supervision are allowable costs only when provided on behalf of a child who is already placed in a preadoptive home.

Costs under the Adoption Assistance Program must be directly related to the administration of the Adoption Assistance Program and to children for whom adoption is a definite plan, rather than just a long range goal which may not materialize. Therefore, the child must be in placement in a specific preadoptive home, rather than in a foster care placement where the goal is eventual adoptive placement.

Source: ACYF-CB-PIQ-85-06 (6/5/85)

Reference: Social Security Act - section 473

3 **Q:** Can a State claim title IV-E administrative costs for activities performed on behalf of a child in a finalized adoption?

A: A State may claim Federal financial participation for activities performed on behalf of a child in a finalized adoption that are consistent with 45 CFR 1356.60(c) and the State's approved cost allocation plan. Under the title IV-E adoption assistance program, a State may claim for administrative activities that occur post-finalization, such as fair hearings and appeals, management of the adoption subsidy, review and renegotiation of the adoption assistance agreement, referral to services, and case management performed to implement an adoption assistance agreement.

Furthermore, if the State determines that the adoptive placement is in jeopardy and demonstrates that the adopted child is a candidate for foster care, the State may claim allowable title IV-E administrative costs under the foster care program for activities performed on behalf of the child as a candidate.

Source: 8/16/02

Reference: Social Security Act - section 474(a)(3)(B); 45 CFR 1356.60(c); CWPM Sections 8.1A, 8.1B and 8.1D

8.1B TITLE IV-E, Administrative Functions/Costs, Allowable Costs - Foster Care Maintenance Payments Program

1 *Q:* Please clarify those pre-placement administrative activities that are considered a service and, therefore, not claimable under title IV-E from those that are allowable administrative functions.

A: A State may claim for any allowable title IV-E administrative cost that comports with or is closely related to one of the listed activities at 45 CFR 1356.60(c)(2). Allowable costs related to pre-placement activities may include the determination of eligibility, preparation for placement, placement and referral costs before the child is placed in foster care.

The administrative costs of referral to service providers (45 CFR 1356.60 (c)(2)(i)) are only for those referrals specifically designed to further the statutory goal of reasonable efforts to prevent removal in section 471(a)(15)(B)(i) of the Social Security Act. Referral to services is limited to the activities of the caseworker and the caseworker's supervisor and does not include investigations or physical or mental examinations or evaluations. The costs of services related to the prevention of placement are not foster care administrative costs and are therefore not reimbursable. A State's cost allocation plan must identify the costs that are allocated and claimed under the program.

Costs that are not reimbursable (under 45 CFR 1356.60 (c)(3)) include those for social services which provide counseling or other treatment to the child, his family, or foster family to remedy home conditions, personal problems or behaviors. Examples of non-reimbursable services include counseling, homemaker or housing services and assisting in reuniting families. These services are not reimbursable regardless of the credentials or training of the provider, e.g., these services provided by a caseworker are unallowable. Further, they are not reimbursable regardless of whether they are provided on a single occasion or as part of a series.

Allowable costs associated with preparation for and participation in judicial determinations (45 CFR 1356.60 (c)(2)(ii)) are limited to the preparation of reports to the court and participation in court proceedings by State or local agency personnel.

Source: *ACYF-CB-PA-85-01 (11/18/85); ACYF-CB-PA-87-05 (10/22/87); 7/7/2006*

Reference: *45 CFR Part 1356.60*

2 **Q:** May we claim Federal financial participation (FFP) for the cost of conducting title IV-E eligibility determinations even for children who are not found to be title IV-E eligible?

A: Yes. The determination and redetermination of eligibility (45 CFR 1356.60 (c)(l)) are considered necessary administrative activities in the title IV-E foster care program. Therefore, a State may claim reimbursement for the costs of all determinations and redeterminations of eligibility for title IV-E foster care. These may include negative as well as positive eligibility determinations.

Reimbursement for eligibility determination activities is limited to costs involved in the actual verification and documentation of eligibility and may not include the costs of other activities such as judicial determinations, placement of the child or periodic court or administrative reviews. The activities of staff whose responsibilities extend beyond eligibility determination for title IV-E must be allocated to the appropriate program; e.g., foster care maintenance, food stamps, or title XIX medical assistance.

Source: ACYF-CB-PA-87-05 (10/22/87)

Reference: 45 CFR Part 1356.60; DHHS Grant Appeals Board Decision No. 844

3 **Q:** May the State claim administrative costs for the child of a minor parent?

A: When a child is placed with his/her minor parent, no administrative costs may be claimed on her/his behalf because s/he is not eligible for nor a recipient of title IV-E foster care maintenance payments. The State is merely increasing the amount of the title IV-E foster care maintenance payment made on behalf of the eligible minor parent to accommodate the board and care of the child. In situations where the eligibility of the minor parent and his/her infant is determined separately and the two are placed separately, the State may claim administrative costs for the child because s/he is eligible for and receiving title IV-E maintenance payments in her/his own right.

Source: Questions and Answers on the Final Rule (65 FR 4020) (1/25/00)

Reference: Social Security Act - section 475 (4)

4 ***Q:*** Can administrative costs for processing and management of foster child health care services be claimed against title IV-E?

A: No. In accordance with sections 474 (a)(3) and 475 (4) of the Social Security Act and 45 CFR 1356.60 (c), administrative costs for the processing and management of health care services for foster children under title IV-E are not allowable.

Section 475 (4) defines "foster care maintenance payments" as payments to cover the cost of (and the cost of providing) food, clothing, shelter, daily supervision, school supplies, and a child's personal travel to the child's home for visitation. The provision of health care services is not included in that definition and therefore is not an allowable cost item under title IV-E. Allowable administrative costs are only those administrative expenditures necessary for the proper and efficient administration of the title IV-E State plan.

Source: ACYF-CB-PIQ-85-05 (4/12/85)

Reference: Social Security Act - sections 474 (a)(3) and 475 (4); 45 CFR 1356.60 (c)

5 ***Q:*** Is it permissible for a State title IV-B/IV-E agency (State agency) to identify court activities related to title IV-E eligible children and claim title IV-E reimbursement on behalf of the court? Such activities might include docketing of the cases, the time of court staff assigned to review "reasonable efforts" made by the State agency, clerical support, the time spent by referees with title IV-E cases, and expenses such as supplies, space and utilities.

A: No. Section 474 (a)(3) of the Social Security Act (the Act) provides for Federal matching for State administrative expenditures; section 471(a)(2) of the Act specifies that the responsible State agency shall administer the State plan. Accordingly, a State agency may not claim reimbursement for administrative costs under title IV-E for activities being performed by the court.

With respect to the activities described in the question, docketing of cases is a required court activity, not a State agency function. The time of court staff assigned to review "reasonable efforts" made by the State agency is likewise a required court activity, and not a State agency function. In this regard, the State agency is required by section 471(a)(15) of the Act to provide "reasonable efforts" prior to the placement of a child in foster care to eliminate the need for removal of the child from his home and, when removal is necessary, to provide "reasonable efforts" to make it possible for the child to return home or to make and finalize an alternate

permanent living arrangement for the child. The court is required by section 472 (a)(2)(A)(ii) of the Act to determine if the State, in fact, has made "reasonable efforts" to keep the child in his home.

Thus, activity related to the "reasonable efforts" determination to be made by the court would not be considered an administrative cost that is reimbursable by the State agency on behalf of the court. Associated clerical and overhead expenses are similarly unallowable.

Source: ACYF-CB-PIQ-92-03 (7/17/92)

Reference: Social Security Act - sections 471, 472 and 474

6 Q: How should the costs of foster parent insurance be claimed, as maintenance payments or as administrative expenditures subject to reimbursement? What types of insurance costs are allowable? Is liability insurance sometimes considered a service? What should be included in the definition of "liability insurance"?

A: Section 475 (4) of the Social Security Act, by including "liability insurance with respect to a child" in the definition of foster care maintenance payments, gives States the option of considering insurance for foster parents as a direct foster care maintenance cost or as an administrative cost of the foster care maintenance program under title IV-E.

Some States include payment for insurance coverage in the monthly foster care payment to foster parents; others provide the protection through a group insurance policy or through the State's self-insuring procedures. Using self-insurance, the State may be able to provide broad coverage at low cost.

Foster parent insurance should include coverage of damages by a foster child to the home or property of the foster parents and of harm done by a foster child to another party.

Source: ACYF-CB-PIQ-82-04 (1/29/82)

Reference: Social Security Act - section 475 (4)

7 ***Q:*** If foster parent insurance is an administrative cost when purchased by the State agency, then the State receives a 50% match rather than FMAP. Doesn't this provide a disincentive for the State to take responsibility for insurance of foster parents and encourage the State to have the foster parents obtain their own insurance?

A: Although, under title IV-E, Federal match may be lower for administrative costs than for maintenance costs, there is advantage to the State in assuming the overall responsibility for the protection for foster parents caring for children under the State's custody as a recruitment incentive. If the State chooses to use its self-insuring procedures, it may be able to provide a broad scope of coverage at relatively low cost. Foster parents are valuable resources to the agency, and the provision of protection against possible risks they face in providing care is a strong inducement to participate in the program.

Source: ACYF-CB-PIQ-82-04 (1/29/82)

Reference: Social Security Act - sections 424(a) and (c), 475 (4)

8 ***Q:*** There appears to be no agreement between insurers on the meaning of "liability insurance". Is the interpretation to include coverage of damages to the home or property of the foster parents as well as coverage for harm done by the child to another party, or accidental harm done by the foster parents to the child?

A: The terminology may be misleading, because foster parents are interested in more than "liability insurance". The correct interpretation includes coverage of damages to the home or property of the foster parents, as well as liability for harm done by the child to another party. In addition, protection against suit for possible malpractice or situations such as alienation of affection are often realistic concerns of persons who care for the children of others.

Several States have responded to these concerns by providing coverage for foster parents under a "pooled" liability program which provides in effect a self-insurance for departments of State government. Other States have legislated or otherwise defined foster parents as employees or as persons acting on behalf of the State, thus providing protection to those persons for claims made against them as agents of the State. Some States have purchased insurance coverage for foster parents, although the policies available often do not cover all of the risks incurred.

Source: *ACYF-CB-PIQ-82-04 (1/29/82)*

Reference: *Social Security Act - sections 424(a) and (c), 475 (4)*

9 **Q:** 45 CFR 1355.33 (b) requires the use of "external partners" on the child and family services review team. Can these individuals be paid or compensated?

A: In the regulation, we identified agencies/entities external to the State that participated in the development of the State's Child and Family Services plan as appropriate partners to include on the review team. The State may cover per diem and travel expenses for its external partners' participation to the extent that it so chooses. Moreover, the State may, pursuant to an approved cost allocation plan, allocate the cost of conducting a child and family services review, which may include compensation for the State's external partners, to title IV-E.

Source: *Questions and Answers on the Final Rule (65 FR 4020) (1/25/00)*

Reference: *45 CFR 1355.33*

10 **Q:** Please provide some guidance with respect to the allowable costs for candidates for foster care.

A: Pursuant to section 472(i) of the Social Security Act (the Act) a State may make claims for candidates for foster care for any allowable title IV-E administrative cost that comports with or is closely related to the activities listed at 45 CFR 1356.60(c)(2).

Consistent with the law, existing policy and DAB decisions (see DAB Decision Nos. 844 and 1428), pre-placement administrative functions for which States wish to claim FFP must be "closely related" to the administrative cost items specified at 45 CFR 1356.60. Further, the administrative costs of referral to service providers (45 CFR 1356.60(c)(2)(i) are for those referrals specifically designed to further the statutory goal of section 471(a)(15)(B)(i) of the Act (reasonable efforts to prevent removal) and are limited to the activities of agency staff in the referral process only.

Allowable costs of preparation for and participation in judicial determinations (45 CFR 1356.60(c)(2)(ii) are limited to those costs related to preparation of reports to the court and

participation in court proceedings by State or local title IV-E agency personnel.

Title IV-E administrative costs claimed on behalf of foster care candidates are subject to the same limitations that are in place when such cost items are claimed for children in foster care. For example, investigating claims of child abuse/neglect, physical/mental examinations or evaluations, and completing case progress notes with regard to the delivery of services are not allowable title IV-E administrative functions. Nor do the actual services delivered to foster care candidates in compliance with the reasonable efforts requirements qualify as title IV-E administrative costs.

Source: ACYF-CB-PA-87-05 (10/22/87); ACYF-CB-PA-01-02 (7/3/01); 7/7/2006

Reference: Social Security Act - section 472(i)(2); 45 CFR 1356.60; Departmental Appeals Board Decision Nos. 844 and 1428; ACYF-CB-IM-06-02

11 Q: ¹ May the State claim Federal financial participation (FFP) for the administrative costs of an otherwise title IV-E eligible child who is placed in an unlicensed or unapproved foster family home?

A: Under certain circumstances, yes. The State may claim administrative costs on behalf of an otherwise eligible child placed in an unlicensed or unapproved relative home for 12 months or the average length of time it takes the State to license or approve a foster family home, whichever is less. During this time, an application for licensure or approval of the relative home as a foster family home must be pending (section 472(i)(1)(A) of the Social Security Act). The State is prohibited from claiming administrative costs for a child placed in an unlicensed or unapproved foster family home that is not related to the child. For the purposes of this provision, a relative is defined by section 406(a) of the Social Security Act as in effect on July 16, 1996, and implemented in 45 CFR 233.90(v).

¹ This question was originally deleted from the manual. The answer is new.

Source: 8/7/2006

Reference: Social Security Act ¿ section 472(i)(1)(A), 45 CFR 233.90(v)(c)(1)

12 Q: May we claim Federal financial participation (FFP) for the administrative costs of otherwise title IV-E eligible children who are placed in public child care institutions that accommodate more than 25 children?

A: In general, no. Section 472(c)(2) of the Social Security Act specifically excludes public child care institutions that accommodate more than 25 children from the definition of "child care institution" therein, making such facilities unallowable under title IV-E. Therefore, a child placed in a public child care institution that accommodates more than 25 children is not eligible for title IV-E, and thus the State may not claim administrative costs on his/her behalf. Nor may the State consider such child to be a candidate for the purpose of claiming title IV-E administrative costs because such child has been removed from the home.

However, a State may claim administrative costs on behalf of an otherwise eligible child for the calendar month prior to the month the child moves from an unlicensed or unapproved foster family home or child care institution into one which is licensed or approved (see section

472(i)(1)(B) of the Social Security Act and section 8.1 of the Child Welfare Policy Manual). The State must claim any such administrative costs consistent with an approved cost allocation plan.

Source: *ACYF-CB-PA-01-02 (7/3/01); 7/17/2006*

Reference: *Social Security Act - section 472(c)(2) and 472(i)(1)(B); Section 8.1 of the Child Welfare Policy Manual*

13 **Q:** May we claim title IV-E administrative costs for eligible children who receive Supplemental Security Income (SSI)?

A: Yes. An August 17, 1993 memorandum from the Acting Commissioner of the Administration on Children, Youth, and Families to the Administration for Children and Families Regional Administrators allowed a State to include children who are eligible for title IV-E but who are receiving SSI in lieu of title IV-E foster care maintenance payments when determining its administrative cost ratio. This practice was conceptualized by considering these children candidates for foster care. While the policy itself is sound, a child who is in foster care is not a candidate because s/he has already been removed from home. If a child is fully eligible for title IV-E a State's choice to fund that child's board and care through SSI rather than title IV-E does not negate that child's eligibility for title IV-E. The State may, therefore, claim Federal financial participation under title IV-E for title IV-E administrative functions performed on behalf of that child.

Source: *ACYF-CB-PA-01-02 (7/3/01)*

Reference: *Social Security Act - sections 471 and 474*

14 Q: May a State claim title IV-E administrative funds for the cost of conducting child and family services (CFS) reviews and title IV-E eligibility reviews?

A: Yes, however, a State that seeks to charge the allowable portion of the costs of conducting a CFS review to title IV-E must first amend its cost allocation plan to include CFS review activities. The State must, pursuant to 45 CFR Part 75 Subpart E cost principles, allocate the costs of the CFS review across benefiting programs and may then charge the portion claimable under title IV-E at the 50 percent rate for Federal financial participation (FFP).

Conducting a child and family services review includes preparation for and completion of the statewide assessment, preparation for and the execution of the on-site portion of the review, and developing and implementing a program improvement plan.

All costs for a State to prepare and conduct a title IV-E eligibility review, as well as any required PIP development costs, are 100 percent allocable to title IV-E administration. The costs associated with approved PIP activities are also eligible for 100 percent allocation to title IV-E administration. A State should, however, separately allocate costs qualifying as title IV-E training (in accordance with all applicable regulations) for claiming at the 75 percent rate of FFP.

Note: This answer previously referenced OMB Circular A-87. 45 CFR Part 75 supersedes OMB Circular A-87 effective December 26, 2014 (79 FR 75871, Dec. 19, 2014).

Source: August 16, 2002 (revised 11/2/2016)

Reference: Social Security Act section 474(a)(3); 45 CFR Part 75; 45 CFR 1355.20, 33, and 35; 79 FR 75871, Dec. 19, 2014; 81 FR 3022, Jan. 20, 2016.

15 Q: Is the implementation and operation of a statewide quality assurance system an allowable title IV-E administrative cost?

A: Pursuant to section 471(a)(7) of the Social Security Act (the Act), the State agency is required to monitor and conduct periodic evaluations of its title IV-E program. The operation of a statewide quality assurance system is one acceptable method for complying with section 471(a)(7) of the Act. A statewide quality assurance system will usually include the review of cases other than those that are title IV-E eligible and address issues, such as the effectiveness of the delivery of social services, that do not qualify as title IV-E administration. Only quality assurance system costs associated with title IV-E eligible cases and functions may be claimed for title IV-E reimbursement. A State may amend its cost allocation plan as necessary to include the implementation and operation of a quality assurance system and subsequently claim the allowable title IV-E portion as an administrative expense after allocating costs among all benefiting programs.

Source: 8/16/02

Reference: Social Security Act -- Section 401(a)(7)

16 Q: Are administrative costs allowable when a child has run away from a foster care placement?

A: Yes, administrative costs are allowable when a child has run away from a foster care placement. The manual states, in section 8.3c.2, Question 3, that if a State retains placement and care responsibility for a child who has run away from a foster care placement, the State must continue to perform title IV-E activities on behalf of such a child, including holding six-month periodic reviews and permanency hearings.

Source: 6/23/03

Reference: Section 474 of the Act; 45 CFR 1356.60; Child Welfare Policy Manual Section 8.3c.2

17 Q: Can a case assessment be considered an allowable administrative cost?

A: Yes, a case assessment is an allowable administrative cost in the context of case planning. Section 471(a)(16) of the Social Security Act (the Act) requires the State to develop a case plan as defined at section 475(1) of the Act. The development of and ongoing updates to the case plan are allowable costs pursuant to 45 CFR 1356.60(c)(2)(iv). A critical component of case planning is the worker's assessment of the child and family. A case assessment might

consider information regarding psychological, developmental, behavioral and educational factors; explore underlying or disguised issues such as family violence or substance abuse; examine the child and the family s needs, strengths, resources and existing support systems; and explore whether it is safe for the child to remain in or return to the home. Furthermore, it could include information on the child's past history, current adjustment, direct observations, and family history.

Specialized assessments such as psychiatric, medical or educational assessments are medical or educational services, respectively, and are not, therefore, allowable under title IV-E (45 CFR 1356.60(c) and Child Welfare Policy Manual Section 8.1B). Time spent analyzing specialized assessments to inform the case plan, however, is allowable.

Source: 6/23/03

Reference: Social Security Act - section 471(a)(16), section 475(1) and (5); 45 CFR 1356.60(c); Child Welfare Policy Manual Section 8.1B

18 Q: May a State claim title IV-E administrative funds for the legal services of a child in foster care or his/her parents, such as the parent or child's legal representation in court hearings?

A: No. The regulations at 45 CFR 1356.60(c) specify that Federal financial participation is available at the rate of 50% for administrative expenditures necessary for the proper and efficient administration of the title IV-E State plan. The administrative function specified at 45 CFR 1356.60(c)(2)(ii), preparation for and participation in judicial determinations, concerns the State agency?s representation but not the provision of legal services to a child or parent. Only the State agency?s participation in judicial determinations is an allowable cost.

Source: 06/09/04

Reference: Section 474 of the Social Security Act, 45 CFR 1356.60(c)(2)(ii).

19 Q: Does having an approved program improvement plan (PIP) enable a State to claim title IV-E administrative or training costs that otherwise would not be allowable under section 474(a)(3) of the Social Security Act?

A: No. The costs of any administrative activities or training that a State undertakes as a result of a program improvement plan can only be claimed under title IV-E if the costs are allowable under the existing policies, regulations, and statute for claiming FFP. The existence of an approved PIP does not make otherwise unallowable costs allowable under title IV-E.

Source: 7/7/2006

Reference: 45 CFR 1357.10(b)

20 Q: States are permitted to claim administrative costs for a child placed with a relative for the lesser of 12 months or the average length of time it takes for the State to license or approve a foster home as long as a foster family home application is pending. What happens if the State does not license or approve the relative's home during this period?

A: The State agency must discontinue administrative cost claims on behalf of the child if the home is not licensed or approved during the timeframe specified in section 472(i)(1)(A) of the Social Security Act (i.e., at the end of the 12th month or the average time it takes the State to license/approve a foster family home, if less). Furthermore, the statute specifies that a State is permitted to claim administrative costs only if an application for licensure or approval of the home is pending.

Source: 8/7/2006

Reference: Social Security Act ¿ section 472(i)(1)(A)

21 Q: What administrative costs may a State claim during the one-month period when a child moves from an unallowable facility to a licensed or approved foster family home or child care institution as described at section 472(i)(1)(B) of the Social Security Act?

A: A State may claim any allowable title IV-E administrative cost that comports with 45 CFR 1356.60(c). There are no restrictions on the types of title IV-E administrative activities that States may claim during the one-month period, as long as they are consistent with the examples of allowable administrative costs stipulated in 45 CFR 1356.60(c)(2), such as case management and supervision, or activities that are closely related to those examples. As required in 1356.60(c), the State?s cost allocation plan must identify the costs that are allocated and claimed under the program.

Source: 8/7/2006

Reference: Social Security Act ¿ section 472(i)(1)(B); 45 CFR 1356.60(c)

22 Q: Section 472(i)(1)(B) of the Social Security Act (the Act) permits States to claim administrative costs for a calendar month prior to the child¿s move from an unallowable facility to a licensed or approved foster family home or child care institution. Is a State limited in how many times it can apply section 472(i)(1)(B) for the same child?

A: No. The State may claim up to one calendar month of administrative costs pursuant to section 472(i)(1)(B) of the Act each time a child transitions from a facility not eligible for title IV-E payments to a licensed or approved foster family home or child care institution.

Source: 8/7/2006

Reference: Social Security Act ¿ section 472(i)(1)(B)

23 Q: May a State claim title IV-E administrative costs as permitted under section 472(i) of the Social Security Act (the Act) for a child placed in an unlicensed or unapproved relative home before completing the background check requirements in section 471(a)(20) of the Act?

A: Yes. The State may claim title IV-E administrative costs in accordance with 472(i) of the Act absent the results of the relative?s background checks, although the State must complete the background check requirements in section 471(a)(20) of the Act before the relative's home can be licensed or approved by the State. The State may claim the administrative costs only during the period specified in the statute and while an application for foster family licensure or approval of the relative home is pending.

Source: 01/29/07

Reference: Social Security Act ¿ sections 471(a)(20) and 472(i)

24 Q: May the State claim a title IV-E foster care maintenance payment for an allowable provider that covers the entire month if a child is temporarily absent for a portion of the month? For example, the child has run away, goes on a weekend home visit, or is hospitalized for medical treatment during some part of the month. (Moved to 8.3B)

(Deleted 04/28/2009)

25 Q: May a State claim administrative costs during the unlicensed period that a child is placed in a foster family home whose license has expired, but is in the process of renewal?

A: Under certain circumstances, it is possible that the State may claim administrative costs in this situation. Please see section 8.3A.8c, question 11 of the Child Welfare Policy Manual in which we allow the State to claim administrative costs for the entire month when an otherwise eligible child has resided in a home for the entire month, even if it is only licensed for a portion of the month. Furthermore, if the State's policies allow an expired license to remain in effect until renewed, the child placed in such a home is considered placed in a licensed foster family home, and the State may claim Federal Financial Participation (FFP) during that period. If, however, the State does not consider the expired license to remain in effect, the State may not

claim FFP from the beginning of the month after the license expired until the beginning of the month in which the license is re-issued.

Source: 04/26/07

Reference: Social Security Act ¿ section 471(a)(10), Child Welfare Policy Manual ¿ section 8.3A.8c, question 11

26 Q: Section 472(i)(1)(B) of the Social Security Act (the Act) allows a State to claim Federal financial participation (FFP) for allowable administrative expenses for an otherwise eligible child for not more than one calendar month when the child moves from a facility not eligible for payments under title IV-E into a foster family home or child care institution licensed or approved by the State. Please clarify for what time period administrative costs may be claimed during this transition.

A: When an otherwise title IV-E eligible child moves from a facility not eligible for payments under title IV-E to a licensed or approved foster family home or child care institution, the State may claim administrative costs in accordance with section 472(i)(1)(B) of the Act: 1) for the full calendar month prior to the month in which the child moved; and 2) for the next full calendar month if the child meets all title IV-E eligibility criteria prior to the end of that month. This is consistent with our administrative cost claiming practice allowing a State to claim title IV-E administrative costs for an entire month if the child is eligible for a portion of the month

Source: 11/14/07

Reference: Social Security Act ¿ section 472(i)(1)(B)

27 **Q:** When a child in foster care lives in a foster family home or child care institution outside the child¿s school of origin may the cost of transporting the child to and from the school of origin be an allowable title IV-E administrative cost?

A: Yes. As specified in the Child Welfare Policy Manual Section 8.1, Q&A3, to be an allowable title IV-E administrative cost under title IV-E, a cost must be one of the examples listed in 45 CFR 1356.60(c)(2) or closely related to one of those examples. The costs described in the question are closely related to case management, which is listed as an example of an allowable administrative cost in 45 CFR 1356.60(c)(2). Any such costs must be allocated through an approved cost allocation plan.

Source: 12/31/07

Reference: 45 CFR 1356.60(c)(2); Child Welfare Policy Manual section 8.1, Q&A3

28 **Q:** May a State claim the costs of a worker, a foster parent, or a volunteer transporting a child or his or her family to various appointments, such as medical or counseling, or to court hearings and case reviews as a title IV-E administrative cost?

A: Yes, these transportation costs, regardless of who provides them, could reasonably be considered related to case management activities and necessary for the proper and efficient administration of the title IV-E State plan and therefore an allowable administrative cost under 45 CFR 1356.60(c). Any such costs must be allocated through an approved cost allocation plan and the claims must be on behalf of a title IV-E eligible child or candidate for title IV-E foster care.

Source: 01/09/09

Reference: 45 CFR 1356.60(c)

29 **Q:** What are examples of allowable administrative costs for the title IV-E Guardianship Assistance Program?

A: The Social Security Act, at section 474(a)(3)(E), permits title IV-E agencies with approved title IV-E plans to claim reimbursement at a 50 percent matching rate for the costs of administrative activities found necessary by the Secretary for the proper and efficient administration of the title IV-E plan. The Guardianship Assistance Program (GAP) is an optional portion of the title IV-E plan and provides permanency with relative guardians for a child who has been in title IV-E foster care living with that relative.

In general, the title IV-E administrative costs that are allowable for children in the GAP program are those necessary for the title IV-E agency to administer the GAP program and agreement. This includes overall development and operation of a title IV-E agency's GAP program beginning in the calendar quarter when the IV-E agency submits an approvable title IV-E GAP plan to the Children's Bureau. Other activities include: determining GAP eligibility, fair hearings and appeals, management of the GAP payment, review and re-negotiation of the GAP agreement, referral to services, and case management only for the IV-E agency to implement the GAP agreement. As such, the IV-E agency's administrative activities for a child in the GAP program are not as extensive as they are for a child in foster care that has not yet achieved permanency.

Source: *10/14/2011*

Reference: *Social Security Act ¿ section 474(a)(3)(E), PI-10-01, Child Welfare Policy Manual section 8.1A*

8.1C TITLE IV-E, Administrative Functions/Costs, Calculating Claims

1 ***Q:*** May a State claim Federal financial participation (FFP) in the title IV-E foster care and adoption assistance programs based on estimates of quarterly expenditures, or must FFP be claimed on the basis of actual expenditures reported quarterly?

A: In accordance with regulations at 45 CFR 95.4, a "claim" is defined as "...a request for Federal financial participation in the manner and format required by our program regulations, and instructions or directives issued thereunder." The instructions for completing Form ACF IV-E-1 state that all amounts must be for actual expenditures made under the State's approved IV-E plan in accordance with applicable statutes and regulations. These claims must be supported by accounting records and source documentation at the time they are submitted. Estimates of quarterly expenditures do not represent a "claim" as defined above and, as such, may not be reported on the Form IV-E-1 for the purpose of claiming FFP. All claims must be comprised of actual expenditures and filed within two years from the end of the quarter within which the expenditures were made.

Source: ACYF-CB-PIQ-96-01 (10/8/96)

Reference: 45 CFR 95.4; ACYF-OC-PI 99-01 (9/22/99)

2 ***Q:*** What is the connection between the date the child is considered to have entered foster care and when the State may claim Federal financial participation (FFP) for foster care maintenance payments?

A: Establishing initial eligibility for title IV-E funding and initial claiming for FFP have no relationship to the date the child is considered to have entered foster care defined at section 475 (5)(F) of the Social Security Act. The purpose of that provision is to set the "clock" for determining when to satisfy the requirements for holding periodic reviews, permanency hearings, and the TPR provision. A child's initial eligibility for title IV-E funding is not related to this time frame.

The date a child is considered to have entered foster care is, however, related to maintaining a child's eligibility for title IV-E funding. Under 45 CFR 1356.21 (b)(2), we require the State to use the date the child is considered to have entered foster care in determining when to obtain a judicial determination that it made reasonable efforts to finalize a permanency plan. We intentionally linked the timing for obtaining this judicial determination to the date the child is

considered to have entered foster care so that such determinations could occur at the permanency hearing, the logical time for making such determinations.

Source: Preamble to the Final Rule (65 FR 4020) (1/25/00)

Reference: Social Security Act - sections 475 (5)(F); 45 CFR 1355.20 and 1356.21 (b)(2)

3 **Q:** A State asks whether it is required to apply an eligibility factor to child specific costs for children whom it "reasonably views as candidates for title IV-E foster care maintenance payments".

A: Administrative costs identified in 45 CFR 1356.60 (c)(2) that are not directly linked to the eligibility of children must be allocated in such a manner as to assure that each participating program is charged its proportionate share of costs. Such allocation may be on the basis of case count or on some other equitable basis. These administrative costs include recruitment and licensing of foster homes, rate setting, training, and the proportionate share of related agency overhead.

Child specific administrative costs include such matters as referrals, reports and court proceedings. Allowable administrative costs associated with child specific activities are 100 percent reimbursable for those individuals that the State reasonably views as candidates for title IV-E foster care.

In order to claim child specific administrative costs, the State may individually determine those children who are title IV-E foster care candidates and claim 100 percent of the child specific allowable administrative costs incurred on behalf of these children.

Alternatively, if the child is not specifically identified as a candidate for title IV-E foster care, there must be an allocation. The allocation must be based on a determination both of candidacy for foster care and of potential IV-E eligibility. Using a ratio of IV-E to non-IV-E cases is one acceptable means of allocation. Other means of determining candidacy and of determining potential IV-E eligibility may also be acceptable.

The State must clearly identify in its Cost Allocation Plan those administrative activities which are child specific and the methodology which will be used for claiming these costs.

Source: ACYF-CB-PA-87-05 (10/22/87); ACYF-CB-PIQ-96-01 (10/8/96)

Reference: 45 CFR 1356.60; DHHS Grant Appeals Board Decision No. 844

4 **Q:** Licenses for foster family homes and child-care institutions often go into effect or may lapse on a day other than the first or last day of the month. How should the State claim Federal financial participation (FFP) for a title IV-E eligible child who is placed in a foster family home or child-care institution that is licensed for a portion of a month?

A: If a foster family home or child-care institution is licensed for a portion of a month, the State may claim FFP for the entire month when an otherwise eligible child has resided in that home or institution for the entire month. The State must prorate any claims when the otherwise eligible child has resided in the home or institution for a portion of the month.

Source: Questions and Answers on the Final Rule (65 FR 4020) (1/25/00)

Reference: Social Security Act - section 471 (a)(10)

5 **Q:** When May Federal financial participation (FFP) begin for candidates for foster care?

A: States may claim FFP for administrative costs for allowable administrative functions performed on behalf of foster care candidates in the month in which the child's candidacy is determined consistent with section 472(i)(2) of the Social Security Act (the Act). States may not claim FFP for title IV-E administrative functions performed prior to the month of candidacy because a child is not a candidate for foster care until the State has determined that the child is at imminent risk of removal from the home and reasonable efforts are being made to prevent removal, or if necessary, to pursue removal from the home. A State must document that it has determined that a child is a candidate for foster care pursuant to one of three acceptable methods: a case plan that identifies foster care as the goal absent preventative services; an eligibility form used to document the child's eligibility for title IV-E; or evidence of court proceedings related to the child's removal from the home.

Source: ACYF-CB-PA-01-02 (7/3/01); 7/7/2006

Reference: Social Security Act - section 472(i)(2)); 45 CFR 1356.60; Departmental Appeals Board Decision No. 844; ACYF-CB-IM-06-02

6 ***Q:*** Are administrative funds available at 50% Federal financial participation (FFP) for the cost of accrediting a State¿s child welfare agency?

A: Yes. Section 471(a)(22) of the Social Security Act requires States to provide standards to ensure that children in public or private foster care placements are provided quality services that protect the safety and health of the children. Therefore, costs associated with accrediting a State?s child welfare agency, to the extent they meet the requirement with regard to the placement of children in foster care, are allowable for the proper and efficient administration of the State plan.

Any such costs must be allocated, through an approved cost allocation plan, to all benefiting programs.

Source: 06/09/04

Reference: Section 471(a)(22) of the Social Security Act, 45 CFR 1356.60(c).

7 ***Q:*** Section 472(i)(2) of the Social Security Act permits States to claim administrative costs on behalf of a candidate for foster care who is ¿potentially eligible for benefits under a State plan under this part.¿ Does the phrase "potentially eligible" mean that the State must determine that a child would meet the Aid to Families with Dependent Children (AFDC) eligibility criteria at the time of removal before claiming allowable costs?

A: No. States may forgo testing for AFDC eligibility in favor of using cost allocation to claim for allowable title IV-E administrative functions performed on behalf of children who are candidates for foster care maintenance payments. The allocation must be based both on a determination of candidacy for foster care and potential title IV-E eligibility. States typically use a ratio of title IV-E to non-title IV-E cases to satisfy the requirement that foster care candidates potentially be eligible for title IV-E. Please see Child Welfare Manual Section 8.1C Question and Answer #3 for more detail on acceptable methods for calculating claims for candidates.

Source: 8/7/2006

Reference: Social Security Act - section 472(i)(2)

8 ***Q:*** Which children should be included in the numerator and which in the denominator to determine a title IV-E foster care participation rate for purposes of claiming title IV-E Foster Care program administrative costs under section 474(a)(3) of the Social Security Act (the Act)?

A: A title IV-E agency that uses a title IV-E foster care participation rate (sometimes called the eligibility, penetration or discount rate) as a cost allocation methodology must determine this rate by dividing the number of title IV-E foster care eligible children by the total number of children in foster care pursuant to the definition of foster care in 45 CFR 1355.20. The numerator is comprised of the total number of children in foster care determined to meet all title IV-E eligibility requirements. A title IV-E agency may also include in the numerator otherwise eligible children placed with relatives pending foster family home approval or licensure (for the lesser of the average time it takes to license a foster home or 12 months) and children moving from a facility that is not licensed to one that is for up to one month pursuant to section 472(i)(1) of the Act. The denominator is comprised of the total number children who are in foster care, including those that are title IV-E eligible and those that are not or have not yet been determined title IV-E eligible.

Any methodology for claiming administrative costs, including the calculation of the participation rate described above, must be a part of the State's approved cost allocation plan or a Tribe's approved cost allocation methodology in accordance with 45 CFR 95.507(b)(4) and 45 CFR Part 75 Subpart E cost principles.

Note: This answer previously referenced 2 CFR Part 225. 45 CFR Part 75 supersedes 2 CFR Part 225 effective December 26, 2014 (79 FR 75871, Dec. 19, 2014).

Source: 04/20/12 (revised 11/2/2016)

Reference: Social Security Act sections 472(i) and 474(a)(3); 45 CFR Part 75, 45 CFR 95.507(b)(4), 45 CFR 1355.20, 79 FR 75871, Dec. 19, 2014, ; 81 FR 3022, Jan. 20, 2016; and Child Welfare Policy Manual section 8.1C Q/A#3

8.1D TITLE IV-E, Administrative Functions/Costs, Candidates

1 ***Q:*** May we claim Federal financial participation (FFP) for the administrative costs associated with foster care candidates even for children who never enter foster care?

A: Yes. Federal financial participation for administrative costs listed at 45 CFR l356.60(c) may be claimed regardless of whether the child is actually placed in foster care and becomes a recipient of title IV-E foster care benefits. However, reimbursement is limited to those individuals the State reasonably views as candidates for foster care maintenance payments consistent with section 472(i)(2) of the Social Security Act.

The three acceptable methods of documentation indicating that a child is a candidate for foster care benefits are: (l) A defined case plan which clearly indicates that, absent effective preventive services, foster care is the planned arrangement for the child, (2) an eligibility determination form which has been completed to establish the child's eligibility under title IV-E, or (3) evidence of court proceedings in relation to the removal of the child from the home, in the form of a petition to the court, a court order or a transcript of the court's proceedings.

Should the State determine that the child is no longer a candidate for foster care at any point prior to the removal of the child from his home, subsequent activities will not be allowable for reimbursement of costs under title IV-E.

Source: ACYF-CB-PA-87-05 (10/22/87); 7/7/2006

Reference: Social Security Act - sections 471 (a)(15) and 472(i)(2); DHHS Grant Appeals Board Decision No. 844; ACYF-CB-IM-06-02

2 **Q:** At what point may a child be considered a candidate for foster care?

A: A candidate for foster care is a child who is at serious risk of removal from home as evidenced by the State agency either pursuing his/her removal from the home or making reasonable efforts to prevent such removal. The basis for determining when a child may be considered a candidate for foster care can be found in statute, Departmental policy, and Departmental Appeals Board (DAB) decisions:

STATUTE: Section 471(a)(15)(B)(i) of the Act provides the frame of reference for determining the point at which a child becomes a candidate for foster care by requiring a State to make reasonable efforts to prevent a child's removal from home. A child may not be considered a candidate for foster care solely because the State agency is involved with the child and his/her family. In order for the child to be considered a candidate for foster care, the State agency's involvement with the child and family must be for the specific purpose of either removing the child from the home or satisfying the reasonable efforts requirement with regard to preventing removal.

DEPARTMENTAL POLICY: stipulates the three acceptable methods for documenting a child's candidacy for title IV-E foster maintenance payments. The existence of these forms of documentation indicates that a child legitimately may be considered a candidate for foster care:

1) A defined case plan which clearly indicates that, absent effective preventive services, foster care is the planned arrangement for the child.

The decision to remove a child from home is a significant legal and practice issue that is not entered into lightly. Therefore, a case plan that sets foster care as the goal for the child absent effective preventive services is an indication that the child is at serious risk of removal from his/her home because the State agency believes that a plan of action is needed to prevent that removal.

2) An eligibility determination form which has been completed to establish the child's eligibility under title IV-E.

Completing the documentation to establish a child's title IV-E eligibility is an indication that the State is anticipating the child's entry into foster care and that s/he is at serious risk of removal from home. Eligibility forms used to document a child's candidacy for foster care should include evidence that the child is at serious risk of removal from home. Evidence of AFDC eligibility in and of itself is insufficient to establish a child's candidacy for foster care.

3) Evidence of court proceedings in relation to the removal of the child from the home, in the form of a petition to the court, a court order or a transcript of the court proceedings.

Clearly, if the State agency has initiated court proceedings to effect the child's removal from home, s/he is at serious risk of removal from the home.

DAB DECISIONS: DAB Decision No. 1428 offers the following guidance for identifying the point at which a child may be considered a candidate:

"...The methods of documenting candidacy [identified in the Department's policy guidance] involve activities which occur at a point when the state has initiated efforts to actually remove a child from his or her home or at the point the state has made a decision that the child should be placed in foster care unless preventive services are effective..."

The DAB also ruled in Decision No. 1428 that a report of child abuse or neglect is insufficient for establishing a child's candidacy for foster care:

"...The fact that a child is the subject of [a child abuse/neglect report] falls far short of establishing that the child is at serious risk of placement in foster care and thus of becoming eligible for IV-E assistance..."

A candidate, in the opinion of the DAB, is a child who is at serious risk of removal from his/her home because the State is either pursuing that removal or attempting to prevent it. A child cannot be considered a candidate for foster care when the State agency has no formal involvement with the child or simply because s/he has been described as "at risk" due to circumstances such as social/interpersonal problems or a dysfunctional home environment.

Source: ACYF-CB-PA-01-02 (7/3/01)

Reference: Social Security Act - section 471 (a)(15); Departmental Appeals Board Decision No. 1428

3 Q: Can children on trial home visits be considered candidates for foster care?

A: Yes. A State often will provide supportive services to a child and family during the course of a trial home visit to facilitate the success of such visit. We believe that the services and supports provided to a child on a trial home visit can be considered reasonable efforts to prevent the child's removal from the home and return to foster care in accordance with section 471(a)(15)

of the Act. If the State determines that the child on a trial home visit meets the other criteria in section 472(i)(2) of the Social Security Act (the Act), the State, may claim Federal reimbursement for the allowable title IV-E administrative costs associated therewith. However, a child may not be simultaneously both in foster care and a candidate for foster care. In addition, the State must document the child's candidacy for foster care pursuant to one of the approved methods. For example, the State may document in the child's case plan its intent for the child to return to foster care if the services provided during the course of the trial home visit prove unsuccessful.

Source: ACYF-CB-PA-01-02 (7/3/01); 7/7/2006

Reference: The Social Security Act ¿ section 472(i)(2); 45 CFR 1356.21(e) and 1356.60; ACYF-CB-IM-06-02

4 Q: Can children in aftercare be considered candidates for foster care?

A: Yes. During aftercare, the services or supports provided to the newly reunited family can be considered the State agency's reasonable efforts to prevent the child's removal from the home and re-entry into foster care in accordance with section 471(a)(15) of the Act. If the State determines that the child in aftercare meets the other criteria in section 472(i)(2) of the Social Security Act (the Act), the State may claim Federal reimbursement for the allowable title IV-E administrative costs associated therewith. However, in order to consider a child who is newly reunited with his/her family a candidate for foster care, the State must document the child's candidacy pursuant to one of the approved methods. The State may, for example, develop a case plan that demonstrates its intent to remove the child from home and return him/her to foster care if the aftercare services prove unsuccessful.

Source: ACYF-CB-PA-01-02 (7/3/01); 7/7/2006

Reference: The Social Security Act ¿ section 472(i)(2); Departmental Appeals Board Decision No. 844; ACYF-CB-IM-06-02

5 **Q:** What is the maximum length of time a child may be held in candidate status?

A: Pursuant to Departmental Appeals Board Decision No. 844, the Department has instructed States to cease claiming Federal reimbursement when the State determines, at any point prior to the removal of a child from home, that such child is no longer a candidate. By definition, a candidate is a child for whom the State is either pursuing or making reasonable efforts to prevent a removal, suggesting a child may be considered a candidate only for a finite period of time. We do not prescribe the maximum length of time a child may be considered a candidate; however, a State must document its justification for retaining a child in candidate status for longer than six months.

Source: ACYF-CB-PA-01-02 (7/3/01)

Reference: Departmental Appeals Board Decision No. 844

6 **Q:** Who must make the determination with respect to foster care candidacy?

A: The State agency (or another public agency that has entered into an agreement with the State title IV-E agency pursuant to section 472(a)(2) of the Social Security Act (the Act)) must determine whether a child is a candidate. The basis for this clarification is set forth in regulation and Departmental policy:

REGULATION: A determination with respect to candidacy is a type of eligibility determination because title IV-E funds are expended as the result of a determination with respect to a child's status. The regulations at 45 CFR 205.100 require that officials of the State agency perform administrative functions that require the exercise of discretion. Under long-standing Departmental policy that originates with the 1939 amendments to the Social Security Act, the determination of an individual's eligibility for a Federal entitlement is considered a function that requires the exercise of discretion. Accordingly, determinations with respect to foster care candidacy must be made by employees of the State agency, or of another public agency that has entered into an agreement with the State agency pursuant to section 472(a)(2) of the Act. We are aware that some States contract with consultants to assist in identifying children in the foster care caseload who may be eligible for title IV-E. These contractors are not employees of the State agency and may not make determinations with respect to title IV-E eligibility or foster care candidacy. The same holds true for the contractors of public agencies that enter into title IV-E agreements pursuant to section 472(a)(2) of the Act. Only employees of the

public agency are authorized to make the determination of title IV-E eligibility and/or foster care candidacy.

DEPARTMENTAL POLICY: The three acceptable forms of documentation that establish a child's candidacy for title IV-E support that the State agency must make the determination with respect to candidacy:

1) A defined case plan which clearly indicates that, absent effective preventative services, foster care is the planned arrangement for the child.

The DAB, in Decision No. 844, ruled that the development of a case plan is a title IV-E administrative function that may be performed on behalf of candidates in accordance with section 471(a)(16) of the Act. The case plan identified above is thus the State agency's case plan developed in compliance with section 471(a)(16) of the Act.

2) An eligibility determination form which has been completed to establish the child's eligibility under title IV-E.

As stated earlier, only employees of the State agency can make the determination with respect to candidacy because it is a type of eligibility determination. The form referenced above is thus the State agency's documentation of the child's eligibility for title IV-E.

3) Evidence of court proceedings in relation to the removal of the child from the home, in the form of a petition to the court, a court order or a transcript of the court proceedings.

A candidate is a child for whom the State agency is either seeking a removal or fulfilling the statutory requirement to attempt to prevent removal from the home. Among other things, the State agency is required to obtain a judicial determination sanctioning or approving such an attempt to prevent removal with respect to reasonable efforts to qualify the child for title IV-E foster care maintenance payments. The judicial proceedings referenced above are those proceedings the State agency initiates to obtain the judicial determinations related to the removal of a child from home.

Source: ACYF-CB-PA-01-02 (7/3/01)

Reference: Social Security Act - section 472(a); 45 CFR 205.100; Departmental Appeals Board Decision No. 844

7 ***Q:*** Are children placed in facilities that are outside the scope of what is considered foster care candidates for the purpose of claiming title IV-E administrative costs?

A: No. A child who has been removed from his/her home is not a candidate for foster care. Moreover, States should note that, in accordance with long-standing Departmental policy, title IV-E administrative costs cannot be claimed on behalf of a child who is placed in a facility that is not a foster care facility, even if the State intends to place such child in foster care at a later date. Facilities that are outside the scope of foster care include, but are not limited to: detention facilities; psychiatric hospitals; forestry camps; or facilities that are primarily for the detention of children who are adjudicated delinquent.

Source: ACYF-CB-PIQ-85-06 (4/12/85); ACYF-CB-PA-01-02 (7/3/01)

Reference: Social Security Act - section 472 (c)(2)

8 Q: What constitutes a case plan for the purposes of documenting a child's candidacy for foster care?

A: The development of a case plan in compliance with sections 471(a)(16) of the Social Security Act (the Act) is an allowable title IV-E function performed on behalf of candidates for foster care. The requirements for case plans developed pursuant to section 471(a)(16) of the Act are set forth in regulation at 45 CFR 1356.21(g). The provisions at 45 CFR 1356.21(g) are, therefore, to the extent that they are applicable to pre-placement, controlling with respect to case plans used to document candidacy for foster care. Specifically, the provisions at 45 CFR 1356.21(g)(1) and (4) apply. The case plan used to document a child's candidacy for foster care must be a written document that is developed jointly with the parent(s) or guardian of the child and include a description of the services offered and provided to prevent removal of the child from the home. In addition, the State must document, in said plan, that the goal for the child is foster care if the services described in the plan are not effective.

Adherences to the regulatory case plan provisions increase the likelihood that the plan will be effective, either in preventing or pursuing the removal of the child from the home. Nonetheless, State claims for administrative costs on behalf of candidates for foster care are not based on the completeness of the case plan. While we expect the case plan requirements that apply to a candidate to be met, the State may claim administrative costs in the month that it determines and documents a child is a candidate for foster care consistent with section 472(i)(2) of the Act (see Section 8.1C QA #5 of the Child Welfare Policy Manual).

Source: 8/16/02; 7/7/2006

Reference: Social Security Act -- Sections 471(a)(16) and 475(1) 45 CFR 1356.21(g); Departmental Appeals Board Decision No. 844 ; Child Welfare Policy Manual Section 8.1C QA #5; ACYF-CB-IM-06-02

9 Q: The State is permitted to claim administrative costs for a candidate for foster care if a potentially title IV-E eligible child is at imminent risk of removal from the home and the State is either pursing the removal of the child from the home or providing reasonable efforts to prevent the removal in accordance with section 471(a)(15) of the Social Security Act (the Act). Section 472(i)(2) of the Act requires the State to redetermine that a candidate for foster care remains at imminent risk of removal at least every six months. What happens if the State does not complete this redetermination timely?

A: The statute is very specific that the State may claim administrative costs for a candidate for foster care only if the State is providing reasonable efforts in accordance with section 471(a)(15) of the Act or pursuing the removal of the child from the home and redetermines at least every six months that the child remains at imminent risk of removal from the home. Therefore, if the State does not make this determination at the six-month point, the State must cease claiming administrative costs on behalf of the child.

Source: 8/7/2006

Reference: Social Security Act - Section 472(i)(2)

10 Q: Section 472(i)(2) of the Social Security Act (the Act) describes a candidate for foster care as a child at "imminent" risk of removal. Does the State have to use the term "imminent risk" in the case plan to document a child's candidacy? Or, is it permissible for the State to document that the child is at "serious risk of removal" from the home to satisfy this requirement?

A: We consider the term "serious risk of removal" to be synonymous with "imminent risk of removal." As such, the State may use this term in the case plan to document a child's candidacy. The State also may use alternate descriptions that are equivalent to "imminent" or "serious risk of removal." In addition, the State must ensure that the child meets all other criteria in section 472(i)(2) of the Act and the Child Welfare Policy Manual at Section 8.1, to be a candidate for foster care.

Source: 1/29/2007

Reference: Social Security Act ¿ section 472(i)(2)

11 **Q:** In order for a child to be considered a foster care candidate for purposes of section 472(i)(2) of the Social Security Act (the Act), among other things, the State must have documented that the child is at imminent risk of removal from the home. Does the out of home placement for the child have to be a foster care setting?

A: Yes. Section 472(i)(2) of the Act explicitly states that, among other requirements, to be a candidate for foster care, a child has to be potentially eligible for title IV-E foster care benefits. Therefore, this means that the State has made a decision that the out of home placement for the child will be a foster care setting. A child is not a candidate for foster care when the planned out of home placement for the child is an arrangement outside of foster care, such as a detention facility.

Source: 12/31/07

Reference: Social Security Act ¿ section 472(i)(2)

8.1E TITLE IV-E, Administrative Functions/Costs, Contracting

1 **Q:** Under the title IV-E foster care program may the title IV-E State agency contract for some child foster care functions (administrative or otherwise) and still be eligible for Federal financial participation (FFP), as long as the State agency retains responsibility for the placement and care of the child?

A: Yes. Under title IV-E, such functions as training, recruiting or licensing of foster homes for which the State contracts with private agencies are defined as allowable costs for the proper administration of the State plan and may be claimed for purposes of Federal financial participation (FFP). Responsibility for the placement and care of the foster child, however, must remain with the State agency.

Source: ACYF-CB-PIQ-82-07 (8/25/82)

Reference: Social Security Act - section 474 (a)(3)(B)

2 ***Q:*** Title IV-E administrative costs may be claimed for activities completed by child placing agencies. When an institution participates in case review, case supervision and case management, can an allocated amount of this time be charged to title IV-E administration? If not, what is the appropriate way of allocating these costs? When an institution participates in making a treatment plan and in daily recording of a child's progress, to what should these activities be allocated?

A: The first statement in the question is not entirely accurate. Title IV-E administrative costs may be claimed when the State contracts with child-placing agencies to perform foster care related administrative functions of the State.

45 CFR 1356.60 (c)(2) includes in the list of allowable State administrative costs those costs which are necessary for the administration of the foster care program.

Costs for these State administrative activities, when performed by a child-care institution, may be claimed by the State as the State's administrative costs if the State contracts with the institution to perform these activities. These costs may not also be claimed as part of the child's title IV-E maintenance payment.

The institution's provision of social services in relation to the child's personal or behavioral problems, counseling to ameliorate home conditions and daily recording of progress would not be considered administrative activities of the title IV-E foster care maintenance program and the costs are not allowable for purposes of Federal financial participation (45 CFR 1356.60 (c)(3)).

Source: ACYF-CB-PIQ-85-06 (6/5/85)

Reference: 45 CFR 1356.60 (c)

3 **Q:** May State agencies contract with another organization, such as a community college to conduct training on behalf of the State agency? This training would be considered State agency training, not educational institution training?

A: Yes. Section 474 (a)(3)(A) of the Social Security Act provides for Federal financial participation (FFP) in the costs of training personnel employed by or preparing for employment with the State or local agency. Section 474 (a)(3)(B) covers other administrative expenditures, including the training of foster parents. It is within the discretion and flexibility of the State agency to determine the most efficacious and cost effective means of meeting the short and long term training needs of the State and local agencies.

Source: ACYF-CB-PIQ-82-17 (10/14/82)

Reference: Social Security Act - section 474 (a)

4 **Q:** May title IV-E foster care maintenance payments flow through a for-profit entity to the foster care provider?

A: Yes. The Fair Access Foster Care Act of 2005 (Public Law 109-113), which took effect on November 22, 2005, amended section 472(b) of the Social Security Act to eliminate the prohibition against making foster care maintenance payments through a for-profit entity.

Source: 01/29/07

Reference: Social Security Act, section 472; Public Law 109-113

8.1F TITLE IV-E, Administrative Functions/Costs, Match Requirements

1 **Q:** Can third-party in-kind services and donated funds be used as the State's share for matching purposes under title IV-E?

(Deleted 08/26/2002)

2 **Q:** May third-party in-kind services be used as the State's share for matching purposes under title IV-E?

A: No. Third party in-kind contributions may not be used by a State to meet Federal cost-sharing requirements under the title IV-E Foster Care and Adoption Assistance Program.

Source: ACYF-CB-PIQ-84-06 (10/22/84) / 8/16/02

Reference: Social Security Act - section 474; 45 CFR Part 1356.60

3 **Q:** May donated funds be used as the State's share for matching purposes under title IV-E?

A: The Departmental Appeals Board concluded in Decision No. 1737 (July 14, 2000) that longstanding agency policy permitted States to claim Federal financial participation (FFP) for allowable costs paid with funds donated to support specific activities. The State must take into consideration the following conditions in order for a State to use donated funds to meet Federal cost-sharing requirements and claim FFP:

1) The donated funds must be used to pay for allowable title IV-E costs.
2) The donor may specify the activities to be supported with its donations but cannot be a sponsor or operator of a program to provide such activities.
3) The donor may specify the geographic area in which the activity is to be provided.

States should note, however, that only funds donated from a public source that satisfy the above criteria may be used to match title IV-E training expenditures pursuant to 45 CFR 1356.60(b)(3).

Source: 8/16/02

Reference: Departmental Appeals Board Decision No. 1737 (July 14, 2000); 45 CFR Part 1356.60

4 **Q:** May unrestricted funds from a private source donated to the State that become part of the general pool of funds available to the State and are then appropriated by the State legislature be used to match title IV-E Federal Financial Participation (FFP) at the 75 percent rate for training?

A: Yes. Funds that are donated from a private source to the State's general funds or treasury and then appropriated by the State legislature to the State child welfare agency are considered public funds and, therefore, may be used as the State's share in claiming FFP for title IV-E training at the 75 percent rate. However, private funds that merely are transferred from the private source to the State cannot be used to match the State?s training costs under title IV-E foster care or adoption assistance.

Source: April 6, 2006

Reference: 45 CFR 235.66(a)

5 **Q:** The Departmental Appeals Board (DAB) found in Decision No. 1737 that States may claim FFP for allowable administrative costs paid with private funds that are donated to support specific activities. Does this finding mean that funds donated from a private source can be used to match Federal financial participation (FFP) at the 75% rate for title IV-E training?

A: No. DAB Decision No. 1737 did not address matching funds for training under section 474(a)(3)(A) and (B) of the Social Security Act (the Act). Therefore, ACF regulations and policy which permit only public funds to be used as match for title IV-E training at the 75% rate are applicable. As specified in the Child Welfare Policy Manual at Section 8.1F question 3, only public funds may be used to match title IV-E training expenditures. The regulations at 45 CFR 1356.60(b)(3) on Federal matching funds for State and local training for foster care and adoption assistance under title IV-E cross reference to 45 CFR 235.63 through 235.66(a) which, among other things, permit public funds to be used as match. The regulation does not cross reference to 45 CFR 235.66(b) which permit funds donated from private sources to be used as match.

Source: 8/7/2006

Reference: 45 CFR 1356.60(b)(3); 45 CFR 235.66(a); DAB Decision No. 1737

8.1G TITLE IV-E, Administrative Functions/Costs, Title IV-E Agreements

1 ***Q:*** May a court be considered a "public agency" for purposes of entering into a title IV-E agreement, or does "public agency" refer only to the executive branch of State government? Is separation of powers an issue here?

A: There is no statutory prohibition on agreements between the public agency administering the title IV-E foster care program and the court. However, legislative and program history do not provide precedent for agreements whose only purpose is to transfer the decision-making authority for placement and care from the title IV-E administering agency to the court or its affiliated citizen review panel. Rather, discussion of such agreements in the 1963 Handbook of Public Assistance Administration describes "another public agency" as a child placing agency authorized by State law to operate a program of services to children and families, with supervision by the agency administering the Aid to Families with Dependent Children program. Current ACF policy sustains this position.

Therefore, the requirements of section 472 (a)(2)(B) of the Social Security Act may be met through an agreement with a public agency (including a court) which is authorized under State law to operate as a child placing agency, and, if so authorized, is operating a child placing agency. The agreement, properly written, should be binding on both parties and should permit the State agency to have access to case records, reports or other informational materials as needed to monitor title IV-E compliance. The State must maintain a supervisory role in relation to all title IV-E eligible children and would need to monitor the provisions required under title IV-E.

However, if a court is not authorized under State law to operate and is not operating as a child placing agency, the court could not be considered "another public agency" with responsibility for placement and care of otherwise eligible children for purposes of section 472 (a)(2)(B).

Source: ACYF-CB-PIQ-85-02 (3/13/85)

Reference: Social Security Act - section 472 (a)(2)(B); Handbook of Public Assistance Administration, Part IV, Department of Health, Education and Welfare 7/24/63

2 ***Q:*** Which agency (State or Tribal) has responsibility for providing foster care payments and child welfare services to Indian children?

A: The title IV-E program is a State administered program to pay the costs of foster care for AFDC eligible children removed from their homes, for whom the State or the Tribe has responsibility for placement and care. It is an entitlement program for individual children and must be available to all eligible residents of a State, including Indian children living on or off reservations.

The title IV-B child welfare services program provides Federal funds in the form of formula grants to States and Tribes consistent with the purposes in section 421 of the Act.

Some Federally recognized Tribes providing child welfare services are eligible to receive title IV-B grants directly from the Federal government. Since these are grants to States and Tribes, and are not entitlements for individual children, the States and participating Tribes have the authority to allocate the use of these funds and to set priorities for their use.

Many States and Tribes have developed State-Tribal agreements which formalize the sharing of responsibility for providing foster care maintenance and child welfare services, using title IV-E and title IV-B funds, as well as Social Services Block Grant funds and State funds.

Where neither the State nor the Tribe has resources sufficient to cover all the needs of all Indian children, the Bureau of Indian Affairs, as payor of last resort, may pay for these services.

Source: ACYF-CB-PIQ-88-02 (1/27/88)

Reference: Social Security Act - sections 421, 422, 428 and 472; 25 CFR 20.3

3 ***Q:*** What is the rationale for prohibiting any body that conducts permanency hearings from being part of or under the supervision or direction of the State agency? Does this requirement extend to other public agencies with which the State agency has a title IV-E agreement?

A: Critical decisions that have a significant effect on the lives of children and their families are made at permanency hearings. The purpose of requiring courts to oversee permanency hearings is to ensure that these hearings are conducted by an impartial body, which includes any body appointed or approved by the court to provide this oversight in its stead. An administrative body that is part of the State agency or under its direction or supervision would not meet the test of impartiality.

The requirement does extend to other public agencies with which the State agency has an agreement. Title IV-E requirements extend to any other public agency with which the State agency enters an agreement for the performance of title IV-E administrative functions, including responsibility for placement and care of the child.

Source: Preamble to the Final Rule (64 FR 4020) (1/25/00)

Reference: Social Security Act - sections 475 (5)(c); 45 CFR 1355.20

4 ***Q:*** Under title IV-E a State agency must be designated to administer the foster care maintenance program. Could another State agency, such as a "Youth Authority", provide program monitoring and supervision through an inter-agency contract (assuming some or all children under the "Youth Authority" will be eligible)?

A: Section 472 of the Social Security Act requires that "such child's placement and care are the responsibility of the State agency administering the (title IV-E) State plan...or any other public agency with whom the State agency administering or supervising the administration of the (title IV-E) State plan...has made an agreement which is still in effect."

Assuming that a State Department of Social Services (DSS) is the title IV-E designated agency, a "Youth Authority" for example, would need to have a currently effective agreement with the DSS which covers these children and all requirements of the title IV-E law and regulations. If the agreement covered all of the requirements, then the "Youth Authority" could, for purposes of administering the title IV-E State plan, function as the DSS's surrogate. This arrangement, however, would not relieve the DSS of ultimate responsibility to supervise the

"Youth Authority's" administration of the State plan for these children nor does it speak to the question of IV-E allowable costs. Moreover, the requirements of the Act under section 472, are broader than merely an agreement between two State entities covering particular items. To receive FFP for the care of "Youth Authority" supervised children, the DSS and the "Youth Authority" would have to assure that all the title IV-E State plan requirements are met for these children, not merely addressed by the interagency agreement. Assuming these arrangements are carried out properly, FFP could be available.

Source: ACYF-CB-PIQ-82-10 (8/11/82)

Reference: Social Security Act - section 472

5 **Q:** Is a public entity that has entered into a title IV-E agreement pursuant to section 472(a)(2)(B) of the Social Security Act (the Act) with the State agency permitted to perform the title IV-E functions of an employee of the State title IV-E agency?

A: Yes. Entering into a section 472(a)(2)(B) agreement with the State title IV-E agency permits another public agency to have responsibility for the placement and care of title IV-E eligible children. An agency that exercises responsibility for the placement and care of a title IV-E eligible child is fulfilling the fundamental purpose of the program and is, in effect, implementing the title IV-E State plan on behalf of a specified population of children under the agreement. Thus, such public agencies are permitted to perform functions that the State agency is required to perform pursuant to 45 CFR 205.100(b), such as eligibility determinations. Public agencies that enter into section 472(a)(2)(B) agreements are subject to all applicable Federal statutory, regulatory, and policy guidance as well as State rules that implement Federal requirements.

Source: 06/09/04

Reference: Section 472(a)(2)(B) of the Social Security Act, 45 CFR 205.100.

8.1H TITLE IV-E, Administrative Functions/Costs, Training

1 ***Q:*** What costs can the title IV-E agency claim for Federal financial participation (FFP) to train title IV-E agency employees, foster parents, adoptive parents, relative guardians, employees of private child placing and child care agencies, and the other individuals listed in section 474(a)(3)(B) of the Social Security Act (the Act)?

A: Section 474(a)(3)(A) of the Social Security Act (the Act) provides that States and Tribes with plans approved under title IV-E shall be entitled to Federal matching funds for the proper and efficient administration of the plan in the following proportions of total amounts expended: 75 percent for the training (including both short-term training and long-term training at educational institutions, through grants to the institutions or by direct financial assistance to students enrolled in such institutions) of personnel employed or preparing for employment by the title IV-E agency or by the local agency administering the title IV-E plan; and 474 (a)(3)(B) of the Act provides for the short-term training of current or prospective foster or adoptive parents or relative guardians, the members of the staff of State or Tribal-licensed or approved child care institutions providing care to foster and adopted children receiving assistance under this part and members of the staff of abuse and neglect courts, agency attorneys, attorneys representing children or parents, guardians ad litem, or other court-appointed special advocates representing children in proceedings of such courts, in ways that increase the ability of such current or prospective parents, guardians, staff members, institutions, attorneys and advocates to provide support and assistance to foster and adopted children, and children living with relative guardians whether incurred directly by the State or by contract.*

The regulations at 45 CFR 1356.60(b) and (c) specify what is considered a training cost and what is considered an administrative expense under title IV-E. Section 1356.60(c) explains that the State's cost allocation plan shall identify which costs are allocated and claimed under title IV-E. Tribal title IV-E agencies must identify which costs are allocated and claimed under title IV-E in the Tribe's cost allocation methodology (CAM) (see ACYF-CB-PI-10-13). With regard to costs of educational programs (approved by the title IV-E agency) leading to a baccalaureate or graduate degree, the regulations clearly indicate that training to prepare persons who are employed or about to be employed by the title IV-E agency administering the title IV-E plan can include such long-term training. Grants to the institution or to the person attending the institution are reimbursable at a Federal matching rate of 75 percent. (See 45 CFR 1356.60 (b)(1)(i), 235.63 (c) and 235.64 (c) for further clarification.)

Costs matchable as training expenditures at 75% FFP under this provision may include: (1) salaries, fringe benefits, travel, per diem, tuition, books and registration fees for title IV-E agency trainees in allowable short-term or long-term training (regardless of the duration of the training) for the time period the employee is actually participating in training; (2) salaries, fringe benefits, travel and per diem for staff development personnel assigned to training functions to the extent time is spent performing such functions; (3) salaries, fringe benefits, travel and per diem for experts outside the agency engaged to develop or conduct training programs; (4) travel, per diem, tuition, books and registration fees for foster parents and other persons identified under section 474(a)(3)(B) of the Act in short-term training; and (5) costs of space, postage, training supplies, and purchase or development of training material.

Federal regulations at 45 CFR 1356.60 (b)(2) require that all training activities and costs funded under title IV-E must be included in the title IV-E agency's training plan for title IV-B. Title IV-E agencies will be reimbursed under title IV-E for such costs only if the activities and costs are described and included in the jointly developed and approved title IV-B plan.

All training costs must be allocated to the benefiting title IV-E foster care, adoption assistance or guardianship assistance program and other State/Tribal/Federal programs consistent with the State's CAP or Tribe's CAM and in such a manner as to ensure that the cost is charged to the program in accordance with the relative benefits that the program receives from the training. Title IV-E agencies may determine the manner in which they allocate costs but must do so in accordance with the cost principles delineated at 45 CFR Part 75 Subpart E.

* Beginning October 1, 2008, section 474(a)(3)(B) of the Act was expanded to authorize FFP for the short-term training of additional trainees. The additional trainees are: relative guardians

(if the title IV-E agency has opted per section 471(a)(28) to offer a guardianship assistance program), members of licensed or approved child welfare agencies providing services to children receiving assistance under title IV-E, members of the staff of abuse and neglect courts, agency attorneys, attorneys representing children or parents, guardians ad litem, or other court-appointed special advocates representing children in the proceedings of such courts in ways that increase their ability to provide support and assistance to title IV-E eligible children. FFP is available for the additional categories of trainees in increasing rates rising to 75% in FY 2013. The specific rates of FFP are 55% in FY 2009, 60% on FY 2010, 65% in FY 2011, 70% in FY 2012 and 75% each FY thereafter.

Note: This answer previously referenced OMB Circular A-87 and 2 CFR Part 225. 45 CFR Part 75 supersedes OMB Circular A-87 and 2 CFR Part 225 effective December 26, 2014 (79 FR 75871, Dec. 19, 2014).

Source: 07/23/07 [Revised 12/02/13; 11/2/2016]

Reference: Social Security Act - sections 474 (a)(3)(A) and (B); Public Law 110-351 section 203(b); 45 CFR Part 75; 45 CFR 1356.60 (b) and (c), 235.64(c); ACYF-CB-PA-90-01, ACYF-CB-PI-10-11; 79 FR 75871, Dec. 19, 2014; 81 FR 3022, Jan. 20, 2016

2 **Q:** May State agencies contract with another organization, such as a community college to conduct training on behalf of the State agency? This training would be considered State agency training, not educational institution training?

A: Yes. Section 474 (a)(3)(A) of the Social Security Act provides for Federal financial participation (FFP) in the costs of training personnel employed by or preparing for employment with the State or local agency. Section 474 (a)(3)(B) covers other administrative expenditures, including the training of foster parents. It is within the discretion and flexibility of the State agency to determine the most efficacious and cost effective means of meeting the short and long term training needs of the State and local agencies.

Source: ACYF-CB-PIQ-82-17 (10/14/82)

Reference: Social Security Act - section 474 (a)

3 ***Q:*** May the States fund adoptive parents' attendance at adoption conferences with title IV-E training funds?

A: Yes. States may utilize title IV-E funds for the purposes of paying for the costs of adoptive parents' attendance at conferences which have training components or which include discussions of significant issues covering adoption and the needs of children. Title IV-E of the Act supports a continuing relationship between adoptive parent(s) and the agency to provide services, as needed, to the adoptive parent(s) in the care of the child. These provisions are interpreted to include training for this purpose.

Costs, including travel and per diem, claimed under title IV-E would be reimbursable at the 75% matching rate for adoptive parents attending such training conferences (45 CFR 1356.60 (b)(1)(ii)).

The placement of children in adoptive homes when they cannot return to their biological family is an essential child welfare service. Today's emphasis on placing children with special needs in adoption poses many problems and needs for adoptive parents. By attending and participating in conferences which have training components related to adoption and discussions of adoption issues, adoptive parents may better learn how to deal with special problems and enhance their parenting skills by sharing experiences with others in similar circumstances. Active participation of adoptive parents in such conferences may result in improved adoption planning and policy development through their advisory relationships with public agencies, and thereby assist in extending and strengthening adoption services to children and adoptive parents.

Source: ACYF-CB-PA-82-03 (10/14/82)

Reference: Social Security Act - section 474 (a)(3)(B); 1356.60 (c)(5)

4 **Q:** May allowable costs include salary, travel and per diem for State agency program staff or State agency staff development unit staff conducting training of employees or foster parents?

A: For purposes of title IV-E, 45 CFR 235.64 (a), which we have used as the implementing regulation (as cross-referenced in 45 CFR 1356.60 (b)), allows the costs identified above to be claimed for FFP purposes.

Source: ACYF-CB-PIQ-82-17 (10/14/82)

Reference: Social Security Act - sections 471and 474 (a); 45 CFR Parts 1356 and 235

5 **Q:** Is title IV-E training limited to training related to foster care maintenance or can it be related to the entire provision of foster care including meeting the child's service needs? Since most training programs for foster parents discuss the "total" child, the hope would be the training costs would not need to be separated between title IV-E and title IV-B.

A: Within the restrictions articulated in section 474 (a)(3) of the Social Security Act, training may cover the full range of activities necessary to meet the States maintenance and service requirement of title IV-E.

Source: ACYF-CB-PIQ-82-17 (10/14/82)

Reference: Social Security Act - section 474 (a); 45 CFR Parts 1356 and 235

6 **Q:** Prior to the on-site portion of a child and family services review (CFSR), the State members of the team must participate in a State team training. Can the costs related to such participation be claimed by the State at the 75 percent rate of Federal financial participation (FFP)?

A: Yes, the State may, using an approved cost allocation methodology, identify and claim that portion of the cost of its employees' participation in the CFSR State team training that is allowable under title IV-E at the enhanced rate of 75 percent Federal financial participation pursuant to 45 CFR 235.64(c)(3). Specifically, travel, per-diem, and educational supplies may be claimed at the 75 percent rate. The costs of training the State's external partners or

participants who are not employees of the State agency similarly must be allocated across benefiting programs and the title IV-E portion may be claimed at the 50 percent FFP rate as administrative costs.

Pursuant to section 474(a)(3)(A) of the Social Security Act (the Act), an enhanced rate of FFP is available to train employees of the State agency to perform title IV-E functions. In accordance with section 471(a)(7) of the Act, the State agency is required to monitor and conduct periodic evaluations of its title IV-E program. A State agency employee who is participating in a CFSR is, therefore, performing a title IV-E function pursuant to section 471(a)(7) of the Act, making the enhanced FFP available to train the employee to perform that function.

Any other training associated specifically with conducting a child and family services review or included in an approved CFSR program improvement plan likewise may be claimed under title IV-E in accordance with the guidance provided above.

Source: August 16, 2002

Reference: Social Security Act -- Sections 471(a)(7) and 474(a)(3)(A); 45 CFR 235.64

7 ***Q:*** The Departmental Appeals Board (DAB) found in Decision No. 1737 that States may claim FFP for allowable administrative costs paid with private funds that are donated to support specific activities. Does this finding mean that funds donated from a private source can be used to match Federal financial participation (FFP) at the 75% rate for title IV-E training?

A: No. DAB Decision No. 1737 did not address matching funds for training under section 474(a)(3)(A) and (B) of the Social Security Act (the Act). Therefore, ACF regulations and policy which permit only public funds to be used as match for title IV-E training at the 75% rate are applicable. As specified in the Child Welfare Policy Manual at Section 8.1F question 3, only public funds may be used to match title IV-E training expenditures. The regulations at 45 CFR 1356.60(b)(3) on Federal matching funds for State and local training for foster care and adoption assistance under title IV-E cross reference to 45 CFR 235.63 through 235.66(a) which, among other things, permit public funds to be used as match. The regulation does not cross reference to 45 CFR 235.66(b) which permit funds donated from private sources to be used as match.

Source: 8/7/2006

Reference: 45 CFR 1356.60(b)(3); 45 CFR 235.66(a); DAB Decision No. 1737

8 ***Q:*** What are the title IV-E training topics that the State may claim at the enhanced Federal financial participation rate under section 474 (a)(3)(A) and (B) of the Social Security Act and 45 CFR 1356.60(b)?

A: In general, the training topics must be closely related to one of the examples cited in 45 CFR 1356.60(c)(1) and (2) as allowable administrative activities under the title IV-E program. The regulatory examples of allowable activities include:

<ul style="list-style-type:Disc; margin-left: 2em;">

Eligibility determinations and re-determinations

Fair hearings and appeals

Rate setting

Referral to services

Preparation for and participation in judicial determinations

Placement of the child

Development of the case plan

Case reviews

Case management and supervision

Recruitment and licensing of foster homes and institutions

Additional examples of allowable administrative activities specifically applicable to the title IV-E adoption assistance program include, but are not limited to:

<ul style="list-style-type:Disc; margin-left: 2em;">

Grievance procedures

Negotiation and review of adoption assistance agreements

Post-placement management of subsidy payments

Home studies

A proportionate share of the development and use of adoption exchanges

There are many training topics that are closely related to these title IV-E allowable activities that the State may train its workers on and claim at the 75 percent rate. The following are some examples:

<ul style="list-style-type:Disc; margin-left: 2em;">

Social work practice, such as family centered practice and social work methods including interviewing and assessment.

Cultural competency related to children and families.

Title IV-E policies and procedures.

Child abuse and neglect issues, such as the impact of child abuse and neglect on a child, and general overviews of the issues involved in child abuse and neglect investigations, if the training is not related to how to conduct an investigation of child abuse and neglect.

Permanency planning including using kinship care as a resource for children involved with the child welfare system.

General substance abuse, domestic violence, and mental health issues related to children and families in the child welfare system, if the training is not related to providing treatment or services.

Effects of separation, grief and loss, child development, and visitation.

Communication skills required to work with children and families.

Activities designed to preserve, strengthen, and reunify the family, if the training is not

related to providing treatment or services.

Assessments to determine whether a situation requires a child?s removal from the home, if the training is not related directly to conducting a child abuse and neglect investigation. Training on how to conduct specialized assessments such as psychiatric, medical or educational assessments are not permitted.

Ethics training associated with a title IV-E State plan requirement, such as the confidentiality requirements in section 471(a)(8) of the Act.

Contract negotiation, monitoring or voucher processing related to the IV-E program.

Adoption and Foster Care Analysis and Reporting System (AFCARS), Statewide Automated Child Welfare Information System (SACWIS) or other child welfare automated system functionality that is closely related to allowable administrative activities in accordance with 45 CFR 1356.60(d) that the State has chosen to claim as title IV-E training rather than as SACWIS developmental or operational costs (see AT-ACF-OISM-001).

Independent living and the issues confronting adolescents preparing for independent living consistent with section 477(b)(3)(D) of the Act and the Child Welfare Policy Manual (CWPM), Section 3.1H, Q/A #1.

Foster care candidate determinations and pre-placement activities directed toward reasonable efforts in 471(a)(15), if the training is not related to providing a service.

Training on referrals to services, not how to perform the service.

Source: 4/10/07 [revised 08/12/09]

Reference: Social Security Act ¿ Sections 471(a)(8), 471(a)(15), 474 (a)(3)(A) and (B) and 477(b)(3)(D); 45 CFR 1356.60(b), (c) and (d); 235.64(a)(1) and (2); CWPM, Section 3.1H, Q/A #1; AT-ACF-OISM-001

9 Q: May the State claim title IV-E funds at the 75 percent match rate for any administrative activities that are directly related to carrying out the State agency¿s training initiatives?

A: Yes. Consistent with 45 CFR 235.64(a)(1) and (2) (which applies to title IV-E training costs by cross reference at 45 CFR 1356.60(b)(3)) and Departmental Appeals Board Decision #1666, the administration of training activities (when performed by the State agency training unit), such as contract negotiation, monitoring, or voucher processing is reimbursable as a training activity at the 75 percent match rate. Also, certain State agency overhead costs that are allocable to the State agency training unit in accordance with an approved cost allocation plan may be claimed as title IV-E training costs at 75 percent Federal financial participation (FFP). Further, while a State normally may not claim 75 percent FFP for day-to-day staff supervision, if the supervisor is performing a training function as part of a formalized training program, such as an on-the-job training component of initial in-service training, the State may consider the

portion of time during which such activity is performed by the supervisor as training eligible for 75 percent match (to the extent it is allocable to title IV-E).

Source: 4/10/07

Reference: 45 CFR 1356.60(c)(2)(ix); 45 CFR 235.64(a)(1) and 235.65(a); Departmental Appeals Board Decision #1666

10 Q: May the State claim title IV-E administrative expenses at the 50 percent match on training topics not allowable at the 75 percent match rate?

A: It depends. The State may claim title IV-E administrative costs for training staff on any topic areas that are necessary for the proper and efficient administration of the State?s title IV-E program. These would include topics that address general skills or knowledge required for overall job performance. Some examples of general training topics that the State may claim as a title IV-E administrative cost at the 50 percent match rate include, but are not limited to:

- State agency personnel policies and procedures
- Job performance enhancement skills (e.g., writing, basic computer skills, time management)
- First aid, CPR, or facility security training
- General supervisory skills or other generic skills needed to perform specific jobs
- Ethics unrelated to the title IV-E State plan
- Team building and stress management training
- Safe driving
- Worker retention and worker safety

Source: 4/10/07

Reference: Social Security Act ¿ Section 474(a)(3)(E); 45 CFR 1356.60(c)

11 ***Q:*** What training topics are not allowable as either a training cost or an administrative cost under the title IV-E program?

A: In general, the State may not claim title IV-E funds at the 75 percent rate unless the training addresses topics closely related to one of the examples of title IV-E administrative costs listed in Federal regulation at 45 CFR 1356.60(c)(1) and (2). In addition, funds are not allowable at either the 75 or 50 percent match rate for training on topics that do not address a general administrative need that is determined necessary for the proper and efficient administration of the title IV-E program. Examples of training topics that are not allowable under the title IV-E program include, but are not limited to:

- How to address or treat child or family problems or behaviors because it supports the delivery of social services rather than the administration of the title IV-E State plan.
- Conducting child abuse and neglect investigations because such specialized skills are required for staff activities that occur prior to a child's entering foster care or adoption, and even prior to a child?s becoming a candidate for foster care.
- Child welfare/social service topics that are not related directly to the title IV-E programs or the administration of the title IV-E State plan.

Source: 4/10/07

Reference: Social Security Act ¿ Sections 474(a)(3)(A) and (E); 45 CFR 1356.60(c)(1), (2) and (3); 45 CFR 235.62(b); Departmental Appeals Board Decision #1530 and others.

12 Q: Would you explain the cost-sharing or matching requirements for the title IV-E training program?

A: The cost-sharing or matching requirements for the title IV-E training program are addressed in regulation at 45 CFR 235.66(a), and referenced by 45 CFR 1356.60(b). The following principles apply:

- Only public funds consisting of cash outlays may be used as the State?s share in claiming title IV-E training costs. In-kind contributions are not permitted.
- The funds used as match for title IV-E training must be appropriated directly to the State or local public agency administering the program, or transferred from another public agency or Tribe to the State or local agency and under its administrative control, or certified by the contributing public agency as representing expenditures eligible for FFP.
- Private funds regardless of their source of origin may not be used as the State's share in claiming title IV-E training costs¹.
- Donated funds may be used as the State's share in claiming only if they are donated from a public source (see CWPM, Section 8.1F, Q/A #3).
- Funds used as a match cannot be used to match another Federal program unless the other Federal program explicitly allows such funds to be used as a match for title IV-E (for example, Tribes with a section 472(a) title IV-E agreement may use Indian Child Welfare Act, Indian Self-determination and Education Act and Community Development Block grant funds as a match for title IV-E, including training eligible under title IV-E at the 75 percent match rate).
- Federal funds are not permitted as a match.

¹1356.60(b) does not cross reference to 45 CFR 235.66(b) which authorizes privately donated funds as a match under the former title IV-A Aid to Families with Dependent Children (AFDC), training program.

Source: 4/10/07

Reference: 45 CFR 1356.60(b) and 235.66(a); CWPM, Section 8.1F, Q/A #3; 25 CFR Parts 20 and 25

13 Q: May a State claim title IV-E training funds at the 75 percent match rate for initial in-service training if there are gaps of days or weeks or longer when the newly hired staff is not receiving training either in the classroom or on the job?

A: Yes. There may be situations in which a State?s approved training plan includes initial in-service training that is delivered intermittently over a period of time. In such situations, the State may claim title IV-E at the 75 percent match rate for the periods of time the employee is actually participating in the training. Consistent with the regulations at 45 CFR 1356.60(b)(3) and 235.61(a), an employee must be in some form of structured training related to title IV-E administrative activities s/he will perform in order for the State to claim FFP for properly allocated trainee costs at the 75 percent match rate. Employee absences due to approved leave do not disrupt the initial in-service training period. However, if an employee is on duty but not participating in initial in-service training, FFP at the 75 percent rate is not available to reimburse the State agency for the costs of the employee?s salary, fringe benefits, travel or per diem during the non-training period.

Source: 4/10/07

Reference: 45 CFR 1356.60(b)(3) and 235.61(a)

14 Q: May the State claim title IV-E training funds for the portion of the initial in-service training program that includes actual work experience?

A: It depends. Under some circumstances a State or local agency employee may be considered to be in training while carrying a partial caseload and the costs of that employee?s salary, fringe benefits, travel or per diem may be reimbursable at the 75 percent level. To meet these circumstances, the employee must carry a caseload that is significantly smaller than that for the journeyman position in the State. In addition, the work experience component must be fully detailed and justified as an integral component of the initial in-service training program in the State's training plan for title IV-B, as required by 45 CFR 1356.60(b)(2). It is reasonable to expect that an initial in-service training program that includes work experience would include more than the standard day-to-day supervision typically provided to experienced employees. Furthermore, the State should ensure that the trainee's performance is closely assessed and monitored, for example, that feedback is regularly provided to the worker.

Source: 4/10/07

Reference: 45 CFR 1356.60(b)(2), 235.61(a) and 235.64(b)(1)

15 **Q:** May the State claim title IV-E training funds at the 75 percent match rate to train current title IV-E agency staff who are either promoted or transfer to another position within the agency, such as from caseworker to supervisor, under an initial in-service training program?

A: Yes, the State may claim title IV-E training funds at the 75 percent match rate to train through an initial in-service training program current State agency employees who accept employment in a different position in the title IV-E agency, such as from a caseworker position to a supervisory position or from one program area to another such as from foster care to adoption. The training must meet the definition of initial in-service training, however, and therefore be intensive, task-oriented and last for at least one week as specified in the regulations at 45 CFR 235.61(a) and 235.64(b)(1).

While the definition of in-service training specifically indicates that such training is for "new employees," it is reasonable, within the context of this definition, to treat someone in a new position in the State agency as a "new" employee for training purposes. The employee's training needs are similar to those of a new employee. If the training is associated with the administration of an approved title IV-E State plan requirement and intended to give the staff the specific skills required to perform title IV-E foster care and adoption functions, it may be matched at the 75 percent FFP rate. Training focused on the development of supervisory skills and tasks related to supervision (generic skills training) may be matched at the rate of 50 percent FFP. The training activities and costs must be included in the State agency's training plan for title IV-B.

Source: 4/10/07

Reference: 45 CFR 235.61(a) and 235.64(b)(1)

16 **Q:** The regulations at 45 CFR 235.61(a) define initial in-service training as a period of intensive, task-oriented training to prepare new employees to assume job responsibilities. What is meant by "intensive?" Are there any circumstances whereby an employee can be considered to be participating in initial in-service training while maintaining a full caseload?

A: Intensive training is training that is highly concentrated and intended to significantly strengthen and increase the employee's knowledge. Given these parameters, an employee could not participate in intensive training while maintaining a full caseload. There is not enough time in a regular work week to accommodate both maintaining a full caseload and participating in intensive training, whether classroom or on-the-job training is provided. The majority of the employee's time during intensive training is dedicated to training activities. An intensive training program may encompass an on-the-job component in which an employee maintains a partial caseload provided in a structured learning environment with a higher degree of supervision than a regular employee would experience.

As specified in the regulations at 45 CFR 235.64, Federal financial participation is available at 75% for employees in initial in-service training for at least one week for salaries, fringe benefits, travel and per diem to the extent that the training is related to the examples of allowable administrative costs necessary for the administration of the foster care program at 45 CFR 1356.60(c)(2).

Each State's title IV-B training plan must accord with the definition of in-service training at 45 CFR 235.61(a). In addition, course descriptions, activities and costs must be described in the State's approved training plan for title IV-B. Training that benefits the overall administration of a State's foster care or adoption assistance program, and not only children eligible under title IV-E, must be allocated to all benefiting Federal and State programs in accordance with 45 CFR Part 75 Subpart E cost principles and an approved cost allocation plan.

Source: 09/05/07 (revised 11/2/2016)

Reference: 45 CFR Part 75, 235.64, 235.61(a) and 1356.60(c)(2); 79 FR 75871, Dec. 19, 2014.; 81 FR 3022, Jan. 20, 2016

17 Q: For what short-term training content may a title IV-E agency claim Federal financial participation (FFP) to train the categories of individuals specified in section 474(a)(3)(B) of the Social Security Act (the Act)?

A: Section 474(a)(3)(B) of the Act authorizes short-term training for certain categories of individuals to increase their ability to provide support and assistance to foster and adopted children and children living with relative guardians, if the title IV-E agency has opted to provide a guardianship assistance program per section 471(a)(28) of the Act. In general, the short-term training must be necessary for the proper and efficient administration of the title IV-E plan and closely related to one of the examples cited in 45 CFR 1356.60(c)(1) and (2) as allowable administrative activities under the title IV-E program. Some examples of allowable training topics are listed in the Child Welfare Policy Manual section 8.1H Q/A#8.

Source: 08/12/09

Reference: Social Security Act ¿ section 474(a)(3)(B), 45 CFR 1356.60(c)(1) and (2), Child Welfare Policy Manual section 8.1H Q/A#8

18 Q: May title IV-E agencies claim Federal financial participation (FFP) for the short-term training of judges under section 474(a)(3)(B) of the Act (the Act)?

A: Yes, the law permits the title IV-E agency to claim FFP for short-term training of judges and other members of the staff of abuse and neglect courts involved in making judicial determinations and other decisions regarding families in the child welfare system. The training must meet the criteria established in section 474(a)(3)(B) of the Act. See Q/A#8 for examples of allowable training topics.

Source: 08/12/09

Reference: Social Security Act ¿ section 474(a)(3)(B)

19 Q: Section 474(a)(3)(B) of the Social Security Act (the Act) permits States to claim short-term training costs for members of the staff of State-licensed or State-approved child welfare agencies providing services to children receiving title IV-E assistance. Is there a Federal definition of a State-licensed or State-approved child welfare agency?

A: No. The title IV-E agency has the discretion to determine what kinds of agencies are child welfare agencies and the criteria for licensing or approving such agencies for the purpose of this provision. . See Q/A#8 for examples of allowable training topics.

Source: 8/12/09

Reference: Social Security Act ¿ section 474(a)(3)(B)

20 Q: Section 474(a)(3)(B) of the Social Security Act allows the title IV-E agency to claim as title IV-E expenditures the short-term training costs to train attorneys who represent children and their parents in such ways that increase the ability of the attorney to provide support and assistance to these children. Must the attorneys be employed by the title IVE agency in order for the title IV-E agency to claim the short-term training costs for these attorneys?

A: No. There is no requirement in the law that the attorneys identified in section 474(a)(3)(B) be employed by the title IV-E agency. The title IV-E agency may claim the allowable costs to train an attorney who represents title IV-E children or their parents and meets the criteria established in section 474(a)(3)(B) of the Social Security Act. See Q/A#8 for examples of allowable training topics.

Source: 08/12/09

Reference: Social Security Act ¿ section 474(a)(3)(B)

21 **Q:** What are allowable title IV-E training topics related to the role of protective factors in healthy child development, such as resiliency; relational competence; child social and emotional development; trauma; cultural competence and related areas?

A: There are many protective factors that help to minimize risk to children and promote healthy child development. Training and providing information to title IV-E child welfare staff and foster/adoptive parents and others on such factors are allowable title IV-E training topics. Such training topics include, but are not limited to:

- <u>Evidence-based practice</u>: Training on the importance of using evidence-based techniques for case planning and modifying agency culture to support and sustain evidence-based practice.
- <u>Screening and assessment</u>: How to use of screening and assessment tools to develop the child?s case plan.
- <u>Protective factors:</u> Introduction to the concept of risk and protective factors and prevention; effective strategies for prevention; overview of strategies to target and encourage development of protective factors.
- <u>Resilience:</u> Strategies for minimizing the traumatic experience of placement(s) for children, including facilitating attachment and promoting stable relationships.
- <u>Relational competence:</u> An overview of the role of relational competence in family relationships.
- <u>Child social and emotional development and well-being:</u> Principles of child growth and social, emotional, physical, and intellectual development.
- <u>Trauma:</u> An overview of trauma, including definitions, key terms related to trauma and the long term impact of trauma experiences; the ways that trauma may impact children?s functioning and well-being at various stages of development; the impact of secondary trauma on caregivers and providers; general descriptions of effective treatments and strategies for addressing traumatic reactions and restoring developmentally appropriate functioning.
- <u>Cultural competence</u>: How to assess and serve the needs of children without bias and ensure their safety, including how to parent youth struggling with issues related to sexual orientation, gender identity and/or gender expression.

<p>However, training on treating conditions is not allowable as a title IV-E training topic because such training supports the delivery of social services.? Also, please note that all title IV-E training activities and costs must be included in the title IV-E agency's training plan for title IV-B and properly cost allocated to benefitting programs using the

appropriate eligibility rate or similar method.? Please see Child Welfare Policy Manual section 8.1H Q/A#8 for more information on allowable training topics.</p>

Source: 05/22/2012

Reference: Social Security Act ¿ section 474(a)(3)(B)

22 ***Q:*** May a title IV-E agency claim title IV-E federal financial participation (FFP) for training costs on behalf of individuals who are preparing for employment with a private agency performing title IV-E administrative activities through a contractual arrangement with the title IV-E agency?

A: Yes. A title IV-E agency may claim title IV-E administrative costs for these individuals at the 50% FFP rate in accordance with section 474(a)(3)(E) of the Act because it is in line with the proper and efficient administration of the title IV-E program. The use of title IV-E for educational stipends or other allowable training costs for such prospective contract staff to perform title IV-E administration should enhance the quality of the title IV-E workforce as well as the associated case planning and management work in title IV-E programs. States may claim such costs to the extent allocable and in accordance with an approved cost allocation plan; tribes may claim such costs to the extent allocable and in accordance with an approved cost allocation methodology. Such costs may not be claimed at the 75% FFP rate. A title IV-E agency must include the basis for so allocating in its title IV-B training plan.

The title IV-E agency may claim reimbursement for stipends to train persons preparing for employment with a private agency as described above, under the following conditions and limitations:

(1) Persons preparing for employment with a private agency under contract with the title IV-E agency to perform title IV-E administrative activities are pursuing educational programs approved by the title IV-E agency;

(2) Persons preparing for employment with a private agency under contract with the title IV-E

agency to perform title IV-E administrative activities are committed to work for a title IV-E contracted private agency for a period of time at least equal to the period for which financial assistance is granted if employment is offered within 2 months after training is completed;

(3) The title IV-E contracted private agency offers the individual preparing for employment a job upon completion of training unless precluded by contractual provisions or other circumstances beyond the agency's control; and if such agency is no longer operating under a title IV-E contract or cannot offer the individual employment, the title IV-E agency will either identify another title IV-E contracted agency to offer employment or release the individual from his or her commitment;

(4) The title IV-E agency keeps a record of the employment of persons trained. If the persons are not employed by a title IV-E contracted private agency, the record specifies the reason for non-employment;

(5) The title IV-E agency evaluates the training programs; and

(6) Any recoupment of funds by the title IV-E agency from trainees failing to fulfill their commitment under this section shall be treated as program income and shall be deducted from total administrative costs for the purpose of determining net costs for FFP.

Source: *December 2, 2016*

Reference: *Social Security Act § 474(a)(3)(E); 45 C.F.R. 235.63(b)*

8.2 TITLE IV-E, Adoption Assistance Program

1 ***Q:*** May a title IV-E agency suspend or reduce a title IV-E adoption assistance subsidy solely because the adoptive parents fail to renew or recertify the adoption assistance agreement?

A: No. It is incumbent upon adoptive parents to keep the title IV-E agency informed of material changes that might impact the parent's support, but a title IV-E agency cannot reduce or suspend adoption assistance solely because the adoptive parents fail to reply to the its request for information, renewal or recertification of the agreement. Once an eligible child is receiving title IV-E adoption assistance pursuant to an agreement, adoption assistance continues until either the adoptive parents concur to a change or one of the statutory conditions are met for termination of the assistance (section 473(a)(4) of the Social Security Act and Child Welfare Policy Manual Section 8.2B.9 Q/A #2). Therefore, suspensions or reductions in a title IV-E adoption assistance payment are not permitted without the concurrence of the adoptive parents under section 473(a)(3) of the Act unless the agency suspends the payment in accordance with Child Welfare Policy Manual Section 8.2A and 8.2D.

Source: *12/31/07*

Reference: *Social Security Act - section 473(a)(3) and (4); Child Welfare Policy Manual section 8.2B.9 Q/A #2*

8.2A TITLE IV-E, Adoption Assistance Program, Agreements

1 **Q:** Is it permissible for a State to include a statement in the title IV-E adoption assistance agreement to the effect that "The Department¿s obligation to provide for Federally funded adoption assistance payments and/or services is subject to the appropriation of State funds"?

A: No. Although we understand that the State may experience difficulties in its ability to pay subsidies due to the State budget, such difficulties do not relieve or alter the State?s obligation under title IV-E to act in accordance with executed adoption assistance agreements. Accordingly, any statement that undermines the State?s obligation to honor the terms of the title IV-E adoption assistance agreement is not consistent with Federal requirements in sections 473(a)(1)(B)(ii) and 473(a)(3) of the Social Security Act. Once an agreement is signed, the State must obtain the concurrence of the adoptive parent if it wishes to make any changes in the payment amount with one exception. That exception is when there is an across-the-board reduction or increase in the foster care maintenance payment rate. In that circumstance, the State may adjust the adoption assistance payment without the adoptive parent's concurrence.

Source: 08/05/08

Reference: Social Security Act - sections 473(a)(1)(B)(ii) and 473(a)(3); CWPM 8.2D4, Q/A #2)

2 **Q:** Under what circumstances may a title IV-E agency suspend adoption assistance payments?

A: Pursuant to long-standing policy, title IV-E agencies were prohibited from suspending adoption assistance payments because a suspension was the equivalent of terminating adoption assistance payments. See ACYF-CB-PIQ-98-02, as incorporated into §8.2 of the Child Welfare Policy Manual (CWPM). Title IV-E agencies advised us that our adoption assistance suspension policy did not allow them the latitude to act when the agency was unsure or doubted that the parent was continuing to provide support to the child/youth. Consequently, we issued a Request for Comment in the Federal Register, 80 FR 17058 (March 31, 2015) asking agencies and other stakeholders to comment on our adoption assistance suspension policy. Informed by the comments we received, we have revised our adoption assistance suspension policy to allow title IV-E agencies to suspend adoption assistance payments in accordance with the guidance provided below.

A title IV-E agency may suspend adoption assistance payments if the agency cannot establish

that the adoptive parent is providing any support to the child/youth (including individuals up to age 21 as per an approved title IV-E plan) because the agency has not been able to establish contact with the parent to make such a determination. “Any support” includes various forms of financial support, as determined by the title IV-E agency. Payments for family therapy, tuition, clothing, maintenance of special equipment in the home, or services for the child's special needs are acceptable forms of financial support. See §473(a)(4)(A)(iii) of the Social Security Act (the Act); CWPM, §8.2D.5, Question and Answer #2.

Similarly, a title IV-E agency may suspend adoption assistance payments if the agency cannot establish that the adoptive parent is legally responsible for the support of the child under age 18 because the agency has not been able to establish contact with the parent to make a determination. A parent is considered no longer legally responsible for the support of a child when parental rights have been terminated or when the child becomes an emancipated minor, marries, or enlists in the military. See §473(a)(4)(A)(ii) of the Act; the Child Welfare Policy Manual at §8.2D.5, Question and Answer #2.

Note that a title IV-E agency cannot reduce or suspend adoption assistance solely because the adoptive parents fail to reply to the agency’s request for information, renewal, or recertification of the adoption assistance agreement.

A title IV-E agency only may suspend adoption assistance payments in accordance with the fair hearing requirements at 45 C.F.R. §205.10. Before suspending a payment, the title IV-E agency must ensure that notice to the adoptive parents is both timely and adequate, as described at 45 C.F.R. § 205.10(a)(4). As such, the title IV-E agency must mail notice of intent to suspend the adoption assistance payments at least ten days before the agency plans to suspend the payments. It also must describe that the agency intends to suspend payments, the reasons for the intended suspension and the title IV-E basis as outlined above for the intended suspension. Finally, the agency must describe the adoptive parent’s right to request a fair hearing and the circumstances under which assistance is continued if a hearing is requested.

In order to be able to suspend adoption assistance payments in accordance with the guidance above, the title IV-E agency must first amend its title IV-E plan and have the Children’s Bureau approve the change. Note also that each new adoption assistance agreement must include the circumstances under which the title IV-E agency may suspend adoption assistance payments. Similarly, the title IV-E agency may try to re-negotiate existing adoption assistance agreements with the adoptive parent to include the circumstances under which the title IV-E agency may suspend payments; however, the terms of an existing adoption assistance agreement only may be changed with the concurrence of the adoptive parent. If an adoptive parent declines to include such a term in the existing agreement, the title IV-E agency may not suspend adoption assistance payments under that agreement.

If the title IV-E agency suspends adoption assistance as described above, the child/youth remains title IV-E eligible, and the title IV-E adoption assistance agreement remains in effect while the payment is suspended.

Although an agency may suspend a child's adoption assistance payment under the circumstances described above, the child's eligibility for, and receipt of, Medicaid may not be suspended while the adoption assistance agreement is in effect. See §473(b) of the Social Security Act. The title IV-E agency also may claim any title IV-E adoption assistance administrative costs on behalf of a child whose title IV-E adoption assistance is suspended in accordance with its approved cost allocation plan.

Source: 02/14/2018

Reference: Social Security Act, section 473(a)(4)(A) and (B); 45 CFR 205.10

8.2A.1 TITLE IV-E, Adoption Assistance Program, Agreements, Interstate placements

1 ***Q:*** Which State is responsible for entering into an adoption assistance agreement in interstate adoptions?

A: If the State agency has responsibility for placement and care of a child, that State is responsible for entering into the adoption assistance agreement and paying the title IV-E adoption subsidy, even if the child is placed in an adoptive home in another State. If the State agency does not have responsibility for placement and care, it is the adoptive parents' State of residence where the adoption assistance application should be made. In that event, the public child welfare agency in the adoptive parents' State of residence is responsible for determining whether the child meets the definition of special needs, entering into the adoption assistance agreement and paying the subsidy, consistent with the way public benefits are paid in other programs.

Source: ACYF-CB-PA-01-01 (1/23/01)

Reference: Social Security Act - section 473

2 **Q:** What happens if a family moves to a different State while the adoption assistance agreement is still in effect?

A: Section 475 (3)(B) of the Social Security Act requires that any adoption assistance agreement, effective on or after October 1, 1983, stipulate that the agreement ...shall remain in effect regardless of the State of which the adoptive parents are residents at any given time. The agreement shall contain provisions for the protection (under an interstate compact approved by the Secretary or otherwise) of the interests of the child in cases where the adoptive parents and child move to another State while the agreement is effective.

States which enter into adoption assistance agreements must take measures to assure that the terms of the agreements are met. Either directly, or through agreements with other States, services and medical care (children eligible for title IV-E adoption assistance payments are deemed eligible for title XIX (Medicaid) regardless of their residence within the nation) agreed upon between the State and parents must be provided (45 CFR 1356.40(e)).

The responsibility of the State to honor its commitments for title XIX and other services as specified in the adoption agreement, is based on the State's agreement to administer title IV-E. The authority for the State to enter into agreements and contracts with other States to honor commitments made in adoption assistance agreements is based on the State's statute or administrative procedures.

Source: ACYF-CB-PI-83-08 (8/10/83)

Reference: Social Security Act - section 475(3); 45 CFR 1356.40

3 ***Q:*** When the State agency enters into an adoption assistance agreement with a family from another State, which State's rate structure applies as the limit for the adoption assistance payment?

A: In situations where a child is placed by the State agency in one State with an adoptive family in another State, it is the placing State that would look at its own established foster care rate structure, as well as State law and policy governing its foster care and adoption assistance payments, to determine the amount of assistance available on behalf of the child. If the placing and paying State's law or policy allows flexibility to pay amounts based upon the foster care board rate in the State in which the child is placed for adoption, this practice would be allowable under title IV-E since the statutory requirement in section 473 (a)(3) of the Act would be met.

Source: ACYF-CB-PA-01-01 (1/23/01)

Reference: Social Security Act - section 473 (a)(3)

4 ***Q:*** Please explain the responsibilities of States that have entered into interstate adoptions when the adoptive parents die or the adoption is dissolved.

A: If a title IV-E adoption dissolves or the adoptive parents die and the child is placed with a State agency that assumes responsibility for placement and care, it is the placing State's responsibility to determine whether the child meets the definition of special needs, and pay the subsidy in a subsequent adoption. If, however, a public child welfare agency is not involved in the subsequent adoptive placement of a child, it is the public child welfare agency in the subsequent adoptive parents' State of residence that is responsible for determining whether the child meets the definition of special needs, entering into the adoption assistance agreement, and paying the subsidy. The State of the child's initial adoption or the State that pays the title IV-E adoption assistance in the child's initial adoption is irrelevant in a subsequent adoption.

Source: ACYF-CB-PA-01-01 (1/23/01)

Reference: Social Security Act - section 473

8.2A.2 TITLE IV-E, Adoption Assistance Program, Agreements, Means test

1 **Q:** May a title IV-E agency employ a means test when negotiating adoption assistance agreements?

A: The use of a means test is prohibited in the process of selecting a suitable adoptive family, or in negotiating an adoption assistance agreement, including the amount of the adoption assistance payment. Once a child has been determined eligible under section 473 of the Act, adoptive parents cannot be rejected for adoption assistance or have payments reduced without their agreement because of their income or other resources. In addition, the title IV-E agency cannot arbitrarily reject a request for an increase in the amount of subsidy (up to the amount the child would have received in foster care) in cases where the adoptive parents make life choices such as resigning one's job to stay at home with the adopted child or to return to school. Adoptive parents can request a fair hearing if the title IV-E agency rejects such requests.

The circumstances of the adopting parents must be considered together with the needs of the child when negotiating the adoption assistance agreement. Consideration of the circumstances of the adopting parents has been interpreted by the Department to pertain to the adopting family's capacity to incorporate the child into their household in relation to their lifestyle, standard of living and future plans, as well as their overall capacity to meet the immediate and future needs (including educational) of the child. This means considering the overall ability of the family to incorporate an individual child into their household. Families with the same incomes or in similar circumstances will not necessarily agree on identical types or amounts of assistance. The uniqueness of each child/family situation may result in different amounts of payment.

Source: ACYF-CB-PA-01-01 (1/23/01)

Reference: 45 CFR 1356.40 (c)

8.2B TITLE IV-E, Adoption Assistance Program, Eligibility

1 *Q:* Please explain who is eligible for title IV-E adoption assistance for a child who is not an "applicable child".

(Deleted 10/25/2017)

2 *Q:* Does a child who is not an "applicable child" need to be continuously eligible for Aid to Families for Dependent Children (AFDC) during the period s/he is in foster care in order to be eligible for adoption assistance after the termination of parental rights?

(Deleted 10/25/2017)

3 *Q:* Are children whose legal guardianships disrupt eligible for title IV-E adoption assistance?

(Deleted 10/25/2017)

4 *Q:* Is the State required to provide title IV-E adoption assistance to all eligible children on whose behalf it is requested?

A: Yes, if the child meets the criteria in section 473 of the Social Security Act (the Act). Section 473(a)(1)(A) of the Act specifies that "[e]ach State having a plan approved under this part **shall** [emphasis added] enter into adoption assistance agreements (as defined in section 475(3) of the Act) with the adoptive parents of children with special needs." Further, sections 473(a)(1)(B)(i) and (ii) of the Act require States to make payments of nonrecurring adoption expenses incurred by or on behalf of parents in connection with the adoption of a child with special needs and/or adoption assistance payments on behalf of a child who meets the requirements of section 473(a)(2) of the Act.

Source: 04/24/07

Reference: Social Security Act ¿ sections 473(a) and 475(3)

5 Q: The statute requires that to be an ¿applicable child¿ based on the child¿s ¿duration in care,¿ the child must have been in foster care for 60 consecutive months (see section 473(e)(2)(A) of the Social Security Act). Please provide additional guidance on calculating the 60 consecutive month period.

(Deleted 10/25/2017)

6 Q: The Adoption Assistance eligibility criteria for an ¿applicable child¿ includes one pathway to title IV-E adoption assistance eligibility which requires that the child must be in the ¿care¿ of a public or licensed private child placement agency by way of a voluntary placement, voluntary relinquishment or a court-ordered removal with a judicial determination that remaining at home would be contrary to the child¿s welfare. Does ¿care¿ mean that that a public or private agency must have placement and care responsibility for the child?

A: No. Although the term "care" as it is used in 473(a)(2)(A)(ii)(I)(aa) of the Social Security Act (the Act) may imply that a public or private agency has placement and care responsibility for the child, it is not explicit. Therefore, in situations where any sort of care is being provided for an applicable child by a public or licensed private child placement agency or Indian tribal organization at the time the adoption proceedings are initiated, the requirements in section 473(a)(2)(A)(ii)(I)(aa) of the Act will be met.

Source: 5/04/11

Reference: Social Security Act ¿ section 473(a)(2)(A)(ii)(I)(aa)

7 **Q:** The Adoption Assistance eligibility criteria for an ¿applicable child¿ includes one pathway to title IV-E adoption assistance eligibility which requires that the child must be in the care of a public or licensed private child placement agency by way of a voluntary placement, voluntary relinquishment or a court-ordered removal with a judicial determination that remaining at home would be contrary to the child¿s welfare. When referring to a ¿licensed¿ private child placement agency, does this mean that the agency must be licensed by the State or Tribe entering into the adoption assistance agreement? Or is it required that the title IV-E agency provide a payment to an eligible child even if the agency was not licensed in the State or Tribe that is entering into the agreement?

A: Section 473(a)(2)(A)(ii)(I)(aa) prescribes only that the child be in the care of "...a licensed private child placement agency or Indian tribal organization." So long as the child placement agency is licensed for title IV-E eligibility purposes it does not matter who licenses the agency.

Source: 5/04/11

Reference: Social Security Act ¿ section 473(a)(2)(A)(ii)(I)(aa)

8 **Q:** The statute authorizes title IV-E adoption assistance eligibility for siblings of an applicable child under certain circumstances. These circumstances include the following factors: 1) the child is a sibling of the applicable child for the fiscal year; 2) the sibling is to be placed in the same adoption placement as the applicable child sibling for the fiscal year; and 3) the sibling meets the eligibility requirements for the title IV-E adoption assistance program. In such situations, must the adoption for the sibling who is the applicable child be finalized prior to that of the child who may meet the criteria as a sibling of an applicable child for the sibling to be eligible for title IV-E adoption assistance?

(Deleted 10/25/2017)

9 **Q:** Does a child who is a member of a sibling group have to meet the criteria in section 473(e)(3) of the Social Security Act (the Act) prior to finalization or prior to entering into the adoption assistance agreement to be considered an applicable child?

A: A child who is a member of a sibling group must meet the criteria in section 473(e)(3) of the

Act prior to finalization of the adoption to be considered an applicable child. Under 473(e)(3) of the Act, a sibling is considered to be an applicable child if he meets the following elements:

(A) is a sibling of a child who is an applicable child;

(B) is to be placed in the same adoption placement as an applicable child who is his/her sibling; and

(C) meets the adoption assistance eligibility requirements for an applicable child.

A child must meet these three elements prior to the finalization of the adoption. This is consistent with policy stated in the Child Welfare Policy Manual Section 8.2B12 Q/A #2 in which we stated that a child's eligibility for Supplemental Security Income benefits must be established prior to finalization of the adoption. It is also consistent with policy in ACYF-CB-PI-10-11 in which we stated that an applicable child is a child who has been in foster care under the responsibility of the title IV-E agency for any 60 consecutive months prior to the finalization of the adoption.

Source: 05/04/11

Reference: Social Security Act ¿ section 473(e)(3); Child Welfare Policy Manual Section 8.2B.12 Q/A#2; ACYF-CB-PI-10-11

10 *Q:* Must a title IV-E agency that takes the option to extend the title IV-E programs to older youth ages 19, 20, or 21 per section 475(8)(B) of the Social Security Act provide title IV-E adoption assistance payments to the older youth who remain eligible when the adoption assistance agreements expires?

A: Yes. A title IV-E agency must provide extended adoption assistance payments to an older youth when his adoption assistance agreement expires, if the youth remains eligible for the adoption assistance program. This includes youth under a title IV-E adoption assistance agreement in place prior to the agency taking the option to extend the title IVE programs.

Source: *05/04/11*

Reference: *Social Security Act ¿ sections 475(8)(B) and 473*

8.2B.1 TITLE IV-E, Adoption Assistance Program, Eligibility, Biological parents

1 *Q:* Can a biological parent whose parental rights have been terminated and who later adopts his or her biological child receive title IV-E adoption assistance?

A: No. The purpose of the title IV-E adoption assistance program is to provide assistance to adoptive families who adopt special needs children in need of alternative permanent homes. A child cannot be considered a child with special needs unless, among other things, "the State has determined that the child cannot or should not be returned to the home of his parents" (section 473(c) of the Act). While the termination of parental rights (TPR) would verify that this determination had previously been made, the placement of the child back into the biological home would nullify such a determination. While the IV-E agency may continue to recognize that the legal ties have been severed, the biological ties remain.

In this situation, the child would be returned to the home of the biological parent. Thus, a determining factor for title IV-E eligibility in section 473(c) of the Act would not be present. The adoption by the biological parent in these circumstances, would be undertaken as a means of restoring the legal relationship between the parent and child, rather than for purposes of providing the child with new parents or a substitute for the original home.

Source: *ACYF-CB-PIQ-89-04 (8/8/89)*

Reference: *Social Security Act - sections 472 (a)(2)(A) and (C), 473 (a)(2)(A)(ii) and 473 (c)*

8.2B.2 TITLE IV-E, Adoption Assistance Program, Eligibility, Children in foster care

1 **Q:** Would adoptive parents continue to be eligible to receive title IV-E adoption assistance payments on behalf of a child who has been placed in a psychiatric facility under the care and responsibility of the title IV-E agency through a voluntary placement agreement?

A: Yes. Title IV-E, section 473 (a)(4)(A) of the Social Security Act indicates that no payment may be made to parents with respect to any child if the State determines that the parents are no longer legally responsible for the support of the child who has not attained 18 years of age or if the State determines that the child is no longer receiving any support from such parents. Other than the age of the child, these two conditions are the only basis in the Act for terminating adoption assistance payments on behalf of a child unless requested by or agreed to by the adoptive parents. On the other hand, there is nothing to prevent the State agency or the court from requesting or ordering the parents to contribute toward the cost of the child's care in the psychiatric facility, in the same manner as any other parents would be asked in similar situations.

Source: ACYF-CB-PIQ-85-12 (11/25/85)

Reference: Social Security Act - section 473 (a)(4)(A)

2 **Q:** May title IV-E eligible children in adoptive homes receive title IV-E foster care maintenance payments prior to finalization of adoption?

A: Prior to the finalization of adoption, title IV-E eligible children in adoptive homes may receive foster care maintenance payments if the home is licensed for foster care.

Source: ACYF-CB-PIQ-82-01 (1/19/82)

Reference: Social Security Act - section 472

8.2B.3 TITLE IV-E, Adoption Assistance Program, Eligibility, Child of a minor parent

1 **Q:** Is the child of a minor parent eligible for title IV-E adoption assistance as a child who is not an "applicable child"?

(Deleted 10/25/2017)

2 **Q:** In reference to a child who is not an "applicable child", when must the child of a minor parent meet the title IV-E adoption assistance eligibility criteria?

(Deleted 10/25/2017)

3 **Q:** When does an applicable child of a minor parent have to live in a foster family home or child care institution with the minor parent to meet the requirements in section 473(a)(2)(A)(ii)(I)(cc) of the Social Security Act (the Act)?

A: The statute at 473(a)(2)(A)(ii)(I)(cc) requires that the applicable child of the minor parent lived with his or her minor parent in a foster family home or child care institution and does not specify a timeframe. Therefore, the applicable child of a minor parent may reside with his or her minor parent at any point prior to the finalization of the child's adoption.

Source: 05/04/11

Reference: Social Security Act ¿ section 473(a)(2)(A)(ii)(I)(cc)

8.2B.4 TITLE IV-E, Adoption Assistance Program, Eligibility, Deceased adoptive parents/dissolved adoptions

1 **Q:** Please explain the requirements regarding a child's eligibility for title IV-E adoption assistance when the adoptive parents die or the adoption is dissolved.

A: In the situation where a child is adopted and receives title IV-E adoption assistance, but the adoption later dissolves or the adoptive parents die, a child may continue to be eligible for title IV-E adoption assistance in a subsequent adoption. The only determination that must be made by the title IV-E agency prior to the finalization of the subsequent adoption is whether the child is a child with special needs, consistent with the requirements in section 473(c) of the Act. Eligibility factors in sections 473(a)(2)(A) of the Act must not be redetermined when such a child is subsequently adopted because the child is to be treated as though his or her

circumstances are the same as those prior to his or her previous adoption. Since title IV-E adoption assistance eligibility need not be re-established in such subsequent adoptions, the manner of a child's removal from the adoptive home, including whether the child is voluntarily relinquished to an individual or private agency, is irrelevant.

Source: *ACYF-CB-PA-01-01 (1/23/01)*

Reference: *Social Security Act - section 473(a)(2)(A) and (C) and 473(c)*

2 ***Q:*** Please explain the responsibilities of States that have entered into interstate adoptions when the adoptive parents die or the adoption is dissolved.

A: If a title IV-E adoption dissolves or the adoptive parents die and the child is placed with a State agency that assumes responsibility for placement and care, it is the placing State's responsibility to determine whether the child meets the definition of special needs, and pay the subsidy in a subsequent adoption. If, however, a public child welfare agency is not involved in the subsequent adoptive placement of a child, it is the public child welfare agency in the subsequent adoptive parents' State of residence that is responsible for determining whether the child meets the definition of special needs, entering into the adoption assistance agreement, and paying the subsidy. The State of the child's initial adoption or the State that pays the title IV-E adoption assistance in the child's initial adoption is irrelevant in a subsequent adoption.

Source: *ACYF-CB-PA-01-01 (1/23/01)*

Reference: *Social Security Act - section 473*

3 **Q:** A child is adopted by two parents, but only one parent signs the adoption assistance agreement. May the child continue to receive title IV-E adoption assistance payments if the parent who signed the adoption assistance agreement later dies?

A: Yes, once the surviving adoptive parent signs an agreement. There is nothing in title IV-E or 45 C.F.R. Part 1356 that would prohibit payments from continuing on behalf of the eligible child under an agreement signed by the surviving adoptive parent after the death of the parent who signed the original agreement.

Source: 03/18/13

Reference: Social Security Act - Section 473; 45 CFR 1356.40

8.2B.5 TITLE IV-E, Adoption Assistance Program, Independent Adoptions

1 **Q:** Is a child who is the subject of an independent adoption eligible for title IV-E adoption assistance if the child is not an "applicable child"?

(Deleted 10/25/2017)

8.2B.6 TITLE IV-E, Adoption Assistance Program, International Adoptions

1 **Q:** Is a child who is the subject of an international adoption eligible for title IV-E adoption assistance if the child is not an "applicable child"?

(Deleted 10/25/2017)

8.2B.7 TITLE IV-E, Adoption Assistance Program, Eligibility, Judicial determinations

1 **Q:** We believe that the lack of a "reasonable efforts" determination in accordance with section 472 (a)(1) of the Social Security Act (the Act) cannot result in ineligibility for title IV-E adoption assistance. Is this correct?

A: Yes. The judicial determination of "reasonable efforts" to prevent placement and reunify the child with his family is an eligibility requirement for the title IV-E foster care maintenance payments program (section 472 (a)(1) of the Act), but such a determination is not an eligibility requirement for adoption assistance in section 473 of the Act.

Source: *ACYF-CB-PIQ-85-06 (6/5/85)*

Reference: *Social Security Act - sections 472 and 473*

2 Q: Do the "contrary to the welfare" requirements at 45 CFR 1356.21(c) and (d) apply to the adoption assistance program?

A: Yes. To fulfill the eligibility criteria in section 473 (a)(2)(A) of the Social Security Act when a child's removal from the home is the result of court action, there must be a judicial determination to the effect that to remain in the home would be contrary to the child's welfare. Since a child's removal from the home must occur as a result of such a judicial determination, the determination must be made in the first court ruling that sanctions (even temporarily) the removal of a child from the home. If the determination is not made in the first court ruling pertaining to removal from the home, the child is not eligible for title IV-E adoption assistance pursuant to an involuntary removal. The contrary to the welfare finding must be explicit and made on a case-by-case basis. Items such as nunc pro tunc orders, affidavits, and bench notes are not acceptable substitutes for a court order. Only an official transcript is sufficient evidence of the judicial determination. A judicial determination regarding reasonable efforts to prevent removal or reunify the family, although required for title IV-E foster care, is not a requirement for title IV-E adoption assistance eligibility.

Source: *ACYF-CB-PA-01-01 (1/23/01)*

Reference: *Social Security Act - section 473 (a)(2)(A); 45 CFR 1356.21(c) and (d)*

8.2B.8 TITLE IV-E, Adoption Assistance Program, Eligibility, Medicaid

1 *Q:* Is Title XIX coverage required under title IV-E Adoption Assistance?

A: Yes. Section 473 (b) of the Social Security Act clearly establishes that a child receiving foster care maintenance payments or for whom an adoption assistance agreement is in effect is treated as a child who is a recipient of Aid to Families with Dependent Children (AFDC). In addition, section 2171 of the Omnibus Budget Reconciliation Act of 1981 (P.L. 97-35) subsequently amended section 1902 (a)(10)(A) to specifically require eligibility for title XIX (Medicaid) services for "all individuals receiving aid or assistance under any plan of the State approved under...part A or part E of title IV". Consequently, to the extent that the State has a title XIX program, children covered by title IV-E are statutorily eligible.

Source: *ACYF-CB-PIQ-82-16 (6/21/82)*

Reference: *Social Security Act - sections 471, 473 and 1902; Omnibus Budget Reconciliation Act of 1981 (P.L. 97-35)*

2 *Q:* Some States are requiring adoptive parents to complete annual renewals of their adoption assistance agreements. Does title IV-E require the State or local agency to perform annual renewals or eligibility determinations for adoption assistance?

A: This question has moved to 8.2B.9; question 2

Source:

Reference:

8.2B.9 TITLE IV-E, Adoption Assistance Program, Eligibility, Redeterminations

1 *Q:* What are the requirements for redeterminations of title IV-E adoption assistance eligibility?

A: The title IV-E adoption assistance program does not require redeterminations of a child's eligibility. Although the title XIX Medicaid program and the program that, in part, may qualify a

child initially for adoption assistance, such as Supplemental Security Income, require redeterminations, they are unnecessary for the purpose of maintaining a child's eligibility for title IV-E adoption assistance. Once a child has been determined eligible and is receiving adoption assistance, a title IV-E agency may terminate the assistance only under the circumstances specified at section 473(a)(4) of the Social Security Act.

Source: *ACYF-CB-PA-01-01 (1/23/01)*

Reference: *Social Security Act - section 473*

2 **Q:** Does title IV-E require the agency to perform annual renewals or continued eligibility determinations for adoption assistance?

A: No. Title IV-E does not require the title IV-E agency to perform annual renewals, recertifications or eligibility re-determinations for title IV-E adoption assistance. Parents who receive adoption assistance payments, however, have a responsibility to keep the agency informed of circumstances that would make them ineligible for title IV-E adoption assistance payments, or eligible for assistance payments in a different amount. See Section 473 (a)(4)(B) of the Social Security Act. Once a child is determined eligible to receive title IV-E adoption assistance, he or she remains eligible until: (1) the age of 18 or such higher age up to age 21 as the State may elect under section 475(8)(B)(iii)(if the child meets applicable employment/education conditions), or age 21 (if the agency determines that the child has a mental or physical disability that warrants the continuation of assistance (2) the agency determines that the parent is no longer legally responsible for the support of the child under 18, or; (3) the agency determines the child is no longer receiving any support from the parents.

Source: *ACYF-CB-PIQ-98-02 (9/03/98)*

Reference: *Social Security Act - section 473(a)(4)(A); section 475(8)(B)(iii)*

8.2B.10 TITLE IV-E, Adoption Assistance Program, Eligibility, Responsibility for placement and care

1 *Q:* In reference to a child who is not an "applicable child" must the State have responsibility for placement and care of a child for that child to be eligible for title IV-E adoption assistance?

(Deleted 10/25/2017)

8.2B.11 TITLE IV-E, Adoption Assistance Program, Eligibility, Special needs

1 *Q:* Please explain the requirements for special needs determinations for a child who is not an "applicable" child.

(Deleted 10/25/2017)

2 *Q:* In establishing title IV-E eligibility for adoption assistance, is termination of parental rights the only mechanism for demonstrating that a child cannot or should not be returned home?

A: One of the criteria for establishing that a child has special needs is a determination by the title IV-E agency that the child cannot or should not be returned to the home of his or her parents. Previous guidance stated that this means that the title IV-E agency must have reached that decision based on evidence by an order from a court of competent jurisdiction terminating parental rights, the existence of a petition for a termination of parental rights (TPR), or a signed relinquishment by the parents. It has been brought to our attention that there are situations in which adoptions are legal without a TPR. Specifically, in some Tribes adoption is legal without a TPR or a relinquishment from the biological parent(s), and there is at least one State that allows relatives who have cared for a related child for a period of time to adopt without first obtaining a TPR.

After consideration, we believe that our earlier policy is an unduly narrow interpretation of the statute. Consequently, if a child can be adopted in accordance with State or Tribal law without a TPR or relinquishment, the requirement of section 473 (c) of the Act will be satisfied, so long as the State or Tribe has documented the valid reason why the child cannot or should not be returned to the home of his or her parents.

Source: ACYF-CB-PA-01-01 (1/23/01)

Reference: Social Security Act - section 473 (c)

3 Q: In determining whether an applicable child who is a special needs child is eligible for title IV-E adoption assistance through the Supplemental Security Income (SSI) pathway, may a title IV-E agency make the determination that the child meets the medical or disability requirements for SSI benefits? (See section 473(a)(2)(A)(ii)(I)(bb) of the Social Security Act).

A: Yes. For the purposes of determining whether an applicable child who is a special needs child is eligible for title IV-E adoption assistance through the SSI pathway, the title IV-E agency may make the determination that the child meets the medical or disability requirements for SSI benefits. The title IV-E agency is not making an SSI eligibility determination on behalf of the child, as that responsibility lies with the Social Security Administration and that includes a financial eligibility component. Rather, the title IV-E agency is responsible for title IV-E adoption assistance eligibility determinations, and therefore the agency is permitted to make the determination that the child meets the medical or disability requirements for SSI benefits for title IV-E eligibility purposes.

Source: 2/24/2011

Reference: Social Security Act - Sections 473(a)(1)(B)(ii)), 473(a)(2)(A)(ii)(I)(bb) and 473(c)(2)(B)(ii)

4 Q: An applicable child must meet sections 473(c)(2)(A), (B) and (C) of the Social Security Act (the Act) in order to be considered a child with special needs for the adoption assistance program. Must a title IV-E agency¿s definition of a child with special needs include the criteria in section 473(c)(2)(B)(ii) of the Act ¿ that the applicable child meets all the medical or disability requirements of title XVI?

A: Yes. A title IV-E agency must include both a child for whom the agency has determined there is a specific factor or condition (section 473(c)(2)(B)(i) of the ACt) and a child who meets all medical or disability requirements of title XVI (section 473(c)(2)(B)(ii) of the Act) in the definition of a child with special needs for an applicable child. Therefore, the title IV-E agency must consider an applicable child who meets all the medical or disability requirements of title XVI and the requirements in sections 473(c)(2)(A) and (C) of the Act a child with special needs for the purpose of title IV-E adoption assistance eligibility.

Source: 05/04/11

Reference: Social Security Act ¿ sections 473(c)(2)(A), (B) and (C)

8.2B.12 TITLE IV-E, Adoption Assistance Program, Eligibility, SSI

1 ***Q:*** In reference to a child who is not an "applicable child" is there a prohibition under title IV-E against claiming Federal financial participation (FFP) for adoption assistance for a child who receives Supplemental Security Income (SSI)?

(Deleted 10/25/2017)

2 ***Q:*** Section 473(a)(2)(A)(bb)(II) of the Social Security Act (the Act) indicates that a child who meets all of the requirements of title XVI of the Act with respect to eligibility for Supplemental Security Income (SSI) benefits may be eligible for title IV-E adoption assistance. When must a child be eligible for SSI for the purposes of meeting the title IV-E adoption assistance eligibility criteria for a child who is not an "applicable child"?

(Deleted 10/25/2017)

3 ***Q:*** In determining whether an applicable child who is a special needs child is eligible for title IV-E adoption assistance through the Supplemental Security Income (SSI) pathway, may a title IV-E agency make the determination that the child meets the medical or disability requirements for SSI benefits? (See section 473(a)(2)(A)(ii)(I)(bb) of the Social Security Act).

A: Yes. For the purposes of determining whether an applicable child who is a special needs child is eligible for title IV-E adoption assistance through the SSI pathway, the title IV-E agency may make the determination that the child meets the medical or disability requirements for SSI benefits. The title IV-E agency is not making an SSI eligibility determination on behalf of the child, as that responsibility lies with the Social Security Administration and that includes a financial eligibility component. Rather, the title IV-E agency is responsible for title IV-E adoption assistance eligibility determinations, and therefore the agency is permitted to make the determination that the child meets the medical or disability requirements for SSI benefits for title IV-E eligibility purposes.

Source: *2/24/2011*

Reference: *Social Security Act - Sections 473(a)(1)(B)(ii)), 473(a)(2)(A)(ii)(I)(bb) and 473(c)(2)(B)(ii)*

8.2B.13 TITLE IV-E, Adoption Assistance Program, Eligibility, Voluntary relinquishments

1 ***Q:*** Is a child who is voluntarily relinquished to a private, nonprofit agency eligible for title IV-E adoption assistance as a child who is not an "applicable child"?

(Deleted 10/25/2017)

8.2C TITLE IV-E, Adoption Assistance Program, Interstate Compact

1 ***Q:*** What is the definition or description of the term "interstate compact" as used in the Adoption Assistance and Child Welfare Amendments of 1980 (Public Law 96-272)?

A: An interstate compact is an instrument to assure provisions for the protection of the interests of the child receiving agreed-upon financial assistance or other supportive services under a currently effective adoption assistance agreement when the adoptive parents and the child adopted under the agreement move to another State (Social Security Act, section 475 (3)). The Act requires that adoption assistance agreements remain in effect regardless of the State in which the adoptive parents are residents at any given time.

Source: *ACYF-CB-PIQ-81-03 (10/20/81)*

Reference: *Social Security Act - section 475*

8.2D TITLE IV-E, Adoption Assistance Program, Payments

1 **Q:** May a title IV-E agency make title IV-E adoption assistance payments directly to a youth age 18 or older?

A: No. A title IV-E agency must make the payments to the youth's adoptive parent(s). Section 473(a)(1)(B)(ii) of the Act specifies that the title IV-E agency may make adoption assistance payments to parents who adopt a child with special needs, either directly or through another public or nonprofit private agency.

Source: 05/06/2013

Reference: Social Security Act ¿ section 473(a)(1)(B)(ii)

2 **Q:** Must a title IV-E agency discontinue title IV-E adoption assistance payments provided per 475(8)(B) of the Act for a youth who is age 18 or older if the title IV-E agency determines that the youth is no longer meeting the education or employment criteria or is no longer incapable of meeting any of these criteria due to a medical condition, as elected by the title IV-E agency?

A: Yes. A title IV-E agency must ensure that a youth receiving a title IV-E adoption assistance payment under section 475(8)(B) of the Act meets the education and employment criteria or is incapable of meeting any of these criteria due to a medical condition, as elected by the title IV-E agency. Once a title IV-E agency determines that a youth no longer meets the criteria, the agency must discontinue title IV-E adoption assistance payments for the youth. However, if the youth meets the criteria at a later time, the title IV-E agency may resume payments to the youth.

Source: 05/06/2013

Reference: Social Security Act ¿ section 475(8)(B); ACYF-CB-PI-10-11

3 ***Q:*** Under what circumstances may a title IV-E agency suspend adoption assistance payments?

A: Pursuant to long-standing policy, title IV-E agencies were prohibited from suspending adoption assistance payments because a suspension was the equivalent of terminating adoption assistance payments. See ACYF-CB-PIQ-98-02, as incorporated into §8.2 of the Child Welfare Policy Manual (CWPM). Title IV-E agencies advised us that our adoption assistance suspension policy did not allow them the latitude to act when the agency was unsure or doubted that the parent was continuing to provide support to the child/youth. Consequently, we issued a Request for Comment in the Federal Register, 80 FR 17058 (March 31, 2015) asking agencies and other stakeholders to comment on our adoption assistance suspension policy. Informed by the comments we received, we have revised our adoption assistance suspension policy to allow title IV-E agencies to suspend adoption assistance payments in accordance with the guidance provided below.

A title IV-E agency may suspend adoption assistance payments if the agency cannot establish that the adoptive parent is providing any support to the child/youth (including individuals up to age 21 as per an approved title IV-E plan) because the agency has not been able to establish contact with the parent to make such a determination. “Any support” includes various forms of financial support, as determined by the title IV-E agency. Payments for family therapy, tuition, clothing, maintenance of special equipment in the home, or services for the child's special needs are acceptable forms of financial support. See §473(a)(4)(A)(iii) of the Social Security Act (the Act); CWPM, §8.2D.5, Question and Answer #2.

Similarly, a title IV-E agency may suspend adoption assistance payments if the agency cannot establish that the adoptive parent is legally responsible for the support of the child under age 18 because the agency has not been able to establish contact with the parent to make a determination. A parent is considered no longer legally responsible for the support of a child when parental rights have been terminated or when the child becomes an emancipated minor, marries, or enlists in the military. See §473(a)(4)(A)(ii) of the Act; the Child Welfare Policy Manual at §8.2D.5, Question and Answer #2.

Note that a title IV-E agency cannot reduce or suspend adoption assistance solely because the adoptive parents fail to reply to the agency’s request for information, renewal, or recertification of the adoption assistance agreement.

A title IV-E agency only may suspend adoption assistance payments in accordance with the fair hearing requirements at 45 C.F.R. §205.10. Before suspending a payment, the title IV-E agency must ensure that notice to the adoptive parents is both timely and adequate, as described at 45 C.F.R. § 205.10(a)(4). As such, the title IV-E agency must mail notice of intent

to suspend the adoption assistance payments at least ten days before the agency plans to suspend the payments. It also must describe that the agency intends to suspend payments, the reasons for the intended suspension and the title IV-E basis as outlined above for the intended suspension. Finally, the agency must describe the adoptive parent's right to request a fair hearing and the circumstances under which assistance is continued if a hearing is requested.

In order to be able to suspend adoption assistance payments in accordance with the guidance above, the title IV-E agency must first amend its title IV-E plan and have the Children's Bureau approve the change. Note also that each new adoption assistance agreement must include the circumstances under which the title IV-E agency may suspend adoption assistance payments. Similarly, the title IV-E agency may try to re-negotiate existing adoption assistance agreements with the adoptive parent to include the circumstances under which the title IV-E agency may suspend payments; however, the terms of an existing adoption assistance agreement only may be changed with the concurrence of the adoptive parent. If an adoptive parent declines to include such a term in the existing agreement, the title IV-E agency may not suspend adoption assistance payments under that agreement.

If the title IV-E agency suspends adoption assistance as described above, the child/youth remains title IV-E eligible, and the title IV-E adoption assistance agreement remains in effect while the payment is suspended.

Although an agency may suspend a child's adoption assistance payment under the circumstances described above, the child's eligibility for, and receipt of, Medicaid may not be suspended while the adoption assistance agreement is in effect. See §473(b) of the Social Security Act. The title IV-E agency also may claim any title IV-E adoption assistance administrative costs on behalf of a child whose title IV-E adoption assistance is suspended in accordance with its approved cost allocation plan.

Source: 02/14/2018

Reference: Social Security Act, section 473(a)(4)(A) and (B); 45 CFR 205.10

8.2D.1 TITLE IV-E, Adoption Assistance Program, Payments, Allowable costs

1 ***Q:*** Are there restrictions for how title IV-E adoption assistance funds may be spent?

A: Once the adoption assistance agreement is signed and the child is adopted, the adoptive parents are free to make decisions about expenditures on behalf of the child without further

agency approval or oversight. Hence, once an adoption assistance agreement is in effect, the parents can spend the subsidy in any way they see fit to incorporate the child into their lives. Since there is no itemized list of approved expenditures for adoption assistance, the title IV-E agency cannot require an accounting for the expenditures. The amount of the assistance may be adjusted periodically if the family's or child's circumstances change, but only with the concurrence of the adoptive family.

Source: *ACYF-CB-PA-01-01 (1/23/01)*

Reference: *Social Security Act - sections 473*

8.2D.2 TITLE IV-E, Adoption Assistance Program, Payments, Duration

1 **Q:** May a title IV-E agency limit the duration of payments pursuant to an adoption assistance agreement?

A: Title IV-E agencies may limit the duration of payments under an adoption assistance agreement for individual eligible children to a period which may end prior to the child's eighteenth birthday, if the decision is made on a case-by-case basis, taking into consideration the provisions of section 473 (a)(2) of the Social Security Act. Title IV-E agencies may not have a blanket policy which limits the duration of all adoption assistance payments to a date earlier than the eighteenth birthday of eligible children, although a time limit may be set in individual cases with the concurrence of the adopting parents, depending on the needs of the child and the circumstances of the parents.

Source: *ACYF-CB-PIQ-81-02 (12/8/81)*

Reference: *Social Security Act - section 473*

8.2D.3 TITLE IV-E, Adoption Assistance Program, Payments, Non-recurring expenses

1 ***Q:*** Please summarize the requirements for the nonrecurring expenses of adoption.

A: The title IV-E agency must enter into an adoption assistance agreement prior to the finalization of the adoption and reimburse (up to $2000, or at title IV-E agency option a lower limit) the nonrecurring adoption expenses incurred by any parent who adopts a child with special needs. The only eligibility criterion to be applied for reimbursement of the nonrecurring expenses of adoption is that the title IV-E agency determine that the child meets the definition of special needs, in accordance with section 473 (c) of the Act. A child does not have to be eligible for Aid to Families with Dependent Children, title IV-E foster care, or Supplemental Security Income in order for the adoptive parents to receive reimbursement for their nonrecurring adoption expenses. Nor does the child have to be under the responsibility for placement and care of the title IV-E agency in order for the adoptive parents to be reimbursed for the nonrecurring expenses of adoption.

The term "nonrecurring adoption expenses" is defined as the reasonable and necessary adoption fees, court costs, attorney fees and other expenses which are directly related to the legal adoption of a child with special needs, which are not incurred in violation of State/Tribal or Federal law, and which have not been reimbursed from other sources or funds. Federal financial participation is available at the matching rate of 50 percent for title IV-E agency expenditures up to $2000 for each adoptive placement.

Source: *ACYF-CB-PA-01-01 (1/23/01)*

Reference: *Social Security Act - section 473(a)(6); 473(a)(1)(B)(i); 45 CFR 1356.41*

2 **Q:** Is it possible for the title IV-E agency to set maximum amounts on specific items within the category of nonrecurring expenses for which they will reimburse adoptive parents?

A: No. The Tax Reform Act of 1986 (Public Law 99-514) amended title IV-E of the Act to require payments for the nonrecurring adoption expenses incurred by adopting parents in connection with the adoption of children with special needs. The only discretion is the flexibility to set a reasonable lower maximum than the $2000 for which Federal reimbursement is available at a 50% matching rate.

Source: ACYF-CB-PIQ-89-02 (5/23/89)

Reference: Social Security Act - section 473; The Tax Reform Act of 1986 (P.L. 99-514)

3 **Q:** Title IV-E agencies are required to reimburse up to $2,000, or such lower amount as set by the title IV-E agency, for the non-recurring adoption expenses of parents who adopt children with special needs. The regulations define "non-recurring adoption expenses" as reasonable and necessary adoption fees, court costs, attorney fees and other expenses which are directly related to the legal adoption of a child with special needs. "Other expenses" were defined as the costs of adoption incurred by or on behalf of the parents and for which parents carry the burden of payment, such as the adoption study, including health and psychological examinations, supervision of the placement prior to adoption, transportation and the reasonable costs of lodging and food for the child and/or the adoptive parents when necessary to complete the adoption process. Would it be possible for a title IV-E agency to further limit the reimbursable areas within the allowable expense category? For instance, could reimbursement be limited to attorney fees only? Or, could a title IV-E agency elect not to reimburse adoption study fees and transportation costs?

A: No. A title IV-E agency may not limit reimbursement for nonrecurring adoption expenses by category. Adoptive parents who apply for reimbursement of the non-recurring expenses of adoption must be reimbursed for any of the non-recurring adoption expenses described at 45 CFR 1356.41 (i) when they adopt a child with special needs as set forth in section 473 (c) of the Social Security Act.

Source: ACYF-CB-PIQ-89-02 (5/23/89)

Reference: Social Security Act - section 473

4 **Q:** Prospective adoptive parents sometimes have an attorney review the subsidy agreement to ensure that the parents¿ best interests are addressed. This private attorney review is in addition to the work of the State agency attorneys who prepare the subsidy paperwork. Are attorney fees and other expenses related to the review of the title IV-E adoption assistance agreement directly related to the legal adoption of a child with special needs and, therefore, allowable under title IV-E?

A: Yes. If the adoptive parents who are adopting a child with special needs incur an attorney fee for review of the adoption subsidy agreement, the State may reimburse the adoptive parents for that expenditure, up to the $2,000 limit, as a nonrecurring expense of adoption. In addition, the State also may claim the costs of the agency attorney?s review of the adoption assistance agreement as an administrative cost, consistent with the policy in the Child Welfare Policy Manual (CWPM), Section 8.1A, Q/A #1.

Source: 7/6/05

Reference: Social Security Act -- Section 473(a)(6), 45 CFR 1356.41(i); CWPM, Section 8.1A, Q/A #1

5 **Q:** Does the nonrecurring adoption expenses limit of $2,000 (or lower at title IV-E agency option) apply per adoption episode or is it a lifetime limit?

A: The nonrecurring adoption expenses limit is applied per adoption episode.

Source: 7/6/05

Reference: Social Security Act -- Section 473(a)(1)(B)(i), 45 CFR 1356.41

6 **Q:** Can the title IV-E agency claim Federal financial participation (FFP) for the nonrecurring expenses of adoption if the adoption is never finalized?

A: Yes. The State may claim FFP for the nonrecurring expenses of adoption in accordance with the requirements set forth in 45 CFR 1356.41 if:

- there is a title IV-E agreement for the nonrecurring expenses of adoption between the adoptive parent(s) and the State or local agency; and

- the State has determined that the child is a child with special needs in accordance with section 473(c) of the Social Security Act (the Act).

Consistent with section 473(a)(5) of the Act, payments may be made on behalf of a child in an adoptive placement prior to the finalization of adoption when all eligibility requirements in section 473 of the Act are met and there is a signed adoption assistance agreement between the State or local agency and the adoptive parent(s). The regulation at 45 CFR 1356.41(b) provides that the agreement for the nonrecurring expenses of adoption may be a separate document or a part of the agreement for either Federal or State adoption assistance. In allowing adoption assistance payments to be made prior to the finalization of the adoption, the Department has never differentiated between payments for ongoing adoption assistance under such agreements and payments for the nonrecurring expenses for adoption. Further, nothing in statute or regulation prohibits reimbursement for the expenses incurred by adoptive families in circumstances where the adoption is not finalized.

Source: September 29, 2005

Reference: Social Security Act ¿ Sections 473(a)(1)(B)(i) and 473(a)(5); 45 CFR 1356.41(b).

8.2D.4 TITLE IV-E, Adoption Assistance Program, Payments, Rates

1 *Q:* Please explain how the title IV-E agency should set rates for title IV-E adoption assistance payments.

A: The amount of the adoption assistance payment cannot exceed the amount the child would have received if s/he had been in a foster family home, but otherwise must be determined through agreement between the adoptive parents and the title IV-E agency. Unlike other public assistance programs in the Social Security Act, the title IV-E adoption assistance program is intended to encourage an action that will be a lifelong social benefit to certain children and not to meet short-term monetary needs during a crisis. Further, the adoptive parents' income is not relevant to the child's eligibility for the program. Title IV-E adoption assistance is not based upon a standard schedule of itemized needs and countable income. Instead, the amount of the adoption assistance payment is determined through the discussion and negotiation process between the adoptive parents and a representative of the title IV-E agency based upon the needs of the child and the circumstances of the family. The payment that is agreed upon should combine with the parents' resources to cover the ordinary and special needs of the child projected over an extended period of time and should cover anticipated needs, e.g., child care. Anticipation and discussion of these needs are part of the negotiation of the amount of the adoption assistance payment.

Source: *ACYF-CB-PA-01-01 (1/23/01)*

Reference: *Social Security Act - section 473 (a)(3)*

2 **Q:** A title IV-E agency wants to include a list of specific circumstances in the adoption assistance agreement that would lead to an automatic reduction in the adoption subsidy amount if the title IV-E agency determines the circumstances occur. These circumstances could include an improvement in the condition of the child or the financial circumstances of the parent, the child's eligibility for other forms of assistance, or the child's re-entry into foster care. Is this practice allowable?

A: No. Once a child is adopted and determined to be eligible for title IV-E adoption assistance, the adoption assistance payments may not be automatically adjusted without the agreement of the adoptive parents for any reason other than an across-the-board reduction or increase in foster care maintenance rates. The statute requires that the adoption assistance payment "take into consideration the circumstances of the adopting parents and the needs of the child being adopted, and may be readjusted periodically, with the concurrence of the adopting parents depending upon changes in such circumstances (section 473(a)(3) of the Social Security Act)." A title IV-E agency would not be considering the unique circumstances of the child and parents by automatically adjusting the subsidy. The title IV-E agency may describe in the agreement specific circumstances such as those articulated in the question, that may warrant a future re-negotiation and adjustment of the payment. Agreements that are not negotiated to the specific needs of the adoptive child and the circumstances of the family, however, are not permissible.

Source: ACYF-CB-PIQ-98-02 (9/03/98)

Reference: Social Security Act - section 473 (a)(3)

3 **Q:** Can the State median income adjusted to family size be used as a guide to establish consistency in determining amounts of payment?

A: No. The use of such guidelines is not appropriate to the process. During the negotiation of an adoption assistance agreement, it is important to keep in mind that the circumstances of the adopting parents and the needs of the child must be considered together. The overall ability of a singular family to incorporate an individual child into the household is the objective. Families with the same incomes or in similar circumstances will not necessarily agree on identical types or amounts of assistance. The uniqueness of each child/family situation may result in different amounts of payment. Consistency is not the goal.

Source: *ACYF-CB-PIQ-90-02 (10/2/90)*

Reference: *Social Security Act - sections 473*

4 **Q:** Is it permissible to adjust the amount of the adoption assistance payment after the adoption assistance agreement is signed?

A: Adoption assistance payments made on behalf of a child cannot exceed the amount the child would have received if s/he had been in a foster family home. Accordingly, a title IV-E agency may negotiate an adoption assistance agreement that automatically allows for adjustments to the adoption assistance payment when there is an increase in the foster care board rate. Alternatively, a title IV-E agency may renegotiate an adoption assistance agreement if the adoptive parents request an increase in payment due to a change in their circumstance and a higher foster care rate would have been paid on behalf of the child if the child had still been in foster care. As an example, a child is adopted and the adoption assistance agreement is negotiated for $250 a month, the same amount the child had been receiving in foster care. If, two years later, the title IV-E agency's monthly foster care board rate is increased to $400, the family can request that the adoption assistance agreement be renegotiated and receive up to $400 for the child, since this is the amount the child would have received each month if s/he had continued to be in foster care.

Source: *ACYF-CB-PA-01-01 (1/23/01)*

Reference: *Social Security Act - section 473 (a)(3)*

5 ***Q:*** Some title IV-E agency's foster care rate structures are based on levels of care. How would such a structure impact the adoption assistance rates?

A: If a title IV-E agency's foster care payment schedule includes higher level-of-care rates that are paid across-the-board for certain children, the title IV-E agency may pay up to that amount in adoption assistance if that specific child would have received the higher level-of-care rate in foster care. In addition, if a title IV-E agency's foster care payment standard includes across-the-board higher foster care rates for working foster parents to pay for child care, or includes provisions for periodic across-the-board increases for such items as seasonal clothing, the adoption assistance agreement may include the higher rate. However, special allowances that may be made on behalf of an individual child in certain situations in foster care, such as child care or clothing allowances, are not permitted as an allowable additional reimbursement in the adoption assistance program. Special allowances for individual children that are over and above the title IV-E agency's foster care payment standard cannot be included in the amount negotiated in the adoption assistance agreement since the adoption assistance payment cannot exceed the foster care maintenance payment rate for the child.

Source: *ACYF-CB-PA-01-01 (1/23/01)*

Reference: *Social Security Act - section 473 (a)(3)*

6 ***Q:*** When the State agency enters into an adoption assistance agreement with a family from another State, which State's rate structure applies as the limit for the adoption assistance payment?

A: In situations where a child is placed by the State agency in one State with an adoptive family in another State, it is the placing State that would look at its own established foster care rate structure, as well as State law and policy governing its foster care and adoption assistance payments, to determine the amount of assistance available on behalf of the child. If the placing and paying State's law or policy allows flexibility to pay amounts based upon the foster care board rate in the State in which the child is placed for adoption, this practice would be allowable under title IV-E since the statutory requirement in section 473 (a)(3) of the Act would be met.

Source: *ACYF-CB-PA-01-01 (1/23/01)*

Reference: Social Security Act - section 473 (a)(3)

7 ***Q:*** May a State's policy limit the maximum adoption assistance payment for any family at a level lower than the maximum foster care maintenance payment a child would have received in a foster family home?

A: Federal law and regulations do not prohibit a State from having a law or policy that limits the maximum adoption assistance payments to a level lower than the maintenance payment a child would have received in a foster family home. The law only prescribes that the adoption assistance payment can be no more than the foster care maintenance payment that the child would have received in a foster family home during the same time period (see section 473(a)(3) of the Social Security Act). Within these parameters, however, the State must negotiate the amount of the adoption assistance payment with the adoptive family taking into consideration the needs of the child and the circumstances of the family. Furthermore, from a practice standpoint establishing a lower ceiling within which the State and family may negotiate an adoption assistance payment may reduce the pool of adoptive parents available to provide permanent homes for children with special needs.

Source: 7/7/2006

Reference: Social Security Act ¿ section 473(a)(3)

8.2D.5 TITLE IV-E, Adoption Assistance Program, Payments, Termination

1 ***Q:*** Under what circumstances may the title IV-E agency terminate an adoption assistance agreement?

A: Title IV-E adoption assistance is available on behalf of a child if s/he meets all of the eligibility criteria and the title IV-E agency enters into an adoption assistance agreement with the prospective adoptive parent(s) prior to the finalization of the adoption. The agreement must be signed by all parties to the agreement (namely, the adoptive parents and the title IV-E agency representative) in order to meet the requirements for an adoption assistance agreement.

Once an adoption assistance agreement is signed and in effect, it can be terminated under the following circumstances only. Namely, (1) the child has attained the age of 18 or such greater age that the State or Tribe may elect under section 475(8)(B)(iii) of the Act; (2) the

child has attained age of 21 if the title IV-E agency has determined that the child has a mental or physical disability which would warrant continuation of assistance); (3) the title IV-E agency determines that the adoptive parents are no longer legally responsible for support of the child who has not attained 18 years of age; or (4) the title IV-E agency determines that the adoptive parents are no longer providing any support to the child.

Source: ACYF-CB-PA-01-01 (1/23/01)

Reference: Social Security Act - sections 473(a)(4) and 475(8)(B)(iii); 45 CFR 1356.40(b)

2 **Q:** Section 473(a)(4)(A) of the Social Security Act states that no adoption assistance payment can be made to parents if the title IV-E agency determines that the parents are no longer legally responsible for the support of a child who has not attained 18 years of age, or if the title IV-E agency determines that a child is no longer receiving any support from the parents. When is a parent considered to be "no longer legally responsible for support" or not providing "any support" for the child?

A: A parent is considered no longer legally responsible for the support of a child when parental rights have been terminated or when the child becomes an emancipated minor, marries, or enlists in the military.

"Any support" includes various forms of financial support. The title IV-E agency may determine that payments for family therapy, tuition, clothing, maintenance of special equipment in the home, or services for the child's special needs, are acceptable forms of financial support. Consequently, the title IV-E agency may continue the adoption assistance subsidy, if it determines that the parent is, in fact, providing some form of financial support to the child.

Source: ACYF-CB-PIQ-98-02 (9/03/98)

Reference: Social Security Act - section 473(a)(4)(A)

3 ***Q:*** Can a State agency automatically suspend the adoption assistance payment for the duration of an adopted child's placement in foster care? The State agency would reinstate the payment upon the child's return home.

(Deleted 02/21/2018)

4 ***Q:*** Is it permissible for a State to include a statement in the title IV-E adoption assistance agreement to the effect that "The Department¿s obligation to provide for Federally funded adoption assistance payments and/or services is subject to the appropriation of State funds"?

A: No. Although we understand that the State may experience difficulties in its ability to pay subsidies due to the State budget, such difficulties do not relieve or alter the State?s obligation under title IV-E to act in accordance with executed adoption assistance agreements. Accordingly, any statement that undermines the State?s obligation to honor the terms of the title IV-E adoption assistance agreement is not consistent with Federal requirements in sections 473(a)(1)(B)(ii) and 473(a)(3) of the Social Security Act. Once an agreement is signed, the State must obtain the concurrence of the adoptive parent if it wishes to make any changes in the payment amount with one exception. That exception is when there is an across-the-board reduction or increase in the foster care maintenance payment rate. In that circumstance, the State may adjust the adoption assistance payment without the adoptive parent's concurrence.

Source: 08/05/08

Reference: Social Security Act - sections 473(a)(1)(B)(ii) and 473(a)(3); CWPM 8.2D4, Q/A #2)

8.2E TITLE IV-E, Adoption Assistance Program, Promoting Adoption Assistance

1 **Q:** What is the State's responsibility for notifying prospective adoptive parents about the availability of adoption assistance?

A: The State title IV-B/IV-E agency is required to actively seek ways to promote the adoption assistance program. This means that it is incumbent upon the State agency to notify prospective adoptive parents about the availability of adoption assistance for the adoption of a child with special needs. There is no prescribed way in which promotion of the program must be accomplished. One example would be to alert potential adoptive parents during a recruitment campaign for adoptive homes (websites, newspapers, flyers, etc.). Another example would be to alert every prospective adoptive parent who inquires to the State agency about adoption.

The primary goal of the title IV-E adoption assistance program is to provide financial support to families who adopt difficult-to-place children from the public child welfare system. These are children who otherwise would grow up in State foster care systems if a suitable adoptive parent could not be found. Thus, the State or local title IV-E agency is responsible for assuring that prospective adoptive families with whom they place eligible children who are under their responsibility are apprised of the availability of title IV-E adoption assistance.

However, in circumstances where the State agency does not have responsibility for placement and care, or is otherwise unaware of the adoption of a potentially special needs child, it is incumbent upon the adoptive family to request adoption assistance on behalf of the child. It is not the responsibility of the State or local agency to seek out and inform individuals who are unknown to the agency about the possibility of title IV-E adoption assistance for special needs children who also are unknown to the agency. This policy is consistent with the intent and purpose of the statute, and that is to promote the adoption of special needs children who are in the public foster care system.

Source: ACYF-CB-PA-01-01 (1/23/01)

Reference: 45 CFR 1356.40 (f)

8.3 TITLE IV-E, Foster Care Maintenance Payments Program

No questions and answers are available at this time.

8.3A TITLE IV-E, Foster Care Maintenance Payments Program, Eligibility

1 **Q:** A judicial determination is made that a child should be removed from his home, and the child is placed in foster care with title IV-E foster care payments being paid on his behalf. Casework services are provided toward a goal of reuinification. At a later date, the court rules that the child should return home; however, the court retains jurisdiction and continues the county department's responsibility to supervise the home and to provide services necessary to further strengthen the family unit.

Subsequent circumstances cause the court to determine that the child must return to foster care. In considering initial eligibility on the title IV-E foster care reapplication, which judicial determination removing the child from his home should be used - the first or the second?

A: When a child is removed from his home and placed in foster care, there must be a judicial determination to the effect that continuation in the home would be contrary to the welfare of the child and that reasonable efforts have been made to prevent or eliminate the need for removal. Such a determination is necessary at any time (or every time) that a child is removed from his home, because each situation involves different circumstances and reasons for placement. Unless the child was visiting his home on a trial basis, a return to foster care would require a new determination of eligibility based on the circumstances at that time. In the situation described, the judicial determination and eligibility factors current at the time of the most recent removal would be used to determine eligibility for title IV-E foster care.

Source: ACYF-CB-PIQ-86-03 (5/9/86)

Reference: Social Security Act - section 472

2 **Q:** The statute refers to a child being eligible for AFDC "in or for such month" in sections 472(a)(3)(A)(i) and (ii) of the Social Security Act (the Act). Please clarify the month in which the child must have met the AFDC eligibility criteria?

A: The child must have been eligible for AFDC in either the month of the voluntary placement agreement or the removal petition. This is true whether the child was living with a specified relative at the time of the removal petition or voluntary placement agreement (section 472(a)(3)(A)(i) of the Act), or whether the child was living with an interim relative caretaker within the six months prior to the removal petition or voluntary placement agreement (section 472(a)(3)(A)(ii)(II) of the Act). In the latter situation, although the child is not in the home of the specified relative from whom the child was removed, the State must determine whether the child would have met the AFDC criteria had the child remained in the specified relative's home.

Source: 7/7/2006

Reference: Social Security Act - section 472(a)(3)(A)(i) and (ii); 45 CFR 1356.21(l)

3 **Q:** In determining a child's Aid to Families with Dependent Children (AFDC) eligibility, should the state examine the household circumstances when the child was removed from home, or should the state examine the whole month in which the removal petition was initiated or the voluntary placement agreement was signed?

A: The state must determine a child's AFDC eligibility in or for the month in which the court proceedings were initiated or the voluntary placement agreement was signed. State title IV-E agencies must use the state's title IV-A plan (as it was in effect on July 16, 1996) to determine if a child would have been eligible for AFDC. Tribal title IV-E agencies must use the title IV-A state plan (as it was in effect on July 16, 1996) in the state in which the child resides when the child was removed from the home to determine if a child would have been eligible for AFDC.

Source: December 2, 2016

Reference: 472(a)(3) of the Social Security Act

4 ***Q:*** May a youth age 18 or older who is married or enlisted in the military be eligible for title IV-E foster care?

A: Yes. There is nothing in title IV-E that prohibits a title IV-E agency from providing title IV-E foster care to an otherwise eligible youth if the youth is married or enlisted in the military (including if the youth is in the military reserves or ROTC).

Source: 05/06/2013

Reference: Social Security Act ¿ section 475(8)(B); ACYF-CB-PI-10-11

5 ***Q:*** May a title IV-E agency require a youth age 18 or older to have been in foster care in the State or Tribe prior to turning age 18 in order to receive title IV-E foster care at age 18 or older under section 475(8)(B)?

A: Yes, the title IV-E agency may provide title IV-E foster care only to youth who were in foster care in the State or Tribe prior to turning age 18. However, there is no federal requirement for a youth to have been in foster care prior to turning age 18 to receive title IV-E foster care at age 18 or older under section 475(8)(B).

Source: 05/06/2013

Reference: Social Security Act ¿ section 475(8)(B); ACYF-CB-PI-10-11

8.3A.1 TITLE IV-E, Foster Care Maintenance Payments Program, Eligibility, Adjudicated delinquents

1 ***Q:*** Are adjudicated delinquents eligible for title IV-E foster care maintenance payments?

A: The question of eligibility for Federal reimbursement in the case of adjudicated delinquents rests on two factors: (1) eligibility of the child, and (2) the type of facility in which the child is placed. Any child for whom title IV-E foster care maintenance payments are claimed must meet the eligibility criteria described in section 472 (a) of the Social Security Act (the Act). These general requirements are: (a) The child must be a "dependent child" as defined in

section 406 (a) or 407 of the Act (as in effect on July 16, 1996) and the applicable regulation, 45 CFR 233.90 (c)(1), but for his or her removal from the home of a specified relative; (b) That the child was eligible for Aid to Families with Dependent Children (AFDC) in the month described in section 472 (a)(3)(A)(i) of the Act and consistent with the contingencies explained in section 472 (a)(3)(A)(ii) of the Act; (c) The child must be removed from the home of a relative pursuant to a voluntary placement agreement or as the result of a judicial determination to the effect that continuation in the home would be contrary to the welfare of the child and that reasonable efforts were made prior to placement to prevent the need for removal of the child from his home; and (d) The child's placement and care must be the responsibility of the State title IV-E agency or another public agency with whom the State agency has a currently effective agreement.

If the child meets the title IV-E eligibility requirements, FFP may be claimed for foster care costs in licensed or approved facilities as described in section 472 (b) and (c) of the Act. Such facilities, however, may not include "detention facilities, forestry camps, training schools, or any other facility operated primarily for the detention of children who are determined to be delinquent."

Source: ACYF-CB-PIQ-82-10 (8/11/82); ACYF-CB-PIQ-88-03 (4/11/88)

Reference: Social Security Act - sections 406 (a) and 407 (as in effect on July 16, 1996) and 472; 45 CFR 1355.20 and 233.90 (c)(1)

2 ***Q:*** If a temporary detention order states that the child is to be detained until sentencing because there is reason to believe he would run away, would this satisfy the requirement for a determination regarding "contrary to the welfare?"

A: No. This language could not be construed to mean that to continue in the home would be "contrary to the (child's) welfare." It is important to remember that the judicial determinations required for title IV-E eligibility were intended to ensure that children were not removed from their homes unnecessarily. In juvenile justice procedures, where children are removed for correctional purposes, the courts must determine that continuation in the home would be contrary to the child's welfare if title IV-E eligibility is to be established.

Source: ACYF-CB-PIQ-91-03 (4/3/91)

Reference: Social Security Act - sections 472 (a)(2)(A)(ii)

3 ***Q:*** Court orders that sentence a child to a juvenile detention facility often include language which differs from that in a dependency order resulting in a foster care placement. Does language in a detention order indicating that the child is a "threat to himself or the community" meet the requirement in section 472 of the Social Security Act regarding "contrary to the welfare?"

A: A court order indicating that the child is a threat to himself satisfies the requirement of a determination that remaining in the home would be contrary to the child's welfare. However, if the court order indicates only that the child is a threat to the community, such language would not satisfy the requirement for a determination that continuation in the home would be contrary to the child's welfare.

Source: ACYF-CB-PIQ-91-03 (4/3/91)

Reference: Social Security Act - sections 472 (a)(2)(A)(ii)

4 **Q:** A youth may be declared a ward of the court and be ordered placed in much the same manner as delinquents, yet, he is not a delinquent in that no crime has been committed. Does the term "juvenile delinquent" refer to status offenders and, if not, are status offender wards eligible for Federal funds?

A: It is the Department's position that "juvenile delinquent" refers only to those children who have been adjudicated as having committed a delinquent act(s) and does not include status offenders. This interpretation is clearly supported by the legislative history.

Source: ACYF-CB-PIQ-82-10 (8/11/82)

Reference: Social Security Act - section 470

8.3A.2 TITLE IV-E, Foster Care Maintenance Payments Program, Eligibility, Age

1 **Q:** For what classes of title IV-E eligible children does title IV-E allow continuation of foster care maintenance payments after age 18 and reimbursements for those payments? May a State, for example, claim Federal financial participation (FFP) for children in foster care who have mental or physical handicaps who remain in care until age 21?

A: Under section 406 (a) of the Social Security Act (the Act) (as in effect on July 16, 1996) a dependent child is defined as one under the age of 18. This age limit applies to title IV-E foster care eligibility under section 472 of the Act. The only exception under section 406 (a) is (at State option) for those children who are over 18 and under the age of 19 and who are full time students expected to complete their secondary schooling or equivalent training before reaching age 19. There is no provision under title IV-E which specifically allows payments on behalf of mentally or physically handicapped children in foster care who are age 18 or older. Therefore, no federal financial participation is available for such payment unless the requirements of 45 CFR 233.90 are met.

On the other hand, title IV-E adoption assistance (at State option) may be continued to age 21 with respect to a child with a mental or physical handicap.

Source: ACYF-CB-PIQ-85-05 (4/12/85)

Reference: Social Security Act - sections 406 (a) (as in effect on July 16, 1996) and 472

2 *Q:* Can a youth who was previously title IV-E eligible who has "aged out" of foster care at age 18 retain his/her title IV-E eligibility if he/she re-enters foster care? The youth is under age 19 and expected to graduate from high school before reaching the age of 19.

A: No. The State must newly determine the child's title IV-E foster care eligibility once a child ages out of foster care at age 18 and the State no longer has placement and care responsibility. Section 8.3A.10 Q&A2 of the Child Welfare Policy Manual explains that a re-determination of title IV-E eligibility is permitted only when the child is continuously in foster care status and remains under the responsibility of the State agency for placement and care, neither of which is the case as described.

However, a youth at age 18 could retain his/her title IV-E eligibility if s/he provides written authorization for the State's continued placement and care responsibility prior to aging out of foster care, and is a full time student and expected to complete his/her secondary schooling or equivalent training before reaching age 19 consistent with the State's former AFDC plan.

Source: 12/31/07

Reference: Social Security Act ¿ section 472(a)(3); Child Welfare Policy Manual section 8.3A.10 Q&A2

8.3A.3 TITLE IV-E, Foster Care Maintenance Payments Program, Eligibility, Biological parents

1 *Q:* Since adoption assistance is not available for children adopted by biological parents, would Federal financial participation (FFP) under title IV-E foster care be available in those homes if the parents do not adopt and the agency retains guardianship and responsibility for placement and care?

A: No. Title IV-E foster care maintenance payments are available for AFDC-eligible children who have been removed from their own homes and placed in a foster family home or child care institution. By definition, foster care is provided by someone other than a biological parent.

While a termination of parental rights severs the legal ties between the parent and the child, it does not change the biological relationship with the child. A child living with his parents would not be considered to be living in a foster home and, thus, would not be eligible for title IV-E foster care maintenance payments.

Source: *ACYF-CB-PIQ-89-04 (8/8/89)*

Reference: *Social Security Act - sections 472 (a)(2)(A) and (C), 472 (b)*

2 **Q:** When a child is removed from the custodial parent and placed by the State for a temporary period of time with the non-custodial parent under the placement and care responsibility of the State title IV-E agency, and then the State agency subsequently moves the child to a licensed foster family home, must the State agency obtain another removal order in order to claim title IV-E?

A: No. The child is not eligible for title IV-E while placed with the non-custodial parent (see Child Welfare Policy Manual Section 8.3A.3 Q/A #1). However, the child's placement with the non-custodial parent has no bearing on whether the State may claim title IV-E reimbursement for the child when s/he is later placed in a licensed foster family home, so long as the State maintains placement and care responsibility and the child otherwise meets the criteria in sections 472(a)(2)(A) and (B) and 472(a)(3) of the Act. Presuming the State has already obtained a contrary to the welfare finding in relation to the custodial parent, it remains valid for title IV-E purposes unless the State's placement and care responsibility ends and the child is removed again pursuant to a court order or voluntary placement agreement.

Source: *12/6/2007*

Reference: *Social Security Act ¿ sections 472(a)(2)(A) and (B); 45 CFR 1355.20*

3 ***Q:*** May a title IV-E agency consider a youth age 18 or older who is residing in the same home as his/her parent or guardian to be in an allowable title IV-E supervised independent living setting if paired with title IV-E agency supervision?

A: Yes. A title IV-E agency may develop a range of supervised independent living settings as long as those settings can be reasonably interpreted as consistent with the law at section 472(c)(2). It is within the title IV-E agency's discretion to determine that residing with a parent or guardian is an allowable supervised independent setting provided that the title IV-E agency is providing supervision. In this arrangement, the parent or guardian is not the foster care provider for the youth, nor has the agency returned the youth home to live under the care of his/her parent or legal guardian.

For example, the title IV-E agency may consider a youth who normally resides in a dorm during college who then lives in a room in the home of his/her parent during breaks from college, or a youth who takes classes and rents a basement room from his/her guardian to be in allowable supervised independent living settings when paired with agency supervision. Ultimately, it is up to the title IV-E agency to consider the circumstances of the youth and the supervised independent living arrangement to determine whether it would be an appropriate and allowable independent living setting.

Source: 05/06/2013

Reference: Social Security Act ¿ section 472(c)(2); ACYF-CB-PI-10-11

8.3A.4 TITLE IV-E, Foster Care Maintenance Payments Program, Eligibility, Child in facility outside scope of foster care

1 **Q:** How is a child's IV-E eligibility impacted by an interruption in a foster care episode, for example, a temporary placement in a detention facility or psychiatric hospital?

A: As long as the original court order pertaining to the child?s removal is still in effect, the title IV-E agency may claim title IV-E funds when the child returns to a foster care setting.

Federal financial participation is not available while the child is placed in a facility that is considered outside the scope of "foster care."

Source: Questions and Answers on the Final Rule (65 FR 4020) (1/25/00); April 6, 2010

Reference: Social Security Act - section 472 (a); 45 CFR 1355.20

2 **Q:** How should the State establish title IV-E eligibility for a child who is temporarily placed in a facility that is considered outside the scope of "foster care," such as a detention facility or psychiatric hospital, prior to his/her placement in foster care? When may the State begin to claim for such child if s/he is placed in foster care?

A: The State must comply with the title IV-E eligibility criteria as set forth in the statute at section 472 (a) of the Social Security Act (the Act) and the implementing regulations at 45 CFR 1356.21(b), (c), and (d). The State must establish the child's eligibility at removal (which includes meeting the Aid to Families with Dependent Children eligibility requirements as in effect on July 16, 1996 and judicial determinations to the effect that it is contrary to the child's welfare to remain in the home and that reasonable efforts were made to prevent such removal) even for children who are not initially placed in a foster care setting. Title IV-E is an entitlement program and, as such, no flexibility exists with respect to satisfying the requisite eligibility criteria. If such eligibility criteria are not satisfied within the time frames prescribed in the regulation, the child is ineligible for title IV-E funds.

When the child is transferred to a facility that meets the requirements of section 472 (c) of the Act, Federal financial participation is available from the first day of placement in the month in which all title IV-E eligibility requirements are met.

Source: *Questions and Answers on the Final Rule (65 FR 4020) (1/25/00); ACYF-CB-PIQ 88-03 (4/11/88)*

Reference: *Social Security Act - section 472; 45 CFR 1356.21*

3 **Q:** When a child is removed from the custodial parent and placed by the State for a temporary period of time with the non-custodial parent under the placement and care responsibility of the State title IV-E agency, and then the State agency subsequently moves the child to a licensed foster family home, must the State agency obtain another removal order in order to claim title IV-E?

A: No. The child is not eligible for title IV-E while placed with the non-custodial parent (see Child Welfare Policy Manual Section 8.3A.3 Q/A #1). However, the child's placement with the non-custodial parent has no bearing on whether the State may claim title IV-E reimbursement for the child when s/he is later placed in a licensed foster family home, so long as the State maintains placement and care responsibility and the child otherwise meets the criteria in sections 472(a)(2)(A) and (B) and 472(a)(3) of the Act. Presuming the State has already obtained a contrary to the welfare finding in relation to the custodial parent, it remains valid for title IV-E purposes unless the State's placement and care responsibility ends and the child is removed again pursuant to a court order or voluntary placement agreement.

Source: *12/6/2007*

Reference: *Social Security Act ¿ sections 472(a)(2)(A) and (B); 45 CFR 1355.20*

8.3A.5 TITLE IV-E, Foster Care Maintenance Payments Program, Eligibility, Child of a minor parent

1 ***Q:*** Please explain the requirements with respect to title IV-E eligibility and the case review system at section 475(5) of the Social Security Act (the Act) for a child and his/her minor parent in foster care. Specifically: Must the State have placement and care responsibility of both? Is the child considered to be in foster care even if the State does not have placement and care responsibility? May the child continue to receive IV-E if the minor parent runs away? May the State claim administrative costs for the child? Is the child eligible for medical assistance under title XIX and social services under title XX?

A: Section 475(4)(B) of the Act requires that foster care maintenance payments for a minor parent in foster care cover a child of such parent if the child is placed with the minor parent. Neither the statute nor regulations require the State to have placement and care responsibility for the child in order for such costs to be included in the minor parent?s foster care maintenance payment. Good social work practice suggests that the minor parent?s case plan include the needs of the child and that the child?s needs and interests be addressed during the six-month periodic reviews and permanency hearings held on behalf of the minor parent. However, the State is not required to satisfy these requirements independently on behalf of the child because s/he is not under the State?s responsibility for placement and care and, therefore, pursuant to Federal law and regulations, is not in foster care.

In cases where the State has placement and care responsibility for both the minor parent and the child, title IV-E eligibility would have to be determined individually for each. Likewise, if a minor parent leaves the foster home and does not take the child, the child?s eligibility for foster care then would be based upon his or her individual circumstances. In addition, the State would have to obtain responsibility for placement and care of the child through either a voluntary placement agreement or a court order with the required judicial determinations. Once the child of a minor parent is in foster care, the requirements of the case review system at section 475(5) of the Act apply.

When a child is placed with his/her minor parent without placement and care responsibility by the State, no administrative costs may be claimed on her/his behalf because s/he is not eligible for nor a recipient of title IV-E foster care maintenance payments. The State is merely increasing the amount of the title IV-E foster care maintenance payment made on behalf of the eligible minor parent to accommodate the board and care of the child. In situations where the eligibility of the minor parent and his/her infant are determined separately and both are placed in foster care, the State may claim administrative costs for the child because s/he is eligible for and receiving title IV-E maintenance payments in her/his own right.

Section 472(h) of the Act makes clear that a child whose costs are covered by the title IV-E payment made with respect to the minor parent is a child with respect to whom foster care

maintenance payments are made under title IV-E and is thus eligible for medical assistance and social services under titles XIX and XX.

Source: 06/09/04

Reference: Social Security Act ¿ sections 472 and 475 and Titles XIX and XX; 45 CFR 1356.21

2 ***Q:*** If the child of a minor parent, who is a title IV-E recipient, has resources, such as survivor benefits, how would the resources of the infant affect his/her minor parent's eligibility for title IV-E foster care maintenance payments?

A: Section 475 (4)(B) of the Social Security Act requires States to include in the foster care maintenance payment for a minor parent an amount necessary to cover the costs of maintenance of the son or daughter living in the same foster home or institution with such minor parent. Eligibility of the son or daughter under title IV-E is not a condition of the increased maintenance payment on behalf of the minor parent. Rather, it is the title IV-E eligibility of the minor parent that allows the increased payment to include an amount to meet the son's or daughter's needs in that home.

Source: ACYF-CB-PIQ-91-02 (4/2/91)

Reference: Social Security Act - sections 472 (h) and 475 (4)(B)

3 ***Q:*** Are both a teen mother and her child eligible for Federal financial participation under title IV-E if both are under the placement and care responsibility of the State and have been placed in the same foster family home? If so, would the minor child continue to be eligible for title IV-E if the court orders that the child be reunited with the teen mother?

A: If a teen mother and her child are both in the same foster family home and each has been determined to be eligible for title IV-E, the State can claim FFP under title IV-E foster care for both the teen mother and her child. This includes foster care maintenance payments and administrative costs. In this situation, both the child and mother have been determined eligible for title IV-E foster care, and placed in a licensed foster family home. The fact that the teen mother and her child are in the same foster home does not mean that they have been ?reunified? in the statutory sense, as the foster parent and not the teen parent, is responsible for the day-to-day care and supervision of the child.

If reunification of the child with the teen mother has occurred and the child is no longer under the responsibility of the State for placement and care, the child is no longer eligible for a title IV-E payment. (We use the term ?reunification? here to refer to situations in which a child is returned to the parent?s control and is no longer under the care or supervision of the State.) In such situations, the State must include amounts necessary to cover the costs incurred on behalf of the child in the teen mother?s title IV-E payment. (See Section 475(4)(B)(ii) of the

Act, 45 CFR 1356.21(j), and CWPM 8.3.A.5) However, once the child is no longer under the responsibility of the State for placement and care, the State cannot continue to claim administrative costs on his or her behalf since s/he is not eligible for, nor a recipient of, title IV-E foster care maintenance payments.

Source: 06/09/04

Reference: Social Security Act ¿ sections 472 and 475; 45 CFR 1356.21.

8.3A.6 TITLE IV-E, Foster Care Maintenance Payments Program, Eligibility, Contrary to the welfare

1 ***Q:*** Do you consider an emergency order (sometimes referred to as a "pick-up order" or "ex-parte order") as the first court ruling for the purpose of meeting the contrary to the welfare requirements?

A: We have made no distinction about the type of order in which the contrary to the welfare determination is required. Such a determination must be made in the very first court order pertaining to the child's removal from home. If the emergency order is the first order pertaining to a child's removal from home, then the contrary to the welfare determination must be made in that order to establish title IV-E eligibility.

Source: Preamble to the Final Rule (65 FR 4020) (1/25/00)

Reference: 45 CFR 1356.21 (c)

2 ***Q:*** For purposes of meeting the section 472 (a)(2)(A)(ii) eligibility requirement, must a temporary detention order include "contrary to the welfare" language or is it possible to consider a later delinquency adjudication order or dependency adjudication order as the removal order?

A: The statute requires that the "removal" from the home must occur as the result of a judicial determination to the effect that continuation therein would be contrary to the child's welfare.

Therefore, such a determination must be made in the order that results in the removal of the child from the home. Since the child has already been removed from his home and is in detention as the result of a temporary detention order, the later hearing order only sanctions that removal. A child would remain ineligible during the entire foster care placement if the

"contrary to the welfare" determination is not made at the time of the temporary detention order.

Source: *ACYF-CB-PIQ-91-03 (4/3/91)*

Reference: *Social Security Act - section 472 (a)(2)(A)*

3 **Q:** A child is ineligible for an entire foster care episode for failure to satisfy the contrary to the welfare requirements. Please explain the rationale for this position.

A: The contrary to the welfare determination is a critical statutory protection and a criterion for establishing title IV-E eligibility. Once a child is removed from home, the State cannot go back and "fix" an inappropriate removal. If a child's removal from home is not based on a judicial determination that it was contrary to the child's welfare to remain in the home, the child is ineligible for title IV-E funding for the entire foster care episode subsequent to that removal because there is no opportunity to satisfy this eligibility criterion at a later date. The same does not hold true for all other eligibility criteria. For example, judicial determinations regarding reasonable efforts to finalize a permanency plan, placement in a licensed foster family home or child care institution, and State agency responsibility for placement and care are all title IV-E eligibility criteria that can be reestablished if lost or established at a later time if missing at the beginning of a foster care episode. This is not the case with the contrary to the welfare determination.

Source: *Preamble to the Final Rule (65 FR 4020) (1/25/00)*

Reference: *45 CFR 1356.21 (c)*

4 **Q:** Court orders that sentence a child to a juvenile detention facility often include language which differs from that in a dependency order resulting in a foster care placement. Does language in a detention order indicating that the child is a "threat to himself or the community" meet the requirement in section 472(a)(2)(A)(ii) regarding "contrary to the welfare?"

A: A court order indicating that the child is a threat to himself satisfies the requirement of a determination that remaining in the home would be contrary to the child's welfare. However, if the court order indicates only that the child is a threat to the community, such language would not satisfy the requirement for a determination that continuation in the home would be contrary to the child's welfare.

Source: *ACYF-CB-PIQ-91-03 (4/3/91)*

Reference: *Social Security Act - section 472 (a)(2)(A)(ii)*

5 **Q:** If a temporary detention order states that the child is to be detained until sentencing because there is reason to believe he would run away, would this satisfy the requirement for a determination regarding "contrary to the welfare?"

A: No. This language could not be construed to mean that to continue in the home would be "contrary to the (child's) welfare." It is important to remember that the judicial determinations required for title IV-E eligibility were intended to ensure that children were not removed from their homes unnecessarily. In juvenile justice procedures, where children are removed for correctional purposes, the courts must determine that continuation in the home would be contrary to the child's welfare if title IV-E eligibility is to be established.

Source: *ACYF-CB-PIQ-91-03 (4/3/91)*

Reference: *Social Security Act - section 472 (a)(2)(A)(ii)*

6 **Q:** Our State presently petitions the court for protective supervision of a child (not legal custody) with the right to place the child. The petition is based on the child's being within the jurisdiction of the court on the basis that the child is abused, neglected, or is beyond the control of the parents. If the State is given protective supervision with the right to place, it is based on that petition. If placement becomes necessary, placement is made without the State needing to return to court for an amended order. In some situations, the child is already in placement under an immediate physical custody order of the court.

Is the granting of a State's petition for protective supervision with the right to place and the subsequent placement of the child sufficient to make an otherwise eligible child qualify for foster care payments under title IV-E?

A: No. The Social Security Act, at section 472 (a)(2)(A), requires that the removal of a child from the home be the result of a voluntary placement agreement or a judicial determination to the effect that continuation therein would be contrary to the welfare of the child.

If the court grants protective supervision responsibility to the State agency and leaves to that agency the option to remove the child from the home at a later time, the requirement in section 472 (a)(2)(A)(ii) for a judicial determination has not been met. Although there are no Federal requirements as to the exact language of court orders, the Act requires a judicial determination to the effect that continuation in the child's home would be contrary to his welfare. The granting of a petition for protective supervision with the right to place the child is not sufficient to meet this requirement.

At the time of removal, if a judicial determination is made that amends the earlier order granting protective supervision that sanctions the removal and satisfies the requirements in section 472 (a)(2)(A)(ii), the otherwise eligible child would then become eligible for title IV-E.

Source: ACYF-CB-PIQ-84-05 (7/5/84); ACYF-CB-PIQ-85-07 (6/25/85)

Reference: Social Security Act - section 472(a)(2)(A)

7 **Q:** After a dependency petition is filed, the court finds reasonable grounds to believe a child is dependent and would be endangered in his or her home and enters a temporary shelter order causing the child to be taken in to custody. The child is then placed in foster care by the State agency. Does this temporary shelter order constitute a "judicial determination" as required for a State to receive Federal financial participation (FFP) in the costs of the child's foster care maintenance under the title IV-E program? May FFP begin from the date of the shelter order,

if the order is not rescinded or otherwise revised so that it no longer supports the removal of the child from the home?

A: A temporary shelter care order that meets the requirements of a "judicial determination" would permit the authorization of FFP as of the date of the shelter care order, provided all other eligibility requirements are met. As to the requirements of a "judicial determination," the essential element is that the court order (temporary or dispositional) for removal of the child from the home is based on a determination that continuation therein would be contrary to the welfare of the child.

It is correct that FFP would have to be discontinued if at a subsequent hearing the court order was rescinded or revised so that it no longer supported the removal of the child from the home. It is also correct that the date the judicial proceedings are initiated is not the date the judicial determination is made, if the initiated action is only a petition or summons, unless the judicial determination is made on the same date.

A State may claim Federal matching for costs of children placed involuntarily in foster care only after judicial determinations are made (1) that continuation in the home would be contrary to the welfare of the child and (2) that reasonable efforts had been made to prevent the removal of the child from the home. Once the court order is issued (either a temporary or dispositional order), FFP may be claimed only from the first day the child is in the foster home; provided all other title IV-E eligibility criteria are satisfied.

Source: *ACYF-CB-PIQ-82-03 (1/29/82)*

Reference: *Social Security Act - section 472*

8 ***Q:*** Once a court order is issued with a judicial determination that remaining in the home is contrary to the child's welfare, does the State have to actually remove the child at that time and place the child in foster care?

A: Yes. Section 472(a)(2) of the Social Security Act predicates a child's receipt of title IV-E funds on the child's removal from home as the result of either a voluntary placement agreement or a judicial determination that to remain at home is contrary to the child's welfare.

The judicial determination that results in the child's removal must coincide with (i.e., occur at the same time as) the agency's action to physically or constructively remove the child, unless the court order specifies an alternative timeframe for removal, as allowed for in the Departmental Appeals Board (DAB) decision # 2017.

If a court makes a judicial determination that it is contrary to the child's welfare to remain at home (without specifying an alternative timeframe) and the child does, in fact, remain at home and no removal occurs, the requirement for removal is not met and the child is ineligible for title IV-E. If the child's safety is not at risk and a State chooses to offer support services to the family in-home to prevent having to remove the child, it should do so. States cannot issue "blanket" removal orders, however, in an attempt to guarantee title IV-E eligibility in the event that the child has to be removed from home at some point in the future.

Source: 1/29/2007

Reference: Social Security Act ¿ section 472(a)(2)

8.3A.7 TITLE IV-E, Foster Care Maintenance Payments Program, Eligibility, Documentation of judicial determinations

1 ***Q:*** Please explain the rationale for the policy of requiring judicial determinations to be explicit, made on a case-by-case basis, and so stated in the court order and provide guidance on how to satisfy this requirement.

A: The basis for this policy can be found in the legislative history of the Federal foster care program. The Senate report on the bill that became Public Law 96-272 characterized the required judicial determinations as "... important safeguard[s] against inappropriate agency action..." and made clear that such requirements were not to become "... a mere pro forma exercise in paper shuffling to obtain Federal funding..." (S. Rept. No. 336, 96th Cong., 2d Sess. 16 (1980)). We concluded, based on our review of States' documentation of judicial determinations over the past years, that, in many instances, these important safeguards had become precisely what Congress was concerned that they not become.

States have a great deal of flexibility in satisfying this requirement. For example, the court order may reference the facts of a court report, related psychiatric or psycho-social report, or sustained petition as a mechanism for demonstrating that judicial determinations are made on a case-by-case basis. If the State can demonstrate that such determinations are made on a case-by-case basis through a checklist then that is acceptable also.

Source: Preamble to the Final Rule (65 FR 4020) (1/25/00)

Reference: 45 CFR 1356.21 (d); S. Rept. No. 336, 96th Congress, 2nd Session 16 (1980)

2 **Q:** Some States do not transcribe court hearings; rather, court clerks take "bench notes" during the course of a hearing. Are these "bench notes" acceptable for purposes of meeting the documentation requirements of 45 CFR 1356.21(d)?

A: No. Bench notes do not constitute acceptable documentation of judicial determinations. In accordance with the regulations, the only acceptable alternative documentation of judicial determinations, absent language in a court order, is a transcript of the court proceedings. We recommend that the State agency collaborate closely with the judicial system to assure that the necessary judicial determinations are made and appropriately recorded for children who must be removed from their homes.

Source: Questions and Answers on the Final Rule (65 FR 4020) (1/25/00)

Reference: 45 CFR 1356.21 (d)

3 **Q:** Please clarify whether a judicial determination to satisfy title IV-E eligibility criteria must use the exact terminology of "contrary to the welfare," "reasonable efforts to prevent removal" or "reasonable efforts to finalize a permanency plan."

A: Judicial determinations do not need to contain the exact language in the statute at section 472(a)(2)(A)(ii) of the Social Security Act (the Act) or regulations at 45 CFR 1356.21(b) and (c) to satisfy the title IV-E eligibility requirements. As specified in the preamble to the final rule published on January 25, 2000 (65 FR 4056), the judicial determinations must convey that the court has determined that the requisite findings have been made. If the judicial determination is not made in a court order, a transcript of the proceedings that indicates that the judicial determination was made is the only other acceptable documentation .

Source: 12/6/2007

Reference: Social Security Act ¿ 472(a)(2)(A)(ii); 45 CFR 1356.21; 65 FR 4056

8.3A.8 TITLE IV-E, Foster Care Maintenance Payments Program, Eligibility, Facilities requirements

No questions and answers are available at this time.

8.3A.8a TITLE IV-E, Foster Care Maintenance Payments Program, Eligibility, Facilities requirements, child-care institution

1 **Q:** When and under what conditions can a public agency or unit of government claim reimbursement under title IV-E for multiple facilities operated as licensed public child care institutions for 25 or fewer children?

A: Only public child-care institutions which are clearly and definitely separate entities serving 25 or fewer children are covered under the provisions in section 472 of the Social Security Act. Child care institutions operated by a public agency or unit of government must be separate entities that are managed or administered as individual programs complete in themselves.

In addition to a license or approval for 25 or fewer children, other criteria that are indicative of an independent, discrete facility are: (a) separate budget; (b) separate on-site management, including control over personnel, i. e. hiring and firing; (c) separate control over intake and discharge; (d) separate control over development of the child care program; and (e) separate identification of program/treatment purposes and goals.

Although cottages on the same plot of land are not considered to be separate entities, physical proximity to other facilities is not in itself a factor that would disqualify an institution that has otherwise demonstrated its autonomy. For example, a county may operate several small institutions throughout the county within a short distance from each other. If they are not on a common lot and do not share the same address or history of being one institution, it is possible that the costs of care in each facility may be allowable for FFP, if all other conditions, as outlined above, are met by the institution.

Source: ACYF-CB-PIQ-88-04 (7/19/88)

Reference: Social Security Act - section 472 (c)

2 **Q:** An inquiry from a State described a situation in which a local governmental unit is operating a residential child care facility that consists of several cottages on a common plot of land. One of the cottages, licensed by the State, has a licensed capacity of 25 or fewer children. Another cottage is also licensed, but for more than 25. The question is: are the costs of care in the cottage of 25 or less eligible for Federal financial participation (FFP), since it has an individual license and is not considered, for purposes of licensing, as a part of the other cottage housing more than 25 children?

A: No. Despite the fact the individual cottage is licensed for 25 or fewer children, it is considered to be part of a single larger institution. The cottages, as described, are located on a common plot of land and are operated and managed by a single administration. Decentralization of living units from one large building to several smaller cottages does not qualify the institution under the definition of "child-care institution" in section 472 (c) of the Social Security Act. Therefore, the costs of foster care maintenance for children living in a public institution of this type, with a total population of over 25, may not be claimed for FFP under title IV-E.

Congressional intent is clear in the Senate Committee Report (No. 96-336 p. 16): "the committee expects that the administration will closely monitor claims for reimbursement under this authority to assure that payments are not made with respect to care in large institutions which have made superficial changes, such as the establishment of a 'group home' wing within a larger institution. The committee intends that only institutions which are clearly and definitely separate entities serving 25 or fewer children will be covered by the provision."

In addition, the House Conference Report (No. 96-136 p.54) stated that foster care payments for children placed in large public institutions would be disallowed, "even though a wing on the institution, a dormitory, or a cottage on the grounds of the institution may have 25 or fewer residents."

Source: ACYF-CB-PIQ-88-04 (7/19/88)

Reference: Social Security Act - section 472 (c); House of Representatives Conference Report No. 96-136 and Senate Committee Report No. 96-336

3 **Q:** What is the operative definition of the term "primarily" when used to describe a facility for the detention of children?

A: Section 472 (c)(2) of the Social Security Act (the Act) defines "child-care institution". The word

"primarily" is used to modify the use of the facility for detention purposes. The following questions are asked when determining the "primarily" issue: (a) Who operates the facility? (b) For what purposes does it exist? (c) Is it licensed or approved? If so, for what use and by whom? (d) From whom does it receive its major financial resources? (e) What type of children are residents? (f) Would it be viable without the need to house children adjudicated delinquent? (g) Is the facility physically restrictive?

In addition to these questions, the Department would look to the specific facts of a given situation. However, it is important to keep in mind that separation of serious juvenile offenders from foster care children (including status offenders) is a most significant practice issue.

Source: ACYF-CB-PIQ-82-10 (8/11/82); ACYF-CB-PIQ-88-03 (4/11/88); 10/25/16

Reference: Social Security Act - sections 472; 45 CFR 1355.20

4 **Q:** Is Federal financial participation available for children placed in for-profit child-care institutions?

A: Formerly, title IV-E foster care maintenance payments for placements in child-care institutions were restricted to public or private nonprofit institutions. Effective August 22, 1996 with the enactment of the Personal Responsibility and Work Opportunity Reconciliation Act, title IV-E reimbursement became available for State foster care maintenance expenditures incurred through placements made in eligible private "for-profit" child-care institutions.

Source: ACYF-CB-PA-97-01 (7/25/97)

Reference: Social Security Act - section 472 (c)(2).

5 **Q:** If an otherwise eligible title IV-E child is placed in a child care institution that has locked living units for the child's benefit or safety, does this render the facility "physically restrictive," such that the child is ineligible for title IV-E?

A: Not necessarily. A facility that has locked living units may meet the Federal definition of a child care institution enabling the State to claim title IV-E on behalf of a child. The statute at section 472 (c)(2) of the Social Security Act requires the State to place the child in a child care

institution that meets certain statutory and regulatory requirements. The law stipulates that a child care institution shall not include detention facilities "or any other facility operated primarily for the detention of children who are determined to be delinquent". The definition of child care institution in Federal regulations at 45 CFR 1355.20 states that:

[A] Detention facility in the context of the definition of child care institution in section 472 (c)(2) of the [Social Security] Act means a physically restricting facility for the care of children who require secure custody pending court adjudication, court disposition, execution of a court order or after commitment.

It is clear that States may not claim title IV-E for a child if the facility is "physically restrictive" in that it is used primarily to detain children who require secure custody. If a facility is not used primarily for this purpose, but the facility has some restrictions for the benefit or safety of the child, then the State may make title IV-E claims on behalf of an otherwise eligible child placed there.

While the State may claim title IV-E for a child placed in a child care institution that is secured for his or her benefit or safety, we want to note one caveat. The Departmental Appeals Board (California Department of Social Services Decision No. 960) noted in its decision that "a mixture of detention and treatment is common in juvenile law." Adding a treatment component to a facility that is used primarily to secure delinquent children does not render the child care institution consistent with the strictures of title IV-E.

Source: 6/23/03

Reference: Social Security Act - Section 472 (c)(2); 45 CFR 1355.20; Departmental Appeals Board California Department of Social Services Decision No. 960.

6 **Q:** Under section 471(a)(10)(B) of the Act, there must be at least one "onsite official...designated to be the caregiver who is authorized to apply the reasonable and prudent parent standard" as a condition of a contract the title IV-E agency enters into with a child care institution. May the onsite official(s) be someone affiliated with the child's case (such as the child care institution's case manager for the child)?

A: Yes. Officials of the child care institution affiliated with the child's case, such as the child care institution's case manager, may be a designated "onsite" official. The person must be trained in how to use and apply the reasonable and prudent parent standard in the same manner as prospective foster parents are trained.

Source: 8/26/15

Reference: Social Security Act - Section 471(a)(10)(B)

8.3A.8b TITLE IV-E, Foster Care Maintenance Payments Program, Eligibility, Facilities requirements, foster family home

1 **Q:** Does the language in the first part of the definition: "Foster family home means the home of an individual or family..." modify the latter statement: "The term may include group homes...or other facilities?" For example, is corporate ownership of a group home precluded?

A: The sentence of the regulation at 45 CFR l355.20 which refers to group homes or boarding homes does not change the required nature of the facility, which must be the home of an individual or family. A group home owned and operated by a corporation would not be within the definition of a foster family home. A foster family group home or foster family boarding home, if it is licensed or approved as such by the State and it is the home of an individual or family, would be considered within the definition of "foster family home," whether payments are made to the individual, family, or to a public agency or non-profit child placement or child care agency (section 472(b)(1) of the Social Security Act).

Source: ACYF-CB-PIQ-87-04 (8/13/87)

Reference: Social Security Act - section 472; 45 CFR 1355.20 (a)

2 **Q:** The regulation at 45 CFR 1355.20 (a) which includes a definition of the term "foster family home" as " . . . the home of an individual or family licensed or approved by the State licensing or approval authority(ies), . . . The term may include group homes, agency operated boarding homes or other facilities licensed or approved for the purpose of providing foster care by the State agency responsible for approval or licensing of such facilities." Is it the intent of 45 CFR 1355.20 to open up the definition of foster family home to what is essentially institutional care (e.g., residential treatment)?

A: No. Title IV-E provides at section 472 (b) that foster care maintenance payments may be made on behalf of a title IV-E eligible child who is either: (1) in the foster family home of an individual; or (2) in a child-care institution.

It is not the intent of the regulation to equate residential treatment in a child care institution with foster family care.

Source: ACYF-CB-PIQ-87-04 (8/13/87)

Reference: Social Security Act - section 472 ; 45 CFR 1355.20

8.3A.8c TITLE IV-E, Foster Care Maintenance Payments Program, Eligibility, Facilities requirements, licensing

1 **Q:** Can the State waive some foster home standards or criteria for licensure or approval of relative foster homes?

A: Yes, in certain situations. In order to meet the requirements of section 471 (a)(10) of the Social Security Act, the State licensing authority must be responsible for establishing standards for foster family homes and child care institutions which are reasonably in accord with recommended standards of national organizations.

However, special situations may arise where there are grounds for waiving a requirement for an individual relative/foster parent on behalf of a foster child. For example, a relative's dwelling may contain 10% less square feet than necessary to meet normal licensing standards. In these exceptional circumstances, the reason for the waiver must be documented in the licensing/approval record for the foster home and the certification of licensure/approval must indicate its applicability only to the specific relative child.

All foster care licensing standards should provide equal protection in terms of safety,

sanitation, civil rights, and admission policies (where applicable) for all children in care, regardless of their special situations. Children living in the homes of relatives are entitled to no less protection than children living in non-relative foster homes.

Source: ACYF-CB-PIQ-85-11 (11/21/85)

Reference: Social Security Act - sections 471 (a)(10), and 472 (c)

2 **Q:** Must a foster home be licensed by the State or by a State-certified child placement agency for title IV-E payments to be properly made?

A: No. Although Federal financial participation (FFP) is available for the costs of foster care maintenance only in licensed or approved foster homes or child care institutions, the statute does not limit licensing authority to the State or a State-certified child placement agency. Foster care facilities may be licensed by the State agency responsible for licensing, by other agencies under contract with the title IV-B/IV-E agency, or by Indian Tribal licensing authorities.

The statute at section 472 does not mention Indian Tribes; however, the regulation at 45 CFR l355.20, in defining "foster family home," makes clear that with respect to foster family homes on or near reservations, such homes may be licensed or approved by the Tribal licensing or approval authority(ies). The Indian Child Welfare Act of 1978 at 25 U.S.C. 1931 (b) expressly provides that, for purposes of qualifying for Federal funds under any Federally assisted program, " . . . licensing or approval of foster or adoptive homes or institutions by an Indian tribe shall be deemed equivalent to licensing or approval by a State." In Native Village of Stevens v. Smith, 770 F.2d l486 (9th Cir., 1985), the Court held that: "Congress clearly intended by this section 193l(b) that tribal approval be recognized as equivalent to State licensing or approval." Stevens at 1488.

Source: ACYF-CB-PIQ-87-01 (3/25/87)

Reference: Social Security Act - section 472; 45 CFR 1355.20; 25 U.S.C. of the Indian Child Welfare Act

3 ***Q:*** Must a Tribal foster home meet State licensing standards or be a "relative home" in order to be eligible for payments under title IV-E?

A: Foster homes on or near an Indian reservation or "relative homes" must meet either State licensing standards or Indian Tribal licensing standards.

Source: ACYF-CB-PIQ-87-01 (3/25/87); Preamble to the Final Rule (65 FR 4020) (1/15/00)

Reference: Social Security Act - section 471 (a)(10); 45 CFR 1355.20; 25 U.S.C. of the Indian Child Welfare Act

4 ***Q:*** Both sections 401 (c)(1)(A) and 411 (c)(1)(A) of the Personal Responsibility Work Opportunity Reconciliation Act (PRWORA) define Federal, State, and local public benefits to include professional or commercial licenses. Is a foster care or adoptive home license/approval considered a Federal, State, or local public benefit?

A: No. Foster care and adoptive home licenses/approvals are not considered a Federal, State or local public benefit under sections 401(c)(1)(A) and 411(c)(1)(A) of PRWORA because they are not professional or commercial licenses.

Source: ACYF-CB-PIQ-99-01 (1/14/99)

Reference: Social Security Act - Titles IV-B and IV-E; the Personal Responsibility Work Opportunity Reconciliation Act (PRWORA) (PL 104-193)

5 ***Q:*** May a State maintain separate systems that "license" one category of foster family homes, e.g., non-relatives, and "approves" another category, e.g., relatives, as long as both systems adhere to the same standards?

A: Regardless of the term used to denote full licensure or approval, the statute and the regulation require that the State use the same standards to license or approve all foster homes, and the standards used must comprise full licensure or approval of the homes, including all applicable safety requirements. Some States have applied the terms "licensed" and/or "approved" to foster family homes that have complied with the States' requirements to provide foster care for

children under the States' care and placement responsibility. At times, State requirements for "licensure" and "approval" have been different, particularly in their applicability to related and non-related foster family homes. While States may continue to use two different terms to denote licensure or approval of homes, the benefits of doing so are unclear, as the same standards must be used for all homes.

Source: *Questions and Answers on the Final Rule (65 FR 4020) (1/25/00)*

Reference: *Social Security Act - section 471 (a)(10); 45 CFR 1355.20*

6 **Q:** The regulations permit States to claim title IV-E reimbursement made for children placed in foster family homes for a period of time, up to 60 days, between the date the foster family homes meets all the licensing or approval criteria and the date the agency issues the license or approval. When does the 60-day period begin?

A: We recognize that certain administrative procedures may delay the actual issuance of a license beyond the date that all of the required documentation is received by the agency. The 60-day period begins when the agency has, in hand, all of the documentation required to issue a license, based on full compliance with the agency's licensing standards.

Source: *Questions and Answers on the Final Rule (65 FR 4020) (1/25/00)*

Reference: *45 CFR 1355.20*

7 **Q:** We understand the prohibition on claiming FFP for title IV-E foster care maintenance payments on behalf of children placed in foster family homes that are not fully licensed or approved. In situations where a foster home that has a full license or approval is placed on "probation" due to some factor that must be corrected, but maintains the license or approval during the probationary period, can the State claim FFP under title IV-E during the probationary period?

A: The purpose of requiring full licensure or approval of all foster family homes is to assure that the State's licensure or approval standards, including those that protect the health and safety of children, are applied to all foster homes that care for children. If a foster family home is placed on probation due to lack of compliance with a licensing or approval standard, the State may not claim FFP for foster care maintenance payments during the time that the foster home does not comply with the standards. However, if the home meets all of the licensure or

approval standards but is on probation only in the sense that it is a newly licensed home requiring more frequent supervision by the agency, the period of probation would not preclude title IV-E foster care payments being made on behalf of an eligible child in the home.

Source: *Questions and Answers on the Final Rule (65 FR 4020) (1/25/00)*

Reference: *Social Security Act - section 471 (a)(10); 45 CFR 1355.20*

8 **Q:** What is an example of a two-tiered system of licensing, and how does that apply to training foster families?

A: A two-tiered system of licensing is one in which different licensing standards are applied to different groups of foster family homes. For example, different standards for related foster family homes and non-related foster family homes, as well as for "provisional" foster family homes that have not yet met all required standards for full licensure, are two-tiered systems. If a State maintains certain training requirements as a standard to be met for full licensure, the standard must be applied to all foster family homes licensed or approved by the State.

Source: *Questions and Answers on the Final Rule (65 FR 4020) (1/25/00)*

Reference: *Social Security Act - section 471 (a)(10); 45 CFR 1355.20*

9 **Q:** By what authority are Tribes restricted to licensing homes that are on or near Indian reservations?

A: Section 1931 of the Indian Child Welfare Act (ICWA) authorizes Indian tribes and tribal organizations to establish and operate child and family services programs "on or near reservations," including a system for licensing or otherwise regulating Indian foster and adoptive homes. We use this language at section 1355.20 of the regulations to remain consistent with the ICWA.

Source: *Preamble to the Final Rule (65 FR 4020) (1/25/00)*

Reference: *Social Security Act - 45 CFR 1355.20; 25 U.S.C. of the Indian Child Welfare Act*

10 **Q:** Must foster family homes approved through the tribal process meet the same standard as homes licensed by the State?

A: The definition of "foster family home" at section 1355.20 of the regulations gives tribal licensing or approval authorities the jurisdiction to license or approve homes that are on or near Indian reservations. This is consistent with the Indian Child Welfare Act at section 1931(b) which states that for purposes of qualifying for funds under a Federally assisted program, licensing or approval of foster or adoptive homes or institutions by an Indian tribe is equivalent to licensing or approval by a State. The authority to license or approve includes the authority to set standards.

Source: Preamble to the Final Rule (65 FR 4020) (1/25/00)

Reference: Social Security Act - 45 CFR 1355.20; 25 U.S.C. of the Indian Child Welfare Act

11 **Q:** Licenses for foster family homes and child-care institutions often go into effect or may lapse on a day other than the first or last day of the month. How should the State claim Federal financial participation (FFP) for a title IV-E eligible child who is placed in a foster family home or child-care institution that is licensed for a portion of a month?

A: If a foster family home or child-care institution is licensed for a portion of a month, the State may claim FFP for the entire month when an otherwise eligible child has resided in that home for the entire month. The State must prorate any claims when the otherwise eligible child has resided in the home or institution for a portion of the month.

Source: Questions and Answers on the Final Rule (65 FR 4020) (1/25/00)

Reference: Social Security Act - section 471 (a)(10)

12 **Q:** Can a State claim title IV-E reimbursement for an eligible child placed in a child-care institution that has a provisional license? Can the State claim title IV-E if the child care institution has a probationary license due to a violation of State procedures?

A: If a child-care institution is granted a provisional license or placed on probationary status due to its failure to fully satisfy all of the State's licensing standards, then children placed in such facility are not eligible for title IV-E foster care maintenance payments. The child-care institution becomes eligible for Federal financial participation when it comes into full compliance with the State's licensing standards.

Source: Questions and Answers on the Final Rule (65 FR 4020) (1/25/00)

Reference: Social Security Act - section 471 (a)(10)

13 **Q:** Does the law require that licensed child-placing agencies in a State use the same foster home licensing standards as the State?

A: Yes. Section 471(a)(10) of the Act requires that the State licensing authority establish licensing standards and apply those standards to any foster family home or child care institution receiving funds under titles IV-B or IV-E of the Act. Furthermore, 45 CFR 1355.20 requires a State to apply the foster care licensing standards to all foster family homes for which it claims Federal financial participation. The only exception to these requirements is for foster family homes on or near Indian reservations, which may be licensed or approved in accordance with standards established by the tribal licensing or approval authority. The fact that a child-placing agency is conducting licensing activities on behalf of a State does not diminish the requirement for the State to apply the licensing standards equally to all foster family homes. Failure of the State to comply with this requirement will be considered a State plan compliance issue.

The law does not preclude the State or child-placing agency from establishing additional criteria above and beyond basic State licensing requirements for different levels of care to meet children's needs. For example, the State may license or approve all foster family homes according to the same minimum standards but require additional criteria for foster families that will provide therapeutic care or care for fragile children with special medical needs. As long as the State or child-placing agency adheres to the State's basic licensing standards, the State meets the requirements of section 471(a)(10) of the Act.

Source: *8/16/02*

Reference: *Social Security Act section 471(a)(10); 45 CFR 1355.20*

14 Q: May a State claim title IV-E reimbursement on behalf of an otherwise eligible child when a State¿s licensure requirements are met as the result of a "variance"?

A: Under specific circumstances, a State may claim title IV-E reimbursement on behalf of an otherwise eligible child when a State?s licensure requirements are met through a ?variance?. For title IV-E purposes, a ?variance? is a mechanism that allows the State to meet a standard for licensure in a way other than is specified in the rule that governs licensure in that State. A ?variance? is acceptable on a case-by-case basis only if the State has the authority to permit "variances", the purpose of the State?s licensing standard is achieved, and the safety of the child is maintained. A ?variance? constitutes an alternative equivalent method to meet the standard. For example, a "variance" may be granted when a foster family?s well does not have potable water, and the family purchases bottled water for drinking. The State?s "variance" from the original rule still meets the State?s licensing requirement that the home is able to provide safe drinking water.

Source: *September 29, 2005*

Reference: *45 CFR 1355.20(a)*

15 Q: May a State claim title IV-E foster care maintenance payments on behalf of an otherwise eligible child who is in a pre-adoptive placement with an adoptive family if the family does not meet the State's foster care license/approval requirements but does meet the State's adoptive home license/approval requirements?

A: No. The State may not claim title IV-E foster care maintenance payments for the child because the child is not in a licensed/approved foster family home as required in section 472(b)(1) of the Social Security Act (the Act). Although the child is in a home that meets the State's adoptive home approval requirements, the requirement in section 472(b)(1) of the Act that the child be placed in a licensed/approved foster family home is not met.

However, if the child meets the adoption assistance eligibility requirements in section 473(a)(2) of the Act, the State may claim for title IV-E adoption assistance payments paid on the child's behalf once an adoption assistance agreement has been signed by all parties prior to finalization.

Source: April 6, 2006

Reference: Social Security Act - sections 472(b) and 473(a)

16 Q: In response to a question about foster care provider licenses that go into effect or lapse on a day other than the first or last day of the month, section 8.3A.8c of the Child Welfare Policy Manual (CWPM), Q/A #11, states that "[i]f a foster family home or child-care institution is licensed for a portion of a month, the State may claim Federal financial participation (FFP) for the entire month when an otherwise eligible child has resided in that home for the entire month." Does this same policy apply in situations where a foster care provider's license is revoked at some point during the month?

A: No. Although it has been long-standing policy that FFP can be claimed from the first day of placement in the month in which all eligibility criteria have been met, such policy does not extend to situations in which a foster care provider's license or approval has been revoked. Revocation of a license/approval implies that the State has rescinded, withdrawn or otherwise invalidated the provider?s license or approval. Therefore, instead of the Q/A referred to in the question, section 8.3A.8c of the CWPM, Q/A #7, more appropriately applies to this circumstance. This Q/A responds to a question about whether FFP can be claimed in situations where a fully licensed foster home has been placed on probation. The response, in part, states that, "[i]f a foster family home is placed on probation due to lack of compliance with

a licensing or approval standard, the State may not claim FFP for foster care maintenance payments during the time that the foster home does not comply with the standards." Accordingly, a State cannot claim FFP for foster care maintenance payments beyond the date of revocation of a foster care provider's license or approval. A State may, however, claim a full month of administrative costs in accordance with the State's cost allocation plan.

Source: 8/7/2006

Reference: 45 CFR 1355.20 (definition of foster family home); Child Welfare Policy Manual, Section 8.3A.8c, Q/A #7 and Q/A #11

17 Q: May a State claim administrative costs during the unlicensed period that a child is placed in a foster family home whose license has expired, but is in the process of renewal?

A: Under certain circumstances, it is possible that the State may claim administrative costs in this situation. Please see section 8.3A.8c, question 11 of the Child Welfare Policy Manual in which we allow the State to claim administrative costs for the entire month when an otherwise eligible child has resided in a home for the entire month, even if it is only licensed for a portion of the month. Furthermore, if the State's policies allow an expired license to remain in effect until renewed, the child placed in such a home is considered placed in a licensed foster family home, and the State may claim Federal Financial Participation (FFP) during that period. If, however, the State does not consider the expired license to remain in effect, the State may not claim FFP from the beginning of the month after the license expired until the beginning of the month in which the license is re-issued.

Source: 04/26/07

Reference: Social Security Act ¿ section 471(a)(10), Child Welfare Policy Manual ¿ section 8.3A.8c, question 11

18 ***Q:*** When a child is placed in foster care outside the State that has placement and care responsibility, must the foster family home be licensed by the State in which it is situated for title IV-E eligibility purposes? Will it be considered an error case on a title IV-E eligibility review if a foster family home is not licensed by the State in which it is situated?

A: Yes to both questions. In order for a child to be eligible for title IV-E foster care maintenance payments, the statute requires that the foster family home or child care institution be licensed by the State licensing authority in the State in which the home is situated. Section 472(c)(1) of the Social Security Act (the Act) defines foster family home as "a foster family home for children which is licensed by the State in which it is situated or has been approved, by the agency of such State having responsibility for licensing homes of this type, as meeting the standards established for such licensing." The definition for a child care institution in 472(c)(2) of the Act similarly requires licensing or approval by the State in which it is situated. See the CWPM Section 8.3A.8c, Q/A #2 for the situations in which a Federally-recognized Indian tribal licensing authority may license a foster family homes for title IV-E purposes.

If during a title IV-E eligibility review, we find that a foster care maintenance payment has been made during the period under review for a child placed in a home (or child care institution) not licensed or approved by the State in which it is situated, the case will be found in error. If we find such payments were made outside the period under review, the ineligible payments will be disallowed.

Source: 11/14/07

Reference: Social Security Act ¿ section 472(c)

19 Q: If a State's license or approval of a private child-placing agency expires but that agency continues to license/approve foster family homes on behalf of the State, will the Administration for Children and Families (ACF) consider such homes fully licensed or approved according to State standards for title IV-E eligibility purposes?

A: Section 472(c) of the Social Security Act (the Act) requires a foster family home to be licensed or approved in accordance with section 471(a)(10) of the Act by the agency of the State that has responsibility for licensing such homes. Therefore, as long as the State considers the foster family home licensed, ACF will consider the title IV-E eligibility requirement met.

Source: 12/31/07

Reference: Social Security Act ¿ sections 471(a)(10) and 472(c)

20 Q: Are title IV-E agencies required to include the reasonable and prudent parent standard in foster care licensing standards (as defined in section 475(10) of the Social Security Act (the Act) and referenced in section 471(a)(10) of the Act regarding the licensing standards)? And are foster parents and designated officials for a child care institution then required to apply it?

A: Yes to both questions. Section 471(a)(10) of the Act requires title IV-E agencies to amend their standards for foster care to permit caretakers to use the reasonable and prudent parenting standard, and foster parents and designated officials for a child care institution must apply the standard as described in law at section 475(10)(A) of the Act. Specifically, the Act defines "reasonable and prudent parent standard" to mean "the standard characterized by careful and sensible parental decisions that maintain the health, safety, and best interests of a child while at the same time encouraging the emotional and developmental growth of the child, that a caregiver shall use when determining whether to allow a child in foster care...to participate in extracurricular, enrichment, cultural, and social activities."

Source: 6/5/2015

Reference: Social Security Act – sections 471(a)(10), 475(10)

21 **Q:** Under section 471(a)(10)(B) of the Act, there must be at least one "onsite official...designated to be the caregiver who is authorized to apply the reasonable and prudent parent standard" as a condition of a contract the title IV-E agency enters into with a child care institution. May the onsite official(s) be someone affiliated with the child's case (such as the child care institution's case manager for the child)?

A: Yes. Officials of the child care institution affiliated with the child's case, such as the child care institution's case manager, may be a designated "onsite" official. The person must be trained in how to use and apply the reasonable and prudent parent standard in the same manner as prospective foster parents are trained.

Source: 8/26/15

Reference: Social Security Act - Section 471(a)(10)(B)

8.3A.8d TITLE IV-E, Foster Care Maintenance Payments Program, Eligibility, Facilities requirements, supervised independent living

1 **Q:** May a title IV-E agency consider a youth age 18 or older who is residing in the same home as his/her parent or guardian to be in an allowable title IV-E supervised independent living setting if paired with title IV-E agency supervision?

A: Yes. A title IV-E agency may develop a range of supervised independent living settings as long as those settings can be reasonably interpreted as consistent with the law at section 472(c)(2). It is within the title IV-E agency's discretion to determine that residing with a parent or guardian is an allowable supervised independent setting provided that the title IV-E agency is providing supervision. In this arrangement, the parent or guardian is not the foster care provider for the youth, nor has the agency returned the youth home to live under the care of his/her parent or legal guardian.

For example, the title IV-E agency may consider a youth who normally resides in a dorm during college who then lives in a room in the home of his/her parent during breaks from college, or a youth who takes classes and rents a basement room from his/her guardian to be in allowable supervised independent living settings when paired with agency supervision. Ultimately, it is up to the title IV-E agency to consider the circumstances of the youth and the supervised independent living arrangement to determine whether it would be an appropriate and allowable independent living setting.

Source: 05/06/2013

Reference: Social Security Act ¿ section 472(c)(2); ACYF-CB-PI-10-11

2 ***Q:*** May a title IV-E agency consider a youth age 18 or older who is residing in a substance abuse, mental health or other adult residential treatment facility to be in a supervised independent living setting for title IV-E purposes?

A: It depends. Title IV-E agencies have the discretion to develop a range of supervised independent living settings for youth age 18 or older which can be reasonably interpreted as consistent with the law at section 472(c)(2). A title IV-E agency may consider a substance abuse, mental health or other adult treatment facility to be a supervised independent living setting only if the youth is living in the facility voluntarily. In addition, this arrangement must be paired with title IV-E agency supervision.

Source: 05/06/2013

Reference: Social Security Act ¿ section 472(c)(2); ACYF-CB-PI-10-11

8.3A.9 TITLE IV-E, Foster Care Maintenance Payments Program, Reasonable efforts

1 ***Q:*** What is the statutory basis for treating a judicial determination that the State made reasonable efforts to prevent the child's removal from his/her home, to reunify the child and family, and to make and finalize an alternate permanent placement when the child and family cannot be reunited as title IV-E eligibility criteria?

A: Section 472 (a)(2)(A)(ii) of the Social Security Act (the Act) contains two eligibility criteria. The first pertains to the child's removal from home. Such removal must be based on a judicial determination that it was contrary to the child's welfare to remain at home. The second eligibility criterion requires a judicial determination that the State made reasonable efforts of the type described in section 471(a)(15) of the Act. Section 471(a)(15) of the Act requires the State agency to make reasonable efforts to prevent the child's removal from his/her home, to reunify the child and family, and to make and finalize an alternate permanent placement when the child and family cannot be reunited. The requirements for judicial determinations regarding reasonable efforts are title IV-E eligibility criteria. If the eligibility criteria are not satisfied, the child is not eligible for title IV-E funding.

Source: *Preamble to the Final Rule (65 FR 4020) (1/25/00); 7/17/2006*

Reference: *Social Security Act - sections 471 (a)(15) and 472 (a)(2)(A)(ii); 45 CFR 1356.21 (b) and (d)*

2 ***Q:*** May a State receive an extension to the time frames prescribed in the regulation for obtaining judicial determinations regarding reasonable efforts to address the problem of continuances?

A: We are sympathetic to the issue of continuances. However, we believe that the need for timely judicial determinations is more appropriately addressed by building capacity through training judges and attorneys rather than extending the time frames for satisfying title IV-E eligibility criteria. Therefore, no extensions may be granted.

Source: *Preamble to the Final Rule (65 FR 4020) (1/25/00)*

Reference: *45 CFR 1356.21 (b)*

3 ***Q:*** May a checklist be used to document the reasonable efforts requirements?

A: The regulations, at section 1356.21 (d), requires judicial determinations to be explicit, and made on a case-by-case basis. This requirement is made to assure that the individual circumstances of each child before the court are properly considered in making judicial determinations. If the State can demonstrate that such determinations are made on a case-by-case basis and documented through a checklist, that will be considered acceptable in a title IV-E foster care eligibility review.

Source: *Questions and Answers on the Final Rule (65 FR 4020) (1/25/00)*

Reference: *45 CFR 1356.21 (d)*

8.3A.9a TITLE IV-E, Foster Care Maintenance Payments Program, Eligibility, Reasonable Efforts to Finalize a Permanency Plan

1 ***Q:*** We understand that the timing for obtaining the initial judicial determination related to making reasonable efforts to finalize/achieve a permanency plan is based on the date the child is considered to have entered foster care. Are subsequent judicial determinations to be obtained based on the date the child is considered to have entered foster care or within 12 months of the date the judicial determination actually was obtained?

A: The statute requires that the judicial determination of reasonable efforts to finalize/achieve a permanency plan be obtained no later than 12 months from the date the child is considered to have entered foster care and at least once every 12 months thereafter while the child is in foster care. Accordingly, States must use the date of the last judicial determination for a child to determine the date the next one is due. In no circumstance may the interval between these judicial determinations exceed 12 months. If a judicial determination regarding reasonable efforts to finalize a permanency plan is not made within the time frame prescribed above, the child becomes ineligible under title IV-E at the end of the month in which the judicial determination was required to have been made and remains ineligible until such a determination is made.

Although the permanency hearing may serve as the mechanism for obtaining the judicial determination of reasonable efforts to finalize/achieve a permanency plan, there is no requirement that the judicial determination be made at a permanency hearing. The court may make such a judicial determination, based upon evidence presented to it by the State, without a formal hearing.

Source: 06/09/04

Reference: Section 471(a)(15)(B) of the Social Security Act, 45 CFR 1355.20 and 1356.21(b)(2).

2 **Q:** Regarding the reasonable efforts to finalize judicial determination: Is the State required to look at the permanency plan in effect at the time the judicial determination is due to see if the court order addresses that specific plan in its reasonable efforts judicial determination?

A: No. The State is not required to reconcile the permanency plan in effect at the time the judicial determination is due with the reasonable efforts determination itself. In order to sustain a child's ongoing title IV-E foster care eligibility, the court must make a judicial determination of reasonable efforts to finalize a permanency plan within 12 months from the date the child is considered to have entered foster care and at least once every 12 months thereafter while the child remains in foster care. We have indicated that we will not instruct courts on the criteria they are to use to make the judicial determination. At the same time, however, we recognize the significance of the provision as it relates to moving a child toward permanency. The courts, therefore, may rule on the plan that is in effect at the time of the finding, a plan that has been in effect for a brief period of time, or the activities related to achieving permanency that took place over the prior 12 months, even if the plan had been abandoned during that 12-month period. In any event, the judicial determination should reflect the court?s judgment as to whether the agency activities that were performed during the previous 12 months were meaningful in bringing about permanency for the child.

Source: 7/6/05

Reference: Social Security Act -- Section 471 (a)(15), 45 CFR 1356.21(b)(2), 1356.71(d)(1)(i)

3 ***Q:*** Is the State required to obtain a judicial determination regarding reasonable efforts to finalize a permanency plan in accordance with 45 CFR 1356.21(b)(2) for a child placed in foster care as a result of a voluntary placement agreement?

A: No. A judicial determination regarding reasonable efforts to finalize a permanency plan is required only for children removed from their homes via court action (section 472(a)(2)(A)(ii) of the Social Security Act (the Act)). Although a judicial determination regarding reasonable efforts to finalize a permanency plan is not required, the State must comply with the State plan requirements to provide reasonable efforts for all children as described in section 471(a)(15) of the Act, including those children who are voluntarily placed.

Source: April 6, 2006

Reference: Social Security Act - sections 472(a)(2)(A)(ii) and 471(a)(15); 45 CFR 1356.21(b) and (2) and 1356.22

4 ***Q:*** What are the criteria for determining whether a child is ineligible for a title IV-E foster care maintenance payment with respect to the requirement that a judicial determination regarding reasonable efforts to finalize a permanency plan be made within 12 months of the date the child is considered to have entered foster care and every 12 months thereafter? For example, is a child ineligible from the date the determination is due until such time as the date the determination is made?

A: Consistent with the regulation at 45 CFR 1356.21(b)(2)(ii), if a judicial determination regarding reasonable efforts to finalize a permanency plan is not made in accordance with the prescribed schedule, the child becomes ineligible for title IV-E at the end of 12th month following the date the child is considered to have entered foster care or the end of the 12th month from the most recently obtained judicial determination regarding reasonable efforts to finalize a permanency plan. If the reasonable efforts to finalize a permanency plan determination subsequently is made later for the otherwise eligible child, the State can claim Federal financial participation (FFP) under title IV-E foster care from the beginning of the month in which the judicial determination was made. See section 8.3A.15 of the Child Welfare Policy Manual, Q/A#1.

We offer the following example to clarify the policy:

If the judicial determination regarding reasonable efforts to finalize a permanency plan is due September 10, 2004, but not held until October 18, 2004, the State may claim FFP on behalf of an otherwise eligible child without interruption. Consistent with the regulation cited above, the

child is eligible until the end of the 12th month in which the determination is due. Therefore, in this example, the child is eligible through September 2004, which is the month in which the determination was due. Further, in accordance with long-standing Departmental policy, once all eligibility criteria are met for a child, a State may claim Federal financial participation for a child from the first day of placement in the month in which all title IV-E eligibility criteria are met. Therefore, the child would continue to be eligible for title IV-E benefits from October 1, 2004, since the determination was made in October 2004.

It should be noted that for a child who entered foster care prior to March 27, 2000 (the effective date of the Final Rule which established the reasonable efforts to finalize a permanency plan requirement at 45 CFR 1356.21(b)(2)), the concept of "the date the child is considered to have entered foster care" is nonexistent. For those children, the initial reasonable efforts to finalize a permanency plan judicial determination was due no later than March 27, 2001.

Source: 8/7/2006

Reference: Social Security Act ¿ section 471(a)(15)(B)(ii); 45 CFR 1356.21(b)(2)(ii); 65 FR 4052; Child Welfare Policy Manual Section 8.3A.15 Q/A#1

5 **Q:** When a child in foster care is placed in another State and the sending State transfers the child's placement and care responsibility to the receiving State¿s title IV-B/IV-E agency, does the "clock" re-start for determining when the case review requirements or reasonable efforts to finalize a permanency plan are due?

A: No. The "clock" for the case review requirements and reasonable efforts to finalize a permanency plan judicial determination begins on the date the child is considered to have entered foster care (section 475(5)(F) of the Social Security Act, 45 CFR 1355.20 and 1356.21(b)(2)). The date the child is considered to have entered foster care is the earlier of the date of the first judicial finding that the child has been subjected to child abuse or neglect, or the date that is 60 days after the child's removal from the home. The child's transfer from one State to another does not alter either date. Moreover, we believe that not extending the timeframes for carrying out the protections in such circumstances is consistent with a child's sense of time and the statute?s emphasis on timely permanency for children.

Source: 09/05/07

Reference: Social Security Act - section 475(5)(F); 45 CFR 1355.20 and 1356.21(b)(2)

8.3A.9b TITLE IV-E, Foster Care Maintenance Payments Program, Reasonable efforts, to prevent a removal

1 **Q:** Does the initial "reasonable efforts to prevent removal" determination affect the child's initial eligibility for title IV-E foster care payments, or does this determination constitute FFP criteria for claiming foster care maintenance payments?

A: Pursuant to the regulations at section 1356.21(b) (1) (ii), judicial determinations regarding reasonable efforts to prevent removal must be made in accordance with the criteria and time frames specified therein, or the child is not eligible under the title IV-E foster care maintenance payments program for the duration of that stay in foster care.

Source: Questions and Answers on the Final Rule (65 FR 4020) (1/25/00)

Reference: Social Security Act - section 472 (a)(2)(A)(ii); 45 CFR 1356.21 (b)

2 **Q:** When must the "reasonable efforts to prevent removal" criteria be met; in the initial court order that removes the child or 60 days from the date the child is removed?

A: Pursuant to 45 CFR 1356.21 (b)(1)(i), the State agency must obtain a judicial determination that it either made or was not required to make reasonable efforts to prevent a child's removal from the home no later than 60 days from the date the child was removed from the home. However, the State agency may obtain such a determination earlier than 60 days from the date of removal.

Source: Questions and Answers on the Final Rule (65 FR 4020) (1/25/00)

Reference: Social Security Act - section 471 (a)(15); 45 CFR 1356.21 (b)

3 **Q:** Title IV-E eligibility for an entire foster care episode is prohibited if the reasonable efforts to prevent removal requirements are not satisfied. Please explain the rationale for this policy.

A: The requirement for the State to make reasonable efforts to prevent removals is a fundamental protection under the Social Security Act and one of several criteria used in establishing title IV-E eligibility. From both a practice and an eligibility perspective, it is impossible for the State to provide efforts to prevent the removal of a child from home after the fact.

From a practice perspective, the removal of a child from the home, even temporarily, makes a profound impact on a family that cannot be undone. If the child is returned after services have been delivered, or even immediately, the State has reunified the family, not prevented a removal.

The statute requires that title IV-E eligibility be established at the time of a removal. If the State does not make reasonable efforts to prevent a removal or fails to obtain a judicial determination with respect to such efforts, the child can never become eligible for title IV-E funding for that entire foster care episode because there is no opportunity to establish eligibility at a later date.

Source: Preamble to the Final Rule (65 FR 4020) (1/25/00)

Reference: 45 CFR 1356.21 (b)(1)

4 ***Q:*** For title IV-E eligibility purposes, will the Administration for Children and Families accept a judicial determination that efforts to prevent removal or reunify the family were not necessary for a reason other than those described in 45 CFR 1356.21(b)(3)?

A: Yes. We addressed this issue in the 1998 preamble to the Proposed Rule on Title IV-E Foster Care Eligibility Reviews and Child and Family Services State Plan Reviews (63 FR 50057, 50073). It states that "[w]hile we recognize that concern for the child's safety may preclude efforts to prevent removal, the court must make a reasonable efforts determination. Even when children are removed in emergency situations, the court must consider whether appropriate services were or should have been provided. When the court determines that it was reasonable for the agency to make no effort to provide services to prevent removal [or to return the child home] in light of exigent circumstances discovered through assessment of the family, such as the safety or protection of the child, there must be a judicial determination to that effect." Thus, if there is a judicial determination to the effect that efforts to prevent removal or reunify the family have not been made due to the immediate danger to the child, or that the lack of efforts is appropriate due to the particular circumstances of the case, the reasonable efforts requirements in 45 CFR 1356.21(b)(1) and (2) will be satisfied.

Source: 12/31/07

Reference: 45 CFR §1356.21(b); Title IV-E Foster Care Eligibility Reviews and Child and Family Services State Plan Reviews (63 FR 50057, 50073; 65 FR 4020, 4053)

8.3A.9c TITLE IV-E, Foster Care Maintenance Payments Program, Reasonable Efforts, Qualifying Language in Court Orders

1 ***Q:*** Some States have begun to use qualifying language in court orders, which restricts the purpose of the reasonable efforts findings to title IV-E funding purposes only. For example, in one State, the court annotates its orders with the phrase "for Federal funding purposes only" in order to address parental concerns that the order is entered without prejudice. Another State proposes adding language to the court order that "the title IV-E judicial determination shall not be given any effect in subsequent court proceedings." Is the use of qualifiers to the judicial determination of reasonable efforts allowable under title IV-E?

A: No. It is not permissible for a State to use such restrictive language in making the required judicial findings. When a judicial determination is qualified by language stating or implying that it has been made for the purpose of Federal funding only or that it has no precedential effect, then a bona fide judicial determination has not been made. An official notation that a finding is for a limited purpose only suggests that it must be "re-made" in order for it to become valid.

This policy is consistent with legislative history and was addressed in the preamble to the 2000 regulations, which quote S. Rep. No. 336, 96th Cong., 2d Sess. 16 (1980) and make the point that the required judicial determinations should not become "...a mere pro forma exercise in paper shuffling to obtain Federal funding..." (pg. 4056, 65 Fed. Reg.).

Court orders containing judicial determinations qualified by restrictive language such as that described above will not satisfy title IV-E eligibility requirements for Federal financial participation (FFP).

Source: 7/6/05

Reference: Social Security Act -- Sections 471(a)(15)(B) and 472(a)(2)(A)(ii)

8.3A.10 TITLE IV-E, Foster Care Maintenance Payments Program, Eligibility, Redeterminations

1 *Q:* We believe failure to hold a timely redetermination of title IV-E eligibility is a program issue, not an eligibility issue. Is this correct?

(Deleted 04/27/2010)

2 *Q:* How does a title IV-E agency determine when it must re-establish a child¿s eligibility for foster care? What is required after a break in a foster care placement in those cases where there is no new court ordered removal from the home and no break in title IV-E agency responsibility for placement and care? Examples of situations are as follows: (a) A child in foster care goes to the State training school and then back to foster care; (b) A child in foster care goes to live with a relative (not parent) under title IV-E agency supervision, and then back to foster care; (c) A child in foster care goes home under title IV-E agency supervision without a change in court order and then returns to foster care.

A: The criteria to be used in determining whether re-establishing a child's eligibility for foster care maintenance payments under title IV-E would be required hinges on whether the child is continuously in foster care status and remains under the responsibility of the title IV-E agency for placement and care. In making this determination, the agency would ask: (1) Is the child in foster care? (2) Is the original court order or voluntary placement agreement still in effect in relation to removal of the child from his home? (3) Is the child still under the responsibility of the title IV-E agency for placement and care? If all of these conditions are in effect, even though there has been a temporary interruption of the foster care placement, the child?s title IV-E eligibility does not need to be re-established.

If the child is discharged from foster care and returned to his own home (the home from which he was removed), he could not be considered to be in foster care status, even if the agency maintains a supervisory role with the child and family. If the child leaves foster care to live with a relative, the agency would need to determine whether the child remained in foster care status or whether the home of the relative was now considered to be the child's own home. Short trial visits to a child's home would not be considered interruptions in foster care status. In the event the child returns home (for what is expected to be a permanent period), but is later returned to foster care, a new determination of eligibility based on circumstances at the time of that placement would be required. If the child leaves the foster home and is placed in the State training school for a temporary period, and the court order of removal is still in effect, he may retain his foster care status during the training school placement. Of course, Federal financial participation is allowed only during the time the child is in a licensed or approved foster care facility.

Source: ACYF-CB-PIQ-85-06 (6/5/85); April 6, 2010

Reference: Social Security Act - section 472

3 ***Q:*** During the time the child is receiving title IV-E foster care payments, the parental rights of his parents are terminated. The child is subsequently moved into a residential care facility which is not eligible to receive foster care payments and the title IV-E case is discontinued. Later, he is again placed into a foster home and reapplication for title IV-E foster care is made.

In considering eligibility for this reapplication, the deprivation at the time of court action, found initially and verified under the old foster care case, can be utilized. However, to meet the requirement of "continues to be eligible", must deprivation with regard to the biological parents again be established or may the termination of parental rights be used to constitute deprivation?

(Deleted 04/27/2010)

8.3A.11 TITLE IV-E, Foster Care Maintenance Payments Program, Eligibility, Removal from the home/living with

1 ***Q:*** We are confused by the term "constructive removal"? Please explain the term and its implications for the title IV-E program.

A: To be eligible for title IV-E funding, a child must, among other things, be removed from the home of a relative as the result of a voluntary placement agreement or a judicial determination that continuation in the home would be contrary to the child's welfare. The statute allows a six-month period of time during which the child can live with an interim caretaker, relative or non-relative, and still be eligible for title IV-E. Under prior policy, we interpreted the term "removal" to mean a physical removal. As a result, if the interim caretaker was a relative, and the State intended to remove custody from the parent but let the child remain with that interim caretaker relative, the child could not be eligible for title IV-E funding because the child was not physically removed from the home of a relative. This policy created a disincentive for relative placements. To remove this inequity between relative and non-relative caregivers, we now permit the removal of the child from the home, in this circumstance, to be a "constructive" (i.e., nonphysical, paper, or legal) removal.

We offer a summary of examples to clarify when a child would be eligible for title IV-E foster care pursuant to a constructive removal. These examples presume that the child is eligible for Aid to Families with Dependent Children (AFDC) in the home of the parent or other specified relative:

The child lived with either a related or non-related interim caretaker for less than six months prior to the State's petition to the court for removal of the child. The State licenses the home as a foster family home and the child continues to reside in that home in foster care. The child is eligible for title IV-E foster care since s/he lived with the parent within six months of the State's petition to the court, and was constructively removed from the parent (i.e., there was a paper removal of custody).

The child lived with either a related or non-related interim caretaker for more than six months prior to the State's petition to the court. The State licenses the home as a foster family home and the child remains in that home in foster care. The child is ineligible for title IV-E foster care since s/he had not lived with the parent within six months of the State's petition to the court, and was not removed from the home of a relative. (Although constructively removed, the child is ineligible for title IV-E because it had been more than six months since the child lived with the parent.)

The child lives with a related interim caretaker for seven months before the caretaker contacts the State to remove the child from his/her home. The agency petitions the court and the court removes the custody from the parents and physically removes the child from the home of the interim related caretaker. The child would not be eligible for title IV-E foster care since s/he had not lived with the parent or other specified relative from whom there was a constructive removal within six months of the initiation of court proceedings. (Although the child was physically removed from the home of the related interim caretaker, that removal cannot be used to determine title IV-E eligibility since the removal was not the result of a voluntary placement agreement or judicial determination, as required in section 472 (a)(2)(A) of the Act. Moreover, the child is ineligible for title IV-E because it had been more than six months since the child lived with the parent from whom s/he was removed.)

The child lived with a non-related interim caretaker for seven months before the caretaker asks the State to remove the child from his/her home and place in foster care. The child is ineligible for title IV-E foster care because s/he had not lived with a parent or specified relative within six months of the petition.

The child is in a three-generation household in which the mother leaves the home. The grandmother contacts the State agency four months later and the agency petitions the court within six months of the date the child lived with the mother in the home. The State licenses the grandmother's home as a foster family home and the child continues to reside in the home in foster care. The child is eligible for title IV-E foster care since s/he lived with the parent within six months of the State's petition to the court, and was constructively removed from the parent's custody.

Source: Preamble to the Final Rule (65 FR 4020) (1/25/00)

Reference: Social Security Act - section 472 (a)(2)(A); 45 CFR 1356.21 (k) and (l)

2 **Q:** Can a child be considered "constructively" removed from a legal guardian who is not a specified relative?

A: No. The statute at section 472 (a)(3)(A) of the Social Security Act requires, among other things, that a child be living with and removed from the home of a specified relative at the time of the voluntary placement agreement or initiation of court proceedings. The provisions for "constructive" removal do not alter the requirement that the removal be from the home of a parent or specified relative.

Source: Preamble to the Final Rule (65 FR 4020) (1/25/00)

Reference: Social Security Act - sections 406 (a) and 407 (as in effect on July 16, 1996) and 472(a)(3)(A); 45 CFR 1356.21 (k)

3 **Q:** May a child born to a woman while she is a prison inmate or patient in a state hospital be considered eligible for foster care payments if all other title IV-E foster care requirements are met? It has been our interpretation that since the child could not return home with the mother and live with her because of her prisoner or patient status, the child would not be eligible to receive AFDC. Hence, such a child could not meet title IV-E foster care eligibility requirements.

A: An otherwise eligible child born to a woman who is a prison inmate or a patient in a hospital, and deprived of the support of an absent father, would be eligible for the title IV-E foster care

program if removed from the "home of a relative" and placed in foster care in accordance with section 472 of the Social Security Act (the Act). This is true when the child is placed in foster care awaiting the mother's release or when parental rights are terminated directly after birth. The inability of the child to return to the mother during her prisoner or patient status (or for any other reason) has no bearing on the child's eligibility for title IV-E foster care.

Eligibility for the title IV-E foster care maintenance payments program as defined in section 472(a) of the Act states that a State shall make foster care maintenance payment on behalf of each child who has been removed from the home of a relative specified in section 406(a) (as in effect on July 16, 1996)" if, among other things, the child was AFDC eligible in the home of the specified relative from whom the child was legally removed.

The child born to a mother who was a hospital patient or a prison inmate would be considered to be living with the mother at the time of birth, and if placed in foster care would be removed from the home of the relative (the mother) in accordance with section 472 (a). The definition of "home" at 45 CFR 233.90 (c)(1)(v)(B) is applicable to the hospital or prison setting.

Source: ACYF-CB-PIQ-86-03 (5/9/86); 7/17/2006

Reference: Social Security Act - sections 406 (a) and 407 (as in effect on July 16, 1996) and 472(a); 45 CFR 233.90 (c)(1)(v)(B) and 45 CFR 1356.21 (k)

4 **Q:** For the purpose of determining a child's eligibility for Aid to Families with Dependent Children (AFDC) at the time of the child's removal from his or her home, the child must have been living with and removed from the home of a specified relative. Who is considered a "specified relative" for this purpose?

A: A specified relative is defined as any relation by blood, marriage or adoption who is within the fifth degree of kinship to the dependent child. This includes great-great-great grandparents and first cousins once removed (children of first cousins). Accordingly, for the purpose of determining title IV-E eligibility, any otherwise eligible child who is removed from the home of a relative who is within the fifth degree of kinship to the child will be eligible for assistance under title IV-E.

Source: ACYF-CB-IM-92-04 (2/24/92)
Reference: 45 CFR 233.90 (c)(1)(v)

5 **Q:** Once a court order is issued with a judicial determination that remaining in the home is contrary to the child's welfare, does the State have to actually remove the child at that time and place the child in foster care?

A: Yes. Section 472(a)(2) of the Social Security Act predicates a child's receipt of title IV-E funds on the child's removal from home as the result of either a voluntary placement agreement or a judicial determination that to remain at home is contrary to the child's welfare.

The judicial determination that results in the child's removal must coincide with (i.e., occur at the same time as) the agency's action to physically or constructively remove the child, unless the court order specifies an alternative timeframe for removal, as allowed for in the Departmental Appeals Board (DAB) decision # 2017.

If a court makes a judicial determination that it is contrary to the child's welfare to remain at home (without specifying an alternative timeframe) and the child does, in fact, remain at home and no removal occurs, the requirement for removal is not met and the child is ineligible for title IV-E. If the child's safety is not at risk and a State chooses to offer support services to the family in-home to prevent having to remove the child, it should do so. States cannot issue "blanket" removal orders, however, in an attempt to guarantee title IV-E eligibility in the event that the child has to be removed from home at some point in the future.

Source: 1/29/2007

Reference: Social Security Act ¿ section 472(a)(2)

6 Q: A child is placed in a residential treatment facility by his parents without title IV-E agency involvement and the child remains there for more than six months while his parents maintain responsibility for the child. If the child is later judicially or voluntarily removed from the home and placed in the title IV-E agency¿s placement and care, could the child meet the Aid to Families with Dependent Children (AFDC) ¿living with¿ a specified relative requirement in section 472(a)(3)(A) of the Social Security Act (the Act)?

A: Yes. The title IV-E foster care maintenance payment program includes a requirement that the child would have received AFDC in the home of the specified relative from which the child was removed in or for the month of removal if the child has ?lived with? the specified relative within 6 months of the child?s removal (see section 472(a)(3)(A) of the Act). In addition, 45 CFR 233.90(c)(v)(4)(B) provides that under the AFDC program, the ?living with? standard has been met ?so long as the relative exercises responsibility for the care and control of the child.?

In this situation, the parents exercise responsibility for the care and control of the child as they have made a private placement for their child and can decide when their child can leave. Therefore, so long as the parents maintained care and control of the child while he or she was in the residential facility, the child could meet the AFDC ?living with? requirement if the child is later judicially or voluntarily removed from the home and placed in the title IV-E agency?s placement and care responsibility.

Source: 2/24/2011

Reference: Social Security Act ¿ Section 472(a)(3)(A), 45 CFR 233.90(c)(v)(4)(B), 45 CFR 1356.21(l)

7 **Q:** May a youth over age 18 under the option per section 475(8)(B) of the Social Security Act be his or her own specified relative for the purposes of satisfying the ¿living with¿ and ¿removed from¿ specified relative requirements described at section 472(a) of the Social Security Act?

A: Yes.

Source: 2/24/2011

Reference: Social Security Act ¿ Sections 472(a)(3)(A)(ii)(II) and 475(8)(B)

8.3A.12 TITLE IV-E, Foster Care Maintenance Payments Program, Eligibility, Responsibility for placement and care

1 **Q:** What does "responsibility for placement and care" mean? Are there certain activities which cannot be delegated? If so, which activities? Can the "case plan" be delegated while the child is under the care of the nonprofit agency? Does "responsibility for placement and care" mean that the State agency must have custody of the child or can the court give custody to a private nonprofit agency? We think "responsibility for placement and care" follows custody.

A: The title IV-E agency, or another public agency with whom the State agency has made an agreement which is still in effect, is to be assigned the overall responsibility for placement and care of the child, although many of the activities associated with the placement and care may be performed by others. Clearly, if the court assigns the responsibility for a child to an agency or institution other than the State or local agency administering the title IV-E foster care program or to another public agency with which the title IV-E agency has no agreement, no Federal financial participation (FFP) will be allowable.

Under title IV-E, to be eligible for FFP, section 472 (a)(2)(B) of the Social Security Act (the Act) requires that the responsibility for placement and care of the child is with the State agency administering the plan approved under section 471 of the Act, or any other public agency with whom the State agency administering or supervising the administration of the State plan approved under section 471 has made an agreement which is in effect.

A major responsibility in placement and care is the development of an individual case plan for the child, including periodic review of the appropriateness and suitability of the plan and the foster care placement, to ensure that proper care and services are provided to facilitate return to the child's own home or to make an alternative permanent placement. The case plan activities, such as assessing family strengths and needs, identifying and using community resources, and the periodic review and determination of the continued appropriateness of placement, and the efforts to finalize a permanency plan may be carried out by agencies from

which services are purchased. However, the ultimate responsibility for ensuring that there is an appropriate plan of care, case review, and activities to improve the home of the child or identify and work toward a permanency plan for the child remains with the State agency identified in the State plan as having responsibility for the placement and care of the child. Thus, the State agency must actively supervise the various activities performed by the contractor or other agency. This supervision includes case plan assessment and case review functions and adherence to the requirements of the Act, Federal rules, regulations and policy interpretations in operation of the foster care maintenance program. The State is ultimately responsible for proper operation of the foster care program.

Although responsibility for placement and care generally is associated with child custody, custody of the child is not a requirement of Federal law or policy under title IV-E and the State agency need not be given custody, but must be given responsibility for placement and care of the child. Custody may be retained by the court or be given to a private nonprofit agency. However, the State agency administering the title IV-E plan or another public agency with which the title IV-E agency has a currently effective agreement can be given "responsibility for placement and care" in order to claim FFP for foster care costs under this program.

Source: ACYF-CB-PIQ-82-07 (8/25/82)

Reference: Social Security Act - sections 471 and 472

2 **Q:** Can foster care payments under title IV-E be made on behalf of a child initially placed under the care of another public agency (and no inter-agency agreement exists), when and if the responsibility for the placement and care of the child is later transferred to the State title IV-E agency?

A: Yes. Section 472 (a)(2)(B) of the Social Security Act (the Act) does not require that the child's placement and care be the initial responsibility of the State title IV-E agency, nor does it conversely prohibit a subsequent transfer from another public (or private) agency to the State agency from triggering eligibility for foster care payments for an otherwise eligible child. When all eligibility criteria in section 472(a) are met, a State may claim FFP from the first day of placement in the month in which all eligibility criteria have been met. FFP may not be retroactive to the time of removal.

Once the responsibility for placement and care has been given to the State agency, all of the State plan requirements in sections 471(a)(15) and (16) of the Act are applicable, including the title IV-E case plan and case review requirements.

Source: *ACYF-CB-PIQ-87-03 (6/1/87)*

Reference: *Social Security Act - sections 471 and 472*

3 **Q:** The regulations at 45 CFR 1356.21(g)(3) specify that Federal financial participation (FFP) for title IV-E foster care maintenance payments may not be claimed when a court orders a placement with a specific foster care provider. In situations where the court specifies the placement in a court order after hearing testimony from various sources, including the State IV-E agency, is FFP available? Is availability of FFP affected when the court disagrees with the agency's placement recommendation and specifies another placement in the order?

A: Title IV-E requires, as a condition of eligibility, that a child's placement and care responsibility be vested either with the State agency, or another public agency with which the State has an agreement. The purpose of the regulatory provision in question is to assure that the authority of the State title IV-E agency with placement and care responsibility for the child is not usurped. A "court-ordered" placement, as prohibited in the rule, involves the court taking placement and care responsibility away from the agency and assuming placement and care responsibility by choosing the child's placement without bona fide consideration of the agency's recommendation regarding placement. This does not mean that the court must always concur with the agency's recommendation in order for the child to be eligible for title IV-E foster care payments. As long as the court hears the relevant testimony and works with all parties, including the agency with placement and care responsibility, to make appropriate placement decisions, we will not disallow the payments. The prohibition in the rule also does not apply to situations where the court merely names the child's placement in the court order as an endorsement or approval of the agency's placement choice.

Source: *Questions and Answers on the Final Rule (65 FR 4020) (1/25/00)*

Reference: *45 CFR 1356.21 (g)(3)*

4 **Q:** Does responsibility for placement and care of the child as used in section 472(a)(2)(B) of title IV-E of the Social Security Act (the Act) equate with custody?

A: Not necessarily. The title IV-E foster care program requires, as a condition of eligibility, that a child's placement and care responsibility be vested either with the State agency or another public agency with which the State has a bona fide agreement pursuant to section 472(a)(2)(B)(ii) of the Act. The term placement and care means that the State agency is legally accountable for the day-to-day care and protection of the child who has come into foster care through either a court order or a voluntary placement agreement. Sometimes this responsibility translates to "custody" or "care and control" of the child via a court order, but custody is not a title IV-E requirement. Placement and care responsibility allows the State agency to make placement decisions about the child, such as where the child is placed and the type of placement most appropriate for the child. It also ensures that the State provides the child with the mandated statutory and regulatory protections, including case plans, administrative reviews, permanency hearings, and updated health and education records.

Source: ACYF-CB-PIQ-82-07 (8/25/82); 6/23/03

Reference: Social Security Act - sections 471 and 472

8.3A.13 TITLE IV-E, Foster Care Maintenance Payments Program, Eligibility, Voluntary placement agreements

1 **Q:** If a State fails to obtain the necessary judicial determination within the first 180 days of a voluntary placement, can the case be reopened when a judicial hearing is convened or does the child lose all further benefits of the title IV-E program during that period of placement?

A: The case may not be reopened. The judicial determination must be made within the first 180 days of placement. Section 472 (e) of the Social Security Act states that no Federal payment may be made for a child removed from his or her home pursuant to a voluntary placement agreement and who remains in voluntary placement in excess of 180 days, unless there has been a judicial determination within the first 180 days of such placement to the effect that the placement is in the best interests of the child.

According to the legislative history, this provision was included in Public Law 96-272 in order to allow for short term emergency placements but provide the child with the protection of a court review if the placement became prolonged.

Source: ACYF-CB-PIQ-85-09 (10/10/85)

Reference: Social Security Act - sections 472 (d) and (e)

2 **Q:** In the event that a court hearing date has been set within the first 180 days of a voluntary placement, but no determination made, may a pre-approved continuance hearing date deem the child eligible up to the continuance date?

A: No. Although the applicable title IV-E requirement at section 472 (e) is stated in terms of a judicial determination, it does not specifically require a court hearing. If the determination is not made within 180 days of placement, whether or not a hearing is held, Federal financial participation may not continue.

Source: ACYF-CB-PIQ-85-09 (10/10/85)

Reference: Social Security Act - sections 472 (d) and (e)

3 **Q:** A State places a child into foster care pursuant to a voluntary placement agreement but does not have the voluntary placement provision in its State Plan and, thus, does not claim Federal financial participation (FFP) for the child. Can this placement later be considered a judicial removal and FFP be claimed from that time forward if there is a petition to the court within six months of the time the child had last been living with the parent(s) and subsequent judicial determinations are made regarding "contrary to the welfare" and "reasonable efforts"?

A: No. The statute allows FFP for otherwise eligible children who are removed from their homes either pursuant to a voluntary placement agreement or as the result of judicial determinations regarding "contrary to the welfare" and "reasonable efforts." It is a State option whether to claim FFP for voluntary placements. For a State to be eligible for Federal reimbursement for voluntary placements, it must meet the requirements of section 472 of the Social Security Act and must have such provision in its title IV-E State Plan. In States that accept voluntary placements, but do not meet the requirements for claiming FFP, such placements are ineligible for FFP during the entire stay in foster care. The fact that a petition is filed within six months of the removal and the required subsequent judicial determinations are obtained does not change the nature of the removal from voluntary to judicial.

If, however, a State revises its title IV-E State Plan and becomes eligible to claim FFP for voluntary placements, it may also begin to claim FFP for any eligible child who had previously been removed pursuant to a voluntary placement agreement if there had been a judicial determination regarding "best interests" within 180 days of the child's placement.

Source: *ACYF-CB-PIQ-89-03 (7/24/89)*

Reference: *Social Security Act - sections 472*

4 **Q:** If a State, which is claiming Federal financial participation (FFP) for voluntarily placed children, misses the requirement for a judicial determination within 180 days of placement that such placement is in the best interests of the child, but petitions the court within the six-month timeframe set forth in section 472(a)(3)(A)(ii)(II) of the Social Security Act, can the State consider this a judicial removal, once determinations are made concerning "contrary to the welfare" and "reasonable efforts"?

A: No. The State has been claiming FFP under the Federal voluntary placement program for 180 days. In this case, the State has failed to meet the requirement for continuing FFP that there must be a judicial determination within 180 days to the effect that the placement is in the best interests of the child. The fact that the State petitioned the court within six months of the time the child last resided with a relative and later obtained the judicial determinations required for judicial removals would not change the nature of that removal from voluntary to judicial.

Source: *ACYF-CB-PIQ-89-03 (7/24/89)*

Reference: *Social Security Act - sections 472(a)(3)(A)(ii)(II); 45 CFR 1356.22*

5 ***Q:*** May a State develop a voluntary placement agreement that would allow a parent to retain custody of his or her child and allow the State to claim Federal financial participation under the title IV-E foster care maintenance payments program on behalf of an otherwise eligible child?

A: Yes. As long as the State retains placement and care responsibility for the child, the fact that the voluntary placement agreement allows the parent to retain custody of the child does not impair the child's eligibility for title IV-E foster care maintenance payments. Placement and care responsibility means that the State agency is legally accountable for the day-to-day care and protection of the child in foster care. Responsibility for placement and care allows the State agency to make placement decisions about the child, such as where the child is placed and the type of placement most appropriate for the child.

The State's placement and care responsibilities under section 472(a)(2)(B) of the Social Security Act must be unencumbered in order to claim Federal financial participation for title IV-E foster care costs. To the extent that a States definition of custody contradicts or in any manner limits the agency's placement and care discretion, such children would not be eligible for title IV-E foster care maintenance payments.

Source: 06/09/04

Reference: Social Security Act- sections 472(a)(2)(B) and (f), CWPM section 8.3A.12.

6 ***Q:*** When a child is initially placed into foster care through a voluntary placement agreement, and the State subsequently issues a court order regarding the child's removal and/or the State's placement and care responsibility, what criteria must be met for the child to be eligible for title IV-E foster care maintenance payments?

A: The child must meet the criteria for voluntary placement agreements in section 472(a)(2)(A)(i) of the Social Security Act and 45 CFR 1356.22(a) to be eligible for title IV-E foster care maintenance payments. This is because the subsequent court order does not change the child's removal, which was authorized by the voluntary placement agreement. As such, the agency is not required to secure a judicial finding of reasonable efforts to prevent removal or to finalize the permanency plan.

Source: 04/26/07

Reference: Social Security Act ¿ section 472(a)(2)(A); 45 CFR 1356.22(a)

7 ***Q:*** Section 472(e) of the Social Security Act (the Act) requires a State to obtain a judicial determination during the first 180 days of the voluntary placement to the effect that the placement is in the child's best interest to continue title IV-E payments beyond that time. When does this 180-day clock begin?

A: The 180-day clock begins the day a child is physically placed in foster care as defined in 45 CFR 1355.20 pursuant to a voluntary placement agreement with the exception of constructive removals. In constructive removals, the 180-day clock begins on the date the voluntary placement agreement is signed since there is no physical removal of the child from his/her home (45 CFR 1356.21(k)(3)).

Source: 12/6/2007

Reference: The Social Security Act ¿ Section 472(e); 45 CFR 1355.20, 1356.21(k)(3) and 1356.22(b)

8.3A.14 TITLE IV-E, Foster Care Maintenance Payments Program, Eligibility, Voluntary relinquishments

1 *Q:* May voluntary relinquishments from biological parents be treated as voluntary placement agreements for the purpose of establishing title IV-E eligibility? What if the relinquishment is approved by a court?

A: A child who is voluntarily relinquished to the State agency does not meet the requirements of section 472 of the Social Security Act for the receipt of foster care maintenance payments.

Voluntary relinquishment means the voluntary relinquishing by parents of their parental rights to the department of social services, without court involvement. A voluntary relinquishment does not meet the definition of a voluntary placement under section 472 nor is it a placement resulting from a judicial determination as provided by section 472. Thus, Federal financial participation (FFP) would not be available for voluntarily relinquished children.

In order for a child to qualify for foster care maintenance payments, section 472 (a)(2) provides that removal from the home must occur by either of two ways: (1) pursuant to a voluntary placement agreement entered into by the child's parent or legal guardian or (2) be the result of a judicial determination to the effect that continuation therein would be contrary to the welfare of such child and that reasonable efforts have been made (A) prior to the placement of a child in foster care to prevent or eliminate the need for removal of the child from his home, (B) to make it possible for the child to return home, and (C) to finalize an alternate permanency plan if the child cannot be returned home.

The term "voluntary placement" as provided at section 472 (f)(1) means: an out-of-home placement of a minor by or with participation of a State agency, after the parents or guardians of the minor have requested the assistance of the agency and signed a voluntary placement agreement. The term "voluntary placement agreement" as provided by section 472 (f)(2) means: a written agreement, binding on the parties to the agreement between the State agency, any other agency acting on its behalf, and the parents or guardians of a minor child which specifies, at a minimum, the legal status of the child and the rights and obligations of the parents or guardians, the child, and the agency while the child is in placement.

It is clear from section 472, specifically sections 472 (a)(2)(A) and (f) that voluntary placement recognizes an agreement between parents (or legal guardians) and the State. The agreement, as provided by section 472 (f) must specify the "legal status of the child and the rights and obligations of the parents or guardians, the child, and the agency while the child is in placement." Parents cannot be a party to such an agreement while abandoning their basic legal status as parents. Further, if at any time after the signing of the agreement, the parents or

legal guardians no longer have the legal status as such, then the agreement is no longer effective, and the placement is no longer the voluntary placement stipulated in the agreement.

The language of section 472 (g) suggests that a voluntary placement is a temporary state of affairs with parents or guardians having the capacity and right to revoke such agreement unless a court determines that return to the home would be contrary to the best interest of the child. Even in this latter situation, such a determination prevents a return of the child to its parental home but does not deprive the parents of their parental rights.

Finally, with regard to non-voluntary placement under section 472, it is clear that Federal foster care payments can be made only if the removal from the home of the parents was the result of a judicial determination (including the "reasonable efforts" determination) as required by section 472 (a)(2)(A)(ii). Thus, even though a voluntary relinquishment is later accepted or approved in court, such an approval does not change the nature of the action from a voluntary relinquishment to a removal which results from a judicial determination as provided by section 472 (a)(2)(A)(ii).

Source: ACYF-CB-PIQ-85-03 (3/19/85)

Reference: Social Security Act - section 472 (a)(2)(A), (f) and (g)

2 **Q:** How may a child who is voluntarily relinquished by his/her parents to the State title IV-E agency become eligible for title IV-E foster care maintenance payments?

A: If the child had last been living with the parent(s) within six months of the date court proceedings were initiated leading to a judicial determination that remaining in the home would be contrary to the welfare of such child, the removal from the home will be considered a "judicial removal." In addition, the "reasonable efforts" determination must be made in relation to removal of the child from the home. Such judicial determinations will prevail as the critical factor related to removal and any prior voluntary relinquishment action will not be relevant for purposes of title IV-E eligibility (sections 472(a)(2)(A)(ii) and 472(a)(3)(A)of the Social Security Act).

However, if the court merely sanctions the relinquishment without making the findings specified in section 472(a)(2)(A)(ii), the child cannot be considered to be "judicially removed" in accordance with that section, and foster care maintenance payments may not be claimed under title IV-E.

Source: *ACYF-CB-PIQ-89-01 (2/9/89)*

Reference: *Social Security Act - section 472 (a)(2) and (3)*

8.3A.15 TITLE IV-E, Foster Care Maintenance Payments Program, Eligibility, When payments may begin

1 *Q:* At what point may the State begin to claim Federal financial participation (FFP) for title IV-E foster care maintenance payments?

A: States may claim FFP from the first day of placement in the month in which all title IV-E eligibility criteria are met.

Source: *ACYF-CB-PIQ-91-05 (8/15/91)*

Reference: *Social Security Act - section 472*

8.3B TITLE IV-E, Foster Care Maintenance Payments Program, Payments

1 *Q:* Under title IV-E, how is the term "foster care maintenance payments" defined?

A: Under title IV-E, the term "foster care maintenance payments" is defined (in section 475(4) of the Social Security Act) as: "...payments to cover the cost of (and the cost of providing) food, clothing, shelter, daily supervision, school supplies, a child's personal incidentals, liability insurance with respect to a child and reasonable travel to the child's home for visitation and reasonable travel for the child to remain in the school in which the child is enrolled at the time of placement. In the case of institutional care, such term shall include the reasonable costs of administration and operation of such institution as are necessarily required to provide the items described in the preceding sentence."

The cost items listed in the first sentence apply equally to family foster care and institutional foster care. The costs of providing the items may include costs such as local transportation necessary for either a foster parent or institution to provide the items. However, allowable costs do not include reimbursement in the nature of salary for the exercise by the foster family of ordinary parental duties.

The second sentence applies only to institutional foster care. The reasonable costs of

administration and operation necessary to provide the items only for children served under title IV-E foster care are allowable elements in payments to child care institutions. Since these costs are limited types of activities and apply only to title IV-E children, the costs of foster care in institutions will have to be allocated along two lines: (1) the allocation of costs, for purposes of Federal financial participation (FFP), based on allowable cost items and activities; and (2) the allocation of costs based on the proportion of children in the institution receiving foster care under title IV-E for those allowable elements compared to children whose care is paid under other programs.

The establishment of a cost allocation system for institutions, as well as for the title IV-E agency itself, is a title IV-E agency-responsibility and is a necessary precursor to the title IV-E agency?s ability to claim FFP for allowable institutional foster care costs.

Source: ACYF-CB-PA-82-01 (4/30/82) revised 08/31/09

Reference: Social Security Act - sections 472, 474 and 475 (4)

2 ***Q:*** Does title IV-E preclude a State agency from passing on to the child title IV-E funds for his use for his maintenance in an independent living program?

(Deleted 02/25/2011)

3 ***Q:*** Please clarify how funds may be disbursed for allowable child care.

A: States may include the cost of allowable child care in the basic foster care maintenance payment or may make a separate maintenance payment directly to the licensed provider. For example, if, in a particular foster family, both parents work, the State may include the cost of child care in the maintenance payment made to that family or may pay the licensed provider directly. Regardless of the payment method chosen, the State must be able to provide documentation to verify allowable expenditures.

Source: Preamble to the Notice of Proposed Rulemaking (63 FR 50058) (9/18/98)

Reference: 45 CFR 1355.20

4 ***Q:*** Federal policy allows a State to include child care for working foster parents in the title IV-E foster care maintenance payment. Are there any Federal requirements that prohibit a State from providing child care for working foster parents in some but not all "political subdivisions" or jurisdictions in the State?

A: No. Nothing in statute or regulation prohibits a State from providing child care for working parents in some but not all jurisdictions. Daily supervision is one of the components of a foster care maintenance payment, and licensed child care is an allowable element of daily supervision in certain circumstances (see the definition of foster care maintenance payments in 45 CFR ?1355.20). A State has the discretion to choose the way in which it will provide daily supervision, including whether or not to provide child care in the title IV-E foster care maintenance payment for some or all working foster parents.

Source: March 1, 2005

Reference: Section 475(4)(A) of the Social Security Act; 45 CFR §1355.20

5 **Q:** May title IV-E foster care maintenance payments flow through a for-profit entity to the foster care provider?

A: Yes. The Fair Access Foster Care Act of 2005 (Public Law 109-113), which took effect on November 22, 2005, amended section 472(b) of the Social Security Act to eliminate the prohibition against making foster care maintenance payments through a for-profit entity.

Source: 01/29/07

Reference: Social Security Act, section 472; Public Law 109-113

6 **Q:** May title IV-E eligible children in adoptive homes receive title IV-E foster care maintenance payments prior to finalization of adoption?

A: Prior to the finalization of adoption, title IV-E eligible children in adoptive homes may receive foster care maintenance payments if the home is licensed for foster care. This practice is necessary to prevent a gap in medical care and/or support for foster children who have been placed for adoption but are ineligible for IV-E subsidy until the adoption assistance agreement is signed.

Source: ACYF-CB-PIQ-82-01 (1/19/82)

Reference: Social Security Act - section 471 and 475

7 **Q:** May the State claim a title IV-E foster care maintenance payment for an allowable provider that covers the entire month if a child is temporarily absent for a portion of the month? For example, the child has run away, goes on a weekend home visit, or is hospitalized for medical treatment during some part of the month.

A: Yes. The State may provide a full month's title IV-E foster care maintenance payment to the

licensed provider if the brief absence does not exceed 14 days and the child's placement continues with the same provider. Otherwise, the State must prorate its claims if the child is absent from the placement for more than a reasonable brief period.

Source: *1/29/2007*

Reference: *Social Security Act ¿ section 472*

8 **Q:** Must a title IV-E agency discontinue title IV-E foster care maintenance payments provided per section 475(8)(B) of the Act for a youth who is age 18 or older if the title IV-E agency determines that the youth is no longer meeting the education or employment criteria, or is no longer incapable of meeting any of these criteria due to a medical condition, as elected by the title IV-E agency?

A: Yes. A title IV-E agency must ensure that a youth receiving a title IV-E foster care maintenance payment under section 475(8)(B) of the Act meets the education and employment criteria or is incapable of meeting any of these criteria due to a medical condition, as elected by the title IV-E agency. Once a title IV-E agency determines that a youth no longer meets the criteria, the agency must discontinue the title IV-E foster care maintenance payment for the youth. However, if the youth meets the criteria at a later time, the title IV-E agency may resume payments to the youth.

Source: *05/06/2013*

Reference: *Social Security Act ¿ section 475(8)(B); CWPM Section 8.3A.4 Q/A #1*

9 **Q:** May a title IV-E agency make title IV-E foster care maintenance payments directly to a youth age 18 or older who is in a supervised independent living setting under agency supervision?

A: Yes. If the youth is in a supervised independent living setting and there is no actual provider or other child placing intermediary, the title IV-E agency may pay the foster care maintenance payment directly to the youth.

Source: 05/06/2013
Reference: ACYF-CB-PI-10-11

8.3B.1 TITLE IV-E, Foster Care Maintenance Payments Program, Payments, Allowable costs

1 **Q:** What are the elements of costs for foster care maintenance payments under section 475 (4) of the Social Security Act (the Act)?

A: There are three groups of costs:

(1) Items of Cost: Clearly, all items of cost specifically enumerated in the Act are allowable. In addition, questions may arise about the interpretation of items, listed in the Act, particularly, "daily supervision."

(a) "Daily supervision" in family foster care - "Daily supervision" in family foster care may include such an item as child care. A foster family parent who is working while a foster child is not in school will have to arrange for some form of alternate care, such as day care, for the daily supervision of the child. However, as was stated in the legislative history of P.L. 96-272, "payments for the costs of providing care to foster children are not intended to include reimbursement in the nature of a salary for the exercise by the foster family parent of ordinary parental duties." (p. 50, House of Representatives, Report No. 96-900, April 23, 1980.)

(b) "Daily supervision" in institutional foster care - "Daily supervision" in institutions is a limited function. It includes routine day-to-day direction and supervision. It does not include social services.

(c) Social services under family foster care or institutional foster care - As with all items of care and for costs of administration and operation, the critical factor is the activity being performed and not the title or position of the performer. "Social services" are not allowable cost items as title IV-E maintenance payments under any circumstances, regardless of what type of person provides them.

Examples of unallowable "social services" are: counseling and therapy to help with a child's adjustment at the institution; counseling and therapy to help a child resolve the problem(s) for which he or she was placed; counseling and therapy with the child and his or her biological family to resolve the difficulties that led to the need for placement; counseling and therapy to plan for the return of the child to the community; and psychological or educational testing, evaluation, and assessment. These costs may be claimed under other programs, e.g., title IV-B or title XX (Social Services Block Grant Program) of the Act or a State-funded program.

(d) Other items in family or institutional foster care - Questions have been raised regarding some other specific items. "Recreation" is not enumerated in the Act and cannot be regarded as an element of these costs except where it clearly substitutes for otherwise necessary daily supervision, e.g., day care, as discussed in (a) above. In such a case, only the minimal costs for the eligible child and caretaker may be included.

(2) Costs of providing: In both family and institutional foster care, the costs of providing the items listed in section 475 (4) may be included in payments. This is a limited added cost. However, recreation generally is not a "cost of providing". When it is a form of daily

supervision, as stated in paragraph (1)(d) above, it is allowable.

In an institution, the cost of providing the items might include the costs of activities performed by cottage parents or other persons filling such a role in their daily supervision of eligible children. The key is the activity being performed rather than the occupation or profession of the individual. And, to reiterate, only the proportion of costs related to providing allowable items to title IV-E children is eligible for payment.

Inquiry has also been made regarding two other functions and performers. The costs of providing daily supervision of eligible children in an institution by a social worker is allowable; however, the costs of a social worker providing counseling and guidance related to a child's development, as contrasted with routine supervision, would not be an allowable cost. Further, only the proportion of costs attributable to title IV-E children would be allowable.

Another question relates to the costs of (1) dispensing over the counter medicines, (2) supervising the administration of prescribed medicines, (3) administering first aid and (4) diagnosing illnesses. The activities performed under numbers (1) and (2) and routine activities under (3) would be allowable. The activity described under (4) is more specialized and is not a cost of providing daily supervision. It is unlike an activity which a family foster parent would be expected to be able to perform in the course of providing "daily supervision." Again, only the proportion of costs of providing allowable items to title IV-E children are eligible for Federal financial participation (FFP).

(3) Reasonable costs of administration and operation in an eligible institution: Section 475 (4) also permits payment on behalf of eligible children in institutions to include "the reasonable costs of administration and operation of such institution as are necessarily required to provide the items [described in the same paragraph]." Factors related to the allowability of costs therefore include:

(a) The institution must meet the definition of a "child-care institution" in section 472 (c)(2) of the Act. Costs borne by child placing agencies are not eligible for FFP.

(b) The costs of administration and operation must be "necessarily required to provide the items described in [paragraph 475 (4)]." Thus, the proportional cost of a bookkeeper, food workers, and supervisor of cottage parents for the institution would be allowable. The costs of providing counseling or diagnosis of illness by a social worker or nurse or costs of the staff of a parent agency not employed by the institution would not be allowable.

(c) The costs must be "reasonable", that is, no more than the customary costs for performing similar functions in similar institutions, e.g., in size, and type of children, such as handicapped children.

(d) The costs must be allocated for title IV-E children on whose behalf payments are made.

(e) The costs must be allowable under 45 CFR Part 75. (Note: This answer previously referenced 45 CFR Part 92. 45 CFR Part 75 supersedes 45 CFR Part 92 effective December 26, 2014 (79 FR 75871, Dec. 19, 2014).)

Given these factors, the issue of cost allocation is important. Various cost allocation methods, e.g., random moment studies or actual counts, may be used by institutions in developing their cost allocation plans. The State agency must approve the plan as a part of its approval of rates.

Source: ACYF-CB-PA-82-01 (4/30/82) (revised 11/2/2016)

Reference: Social Security Act - sections 472, 474 and 475 (4); 45 CFR Part 75; 79 FR 75871, Dec. 19, 2014; 81 FR 3022, Jan. 20, 2016

2 **Q:** In child care institutions, are costs that are normally associated with family activities such as going to a baseball game, picnics, etc., allowable for Federal financial participation (FFP) in the title IV-E Foster Care Maintenance Payment Program? What about staff time for supervision, transportation, tickets, etc.?

A: Reimbursement of recreation costs per se is not permitted under title IV-E (see the definition of "foster care maintenance payments" under section 475(4) of the Social Security Act). Since section 475(4) includes "a child's personal incidentals," however, the reasonable and occasional cost of such items as tickets or other admission fees for sporting, entertainment or cultural events or dues for clubs are reimbursable under title IV-E Foster Care as a part of the maintenance payment.

The costs of staff necessary to provide supervision to insure the well being and safety of children on or off campus are allowable even if the event has recreational components. The costs of staff merely accompanying the children but not necessary for their supervision are not allowable.

Transportation as a separate item of expense is not allowable except for reasonable travel to the child's home for visitation and reasonable travel for the child to remain in the school in which the child is enrolled at the time of placement.

Source: ACYF-CB-PIQ-87-02 revised 08/31/09

Reference: Social Security Act - sections 472, 474 and 475 (4)

3 ***Q:*** Are all costs for day care/baby-sitting services provided to title IV-E eligible children reimbursable as a title IV-E foster care maintenance cost?

If not, for which of the following purpose(s) may daycare/babysitting services be claimed for reimbursement: (1) illness of the foster parent; (2) respite care; (3) foster parent attendance at: administrative case review/judicial reviews, case conferences/team meetings, school conferences/ET (Pupil Evaluation Team), or foster parent training; (4) foster parent visits with a child who is temporarily out of the home, e.g. child hospitalized or at camp; (5) enhancement of a foster child's social skills/peer relationships/socialization; or, (6) special needs of foster child best met in a day care setting.

A: The legislative history of Public Law 96-272 (p. 5, House of Representatives, Report No. 96-900, April 23, 1980) states that "payments for the costs of providing care to foster children are not intended to include reimbursement in the nature of a salary for the exercise by the foster family parent of ordinary parental duties." Since foster care maintenance payments are not salaries, foster parents must often work outside the home. Therefore, child care that provides daily supervision during a foster parent's working hours when the child is not in school is an allowable expenditure under title IV-E. Child care costs which facilitate the foster parent's attendance at activities which are beyond the scope of "ordinary parental duties" are allowable expenditures as well.

Child care provided to a foster child to facilitate a foster parent's participation in activities that are within the realm of "ordinary parental duties" or child care activities which are deemed a social service are not reimbursable under title IV-E. The items enumerated in the question were assessed based on these criteria.

(1) Illness of a foster parent: ensuring supervision for one's children during one's illness is an ordinary parental duty. Therefore, child care provided to a child in foster care due to the illness of the foster parent is not an allowable expenditure under title IV-E foster care maintenance.

(2) Respite care: respite care is defined in federal regulation as an allowable title IV-B child welfare service and is not an allowable expenditure under title IV-E foster care maintenance. States may use title XX to fund respite care services.

(3) Foster parent attendance at:

a. administrative case/judicial reviews: this activity is not an ordinary parental duty. Therefore, child care is an allowable expenditure under title IV-E foster care maintenance when the foster parent(s) is required to attend administrative case/judicial reviews without the foster child;

b. case conferences/team meetings: when the foster parent is mandated by the court or the agency to attend case conferences or team meetings without the foster child, child care is an allowable expenditure under title IV-E foster care maintenance because this activity is beyond the scope of ordinary parental duties;

c. school conferences/ET (Pupil Evaluation Team): this activity is an ordinary parental duty and the cost of child care to provide for the foster parent's attendance at such is not an allowable expenditure under title IV-E foster care maintenance; or,

d. foster parent training: foster parent training required by the State agency is an activity beyond the scope of ordinary parental duties. Therefore, the cost of child care to provide for the foster parent's attendance at mandatory foster parent training is an allowable expenditure under title IV-E foster care maintenance.

(4) Foster parent visits with a child who is temporarily out of the home, e.g. child hospitalized or at camp: this is an ordinary parental duty. Child care provided to facilitate such is not an allowable expenditure under title IV-E foster care maintenance.

(5) Enhancement of a foster child's social skills/ peer relationships/socialization: child care that serves to enhance a child's social skills is typically a social service and/or recreational activity and, as such, is not reimbursable under title IV-E foster care maintenance. However, when recreational activities clearly substitute for otherwise necessary daily supervision, e.g., child care during the foster parent's working hours, they are allowable expenditures under title IV-E foster care maintenance.

(6) Special needs of a foster child best met in a day care setting: therapeutic child care is a social service and is not an allowable expenditure under title IV-E foster care maintenance.

Child care services for children in foster care must be rendered by a provider that is licensed, certified, or has some other formal status under State or local regulations in order for the State to claim reimbursement under title IV-E. This interpretation is consistent with the statute at section 472(c) which requires States to make placements in licensed or approved foster family homes and/or child care institutions. Since foster parents must be licensed or approved, child care providers that provide a foster child daily supervision in the foster parent's stead must also be licensed or approved in order for the State to claim reimbursement under title IV-E foster care maintenance. Informal, episodic child care need not have such status and is presumably included in the basic title IV-E foster care maintenance payment.

Source: ACYF-CB-PIQ-97-01 (3/4/97)

Reference: Social Security Act - sections 472, 474 and 475; 45 CFR 1356.60

4 ***Q:*** For which of the following purpose(s) may transportation services be claimed for reimbursement as a foster care maintenance payment: (1) the foster parent's involvement in/attendance at administrative case/judicial reviews, case conferences/team meetings, school conferences, and foster parent training; (2) the travel of a child in foster care to/from the following activities: (a) allowable day care, (b) school attendance and extracurricular activities, (c) pre-placement visits, (d) foster family trips, (e) sports and cultural events, (f) administrative case/judicial reviews, (g) visitation at other locations, e.g., in the child welfare office, or, (h) visitation with siblings, other relatives, or other caretakers?

A: Local travel associated with providing the items listed in the first sentence of section 475 (4)(A) of the Social Security Act (the Act): food; clothing; shelter; daily supervision; school supplies; and a child's personal incidentals is an allowable expenditure for title IV-E foster care reimbursement.

The cost of local transportation associated with the items listed at section 475(4)(A) is presumably included in the basic title IV-E foster care maintenance payment. Transportation as a separate item of expense is not allowable except for reasonable travel to the child's home for visitation and for the child to remain in the school in which the child is enrolled at the time of placement. The items enumerated in the question were assessed based on these criteria.

(1) a. The foster parent's involvement in/attendance at administrative case/judicial reviews, case conferences/team meetings, and foster parent training: these items do not coincide with the definition at section 475 (4)(A). Therefore, transportation associated with them is not an allowable title IV-E foster care maintenance expenditure. However, section 474 (a) of the Act states that each State shall be entitled to a payment "... for the proper and efficient administration of the State plan...." Transportation to provide for a foster parent's attendance at administrative case/judicial reviews and mandatory case conferences/team meetings is an allowable title IV-E administrative expenditure because these activities provide for the proper and efficient administration of the title IV-E State plan. Additionally, section 474(3)(B) of the Act states that each State shall be entitled to Federal financial participation for "... expenditures (including travel and per diem expenses) as are for the short-term training of current or prospective foster or adoptive parents..." Transportation and per diem to provide for foster parent's attendance at mandatory foster parent training is an allowable title IV-E training expenditure.

b. The cost of a foster parent traveling to attend school conferences in the school in which the child was enrolled at the time of placement would be an allowable foster care maintenance expenditure because section (475(4) of the Act includes the cost of reasonable travel for the

child to remain in that school.

(2) The travel of a child in foster care to/from the following activities:

a. allowable day care: transportation as a separate item of expense is not allowable except for reasonable travel to the child's home for visitation. However, the costs of transporting a child in foster care to and from child care that substitutes for daily supervision are allowable and presumed to be included in the basic foster care maintenance payment;

b. school attendance and extracurricular activities: Section 475(4) of the Act includes the cost of reasonable travel for the child to remain in the school in which the child is enrolled at the time of placement in foster care as allowable as a title IV-E foster care maintenance expenditure. Additionally, other transportation associated with the child's attendance at his/her school of origin is an allowable administrative cost under title IV-E because such transportation is related to case management and therefore necessary for the proper and efficient administration of the title IV-E State plan (see Child Welfare Policy Manual section 8.1B and 45 CFR 1356.60(c)(2)). The cost of transportation to and from extracurricular activities that substitute for daily supervision is also allowable and presumed to be included in the basic title IV-E foster care maintenance payment;

c. pre-placement visits: this activity does not fall under the definition at section 475(4)(A). Therefore, transportation to and from pre-placement visits is not an allowable foster care maintenance expenditure. However, regulations at 45 CFR 1356.60(c)(2) list "placement of the child" as an example of an allowable administrative cost;

d. foster family trips: transportation for foster family trips is not an allowable expenditure under title IV-E because these trips do not coincide with the items described at section 475(4)(A) of the Act. Transportation as a separate item of expense is not allowable except for reasonable travel to the child's home for visitation;

e. sports and cultural events: the reimbursement of recreation costs per se is not permitted under title IV-E. Since section 475(4) includes "a child's personal incidentals" the reasonable and occasional cost of such items as tickets or other admission fees for sporting, entertainment or cultural events are reimbursable under title IV-E Foster Care as a part of the maintenance payment. Transportation to and from these events is presumed to be included in the basic foster care maintenance payment;

f. administrative case/judicial reviews: transportation costs associated with the child's attendance at administrative case/judicial reviews are not allowable expenditures under title IV-E foster care maintenance because these activities do not coincide with the items described at section 475(4)(A). However, transportation costs associated with the child's attendance at

administrative case/judicial reviews are allowable administrative costs under title IV-E because they provide for the proper and efficient administration of the title IV-E State plan;

g. visitation at other locations, e.g., in the child welfare office: the statute provides for "reasonable travel to a child's home for visitation," however, in many circumstances, it is not possible or appropriate for visitation to occur at the child's home. Therefore, reasonable transportation costs for visits at locations other than the child's home, e.g., at the child welfare office or other location deemed appropriate by the agency, are allowable as separate expenditures under title IV-E foster care maintenance. Transportation costs for visitation are only reimbursable for the child and not for the costs of a biological parent or other relative visiting with the child. States may use title XX or title IV-B funds for that purpose; or

h. visitation with siblings, other relatives, or other caretakers: since section 475(4)(A) does not specify with whom visits must occur, reasonable travel for visits with siblings, relatives, or other caretakers is an allowable separate title IV-E foster care maintenance expenditure. Again, transportation costs for visitation are only reimbursable for the child and not for the costs of a relative visiting with the child. States may use title XX or title IV-B funds for that purpose.

Source: 12/31/07 revised 08/31/09

Reference: Social Security Act - sections 472, 474 and 475; 45 CFR 1356.60

5 **Q:** What is an acceptable profit margin for a for-profit child-care institution that services title IV-E eligible children?

A: When contracting for goods or services with a profit-making enterprise, there is a presumption that a certain amount of profit is included in the price offered. While there are no Federal guidelines limiting the amount or percentage of profit that may be included in such a contracted price, States are required to obtain the most beneficial pricing by adhering to the "Procurements by states" mandated by 45 CFR 75.326 and the cost principles at 45 CFR PArt 75.403, that "...(t)o be allowable under Federal awards, costs must ... (a)Be necessary and reasonable for the performance of the Federal award and be allocable thereto under these principles."

In defining "reasonable costs", 45 CFR Part 75.404 provides the following guidance:

"... A cost is reasonable if, in its nature and amount, it does not exceed that which would be incurred by a prudent person under the circumstances prevailing at the time the decision was made to incur the cost ...In determining reasonableness of a given cost, consideration shall be given to: Whether the cost is of a type generally recognized as ordinary and necessary for the operation of the governmental unit or the performance of the Federal award; The restraints or requirements imposed by such factors as - sound business practices, arm's-length bargaining, Federal, State and other laws and regulations, and, terms and conditions of the Federal award; Market prices for comparable goods or services for the geographic area; Whether the individuals concerned acted with prudence in the circumstances considering their responsibilities to the non-Federal entity, its employees, where applicable its students or membership, the public at large, and the Federal Government; Whether the non-Federal entity significantly deviates from the established practices and policies regarding the incurrence of costs, which may unjustifiably increase the Federal award's cost."

Accordingly, when States are awarding contracts to for-profit child-care institutions under title IV-E, it is whether the price itself is reasonable under the 45 CFR Part 75 Subpart E cost principle standards that will be used to determine the allowability of that cost, not the amount of profit which a contractor may be making under that contract.

Note: This answer previously referenced 45 CFR Part 92 and OMB Circular A-87. 45 CFR Part 75 supersedes 45 CFR Part 92 and OMB Circular A-87 effective December 26, 2014 (79 FR 75871, Dec. 19, 2014).

Source: ACYF-CB-PA-97-01 (7/25/97) (revised 11/2/2016)

Reference: Social Security Act - sections 472 and 473; PL 104-193; 45 CFR Part 75; 79 FR 75871, Dec. 19, 2014. ; 81 FR 3022, Jan. 20, 2016

6 ***Q:*** Routine medical-related expenses are covered under our State's uniform foster care rate.

However, when unexpected, expensive medical costs are incurred which are not covered by title XIX, can other Federal funds be utilized? May prescription drugs which are not covered by Medicaid or any other program be allowed as a personal incidental cost within the definition in section 475 (4) of the Social Security Act (the Act)? If so, would there be any special conditions which would have to be met (e.g. cost limits, documentation)? If not, is there any provision within title IV-E which would permit reimbursement of the costs of prescription drugs for children in foster care for which no other funding source is available?

A: Federal medical payments on behalf of title IV-E eligible children in foster care are provided under the State's title XIX, Medicaid program, in accordance with title XIX, Medicaid Program, and with section 472 (h) of the Act. The definition of "foster care maintenance payments" in section 475 (4) does not include medical expenses as an allowable cost in title IV-E.

A State may not include in the title IV-E foster care maintenance payment a specific allowance for medical care - nor may a State be reimbursed under title IV-E for direct expenditures of the types described in the questions. The "personal incidentals" item in the foster care maintenance payment under title IV-E, as provided by section 475 (4), may be used to meet incidental needs - and foster parents are not generally required to provide an accounting of specific expenditures, as long as the basic needs of the child are met and the maintenance payment is used for those needs.

Source: ACYF-CB-PIQ-84-01 (2/10/84)

Reference: Social Security Act - sections 472 (h) and 475 (4); Title XIX

7 ***Q:*** How should the costs of foster parent insurance be claimed, as maintenance payments or as administrative expenditures subject to reimbursement? What types of insurance costs are allowable? Is liability insurance sometimes considered a service? What should be included in the definition of "liability insurance"?

A: Section 475 (4) of the Social Security Act, by including "liability insurance with respect to a child" in the definition of foster care maintenance payments, gives States the option of considering insurance for foster parents as a direct foster care maintenance cost or as an administrative cost of the foster care maintenance program under title IV-E.

Some States include payment for insurance coverage in the monthly foster care payment to foster parents; others provide the protection through a group insurance policy or through the State's self-insuring procedures. Using self-insurance, the State may be able to provide broad coverage at low cost.

Foster parent insurance should include coverage of damages by a foster child to the home or property of the foster parents and of harm done by a foster child to another party.

Source: ACYF-CB-PIQ-82-04 (1/29/82)

Reference: Social Security Act - section 475 (4)

8 **Q:** An individual is both a foster care provider and a child care provider for the same child. Is it permissible under title IV-E for the State to provide a title IV-E foster care maintenance payment and a Federal child care payment (title IV-A or child care development fund) to the same provider?

A: There is nothing in title IV-E that prohibits a State from providing a title IV-E foster care maintenance payment and a title IV-A or child care development fund payment to the same provider for the same child. Under these circumstances, however, the State may not include any payment for child care in its title IV-E foster care maintenance payment for the child.

Source: 06/09/04

Reference: Social Security Act, sections 472, 474 and 475(4)

9 **Q:** The definition of "foster care maintenance payments" at 475(4)(A) of the Social Security Act includes payments to cover the cost of (and the cost of providing) a child's "personal incidentals." For title IV-E purposes, what does the term "personal incidentals" include?

A: The Social Security Act requires that the title IV-E foster care maintenance payment is to cover the cost of (and the cost of providing), among other things, the personal incidentals of the child in foster care. These items are typically purchased for the child on an occasional, as-needed basis and may include a variety of items. Specifically, we consider the following categories of expenditures examples of "personal incidentals": items related to personal hygiene; cosmetics; over-the-counter medications and special dietary foods; infant and toddler supplies, including high chairs and diapers; fees related to activities, such as Boy/Girl Scouts; special lessons, including horseback riding; graduation fees; funeral expenses; and miscellaneous items such as stamps, envelopes, writing paper, film and the cost of film development for a personal camera.

Further, as stated in section 8.3B.1 of the Child Welfare Policy Manual (CWPM), the "reasonable and occasional" costs of such items as tickets or other admission fees for sporting, entertainment or cultural events or dues for clubs are reimbursable under the foster care maintenance payment as personal incidentals.

The State may provide for these costs in the basic foster care maintenance payment or a separate payment to the foster parent.

Source: *7/6/05*

Reference: *Social Security Act -- Section 475(4)(A), CWPM Section 8.3B.1*

10 **Q:** In some States, foster parents provide "respite" for a short period of time for a child in foster care who is placed with another foster parent. May the State claim title IV-E foster care maintenance payments for the child who goes temporarily to stay with another foster parent for respite purposes?

A: Yes. A State may claim allowable title IV-E foster care maintenance payments on behalf of a child who is title IV-E eligible and is placed with a licensed foster care provider only temporarily, as a respite placement. The foster parent is not being paid to provide respite care, rather the allowable costs of an eligible child are continuing to be paid. Title IV-E foster care maintenance payments may be claimed because the child is eligible and with a licensed provider. However, foster care maintenance payments may not be made to both providers for the same period in this situation.

Source: *September 29, 2005*

Reference: *Social Security Act ¿ Section 475 (4)*

8.3B.2 TITLE IV-E, Foster Care Maintenance Payments Program, Payments, Rates

1 **Q:** What are the restrictions for rate setting with respect to for-profit child-care institutions?

A: States used non-Federal dollars when contracting with for-profit child-care institutions prior to the amendments to section 472 (c) of Social Security Act (the Act) which provide Federal financial participation (FFP) for children placed in for-profit child-care institutions. The availability of FFP should have little or no impact on States' rate setting practices for for-profit child-care institutions if a single set of standards has been utilized for facilities regardless of title IV-E eligibility. The approved rates should, however, clearly identify and separate payments for foster care maintenance, as defined at section 475 (4)(A) of the Act, from those for tuition, treatment, social services, and other expenditures not reimbursable under title IV-E foster care maintenance.

Source: ACYF-CB-PA-97-01 (7/25/97)

Reference: Social Security Act - sections 472 and 475; the Personal Responsibility Work Opportunity Reconciliation Act (PRWORA) (PL 104-193)

2 **Q:** In our State, we pay four different rates for foster care maintenance. A basic rate to all foster parents covers food, clothing, shelter, and personal incidentals. In addition, there are three levels of supplements which are paid to foster parents who care for children with varying degrees of physical or emotional handicaps. The higher rates in these cases relate to the increased supervision required for children with special needs and are considered a part of the foster care maintenance payment. Are these supplemental payments to foster parents allowable for reimbursement under title IV-E foster care as a maintenance cost?

A: Yes. These costs are allowable for Federal financial participation under the title IV-E foster care program. Certain categories of children, including those with physical or emotional disabilities, may require more day-to-day supervision and attention than those without such conditions. Although Congress did not intend that salaries be paid under title IV-E to foster parents for ordinary parental duties, "daily supervision" is one of the items included in the definition of "foster care maintenance payments" in section 475(4) of the Social Security Act. A supplement to the basic maintenance payment for a particular child is justified when the child has greater than usual needs for the items included in the definition, as determined by the State agency.

Source: ACYF-CB-PIQ-86-04 (8/20/86)

Reference: Social Security Act - section 475 (4)

8.3C TITLE IV-E, Foster Care Maintenance Payments Program, State Plan/Procedural Requirements

1 ***Q:*** For what population of children must the section 422 protections be provided?

A: Section 422 of the Social Security Act requires that all of the protections set forth therein be provided to all children in foster care. "Foster care" is defined at 45 CFR 1355.20 as:

"24 hour substitute care for all children placed away from their parents or guardians and for whom the State agency has placement and care responsibility. This includes but is not limited to foster family homes, foster homes of relatives, group homes, emergency shelters, residential facilities, child-care institutions, and pre-adoptive homes regardless of whether the foster care facility is licensed and whether payments are made by the State or local agency for the care of the child or whether there is Federal matching of any payments that are made."

Situations exist in which a child who, while s/he may have been removed from her/his home and placed in 24 hour substitute care, is not considered to be in "foster care" because of the nature of the facility in which s/he is placed. In accordance with the statute, we have not considered detention facilities, forestry camps, training schools, facilities that are primarily for the detention of children who are adjudicated delinquent, and facilities like medical or psychiatric hospitals as foster care placements. Therefore, children placed in facilities of the type described here are not, by definition, in foster care and the State is not required to provide the protections to them while they are placed in such facilities.

Source: Questions and Answers on the Final Rule (65 FR 4020) (1/25/00)

Reference: Social Security Act - section 471 (22); 45 CFR 1355.20

2 **Q:** Please explain the requirements with respect to case plans and the case review system at section 475 of the Social Security Act (the Act) for a child and his/her minor parent in foster care.

A: The State is not required to satisfy the requirements of the case plan and case review system set forth at section 475 of the Act on behalf of a child of a minor parent because s/he has not been removed from her/his biological parent and; therefore, pursuant to Federal law and regulations, is not in foster care. However, good social work practice suggests that the minor parent's case plan include the needs of the child and that the child's needs and interests be addressed during the six-month periodic reviews and permanency hearings held on behalf of the minor parent.

In cases where the State has placement and care responsibility for both the minor parent and child, and has placed them in different foster homes, the child is considered to be in foster care and the requirements of the case plan and case review system at section 475 of the Act apply.

Source: Questions and Answers on the Final Rule (65 FR 4020) (1/25/00)

Reference: Social Security Act - section 475; 45 CFR 1355.20

3 **Q:** Section 471(a)(26) of the Social Security Act (the Act) requires the State to conduct and complete an interstate home study and return a report on the results of the study within 60 days (or 75 days under certain circumstances). Must the State include the results of the criminal background checks and child abuse registry checks on the prospective foster or adoptive family required by section 471(a)(20) of the Act in the 60-day report?

A: No. Section 471(a)(26) of the Act requires that if a State receives a request to conduct a "study of a home environment" to assess the safety and suitability of placing a child in the home, the State must within 60 days conduct, complete, and provide a report of the study to the requesting State. This requirement for an interstate "home study" does not encompass the Federal provisions for criminal background checks and child abuse registry checks in section 471(a)(20) of the Act. Rather, these checks are required before the State can license or approve a prospective foster or adoptive family. Ideally, however, the receiving State would include the results of the criminal background check and child abuse registry check in the report to the sending State so that the State could more readily determine the suitability of the home for the child.

Source: *01/29/07*

Reference: *Social Security Act ¿ sections 471(a)(26) and 471(a)(20)*

4 **Q:** How will ACF determine compliance with the interstate home study requirements in section 471(a)(26) of the Social Security Act (the Act)?

A: Section 471(a)(26) of the Act is a title IV-E State plan requirement; therefore, ACF has the authority to apply the partial review process described in 45 CFR 1355.32(d), if warranted, to determine the State's compliance.

Source: *01/29/07*

Reference: *Social Security Act ¿ section 471(a)(26)*

5 **Q:** Section 471(a)(26)(A)(i) of the Social Security Act (the Act) requires States to complete out-of-State home studies within 60 days, or 75 days in limited circumstances. Are the time limits of section 471(a)(26)(A)(i) of the Act based on business or calendar days?

A: The 60 and 75-day time limits that apply to the requirements of section 471(a)(26)(A)(i) of the Act are based on calendar days. Time limits referred to in the statute refer to calendar days unless otherwise specified.

Source: *04/24/07*

Reference: *Social Security Act ¿ section 471(a)(26)(A)*

6 **Q:** Section 471(a)(26)(A)(i) of the Social Security Act (the Act) requires that States complete out-of-State home studies within 60 days, or 75 days in limited circumstances. At what point does the 60 or 75-day timeframe begin?

A: Section 471(a)(26)(A)(i) of the Act establishes that the 60 and 75-day period begins when the State that is to conduct the home study receives the home study request. It is up to each State to determine the entity in the State to receive these requests.

Source: 04/24/07

Reference: Social Security Act ¿ section 471(a)(26)(A)

7 **Q:** Section 471(a)(26)(A)(i) of the Social Security Act (the Act) requires that within 60 days of having received an interstate home study request from another State, the responding State conduct and complete the study and return a report to the requesting State. If the home study request is incomplete when it is received and additional information is required, when does the statutory 60-day timeframe begin?

A: A State may establish its own rules for what constitutes a completed out-of-State home study request pursuant to section 471(a)(26)(A)(i) of the Act. Therefore, the 60-day timeframe begins when a complete request, as defined by the State that is performing the home study, is received from the requesting State.

Source: 04/24/07

Reference: Social Security Act ¿ section 471(a)(26)(A)

8 **Q:** Under section 471(a)(26)(A) of the Social Security Act (the Act), the law requires a State receiving an out-of-State home study request to "directly or by contract" complete the home study. Does the statute permit either the responding or requesting State to contract with a private agency for an interstate home study?

A: Yes. When a State receives an out-of-State home study request, the State is required to conduct and complete the study "directly or by contract." However, the requesting State may choose to contract directly with a private agency to conduct an out-of-State home study, rather than requesting the State to complete the study.

Source: 04/24/07

Reference: Social Security Act ¿ section 471(a)(26)(A)

9 **Q:** Do Indian Tribes have to operate the title IV-B programs to operate a title IV-E program?

A: Yes, but only a title IV-B subpart 1 program. Section 471(a)(2) of the Social Security Act requires the same agency administering title IV-B, subpart 1 to operate the title IV-E program. To give this language effect, the title IV-E agency must operate a title IV-B, subpart 1 program. There is no similar requirement in title IV-E related to the title IV-B, subpart 2 program.

Source: 12/19/08

Reference: Social Security Act ¿ section 471(a)(2)

10 **Q:** Amendments to sections 475(1)(B) and (D), 475(5)(B-C))and section 475A of the Social Security Act (the Act) expand the case review and case plan requirements to prohibit a title IV-B/IV-E agency from providing a plan of another planned permanent living arrangement (APPLA) for youth under age 16 and also includes other changes to APPLA plans. When do these changes to the Act apply to children under age 16 already in the system as of the effective date of the provisions?

A: Once the state or tribe is required to meet the federal requirements,* the title IV-B/IV-E agency must apply the new APPLA requirements to any youth under age 16 as of the child's next

permanency hearing. This also means that as of the state or tribal title IV-B/IV-E agency's effective date, the agency will be required to choose a permanency plan other than APPLA for youth under age 16 at the youth's next permanency hearing.

* Effective date for states: 9/29/15 unless a delayed effective date is approved. A limited period of delay is permitted when the Secretary of the U.S. Department of Health and Human Services determines that legislation (other than legislation appropriating funds) is required for a title IV-E agency to comply with the plan requirements under title IV-E of the Act imposed by the amendment. The "delayed effective date" is defined as the 1st day of the 1st calendar quarter after the 1st regular session of the state legislature or tribal governing body after enactment. Effective date for children under the placement and care of an Indian tribe, tribal organization or consortium: 9/29/17.

Source:

Reference: Social Security Act – sections 475(1)(B) and (D), 475(5)(B-C)and 475A(a)

8.3C.1 TITLE IV-E, Foster Care Maintenance Payments Program, State Plan/Procedural Requirements, Case plans

1 ***Q:*** 45 CFR 1356.21 (g)(1) requires case plans to be developed jointly with the parent(s). What if the State is unable to locate the parent or s/he is unwilling or unable to participate in developing the plan?

A: We believe the regulatory requirement to include parents in the joint development of case plans serves the goal of the Adoption and Safe Families Act (Pub. Law 105-89) to begin the permanency planning process and service delivery as soon as possible following a child's removal from home. If the parent is not able or willing to participate in the development of the case plan, it should be so noted in the plan.

Source: Preamble to the Notice of Proposed Rulemaking (63 FR 50058) (9/18/98)

Reference: 45 CFR 1356.21 (g)

2 **Q:** How long after the original placement occurs must the case plan be written? Must a new case plan be prepared each time a child moves to a new provider or is it sufficient to update the case plan for each change in placement? How often must the case plan be updated if the child remains in the same placement for several years?

A: The regulations at 45 CFR 1356.21 (g) require that the case plan "Be developed within a reasonable period, to be established by the State, but in no event later than 60 days from the child's removal from the home..." Therefore, when a new placement is made, either a new or updated case plan must be developed.

If a child remains in the same placement for several years, the case plan should be updated periodically. Ordinarily, this should occur after each six-month periodic review. The education and health section of the case plan should also be updated as appropriate to reflect the changing services to and needs of the child.

Source: ACYF-CB-PIQ-90-03 (12/6/90)

Reference: Social Security Act - section 471 (a)(16), 475 (1) and (5); 45 CFR 1356.21 (g)

3 **Q:** Must the court approve case plans?

A: No. There is no statutory basis for requiring judicial approval of the State agency's case plan document. The court's role is to: exercise oversight of the permanency plan; review the State agency's reasonable efforts to prevent removal from the home, reunify the child with the family and finalize permanent placements; and to conduct permanency hearings. The State agency is responsible for developing and implementing the case plan. We see no additional benefit in requiring court approval of the case plan.

Moreover, it is not permissible for courts to extend their responsibilities to include choosing a child's placement with a specific foster care provider. To be eligible for title IV-E foster care maintenance payments the child's placement and care responsibility must either lie with the State agency, or another public agency with whom the State has an agreement according to section 472 (a)(2) of the Social Security Act. Once a court has chosen a placement with a specific provider, it has assumed the State agency's placement responsibility. Consequently, the State cannot claim Federal financial participation (FFP) for that placement.

Source: *Preamble to the Final Rule (65 FR 4020) (1/25/00)*

Reference: *45 CFR 1356.21 (g)*

4 **Q:** What are the title IV-E and title IV-B case plan requirements regarding health and educational records? Can the education and health records remain a part of the case record rather than be incorporated into the case plan? Can education and health records be attached to the case plan as an appendix?

A: Section 475 (1) of the Social Security Act (the Act) included in its definition of "case plan" the requirement that a foster child's case plan must include certain information regarding his educational and health status. In addition, section 475 (5)(D) of the Act ensures that the child's health and education records are reviewed and updated at the time of each placement of the child in foster care and that such records are supplied to the foster parent or foster care provider with whom the child is placed.

The case plan must be a discrete document which includes the education and health records of the child. In most cases, the information to be included in the case plan, and supplied to the foster parent(s) or caretaker of the foster child, would be less comprehensive than the case record. The case record, on the other hand, should include all of the health and education records of the child and include detailed medical reports, psychological evaluations, etc.

It would be possible to comply with the law by attaching copies of the most relevant health and education information to the case plan as an appendix or by summarizing this information as an integral part of the case plan.

Source: *ACYF-CB-PIQ-90-03 (12/6/90)*

Reference: *Social Security Act - sections 475 (1)*

5 **Q:** Section 475(1)(C) of the Social Security Act states that the case plan must include "the most recent information available" regarding the health and education records of the child. How can a State meet the requirements in order to continue eligibility for Federal financial participation (FFP) if the records are not available?

A: States are required under this provision to include the child's most recent available health and educational records in the child's case plan. If the information is unavailable as a result of Federal or State confidentiality restrictions or for any other reason, the State should explain this in the case plan and describe the steps being taken to obtain such records. Including recent health and education records in a case plan is a State plan requirement, rather than a title IV-E eligibility criterion upon which FFP is conditioned. Therefore, we may determine whether the State is in substantial compliance with this requirement through a Child and Family Services Review or a partial review (45 CFR 1355.32 and 1355.34).

Source: 01/29/07

Reference: The Safe and Timely Interstate Placement of Foster Children Act of 2006 (P.L. 109-239); 475(5)(C) of the Social Security Act

6 **Q:** Regulations at 45 CFR 1356.21(g) require that a State develop a case plan within 60 days of removal. How is the due date for development of a case plan determined for a child initially placed in a facility outside the scope of foster care (e.g., a detention facility or psychiatric hospital) prior to entering foster care?

A: The case plan requirements in 45 CFR 1356.21(g) apply to children in foster care. Accordingly, when a child is initially placed in a facility that is outside the scope of foster care, the State has 60 days from the date the child is placed in foster care to develop a case plan.

Source: 12/31/07

Reference: Social Security Act ¿ sections 471(a)(16); 45 CFR 1356.21(g); Preamble to the Final Rule (65 FR 4031)

7 ***Q:*** Does 475A(b) of the Social Security Act (the Act) create specific federal "rights" for youth in foster care with regard to education, health, visitation, court participation and other areas?

A: No. Section 475A(b) expands the title IV-B/IV-E case plan requirements so that the title IV-B/IV-E agency must provide information to the youth about certain rights of the child in foster care. Specifically, in the case plan of each youth age 14 and older, the title IV-B/IV-E agency must include a document that describes the rights the agency has established for the youth, such as rights to education, health, visitation and the child s right to stay safe and avoid exploitation.

Source: 6/5/2015

Reference: Social Security Act – section 475A(b)

8.3C.2 TITLE IV-E, Foster Care Maintenance Payments Program, State Plan/Procedural Requirements, Case review system

1 ***Q:*** Should the time a child spends in shelter care be factored into calculating the timing for holding periodic reviews, permanency hearings, and for complying with the termination of parental rights (TPR) provision?

A: Under long-standing Departmental policy, shelter care is considered a form of foster care (see the definition of "foster care" at 45 CFR 1355.20). Shelter care is one of many possible settings in which children in foster care are placed. Therefore, time spent in shelter care counts in determining when to hold periodic reviews, permanency hearings, and for complying with the TPR provision.

Source: Preamble to the Final Rule (65 FR 4020) (1/25/00)

Reference: Social Security Act - section 475 (5)(F); 45 CFR 1355.20 and 1356.21 (f)

2 ***Q:*** How is the timing for holding six-month periodic reviews and permanency hearings impacted by an interruption in a foster care episode, for example, a temporary placement in a detention facility or psychiatric hospital?

A: States have two options for addressing the scenario presented in this question:

First, despite the interruption in foster care, the State may choose to treat the foster care placement as continuous if the original court order pertaining to the child's removal from the home is still in effect. If the State chooses to do so, the "clock" for holding six-month periodic reviews and permanency hearings would stop while the child is placed in a facility that is outside the scope of "foster care" because the State is not required to hold such reviews and hearings for children who are not in "foster care." The timing for holding six-month periodic reviews and permanency hearings would resume in accordance with the original schedule when the child returns to a foster care setting.

Alternatively, the State may treat the placement in a facility that is outside the scope of foster care as a discharge from foster care. Obviously, if the child is discharged from foster care, the State is not required to hold six-month periodic reviews or permanency hearings for such child. The timing for holding such reviews and hearings begins anew when/if the child returns to foster care.

Regardless of the option the State chooses, no Federal financial participation is available while the child is placed in a facility that is considered outside the scope of "foster care."

Source: Questions and Answers on the Final Rule (65 FR 4020 (1/25/00)

Reference: Social Security Act - section 475 (5); 45 CFR 1355.20

3 ***Q:*** Must the State hold six-month periodic reviews and permanency hearings for children who have run away?

A: If the State retains responsibility for the placement and care of the child during the runaway episode, it must continue to hold six-month periodic reviews and permanency hearings on the original schedule, even if the child has not been located.

Source: Questions and Answers on the Final Rule (65 FR 4020 (1/25/00)

Reference: Social Security Act - sections 472 (a) and 475 (5)

4 ***Q:*** Must the State hold six-month periodic reviews and permanency hearings for children in foster care who are placed in unlicensed foster family homes?

A: Yes. The protections set forth at section 422(a)(10) of the Social Security Act apply to all children in foster care, regardless of a foster care provider's licensure.

Source: Questions and Answers on the Final Rule (65 FR 4020 (1/25/00)

Reference: Social Security Act - section 422; 45 CFR 1355.20

5 ***Q:*** We understand that the timing for conducting the initial permanency hearing and six-month periodic review is based on the date the child is considered to have entered foster care. Are subsequent reviews/hearings to be held based on the date the child is considered to have entered foster care or within 12 months of the date the prior hearing or review was actually held?

A: Either methodology referenced in the question is consistent with and would satisfy the regulatory requirements. We will, therefore, leave the methodology employed to the State's discretion. We strongly encourage States, however, to adopt and set forth in State policy one methodology for holding the subsequent hearings/reviews to ensure consistent application across the title IV-E caseload.

Source: *Questions and Answers on the Final Rule (65 FR 4020 (1/25/00)*

Reference: *Social Security Act - section 475 (5); 45 CFR 1355.20*

6 **Q:** When a child in foster care is placed in another State and the sending State transfers the child's placement and care responsibility to the receiving State's title IV-B/IV-E agency, does the "clock" re-start for determining when the case review requirements or reasonable efforts to finalize a permanency plan are due?

A: No. The "clock" for the case review requirements and reasonable efforts to finalize a permanency plan judicial determination begins on the date the child is considered to have entered foster care (section 475(5)(F) of the Social Security Act, 45 CFR 1355.20 and 1356.21(b)(2)). The date the child is considered to have entered foster care is the earlier of the date of the first judicial finding that the child has been subjected to child abuse or neglect, or the date that is 60 days after the child's removal from the home. The child's transfer from one State to another does not alter either date. Moreover, we believe that not extending the timeframes for carrying out the protections in such circumstances is consistent with a child's sense of time and the statute?s emphasis on timely permanency for children.

Source: *09/05/07*

Reference: *Social Security Act - section 475(5)(F); 45 CFR 1355.20 and 1356.21(b)(2)*

7 **Q:** Section 475(5)(I) of the Social Security Act (the Act) expands the case review system to require the title IV-B/IV-E agency to provide birth certificates, Social Security cards and other documents to certain youth who age out of foster care. To whom must the title IV-B/IV-E agency provide these documents?

A: Title IV-B/IV-E agencies must provide the documents to a child who is leaving foster care because he or she has attained 18 years of age or such greater age as the title IV-E agency has elected under section 475(8) of the Act unless the child has been in foster care for less than 6 months. If a youth leaves foster care after age 21, the title IV-B/IV-E agency also is required to provide the documents to such youth. Although not required, we encourage agencies to provide these essential documents to any youth who leave foster care over the age of 18.

Source: 6/5/2015

Reference: Social Security Act – sections 475(5)(I), 475(8).

Effective 9/29/15, unless ACF approves a delayed effective date.

8.3C.2a TITLE IV-E, Foster Care Maintenance Payments Program, State Plan/Procedural Requirements, Case review system, date a child is considered to have entered foster care

1 ***Q:*** For the date the child is considered to have entered foster care, may the State use a date that is earlier than that prescribed in regulation?

A: The time frames for considering when a child has entered foster care, i.e., the earlier of a judicial finding of abuse or neglect or 60 days from the date the child is removed from the home, are statutory. However, nothing precludes a State from using a point in time that is earlier than that required by statute or regulation, such as the date the child is physically removed from the home. Clearly, if a State uses the date a child is physically removed from the home, the requirements for holding periodic reviews, permanency hearings, and complying with the termination of parental rights provision within the time frames prescribed would be satisfied.

Source: Preamble to the Final Rule (65 FR 4020) (1/25/00)

Reference: Social Security Act - section 475 (5)(F); 45 CFR 1355.20, 1356.21 (b)(2) and 1356.22

2 ***Q:*** How does the date of entry into foster care apply to children who enter foster care pursuant to a voluntary placement agreement?

A: The statute makes no distinction with respect to the manner in which children enter foster care when setting the parameters for determining when a child is considered to have entered foster care. Therefore, children placed in foster care via a voluntary placement agreement will be considered to have entered foster care no later than 60 days after the child is removed from the home.

We want to take this opportunity, however, to note that the purpose of the 60-day limit at section 475 (5)(F) of the Social Security Act is to ensure that periodic reviews, permanency hearings, and application of the termination of parental rights (TPR) provision are not delayed

as a result of contested involuntary removals. The danger of such a delay often does not exist when children are removed from their homes pursuant to a voluntary placement agreement. When children are removed from home via a voluntary placement agreement, we encourage States to use the date the child is placed in foster care (rather than 60 days later) as the date for calculating when to hold periodic reviews, permanency hearings, and for complying with the TPR provision.

Source: *Preamble to the Final Rule (65 FR 4020) (1/25/00)*

Reference: *Social Security Act - section 475 (5)(F); 45 CFR 1355.20, 1356.21 (b)(2) and 1356.22*

3 **Q:** How should the State determine the date a child is considered to have entered foster care for a child who is voluntarily relinquished?

A: The date a child is considered to have entered foster care according to the statute is the earlier of a judicial finding of abuse or neglect or 60 days from the date the child was removed from the home. Typically, there is no finding of abuse or neglect in a voluntary relinquishment, so the date of entry into foster care would be no later than 60 days from the date the child was removed from the home.

Source: *Preamble to the Final Rule (65 FR 4020) (1/25/00)*

Reference: *Social Security Act - section 475 (5)(F); 45 CFR 1355.20, 1356.21 (b)(2) and 1356.22*

4 **Q:** What is the connection between the date the child is considered to have entered foster care and when the State may claim Federal financial participation (FFP) for foster care maintenance payments?

A: Establishing initial eligibility for title IV-E funding and initial claiming for FFP have no relationship to the date the child is considered to have entered foster care defined at section 475 (5)(F) of the Social Security Act. The purpose of that provision is to set the "clock" for determining when to satisfy the requirements for holding periodic reviews, permanency hearings, and the termination of parental rights (TPR) provision. A child's initial eligibility for title IV-E funding is not related to this time frame.

The date a child is considered to have entered foster care is, however, related to maintaining a child's eligibility for title IV-E funding. Under section 1356.21 (b)(2), we require the State to use the date the child is considered to have entered foster care in determining when to obtain a judicial determination that it made reasonable efforts to finalize a permanency plan. We intentionally linked the timing for obtaining this judicial determination to the date the child is considered to have entered foster care so that such determinations could occur at the permanency hearing, the logical time for making such determinations.

Source: Preamble to the Final Rule (65 FR 4020) (1/25/00)

Reference: Social Security Act - section 475 (5)(F); 45 CFR 1355.20, 1356.21 (b)(2) and 1356.22

5 **Q:** States often temporarily place children in facilities that are outside the scope of what is considered "foster care," such as a detention facility or psychiatric hospital, with the intent of moving the child to a foster care placement at a later date. What is the "date the child is considered to have entered foster care" (the date used to satisfy the case review requirements at section 475 (5) of the Social Security Act (the Act)) for such children?

A: If a child is initially placed in a facility that is not a foster family home or child-care institution, i.e., the child is not in "foster care," and remains in such facility for more than 60 days, the date such child is considered to have entered foster care is the day that child is placed in a foster family home or child-care institution. If however, the child's entry into foster care from such a setting occurs within 60 days of his or her removal from the home, States should determine the "clock" for satisfying the requirements of the case review system in accordance with section 475 (5)(F) of the Act, i.e., the earlier of a judicial finding of abuse or neglect or 60 days from the date of removal.

Source: Questions and Answers on the Final Rule (65 FR 4020) (1/25/00)

Reference: Social Security Act - section 475 (5); 45 CFR 1355.20

8.3C.2b TITLE IV-E, Foster Care Maintenance Payments Program, State Plan/Procedural Requirements, Case review system, notice and right to be heard

1 *Q:* Is it possible to waive noticing a parent whose child's case plan goal is a permanent foster care placement?

A: There is no waiver provision in the law with respect to opportunity for parental involvement in an administrative review undertaken as required by the case review system.

A periodic case review may be undertaken either by a court or by an "administrative review". (Section 475 (5)(B) of the Social Security Act (the Act)). Section 475 (6) of the Act defines an "administrative review" as a "review open to the participation of the parents of the child..."

These provisions indicate that when a State agency satisfies the periodic review requirement by "administrative review", it must provide parents the opportunity to participate in the proceedings. Of course the parents may choose not to participate. But it is incumbent upon the State agency to give them that opportunity.

Source: ACYF-CB-PIQ-81-01 (10/20/81)

Reference: Social Security Act - sections 471 (a)(16) and 475 (5) and (6)

2 *Q:* Do the notice requirements in section 475(G) of the Social Security Act apply to all court hearings? Do they apply to shelter care, emergency removal, adjudication and disposition hearings? Do they apply to procedural hearings, such as pretrial hearings or hearings on motions for discovery?

A: The revised statutory language confers a "right" to be heard instead of an "opportunity," as well as changes such right to be heard to a "proceeding" instead of "review or hearing" as in the previous language. Thus, we are interpreting this change to mean that in having a "right" to any "proceeding" to be held with respect to the child, the foster parents, pre-adoptive parents or relatives providing care for a child must, at a minimum, be provided with notice of their right to be heard in all permanency hearings, as well as six-month reviews, if held by the court.

Source: 01/29/07

Reference: Social Security Act ¿ section 475(5)(G), 45 CFR 1356.21(o)

8.3C.2c TITLE IV-E, Foster Care Maintenance Payments Program, State Plan/Procedural Requirements, Case review system, permanency hearings

1 *Q:* Must the State cease efforts at reunification at the permanency hearing if the child is unable to return home to the parent at that time?

A: No. The State is not obliged to set an alternate permanency plan at the permanency hearing if the child and family are not able to reunify at that time. However, the intent of the Adoption and Safe Families Act in shortening the time line for holding a permanency hearing was to place greater accountability and responsibility on parents for making their home ready and safe for the child's return. Families often present very complicated issues that must be resolved prior to reunification. For example, parents dealing with substance abuse issues may require more than 12 months to resolve those issues. However, a parent must be complying with the established case plan, making significant measurable progress toward achieving the goals established in the case plan, and diligently working toward reunification in order to maintain it as the permanency plan at the permanency hearing. Moreover, the State and court must expect reunification to occur within a time frame that is consistent with the child's developmental needs. If this is not the situation, the State is obliged to establish and act on an alternate permanency plan for the child at the permanency hearing. Too often, reunification is retained as the permanency goal when a parent is negligent in complying with the requirements of the case plan until the months or weeks immediately prior to the permanency hearing. A parent's resumption of contact or overtures toward participating in the case plan in the months or weeks immediately preceding the permanency hearing are insufficient grounds for retaining reunification as the permanency plan. In such situations, the parent should demonstrate a genuine, sustainable investment in completing the requirements of the case plan in order to retain reunification as the permanency goal. The shortened time frames and increased accountability for parents makes it incumbent on the State to begin providing services to families as soon as it receives responsibility for the child's placement and care. Ideally, the State will begin delivering services to resolve those parental issues which lead to the removal as soon as the child is removed from home.

Source: Preamble to the Notice of Proposed Rulemaking (63 FR 50058) (9/18/98)

Reference: Social Security Act - section 475 (5)(C); 45 CFR 1355.20

2 *Q:* What is the rationale for prohibiting any body that conducts permanency hearings from being

part of or under the supervision or direction of the State agency? Does this requirement extend to other public agencies with which the State agency has a title IV-E agreement?

A: Critical decisions that have a significant effect on the lives of children and their families are made at permanency hearings. The purpose of requiring courts to oversee permanency hearings is to ensure that these hearings are conducted by an impartial body, which includes any body appointed or approved by the court to provide this oversight in its stead. An administrative body that is part of the State agency or under its direction or supervision would not meet the test of impartiality.

The requirement does extend to other public agencies with which the State agency has an agreement. Title IV-E requirements extend to any other public agency with which the State agency enters an agreement for the performance of title IV-E administrative functions, including responsibility for placement and care of the child.

Source: Preamble to the Final Rule (65 FR 4020) (1/25/00)

Reference: Social Security Act - section 475 (5)(C); 45 CFR 1355.20

3 Q: May a State include placement in a permanent foster family home and emancipation in the list of permanency goals at section 475 (5)(C) of the Social Security Act (the Act) that are exempt from the compelling reason requirement in that section?

A: No. Section 475 (5)(C) of the Act specifies that the only permanency options the State may set without a compelling reason to do so include reunification, adoption, legal guardianship, or placement with a fit and willing relative.

Source: Preamble to the Final Rule (65 FR 4020) (1/25/00)

Reference: Social Security Act - section 475 (5)(C); 45 CFR 1355.20

4 *Q:* In what way can a State meet the requirement for the court holding a permanency hearing to conduct age-appropriate consultation with the child in section 475(5)(C)(iii) of the Social Security Act (the Act)?

A: Any action that permits the court to obtain the views of the child in the context of the permanency hearing could meet the requirement. Section 475(5)(C)(iii) of the Act tasks the State with applying procedural safeguards to ensure that the consultation occurs. However, the statute does not prescribe a particular manner in which the consultation with the child must be achieved which provides the State with some discretion in determining how it will comply with the requirement.

We do not interpret the term "consult" to require a court representative to pose a literal question to a child or require the physical presence of the child at a permanency hearing. However, the child's views on the child's permanency or transition plan must be obtained by the court for consideration during the hearing. For example, a report to the court in preparation for a permanency hearing that clearly identifies the child's views regarding the proposed permanency or transition plan for the child could meet the requirement. Also, an attorney, caseworker, or guardian ad litem who verbally reports the child's views to the court could also meet the requirement. Information that is provided to the court regarding the child's best interests alone are not sufficient to meet this requirement. Ultimately, if the court is not satisfied that it has obtained the views of the child through these or any other mechanism, it could request that the child be in the courtroom, or make other arrangements to obtain the child's views on his/her permanency or transition plan. plan.

Source: *06/22/07*

Reference: *Social Security Act - 475(5)(C)(iii)*

8.3C.2d TITLE IV-E, Foster Care Maintenance Payments Program, State Plan/Procedural Requirements, Case review system, six month periodic reviews

1 *Q:* Is it possible to abbreviate and/or alter case review procedures for a child whose case plan

goal is long-term foster care?

A: Each child for whom foster care maintenance payments are claimed under title IV-E must have a case review in accordance with the provisions outlined in section 475 (5) of the Social Security Act. These statutory requirements must be adhered to under all circumstances. Thus, a case plan and periodic reviews must be developed and implemented even if the goal for the child is long-term foster care.

However, the form and content of the review may be varied to accommodate the circumstances described. If the placement goal is long-term foster care, review would focus on areas other than alleviating problems in the child's original home. There are many interests of the child for which the agency continues to be responsible. There are, for example, matters concerning the continued appropriateness of the plan and the placement, plans for assuring that the child continues to receive proper care in the placement, and the appropriateness of services provided to the child under the plan; and, by implication, the agency has a continuing responsibility to assure and facilitate the child's adjustment. Moreover, information from full case review is needed to report to the court at the 12-month permanency hearing.

Source: ACYF-CB-PIQ-81-01 (10/20/81)

Reference: Social Security Act - sections 471(a)(16) and 475(1) and (5)

2 **Q:** Is it correct to say that an administrative review as a written report from the State agency to the court does not meet the court review requirement unless the court reviews the report and makes a determination as described in section 475 of the Social Security Act (the Act)?

A: This interpretation is correct. Section 475 (5)(B) of the Act lists the determinations which must be made with regard to a foster child's status during the periodic six month review. If these do not occur in the court review, it is the State agency's responsibility to carry out an administrative review which meets these requirements. For States which make use of courts for periodic review of children in foster care, it would be advisable to develop cooperative arrangements, if possible, to accomplish the purposes of the review.

Source: ACYF-CB-PIQ-82-01 (1/19/82)

Reference: Social Security Act - sections 471(a)(16) and 475 (5)

3 **Q:** We believe failure to hold a six month case review is a program issue and not an eligibility issue. Is this correct?

A: Yes. Failure to hold a periodic review as required in section 471 (a)(16) of the Social Security Act is not an eligibility issue. Section 471 (a)(16) is a title IV-E State plan requirement for a case review system with respect to each child receiving title IV-E foster care maintenance payments. It is not an eligibility requirement for the individual child in care. Failure to conduct timely periodic reviews of the status of each child receiving assistance under title IV-E could result in the State's being out of compliance with its title IV-E State plan; however, such failure would not affect the individual child's eligibility under the program.

Source: ACYF-CB-PIQ-85-06 (6/5/85)

Reference: Social Security Act - sections 471 (a)(16) and 472

4 **Q:** Can periodic reviews occur less frequently than every six months?

A: No. Section 475 (5)(B) of the Social Security Act provides that, "the status of each child is reviewed periodically but no less frequently than once every six months by either a court or by administrative review.." Without exception, the clear statutory language requires a review at least once every six months.

Source: ACYF-CB-PIQ-81-01 (10/20/81)

Reference: Social Security Act - sections 471(a)(16) and 475 (5)(B)

8.3C.2e TITLE IV-E, Foster Care Maintenance Payments Program, State Plan/Procedural Requirements, Case review system, termination of parental rights

1 **Q:** How should a State calculate the 15 out of 22 months when a child has multiple entries to and exits from foster care?

A: For the purpose of implementing the termination of parental rights (TPR) provision for children with multiple foster care placement episodes within the 22 month period, the State must use a cumulative method of calculating 15 months in foster care. For example, a child enters foster care on January 15, 2001 and is discharged from foster care three months later on April 15, 2001. He remains home for six months and then enters foster care again on October 15, 2001. The State must apply the TPR requirement at section 475(5)(E) of the Social Security Act with respect to this child based on the date he entered foster care for the first foster care episode, or January 15, 2001. If this child remains in foster care for another 12 months, the State will be obliged to comply with section 475(5)(E) on October 15, 2002, because this child will have been in foster care for a cumulative total of 15 out of the previous 22 months. However, the time line for conducting case reviews, permanency hearings, and providing time-limited reunification services for the subsequent foster care episode must be based on the date the child entered foster care for that episode, October 15, 2001.

If the child in the above scenario does not return to foster care until January 15, 2003, the State must begin calculating a new 15 out of 22 month period for applying section 475(5)(E) and the other case review requirements as of January 15, 2003, because this most recent date of entry into foster care is more than 22 months after the date the child entered foster care during the prior episode.

Source: *Preamble to the Notice of Proposed Rulemaking (63 FR 50058) (9/18/98)*

Reference: *Social Security Act - section 475 (5)(E); 45 CFR 1356.21 (i)*

2 **Q:** When a child has been in foster care for 15 out of 22 months but the State does not file a petition to terminate parental rights (TPR) because an exception applies, must the State begin counting another 15 out of 22 months at that time?

A: States need only apply section 475(5)(E) of the Social Security Act (the Act) to a child once. If, when a child reaches 15 months in foster care, the State does not file a petition for TPR because one of the exceptions applies, or the State does file such a petition but the court does not sustain that petition, the State does not need to begin calculating another 15 out of 22 months in foster care for that child. We think the requirements at sections 471(a)(15)(C) and (E) and 475(1)(E) of the Act regarding reasonable efforts to make and finalize alternate permanency placements and the requirements at section 475(5)(C) of the Act regarding permanency hearings provide children sufficient protections with respect to achieving permanency, thereby removing the need to require multiple applications of section 475(5)(E) of the Act. However, this does not preclude the State from filing, or the court from ordering, a petition for TPR upon later review if the permanency plan has not been achieved.

Source: *Preamble to the Notice of Proposed Rulemaking (63 FR 50058) (9/18/98)*

Reference: *Social Security Act - section 475 (5)(E); 45 CFR 1356.21 (i)*

3 ***Q:*** Must the State obtain a judicial determination regarding a compelling reason not to file a petition to terminate parental rights (TPR)?

A: No. We have not interpreted the statutory language which requires that the documentation of the compelling reason be "... available for court review..." as a requirement that the court make a determination with respect to the compelling reason. To interpret this language as requiring a court determination with respect to the compelling reason not to file a TPR would place an unnecessary additional burden on the State agency and the courts. We do anticipate, however, that the court will have the opportunity to review the compelling reason not to file for TPR as part of its ongoing oversight.

Source: Preamble to the Notice of Proposed Rulemaking (63 FR 50058) (9/18/98)

Reference: Social Security Act - section 475 (5)(E); 45 CFR 1356.21 (i)

4 ***Q:*** Is it possible to exempt certain categories of children from the requirement to file or join termination of parental rights (TPR) petitions for children who have been in foster care for 15 out of the most recent 22 months?

A: No. There is no statutory authority to provide an exemption for particular populations from the requirement to file a TPR for children who have been in foster care for 15 out of the most recent 22 months. The TPR requirement is designed to encourage State agencies to make timely decisions about permanency for children in foster care. Exempting groups of children from the requirements would be contrary to this goal.

Source: Preamble to the Final Rule (65 FR 4020) (1/25/00)

Reference: Social Security Act - section 475 (5)(E); 45 CFR 1356.21 (i)

5 ***Q:*** Please explain how the termination of parental rights (TPR) requirement applies to Indian tribes and it's relationship to Indian Child Welfare Act requirements.

A: The Indian Child Welfare Act of 1978 (ICWA), Public Law 95-608, was passed in response to concerns about the large number of Indian children who were being removed from their families and tribes and the failure of States to recognize the culture and tribal relations of Indian people. ICWA, in part, creates procedural protections and imposes substantive standards on the removal, placement, termination of parental rights and consent to adoption of children who are members of or are eligible for membership in an Indian tribe. The addition of the requirement in section 475 (5)(E) of the Social Security Act (the Act) to file a petition for TPR for certain children in no way diminishes the requirements of ICWA for the State to protect the best interests of Indian children. Furthermore, States are required to comply with the ICWA requirements and develop plans that specify how they will comply with ICWA in section 422 (b)(9) of the Act.

The requirement in section 475 (5)(E) of the Act applies to Indian tribal children as it applies to any other child under the placement and care responsibility of a State or tribal agency receiving title IV-B or IV-E funds. While we recognize that termination of parental rights and adoption may not be a part of an Indian tribe's traditional belief system or legal code, there is no statutory authority to provide a general exemption for Indian tribal children from the requirement to file a petition for TPR. If an Indian tribe that receives title IV-B or IV-E funds has placement and care responsibility for an Indian child, the Indian tribe must file a petition for TPR or, if appropriate, document the reason for an exception to the requirement in the case plan, on a case-by-case basis.

Source: Preamble to the Final Rule (65 FR 4020) (1/25/00)

Reference: Social Security Act - sections 422 (b)(9) and 475 (5)(E); 45 CFR 1356.21 (i); The Indian Child Welfare Act of 1978 (PL 95-608)

6 **Q:** May the State or Tribe define compelling reasons for not filing a petition to terminate parental rights (TPR) in State law or Tribal code?

A: No. States and Tribes may not develop a standard list of compelling reasons for not filing for TPR that exempts groups of children. Such a practice is contrary to the requirement that determinations regarding compelling reasons be made on a case-by-case basis. States and Tribes may, however, provide case workers examples of such for training purposes.

Source: Preamble to the Final Rule (65 FR 4020) (1/25/00)

Reference: Social Security Act - section 475 (5)(E); 45 CFR 1356.21 (i)

7 **Q:** Is the fact that a child had been in foster care for 15 out of the most recent 22 months legal grounds for a State to file a termination of parental rights (TPR) petition?

A: States are neither required nor prohibited by Federal statute from making a child's length of stay in foster care legal grounds to file or grant a petition for TPR.

Source: Preamble to the Final Rule (65 FR 4020) (1/25/00)

Reference: Social Security Act - section 475 (5)(E); 45 CFR 1356.21 (i)

8.3C.3 TITLE IV-E, Foster Care Maintenance Payments Program, State Plan/Procedural Requirements, Foster care goals

1 **Q:** Must the foster care goals required at section 471(a)(14) of the Social Security Act be enacted into State statute or may these goals be set forth in administrative code?

A: Section 471(a)(14) of the Social Security Act requires that specific goals be established by State law as to the maximum number of children receiving assistance under the State's title IV-E plan who will remain in foster care in excess of 24 months, and that the State plan include a description of the steps which will be taken by the State to achieve such goals. There is no specific requirement that such goals be incorporated into a statutory enactment. Our Office of the General Counsel has found that "State law" includes the administrative regulations of a

State, properly promulgated according to the procedural requirements of that State. The goals which are to be established by State law may be either incorporated into a State statute or established through administrative regulation. In either case, they must be specific as to absolute numbers or a percentage of all foster children receiving assistance under the plan.

Source: *ACYF-PIQ-82-01 (1/19/82)*

Reference: *Social Security Act - section 471 (a)(14)*

8.3C.4 TITLE IV-E, Foster Care Maintenance Payments Program, State Plan/Procedural Requirements, Reasonable efforts

1 ***Q:*** What is the definition of "reasonable efforts?"

A: We have not, nor do we intend to define "reasonable efforts." To do so would be a direct contradiction of the intent of the law. The statute requires that reasonable efforts determinations be made on a case-by-case basis. We think any definition would either limit the courts' ability to make determinations on a case-by-case basis or be so broad as to be ineffective. In the absence of a definition, courts may entertain actions such as the following in determining whether reasonable efforts were made:

(1) Would the child's health or safety have been compromised had the agency attempted to maintain him or her at home?

(2) Was the service plan customized to the individual needs of the family or was it a standard package of services?

(3) Did the agency provide services to ameliorate factors present in the child or parent, i.e., physical, emotional, or psychological, that would inhibit a parent's ability to maintain the child safely at home?

(4) Do limitations exist with respect to service availability, including transportation issues? If so, what efforts did the agency undertake to overcome these obstacles?

(5) Are the State agency's activities associated with making and finalizing an alternate permanent placement consistent with the permanency goal? For example, if the permanency goal is adoption, has the agency filed for termination of parental rights, listed the child on State and national adoption exchanges, or implemented child-specific recruitment activities?

Source: Preamble to the Notice of Proposed Rulemaking (63 FR 50058) (9/18/98)

Reference: Social Security Act - section 471 (a)(15)

2 **Q:** The statute states that a court of competent jurisdiction may find that reasonable efforts are not required. Please clarify what is meant by the term "court of competent jurisdiction".

A: The court that has responsibility for hearing child welfare dependency cases must make the determination that reasonable efforts to prevent a child's removal from home or to reunify a child and family are not required. Depending on the circumstances, this determination may be based on the findings of another court or the findings of the court that is determining whether reasonable efforts are required.

The court that hears child welfare dependency cases may find that the child has been subjected to aggravated circumstances, if it has the authority to do so, and that reasonable efforts are not required because the statutory language at section 471(a)(15)(D)(i) of the Social Security Act (the Act) regarding aggravated circumstances does not require a criminal conviction.

When a parent has been found to have committed one of the felonies enumerated at section 471(a)(15)(D)(ii) of the Act, the court's determination that reasonable efforts are not required must be based on the findings of a criminal court. The statutory language at section 471(a)(15)(D)(ii) requires a criminal conviction of one of the felonies identified therein. In circumstances in which the criminal proceedings have not been completed or are under appeal, the court that hears child welfare dependency cases must determine whether reasonable efforts are required based on the developmental needs of the child and the length of time associated with completion of the criminal proceedings or the appeals process.

When the determination that reasonable efforts are not required is based on a previous involuntary termination of parental rights, that determination is clearly based on the findings of another court decision.

Source: Preamble to the Notice of Proposed Rulemaking (63 FR 50058) (9/18/98)

Reference: Social Security Act - section 471 (a)(15)(D); 45 CFR 1356.21 (b)(3)

3 **Q:** Are States required to engage in concurrent planning or is it at State option?

A: States have the option of making reasonable efforts to make and finalize an alternate permanent placement concurrently with reasonable efforts to reunify a child with his/her family. Concurrent planning can be an effective tool for expediting permanency, and the statute offers it as such. However, since it may not be an appropriate approach for every child or family, States are not required to use concurrent planning and the decision to do so must be made on a case-by-case basis. We urge States to obtain technical assistance and provide appropriate training and supervision to agency workers prior to deploying a concurrent planning strategy.

Source: Preamble to the Notice of Proposed Rulemaking (63 FR 50058) (9/18/98)

Reference: Social Security Act - section 471 (a)(15)(F); 45 CFR 1356.21 (b)(4)

4 **Q:** The regulations, at 45 CFR 1356.21 (b)(3), list the circumstances under which the court may determine that reasonable efforts are not required to prevent removal or to reunify the child and family. Are there other circumstances under which the court may determine that reasonable efforts are not required?

A: The statute specifically enumerates those circumstances in which reasonable efforts are not required. Unless one of the circumstances at section 471 (a)(15)(D) of the Social Security Act (the Act) exists, the statute requires the State to make reasonable efforts. In each individual case, the court and the State must determine the level of effort that is reasonable, based on safety considerations and the circumstance of the family. Section 478 of the Act clarifies that the State court continues to have discretion when making judgments about the health and safety of the child.

Source: Questions and Answers to the Final Rule (65 FR 4020) (1/25/00)

Reference: Social Security Act - section 471 (a)(15)(D) and 478; 45 CFR 1356.21 (b)(3)

5 ***Q:*** Can Indian tribes identify, in tribal code, those aggravated circumstances in which reasonable efforts are not required in accordance with section 471 (a)(15)(D)(i) of the Social Security Act?

A: When entering into a title IV-E agreement with a State, the tribe must adhere to the list of aggravated circumstances defined in State law. The statute at section 471 (a)(15)(D)(i) specifically requires that the aggravated circumstances in which reasonable efforts are not required be defined in State law. Moreover, other public agencies and tribes that enter into agreements with the State agency are not operating or developing their own title IV-E program separate and apart from that operated under the State plan. Rather, the agency or tribe is agreeing to operate the title IV-E program established under the State plan for a specific population of children in foster care. Therefore, the other public agency or tribe is bound by any State statute related to the operation of the title IV-E program. We expect the State child welfare agency to engage the tribes, and any other agency with which it has title IV-E agreements, in developing its list of aggravated circumstances.

Source: Preamble to the Final Rule (65 FR 4020) (1/25/00)

Reference: Social Security Act - section 471 (a)(15)(D) and 478; 45 CFR 1356.21 (b)(3)

6 ***Q:*** What are the requirements with respect to the timing for obtaining judicial determinations that reasonable efforts are not required to reunify a family?

A: There are none. We do not think it is appropriate to prescribe a time frame for obtaining such a determination.

Source: Preamble to the Final Rule (65 FR 4020) (1/25/00)

Reference: 45 CFR 1356.21 (b)(3)

8.3C.5 TITLE IV-E, Foster Care Maintenance Payments Program, State Plan/Procedural Requirements, Trial home visit

1 ***Q:*** What is the regulatory definition of a trial home visit?

A: There is no regulatory definition of the term "trial home visit," as it is within the State's discretion to define. We do not think that it would be appropriate for us to develop a regulatory definition. We also do not believe that we could develop a definition that would be inclusive of the variety of State policies on trial home visits or that a definition would be helpful. In practice, a trial home visit is intended to be a short term option in preparation for returning the child home permanently.

Source: Preamble to the Final Rule (65 FR 4020) (1/25/00)

Reference: 45 CFR 1356.21 (e)

2 Q: Often, courts do not specify time periods for trial home visits for children in foster care. If a court does not specify a time period, should we assume it cannot be longer than six months without having to re-establish eligibility for title IV-E foster care payments?

A: Pursuant to 45 CFR 1356.21 (e), six months is the outside limit for a trial home visit without having to re-establish title IV-E eligibility if the child re-enters foster care, unless there is a court order extending the trial home placement beyond six months. If there is a court order extending the trial home visit beyond six months, and the trial home visit does not exceed the time frame in the court order, the child retains title IV-E eligibility upon returning to foster care following the trial home visit.

Source: Question and Answers on the Final Rule (65 FR 4020) (1/25/00)

Reference: 45 CFR 1356.21 (e)

3 Q: Would a continuance of a hearing scheduled to address the trial home visit satisfy the requirement that for title IV-E funding to continue, a court must order a longer visit?

A: No. The regulations establish a six-month outer limit for a trial home visit, except when a court orders a longer visit. A court continuance of a hearing regarding the trial home visit does not satisfy this requirement.

Source: Preamble to the Final Rule (65 FR 4020) (1/25/00)

Reference: 45 CFR 1356.21 (e)

4 ***Q:*** Must the State hold six-month periodic reviews and permanency hearings for children on trial home visits?

A: Historically, this has been an area in which States have had some flexibility. If the State considered a child who is on a trial home visit to be "in foster care," then it was required to continue holding six-month periodic reviews and permanency hearings during that visit. If not, then the State was not required to hold such reviews or hearings. If the trial home visit ends within the six months allotted in the regulations at 45 CFR 1356.21 (e), then the foster care placement is considered continuous and the State should hold six-month periodic reviews and permanency hearings in accordance with the original schedule.

Source: Questions and Answers on the Final Rule (65 FR 4020) (1/25/00)

Reference: Social Security Act - section 475 (5); 45 CFR 1356.21 (e)

8.4 TITLE IV-E, General Title IV-E Requirements

1 ***Q:*** What is the definition of "unemployed parent" for purposes of completing the AFDC portion of a title IV-E eligibility determination?

A: The Administration for Children and Families (ACF) and the Centers for Medicaid and Medicare Services (CMS) amended the definition of ?unemployed parent? at 45 CFR 233.101(a)(1) in 1998 in response to the replacement of the former AFDC program with the Temporary Assistance for Needy Families (TANF) program. Each State was required to establish a ?reasonable standard? for measuring unemployment in order to determine whether an individual qualified for benefits under TANF or Medicaid and whether a child met the AFDC portion of title IV-E eligibility. The amended regulation specifically permits States to consider hours of work, dollar amounts earned, and family size in establishing the reasonable standard of unemployment.

At a minimum, States are required to include as an ?unemployed parent? an individual who is employed less than 100 hours per month, or exceeds that standard for a particular month if the work is intermittent and the excess work is temporary. Such work may be considered temporary if the unemployed parent worked fewer than 100 hours in the preceding two months

and is expected to work fewer than 100 hours in the following month (see 45 CFR 233.101(a)(1)). States are constrained by this definition in order to preserve Medicaid and title IV-E eligibility for any individuals who would have been eligible under the AFDC rules previously in effect (see 63 FR 42270 - 42272, August 7, 1998). States are not required to establish a broader definition of ?unemployed parent? but may do so.

Source: *6/23/03*

Reference: *Public Law 104-193; 45 CFR 233.101(a)(1); 63 FR 42270-42275, August 7, 1998.*

2 **Q:** Please explain the assurance requirement at section 471(a)(30) of the Social Security Act (the Act).

A: Section 471(a)(30) of the Act requires the title IV-E agency to provide assurances in the title IV-E plan that each child eligible for a title IV-E payment who has attained the minimum age for mandatory school attendance under State or Tribal law is a full-time elementary or secondary school student, has completed secondary school, or is incapable of attending school on a full-time basis, in accordance with sections 471(a)(30)(A) through (D). Section 471(a)(30) of the Act is a title IV-E plan requirement and, as such, does not place conditions on a child?s eligibility for or receipt of assistance under the foster care, adoption assistance or guardianship assistance programs. ACF may conduct a partial review pursuant to 45 CFR 1355.32(d), if necessary to determine compliance with the title IV-E plan.

Source: *05/29/09*

Reference: *Social Security Act - section 471(a)(30)*

3 **Q:** Is the requirement at section 471(a)(30) of the Social Security Act (the Act) an annual requirement, a one time requirement when the adoption or guardianship is finalized, or an ongoing requirement?

A: The requirement at section 471(a)(30) of the Act is not prescriptive; therefore, the title IV-E agency may determine how it will assure that the requirement is being met and the frequency of any procedures for doing so.

Source: 05/29/09

Reference: Social Security Act - section 471(a)(30)

8.4A TITLE IV-E, General Title IV-E Requirements, AFDC Eligibility

1 **Q:** Section 108 (d) of the Personal Responsibility Work Opportunity Reconciliation Act (PRWORA) (as amended by the Balanced Budget Act of 1997, P.L. 105-33) links eligibility for Federal foster care and adoption assistance to the Aid to Families with Dependent Children (AFDC) program as it was in effect on July 16, 1996. Section 401(a) of PRWORA limits Federal public benefits to "qualified aliens." The term "qualified alien" was not defined or in use on July 16, 1996. How are title IV-E agencies to apply these two provisions?

A: Alien children must be eligible for AFDC under a State's July 16, 1996 plan and must also meet the PRWORA definition of "qualified alien" to be eligible for Federal foster care maintenance or adoption assistance (except that children receiving adoption assistance pursuant to agreements signed before August 22, 1996 may continue to receive such assistance).

Source: ACYF-CB-PIQ-99-01 (1/14/99) (revised 6/6/13)

Reference: Social Security Act - sections 472(a)(4) and 473(a)(2)(B); the Personal Responsibility Work Opportunity Reconciliation Act (PL 104-193); Balanced Budget Act of 1997 (PL 105-33)

2 ***Q:*** Under the following circumstances, is the child eligible for title IV-E foster care? Aid to Families with Dependent Children (AFDC) eligibility for a child is based on incapacity of the parent. In the month following removal, the parent is no longer consider incapacitated. By the time of the twelve month eligibility redetermination, the family is no longer eligible for AFDC. What is the title IV-E status of the child?

(Deleted 04/27/2010)

3 ***Q:*** When continued deprivation cannot be substantiated after initial eligibility has been established because the whereabouts of the parent from whom the child was removed cannot be determined, is the child no longer eligible under title IV-E?

(Deleted 04/27/2010)

4 ***Q:*** During the time the child is receiving title IV-E foster care payments, the parental rights of his parents are terminated. The child is subsequently moved into a residential care facility which is not eligible to receive foster care payments and the title IV-E case is discontinued. Later, he is again placed into a foster home and reapplication for title IV-E foster care is made.

In considering eligibility for this reapplication, the deprivation at the time of court action, found initially and verified under the old foster care case, can be utilized. However, to meet the requirement of "continues to be eligible," must deprivation with regard to the natural parents again be established or may the termination of parental rights be used to constitute deprivation?

(Deleted 04/27/2010)

5 **Q:** Aid to Families with Dependent Children (AFDC) eligibility requires the counting of a step-parent's income. Is this requirement applicable to title IV-E?

A: If the State deems step-parent income available to the child pursuant to its July 16, 1996 AFDC State plan, step-parent income must be counted in determining title IV-E eligibility (45 CFR 233.30 (a)(3)(xiv)).

Source: ACYF-CB-PIQ-85-07 (6/25/85) (revised 6/6/13)

Reference: 45 CFR 233.30

6 **Q:** Under the Aid to Families with Dependent Children (AFDC) regulations, certain work expense deductions and disregards are allowable in determining eligibility. In determining the amount of a child's earnings, is the AFDC budgeting procedure to be followed or are title IV-E agencies allowed to establish a separate set of budgeting procedures for title IV-E?

A: The AFDC regulations and procedures (45 CFR 233.20) are applicable in the title IV-E foster care maintenance payments program.

Source: ACYF-CB-PIQ-85-07 (6/25/85) (revised 6/6/13)

Reference: 45 CFR 233.20

7 **Q:** A State asks whether the payment standard or the Aid to Families with Dependent Children (AFDC) need standard to determine AFDC eligibility shall be used to determine eligibility for the title IV-E program.

A: The AFDC need standard should be used for determining eligibility for the title IV-E program. Section 472 (a) of the Social Security Act defines as eligible "a child who would meet the requirements of section 406 (a)... ;" as in effect on July 16, 1996 section 406 (a), in turn, refers to a "needy child," without reference to a payment standard. Reference to the need standard thus flows directly from the words of the statute. The IV-E program has never interpreted the reference to receipt of aid, in section 472 (a)(4), as excluding from foster care eligibility a

needy child who did not or might not have actually received AFDC because of the payment standard.

Section 472 of the Social Security Act refers to the need standard at the outset, and does not subsequently distinguish between the need and payment standards; moreover, there is no such distinction recognized in the IV-E regulations. Consistent with that framework, the reference to receipt of aid in section 472 (a)(4) has been consistently understood to mean eligibility in accordance with the need standard.

Furthermore, when section 472 (a)(4) states: "received aid...in or for the month in which court proceedings leading to the removal...from the home were initiated," it is not using those words as an eligibility requirement but rather, referring to the point in time when the child meets the appropriate eligibility standards. Thus, sections 472 (a)(4)(A) and (B) are understood to refer to the times when the child met the 406 (a) standards.

Source: ACYF-CB-PIQ-96-01 (10/8/96)

Reference: Social Security Act - sections 402, 406, 407 (as in effect on July 16, 1996) and 472 (a)(4); 45 CFR 1356.60 and 233.20 (a)

8 ***Q:*** May the income of a foster care child be pro-rated among the siblings who are placed in the same living arrangement with that child? May resources considered similarly in the same situation? In other words, may the children be considered an assistance group or must each child be a separate assistance unit?

A: Each child in foster care, whether placed alone or in the same foster care facility as his or her siblings, is considered a separate unit for purposes of determing eligibility for title IV-E foster care. Only income that is actually received by a child in foster care is counted as available to meet the child's needs and the income and resources of the foster child would not be considered as available to siblings placed or living in the same foster home.

Source: ACYF-CB-PIQ-86-03 (5/9/86)

Reference: Social Security Act - sections 406 (a) and 407 (as in effect on July 16, 1996); 45 CFR 233.90

9 ***Q:*** If, under a waiver pursuant to section 1115 (a) of the Social Security Act (an 1115 (a) waiver), the State denied benefits to a child who would otherwise meet the requirements of the Aid to Families with Dependent Children (AFDC) program, would that child then be ineligible for title IV-E foster care maintenance or adoption assistance payments, should that child come into State care?

A: No. A State's 1115 (a) waiver of AFDC requirements does not affect eligibility for title IV-E foster care maintenance or adoption assistance payments. Regardless of whether the rules and provisions of a State's section 1115 (a) waiver broaden or restrict AFDC eligibility, those waiver rules shall not be applied in making title IV-E eligibility determinations.

Source: ACYF-CB-PIQ-96-02 (12/12/96)

Reference: Social Security Act - section 1115

10 Q: For the purpose of determining a child's AFDC eligibility at the time of the child's removal from his or her home, the child must have been living with and removed from the home of a specified relative. Who is considered a "specified relative" for this purpose?

A: A specified relative is defined as any relation by blood, marriage or adoption who is within the fifth degree of kinship to the dependent child. This includes great-great-great grandparents and first cousins once removed (children of first cousins). Accordingly, for the purpose of determining title IV-E eligibility, any otherwise eligible child under age 18 who is removed from the home of a relative who is within the fifth degree of kinship to the child will be eligible for assistance under title IV-E. Also see Q7 in section 8.3A11 for the specified relative requirements for youth over age 18.

Source: ACYF-CB-IM-92-04 (2/24/92) (revised 6/6/13)

Reference: Social Security Act - section 406 (a) (as in effect on July 16, 1996); 45 CFR 233.90(c)(1)(v)

11 Q: How does the title IV-E agency determine need and deprivation to establish a child's eligibility for title IV-E adoption assistance?

A: If a child's eligibility for title IV-E adoption assistance is based upon his or her eligibility for Aid to Families with Dependent Children (AFDC) as a dependent child, the title IV-E agency must determine that the child would have been AFDC-eligible in the home from which s/he was removed. To meet the AFDC criteria, the child must be both a needy child and a child who is deprived of parental support or whose principal wage earner parent is unemployed. Need exists in the child's home if the resources available to the family are below $10,000 and meets the income test (see section 8.4A Q/A #18 of the Child Welfare Policy Manual). Deprivation exists in the home in situations where there is death of a parent, an absent parent, or a parent with a mental or physical incapacity to the extent that the parent cannot support or care for the child. At the point of the removal of a child from his or her home, a termination of parental rights (TPR) alone is not proof that deprivation exists. The factors noted here must be established based on the circumstances in that home. If the child meets these AFDC criteria at removal, no further AFDC eligibility determination is needed for adoption assistance.

Source: ACYF-CB-PA-01-01 (1/23/01); 7/17/2006 (revised 6/6/13)

Reference: Social Security Act - section 473 (a)(2); section 8.4B Q/A #18 of the Child Welfare Policy Manual).

12 **Q:** Pursuant to the provisions of the Foster Care Independence Act of 1999, Section 472(a) of the Social Security Act was amended to permit an increase in the value of resources allowable for title IV-E eligibility to $10,000. What is the effective date of this amendment?

A: The effective date of the amendment to section 472(a) of the Social Security Act (the Act) made by the Foster Care Independence Act of 1999 is December 14, 1999. (Note: The Deficit Reduction Act of 2005 located the resource value provision for the foster care program at section 472(a)(3)(B) and for the adoption assistance program at section 473(a)(2)(A)(i)(I)(bb) of the Act).

Source: Questions and Answers on the Chafee Foster Care Independence Program; 7/17/2006

Reference: Social Security Act - sections 472(a)(3)(B) and 473(a)(2)(A)(i)(I)(bb); The Foster Care Independence Act of 1999; the Deficit Reduction Act of 2005

13 **Q:** Should a title IV-E agency include Temporary Assistance for Needy Families (TANF) payments as unearned income when determining whether a child meets the Aid to Families with Dependent Children (AFDC) requirements in effect on July 16, 1996 for title IV-E eligibility purposes?

A: No. As the title IV-A program, TANF should not be counted as income in determining title IV-E eligibility.

Source: 06/09/04 (revised 6/6/13)

Reference: Section 472 of the Social Security Act.

14 Q: What is the definition of unemployed parent for purposes of completing the AFDC portion of a title IV-E eligibility determination?

A: The Administration for Children and Families (ACF) and the Centers for Medicaid and Medicare Services (CMS) amended the definition of unemployed parent at 45 CFR 233.101(a)(1) in 1998 in response to the replacement of the former AFDC program with the Temporary Assistance for Needy Families (TANF) program. Each State was required to establish a reasonable standard for measuring unemployment in order to determine whether an individual qualified for benefits under TANF or Medicaid and whether a child met the AFDC portion of title IV-E eligibility. The amended regulation specifically permits States to consider hours of work, dollar amounts earned, and family size in establishing the reasonable standard of unemployment.

Source: 6/23/03

Reference: Public Law 104-193; 45 CFR 233.101(a)(1); 63 FR 42270-42275, August 7, 1998.

15 Q: How is the $10,000 resource limit to be applied in determining eligibility for title IV-E?

A: The Foster Care Independence Act of 1999 amended section 472(a) of the Social Security Act to authorize an increase in the value of resources allowable for title IV-E eligibility to $10,000. The $10,000 resource limit applies to the resources of the child and family for the purposes of determining AFDC/title IV-E eligibility. A State may not opt to set the combined value of resources at less than $10,000. (Note: The Deficit Reduction Act of 2005 located the resource value provision for the foster care program at section 472(a)(3)(B) and for the adoption assistance program at section 473(a)(2)(A)(i)(I)(aa)(BB) of the Social Security Act).

Source: 7/6/05; 7/17/2006 (revised 6/6/13)

Reference: Social Security Act -- Sections 472(a)(3) and 473(a)(2)(A)(i)(I)(aa)(BB); The Foster Care Independence Act of 1999; The Deficit Reduction Act of 2005

16 Q: May States adjust the 1996 standard of need to reflect cost of living adjustments?

A: No. The Personal Responsibility and Work Opportunity Reconciliation Act (PRWORA) did not include any allowance for cost of living or adjustments for inflation in setting the July 16, 1996 look-back date. States may not adjust the 1996 standard of need to reflect cost of living adjustments, since the statutory look-back date is set at a specific point in time.

Source: 7/6/05

Reference: Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (P.L.104-193)

17 Q: May a title IV-E agency determine a child's title IV-E eligibility based on the Temporary Assistance for Needy Families (TANF) Program instead of the Aid to Families with Dependent Children (AFDC) Program?

A: No. The Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA) retained the connection between the title IV-E program and the AFDC program and established an AFDC "look-back date" of

July 16, 1996. As such, TANF eligibility may not be substituted for an AFDC eligibility determination. States must use the title IV-A State plan that was in effect on July 16, 1996, to determine a child's AFDC eligibility. Tribal title IV-E agencies must use the title IV-A State plan that was in effect on July 16, 1996, in the State in which the child resides at the time of removal from the home to determine a child's AFDC eligibility.

Source: September 29, 2005 (revised 6/6/13)

Reference: Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (P.L.104-193)

18 **Q:** Question: One of the title IV-E eligibility requirements under section 472(a) of the Social Security Act (Act) is that a child must have been eligible for the former Aid to Families with Dependent Children (AFDC) program. As such, the title IV-E agency must determine that the child is a dependent child based on the State title IV-A plan in effect as of July 16, 1996. What process must agencies use to determine whether a child is a "needy child" under the former AFDC program, as described in former section 406(a) of the Act?

A: The AFDC program required that a child meet eligibility requirements related to both financial need (i.e., a "needy child") and deprivation of parental support. In response to the specific question, this answer addresses only the requirements for establishing that a child meets the requirements related to financial need under AFDC.

For AFDC eligibility determinations, the title IV-E agency must apply the former AFDC program's two-step income test to establish whether a child would have been considered a "needy child" under the State's title IV-A plan in effect on July 16, 1996. In addition to the income test, the agency must apply a test of resources. Both the two-step income and resources tests must be applied, in accordance with 45 CFR 233.20. 1

Prior to the passage of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, each State set its own AFDC need standard to use in determining eligibility for the program. The term "AFDC need standard" refers to the amount of money a State determined that a particular size family needed to subsist. For title IV-E purposes, the State's need standard as of July 16, 1996, (disregarding any Section 1115(a) waivers that may have been in effect on that date) is the amount that provides the basis for both steps in the income test portion of the AFDC eligibility determination process.

The two-step income test to determine financial need under AFDC to be conducted in accord with Federal requirements and the State plan as in effect on July 16, 1996, is as follows (see 45 CFR 233.20(a)(3)(xiii) and 45 CFR 233.20(a)(3)(ii)(F)):

Step One of the Income Test-Gross Income Limitation: The title IV-E agency determines if the family's gross income is less than 185 percent of the State's AFDC need standard, after applying appropriate disregards. 2 If the family's gross income is more than 185 percent of the State's AFDC need standard, the child would have been ineligible for the program and, thus, is not eligible for title IV-E. If the family's gross income does not exceed 185 percent of the State's AFDC need standard, the title IV-E agency proceeds to the second step to continue the process of determining if a child is a needy child and would have been eligible for AFDC.

Step Two of the Income Test-Determination of Need: For this second step, the title IV-E

agency compares the family's income, after applying further appropriate disregards, to 100 percent of the State's AFDC need standard, the same need standard used in step one. If the family's income is in excess of 100 percent of the State's need standard, the child would not have been eligible for AFDC and, thus, is not eligible for title IV-E. If the family's income does not exceed 100 percent of the need standard, the child would have met the AFDC income test for eligibility.

In addition to applying the two-step income test to determine if a child would have been considered a "needy child" under AFDC, the title IV-E agency must determine whether the child's family has resources under $10,000 in value, after appropriate disregards.3 Both the income and resources tests must be applied to the child and family in the removal home to determine eligibility for AFDC.

Once the child has been determined to be eligible for AFDC, the child remains eligible for AFDC as long as the court order that sanctioned the child?s removal from the home remains in effect.

1 The two-step process has been in place since 1981. See the 1994 Green Book, 14th Edition, July 15, 1994, Section 10 for more details on the two-step process.

2 The gross income limitation -the first step of the process- was increased from 150 percent to 185 percent of the need standard by the Deficit Reduction Act of 1984 (Public Law 98-369) and implemented through regulation at 45 CFR 233.20(a)(3)(xiii).

3 Public Law 106-169 increased the resource limit to $10,000. See the Child Welfare Policy Manual at 8.4A #15 for more information.

Source: April 6, 2010 (revised 6/6/13)

Reference: Social Security Act ¿ Section 472(a), Sections 406(a) and 407 (as in effect on July 16, 1996); 45 CFR 233.20(a)(3)(xiii); 45 CFR 233.20(a)(3)(ii)(F); 45 CFR 233.20(a)(2); 45 CFR 233.20(a)(2)(v)

19 Q: How does a title IV-E agency determine title IV-E eligibility for an abandoned child whose parents are unknown?

A: It is unlikely that a title IV-E agency would be able to determine title IV-E eligibility for an abandoned child whose parents are unknown. This situation differs from one in which a parent

leaves a child with a friend or relative and is unreachable, but the identity of the parent is known. In either scenario, all of the title IV-E eligibility requirements must be met for a child on whose behalf title IV-E foster care or adoption assistance is claimed. This includes the requirement that the child meet the Aid to Families with Dependent Children (AFDC) eligibility requirements as outlined at section 472(a)(3) and 473(a)(2)(A)(i)(I)(aa)(BB) of the Social Security Act. As such, the title IV-E agency must be able to establish and verify financial need and deprivation of parental support based on the home from which the child was removed. Determining a child's financial need requires a title IV-E agency to examine the parents' income and resources. In the case in which the identity of the parents is unknown, including when a child has been abandoned, the title IV-E agency will not have any financial information on which to make an AFDC eligibility determination. A title IV-E agency must document that a child meets all AFDC eligibility requirements; a title IV-E agency cannot presume that a child would meet the eligibility requirements simply because the child has been abandoned.

Source: April 6, 2006 (revised 6/6/13)

Reference: Social Security Act - sections 472(a)(3), 473(a)(2) and 479B(b)

20 Q: If a child is removed from a specified relative who is the child's legal guardian, must the title IV-E agency determine whether the child meets the Aid to Families with Dependent Children (AFDC) criteria of deprivation based on the legal guardian or the parent?

A: A determination of deprivation is always made in relation to the child's parent for AFDC eligibility purposes. Under no circumstances does the title IV-E agency look to the legal guardian to determine deprivation. Consistent with the provision in 45 CFR 233.90(c)(1)(i), "[t]he determination whether a child has been deprived of parental support or care is made in relation to the child's natural parent or, as appropriate, the adoptive parent or stepparent described in paragraph (a) of this section." Even when parental rights have been terminated and the child is removed from a relative legal guardian, the title IV-E agency must look to the situation of the parents to determine deprivation. When determining deprivation with respect to a child who is living with a relative legal guardian, a positive determination regarding deprivation can be made based upon the fact that the child is deprived of parental support due to continued absence. Although deprivation must be based on the child?s parent, this does not alter the requirement to determine whether the child would have met the AFDC criteria of financial need while living in the home of the specified relative from whom the child was removed (section 472(a)(3) of the Social Security Act and 45 CFR 1356.21(l)).

Source: *04/24/07 (revised 6/6/13)*

Reference: *Social Security Act - sections 472(a)(3) and 479B(c)(1)(C)(ii)(II); 45 CFR 233.90(c)(1)(i) and 1356.21(l)*

21 **Q:** In determining a child's Aid to Families with Dependent Children (AFDC) eligibility, should the state examine the household circumstances when the child was removed from home, or should the state examine the whole month in which the removal petition was initiated or the voluntary placement agreement was signed?

A: The state must determine a child's AFDC eligibility in or for the month in which the court proceedings were initiated or the voluntary placement agreement was signed. State title IV-E agencies must use the state's title IV-A plan (as it was in effect on July 16, 1996) to determine if a child would have been eligible for AFDC. Tribal title IV-E agencies must use the title IV-A state plan (as it was in effect on July 16, 1996) in the state in which the child resides when the child was removed from the home to determine if a child would have been eligible for AFDC.

Source: *December 2, 2016*

Reference: *472(a)(3) of the Social Security Act*

22 **Q:** Must a State use one definition of "unemployed parent" for Medicaid, Temporary Assistance for Needy Families (TANF) and title IV-E purposes?

A: No. For title IV-E eligibility purposes, there is no requirement that the State use the same definition of "unemployed parent"as Medicaid and TANF. The State must use the definition that was in its Aid to Families with Dependent Children (AFDC) State plan on July 16, 1996, unless the State has used the authority under 45 CFR 233.101(a)(1) to apply a less restrictive definition to the title IV-E program.

Source: *04/26/07*

Reference: *45 CFR 233.101(a)(1)*

23 Q: How should the title IV-E agency determine financial need for Aid to Families with Dependent Children (AFDC) program eligibility purposes when the child is removed from a specified relative other than a parent? Must the title IV-E agency consider the relative's income and resources?

A: If a child is removed from the non-parental specified relative through a contrary to the welfare judicial determination, or a valid voluntary placement agreement, the title IV-E agency determines financial need based on the financial situation of the child only. However, if the State's July 16, 1996 AFDC State plan required the title IV-E agency to consider non-parental relative income or resources, then the title IV-E agency must consider the relative's income and resources.

Source: 12/31/07 (revised 6/6/13)

Reference: 45 CFR 233.20

24 Q: May title IV-E agencies re-determine a child's Aid to Families with Dependent Children (AFDC) eligibility after the child was determined to be AFDC eligible at removal?

A: No. A title IV-E agency is not required to re-determine a child's AFDC eligibility. Given the statutory changes over the years, we have eliminated the former requirement to re-determine a child's AFDC eligibility at regular intervals as we now believe it is unnecessary to conduct re-determinations for a program (AFDC) that has not been operational for nearly 14 years. Further, it is not possible to implement the option to extend title IV-E assistance to youth in foster care over the age of 18 and require such youth to be subject to AFDC re-determinations. To do so clearly would be inconsistent with the law's amendments to provide an option for extended title IV-E assistance to older youth. Rather, a child must have met the AFDC eligibility requirements per section 472(a)(3) of the Social Security Act at the time of removal from the home or when a voluntary placement agreement is entered to be eligible for title IV-E foster care. For the purpose of title IV-E eligibility reviews, we will not review whether title IV-E agencies have conducted annual AFDC re-determinations for each child in the sample.

Source: April 6, 2010

Reference: Social Security Act-Section 472(a)(3); Sections 406(a) and 407 (as in effect on July 16, 1996); 45 CFR 233.20.

25 **Q:** If a youth age 18 or older entering foster care is married, how is AFDC eligibility determined?

A: AFDC eligibility for a married youth who is entering foster care at age 18 or older is determined without regard to the parents/legal guardians or others in the assistance unit in the home from which the youth was removed as a younger child, and without regard to the youth's spouse.

Source: 05/06/2013

Reference: Social Security Act - sections 472(a)(3) and 473(a)(2); ACYF-CB-PI-10-11

26 **Q:** If a tribal title IV-E agency's service area spans more than one state, how should the agency determine whether the child is AFDC eligible?

A: The tribal title IV-E agency must use the AFDC plan (as it was in effect on July 16, 1996) of the state where the child resides (479B(c)(1)(C)(ii)(II) of the Act). However, the tribal title IV-E agency may determine the state in which a child resides in accordance with tribal law or policy.

Source: 12/10/2015

Reference: 479B(c)(1)(C)(ii)(II)

8.4B TITLE IV-E, General Title IV-E Requirements, Aliens/Immigrants

1 **Q:** Section 403 (a) of the Personal Responsibility and Work Opportunity Reconciliation Act (PRWORA) (PL 104-193) sets a five year residency requirement for qualified aliens who enter the United States on or after August 22, 1996 and who make application for Federal means-tested programs. Section 403(c)(2)(F) of PRWORA lists those programs that are exempted from section 403(a) to include titles IV-B and IV-E, under certain circumstances; however, title XIX is not on the list of programs exempted from section 403(a) of PRWORA. Title IV-E eligible children are categorically eligible for Medicaid. Must qualified alien children who are eligible for title IV-E meet the five year residency requirement to be eligible for title XIX?

A: No. All qualified alien children who are eligible for title IV-E retain their categorical eligibility for

Medicaid under title XIX, regardless of how long they have been in the United States. Section 402(a)(3) of the Social Security Act (as amended by PRWORA) requires States to certify, in their Temporary Assistance for Needy Families Plans, that "... the State will operate a foster care and adoption assistance program under the State plan approved under part E, and that the State will take such actions as are necessary to ensure that children receiving assistance under such part are eligible for medical assistance under the State plan under title XIX."

The statute makes no distinction between children who are citizens and children who are qualified aliens. Thus, the law requires all title IV-E eligible children to receive medical coverage under title XIX.

Source: ACYF-CB-PIQ-99-01 (1/14/99)

Reference: Social Security Act - Titles IV-E and XIX; The Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PL 104-193)

2 **Q:** Are unaccompanied minor refugee children eligible for title IV-E payments for foster care?

A: In order to be eligible for foster care payments under title IV-E any child must meet the requirements of section 406(a) or of section 407 of the Social Security Act (the Act) (as such sections were in effect on July 16, 1996) except for his removal from the home of a relative (specified in section 406(a)), in addition to meeting the other requirements found in section 472(a) of the Act. If a title IV-E agency is able to document that the child meets the requirements found in the Act, the unaccompanied minor refugee child is eligible for title IV-E payment, provided he/she is a qualified alien.

One of the major problems, however, is that because the child is unaccompanied, documentation is not ordinarily available to substantiate the child's age, financial need, and deprivation of parental support or care by reason of death of a parent, continued absence of the parent from the home, or physical or mental incapacity of a parent (45 CFR 233.90(c)).

In addition, the child must meet the requirements of section 472 (a) of the Act. These requirements include, for example, the existence of a voluntary placement agreement entered into by the child's parent or legal guardian or a judicial determination that continuation of the child in his home would be contrary to his welfare. Another requirement is that the child either received aid under section 402 of the Act (as in effect on July 16, 1996) in the month in which

the agreement or judicial determination was made, or would have received aid in or for that month if an application had been made and the child had been living with a specified relative within six months prior to the month in which the agreement was made or the judicial proceeding was initiated.

Therefore, although the unaccompanied minor refugee child may clearly be in need of foster care upon his arrival in this country, he must also meet the eligibility requirements of title IV-E (section 472(a)) if Federal financial participation is claimed by the title IV-E agency. If it can be documented that he meets the requirements, then he would be eligible for title IV-E payments.

The circumstances of a refugee child who comes into the country with his family are different from the unaccompanied child in that the first child is "living with" his family. Assuming the degree of kinship is that cited in section 406(a) of the Act, this accompanied child could later become eligible for title IV-E foster care payments, if all criteria in section 472(a) are met and the documentation of age, need and deprivation can be reviewed in relation to the home (in the U.S.) from which he is removed.

Source: ACYF-CB-PIQ-83-07 (10/24/83); ACYF-CB-PIQ-99-01 (1/14/99) (revised 6/6/13)

Reference: Social Security Act - sections 406 (a), 407 (as in effect on July 16, 1996) and 472; 45 CFR 233.90

3 Q: It is our understanding that qualified aliens, regardless of whether they entered the United States before or after the date of enactment of the Personal Responsibility and Work Opportunity Reconciliation Act (PRWORA), August 22, 1996, are eligible for Federal foster care maintenance and adoption assistance payments. Is this a correct interpretation?

A: Not entirely. If the child is a qualified alien who is placed with a qualified alien or United States citizen, the date the child entered the United States is irrelevant. However, if the child is a qualified alien who entered the United States on or after August 22, 1996 and is placed with an unqualified alien, the child would be subject to the five-year residency requirement for Federal means-tested public benefits at section 403(a) of PRWORA unless the child is in one of the excepted groups identified at section 403(b). As a general matter, we do not expect these situations to arise very often. In the event such situations do arise, State, Tribal or local funds may be used to support these children.

Source: ACYF-CB-PIQ-99-01 (1/14/99) (revised 6/6/13)

Reference: Social Security Act- sections 472(a)(4) and 473(a)(2)(B); The Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PL 104-193)

4 Q: Does the welfare reform legislation concerning benefits for immigrants/aliens have any impact on title IV-E eligibility for legal aliens, persons permanently residing under color of law (PRUCOL), etc.?

A: Yes. Alien children must be qualified aliens in order to be eligible for title IV-E payments and independent living services. Not all legal aliens or aliens with PRUCOL status necessarily meet the criteria for qualified alien status.

Source: ACYF-CB-PIQ-99-01 (1/14/99) (revised 6/6/13)

Reference: Social Security Act- sections 472(a)(4), 473(a)(2)(B) and 473(d); The Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PL 104-193)

5 Q: Does title IV of the Personal Responsibility and Work Opportunity Reconciliation Act (PRWORA) supersede the provision in section 472(a) of the Social Security Act (the Act) which affords title IV-E eligibility to certain alien children who would be otherwise eligible for title IV-E but for their disqualification for the Aid to Families with Dependent Children (AFDC) program due to their alien status?

A: Yes. Title IV-E agencies must follow the rule in PRWORA section 401(a) that: "(n)otwithstanding any other provision of law ... an alien who is not a qualified alien ... is not eligible for any Federal public benefit..."

Source: ACYF-CB-PIQ-99-01 (1/14/99) (revised 6/6/13)

Reference: Social Security Act - section 472 (a); tThe Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PL 104-193)

6 ***Q:*** Section 108 (d) of the Personal Responsibility and Work Opportunity Reconciliation Act (PRWORA) (as amended by the Balanced Budget Act of 1997, P.L. 105-33) links eligibility for Federal foster care and adoption assistance to the Aid to Families with Dependent Children (AFDC) program as it was in effect on July 16, 1996. Section 401(a) of PRWORA limits Federal public benefits to "qualified aliens." The term "qualified alien" was not defined or in use on July 16, 1996. How are title IV-E agencies to apply these two provisions?

A: Alien children must be eligible for AFDC under a State's July 16, 1996 plan and must also meet the PRWORA definition of "qualified alien" to be eligible for Federal foster care maintenance or adoption assistance (except that children receiving adoption assistance pursuant to agreements signed before August 22, 1996 may continue to receive such assistance).

Source: ACYF-CB-PIQ-99-01 (1/14/99) (revised 6/6/13)

Reference: Social Security Act - Title IV-E; The Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PL 104-193)

7 ***Q:*** Can an unqualified alien become the foster or adoptive parent of a title IV-E eligible child?

A: Yes. However, the unqualified alien foster or adoptive parent of a child who entered the United States on or after 8/22/96 would be eligible to receive title IV-E payments on behalf of the child only if the child is a United States citizen, is in one of the excepted groups at section 403(b) the Personal Responsibility and Work Opportunity Reconciliation Act (PRWORA), or has lived in the United States as a qualified alien for five years.

This interpretation is consistent with section 401(a) of PRWORA, which requires aliens to be qualified in order to receive Federal public benefits. Foster and adoptive parents are not recipients of Federal foster care and adoption assistance payments; rather, foster care and adoption assistance payments are made on the child's behalf to meet his or her needs.

Source: ACYF-CB-PIQ-99-01 (1/14/99)

Reference: The Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PL 104-193)

8 ***Q:*** Both sections 401(c)(1)(A) and 411(c)(1)(A) of the Personal Responsibility and Work Opportunity Reconciliation Act (PRWORA) (PL 104-193) define Federal, State, and local public benefits to include professional or commercial licenses. Is a foster care or adoptive home license/approval considered a Federal, State, or local public benefit?

A: No. Foster care and adoptive home licenses/approvals are not considered a Federal, State or local public benefit under sections 401(c)(1)(A) and 411(c)(1)(A) of PRWORA because they are not professional or commercial licenses.

Source: ACYF-CB-PIQ-99-01 (1/14/99)

Reference: The Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PL 104-193)

9 ***Q:*** Are title IV-E agencies required to verify the citizenship or immigration status of individuals receiving services or payments under title IV-E?

A: Title IV-E agencies are required to verify the citizenship or immigration status of all children receiving Federal foster care maintenance payments, adoption assistance payments, or independent living services.

Title IV-E agencies are not required to verify the citizenship or alien status of foster or adoptive parents, with one exception. Title IV-E agencies must verify the citizenship or immigrant status of potential foster or adoptive parents when placing a qualified alien child who entered the United States on or after 8/22/96 and has been in the United States as a qualified alien for less than five years. In order to be exempt from the five year residency requirement imposed at section 403 of the Personal Responsibility and Work Opportunity Reconciliation Act, a qualified alien child must be placed with a citizen or a qualified alien; hence, citizenship/alien status of prospective foster or adoptive parents must be verified in such circumstances.

Source: ACYF-CB-PIQ-99-01 (1/14/99) (revised 6/6/13)

Reference: Social Security Act - Title IV-E; The Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PL 104-193)

10 Q: Can you explain section 472(a)(4) of the Social Security Act (the Act) and how it applies to Aid to Families with Dependent Children (AFDC) eligibility under title IV-E?

A: Section 472(a)(4) of the Act is no longer applicable to the title IV-E program. This provision essentially "deemed" certain alien children who were "temporary" legal residents as eligible for AFDC, thereby granting them access to the title IV-E program if other eligibility requirements were met. This provision was made obsolete by title IV of the Personal Responsibility and Work Opportunity Reconciliation Act (PRWORA) of 1996 (Public Law 104-193). Under PRWORA, a child must be a qualified alien or a citizen in order to receive title IV-E payments. (See Child Welfare Policy Manual section 8.4B Q&A5 and 6).

Source: 12/31/07 (revised 6/6/13)

Reference: Social Security Act ¿ section 472(a)(4), Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (Public Law 104-193) ¿ section 401(a), Child Welfare Policy Manual section 8.4B Q&A5 and 6

11 Q: May a title IV-E agency claim payments under the title IV-E foster care program for a child in foster care who is not a citizen or qualified alien at removal, but who later secures Special Immigrant Juvenile Status (SIJS) and becomes a qualified alien?

A: No. Section 472(a)(3) of the Social Security Act requires that the child would have been eligible under the former Aid to Families with Dependent Children (AFDC) program in the month of the voluntary placement agreement or court proceedings leading to the removal from the home. A child who was not a citizen or qualified alien at the time of his or her court ordered or voluntary removal would not have been eligible for the former AFDC program. Therefore, the child cannot later become title IV-E eligible even if his/her status changes to one of "qualified alien" during that foster care episode since the child was not AFDC eligible at removal.

Source: 2/24/2011

Reference: Social Security Act ¿ Section 472(a)(3)

12 **Q:** Section 471(a)(27) of the Social Security Act (the Act) requires title IV-E agencies to have in effect procedures for verifying the United States (U.S.) citizenship or immigration status of any child in foster care under the responsibility of the State or Tribe. When determining U.S. citizenship for a child in title IV-E foster care under the responsibility of the Tribe, may Federally recognized Tribes use Tribal enrollment cards to verify U.S. citizenship?

A: No. A Tribal enrollment card alone is not sufficient to meet the citizenship verification requirement of section 471(a)(27) of the Act. As a general rule, Tribal membership itself does not speak to the citizenship of the individual. The "Interim Guidance on Verification of Citizenship, Qualified Alien Status ad Eligibility Under Title IV of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996" published in the Federal Register on November 17, 1997 (62 FR 61344) by the Department of Justice should be used as guidance for verifying citizenship.

Source: 05/04/11

Reference: Social Security Act ¿ section 471(a)(27); 62 FR 61344

8.4C TITLE IV-E, General Title IV-E Requirements, Child support

1 **Q:** As part of the Aid to Families with Dependent Children (AFDC) requirements for eligibility, the parents must sign a child support assignment form. Does this provision apply to title IV-E?

A: When Public Law 96-272 established title IV-E in 1980, it made no provision for the assignment of support rights as a condition of eligibility. Early developmental policy stated that under title IV-E the assignment of support rights was optional; however, section 471(a)(17) of the Social Security Act (as amended by Public Law 98-378, (effective October 1, 1984)) requires title IV-E agencies to take steps to secure an assignment of support rights on behalf of each child receiving title IV-E foster care maintenance payments. However, a child is not ineligible under title IV-E because the parent fails to comply with certain AFDC requirements in regard to child support assignment.

According to the regulations, "a child may not be denied AFDC either initially or subsequently because a parent or other caretaker relative fails to cooperate with the child support agency..." (45 CFR 233.90 (b)(4)(i)).

Source: ACYF-CB-PIQ-85-07 (6/25/85) (revised 6/6/13)

Reference: 45 CFR 233.90

2 Q: A child for whom title IV-E adoption assistance payments are made re-enters foster care and becomes eligible for title IV-E foster care maintenance payments. Must the title IV-E agency refer the child to the title IV-D agency to establish and collect child support?

A: Title IV-E agencies are required to refer children receiving title IV-E foster care to title IV-D for child support enforcement, but are afforded some degree of flexibility by title IV-E in determining which cases are appropriate for referral. The title IV-E plan must provide that, "where appropriate all steps will be taken, including cooperative efforts with the State agencies administering the plans approved under parts A and D, to secure an assignment to the State of any rights to support on behalf of each child receiving foster care maintenance payments under this part" (Section 471(a)(17) of the Social Security Act).

To determine if a case is "appropriate" to refer to the title IV-D agency, the title IV-E agency should evaluate it on an individual basis, considering the best interests of the child and the circumstances of the family. For example, is the parent working towards reunification with the child, consistent with the case plan? Would the referral impede the parent's ability to reunify with the child? Has the parent agreed to pay for the costs of out-of-home care or to temporarily accept a reduction in the adoption assistance payment? Questions of this nature should guide the agency's decision making regarding whether or not the referral should be made to the title IV-D agency.

Source: ACYF-CB-PIQ-98-02 (9/03/98) (revised 6/6/13)

Reference: Social Security Act - section 471(a)(17)

3 ***Q:*** If the State title IV-E agency refers to the title IV-D agency a child in foster care on whose behalf a title IV-E adoption assistance subsidy is being paid, can the court or the administrative body limit the child support award to the amount of the adoption assistance subsidy?

A: Each State is required by Federal statute and regulation to establish guidelines for child support awards within the State that "take into consideration all earnings and income of the absent parent" (45 CFR 302.56(c)). The court or administrative body setting the award must presume that the amount resulting from the application of these guidelines is the correct amount of child support to be paid (section 467(b)(2) of the Social Security Act; 45 CFR 302.56(f)). It is unlikely that the presumptive child support obligation determined according to the State child support guidelines would be equal to the adoption subsidy amount.

Federal law, however, allows the court to deviate from the presumptive amount determined pursuant to the State child support guidelines. In order to deviate from the presumptive amount required by the guidelines, the court must make written findings on the record, documenting why the guidelines amount is unjust or inappropriate in a given case. These findings must be based on criteria that are established by the State that support a deviation from the guidelines (section 467(b)(2); 45 CFR 302.56 (g)). ACF recommends that the title IV-E agency collaborate with the title IV-D agency to review and recommend criteria for deviations that would support the best interests of the child.

Source: ACYF-CB-PIQ-98-02 (9/03/98)

Reference: Social Security Act - section 467(b)(2); 45 CFR 302.56

4 **Q:** Must adoption assistance payments be included in the definition of "all earnings and income" as described in the child support regulations at 45 CFR 302.56(c) for the purpose of determining the child support award?

A: Adoption assistance payments may or may not be included in a State's definition of "all earnings and income" for the purpose of determining a child support award. Federal regulations implementing the Federal child support laws require that State guidelines take into consideration "all earnings and income of the absent parent" but afford States the discretion to define the term.

Source: ACYF-CB-PIQ-98-02 (9/03/98)

Reference: 45 CFR 302.56 (c)

8.4D TITLE IV-E, General Title IV-E Requirements, Concurrent Receipt of Federal Benefits

1 **Q:** What is the Department's policy, under title IV-E, on concurrent receipt of benefits under title IV-E and Supplemental Security Income (SSI)?

A: There is no prohibition in title IV-E against claiming Federal financial participation (FFP) for foster care maintenance payments or adoption assistance payments made on behalf of a child who is receiving SSI benefits.

Foster Care: Although eligibility for title IV-E foster care is tied to eligibility for Aid to Families with Dependent Children (AFDC) as was in effect on July 16, 1996 and AFDC precluded concurrent eligibility for payments from AFDC and title XVI (section 402 (a)(24) of the Social Security Act), this preclusion rule is not transferable to title IV-E for the purposes of foster care maintenance payment eligibility determinations. A child, if eligible, may receive benefits from both programs simultaneously.

Adoption Assistance: In the Adoption Assistance program, the applicant may choose to apply for either or both SSI and adoption assistance. Concurrent receipt of benefits from the adoption assistance program and SSI is not prohibited under title IV-E (section 473).

The adoptive parents of the child eligible to receive title IV-E adoption assistance payments and SSI benefits may make application for both programs and the child, if eligible, may receive benefits from both programs. In considering the most appropriate choice of programs and deciding whether to make application for one or both, the adoptive parents should be aware of the differences between SSI and the Adoption Assistance Program.

In the Adoption Assistance Program, the amount of the adoption assistance payment is determined after taking into consideration the circumstances of the adopting parents and the needs of the child being adopted. While the child's SSI benefit would be a consideration in the negotiation of the amount of the adoption assistance payment as part of the determination of the needs of the child being adopted, this income would not generate an automatic reduction in any standardized payment amount.

The amount agreed upon by the adoptive parents and the administering agency is limited, however, to the amount of the foster care maintenance payment which would have been paid if the child had been in a foster family home (section 473 (a)(3)).

Because there are many complexities and financial implications for the States and Tribes as well as the adoptive families, it is important for all parties to discuss all aspects of a combination of SSI and adoption assistance at the time the adoption assistance agreement is negotiated. Such discussions could include, in addition to the adoptive parents, representatives from title IV-E and title XVI programs.

With full knowledge of the SSI and Adoption Assistance programs, the adoptive parents can then make an informed decision about application for or receipt of benefits from either or both programs for which they or the child are eligible. They should be advised, however, that if they decline title IV-E adoption assistance and choose to receive only SSI for the child, and if they do not execute an adoption assistance agreement before the adoption is finalized and do not receive adoption assistance payments pursuant to such an agreement, they may not later receive title IV-E adoption assistance payments, as the child would no longer meet all of the eligibility requirements as a child with special needs (section 473 (c)(2)).

Source: ACYF-CB-PA-94-02 (2/4/94) (revised 6/6/13)

Reference: Social Security Act - sections 402 (a)(24), 406 (a) and 407 (as in effect on July 16, 1996) and 472 (a), 473 (a) and (c)(2);

2 **Q:** How should the decision to apply for SSI or title IV-E benefits be made?

A: The difference between title XVI (SSI) and title IV-E should be considered carefully by the decision maker when choosing whether to apply for either or both title IV-E or SSI benefits on behalf of the child. Information regarding the benefits available under each program should be made available by the title IV-E agency so that an informed choice can be made in the child's best interest. To achieve this goal, title IV-E agencies should exchange information regarding eligibility requirements and benefits with local Social Security district offices and establish formal procedures to refer clients and their representatives to the local Social Security district office for consultation and/or application when appropriate.

Source: ACYF-CB-PA-94-02 (2/4/94) (revised 6/6/13)

Reference: Social Security Act - titles IV-E and XVI

3 **Q:** May we claim title IV-E administrative costs for eligible children who receive Supplemental Security Income (SSI)?

A: Yes. An August 17, 1993 memorandum from the Acting Commissioner of the Administration on Children, Youth, and Families to the Administration for Children and Families Regional Administrators allowed a State to include children who are eligible for title IV-E but who are receiving SSI in lieu of title IV-E foster care maintenance payments when determining its administrative cost ratio. This practice was conceptualized by considering these children candidates for foster care. While the policy itself is sound, a child who is in foster care is not a candidate because s/he has already been removed from home. If a child is fully eligible for title IV-E a title IV-E agency's choice to fund that child's board and care through SSI rather than title IV-E does not negate that child's eligibility for title IV-E. The agency may, therefore, claim Federal financial participation under title IV-E for title IV-E administrative functions performed on behalf of that child.

Source: ACYF-CB-PA-01-02 (7/3/01) (revised 6/6/13)

Reference: Social Security Act - sections 471 and 474

4 ***Q:*** Are Supplemental Security Income (SSI) benefits under Title XVI made to a child in foster care, including those funds conserved for the child in dedicated accounts, counted as a resource when determining eligibility for title IV-E?

A: No. The child must have been eligible for Aid to Families with Dependent Children (AFDC) as it was in effect on July 16, 1996 (section 472(a) of the Social Security Act) to receive title IV-E foster care maintenance payments. The AFDC regulations at 45 CFR 233.20(a)(1)(ii) and 45 CFR 233.20 (a) (3)(x) exclude the needs, income and resources of individuals receiving benefits under title XVI in determining the need and amount of payment of an AFDC assistance unit. Thus, these exclusions apply to SSI-eligible children who are under the care and responsibility of the title IV-E agency and otherwise eligible for title IV-E.

Source: 11/14/07 (revised 6/6/13)

Reference: Social Security Act - titles IV-E and XVI; 45 CFR 233.20(a)(1)(ii) and 233.20(a)(3)(x)

8.4E TITLE IV-E, General Title IV-E Requirements, Confidentiality

1 ***Q:*** Under title IV-E, what information can be released? In particular, what information is child welfare information when a child is placed as a result of a juvenile offense?

A: The issue of confidentiality is not focussed around the specific nature of the information, but rather the source of the information. No information that is gained from the child welfare agency may be released, except for the purposes identified in 45 CFR 205.50 (a)(1)(i). If the court gains information regarding a juvenile from the child welfare agency, this information must remain confidential. Should the court gain information about a juvenile in a proceeding that does not involve the child welfare agency, the confidentiality provisions of Section 471(a)(8) of the Social Security Act do not apply. Other parties would abide by their own confidentiality restrictions.

Thus, in a court proceeding, if a psychologist is requested to testify on behalf of the child welfare agency, the information is safeguarded under the provisions of Section 471(a)(8). If the psychologist's relationship to the child does not involve the child welfare agency, then Section 471(a)(8) does not apply.

Source: ACYF-CB-PIQ-95-02 (6/7/95)

Reference: Social Security Act - section 471 (a)(8); 45 CFR 205.50

2 **Q:** Who can release information? In particular, can parties other than the title IV-E agency (such as the court) release information?

A: The release of information which was obtained from the child welfare agency by any party (including the court), except in the same circumstances as identified in 45 CFR 205.50(a)(1)(i), would result in violation of the title IV-E Plan requirements.

Source: ACYF-CB-PIQ-95-02 (6/7/95) (revised 6/6/13)

Reference: Social Security Act - section 471 (a)(8); 45 CFR 205.50

3 **Q:** Is any information contained in the child welfare record protected from redisclosure by a court in accordance with title IV-E confidentiality requirements?

A: No. The prohibition covers information that is gained from the child welfare agency. The provisions of confidentiality of information cannot be extended to information that the court has gained from sources other than the child welfare agency.

For example, if the police, school officials, or some other party refers a child to the child welfare agency, the child welfare agency must treat information about the referral as confidential. If the child welfare agency informed the court about this referral, court redisclosure of this information would result in the agency's violation of the plan requirements under title IV-E. If the police, the school official, or some other party went to the court directly, then the confidentiality provisions would not apply. If the court became aware of the police, the school, or other party involvement through a source other than the child welfare agency, the confidentiality provisions in Section 471(a)(8) of the Social Security Act and 45 CFR 205.50 would not apply.

Source: ACYF-CB-PIQ-95-02 (6/7/95) (revised 6/6/13)

Reference: Social Security Act - section 471 (a)(8); 45 CFR 205.50

4 ***Q:*** Under what authority may the Department review closed or sealed foster care records, particularly for those children who have been adopted?

A: Section 471(a)(8) of the Social Security Act requires a title IV-E plan to provide safeguards restricting use and disclosure of information concerning individuals assisted by the title IV-E programs. It also indicates that a title IV-E plan must provide: Safeguards which restrict the use of information concerning individuals assisted under the Plan to purposes directly connected with... (C) the administration of any other federal or federally assisted program which provides assistance, in cash or in kind, or services, directly to individuals on the basis of need, and (D) any audit or similar activity conducted in connection with the administration of any such plan or program by any governmental agency which is authorized by law to conduct such audit or activity; and the safeguards so provided shall prohibit disclosure, to any committee or legislative body (other than an agency referred to in (D), with respect to any activity referred to in such clause), of any information which identifies by name or address any such applicant or recipients except that nothing contained herein shall preclude a State or Tribe from providing standards which restrict disclosures to purposes more limited than those specified herein, or which in the case of adoptions, prevent disclosure entirely.

While the language of section 471(a) (8) (D) provides that States and Tribes may restrict disclosure entirely of adoption assistance records, that subsection, read in its entirety and in harmony with other sections of the Act, indicates that Congress did not intend to restrict access to federal auditors of information essential for audits under the title IV-E programs.

In particular, section 471(a) (8) (D) itself provides for disclosure of information concerning individuals assisted by the title IV-E programs for purposes directly connected with audits conducted by the Federal Government and otherwise authorized by law.

The authority for Federal audits of the title IV-E programs is expressly provided for under section 471 (a)(6). That section requires that a Plan, in order to qualify for FFP for title IV-E, provide that the appropriate agency will make such reports, in such form and containing such information as the Secretary may from time to time find necessary to assure the correctness and verification of such reports.

The legislative history of section 471(a)(8) also reveals that while Congress was concerned about providing safeguards which limited access to information on individuals assisted by the title IV-E programs, it did not intend to hinder the essential function of Federal audits. Thus, while Congress extended to States and Tribes the option of imposing restrictions broader than those imposed in the past on the disclosure of information for the protection of the confidentiality of recipients of adoption assistance, it did not impede essential auditing functions by those authorized to conduct such audits.

Accordingly, in the case of reviews of the eligibility of foster care and adoption assistance claims, the title IV-E agency must make available foster care and adoption records (including sealed foster care and adoption records) in order to document the eligibility of the beneficiaries (children) and related costs of administration. If the requested records cannot or are not made available, all payments made on behalf of the children whose records have not been made available for review and associated costs will be disallowed.

Source: ACYF-PA-85-02 (12/19/85) (revised 6/6/13)

Reference: Social Security Act - sections 471 (a)(6) and (8) and 479Bb; H.R. Rep. Conf. No. 96-900, 96th Congress 2nd Session 44 (1980)

5 ***Q:*** What are the title IV-E confidentiality requirements?

A: Title IV-E of the Social Security Act requires that title IV-E agencies provide safeguards to restrict the use and/or disclosure of information regarding children receiving title IV-E assistance. In addition, in accordance with 45 CFR 1355.30 (p)(3), records maintained under title IV-E of the Act are subject to the confidentiality provisions in 45 CFR 205.50. Among other things, 45 CFR 205.50 restricts the release or use of information concerning individuals receiving financial assistance under the programs governed by this provision to certain persons or agencies that require the information for specified purposes. The authorized recipients of this information are in turn subject to the same confidentiality standards as the agencies administering those programs.

To the extent that the records of the State title IV-E agency contain information regarding child

abuse and neglect reports and records, such information is subject to the confidentiality requirements at section 106 of the Child Abuse Prevention and Treatment Act (CAPTA).

Source: ACYF-NCCAN-PIQ-97-03 (9/26/97); ACYF-CB-PIQ-98-01 (6/29/98 updated 9/27/11) (revised 6/6/13)

Reference: Social Security Act - section 471 (a)(8); 45 CFR 205.50; 45 CFR 1355.30; Child Abuse Prevention and Treatment Act (CAPTA), as amended (42 U.S.C. 5101 et seq.) - sections 106 (b)(2)(B)(viii), (ix), and (x)

6 Q: Will States compromise compliance with title IV-E of the Social Security Act if they comply with the confidentiality requirements in sections 106 (b)(2)(B)(viii), (ix), and (x) of CAPTA?

A: Title IV-E requires that States provide safeguards restricting the use and/or disclosure of information regarding children served by title IV-E foster care. Records maintained under title IV-E are to be safeguarded against unauthorized disclosure. The regulation at 45 CFR 205.50 states that the release or use of information concerning individuals applying for or receiving financial assistance is restricted to certain persons or agencies that require it for specified purposes. Such recipients of information are in turn subject to standards of confidentiality comparable to those of the agency administering the financial assistance programs. There may be instances where CPS information is subject both to disclosure requirements under CAPTA and to the confidentiality requirements under title IV-E and 45 CFR 205.50. To the extent that the CAPTA provisions require disclosure (such as in section 106 (b)(2)(B)(ix), the CAPTA disclosure provision would prevail in the event of a conflict since the CAPTA confidentiality provisions were most recently enacted. Where the CAPTA provision is permissive (such as in sections 106 (b)(2)(B)(viii)(I)-(VI)), it allows States to disclose such information without violating CAPTA, but it does not make such disclosure permissible in other programs if it is not otherwise allowed under the other program's governing statute or regulations.

Source: ACYF-NCCAN-PIQ-97-03 (9/26/97); updated 9/27/11

Reference: Child Abuse Prevention and Treatment Act (CAPTA), as amended (42 U.S.C. 5101 et seq.) - sections 106; 45 CFR 205.50

7 ***Q:*** Some States have enacted laws that allow open courts for juvenile protection proceedings, including child in need of protection or services hearings, termination of parental rights hearings, long-term foster care hearings and in courts where dependency petitions are heard. Questions have arisen about whether courts that are open to the public and allow a verbal exchange of confidential information meet the confidentiality requirements under title IV-E. Do the confidentiality provisions in title IV-E restrict the information that can be discussed in open court?

A: No. Section 471(c) of the Social Security Act allows title IV-E agencies to set their own policies relating to public access to court proceedings to determine child abuse and neglect or other court hearings held pursuant to titles IV-B or IV-E. Such policies must, at a minimum, ensure the safety and well-being of the child, his or her parents and family.

Source: 06/19/08 (revised 6/6/13)

Reference: Social Security Act - section 471 (a)(8) and (c)

8 ***Q:*** Is it permissible under title IV-B or IV-E of the Social Security Act (the Act) for the title IV-E agency to disclose to the public information contained in a title IV-B/IV-E agency's records regarding a deceased foster child?

A: Yes. Section 471(a)(8) of the Act and section 45 CFR 205.50 require the title IV-B or IV-E agency to provide safeguards which restrict the disclosure of information concerning individuals assisted under the title IV-B or IV-E plan. Upon the child's death, he/she is no longer a recipient of these programs. However, information concerning other family members is still protected if they are recipients and care must be exercised to not release information on such other family members.

Source: 09/05/07 (revised 6/6/13)

Reference: Social Security Act ¿ section 471, 45 CFR 205.50

8.4F TITLE IV-E, General Title IV-E Requirements, Criminal Record and Registry Checks

1 ***Q:*** Do States have to request information from a "State" maintained child abuse and neglect registry of a U.S. Territory in which a prospective foster or adoptive parent has resided within the last five years in accordance with section 471(a)(20)(C)(i) of the Social Security Act (the Act)?

A: Yes. For the purposes of title IV-E, a "State" is defined in 45 CFR 1355.20 as the 50 States, the District of Columbia, Commonwealth of Puerto Rico, the U.S. Virgin Islands, Guam and American Samoa. As such, States have to request child abuse and neglect information pursuant to section 471(a)(20)(C)(i) of the Act of any of these territories that maintains a child abuse and neglect registry. However, only those Territories that have an approved State plan under title IV-E are obligated to comply with an incoming request pursuant to section 471(a)(20)(C)(ii) of the Act.

Source: 12/6/2007

Reference: Social Security Act - section 471(a)(20)(C); 45 CFR 1355.20

2 ***Q:*** Does the criminal background check provision require checks at the State level, Federal level, or both?

(Deleted 01/31/2007)

3 ***Q:*** Does the criminal records checks provision apply to foster parents and adoptive parents whose licensure or approval predates the passage of the Adoption and Safe Families Act?

(Deleted 09/20/2007)

4 ***Q:*** Do the requirements for a criminal records check include checks for any member of the household over the age of 18?

A: No. Such a requirement would go beyond the statute.

Source: *Preamble to the Final Rule (65 FR 4020) (1/25/00)*

Reference: *Social Security Act - section 471 (a)(20); 45 CFR 1356.30*

5 Q: Does a "drug-related offense" include an alcohol-related felony conviction?

A: The criminal records check provision at section 471 (a)(20)(A) of the Social Security Act would apply in such situations. Alcohol is considered a drug and a felony conviction for an alcohol-related offense is a serious crime. Therefore, unless the State opts out of the provision, an alcohol-related felony conviction within the last five years would prohibit the State from placing children with the individual for the purpose of foster care or adoption under title IV-E.

Source: *Preamble to the Final Rule (65 FR 4020) (1/25/00)*

Reference: *Social Security Act - section 471 (a)(20); 45 CFR 1356.30*

6 Q: May an Indian tribe elect not to conduct or require criminal records checks on foster or adoptive parents if it obtains an approved resolution from the governing body of the Indian tribe?

A: No. Tribes may only receive title IV-E funds pursuant to a title IV-E agreement with a State. A Tribe that enters into such an agreement must comport with section 471 (a)(20) of the Social Security Act (the Act) and section 1356.30 in accordance with the State plan in order to receive title IV-E funding on behalf of children placed in the homes it licenses. Agreements between the State child welfare agency and other public agencies or Tribes permit those entities to have placement and care responsibility for a particular group of the foster care population under the approved State plan. Such agreements do not permit other public agencies or tribes to develop a distinct title IV-E program separate from that operated under the approved State plan.

Source: *Preamble to the Final Rule (65 FR 4020) (1/25/00)*

Reference: *Social Security Act - section 471(a)(20); 45 CFR 1356.30*

7 **Q:** Must a State complete the fingerprint-based check of national crime information databases required by section 471(a)(20)(A) of the Social Security Act before placing a child in the home of a prospective foster or adoptive parent?

A: No. The State is not required by Federal law to complete the fingerprint-based checks before placing a child in the home of a prospective foster or adoptive parent. Rather, section 471(a)(20)(A) of the Act makes a fingerprint-based check of the national crime information databases an integral part of a State's criminal records check procedures that the State must complete before licensing or approving a prospective foster or adoptive parent.

Although the State may place a child in the home prior to completing the required criminal records check, doing so prior to completing thorough safety checks has serious practice implications. Further, States must still meet other Federal requirements to claim title IV-E foster care maintenance or adoption assistance. Therefore, title IV-E foster care maintenance payments may be paid on behalf of an otherwise eligible child only once the criminal records check has been completed, the records reveal that the parents did not commit any prohibited felonies in section 471(a)(20)(A)(i) and (ii) of the Act, and the foster family home is licensed. Similarly, title IV-E adoption assistance payments may be paid on behalf of an otherwise eligible child only once the criminal records check has been completed, the records reveal that the parents did not commit any of the prohibited felonies, and all other adoption assistance criteria are met.

Source: 01/29/07

Reference: Social Security Act ¿ 471(a)(20)(A)

8 ***Q:*** Must the State conduct the child abuse and neglect registry checks required by section 471(a)(20)(C) of the Social Security Act before placing a child in the home of a prospective foster or adoptive parent?

A: No. The State is not required to conduct a check of the State's child abuse and neglect registry before placing a child in the home of a prospective foster or adoptive parent. Rather, a State must check, or request a check of a State-maintained child abuse and neglect registry in each State the prospective foster and adoptive parents and any other adult(s) living in the home have resided in the preceding five years before the State can license or approve a prospective foster or adoptive parent.

Although the State may place a child in the home prior to completing the required registry checks, doing so prior to completing thorough safety checks has serious practice implications. Further, States must still meet other Federal requirements to claim title IV-E foster care maintenance or adoption assistance. Therefore, title IV-E foster care maintenance payments may be paid on behalf of an otherwise eligible child only once the criminal records check has been completed, the records reveal that the parents did not commit any prohibited felonies in section 471(a)(20)(A)(i) and (ii) of the Act, and the foster family home is licensed. Similarly, title IV-E adoption assistance payments may be paid on behalf of an otherwise eligible child only once the criminal records check has been completed, the records reveal that the parents did not commit any of the prohibited felonies, and all other adoption assistance criteria are met.

Source: 01/29/07

Reference: Social Security Act ¿ section 471(a)(20)(C)

9 **Q:** Does section 471(a)(20) of the Social Security Act (the Act) require the State to conduct a child abuse and neglect registry check on an adult who moves into a licensed/approved foster or adoptive home?

A: No. The new child abuse and neglect registry check requirements in section 471(a)(20) of the Act apply to "prospective" adoptive or foster parents, as well as all adults living in the prospective family's home. Thus, once a foster or adoptive home has been approved or licensed by the State, section 471(a)(20) of the Act does not require the State to complete additional child abuse and neglect checks on other adult(s) living in the home.

Source: 01/29/07

Reference: Social Security Act ¿ section 471(a)(20)

10 **Q:** Please explain the criminal background check requirements of section 471(a)(20)(A) of the Act and to whom they apply.

A: Section 471(a)(20)(A) of the Act places requirements on the State as a condition of the title IV-E State plan and places additional requirements for claiming title IV-E foster care maintenance and adoption assistance payments on behalf of a title IV-E eligible child.

As a condition of the title IV-E State plan, the State title IV-E agency must have procedures for criminal background checks, including fingerprint-based criminal record checks of the national crime information databases for prospective foster and adoptive parents. The State title IV-E agency and its agents, must conduct the checks and otherwise apply the procedures for prospective parents whom it will license or approve to care for a participant in the State?s title IV-B/IV-E program (section 471(a)(20)(A) of the Act). Agents of the title IV-E agency include a State licensing authority and any other agency that is under contract with the title IV-E agency to issue licenses or approvals.

Further, in order for a State to claim title IV-E foster care maintenance or adoption assistance payments for an otherwise title IV-E eligible child, the criminal records check must reveal that the prospective foster or adoptive parent has not been convicted of the prohibited felonies, and in the case of a foster family home, the home must be licensed or approved (section 471(a)(20)(A)(i) and (ii) of the Act). This applies regardless of the entity that licenses or approves the prospective parent (e.g., a private adoption agency, an Indian tribe either with or

without an agreement under section 472(a)(2)(B)(ii) of the Act, or a private child placing agency not under contract with the State agency).

Source: *April 13, 2007*

Reference: *Social Security Act - section 471(a)(20)(A)*

11 Q: To whom do the child abuse and neglect registry checks for prospective foster and adoptive parents at section 471(a)(20)(C) of the Social Security Act (the Act) apply?

A: The State must check any child abuse and neglect registry maintained by a State in which the adults living in the home of a prospective foster or adoptive parent have resided in the preceding five years, for any prospective parent who: 1) will be licensed or approved by the title IV-E agency, another public agency operating the title IV-E program pursuant to an agreement with the title IV-E agency (section 472(a)(2)(B)(ii) of the Act), or any other agency that is under contract with the title IV-E agency to issue licenses or approvals; and, 2) will provide care for a child who is a participant in the State?s title IV-B/IV-E programs (section 471(a)(20)(C)(i) of the Act).

Source: *April 13, 2007*

Reference: *Social Security Act - section 471(a)(20)(C)*

12 Q: May a State develop alternative procedures for background checks that do not include a fingerprint-based check of the national crime information databases (NCID) or a check of all State-maintained child abuse and neglect registries in which a prospective foster or adoptive parent and other adults living in the house have resided in the past five years?

A: A State's general procedures for criminal background checks of prospective foster and adoptive parents prior to licensing or approval as specified in section 471(a)(20) of the Social Security Act, must include conducting fingerprint-based checks of the NCID. The State must also check its own State-maintained child abuse and neglect registry, if it has one, and other State-maintained registries in which adult members of the prospective foster or adoptive parent's home have resided in the last five years. See the Child Welfare Policy Manual (CWPM) Section 8.4F Q/A #29 for case-by-case situations in which States may use an

alternative method to obtain fingerprint-based checks of the NCID.

Source: *07/02/07*

Reference: *Social Security Act - section 471(a)(20); CWPM Section 8.4F #29*

13 **Q:** If a foster parent decides to become an adoptive parent, would the background check provisions of section 471(a)(20) of the Social Security Act (the Act) apply if the foster parent had already undergone the checks to be licensed as a foster parent?

A: It depends. Some prospective parents are "dually licensed" to be a foster parent and/or an adoptive parent and therefore do not need a separate license or approval once initially licensed or approved. In this circumstance, the parent providing foster care does not become a "prospective" adoptive parent and the State would not be required by Federal law to conduct the background checks in section 471(a)(20) of the Act again.

However, if a State has separate licenses or approvals for foster and adoptive parents, then the State must comply with section 471(a)(20) of the Act prior to licensing or approving the foster parent as an adoptive parent. Consistent with the Child Welfare Policy Manual 8.4F Q/A #14, if the State has established an appropriate timeframe that a background check remains valid and such timeframe has not expired for the foster parent seeking approval as an adoptive parent, the State can consider the requirement of section 471(a)(20) of the Act met without conducting a new background check.

Source: *April 7, 2008*

Reference: *Social Security Act - section 471(a)(20)*

14 Q: May a State establish an appropriate timeframe for when a fingerprint-based check of the national crime information databases or a child abuse and neglect registry check must be completed or can remain valid to meet the purposes in section 471(a)(20) of the Social Security Act (the Act)?

A: Yes. The statute requires only that the background checks for prospective foster and adoptive parents be conducted prior to licensure or approval (section 471(a)(20) of the Act). Since the statute does not prescribe a specific timeframe for when such checks must be completed or remain valid, the State has the discretion to establish timeframes as it sees fit, so long as the background checks are completed prior to licensure or approval.

Source: April 13, 2007

Reference: Social Security Act - section 471(a)(20)

15 Q: May a State determine that it will not license or approve a foster or adoptive parent who has a criminal record other than one specified in section 471(a)(20)(A)(i) or (ii) of the Social Security Act (the Act)?

A: Yes. The State has the discretion to establish more restrictive criteria for foster or adoptive home licensure or approval than described in section 471(a)(20)(A)(i) or (ii) of the Act.

Source: April 13, 2007

Reference: Social Security Act - section 471(a)(20)(A)

16 Q: Section 471(a)(20)(C)(i) of the Social Security Act (the Act) requires a State to request a check of information in another State¿s child abuse and neglect registry in which a prospective foster parent, adoptive parent, or other adult in the home has resided in the preceding five years. With regard to this provision, is the requesting State able to comply with the law if the other State that maintains such a registry denies the request because the provision is not yet effective in the other State?

A: Yes. Section 471(a)(20)(C)(i) of the Act requires the State to request and check a State-

maintained child abuse and neglect registry of another State in which prospective foster and adoptive parents and other adults living in the home have resided within the last five years. The requirement is met for the requesting State when the State receives the information from the other State?s registry or is denied the request because the statutory provision is not yet in effect in the other State (or does not maintain a registry). If the State?s request to check child abuse and neglect information is denied because the other State has an ACF-approved delayed effective date, or the State does not maintain a registry, the State may determine whether to license or approve the prospective foster or adoptive parent in the absence of the information.

A State that maintains a child abuse and neglect registry must comply with another State?s request to check information on a prospective adoptive or foster parent and other adult household members (section 471(a)(20)(C)(ii) of the Act) as of the State?s specified effective date consistent with section 471(a)(20)(C)(i) and (ii) of the Act. The effective date will vary among the States and may extend into 2008 if a State has an ACF-approved delayed effective date (section 152(c) of Public Law 109-248).

Source: April 13, 2007

Reference: Social Security Act - section 471(a)(20)(C); Public Law 109-248 ¿ section 152(c)

17 ***Q:*** Must a State make a registry check request pursuant to section 471(a)(20)(C)(i) of the Social Security Act (the Act) of a State which is not yet required to comply with such a request due to having an ACF-approved delayed effective date for section 471(a)(20)(C)(ii) of the Act?

A: Yes. Section 471(a)(20)(C)(i) of the Act requires a State to request a check of information in another State?s child abuse and neglect registry in which a prospective foster parent, adoptive parent, or adult in the home has resided in the preceding five years. A State seeking to approve or license prospective foster or adoptive parents must request the information on all adults in the prospective foster/adoptive home, even if the other State that maintains a child abuse and neglect registry has an ACF-approved delayed effective date.

Source: April 13, 2007

Reference: Social Security Act - section 471(a)(20)(C)(i)

18 ***Q:*** Section 471(a)(20)(C)(i) of the Social Security Act (the Act) states that "the State shall check any child abuse and neglect registry maintained by the State..." How does this apply if a State does not maintain a child abuse and neglect registry?

A: If a State itself does not maintain a child abuse and neglect registry, the State is not required by section 471(a)(20)(C)(i) of the Act to provide information to a requesting State or check further for child abuse and neglect information within the State on the prospective adoptive parent, foster parent or other adults living in the home.

Source: April 13, 2007

Reference: Social Security Act - section 471(a)(20)(C)(i)

19 Q: How should a State proceed when another State that maintains a child abuse and neglect registry does not respond to an out-of-State request to check a child abuse and neglect registry pursuant to section 471(a)(20)(C)(i) of the Social Security Act (the Act)?

A: The State may not approve or license a prospective foster or adoptive home pursuant to section 471(a)(20)(C)(i) of the Act without the results of a State-maintained child abuse and neglect registry check of another State where the prospective parents or other adults in the home have lived in the past five years, unless the results are not provided because the other State has an ACF-approved delayed effective date. A State that believes that another State that maintains a registry is not responding appropriately to an information request for a reason other than an ACF-approved delayed effective date should contact their ACF regional office. ACF may conduct a partial review pursuant to 45 CFR 1355.32(d) to determine the State?s compliance with the title IV-E State plan.

Source: April 13, 2007

Reference: Social Security Act - section 471(a)(20)(C)(i) and (ii); 45 CFR 1355.32(d)

20 Q: How should a State that maintains a child abuse and neglect registry and has an ACF-approved delayed effective date respond to incoming requests for child abuse and neglect registry information on prospective adoptive and foster parents pursuant to section 471(a)(20)(C) of the Social Security Act? Is that State out of compliance with the law if it does not provide the information?

A: The statute does not prescribe how a State with an ACF-approved delayed effective date should respond when denying a request for child abuse and neglect registry information from another State. The State is not out of compliance with the statute if it is unable to provide the information in its registry to another State on the adults living in the home of a prospective foster and adoptive parent before the ACF-approved effective date on which it is required to comply.

Source: April 13, 2007

Reference: Social Security Act - section 471(a)(20)(C)

21 **Q:** If a State has verified that another State does not maintain a child abuse and neglect registry, is the State still required by section 471(a)(20)(C)(i) of the Social Security Act (the Act) in every case to make a request to that other State?

A: No. The requirement in section 471(a)(20)(C)(i) of the Act to request a check for child abuse and neglect registry information in another State in which the prospective parent or other adult has resided in the preceding five years is inapplicable if that other State does not maintain a child abuse and neglect registry.

Source: April 13, 2007

Reference: Social Security Act - section 471(a)(20)(C)(i)

22 **Q:** Some States have procedures that predicate releasing information from their State-maintained child abuse and neglect registry on the requesting State meeting certain conditions. For example, some States require the requesting State to obtain a notarized release or consent from the prospective foster or adoptive parent and others charge a fee for the information. Is this permissible?

A: Yes. The statute does not prohibit a State from establishing procedures or charging fees for another State to access information from its State-maintained child abuse and neglect registry. As long as the State that maintains the registry enables another State to request and check information in that registry, the State is meeting the requirement in section 471(a)(20)(C)(ii) of the Social Security Act. Any fees paid by the requesting State to another State to gain access to information in a State-maintained child abuse and neglect registry pursuant to section 471(a)(20)(C)(i) of the Act may be reimbursed as direct title IV-E administrative costs.

Source: April 13, 2007

Reference: Social Security Act - section 471(a)(20)(C)

23 **Q:** If the child will not receive title IV-E foster care maintenance or adoption assistance payments, must a prospective foster parent or adoptive parent who will be licensed or approved by an Indian tribe meet the requirements of 471(a)(20) of the Social Security Act (the Act)?

A: No. The requirement at section 471(a)(20) of the Act is applicable to the State?s title IV-E plan, with some additional conditions for claiming title IV-E payments and therefore does not extend to Indian tribal licenses or approvals if the child will not receive title IV-E foster care maintenance or adoption assistance payments.

Source: April 13, 2007

Reference: Social Security Act - sections 471(a)(20)

24 **Q:** Section 471(a)(20)(A)(i) and (ii) of the Social Security Act (the Act) prohibit a State from claiming title IV-E foster care maintenance payments or adoption assistance payments when prospective foster or adoptive parents have been convicted of certain crimes. Are there any exemptions or exceptions permitted from this requirement, such as the State or Indian tribe under a title IV-E agreement with the State considers the prospective parent rehabilitated or the placement is in the best interests of the child?

A: No, there are no exceptions to the requirements at section 471(a)(20)(A)(i) and (ii) of the Act, once the provision is effective in the State. The State, or an Indian tribe under a title IV-E agreement (pursuant to section 472(a)(2)(B)(ii) of the Act) has the discretion to place the child in a home where prospective parents have been convicted of such crimes. However, the State or Tribe may not claim title IV-E foster care maintenance or adoption assistance payments in such cases.

Source: April 13, 2007

Reference: Social Security Act - sections 471(a)(20)(A) and 472(a)(2)(B)(ii)

25 Q: Is an Indian tribe that has a title IV-E agreement under section 472(a)(2)(B)(ii) of the Social Security Act (the Act) permitted an exemption or exception to the background check provisions of section 471(a)(20) of the Act?

A: No. An Indian tribe with a section 472(a)(2)(B)(ii) agreement must meet the requirements of section 471(a)(20) of the Act for any prospective foster or adoptive parent who will provide care for a child who will receive title IV-E foster care maintenance payments or title IV-E adoption assistance payments.

Source: April 13, 2007

Reference: Social Security Act ¿ sections 471(a)(20)(A) and 472(a)(2)(B)(ii)

26 Q: Do States have to request information from a child abuse and neglect registry of an Indian tribe in which a prospective foster or adoptive parent has resided within the last five years in accordance with section 471(a)(20)(C)(i) of the Social Security Act (the Act)? Do Indian tribes have to comply with such a request from a State according to section 471(a)(20)(C)(ii) of the Act?

A: No to both questions. The references to a "State"-maintained child abuse and neglect registry in section 471(a)(20)(C)(i) and (ii) of the Act do not include an Indian tribe, as an Indian tribe is not considered a "State" for title IV-E pursuant to 45 CFR 1355.20.

Source: April 13, 2007

Reference: Social Security Act - section 471(a)(20)(C)

27 ***Q:*** Is a State able to comply with section 471(a)(20)(A) of the Social Security Act (the Act) if the State is unable to take legible fingerprint impressions of the prospective parent to whom the requirements apply?

(Deleted 07/02/2007)

28 ***Q:*** For the purposes of section 471(a)(20)(C) of the Social Security Act (the Act), what constitutes a "child abuse and neglect registry maintained by the State"? If a State does not have such a registry, is it required to develop one?

A: The State has the discretion to determine whether it has a "child abuse and neglect registry maintained by the State." The law does not require a State that does not maintain a child abuse and neglect registry to develop one, neither does it require a State that currently has a registry to maintain it in perpetuity. States that do not maintain a child abuse and neglect registry are not required by section 471(a)(20)(C)(ii) of the Act to provide child abuse and neglect information to a requesting State on adult members of a prospective foster or adoptive parent?s home.

Source: 04/27/07

Reference: Social Security Act ¿ section 471(a)(20)(C)

29 ***Q:*** What information must a State release from its child abuse and neglect registry to comply with an incoming request from another State for information on an adult member of a prospective foster or adoptive parent's home as required by section 471(a)(20)(C)(ii) of the Social Security Act? For example, may the State release information only on substantiated reports of abuse and neglect?

A: The State has the discretion to determine what information to release to a requesting State on the prospective foster or adoptive parent or any adult living in the home of such prospective parent, unless or until we issue regulations on this provision. We encourage States to be as forthcoming as possible to permit States to make appropriate decisions about approval or licensure of prospective foster or adoptive parents.

Source: 04/27/07

Reference: Social Security Act ¿ section 471(a)(20)(C)(ii)

30 Q: Some prospective foster or adoptive parents have unreadable or missing fingerprints due to their age, disability, or occupation. How can a State comply with section 471(a)(20)(A) of the Social Security Act (the Act) in such cases?

A: Section 471(a)(20)(A) of the Act requires States to have procedures for conducting fingerprint-based checks of the national crime information databases (NCID) for certain prospective foster and adoptive parents (see CWPM 8.4F Q/A #9). Those procedures must provide for the State to obtain fingerprints of all such prospective parents and submit them to the NCID.

We are aware that in some limited, case-specific circumstances, a State may not be able to: 1) obtain an individual?s fingerprints as a result of the individual?s disability; or, 2) obtain legible fingerprints due to low quality fingerprints, as a result of age, occupation or otherwise, thereby making it impossible for the NCID to provide results. Establishing such procedures under the below circumstances satisfies section 471(a)(20)(A) of the Act:

<u>Inability to obtain fingerprints due to a physical disability.</u> The State must comply with section 471(a)(20)(A) of the Act by developing and utilizing a procedure to conduct a name-based check of the NCID or it may develop and utilize another appropriately comprehensive criminal background check process. We expect the State to reserve and clearly state in writing that this alternative procedure is for limited and case-specific situations, such as when a fingerprint specialist has documented that the prospective parent?s disabling condition prevents fingerprinting, or the individual does not have fingers.

<u>Inability to obtain results due to low quality fingerprints.</u> The State must comply with section 471(a)(20)(A) of the Act by obtaining and submitting the individual?s fingerprints to the NCID. If the individual?s fingerprint impressions are rejected by the NCID, the State may instead implement an alternate procedure to conduct a name-based check of the NCID or to use another appropriately comprehensive criminal background check process. We expect the State to reserve and clearly state in writing that this alternate procedure is used only in the limited and case-specific situation described above.

It is not acceptable for the State to utilize an alternative background check process when fingerprints impressions are of low quality due to the State?s lack of technological capacity or

use of improper techniques. The Criminal Justice Information Services (CJIS) Division of the Department of Justice and the State?s CJIS Systems Officer can assist the State in determining appropriate techniques and technologies to use to take legible fingerprints, including procedures for individuals with abnormalities of the fingers or hands.

Source: 07/02/07

Reference: Social Security Act ¿ section 471(a)(20)(A)

31 Q: Does the State title IV-E agency, or licensing authority, itself have to request information from a State-maintained child abuse and neglect registry pursuant to section 471(a)(20)(C)(ii) of the Social Security Act (the Act)? Similarly, does the State title IV-E agency, or licensing authority, itself have to receive the registry information?

A: Yes to both questions. The statute provides "that the State shall?check any child abuse and neglect registry...and request any other State in which" the prospective parent or other adults in the home have resided the past five years (see section 471(a)(20)(C) of the Act). Further, the State that maintains such a registry must comply with an incoming request received from another State title IV-E agency or licensing authority (section 471(a)(20)(C)(ii) of the Act). For purposes of this State plan requirement, the request must be made by the State title IV-E agency or other licensing authority requiring the check directly to the other State where the adult had lived, and the State that maintains the child abuse and neglect registry must respond to the State title IV-E agency or other licensing authority rather than to the prospective parent or other adult living in the household. It is permissible, however, for the State that maintains the registry to have a procedure which requires the State title IV-E agency or other licensing authority submitting the request to obtain an affidavit or other form of consent from the adult to release such information.

Source: 12/6/2007

Reference: Social Security Act - section 471(a)(20)(C)

32 Q: Upon the dissolution of an adoption or death of the adoptive parents of a child receiving title IV-E adoption assistance, must the child's new prospective adoptive parents meet the background check requirements of section 471(a)(20) of the Social Security Act (the Act) before they can receive IV-E adoption assistance if that subsequent adoption will be achieved through a private or independent entity?

A: Yes. In order for the State to claim title IV-E adoption assistance payments in an independent or private adoption for an otherwise eligible child, the background checks specified in section 471(a)(20)(A) of the Act must be conducted. Furthermore, the checks must reveal that the prospective adoptive parent has not been convicted of one of the prohibited felonies consistent with section 471(a)(20)(A)(i) and (ii) of the Act.

Source: 12/6/2007

Reference: Social Security Act - section 471(a)(20)(A); Child Welfare Policy Manual Section 8.4F Q/A #9 and 10

33 Q: Are the criminal background check requirements at section 471(a)(20)(A) of the Social Security Act (the Act) applicable to all international, private or independent adoptions?

A: No, the criminal background checks pursuant to section 471(a)(20)(A) of the Act are only applicable in circumstances in which the child who is the subject of an international, private or independent adoption will receive title IV-E adoption assistance. This is because section 471(a)(20)(A) of the Act generally applies to prospective parents whom the State or its agents will license or approve to care for a participant in the State's title IV-B/IV-E program (see the Child Welfare Policy Manual Section 8.4F Q/A #9). In order for a State to claim title IV-E adoption assistance payments for an otherwise eligible child, the State must conduct a criminal background check that reveals that the prospective adoptive parent has not been convicted of one of the prohibited felonies consistent with section 471(a)(20)(A)(i) and (ii) of the Act. Therefore, if a child subject to an international, private or independent adoption is otherwise eligible for title IV-E adoption assistance, the State can claim reimbursement under title IV-E only after the background checks specified in section 471(a)(20)(A) of the Act have been conducted and the results meet the conditions in section 471(a)(20)(A)(i) and (ii) of the Act.

Source: 04/25/08

Reference: Social Security Act - section 471(a)(20)(A); Child Welfare Policy Manual section 8.4F Q/A #9

8.4G TITLE IV-E, General Title IV-E Requirements, Fair Hearings

1 *Q:* Do the regulations at 45 CFR 205.10 require fair hearings for appeals related to services as well as financial claims?

A: Yes. The regulations at 1355.30 (p)(2) provide that the procedures for hearings found in 45 CFR 205.10 shall apply to all programs funded under titles IV-B and IV-E of the Social Security Act. Fair hearings in relation to services as well as financial claims are therefore covered under this regulation. The process for fair hearings under section 205.10 is essentially the same for services hearings as for financial hearings. However, because the substantive portion of the regulations provides no examples of service issues, the title IV-E agency has the option of modifying the context of the hearing to accommodate services program complaints. The hearing process under either situation requires that recipients be advised of their right to a hearing, that they may be represented by an authorized representative, and that there be a timely notice of the date and place of the hearing.

The following paragraphs, excerpted from the now obsolete section 1392.11, may be used as guidance for the hearings related to services issues. The title IV-E agency "must have a provision for a fair hearing, under which applicants and recipients may appeal denial of or exclusion from a service program, failure to take account of recipient choice of service or a determination that the individuals must participate in the service program. The results of appeals must be formally recorded and all applicants and recipients must be advised of their right to appeal and the procedures for such appeal. There must be a system through which recipients may present grievances about the operation of the service program."

Examples of service issues in title IV-E that might result in a grievance or request for a hearing include: Agency failure to offer or provide appropriate pre-placement preventive services or reunification services; Agency may not have placed child in the most family-like setting in close proximity to his parents; Parents were not informed of their rights to participate in periodic administrative reviews; Agency failed to provide services agreed to in case plan; A request for a specific service is denied or not acted upon; and Agency failure to carry out terms of adoption assistance agreements.

Source: ACYF-CB-PIQ-83-04 (10/26/83) (revised 6/6/13)

Reference: 45 CFR 1355.30 (k), and (p), 205.10 and 1392.11

2 **Q:** Please explain the circumstances in which adoptive parents have the right to a fair hearing.

A: Federal regulations at 45 CFR 1356.40(b)(1) require that the adoption assistance agreement be signed and in effect at the time of, or prior to, the final decree of adoption. However, if the adoptive parents feel they wrongly have been denied benefits on behalf of an adoptive child, they have the right to a fair hearing. Some allegations that constitute grounds for a fair hearing include: relevant facts regarding the child were known by the title IV-E agency or child-placing agency and not presented to the adoptive parents prior to the finalization of the adoption; denial of assistance based upon a means test of the adoptive family; adoptive family disagrees with the determination by the title-IV-E agency that a child is ineligible for adoption assistance; failure by the agency to advise potential adoptive parents about the availability of adoption assistance for children in the foster care system; decrease in the amount of adoption assistance without the concurrence of the adoptive parents; and denial of a request for a change in payment level due to a change in the adoptive parents circumstances. In situations where the final fair hearing decision is favorable to the adoptive parents, the agency can reverse the earlier decision to deny benefits under title IV-E. If the child meets all the eligibility criteria, Federal Financial Participation (FFP) is available, beginning with the earliest date of the child's eligibility (e.g., the date of the child's placement in the adoptive home or finalization of the adoption) in accordance with Federal and State/Tribal statutes, regulations and policies.

The right to a fair hearing is a procedural protection that provides due process for individuals who claim that they have been wrongly denied benefits. This procedural protection, however, cannot confer title IV-E benefits without legal support or basis. Accordingly, FFP is available only in those situations in which a fair hearing determines that the child was wrongly denied benefits and the child meets all Federal eligibility requirements. For example, if a fair hearing officer determines that a child would have been eligible for Supplemental Security Income (SSI) prior to the finalization of the adoption, FFP is available only if there had been eligibility documentation for the child from the Social Security Administration, or its designee at that time. Accordingly, if a fair hearing officer decides that a child should have received adoption assistance, but, in fact, the child does not meet all the Federal eligibility criteria, the title IV-E agency cannot claim FFP under title IV-E for the child.

Source: ACYF-CB-PA-01-01 (1/23/01) (revised 6/6/13)

Reference: Social Security Act -sections 471(a)(12) and 473

3 **Q:** Do foster parents or relative caregivers have a right to a fair hearing under section 471(a)(12) of the Social Security Act (the Act) with regard to adverse placement decisions? In particular, do the provisions for relative preference at section 471(a)(19) of the Act and an opportunity to be heard for foster parents and relative caretakers at section 475(5)(G) of the Act create fair hearing rights?

A: No. The provisions at sections 471(a)(19) and 475(5)(G) of the Act have no relation to or bearing on the fair hearing requirements. The title IV-E agency determines where and with whom the child will be placed by virtue of its placement and care responsibility.

The fair hearing provision at section 471(a)(12) of the Act provides for granting an opportunity for a fair hearing to any individual whose claim for benefits available pursuant to this part is denied or not acted upon with reasonable promptness. The benefit under the title IV-E foster care maintenance payments program is provided to eligible children.

Source: 06/09/04 (revised 6/6/13)

Reference: Section 471(a)(12) of the Social Security Act, 45 CFR 205.10 and 1355.30(p)(2).

4 **Q:** Does section 471(a)(12) of the Act give prospective adoptive parents a right to the 45 CFR 205.10 fair hearings provisions with regard to pre-adoptive foster care placement issues?

A: No. Section 471(a)(12) of the Act does not grant prospective adoptive parents the right to a fair hearing under 45 CFR 205.10, for the purposes of challenging the title IV-E agency's exercise of its placement and care responsibilities pursuant to section 472(a)(2)(B) of the Act. The title IV-E fair hearings provision is directed to individuals who believe that they have been denied a benefit to which they are entitled, such as the denial of adoption assistance (see 45 CFR 205.10(a)(5) and Child Welfare Policy Manual Section 8.4). The situation raised in the question does not involve the denial of a benefit or assistance, but rather entails a placement decision.

Nothing in Federal law or regulations requires the title IV-E agency to provide an individual with an opportunity for a fair hearing with regard to agency placement decisions.

Source: 06/09/04 (revised 6/6/13)

Reference: Section 471(a)(12) of the Social Security Act, 45 CFR 205.10.

5 **Q:** Is the title IV-E agency required to conduct the fair hearings mandated at section 471(a)(12) of the Social Security Act (the Act), or may it delegate the process to another agency?

A: Although section 471(a)(12) of the Act requires that the title IV-E agency provide for an opportunity for a fair hearing "before the State agency," the regulation at 45 CFR 1355.30(p)(2) cross references 45 CFR 205.10. The latter citation at 45 CFR 205.10(a)(9) authorizes the hearings to "be conducted by an impartial official(s) or a designee of the agency." Thus, an agency other than the title IV-E agency may be designated to conduct hearings and make recommendations to the title IV-E agency. The provision at 45 CFR 205.100(b)(1), however, prohibits officials of the title IV-E agency from delegating their authority for exercising administrative discretion in the "administration or supervision of the plan." Thus, although the title IV-E agency may delegate the fair hearing function pursuant to the title IV-E requirement, the title IV-E agency must make the final decision.

Source: 7/6/05 (revised 6/6/13)

Reference: Social Security Act -- Sections 471(a)(12), 45 CFR Parts 1355.30(p)(2), 205.10(a)(9) and 205.100(b)(1)

8.4H TITLE IV-E, General Title IV-E Requirements, Safety Requirements

1 ***Q:*** Is the requirement for criminal records checks extended to the staff of child-care institutions, unlicensed relative homes?

A: The criminal records check provision does not extend to child-care facilities; the statute specifically limits this requirement to prospective foster and adoptive parents. However, in order to be an eligible provider for title IV-E funding purposes, the licensing file must include documentation that safety considerations with respect to the caretakers have been addressed. This safety documentation requirement applies to child-care institutions in every situation. Since this provision is a title IV-E funding requirement, it does not extend to relative homes that are not licensed or approved in accordance with State/Tribal licensing standards because children placed in such homes are not eligible for title IV-E funding.

Source: Preamble to the Final Rule (65 FR 4020) (1/25/00) (revised 6/6/13)

Reference: Social Security Act - section 471 (a)(20); 45 CFR 1356.30

8.4I TITLE IV-E, General Title IV-E Requirements, Social Security Numbers

1 ***Q:*** What is the policy regarding a Social Security Number for persons eligible under title IV-E?

A: Section 472 of the Social Security Act does not require that an otherwise eligible child apply for or furnish to the title IV-E agency a Social Security Number in order to be eligible for the title IV-E foster care maintenance and adoption assistance programs.

Source: ACYF-CB-PA-86-01 (2/25/86) (revised 6/6/13)

Reference: Social Security Act - section 472

2 ***Q:*** How should title IV-E agencies reconcile the inconsistent requirements for furnishing social security numbers (SSN) under Medicaid and title IV-E?

A: Changes brought about by the Deficit Reduction Act of 1984 (DEFRA) (Public Law 98-369) resulted in an OHDS Policy Announcement which stated that otherwise eligible children are not required to apply for or furnish a Social Security Number (SSN) in order to be eligible for the title IV-E Foster Care Maintenance Payments Program or the Adoption Assistance Program.

However, title XIX program regulations at 42 CFR 435.910 were amended to require, effective April 1, 1985, that each individual (including children)

requesting Medicaid services furnish his/her SSN as a condition of eligibility for Medicaid. (It should be noted that if an individual needs emergency medical care, medical assistance cannot be denied if the individual has not previously applied for a SSN.)

Children who are eligible for title XIX Medicaid on the basis of their eligibility under title IV-E must furnish a SSN as a condition of eligibility for Medicaid, even though a SSN is not required under title IV-E.

Source: ACYF-CB-PA-87-01 (1/5/87) (revised 6/6/13)

Reference: Social Security Act - sections 472 (h), 473 (b), 1102 and 1137; Public Law 98-369; 42 CFR 435.910

8.5 Guardianship Assistance Program

1 **Q:** Are children that are receiving title IV-E guardianship assistance payments eligible for Medicaid?

A: Children who receive title IV-E kinship guardianship assistance payments are categorically eligible for title XIX pursuant to section 473(b)(3)(C) in the State where such child resides.

Source: 08/12/09

Reference: Social Security Act ¿ section 473(b)(3)(C)

2 **Q:** Do the fair hearing requirements in section 471(a)(12) and 45 CFR 205.10 apply to the title IV-E Guardianship Assistance Program (GAP)?

A: Yes. The title IV-E agency must provide an opportunity for a fair hearing to any individual whose claim for kinship guardianship assistance available under title IV-E is denied or is not acted upon with reasonable promptness per regulations in 45 CFR 205.10.

Source: 08/12/09

Reference: Social Security Act ¿ section 471(a)(12); 45 CFR 205.10; 45 CFR 1355.30(p)(2)

3 **Q:** Describe the case plan requirements for children who have a permanency plan of relative guardianship.

A: Section 475(1)(F) of the Social Security Act requires the title IV-E agency to include specific information in the case plan for each child with a permanency plan of placement with a relative guardian and receipt of kinship guardian assistance payments. The case plan must describe the following: 1) how the child meets the eligibility requirements; 2) the steps the agency has taken to determine that return to the home or adoption is not appropriate; 3) the efforts the agency has made to discuss adoption with the child's relative foster parent and the reasons why adoption is not an option; 4) the efforts the agency has made to discuss kinship guardianship with the child's parent or parents or the reasons why efforts were not made; 5)

the reason why a permanent placement with a prospective relative guardian and receipt of a kinship guardian assistance payment is in the child's best interests; and 6) the reasons for any separation of siblings during placement. If the child's placement with the prospective relative guardian does not include siblings, the case plan must also include a description of the reasons why the child is separated from siblings during placement.

Source: 08/12/09

Reference: Social Security Act ¿ section 475(1)(F)

4 **Q:** Which title IV-E plan requirements apply to the guardianship assistance program?

A: The title IV-E plan requirements that are not specifically limited to the title IV-E foster care maintenance payment or adoption assistance programs also apply to the guardianship assistance program under title IV-E. These requirements are in sections 471(a)(2) through 471(a)(9); 471(a)(12), 471(a)(13), 471(a)(20)(C), 471(a)(25), 471(a)(26), and 471(a)(30) through (a)(32) of the Social Security Act, and address topics such as agency organization and program administration, program audits and monitoring, confidentiality of information, fair hearings, interstate placements, school attendance and sibling placement. Further, Departmental regulations at 45 CFR 1355.30 apply to the title IV-E guardianship assistance program to the same extent that they apply to the title IV-E foster care maintenance payments and adoption assistance programs.

Source: 08/12/09

Reference: Social Security Act ¿ sections 471(a)(2) ¿ (9), 471(a)(12) ¿ (13), 471(a)(20)(C), 471(a)(25) ¿ (26), 471(a)(30) ¿ (32); 45 CFR 1355.30

5 ***Q:*** May a title IV-E agency that is operating a title IV-E guardianship assistance program (GAP) claim allowable administration and training costs?

A: A title IV-E agency that is operating a title IV-E GAP may claim allowable administrative and training costs for the proper and efficient administration of the guardianship assistance program.

Source: 08/12/09

Reference: Social Security Act ¿ section 474(a)(3)

6 ***Q:*** Is a title IV-E agency obligated to reimburse the non-recurring expenses (NREs) (e.g., legal fees) if the legal guardianship is never finalized?

A: Yes. A title IV-E agency is obligated to reimburse NREs incurred pursuing legal guardianship, even if the guardianship is never finalized, pursuant to section 473(d)(1)(B)(iv) of the Social Security Act (the Act). A kinship guardianship assistance agreement must be in place with a prospective relative guardian prior to the establishment of the legal guardianship and must specify, among other things, that the title IV-E agency will pay the total cost of NREs associated with obtaining legal guardianship of the child, to the extent the total cost does not exceed $2,000 (section 473(d)(1)(B)(iv) of the Act). A title IV-E agency may claim Federal financial participation at the 50 percent rate for NREs incurred pursing legal guardianship per section 474(a)(5) of the Act.

Source: 10/14/2011

Reference: Social Security Act ¿ sections 473(d)(1)(B)(iv) and 474(a)(5)

7 **Q:** Is a guardianship assistance agreement required between the successor legal guardian and the title IV-E agency?

A: Yes. The requirements for a guardianship assistance agreement in section 473(d)(1) of the Act apply to the successor legal guardian.

Source: 2/18/2015

Reference: Social Security Act – sections 473(d)(1), 473(d)(3)(C)

8 **Q:** Are title IV-E agencies required to have a successor legal guardian option?

A: Yes. Title IV-E agencies with approved title IV-E guardianship assistance plans must include the successor legal guardian provision as part of their guardianship assistance program, and must amend their title IV-E plans per instructions in ACYF-CB-PI-14-06.

Source: ACYF-CB-PI-14-06 (11/21/14); 2/18/2015

Reference: Social Security Act – sections 473(d)(1), 473(d)(3)(C)

8.5A Guardianship Assistance Program, Agreements

1 **Q:** What are the requirements for a title IV-E kinship guardianship agreement?

A: Section 473(d)(1)(A) of the Social Security Act (the Act) requires that a title IV-E agency negotiate and enter into a written, binding kinship guardianship assistance agreement with the prospective relative guardian, and provide the prospective relative guardian with a copy of the agreement. Section 473(d)(1)(B) of the Act prescribes certain requirements for the kinship guardianship assistance agreement. It must specify the following: the amount of, and manner in which the kinship guardianship assistance payment will be provided to the prospective relative guardian; the manner in which the payment may be adjusted periodically, in consultation with the relative guardian, based on the circumstances of the relative guardian and the needs of the child; the additional services and assistance for which the child and

relative guardian will be eligible under the agreement; and the procedure by which the relative guardian may apply for additional services.

Additionally, the kinship guardianship assistance agreement must provide that the agreement will remain in effect without regard to the State of residency of the relative guardian pursuant to 473(d)(1)(C) of the Act, and must specify that the agency will pay the total cost of nonrecurring expenses associated with obtaining legal guardianship of the child to the extent the total cost does not exceed $2,000.

Source: 08/12/09

Reference: Social Security Act ¿ section 473(d)(1)

2 Q: For the Guardianship Assistance Program (GAP), does a title IV-E agency have the flexibility to establish a cap on specific components (e.g., attorney fees) of the nonrecurring expenses that it must pay in connection with obtaining legal guardianship of the child?

A: No. Section 473(d)(1)(B)(iv) of the Social Security Act provides that a GAP agreement must specify, among other things, that the title IV-E agency will pay the ?total cost of nonrecurring expenses associated with obtaining legal guardianship of the child, to the extent the total cost does not exceed $2,000.? Such language does not permit a title IV-E agency the discretion to establish such a cap on specific items that qualify as nonrecurring expenses.

Source: 2/24/2011

Reference: Social Security Act ¿ Section 473(d)(1)(B)(iv)

3 Q: May a title IV-E agency include a provision in the Guardianship Assistance Program (GAP) agreement terminating payments if the guardian and the child move to another country?

A: Yes. The title IV-E agency has the flexibility to include a provision in the GAP agreement terminating payments if the guardian and the child move to another country. ACYF-CB-PI-10-11 states that a title IV-E agency has broad discretion to establish how it will evaluate, reevaluate, or terminate GAP agreements. The PI states, ?[f]or example, a title IV-E agency may establish agreements that: . . . allow the agency to suspend or discontinue guardianship

assistance payments when a certain event occurs.? Accordingly, a title IV-E agency may provide in the GAP agreement that moving to another country is an event that could cause the suspension or discontinuation of GAP payments.

Source: 2/24/2011

Reference: Social Security Act ¿ Section 473(d)(1), ACYF-CB-PI-10-11

8.5B Guardianship Assistance Program, Eligibility

1 ***Q:*** May a title IV-E agency that operates the Guardianship Assistance Program (GAP) require a child to have resided in foster care with the prospective relative guardian for a minimum period longer than six consecutive months for the child to be eligible for the GAP program?

(Deleted 03/24/2010)

2 ***Q:*** If the relative guardian receiving title IV-E Guardianship Assistance Program (GAP) payments on behalf of a child dies or is no longer able to care for the child, does the child retain eligibility for title IV-E foster care maintenance payments if he returns to foster care?

A: No. There is no provision in section 472 of the Social Security Act (the Act) for the child to retain title IV-E eligibility for foster care maintenance payments if he re-enters foster care from a legal guardianship. A child in this situation would need to meet the eligibility criteria in section 472(a) through (c) of the Act to receive title IV-E foster care maintenance payments in the subsequent foster care placement.

Source: 05/29/09

Reference: Social Security Act ¿ sections 472(a) through (c)

3 ***Q:*** If the relative guardian receiving title IV-E Guardianship Assistance Program (GAP) payments on behalf of a child dies or is no longer able to care for the child, is the child automatically eligible for the GAP program if placed with a subsequent guardian?

(Deleted 10/09/2014)

4 ***Q:*** If the relative guardian receiving title IV-E Guardianship Assistance Program (GAP) payments on behalf of a child dies or is no longer able to care for the child, may the GAP payments be transferred to a third party?

(Deleted 10/09/2014)

5 ***Q:*** Describe the child eligibility requirements for the title IV-E kinship guardianship assistance program (GAP).

A: To be eligible for title IV-E GAP, a child must have been: 1) removed from his or her home pursuant to a voluntary placement agreement or as a result of a judicial determination that continuation in the home would be contrary to the welfare of the child; and 2) eligible for title IV-E foster care maintenance payments during at least a six consecutive month period during which the child resided in the home of the prospective relative guardian who was licensed or approved as meeting the licensure requirements as a foster family home.

While the Social Security Act (the Act) does not require title IV-E foster care maintenance payments to have been paid on behalf of the child during the six month timeframe, it does require that such a child meet all title IV-E foster care maintenance payment eligibility criteria pursuant to section 472(a),(b) and (c) of the Act and 45 CFR 1356.21 in the home of the fully licensed or approved relative foster parent for a consecutive six-month period to be eligible for title IV-E kinship guardianship assistance payments with that prospective relative guardian (section 473(d)(3)(A)(i)(II) of the Act).

Additionally, the title IV-E agency must determine that: 1) return home or adoption are not appropriate permanency options; 2) the child demonstrates a strong attachment to the prospective relative guardian; and 3) the relative guardian has a strong commitment to caring permanently for the child. The title IV-E agency must consult with a child who is 14 years or older regarding the kinship guardianship arrangement. These determinations are not judicial

findings but rather determinations made by the title IV-E agency (section 473(d)(3)(A) of the Act).

Source: 08/12/09

Reference: Social Security Act ¿ sections 472 and 473(d)(3); 45 CFR 1356.21

6 Q: Please provide additional guidance on what counts as a ¿consecutive month¿ for purposes of determining eligibility for title IV-E kinship guardianship assistance payments.

A: One of the eligibility criteria for title IV-E kinship guardianship assistance payments is that the child must be eligible for title IV-E foster care maintenance payments for at least a consecutive six-month period while the child resided in the prospective relative guardian?s licensed or approved foster family home. A month may be counted in the six consecutive month period if the child met all of the title IV-E foster care maintenance payment eligibility criteria for at least one day of that particular month while in the prospective relative guardian?s home, and is therefore eligible for a title IV-E foster care maintenance payment for at least a portion of that month.

Source: 2/24/2011

Reference: Social Security Act ¿ Section 472, 473(d)(3)(A)(i)(II), 45 CFR 1355.20(a), ACYF-CB-PI-10-11

7 Q: Must a title IV-E agency that takes the option to extend the IV-E programs to older youth ages 19, 20, or 21 per section 475(8)(B) of the Social Security Act and has opted to provide title IV-E guardianship assistance provide title IV-E guardianship assistance payments to the older youth who remains eligible when the agreement expires?

A: Yes. A title IV-E agency must provide extended guardianship assistance payments to an older youth when his title IV-E guardianship assistance agreement expires, if the youth remains eligible for the guardianship assistance payments. This includes youth under a title IV-E guardianship assistance agreement in place prior to the agency taking the option to extend the title IVE programs.

Source: 05/04/11

Reference: Social Security Act ¿ sections 475(8)(B) and 473(d)

8.5B.1 Guardianship Assistance Program, Eligibility, Siblings

1 ***Q:*** If a title IV-E agency operates the Guardianship Assistance Program (GAP), is it mandatory or optional for the agency to provide a GAP payment for a sibling of the child who is eligible for a GAP payment?

A: It is optional. Section 473(d)(3)(B) of the Social Security Act (the Act) permits a title IV-E agency to provide kinship guardianship assistance payments on behalf of a sibling to a child eligible per section 473(d)(3)(A) of the Act if the sibling is placed in the same kinship guardianship arrangement in accordance with section 471(a)(31) of the Act.

Source: 05/29/09

Reference: Social Security Act ¿ sections 471(a)(31) and 473(d)(3)

2 ***Q:*** May a title IV-E agency provide guardianship assistance payments for the siblings of an eligible child?

A: The title IV-E agency may make kinship guardianship assistance payments pursuant to a kinship guardianship agreement on behalf of each sibling of an eligible child who is placed with the same relative under a kinship guardianship arrangement if the title IV-E agency and the relative guardian agree that the placement is appropriate (section 473(d)(3)(B) of the Social Security Act (the Act)). Title IV-E nonrecurring expenses are also available for siblings so placed. The Act does not require that the title IV-E agency place siblings with the relative guardian of the child simultaneously with the title IV-E eligible child for the siblings to qualify for payment under section 473(d)(3)(B) of the Act. The sibling does not have to meet the eligibility criteria in section 473(d)(3)(A) of the Act to receive kinship guardianship assistance payments or for the legal guardian to be reimbursed for the nonrecurring expenses related to the costs of the legal guardianship.

Source: 08/12/09

Reference: Social Security Act ¿ section 473(d)(3)

8.5B.2 Guardianship Assistance Program, Eligibility, Guardian requirements

1 ***Q:*** Describe the criminal records check requirements for relative guardians.

A: Before a relative guardian may receive title IV-E kinship guardianship assistance payments on behalf of a child, the title IV-E agency must conduct fingerprint-based criminal records checks of the national crime information databases (NCID) of the relative guardian(s) and child abuse and neglect registry checks of relative guardian(s) and other adults living in the guardian's home consistent with section 471(a)(20)(C) of the Social Security Act (the Act).
Consistent with existing policy, if the title IV-E agency has established an appropriate timeframe that the NCID and child abuse and neglect registry background checks remain valid and such timeframe has not expired for the foster parent who previously received the background checks and is now seeking to become a relative guardian, the agency can consider the requirement of section 471(a)(20) of the Act met without conducting new background checks (Child Welfare Policy Manual 8.4F Q/A #13).

Source: 08/12/09

Reference: Social Security Act ¿ section 471(a)(20); Child Welfare Policy Manual section 8.4F Q/A #13

2 ***Q:*** Are fingerprint-based criminal background check requirements in 471(a)(20)(C) of the Act required for successor legal guardians named in the guardianship assistance agreement per section 473(d)(3)(C) of the Act? If so, at what point must this be completed?

A: Yes. The criminal background check requirements in section 471(a)(20)(C) of the Act apply to the successor legal guardian. Before the successor legal guardian may receive a title IV-E payment, the title IV-E agency must: 1) conduct fingerprint-based criminal records checks of the national crime information databases (NCID) of the guardian(s) and 2) child abuse and neglect registry checks of guardian(s) and other adults living in the guardian's home consistent with section 471(a)(20)(C) of the Social Security Act (the Act). See CWPM 8.5B.2 Q/A #1 for more information.

Source: 2/18/2015

Reference: Social Security Act – sections 471(a)(20)(C), 473(d)(3)(C)

3 **Q:** Must the successor legal guardian named in the guardianship assistance agreement be a "relative" as with the original guardian?

A: No. The statute at 473(d)(3)(C) of the Act provides that the child's eligibility "...shall not be affected by reason of replacement of the relative guardian with a successor legal guardian named" in the agreement.

Source: 2/18/2015

Reference: Social Security Act – section 473(d)(3)(C)

8.5C Guardianship Assistance Program, Payments

1 **Q:** May a title IV-E agency operating a Guardianship Assistance Program (GAP) set a different payment ceiling for payments under the GAP than it sets for the Adoption Assistance Program?

A: Yes. However, neither the GAP payment nor the adoption assistance payment can exceed the amount of the foster care maintenance payment which the child would have received had the child remained in a foster family home.

Source: 05/29/09

Reference: Social Security Act ¿ section 473(d)(2)

2 **Q:** For the Guardianship Assistance Program (GAP), does a title IV-E agency have the flexibility to establish a cap on specific components (e.g., attorney fees) of the nonrecurring expenses that it must pay in connection with obtaining legal guardianship of the child?

A: No. Section 473(d)(1)(B)(iv) of the Social Security Act provides that a GAP agreement must specify, among other things, that the title IV-E agency will pay the ?total cost of nonrecurring

expenses associated with obtaining legal guardianship of the child, to the extent the total cost does not exceed $2,000.? Such language does not permit a title IV-E agency the discretion to establish such a cap on specific items that qualify as nonrecurring expenses.

Source: 2/24/2011

Reference: Social Security Act ¿ Section 473(d)(1)(B)(iv)

3 Q: If a relative guardian moves to another country on a temporary or permanent basis with the child for whom he/she is the guardian, would the relative guardian still be eligible to receive title IV-E Guardianship Assistance Program payments directly on behalf of the child?

A: Yes. The title IV-E agency may provide title IV-E payments to a relative guardian on behalf of the child when living outside of the U.S. The already established guardian must have entered into a guardianship agreement with the title IV-E agency on behalf of an eligible child.

Source: 2/24/2011

Reference: Social Security Act ¿ Section 473(d)(1)

4 Q: May a title IV-E agency make a title IV-E guardianship assistance payment directly to a youth age 18 or older?

A: No. A title IV-E agency must make the payments to the relative guardian(s) per section 473(d)(1)(A) of the Act which specifies that the guardianship assistance agreement is between the agency and the relative guardian(s).

Source: 05/06/2013

Reference: Social Security Act ¿ section 473(d)

5 **Q:** Must a title IV-E agency discontinue title IV-E guardianship assistance payments provided per section 475(8)(B) of the Act for a youth age 18 or older if the title IV-E agency determines that the youth is no longer meeting the education or employment criteria or is no longer incapable of meeting any of these criteria due to a medical condition, as elected by the title IV-E agency?

A: Yes. A title IV-E agency must ensure that a youth receiving a title IV-E guardianship assistance payment under section 475(8)(B) of the Act meets the education and employment criteria or is no longer incapable of meeting any of these criteria due to a medical condition, as elected by the title IV-E agency. Once a title IV-E agency determines that a youth no longer meets the criteria, the agency must discontinue title IV-E guardianship assistance payments for the youth. However, if the youth meets the criteria at a later time, the title IV-E agency may resume payments to the youth.

Source: 05/06/2013

Reference: Social Security Act ¿ section 475(8)(B); ACYF-CB-PI-10-11

6 **Q:** Are title IV-E agencies required to pay non-recurring expenses associated with obtaining legal guardianship of the child on behalf of the successor guardian?

A: Yes. An agreement is required between the successor guardian and the title IV-E agency. This guardianship assistance agreement must specify that the agency will pay the total cost of nonrecurring expenses associated with obtaining legal guardianship of the child to the extent the total cost does not exceed $2,000, per section 473(d)(1)(B) of the Act. The nonrecurring expenses limit is applied per guardianship.

Source: 8/26/15

Reference: Social Security Act – sections 473(d)(1), 473(d)(3)(C), Child Welfare Policy Manual Section 8.5 Question/Answer 7

8.5C.1 Guardianship Assistance Program, Payments, Termination

1 ***Q:*** May a title IV-E agency include a provision in the Guardianship Assistance Program (GAP) agreement terminating payments if the guardian and the child move to another country?

A: Yes. The title IV-E agency has the flexibility to include a provision in the GAP agreement terminating payments if the guardian and the child move to another country. ACYF-CB-PI-10-11 states that a title IV-E agency has broad discretion to establish how it will evaluate, reevaluate, or terminate GAP agreements. The PI states, "[f]or example, a title IV-E agency may establish agreements that: . . . allow the agency to suspend or discontinue guardianship assistance payments when a certain event occurs." Accordingly, a title IV-E agency may provide in the GAP agreement that moving to another country is an event that could cause the suspension or discontinuation of GAP payments.

Source: 2/24/2011

Reference: Social Security Act ¿ Section 473(d)(1), ACYF-CB-PI-10-11

8.5D Guardianship Assistance Program, Interstate

No questions and answers are available at this time.

9. TRIBES/INDIAN TRIBAL ORGANIZATIONS AND CONSORTIA (policies related to the tribal IV-B/E procedural requirements, tribal IVE agencies and title IV-E agreements)

9. TRIBES/INDIAN TRIBAL ORGANIZATIONS AND CONSORTIA (policies related to the tribal IV-B/E procedural requirements, tribal IVE agencies and title IV-E agreements)

1 ***Q:*** May a State establish and implement a policy that limits foster care maintenance payments and child welfare services for Indian children to only those who are title IV-E eligible?

A: No. Not in the use of Federal funds. A State may not establish and implement policy that treats one group of children differently from another on the basis of ethnicity or race or that categorically excludes Indian children from benefits in the administration of any Federally assisted program. Such a policy is discriminatory and is in conflict with the provisions of title VI of the Civil Rights Act.

States and Tribes receiving title IV-B child welfare services funds have the flexibility and discretion to allocate these and other resources within the context of a total child welfare services plan. A child welfare services plan, however, may not be designed or implemented in such a way as to discriminate against any group based on race, age, or ethnicity, either directly or through geographic or other proximate exclusions.

Source: ACYF-CB-PIQ-88-02 (1/27/88)

Reference: Social Security Act - sections 422, 428 and 472; 25 CFR 20.3

2 **Q:** If the child will not receive title IV-E foster care maintenance or adoption assistance payments, must a prospective foster parent or adoptive parent who will be licensed or approved by an Indian tribe meet the requirements of 471(a)(20) of the Social Security Act (the Act)?

A: No. The requirement at section 471(a)(20) of the Act is applicable to the title IV-E plan, with some additional conditions for claiming title IV-E payments and therefore does not extend to Indian tribal licenses or approvals if the child will not receive title IV-E foster care maintenance or adoption assistance payments.

Source: April 13, 2007 (revised 12/11/14)

Reference: Social Security Act – sections 471(a)(20)

9.1 TRIBES/INDIAN TRIBAL ORGANIZATIONS, Application of Title IV-B and Title IV-E Procedural Requirements

1 **Q:** When the Bureau of Indian Affairs (BIA) is responsible for a child's foster care costs, it will often contract with a State to provide services to that child. Such child is then included in the State's inventory, information system and case review system. The BIA appoints an administrative panel to conduct six month periodic reviews. Do the administrative review panels appointed by the BIA to conduct periodic (six month) reviews for Indian children in foster care satisfy the requirements of sections 475 (5) and (6) of the Social Security Act (the Act)?

A: Yes. Periodic reviews which are administrative reviews (rather than reviews conducted by a court) can take various forms at the State's option. They may be conducted by State agency staff, by a review panel made up of persons outside the agency, or by a panel comprised of both agency staff and the public. Title IV-E does not prohibit the State agency from utilizing a non-agency panel appointed outside the administration of the State agency.

Regardless of who appoints the review panel, the review must be conducted in accordance with section 475(5)(B) and (6) of the Act. It must be open to the participation of the parents of the child and it must include at least one person who is not responsible for the case management of, or delivery of services to, either the child or the parent who are the subject of the review.

Source: ACYF-CB-PIQ-83-09 (12/14/83)

Reference: Social Security Act - sections 422 (b)(8), 471 (a)(16) and 475(5)(B) and (6)

2 Q: Please explain how the termination of parental rights (TPR) requirement applies to Indian tribes and its relationship to Indian Child Welfare Act requirements.

A: The Indian Child Welfare Act of 1978 (ICWA), Public Law 95-608, was passed in response to concerns about the large number of Indian children who were being removed from their families and tribes and the failure of States to recognize the culture and tribal relations of Indian people. ICWA, in part, creates procedural protections and imposes substantive standards on the removal, placement, termination of parental rights and consent to adoption of children who are members of or are eligible for membership in an Indian tribe. The addition of the requirement in section 475 (5)(E) of the Social Security Act (the Act) to file a petition for TPR for certain children in no way diminishes the requirements of ICWA for the State to protect the best interests of Indian children. Furthermore, States are required to comply with the ICWA requirements and develop plans that specify how they will comply with ICWA in section 422 (b)(9) of the Act.

The requirement in section 475 (5)(E) of the Act applies to Indian tribal children as it applies to any other child under the placement and care responsibility of a State or tribal agency receiving title IV-B or IV-E funds. While we recognize that termination of parental rights and adoption may not be a part of an Indian tribe's traditional belief system or legal code, there is no statutory authority to provide a general exemption for Indian tribal children from the requirement to file a petition for TPR. If an Indian tribe that receives title IV-B or IV-E funds has placement and care responsibility for an Indian child, the Indian tribe must file a petition for TPR or, if appropriate, document the reason for an exception to the requirement in the case plan, on a case-by-case basis.

Source: Preamble to the Final Rule (65 FR 4020) (1/25/00)

Reference: Social Security Act - sections 422(b)(9) and 475 (5)(E); 45 CFR 1356.21 (i)

3 **Q:** May the State or Tribe define compelling reasons for not filing a petition to terminate parental rights (TPR) in State law or Tribal code?

A: No. States and Tribes may not develop a standard list of compelling reasons for not filing for TPR that exempts groups of children. Such a practice is contrary to the requirement that determinations regarding compelling reasons be made on a case-by-case basis. States and Tribes may, however, provide case workers examples of such for training purposes.

Source: Preamble to the Final Rule (65 FR 4020) (1/25/00)

Reference: Social Security Act - sections 475 (5)(E); 45 CFR 1356.21 (i)

4 **Q:** Do Indian Tribes have to operate the title IV-B programs to operate a title IV-E program?

A: This question has moved to 9.2; question 11.

Source: 12/19/08

Reference: Social Security Act ¿ section 471(a)(2)

9.2 TRIBES/INDIAN TRIBAL ORGANIZATIONS, Application of Title IV-E Eligibility Requirements for Title IV-E Tribal Agencies

1 **Q:** A placement is made by an Indian Tribe, can title IV-E payments be made only if the Tribe is certified by the State as a child placing agency?

A: This question has moved to 9.4; question 7.

Source: ACYF-PIQ-87-01 (3/25/87)

Reference: Social Security Act - section 472 (a)

2 **Q:** Must foster family homes approved through the tribal process meet the same standard as homes licensed by the State?

A: This question has moved to 9.4; question 8.

Source: ACYF-CB-PIQ-87-01 (3/25/87); Preamble to the Final Rule (65 FR 4020) (1/25/00)

Reference: The Indian Child Welfare Act of 1978; 45 CFR 1355.20

3 **Q:** In establishing title IV-E eligibility for adoption assistance, is termination of parental rights the only mechanism for demonstrating that a child cannot or should not be returned home?

A: One of the criteria for establishing that a child has special needs is a determination by the State that the child cannot or should not be returned to the home of his or her parents. Previous guidance stated that this means that the State must have reached that decision based on evidence by an order from a court of competent jurisdiction terminating parental rights, the existence of a petition for a termination of parental rights (TPR), or a signed relinquishment by the parents. It has been brought to our attention that there are situations in which adoptions are legal without a TPR. Specifically, in some Tribes adoption is legal without a TPR or a relinquishment from the biological parent(s), and there is at least one State that allows relatives who have cared for a related child for a period of time to adopt without first obtaining a TPR.

After consideration, we believe that our earlier policy is an unduly narrow interpretation of the statute. Consequently, if a child can be adopted in accordance with State or Tribal law without a TPR or relinquishment, the requirement of section 473 (c)(1) of the Act will be satisfied, so long as the State or Tribe has documented the valid reason why the child cannot or should not be returned to the home of his or her parents.

Source: ACYF-CB-PA-01-01 (1/23/01)

Reference: Social Security Act - section 473 (c)

4 **Q:** By what authority are Tribes restriced to licensing homes that are on or near Indian reservations?

A: This question has moved to 9.4; question 9.

Source: Preamble to the Final Rule (65 FR 4020) (1/25/00)

Reference: The Indian Child Welfare Act of 1978; 45 CFR 1355.20

5 **Q:** May a State establish and implement a policy that limits foster care maintenance payments and child welfare services for Indian children to only those who are title IV-E eligible?

A: This question has moved to 9; question 1.

Source: ACYF-CB-PIQ-88-02 (1/27/88)

Reference: Social Security Act - sections 422, 428 and 472; 25 CFR 20.3

6 **Q:** If the child will not receive title IV-E foster care maintenance or adoption assistance payments, must a prospective foster parent or adoptive parent who will be licensed or approved by an Indian tribe meet the requirements of 471(a)(20) of the Social Security Act (the Act)?

A: This question has moved to 9; question 2.

Source: *April 13, 2007*

Reference: *Social Security Act - sections 471(a)(20)*

7 **Q:** Section 471(a)(20)(A)(i) and (ii) of the Social Security Act (the Act) prohibit a State from claiming title IV-E foster care maintenance payments or adoption assistance payments when prospective foster or adoptive parents have been convicted of certain crimes. Are there any exemptions or exceptions permitted from this requirement, such as the State or Indian tribe under a title IV-E agreement with the State considers the prospective parent rehabilitated or the placement is in the best interests of the child?

A: This question has moved to 9.4; question 10.

Source: *April 13, 2007*

Reference: *Social Security Act - sections 471(a)(20)(A) and 472(a)(2)(B)(ii)*

8 **Q:** Is an Indian tribe that has a title IV-E agreement under section 472(a)(2)(B)(ii) of the Social Security Act (the Act) permitted an exemption or exception to the background check provisions of section 471(a)(20) of the Act?

A: This question has moved to 9.4; question 11.

Source: *April 13, 2007*

Reference: *Social Security Act ¿ sections 471(a)(20)(A) and 472(a)(2)(B)(ii)*

9 **Q:** Section 479B(c)(1)(C)(ii)(I) of the Social Security Act permits affidavits and nunc pro tunc documents to be used for the first 12 months of a tribal title IV-E plan to verify reasonable efforts and contrary to the welfare judicial determinations. May a nunc pro tunc order used by a Tribe to verify these judicial determinations be signed by a judge other than the judge who originally made the contrary to welfare or reasonable efforts determinations?

A: Yes, a nunc pro tunc order may be signed by a judge other than the judge who originally made the contrary to welfare or reasonable efforts determinations as long as the judge signing the nunc pro tunc order considers the evidence (in the court file or otherwise) and agrees that it was contrary to the child's welfare to remain in the home and that reasonable efforts were made.

Source: 05/04/11

Reference: Social Security Act ¿ section 479B(c)(1)(C)(ii)(I)

10 **Q:** If a Tribal title IV-E agency places an Indian child in accordance with the Indian Child Welfare Act (ICWA), does that violate section 471(a)(18) of the Social Security Act (the Act)?

A: No. The Indian Child Welfare Act of 1978 (ICWA), Public Law 95-608, was passed in response to concerns about the large number of Indian children who were being removed from their families and Tribes and the failure of States to recognize the culture and tribal relations of Indian people. ICWA, in part, creates procedural protections and imposes substantive standards on the removal, placement, termination of parental rights and consent to adoption of children who are members of or are eligible for membership in an Indian tribe. ICWA and section 471(a)(18) of the Act work together to provide important protections for children. When a Tribal title IV-E agency places an Indian child (as defined by ICWA) according to the placement preferences established in ICWA, the agency is acting in accordance with section 474(d)(4) of the Act and 45 CFR 1355.38(a)(5). Therefore, it does not violate section 471(a)(18) of the Act.

However, Tribal title IV-E agencies must ensure that children achieve permanency in a timely manner (see section 471(a)(15)(C) of the Act). This is consistent with the Bureau of Indian Affairs' (BIA) guidance to State courts. The BIA has explained that if, after a diligent search has been completed for families in accordance with the ICWA preference criteria, and a

suitable prospective foster care, preadoptive, or adoptive family has not been identified, the agency has good cause to expand the search beyond the order of preference (BIA Guidelines for State Courts; Indian Child Custody Proceedings; 44 FR 67584).

As with State agencies, if a Tribal title IV-E agency places a child to whom the ICWA protections do not apply, then the agency must comply with section 471(a)(18) of the Act, which prohibits agencies from:

- delaying or denying a child's foster care or adoptive placement on the basis of the child's or the prospective parent's race, color, or national origin; and
- denying to any individual the opportunity to become a foster or adoptive parent on the basis of the prospective parent's or the child's race, color, or national origin.

Source: 03/06/2012

Reference: Social Security Act - sections 471(a)(18) and 474; 45 CFR 1355.38(a)(5); The Indian Child Welfare Act of 1978; BIA Guidelines for State Courts on Indian Child Custody Proceedings; 44 FR 67584 (November 26, 1979)

11 Q: Do Indian Tribes have to operate the title IV-B programs to operate a title IV-E program?

A: Yes, but only a title IV-B subpart 1 program. Section 471(a)(2) of the Social Security Act requires the same agency administering title IV-B, subpart 1 to operate the title IV-E program.To give this language effect, the title IV-E agency must operate a title IV-B, subpart 1 program. There is no similar requirement in title IV-E related to the title IV-B, subpart 2 program.

Source: 12/19/08

Reference: Social Security Act section 471(a)(2)

12 Q: A IVE/IVB agency must must file a petition to terminate the parental rights (TPR) of a child in foster care, (unless there is an exception) under certain circumstances, such as when a child has been in foster care for 15 of the most recent 22 months (see 475(5)(E) of the Act). A TPR may affect a child's ability to be a full member of his/her tribe, preventing the child from accessing services and benefits available to tribal members. May a tribal agency develop an alternative to terminating a parent's rights (TPR) that allows the child to retain full membership in the tribe, such as a modification of parental rights?

A: Yes, a tribal agency may develop an alternative to a "termination" of parental rights, such as a "modification" of parental rights, as long as the tribe's process meets the case review system requirement defined in section 475(5)(E) of the Act. This means that the process of modifying parental rights will result in a child becoming available for adoption and for the tribe to concurrently identify, recruit, process and approve a qualified adoptive family. Therefore, whether the modification of parental rights meets the statutory provisions will depend on a specific tribe's law, policy or procedures.

Source: 2/15/15

Reference: Legal and Related References: Social Security Act – sections 475(5)(E); 45 CFR 1356.21(i)

13 Q: If a tribal title IV-E agency's service area spans more than one state, how should the agency determine whether the child is AFDC eligible?

A: The tribal title IV-E agency must use the AFDC plan (as it was in effect on July 16, 1996) of the state where the child resides (479B(c)(1)(C)(ii)(II) of the Act). However, the tribal title IV-E agency may determine the state in which a child resides in accordance with tribal law or policy.

Source: 12/10/2015

Reference: 479B(c)(1)(C)(ii)(II)

9.3 TRIBES/INDIAN TRIBAL ORGANIZATIONS, Responsibilities of the Bureau of Indian Affairs

1 ***Q:*** Is it the State title IV-B/IV-E agency or the Bureau of Indian Affairs (BIA) that has responsibility for providing foster care and child welfare services to Indian children residing on or near an Indian reservation?

A: The BIA takes the position that its legislation and regulations make it the payor of last resort for Indian child welfare services, and that it will only provide assistance when it is not available from other sources (see 25 CFR 20.3). Therefore, the BIA does not become involved in paying for Indian child welfare services or foster care payments until the State and the Tribes have determined that assistance or services are not otherwise available. The availability of payments and services, however, must not be based on any discriminating practice which treats Indian children differently from other children.

Source: ACYF-CB-PIQ-88-02 (1/27/88)

Reference: Social Security Act - sections 421, 422, 428 and 472; 25 CFR 20.3

9.4 TRIBES/INDIAN TRIBAL ORGANIZATIONS, Title IV-E Agreements

1 ***Q:*** Which agency (State or Tribal) has responsibility for providing foster care payments and child welfare services to Indian children?

A: While the Federal government provides funds through legislatively mandated programs for certain child welfare needs, it does not assume direct responsibility for the needs of individual children in each State. Rather, this responsibility is reserved for the States.

Federal programs which assist States in meeting this responsibility include the title IV-E foster care maintenance payments program and the title IV-B child welfare services program.

The title IV-E program is a State administered program to pay the costs of foster care for AFDC eligible children removed from their homes, for whom the State or the Tribe has responsibility for placement and care. It is an entitlement program for individual children and must be available to all eligible residents of a State, including Indian children living on or off reservations.

The title IV-B child welfare services program provides Federal funds in the form of formula grants to States and Tribes consistent with the purposes in section 421 of the Act.

Some federally recognized Tribes providing child welfare services are eligible to receive title IV-B grants directly from the Federal government. Since these are grants to States and Tribes, and are not entitlements for individual children, the States and participating Tribes have the authority to allocate the use of these funds and to set priorities for their use.

Many States and Tribes have developed State-Tribal agreements which formalize the sharing of responsibility for providing foster care maintenance and child welfare services, using title IV-E and title IV-B funds, as well as Social Services Block Grant funds and State funds.

Where neither the State nor the Tribe has resources sufficient to cover all the needs of all Indian children, the BIA, as payor of last resort, may pay for these services.

Source: ACYF-CB-PIQ-88-02 (1/27/88)

Reference: Social Security Act - sections 421, 422, 428 and 472; 25 CFR 20.3

2 **Q:** Must a State decline to enter into a title IV-E agreement with a Tribe that does not meet all of the title IV-B section 422 "protection" or assurances?

A: No. It would not be necessary to decline entering into such Tribal-State agreements because of the Tribe's inability to meet certain title IV-E requirements.

We assume that by Tribal-State intergovernmental title IV-E agreements you are referring to an agreement for the placement and care of children eligible under section 472 (a) of the Social Security Act (the Act).

The terms of a title IV-E agreement, in accordance with section 472 (a)(2)(B) of the Act, would be negotiated between the State and the Tribe. The agreement should specify the respective responsibilities of each in relation to carrying out the title IV-E requirements. The agreement should also include provisions for assuring that the section 422 protections are afforded to each child in foster care under the Tribes responsibility for placement and care for whom title IV-E foster care maintenance payments are being made by the State. The State and Tribe would determine the responsibilities of each in meeting the section 422 requirements.

However, the State has ultimate responsibility for assuring that the title IV-E requirements are met for title IV-E eligible children.

Source: *ACYF-CB-PIQ-85-05 (4/12/85)*

Reference: *Social Security Act - section 472 (a)*

3 **Q:** In order for the State to meet the title IV-B section 422 requirements, must Tribal children assisted under intergovernmental agreements be included in the State's inventory, information system and case review system?

A: In order for a State to meet the section 422 requirements, children under the Tribe's responsibility, but for whom the State is making title IV-E payments, must be included in the State's inventory and information system. The State must also assure that a case review system and a preventive and reunification services program are in operation and applicable to these Native American children.

The title IV-E agreement may designate whether the State or the Tribe will implement the case review system and provide the services specified above, since the State (making the title IV-E foster care maintenance payments) and the Tribe (having the responsibility for placement and care) have a shared responsibility for assuring title IV-E children receive these protections.

Source: ACYF-CB-PIQ-85-05 (4/12/85)

Reference: Social Security Act - section 472 (a)(2)

4 **Q:** May a State make payments under title IV-E with respect to children in Indian foster homes only if the children are under the responsibility of the State title IV-E/IV-B agency or a State-certified child placing agency?

A: No. Section 472(a) of the Social Security Act (the Act) outlines the eligibility requirements for a child to receive assistance and the conditions under which a State may make foster care maintenance payments under title IV-E and receive Federal financial participation (FFP).

In accordance with section 472(a)(2)(B), a State shall make foster care maintenance payments under title IV-E if, among other conditions, the child's placement and care are the responsibility of the State agency administering the title IV-E State plan or any other public agency (including an Indian Tribe) with whom the State agency has made an agreement which is in effect. There is no provision in the statute that authorizes title IV-E payments where custody or responsibility for placement and care of the child has been given to a private agency.

Therefore, if the State and the Indian Tribe negotiate and enter into an agreement which recognizes that the Tribe has been given custody or responsibility for placement and care of certain title IV-E eligible children and which confirms the Tribe's responsibility to comply with the requirements under title IV-E in relation to these children, the State may claim FFP under title IV-E for the costs of foster care maintenance payments for them.

Source: *ACYF-CB-PIQ-87-01 (3/25/87) (revised 12/2/14)*

Reference: *Social Security Act - section 472 (a)*

5 **Q:** Can Indian tribes that enter into a title IV-E agreement with a title-IV-E agency identify, in tribal code, those aggravated circumstances in which reasonable efforts are not required in accordance with section 471 (a)(15)(D)(i) of the Social Security Act?

A: When entering into a title IV-E agreement with a title IV-E agency, the tribe must adhere to the list of aggravated circumstances defined in State law. The statute at section 471 (a)(15)(D)(i) specifically requires that the aggravated circumstances in which reasonable efforts are not required be defined in State law. Moreover, other public agencies and tribes that enter into agreements with the State agency are not operating or developing their own title IV-E program separate and apart from that operated under the State plan. Rather, the agency or tribe is agreeing to operate the title IV-E program established under the State plan for a specific population of children in foster care. Therefore, the other public agency or tribe is bound by any State statute related to the operation of the title IV-E program. We expect the State child welfare agency to engage the tribes, and any other agency with which it has title IV-E agreements, in developing its list of aggravated circumstances.

Source: *Preamble to the Final Rule (65 FR 4020) (1/25/00) (revised 12/2/14)*

Reference: *Social Security Act - section 471 (a)(15)(D); 45 CFR 1356.21 (b)(3)*

6 **Q:** May an Indian tribe elect not to conduct or require criminal records checks on foster or adoptive parents if it obtains an approved resolution from the governing body of the Indian tribe?

A: No. Tribes that receive title IV-E funds pursuant to a title IV-E agreement with a title IV-E agency must comport with section 471 (a)(20) of the Social Security Act and 45 CFR 1356.30 in accordance with the State plan in order to receive title IV-E funding on behalf of children placed in the homes it licenses. The statute expressly gives the State the authority to opt out of section 471 (a)(20) through State legislation or a letter from the Governor to the Secretary. Agreements between the State child welfare agency and other public agencies or tribes permit those entities to have placement and care responsibility for a particular group of the foster care population under the approved State plan. Such agreements do not permit other public agencies or tribes to develop a distinct title IV-E program separate from that operated under the approved State plan.

Source: Preamble to the Final Rule (65 FR 4020) (1/25/00) (revised 12/2/14)

Reference: Social Security Act - section 471 (a)(20); 45 CFR 1356.30

7 **Q:** A placement is made by an Indian Tribe, can title IV-E payments be made (through a 472 agreement) only if the Tribe is certified by the State as a child placing agency?

A: No. Under title IV-E, Federal financial participation (FFP) is available for the costs of foster care maintenance for a child who meets the eligibility criteria in section 472 (a). For reimbursement under title IV-E, there is no further specification in the statute with regard to certification of a child placing agency which would preclude placement by an Indian Tribal organization or Indian Tribal court.

Source: ACYF-PIQ-87-01 (3/25/87)

Reference: Social Security Act - section 472 (a)

8 **Q:** Must foster family homes approved through the tribal process meet the same standard as homes licensed by the State?

A: The definition of "foster family home" at 45 CFR 1355.20 gives tribal licensing or approval authorities the jurisdiction to license or approve homes that are on or near Indian reservations. This is consistent with ICWA at section 1931(b) which states that for purposes of qualifying for funds under a federally assisted program, licensing or approval of foster or adoptive homes or institutions by an Indian tribe is equivalent to licensing or approval by a State. The authority to license or approve includes the authority to set standards.

Source: ACYF-CB-PIQ-87-01 (3/25/87); Preamble to the Final Rule (65 FR 4020) (1/25/00)

Reference: The Indian Child Welfare Act of 1978; 45 CFR 1355.20

9 **Q:** By what authority are Tribes restricted to licensing homes that are on or near Indian reservations?

A: Section 1931 of the Indian Child Welfare Act (ICWA) authorizes Indian tribes and tribal organizations to establish and operate child and family services programs "on or near reservations," including a system for licensing or otherwise regulating Indian foster and adoptive homes. We use this language at section 1355.20 of the regulations to remain consistent with the ICWA.

Source: Preamble to the Final Rule (65 FR 4020) (1/25/00)

Reference: The Indian Child Welfare Act of 1978; 45 CFR 1355.20

10 **Q:** Section 471(a)(20)(A)(i) and (ii) of the Social Security Act (the Act) prohibit a State from claiming title IV-E foster care maintenance payments or adoption assistance payments when prospective foster or adoptive parents have been convicted of certain crimes. Are there any exemptions or exceptions permitted from this requirement, such as the State or Indian tribe under a title IV-E agreement with the State considers the prospective parent rehabilitated or the placement is in the best interests of the child?

A: No, there are no exceptions to the requirements at section 471(a)(20)(A)(i) and (ii) of the Act, once the provision is effective in the State. The State, or an Indian tribe under a title IV-E agreement (pursuant to section 472(a)(2)(B)(ii) of the Act) has the discretion to place the child in a home where prospective parents have been convicted of such crimes. However, the State or Tribe may not claim title IV-E foster care maintenance or adoption assistance payments in such cases.

Source: *April 13, 2007*

Reference: *Social Security Act - sections 471(a)(20)(A) and 472(a)(2)(B)(ii)*

11 **Q:** Is an Indian tribe that has a title IV-E agreement under section 472(a)(2)(B)(ii) of the Social Security Act (the Act) permitted an exemption or exception to the background check provisions of section 471(a)(20) of the Act?

A: No. An Indian tribe with a section 472(a)(2)(B)(ii) agreement must meet the requirements of section 471(a)(20) of the Act for any prospective foster or adoptive parent who will provide care for a child who will receive title IV-E foster care maintenance payments or title IV-E adoption assistance payments.

Source: *April 13, 2007*

Reference: *Social Security Act - sections 471(a)(20)(A) and 472(a)(2)(B)(ii)*