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Child Welfare Policy Manual: Table of Contents

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1. AFCARS
   1.1 Compliance and Penalties
   1.2 Data Elements and Definitions
      1.2A Adoption Specific Elements
         1.2A.1 Adoptive parents
         1.2A.2 Birth parents
         1.2A.3 Child's demographics
         1.2A.4 Court actions
         1.2A.5 Financial information
         1.2A.6 Placement
   1.2B Foster Care Specific Elements
      1.2B.1 Case plan goal
      1.2B.2 Child's demographics
      1.2B.3 Episode and removal circumstances
      1.2B.4 Financial elements
      1.2B.5 Foster family home
      1.2B.6 Outcome information
      1.2B.7 Placements
      1.2B.8 Principal caretaker
      1.2B.9 Termination of parental rights
   1.3 Reporting Population
   1.4 Technical Requirements

2. CAPTA
   2.1 Assurances and Requirements
      2.1A Access to Child Abuse and Neglect Information
         2.1A.1 Confidentiality
         2.1A.2 Expungment
         2.1A.3 Open Courts
         2.1A.4 Public Disclosure
         2.1B Appeals
         2.1C Expedited Termination of Parental Rights
         2.1D Guardian Ad Litems
         2.1E Reunification
   2.1F CAPTA, Assurances and Requirements, Infants Affected by Illegal Substance Abuse
   2.1F.1 CAPTA, Assurances and Requirements, Infants Affected by Illegal Substance Abuse, Plan of Safe Care
   2.1G CAPTA, Assurances and Requirements, Triage
   2.1H CAPTA, Assurances and Requirements, Notification of Allegations
2.1I CAPTA, Assurances and Requirements, Referrals to IDEA, Part C
2.1J CAPTA, Assurances and Requirements, Criminal Background Checks

2.2 Citizen Review Panels
2.3 Definitions

3. INDEPENDENT LIVING
3.1 Certifications and Requirements
3.1A Adolescent Participation
3.1B Age
3.1C Coordination
3.1D Fraud and Abuse
3.1E Miscellaneous Requirements
3.1F Objective Eligibility Criteria
3.1G Room and Board
3.1H Training
3.1I Tribal

3.2 Data Collection
3.2A Data Elements
3.2B Outcome Measures
3.2C Penalties for Noncompliance
3.2D Systems Requirements
3.3 Fiscal
3.3A Administrative Costs
3.3B Allocations
3.3C Match
3.3D Non-supplantation
3.3E Use of Funds

3.4 Related Foster Care Requirements
3.5 Independent Living, Educational and Training Vouchers
3.5A Youth Eligibility
3.5B Coordination and Duplication
3.5C Eligible Expenses and Institutions
3.5D Administrative Costs
3.5E Match
3.5F Use of Funds
3.5G ran

4. MEPA/IEAP
4.1 Diligent Recruitment
4.2 Enforcement of Section 471 (a)(18) of the SSA
4.3 Guidance for Compliance

5. MONITORING
5.1 Child and Family and Services Review (CFSR)
5.2 Title IV-E Eligibility Reviews

6. CCWIS
7. TITLE IV-B
7.1 Citizenship/Alienage Requirements
7.2 Confidentiality
7.3 Programmatic Requirements
7.4 Use of Funds
8. TITLE IV-E
8.1 Administrative Functions/Costs
   8.1A Allowable Costs - Adoption Assistance Program
   8.1B Allowable Costs - Foster Care Maintenance Payments Program
   8.1C Calculating Claims
   8.1D Candidates
   8.1E Contracting
   8.1F Match Requirements
   8.1G Title IV-E Agreements
   8.1H Training
8.2 Adoption Assistance Program
   8.2A Agreements
   8.2A.1 Interstate placements
   8.2A.2 Means test
   8.2B Eligibility
   8.2B.1 Biological parents
   8.2B.2 Children in foster care
   8.2B.3 Child of a minor parent
   8.2B.4 Deceased adoptive parents/dissolved adoptions
   8.2B.5 Independent Adoptions
   8.2B.6 International Adoptions
   8.2B.7 Judicial determinations
   8.2B.8 Medicaid
   8.2B.9 Redeterminations
   8.2B.10 Responsibility for placement and care
   8.2B.11 Special needs
   8.2B.12 SSI
   8.2B.13 Voluntary relinquishments
   8.2C Interstate Compact
   8.2D Payments
   8.2D.1 Allowable costs
   8.2D.2 Duration
   8.2D.3 Non-recurring expenses
   8.2D.4 Rates
   8.2D.5 Termination
   8.2E Promoting Adoption Assistance
8.3 Foster Care Maintenance Payments Program
   8.3A Eligibility
   8.3A.1 Adjudicated delinquents
   8.3A.2 Age
8.3A.3 Biological parents
8.3A.4 Child in facility outside scope of foster care
8.3A.5 Child of a minor parent
8.3A.6 Contrary to the welfare
8.3A.7 Documentation of judicial determinations
8.3A.8 Facilities requirements
8.3A.8a child-care institution
8.3A.8b foster family home
8.3A.8c licensing
8.3A.9 Reasonable efforts
8.3A.9a to finalize a permanency plan
8.3A.9b to prevent a removal
8.3A.9c to qualify language in court orders
8.3A.10 Redeterminations
8.3A.11 Removal from the home/living with
8.3A.12 Responsibility for placement and care
8.3A.13 Voluntary placement agreements
8.3A.14 Voluntary relinquishments
8.3A.15 When payments may begin
8.3B Payments
8.3B.1 Allowable costs
8.3B.2 Rates
8.3C State Plan/Procedural Requirements
8.3C.1 Case plans
8.3C.2 Case review system
8.3C.2a date a child is considered to have entered foster care
8.3C.2b notice and opportunity to be heard
8.3C.2c permanency hearings
8.3C.2d six month periodic reviews
8.3C.2e termination on parental rights
8.3C.3 Foster care goals
8.3C.4 Reasonable efforts
8.3C.5 Trial home visit
8.4 General Title IV-E Requirements
8.4A AFDC Eligibility
8.4B Aliens/Immigrants
8.4C Child support
8.4D Concurrent Receipt of Federal Benefits
8.4E Confidentiality
8.4F Criminal Record and Registry Checks
8.4G Fair Hearings
8.4H Safety Requirements
8.4I Social Security Numbers
9. TRIBES/INDIAN TRIBAL ORGANIZATIONS
9.1 Application of Title IV-B and Title IV-E Procedural Requirements
9.2 Application of Title IV-E Eligibility Requirements
9.3 Responsibilities of the Bureau of Indian Affairs
9.4 Title IV-E Agreements
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.

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 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 104-235 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

**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

No questions and answers are available at this time.

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

**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

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

No questions and answers are available at this time.

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

1.2A.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.

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

No questions and answers are available at this time.

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

I 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.)

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.)

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.)

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.)
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.
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 CFR 1355, Appendix D, Detailed Foster Care, Element Number 18.)

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

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

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)(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

No questions and answers are available at this time.

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

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.)
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.

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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
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

Q: The data element, "Number of Previous Placement Settings During This Removal Episode" clearly indicates 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

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.

\textit{Source: ACYF-CB-PIQ-95-01 (3/8/95)}
\textit{Reference: Social Security Act - section 479; 45 CFR Parts 1355, 1356 and 1357}

\textbf{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)

\textbf{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?

\textbf{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).

\textit{Source: ACYF-CB-PIQ-95-01 (3/8/95)}
\textit{Reference: Social Security Act - section 479; 45 CFR Parts 1355, 1356 and 1357}

\textbf{16 Q:} How are children in shelter care indicated on the AFCARS questionnaire?

(Deleted 07/05/2002)
**Child Welfare Policy Manual**

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)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)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)(5-28-02)

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 calculation of previous placement settings. (see CWPM 1.2B.7).

Source: (5-28-02)(5-28-02)
Reference: Appendix A to 45 CFR 1355.40
**Child Welfare Policy Manual**

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)(5-28-02)
*Reference:* Social Security Act - section 479; 45 CFR 1355.40 & appendices

### 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.

*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.)
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.)

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.

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) 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) 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) 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) 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)
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.


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.


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); ACYF-CB-PIQ-95-01 (3/8/95)
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
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.

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

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)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

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)ACYF-CB-PIQ-95-01 (3/8/95)
Reference:Social Security Act - section 479; 45 CFR Parts 1355, 1356 and 1357
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

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

A: There are only four assurances in the CAPTA amendments of 1996 that require provisions in State law. Those are: 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)(A)(iv)); 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)(xiii)); 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)(B)(iii)); and authority under State law to permit the CPS system of the State 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).

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

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?
CAPTA, as amended in 1996, 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.


2.1ACAPTA, Assurances and Requirements, Access to Child Abuse and Neglect Information

No questions and answers are available at this time.

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

Q: What are the CAPTA confidentiality requirements?

A: The CAPTA Amendments of 1996 require that States preserve the confidentiality of all reports and records on child abuse and neglect in order to protect the privacy rights of the child and the child’s parents or guardians, except in certain limited circumstances. CAPTA prohibits disclosure of confidential child abuse and neglect information to persons or entities outside those enumerated in the statute. 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.

The only exception to the restrictions on disclosure of otherwise confidential child abuse and
neglect information is in cases of child abuse or neglect that result in the death or near death of a child. In such cases, CAPTA requires public disclosure of the findings and information about the case.

Source: ACYF-NCCAN-PIQ-98-01 (6/29/98)
Reference: Child Abuse Prevention and Treatment Act (CAPTA), as amended (42 U.S.C. 5101 et seq.) - sections 106 (b)(2)(A)(v) and (vi)

2 Q: Would legislation which 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)(v) of CAPTA?

A: No. The CAPTA Amendments of 1996 require that States preserve the confidentiality of all records in order to protect the rights of the child and the child's parents or guardians, except in certain circumstances. The statute specifies the persons to whom and circumstances in which disclosure of CPS records can be made. In addition, it allows States to release CPS records to entities or classes of individuals statutorily authorized by the State to receive such information pursuant to a legitimate State interest.

The CAPTA language strikes a delicate balance between protecting the privacy rights of individuals and the release of CPS records when there is a legitimate State purpose for the disclosure. In creating this balance, it is clear that the Congress did not intend that all records be made public.

Source: ACYF-NCCAN-PIQ-97-01 (3/4/97)
Reference: Child Abuse Prevention and Treatment Act (CAPTA), as amended (42 U.S.C. 5101 et seq.) - section 106
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. Under the CAPTA amendments, 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-97-01 (3/4/97)
Reference:Child Abuse Prevention and Treatment Act (CAPTA), as amended (42 U.S.C. 5101 et seq.) - section 106

4 Q: The confidentiality provision at section 106 (b)(2)(A)(v) of 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 except in certain circumstances. The statutory language states that such records, "shall only be made available to" a specified list of persons and entities. Under the CAPTA Amendments of 1996 are States required to disclose child abuse and neglect records to the persons and entities enumerated in subsections (I)-(VI) under section (v)?

A: No. The language prohibits State disclosure of confidential child abuse and neglect information to persons or entities outside the enumerated categories, and permits, rather than requires, such disclosure to those included in the specified categories.

Source:ACYF-NCCAN-PIQ-97-03 (9/26/97)
Reference:Child Abuse Prevention and Treatment Act (CAPTA), as amended (42 U.S.C. 5101 et seq.) - section 106
**Child Welfare Policy Manual**

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)

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)(v) and (vi) 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)(A)(vi), 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)(A)(v)(I)-(VII)), 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.
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.

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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, they also allow 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.

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.

Q: Would there be a conflict with the CAPTA confidentiality requirements if a State chooses to open proceedings relating to child abuse and neglect to the public?

A: Juvenile courts were set up separately from adult court proceedings in order to have non-criminal civil proceedings that would create an environment to assist in family problem-solving while protecting the privacy rights of the child and family. The opening of these proceedings would not in itself be in conflict with the statute in that the statute requires confidentiality for "reports and records". However, to the extent that the proceedings involve CPS reports and
records which are otherwise confidential, there would be a conflict unless there are provisions to maintain the confidentiality of these records vis-a-vis the public.

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

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?

A: Yes. The purpose of the confidentiality provision is to protect the privacy rights of individuals receiving services or assistance under this program and to assure that confidential information is not disclosed to unauthorized recipients. Although, under CAPTA, confidential information may be shared with the courts, there is no provision which allows for public disclosure of such information except in cases of child abuse or neglect that result in the death or near death of a child. The confidentiality requirements of CAPTA do not prohibit open courts per se. However, to the extent that the proceedings involve discussion of confidential information from the child abuse and neglect report and record, the confidentiality requirements apply. Accordingly, such information cannot be discussed in a public forum, including an open court. To the extent that confidential information is relevant to the proceedings, it must be discussed in the court's chambers or some other restricted setting, and the pertinent sections of the transcript must be kept confidential as well.

Violation of the Federal confidentiality provisions is a State plan compliance issue under CAPTA.

Reference:Social Security Act - section 471 (a)(8); 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)

2.1A.4CAPTA, Assurances and Requirements, Access to Child Abuse and Neglect Information, Public disclosure
1 Q: The CAPTA amendments at section 106 (b)(2)(vi) require 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)
Reference:Child Abuse Prevention and Treatment Act (CAPTA), as amended (42 U.S.C. 5101 et seq.) - section 106

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. 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 available facts. However, nothing in this provision should be interpreted to require disclosure of information which would jeopardize a criminal investigation or proceeding.

Source:ACYF-NCCAN-PIQ-97-01 (3/4/97)
Reference:Child Abuse Prevention and Treatment Act (CAPTA), as amended (42 U.S.C. 5101 et seq.) - section 106
**Child Welfare Policy Manual**

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)(vi) for public disclosure of findings or information about cases of child abuse or neglect that result in child fatality or near fatality?

**A:** Yes. This process allows for public disclosure in such cases and would meet the CAPTA requirement.

*Source:* ACYF-NCCAN-PIQ-97-03 (9/26/97)

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

### 2.1BCAPTA, 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:** By October 3, 1998, States were 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)

2 Q: To whom does the appeals process under section 106 (b)(2)(xi)(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)
Reference: Child Abuse Prevention and Treatment Act (CAPTA), as amended (42 U.S.C. 5101 et seq.) - section 106

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

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)(xi)(II) of CAPTA, States had to have had an appeals process in place by October 3, 1998, 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 should include steps to assure that individuals with such rights receive timely notification.

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

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

1 **Q:** The provision at section 106 (b)(2)(xi)(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.

Reference:Child Abuse Prevention and Treatment Act (CAPTA), as amended (42 U.S.C. 5101 et seq.) - section 106
2.1DCAPTA, Assurances and Requirements, Guardian Ad Litems

Q: What is the meaning of the requirement in section 106 (b)(2)(ix) 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 (CASA). The Congress 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).

Source:ACYF-NCCAN-PIQ-97-01 (3/4/97)
Reference:Child Abuse Prevention and Treatment Act (CAPTA), as amended (42 U.S.C. 5101 et seq.) - section 106

2.1ECAPTA, Assurances and Requirements, Reunification

Q: If a State does not "require" reunification, in general, must it do anything further regarding the mandate in section 106 (b)(2)(xii) 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 or felonious assault of a child?

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.

Source:ACYF-NCCAN-PIQ-97-01 (3/4/97)
Reference:Child Abuse Prevention and Treatment Act (CAPTA), as amended (42 U.S.C. 5101 et seq.) - section 106
Q: Section 106 (b)(2)(xii) 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. 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" (section 102 (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)
Reference: Child Abuse Prevention and Treatment Act (CAPTA), as amended (42 U.S.C. 5101 et seq.) - section 106; Indian Child Welfare Act

Q: Does section 106 (b)(2) (xiii) of CAPTA, which requires States to have provisions for termination of parental rights in cases where a parent has been convicted of murder, manslaughter or felonious assault of a child, mean that children cannot be reunified with a parent that has committed such a crime?

A: No. This provision is not a prohibition against reunification, but rather assures that reunification is not required in such cases. 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)
Reference: Child Abuse Prevention and Treatment Act (CAPTA), as amended (42 U.S.C. 5101 et seq.) - section 106
2.2 CAPTA, Citizen Review Panels

1. **Q:** How will States know how many citizen review panels they will be required to 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 Family Resource and Support (CBFRS) Program?

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

2. **Q:** Do States have the flexibility to determine how to implement the citizen review panels requirement in section 106 (b)(2)(x) 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)
Reference: Child Abuse Prevention and Treatment Act (CAPTA), as amended (42 U.S.C. 5101 et seq.) - section 106
3  **Q:** What are the functions that citizen review panels must perform?

**A:** Pursuant to sections 106 (c)(4)(A)(i) and (ii) of 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 and procedures of State and local agencies, and (2) reviewing specific cases, where appropriate. In addition, consistent with section 106 (c)(4)(A)(iii) of CAPTA, a panel may review other criteria that it considers important to ensure the protection of children, including the extent to which the State CPS system is coordinated with the title IV-E foster care and adoption assistance programs of the Social Security Act, and the child fatalities and near fatalities in the State.

*Source:* ACYF-CB-PI-99-09 (6/2/99)

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

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)

*Reference:* Child Abuse Prevention and Treatment Act (CAPTA), as amended (42 U.S.C. 5101 et seq.) - section 106
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)
Reference:Child Abuse Prevention and Treatment Act (CAPTA), as amended (42 U.S.C. 5101 et seq.) - section 106106 (b)(2)(A)(x) and (c)

2.3CAPTA, 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 111 (2). Please clarify.

A: The provision at section 111 (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)ACYF-NCCAN-PIQ-97-03 (9/26/97)
Reference:Child Abuse Prevention and Treatment Act (CAPTA), as amended (42 U.S.C. 5101 et seq.) - section 111

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

A: The differences in the definitions found in these two 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.

The definitions in section 111 (2) and (4), on the other hand, provide the minimum standards for the broader definitions of "child abuse and neglect" and "sexual abuse" which are used for all other purposes of Title I.

Reference:Child Abuse Prevention and Treatment Act (CAPTA), as amended (42 U.S.C. 5101 et seq.) - sections 106 and 111
3  **Q:** The CAPTA amendments at section 106 (b)(2)(vi) require 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)

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

A: Title IV-E precludes payments made directly to the child or turned over to him by another agency for the purpose of meeting independent living costs. The eligibility of a child for title IV-E is based in part on the fact that he is placed in a family foster home or child care institution as a result of a court determination or voluntary agreement (section 472 (a)(3) of the Social Security Act (the Act)). Federal financial participation is limited to foster care maintenance payments made on behalf of a child described in section 472 (a) of the Act who is in a foster family home or in a child care institution (section 472 (b)). Both "foster family home" and "child care institution" are defined in section 472 (c). Title IV-E does not include "independent living" in these definitions, and it is not considered foster care within the meaning of the Act. Title IV-B may be an alternative source of funding for these independent living programs. Since independent living is not considered foster care, the limitations found in section 423 (c)(1)(B) of title IV-B to foster care payments would not apply.

Source: ACYF-CB-PIQ-83-05 (10/19/83)
Reference: Social Security Act - sections 423 and 472; 45 CFR 1355.20
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, Certification and Requirements, Adolescent Participation

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, Certification and Requirements, Age

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

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

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

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.

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: 7/25/2002
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: 7/25/2002
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

3.1 INDEPENDENT LIVING, Certifications and Requirements, Room and Board

**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

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

3.1 INDEPENDENT LIVING, Certifications and Requirements, Training

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 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 employees of the State agency (or individuals preparing for employment with the State agency), foster parents, adoptive parents, and the staff of State licensed or approved child-care institutions is reimbursable from title IV-E administrative funds at the rate of 75 percent Federal Financial Participation (FFP). If the State contracts with private entities to perform case management functions, it may claim 50 percent reimbursement 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 State.
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
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:** No general statutory or policy changes were made to title IV-E training. States 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
Reference: Social Security Act - sections 477 and 474; 45 CFR 235

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: 7/25/02/25/02
Reference: Social Security Act - section 477(b)(3)(D)
3.1 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


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

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

No questions and answers are available at this time.

3.2B INDEPENDENT LIVING, Data Collection, Outcome Measures

No questions and answers are available at this time.

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

No questions and answers are available at this time.

3.3 INDEPENDENT LIVING, Fiscal

No questions and answers are available at this time.
3.3A INDEPENDENT LIVING, Fiscal, Administrative Costs

No questions and answers are available at this time.

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 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 Questions and Answers on the Chafee Foster Care Independence Program
Reference: Social Security Act - section 477(c)
**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

**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 will continue to follow the regulations at 45 CFR Part 92, Uniform Administrative Requirements for Grants...to State and Local Governments. 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.

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

*Reference:* 45 CFR Part 92

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.

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

*Reference:* Social Security Act - section 474(c)(4)
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 92.24 and permit the use of third party, in-kind contributions.

Source: 7/25/02


3.3D INDEPENDENT LIVING, Fiscal, Non-supplantation

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

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).
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.
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

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.
**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.
4. MEPA/IEAP

4.1 MEPA/IEAP, Diligent Recruitment

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: "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: 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 care. A State 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 State for identifying families for minority children. The overall recruitment program of the State must be open to all qualified families regardless of race, color, or national origin.

Source: ACYF-CB-PI-95-23 (10/11/95)
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 (PL 104-188)
4.2 MEPA/IEAP, Enforcement of Section 471 (a)(18) of the SSA

**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 State 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 State 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)
Reference: Social Security Act - section 471 (a)(18); 45 CFR 1355.38

**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 State 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 States 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 States 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)
Reference: Social Security Act - section 471 (a)(18); 45 CFR 1355.38
4.3 MEPA/IEAP, Guidance for Compliance

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)
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
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)
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)

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)

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)

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)
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)


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 State 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)
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 State 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)

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)

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)
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)


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 state 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 states or 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)
5.1 MONITORING, Child and Family and Services Review (CFSR)

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)
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.
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.
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
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.

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.
**Child Welfare Policy Manual**

**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.

**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 decrees 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
MONITORING, Title IV-E Eligibility Reviews

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)

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
Testing Testing Testing
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. CCWIS

7.TITLE IV-B

7.1TITLE 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)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)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)
Reference: Social Security Act - section 471 (a)(8); 45 CFR 205.50; 45 CFR 1355.21 (a); Child Abuse Prevention and Treatment Act (CAPTA), as amended (42 U.S.C. 5101 et seq.) - sections 106 (b)(2)(A)(v) and (vi)

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
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)ACYF-CB-PIQ-95-02 (6/7/95)
Reference:Social Security Act - section 471 (a)(8); 45 CFR 205.50

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.
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)(v) and (vi) 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)(A)(vi), 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)(A)(v)(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.
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: Yes. The purpose of the confidentiality provision is to protect the privacy rights of individuals receiving services or assistance under this program and to assure that confidential information is not disclosed to unauthorized recipients. Although, under title IV-B, confidential information may be shared with the courts, there is no provision which allows for public disclosure of such information. The confidentiality requirements of title IV-B do not prohibit open courts per se. However, to the extent that the proceedings involve discussion of confidential information concerning a child or family who is receiving the title IV-B child welfare services, the confidentiality requirements apply. Accordingly, such information cannot be discussed in a public forum, including an open court. To the extent that confidential information is relevant to the proceedings, it must be discussed in the court's chambers or some other restricted setting, and the pertinent sections of the transcript must be kept confidential as well.

Violation of the Federal confidentiality provision is a State plan compliance issue under title IV-B.

Reference:Social Security Act - section 471 (a)(6); 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)
7.3 TITLE IV-B, Programmatic Requirements

I  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
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)ACYF-CB-PIQ-83-04 (10/26/83)
Reference:45 CFR 1355.30 (k), 205.10 and 1392.11
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)(D)). 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)
Reference: Child Abuse Prevention and Treatment Act (CAPTA), as amended (42 U.S.C. 5101 et seq.) - section 106

7.4 TITLE IV-B, Use of Funds

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 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-B includes in the definition of child welfare service those services which are directed toward placing children in suitable adoptive homes where restoration to the biological family is not possible or appropriate.

Costs for adoptive parents to attend such conferences under title IV-B would be reimbursable at the 75% matching rate (section 423 (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.
**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 423 (c)(1) 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.

**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) ACYF-CB-PIQ-82-04 (1/29/82)
Reference: Social Security Act - section 423 (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) 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) ACYF-CB-PIQ-84-01 (2/10/84)
Reference: Social Security Act - section 425 (a)(1)

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) (1/25/00) Preamble to the Final Rule (65 FR 4020) (1/25/00)
Reference: 45 CFR 1356.30 and 1356.60

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.
8.1ATITLE IV-E, Administrative Functions/Costs, Allowable Costs - Adoption Assistance Program

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
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

8.1BTITLE IV-E, Administrative Functions/Costs, Allowable Costs - Foster Care Maintenance Payments Program

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: 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.

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 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 or other activities related to the prevention of placement are not foster care administrative costs and are therefore not reimbursable.

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 casework or casework supervisory personnel.

Source: ACYF-CB-PA-85-01 (11/18/85); ACYF-CB-PA-87-05 (10/22/87)
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)ACYF-CB-PA-87-05 (10/22/87)
References: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)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)(1) 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

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 423 (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.
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.

10 Q: Please provide some guidance with respect to the allowable costs for candidates for foster care.

A: Pursuant to 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)

**Reference:** Social Security Act - section 471(a)(15); 45 CFR 1356.60; Departmental Appeals Board Decision Nos. 844 and 1428

**Q:** May we claim Federal financial participation (FFP) for the administrative costs of otherwise title IV-E eligible children who are placed in unlicensed foster family homes?

**A:** 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.

**Source:** ACYF-CB-PA-01-02 (7/3/01)

**Reference:** Social Security Act - section 472(c)(2)
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 OMB Circular A-87 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.

Source: August 16, 2002
Reference: Social Security Act section 474(a)(3); 45 CFR 1355.20, 33, and 35; Office of Management and Budget Circular A-87, Cost Principles for State and Local Governments

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; 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; 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
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)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.
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 begin claiming for administrative functions performed on behalf of foster care candidates in the month in which the child’s candidacy is documented. States may not claim FFP for title IV-E administrative functions performed prior to the documentation of candidacy because a child is not a candidate for foster care until documented as such pursuant to one of the acceptable methods: a case plan that identifies foster care as the goal absent preventative services; 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)
Reference: Social Security Act - section 471(a)(15); 45 CFR 1356.60; Departmental Appeals Board Decision No. 844
8.1D TITLE IV-E, Administrative Functions/Costs, Candidates

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 1356.60 (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.

The three acceptable methods of documentation indicating that a child is a candidate for foster care benefits are: (1) 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)
Reference: Social Security Act - sections 471 (a)(15) and (16); DHHS Grant Appeals Board Decision No. 844
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)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. The State, therefore, 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)

**Reference:** 45 CFR 1356.21(e) and 1356.60

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4 **Q:** Can children in aftercare be considered candidates for foster care?

**A:** Yes. Departmental Appeals Board Decision No. 844 permits States to consider a child who is receiving aftercare services to be a candidate for foster care. In such circumstances, 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. The State, therefore, 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)

**Reference:** Departmental Appeals Board Decision No. 844

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
**Child Welfare Policy Manual**

**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) ACYF-CB-PIQ-85-06 (4/12/85); ACYF-CB-PA-01-02 (7/3/01)

*Reference:* Social Security Act - section 472 (c)(2)

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**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 is an allowable title IV-E function performed on behalf of candidates for foster care pursuant to Departmental Appeals Board (DAB) Decision No. 844. In the aforementioned Decision, the Board found that, pursuant to section 471(a)(16) of the Social Security Act (the Act), a State could begin to develop a case plan prior to a child's placement in foster care and claim the attendant title IV-E administrative funds. Pursuant to DAB No. 844, the case plan developed to document a child's candidacy for foster care is the plan that the State agency develops in compliance with section 471(a)(16) of the Act.

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.

*Source:* 8/16/02

*Reference:* Social Security Act section 471(a)(16); 45 CFR 1356.21(g)
8.1 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)ACYF-CB-PIQ-82-07 (8/25/82)

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)).

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)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: No. Foster care maintenance payments must be made directly to foster family homes or child-care institutions from the State child welfare agency or through the public or private nonprofit child-placement or child-care agency with which the State contracts for making and/or supervising placements. Federal financial participation is not available for foster care maintenance payments made through a for-profit child-placing or child-care agency.
8.1FTITLE 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.

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

8.1GTITLE IV-E, Administrative Functions/Costs, Title IV-E Agreements

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) 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).

Source: ACYF-CB-PIQ-85-02 (3/13/85)ACYF-CB-PIQ-85-02 (3/13/85)
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 to establish, extend and strengthen child welfare services.

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 420, 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

8.1 TITLE IV-E, Administrative Functions/Costs, Training

Q: What is the Federal financial participation (FFP) in the costs of training for employees of the State title IV-E agency, foster parents, adoptive parents and employees of private child placing and child care agencies?

A: Prior to the signing of Public Law (P.L.) 101-239 on December 19, 1989, section 474 of the Social Security Act (the Act) provided that States with plans approved under title IV-E shall be entitled to Federal matching funds for the proper and efficient administration of the State 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 State grants to the institutions or by direct financial assistance to students enrolled in such institutions) of personnel employed or preparing for employment by the State agency or by the local agency administering the State title IV-E State plan; and 50 percent for the remainder of expenditures necessary for the proper and efficient administration of the State IV-E plan.

The regulations at 45 CFR 1356.60 specify what is considered a training cost and what is considered an administrative expense under title IV-E. Section 1356.60 (c) further explains that the State's cost allocation plan shall identify which costs are allocated and claimed under title IV-E. With regard to costs of educational programs (approved by the State 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 State 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.)

Under section 474 (a)(3)(B) of the Act, federal financial participation is available at 75 percent "...for the short-term training of current or prospective foster or adoptive parents and the members of the staff of State-licensed or State-approved child care institutions providing care to foster and adopted children receiving assistance under this part, in ways that increase the ability of such current or prospective parents, staff members, and institutions to provide support and assistance to foster and adopted children, whether incurred directly by the State or by contract."
Costs matchable as training expenditures under this provision may include: (1) travel, per diem, tuition, books and registration fees for trainees; (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; and (4) costs of space, postage, training supplies, and purchase or development of training material. Costs not allowable for trainees under this provision include salaries and fringe benefits.

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 State agency's training plan for title IV-B. States will be reimbursed under title IV-E for such costs only if the activities and costs are described and included in the State's jointly developed and approved title IV-B plan.

All training costs must be allocated to Title IV-E, State foster care and other State/Federal programs in such a manner as to assure that each participating program is charged its proportionate share of the costs. The allocations may be determined by case count of title IV-E eligible children in relation to all children in foster care under the responsibility of the State title IV-E/IV-B agency or on some other equitable basis.

Source: ACYF-CB-PA-90-01 (6/14/90) ACYF-CB-PIQ-82-17 (10/14/82)
Reference: Social Security Act - sections 474 (a)(3)(A) and (B); 45 CFR 1356.60 (b) and (c), 235.63 - 235.66 (a)

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) ACYF-CB-PIQ-82-17 (10/14/82)
Reference: Social Security Act - section 474 (a)
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)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)ACYF-CB-PIQ-82-17 (10/14/82)
Reference:Social Security Act - sections 471 and 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)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
8.2TITLE IV-E, Adoption Assistance Program

No questions and answers are available at this time.

8.2ATITLE IV-E, Adoption Assistance Program, Agreements

No questions and answers are available at this time.

8.2A.1TITLE IV-E, Adoption Assistance Program, Agreements, Interstate placements

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)ACYF-CB-PA-01-01 (1/23/01)
Reference:Social Security Act - section 473
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
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)

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
Q: May a State 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 State 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 State 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.
8.2 TITLE IV-E, Adoption Assistance Program, Eligibility

Q: Please explain who is eligible for title IV-E adoption assistance.

A: A State is required to enter into an adoption assistance agreement with the adoptive parents of a child with special needs (as defined in section 473(c) of the Social Security Act (the Act)) and provide adoption assistance if the child meets specific requirements. There are four ways that a child can be eligible for title IV-E adoption assistance:

1. Child is eligible for Aid to Families with Dependent Children (AFDC) and meets the definition of a child with special needs - Adoption assistance eligibility that is based on a child's AFDC eligibility (in accordance with the program rules in effect on July 16, 1996) is predicated on a child meeting the criteria for such both at the time of removal and in the month the adoption petition is initiated. In addition, the State must determine that the child meets the definition of a child with special needs prior to finalization of the adoption.

The method of removal has the following implications for the AFDC-eligible child's eligibility for title IV-E adoption assistance: If the child is removed from the home pursuant to a judicial determination, such determination must indicate that it was contrary to the child's welfare to remain in the home; or if the child is removed from the home pursuant to a voluntary placement agreement, that child must actually receive title IV-E foster care payments to be eligible for title IV-E adoption assistance.

Children placed pursuant to a voluntary placement agreement under which a title IV-E foster care maintenance payment is not made are not eligible to receive title IV-E adoption assistance.

2. Child is eligible for Supplemental Security Income (SSI) benefits and meets the definition of a child with special needs - A child is eligible for adoption assistance if, at the time the adoption petition is filed, the child meets the requirements for title XVI SSI benefits, and prior to the finalization of the adoption is determined by the State to be a child with special needs.

There are no additional criteria that a child must meet to be eligible for title IV-E adoption assistance when eligibility is based on a special needs child meeting SSI requirements. Specifically, how a child is removed from his or her home or whether the State has responsibility for the child's placement and care is irrelevant in this situation.

Unlike AFDC eligibility that is determined by the State child welfare agency, only a designated Social Security Administration claims representative can determine SSI eligibility and provide the appropriate eligibility documentation to the State. The child's eligibility for SSI benefits
must be established no later than at the time the adoption petition is filed.

3. Child is eligible as a child of a minor parent and meets the definition of a child with special needs - A child is eligible for title IV-E adoption assistance in this circumstance if: the child's parent is in foster care and receiving title IV-E foster care maintenance payments that cover both the minor parent and the child at the time the adoption petition is initiated; and prior to the finalization of the adoption, the child of the minor parent is determined by the State to meet the definition of a child with special needs.

There are no additional criteria that must be met in order for a child to be eligible for title IV-E adoption assistance if the child's eligibility is based on his or her minor parent's receipt of foster care while placed with the minor parent in foster care. As with SSI, there is no requirement that a child must have been removed from home pursuant to a voluntary placement agreement or as a result of a judicial determination. However, if the child and minor parent have been separated in foster care prior to the time of the adoption petition, the child's eligibility for title IV-E adoption assistance must be determined based on the child's current and individual circumstances, consistent with section 473 of the Act.

4. Child is eligible due to prior title IV-E adoption assistance eligibility and meets the definition of a child with special needs - 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 State 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. Need and eligibility factors in sections 473(a)(2)(A) and (B) 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 - sections 473(a)(2) and 473(c)

Q: Does a child need to be continuously eligible for AFDC during the period he is in foster care in order to be eligible for adoption assistance after the termination of parental rights?
A: Eligibility for adoption assistance payments, among other criteria, requires that a child either meet the requirements of section 406 (a) or 407 of the Social Security Act (the Act) (as in effect on July 16, 1996) except for his removal from the home, or meet all requirements of title XVI with respect to eligibility for Supplemental Security Income benefits. This discussion will only address the requirement for meeting section 406(a) or 407 and not SSI eligibility.

A child for whom eligibility for title IV-E adoption assistance payments is being established need not have been continuously eligible for title IV-E foster care during his tenure in foster care prior to the initiation of adoption proceedings. The critical times for meeting the eligibility requirements for AFDC is at the time of the child’s removal from the home and at the time the adoption proceedings are initiated. For example, a ten year old child enters foster care. At that time the child would have met all the requirements for AFDC in terms of deprivation (since parents were separated), need, age, and “living with” requirements, and his removal was the result of a court determination. However, no application for title IV-E foster care was made. Several months later, the child's parents reunite and although he continues in care, the child would be ineligible for title IV-E foster care because he would no longer be deprived of parental support and care in his home. One year from the date of original placement, the father dies. The child, still in foster care, may now be eligible for AFDC if he meets the age and need requirements of the State. However the application for title IV-E foster care still is not made. Sometime after the death of the father, the mother's parental rights are terminated, and the child is then free for adoption.

The agency reviews its caseload, evaluates the child's situation and decides to apply for title IV-E foster care for the child. The State agency would reconstruct the facts at the time the child came into care to determine eligibility for AFDC insofar as the child met the “living with” requirements and could have been eligible for a payment under section 402 of the Act if an application had been made. The child’s present situation must be addressed to assure that the child currently meets the eligibility factors of age, deprivation and need. If, three months later, adoption proceedings are initiated, then current eligibility would be reviewed in terms of age and the child’s need, since deprivation was already established by the death of the father. Of course, the agency must also determine that the child meets the other criteria required by section 473 of the Act for adoption assistance.

Source: ACYF-CB-PIQ-82-18 (8/11/82)
Reference: Social Security Act - sections 472 and 473

Q: Are children whose legal guardianships disrupt eligible for title IV-E adoption assistance?
A: If a child who had been receiving title IV-E foster care maintenance payments prior to a legal guardianship returns to foster care or is placed in an adoptive home after disruption of the legal guardianship, the factors below must be considered in determining the child's eligibility for title IV-E adoption assistance:

1) Title IV-E Demonstration Waiver States - In States that have an approved title IV-E demonstration waiver from the Department to operate a subsidized legal guardianship program, the title IV-E terms and conditions allow reinstatement of the child's title IV-E eligibility status that was in place prior to the establishment of the guardianship in situations where the guardianship disrupts. Therefore, if a guardianship disrupts and the child returns to foster care or is placed for adoption, the State would apply the eligibility criteria in section 473 of the Social Security Act (the Act) for the child as if the legal guardianship had never occurred.

2) Non-Demonstration Waiver States - In States that do not have an approved title IV-E demonstration waiver from the Department, the eligibility requirements in section 473 of the Act must be applied to the child's current situation. Therefore, in a situation where the child has returned to foster care from the home of a non-related legal guardian, the child would not be eligible for title IV-E adoption assistance since the child was not removed from the home of a specified relative. If, however, the child has been removed from the home of a related legal guardian, an otherwise eligible child could be eligible for title IV-E adoption assistance.

In either situation, however, if a child is determined to be eligible for Supplemental Security Income at or prior to the time of the adoption petition and, subsequent to the adoption, meets the definition of special needs, the child would be eligible for title IV-E adoption assistance. If a child meets these criteria, no further eligibility criteria must be met.

Source:ACYF-CB-PA-01-01 (1/23/01)ACYF-CB-PA-01-01 (1/23/01)
Reference:Social Security Act - sections 473
8.2B.1 TITLE IV-E, Adoption Assistance Program, Eligibility, Biological parents

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)(1) 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 State 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)(1) 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)(1) and (3), 473(a)(2)(C) and 473(c)(1)

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 State agency through a voluntary placement agreement?

A: Yes. Title IV-E, section 473 (a)(3)(B) of the Social Security Act states 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 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)(3)

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?

A: Section 473 (a)(2) of the Social Security Act provides that the child whose costs in a foster

family home or child-care institution are covered by the title IV-E foster care payment made with respect to the parent is eligible for adoption assistance under title IV-E, if determined by the State to be a child with special needs under section 473 (c). 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: ACYF-CB-PA-88-01 (7/6/88); Questions and Answers on the Final Rule (65 FR 4020 (1/25/00))
Reference: Social Security Act - section 473

8.2B.4 TITLE IV-E, Adoption Assistance Program, Eligibility, Deceased adoptive parents/dissolved adoptions

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 State 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. Need and eligibility factors in sections 473 (a)(2)(A) and (B) 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) 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

### 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?

**A:** We consider an independent adoption one in which the child is not under the responsibility of a public or private adoption agency. It is highly improbable that a child who is adopted through an independent adoption will be eligible for title IV-E adoption assistance since many of these children are voluntarily relinquished at birth directly to an adoptive family. Children who are voluntarily relinquished are eligible only in certain limited circumstances and only when they are relinquished to the State child welfare agency or another public agency (including Tribes) with which the State agency has a title IV-E agreement. The only exceptions are: (1) a child who is eligible for Supplemental Security Income at the time the adoption petition is filed; and (2) a child in a subsequent adoption, under specific circumstances, if s/he received title IV-E adoption assistance in a previous adoption. If the State determines that such child is a child with special needs, consistent with section 473(c) of the Act, the State may not apply any further requirements or restrictions to the child's eligibility for title IV-E adoption assistance.
8.2B.6 TITLE IV-E, Adoption Assistance Program, International Adoptions

I Q: Is a child who is the subject of an international adoption eligible for title IV-E adoption assistance?

A: The Federal adoption assistance program under title IV-E was intended to provide permanency for children with special needs in public foster care by assisting States in providing ongoing financial and medical assistance to the families who adopt them. As a result, the statutory requirements for title IV-E adoption assistance eligibility are geared to needy children in public child welfare systems and are difficult, if not impossible, to apply to children who are adopted from abroad. Therefore, although the statute does not categorically exclude these children from participation in the title IV-E adoption assistance program, it is highly improbable that children who are adopted abroad by U.S. citizens, or are brought into the U.S. from another country for the purpose of adoption, will meet the criteria in section 473 of the Social Security Act (the Act) for title IV-E adoption assistance eligibility.

In addition to meeting the three-part criteria for special needs in section 473(c) of the Act, to be eligible for title IV-E adoption assistance, a child also must be eligible in one of the following manners:

1) Eligible for Aid to Families with Dependent Children (AFDC) at the time of the voluntary placement agreement or court removal petition, and considered a dependent child at the time of the adoption petition; 2) Eligible for Supplemental Security Income in the month the adoption petition is filed; or 3) foster care costs of the child are being covered by title IV-E foster care maintenance payments being made for his or her minor parent in foster care.

Children who are adopted abroad, or are brought into the U.S. from other countries for the purpose of adoption, are not:

1) AFDC-eligible in their own homes (AFDC was a domestic program and therefore not available on behalf of children in their own homes in another country); 2) SSI-eligible in the month the adoption petition is filed (SSI cannot be established at the time the adoption petition is filed since a child who is adopted from another country cannot meet either the Social Security Administration's alien eligibility requirement or its "presence in the U.S." rule (requiring that an individual who has been outside the U.S. for 30 consecutive days must be present in the U.S. for 30 consecutive days to be eligible for SSI). The Child Citizenship Act of 2000,

Wednesday, October 29, 2003: 159
Public Law 106-395, impacts neither the SSI eligibility for children who are adopted from abroad nor the title IV-E adoption assistance eligibility for these children); or 3) eligible as a result of their minor parent's receipt of title IV-E foster care maintenance payments.

The above cited reasons, as well as the criteria that the child must meet in order to determine whether a child meets the definition of special needs make it highly improbable, if not virtually impossible, that a child adopted through an intercountry adoption will be eligible for title IV-E adoption assistance. Although it is highly improbable that children adopted through an intercountry adoption will meet the title IV-E adoption assistance requirements, States cannot in policy categorically exclude these children from consideration since the statute does not authorize such an exclusion.

In the case of reimbursement of nonrecurring expenses of adoption, the State need only to determine that the child is a child with special needs, consistent with section 473(c) of the Act. Accordingly, if a child who is adopted from abroad meets the three criteria for special needs, the State must pay for the nonrecurring adoption expenses for these children, consistent with 45 CFR 1356.41, if requested by the parents prior to the finalization of the adoption.

8.2B.7 TITLE IV-E, Adoption Assistance Program, Eligibility, Judicial determinations

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.
**Child Welfare Policy Manual**

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)(i) 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. 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) ACYF-CB-PA-01-01 (1/23/01)

*Reference:* Social Security Act - section 473 (a)(2); 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 adoption assistance payments 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) ACYF-CB-PIQ-82-16 (6/21/82)
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 <a href="http://www.acf.hhs.gov/programs/cb/laws/cwpm/policy_dsp.jsp?citID=173#1100">8.2B.9 ; question 2</a>

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 programs that, in part, may qualify a child initially for adoption assistance, such as Aid to Families with Dependent Children and 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 State 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)ACYF-CB-PA-01-01 (1/23/01)
Reference:Social Security Act - section 473
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: No. There is no Federal statute or provision requiring 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 State or local agency informed of circumstances which would make them ineligible for title IV-E adoption assistance payments, or eligible for assistance payments in a different amount (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 and the subsidy continues until: (1) the age of 18 (or 21 if the State determines that the child has a mental or physical disability which warrants the continuation of assistance); (2) the State determines that the parent is no longer legally responsible for the support of the child, or; (3) the State 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)(B)

8.2B.10TITLE IV-E, Adoption Assistance Program, Eligibility, Responsibility for placement and care

Must the State have responsibility for placement and care of a child for that child to be eligible for title IV-E adoption assistance?

A: The eligibility requirements for adoption assistance in section 473 (a)(2) of the Act do not specify that the State title IV-E agency must have placement and care responsibility for a child to qualify for adoption assistance. There are some situations, however, in which the criteria dictate that a child be under the placement and care responsibility of the State agency or that of another public agency (including Tribes) with whom the State has a title IV-E agreement in order to be eligible for title IV-E adoption assistance. These are:

1) a child who is placed pursuant to a voluntary placement agreement and who must have had a title IV-E foster care maintenance payment paid on his or her behalf under the agreement; consistent with section 472(a)(2) of the Act; and
2) a child who is eligible for title IV-E adoption assistance based upon his or her minor parent's eligibility for title IV-E foster care while in the custody of the State agency, consistent with section 473(a)(2)(A)(iii) of the Act.

Source: ACYF-CB-IM-01-01 (11-6-01)
Reference: Social Security Act - section 473 (a)(2)

8.2B.11 TITLE IV-E, Adoption Assistance Program, Eligibility, Special needs

Q: Please explain the requirements for special needs determinations.

A: An integral part of establishing adoption assistance eligibility requires the State to determine that the child is a child with special needs in accordance with all three criteria defined in section 473 (c) of the Social Security Act (the Act):

1) The State must determine that the child cannot or should not be returned to the home of his or her parents (section 473 (c)(1) of the Act); and 2) The State must determine that there exists a specific factor or condition because of which it is reasonable to conclude that the child cannot be placed with adoptive parents without providing title IV-E adoption assistance or title XIX medical assistance. Such a factor or condition may include (but is not limited to) ethnic background, age or membership in a minority or sibling group, the presence of a medical condition, or physical, mental or emotional disabilities. For example, in some States ethnic background alone may inhibit the ability of a child to be adopted, while in other States a combination of factors, such as minority status and age, may be factors. It is important to note that in each case the State must conclude that, because of a specified factor or factors, the particular child cannot be placed with adoptive parents without providing assistance; and

3) Finally, the State must determine that in each case a reasonable, but unsuccessful, effort to place the child with appropriate parents without providing adoption assistance has been made. Such an effort might include the use of adoption exchanges, referral to appropriate specialized adoption agencies, or other such activities. The only exception to this requirement is when it would not be in the best interests of the child because of such factors as the existence of significant emotional ties with prospective adoptive parents while in the care of those parents as a foster child. The exception also extends to other circumstances that are not in the child's best interest, as well as adoption by a relative, in keeping with the statutory emphasis on the placement of children with relatives.

The State must document in each child's case record the specific factor(s) that make the child difficult to place and describe the efforts to place the child for adoption without providing
assistance. In an effort to find an appropriate adoptive home for a child, and meet the requirement that a reasonable, but unsuccessful, effort be made to place the child without adoption assistance, it is not necessary for the agency to "shop" for a family while the child remains in foster care. Once the agency has determined that placement with a certain family is in the child's best interest, the agency should make full disclosure about the child's background, as well as known or potential problems. If the agency has determined that the child cannot or should not return home and the child meets the statutory definition of special needs with regard to specific factors or conditions, then the agency can pose the question of whether the prospective adoptive parents are willing to adopt without assistance. If they say they cannot adopt the child without adoption assistance, the requirement in section 473 (c)(2)(B) for a reasonable, but unsuccessful, effort to place the child without providing adoption assistance will be met.

Source:ACYF-CB-PA-01-01 (1/23/01)
Reference:Social Security Act - sections 471(a)(19) and 473 (c)
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)
8.2B.12 TITLE IV-E, Adoption Assistance Program, Eligibility, SSI

**Q:** 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)?

**A:** There is no prohibition under title IV-E against claiming FFP for adoption assistance for a child who receives benefits from SSI. Section 473 of title IV-E created an adoption assistance program which permits Federal matching funds for the costs of adoption assistance for the purpose of encouraging the placement of eligible children in adoptive homes. Under title IV-E adoption assistance (section 473), the scope of eligibility specifically includes children with special needs who are eligible to receive SSI (473 (a)(2)(A)(ii)) as well as those eligible for AFDC (473 (a)(2)(A)(i)) and title IV-E foster care (473 (a)(2)(A)(iii)).

Title XVI (SSI) is a needs based program and, as such, requires a test of income and resources of the adoptive parents in determining the amount of the SSI benefit to which a child with a disability(ies) may be entitled. If (or when) the parental resources and income exceed a maximum level determined by the SSI program, the child is no longer eligible for SSI payments.

If the adoptive parents decide to decline adoption assistance and choose to receive only SSI for the child, and if they have not executed an adoption assistance agreement before the adoption is finalized, 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)). It may be prudent for the decision maker (parent, guardian, custodian, caretaker relative) to arrange for an adoption assistance agreement which does not provide for payment, but which does provide for title XVI and title XIX coverage, and which may at some future date, upon review, be renegotiated to provide for payment of adoption assistance funds.

The adoptive parents of a child eligible for title IV-E adoption assistance and SSI benefits may make application for both programs and the child, if eligible, may benefit from both programs simultaneously.

In cases where the child is eligible for both SSI and title IV-E and there is concurrent receipt of payments from both programs, "the child's SSI payment will be reduced dollar for dollar without application of any exclusion", thus decreasing the SSI benefit by the amount of the title IV-E payment (SSI Program Operations Manual). To reiterate, concurrent receipt is subject to the SSI rule that the SSI payment will be reduced by the amount of the foster care payment.

8.2B.13 TITLE IV-E, Adoption Assistance Program, Eligibility, Voluntary relinquishments

**Q:** Is a child who is voluntarily relinquished to a private, nonprofit agency eligible for title IV-E adoption assistance?

**A:** As authorized by section 473(a)(2)(A)(i) of the Act, a child is eligible for title IV-E adoption assistance if s/he is removed from the home by way of a voluntary placement agreement with respect to which title IV-E foster care payments are provided, or as the result of a judicial determination that to remain in the home would be contrary to the child's welfare. However, a child who is voluntarily relinquished to either a public or private, nonprofit agency will be considered judicially removed in the following circumstances:

1. the child is voluntarily relinquished either to the State agency (or another public agency (including Tribes) with whom the State has a title IV-E agreement), or to a private, nonprofit agency; and

2. there is a petition to the court to remove the child from home within six months of the time the child lived with a specified relative; and

3. there is a subsequent judicial determination to the effect that remaining in the home would be contrary to the child's welfare.

Under these circumstances, the AFDC-eligible child will be treated as though s/he was judicially removed rather than voluntarily relinquished. If the State agency subsequently determines that the child also meets the three criteria in the definition of a child with special needs in section 473(c) of the Act, the child is eligible for title IV-E adoption assistance. If, however, there is no petition to remove the child from the home or no subsequent judicial determination, the child cannot be considered judicially removed for the purpose of title IV-E adoption assistance eligibility. Furthermore, if the court merely sanctions the voluntary relinquishment without making a determination that it is contrary to the child's welfare to remain in the home, the child is not eligible for title IV-E adoption assistance.

Source: ACYF-CB-IM-01-08 (11-6-01)
Reference: Social Security Act - section 473(a)(2)

8.2C TITLE IV-E, Adoption Assistance Program, Interstate Compact

**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

No questions and answers are available at this time.

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 State 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

Q: May a State limit the duration of payments pursuant to an adoption assistance agreement?

A: States 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. States 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

Q: Please summarize the requirements for the nonrecurring expenses of adoption.

A: The State must enter into an adoption assistance agreement prior to the finalization of the adoption and reimburse (up to $2000, or at State 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 State 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 State 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 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 State
expenditures up to $2000 for each adoptive placement.

Source:ACYF-CB-PA-01-01 (1/23/01)ACYF-CB-PIQ-89-02 (5/23/89)
Reference:Social Security Act - section 473(a)(6); 45 CFR 1356.40 (i)

2 Q: Is it possible for States 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 States to make payments for the nonrecurring adoption expenses incurred by adopting parents in connection with the adoption of children with special needs. The only discretion given States 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)

3 Q: States are required to reimburse up to $2,000, or such lower amount as set by the State, 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 State to further limit the reimburseable areas within the allowable expense category? For instance, could reimbursement be limited to attorney

A: No. A State 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
8.2D.4 TITLE IV-E, Adoption Assistance Program, Payments, Rates

Q: Please explain how the State 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 State or local 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 State 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)ACYF-CB-PA-01-01 (1/23/01)

Reference:Social Security Act - section 473 (a)(3)
2  **Q:** A State 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 State 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 State would not be considering the unique circumstances of the child and parents by automatically adjusting the subsidy.

The State 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 State 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 State 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 State'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 State's foster care rate structures are based on levels of care. How would such a structure impact the adoption assistance rates?

A: If a State's foster care payment schedule includes higher level-of-care rates that are paid across-the-board for certain children, the State 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 State'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 State'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)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)ACYF-CB-PA-01-01 (1/23/01)
8.2D.5 TITLE IV-E, Adoption Assistance Program, Payments, Termination

**Q:** Under what circumstances may the State 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 State 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 a State 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 three circumstances only. Namely, (1) the child has attained the age of 18 (or the age of 21 if the State has determined that the child has a mental or physical disability which would warrant continuation of assistance); (2) the State determines that the adoptive parents are no longer legally responsible for support of the child; or (3) the State determines that the adoptive parents are no longer providing any support to the child.
2 Q: Section 473(a)(4)(B) of the Social Security Act states that no adoption assistance payment can 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 or if the State determines that the child is no longer receiving any support from such 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 State 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 State 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)(B)

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.

A: No. An automatic suspension is, in effect, the equivalent to a termination of the adoption assistance payment and as such is unallowable under section 473(a)(3)(B) if the parent remains legally responsible or is providing any support for the child. However, consistent with section 473(a)(4)(B) of the Act, there may be circumstances in which adoptive parent(s) may be eligible for payments in a different amount. In these instances, a State may re-negotiate the agreement and reduce the payment for the duration of an adopted child's placement in foster care with the concurrence of the adoptive parent.

Source:ACYF-CB-PIQ-98-02 (9/03/98)
Reference:Social Security Act - section 473(a)(4)(B)
8.2 TITLE IV-E, Adoption Assistance Program, Promoting Adoption Assistance

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.

8.3ATITLE IV-E, Foster Care Maintenance Payments Program, Eligibility

**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 reunification. 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
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)(4)(A) of the Act and consistent with the contingencies explained in section 472 (a)(4)(B) 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)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)(1)

**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)(1)

**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.
8.3A.2 TITLE IV-E, Foster Care Maintenance Payments Program, Eligibility, Age

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.
8.3A.3 TITLE IV-E, Foster Care Maintenance Payments Program, Eligibility, Biological parents

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)ACYF-CB-PIQ-89-04 (8/8/89)
Reference:Social Security Act - sections 472 (a)(1) and (3), 472 (b)(1)

8.3A.4 TITLE IV-E, Foster Care Maintenance Payments Program, Eligibility, Child in facility outside scope of foster care

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: 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, it must redetermine the child's eligibility for title IV-E upon his/her placement in a foster family home or child-care institution by verifying the child's need and deprivation.

Alternatively, the State may treat the placement in a facility that is outside the scope of foster care as a discharge from foster care. If so, the State must, re-establish the child's title IV-E eligibility, which includes obtaining the requisite judicial determinations.

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 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)(1) through (4) 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 the child's removal from the home was contrary to his/her welfare 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
8.3A.5 TITLE IV-E, Foster Care Maintenance Payments Program, Eligibility, Child of a minor parent

**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 of 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 has not been removed from her/his biological parent 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 child, and has placed them in different foster homes, 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 is placed separately from the minor parent, s/he is considered to be in foster care and 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, 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.

Section 472 (h) of the Act makes clear that the child whose costs are covered by the title IV-E payment made with respect to the parent shall be considered 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:ACYF-CB-PA-88-01 (7/6/88); Questions and Answers on the Final Rule (65 FR 4020 (1/25/00))ACYF-CB-PA-88-01 (7/6/88); Questions and Answers on the Final Rule (65 FR 4020 (1/25/00))
Reference:Social Security Act - section 472 and 475 Title 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)ACYF-CB-PIQ-91-02 (4/2/91)
Reference:Social Security Act - sections 472 (h) and 475 (4)(B)
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) 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)(1) 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.

Reference: Social Security Act - section 472 (a)(1)
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)

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 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)(1)
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)(1)

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)(1), 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)(1) 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)(1), 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

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.
8.3A.7 TITLE IV-E, Foster Care Maintenance Payments Program, Eligibility, Documentation of judicial determinations

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) Preamble to the Final Rule (65 FR 4020) (1/25/00)
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)

8.3A.8TITLE IV-E, Foster Care Maintenance Payments Program, Eligibility, Facilities requirements

No questions and answers are available at this time.

8.3A.8aTITLE IV-E, Foster Care Maintenance Payments Program, Eligibility, Facilities requirements, child-care institution

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)

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
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. To expose a dependent child to the potentially negative influence of delinquent children, would usually be considered an inappropriate foster care placement decision.

Source: ACYF-CB-PIQ-82-10 (8/11/82); ACYF-CB-PIQ-88-03 (4/11/88); ACYF-CB-PIQ-82-10 (8/11/82); ACYF-CB-PIQ-88-03 (4/11/88)
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 (e)(2); the Personal Responsibility and Work Opportunity Reconciliation Act (PRWORA) of 1996 (PL 104-193)

**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 (emphasis added). 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.
**Child Welfare Policy Manual**

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 1355.20 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

**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)
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 1355.20, 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 1486 (9th Cir., 1985), the Court held that: "Congress clearly intended by this section 1931(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)
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)ACYF-CB-PIQ-87-01 (3/25/87); Preamble to the Final Rule (65 FR 4020) (1/15/00)

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)ACYF-CB-PIQ-99-01 (1/14/99)

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) 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) 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.
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) Preamble to the Final Rule (65 FR 4020) (1/25/00)

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) 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

8.3A.9 TITLE IV-E, Foster Care Maintenance Payments Program, Reasonable efforts

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)(1) 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 voluntary placement agreement or 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)
Reference: Social Security Act - sections 471(a)(15) and 472(a)(1); 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 achieve a permanency plan

**Q:** We understand that the timing for obtaining the initial judicial determination related to making reasonable efforts to finalize a permanency plan is based on the date the child is considered to have entered foster care. Are subsequent 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 prior judicial determination was actually obtained?

**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 obtaining the subsequent judicial determinations 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 471 (a)(15)(B); 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

**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); 45 CFR 1356.21 (b)
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)

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)
8.3A.10 TITLE IV-E, Foster Care Maintenance Payments Program, Eligibility, Redeterminations

**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?

**A:** You are correct in your assessment that failure to hold a timely redetermination of title IV-E eligibility is a State plan issue (a program issue, as stated in your question) rather than an issue related to the eligibility of the child for title IV-E foster care maintenance payments.

Under the Aid to Families with Dependent Children (AFDC) Program, an eligibility redetermination is a State plan requirement (45 CFR 206.10 (a)(9)(iii)) and not a factor affecting the child's eligibility. While there is no statutory requirement under title IV-E concerning the frequency of eligibility redeterminations, such a procedure should be carried out periodically in order to assure that Federal financial participation is claimed properly. (Section 471 (a)(1) allows for Federal financial participation for foster care maintenance payments only in accordance with the requirements in section 472. Therefore, the State must assure that the child meets those eligibility requirements.)

ACYF has advised State agencies that an appropriate period for redetermination would be every 12 months, at which time factors subject to change, such as continued deprivation of parental support and care and the child's financial need would be reviewed and documented. However, if the State agency misses the twelve month eligibility redetermination schedule in certain cases, those cases would not be considered ineligible for Federal financial participation for that reason alone. When the eligibility review is held, however, if the child is found to have been ineligible for any prior month, no claim for Federal financial participation may be made for that month.

Source: ACYF-CB-PIQ-85-06 (6/5/85)
Reference: Social Security Act - sections 471 and 472; 45 CFR 206.10 (a)(9)(iii)
2  

**Q:** Is it permissible to allow redeterminations to be used after a break in foster care placement in those cases where there is no new court ordered removal from the home and no break in State responsibility for placement and care? Examples of situations in which redeterminations are currently being used 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 State supervision, and then back to foster care; (c) A child in foster care goes home under State supervision without a change in court order and then returns to foster care.

**A:** The criteria to be used in determining whether an initial determination or redetermination of a child's eligibility for foster care maintenance payments under title IV-E would be required hinge on whether the child is continuously in foster care status and remains under the responsibility of the State agency for placement and care. In making this determination, the State 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 State 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, a redetermination of eligibility would be appropriate.

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 State agency maintains a supervisory role with the child and family. If the child leaves foster care to live with a relative, the State 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. Any continuing foster care status, where the child is still under responsibility of the State agency, would indicate the need for periodic redeterminations of eligibility at regular 12 month intervals. 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 a 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. A redetermination of eligibility would be required after the child returns to the foster care facility. 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)

*Reference:*Social Security Act - section 472
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?

If the child has not returned to his own home and has been continuously in a foster care status since removal from the home (whether or not the facility is eligible to receive payments under title IV-E), a redetermination of eligibility would be appropriate at the time he returned to a facility eligible for Federal financial participation (FFP).

A redetermination of the deprivation factor at that time would consist of a confirmation that the conditions at the time of removal from the home continued to exist or that termination of parental rights (TPR) had occurred. In the latter case, the TPR would, from that point and throughout this episode of foster care, become the reason for continuing eligibility in terms of the deprivation factor.

If, however, the child is not continuously in foster care status and returns to the home of a relative that is considered to be his own home, then a subsequent re-entry into the foster care system requires a new (initial) determination of all eligibility factors.

In such a situation, where the child was living in the home of another relative after termination of parental rights and was later removed from the home of that relative, deprivation would then be based upon the absence of the parent(s) from the home of the relative, rather than TPR. (See section 406(a) as in effect on July 16, 1996).

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)
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)(1) 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)(1); 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)(4) 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; 45 CFR 1356.21 (k)
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 foster care payments may be made with respect to a child who "would meet the requirements of section 406 (a) or section 407 but for his removal from the home of a relative..." The controlling factor in establishing initial eligibility is the deprivation of parental support. Other requirements under title IV-E follow in sections 472 (a)(1) through (4). 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)ACYF-CB-PIQ-86-03 (5/9/86)
Reference:Social Security Act - sections 406 (a) and 407 (as in effect on July 16, 1996) and 472; 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)

8.3A.12TITLE 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) 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

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) 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) 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) 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...

Wednesday, October 29, 2003page: 219

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) 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) 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.

**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)(4)(B)(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.
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) 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)(1) 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)(1). 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).

Source: ACYF-CB-PIQ-85-03 (3/19/85)

Reference: Social Security Act - section 472 (a)

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)(1) and 472(a)(4)(B) of the Social Security Act).

However, if the court merely sanctions the relinquishment without making the findings specified in section 472(a)(1), 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.
8.3A.15 TITLE IV-E, Foster Care Maintenance Payments Program, Eligibility, When payments may begin

**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.

8.3B TITLE IV-E, Foster Care Maintenance Payments Program, Payments

**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. 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

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*Source:* ACYF-CB-PIQ-91-05 (8/15/91)

*Reference:* Social Security Act - section 472
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 State itself, is a State responsibility and is a necessary precursor to the State's ability to claim FFP for allowable institutional foster care costs.

Source: ACYF-CB-PA-82-01 (4/30/82)
Reference: Social Security Act - sections 472, 474 and 475 (4)
2 \textbf{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?

\textbf{A:} Title IV-E precludes payments made directly to the child or turned over to him by another agency for the purpose of meeting independent living costs. The eligibility of a child for title IV-E is based in part on the fact that he is placed in a family foster home or child care institution as a result of a court determination or voluntary agreement (section 472 (a)(3) of the Social Security Act (the Act)). Federal financial participation is limited to foster care maintenance payments made on behalf of a child described in section 472 (a) of the Act who is in a foster family home or in a child care institution (section 472 (b)). Both "foster family home" and "child care institution" are defined in section 472 (c). Title IV-E does not include "independent living" in these definitions, and it is not considered foster care within the meaning of the Act. Title IV-B may be an alternative source of funding for these independent living programs. Since independent living is not considered foster care, the limitations found in section 423 (c)(1)(B) of title IV-B to foster care payments would not apply.

\textit{Source:ACYF-CB-PIQ-83-05 (10/19/83)ACYF-CB-PIQ-83-05 (10/19/83)}
\textit{Reference:Social Security Act - sections 423 and 472; 45 CFR 1355.20}

3 \textbf{Q:} Please clarify how funds may be disbursed for allowable child care.

\textbf{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.

\textit{Source:Preamble to the Notice of Proposed Rulemaking (63 FR 50058) (9/18/98)Preamble to the Notice of Proposed Rulemaking (63 FR 50058) (9/18/98)}
\textit{Reference:45 CFR 1355.20}
4  Q: May title IV-E foster care maintenance payments flow through a for-profit entity to the foster care provider?

A: No. Foster care maintenance payments must be made directly to foster family homes or child-care institutions from the State child welfare agency or through the public or private nonprofit child-placement or child-care agency with which the State contracts for making and/or supervising placements. Federal financial participation is not available for foster care maintenance payments made through a for-profit child-placing or child-care agency.

Source: ACYF-CB-PA-97-01 (7/25/97)  
Reference: Social Security Act - sections 472; the Personal Responsibility Work Opportunity Reconciliation Act (PRWORA) (PL 104-193)

5  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

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 74.

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) ACYF-CB-PA-82-01 (4/30/82)
Reference: Social Security Act - sections 472, 474 and 475 (4)

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.

Source: ACYF-CB-PIQ-87-02 (5/18/87) ACYF-CB-PIQ-87-02 (5/18/87)
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. The items enumerated in the question were assessed based on these criteria.

(1) The foster parent's involvement in/attendance at administrative case/judicial reviews, case conferences/team meetings, school conferences, 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 to provide for foster parent's attendance at mandatory foster parent training is an allowable title IV-E training expenditure.

(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: the primary function of school is to provide
education. Since education is not in the definition found at section 475(4)(A), transportation to
and from school is not an allowable title IV-E foster care maintenance expenditure. The cost of
transportation to and from extracurricular activities that substitute for daily supervision is
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: ACYF-CB-PIQ-97-01 (3/4/97)
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 "Procurement Standards" mandated by 45 CFR 74.40 through 74.48 and the requirements of OMB Circular A-87, that "...(t)o be allowable under Federal awards, costs must ... (b)e necessary and reasonable for proper and efficient performance and administration of Federal awards."

In defining "reasonable costs", A-87 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, arms length bargaining, Federal, State and other laws and regulations, and, terms and conditions of the Federal award; Market prices for comparable goods or services; Whether the individuals concerned acted with prudence in the circumstances considering their responsibilities to the governmental unit, its employees, the public at large, and the Federal Government; Significant deviations from the established practices of the governmental unit 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 A-87 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.

Source: ACYF-CB-PA-97-01 (7/25/97)
Reference: Social Security Act - sections 472 and 473; PL 104-193; OMB Circular Number A-87

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
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)
8.3B.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.
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.
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

8.3C.1 TITLE IV-E, Foster Care Maintenance Payments Program, State Plan/Procedural Requirements, Case plans

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)
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 health and education records of the child "...to the extent available and accessible..." How can a State meet the requirements in order to continue eligibility for Federal financial participation (FFP) if the records are not available and accessible?

A: If there are circumstances in which the health and education records are not "available and accessible", the State should provide written documentation in the case plan as to the reasons why this information is not available and accessible as well as the steps being taken by the State to obtain such records. For example, information that would otherwise be included may be unavailable as a result of Federal or State confidentiality restrictions. In some instances, coordination among the Department of Social Services, the Department of Education, and medical providers may be necessary in order to make them aware of this case plan requirement and to request their assistance in helping the State child welfare agency to comply with this provision.

Source:ACYF-CB-PIQ-90-03 (12/6/90)
Reference:Social Security Act - sections 471 (a)(16), 475 (1) and (5)

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)
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.

*Source:* Questions and Answers on the Final Rule (65 FR 4020 (1/25/00))

*Reference:* Social Security Act - sections 472 (a) and 475 (5)
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.

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 opportunity 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: Please provide guidance on the type and degree of participation that must be afforded foster parents, preadoptive parents, and relative caregivers in satisfying the requirements for notice and opportunity to be heard.

A: The requirement that States give foster parents, preadoptive parents and relative caretakers notice of and an opportunity to be heard affords these individuals with a right to provide input to these reviews and hearings. However, it does not confer a right to appear in person at the review or hearing. The requirement can be met as the State sees fit, such as by notification to the individuals that they have an opportunity to attend the review or hearing and provide input, or notification that they can provide written input for consideration at the review or hearing.

Source:Preamble to the Final Rule (65 FR 4020) (1/25/00)
Preamble to the Final Rule (65 FR 4020) (1/25/00)
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

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
8.3C.2d TITLE IV-E, Foster Care Maintenance Payments Program, State Plan/Procedural Requirements, Case review system, six month periodic reviews

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 (1/1982)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.

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.
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.
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)

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)
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)(11) 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)(11) 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

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?
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.
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.5TITLE 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)

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

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 on 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
8.4 TITLE IV-E, General Title IV-E Requirements, AFDC Eligibility

**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 States 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)

**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 considered 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?

**A:** The child is not eligible for title IV-E foster care unless the AFDC deprivation requirement is met. Incapacity of a parent is one of the reasons a child may be determined to be deprived of parental support or care under AFDC (reference section 406 (a) and 407 of the Act (as such sections were in effect on July 16, 1996) and 45 CFR 233.90 (c)(1)(i)). Eligibility ends when the parent is no longer incapacitated, unless a different reason for deprivation has emerged, such as death or absence from the home.

Source: ACYF-CB-PIQ-85-07 (6/25/85)
Reference: Social Security Act - sections 406 (a) and 407 (as in effect on July 16, 1996); 45 CFR 233.90
**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?

**A:** The inability to determine the whereabouts of the parent from whose home the child was removed does not preclude continuing eligibility for title IV-E foster care maintenance payments.

At the time of the twelve month redetermination of eligibility, both need and deprivation must be documented. Deprivation of parental support or care may be based on the death, continued absence from the home, physical or mental incapacity of a parent, or at State option, unemployment of the principal wage earner. If the whereabouts of the parent from whose home the child was removed cannot be determined by the State agency at the time of redetermination and documentation in the case record verifies the efforts made to locate the parent(s), then deprivation may be established based on continued absence from the home.

However, the continued absence of the parents from the home must be accompanied by factors such as set forth in 45 CFR 233.90 (c)(1)(iii): "...When the nature of the absence is such as either to interrupt or to terminate the parent's functioning as provider of maintenance, physical care, or guidance for the child, and the known or indefinite duration of the absence precludes counting on the parent's performance of the function of planning for the present support or care of the child."

While the specific circumstances of either of the parents may not be known to the agency, documentation of their continued absence is required in order to redetermine the child's eligibility for title IV-E foster care. The method for substantiation of the parents' absence is left to State policy and procedure.

If the child had been removed from the home of a relative rather than from the parent(s)' home, the relative's home is reviewed at the time of redetermination to establish continuing deprivation of parental support and care. If either or both parents are not in that household at redetermination, then the child is so deprived, based on continued absence of the parent(s) from that home.

On the other hand, the continued absence of parents from the home cannot be used as basis for determining that a child is initially deprived of parental support or care, in cases where there is an inability to document that the child had been living in the home of any parent or relative, e.g., in the case of an abandoned child.
**Child Welfare Policy Manual**

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?

**A:** If the child has not returned to his own home and has been continuously in a foster care status since removal from the home (whether or not the facility is eligible to receive payments under title IV-E), a redetermination of eligibility would be appropriate at the time he returned to a facility eligible for Federal financial participation (FFP).

A redetermination of the deprivation factor at that time would consist of a confirmation that the conditions at the time of removal from the home continued to exist or that termination of parental rights (TPR) had occurred. In the latter case, the TPR would, from that point and throughout this course of foster care, become the reason for continuing eligibility in terms of the deprivation factor.

If, however, the child is not continuously in foster care status and returns to the home of a relative that is considered to be his own home, then a subsequent re-entry into the foster care system requires a new (initial) determination of all eligibility factors.

In such a situation, where the child was living in the home of another relative after termination of parental rights and was later removed from the home of that relative, deprivation would then be based upon the absence of the parent(s) from the home of the relative, rather than TPR. (See section 406(a) (as in effect on July 16, 1996)).

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

5 **Q:** Aid to Families with Dependent Children (AFDC) initial eligibility requires the counting of a step-parent's income. Is this requirement applicable to title IV-E?
**Child Welfare Policy Manual**

**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)).


*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 States 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. In determining the eligibility of a child who is receiving foster care benefits under title IV-E, the amount of the child's gross income should be applied to 185% of the need standard, and eligibility would continue in terms of need as long as his gross income did not exceed that point. However, in applying the 185% test when determining initial eligibility, the State has the option to disregard the earned income of a dependent child who is a full time student. Once the child is receiving payments under the title IV-E program, the earned income of the child who is a full time student is disregarded indefinitely (402 (a)(8)(A)(i) and 402 (a)(8)(A)(vii)).

If a portion of the child's income is applied to the foster care maintenance cost, the State's claim for Federal financial participation should include only its share of the amount paid for foster care that has not been offset by the child's countable income.


*Reference:* Social Security Act - 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 determining 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 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:* 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 State 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 State 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. 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.

In addition, the child must meet the need and deprivation requirements at the time of the adoption petition. Once a child is in foster care, need is based upon the resources available to the child. Hence, the resources available to the child must be below the $10,000 limit at the time of the adoption petition. After a child has been determined deprived in the home from which s/he is removed, a TPR can serve as proof of deprivation at the time of the petition.
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 is December 14, 1999.

8.4B TITLE IV-E, General Title IV-E Requirements, Aliens/Immigrants

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.
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 of the Act. If a State 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)(1) through (4) 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 State. 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)

Reference:Social Security Act - sections 406 (a), 407 (as in effect on July 16, 1996) and 472; 45 CFR 233.90
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 or local funds may be used to support these children.

Source:ACYF-CB-PIQ-99-01 (1/14/99)

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 Federal foster care maintenance and adoption assistance 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)
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. States 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)

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 States 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)
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)

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)
Q: Are States required to verify the citizenship or immigration status of individuals receiving services or payments under title IV-E?

A: States 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.

States are not required to verify the citizenship or alien status of foster or adoptive parents, with one exception. States 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) ACYF-CB-PIQ-99-01 (1/14/99)

8.4 TITLE IV-E, General Title IV-E Requirements, Child support

Q: As part of the Aid to Families with Dependent Children (AFDC) requirements for initial 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) (as amended by Public Law 98-378, (effective October 1, 1984)) requires States 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..."
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: States 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 State's 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 State 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.
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.

In cases where the child is eligible for both SSI and title IV-E and there is concurrent receipt of payments from both programs, "the child's SSI payment will be reduced dollar for dollar without application of any exclusion", thus decreasing the SSI benefit by the amount of the title IV-E payment (SSI Program Operations Manual). To reiterate, concurrent receipt is subject to the SSI rule that the SSI payment will be reduced by the amount of the foster care payment.

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).

Section 473 of title IV-E created an adoption assistance program which permits Federal matching funds for the costs of adoption assistance for the purpose of encouraging the placement of eligible children in adoptive homes. Under title IV-E adoption assistance (section 473), the scope of eligibility includes children with special needs who are eligible to receive SSI as well as those eligible for AFDC and title IV-E foster care. The statute's intention to extend the program of adoption assistance is clearly stated in section 473 (a)(1)(A)(ii): "Each State...shall...make adoption assistance payments...to parents...who... adopt a child who...(ii) meets all of the requirements of title XVI with respect to eligibility for supplemental security income benefits...."

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.

Title XVI (SSI) is a needs based program and, as such, requires a test of income and resources of the adoptive parents in determining the amount of the SSI benefit to which a disabled child may be entitled. If (or when) the parental resources and income exceed a maximum level determined by SSI, the child is no longer eligible for SSI payments.

In cases where the income and resources of the adoptive parents do not affect the child's eligibility for SSI and there is concurrent receipt of payments from both programs, SSI will then count dollar-for-dollar the amount of title IV-E adoption assistance paid to the parents, thus decreasing the SSI benefit by the amount of the adoption assistance payment.

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, as in the SSI program. 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)(2)).

Because there are many complexities and financial implications for the States 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)

**Reference:** Social Security Act - sections 402 (a)(24), 406 (a) and 407 (as in effect on July 16, 1996) and 472 (a) and 473 (a); Program Operations Manual System, Part 5, Supplemental Security Income Chapter 008 - Income, Subchapter 30 - Unearned Income

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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 State 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)

**Reference:** Social Security Act - titles IV-E and XVI
May we claim Title IV-E administrative costs for eligible children who receive Supplemental Security Income (SSI)?

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

8.4 TITLE IV-E, General Title IV-E Requirements, Confidentiality

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?

The issue of confidentiality is not focused 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.
2 **Q:** Who can release information? In particular, can parties other than the State 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 State violation of the State Plan requirements for Foster Care and Adoption.

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 State's violation of the State 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.
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 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). That section requires that a State Plan, in order to qualify for 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-PA-85-02 (12/19/85)

5 Q: What are the title IV-E confidentiality requirements?

A: Title IV-E of the Social Security Act requires that States provide safeguards to restrict the use and/or disclosure of information regarding children receiving title IV-E foster care and adoption 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 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)
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)(v) and (vi) 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)(A)(vi), 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)(A)(v)(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)ACYF-NCCAN-PIQ-97-03 (9/26/97)
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:** Yes. The purpose of the confidentiality provision is to protect the privacy rights of individuals receiving services or assistance under title IV-E and to assure that confidential information is not disclosed to unauthorized recipients. While, under title IV-E, confidential information may be shared with the courts, there is no provision which allows for public disclosure of such information. The confidentiality requirements of title IV-E do not prohibit open courts per se. However, to the extent that the proceedings involve discussion of confidential information concerning a child who is receiving title IV-E foster care or adoption assistance, the confidentiality requirements apply. Accordingly, such information cannot be discussed in a public forum, including an open court. To the extent that confidential information is relevant to the proceedings, it must be discussed in the court's chambers or some other restricted setting, and the pertinent sections of the transcript must be kept confidential as well.

Violation of the Federal confidentiality provisions is a State plan compliance issue under title IV-E.


*Reference:* Social Security Act - section 471 (a)(8); 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)
8.4FTITLE IV-E, General Title IV-E Requirements, Criminal Records Checks

1. Q: Does the criminal background check provision require checks at the State level, Federal level, or both?

A: The statute is silent with respect to this issue. Therefore, the State may exercise its discretion in choosing whether to conduct criminal records checks at the State or Federal level.

Source: Preamble to the Notice of Proposed Rulemaking (63 FR 50058) (9/18/98)
Reference: Social Security Act - section 471(a)(20); 45 CFR 1356.30

2. 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?

A: The provision applies to "prospective" foster and adoptive parents. Therefore, the provision applies to foster and adoptive parents who are licensed or approved after the date of enactment of the law (November 19, 1997), or the approved delayed effective date if the State required legislation to implement the provision.

Source: Preamble to the Final Rule (65 FR 4020) (1/25/00)
Reference: Social Security Act - section 471 (a)(20); 45 CFR 1356.30

3. 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
4  **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

5  **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. The statute expressly gives the State the authority to opt out of section 471 (a)(20) of the Act 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)  
_Reference:_ Social Security Act - section 471 (a)(20); 45 CFR 1356.30
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 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-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)
Reference: 45 CFR 1355.30 (k), 205.10 and 1392.11

2  Q: Please explain the circumstances in which an 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 State 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 State that a child is ineligible for adoption assistance; failure by the State agency to advise potential adoptive parents about the availability of adoption assistance for children in the State 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 State 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 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) at the time the adoption petition is filed, FFP is available only if there had been eligibility documentation for the child from the Social Security Administration, or its designee, at the time of the adoption petition. 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 State cannot claim FFP under title IV-E for the child.

Source:ACYF-CB-PA-01-01 (1/23/01)
Reference:Social Security Act -sections 471(a)(12) and 473

8.4HTITLE IV-E, General Title IV-E Requirements, Safety Requirements

Q: Is the requirement for criminal records checks extended to the staff of child-care institutions
and 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, in all cases where no criminal records check is conducted, 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 and to prospective foster and adoptive parents in States that opt out of the criminal records check provision. 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 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)
Reference: Social Security Act - section 471 (a)(20); 45 CFR 1356.30

8.4TITLE 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 State 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)
Reference: Social Security Act - section 472

2 Q: How should States 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)

Reference: Social Security Act - sections 472 (h), 473 (b), 1102 and 1137; Public Law 98-369; 42 CFR 435.910
9. TRIBES/INDIAN TRIBAL ORGANIZATIONS

9.1 TRIBES/INDIAN TRIBAL ORGANIZATIONS, Application of Title IV-B and Title IV-E Procedural Requirements

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)(10), 471 (a)(16) and 475 (5)(B) and (6)
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)(11) 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)(11) and 475 (5)(E); 45 CFR 1356.21 (i)
**Child Welfare Policy Manual**

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)

9.2 TRIBES/INDIAN TRIBAL ORGANIZATIONS, Application of Title IV-E Eligibility Requirements

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:** 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)

2  **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)

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 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)

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:* 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 420, 422, 428 and 472; 25 CFR 20.3
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) ACYF-CB-PIQ-88-02 (1/27/88)
Reference: Social Security Act - sections 420, 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 to establish, extend and strengthen child welfare services.
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 420, 422, 428 and 472; 25 CFR 20.3
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) 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)(2)
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?

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)

May payments be made under title IV-E of the Social Security Act (the Act) 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?

No. Section 472 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), 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)ACYF-CB-PIQ-87-01 (3/25/87)
Reference:Social Security Act - section 472 (a)(2)

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)Preamble to the Final Rule (65 FR 4020) (1/25/00)
Reference:Social Security Act - section 471 (a)(15)(D); 45 CFR 1356.21 (b)(3)
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 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)
Reference: Social Security Act - section 471 (a)(20); 45 CFR 1356.30