

ACF Administration for Children and Families	U.S. DEPARTMENT OF HEALTH AND HUMAN SERVICES Administration for Children, Youth and Families	
	1. Log No: ACYF-CB-PI-98-14	2. Issuance Date: August 20, 1998
	3. Originating Office: Children's Bureau	
	4. Key Words: Transition Rules, Adoption and Safe Families Act, Termination of Parental Rights	

PROGRAM INSTRUCTION

TO: State and Territorial Agencies Administering or Supervising the Administration of Title IV-E of the Social Security Act and Regional Administrators, Regions I-X.

SUBJECT: The Transition Rules for Implementing the Title IV-E Termination of Parental Rights Provision in the Adoption and Safe Families Act of 1997.

LEGAL AND RELATED REFERENCES: Section 475(5) of the Act; Sections 103 and 501 of the Adoption and Safe Families Act of 1997 (Public Law 105-89).

PURPOSE: The purpose of this Program Instruction is to provide guidance on the transition rules for implementing the requirement at section 475(5)(E) of the Act to file termination of parental rights (TPR) petitions in certain circumstances. Specific guidance on the actual implementation of section 475(5)(E) of the Act will be transmitted in a future issuance or regulation. Until such guidance is issued, States should consult the statute in implementing section 475(5)(E) of the Act.

BACKGROUND: President Clinton signed the Adoption and Safe Families Act of 1997 (ASFA) into law on November 19, 1997. The goal of the ASFA is to strengthen the child welfare system's response to children's safety, need for permanency, and well-being. Congress amended section 475(5) of the Act by adding subsection (E) which requires States to file or join a petition to terminate parental rights:

1. when a child has been in foster care for 15 of the most recent 22 months;
2. when a child has been determined to be an abandoned infant (as defined in State law); or
3. when the parent has been convicted of murder or voluntary manslaughter of his/her own child, been convicted of aiding or abetting, attempting, conspiring or soliciting to commit such a murder or voluntary manslaughter, or committing a felony assault that resulted in serious bodily injury to his/her own child.

The three exceptions to this requirement are:

1. the child is placed with a relative (at the option of the State);
2. the State documents a compelling reason not to file a petition for TPR;
3. the State has not provided the services, identified in the case plan, necessary to make the home safe for the child's return within the timeframe specified in the case plan.

For those children who enter foster care after the date of enactment of the ASFA, section 475(5)(F) sets a reference point for implementing section 475(5)(E) by identifying when a child is considered to have entered foster care. A child enters foster care on the earlier of: 1) the date at which the court first determines the child has been abused or neglected, or 2) the date that is 60 days from the date of the child's removal from home.

INSTRUCTION: In this Program Instruction, we address the transition rules as they apply to:

1. the effective date for implementing the ASFA;
2. differentiating between "new" and "current" children in foster care;
3. applying the TPR provision to:
 - o "new" children in foster care;
 - o children "currently" in foster care; and,
 - o abandoned infants and children of parents who have committed the felonies identified in section 475(5)(E) of the Act; and,
4. ACF's response to a State not enacting the necessary State legislation to implement section 475(5)(E) of the Act within the timeframe prescribed in statute.

Effective Date: The ASFA is effective upon enactment; however, the law permits a delayed effective date when the Secretary determines a State must enact legislation to implement certain State plan requirements. In such situations, the effective date for those State plan requirements in the ASFA requiring State legislation is the first day of the calendar quarter following the end of the first legislative session that occurs after the date of enactment, November 19, 1997 ([see ACYF-PI-CB-98-02](#)).

States with two-year legislative sessions must count each year as a separate session. In such States, therefore, the delayed effective date is the first day of the calendar quarter following the end of the first year of the legislative session.

States should note that nothing in the statute precludes a State from complying with section 475(5)(E) earlier than is required in the statute.

Determining "New" and "Current" Children in Foster Care: The State must distinguish "new foster children" from "current foster children," in accordance with the distinction in the ASFA at section 103(c). As defined in the ASFA, "new foster children" are those who have entered foster care (in accordance with section 475(5)(F) of the Act) on or after November 20,

1997. "Current foster children" are those who were in foster care under the responsibility and care of the State agency on or before November 19, 1997.

Transition Rules for "New" Children in Foster Care: The effect of the transition rules on "new" children in foster care depends on: 1) whether the State requires legislation to comply with section 475(5)(E); and 2) if so, whether the child reaches the 15 month time limit before or after the delayed effective date.

No legislation required. When a State can comply with section 475(5)(E) without enacting legislation, it must file a petition for TPR or document the relevant exception in the case plan for any "new foster children" as soon as that child has been in foster care for 15 of the most recent 22 months.

Rule for "new" children who reach the 15 month time limit after the delayed effective date. When a "new foster child" reaches the 15 month time limit after the delayed effective date for 475(5)(E), the State must apply the TPR provision as soon as that child reaches the time limit. For example, if the State's first legislative session following the enactment of the ASFA ends on June 15, 1998, the State's delayed effective date would be July 1, 1998. The State must comply with section 475(5)(E) beginning July 1, 1998 and file petitions for TPR or document the relevant exception in the case plan for a "new foster child" when that child reaches the 15-month time limit.

Rules for "new foster children" who reach the 15 month time limit before the delayed effective date. The State has three months from the end of the first legislative session that follows the date of enactment of the ASFA to apply the TPR provision to "new foster children" who reach the 15-month time limit before the delayed effective date. For example, if the first legislative session following the date of enactment ends on March 15, 1999, the State's delayed effective date is April 1, 1999. In this example, the State has until June 15, 1999 to apply section 475(5)(E) of the Act to any "new foster child" who reached the 15 month time limit before April 1, 1999 by filing a petition for TPR or documenting the relevant exception in the case plan.

Transition Rules for "Current Foster Children:" In implementing the TPR provision, the transition rules are applied to "current foster children" irrespective of the need for State legislation to implement certain State plan requirements. States have 18 months from the end of the first legislative session following the date of enactment of the ASFA to apply section 475(5)(E) of the Act to all "current foster children." The State is to apply the TPR provision to one-third of the "current foster children" at six-month intervals until it has complied with section 475(5)(E) for all "current foster children." States must, at a minimum, prioritize two subsets of "current foster children" when phasing in the TPR provision:

1. those who have adoption as their permanency plan; and
2. those who have been in foster care the longest.

The TPR provision must be applied to these two subsets of "current foster children" during the first six-month phase-in period. We want to note that States do have the flexibility to identify

other subsets of "current foster children," in addition to those identified in the statute, for whom it will give priority when coming into compliance with section 475(5)(E) of the Act.

To illustrate, if a State's first legislative session following the enactment of the ASFA ends on June 30, 1998, the State must:

1. apply section 475(5)(E) of the Act to one-third of its "current foster children," giving priority to children with a permanency goal of adoption and children who have been in foster care the longest, by filing a petition for TPR or documenting the relevant exception in the case plan by January 1, 1999;
2. apply section 475(5)(E) of the Act to two-thirds of its "current foster children" by filing a petition for TPR or documenting the relevant exception in the case plan by July 1, 1999; and,
3. apply section 475(5)(E) of the Act to all of its "current foster children" by filing a petition for TPR or documenting the relevant exception in the case plan by January 1, 2000.

Nothing in the statute precludes a State from coming into compliance with section 475(5)(E) of the Act for "current foster children" earlier than what is prescribed.

Effective Date for Abandoned Infants and Children of Parents Who Have Committed Certain Felonies: If the State does not need to enact legislation, it must apply section 475(5)(E) with respect to abandoned infants and parents who have committed the felonies identified at section 475(5)(E) of the Act beginning on November 19, 1997. If the State does need to enact legislation to implement the TPR provision, it must apply section 475(5)(E) with respect to abandoned infants and parents who have committed the felonies identified at section 475(5)(E) of the Act beginning on the delayed effective date.

The State Agency Is Unable to Obtain the Necessary Legislation: The ASFA requires section 475(5)(E) of the Act to be treated as a title IV-E State plan requirement. Therefore, failure to obtain the necessary State legislation required to implement section 475(5)(E) of the Act during the first legislative session following the enactment of the ASFA will result in a State plan compliance issue.

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