



Child Welfare: A Detailed Overview of Program Eligibility and Funding for Foster Care, Adoption Assistance and Kinship Guardianship Assistance under Title IV-E of the Social Security Act

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Summary

Under Title IV-E of the Social Security Act, states, territories, and tribes are entitled to claim partial federal reimbursement for the cost of providing foster care, adoption assistance, and kinship guardianship assistance to children who meet federal eligibility criteria. The Title IV-E program, as it is commonly called, provides support for monthly payments on behalf of eligible children, as well as funds for related case management activities, training, data collection, and other costs of program administration. In FY2011, states (including the 50 states and the District of Columbia) spent \$12.4 billion under the Title IV-E program and received federal reimbursement of \$6.7 billion, or 54% of that spending. At the federal level, the Title IV-E program is administered by the Children's Bureau, an agency within the U.S. Department of Health and Human Services (HHS).

More than two-thirds of all Title IV-E spending supports provision of foster care, which is a temporary living arrangement for children who cannot remain safely in their own homes. Title IV-E foster care maintenance payments are subsidies provided to foster caregivers to support the daily living costs of eligible children. Title IV-E program administration primarily supports caseworker and agency efforts to ensure the safety and well-being of each child in foster care and to plan for, and achieve, permanency for them via family reunification, adoption, or legal guardianship. Just 29% of the \$8.3 billion in total (state and federal) Title IV-E foster care spending for FY2011 was used for maintenance payments, while close to half (46%) of those Title IV-E foster care dollars supported program administration (primarily for case planning and case management).

Close to one-third of all Title IV-E spending (state and federal) supports children in permanent adoption or guardianship placements. Title IV-E adoption assistance payments are monthly subsidies provided for eligible adopted children (most of whom were previously in foster care), for whom the state determined they could not be returned home and that there was a condition or factor that precluded their adoption without assistance (e.g., age, medical condition, or membership in a sibling group). Kinship guardianship assistance payments are ongoing subsidies for eligible children placed with a legal relative guardian, for whom returning home from foster care is not possible or appropriate and for whom the agency also determines adoption is not appropriate. In FY2011, more than 80% of the total spending for Title IV-E adoption assistance (\$4.0 billion) and Title IV-E kinship guardianship assistance (\$51 million) supported ongoing subsidies for eligible children.

States receiving Title IV-E funding are required to provide foster care and adoption assistance to eligible children. They may also choose to provide kinship guardianship assistance to all eligible children. Federal eligibility for all types of Title IV-E assistance is limited by age. Additional criteria vary by the kind of assistance but often require children to have been removed from low income households. Each month during FY2011, an average of 168,400 children received a Title IV-E foster care maintenance payment and 413,800 received Title IV-E adoption assistance. On a national basis, children who received Title IV-E foster care maintenance payments comprise less than half of all children in foster care and about one-quarter of those receiving ongoing adoption subsidies.

The number of children in foster care overall, as well as the number of those children receiving Title IV-E foster care support has been in decline for most of the past decade; the amount of money spent for Title IV-E foster care is also declining. During most of the same time period,

however, the number of children receiving Title IV-E adoption assistance and the amount of spending for Title IV-E adoption assistance grew rapidly. Although representing a small part of the program now, both the number of children assisted via Title IV-E kinship guardianship assistance and the amount of spending for that purpose are expected to increase.

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Introduction

Foster care is a temporary living arrangement for children who cannot remain safely in their own homes. For nearly every child who enters foster care, a first goal of the child welfare agency is to ensure necessary services are identified, and provided, so that the child can quickly and safely return to his or her parents. Most children who leave foster care do so to be reunited with parents or other family members. For some children, however, this is not possible. In those cases, the child welfare agency must work to find a new permanent home for these children and this may be accomplished through adoption or legal guardianship.

As the U.S. Constitution has been interpreted, responsibility for the protection of children and the well-being of children and their families, is considered primarily a state duty. However, Congress has long sought to assist states in improving their child welfare services. In exchange for federal funding to support provision of foster care and other child welfare services, states must meet certain federal requirements.¹ Under Title IV-E of the Social Security Act, states, territories, and tribes who meet those requirements are entitled to claim partial federal reimbursement for the cost of providing foster care, adoption assistance, and kinship guardianship assistance to children who meet federal eligibility criteria. The Title IV-E program, as it is commonly called, provides support for monthly payments on behalf of eligible children, as well as funds for related case management activities, training, data collection, and other costs of program administration. In FY2011, states (including the 50 states and the District of Columbia) spent \$12.4 billion under the Title IV-E program, and received federal reimbursement of \$6.7 billion, or 54% of that spending.

At the federal level, the Title IV-E program is administered by the Children's Bureau, an agency within the U.S. Department of Health and Human Services (HHS), Administration for Children and Families (ACF), Administration on Children, Youth, and Families (ACYF). At the state level, the child welfare agency, which is often a part of the state's human services or social services department, administers the Title IV-E program. Some state agencies administer the program centrally, while others supervise the administration of the Title IV-E program by counties. In either case, the *state* child welfare agency is the recipient of the federal Title IV-E funding and is responsible for ensuring that the Title IV-E program is administered in accordance with federal policy.

Roughly two-thirds of the Title IV-E dollars spent in FY2011 supported provision of foster care. Further, the very large majority of children who receive Title IV-E adoption assistance were previously in foster care, as were all children who receive Title IV-E kinship guardianship assistance. This report begins with a brief discussion of why children come to the attention of the child welfare agency and how they may subsequently enter foster care. It next outlines the requirements states must meet to receive federal Title IV-E funds; the kinds of assistance and activities that can be provided with Title IV-E dollars, and on whose behalf those dollars may be spent; and the way that federal funding is authorized for this program. Finally, the majority of the report focuses on Title IV-E program eligibility criteria and spending that is specific to each of the program's three components: foster care maintenance payments, adoption assistance, and kinship guardianship assistance.

¹ For a review of requirements applicable to the Title IV-E program, see CRS Report R42794, *Child Welfare: State Plan Requirements under the Title IV-E Foster Care, Adoption Assistance, and Kinship Guardianship Assistance Program*, by Emilie Stoltzfus.

Why Do Children Enter Foster Care?

In response to the mandatory and voluntary reports of child abuse or neglect, public child protection (or child welfare) agencies annually conduct an estimated 2 million family investigations involving some 3 million children.² The purpose of these investigations is to determine whether abuse or neglect of a child has occurred, or is likely to occur, and, as necessary, to provide services to ensure children are safe and that their families are able to care for and support them. The most common concern that brings children to the attention of child welfare agencies is neglect (either a lack of supervision or a failure to provide for the child's basic needs). Physical abuse is less frequently alleged, followed by sexual abuse, or emotional abuse.³

In most cases, investigative caseworkers determine that children may safely remain in their own home. (This is true without regard to whether the investigation determines that abuse and/or neglect occurred.) A national survey of children in families investigated for abuse or neglect found that approximately 4 to 6 months after the investigation, 87.1% of the children were living at home (either because they were never removed or because they had already been reunited), 6.1% were living in informal kinship arrangements, and the remaining 6.3% were in formal out-of-home placements (including 2.4% in a formal kin care arrangement, 3.4% in foster family care, and 0.5% in a group setting).⁴

Investigative caseworkers frequently identify certain underlying factors that directly lead to the child abuse/neglect investigation and/or might jeopardize the ability of that family to safely care for and support a child. These include high stress in the family (e.g., unemployment, drug use, poverty, or neighborhood violence), low social support, trouble paying for basic necessities (e.g., food, shelter, clothing, electricity or heat), substance abuse by the caregiver, a history of domestic violence and/or of child abuse or neglect against the primary caregiver, mental health problems of the caregiver, a recent history of arrest of the primary caregiver, and other factors. In nearly every case, these risk factors are more likely to be identified in families from which children are removed from the home following an investigation as compared to those in which the children remained living in the home. There was no statistically significant difference between children removed from the home and those remaining in the home with regard to two factors: history of domestic violence against the primary caregiver, or current domestic violence against that caregiver.⁵

² U.S. Department of Health and Human Services (HHS), Administration for Children and Families (ACF), Administration on Children, Youth, and Families (ACYF), Children's Bureau, *Child Maltreatment 2010*, (December 2011), Table 2-3 and Table 3-5. (Hereinafter HHS, *Child Maltreatment 2010*.) The same child may be part of a family that is investigated more than once in a given year. Counting a child each time he or she was included in a CPS investigation or other response raises the total number of children receiving a CPS response in each recent year to an estimated 3.6 million.

³ Ibid, p. 24. Cecilia Casanueva, et al., *NSCAW II Baseline Report: Maltreatment*, OPRE Report #2011-27c, Washington, DC: Office of Planning, Research and Evaluation (OPRE), ACF, HHS (August 2011), pp. 4-5. (Hereinafter, Casanueva, et al., *NSCAW II Baseline Report: Maltreatment*, 2011). The survey looked at a national sample of children who were in families investigated for child abuse or neglect between February 2008 and April 2009.

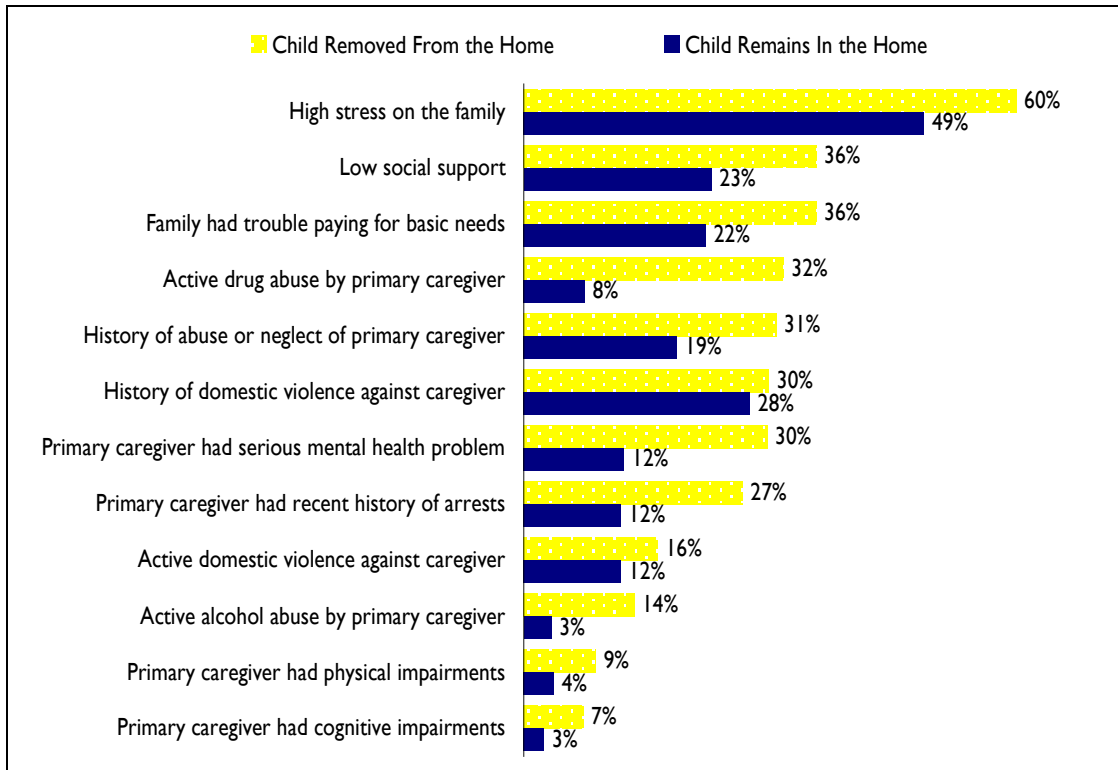
⁴ Melissa Dolan, et al., *Introduction to NSCAW II: Baseline Report* OPRE Report #2011-27a, Washington, DC: OPRE, ACF, HHS (August 2011), p. 7. (Hereinafter, Dolan, et al., *Introduction to NSCAW II Baseline Report*, 2011.) Annual administrative data also shows that the large majority of children remain in their homes following a child abuse or neglect investigation, See HHS, *Child Maltreatment 2010*, p. 90.

⁵ Casanueva, et al., *NSCAW II Baseline Report: Maltreatment*, 2011, pp. 4-6, 11-15.

Figure 1 shows presence of risk factors in a national sample of families investigated for child abuse or neglect, by whether the child was living in the family home, or outside that home, approximately four months after the investigation. Each family may be identified with one or more risk factors.

Figure 1. Selected Risk Factors Among Families Investigated for Child Abuse and Neglect, by Post-Investigation Placement Status of Children

Risks as assessed by investigative caseworker; placement status as of circa four months after the investigation



Source: Figure prepared by the Congressional Research Service based on tabulations of NSCAW II baseline data received from HHS, ACF, Office of Planning, Research, and Evaluation. NSCAW II is a national survey of children in families that were investigated for child abuse or neglect between February 2008 and April 2009.

Note: Each family could be identified with one or more risk factors. The percentage difference shown between presence of a given risk factor for children in the home circa four months after the investigation and those who were not in the home at that time was found to be statistically significant for all but two of the factors shown here. There was no significant difference found with regard to presence of the risk factors active domestic violence against the primary caregiver or history of domestic violence against the primary caregiver.

Title IV-E Supports Children in Foster Care, Adoption, and Kinship Guardianship

The Title IV-E program funds foster care maintenance payments to provide direct financial assistance for children who are placed in foster care for their safety. Foster care, however, is a temporary living arrangement and for nearly every child who enters foster care, the first goal of

the agency (and as spelled out in federal policy) is to reunite children with their parents.⁶ **Figure 1** gives some sense of the challenges that child welfare agencies face in meeting that goal. As part of required case planning for children in foster care, Title IV-E funds are used to assess what services and supports may be needed to enable reunification and to plan for provision of those services. However, Title IV-E may only pay for that work when it is done on behalf of a child who meets Title IV-E eligibility criteria. Title IV-E funding may not be used to pay for any of the services identified as necessary to enable reunification, nor may it be used to provide post-reunification services to ensure the continued success of the family. To support those child welfare purposes, states may rely on funding under Title IV-B of the Social Security Act (both Subpart 1, the Stephanie Tubbs Jones Child Welfare Services Program and Subpart 2, the Promoting Safe and Stable Families Program). They may also use other federal funding streams that are not wholly dedicated to child welfare purposes but may be used to support child welfare goals. Most states rely on the Temporary Assistance for Needy Families (TANF) block grant (Title IV-A of the Social Security Act) and the Social Services Block Grant (SSBG) (Title XX, Subpart 1 of the Social Security Act) to support their child welfare programs.

For some children, returning home is not possible and the goal for the child welfare agency with regard to these children is to find them a new safe and permanent home. To facilitate this, Title IV-E funds ongoing adoption assistance and, in states that elect this option, kinship guardianship assistance, as a way to encourage and sustain legally established, new permanent families for children. Under Title IV-E, states provide direct financial assistance to eligible children after they leave foster care for adoption or kinship guardianship. However, as is true with children who are reunited with their parents, states may not use Title IV-E funds to provide post-adoption or post-guardianship support services to those families or their children. Again, the child welfare programs under Title IV-B, as well as TANF and SSBG (to the extent they are available to the child welfare agency) may be used for these purposes.

Finally, some youth leave, or are expected to leave, foster care because they reach the age at which the state ends foster care support (often age 18), rather than because they return to their families or are placed in a new permanent family. Title IV-E includes unique support for services to these youth. That support is authorized under the Chafee Foster Care Independence Program. Although included in Title IV-E of the Social Security Act, the Chafee program has separate requirements and funding distribution rules and is outside the scope of this report. For more information see CRS Report RL34499, *Youth Transitioning from Foster Care: Background and Federal Programs*, by Adrienne L. Fernandes-Alcantara.

Title IV-E Program Basics

The Title IV-E program is jointly funded by the federal government and the states. All 50 states, the District of Columbia, Puerto Rico, and one tribe (Port Gamble S'Klallam) participate directly in the Title IV-E program. This means they are entitled to seek federal reimbursement for a part of the cost of providing foster care, adoption assistance and kinship guardianship assistance on behalf of children who meet federal eligibility criteria.

⁶ Section 471(a)(15) of the Social Security Act (SSA). See also Sections 475(1)(B) and 475(5)(A) of the SSA.

As used in this report, the term “states,” refers to all 50 states, the District of Columbia⁷ and Puerto Rico,⁸ each of which must meet all the same program requirements to receive Title IV-E funding. Direct access to federal Title IV-E support was authorized for Indian tribes, tribal organizations or tribal consortia, effective with the first day of FY2010. As of early September 2012, only one tribe had completed the process of developing, submitting, and receiving approval of a tribal Title IV-E program. However, additional tribes continue to work toward this goal and HHS anticipates more tribal plans will be approved in the upcoming year.⁹ To receive direct Title IV-E funding, a tribal entity must meet substantially the same program requirements as those made of states. (For further details related to tribal Title IV-E participation requirements, see **Appendix A.**)

Table 1 shows the total dollars spent under the Title IV-E program by program component, as well as the share of that total spending provided by the federal government and the states.

Table 1. Total Title IV-E Program Spending for FY2011

Dollars in millions

Program Component	TOTAL	Federal Share of Total	State Share of Total
Foster Care	\$8,327	\$4,340	\$3,987
Adoption	\$4,009	\$2,315	\$1,693
Guardianship	\$51	\$30	\$21
TOTAL	\$12,386	\$6,685	\$5,702

Source: Table prepared by the Congressional Research Service (CRS) based on Title IV-E claims for reimbursement as submitted by the states for FY2011 and compiled by HHS, ACF, Office of Legislative Affairs and Budget (OLAB). Data do not reflect any disallowances or deferrals that may subsequently be taken.

The Title IV-E program was created in 1980 as part of the Adoption Assistance and Child Welfare Act (P.L. 96-272). That law moved earlier authorized federal funding for foster care from Title IV-A of the Social Security Act to the new Title IV-E and established initial support for adoption assistance. Notable among the many acts that have amended the Title IV-E program since its 1980 enactment are the Adoption and Safe Families Act of 1997 (ASFA, P.L. 105-89), which emphasized children’s safety, along with achieving permanency for children as quickly as possible (particularly via adoption when appropriate); and the Fostering Connections to Success

⁷ The District of Columbia is treated in the same manner as a state in all respects but one: Its federal reimbursement rate for Title IV-E assistance payments is fixed at 70% (Section 474(a) of the SSA). By contrast, as discussed in this report, for each of the 50 states that reimbursement rate is recalculated annually and varies based on a formula in the law.

⁸ The territories of Puerto Rico, Guam, the U.S. Virgin Islands, and American Samoa are defined as “states” for purposes of the Title IV-E program and are generally eligible to participate in the program on the same basis as the 50 states. The Northern Mariana Islands is not defined as a state for purposes of the Title IV-E program and does not appear eligible to participate (Section 1101(a)(1) of the SSA). While program requirements for eligible territories are the same as for any of the 50 states, certain Title IV-E funding rules are different. Specifically, annual federal funding available under Title IV-E, and several other assistance titles in the Social Security Act, is capped at a certain amount for each territory (Section 1108(b) of the SSA). Further, the federal reimbursement rate to the territories for assistance payments under Title IV-E is fixed in every year at 55% (Section 1905(b) of the SSA). Puerto Rico is the only territory that participates in the program and it has had an approved Title IV-E plan since FY1998. However, due to problems related to accurately identifying eligible Title IV-E program costs, since FY2004, Puerto Rico has submitted very limited, or no, Title IV-E claims for federal reimbursement.

⁹ CRS communication with HHS, ACF, ACYF, Children’s Bureau, September 5, 2012.

and Increasing Adoptions Act of 2008 (P.L. 110-351), which focused new attention on ensuring the well-being of children in foster care, allowed states to choose to extend federal foster care assistance to youth up to age 21, phased in expanded federal eligibility for Title IV-E adoption assistance, and gave states the option of providing kinship guardianship assistance under the Title IV-E program.

Policies That Apply for All Three Program Components

In some respects the Title IV-E program encompasses three separate programs—foster care, adoption assistance, and kinship guardianship assistance—each with its own eligibility requirements and specific kinds of assistance. However, the program has a single funding authorization in federal law and certain policies apply regardless of the kind of assistance being provided. These overarching program policies and the program’s funding authority are discussed next.

Must Have an Approved Title IV-E Plan

Any state seeking federal funding under the Title IV-E program must have a federally approved Title IV-E plan that meets all the requirements of the law.¹⁰ Under a Title IV-E plan, a state is required to provide foster care maintenance payments, and enter into adoption assistance agreements, on behalf of eligible children. Additionally, as of October 2008, if the state amends its Title IV-E plan to enable it to claim federal support for kinship guardianship assistance, it is required to enter into kinship guardianship assistance agreements on behalf of eligible children.

Any approved Title IV-E plan must also provide that the state will perform required “administrative” tasks under the program. These are primarily focused on ensuring the safety, permanence, and well-being of children in foster care.¹¹ Although Title IV-E administrative plan requirements mostly address meeting the needs of children while they are in foster care, those requirements are meaningful to other children served under the program because most children who receive Title IV-E adoption assistance, and all of those who receive Title IV-E kinship guardianship assistance, were previously in foster care. Further, the Title IV-E plan is a single document that applies to all three Title IV-E program components (foster care, adoption, and kinship guardianship). No state may receive funding under any one of the Title IV-E components without meeting each of the plan requirements—whether that requirement is directed toward children receiving foster care maintenance payments, adoption assistance, or kinship guardianship assistance.

Funds Available for Eligible Costs Incurred on Behalf of Eligible Children

Title IV-E plan requirements affect allowable spending under the Title IV-E program because they largely define “eligible costs”—that is what may be supported with state and federal program dollars. Eligible Title IV-E program costs include provision of direct financial assistance to eligible children, as well as program administration. Generally, any program cost authorized by the Title IV-E plan that is not direct financial assistance on behalf of an eligible child is

¹⁰ Section 471(a) of the SSA and 45 C.F.R. 1356.20(a) and 1356.21(a).

¹¹ Title IV-E plan requirements are described in CRS Report R42794, *Child Welfare: State Plan Requirements under the Title IV-E Foster Care, Adoption Assistance, and Kinship Guardianship Assistance Program*, by Emilie Stoltzfus.

considered an “administrative” cost. The kind of “administrative” activities that may be supported by Title IV-E are wide ranging. They may include required actions by caseworkers on behalf of individual children, e.g., developing a case plan for a child in foster care; visiting a child in care; preparing for and participating in administrative and court proceedings regarding a child’s removal from the home, status in foster care, and permanency plan; and finding a safe and appropriate foster or adoptive home for a child. Other Title IV-E administrative activities include child welfare agency actions on behalf of individual children or in support of the Title IV-E program overall, e.g., conducting background checks of prospective caregivers, establishing and implementing licensing standards for foster family homes and institutions, developing required program policies, and participating in federal compliance reviews. These examples are meant to be illustrative and do not describe every kind of administrative activity that may be supported under Title IV-E. In addition, there are two categories of administrative costs for which states are required to submit separate reports of their spending. These are program training costs and costs for the development and operation of an approved Statewide Automated Child Welfare Information System (SACWIS).

In general, Title IV-E dollars—whether state or federal—may only be spent on eligible costs and on behalf of eligible children. Federal Title IV-E eligibility criteria are different for each of the three Title IV-E components and are described in more detail later in this report. However, eligibility for any kind of Title IV-E assistance is limited by a child’s age and citizenship or immigration status. Further, children may not receive Title IV-E assistance if they are placed in a home where the background check of the foster or adoptive parent shows certain felony convictions. Finally, most—but not all—Title IV-E assistance is available only to children who were removed from a home with very low household income.

Level of Federal Support Varies by Kind of Cost

The share of Title IV-E program costs the federal government has agreed (in statute) to reimburse states varies based on the kind of program cost. Direct financial assistance for eligible children (foster care maintenance, adoption assistance and kinship guardianship assistance payments), is reimbursed at the state’s unique “FMAP” (federal medical assistance percentage).¹² For each of the 50 states, the FMAP is annually computed by HHS.¹³ No state may have an FMAP that is less than 50% or more than 83% and the formula, which is provided in statute, ensures that states with higher per capita income receive lower federal reimbursement rates and vice versa.¹⁴ For example, if a state has an FMAP of 50%, for every dollar in foster care maintenance payments it makes on behalf of an eligible child, the federal government reimburses the state 50 cents; if a state has an FMAP of 62%, for every dollar in foster care maintenance payments the state makes on behalf of an eligible child, the federal government reimburses the state 62 cents; etc.

All states receive the same federal reimbursement rates for additional Title IV-E program costs. “Administrative” costs are reimbursed at 50% of the state’s eligible spending.¹⁵ Costs related to

¹² Section 474(a)(1), (2) and (5) of the SSA.

¹³ The FMAP calculation was developed for the Medicaid program and is also used to determine reimbursement for certain assistance provided by states under that program. For more information see CRS Report RL32950, *Medicaid: The Federal Medical Assistance Percentage (FMAP)*, by Alison Mitchell and Evelyne P. Baumrucker.

¹⁴ For purposes of Title IV-E, the FMAP for the District of Columbia is fixed at 70% and for Puerto Rico it is fixed at 55%. Special rules apply for determining a Tribal FMAP (see Section 479B(d) of the SSA and **Appendix A**).

¹⁵ Section 474(a)(3)(E) of the SSA.

developing and operating an approved Statewide Automated Child Welfare Information System (SACWIS) are also reimbursed at 50%.¹⁶ Finally, Title IV-E program training costs are reimbursed at 75% of the state's eligible claims.¹⁷

Temporary FMAP Increase as Part of Fiscal Stimulus

From October 1, 2008 through June 30, 2011, Congress enacted a temporary increase in the federal share of Title IV-E foster care maintenance, adoption assistance, and kinship guardianship assistance payments. It did this as part of a larger package of state fiscal relief offered to ease the strain on state budgets caused by the Great Recession. Specifically, under the American Recovery and Reinvestment Act (ARRA, P.L. 111-5), each state's FMAP was raised by 6.2 percentage points for October 1, 2008 through December 30, 2010.¹⁸ Subsequently ARRA was amended (P.L. 111-226) to extend enhanced FMAP support for six months at a phased down level: For the first three months of 2011 each state's FMAP was increased by 3.2 percentage points and for the second three months it was increased by 1.2 percentage points. After June 30, 2011, the level of federal participation in the Title IV-E program returned to its regular reimbursement rate.¹⁹ (The ARRA did not authorize any changes in the share of funding provided to states under the Title IV-E program for general administrative, training, or SACWIS costs.)

As of August 30, 2012, the federal government had obligated \$968 million to states under the Title IV-E program as a result of the enhanced FMAP. Because states still have some time to make Title IV-E claims adjustments for the period of time for which enhanced funding was made available, that number may change somewhat. However, it is expected to represent the bulk of Title IV-E funding provided to states because of the temporary enhanced funding made available from October 1, 2008 through June 30, 2011.

Program and Funding Authorization is Permanent and Open-Ended

Federal reimbursement for Title IV-E program costs is authorized on a permanent and open-ended entitlement basis.²⁰ This means authority to appropriate the funding needed to reimburse states for a part of their Title IV-E program costs remains in place without any periodic reauthorization. It also means that there is no upper or lower limit on the amount of annual federal funding that must be appropriated for this purpose. Instead, Congress typically appropriates the amount of funding that HHS estimates will be necessary to reimburse each eligible Title IV-E program cost submitted by states. This estimate is included in the Administration's annual budget request and is based on anticipated state Title IV-E spending as well as the share of that spending the federal government has agreed to pay for under current law. (Appropriation of this level of funding is referred to as "definite budget authority.") If this estimated amount exceeds actual funds needed to reimburse states for eligible costs, then the additional funds will lapse and are eventually returned to the federal treasury. If the estimate is less than what is needed, additional funds are

¹⁶ Section 474(a)(3)(C) and (D) of the SSA.

¹⁷ Section 474(a)(3)(A) and (B) of the SSA.

¹⁸ See CRS Report R40211, *Human Services Provisions of the American Recovery and Reinvestment Act*, by Gene Falk et al.

¹⁹ The FMAP increase also applied to the Medicaid program. However, depending on the state's level of unemployment, the increase in FMAP available under that program was potentially higher than under Title IV-E.

²⁰ Sections 470 and 474 of the SSA.

made available (and are typically authorized in annual appropriations bills under what is called “indefinite budget authority.”)

Are There Any Limits to Title IV-E Funding?

While there is no dollar limit on the amount of funding that may be provided to a state under Title IV-E, the actual funding that a state may receive is limited by the amount of money that the state spends under the program. This is because the federal government only provides a state partial reimbursement if the state has already spent its own funds on Title IV-E eligible assistance or activities.

Funding is also limited by the statutory (and regulatory) definitions of what is an eligible program cost and who is eligible for assistance. For example, Title IV-E funding is only available for the costs of providing foster care, adoption assistance, or kinship guardianship assistance to children who meet the federal eligibility criteria specific to each of those Title IV-E program components. A state may not, for example, submit as part of its total Title IV-E costs, any spending for foster care maintenance, adoption assistance, or guardianship assistance payments made on behalf of children who are not eligible for Title IV-E assistance.

Additionally, while Title IV-E funds may also be used to ensure proper administration of the program on behalf of eligible children, unless specifically authorized under a waiver of program rules, Title IV-E program funds may not be used to provide social services to any child or family of a child.²¹ Neither may states spend Title IV-E funds for “other activities not specifically included in the Title IV-E plan, including child abuse prevention or investigatory activities and medical or education expenses.”²²

The remainder of this report focuses on eligibility criteria and particular funding provided under each of the three separate Title IV-E program components: foster care; adoption assistance; and kinship guardianship assistance.

²¹ 45 C.F.R. 1356.60(c).

²² Agency discussion preceding Interim Final Rule on Tribal Child Welfare, *Federal Register*, January 6, 2012, p. 917. See also HHS, ACF, ACYF, Children’s Bureau, *Child Welfare Policy Manual*, Section 8.1B, Questions 1 and 10. (Hereinafter *Child Welfare Policy Manual*.)

Title IV-E Foster Care

Most Title IV-E dollars are used to provide foster care to children who meet federal eligibility criteria. On the last day of FY2011, there were fewer than 401,000 children in foster care, but one-half or fewer of those children were estimated to be receiving Title IV-E assistance.

Foster care is a temporary living arrangement intended to ensure a child's safety and well-being while the state child welfare agency works to ensure the child may be safely and permanently returned to his or her own home. If a court determines this is not possible or appropriate, the agency must then work to find a new permanent home for the child via adoption, legal guardianship, or placement with another fit and willing relative.

The number of children entering foster care each year hovered just above or below 300,000 from the late 1990s through the middle of the 2000s. Since that time, however, it has declined to roughly 250,000 children annually. Children entering care in a given fiscal year join those who previously entered care and have not yet exited. The *total* number of children in foster care on the last day of the fiscal year peaked in FY1999 at 567,000 but has since declined in nearly every year and, as of the last day of FY2011, stood at fewer than 401,000. The decline in the overall number of children in foster care has long been driven by an increase in children leaving foster care for adoption (or guardianship) and, more recently, by the decrease in children entering care.

On a national basis, less than half of all children who are in foster care receive federally supported foster care maintenance payments under the Title IV-E program. (The share of children in foster care who receive this support varies significantly by state.) Children for whom foster care is determined necessary for their safety (or in their best interest) but who do not meet the federal Title IV-E eligibility criteria may not be assisted with Title IV-E program funds. Instead states must use state, local, or other (non-Title IV-E) federal dollars to provide support to children who do not meet Title IV-E eligibility criteria.

Federal Title IV-E foster care eligibility criteria are discussed next in this report, and this discussion is followed by a look at foster care spending trends under the Title IV-E program.

<p style="text-align: center;">Children in Foster Care</p> <p>Number of Children Entering Foster Care During FY2011: 252,320</p> <p>Number of Children in Care on Last Day of FY2011: 400,540</p> <ul style="list-style-type: none">• Age: Under 1 year–6%; 1-5 years–32%; 6-10 years–20%; 11-15 years–23%; 16-17 years–15%; and 18-20 years–4%.• Race-Ethnicity: White–41%; Black–27%; Hispanic (of any race)–21%; Two or more races–5%, American Indian/Alaska Native–2%; Asian–1%; Unknown/unable to determine–2%.• How long had they been in care? Average time in care–23.9 months; Median time in care–13.5 months.• Current Placement Settings: Foster family home (non-relative)–47%; Foster family home (relative)– 27%; Group home or Institution–15%; Trial home visit–5%; Pre-adoptive home–4%; Child has run away from foster care setting–1%; Supervised independent living –1%. <p>Average Monthly Number of Children Receiving Title IV-E Foster Care Maintenance Payments During FY2011: 168,385</p> <p>Number of Children Exiting Foster Care During FY2011: 245,260</p> <ul style="list-style-type: none">• Reason children left foster care: Reunited with parent(s)–52%; Adoption–20%; Age-out of care (emancipation)–11%; Go to live with another relative–8%; Legal guardianship–6%; Transfer to another agency–2%; Child has run away and was discharged from care–1%. <p>Source: HHS, Children's Bureau, The AFCARS Report, #19, Preliminary FY2011 Estimates as of July 2012.</p>

Federal Foster Care Eligibility Criteria

Federal foster care eligibility criteria under Title IV-E are multifaceted. As detailed in **Table 2**, below, they reflect Congress's concern that children should only be involuntarily removed from their parents' homes with judicial approval, children must be kept safe at all times, and they must have a permanent home re-established (via reuniting with their parents) or newly established (via adoption or legal guardianship). Congress has recently permitted states to extend Title IV-E assistance to youth beyond age 18 for whom reunification or placement in a new permanent family is not achieved. This change responded to research that suggested better outcomes could be achieved for youth who remained in foster care after age 18 (when compared to those who were simply discharged from care at that age). Finally, Title IV-E foster care assistance is only available for children who are removed from very low income, and primarily single-parent, households. These eligibility criteria reflect the legislative history of federal foster care assistance.

Eligibility for Youth Age 18 or Older

As part of the Fostering Connections to Success and Increasing Adoptions Act of 2008 (P.L. 110-351), Congress amended the Title IV-E program to give states the option to provide assistance to youth in foster care beyond their 18th birthday.²³ This amendment became effective on the first day of FY2011. As of October 2012, 16 states had received approval to extend Title IV-E foster care to otherwise eligible youth beyond their 18th birthday and four additional states were seeking this approval.²⁴ Most of the states with this approval intend to provide Title IV-E foster care assistance to otherwise eligible youth up to age 21, which is the maximum age permitted under federal law.²⁵ Congress further stipulated that for a youth at age 18 or older to be eligible, he or she must be in school (i.e., high school, college, or equivalent level training program), working (i.e., at least 80 hours month), engaged in an activity to promote or remove barriers to employment, or have a documented medical condition that makes the youth unable to do any of these things. HHS has informed states that they may choose to permit eligibility for youth who meet any one of those criteria, or they may limit eligibility to youth meeting only those criteria selected by the state (e.g., only youth who are in school but not those who are employed, or have a medical condition).²⁶ Most states plan to provide foster care assistance to an otherwise eligible youth who meets any one of the education, work, or other criteria listed in federal law.²⁷

²³ Section 475(8) of the SSA. See also HHS, ACF, ACYF, Children's Bureau, PI-10-11, issued July 9, 2010, <http://www.acf.hhs.gov/sites/default/files/cb/pi1011.pdf>. States with an approved Title IV-E plan amendment allowing them to provide Title IV-E assistance to youth in foster care at age 18 or older are also required to extend Title IV-E assistance beyond that age to otherwise eligible youth who at age 16 or older leave foster care for adoption or kinship guardianship.

²⁴ Reflects information received from HHS, ACF, ACYF, Children's Bureau staff as of mid-October 2012. The 16 jurisdictions with approved state plan amendments were: Alabama, Arkansas, California, District of Columbia, Illinois, Maine, Maryland, Michigan, Minnesota, Nebraska, New York, North Dakota, Oregon, Tennessee, Texas, and Washington. The four states with plan amendments under review or revision as of that date were Indiana, Massachusetts, Pennsylvania, and West Virginia.

²⁵ Nebraska's approved plan amendment provides support only to youth up to the age of 19.

²⁶ HHS, ACF, ACYF, Children's Bureau, PI-10-11, issued July 9, 2010. Available at <http://www.acf.hhs.gov/sites/default/files/cb/pi1011.pdf>.

²⁷ Washington state limits this assistance otherwise eligible older youth who are completing high school or in an equivalent level training program. Tennessee limits this assistance to otherwise eligible older youth who are in high school or college, or an equivalent level training program, or those who are incapable of participating in school or work (continued...)

Origin of the Income Standard

Title IV-E foster care support is limited to those children who are removed from homes with very low income (in most states the income standard is well below 100% of the federal poverty guideline). Federal funding dedicated to foster care originated in 1961 (P.L. 87-31) as a part of a prior law cash aid program, known as Aid to Families with Dependent Children (AFDC). Federal foster care eligibility criteria remain linked to income standards and other eligibility rules established under that program. This is true even though Congress established independent funding for foster care when it created the Title IV-E program in 1980 (P.L. 96-272) and despite the fact that it subsequently repealed the AFDC program in 1996 (replacing it with the TANF block grant, P.L. 104-193).

Table 2 describes each of the federal foster care eligibility criteria in four categories: (1) Removal requirements-judicial findings; (2) AFDC-related requirements; (3) Age; and (4) Placement and other requirements.

(...continued)

because of a documented medical condition.

Table 2. Eligibility Criteria for Title IV-E Foster Care Maintenance Payments

Removal Requirements—Judicial Findings	AFDC-Related Requirements	Age	Placement and Other Requirements
<p>If the Child is Removed Involuntarily^a</p> <ul style="list-style-type: none"> A judge must find that the child’s home was “contrary to the welfare of the child;” (this finding must be part of the same court order that removes the child from that home). A judge must find that the state made reasonable efforts to prevent removal of the child and to preserve a family (or determine that those efforts were not required); (this finding must be made no later than 60 days after a child’s removal from home). A judge must find that the state is making reasonable efforts to finalize a permanent home for the child; (this finding must be made within 12 months of a child’s entry to foster care and every 12 months thereafter while the child remains in care). <p>If the Child is Voluntarily Placed in Care^b</p> <p>The child’s parent or guardian requests assistance and enters into a written voluntary placement agreement with the Title IV-E agency; (this agreement must be binding on the parties but does not need to be overseen by a judge).</p> <ul style="list-style-type: none"> A judge must find that the child’s placement in care continues to be in the child’s interest; (this finding must be made within 180 days of the child’s voluntary placement in care if the placement is to continue with Title IV-E support). 	<ul style="list-style-type: none"> The child must be “deprived” of parental support, due to at least one parent’s death, continued absence from the home, or mental incapacity, or because of the unemployment of the principal wage-earner. The child must have been living in the home of a parent, or other specified relative, before removal to foster care. The child must meet the definition of “needy” based on the income and resources of the family he/she was removed from. The income limit is based on the state “need standard” as it existed on July 16, 1996 under the prior law AFDC program; the resource limit is \$10,000. 	<ul style="list-style-type: none"> The child must be under the age of 18; or If a state elected to serve youth of this age under the prior law AFDC program, under the age of 19 and a fulltime high school student (or in an equivalent level training program); or If a state elects to provide for this definition under its Title IV-E plan, under the age of 19, 20 or 21 (as the state may choose); AND <ul style="list-style-type: none"> completing high school (or equivalent credential); enrolled in college (or equivalent level vocational education); participating in a program or activity designed to promote employment or remove barriers to it; employed for at least 80 hours per month; or incapable of any of these activities due to a medical condition (documented in the case plan of the individual and regularly updated). 	<ul style="list-style-type: none"> The child must be in the care and placement responsibility of a state or tribal agency with an approved Title IV-E plan, or another public agency with which that agency has an agreement. The child must be placed in an eligible setting, which is defined as a foster family home, a public child care institution caring for not more than 25 children, a private child care institution of any size, or a supervised independent living arrangement (but only if the youth is at least age 18). The child must not be placed in a locked detention facility. The child must be placed in a licensed foster family home or licensed child care institution. Prospective foster parent(s) must undergo a background check that confirms he or she has never been convicted of any one of these felonies: child abuse or neglect, spousal abuse, a crime involving children (including child pornography), or a crime involving violence (including rape, sexual assault or homicide, but not including other physical assault or battery) AND that he/she has not, within the last five years, committed physical assault, battery, or a drug-related offense that resulted in a felony conviction. Pursuant to the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (P.L. 104-193), the child must be a U.S. citizen or a “qualified alien.”

Source: Table prepared by the Congressional Research Service based on HHS, ACF, ACYF, Children's Bureau Title IV-E Foster Care Eligibility Review Guide (March 2006), P.L. 110-351, and P.L. 104-193.

- a. Requirements related to involuntary removals are shown for all children whose removal occurred on or after March 27, 2000, which was the effective date of the final rule implementing ASFA (P.L. 105-89). Slightly different judicial determination rules apply for children removed before that effective date.
- b. A state or tribal entity may seek federal reimbursement for the cost of children who are voluntarily placed in care only if it indicates in its Title IV-E plan that it intends to do so and has policies and procedures in place to meet each of the statutory requirements related to such voluntary placements. As of July 2011, 10 states did not include this option in their state plans (AR, DE, IN, IA, KS, MI, NE, NJ, OK, TX).

Title IV-E Foster Care Spending

During FY2011, states submitted claims totaling \$8.327 billion in Title IV-E foster care expenses and received federal reimbursement of \$4.340 billion, or 52% of that amount. Spending for maintenance payments represented just 29% of all Title IV-E foster care spending for FY2011 while spending for general foster care administrative purposes under the Title IV-E program represented close to half of the total (46%). Nearly 3% of the FY2011 Title IV-E foster care spending supported development and operation of Statewide Automated Child Welfare Information Systems (SACWIS), and a similar share (just above 3%) was spent on foster care-related Title IV-E training. The remaining FY2011 foster care spending under the Title IV-E program (19%) was reported under the “demonstrations” (i.e., waiver projects) category.

Trend in Title IV-E Foster Care Spending by Kind of Program Cost

Overall spending under the Title IV-E foster care program has trended downward since FY2002; spending for foster care maintenance payments began a nearly uninterrupted decline as early as FY1999. (See **Figure 2**.) This is consistent with the decline in the Title IV-E foster care caseload over that time period. The average monthly number of children who received a Title IV-E foster care maintenance payment peaked in FY1998 at close to 305,200 and declined by nearly 45%, to fewer than 168,400, by FY2011. (During roughly the same time frame, the number of *all* children in foster care, both Title IV-E eligible and not eligible, fell by more than 29%, from a peak of 567,000 children on the last day of FY1999 to fewer than 401,000 on last day of FY2011.)

Total Title IV-E spending for general foster care administrative costs exceeded total Title IV-E spending on foster care maintenance payments as early as FY2000. Foster care administrative spending continued to climb for several years, even as the foster care caseload declined, but since the middle of the last decade it too has trended down. Title IV-E foster claims related to the development and operation of a SACWIS were at their highest level in the late 1990s, soon after Congress authorized this federal support and during the period that enhanced federal support was available for this purpose. Spending for Title IV-E foster care training purposes has not increased, despite broadened authority (enacted in 2008) for states to claim federal Title IV-E support for this purpose.

Finally, Title IV-E foster care spending under child welfare demonstration projects, which states were first required to report on separately for FY2000, jumped significantly in FY2007 and FY2008 as several large projects were implemented. This category refers to spending under what are often referred to as “waiver projects.” For FY2011, more than 90% of the spending reported in this category was related to the projects being implemented in Florida (on a statewide basis) and in California (in Los Angeles and Alameda counties).²⁸ Waiver projects must be designed to be cost neutral to the federal government. Apart from certain project development and evaluation costs, no state should expect to receive more Title IV-E funding under the demonstration project than it would if the project were not in place. However, Title IV-E funding spent under authority of the demonstration project may support a broader range of activities, including services, and be provided to individuals who would not otherwise be eligible for Title IV-E assistance. In all cases,

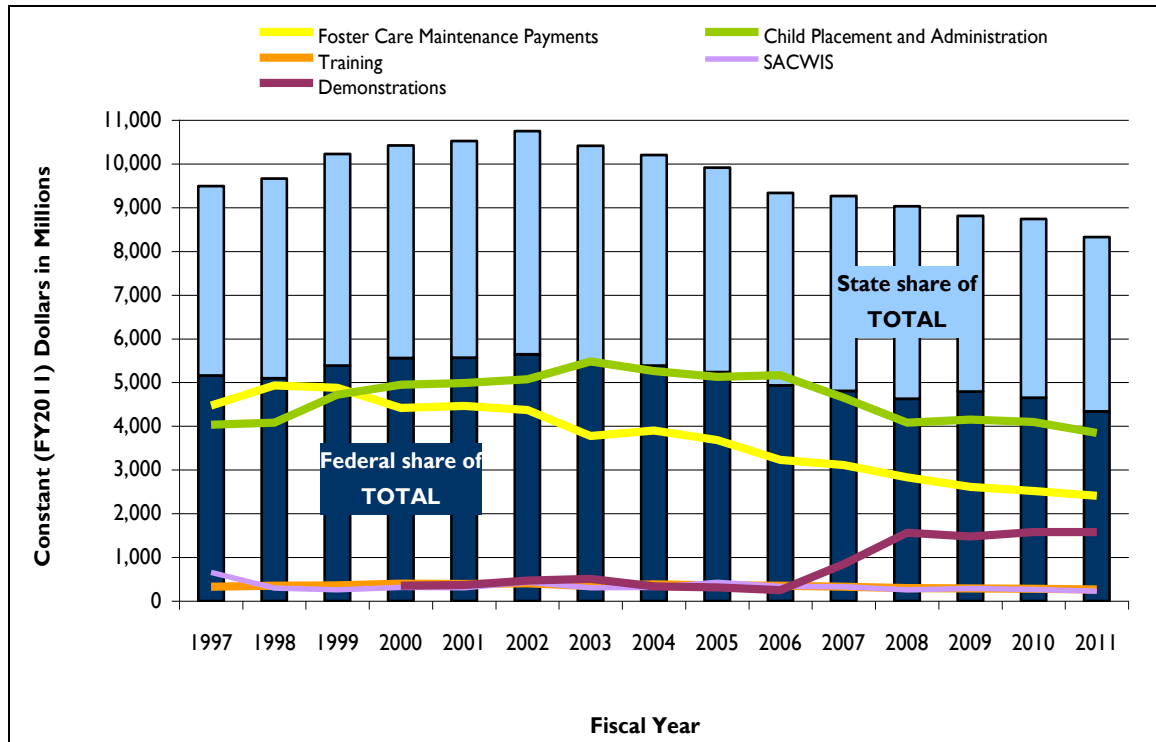
²⁸ Children in foster care in Florida and in Los Angeles and Alameda counties represented a sizeable share (about 10%) of the total number of children in foster care, nationwide, on the last day of FY2011.

however, the kind of Title IV-E spending must be authorized under the state’s approved waiver project.²⁹

Figure 2 shows total Title IV-E spending by federal and state share for each of FY1997-FY2011, as well as total (federal and state) spending in those years by claim category. The amounts are shown in inflation-adjusted (i.e., constant) dollars.

Figure 2. Trend in Title IV-E Foster Care Spending, FY1997-FY2011

Spending shown includes both federal and state share of costs in constant (FY2011) dollars



Source: Figure prepared by the Congressional Research Service based on Title IV-E expenditure claims as submitted by states and annually compiled by HHS, ACF, Office of Legislative Affairs and Budget (OLAB).

²⁹ Child welfare demonstration projects are authorized under Section 1130 of the Social Security Act. Under this authority, HHS may “waive” particular federal requirements (e.g., eligibility rules or rules related to what may be supported with Title IV-E dollars) if the waiver is necessary to allow a state to demonstrate effective ways to deliver improved child welfare services to children and their families. As of August 2012, six states had authority to serve expanded populations and/or to provide expanded services under child welfare waiver authority (CA, FL, IN, OH, OR, IL). All of these projects were initially approved prior to expiration of HHS’ authority to grant waivers in March 2006. As part of the Child and Family Services Improvement and Innovation Act (P.L. 112-34), enacted in September 2011, Congress renewed the authority of HHS to approve as many as ten child welfare demonstration projects in each of FY2012-FY2014. At the end of September 2012, HHS announced approval of nine new waiver projects. Further discussion of child welfare demonstration projects is outside the scope of this report. For more information see “Child Welfare Waivers” on the website of the HHS, ACF, Administration on Children, Youth, and Families (ACYF), Children’s Bureau <http://www.acf.hhs.gov/programs/cb/programs/child-welfare-waivers>.

Title IV-E Foster Care Maintenance Payments

Federal support is available to states for 50%–83% of the cost of providing foster care maintenance payments to eligible children in foster care. The exact share of the cost that will be provided by the federal government is based on a state’s FMAP, or federal medical assistance percentage. As noted above, that state-specific amount is determined by HHS each year using a statutory formula. The formula ensures that states with higher per capita incomes receive the lower federal reimbursement rates and states with low per capita income receive the highest federal reimbursement rates.

States are required to provide foster care maintenance payments on behalf of every Title IV-E eligible child in foster care. The law defines a foster care maintenance payment to include specific costs (see text box). However, there is no federal minimum or maximum foster care maintenance payment rate. States are permitted to set these rates and are required (under Title IV-E) to review them periodically to ensure their “continuing appropriateness.”³⁰ The specific rate provided to a child typically varies by the age of the child, the child’s placement setting, and by any special needs the child may have.

In 2008-2009, the average monthly foster care maintenance payment among a national sample of children living in non-relative foster family homes was \$679.³¹ Payment rates for children living with kin are expected to be lower and rates for children placed in group or institutional settings are expected to be higher. States also vary in the way they provide foster caregivers with support for certain items, such as clothing, school supplies, and child care. Some states may wrap this into the daily or monthly foster care maintenance payment rate while others provide discrete and separate payments.³²

Among non-relative foster caregivers surveyed in 2008-2009, three-fourths (78%) indicated that the foster care payments they received covered the basic living expenses of the child for whom they cared. However, more than two-thirds of those foster caregivers (68%) indicated they sometimes supplemented those payments with their own funds to cover the child’s expenses.³³

Definition of a Foster Care Maintenance Payment

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, reasonable travel to the child’s home for visitation, and, reasonable travel for the child to remain in the school in which the child is enrolled at the time of placement.

If foster care is provided in an institutional setting, a Title IV-E foster care maintenance payment *may* include “reasonable cost of administration and operation” of the institution.

If a youth receiving Title IV-E assistance is a parent whose son or daughter is living with him/her in a foster family home or child care institution, the Title IV-E foster care maintenance payment *must* include funds to cover costs for the son or daughter.

Source: Section 475(4) of the Social Security Act

³⁰ Section 471(a)(11) of the SSA.

³¹ Melissa Dolan, et al., RTI International, *NSCAW II Baseline Report: Child Welfare Services and Experiences of Children Placed in Out-of-Home Care* (OPRE Report # 2011-27e), Washington DC: OPRE, ACF, HHS (September 2011), p. 10. (Hereinafter, *NSCAW II: Child Welfare Services and Experiences of Children Placed in Out-of-Home Care*, 2011).

³² The National Resource Center for Family-Centered Practice and Permanency Planning (NRCFPP), funded by HHS, has compiled a table that shows basic foster care maintenance payments for children in foster family homes by state. Please note that a “basic rate” may be a floor. It is not necessarily a “typical” payment, nor does it represent a median or average payment. See table online at <http://www.hunter.cuny.edu/socwork/nrcfpp/downloads/foster-care-maintenance-payments.pdf>.

³³ *NSCAW II: Child Welfare Services and Experiences of Children Placed in Out-of-Home Care*, 2011, p. 10.

The majority of non-relative and relative caregivers of children removed from their homes have income above the poverty level. However, this is less likely to be true for relative caregivers than for non-relative caregivers. Specifically, 82% of non-relative caregivers had household income above 100% of the federal poverty guideline, compared to 66% of formal kin caregivers and 58% of informal kin caregivers.³⁴

As shown in **Table 3**, in most years, the overall share of Title IV-E foster care maintenance payments paid by the federal government is between 54% and 55% of all states' spending for this purpose. However, the federal share of Title IV-E foster care maintenance payments reached a high of almost 63% during FY2010. As discussed above, that year was part of a 33-month-period (FY2009, FY2010, and the first 9 months of FY2011) for which the ARRA (P.L. 111-5, as amended by P.L. 111-226) provided enhanced federal support to states.³⁵ As of August 30, 2012, states had obligated \$463 million in additional federal support for foster care maintenance payments under this ARRA provision, most of this in FY2009 (\$183 million) and in FY2010 (\$190 million).³⁶

Table 3. Spending for Title IV-E Foster Care Maintenance Payments, FY1997-FY2011
Dollars in millions

Fiscal Year	Title IV-E Claims Related to Foster Care Maintenance Payments					
	Average Monthly Number of Children Assisted	TOTAL <i>All eligible spending claimed by the states</i>	FEDERAL SHARE <i>Amount of total to be reimbursed</i>	TOTAL <i>All eligible spending claimed by the states</i>	FEDERAL SHARE <i>Amount of total to be reimbursed</i>	Federal Share of Title IV-E Foster Care Maintenance Payment Costs
		Constant (FY2011) Dollars		Nominal Dollars		
1997	289,404	\$4,470	\$2,409	\$3,201	\$1,725	53.9%
1998	305,194	\$4,932	\$2,641	\$3,589	\$1,922	53.5%
1999	302,422	\$4,882	\$2,625	\$3,621	\$1,947	53.8%
2000	287,824	\$4,414	\$2,455	\$3,378	\$1,879	55.6%
2001	264,670	\$4,465	\$2,433	\$3,527	\$1,922	54.5%
2002	254,004	\$4,369	\$2,347	\$3,503	\$1,882	53.7%
2003	242,200	\$3,773	\$2,060	\$3,096	\$1,690	54.6%
2004	233,112	\$3,903	\$2,141	\$3,277	\$1,798	54.9%
2005	233,772	\$3,679	\$2,022	\$3,191	\$1,753	55.0%
2006	219,783	\$3,226	\$1,788	\$2,901	\$1,608	55.4%
2007	211,216	\$3,111	\$1,709	\$2,863	\$1,573	54.9%
2008	197,214	\$2,827	\$1,572	\$2,717	\$1,510	55.6%

³⁴ Dolan, et al., *Introduction to NSCAW II Baseline Report*, 2011 p. 10.

³⁵ Each state's FMAP, as enhanced by ARRA is shown in Attachment B of the HHS, ACF, ACYF, Children's Bureau, PI-10-12, available at <http://www.acf.hhs.gov/sites/default/files/cb/pi1012.pdf>.

³⁶ Based on Title IV-E foster care obligations (as of August 30, 2012) tied to the enhanced ARRA FMAP rate. Final funding to states may vary slightly from this amount. Information on obligations received from HHS, ACF, OLAB.

Fiscal Year	Title IV-E Claims Related to Foster Care Maintenance Payments					
	Average Monthly Number of Children Assisted	TOTAL <i>All eligible spending claimed by the states</i>	FEDERAL SHARE <i>Amount of total to be reimbursed</i>	TOTAL <i>All eligible spending claimed by the states</i>	FEDERAL SHARE <i>Amount of total to be reimbursed</i>	Federal Share of Title IV-E Foster Care Maintenance Payment Costs
		Constant (FY2011) Dollars		Nominal Dollars		
2009	186,303	\$2,610	\$1,626	\$2,500	\$1,558	62.3% ^a
2010	181,078	\$2,517	\$1,579	\$2,452	\$1,538	62.7% ^a
2011	168,385	\$2,406	\$1,418	\$2,406	\$1,418	58.9% ^a

Source: Table prepared by the Congressional Research Service based on Title IV-E expenditure claims as submitted by states and compiled annually by HHS, ACF, OLAB.

Note: FY2011 data were reported on a new claim form and may not be directly comparable to earlier years.

- a. As part of fiscal relief provided to states under the American Recovery and Reinvestment Act (ARRA, P.L. 111-5, as amended by P.L. 111-226), the federal share of spending for Title IV-E foster care maintenance payments was increased in all states by 6.2 percentage points for all of FY2009, FY2010, and the first three months of FY2011, by 3.2 percentage points for the second quarter of FY2011 (January-March 2011), and by 1.2 percentage points for the third quarter of FY2011 (April-June 2011). As of July 1, 2011, the regular FMAP was reinstated for Title IV-E program in all states.

How Are Children in Foster Care Who Are Not Eligible for Title IV-E Assisted?

Children in foster care who are not Title IV-E eligible may not be supported with Title IV-E foster care maintenance payments *and none of the dollars shown in Table 3 reflect spending for those children*. Additional state and local funds are expended to meet the full foster care maintenance payment costs of children who do not meet the Title IV-E foster care eligibility criteria.

States may also use certain other federal funding streams to provide monthly assistance to children living in foster care who are not eligible for Title IV-E assistance. A TANF “child-only” payment (typically less than a Title IV-E foster care maintenance payment) may be paid to a child in foster care who is not eligible for Title IV-E and who is living with a relative.³⁷ This kind of TANF assistance may be provided without regard to the income of that relative. Separately, states may also use TANF to provide foster care maintenance payments to other children in foster care (whether or not they are living with a relative), if this kind of spending was authorized under the state’s prior law AFDC Emergency Assistance (EA) program. (Funding for that program was rolled into the TANF block grant when it was created in 1996.) Although states are known to spend significant sums of TANF funds for child welfare purposes, the extent to which those funds are used to provide monthly assistance, as opposed to other child welfare services (e.g., family support or family preservation) is less clear.³⁸ Other federal funding streams sometimes tapped by

³⁷ In 1978, the U.S. Supreme Court found that a state must provide a Title IV-E foster care maintenance payment to a child who is eligible for that assistance even if the child is living with a relative. See *Miller v. Youkiam* (440 U.S. 125).

³⁸ At least one study suggests that TANF spending on foster care maintenance payments (at least under the “authorized under prior law” provision), while significant, may be mostly attributable to practices of a few large states. See Michelle Derr, et al., *Understanding Two Categories of TANF Spending: “Other” and “Authorized Under Prior Law,”* Mathematica Policy Research for HHS, ACF, Office of Planning and Research Evaluation, September 2009. Other studies show significant TANF spending for child welfare purposes but do not make clear whether this spending is for (continued...)

states for monthly room and board payments include Supplemental Security Income (SSI) and Social Security (Title II) “survivors” or disability benefits for children in foster care who meet the eligibility criteria for those federal programs. In addition, states may use Medicaid to supplement payments for children with special medical needs or those whose regular care must include medical treatment. However, the use of Medicaid for any child welfare purposes has declined in recent years.³⁹ States have limited ability to use program funds under the Title IV-B, Subpart 1 program (Stephanie Tubbs Jones Child Welfare Services program) to provide foster care maintenance payments. They are largely prohibited from using Social Services Block Grant (SSBG) funds to do so.

Federal Foster Care Coverage Rate

The estimated federal foster care coverage rate—that is the share of all children in foster care who receive Title IV-E foster care maintenance payments—is believed to have grown from roughly 35% in the early 1980s to more than 54% in the middle 1990s. Since then it has declined and was estimated to be about 40% in FY2011. These rough estimates are based on a comparison of two sets of administrative data.⁴⁰ Separately, survey data collected from state budget officials suggests a higher federal foster care coverage rate. Based on information from the 36 states that provided an estimate for each of state fiscal years 2000, 2002, 2004 and 2006, the survey reported a federal foster care coverage rate of 68% in state FY2000, declining to 58% in state FY2006. Among the 51 states that reported information on this question for state fiscal years 2008 and 2010, the national federal foster care rate was estimated at 55% for both years.⁴¹

The discrepancy between the administrative and survey data is not easy to explain. One likely factor might be differences in how the overall population of children in care are counted for purposes of the administrative data as compared to how states understand that total population for purposes of reporting (via the survey) the share of children in foster care who are receiving Title IV-E foster care assistance. The quality of the administrative data is another concern, including the lack of strict comparability of the numbers. Apart from their different reported foster care coverage rates, however, both the survey and administrative estimates indicate wide variation in the federal foster care coverage rate by state (see table in **Appendix B**). Additionally, both sets of estimates indicate a decline in the federal foster care coverage rate over the past decade.

(...continued)

assistance or for services. See Kerry DeVooght, et al., *Federal, State and Local Spending to Address Child Abuse and Neglect*, (June 2012) and HHS, ACF, Office of Family Assistance, *Engagement in Additional Work Activities and Expenditures for Other Benefits and Services: A TANF Report to Congress*, (March 2011).

³⁹ Kerry DeVooght, et al., *Federal, State and Local Spending to Address Child Abuse and Neglect in State Fiscal Years 2008 and 2010*, (June 2012), pp. 9-10.

⁴⁰ These rates were determined by comparing the average monthly number of children receiving foster care in a given fiscal year, to the number of children in foster care on the last day of the fiscal year. These numbers are reported separately and for different purposes, and because one represents caseload on a single day, and the other represents an average monthly number of children in care across the year, they are not directly comparable.

⁴¹ Kerry DeVooght, et. al, *Federal, State, and Local Spending to Address Child Abuse and Neglect in SFY 2006*, Child Trends, Casey Family Programs and The Annie E. Casey Foundation (December 2008), pp. 11-12; and Kerry DeVooght, et al., *Child Trends, Federal, State and Local Spending to Address Child Abuse and Neglect in SFYs2008 and 2010*, Casey Family Programs and The Annie E. Casey Foundation (June 2012), p. 15. (Hereinafter, DeVooght, et al., *Federal State and Local Spending to Address Child Abuse and Neglect*, June 2012.)

Relationship of Income and Other Criteria to Federal Foster Care Coverage Rate

The static income test that is a part of Title IV-E foster care eligibility criteria through its link to the prior law AFDC program is often cited as a key determinant in the share of children in foster care who are eligible for Title IV-E support.⁴² As shown in **Table 2**, to be eligible for Title IV-E foster care support a child must have been removed from a home that met the income criteria for a needy family under the AFDC program, as that program existed in the state on July 16, 1996 and without adjustment for inflation. Under the prior law AFDC program, states were able to establish their own “need standards” or income test for purposes of determining eligibility for cash assistance. While those standards vary significantly by state, they are generally quite low. The median state need standard (annualized for a family of three) is \$7,740. That amount represented roughly 60% of the federal poverty guideline for a family of that size in 1996 but represents just 41% of the federal poverty guideline for a family of three in 2012. In a large majority of states (37), eligibility for federal Title IV-E foster care assistance is limited to children removed from homes with monthly countable income that (on an annual basis) is less than 50% of the 2012 federal poverty guideline.⁴³

The fact that the income test is not adjusted for inflation makes it an obvious factor in the decline in federal foster care coverage. At the same time, the multi-faceted nature of Title IV-E foster care eligibility—encompassing specific court findings, requiring placement in a licensed setting, stipulating requirements related to citizenship or immigration status, requiring removal from a relative’s home and other criteria—means that income is not always the reason children in foster care are ineligible for federal foster care support.

Remembering that there are multiple Title IV-E foster care eligibility criteria may help to explain why the relationship between a state’s AFDC income test and its coverage rate does not always appear straightforward. If the income standard was the only relevant factor for determining a state’s Title IV-E coverage rate, then presumably states with higher income tests would be more likely to have higher Title IV-E foster care coverage rates. However, this is not always the case. (See each state’s AFDC income standard alongside estimated and reported Title IV-E foster care coverage rates in the state in **Appendix B**.)

Why Are Children Determined Ineligible?

Almost no research has been done on the reasons states find children ineligible for Title IV-E foster care. However, in a survey conducted by the research group Child Trends, 26 states were able to provide numerical data on at least one or more reasons children in out-of-home placements were not eligible for Title IV-E foster care maintenance payments during state FY2010.⁴⁴ Parent’s income was cited as a cause for ineligibility in each of those 26 states; although, its significance in a given state ranged widely from almost no cases in some of those states to the large majority in others. Across all of the reporting states, it was the reason for ineligibility in fewer than half of the cases (40%).⁴⁵ Other factors frequently cited by states as

⁴² See for example, HHS, ACF, FY2013 Budget Justifications, p. 330.

⁴³ CRS calculations based on unpublished 1996 need standard data (for a family of three) received from HHS compared to the federal poverty guidelines for a family of three. For more information see **Table B-1** in **Appendix B**.

⁴⁴ DeVooght, *Federal, State, and Local Spending to Address Child Abuse and Neglect*, June 2012, p.p. 17-18.

⁴⁵ *Ibid.* All of the national averages discussed here were computed by Child Trends and were weighted based on each state’s population of children ineligible for Title IV-E reimbursement. Most states were not able to provide information (continued...)

reasons for a child's ineligibility included, a lack of required judicial determinations (25 states), unlicensed homes or facilities (22 states), and ineligible placement settings (18 states). Again, the significance of these factors varied greatly by state. However, on average, among the states that reported some children were found ineligible because they lacked required judicial determinations, or were in unlicensed or otherwise ineligible homes or other placement settings, between 10%–20% of the ineligible cases were linked to these factors.⁴⁶ Finally, 17 states cited a wide range of “other” reasons that led to ineligible cases in their jurisdictions, including several that—like the family income requirement—are linked to AFDC eligibility rules. These included child must be deprived of parental care or support, child must be removed from the home of a specified relative, and resources in home of removal must not exceed specified limit. Additional “other” reasons for Title IV-E foster care ineligibility, as cited by states in the Child Trends survey, included “child’s age/school attendance,” “missing legal requirements,” and citizenship issues.”⁴⁷

If eligibility criteria other than income are driving a state’s federal foster care coverage rate down, then changes in the state’s policy or practice might address this decline.⁴⁸ However, depending on the specific criteria, this may be more or less possible. For example, if a state increases the use of relative placements for children in foster care (a practice supported in federal policy), this might also increase Title IV-E foster care ineligibility as the practice of routinely licensing relatives is relatively recent in some states and some continue to report that relatives resist, or are unable to meet, foster family home licensing standards. Unlike the income test, however, states may attempt to address this issue by more actively seeking to license relatives, including by using the authority (granted in statute) to waive any non-safety licensing standards for children placed with relatives. Separately, if children are found not eligible for Title IV-E foster care because the required judicial determinations were not made, or were not made in the specified time frames (see **Table 2**), a state may review its procedures to ensure courts have time to act and may also work to raise awareness of the court concerning needed findings and their time frame. At the same time, any improvement will also likely depend on the cooperation of the courts and their willingness to engage with the child welfare agency on this issue.

The share of children eligible for Title IV-E foster care maintenance payments is significant to federal funding for other kinds of Title IV-E foster care purposes because it is a primary factor in determining the amount of “administrative” and other program costs that states may assign to the Title IV-E program. Further, any cost not assigned to the Title IV-E program is not eligible for federal Title IV-E support.

(...continued)

on whether or not a given reason was the exclusive cause of a child’s ineligibility for Title IV-E foster care maintenance payments. However, among the ten states that were able to do this for state FY2010, income was the sole cause for a child’s ineligibility in 8% to 83% of the ineligible cases.

⁴⁶ Ibid.

⁴⁷ Ibid. Before FY2011 (i.e., in time frame of this survey), the Title IV-E eligibility criteria related to age of a child and high school attendance (for child age 18 only) were fully governed by the look back to AFDC rules. As of FY2011, however, P.L. 110-351 provides a new definition of child that may supersede those AFDC rules in states that elect to provide foster care up to age 19, 20, or 21.

⁴⁸ Like family income, a child’s citizenship/immigration status is an eligibility factor that state child welfare agencies would appear unable to address with any policy or practice effort (at least while it maintained the goal of safety as a priority for all children.)

Title IV-E Administrative Spending for Foster Care

Federal support is available to all states for 50% of their cost of providing “child placement services and for the proper and efficient administration” of a foster care program under the Title IV-E plan.⁴⁹ These costs are commonly referred to as “administrative.”

There are many “administrative” purposes under the Title IV-E program. However, most foster care administrative spending is tied to the amount of caseworker time spent to perform required child protection activities on behalf of individual children in foster care and on behalf of children at imminent risk or removal to foster care. (See **Figure 3** below.)

Additional administrative spending supports background checks of prospective foster parents, eligibility determination, rate setting, licensing, policy development, compliance review participation, and other agency activities related to operating a Title IV-E foster care program. (See text box.)

In general, states may only claim federal Title IV-E support for an administrative cost to the extent that the cost was incurred on behalf of a child who is eligible to receive a Title IV-E foster care maintenance payment. There are some instances, however, in which a larger share of all foster care administration costs may be submitted and these instances are described below.

What is a Title IV-E Foster Care Administrative Cost?

Making referrals to services • finding an out-of-home placement for a child • developing a child’s case plan • providing case management and case supervision • preparing for, and participating in, required court proceedings • holding periodic case reviews for a child in care • recruiting and licensing foster homes and institutions • conducting background checks of prospective foster caregivers • operating a rate setting or rate monitoring unit • determining Title IV-E eligibility • providing for fair hearings and appeals • developing required program policies • participating in federal compliance reviews • collecting and reporting data • operating a quality assurance system • providing for a proportionate share of related agency overhead • supporting “other costs directly related only to the administration of the foster care program”

Source: Based primarily on 45 C.F.R. 1356.60(c). See also Child Welfare Policy Manual, Section 8.1B and Instruction for Quarterly Financial Reporting, Form CB-496.

Case Planning and Case Management

More than half of all state and federal Title IV-E foster care administrative spending in FY2011 (53%, or \$2.0 billion in FY2011) was for child-specific case planning and management activities. This funding primarily supports caseworkers who are carrying out the requirements of the case review system. These include assessing a child and family’s needs and developing a written case plan for each child, preparing for and participating in periodic administrative or court reviews of a child’s status in foster care, preparing for and participating in the court’s establishment and review of a child’s permanency plan, assisting a youth who is about to age out of foster care in the preparation of a transition plan and other requirements.

A state child welfare agency can receive federal reimbursement for 50% of the costs of providing these child-specific activities provided they are carried out on behalf of children who are eligible to receive a Title IV-E foster care maintenance payment.⁵⁰ Additionally, a state child welfare

⁴⁹ Section 474(a)(3) of the SSA.

⁵⁰ A child does not have to be receiving a Title IV-E foster care maintenance payment, so long as he is eligible. For example, if a Title IV-E eligible child is receiving federal support via Supplemental Security Income (SSI) rather than (continued...)

agency may claim federal Title IV-E support for these same activities, provided to children in foster care who would be eligible for a Title IV-E foster care assistance except that they are living in the unlicensed home of a relative. However, a state may claim this Title IV-E administrative support for that child only if it is working toward licensing the relative's home and for no longer than the lesser of 12 months or average length of time it takes the state to license a foster family home).⁵¹ Finally, a state may also claim this kind of Title IV-E administrative support for a child who is temporarily living in an ineligible foster care setting (e.g., a locked juvenile detention facility) but only for one month and provided the child is moved back to an eligible placement setting.⁵²

Pre-placement Activities

A sizeable share of state and federal Title IV-E foster care administrative funds (16%, or \$613 million in FY2011) are spent on “pre-placement” activities. This is the only form of Title IV-E foster care funding that is provided on behalf of children who *are not* in foster care. Pre-placement activities include many of the same kinds of child-specific activities as those for children who are in foster care—for example, making referrals for services, preparing for and participating in court proceedings related to a child's removal, or finding a home for the child. To claim this Title IV-E support for efforts made on a child's behalf, the state agency must determine that the child is at “imminent risk of removal” from the home. These children are sometimes described as “candidates” for foster care. A child may be a candidate for no more than 6 months without a redetermination that he/she continues to be at “imminent risk of removal.”

Eligibility Determination

The combined federal and state cost for determining Title IV-E foster care eligibility was \$184 million in FY2011 (5% of all Title IV-E administrative costs). States are permitted to seek federal support for all costs related to Title IV-E eligibility determinations. This includes both the cost of determining that a child is *not* eligible for Title IV-E foster care maintenance payments, as well as determining that a child is eligible for Title IV-E assistance.

Other Foster Care Administrative Costs

Finally, states may seek federal Title IV-E foster care support for other administrative costs necessary to operate a Title IV-E foster care program. These may include establishing and implementing licensing requirements, operating a rate setting unit, conducting background checks, developing required program policies, participating in federal compliance reviews, and other program costs. In general, the part of these costs that may be supported with Title IV-E dollars is the same share as for case planning and case management costs; however, funding for

(...continued)

via a Title IV-E foster care payment, the state may still claim support for providing case planning and management services to the child in foster care. See *Child Welfare Policy Manual*, Section 8.1B, Questions 11 and 13.

⁵¹ Section 472(i) (1)(A) of the SSA. The majority of states (37) reported an average licensing time frame of 6 months or less. Only two states reported a licensing time frame of more than 12 months. (Based on information reported to HHS, ACF by 48 states as of spring 2008.)

⁵² Section 472(i) (1)(B) of the SSA For more information see CRS Report RL33155, *Child Welfare: Foster Care and Adoption Assistance Provisions in the Deficit Reduction Act of 2005 (P.L. 109-171)*, by Emilie Stoltzfus.

specific “other” administrative purposes (e.g., school transportation) may require separate cost allocation processes.

Figure 3 indicates an apparent increase in the Title IV-E foster care administrative costs shown as “other” for FY2011. This may reflect an actual change in state spending patterns, but more likely reflects a change in how the data were reported. FY2011 was the first year that states were required to use a new form to submit their Title IV-E foster care spending claims to HHS. Among other changes, the new form does not include an “other” administrative costs category. However, two new categories, presumably intended to capture those expenses and likely additional costs that were previously reported by states as part of case planning and management, were added.⁵³ These new categories are described as “provider management” related to Title IV-E children in foster care (e.g., recruiting foster families, licensing homes and institutions, conducting criminal record and child abuse registry checks, holding fair hearings, and operating a rate setting unit) and “agency management” related to Title IV-E foster care (e.g., policy development, data collection and reporting, operation of a quality assurance system, proportionate share of related agency overhead, and other costs allocable to Title IV-E program administration).

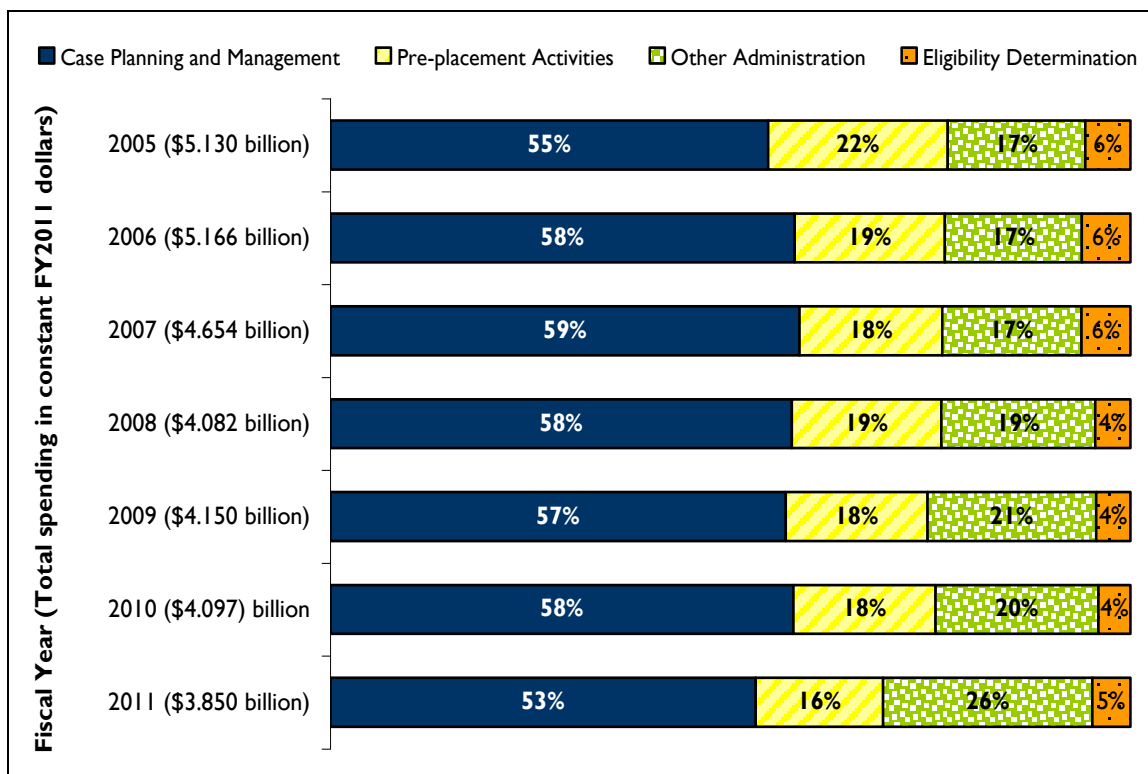
For FY2011, states submitted provider management costs of \$298 million (8% of all Title IV-E foster care administrative costs) and agency management costs of \$708 million (18% of all Title IV-E administrative costs). In **Figure 3** this spending is combined and shown as “other” administrative costs for FY2011. Comparable data, however, are not available for earlier years shown in that Figure. The new specificity providing on the reporting form, as well as the renaming of certain other administrative spending categories, very likely affected how states reported their Title IV-E foster care administrative spending. Therefore, any comparisons across all years shown in **Figure 3** should be made with caution.⁵⁴

⁵³ In the form used by states before FY2011 to submit Title IV-E spending claims, states were instructed to include licensing and recruitment activities as part of “other” only if this activity was not specific to a child. This suggests that before FY2011, states may have reported a number of licensing and background checks in the “child-specific” case planning and case management category.

⁵⁴ This is also a consideration with regard to the amount of spending related to “pre-placement activities.” See the Notes to **Figure 3** for more information.

Figure 3. Share of Foster Care-Related Child Placement and Administrative Spending Under the Title IV-E Program by Category of Cost, FY2005-FY2011

Total spending includes all eligible spending claimed by states in constant (FY2011) dollars: 50% state cost and 50% federal cost.



Source: Figure prepared by the Congressional Research Service based on Title IV-E expenditure claims as submitted by states and compiled by HHS, ACF, OLAB. Disallowances or deferrals not reflected. (For table showing this spending in nominal dollars see **Table C-2**.)

Notes: FY2011 data were reported on a new claim form and may not be directly comparable to earlier years. For FY2005-FY2010 the category “other administrative” includes all costs reported by states as “other.” This reporting category was not available for FY2011. For that year the share of spending for “other administrative” costs as shown in this chart is tied to costs reported by the states in newly described categories, “in-placement administrative costs – provider management,” and “in-placement administrative costs – agency management.” The Deficit Reduction Act of 2005 (P.L. 109-171, enacted in February 2006) amended the Title IV-E program to define on whose behalf a state may claim Title IV-E support for “pre-placement activities” and to state a maximum length of time for which states could claim Title IV-E administrative costs on behalf of children living with unlicensed relatives. These statutory changes matched previously issued, but contested, guidance from HHS. They were expected to reduce the share of costs attributed to pre-placement activities and the amount of Title IV-E administrative spending claimed for children living with unlicensed relatives.

What Drives Program “Administrative” Costs?

Spending on foster care “administrative” purposes surpassed spending for Title IV-E foster care maintenance payments in FY2000. Despite the decline in caseload, and accompanying decline in spending for foster care maintenance payments, Title IV-E foster care administrative spending continued to climb for several more years. (See **Figure 2**.) In FY2006, Title IV-E foster care administrative costs comprised 55% of all Title IV-E foster care spending, compared to 35% for Title IV-E foster care maintenance payments. The share of Title IV-E foster care spending for administrative purposes has declined since that year (due in large part to increased Title IV-E

spending that occurred as part of child welfare demonstration projects (“waivers”). However, in FY2011 foster care administrative costs under Title IV-E continued to represent a significantly larger share of program costs (46%) than did foster care maintenance payments (29%).⁵⁵

The amount and, at least until recent years, the growth of Title IV-E foster care “administrative claims” has been of recurring concern for policymakers.⁵⁶ Since the late 1990s, the expansion of Title IV-E state plan requirements, coupled with increased attention to state compliance with those requirements, likely helped to expand or maintain spending on Title IV-E foster care administrative purposes even as the overall number of children in foster care declined. Both the new state plan requirements and the increased attention to compliance were in large measure meant to improve outcomes for children and families served by the state child welfare agencies. Some examples of requirements that states must meet include to ensure an initial permanency hearing at 12 months following a child’s entry to foster care (rather than previous 18 months); petition a court for the termination of parental rights in cases where children are not going to be reunited with their parents;⁵⁷ conduct background checks for prospective foster care and adoptive parents, including finger-print checks of FBI-maintained databases and checks of state child abuse registries;⁵⁸ make a plan for the educational stability of children in foster care;⁵⁹ help youth about to “age-out” of foster care develop a transition plan;⁶⁰ identify and provide notice to, relatives when a child enters foster care;⁶¹ and annually check any credit reports associated with older children in care and help those children address any irregularities in the reports.^{62, 63}

Outside those specific Title IV-E plan requirements noted here, the 2001 implementation of federal “conformity reviews,” including the Child and Family Services Review and the Title IV-E Eligibility Review has also added to Title IV-E administrative costs.⁶⁴ A central purpose of these reviews is to determine state compliance with the Title IV-E (and Title IV-B) state plan. To the extent the reviews caused states to pay closer attention to their child welfare system, they may have driven increased Title IV-E administrative costs for case planning and review, pre-placement, and provider management costs. In addition, the planning for and participation in the reviews is considered an agency management cost under the Title IV-E program.

⁵⁵ See **Table C-1 in Appendix C** for Title IV-E foster care administrative spending, FY1997-FY2011.

⁵⁶ Omnibus Budget Reconciliation Act of 1990 (P.L. 101-508); HHS, Office of the Inspector General (OIG), *Foster Care Administrative Costs*, OAI-05-87-00012, (1987); HHS, OIG, *Opportunities for Cost Containment by Modifying Federal Reimbursement to States for Administrative Costs of the Title IV-E Program* (A-07-90-00274 (1990)). U.S. Government Accountability Office, *Foster Care and Adoption Assistance: Federal Oversight Needed to Safeguard Funds and Ensure Consistent Support for States’ Administrative Costs*, GAO-06-649, (2006).

⁵⁷ Adoption and Safe Families Act of 1997 (ASFA, P.L. 105-89).

⁵⁸ *Ibid.*, as amended by the Adam Walsh Child Protection and Safety Act of 2006 (P.L. 109-246).

⁵⁹ Fostering Connections to Success and Increasing Adoptions Act of 2008 (P.L. 110-351).

⁶⁰ *Ibid.*

⁶¹ *Ibid.*

⁶² Child and Family Services Improvement and Innovation Act, (2011, P.L. 112-34).

⁶³ This list is meant to be illustrative only. For a more complete review of all Title IV-E plan requirements, regardless of their date of enactment, see CRS Report R42794, *Child Welfare: State Plan Requirements under the Title IV-E Foster Care, Adoption Assistance, and Kinship Guardianship Assistance Program*, by Emilie Stoltzfus.

⁶⁴ Congress mandated new reviews when it added Section 1123A of the SSA as part of the Omnibus Budget Reconciliation Act of 1993 (P.L. 103-66).

Providing Protections to Children Who Are Not Title IV-E Eligible

All children in foster care—whether Title IV-E eligible or not—must receive case planning and review services (primarily caseworker activities on a child’s behalf).⁶⁵ With limited exceptions (discussed above) states may not use Title IV-E funds to provide these protections to children who are not eligible for Title IV-E foster care maintenance assistance. However, states may supplement state and local spending for these purposes with certain other federal funds, including the Title IV-B, Subpart 1 program (Stephanie Tubbs Jones Child Welfare Services), SSBG and TANF funds. Some states have used Medicaid for certain case planning activities on behalf of children in foster care (particularly non-title IV-E eligible children). However, recent survey data show a decline in state child welfare agency spending of Medicaid funds.⁶⁶

Title IV-E Training

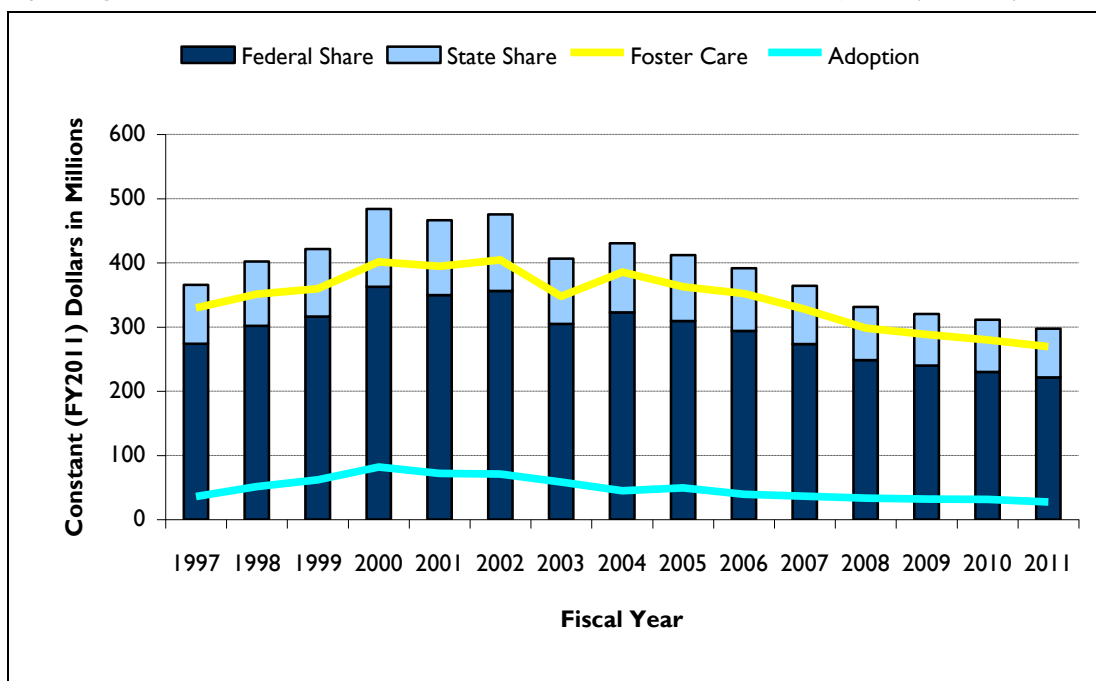
Title IV-E training support is available for all three program components: foster care, adoption assistance and kinship guardianship. Since FY2000, the total amount of Title IV-E program dollars spent for training purposes has declined in most years. The federal share of the total Title IV-E training costs is the same for all states and is generally 75%; (certain time-limited exceptions are discussed below). Most dollars spent for training under the Title IV-E program are related to its foster care component and are included in this report under the discussion of the Title IV-E foster care program. However, all kinds of Title IV-E training, whether related to foster care, adoption assistance, or kinship guardianship, are discussed in this section of the report. (See **Figure 4**).

⁶⁵ According to HHS, to be approved to receive Title IV-E funding a state must also operate a program under Title IV-B, Subpart 1 of the Social Security Act. Under that subpart (which is also known as the Stephanie Tubbs Jones Child Welfare Services Program), states are required to provide case planning and review services to *any* child in foster care whether or not that child is eligible for Title IV-E assistance.

⁶⁶ DeVooght, *Federal, State, and Local Spending to Address Child Abuse and Neglect*, June 2012.

Figure 4. Trend in Title IV-E Spending for Training, FY1997-FY2011

Spending shown includes both federal and state share of costs in inflation-adjusted (constant) dollars



Source: Figure prepared by the Congressional Research Service based on Title IV-E expenditure claims as submitted by states and compiled by HHS, ACF, OLAB.

Notes: Total spending shown includes a small amount of claims related to Title IV-E kinship guardianship assistance for FY2010 (\$48,000) and FY2011 (\$36,000). Those sums are not included in either of the trend lines that show spending for adoption- or foster care-related training.

Federal reimbursement related to training is largely limited to costs that are incurred by the state to train individuals who will provide care, or other services, to Title IV-E eligible children and for training on topics that directly relate to activities required under the Title IV-E plan.

States may seek partial federal reimbursement for the cost of providing short-term training, directly or via a contract, to individuals specified in the law (see text box). Topics that may be covered with these training funds must be related to carrying out the Title IV-E program and may range from administrative tasks (e.g., how to maintain confidential records) to social work practice (e.g., how to assess needs in a family-centered manner). While Title IV-E-supported training may also address broad topics relevant to carrying out the Title IV-E program—for example, caregiver mental health or substance abuse issues—it may not support training related to *treating* those needs (i.e.,

Short-Term Title IV-E Training May Be Provided to These Individuals

- Current or prospective foster parents, adoptive parents, and relative guardians.
- Staff who provide care to Title IV-E eligible children in a licensed or approved residential facility.
- Staff of the state or local public agency administering the Title IV-E program.
- Staff of a private child welfare agency, if the agency is licensed by the state and serves children who receive Title IV-E assistance.
- Personnel of child abuse and neglect courts; agency attorneys of a child or parent; guardian ad litem, and court appointed special advocates.

Source: Section 474(a)(3)(B) of the SSA.

providing mental health services or substance abuse treatment). Similarly, while Title IV-E funds may be used to provide training about the impact of child abuse and neglect on children, it may not be used to provide training to workers on how to specifically conduct a child abuse and neglect investigation. This is because neither treating a caregiver for substance abuse or mental health issues, nor investigating child abuse and neglect are considered within the scope of the Title IV-E program.⁶⁷

The state agency may also use Title IV-E to support “long-term” training for individuals who are employed by a public child welfare agency or those who are preparing for that employment. Long-term training may be provided as direct financial assistance to current or prospective employees who are students or through grants to schools.⁶⁸

Expanded Ability to Seek Title IV-E Training Support Phased In

As of the first day of FY2013, the federal reimbursement rate for all Title IV-E training claims is again 75%. That day marked the end of a four-year phase-in period that provided lower reimbursement rates for some Title IV-E training claims. Specifically, as permitted by the Fostering Connections to Success and Increasing Adoptions Act of 2008 (P.L. 110-351), states may make Title IV-E training claims for short-term training provided to workers at *private*, licensed child welfare agencies providing assistance to Title IV-E eligible children; prospective relative guardians; and for certain individuals handling child abuse and neglect cases in court (see text box above). The 2008 act set the reimbursement rates for these newly authorized Title IV-E training claims at 55% in FY2009, rising five percentage points annually until it reached 75% as of the first day of FY2013.⁶⁹

Most Title IV-E claims for federal reimbursement of training costs continue to be submitted under provisions in place before the changes made by P.L. 110-351. For FY2011, 19 states submitted less than \$13 million in Title IV-E training claims under the broadened authority while all states submitted a combined \$284 million in training claims under the pre-existing authority.

State Discretion in Spending Title IV-E Training Dollars

The overall decline in Title IV-E spending for training over the last decade might be traced to a decline in the share of children who are eligible for Title IV-E assistance. This is because, generally, federal Title IV-E support for training is only available to the extent the training is provided to individuals caring for or otherwise serving children eligible for Title IV-E assistance. In addition, the phase in of broadened authority to seek federal Title IV-E training support was not complete as of FY2011 (last year for which spending data are available). At the same time, the relatively limited spending by states on training—and, through FY2011, the limited use of the new broadened authority to provide training with Title IV-E support—may reflect the greater level of discretion states have over training dollars as compared to other aspects of Title IV-E.

⁶⁷ HHS, ACF,ACYF, Children’s Bureau, *Child Welfare Policy Manual*, Section 8.1H Q&A 8 and Q&A 11.

⁶⁸ Section 474(a)(3)(A) of the SSA.

⁶⁹ Before the enactment of this change states could claim federal support for training of these same private agency workers but only at the regular Title IV-E administrative reimbursement rate of 50%.

The Title IV-E plan does specifically require states to prepare prospective foster parents “adequately with the appropriate knowledge and skills to provide for the needs of the child” and to continue this after the child’s placement as necessary—but it is otherwise mostly silent regarding training.⁷⁰ Further, unlike the need to ensure there are caseworkers to, for example, visit children in foster care or prepare for and participate in required court proceedings for them, the need to train staff may appear less immediate. These facts combined with the generally weak fiscal position of most states since the enactment of P.L. 110-351—may help to explain why there has been no increase in overall Title IV-E training claims since the enactment of the broadened authority to submit Title IV-E training claims.⁷¹

Statewide Automated Child Welfare Information System (SACWIS)

States may claim federal reimbursement under the Title IV-E program for 50% of the cost to plan, develop, and operate a Statewide Automated Child Welfare Information System (SACWIS). Most SACWIS costs are believed to follow from operation of a foster care program. However, as is the case with Title IV-E training costs, costs related to SACWIS may stem from provision of foster care, adoption assistance, or kinship guardianship assistance. The following discussion includes all SACWIS-related spending reported by states, whether categorized as an operation or a development cost.⁷²

States are not required to have a SACWIS, but choosing to do this enables a state to seek federal reimbursement under Title IV-E for costs that would otherwise not be allowed.⁷³ As of September 2012, 36 states have an operational SACWIS, three are developing a SACWIS, and 13 states have a non-SACWIS model information system. (See **Table 4.**)

⁷⁰ Section 471(a)(24) of the SSA. Under the Chafee Foster Care Independence Program (Section 477(b)(3)(D) of the SSA), states must certify that they will provide training **with Title IV-E dollars** to “help foster parents, adoptive parents, workers in group homes, and case managers understand and address the issues confronting adolescents preparing for independent living” (emphasis added). Separately, Section 422(b)(4)(B) of the SSA requires states to describe their child welfare training activities as part of their Title IV-B, Subpart 1 program plan. HHS requires states to include training offered under both *Title IV-E* and Title IV-B in this description. See. HHS, ACF, ACYF-CB- PI-12-05, Issued April 11, 2012, pp. 8-10.

⁷¹ At the time of the enactment of P.L. 110-351, the Congressional Budget Office (CBO) assumed increased Title IV-E training costs to the federal treasury of \$138 million across the first five years of the broadened authority (FY2009-FY2013) and a total of \$412 million across the first ten years of implementation (FY2009-FY2018). See CBO Cost Estimate, “H.R. 6893, Fostering Connections to Success and Increasing Adoptions Act of 2008,” (as signed by the President on October 8, 2008) December 23, 2008, p. 3.

⁷² Specific SACWIS claiming categories are included in the section of the Title IV-E expenditure claim form that is related to Title IV-E foster care costs and these are the costs discussed here.

⁷³ Under Title IV-B, Subpart 1 of the SSA, every state child welfare agency must have a statewide information system that is capable of providing certain demographic and other case characteristics for each child in foster care, or who was in foster care in the preceding 12 months (Section 422(B)(8)(B)(i) of the SSA). However, states may satisfy this requirement using a SACWIS or non-SACWIS model.

Table 4. Status of Development of Statewide Automated Child Welfare Information Systems (SACWIS)

Status of SACWIS	States
System operating (36 states)	Alabama, Alaska, Arizona, Arkansas, Colorado, Connecticut, Delaware, District of Columbia, Florida, Georgia, Idaho, Iowa, Kentucky, Maine, Maryland, Massachusetts, Minnesota, Missouri, Montana, Nevada, New Hampshire, New Jersey, New Mexico, Oklahoma, Ohio, Oregon, Rhode Island, South Carolina, South Dakota, Tennessee, Texas, Utah, Washington, West Virginia, Wisconsin, Wyoming
System in development (3 states)	California, Louisiana, Michigan,
Non-SACWIS model (13 states)	Hawaii, Illinois, Indiana, Kansas, Mississippi, Nebraska, New York, North Carolina, North Dakota, Pennsylvania, Puerto Rico, Vermont, Virginia,

Source: Based on SACWIS status info available online as of September 2012. See that site for updates <http://www.acf.hhs.gov/programs/cb/systems/sacwis/statestatus.htm>.

In establishing the ability of states to make SACWIS claims, Congress stipulated that any system developed must comply with HHS regulations, interface with state child abuse and neglect data collection and AFDC (now TANF) data collection systems (to the extent practicable); and provide more efficient, economical, and effective administration of state child welfare programs, as determined by HHS.⁷⁴ Under the SACWIS rule, states are required to develop “comprehensive” child welfare data collection systems that include child welfare services, foster care and adoption assistance, family preservation and support services, and independent living.⁷⁵

Further, to encourage states to establish a SACWIS, Congress initially approved an enhanced Title IV-E reimbursement rate of 75% for SACWIS *development* costs (and a 50% reimbursement rate for operation). The enhanced development rate was in place from FY1994-FY1997. Beginning with FY1998, however, federal reimbursement of costs for both the development and operation of SACWIS is available at 50%.

States operating or developing an approved SACWIS may claim federal Title IV-E reimbursement for an approved system (both development and operation costs) without regard to whether the system serves foster or adoptive children who meet or do not meet the Title IV-E assistance criteria. A SACWIS must be designed to allow access to case level information across federal programs; accordingly states may also claim certain system development costs across more than one program. However, most SACWIS costs that are not related to operation of a child welfare program under Title IV-E or Title IV-B must be allocated to the program they benefit.⁷⁶

⁷⁴ Omnibus Budget Reconciliation Act of 1993 (P.L. 103-66).

⁷⁵ 45 C.F.R. 1355.53.

⁷⁶ 45 C.F.R. 1355.57. States with a non-SACWIS model may also claim reimbursement related to developing and operating that data collection system at the regular Title IV-E administrative reimbursement rate of 50%. However, they must ensure that the reimbursement claimed is only with regard to the part of their foster care caseload that is Title IV-E eligible. Further, states with a non-SACWIS model system are not able to claim system development costs across as many different programs as may states with a SACWIS model.

Since the establishment of this funding under Title IV-E, states have invested \$4.7 billion in SACWIS operation and development costs and the federal government has reimbursed more than half (55% or \$2.6 billion) of those costs. **Table 5** shows Title IV-E SACWIS claims made by states for FY1994–FY2011.

Table 5. SACWIS Spending Under the Title IV-E Program, FY1994-FY2011

Dollars in millions; SACWIS = Statewide Automated Child Welfare Information System

Fiscal Year	Title IV-E SACWIS Claims			
	TOTAL <i>(all eligible spending by the states)</i>	FEDERAL SHARE <i>(amount of total to be reimbursed)</i>	TOTAL <i>(all eligible spending by the states)</i>	FEDERAL SHARE <i>(amount of total to be reimbursed)</i>
	Constant (FY2011) Dollars		Nominal Dollars	
1994	\$2.4	\$1.7	\$1.6	\$1.1
1995	\$231.1	\$166.0	\$156.8	\$112.7
1996	\$500.3	\$375.0	\$348.9	\$261.5
1997	\$658.2	\$485.2	\$471.3	\$347.4
1998	\$300.6	\$155.1	\$218.7	\$112.9
1999	\$260.9	\$130.5	\$193.5	\$96.8
2000	\$310.9	\$151.8	\$237.9	\$116.1
2001	\$307.9	\$154.0	\$243.2	\$121.6
2002	\$429.1	\$214.6	\$344.0	\$172.0
2003	\$305.6	\$152.8	\$250.8	\$125.4
2004	\$316.1	\$158.0	\$265.4	\$132.7
2005	\$428.4	\$214.1	\$371.5	\$185.7
2006	\$336.6	\$168.3	\$302.7	\$151.3
2007	\$327.4	\$163.7	\$301.3	\$150.6
2008	\$257.7	\$128.8	\$247.6	\$123.8
2009	\$287.4	\$143.7	\$275.3	\$137.7
2010	\$268.0	\$134.0	\$261.1	\$130.6
2011	\$225.5	\$112.8	\$225.5	\$112.8
TOTAL	-	-	\$4,717.2	\$2,592.7

Source: Table prepared by the Congressional Research Service based on Title IV-E expenditure claims as submitted by states and compiled annually by HHS, ACF, Office of Legislative Affairs Budget (OLAB).

Note: FY2011 data were reported on a new claim form and may not be directly comparable to earlier years.

Title IV-E Adoption Assistance

As part of the Adoption Assistance and Child Welfare Act of 1980 (P.L. 96-272), Congress established federal support for assistance to any child that the state determines

- cannot, or should not, be returned home;
- there is a specific factor or condition that makes it reasonable to conclude that the child cannot be placed for adoption without assistance (e.g., child is older or part of a sibling group to be adopted together); and,
- efforts have been made to place the child without assistance, unless this would be against the child's best interest (e.g., if the child has bonded with a foster parent who is clearly the best person to adopt the child but cannot do so without assistance).

In the Title IV-E program, children who meet these criteria are referred to as children with "special needs," and the very large majority of these children were previously in foster care. In its report on the legislation that became the 1980 Adoption Assistance and Child Welfare Act, the House Ways and Means Committee wrote that the "primary objective" of the bill was to "promote reforms in State foster care and child welfare services programs that will significantly increase the number of children placed in permanent homes. Those reforms would not be complete without the provision of adoption assistance."⁷⁷

All states were required to establish a Title IV-E Adoption Assistance component as part of their Title IV-E program (no later than the first day of FY1983). By FY1984 there were 11,600 children receiving Title IV-E adoption assistance on an average monthly basis. That number rose steadily, reaching 146,900 for FY1997. In November 1997 Congress enacted the Adoption and Safe Families Act (ASFA, P.L. 105-89). Among other purposes, that law sought to increase the number of children who left foster care

Children Adopted from Foster Care, FY2011

Number of children discharged from foster care to adoption during FY2011: 50,032

Age at discharge to adoption: Under 1 year: 2%; ages 1-5 years: 54%; ages 6-10 years: 26%; ages 11-15 years: 14%; ages 16 -20 years: 3%. (**Average age:** 6.4 years; **Median age:** 5.2 years)

Race/ethnicity: White: 45%; Black: 23%; Hispanic (of any race): 21%; Two or more races: 7%; American Indian/Alaska Native: 1.5%; Asian: 0.4%; Native Hawaiian/Other Pacific Islander: 0.2%; Unknown/unable to determine: 1%.

How long had they been in care? Average time from latest removal to adoption: 34.0 months; Median time from latest removal to adoption: 29.2 months.

Share of all adoptees determined by states to have special need(s): 84%.

What was the primary factor or condition on which special needs determination was made? The child's membership in a sibling group: 28%; medical condition or physical, mental or social disability: 26%; age: 17%; racial or ethnic background: 11%; or "other" factor or condition: 18%.

All adoptions with public child welfare agency involvement in FY2011 by child's receipt of subsidy: Child receives Title IV-E adoption assistance – 66%; Child receives non-Title IV-E adoption subsidy – 24%; Child does not receive an adoption subsidy: 10%.

Source: State reported AFCARS data for FY2011 as provided to CRS by HHS, ACF, ACYF, August 2012. Information based on the AFCARS foster care file or adoption file. These files contain data for overlapping but slightly different adoption populations. Adoptions in FY2011 foster care file are believed to represent roughly 99% of those included in the FY2011 adoption file.

⁷⁷ U.S. House of Representatives, 96th Cong., 1st sess, Committee on Ways and Means, "Social Services and Child Welfare Amendments of 1979, report to accompany H.R. 3434, p. 56.

for permanent adoptive homes. It sped up the permanency planning time frame for children who entered foster care, and also required states to take steps to ensure the legal availability of a child for adoption if the child had been in care for a certain length of time or if there was no requirement to make “reasonable efforts” to reunite the child with his or her parent. ASFA also authorized Adoption Incentives to provide cash awards to states that increased adoptions of children out of foster care.⁷⁸ The law’s enactment was followed by strong growth in the number of children adopted with public child welfare agency involvement. That number stood at roughly 31,000 in FY1997, grew to more than 51,000 by FY2000 and—despite a significant *decrease* in the number of children in foster care across this time period (i.e., a decline in the pool of children out of which most special needs adoptions occur)—has remained at or above 50,000 adoptions in all but one fiscal year, through FY2011. Adoptions out of foster care also began to occur more quickly in this time period. The average length of time a child who was adopted from foster care had spent in care declined by roughly one year, from 46 months for those adopted in FY2000 to 34 months for those adopted in FY2011.

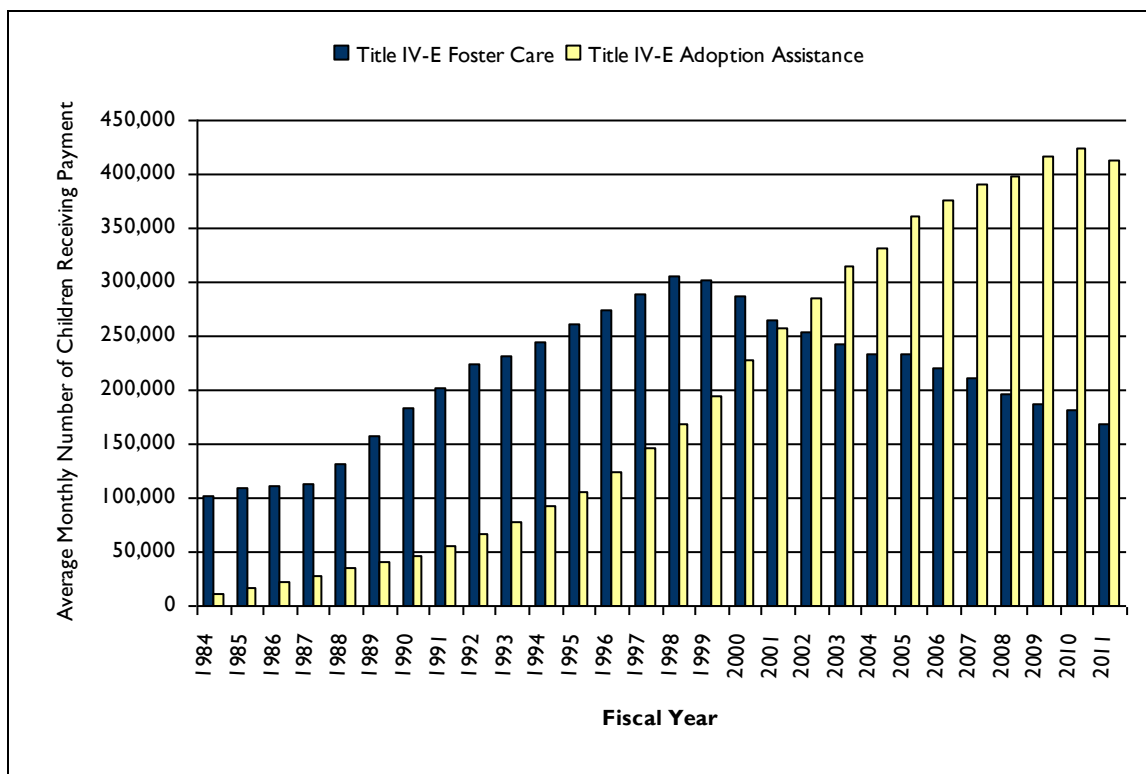
The increased number of children adopted from foster care helped to drive significant growth in the number of children who receive Title IV-E adoption assistance. As of FY1997, there were about 146,400 children receiving Title IV-E adoption assistance on an average monthly basis. That number rose to 285,600 during FY2002—the first year in which the number of children receiving Title IV-E adoption assistance surpassed the number who were receiving Title IV-E foster care maintenance payments—and it climbed to 423,200 by FY2010. States reported the first ever decline in the Title IV-E adoption assistance caseload for FY2011, when an estimated 413,800 received that assistance on a monthly basis.⁷⁹

Some of the reported caseload decline for FY2011 might be due to children who joined the caseload following ASFA and are now leaving it because of age. (In most cases, adoption assistance does not extend beyond age 18, although there are situations in which it may continue until age 21.) Separately, the decline may be related to those federal adoption assistance eligibility criteria that are linked to the income test and other requirements of the prior law cash welfare program known as Aid to Families with Dependent Children (AFDC). While Congress has acted to phase out those federal eligibility criteria for purposes of Title IV-E adoption assistance, the AFDC criteria are expected to continue to apply to the majority of adopted children until at least FY2015 and will not be entirely irrelevant to Title IV-E adoption assistance eligibility until the first day of FY2018. Apart from these potential reasons for the change in the caseload, some of the reported “decline” might also be related to data quality concerns. Specifically, there were significant changes in the reporting form used to collect data on the number of children receiving Title IV-E adoption assistance, and that form first went into effect with FY2011. **Figure 5** shows the change in Title IV-E foster care and adoption assistance caseloads beginning with FY1984.

⁷⁸ For more information see CRS Report RL30759, *Child Welfare: Implementation of the Adoption and Safe Families Act (P.L. 105-89)*, by Karen Spar.

⁷⁹ The Title IV-E adoption assistance caseload numbers given here for FY2010 and FY2011, are slightly different than those reported by HHS, ACF, OLAB in its annualized Title IV-E expenditure claim file. CRS made limited adjustments to those data to reflect corrections or other changes provided to CRS by a small number of states.

Figure 5. Trend in Title IV-E Foster Care and Adoption Assistance Caseloads, FY1984-FY2011



Source: Figure prepared by the Congressional Research Service based on caseload data reported on Title IV-E expenditure claim forms as submitted by states and compiled by HHS, ACF, OLAB.

Notes: FY2011 data were reported on a new claim form and may not be directly comparable. CRS made limited adjustments to the FY2010 and FY2011 adoption assistance caseload data reported on the expenditure form to reflect corrections or other changes provided to CRS by a small number of states.

Federal Adoption Assistance Funding and Eligibility

Federal adoption assistance under Title IV-E is authorized to provide states with partial reimbursement for the cost of providing adoption assistance payments on behalf of eligible adopted children who have special needs. To receive reimbursement for adoption assistance expenses, states must meet all of the same requirements necessary to receive Title IV-E foster care funding, including having an approved Title IV-E plan and meeting data collection and reporting requirements. Further, states are required to enter into a written adoption assistance agreement with the adoptive parent(s) of any adopted child determined to have special needs. Under that agreement, the state must make payments for non-recurring adoption expenses to the adoptive parents of the special needs child and, if the child meets additional federal eligibility criteria, it may make ongoing monthly adoption subsidies to those parents on the child’s behalf.

Until FY2010, these additional federal eligibility criteria always included income and other resource limits that are linked to the prior federal cash aid program (AFDC, as it existed on July 16, 1996) or, alternatively, to the Supplemental Security Income (SSI) program. The Fostering Connections to Success and Increasing Adoptions Act (P.L. 110-351) phases in (from FY2010 to

FY2018) new federal adoption assistance eligibility rules that delink the program from income or resource tests, whether as part of the prior law AFDC program or the current SSI program.

Federal reimbursement for Title IV-E adoption assistance costs made on behalf of eligible children are available for most of the same categories of costs, and at the same reimbursement rates, as is the case for foster care. Specifically, adoption assistance payments for eligible children are reimbursed at the state's FMAP, which ranges from 50% to 83%. Program administration costs are reimbursed at 50% and include reimbursement for non-recurring adoption expenses that are related to the legal costs of finalizing an adoption as well as other program administration costs. Finally, as discussed above, program-related training costs (related to the adoption assistance component of the Title IV-E program) are reimbursed at 75% in most cases. As is true with the foster care component of the Title IV-E program, states with an approved Title IV-E plan may submit adoption assistance claims to HHS, on a quarterly basis, showing all eligible costs incurred and they are entitled to reimbursement for the federal share of those costs. States may submit these claims any time within two years of incurring an eligible expense.

Title IV-E Adoption Assistance Spending Overview

States submitted claims totaling \$4.009 billion in Title IV-E adoption assistance expenses during FY2011, of which they received federal reimbursement of \$2.315 billion or 57.8%. States can expect a higher overall reimbursement for their Title IV-E adoption assistance spending (as compared to foster care spending) because the very large part of the program cost (80% in FY2011) is tied to ongoing assistance payments and, for most states, that spending is reimbursed at a higher rate than most other Title IV-E adoption assistance claims. Title IV-E adoption assistance administrative spending (reimbursed at 50% in all states) has represented between 16% and 18% of total Title IV-E adoption assistance spending annually over the past decade. Less administrative spending is expected under the Title IV-E adoption assistance program (as compared to the Title IV-E foster care program) because there are far more limited purposes for which federal reimbursement of those costs may be claimed. This is because most of the policies and other procedures required under the Title IV-E plan—and for which federal Title IV-E support is available—apply only to children in foster care. (For example, none of the protections offered to children via the case review system are applicable to children once they have left foster care for an adoptive home.)

The federal share of Title IV-E adoption assistance funding is typically between 54.0% and 54.5% of the total (state and federal) spending for the program. However, it reached 60% of Title IV-E adoption assistance spending in both FY2009 and FY2010 and was close to 58% for FY2011. The larger federal share of Title IV-E adoption assistance funding in those years is tied to temporary enhanced federal support provided to states via the American Recovery and Reinvestment Act (ARRA, P.L. 111-5, as amended by P.L. 111-226). As discussed above, that enhanced funding ended as of June 30, 2011. As of August 30, 2012, states had obligated more than \$502 million in federal Title IV-E adoption assistance spending under this temporary provision, most of this in FY2009 (\$195 million) and FY2010 (\$209 million).⁸⁰

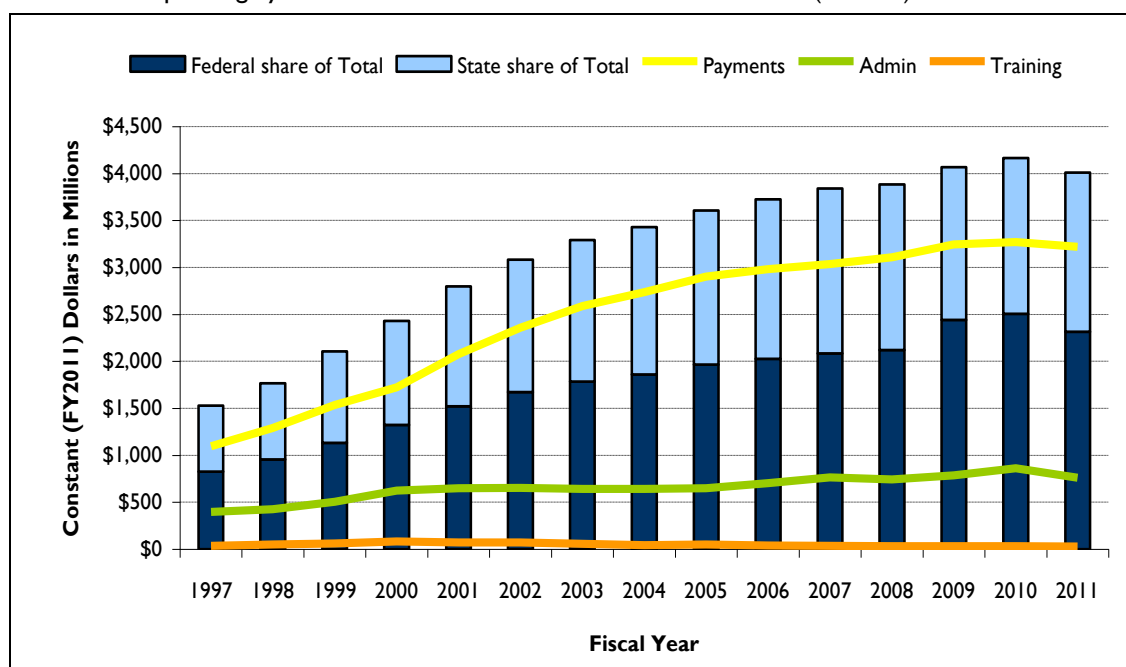
Combined state and federal spending under the Title IV-E adoption assistance component rose rapidly between FY1997 and FY2002, continued to rise at a slower pace through FY2010, and

⁸⁰ Based on federal funding obligations to states (as of August 30, 2012) that were made under ARRA (P.L. 111-5, as amended by P.L. 111-226). Final outlays may vary some from this figure. Data as provided by HHS, ACF, OLAB.

showed its first ever decline in FY2011. As noted above, FY2011 was also the first year in which states reported some decline in the adoption assistance caseload. It is not possible to know yet whether the lower spending represents the start of a trend or if it is anomalous (perhaps reflecting a data quality issue due to states' use of a new reporting form). However, as part of its mid-session review of the FY2013 budget (conducted in the summer 2012), HHS assumed continued annual growth in the Title IV-E adoption assistance caseload of between 3% to 5% through FY2017 and it estimates federal outlays for Title IV-E adoption assistance of \$2.527 billion for FY2013 with annual growth in those outlays of between 4% and 7% through FY2017.⁸¹

Figure 6. Trend in Title IV-E Adoption Assistance Spending, FY1997-FY2011

Spending by kind includes state and federal share in constant (FY2011) dollars.



Source: Figure prepared by the Congressional Research Service based on Title IV-E expenditure claims for adoption assistance as submitted by states and compiled annually by HHS, ACF, OLAB.

Notes: The federal and state total spending bars include a small amount of claims related to Title IV-E demonstrations in each of FY2000-FY2011 which was not included in any of the spending trend lines (payments, administration or training).

Federal Adoption Assistance Eligibility Criteria

No child may be eligible for Title IV-E adoption assistance without being determined as a child with “special needs.” However, not all special needs children qualify for Title IV-E adoption assistance. Instead, a child must also meet the eligibility criteria of at least one of four separate federal eligibility pathways. Additionally, to receive a Title IV-E adoption assistance payment, the child must meet age criteria, be a U.S. citizen or hold a certain immigration status, and meet several other criteria.

⁸¹ Information received by CRS from HHS, ACF, OLAB, September 2012.

Over an eight-year period that began with the first day of FY2010 and will be completed as of the first day of FY2018, the Fostering Connections to Success and Increasing Adoptions Act of 2008 (P.L. 110-351) removes all income or resource-related tests that are embedded in three of the four current federal eligibility pathways. During that phase-in time period, the revised eligibility pathway may be used to determine eligibility for anyone that the statute defines as an “applicable child.” An applicable child must be a certain age, have spent a certain amount of time in foster care, or be the sibling of a child who meets the age or length of stay in care criteria. (See text box.)

Eligibility Pathways

The most common Title IV-E adoption assistance pathway requires the special needs child to have been removed from his or her home via a voluntary placement agreement (signed by the child’s parent or legal guardian and the agency), or in accordance with a judicial determination that the child’s home was “contrary to the welfare” of the child. Further, *unless the child is an applicable child*, to qualify under this pathway, the state must determine that the child, while living in the home from which he or she was removed, would have been considered a “needy” child under the income and other eligibility criteria of the AFDC program, as it existed in the state on July 16, 1996.

Under a second pathway, any special needs child who meets the medical, disability, income, resource, and other requirements of the Supplemental Security Income (SSI) program may be eligible for Title IV-E adoption assistance payments. However, if the special needs child is an *applicable child*, he/she need only meet the medical and disability criteria. No additional income, resource or other SSI program criteria are relevant.

Third, a special needs child may be eligible for Title IV-E adoption assistance if he/she is living with his/her minor parent and a Title IV-E foster care maintenance payment—that includes funds to cover the cost of the child—is being made on behalf of the minor parent. However, if the child is an *applicable child* with special needs, he/she may be eligible under this pathway, without regard to whether the foster care maintenance payment being paid to the minor parent is a Title IV-E payment or a *non-Title IV-E* payment.

Finally, any special needs child that was receiving Title IV-E adoption assistance payments in an adoption that subsequently dissolves (meaning the parental rights of those adoptive parents are terminated), or if the adoptive parents die, is eligible for Title IV-E adoption assistance payments in any subsequent adoption. This pathway is also available to a special needs child who would have been eligible for Title IV-E adoption assistance in the earlier (and now dissolved or ended) adoption, if an eligibility determination had been made at the time of that adoption. This pathway is also available for an applicable child under effectively the same rules.

Who is an “Applicable Child”?

AGE: A child for whom the state finalized a Title IV-E adoption assistance agreement with the child’s prospective adoptive parents on or after the child’s

16th birthday (as of FY2010);

14th birthday (as of FY2011);

12th birthday (as of FY2012);

10th birthday (as of FY2013);

8th birthday (as of FY2014);

6th birthday (as of FY2015);

4th birthday (as of FY2016);

2nd birthday (as of FY2017); or

birth (as of FY2018); OR

LENGTH of TIME IN CARE: A child of any age who has been in foster care for 60 continuous months; OR

SIBLING: A sibling of a child who meets the age or length of stay requirements, and who is to be placed in an adoptive family with that sibling.

Source: Section 473(e) of the Social Security Act

As part of expanding federal Title IV-E adoption assistance coverage to include (as of the first day of FY2018) nearly all children adopted from foster care and determined to have special needs, Congress required states to re-invest any state savings resulting from this broadened federal support in other child welfare-related child and family services, including post adoption services. To implement this provision, HHS required states to provide a signed assurance that they would meet this requirement. The Child and Family Services Improvement and Innovation Act (2011, P.L. 112-34) further required states to document how these re-invested funds are spent, including for post adoption services. Accordingly, HHS has required states to amend, and re-submit an assurance that they will reinvest any state savings as required by P.L. 110-351, to further assure that they will document this spending as required. The revised assurance was to be submitted to HHS by January 31, 2012.⁸²

The eligibility changes made in the Fostering Connections to Success and Increasing Adoptions Act of 2008 are expected to expand eligibility for Title IV-E adoption assistance to nearly all children determined by a state to have special needs. However, a presumably small number of adoptive children may not be eligible because of additional federal eligibility criteria which remain in effect and apply to all children (both “applicable” and non-applicable.). Specifically, those requirements include completion of an adoption assistance agreement between the Title IV-E agency and the prospective adoptive parents *before* the child’s adoption was finalized; a background check of the child’s prospective adoptive parent(s), which must not reveal convictions for certain felonies (i.e., the individual must never have been convicted of committing any of the felonies that would preclude an individual from becoming a foster parent of a child receiving Title IV-E assistance, as discussed above); and age and citizenship/immigration status requirements for the child.

Table 6 shows criteria that a child must meet to be eligible for ongoing Title IV-E adoption assistance payments. No child may be eligible for this assistance without a determination by the state that he or she meets the “special needs” criteria. Further, the child must meet the criteria included in at least one of the four listed eligibility pathways. Those criteria vary based on whether a child is an “applicable child” or not an “applicable child.” Finally, the child must meet other specified requirements including age, citizenship/immigration status rules, placement with a prospective adoptive parent that meets federal background check requirements, and other requirements.

⁸² See HHS, ACF, ACYF, Children’s Bureau, PI-11-09, issued December 9, 2011. Available at <http://www.acf.hhs.gov/sites/default/files/cb/pi1109.pdf>.

Table 6. Eligibility Criteria for Ongoing Adoption Assistance Payments Under Title IV-E

Special Needs Determination	Eligibility Pathways		Age Criteria	Other Requirements
<p>State determines all of the following:</p> <p>(1) Child cannot or should not be returned home;</p> <p>(2) Reasonable efforts to place the child without provision of adoption or medical assistance have been made but have been unsuccessful OR such determination is not required because making those efforts would be contrary to the child's best interest;</p> <p>(3) Child has a condition or factor (such as the child's age, membership in a sibling group, race/ethnicity, medical, physical or emotional disability) that makes it reasonable to conclude that the child will not be placed without assistance*</p> <p>* For an applicable child, determination that a child meets medical or physical disability criteria of the Supplemental Security Income (SSI) program automatically ensures that the child meets this aspect of special needs determination.</p>	Not an Applicable Child	Applicable Child	<p>The child must be under age 18, OR</p> <p>If state elected to serve youth of this age under the prior law AFDC program, under age 19 and a fulltime high school student (or in an equivalent level training program); OR</p> <p>If the state determines that the child has a mental or physical disability that warrants continued assistance, the child must be under the age of 21, or if state has elected to provide for this definition under its Title IV-E plan, the child must be under the age of 19, 20, or 21 (as the state may choose) AND meet the following additional criteria:</p> <ul style="list-style-type: none"> ◦ child's adoption assistance agreement remains in effect and was finalized after the child's 16th birthday; AND ◦ the child is completing high school; ◦ enrolled in college; ◦ participating in an activity designed to reduce barriers to employment; ◦ employed at least 80 hours a month; OR ◦ incapable of any of these because of a medical condition. 	<p>Child's prospective adoptive parents underwent a background check that shows they have not been convicted of specified felonies.</p> <p>A Title IV-E adoption assistance agreement was executed between the Title IV-E agency and the prospective adoptive parents before the child's adoption was finalized.</p> <p>Child's adoptive parents continue to be legally responsible for the child and to provide support for the child.</p> <p>Pursuant to the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (P.L. 104-193), the child must be a U.S. citizen or a "qualified alien."</p> <p>An applicable child who is not a U.S. citizen or resident and who was adopted outside of the United States, or brought to it for the purpose of adoption, may not be eligible UNLESS following that initial adoption the child enters foster care because the initial adoption fails.</p>
	<p>(1) Child was removed from home of a parent or other relative via a voluntary placement agreement or following a judicial finding that the home was contrary to the welfare of the child; at that time the child met the income and other eligibility criteria for the prior law cash welfare program, AFDC; OR</p>	<p>(1) When proceedings for the adoption began, child was in the care of a public or licensed, private child placement agency or tribe via a voluntary placement agreement or relinquishment due to a judicial finding that the home from which the child was removed was contrary to the child's welfare; OR</p>		
	<p>(2) Child is eligible for SSI benefit, including meeting the income test and all medical or disability criteria; OR</p>	<p>(2) Child meets all medical or disability criteria for SSI benefit; OR</p>		
	<p>(3) Child is living with his/her minor parent who is in foster care and the Title IV-E foster care maintenance payment being made on the minor parent's behalf includes support for the child; OR</p>	<p>(3) Child is living with his/her minor parent who is in foster care and the foster care maintenance payment being made on the minor parent's behalf includes support for the child; OR</p>		
	<p>(4) Child is available for adoption because his/her previous adoption was dissolved (i.e., parental rights terminated) or the parents died AND the child was eligible for Title IV-E adoption assistance in the previous adoption (or would have been if a determination had been made at the time).</p>	<p>(4) Effectively, same as for non-applicable child.</p>		

Source: Table prepared by the Congressional Research Service based on Section 473 of the Social Security Act.

Conditions or Factors Used by States in Determining Special Needs

Only children who are determined by a state to have “special needs” may be eligible for Title IV-E adoption assistance. As outlined above, this determination must include a finding by the state that the child cannot be returned to his/her parents and that there is a factor or condition specific to the child that makes it “reasonable to conclude” that the child will not be adopted without provision of adoption assistance or medical assistance. Finally, unless it is not in the child’s best interest, the state must determine that reasonable, but unsuccessful, efforts to place the child have been made without providing such assistance.⁸³

States establish what specific conditions or factors make it unlikely that a child will be adopted without some form of assistance. They may define those conditions or factors as they choose and are also free to change how they are defined. However, once a child has been defined as having special needs, and an adoption assistance agreement has been put in place, they must continue to honor that agreement. Special needs conditions or factors, as they are used by the states, are summarized below.⁸⁴ Typically, a child must meet at least one of the conditions or factors; however, as described below, some of those factors combine two or more criteria (e.g., age + race).

Membership in a Sibling Group

Every state considers membership in a sibling group to be a special need factor, but size and characteristics of the sibling group may affect whether or not this membership is considered a special need. Approximately 40 states permit special needs to be established if a sibling group of any size (i.e., two or more) is being placed together for adoption at the same time. However some of those states (circa 10) require additional findings if a sibling group includes only two children. For example, they may require that at least one of the siblings be of a certain age, or have another identified special need condition or factor. The remaining 11 states allow establishment of special needs if a sibling group of three or more is being placed together in an adoptive home, although a few require that at least one of those siblings meet additional specific criteria.

Among all states, some explicitly require that the siblings be placed in the same adoptive home *at the same time*, while others explicitly permit establishment of special needs for siblings placed in the same home but at different times. However, this latter group of states may require that one or more of the siblings placed in the same adoptive family but at different times meet some additional special needs factor or condition (e.g., earlier placed sibling was already receiving adoption assistance or one or more of the siblings has reached a certain age).

Age

Nearly every state uses age alone as a special needs condition but the minimum age chosen to establish “special need” ranges widely, from one year to 12 years. The majority of states (at least

⁸³ Section 473(c) of the SSA.

⁸⁴ Based on a Congressional Research Service review of those criteria as posted on Child Welfare Information Gateway (September 2012) http://www.childwelfare.gov/adoption/adopt_assistance/questions.cfm?quest_id=1. For some states, additional or clarifying information was sought in state law or regulation and from information on the website of North American Council of Adoptable Children (NACAC) <http://www.nacac.org/adoption/subsidy/stateprofiles.html>.

30) established a minimum age of five, six, seven, or eight years. Further, a small number of states do not specify but permit establishment of special needs at any age if the child's age is determined a barrier to adoptive placement.

Approximately 14 states provide a separate minimum age to establish special need, provided a child also meets certain minority group criteria (e.g., is African- American, of "blended parentage," or is a member of a minority group over-represented in state foster care). Most of these states established the minimum special needs age as two to three years of age for the identified racial or other minority group. (These states often establish a separate, older age at which a "white" or "Caucasian" child may be considered to have special needs.)

Race/Ethnicity

Almost half of all states considered a child's membership in a minority group or race (independent of the child's age or other criteria) to be a factor that established a child's special needs status.

Medical Conditions; Physical, Emotional, or Mental Disabilities

Every state takes into account some combination of medical conditions, as well as physical, emotional or behavioral factors. These are defined differently by states but typically require documentation by a qualified professional. Further, some states stipulate that the conditions must be identified as "severe" or, alternatively "severe or moderate" and/or they must require ongoing rehabilitation or treatment or be "non-correctable."

High Risk

Roughly two-thirds of the states also include "high risk" factors in their special needs determination. "High risk" typically means there is some reason to believe that—based on the experiences or characteristics of a child prior to the adoption—he or she will develop one of the medical conditions, or physical, emotional or mental disabilities identified as a special needs factor. For example, these prior characteristics or experiences might include that the child—has a genetic history that pre-disposes him/her to mental illness; was prenatally exposed to "toxins;" or has a history of serious abuse or neglect. A number of states that permit establishment of "special needs" based on a high risk factor, further stipulate that adoption assistance payments may *not* be made on the child's behalf unless, or until, symptoms of the condition or disability actually occur.

Additional Factors

A few states include additional special needs factors. These include, for example, the length of time the child has been legally available for adoption but not placed; the child previously experienced a disrupted or dissolved adoption; the child experienced multiple placements while in care; determination that language is a barrier to the child's placement; the child is to be adopted by a relative; the child has significant emotional ties with foster parents who are seeking to be the adoptive parents; or the child has a documented history of abuse or neglect.

Primary Factor or Condition Associated with Special Needs Determination

On a national basis the share of children adopted each year who are determined to have special needs has fluctuated between roughly 84% and 88% of all children adopted with public agency involvement for each of FY2000-FY2011. There is no discernable trend (i.e., regular decline or regular increase) in this national percentage and the percentage also varies significantly by state.

Membership in a sibling group, or having a diagnosed medical condition or physical, social or emotional disability, represents the primary factor or condition identified for a little more than half of all children determined to have special needs. Age has declined in importance for determining special needs status over the past several years, while membership in a sibling group and “other” reasons have increased in significance. A child’s racial/ethnic background is least commonly used, however, it is counted as the primary special needs factor in roughly one of ten (10%-11%) special needs determinations. (See **Table 7.**)

Table 7. Children Adopted with Special Needs by Primary Associated Special Need Condition or Factor, FY2004-FY2011

Total adoptions exclude those for which data regarding special needs status was not reported.

Fiscal Year	TOTAL Adoptions		Among Special Needs Adoptions: Primary Factor or Condition Reported as Basis for Special Needs Determination				
	Number	Percent Determined to Have Special Needs	Racial Origin or Background	Age	Member of Sibling Group	Medical Condition or Mental, Physical, or Emotional Disability	Other
2004	48,364	86.6%	11.0%	26.2%	22.4%	27.2%	13.3%
2005	48,989	85.8%	10.5%	24.9%	23.8%	26.1%	14.7%
2006	46,982	84.9%	10.8%	22.6%	24.8%	25.5%	16.2%
2007	47,964	85.0%	10.0%	21.9%	26.0%	25.7%	16.2%
2008	51,674	84.7%	10.5%	22.1%	26.0%	24.8%	16.6%
2009	55,936	85.0%	10.6%	21.6%	25.5%	24.8%	17.5%
2010	52,572	87.7%	11.3%	19.7%	26.5%	24.9%	17.6%
2011	49,496	84.1%	11.0%	17.3%	27.9%	25.6%	18.1%

Source: Table prepared by the Congressional Research Service, based on AFCARS data provided by HHS, ACF, ACYF, August 2012.

Note: The total number of adoptions shown for a given fiscal year may not match the numbers of “total adoptions” for that fiscal year as shown elsewhere because the number here excludes a small number of public child welfare agency adoptions in each year for which special needs status was not reported.

Adoption Assistance Agreements

States are required to enter into an adoption assistance agreement with the adoptive parents of any child having special needs. This written agreement must be between the adoptive parents, the state Title IV-E agency, and any other relevant agencies. The agreement must specify the nature and amount of any payments, services and assistance to be provided and must stipulate that it will

remain in effect regardless of the state in which the adoptive parents are residents.⁸⁵ Under provisions of Title IV-E, any child who is eligible for Title IV-E adoption assistance payments is also eligible for Medicaid. Further, a state is required to assure it will provide Medicaid, or comparable health insurance coverage for any child who does not qualify for Title IV-E adoption assistance payments, but for whom the state finds there is a special need that requires medical, mental health, or rehabilitative care.⁸⁶

Once an adoption assistance agreement is executed it is binding on all parties and may only be ended under the following circumstances:

- the adopted child reaches the age limit for Title IV-E adoption assistance, which is 18 years of age, at the youngest, and up to 21 years at the oldest (see **Table 6** for details);
- the state determines that the parents are no longer legally responsible for the support of the child (i.e., because their parental rights have been terminated, or the child marries, enlists in the military, or becomes an emancipated minor); or
- the parents are not providing any support for the child. (A child does not need to be living with the parents to be receiving support from them. HHS has defined “any support” to include, for example, payments for tuition, family therapy, clothing, or other items.⁸⁷

The 2007 National Survey of Adoptive Parents, which looked at a nationally representative sample of children who were adopted (in any year), found that among children adopted from foster care, more than 9 out of 10 (92%) had an adoption assistance agreement with the public child welfare agency. Of those children, the large majority had an agreement that included an on-going adoption subsidy and/or Medicaid (or other form of public health insurance). Among children adopted from foster care with adoption assistance agreements (at age 5 or older), close to one in five (19%) had used mental health care that was guaranteed in the agreement but an additional one in four (27%) has used mental health care even though it was not a part of the adoption assistance agreement. More than one in three of children in this group had used tutoring services (36%) although that service was very infrequently included in their adoption assistance agreement. Finally, the large majority of children who were adopted from foster care at age 8 or older (88%) had not used residential treatment, although among those who did, not all had this service included in their adoption assistance agreement.⁸⁸

⁸⁵ Section 475(3) and 473(a)(1) of the SSA.

⁸⁶ Section 473(a)(B)(1); Section 1902(a)(10)(A)(i)(I); and Section 471(a)(21) of the SSA. For more information about Medicaid eligibility and Title IV-E see CRS Report R42378, *Child Welfare: Health Care Needs of Children in Foster Care and Related Federal Issues*, by Evelyne P. Baumrucker et al.

⁸⁷ Section 473(a)(4) of the SSA. HHS, ACF,ACYF, Children’s Bureau, *Child Welfare Policy Manual*, Section 8.2D5, Q&A 2.

⁸⁸ Karin Malm, Sharon Vandivere and Amy McKlindon (Child Trends), *Children Adopted from Foster Care: Adoption Agreements, Adoption Subsidies, and Other Post Adoption Supports*, ASPE Research Brief: HHS, Office of the Assistant Secretary for Planning and Evaluation, (May 2011), pp.3-4. (Hereinafter, Malm, et al., *Children Adopted from Foster Care*, (May 2011).)

Adoption Assistance Payments

States may provide federally subsidized monthly adoption assistance payments on behalf of eligible children as soon as an agreement is signed and the child has been placed in an adoptive home. The amount of the adoption assistance payment is to be determined through negotiation with the adoptive parents and must be based on the individual needs of the child and circumstances of the adoptive parents. (However, the income or resources of the adoptive parents must not be used to determine a child's eligibility for Title IV-E adoption assistance.) Payments may be adjusted periodically if circumstances change, but only with the concurrence of the adopting parents. However, in no case may the payment amount exceed what the child would receive if he or she had remained in a foster family home.⁸⁹ This does not preclude adjustments for inflation, or for a child's different needs, as long as the adjustment is consistent with what would have occurred if the child had remained in foster care.⁹⁰

There is no list of "allowable" adoption assistance costs and once an adoption assistance agreement is executed specifying the amount the agency will provide, the adoptive parents are free to spend that money as they see fit for their family.⁹¹

Basic adoption assistance payment rates vary by state and all states have "specialized" rates for particular situations where a child has extraordinary needs and/or requires additional parenting skills.⁹² The 2007 National Survey of Adoptive Parents found that among children adopted out of foster care who were receiving a monthly subsidy, more than four out of 10 received a monthly subsidy ranging from \$301 to \$500 and approximately one-quarter (24%) received a subsidy of between \$501 and \$750 a month. Of the remaining children, roughly equal shares received subsidies at the high or low end of the spectrum: 18% received a monthly subsidy between \$1 and \$300 and 15% received a monthly subsidy of \$750 or more. The parents of two-thirds (67%) of the children adopted from foster care (and who were receiving a subsidy on the child's behalf) felt that the payment amount met the child's needs.⁹³

Not all families of adopted Title IV-E-eligible children with special needs actually receive ongoing adoption assistance payments (and some may receive very low payments). In these instances, the adoptive parent may only have been eligible to receive federal support for costs associated with finalizing the adoption (see discussion of "Non-recurring Adoption Expenses" below) or the parents' circumstances may be such that an adoption subsidy is not needed or wanted. However, having an adoption assistance agreement in place before the adoption of the child is finalized permits payments to be established at some later date if the circumstances of the parents or needs of the child change. It also ensures the child's eligibility for Medicaid.

Table 8 shows total state spending for Title IV-E adoption assistance payments, including the share reimbursed by the federal government, for each of FY1997 to FY2011. *All of this spending concerns children who met the Title IV-E adoption assistance eligibility criteria shown in Table 6.* Support for payments on behalf of special needs adoptees who do not meet all the federal

⁸⁹ Section 473(a)(3) of the SSA.

⁹⁰ HHS, ACF, ACYF, Children's Bureau, *Child Welfare Policy Manual*, Section 8.2D.4, Q&A 4 and 5.

⁹¹ HHS, ACF, ACYF, Children's Bureau, *Child Welfare Policy Manual*, Section 8.2D.1, Q&A 1.

⁹² The North American Council on Adoptable Children (NACAC) provides state-by-state information regarding monthly adoption subsidy payments on its website. See <http://www.nacac.org/adoptionssubsidy/summary.html>.

⁹³ Malm, et al., *Children Adopted from Foster Care*, (May 2011) pp. 4-5.

criteria—believed to comprise roughly one-quarter of the children receiving adoption assistance support—must be provided out of state, local, or other non-Title IV-E sources. There are no reliable administrative data regarding the total number of special needs adoptees who were adopted in any year and who are receiving adoption assistance payments.⁹⁴ As part of a survey on child welfare agency spending, however, state agencies provided information to researchers at Child Trends on the share of children in their states who were receiving a monthly adoption assistance payment under the Title IV-E program (during state fiscal year 2010). The median Title IV-E adoption assistance coverage rate reported was 76%. Close to two-thirds of the states responding (32) reported Title IV-E adoption assistance coverage rates of 71% or more; most of the remaining states (13) reported coverage rates of between 61% and 70%; five states reported a Title IV-E adoption assistance coverage rate of 60% or less.⁹⁵

Table 8. Spending for Title IV-E Adoption Assistance Payments, FY1997-FY2011

Dollars in Millions

Fiscal Year	Title IV-E Claims Related to Adoption Assistance Payments					
	Average Monthly Number of Children Assisted	TOTAL <i>All eligible spending by states</i>	FEDERAL SHARE <i>Amount of total to be reimbursed</i>	TOTAL <i>All eligible spending by states</i>	FEDERAL SHARE <i>Amount of total to be reimbursed</i>	Federal share of Title IV-E Adoption Assistance Payment costs
		<i>Constant (FY2011) Dollars</i>		<i>Nominal Dollars</i>		
1997	146,885	\$1,097	\$599	\$785	\$429	54.6%
1998	168,357	\$1,290	\$704	\$939	\$512	54.6%
1999	194,688	\$1,537	\$834	\$1,140	\$618	54.3%
2000	228,307	\$1,724	\$948	\$1,320	\$726	55.0%
2001	257,790	\$2,077	\$1,142	\$1,640	\$902	55.0%
2002	285,560	\$2,356	\$1,292	\$1,889	\$1,036	54.9%
2003	314,738	\$2,590	\$1,417	\$2,125	\$1,163	54.7%
2004	332,036	\$2,738	\$1,503	\$2,299	\$1,262	54.9%
2005	361,623	\$2,903	\$1,600	\$2,518	\$1,388	55.1%
2006	376,813	\$2,982	\$1,646	\$2,681	\$1,480	55.2%
2007	390,948	\$3,037	\$1,676	\$2,795	\$1,542	55.2%

⁹⁴ Beginning with FY2011, states are asked to report (on their Title IV-E claims form) the average monthly number of children on whose behalf they provided ongoing adoption assistance of any kind along with the average monthly number of children receiving Title IV-E-supported adoption assistance. However, for FY2011 these data could not be used to calculate a federal Title IV-E adoption assistance coverage rate because not all states provide these data and some data provided were deemed unreliable (e.g., total adoption assistance caseload was reported as *smaller* than Title IV-E supported adoption assistance caseload).

⁹⁵ A total of 50 “states” providing information for this part of the survey included 49 states and the District of Columbia. Information from the Child Trends 2008/2010 survey available by state at the Casey Family Programs Statewide Child Welfare Policy Data base website. See <http://www.childwelfarepolicy.org/maps/single?id=301>.

Fiscal Year	Title IV-E Claims Related to Adoption Assistance Payments					
2008	398,769	\$3,107	\$1,724	\$2,986	\$1,657	55.5%
2009	416,408	\$3,246	\$2,021	\$3,109	\$1,936	62.3%
2010	423,216 ^a	\$3,270	\$2,052	\$3,186	\$1,999	62.8%
2011	413,785 ^a	\$3,221	\$1,915	\$3,221	\$1,915	59.4%

Source: Table prepared by the Congressional Research Service based on Title IV-E expenditure claims as submitted by states and compiled annually by HHS, ACF, OLAB.

Note: FY2011 data were reported on a new claim form and may not be directly comparable to earlier years.

- a. CRS made limited adjustments to the FY2010 and FY2011 adoption assistance caseload data reported on the expenditure form to reflect corrections or other changes provided to CRS by a small number of states.

Non-recurring Adoption Expenses

Non-recurring adoption expenses are defined 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 and which are not incurred in violation of State or Federal law.”⁹⁶ The Tax Reform Act of 1986 (P.L. 99-214) amended Title IV-E to require states to provide reimbursement for “non-recurring adoption expenses” incurred by, or on behalf of, the adoptive parents of *any* child with special needs. For adoptive parents to receive this assistance, the children they are adopting must be determined to have special needs and they must be placed in accordance with any applicable state and local laws. They do not need to meet the criteria of any of the federal eligibility pathways (see **Table 6**) for this non-recurring Title IV-E assistance to be paid.⁹⁷ However, the Fostering Connections to Success and Increasing Adoptions Act of 2008 (P.L. 110-351) does stipulate that a child who would be determined by a state to have special needs and meets the definition of an “applicable child” (see text box shown earlier) is not eligible to receive any kind of federal adoption assistance (non-recurring or on-going payments) if the child is not a citizen or resident of this country and was adopted outside the United States or brought to the United States for the purpose of adoption.⁹⁸

States may claim federal reimbursement for 50% of the amount of the non-recurring adoption expenses that they provide to the adoptive parent(s) of a child with special needs. States may choose to pay all, or just some portion, of those non-recurring costs. However, by regulation, HHS has provided that states may only seek federal support for a maximum of \$2,000 in non-recurring adoption costs per child.⁹⁹ For example, if a state provides a family with \$2,000 to meet expenses related to completing the legal adoption of a child, the federal government will reimburse the state for one-half of that cost (\$1,000). Roughly half the states (26) reimburse non-recurring adoption costs up to \$2000, but others limit reimbursement of those costs to smaller

⁹⁶ Section 473(a)(6)(A) of the SSA.

⁹⁷ Section 473(a)(1)(B)(i) of the SSA; 45 C.F.R. 1356.41(d).

⁹⁸ Section 473(a)(7) of the SSA. This prohibition does not extend to any case where a child adopted in another country or brought to this country for adoption subsequently enters foster care because that adoption (as determined by the state) fails. Children adopted from other countries who do not meet the definition of “applicable child” are not categorically excluded from assistance in statute. However, HHS has noted that meeting the federal eligibility pathway criteria is difficult or impossible for these children. See HHS, ACF, ACYF, Children’s Bureau, *Child Welfare Policy Manual*, Section 8.2B.6, Q&A 1.

⁹⁹ Section 473(a)(6)(B) of the SSA; 45 C.F.R. 1356.41(f).

amounts.¹⁰⁰ (For most families who are adopting special needs children with public child welfare agency involvement, the federal adoption tax credit provides support for a higher portion of non-recurring adoption expenses and this would likely remain the case even if, as current law provides, the adoption tax credit reverts to its earlier, less expansive form).¹⁰¹

FY2011 is the first year for which states were asked to report on the amount of funds they provided as reimbursement for non-recurring adoption expenses. Forty-one states (including the District of Columbia) reported total spending of \$37.7 million for these non-recurring costs in that year and they received federal reimbursement of one half of that amount.¹⁰²

Trend in Receipt of Federal Adoption Subsidy

For FY2000 through FY2011, the share of children adopted with public child welfare agency involvement, who receive a monthly subsidy, has remained relatively stable (at between 88% and 91%), while the share of such children whose adoption subsidies are supported with federal Title IV-E dollars has steadily declined. Children who received a *federally* supported adoption subsidy represented about three-fourths (75%) of all adoptions finalized in FY2000 but just two-thirds (66%) of all adoptions finalized in FY2011. (See **Table 9**.)

Please note: This percentage is not comparable to the adoption assistance coverage rate discussed above—and as reported for state FY2010. This is because the earlier discussed rate looks only at the universe of children who received a subsidy and it includes children, regardless of the year in which they were adopted. By contrast, the data below are percentages of the total universe of adoptions completed with public child welfare agency involvement, including those receiving or not receiving assistance, and it includes only those children who were adopted during a given fiscal year.

¹⁰⁰ See state-by-state information on amount of non-recurring expenses that may be reimbursed on the Child Welfare Information Gateway at http://www.childwelfare.gov/adoption/adopt_assistance/questions.cfm?quest_id=3.

¹⁰¹ Since 2001, the federal adoption tax credit has been expanded to provide a greater level of support to adoptive families at higher incomes and for a wider range of adoptions. As of September 30, 2012, however, those expansions are slated to expire. Beginning with tax year 2013, the credit would only be available to families who adopt children determined to have special needs and the adoptive family of a special needs child would need to have adjusted gross income of \$75,000 or less to claim the full credit amount of \$6,000 (considerably less income and credit amounts than are available for tax year 2012). Further, as of tax year 2013, the law does not provide for either the income threshold or the maximum credit rate to be adjusted for inflation; all adoption expenses would need to be accounted for in order to receive this credit; the credit amount could not exceed the amount of incurred expenses; and it would not be refundable. For more information see CRS Report RL33633, *Tax Benefits for Families: Adoption*, by Christine Scott.

¹⁰² Because this is the first year for which these data were reported for this specific category (previously they were to be included in costs claimed for general Title IV-E adoption assistance administration), the quality of the data is somewhat uncertain. It is also unclear whether the ten states that reported no claims for non-recurring adoption expenses did not spend money for this purpose or were unable to report this information separate from other administrative costs.

Table 9. Total Adoptions with Public Child Welfare Agency Involvement by Receipt of Title IV-E Subsidy, Non-Title IV-E Subsidy or No Subsidy, FY2000-FY2011

Number of total adoptions shown excludes those for which data on receipt of subsidy were missing.

Fiscal Year	Total Adoptions	Share of Total Adoptions			
		Subsidy Provided with Title IV-E Support	Subsidy Provided without Title IV-E Support	No Subsidy Provided	Total
2000	50,975	74.8%	13.0%	12.2%	100%
2001	50,480	74.7%	13.1%	12.2%	100%
2002	52,810	73.3%	15.6%	11.1%	100%
2003	50,482	70.1%	18.6%	11.2%	100%
2004	50,839	71.9%	18.8%	9.3%	100%
2005	51,503	71.2%	19.5%	9.3%	100%
2006	50,364	67.4%	20.6%	12.0%	100%
2007	52,534	66.6%	21.1%	12.3%	100%
2008	55,083	65.7%	23.8%	10.5%	100%
2009	56,939	63.9%	24.0%	12.1%	100%
2010	53,502	67.1%	23.3%	9.6%	100%
2011	50,507	65.9%	24.2%	9.9%	100%

Source: Table prepared by the Congressional Research Service, based on AFCARS data provided by HHS, ACF, ACYF, Children’s Bureau in March 2008 for FY2000-FY2003 and in August 2012 for all subsequent years.

Note: The total number of adoptions shown for a given fiscal year may not match the numbers of “total adoptions” for that fiscal year as shown elsewhere because the number here excludes a small number of public child welfare agency adoptions in each year for which data on receipt of subsidy were not reported.

Given that adoption assistance payments are generally provided to children who meet special needs criteria and, as discussed above, the federal government is committed to providing support to nearly all special needs adoptees as of FY2018, this decline is expected to be reversed. However, that reversal may take several years. The Title IV-E adoption assistance pathway most frequently used has been, and presumably continues to be, the pathway that is linked to the eligibility criteria of the prior law AFDC program. Under this pathway, a child must have been *removed* from a home that met the income standards of that prior law cash welfare program. Given that in nearly three-fourths of all states, the applicable AFDC income standard is below 50% of the poverty line this criteria may be expected to depress federal eligibility for as long as it continues to apply to some children.

FY2011 represented only the second year of the phase-in of new eligibility rules that remove that income standard from eligibility for federal Title IV-E adoption assistance. During that year, children for whom an adoption assistance agreement was executed after they had reached age 14 or older, did not need to meet income criteria to be found eligible for Title IV-E adoption assistance. Given that just between 7% or 8% of the adoptions *finalized* in FY2011 were of children age 14 or older (see **Table 10**), the AFDC income criteria are expected to have been applied to the large majority of children for whom Title IV-E adoption assistance was determined

(in both FY2010 and FY2011).¹⁰³ Further, the median age of children adopted from foster care has held constant at just above five years for at least half a decade. Because the median age represents the point at which half of the group was adopted at an older age and half at a younger age, it's likely that the "applicable child" eligibility rules—i.e., the eligibility rules that apply without regard to income status of the home from which a child was removed—will not apply to a majority of children adopted from foster care in a given year until at least FY2015.

Table 10. Age at Finalization of Adoption for Children Adopted with Public Child Welfare Agency Involvement

Fiscal Year	TOTAL Adoptions	0-1 Years	2-3 Years	4-5 Years	6-7 Years	8-9 Years	10-11 Years	12-13 Years	14-15 Years	16 or Older	Total
2004	51,019	11.3%	22.5%	16.9%	13.0%	10.6%	9.7%	7.9%	5.0%	3.1%	100%
2005	51,629	12.6%	23.3%	16.8%	13.0%	10.2%	8.9%	7.2%	4.9%	3.0%	100%
2006	50,647	13.1%	24.3%	16.8%	13.0%	10.0%	8.1%	6.7%	4.8%	3.2%	100%
2007	52,682	13.9%	25.2%	16.6%	12.7%	10.0%	7.7%	6.3%	4.4%	3.2%	100%
2008	55,227	13.5%	25.7%	16.8%	12.8%	9.9%	7.9%	5.7%	4.4%	3.3%	100%
2009	57,110	13.3%	25.9%	17.0%	12.8%	10.0%	7.8%	5.8%	4.2%	3.2%	100%
2010	53,583	13.1%	25.6%	17.0%	12.7%	10.1%	7.9%	6.1%	4.1%	3.4%	100%
2011	50,516	13.6%	25.5%	17.4%	12.4%	9.8%	7.9%	6.0%	4.1%	3.4%	100%

Source: Table prepared by the Congressional Research Service, based on AFCARS data provided by HHS, ACF, ACYF, August 2012.

¹⁰³ Adoption assistance agreements must be executed *before* an adoption is finalized in order for a child to be eligible for Title IV-E adoption assistance. The agreement might happen just a short time before the finalization of the adoption or a year or more before that finalization. See Tom McDonald, et al., "Partitioning the Adoption Process to Better Predict Permanency," *Child Welfare*, vol. 86, no. 3, pp. 5-32.

Kinship Guardianship Assistance

The Fostering Connections to Success and Increasing Adoptions Act of 2008 (P.L. 110-351) authorizes states to seek partial federal reimbursement for kinship guardianship assistance payments made on behalf of eligible children who leave foster care for placement in a “legal guardianship” with a grandparent or other relative. Enactment of this form of Title IV-E assistance followed more than a decade of state experimentation with subsidized guardianship programs both

independently, and under child welfare demonstration projects (as authorized by Section 1130 of the Social Security Act). In a 2007 report, the Government Accountability Office (GAO) recommended that Congress consider enacting federal support of guardianship as a way to reduce the disproportionate representation of African American children in foster care.¹⁰⁴

Definition of Legal Guardianship

A “judicially created relationship between child and caretaker which is intended to be permanent and self-sustaining as evidenced by the transfer to the caretaker of the following parental rights with respect to the child: protection, education, care and control of the person, custody of the person, and decision-making.”

Source: Section 475(7) of the SSA

Like the foster care and adoption assistance components of the Title IV-E program, this federal support is authorized on a permanent and open-ended basis. However, states are not required to provide this assistance to eligible children. Instead a state may choose to amend its Title IV-E plan to provide for this kind of assistance. If a state amends its plan to add a kinship guardianship assistance component, it must enter into a written and binding kinship guardianship agreement with the prospective relative guardians of eligible children.¹⁰⁵ As of early September 2012, 31 states had submitted a Title IV-E plan amendment to enable them to seek federal reimbursement for kinship guardianship assistance provided on behalf of eligible children. The plan amendment for one of those states (Virginia) remained under review, but all of the others had been approved. Through FY2011, most of those states had not yet submitted any claims for federal reimbursement of Title IV-E kinship guardianship assistance. However, states may seek this reimbursement for up to two years from the date on which they incurred the expense—provided the expense was incurred on or after the effective date of their plan amendment. (See **Table 11** for states with approved plan amendments, effective dates of those amendments, and states that had made claims through the end of FY2011.)

The law permits states that previously operated a subsidized guardianship assistance program as part of a child welfare demonstration project (a.k.a., a waiver project) to receive federal reimbursement for assistance and services provided to children who were receiving assistance and services under that project as of September 30, 2008. A state does not need to have an approved Title IV-E plan amendment related to kinship guardianship assistance to make these Title IV-E claims (but it may). Through FY2011, three states had submitted post-demonstration related kinship guardianship assistance claims. Two of those states have an approved Title IV-E plan that includes kinship guardianship assistance (Illinois and Michigan) and one state does not (Iowa).

¹⁰⁴ U.S. Government Accountability Office (GAO), *African American Children in Foster Care: Additional HHS Assistance Needed to Help States Reduce the Proportion in Care*, (GAO-07-816), 2007.

¹⁰⁵ Section 471(a)(28) and Section 473(d)(1) of the SSA.

Table II. Implementation Status of Kinship Guardianship Assistance Under the Title IV-E Program

As of September 1, 2012

Fiscal Year	States with an Approved Title IV-E Kinship Guardianship Assistance Plan (30)	Effective Date of State's Plan Amendment	States that Submitted Kinship Guardianship Claims
FY2012^a			Data not yet available
	Arkansas	11/1/2011	
FY2011			13
	Wisconsin	8/1/2011	Colorado, District of Columbia, Illinois, Iowa, ^b Maryland, Michigan, Montana, New Jersey, Oregon, Pennsylvania, Rhode Island, Tennessee, and Texas
	Hawaii	4/1/2011	
	California	1/1/2011	
	Alabama, Alaska, Idaho, Louisiana, New York, Texas	10/1/2010	
FY2010			4
	Oklahoma, Vermont	7/1/2010	District of Columbia, Illinois, Rhode Island, and Tennessee
	South Dakota	1/1/2010	
	Illinois	11/1/2009	
	Colorado, Maryland, Michigan, Montana, Nebraska, New Jersey, Washington	10/1/2009	
FY2009			1
	Connecticut, Massachusetts	7/1/2009	Tennessee
	Pennsylvania, Tennessee	4/1/2009	
	District of Columbia, Oregon, Rhode Island	1/1/2009	

Source: Table prepared by the Congressional Research Service based on information received from HHS, ACF, OLAB and HHS, ACF, ACYF, Children's Bureau.

Note: In addition to the 30 states shown in the table, as of the same date, Virginia had submitted a Title IV-E kinship guardianship assistance amendment that was under review by HHS/ACF/ACYF.

- a. The Port Gamble S'Klallam Tribe (located in Washington state) received approval of a plan to operate a tribal Title IV-E plan effective April 1, 2012 and that plan includes kinship guardianship assistance.
- b. Iowa has not amended its Title IV-E plan to include kinship guardianship assistance. However, states with or without an approved Title IV-E kinship guardianship assistance plan may submit claims related to children for whom they were providing guardianship assistance payments as of September 30, 2008 under an approved child welfare demonstration project. For FY2011, Iowa is the only state that submitted post-demonstration claims and did not also have an approved Title IV-E kinship guardianship assistance plan.

For states providing kinship guardianship assistance under an approved Title IV-E plan amendment, the same general rules apply with regard to the general kinds of costs and the amount of federal reimbursement that may be claimed. Kinship guardianship assistance payments made on behalf of eligible children are reimbursed at the state's FMAP (which may range from 50% to 83%). Administrative costs for the program may be reimbursed at 50%. As is true for Title IV-E adoption assistance, the kinds of administrative claims that may be made are generally more limited than those for foster care (in large part because once a child is no longer in foster care the requirements for case planning and review no longer apply). However, states are required to provide a relative guardian with funds necessary to meet the full non-recurring costs of finalizing a legal guardianship or \$2,000, whichever is less, and they may claim federal reimbursement of

50% of the cost of that assistance. Finally, states may also seek reimbursement for Title IV-E program training related to serving children who receive Title IV-E kinship guardianship assistance. The federal reimbursement rate for most of those training claims is 75%.

Spending for Kinship Guardianship Assistance Under Title IV-E

Table 12 shows all eligible spending claimed by states under the Title IV-E kinship guardianship assistance component, and the federal share of those claims that were reimbursed to states, through FY2011. (All spending related to children who were previously assisted as part of a Title IV-E subsidized guardianship demonstration project is shown in the payments column of **Table 12**.) The average monthly number of children assisted is also shown as it was reported by states. However, these data are known to be incomplete for FY2011 because some states that made claims for kinship guardianship assistance did not report the average monthly number of children receiving assistance.

As part of its mid-session budget review (conducted in summer 2012) HHS estimates that federal outlays for Title IV-E kinship guardianship assistance will rise to \$81 million for FY2013 (with 14,000 children assisted on an average monthly basis) and will climb to \$174 million by FY2017 (with 28,000 children assisted on an average monthly basis).

Table 12. Spending for Kinship Guardianship Assistance Under the Title IV-E Program, FY2009-FY2011

Nominal dollars in 1000s

Fiscal Year	Average Monthly Number of Children Assisted ^a	TOTAL <i>All eligible spending claimed by states</i>				FEDERAL SHARE <i>Amount of total to be reimbursed</i>			
		Payments ^b	Admin.	Training	All Categories	Payments ^b	Admin.	Training	All Categories
2009	103	\$294	\$0	\$0	\$294	\$207	\$0	\$0	\$207
2010	3,618	\$21,485	\$1,510	\$48	\$23,043	\$12,358	\$750	\$36	\$13,148
2011	3,552 ^c	\$48,355	\$2,311	\$17	\$50,685	\$28,517	\$1,150	\$13	\$29,685

Source: Table prepared by the Congressional Research Service based on Title IV-E expenditure claims as submitted by states and compiled annually by HHS, ACF, OLAB. Any disallowances or deferrals that may subsequently have been taken are not shown.

Note: For FY2009 and FY2010 states were provided interim instructions on how to make Title IV-E kinship guardianship assistance claims via the previously existing Title IV-E claim form. Beginning with FY2011, a new claim form, including a specific section for Title IV-E kinship guardianship assistance was implemented. Reporting across all years shown may not be comparable.

- a. This number includes all children reported by states, via the Title IV-E claims form, as assisted under a newly approved Title IV-E kinship guardianship assistance program and/or those assisted under the state's previously operating child welfare demonstration project to provide subsidized guardianship.
- b. This amount includes spending for children supported via states' newly approved guardianship assistance program as well as spending for those children who were receiving assistance or services under a child welfare demonstration project that provided subsidized guardianship.
- c. This number reflects reported data but is known to be incomplete because several states that submitted claims for federal Title IV-E kinship guardianship assistance did not report on the average monthly number of children assisted.

Required Case Plan Determinations for a Child in Foster Care Whose Permanency Plan is Kinship Guardianship

If a child’s plan for permanently leaving foster care is placement with a relative guardian and receipt of kinship guardianship assistance, the Title IV-E agency must describe all of the following in the foster child’s written case plan:¹⁰⁶

- The steps taken to determine that neither reuniting the child with his/her parents(s) nor adoption are the appropriate permanency option for the child.
- The efforts the agency has made to discuss with the relative foster parent the option of adopting the child “as a more permanent alternative to legal guardianship” and, if the relative foster parent has chosen not to pursue adoption, why this is the case.
- The reason that placement with a fit and willing relative under a kinship guardianship assistance arrangement is in the child’s best interests.
- The reason for any separation of siblings during placement.
- The efforts made by the state agency to discuss with the child’s parent, or parents, the kinship guardianship assistance arrangement or the reasons why the efforts were not made.
- The ways in which the child meets the eligibility requirements for a kinship guardianship assistance payment.

This case plan requirement applies to children while they are in foster care. Once a child leaves foster care permanently, there is no requirement for the Title IV-E agency to maintain a case plan for the child.

Federal Eligibility Criteria for Kinship Guardianship Assistance

To be eligible for Title IV-E kinship guardianship assistance payments, there must be a kinship guardianship assistance agreement in place—between the state agency and the eligible prospective relative guardian—under which the child is placed with the relative who becomes his/her legal guardian. Further, the child must have been eligible for Title IV-E foster care maintenance payments while living in the home of that prospective relative guardian, and the child must also meet certain age and limited other criteria. Finally, the state must make certain determinations regarding the appropriateness of kinship guardianship as a permanency goal for the child.

Link to Title IV-E Foster Care

Eligibility for Title IV-E kinship guardianship assistance payments is tied to a child’s previously established eligibility to receive a title IV-E foster care maintenance payment. Specifically, a child must have been eligible to receive Title IV-E foster care maintenance payments while living for no less than six consecutive months in the home of his or her prospective relative guardian.

¹⁰⁶ Section 475(1)(F) of the SSA.

Among other things, the link to the Title IV-E foster care eligibility criteria effectively means that the child must have entered foster care through a voluntary placement agreement (between the Title IV-E agency and the child’s parent(s)/guardian) or after a judge determined that continuing to live in his or her own home would be “contrary to the welfare” of the child. Further, the income available in the family home from which the child was removed must be at or below the eligibility standard for the prior law cash welfare program, known as AFDC, as that program existed in the state on July 16, 1996. The link to the Title IV-E foster care eligibility criteria also means that the home of the prospective relative guardian must have met the licensing requirements for a foster family home and, further, that the prospective guardian met the federal background check and approval procedures (including the requirement that the relative must not have been found to have committed certain felonies). (For all the criteria linked to Title IV-E foster care maintenance payment eligibility see **Table 2.**)

States are separately required to have specific background check procedures for prospective relative guardians, including fingerprint-based checks of national crime databases and child abuse and neglect registry checks, and these checks must be conducted before a relative guardian may receive kinship guardianship assistance payments on behalf of an eligible child. In program guidance, however, HHS notes that if a state has established an “appropriate” time frame during which a background check remains valid, and that time frame had not expired when the foster parent seeks to become the child’s relative guardian, the state does not need to redo that check but may consider the prospective relative guardian background check requirement as met.¹⁰⁷

Requirements Related to the Relative Guardian

As discussed above, for an individual to be eligible to receive Title IV-E kinship guardianship assistance payments on a child’s behalf, he or she must have been the foster parent of the child for at least six consecutive months, must have met the foster family home licensing requirements, and must not have any of the statutorily prohibited felony convictions on his or her record. In addition, an eligible legal guardian must be the grandparent or other relative of that child and must, as determined by the state, have a strong commitment to permanently care for the child through legal guardianship.¹⁰⁸

The term “relative” is not defined in the statute for purposes of the Title IV-E kinship guardianship assistance program. States are permitted to define “relative” for purposes of their Title IV-E kinship guardianship assistance program (as part of their Title IV-E plan amendment). For example, they may choose to define the term to include only individuals who have biological or legal ties to the child, or they can define it more broadly to include “[t]ribal kin, extended family and friends or other ‘fictive kin.’”¹⁰⁹

¹⁰⁷ Section 471(a)(20)(C) of the SSA. HHS, ACF,ACYF, Children’s Bureau, *Child Welfare Policy Manual*, Section 8.5B.2, Q&A 1.

¹⁰⁸ Sections 471(a)(28) and 473(d)(3) of the SSA.

¹⁰⁹ HHS, ACF,ACYF, Children’s Bureau, PI-10-11, issued July, 9, 2010, p. 14. Available at <http://www.acf.hhs.gov/programs/cb/resource/pi1011>.

Other Required State Determinations

Additionally, for a child to be eligible for Title IV-E kinship guardianship assistance payments, a state must determine that neither being reunited with his or her parents, nor adoption, are appropriate permanency options for the child; that the child demonstrates a strong attachment to the prospective relative guardian; and that, if the child is age 14 or older, he or she has been consulted about the kinship guardianship arrangement.¹¹⁰

Child's Age

A child may not receive Title IV-E kinship guardianship assistance after the age of 18 unless

- the state determines that the child has a mental or physical disability that warrants continued assistance (but only up to age 21); or
- if the state has elected the option to extend Title IV-E assistance to youth after age 18, up to the age of 19, 20, or 21 (as the state specifies in the plan) *and provided that the child entered the guardianship arrangement after his or her 16th birthday* and he/she is a secondary or post-secondary student, is employed at least 80 hours a month, is participating in an activity designed to promote or reduce barriers to employment, or is medically unable to do any of those activities.¹¹¹

States that elect to amend their Title IV-E plan to permit Title IV-E foster care maintenance assistance to youth in foster care after their 18th birthday must also provide extended assistance to an otherwise eligible youth in a Title IV-E kinship guardianship arrangement (up to same age as for youth in foster care), provided that youth entered the arrangement after his or her 16th birthday and meets all other relevant requirements.¹¹²

Sibling of a Child Who Is Eligible for Title IV-E Kinship Guardianship Assistance

A state may, but is not required to, provide Title IV-E kinship guardianship assistance to a sibling of a child who is eligible for that assistance, provided the sibling is placed with the same relative guardian as the eligible child and both the relative guardian and the Title IV-E agency agree that this joint placement is appropriate for the siblings. The placement does not have to occur at the same time. Further, the sibling of the eligible child does not need to meet certain other eligibility requirements (e.g., previously eligible for a Title IV-E foster care maintenance payment while living with the relative guardian).¹¹³

¹¹⁰ Section 473(d)(3)(A)(ii)(iii) and (iv) of the SSA.

¹¹¹ Section 473(a)(4) of the SSA; Section 475(8) of the SSA.

¹¹² HHS, ACF, ACYF, Children's Bureau, PI-10-11, issued July, 9, 2010, p. 2. Available at <http://www.acf.hhs.gov/programs/cb/resource/pi1011>.

¹¹³ Section 473(d)(3)(B) of the SSA. HHS, ACF, ACYF, Children's Bureau, *Child Welfare Policy Manual*, Section 8.5B.1, Q&A 1 and 2.

Ability of State to Set Other Conditions on Receipt of Assistance

HHS has advised states that they may establish additional conditions on receipt of Title IV-E kinship guardianship assistance that make eligibility for this assistance more limited in their state than what federal law would permit. However, HHS must approve those conditions as part of the state's Title IV-E plan amendment related to kinship guardianship. Some examples of conditions state might impose, as provided by HHS in July 2009 guidance, include requiring that a child must have lived in foster care with the prospective relative guardian for more than the 6-month time period required in federal law; requiring a child to be a certain age before he/she is eligible (e.g., 12 or older); requiring the relative guardian to inform the agency if the child's biological parents plan to stay with the guardian on a long term basis and/or requiring cooperation with child support enforcement.¹¹⁴

Kinship Guardianship Assistance Agreement

States that seek reimbursement for kinship guardianship assistance payments must enter into a written and binding kinship guardianship agreement with the prospective relative guardian of an eligible child. The agreement must, at a minimum, stipulate that it will remain in effect without regard to the state in which the relative guardian lives and must specify: (1) the amount of, and manner in which, the kinship guardianship assistance payments will be made on the child's behalf, including the manner in which the amount may, in consultation with the relative guardian, be adjusted periodically based on the circumstances of the relative and the needs of the child; and (2) the additional services and assistance the child and relative will be eligible for under the agreement, including the procedure the relative guardian may use to apply for additional services as needed; and (3) that the state will pay all non-recurring expenses associated with obtaining legal guardianship of the child, or \$2,000 of those expenses, whichever is less.¹¹⁵

A kinship guardianship assistance agreement remains in effect (as provided in the terms of the agreement) as long as the child meets the eligibility criteria for age (described above), the relative guardian remains legally responsible for the child, and as long as he/she is providing support to the child.¹¹⁶

Amount of Kinship Guardianship Assistance Payment

The law provides that a kinship guardianship assistance payment may never be more than the amount the child would receive as a foster care maintenance payment, if he or she remained in a foster family home. (This does not preclude adjustments for inflation or changes due to different needs of the child, provided the changes are consistent with what would happen if the child were in foster care.)¹¹⁷ While the kinship guardianship agreement does not need to specifically address health care coverage, the law provides that any child who meets the federal eligibility criteria to receive a Title IV-E kinship guardianship assistance payment remains categorically eligible for Medicaid.¹¹⁸

¹¹⁴ Ibid, p. 14.

¹¹⁵ Section 473(d)(1) of the SSA.

¹¹⁶ Section 473(a)(4) of the SSA.

¹¹⁷ Section 473(d)(2) of the SSA.

¹¹⁸ Section 473(b)(1) and (3)(C) of the SSA. For more information see April 2009 letter from the HHS, Centers for (continued...)

Appendix A. Tribal Participation in the Title IV-E Program

Direct federal support for tribes under the Title IV-E program was first authorized effective with FY2010. Specifically, the Fostering Connections to Success and Increasing Adoptions Act of 2008 (P.L. 110-351) permits any Indian tribe, tribal organizations or tribal consortia¹¹⁹ that has an approved Title IV-E plan to receive support for foster care, adoption assistance, and if the tribe chooses this, kinship guardianship assistance.¹²⁰ As of April 1, 2012, the Port Gamble S’Klallam tribe (located on the Kitsap Peninsula in Washington state) became the first tribe to independently operate a Title IV-E program.¹²¹ Other tribes are working toward approval of a Title IV-E plan and HHS expects to approve some new tribal plans during FY2013.¹²²

Alternatively, P.L. 110-351 also continues to permit states and tribes to enter into agreements whereby the state agrees to pass through certain Title IV-E funds to tribes for support of children in tribal custody, including for costs related to child placement, training, and other Title IV-E program administration costs. Further, the law, as amended by P.L. 110-351, requires states to negotiate in good faith with any tribe in the state that seeks to enter into an agreement with the state to operate some or all parts of a Title IV-E program for children under tribal authority. The federal Title IV-E reimbursement rate (paid to a state) for children under tribal authority who are covered by a Title IV-E agreement is equal to the tribal FMAP (as described below and which may be greater than a state’s FMAP but not less than that amount).

This Appendix provides an overview of the statutory provisions related to tribal receipt of direct federal funding under the Title IV-E program.¹²³

Requirements for Direct Title IV-E Funding to Tribes

The law requires that HHS apply the requirements and entitlements of the Title IV-E program to any tribe¹²⁴ that has an approved Title IV-E plan in the same manner as those requirements and entitlements apply to a state—unless the statute specifically directs otherwise.¹²⁵

(...continued)

Medicare and Medicaid (CMS) regarding Medicaid eligibility for children receiving Title IV-E kinship guardianship assistance. Available at http://aaicama.org/cms/federal-docs/CMS_MA_Elig_FostConnect_0409.pdf.

¹¹⁹ Section 479B(a) of the SSA. For purposes of the Title IV-E program, the terms “Indian tribe” or “tribal organization” are defined in the same way as those terms are used in the Child Welfare Services program and the Safe and Stable Families program (i.e., the definitions provided for those terms in Section 4 of the Indian Self-Determination and Education Assistance Act [25 U.S.C. § 450b]).

¹²⁰ For more information on this act, see CRS Report RL34704, *Child Welfare: The Fostering Connections to Success and Increasing Adoptions Act of 2008 (P.L. 110-351)*, by Emilie Stoltzfus.

¹²¹ See Port Gamble S’Klallam news release http://www.pgst.nsn.us/images/Title_IV-E_release.pdf and HHS/ACF news release <http://www.acf.hhs.gov/news/press/2012/FirstNativeAmericanProgram.html>.

¹²² Information received by CRS from HHS, ACF, ACYF, Children’s Bureau as of September 5, 2012.

¹²³ For more information on tribal specific rules and considerations for operation of a Title IV-E program see HHS, ACF, ACYF, “Considerations for Indian Tribes, Indian Tribal Organizations or Tribal Consortia Seeking to Operate a Tribal Title IV-E Program,” A Technical Assistance Document of the Children’s Bureau (April 2009); and Tribal Child Welfare, Interim Final Rule, *Federal Register*, January 6, 2012, pp. 896-958 at <http://www.gpo.gov/fdsys/pkg/FR-2012-01-06/pdf/2011-32911.pdf>.

The large majority of Title IV-E provisions apply to tribes seeking direct Title IV-E funding and states in the same manner. However, in the case of a tribe, the law modifies the Title IV-E plan requirement related to statewide operation, requiring instead that a tribe define the service area or areas that are to be covered in the plan.¹²⁶ Tribal Title IV-E plans must also include evidence demonstrating that the tribe has not had any uncorrected significant or material audit exceptions under federal grants or contracts that directly relate to the administration of social services for the three years prior to the date on which the tribe submits its Title IV-E plan for approval. Further, the law also clarifies that, under a tribal Title IV-E plan, licensing of foster family homes or child care institutions must be done by an established tribal authority.¹²⁷

A tribal child's eligibility for Title IV-E foster care, adoption assistance, and kinship guardianship assistance is generally the same as eligibility for a child under a state-operated Title IV-E program. For children in foster care under a tribal Title IV-E plan, the law stipulates that the AFDC rules of the state in which the child lived when he/she was removed from his/her home (as those rules were in effect on July 16, 1996) apply for purposes of determining the child's Title IV-E eligibility.¹²⁸ As noted above, tribal licensing standards apply for purposes of approving or licensing tribal foster family homes and tribal child care institutions. However, the law *does not* modify the separate Title IV-E plan requirements related to background checks of prospective caregivers. Therefore, under a tribal Title IV-E plan, background checks for prospective foster or adoptive parents must meet all of the requirements included in Title IV-E of the Social Security Act. These checks are similar, but not identical to background checks implemented in Indian country under the Indian Child Protection and Family Violence Act.¹²⁹

Like states, tribes seeking direct Title IV-E funding must have an approved Title IV-E plan that points to tribal law or policy that meets federal requirements for the program and they must also have an approved Child and Family Services Plan, under which they receive Title IV-B, Subpart 1 (Stephanie Tubbs Jones Child Welfare Services Program) funding.¹³⁰ Finally, they must develop processes to enable them to successfully claim federal Title IV-E reimbursement, including those to determine eligibility for Title IV-E assistance as well as cost allocation methodologies, and

(...continued)

¹²⁴ For purposes of this discussion, a "tribe" or "tribes" refers to tribe(s), tribal organization(s), or tribal consortium/consortia, and a "tribal Title IV-E plan" refers to the plan of any one of those tribal entities.

¹²⁵ Section 479B(b) of the SSA.

¹²⁶ Section 479B(c)(1)(B) of the SSA.

¹²⁷ Section 479B(c)(2) of the SSA.

¹²⁸ With regard to the time frame within which the required judicial determinations must be made for a child to be eligible for Title IV-E foster care maintenance payments (and as shown in **Table 2** of this report), the law permits a tribal court to meet these by retrospectively issuing a "contrary to the welfare" finding and/or a finding related to "reasonable efforts" to prevent placement or reunite a child. However, the tribal court may only do this during the first 12 months in which the tribe has an approved Title IV-E plan. After that date, it must meet the same time frames, and in the same manner for these judicial determinations as is required of states. Section 479B(c)(1)(C)(ii)(I) of the SSA.

¹²⁹ Under the Indian Child Protection and Family Violence Act (25 U.S.C. 3207(c)) and as interpreted in regulation (25 C.F.R. 63.3) tribes that receive funds under the Indian Self Determination and Education Assistance or the Tribally Controlled School Act are also required to conduct criminal records checks of foster parents (or individuals providing out of home care) for children and generally may not approve foster parents with certain criminal histories. A tribe seeking Title IV-E funding, however, must ensure that the background checks it applies (and findings disqualifying a caregiver to receive Title IV-E on behalf of a child) meet the standards established in the Title IV-E program.

¹³⁰ Tribes are not required to receive funding under the Promoting Safe and Stable Families program to be eligible to receive direct Title IV-E funds. See Tribal Child Welfare, Section-by-Section Discussion of Interim Final Rule, *Federal Register*, January 6, 2012, p. 902.

they must regularly report certain data to HHS, Children’s Bureau regarding children in tribal foster care custody and those who are adopted.

Federal Reimbursement for Tribal Title IV-E Program Costs

Foster care maintenance payments, as well as adoption assistance and guardianship assistance payments, are to be reimbursed at a tribe’s unique “FMAP” (“federal medical assistance percentage”). That percentage is determined by statutory formula and is based on the per capita income of the population in the tribe’s Title IV-E *service area* (as defined in the tribe’s Title IV-E plan). A tribal FMAP (or reimbursement rate) must never be lower than the rate of reimbursement for any state in which the tribe is located and may not be higher than 83%.¹³¹ As is the case for states, tribal training costs under the Title IV-E program are to be reimbursed at 75% of the tribe’s eligible spending and Title IV-E child placement, data collection and reporting, and any other costs necessary for the proper and efficient administration of the program are to be provided at 50% of the tribe’s eligible spending.¹³²

With a few exceptions (which are the same as those provided for states as described in the body of this report), tribes may only seek federal reimbursement for costs related to children who are eligible for Title IV-E assistance. Therefore, tribes operating a Title IV-E program must be able to accurately determine (subject to periodic federal review) Title IV-E eligibility in order to receive any federal support under the program. For training and administrative claims, tribes must have a valid cost allocation *methodology* that determines both what share of training, child placement, and other program administration costs are done on behalf of Title IV-E eligible children, as well as a method to determine what part of the administrative and training costs are allocable to Title IV-E. HHS notes that—while Title IV-E program rules, and general HHS cost allocation principles apply—the U.S. Department of the Interior, Bureau of Indian Affairs (BIA) is the “cognizant” agency for purposes of tribal cost allocation. Further, the indirect cost rates established for use in BIA programs may be used in the Title IV-E program, provided the methodology for the cost rate is supplied in the tribe’s Title IV-E cost allocation methodology (CAM).¹³³

In general, any part of Title IV-E spending that is not reimbursed by the federal government must be provided from non-federal sources. However, certain federal laws explicitly provide that funds received by a tribe via a limited number of specific programs may serve as “non-federal” dollars in other programs. Accordingly, tribes may use any federal funds from such a program to provide the “non-federal” share of Title IV-E spending.¹³⁴ In addition, tribes are permitted to use in-kind

¹³¹ Section 474(a)(1), (2) and (5) of the SSA; HHS, ACF,ACYF, Children’s Bureau, IM-11-05, “Issuance of Final Federal Register Notice on the Calculation of Annual Federal Medical Assistance Percentage (FMAP) Rates for Indian Tribes for Use in Title IV-E Foster Care, Adoption Assistance, and Guardianship Assistance Programs,” September 30, 2011. The August 1, 2011 *Federal Register* notice is attached to this information memorandum.

¹³² Section 474(a)(3)(C), (D), and (E) of the SSA.

¹³³ HHS, ACF, “Tribal Title IV-E Program Cost Allocation Methodology Guidance,” ACYF-CB-PI-10-13, issued November 23, 2010; Tribal Child Welfare, Interim Final Rule, *Federal Register*, January 6, 2012, pp. 901, 917-918; and 45 C.F.R. 1356.60.

¹³⁴ For example, funds provided under Indian Child Welfare Act (ICWA) authority “may be utilized as non-Federal matching share in connection with funds provided under titles IV-B and XX of the Social Security Act or under any other Federal financial assistance program which contribute to the purpose”[for which ICWA child welfare funds are provided [42 U.S.C. § 1931(b)]. Additionally tribes may use contract funds available under the Indian Self Determination and Education Assistance Act (P.L. 93-638) as non-federal matching provided child welfare services are (continued...)

third party expenditures to meet the non-federal share of Title IV-E administrative and training costs. Beginning with FY2012, the Tribal Child Welfare Interim Final Rule permits tribes to use in-kind expenditures to meet the full non-federal Title IV-E administrative (50%) and training (25%) costs.¹³⁵

Data Collection and Reporting Requirements

Tribes operating a Title IV-E program must collect and report data to the HHS Children's Bureau regarding children in foster care or those adopted under the auspices of the public child welfare agency. Data must be submitted electronically as part of the Adoption and Foster Care Analysis and Reporting System (AFCARS) and in a format prescribed by federal regulations.¹³⁶ Twice a year, the tribe must submit data on 1) each child who spent at least 24 hours in foster care under the tribal Title IV-E agency's care and placement responsibility (during the prior six months); and 2) each child who was placed for adoption by the tribal Title IV-E agency or for whom that agency provided adoption assistance during that same 6-month period.¹³⁷ Data must be reported without regard to whether the child is eligible for Title IV-E foster care or adoption assistance.¹³⁸

Tribes seeking direct Title IV-E funding are required to have a statewide information system capable of tracking each child in foster care. As part of meeting this requirement, they may develop a Tribal Automated Child Welfare Information System (TACWIS) *but are not required to do so*. A TACWIS (referred to for states as SACWIS, or Statewide Automated Child Welfare Information System) facilitates cross-program and cross-agency sharing of data by the tribe (and within the tribe) and must meet federal design standards. Tribes with an approved planning document for a TACWIS may make Title IV-E claims for federal reimbursement that are related to the development of a data collection system (including hardware costs). Those tribes may also submit claims for federal reimbursement related to the operation of a required Title IV-E data collection and reporting system. Tribes with an approved Title IV-E plan that *do not* have a TACWIS may only submit regular Title IV-E administrative claims related to operation (not development) of a required data collection and reporting system.¹³⁹

(...continued)

within the scope of the contract. See also Jack F. Trope, "Title IV-E: Helping Tribes Meet the Legal Requirements," March 2010, p. 4.

¹³⁵ Tribal Child Welfare, Interim Final Rule, *Federal Register*, January 6, 2012, pp. 920-921; and 45 C.F.R. 1356.68.

¹³⁶ 45 C.F.R. 1355.40 (as most recently amended by Tribal Child Welfare, Interim Final Rule, released January 6, 2012).

¹³⁷ State child welfare agencies must continue to report data on tribal children in foster care when those children—even those residing on tribal land—are *under the care and placement responsibility of the state child welfare agency*. Children that must be included in state AFCARS submissions include those children in foster care for whom tribes may be administering assistance under a tribal-state IV-E agreement. However, states are not required to report data on tribal children in foster care if the state does not have responsibility for that child's care and placement (e.g., via voluntary placement agreement, tribal-state agreement, or court order). See 45 C.F.R. 1355.40.

¹³⁸ 45 C.F.R. 1355 Appendices A and B list and define each of the foster care and adoption data elements. Appendices C, D and E contain additional specifications related to electronic submission of the data, format for the submission, and other reporting standards.

¹³⁹ HHS, ACF, ACYF-CB-PI-10-13 "Tribal Title IV-E Program Cost Allocation Methodology Guidance," issued November 23, 2010, Section F "Tribal Title IV-E TACWIS and Other Automated Systems Costs."

States report certain additional, closely related child welfare data via the National Child Abuse and Neglect Data System (NCANDS)¹⁴⁰ and the National Youth in Transition Database (NYTD).¹⁴¹ However, neither of these data systems is defined or required in the Title IV-E foster care, adoption assistance and guardianship assistance program. Tribes operating a Title IV-E program are *not required* to report data via these systems.

Transfer of a Child’s Care and Placement Responsibility

The Indian Child Welfare Act (ICWA) provides specific federal rules regarding notice and transfer of certain child custody proceedings (e.g., removal and placement in foster care) from a state court to a tribal court or authority. Those requirements remain unchanged by the authorization of direct federal support to tribes under Title IV-E of the Social Security Act. Separately, for purposes of ensuring continued Title IV-E eligibility and/or payments (as well as Medicaid eligibility), the Fostering Connections Act required HHS to regulate on the issue of transferring care and placement responsibility of a child from a state child welfare agency to a tribal child welfare agency. The regulations are to apply whenever the tribal child welfare agency has an approved Title IV-E plan to receive direct federal Title IV-E funding, or, if the tribe receives Title IV-E funding via a tribal-state Title IV-E agreement.¹⁴²

HHS issued interim final regulations on this matter in early 2012. They provide that each state must establish and maintain transfer procedures, in consultation with Indian tribes. At a minimum those procedures must 1) provide for the state to determine the child’s eligibility for Title IV-E assistance at the time of the transfer of care and placement responsibility (if this determination has not already been made); and 2) provide that the state will supply to the tribe essential documents and information necessary to continue a child’s eligibility for Title IV-E assistance and for Medicaid. Essential documentation and information includes, but is not limited to—judicial determinations that the home from which the child was removed was contrary to his/her welfare and that reasonable efforts to reunite the child and/or to complete the child’s permanency plan have been made consistent with Title IV-E requirements; other documentation the state has, related to the child’s Title IV-E eligibility, and information and documentation related to his/her eligibility or potential eligibility for other federal programs; the child’s written case plan, including health and education records; and information and documentation of the child’s placement settings, including a copy of the most recent provider’s license or approval.¹⁴³

¹⁴⁰ NCANDS was developed by HHS as required by the Child Abuse Prevention and Treatment Act (CAPTA, Section 103(c)(1)(C)). State participation in NCANDS is voluntary, although all states receiving CAPTA state grants are required to report certain child maltreatment data to HHS “to the maximum extent practicable” (Section 106(d)). Tribes are not eligible to receive these CAPTA grant funds. For FY2012, Congress provided \$26 million for those grants, which was divided among 56 jurisdictions (50 states, District of Columbia, Puerto Rico, Guam, American Samoa, U.S. Virgin Islands and the Northern Mariana Islands).

¹⁴¹ Under the Chafee Foster Care Independence Program, states (including DC and any territory) that receive program funding must collect and report data via NYTD effective with FY2011. See 45 C.F.R. 1356.80-1356.85, Appendix A. Certain tribes may also receive Chafee funds, however, those tribes are not required to report via NYTD. See HHS, ACF, ACYF-CB-PI-11-04, [providing guidance to tribes on actions needed to receive funding for programs authorized under Title IV-B of the Social Security Act as well as the Chafee Foster Care Independence, and related Education and Training Vouchers], issued March 23, 2011, p. 9.

¹⁴² Section 301(e) of the Fostering Connections Act (P.L. 110-351).

¹⁴³ 45 C.F.R. 1356.67 (as added by Tribal Child Welfare Interim Final Rule, effective February 6, 2012). *Federal Register*, January 6, 2012, pp. 918-920, 950.

Tribal Title IV-E Implementation Grants and Technical Assistance

Implementation Grants

As the above discussion indicates, preparing to submit and gain approval of a Title IV-E plan requires significant planning. To assist tribal entities seeking to prepare a Title IV-E plan, the Fostering Connections to Success and Increasing Adoptions Act established Tribal Title IV-E implementation grants valued at up to \$300,000.¹⁴⁴ These one-time grants are available only to tribes that plan to develop and submit a Title IV-E plan to HHS within 24 months of receiving the funding. The statute provides that a tribal grantee must repay the full grant amount if it does not submit a Title IV-E plan for approval within 24 months of its receipt of these funds. However, HHS is permitted to waive this repayment if it determines that the failure to submit such a plan within that time frame was due to circumstances beyond the control of the tribe.

A tribe is not required to seek (or receive) this grant funding prior to submitting a Title IV-E plan for approval. However, a tribe that seeks and receives these funds may use them to support any effort necessary to develop a plan to carry out a Title IV-E program. These include costs relating to the development of data collection systems, a cost allocation methodology, agency and tribal court procedures necessary to meet the case review system requirements under the Title IV-E program, or any other costs attributable to meeting any other requirement necessary for approval of a Title IV-E plan.

Through September 1, 2012, HHS had awarded tribal implementation grants to 12 tribes, tribal organizations or consortiums: Tohono O’odham Nation–Sells, AZ; Confederated Salish & Kootenai Tribes–Pablo, MT; Keweenaw Bay Indian Community–Baraga, MI; Sac and Fox Nation–Stroud, OK; Washoe Tribe of Nevada and California–Gardnerville NV; Navajo Nation–Window Rock, AZ; Chickasaw Nation–Ada, OK; Yurok Tribe–Del Norte, CA; Shoshone-Bannock Tribes–Fort Hall, ID; Lummi Nation–Bellingham, WA; and South Puget Intertribal Planning Agency–Shelton, WA; and the Confederated Tribe of Siletz Indians–OR. According to HHS, as of early September 2012, all of these tribes continue to work to finalize a Title IV-E plan.

Technical Assistance

P.L. 110-351 also requires HHS to provide “information, advice, educational materials, and technical assistance” to tribes, generally, regarding the services or other activities funded under the child welfare programs authorized in Title IV-B and Title IV-E of the Social Security Act. This technical assistance is to be available to tribes seeking to operate Title IV-E or Title IV-B programs and to tribes and states seeking to enter into Title IV-E tribal-state agreements or otherwise to satisfy the requirements for state and tribal collaboration or cooperation included in Title IV-E or Title IV-B of the Social Security Act.¹⁴⁵ In September 2009, HHS awarded funding to the Tribal Law and Policy Institute (based in West Hollywood, California) for a National Resource Center for Tribes. The award is expected to last for up to five years. For more information about what the resource center offers, readers are encouraged to visit its website at <http://www.NRC4tribes.org>.

¹⁴⁴ Section 476(c) of the SSA.

¹⁴⁵ Specific cooperation requirements cited are Section 422(b)(9), Section 471(a)(32) and Section 477(b)(3)(G) of the SSA.

Appendix B. AFDC Income Standard and Federal Foster Care Coverage Rate

Table B-1. Estimated Share of Children in Foster Care Receiving Title IV-E Foster Care Maintenance Payments by State

States are ranked from highest to lowest income test

State	AFDC Monthly Counted Income Test (For a family of 3 July 1, 1996) ^a	Estimates Based on Title IV-E Expenditure Claims Data Compared to Total Caseload Data (AFCARS) ^b				Survey Estimates ^c
		FY2009	FY2010	FY2011	Average FY09-11	State FY2010
New Hampshire	\$2,034	50.6%	52.0%	55.4%	52.5%	51.0%
Washington	\$1,252	35.9%	41.0%	17.6%	31.9%	70.0%
Vermont	\$1,173	59.2%	56.6%	47.5%	54.5%	48.6%
Hawaii	\$1,140	32.0%	38.3%	41.7%	36.9%	43.6%
Florida	\$1,082	27.5%	32.7%	26.1%	28.7%	82.0%
Alaska	\$1,028	33.9%	37.1%	34.5%	35.1%	34.0%
Idaho	\$991	69.5%	65.9%	^d	^e	70.0%
West Virginia	\$991	23.4%	24.6%	19.4%	22.4%	34.1%
New Jersey	\$985	44.4%	61.3%	59.8%	54.6%	40.0%
Arizona	\$964	46.5%	44.3%	40.5%	43.6%	49.3%
Illinois	\$963	80.4%	75.0%	46.1%	67.0%	56.0%
Ohio	\$950	65.6%	62.4%	61.0%	63.0%	63.5%
Iowa	\$849	23.1%	22.5%	23.4%	23.0%	41.6%
Missouri	\$846	35.7%	32.0%	33.7%	33.7%	63.0%
Texas	\$751	44.3%	41.4%	43.9%	43.1%	48.5%
Connecticut	\$745	41.0%	37.4%	31.0%	36.4%	44.0%
California	\$723	61.1%	59.1%	57.9%	59.4%	70.0%
Dist. of Columbia	\$712	43.5%	43.7%	54.0%	46.7%	45.9%
Arkansas	\$705	47.8%	47.6%	48.3%	47.9%	65.7%
Nevada	\$699	45.8%	43.3%	40.5%	43.2%	56.7%
Tennessee	\$677	35.8%	44.5%	37.3%	39.1%	45.7%
Wyoming	\$674	12.0%	12.2%	12.8%	12.3%	14.8%
Alabama	\$673	30.6%	39.2%	42.4%	37.1%	57.9%
Louisiana	\$658	56.2%	57.5%	36.7%	50.2%	45.6%
Wisconsin	\$647	27.5%	32.7%	35.9%	32.0%	41.2%
Oklahoma	\$645	44.7%	42.1%	38.8%	41.9%	52.6%
Pennsylvania	\$587	88.4%	96.8%	^d	^e	69.0%
Massachusetts	\$579	23.7%	24.5%	24.7%	24.2%	28.4%
New York	\$577	45.6%	47.5%	39.9%	44.5%	58.6%
Utah	\$568	32.9%	31.3%	33.4%	32.5%	38.5%
Montana	\$558	35.9%	36.4%	37.1%	36.5%	47.6%
Rhode Island	\$554	32.3%	28.4%	31.6%	30.7%	35.0%
Maine	\$553	56.6%	61.9%	43.9%	54.8%	56.0%
Michigan	\$551	22.8%	25.4%	27.0%	25.0%	57.0%

State	AFDC Monthly Counted Income Test (For a family of 3 July 1, 1996) ^a	Estimates Based on Title IV-E Expenditure Claims Data Compared to Total Caseload Data (AFCARS) ^b				Survey Estimates ^c
		FY2009	FY2010	FY2011	Average FY09-11	State FY2010
North Carolina	\$544	37.7%	36.2%	35.3%	36.4%	53.0%
Minnesota	\$532	39.0%	35.6%	31.0%	35.3%	40.6%
Kentucky	\$526	47.7%	41.8%	39.5%	43.0%	47.5%
South Carolina	\$524	23.2%	26.2%	54.1%	33.1%	48.5%
Maryland	\$517	38.2%	35.2%	33.5%	35.8%	55.0%
South Dakota	\$507	29.0%	39.7%	39.1%	35.9%	52.0%
Oregon	\$460	35.2%	35.4%	30.9%	33.8%	63.4%
North Dakota	\$431	31.1%	34.8%	34.8%	33.5%	51.9%
Georgia	\$424	41.9%	40.0%	34.4%	38.8%	59.0%
Colorado	\$421	28.5%	29.2%	29.0%	28.9%	51.9%
Kansas	\$403	22.5%	20.8%	30.7%	24.7%	23.0%
New Mexico	\$381	63.2%	58.4%	43.0%	55.0%	64.7%
Mississippi	\$368	30.3%	27.9%	32.6%	30.3%	37.0%
Nebraska	\$364	24.5%	25.6%	18.6%	23.0%	19.8%
Delaware	\$338	23.1%	27.2%	30.2%	26.9%	24.7%
Virginia	\$322	55.1%	53.0%	48.6%	52.4%	47.9%
Indiana	\$320	23.0%	25.1%	25.5%	24.5%	45.0%
TOTAL	\$695	44.8%	45.1%	39.6%	43.2%	55.0%

Source: Table prepared by the Congressional Research Service (CRS).

- a. The monthly counted income limit shown here is equal to the state's AFDC need standard—for a family of three. For purposes of determining Title IV-E foster care eligibility, states must apply the AFDC need standard as it existed in their state on July 16, 1996. State need standards shown were provided by HHS, ACF. Regarding the dollar amount shown, ACF noted that the standards vary greatly from state to state and in some states more than one need standard may apply based on family's locality, housing arrangement, family composition, or needs beyond the day to day essentials provided for in the basic standards. The need standard displayed assumed that the family (a) lives in the area/locality that included the highest proportionate share of the state's AFDC cases; (b) has no special needs; (c) lives in rented housing; (d) receives the maximum allowable amounts for rent and utilities; and (e) receives any supplemental allowances for items such as heat or energy allowed under the regular budget process.
- b. The coverage rates shown were determined by dividing average number of children receiving Title IV-E maintenance payments in the fiscal year (as reported by states in Title IV-E expenditure claims and provided to CRS by HHS, ACF, Office of Legislative Affairs and Budget) to the total number of children in the state's foster care caseload on the last day of that fiscal year (as reported by the state via the Adoption and Foster Care Analysis and Reporting System, AFCARS, and available on the HHS, ACF, Children's Bureau website). The reporting form for Title IV-E expenditure claims data was changed beginning with FY2011; therefore the FY2011 rates may not be directly comparable to earlier years.
- c. Based on survey of state budget officials, conducted by Child Trends. See Kerry DeVooght, et al., *Federal, State, and Local Spending to Address Child Abuse and Neglect in SFYs 2008 and 2010*, Child Trends, with support from Casey Family Programs and Annie E. Casey Foundation (June 2010).
- d. The calculated percentage exceeded 100% and the data were excluded as unreliable.
- e. Percentage could not be calculated because of missing values.

Appendix C. Additional Tables

Table C-1. Foster Care-Related Spending for Child Placement and Administration Under the Title IV-E Program, FY1997-FY2011

Dollars in millions; the federal share for these costs equals 50% of the total

Fiscal Year	Title IV-E Claims Related to Child Placement and Administration			
	TOTAL <i>All eligible spending claimed by states</i>	FEDERAL SHARE <i>Amount of total to be reimbursed</i>	TOTAL <i>All eligible spending claimed by states</i>	FEDERAL SHARE <i>Amount of total to be reimbursed</i>
	<i>Constant (FY2011) Dollars</i>		<i>Nominal Dollars</i>	
1997	\$4,031	\$2,016	\$2,886	\$1,443
1998	\$4,081	\$2,041	\$2,970	\$1,485
1999	\$4,725	\$2,363	\$3,505	\$1,752
2000	\$4,949	\$2,475	\$3,787	\$1,894
2001	\$4,988	\$2,494	\$3,940	\$1,970
2002	\$5,076	\$2,538	\$4,070	\$2,035
2003	\$5,479	\$2,739	\$4,496	\$2,248
2004	\$5,262	\$2,631	\$4,418	\$2,209
2005	\$5,130	\$2,565	\$4,449	\$2,225
2006	\$5,166	\$2,583	\$4,645	\$2,323
2007	\$4,654	\$2,327	\$4,283	\$2,141
2008	\$4,082	\$2,041	\$3,923	\$1,961
2009	\$4,150	\$2,075	\$3,976	\$1,988
2010	\$4,097	\$2,049	\$3,991	\$1,996
2011	\$3,850	\$1,925	\$3,850	\$1,925

Source: Table prepared by the Congressional Research Service based on Title IV-E expenditure claims as submitted by states and compiled annually by HHS, ACF, Office of Legislative Affairs Budget (OLAB). Any disallowances or deferrals that may subsequently have been taken are not shown.

Note: FY2011 data were reported on a new claim form and may not be directly comparable to earlier years.

Table C-2. Child Placement and Administrative Foster Care Spending, by Detailed Claim Category, Selected Years

Nominal dollars shown in millions; includes TOTAL eligible spending by states;
federal reimbursement 50%.

Administrative Claim Category	FY2005		FY2007		FY2009		FY2011	
Case planning and management	\$2,435	55%	\$2,511	59%	\$2,263	57%	\$2,046	53%
Pre-placement activities	\$999	22%	\$764	18%	\$705	18%	\$613	16%
Eligibility determination	\$251	6%	\$262	6%	\$170	4%	\$184	5%
Other administrative ^a	\$764	17%	\$746	17%	\$838	21%	\$1,006	26%
TOTAL	\$4,449	100%	\$4,283	100%	\$3,976	100%	\$3,850	100%

Source: Table prepared by the Congressional Research Service based on Title IV-E expenditure claims as submitted by states and compiled annually by HHS, ACF, Office of Legislative Affairs Budget (OLAB). Any disallowances or deferrals that may subsequently have been taken are not shown.

Note: FY2011 data were reported on a new claim form and may not be directly comparable to earlier years.

- a. For FY2005-FY2010, this row includes administrative costs reported as "other." For FY2011, this row includes claims reported in the categories of "in-placement administrative costs -provider management" and "in-placement administrative costs- agency management."

Table C-3. Spending for Title IV-E Training Purposes, FY1997-FY2011

Dollars in millions; shaded cells display inflation-adjusted (constant) dollars

Fiscal Year	Foster Care		Adoption Assistance		Foster Care		Adoption Assistance		TOTAL Foster Care +Adoption Assistance ^a			
	All Eligible spending by states	Federal Share Amount reimbursed	All Eligible spending by states	Federal Share Amount reimbursed	All Eligible spending by states	Federal Share Amount reimbursed	All Eligible spending by states	Federal Share Amount reimbursed	All Eligible spending by states	Federal Share Amount reimbursed	All Eligible spending by states	Federal Share Amount reimbursed
	Constant FY2011 Dollars				Nominal Dollars				Constant FY2011 Dollars		Nominal Dollars	
1997	\$330	\$247	\$36	\$27	\$236	\$177	\$26	\$19	\$365	\$274	\$262	\$196
1998	351	263	51	38	255	192	37	28	402	302	293	219
1999	359	270	62	46	267	200	46	34	421	316	313	234
2000	402	301	82	61	307	231	63	47	484	363	370	278
2001	394	296	72	54	311	234	57	43	466	350	368	276
2002	404	303	71	53	324	243	57	43	475	356	381	286
2003	348	261	59	44	285	214	48	36	406	305	334	250
2004	385	289	45	34	324	243	38	28	430	323	361	271
2005	363	272	49	37	314	236	43	32	412	309	357	268
2006	352	264	40	30	316	237	36	27	392	294	352	264
2007	328	246	37	27	302	226	34	25	364	273	335	251
2008	298	224	33	25	286	215	32	24	331	248	318	239
2009	288	216	32	24	276	207	31	23	320	240	307	230
2010	280	207	31	23	273	202	31	22	311	230	303	224
2011	269	201	28	21	269	201	28	21	297	221	297	221

Source: Table prepared by the Congressional Research Service based on Title IV-E expenditure claims as submitted by states and compiled annually by HHS, ACF, Office of Legislative Affairs and Budget (OLAB). Any disallowance or deferrals that may subsequently have been taken are not shown.

Note: The federal share (amount reimbursed) was 75% for all years *except* for FY2010 and FY2011, when it was 74%. In those years some training claims were reimbursed at a lower level due to the phase in of new kinds of training claims, as authorized by the Fostering Connections to Success and Increasing Adoption Act of 2008 (P.L. 110-351).

- a. States submitted a small amount of training claims related to kinship guardianship assistance in FY2010 and FY2011. In nominal dollars, all eligible state spending submitted for training related to Title IV-E kinship guardianship assistance was \$47,721 for FY2010 and \$17,328 for FY2011. The federal share, or amount of that spending reimbursed to the states (also in nominal dollars), was \$35,791 in FY2010 and \$12,516 in FY2011.