

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### CFDA 93.658 FOSTER CARE—TITLE IV-E

#### I. PROGRAM OBJECTIVES

The objective of the Foster Care program is to help States provide safe, appropriate, 24-hour, substitute care for children who are under the jurisdiction of the administering State agency and need temporary placement and care outside their homes.

#### II. PROGRAM PROCEDURES

##### Administration and Services

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 and Puerto Rico, based on a State plan and amendments, as required by changes in statutes, rules, and regulations submitted to and approved by the cognizant ACF Regional Administrator. This program is considered an open-ended entitlement program and allows the State to be funded at a specified percentage (Federal financial participation) for program costs for eligible children.

The designated State 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 (CFDA 93.659); and Independent Living (93.674); Child Welfare Services (CFDA 93.645) and Promoting Safe and Stable Families (CFDA 93.556) programs (Title IV-B of the Social Security Act, as amended); and the Social Services Block Grant program (CFDA 93.667) (Title XX of the Social Security Act, as amended).

##### 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.*). Implementing regulations are at 45 CFR parts 1355, 1356, and 1357.

Awards under the Foster Care program with funding periods beginning on or after October 1, 2003, are subject to the HHS implementation of the A-102 Common Rule, 45 CFR part 92 (*Federal Register*, September 8, 2003, 68 FR 52843-52844). Previously, this program and other HHS entitlement programs described in the Supplement (as noted under the applicable program description) were excluded from this coverage. This program also is subject to 45 CFR part 95 and the cost principles under Office of Management and Budget Circular A-87 (as provided in *Cost Principles and Procedures for Developing Cost Allocation Plans and Indirect Cost Rates for Agreements with the Federal Government*, HHS Publication ASMB C-10, available on the Internet at <http://rates.psc.gov/fms/dca/asmb%20c-10.pdf>).

States 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 State plan.

### III. COMPLIANCE REQUIREMENTS

In developing the audit procedures to test compliance with the requirements for a Federal program, the auditor should look first to Part 2, Matrix of Compliance Requirements, to identify which of the 14 types of compliance requirements described in Part 3 are applicable and then look to Parts 3 and 4 for the details of the requirements.

#### 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 State's Foster Care maintenance payment rate schedule, 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 the associated administrative and operating costs of an 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 (42 USC 672(b)(1) and (2), (c)(2), and 675(4)).
- b. 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)).
- c. 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)).
- d. Funds may be expended for costs directly related to the administration of the program, including those associated with eligibility determination and redetermination; referral to services; placement; preparation for and participation in hearings and appeals; rate setting; recruitment and licensing of foster homes and institutions; and a proportionate share of related agency overhead (45 CFR section 1356.60(c)).
- e. With any required ACF approval, funds may be expended for costs related to design, implementation and operation of a statewide data collection system (45 CFR sections 1356.60(d) and 95.611).

## 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).

## B. **Allowable Costs/Cost Principles**

In addition to the requirements of OMB Circular A-87, States are subject to the cost allocation provisions and rules governing allowable costs of equipment of 45 CFR part 95, which references OMB Circular A-87 at 45 CFR section 95.507(a)(2) (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 must be the result of 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 (unless removal is pursuant to a voluntary placement agreement). 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 6 months from the date the child is removed from the home, consistent with Departmental Appeals Board 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. 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(c)).
- (b) *Removal from home of a specified relative* - 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)).
- (i) *Prior to March 27, 2000* – For a child who entered care 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 the child’s removal from the home (45 CFR section 1356.21(b)(1)).
  - (c) *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. 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 12th 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, Num 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)).
- (2) 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 State agency administering the approved Title IV-E plan or any other public agency under a valid agreement with the cognizant State agency (42 USC 672(a)(2)).

- c. A child 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)). Unless the child is expected to graduate from a secondary educational, or an equivalent vocational or technical training, institution before his or her 19th birthday, eligibility ceases at the child's 18th birthday (45 CFR section 233.90(b)(3)).
- d. The provider, whether a foster family home or a child-care institution must be fully licensed by the proper State Foster Care licensing authority. A child care institution is defined as a private child-care institution, or a public child-care institution which accommodates no more than 25 children, which is licensed or approved by the State in which it is situated, 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)).
- e. 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)). The requirement for a fingerprint-based check takes 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 is 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. 109-248, section 152(c)(1) and (3)). The criminal records check option, including fingerprint-based checks, expires on October 1, 2008 and applies to foster care maintenance payments for calendar quarters beginning on or after that date (42 USC 671(a)(20)(B); Pub. L. No. 109-248, section 152(c)(2)).
- f. The foster family home provider must satisfactorily have met a child abuse and neglect registry check with respect to prospective foster and adoptive parents and any other adult living in the home who has resided in the provider home in the preceding 5 years. This requirement takes effect 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. (42 USC 671(a)(20)(C); Pub. L. No. 109-248, section 152(c)(2) and (3)).

- g. 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)).

2. **Eligibility for Group of Individuals or Area of Service Delivery - Not Applicable**
3. **Eligibility for Subrecipients - Not Applicable**

## **F. Equipment and Real Property Management**

Equipment that is capitalized and depreciated or is claimed in the period acquired and charged to more than one program is subject to 45 CFR section 95.707(b) in lieu of the requirements of the A-102 Common Rule.

## **G. Matching, Level of Effort, Earmarking**

### **1. Matching**

The percentage of required State funding and associated Federal funding (“Federal financial participation” (FFP)) varies by type of expenditure as follows:

- a. Third party in-kind contributions cannot be used to meet the State’s cost sharing requirements (ACYF-CB-PIQ-84-06, 10/22/84; incorporated in the Child Welfare Manual 8.1F. 8/16/02). The non-applicability of the matching and cost sharing provisions of 45 CFR Part 74 to this program conveys to the similar provisions of 45 CFR 92.24 (as a result of the Department of Health and Human Services inclusion of entitlement programs under 45 CFR Part 92) (45 CFR sections 1355.30(c) and 1355.30(n)(1); 45 CFR section 201.5(e)).
- b. The percentage of Federal funding in Foster Care maintenance payments will be the Federal Medical Assistance Program percentage. This percentage varies by State and is available on the Internet (<http://www.aspe.hhs.gov/health/fmap.htm>) (42 USC 674(a)(1); 45 CFR section 1356.60(a)).
- c. The percentage of Federal funding in expenditures for short- and long-term training at educational institutions of employees or prospective employees, and short-term training of current or prospective foster or adoptive parents and members of staff of State-licensed or State-approved child-care institutions (including travel and per diem) is 75 percent (42 USC 674(a)(3)(A) and (B); 45 CFR section 1356.60(b)).

- d. The percentage of Federal funding for expenditures for planning, design, development, and installation and operation of a statewide automated child welfare information system meeting specified requirements (and expenditures for hardware components for such systems) is 50 percent (42 USC 674(a)(3)(C) and (D); 45 CFR sections 1355.52 and 1356.60(d)).
- e. The percentage of Federal funding of all other allowable administrative expenditures is 50 percent (42 USC 674 (a)(1)(E); 45 CFR section 1356.60(c)).

2. **Level of Effort** - Not Applicable

3. **Earmarking** - Not Applicable

#### H. **Period of Availability of Federal Funds**

This program operates on a cash accounting basis and each year's funding and accounting is discrete. To be eligible for Federal funding, claims must be submitted to ACF within 2 years after the calendar quarter in which the State made the expenditure. This limitation does not apply to any claim resulting from a court-ordered retroactive adjustment (45 CFR sections 95.7, 95.13, and 95.19).

#### L. **Reporting**

##### 1. **Financial Reporting**

- a. SF-269, *Financial Status Report* - Not Applicable
- b. SF-270, *Request for Advance or Reimbursement* - Not Applicable
- c. SF-271, *Outlay Report and Request for Reimbursement for Construction Programs* - Not Applicable
- d. SF-272, *Federal Cash Transactions Report* - Not Applicable
- e. ACF-Title IV-E-1, *Foster Care and Adoption Assistance Financial Report (OMB No. 0970-0205)* - States report current expenditures for the previous quarter, and estimate costs for the next quarter. States may also report adjustments to prior quarter costs for the prior two years.

*Key Line Items* - The following line items contain critical information.

Part 1, *Foster Care*, columns (a) through (d)

Part 2, *Foster Care*, columns (a) through (d)

2. **Performance Reporting** - Not Applicable

3. **Special Reporting** - Not Applicable