

DEPARTMENT OF HEALTH AND HUMAN SERVICES

ASSISTANCE LISTING 93.658 FOSTER CARE–TITLE IV-E

I. PROGRAM OBJECTIVES

The objective of the Foster Care program is to help agencies authorized to administer Title IV-E programs to provide safe, appropriate, 24-hour, substitute care for children who are under the jurisdiction of the administering Title IV-E agency and need temporary placement and care outside their homes.

II. PROGRAM PROCEDURES

Overview

The Foster Care program is administered at the federal level by the Children’s Bureau, Administration on Children, Youth and Families, Administration for Children and Families (ACF), a component of the Department of Health and Human Services (HHS). Funding is provided to the 50 states, the District of Columbia, Puerto Rico, the US Virgin Islands, and federally recognized Indian tribes, Indian tribal organizations, and tribal consortia with approved Title IV-E plans, based on a Title IV-E plan and amendments, as required by changes in statutes, rules, and regulations submitted to and approved by the ACF Children’s Bureau Associate Commissioner. This program is considered an open-ended entitlement program and allows the state or tribe to be funded at a specified percentage (federal financial participation) for program costs for eligible children.

The Foster Care program provides federal matching funds to Title IV-E agencies with approved Title IV-E plans for maintenance assistance payments to provide safe and stable out-of-home care to eligible children placed in qualifying foster care settings. The program also provides matching funds for child placement and other administrative or training costs associated with serving these children and others determined to be candidates for the Title IV-E Foster Care program or those either found to be at-risk of becoming or identified as a sex trafficking victim.

The designated state or tribal agency for this program, which is authorized under Title IV-E of the Social Security Act, as amended, also administers ACF funding provided for other Title IV-E programs (e.g., Adoption Assistance (Assistance Listing 93.659); Guardianship Assistance (Assistance Listing 93.090) at agency option and John H. Chafee Foster Care Program for Successful Transition to Adulthood (Assistance Listing 93.674), as well as Child Welfare Services (Assistance Listing 93.645) and Promoting Safe and Stable Families (Assistance Listing 93.556) programs (Title IV-B of the Social Security Act, as amended) (Assistance Listing 93.556) funds available to states and those tribes qualifying for at least a minimum grant of \$10,000); and the Social Services Block Grant program (Assistance Listing 93.667) (Title XX of the Social Security Act, as amended) (states only)). The Title IV-E agency may either directly administer the Foster Care program or supervise its administration by local level agencies. When the program is administered by a state, in accordance with the approved Title IV-E plan, it must be in effect in all political subdivisions of the state, and, if administered by them, program requirements must be mandatory upon them. When the program is administered by a tribe, it must be in effect in all political subdivisions within the tribal service area(s) and for all

populations to be served under the plan. If the program is administered by a political subdivision of a tribe, program requirements must be mandatory upon them (42 USC 671(a)(1-4) and 42 USC 679B(c)(1)(B)).

Source of Governing Requirements

The Foster Care program is authorized by Title IV-E of the Social Security Act, as amended (42 USC 670 et seq.). This includes those amendments made by the Preventing Sex Trafficking and Strengthening Families Act (Pub. L. No. 113-183) and the Family First Prevention Services Act (Pub. L. No. 115-123). Implementing regulations are at 45 CFR parts 1355, 1356, and 1357.

States and tribes are required to adopt and adhere to their own statutes and regulations for program implementation, consistent with the requirements of Title IV-E and the approved Title IV-E plan.

The regulations at 45 CFR Part 75 specifying uniform administrative requirements, cost principles, and audit requirements for HHS awards are applicable to the Foster Care program. However, in accordance with 45 CFR sections 75.101(e)(1)(iii) and 75.101(e)(2), except for 45 CFR section 75.202, the guidance in Subpart C of 45 CFR Part 75 does not apply.

Availability of Other Program Information

The Children's Bureau manages a policy issuance system that provides further clarification of the law and guides states and tribes in implementing the Foster Care program. This information may be accessed at <https://www.acf.hhs.gov/cb/laws-policies>.

III. COMPLIANCE REQUIREMENTS

In developing the audit procedures to test compliance with the requirements for this federal program, the auditor must determine, from the following summary (also included in Part 2, “Matrix of Compliance Requirements”), which of the 12 types of compliance requirements have been identified as subject to the audit (noted with a “Y” in the summary matrix below), and then determine which of the compliance requirements that are subject to the audit are likely to have a direct and material effect on the federal program at the auditee. For each such compliance requirement subject to the audit, the auditor must use Part 3 (which includes generic details about each compliance requirement other than Special Tests and Provisions) and this program supplement (which includes any program-specific requirements) to perform the audit. When a compliance requirement is shown in the summary below as “N,” it has been identified as not being subject to the audit. Auditors are not expected to test requirements that have been noted with an “N.” See the Safe Harbor Status discussion in Part 1 for additional information.

A	B	C	E	F	G	H	I	J	L	M	N
Activities Allowed or Unallowed	Allowable Costs/Cost Principles	Cash Management	Eligibility	Equipment/Real Property Management	Matching, Level of Effort, Earmarking	Period Of Performance	Procurement Suspension & Debarment	Program Income	Reporting	Subrecipient Monitoring	Special Tests and Provisions
Y	Y	N	Y	N	N	N	N	N	Y	Y	Y

A. Activities Allowed or Unallowed

1. *Activities Allowed*

- a. Funds may be expended for foster care maintenance payments on behalf of eligible children, in accordance with the Title IV-E agency’s foster care maintenance payment rate schedule and in accordance with 45 CFR section 1356.21, to individuals serving as foster family homes, to child-care institutions, or to public or private child-placement or child-care agencies. Such payments may include the cost of (and the cost of providing, including certain associated administrative and operating costs of a child care institution) food, clothing, shelter, daily supervision, school supplies, personal incidentals, liability insurance with respect to a child, and reasonable travel to the child’s home for visitation, as well as reasonable travel for the child to remain in the same school he or she was attending prior to placement in foster care (42 USC 672(b)(1) and (2), (c)(2), and 675(4)).
- b. Beginning October 1, 2018, Title IV-E agencies may claim Title IV-E foster care maintenance payments and administrative costs consistent with 45 CFR 1356.60(c) for a child placed with a parent in a licensed residential family-based treatment facility for substance abuse for up to 12 months (42 USC 672(j) and 672(a)(2)(C)).
- c. Funds may be expended for training (including both short- and long-term training at educational institutions through grants to such institutions or by direct financial assistance to students enrolled in such institutions) of personnel employed or preparing for employment by the agency administering the plan (42 USC 674(a)(3)(A)). All training activities and costs funded under Title IV-E shall be included in the Title IV-E agency’s training plan for Title IV-B (45 CFR section 1356.60(b)(2)).
- d. Funds may be expended for short-term training of (1) relative guardians; (2) state/tribe-licensed or state/tribe-approved child welfare agencies

providing services to children receiving Title IV-E assistance; (3) child abuse and neglect court personnel; (4) agency, child or parent attorneys; (5) guardians ad litem; and (6) court appointed special advocates (42 USC 674(a)(3)(B B)).

- e. Funds may be expended for short-term training, including associated travel and per diem, of current or prospective foster parents and staff of licensed or approved child-care institutions at the initiation of or during their period of care (45 CFR section 1356.60(b)(1)(ii)).
- f. Funds may be expended for costs directly related to the administration of the program that are necessary for the proper and efficient administration of the Title IV-E plan. The approved public assistance cost allocation plan (states) or approved cost allocation methodology (tribes) shall identify which costs are allocated and claimed under this program. Examples of allowable costs for the administration of the Foster Care program include those associated with eligibility determination and redetermination; referral to services; preparation for and participation in judicial determinations; hearings and appeals; rate setting; placement of the child; development of the case plan; case reviews; case management and supervision; recruitment and licensing of foster homes and institutions; costs related to data collection and reporting; and a proportionate share of related agency overhead (45 CFR section 1356.60(c)).
- g. Funds may be expended for activities defined as sex trafficking administrative activities (see list of examples below). These activities are meant to combat sex trafficking on behalf of any child or youth in the placement, care, or supervision of the Title IV-E agency who is at-risk of becoming a sex trafficking victim or who is identified as a sex trafficking victim. Such children do not need to be Title IV-E eligible and include those who are not removed from home; those who have run away from foster care and are under age 18 or such higher age elected under Section 475(8) of the Social Security Act; and youth who are not in foster care who are receiving services under the John H. Chafee Foster Care Program for Successful Transition to Adulthood (Assistance Listing 93.674) and at the option of the agency, youth under age 26 who were or were never in foster care (42 USC 671(a)(9), USC 671(a)(34), and 671(a)(35)).

Examples of activities allowable as sex trafficking administration include

- developing and implementing policies and procedures to identify, document in agency records, and determine appropriate services for victims of sex trafficking
- conducting sex trafficking screenings and documenting victims of sex trafficking in agency files

- determining appropriate services for individuals identified as such victims, including referrals to services
- completing reports required for law enforcement and ACF of children or youth who the agency identifies as being a sex trafficking victim
- developing and implementing protocols to locate and assess children missing from foster care, including screening the child to identify if the child is a possible sex trafficking victim

Since the Title IV-E agency is not limited to performing the activities described above on behalf of individuals meeting Title IV-E eligibility requirements, application of a Title IV-E foster care participation rate is not needed in allocating these allowable administrative costs to the Title IV-E Foster Care program (42 USC 671(a)(9) and (a)(34), as amended by Pub. L. No. 113-183, and the Child Welfare Policy Manual section 8.1 Q/A#7).

- h. To the extent that allowable activities constituting training and administrative costs are allocated to the program through application of a Title IV-E participation rate (sometimes called the eligibility, penetration, or discount rate), this rate must be calculated by dividing the number of Title IV-E foster care eligible children by the total number of children in foster care pursuant to the definition of foster care in 45 CFR section 1355.20. The numerator is comprised of the total number of children in foster care determined to meet all Title IV-E eligibility requirements. A Title IV-E agency may also include in the numerator otherwise eligible children placed with relatives pending foster family home approval or licensure (for the lesser of the average time it takes to license a foster home or 12 months) and children moving from a facility that is not licensed to one that is for up to one month pursuant to Section 472(i)(1) of the Social Security Act. The denominator comprises the total number of children who are in foster care, including those that are Title IV-E eligible and those that are not or have not yet been determined Title IV-E eligible. Any methodology for claiming administrative costs, including the calculation of the participation rate described above, must be a part of the state's approved cost allocation plan or a tribe's approved cost allocation methodology (42 USC 672(i) and 674(a)(3), 2 CFR Part 225 or 45 CFR Part 75, as applicable, in accordance with 45 CFR section 75.110, 45 CFR section 95.507(b)(4), 45 CFR section 1355.20, and Child Welfare Policy Manual section 8.1C Q/A#8).
- i. With any required ACF approval, funds may be expended for costs related to design, implementation and operation of a statewide or tribal service area-wide data collection system (45 CFR sections 1356.60(d) and 95.611).

- j. Funds may be expended for costs related to design, implementation, and operation of a statewide or tribal automated child welfare information system (S/TACWIS) that received any required ACF approval by July 31, 2016, or a comprehensive child welfare information system (CCWIS), which receives any required ACF approval on or after August 1, 2016. Funds for S/TACWIS costs are available only for expenditures made prior to or during the transition period of August 1, 2016 through July 31, 2018. Funds are available for CCWIS qualifying costs for expenditures made on or after August 1, 2016 (45 CFR sections 1355.52, 1355.56, 1355.57, 1356.60(e) and 95.611).
- k. Under Section 1130 of the Social Security Act, Title IV-E agencies may be granted authority to operate a demonstration project as set forth in ACF-approved terms and conditions. Any such terms and conditions applicable to the program identify the specific provisions of the Social Security Act that are waived, the additional activities deemed allowable, and the scope and duration (which may not exceed a maximum of five total years unless specifically approved for further continuation) of the demonstration project. All demonstration project operational activities, excluding project evaluation, must end no later than September 30, 2019. The demonstration project must remain cost neutral to the federal government, as provided for in a methodology contained in the approved project terms and conditions involving either a matched comparison group or a capped allocation (42 USC 1320a–9 and Section 201 of Pub. L. No. 112-34).

Allowable activities for which funds may be expended under an approved demonstration project are as follows:

- (1) Costs incurred prior to project implementation for the development of the project that are included in an approved Developmental Cost Plan (42 USC 1320a–9 and Section 201 of Pub. L. No. 112-34).
- (2) Costs incurred at any point during the project lifespan for project evaluation in accordance with an approved Project Evaluation Plan (42 USC 1320a–9 and Section 201 of Pub. L. No. 112-34).
- (3) Costs for otherwise Title IV-E allowable program activities provided as part of the operation of a demonstration project (i.e., to the extent that geographic and Title IV-E funding category components are included in the scope of the approved project) on behalf of Title IV-E eligible children to the extent that the approved cost neutrality limit or payment schedule (if applicable) is not exceeded (42 USC 1320a–9 and Section 201 of Pub. L. No. 112-34).

- (4) Costs for approved specified project intervention activities performed as part of the operation of a demonstration project on behalf of designated children and families (including those approved activities cited as otherwise Title IV-E unallowable) to the extent that the approved cost neutrality limit or payment schedule (if applicable) is not exceeded (42 USC 1320a-9 and Section 201 of Pub. L. No. 112-34).
- (5) Costs for other activities performed throughout the jurisdiction of the Title IV-E agency deemed as allowable through specifically approved Title IV-E waiver provisions (including those approved activities cited as otherwise Title IV-E unallowable) to the extent that the approved cost neutrality limit or payment schedule (if applicable) is not exceeded (42 USC 1320a-9 and Section 201 of Pub. L. No. 112-34).

2. *Activities Unallowed*

- a. Costs of social services provided to a child, the child's family, or the child's foster family which provide counseling or treatment to ameliorate or remedy personal problems, behaviors, or home conditions are unallowable (45 CFR section 1356.60(c)(3)).
- b. Costs claimed as foster care maintenance payments that include medical, educational or other expenses not outlined in 42 USC 675(4)(A).
- c. Costs of conducting investigations of allegations of sex trafficking or other forms of child abuse or neglect or for providing social services, such as counseling or treatment, to victims of sex trafficking or other children or youth (Child Welfare Policy Manual section 8.1 Q/A#7).

B. Allowable Costs/Cost Principles

Both states and tribes are subject to the requirements of 2 CFR Part 200, Subpart E, as implemented by HHS at 45 CFR Part 75. States also are subject to the cost allocation provisions and rules governing allowable costs of equipment of 45 CFR Part 95 (45 CFR sections 1355.57, 95.503, and 95.705).

E. Eligibility

1. Eligibility for Individuals

Foster care benefits may be paid on behalf of a child only if all of the following requirements are met:

- a. Foster care maintenance payments are allowable only if the foster child was removed from the home of a relative specified in Section 406(a) of the Social Security Act, as in effect on July 16, 1996, and placed in foster

care by means of a judicial determination, as defined in 42 USC 672(a)(2), or pursuant to a voluntary placement agreement, as defined in 42 USC 672(f), (42 USC 672(a)(1) and (2) and 45 CFR section 1356.21).

(1) Judicial Determination

(a) *Contrary to the welfare determination* – A child’s removal from the home (unless removal is pursuant to a voluntary placement agreement) must be in accordance with a judicial determination to the effect that continuation in the home would be contrary to the child’s welfare, or that placement in foster care would be in the best interest of the child. The judicial determination must be explicitly stated in the court order and made on a case by case basis. The precise language “contrary to the welfare” does not have to be included in the removal court order, but the order must include language to the effect that remaining in the home will be contrary to the child’s welfare, safety, or best interest (45 CFR section 1356.21(c)).

(i) *Prior to March 27, 2000* – For a child who entered foster care before March 27, 2000, the judicial determination of contrary to the welfare must be in a court order that resulted from court proceedings that are initiated no later than six months from the date the child is removed from the home, consistent with Departmental Appeals Board (DAB) Decision Number 1508 (DAB 1508). The Departmental Appeals Board, through Decision Number 1508, ruled that a petition to the court stating the reason for the state agency’s request for the child’s removal from home, followed by a court order granting custody to the state agency is sufficient to meet the contrary to the welfare requirement (*Federal Register*, January 25, 2000, Vol. 65, Number 16, pages 4020 and 4088-89).

(ii) *On or after March 27, 2000* – For a child who enters foster care on or after March 27, 2000, the judicial determination of contrary to the welfare must be in the first court ruling that sanctions the child’s removal from home (45 CFR section 1356.21(c)). Acceptable documentation is a court order containing a judicial determination regarding contrary to the welfare or a transcript of the court proceedings reflecting this determination (45 CFR section 1356.21(d)). For the first 12 months that a

tribe's Title IV-E plan is in effect, the tribe may use *nunc pro tunc* orders and affidavits to verify reasonable efforts and contrary to the welfare judicial determinations for Title IV-E foster care eligibility (42 USC 679c(c)(1)(C)(ii)(I), as added by Section 301, Pub. L. No. 110-351).

- (b) *Reasonable efforts to prevent removal determination* – Within 60 days from the date of the removal from home pursuant to 45 CFR section 1356.21(k)(ii), there must be a judicial determination as to whether reasonable efforts were made or were not required to prevent the removal (e.g., child subjected to aggravated circumstances such as abandonment, torture, chronic abuse, sexual abuse, parent convicted of murder or voluntary manslaughter or aiding or abetting in such activities) (45 CFR sections 1356.21(b)(1) and (k)). The judicial determination must be explicitly documented (i.e., so stated in the court order and made on a case by case basis).
- (i) *Prior to March 27, 2000* – For a child who entered foster care before March 27, 2000, the judicial determination that reasonable efforts were made to prevent removal or that reasonable efforts were made to reunify the child and family satisfies the reasonable efforts requirement (*Federal Register*, January 25, 2000, Vol. 65, Number 16, pages 4020 and 4088).
- (ii) *On or after March 27, 2000* – For a child who enters foster care on or after March 27, 2000, the judicial determination that reasonable efforts were made to prevent removal or were not required must be made no later than 60 days from the date of child's removal from the home (45 CFR section 1356.21(b)(1)). Acceptable documentation is a court order containing a judicial determination regarding reasonable efforts to prevent removal or a transcript of the court proceedings reflecting this determination (45 CFR section 1356.21(d)). For the first 12 months that a tribe's Title IV-E plan is in effect, the tribe may use *nunc pro tunc* orders and affidavits to verify reasonable efforts and contrary to the welfare judicial determinations for Title IV-E foster care eligibility (42 USC 679c(c)(1)(C)(ii)(I), as added by Section 301, Pub. L. No. 110-351).

- (c) *Reasonable efforts to finalize a permanency plan* – A judicial determination regarding reasonable efforts to finalize the permanency plan must be made within 12 months of the date on which the child is considered to have entered foster care and at least once every 12 months thereafter while the child is in foster care. The judicial determination must be explicitly documented and made on a case by case basis. If a judicial determination regarding reasonable efforts to finalize a permanency plan is not made within this timeframe, the child is ineligible at the end of the twelfth month from the date the child was considered to have entered foster care or at the end of the month in which the subsequent judicial determination of reasonable efforts was due, and the child remains ineligible until such a judicial determination is made (45 CFR section 1356.21(b)(2)).
- (i) *Prior to March 27, 2000* – For a child who entered foster care before March 27, 2000, the judicial determination of reasonable efforts to finalize the permanency plan must be made no later than March 27, 2001, because such child will have been in care for 12 months or longer (January 25, 2000, *Federal Register*, Vol. 65, Number 16, pages 4020 and 4088).
- (ii) *On or after March 27, 2000* – For a child who enters foster care on or after March 27, 2000, the judicial determination of reasonable efforts to finalize the permanency plan must be made no later than 12 months from the date the child is considered to have entered foster care (45 CFR section 1356.21(b)(2)). Acceptable documentation is a court order containing a judicial determination regarding reasonable efforts to finalize a permanency plan or a transcript of the court proceedings reflecting this determination (45 CFR section 1356.21(d)). For the first 12 months that a tribe's Title IV-E plan is in effect, the tribe may use *nunc pro tunc* orders and affidavits to verify reasonable efforts and contrary to the welfare judicial determinations for Title IV-E foster care eligibility (42 USC 679c(c)(1)(C)(ii)(I), as added by Section 301 Pub. L. No. 110-351).

(2) Voluntary Placement

- (a) *Agreement* – A voluntary placement agreement must be entered into by a parent or legal guardian of the child who is a relative specified in Section 406(a) (as in effect on July 16, 1996) and from whose home the child was removed (42 USC 672(a)(2)(A)(i); 45 CFR section 1356.22(a)). A voluntary placement agreement entered into between a youth age 18 or older and the Title IV-E agency can meet the removal criteria in Section 472(a)(2)(A)(i) of the Social Security Act. In this situation, the youth age 18 or older is able to sign the agreement as his/her own guardian (Program Instruction ACYF-CB-PI-10-11 dated July 9, 2010, section B).
- (b) *Best interests of the child determination* – If the removal was by a voluntary placement agreement, it must be followed within 180 days by a judicial determination to the effect that such placement is in the best interests of the child (42 USC 672(e); 45 CFR section 1356.22(b)).
- b. The child’s placement and care are the responsibility of either the Title IV-E agency administering the approved Title IV-E plan or any other public agency under a valid agreement with the cognizant Title IV-E agency (42 USC 672(a)(2)).
- c. A child (except if in placement (new or an existing placement) on or after October 1, 2018, with a parent residing in a licensed residential family-based treatment facility for substance abuse) must meet the eligibility requirements of the former Aid to Families with Dependent Children (AFDC) program (i.e., meet the state-established standard of need as of July 16, 1996, prior to enactment of the Personal Responsibility and Work Opportunity Reconciliation Act) (42 USC 672(a)). Tribes must use the Title IV-A state plan (as in effect as of July 16, 1996) of the state in which the child resided at the time of removal (42 USC 679c(c)(1)(C)(ii)(II)). Program eligibility is limited to an individual defined as a “child.” This classification ordinarily ceases at the child’s 18th birthday (42 USC 672(a)(3), and 42 USC 675(8)(A)). If, however, the state in which the child was living at removal had as a Title IV-A state plan option (as in effect as of July 16, 1996), a Title IV-E agency may provide foster care maintenance payments on behalf of youth who have attained age 18, but are under the age of 19, and who are full-time students expected to complete their secondary schooling or equivalent vocational or technical training before reaching age 19 (45 CFR section 233.90(b)(3)).

A Title IV-E agency may also amend its Title IV-E plan to provide that an individual in foster care who is over age 18 (where an existing eligibility

age extension provision for a full-time student expected to complete secondary schooling prior to attaining age 19 is not applicable) and has not attained 19, 20, or 21 years of age (as the Title IV-E agency may elect) remains eligible as a child when the youth meets prescribed conditions for continued maintenance payments. For a youth age 18 or older, who is entering or re-entering foster care after attaining age 18 consistent with the criteria above, AFDC eligibility is based on the youth without regard to the parents/legal guardians or others in the assistance unit in the home from which the youth was removed as a younger child (e.g., a child-only case). A youth over age 18 must also (as elected by the Title IV-E agency) be (1) completing secondary school (or equivalent), (2) enrolled in post-secondary or vocational school, (3) participating in a program or activity that promotes or removes barriers to employment, (4) employed 80 hours a month, or (5) incapable of any of these due to a documented medical condition (42 USC 675(8)(B) and Program Instruction ACYF-CB-PI-10-11 dated July 9, 2010, section B).

The requirement to conduct annual AFDC redeterminations for purposes of determining continuing Title IV-E eligibility has been eliminated to ease an administrative burden. The Title IV-E agency must (for periods beginning on or after April 8, 2010) establish AFDC eligibility only at the time the child is removed from home or a voluntary placement agreement is entered (42 USC 672(a)(3)(A) and section 8.4A, Question and Answer No. 24 of the Child Welfare Policy Manual).

- d. Beginning October 1, 2018, a child placed with a parent residing in a licensed residential family-based treatment facility for substance abuse who meets all the Title IV-E foster care eligibility requirements except the AFDC eligibility requirements in sections 472(a)(1)(B) and (3) of the Social Security Act shall be eligible for Title IV-E foster care maintenance payments for a period of not more than 12 months. The recommendation for such placement must be specified in the child's case plan before the placement. The treatment facility must provide, as part of the treatment for substance abuse, parenting skills training, parent education, and individual and family counseling and these services must be provided under an organizational structure and treatment framework that involves understanding, recognizing, and responding to the effects of all types of trauma and in accordance with recognized principles of a trauma-informed approach and trauma-specific interventions to address the consequences of trauma and facilitate healing. Although the treatment facility must be licensed, there is no requirement that it meet the Title IV-E licensing and background check requirements for a child care institution. Eligibility is limited for a period of not more than 12 months to foster care maintenance payments which includes such things as the cost of providing food, clothing, shelter, and daily supervision. Since a licensed residential family-based treatment facility for substance abuse is not a child care institution, the Title IV-E foster care maintenance payments may not

include the costs of administration and operation of the facility. Title IV-E agencies may claim administrative costs during the 12-month period consistent with 45 CFR 1356.60(c) for the administration of the Title IV-E program, which includes such things as case management (42 USC 672(a)(2)(C) and 672(j)).

- e. The provider, whether a foster family home or a child-care institution, must be fully licensed by the proper state or tribal foster care licensing authority responsible for licensing such homes or child care institutions. The term “child care institution” as defined in 45 CFR section 1355.20 includes a private child care institution, or a public child care institution that accommodates no more than 25 children, which is licensed by the state in which it is situated or has been approved by the agency of such state responsible for licensing or approval of institutions of this type, as meeting the standards established for such licensing, but does not include detention facilities, forestry camps, training schools, or facilities operated primarily for the purpose of detention of children who are determined to be delinquent (42 USC 671(a)(10) and 672(c)). Effective October 1, 2010, the existing statutory definition of a child care institution includes a supervised setting in which an individual who has attained 18 years of age is living independently, consistent with conditions the secretary establishes in regulations (42 USC 672(c)(2)).

- f. Beginning October 1, 2019 (or the elected delayed effective date of up to two years), limitations on Title IV-E foster care maintenance payments are applicable for new placements made in a child care institution if that facility does not meet specified setting requirements. A “specified setting”, as per Section 472(k) of the Social Security Act (Act) includes only those child care institutions as follows:
 - (1) A qualified residential treatment program (QRTP) as defined in Section 472(k)(4) of the Act.
 - (2) A setting specializing in providing prenatal, post-partum, or parenting supports for youth.
 - (3) In the case of a child who has attained 18 years of age, a supervised setting in which the child is living independently.
 - (4) A setting providing high-quality residential care and supportive services to children and youth who have been found to be, or are at risk of becoming, sex trafficking victims, in accordance with section 471(a)(9)(C) of the Act.

A QRTP placement must also meet additional requirements to avoid Title IV-E funding limitations as follows:

- (5) An assessment to determine the appropriateness of such placement must be completed by a “qualified individual” within 30 days after the placement as per Section 475A(c)(1) of the Act. If this deadline is not met, no foster care maintenance payments may be claimed for the duration of the placement (including those for the first two weeks of care) on behalf of the child.
- (6) A court determination on the appropriateness of this placement must be made within 60 days of the start of each such placement. If this deadline is not met, foster care maintenance payments on behalf of the child may be Title IV-E claimed for only the first 60 days of the placement.
- (7) If the required assessment determines that the placement of a child in a QRTP is not appropriate, a court disapproves such a placement under Section 475A(c)(2) of the Act, or other circumstances exist where the child is transitioning from a QRTP placement to another setting further Title IV-E foster care maintenance payments claiming is limited, as per Section 472(k)(3)(B) of the Act, to the period necessary to transition, up to 30 days after the cited action takes place.

If the placement in a child care institution does not meet the requirements for a specified setting, Title IV-E foster care maintenance payments are limited to covering a two-week period for each placement. Payments for any continuous child care institution placements with a start date prior to the effective date for Section 472(k)(2) of Act are not time limited.

Otherwise allowable administrative costs for an eligible child placed in a child care institution may be Title IV-E claimed for the period of such placement regardless of whether the facility meets the specified setting requirements (42 USC 672(k) and 42 USC 675A(c)).

- g. Beginning October 1, 2019 (or the elected delayed effective date of up to two years for Section 472(k) of the Act), the definition of a foster family home is revised from the one in federal regulations at 45 CFR 1355.20(a) to include only the home of an individual or family that meets requirements as follows:
 - (1) Is licensed or approved by the Title IV-E agency in the state in which it is situated as a foster family home.
 - (2) Is licensed or approved by a tribal authority with respect to a foster family home on or near an Indian Reservation, or a tribal authority of a tribal Title IV-E agency with respect to a foster family home in the tribal Title IV-E agency's service area
 - (3) Meets the standards established for the licensing or approval.

- (4) Provide care for not more than six children in foster care. This limitation may be exceeded, at the option of the Title IV-E agency as requested, for any of the reasons specified at Section 472(c)(1)(B)(i-iv) of the Act.
- (5) The individual(s) in whose care a child has been placed in foster care reside in the home with the child and the Title IV-E agency has determined such individual(s) as being:
 - (a) Licensed or approved to be a foster parent; and
 - (b) Deemed capable of adhering to the reasonable and prudent parent standard; and
 - (c) Providing 24-hour substitute care for children placed away from their parents or other caretakers.

A foster family home may not then include “group homes, agency-operated boarding homes or other facilities licensed or approved for the purpose of providing foster care...” as previously permitted in federal regulations at 45 CFR 1355.20(a) if that facility is not the home of an individual or family where the foster parent resides (42 USC 672(c)(1)).

- h. The foster family home provider must satisfactorily have met a criminal records check, including a fingerprint-based check, with respect to prospective foster and adoptive parents (42 USC 671(a)(20)(A)). This involves a determination that such individual(s) have not committed any prohibited felonies in accordance with 42 USC 671(a)(20)(A)(i) and (ii). The requirement for a fingerprint-based check took effect on October 1, 2006, unless prior to September 30, 2005, the state has elected to opt out of the criminal records check requirement or state legislation was required to implement the fingerprint-based check, in which case a delayed implementation is permitted until the first quarter of the state’s regular legislative session following the close of the first regular session beginning after October 1, 2006. The requirement applies to foster care maintenance payments for calendar quarters beginning on or after the state’s effective date for implementation (Pub. L. No. 109, Section 152(c)(1) and (3)). States that opted out of the criminal records check requirement at Section 471(a)(20) of the Social Security Act prior to September 30, 2005, had until October 1, 2008, to implement the fingerprint-based check requirement. Effective October 1, 2008, a state is no longer permitted to opt out of the fingerprint-based check requirement. The opt-out provision does not impact tribes since they only became eligible to administer a Title IV-E plan on October 1, 2009.

The statutory provisions apply to all prospective foster parents who are newly licensed or approved after the Title IV-E agency’s authorized date

for implementation of the fingerprint-based background check provisions. Title IV-E agencies may also require that certain other adult individuals living in the home be subject to a criminal records check. The completion or lack of completion of criminal records checks for persons other than prospective foster parents does not, however, impact Title IV-E eligibility (42 USC 671(a)(20)(B); Pub. L. No. 109-248, Section 152(c)(2); 45 CFR sections 1356.30(b) and (c); and the Child Welfare Policy Manual section 8.4F Q/A#4).

- i. A Title IV-E agency must check, or request a check of, a state-maintained child abuse and neglect registry in each state the prospective foster and adoptive parents and any other adult(s) living in the home have resided in the preceding five years before the state can license or approve a prospective foster or adoptive parent. This requirement became effective on October 1, 2006, unless the state requires legislation to implement the requirement, in which case a delayed implementation is permitted until the first quarter of the state's regular legislative session following the close of the first regular session beginning after October 1, 2006. The requirement applies to foster care maintenance payments for calendar quarters beginning on or after that date. Tribes first became eligible to administer a Title IV-E plan effective October 1, 2009, and must, therefore, comply with this requirement (42 USC 671(a)(20)(B); Pub. L. No. 109-248, Section 152(c)(2) and (3)).
- j. The licensing file for the child-care institution must contain documentation that verifies that safety considerations with respect to staff of the institution have been addressed (45 CFR section 1356.30(f)). Effective October 1, 2018, unless a legislative delay is approved, the safety considerations in the child-care institution licensing file must consist of proof that criminal background checks, including fingerprint-based criminal records checks of national crime information databases (as defined in section 534(f)(3)(A) of Title 28, United States Code) and child abuse and neglect registry checks for all adults working at the child-care institution were conducted. Title IV-E agencies may use alternative procedures to conduct these criminal records and child abuse registry checks. However, if the agency elects to use an alternate procedure, such procedures must still provide for conducting both checks on every adult working in the institution and the agency must describe in its approved Title IV-E Plan why alternative procedures for conducting the checks are appropriate for the agency (42 USC 671(a)(20)(D)).
- k. Foster care administrative costs for the provision of child-placement services generally are allowable only when performed on behalf of a foster child that is eligible to receive Title IV-E foster care maintenance payments (42 USC 674(a)(3)(E) and 45 CFR section 1356.60). The following exceptions apply:

- (1) Activities specifically associated with the determination or redetermination of Title IV-E eligibility are allowable regardless of the outcome of the eligibility determination (DAB Decision No. 844).
- (2) Otherwise allowable activities performed on behalf of Title IV-E eligible foster children placed in unallowable facilities and unlicensed relative homes can be allowable under limited circumstances as follows:
 - (a) For the lesser of 12 months or the average length of time it takes the state or tribe to issue a license or approval of the home when the child, otherwise Title IV-E eligible, is placed in the home of a relative who has an application pending for a foster family home license or approval (42 USC 672(i)(1)(A)).
 - (b) For not more than one calendar month for an otherwise Title IV-E eligible child transitioning from an unlicensed or unapproved facility to a licensed or approved foster family home or child care institution (42 USC 672(i)(1)(B)).
- (3) In the case of any other child not in foster care who is potentially eligible for benefits under a Title IV-E plan approved under this part and at imminent risk of removal from the home, only if—
 - (a) Reasonable efforts are being made in accordance with 42 USC 671(a)(15) to prevent the need for, or if, necessary to pursue, removal of the child from the home.
 - (b) The Title IV-E agency has made, not less often than every six months, a determination (or redetermination) as to whether the child remains at imminent risk of removal from the home (42 USC 672(i)(2)).
 - (c) Pre-placement administrative costs may be paid on behalf of a child determined to be a candidate for foster care only if all of the following requirements are met:
 - (i) A child who is a potentially Title IV-E eligible child is at imminent risk of removal from the home and the Title IV-E agency is either pursuing the removal of the child from the home or providing reasonable efforts to prevent the removal in accordance with Section 471(a)(15) of the Social Security Act (42 USC 672(i)(2)(A)).

- (ii) No earlier than the month in which the Title IV-E agency has made and documented a determination that the child is a candidate for foster care as evidenced by at least one of the following (section 8.1D, Question and Answer No. 2 of the Child Welfare Policy Manual):
 - (A) A defined case plan, which clearly indicates that absent effective preventive services, foster care is the planned arrangement for the child.
 - (B) An eligibility determination form which has been completed to establish the child's eligibility under Title IV-E. Eligibility forms used to document a child's candidacy for foster care should include evidence that the child is at serious risk of removal from home.
 - (C) Evidence of court proceedings in relation to the removal of the child from the home, in the form of a petition to the court, a court order, or a transcript of the court's proceedings. These proceedings include those where the Title IV-E agency is required to obtain a judicial determination sanctioning or approving such an attempt to prevent removal with respect to reasonable efforts or initiates efforts to obtain the judicial determinations related to the removal of a child from home.
- (iii) The Title IV-E agency determines that the planned out-of-home placement for the child will be a foster care setting (section 8.1D, Question and Answer No. 11 of the Child Welfare Policy Manual).
- (iv) In order to claim child specific candidate administrative costs, the Title IV-E agency may either (section 8.1C, Question and Answer No. 3 of the Child Welfare Policy Manual):
 - (A) individually determine those children who are Title IV-E foster care candidates and claim 100 percent of the child specific

allowable administrative costs incurred on behalf of these children, or

- (B) allocate costs to benefiting programs considering a determination both of candidacy for foster care and of potential Title IV-E eligibility; using a Title IV-E foster care participation rate is one acceptable means of allocation.
- (v) The Title IV-E agency re-determines at least every six months that the child remains at imminent risk of removal from the home. If the Title IV-E agency does not make this determination at the six-month point, it must cease claiming administrative costs on behalf of the child (42 USC 672(i)(2)(B) and section 8.1D, Question and Answer No. 5 of the Child Welfare Policy Manual).
- (vi) Candidate administration on behalf of eligible children is limited to any allowable Title IV-E administrative cost that comports with or is closely related to one of the listed activities at 45 CFR section 1356.60(c)(2). The costs of investigations, physical or mental examinations or evaluations and services related to the prevention of placement are not foster care administrative costs and are therefore not reimbursable (section 8.1B, Question and Answer No. 1 of the Child Welfare Policy Manual).

2. Eligibility for Group of Individuals or Area of Service Delivery

Not Applicable

3. Eligibility for Subrecipients

Not Applicable

L. Reporting

1. Financial Reporting

- a. *SF-270, Request for Advance or Reimbursement* – Not Applicable
- b. *SF-271, Outlay Report and Request for Reimbursement for Construction Programs* – Not Applicable
- c. *SF-425, Federal Financial Report* – Not Applicable

- d. *CB-496, Title IV-E Programs Quarterly Financial Report (OMB No. 0970-0205)* – Title IV-E agencies report current expenditures and information on children assisted for the quarter that has just ended and estimates of expenditures and children to be assisted for the next quarter. Prior quarter adjustment (increasing and decreasing) expenditures applicable to earlier quarters must also be separately reported on this form.

Key Line Items – The following line items contain critical information:

1. *Part 1, Expenditures, Estimates and Caseload Data*, columns (A) through (D) (sections A and E (Foster Care Program))
2. *Part 2, Prior Quarter Expenditure Adjustments – Foster Care*, columns (A) through (E)
3. *Part 3, Foster Care, Adoption Assistance and Guardianship Demonstration Projects*, columns (A) through (F)

2. Performance Reporting

Not Applicable

3. Special Reporting

Not Applicable

4. Special Reporting for Federal Funding Accountability and Transparency Act

See Part 3.L for audit guidance.

N. Special Tests and Provisions

1. Payment Rate Setting and Application

Compliance Requirements Title IV-E agencies establish payment rates for maintenance payments (e.g., payments to foster parents, child care institutions or directly to youth). Payment rates may also be established for Title IV-E administrative expenditures (e.g., payments to child placement agencies or other contractors, which may be either subrecipients or vendors) and for other services. Payment rates must provide for proper allocation of costs between foster care maintenance payments, administrative expenditures, and other services in conformance with the cost principles. The Title IV-E agency's plan approved by ACF must provide for periodic review of payment rates for foster care maintenance payments at reasonable, specific, time-limited periods established by the Title IV-E agency to ensure the rate's continuing appropriateness for the administration of the Title IV-E program (42 USC 671(a)(11); 45 CFR section 1356.21(m)(1); 45 CFR section 1356.60(a)(1) and (c)).

Audit Objectives Determine whether (1) the Title IV-E agency reviewed foster care maintenance payment rates for continued appropriateness in accordance with its established periodicity schedule; (2) the Title IV-E agency established foster care maintenance and administrative expenditure payment rates which provide only for costs which are necessary for the proper and efficient administration of the program and which are for allowable costs (i.e., reasonable, allowable, and properly allocated in compliance with the applicable cost principles and program requirements); and (3) charges to the program were based upon the established payment rates properly applied and the charges to the program were properly classified as foster care maintenance payments or administrative expenditures.

Suggested Audit Procedures

- a. Identify the Title IV-E agency's schedule for the required periodic review to determine the continued appropriateness of amounts paid as foster care maintenance payments and ascertain if the current foster care maintenance payment rates were last reviewed and adjusted in accordance with the Title IV-E agency established schedule.
 - b. Review the Title IV-E agency's policies and procedures for establishing foster care maintenance and administrative expenditure payment rates to ascertain if these policies and procedures will properly determine that the costs charged to the program based upon these payment rates will be allowable.
 - c. Test a sample of Title IV-E foster care maintenance and administrative expenditure payment rates to ascertain if the rates have been properly calculated in accordance with the Title IV-E agency's policies and procedures to ensure only allowable costs are charged to the program.
 - d. Test a sample of Title IV-E foster care rate-based maintenance payments to ascertain if they were based upon the established payment rates per the Title IV-E agency's rate schedule and that these rates were properly applied to ensure that only costs allowable as maintenance payments were charged to the program.
 - e. Test a sample of Title IV-E foster care rate based administrative expenditures to ascertain if they were based upon the established payment rates per the Title IV-E agency's rate schedule and that these rates were properly applied to ensure that only costs allowable as administrative expenditures were charged to the program.
- 2. Operation of a Foster Care Demonstration Project (Applicable Only for Title IV-E Agencies with ACF Approval to Operate a Foster Care Demonstration Project)**

Compliance Requirements Those Title IV-E agencies that receive approval to operate a foster care demonstration project for a specified period of time must do so in accordance with ACF-approved terms and conditions that define the operational parameters and the waivers granted. The funding for operation of such a project is subject to a cost neutrality limit that is calculated either through an experimental design (involving experimental

group cases and either a control or matched comparison group process) or an established capped allocation table for identified populations (including agency-wide) in specific funding categories.

All Title IV-E agencies that operate a foster care demonstration project are also simultaneously continuing to operate the traditional (non-demonstration) foster care program for some portion of the agency's service population and/or funding. Operation of a foster care demonstration project, therefore, includes both the continuation of assistance payments and, where applicable, administration or training under the existing approved Title IV-E Plan and provision of project interventions or other waiver-based services for an identified population. Demonstration project operational costs, to the extent that they provide payments, administration or training that is allowable for traditional Title IV-E foster care funding, must be in compliance with all applicable Title IV-E requirements (unless waived) and are subject to separate identification as part of financial reporting. Funding is also available, subject to separate ACF approvals, for the costs of demonstration project developmental and evaluation costs.

Audit Objectives Determine for those Title IV-E agencies with an approved operational foster care demonstration project whether (1) the Title IV-E agency properly tracked and classified those costs consisting of demonstration project operational, developmental, or evaluation costs; (2) the Title IV-E agency separately identified those project operational costs that are reportable as Title IV-E allowable costs (without a waiver) from other project operational costs; (3) the Title IV-E agency properly identified the applicable project operational cost neutrality limits and cumulative project operational costs for each relevant funding category; and (4) the Title IV-E agency properly tracked and classified those costs consisting of Title IV-E foster care (non-demonstration) costs.

Suggested Audit Procedures

- a. Determine whether a Title IV-E agency is operating a foster care demonstration project and, if so, review the applicable terms and conditions as approved by ACF.
- b. Review the Title IV-E agency's cost tracking procedures for segregating costs properly classified as a component of the approved foster care demonstration project as developmental costs, evaluation costs, or operational costs.
- c. Test a sample of Title IV-E claims (current quarter and any prior quarter adjustments) reported on Form CB-496 Part 3 designated as foster care demonstration project developmental or evaluation costs to determine that the claims are properly classified and reported and that they comply with applicable approvals.
- d. Test a sample of Title IV-E claims (current quarter and any prior quarter adjustments) reported on Form CB-496 Part 3 designated as foster care demonstration project operational costs in each of the funding categories reported to determine that the claims are properly classified as project operational costs

based on (1) the funding category is within the scope of the project’s operational costs, (2) the type of cost, (3) the population served, and (4) the applicable period.

- e. Test a sample of Title IV-E claims (current quarter and any prior quarter adjustments) reported on Form CB-496 Part 3 designated as foster care demonstration project operational costs in each of the funding categories reported to determine that the claims are properly reported as either “Title IV-E Operations” costs (i.e., Title IV-E allowable without the approved demonstration project) or as “Project Intervention and Other Waiver Based Expenditures” (i.e., Title IV-E allowable only with the approved demonstration project).
- f. Review the Title IV-E agency’s Form CB-496 Part 3 reported “Cumulative Cost Neutrality Limit” (for the current quarter and the next quarter estimate) in applicable funding categories to ensure that it is consistent with a calculation through the applicable period as designated in the demonstration project’s approved terms and conditions or, if applicable, an ACF approved quarterly payment schedule.
- g. Review the Title IV-E agency’s Form CB-496 Part 3 reported “Currently Reported and Cumulatively Funded Operational Costs” (for the current quarter and the next quarter estimate) in applicable funding categories to ensure that it is consistent with a calculation through the applicable period based on any such claims submitted on reports for previous periods.
- h. Test a sample of Title IV-E claims (current quarter and any prior quarter adjustments) reported on Form CB-496 Part 1 as foster care (non-demonstration) costs in each of the funding categories identified in the project’s approved terms and conditions as included within project operational costs to determine that the claims are properly classified as outside of project operational costs based on (1) specific exclusions contained in the project’s approved terms and conditions, (2) the type of cost, (3) the population served, and (4) the applicable period.