

<h1>ACF</h1> <p>Administration for Children and Families</p>	U.S. DEPARTMENT OF HEALTH AND HUMAN SERVICES Administration on Children, Youth and Families	
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**INFORMATION MEMORANDUM**

**TO:** Indian Tribes, Tribal Organizations and Consortia

**SUBJECT:** NEW LEGISLATION – Fostering Connections To Success and Increasing Adoptions Act of 2008 and Indian Tribe Option to Apply to Operate a Title IV-E Plan Directly

**LEGAL AND RELATED:** Public Law, 110-351 The Fostering Connections to Success and Increasing Adoption Act of 2008, sections 471 through 479 (title IV-E) of the Social Security Act (the Act); 45 CFR 1355 and 1356

**PURPOSE:** To notify Indian Tribes of the opportunity in Public Law 110-351 for Indian Tribes to operate directly title IV-E programs for foster care maintenance payments, adoption assistance and kinship guardianship assistance and apply for grants to develop title IV-E plans. This Information Memorandum provides a brief overview of the law and the options available to Indian Tribes, which will be followed by more substantive instructions on applying for a grant and operating a Tribal title IV-E program at a later date.

Please note that at the time of this issuance, many of the regulations, policy issuances and sources cited here have not yet been revised to reflect the amendments made by Public Law 110-351. To the extent there is a conflict between the law's amendments and program guidance, Indian Tribes are to follow the law.

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**Section A. Overview of Law**

The Fostering Connections to Success and Increasing Adoptions Act of 2008 (Public Law 110-351), was signed into law by the President on October 7, 2008. The law provides federally-recognized Indian Tribes, Tribal organizations or consortia of Indian Tribes with the option to apply to operate a title IV-E program and seek Federal reimbursement of a share of allowable Tribal expenditures made pursuant to an approved title IV-E plan. This option is available beginning October 1, 2009 (Federal fiscal year (FFY) 2010).

The law also authorizes the Administration for Children and Families (ACF) to award one-time grants of up to \$300,000 to an Indian Tribe, beginning October 1,

2008 (FFY 2009), to assist in the development of a Tribally-operated title IV-E plan. See ACYF-CB-PI-08-05 for the entire law and a draft compilation of the Social Security Act as amended.

## **Section B. Eligible Indian Tribes**

Any Indian Tribe, band, nation, or other organized group or community that is recognized as eligible for special programs and services provided by the United States to Indians because of their status as Indians may submit a title IV-E plan or apply for the title IV-E plan development grant. The law also makes the option to operate a title IV-E program or receive a development grant available to a Tribal organization, which is a recognized body of an Indian Tribe, or a consortium of Indian Tribes or Tribal organizations (sections 479B(a) and(c)(3) of the Act and 25 U.S.C. 450b). Hereafter, we refer to such Indian Tribes, Tribal organizations or consortia, collectively as “Indian Tribes.”

## **Section C. Title IV-E Plan Development Grants and Technical Assistance**

Public Law 110-351 appropriates \$3 million annually, beginning in FFY 2009 for ACF to provide technical assistance and implementation services and to award the title IV-E plan development grants. These provisions are described below:

### *I. Title IV-E Plan Development Grants*

An Indian Tribe may apply to ACF for a one-time grant to assist the Indian Tribe in developing a plan for direct funding under title IV-E with the plan to be submitted to ACF within 24 months of receipt of the grant.

Development grants may be used by the Indian Tribe for any costs attributable to meeting the requirements for approval of a Tribally-operated title IV-E plan. The law cites the following as examples of allowable costs under the development grant: development of a data collection system; development of a cost allocation plan; and, establishing Tribal agency and court procedures necessary to meet the case review requirements in the law (section 476(c)(2)(A)(iii)).

If ACF awards the Indian Tribe a grant, the Indian Tribe must submit a title IV-E plan for direct funding to ACF no later than the end of the 24<sup>th</sup> month after the grant is awarded. If the Indian Tribe does not submit a title IV-E plan within that time frame, it must repay the total grant amount. ACF has the authority to determine that failure to submit a title IV-E plan during the 24-month period was beyond the control of the Indian Tribe and waive the requirement to repay the grant (section 476(c)(2)(B)).

### *II. Technical Assistance and Implementation Services*

Public Law 110-351 authorizes ACF to provide technical assistance and implementation services to Indian Tribes to assist them in understanding the plan requirements of titles IV-B and IV-E, operating title IV-B and IV-E

programs directly or developing title IV-E agreements with States. The law also provides for technical assistance to Indian Tribes and States to satisfy the title IV-B State plan requirement regarding the Indian Child Welfare Act or the State good faith negotiation provisions in title IV-E of the Act and the Chafee Foster Care Independence Program (section 476(c)(2)).

#### **Section D. Mandatory Title IV-E Program Elements**

As specified by the law, the title IV-E requirements apply to Indian Tribes in the same manner as they apply to States, with certain exceptions noted in the law itself. As the Secretary has no authority to make additional exceptions to the title IV-E program requirements, an Indian Tribe wishing to operate its own title IV-E program must adhere to the following requirements:

##### *I. Title IV-E Plan*

To operate a title IV-E program, a Tribe must designate a title IV-E agency that must submit a plan to the ACF Regional Program Manager which references and provides supporting documentation of the law or codes, regulation or policy in effect which complies with each of the title IV-E plan requirements. ACF approval of the title IV-E plan is necessary for a title IV-E agency to claim Federal reimbursement for allowable title IV-E expenditures. Requirements for the plan submission and approval process are found in regulations at 45 CFR 1356.20.

For Indian Tribes, the mandatory title IV-E plan requirements are in sections 471(a)(1) through (27); 471(a)(29) through (31); and section 471(a)(33) of the Act. Additionally, Tribal title IV-E plans must meet the Tribal-specific requirements in section 479B(c) of the Act related to:

- evidence that the Indian Tribe does not have uncorrected significant or material audit exceptions under Federal grants or contracts that relate to the administration of social services during the three-year period prior to the title IV-E plan submittal;
- a description of the service area or areas and populations to be served under the plan and that the plan shall be in effect in all service and population area or areas, to comply with the requirement at section 471(a)(3); and
- the establishment of a tribal authority responsible for establishing and maintaining tribal standards for tribal foster family homes and tribal child care institutions, to comply with the requirement at section 471(a)(10).

All provisions which are cross-referenced in law or regulations (45 CFR 1355 and 1356) as related to the title IV-E plan requirements are also

applicable.<sup>1</sup> An example of the last comprehensive title IV-E plan preprint that States submitted to ACF, can be found at [http://www.acf.hhs.gov/programs/cb/laws\\_policies/policy/pi/2006/pi0606.htm](http://www.acf.hhs.gov/programs/cb/laws_policies/policy/pi/2006/pi0606.htm).

## *II. Foster Care Maintenance Payments Program*

The title IV-E plan must provide for the payment of foster care maintenance payments on behalf of each eligible child. Eligibility requirements for the title IV-E program are found in section 472 of the Act and regulations in 45 CFR 1356. Public Law 110-351 provides the following exceptions to the aforementioned requirements:

- Indian Tribes are permitted to use nunc pro tunc orders or affidavits as an exception to the judicial determination documentation requirements at section 45 CFR 1356.21(d), but only during the first 12 months of the operation of a title IV-E plan.
- Indian Tribes must establish a child's title IV-E eligibility based on the July 16, 1996 AFDC plan of the State in which the child was residing at the time of removal (section 479B(c)(1)(C)(ii)(II)).

Indian Tribes who directly operate a title IV-E program will receive Federal reimbursement at the applicable Federal Medicaid Assistance Percentage (FMAP) for the allowable foster care maintenance payments paid per sections 474(a)(1) and 479B(d) of the Act. The applicable FMAP is either: 1) a Tribal FMAP calculated by the Secretary using the per capita income of the tribe's service population in the mandated formula at section 1905(b) of the Act; or, if higher, 2) the highest FMAP of any State in which the Indian Tribe is located.

## *III. Adoption Assistance Program*

The title IV-E plan also must provide a program of adoption assistance subsidies and reimbursement of the nonrecurring costs of adoption for eligible children in accordance with section 473(a) through (c) of the Act and regulations at 45 CFR 1356.40 and 1356.41.

Indian Tribes who directly operate a title IV-E program will receive Federal reimbursement equal to the Tribal or State FMAP (as described in the section above) of the amount of allowable adoption assistance subsidies paid per section 474(a)(2) of the Act. Nonrecurring costs of adoption are reimbursed at the 50 percent administrative Federal Financial Participation (FFP) rate.

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<sup>1</sup> For example, the definitions in section 475 of the Act are applicable to the title IV-E programs, as are Departmental regulations which govern safeguarding information for the financial assistance programs in 45 CFR 205.50 (see 45 CFR 1355.30).

#### *IV. AFCARS*

Section 479 of the Act and regulations at 45 CFR 1355.40 and 1356.20(b) and the appendices to 45 CFR part 1355, require title IV-E agencies to report data to the Adoption and Foster Care Analysis and Reporting System (AFCARS) as a condition of the title IV-E plan. AFCARS requires case-level data on children in foster care under the placement and care responsibility of the title IV-B/IV-E agency and children who were placed by the title IV-B/IV-E agency for adoption and on those who receive adoption assistance from the title IV-B/IV-E agency. Additional guidance on AFCARS data reporting can be found at:

<http://www.acf.hhs.gov/programs/cb/systems/afcars/fedguid.htm> and <http://www.acf.hhs.gov/programs/cb/systems/afcars/resources.htm>.

#### *V. Administrative and Training Costs*

Title IV-E agencies may claim certain title IV-E training and administrative costs pursuant to section 474(a)(3)(A) through (E) of the Act, as amended, and consistent with implementing regulations at 45 CFR 1356.60(b) and (c). These provisions state that Federal reimbursement under title IV-E is available for administrative expenditures necessary for the proper and efficient administration of the title IV-E plan.

- Section 472(i)(2) of the Act provides Federal reimbursement at the 50 percent FFP rate for administrative expenditures made on behalf of a child who has not yet been removed from his home but is determined to be at imminent risk of removal from the home and is potentially eligible for benefits under the title IV-E Plan (a candidate for title IV-E foster care).
- Section 474(a)(3)(A) of the Act provides Federal reimbursement at the 75 percent FFP rate for short or long-term training at educational institutions for persons preparing for employment by the public agency administering the title IV-E plan.
- Section 474(a)(3)(B) of the Act provides Federal reimbursement for short-term training expenditures for relative guardians, private child welfare agency staff, court staff, agency attorneys, attorneys representing children or parents, guardians ad litem and court-appointed special advocates. The title IV-E agency can claim the training costs of such groups at 55% in FY 2009; 60% in FY 2010; 65% in FY 2011; 70% in FY 2012; and 75% in FY 2013 and thereafter (section 203(b) of Public Law 110-351).
- All other allowable expenditures for administration of the program

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<sup>2</sup> Funding for the grants and technical assistance is pre-appropriated, but may be subject to Federal appropriations.

are subject to Federal reimbursement at the rate of 50 percent (section 474(3)(E)).

#### *VI. Title IV-E Expenditures and Matching*

Title IV-E reimbursable expenditures generally consist of cash outlays. The portion of these expenditures borne by the grantee is referred to as the required cost match or as the non-Federal share of expenditures. Matching funds typically consist of grantee appropriated monies raised from non-Federal revenue sources. Indian Tribes, however, may receive Federal funds specifically authorized by other Federal statutes to be used as match for other Federal programs, including the title IV-E program. Further, unlike States, the law specifically allows Indian Tribes to use in-kind expenditures from certain third party sources as a source of match for administrative and training costs for certain fiscal years in accordance with section 479B(c)(1)(D) of the Act.

#### *VII. Financial Reporting and Claiming*

Section 1132(a) of the Act and regulations at 45 CFR 95.7 allow Federal reimbursement of allowable title IV-E expenditures under an approved title IV-E plan that are claimed within two years after the calendar quarter of the expenditure. To receive reimbursement, title IV-E agencies are required to submit a financial report to ACF of actual title IV-E expenditures (i.e., payments, training and administrative costs) shortly after each fiscal quarter. The financial report must also include necessary adjustments for additional claims or reduced claims, for prior fiscal quarters. Semi-annually, the title IV-E agency submits to ACF a projection of estimated expenditures for the current fiscal year and the subsequent two fiscal years. See

[http://www.acf.hhs.gov/programs/cb/laws\\_policies/policy/pi/2002/pi0201.htm](http://www.acf.hhs.gov/programs/cb/laws_policies/policy/pi/2002/pi0201.htm) for an example of this financial report, currently known as Form ACF-IV-E-1.

#### *VIII. Cost Principles, Cost Allocation Plans and Audits*

In addition to abiding by the title IV-E programmatic and fiscal parameters in the statute and regulations cited above, Departmental regulations at 45 CFR 92.22(b) require adherence to the Federal cost principals at 2 CFR Part 225 (codified from OMB Circular A-87) to determine allowable costs under the title IV-E programs.

Each title IV-E agency is required pursuant to 45 CFR 1356.60(c)(1) and 45 CFR part 95 Subpart E to formulate and seek approval by the cognizant agency of a public assistance cost allocation plan (PACAP). The PACAP, in part, must specifically identify how the title IV-E agency will allocate and claim administrative costs under title IV-E.

Further, title IV-E grantees and subgrantees are responsible for acting in

accordance with Departmental regulations at 45 CFR 92.26 for obtaining periodic audits in accordance with the Single Audit Act Amendments of 1996 (31 U.S.C. 7501-7507) and revised OMB Circular A-133, Audits of States, Local Governments, and Non-Profit Organizations.

## **Section E. Optional Title IV-E Program Provisions**

A title IV-E agency may add to its title IV-E plan, the following optional elements. The title IV-E agency would ‘opt-in’ by citing and documenting the implementing laws or codes, regulations or policy in their title IV-E plan and complying with any additional requirements that pertain to the specified option. Implementation of these optional provisions are also subject to ACF approval in the same manner as the mandatory title IV-E plan elements:

### *I. Voluntary Placement Agreements*

The title IV-E agency may elect to claim foster care maintenance payments pursuant to 45 CFR 1356.20 on behalf of a child voluntarily placed in foster care who meets the criteria in section 472(d) of the Act and 45 CFR 1356.22.

### *II. SACWIS*

Sections 474(a)(3)(C) and (D) of the Act authorize title IV-E funding at the 50 percent FFP administrative rate for an agency to plan, design, develop, install and operate a Statewide Automated Child Welfare Information System (SACWIS) that will assist the agency in carrying out the programs under titles IV-B and IV-E of the Act. SACWIS is an option available to a title IV-E agency subject to the submittal to, and approval by, ACF of an Advance Planning Document (APD). In exchange for the additional administrative funding provided to a title IV-E agency that has an approved APD for a SACWIS, the agency agrees that the SACWIS will be the sole case management automation tool used for all case management activities and will support the reporting of data to AFCARS, among other features. More information on SACWIS and APDs may be found at <http://www.acf.hhs.gov/programs/cb/systems/sacwis/federal.htm> and <http://www.acf.hhs.gov/programs/cb/systems/sacwis/manager.htm>.

### *III. Kinship Guardianship Assistance*

Public Law 110-351 provides a new plan option at section 471(a)(28) of the Act for Federal reimbursement of kinship guardianship assistance payments the agency makes on behalf of eligible children. Section 473(d) of the Act outlines the eligibility criteria for kinship guardianship and section 475(1)(F) of the Act establishes case plan requirements specific to children with a permanency plan that includes receipt of kinship guardianship assistance payments.



#### *IV. Extension of Title IV-E Assistance Up To Age 21*

Public Law 110-351 also adds new section 475(8) of the Act, which provides new plan options beginning in FY 2011, for the term “child” to encompass youth ages 18, 19 or 20. Electing the option permits a title IV-E agency to extend title IV-E assistance up to the higher age selected under certain conditions, in accordance with the following:

- For foster care, the title IV-E agency may extend the option to youth under the agency’s responsibility and may pay title IV-E foster care maintenance payments for eligible youth up to the elected age in foster family homes, child care institutions and supervised independent living settings (sections 475(8)(B)(i)(I) and 472(c)(2)).
- The title IV-E agency may select an extended assistance age for children for whom there is an agreement that becomes effective after the youth turned 16 years old for title IV-E adoption or kinship guardianship assistance (section 475(8)(B)(i)(II) and (III)).
- Once youth in the above mentioned categories turn age 18, they must be engaged in certain work or education activities, or be documented as incapable of participating in such activities, to receive assistance up to the extended age the title IV-E agency selects (section 475(8)(B)(iv)).

#### *V. Chafee Foster Care Independence Program and Education and Training Vouchers*

Indian Tribes are authorized under section 477(j) of the Act to apply to ACF for a direct allotment of Chafee Foster Care Independence Program (CFCIP) and Education and Training Voucher (ETV) Funds. The CFCIP and ETV program rules are distinct from those of the title IV-E foster care, adoption and guardianship programs and not a part of the title IV-E plan per se. A separate issuance will address the guidelines for Indian Tribal CFCIP and ETV applications.

### **Section F. Federal Stewardship of the Title IV-E Programs**

Until regulations are in effect stating otherwise, Indian Tribes operating title IV-E programs of their own will not be subject to the title IV-E eligibility foster care maintenance payment reviews at 45 CFR 1356.71 and the Child and Family Services Reviews at 45 CFR 1355.31-37. Regardless of when regulations are issued, title IV-E Tribal agencies are responsible for complying with all requirements of the title IV-E program, including submitting claims for only allowable costs under the program. ACF has the authority to review any of the programmatic, system or financial documents, papers and specific recipient records pertinent to the title IV-E programs and take necessary fiscal actions including

deferral or disallowance of claims (45 CFR 201.15) and other enforcement actions for material noncompliance with the title IV-E requirements (section 471(a)(6), 45 CFR 201.6 and 45 CFR 92.43).

We encourage Indian Tribes to review the Child Welfare Policy Manual (CWPM) on the Children's Bureau website at [http://www.acf.hhs.gov/j2ee/programs/cb/laws\\_policies/laws/cwpm/index.jsp](http://www.acf.hhs.gov/j2ee/programs/cb/laws_policies/laws/cwpm/index.jsp). This web-based manual contains ACF's official interpretation of policy related to the title IV-E programs in addition to the other programs we administer. The ACF Regional Office Child and Family Specialist can also assist the Indian Tribe in answering questions about the title IV-E program rules or policies.

### **Section G. Other Considerations Regarding Tribal Direct Participation in the Title IV-E Programs**

The opportunity to operate a title IV-E program or apply for a grant to develop a title IV-E plan is not time-limited by Public Law 110-351<sup>2</sup>. The Indian Tribe has the discretion to determine whether or when it wants to develop its own title IV-E program to serve Indian children. States remain responsible for serving resident Indian children who are not otherwise being served by an Indian Tribe under an agreement with the State or under a direct title IV-E plan (section 301(d)(2) of Public Law 110-351).

The law explicitly permits Indian Tribes to continue existing agreements or enter into new agreements with States to share in the administration of a State title IV-E plan and does not modify the terms of such agreements (section 479B(e) of the Act). To support such State/Tribal agreements, the law permits Federal reimbursement of certain title IV-E payments under such agreements at the Tribal FMAP rate, if that rate is higher than the State FMAP rate (section 303(c)(2) of Public Law 110-351). Finally, the law adds a State plan provision for States to negotiate in good faith with Indian Tribes seeking title IV-E agreements (section 471(a)(32)).

### **Section H. Forthcoming Information and Technical Assistance Opportunities**

Soon we will issue additional guidance that will give Indian Tribes more detailed information on the opportunity to apply for a grant to develop a title IV-E plan. We anticipate asking Indian Tribes to first submit a "letter of intent" indicating their interest in applying for such grants and operating a direct title IV-E program, which will then be followed by the actual submission of an application for a grant.

To assist Indian Tribes, our Regional Offices will host regional roundtable sessions that are designed to explain the title IV-E programs in more detail and offer Indian Tribes an opportunity to begin a discussion around Tribally-operated title IV-E programs with their Federal partners. Additional information on the roundtables will be forthcoming.

**INQUIRIES:** Children's Bureau Regional Program Managers

/s/

Joan E. Ohl  
Commissioner

Attachment – CB Regional Program Managers

## ATTACHMENT – Regional Program Managers

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