

<h1>ACF</h1> <p>Administration for Children and Families</p>	U.S. DEPARTMENT OF HEALTH AND HUMAN SERVICES Administration on Children, Youth and Families	
	1. Log No: ACYF-CB-PI-15-08	2. Issuance Date: July 8, 2015
	3. Originating Office: Children's Bureau	
	4. Key Words: Title IV-B Annual Progress and Services Report; Chafee Foster Care Independence Program; Educational Training Vouchers Program	

PROGRAM INSTRUCTION

TO: State, Territorial and Tribal Agencies Administering or Supervising the Administration of Title IV-E of the Social Security Act

SUBJECT: Adoption and Legal Guardianship Incentive Payments

LEGAL AND RELATED REFERENCES: Title IV-E of the Social Security Act (the Act), as amended by Public Law 113-183, the Preventing Sex Trafficking and Strengthening Families Act, enacted September 29, 2014. Sections 473(a)(1)(B)(ii), 473A, 474 and 479 of the Act. Information Memorandum ACYF-CB-IM-09-03, issued September 9, 2009.

PURPOSE: The purpose of this Program Instruction (PI) is to inform title IV-E agencies of the steps they must take to qualify for payments under the Adoption and Legal Guardianship Incentive Payments program, as amended by P.L. 113-183, and the procedures that ACF will use in calculating payments for eligible title IV-E agencies.

BACKGROUND:

History of Program:

The Adoption Incentives program was created as part of the Adoption and Safe Families Act of 1997. The original program authorized the payment of adoption incentive funds to title IV-E agencies that were successful in increasing the number of children adopted from the public foster care system. The amount of the payments to title IV-E agencies was based on increases in the number of children adopted from the foster care system in a year, relative to a baseline number and the number of children adopted with special needs, relative to a baseline number, once a title IV-E agency exceeded its baseline for the total number of adoptions.

The program has been reauthorized and revised several times since then to continue to provide incentives for title IV-E agencies that improve performance in finding permanent homes for children and youth in foster care who are unable to be reunified with their parents. In 2003, the

program was amended to include incentives targeted specifically to older children and youth, who are less likely than younger children to be adopted and risk aging out of foster care without achieving permanency. Under this revised framework, ACF awarded incentives using three baselines: one for the total number of children adopted; one for children with special needs under age nine; and one for children age nine and older.

The Fostering Connections to Success and Increasing Adoptions Act of 2008 (P.L. 110-351) again reauthorized and amended the program, updating the base year used to measure increases and introducing an incentive award for title IV-E agencies exceeding their highest ever foster child adoption rate. Under this reauthorization, incentive payments were provided to the extent that a title IV-E agency increased the number of adoptions above the number of adoptions in a base period. To be eligible for adoption incentive awards, agencies had to exceed their baseline in at least one of the following three categories: total adoptions placed by the public agency, older child public agency adoptions, or exceeding their highest ever foster child adoption rate since FY 2002. Title IV-E agencies could also earn an incentive bonus for exceeding their baseline in special needs adoptions of children under the age of 9. However, to receive this incentive for special needs adoptions, the title IV-E agency also had to exceed its baseline for one of the other three categories listed above; in other words, states that exceeded their special needs baseline *only* were not eligible for an incentive pay out. Incentive awards for title IV-E agencies that exceeded their highest adoption rate since FY 2002 were only available if there were funds remaining after awarding total adoption, special needs, and older child adoption incentive payments. Title IV-E agencies were required to spend the incentive award to provide any service to children and families that is allowable under titles IV-B or IV-E of the Act.

Overview of New Adoption and Legal Guardianship Incentives Payment Program

In September 2014, the President signed into law the Preventing Sex Trafficking and Strengthening Families Act (P.L. 113-183). This law again reauthorized and revised the program. Key changes include the following:

- The program was renamed the "Adoption and Legal Guardianship Incentive Payments" program.
- The program now recognizes improved performance in both adoptions and legal guardianship of children in foster care.
- Incentives may be earned in the following four categories: foster child adoptions, foster child legal guardianships; pre-adolescent foster child adoptions and legal guardianships (ages 9-13), and older child adoptions and legal guardianships (age 14 and older).
- To account for changes in the number of children in foster care, incentive awards are calculated using base rates for each category. The number of adoptions and/or guardianships in each category is compared to a number that is derived by multiplying a base rate in each category to the number of children in foster care on the last day of the preceding fiscal year. In each category, the base rate is defined as the lesser of the rate for the immediately preceding fiscal year or the average rate for the immediately preceding three fiscal years.
- Subject to the availability of funds, title IV-E agencies may also earn an additional incentive payment for timely adoptions.

- The law increases from 2 years to 3 years the length of time that title IV-E agencies have to spend incentive payments.
- Incentive funds may not supplant federal or non-federal funds for services under title IV-B or IV-E.

As in the past, incentive funds will only be paid to a title IV-E agency for *finalized* adoptions and legal guardianships that are reported to the Adoption and Foster Care Analysis and Reporting System (AFCARS). A total of up to \$43 million is authorized to be appropriated in each of FYs 2015 and 2016 in order to make incentive payments to eligible title IV-E agencies.

INFORMATION:

Program Definitions

The following are definitions of terms used in the federal statute at section 473A(g) of the Act and this PI to establish baselines and provide adoption and legal guardianship incentive funds:

- Foster Child Adoption

The finalized adoption of a child who, at the time of adoptive placement, was in public foster care under the placement and care responsibility of the title IV-E agency in accordance with 45 CFR 1355.20, regardless of whether the child receives title IV-E adoption assistance. This includes any child who may have been in foster care consistent with this definition, but whose foster care or adoptive placement was supervised by another public or private agency under an agreement or contract with the title IV-E agency.

- Foster Child Adoption Rate

The foster child adoption rate is determined by dividing the number of foster child adoptions finalized in the state or jurisdiction during the fiscal year by the number of children in foster care under the supervision of the title IV-E agency on the last day of the preceding year.

- Base Rate of Foster Child Adoptions

The lesser of either the foster child adoption rate for the title IV-E agency for the immediately preceding fiscal year or the average foster child adoption rate for the title IV-E agency of the immediately preceding 3 fiscal years.

- Foster Child Guardianship

A child who exits from foster care under the responsibility of the title IV-E agency to live with a legal guardian with the following conditions:

- The child was removed from his or her home due to a voluntary placement

agreement or as a result of a judicial determination that remaining in the home would be contrary to the welfare of the child;

- Being returned home or adopted are not appropriate permanency options for the child;
- The child demonstrates a strong attachment to the prospective legal guardian, and the prospective legal guardian has a strong commitment to caring permanently for the child; and
- If the child is 14 years old, the child has been consulted regarding the legal guardianship arrangement;

OR

- The title IV-E agency has determined through alternative procedures that legal guardianship is the appropriate option for the child.

- Foster Child Guardianship Rate

The foster child guardianship rate is the percentage resulting from dividing the number of foster child guardianships occurring in the state or jurisdiction during the fiscal year by the number of children in foster care under the supervision of the title IV-E agency on the last day of the preceding fiscal year.

- Base Rate of Foster Child Guardianships

The lesser of either the foster child guardianship rate for the title IV-E agency for the immediately preceding fiscal year or the average foster child guardianship rate for the title IV-E agency for the immediately preceding 3 years.

- Pre-Adolescent Child Adoption and Pre-Adolescent Foster Child Guardianship

The final adoption or the placement into foster child guardianship of a child who has attained age 9 but is not yet age 14, and who, at the time of adoption or foster child guardianship placement, was in public foster care *or* was the subject of a title IV-E adoption assistance agreement between the title IV-E agency and the child's adoptive parent(s).

- Pre-Adolescent Child Adoption and Pre-Adolescent Foster Child Guardianship Rate

The pre-adolescent child adoption and pre-adolescent foster child guardianship rate is the percentage determined by dividing the number of pre-adolescent child adoptions plus the number of pre-adolescent foster child guardianships finalized during the fiscal year by the number of children, ages 9 – 13, in foster care under the supervision of the title IV-E agency on the last day of the preceding fiscal year.

- Base Rate of Pre-Adolescent Child Adoptions and Pre-Adolescent Foster Child Guardianships

The lesser of either the pre-adolescent child adoption and pre-adolescent foster child guardianship rate for the title IV-E agency for the immediately preceding fiscal year or the average pre-adolescent child adoption and pre-adolescent foster child guardianship rate for the title IV-E agency for the immediately preceding three fiscal years.

- Older Child Adoption and Older Foster Child Guardianship

The final adoption or the placement into foster child guardianship of a child who is age 14 or older and who, at the time of adoption or foster child guardianship placement, was in public foster care *or* was the subject of a title IV-E adoption assistance agreement between the title IV-E agency and the child's adoptive parent(s).

- Older Child Adoption and Older Foster Child Guardianship Rate

The older child adoption and older foster child guardianship rate is the percentage determined by dividing the number of older child adoptions plus the number of older foster child guardianships finalized during the fiscal year by the number of children, ages 14 and older, in foster care under the supervision of the title IV-E agency on the last day of the preceding fiscal year.

- Base Rate of Older Child Adoptions and Older Foster Child Guardianships

The lesser of either the older child adoption and older foster child guardianship rate for the title IV-E agency for the immediately preceding fiscal year or the average older child adoption and older foster child guardianship rate for the title IV-E agency for the immediately preceding 3 fiscal years.

Award Amounts

Section 473A(d)(1) and (2) of the Act provides for incentive payments for a fiscal year in accordance with the following:

- \$5,000 multiplied by the number of foster child adoptions that exceed the product (rounded to the nearest whole number) of the base rate of foster child adoptions and the number of children in foster care under the supervision of the title IV-E agency on the last day of the preceding fiscal year;
- \$4,000 multiplied by the number of foster child guardianships that exceed the product (rounded to the nearest whole number) of the base rate of foster child guardianships and the number of children in foster care under the supervision of the title IV-E agency on the last day of the preceding fiscal year;
- \$7,500 multiplied by the number of pre-adolescent (ages 9-13) child adoptions and pre-adolescent foster child guardianships that exceeds the product (rounded to the nearest whole number) of the base rate of pre-adolescent child adoptions and pre-adolescent foster child guardianships and the number of pre-adolescent children (ages 9-13) in foster

care under the supervision of the title IV-E agency on the last day of the preceding fiscal year.

- \$10,000 multiplied by the number of older (age 14 or older) adoptions and older foster child guardianships that exceeds the product (rounded to the nearest whole number) of the base rate of older child adoptions and older foster child guardianships and the number of older children (ages 14 or older) in foster care under the supervision of the title IV-E agency on the last day of the preceding fiscal year.

In the event that the total amount of incentive payments earned by title IV-E agencies exceeds the amount of funds appropriated for this purpose, payments to title IV-E agencies will be prorated accordingly. When incentive payments must be prorated, it is ACF's practice to award the remainder of incentive payments earned in the following fiscal year, subject to the availability of funds.

Incentive Awards for Timely Adoptions

In each of FYs 2015 and 2016, if the total amount of incentives payable under the above categories are less than the amount of funding appropriated for the FY, then the balance remaining will constitute the "timely adoption award pool." From this pool, timely adoption awards will be made to all title IV-E agencies in which the average number of months from removal of children from their home to finalized adoption is less than 24 months. The funding in the pool will be divided equally among all agencies qualifying for a timely adoption award.

Eligibility Requirements

In accordance with section 473A(b) of the Act, a state, territory, or tribe is eligible for an adoption incentive payment for fiscal years 2014 and 2015, if:

- The state, territory, or tribe has an approved plan under title IV-E;
- The title IV-E agency submits AFCARS data in compliance with federal regulations enabling ACF to calculate the base rates and number of incentive-earning finalized adoptions and guardianships in each category for a fiscal year; and
- The title IV-E agency provides health insurance coverage to any child with special needs as determined under section 473(c) of the Act for whom there is an adoption assistance agreement between the title IV-E agency and the child's parent(s).

In addition, to be eligible to receive incentive payments based on legal guardianships completed, the agency must complete Attachment B of this PI to certify that all exits from foster care to legal guardianship reported to AFCARS meet the statutory definition of "foster child guardianship" found at section 473A(g)(12) of the Act. (See also definition of foster child guardianship found on pages 3 - 4 of this PI.)

Data Requirements for Adoption and Legal Guardianship Incentive Payments

Incentive funds earned by title IV-E agencies within a fiscal year (earning year) are paid to title IV-E agencies the subsequent fiscal year (award year). This is because the actual amount of incentive funds cannot be calculated by ACF until each title IV-E agency's AFCARS data are submitted after the end of the fiscal year for which the funds are awarded. Thus, incentive payments *earned* in FY 2014 will be *paid* to title IV-E agencies in FY 2015 after the AFCARS submissions for FY 2014 are processed and reconciled by ACF.

ACF will calculate Adoption and Legal Guardianship Incentive payments for each title IV-E agency based on AFCARS data submitted by the title IV-E agency for the earning year and the 3 fiscal years preceding the earning year. The process for calculating adoption and legal guardianship incentive payments is based on the following principles:

- AFCARS is the sole source of data used to determine title IV-E agency base rates and incentive payments, per section 473A(c)(2) of the Act. If a title IV-E agency does not submit to ACF the AFCARS data on the number of children in foster care and the finalized adoptions and legal guardianships in each category for a fiscal year, it will not receive incentive payments for the category for which it did not submit data.
- AFCARS data on finalized adoptions and legal guardianships will be subject to ACF verification and reconciliation to identify and remove duplicate records. This will assist ACF in determining accurate baseline and incentive payment levels.
- When calculating incentive payments, ACF will use data on all children ages 0 – 20 reported to AFCARS.
- All finalized adoption and guardianship data for an earning year must be reported to ACF no later than May 15 of the subsequent fiscal year. For instance, AFCARS data for FY 2014 must have been submitted by midnight, May 15, 2015. Data files not received by the deadline will not be used to calculate adoption and guardianship baselines and incentive awards.
- ACF will establish separate base rates for each category of adoptions and legal guardianships.
- The AFCARS data elements required to calculate incentive payments are listed below:

Foster Care

#01-Title IVE Agency (State)

#02-Report Period Ending Date

#04-Record Number

#06-Date of Birth

#21-Date of Latest Removal from home

#56-Date of Discharge from Foster Care

#58-Reason for Discharge: adoption or guardianship

Adoption

#01-Title IVE Agency (State)

#02-Report Period Ending Date

#03-Record Number

#04-State Agency Involvement

#05-Child's Date of Birth

#21-Date Adoption Legalized

#34-Child was placed by: public agency

#37-Adoption Assistance (title IV-E)

- ACF reserves the right to adjust awards to title IV-E agencies, as it deems necessary, based on AFCARS data reconciliation, fiscal year appropriation, and the statutory payment formula. ACF will recover funds paid to a title IV-E agency as adoption and legal guardianship incentive payments, if ACF determines that the AFCARS data submitted by the title IV-E agency reporting the number of finalized adoptions and legal guardianships was in error.

Reporting and Expenditure Requirements

Title IV-E agencies receiving adoption and legal guardianship incentive awards must spend the funds for services (including post-adoption services) and activities allowable under titles IV-B and title IV-E of the Act. Incentive funds expended by the title IV-E agency may not be used as non-federal (i.e., state, local, or tribal) matching funds for federal financial participation. Payments must be used to supplement and not supplant federal or non-federal funds for services under title IV-B or IV-E (section 473A(f) of the Act).

As a part of its *Child and Family Services Plan* (CFSP) and subsequent *Annual Progress and Services Reports* (APSR) the title IV-E agency must describe its planned and actual services provided to children and families as a result of utilizing the adoption and guardianship incentive awards and any challenges encountered in spending the funds.

Under Sec 473A(e) of the Act, as amended by P.L. 113-183, each title IV-E agency that receives an incentive award now has a "36-month period beginning with the month in which the payments are made" to obligate its adoption incentive payment. (This differs from previous years when the funds had to be obligated within 24 months.) The change is applicable to the awards made in FY 2014, as well as those to be made in FYs 2015 and 2016. In addition, under existing regulations at 45 CFR 75.309(b), each state has an additional 90-day period following the obligation deadline to complete the liquidation of these awards. For example, the FY 2015 award must be obligated by September 30, 2018, and liquidated by December 29, 2018.

Title IV-E agencies receiving incentive payments are required to submit an SF-425, Financial Status Report, electronically through the ACF Online Data Collection (OLDC) system. Agencies are required to submit the SF-425 financial report at the end of each 12 months (October 1 through September 30) of the 3-year expenditure period. Each report is due 90 days after the end of the fiscal year (December 29).

Special Transition Rule for FY 2015 Awards

P.L. 113-183 included a special transition rule for awards to be made in FY 2015, based on the FY 2014 earning year. Awards for this year shall be equal to **one-half of the sum** of:

1. the awards to be made according the provisions of section 473A(d), as amended by P.L. 113-183, and as described in this PI; and
2. the awards that would have been made according to the provisions of section 473A(d), as if the amendments of P.L. 113-183 had not taken effect. (See ACYF-CB-IM-09-03 for details on how awards were to be made under the previous authority.)

In the event that the total amount of incentive payments earned by Title IV-E agencies exceeds the amount of funds appropriated for this purpose, payments to Title IV-E agencies will be prorated accordingly.

INSTRUCTIONS:

To qualify for payments under the Adoption and Legal Guardianship Incentive Payments Program, title IV-E agencies must submit required AFCARS data files as outlined above **no later than May 15 of each year.**

In addition, title IV-E agencies must complete and submit the Certifications found at Attachment B **no later than 30 days following the issuance of this PI.**

INQUIRIES TO: Children’s Bureau Regional Program Managers

/s/

Mark H. Greenberg
Acting Commissioner
Administration on Children, Youth
and Families

/s/

JooYeun Chang
Associate Commissioner
Children’s Bureau

- Attachment A: Children’s Bureau Regional Program Managers
- Attachment B: Certifications for Adoption and Legal Guardianship Incentive Payments Program
- Attachment C: Examples of Adoption and Legal Guardianship Incentive Payment Calculations