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SENATE

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IMPROVED ADOPTION INCENTIVES AND RELATIVE GUARDIANSHIP SUPPORT ACT OF 2008

SEPTEMBER 16, 2008.—Ordered to be printed

Mr. BAUCUS, from the Committee on Finance,
submitted the following

R E P O R T

[To accompany S. 3038]

[Including cost estimate of the Congressional Budget Office]

The Committee on Finance, to which was referred the bill (S. 3038) to amend part E of title IV of the Social Security Act to extend the adoption incentives program, to authorize States to establish a relative guardianship program, to promote the adoption of children with special needs, and for other purposes, reports favorably thereon with an amendment in the nature of a substitute and recommends the bill, as amended, do pass.

I. BACKGROUND

Child Welfare Services

The Child Welfare Services program was established in 1935—as part of the original Social Security Act (P.L. 74-271)—to provide grants to State agencies for the “protection and care of homeless, dependent, and neglected children, and children in danger of becoming delinquent” and for “developing State services for the encouragement and assistance of adequate methods of community child welfare organization.” Child Welfare Services funding is authorized on a discretionary basis and is distributed, by formula, to States, territories, and tribes. The program authorization has been amended numerous times and is currently included in the Social Security Act as part of Title IV-B, subpart 1, under which competitive grants for child welfare training and support for some child welfare related research projects are also authorized. The Child and Family Services Improvement Act of 2006 (P.L. 109-288) clari-

fied the purposes of that subpart as being to “promote State flexibility in the development and expansion of a coordinated child and family services program that utilizes community based agencies and ensures all children are raised in safe, loving families” by—protecting and promoting the welfare of all children and preventing their neglect, abuse, or exploitation; supporting at-risk families to allow children to remain safely in their own homes, or to return safely to those homes; promoting the safety, permanence and well-being of children in foster care and in adoptive homes; and providing training, professional development and support to ensure a well-qualified child welfare workforce.

Title IV–E foster care and adoption assistance

Federal support for children placed in foster care was first authorized on a temporary open-ended entitlement basis in 1961 (P.L. 87–31) as part of the prior law cash welfare program, Aid to Dependent Children (ADC). The 1961 law gave States the option to seek reimbursement for a part of the cost of maintaining in foster care any child who had been eligible for cash assistance in his or her home but who—because of a judicial determination that the home was “contrary to the welfare” of the child—needed to be removed to foster care. One year later, as part of the Public Welfare Amendments of 1962, Congress renamed the cash welfare program, Aid to Families with Dependent Children (AFDC), and authorized reimbursement of eligible State foster care costs on a permanent basis (P.L. 87–543). The Social Security Amendment of 1967 (P.L. 90–248, enacted in January 1968) required States, as part of the AFDC (cash welfare) program, to provide foster care support to eligible children, and it broadened eligibility for Federal foster care assistance to include any child who would have been eligible for AFDC assistance in his or her own home if an application had been made on the child’s behalf.

Eligibility for Title IV–E. In 1980, the Adoption Assistance and Child Welfare Act (P.L. 96–272) created Title IV–E of the Social Security Act to continue, on an independent basis, open-ended Federal reimbursement of a part of all eligible State foster care costs, and to newly authorize open-ended Federal reimbursement to States for a part of the cost of providing monthly subsidies for eligible adopted children who are determined by the State to have “special needs.” The new Title IV–E program, however, retained the eligibility link to the cash welfare program by limiting Federal eligibility for both foster care and (in most cases) adoption assistance to children who were removed from homes in which they were (or would have been if application had been made) eligible for cash welfare under the AFDC program. With the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA, P.L. 104–193) Congress repealed the AFDC program (replacing it with Temporary Assistance to Needy Families, TANF). At the same time, it maintained the prior law AFDC eligibility rules for purposes of determining a child’s eligibility for Federal foster care or adoption assistance under Title IV–E, and those rules (as they existed on July 16, 1996) continue to apply today.

Placement with Relatives and Legal Guardianship. Amendments to the Child Welfare Services (Title IV–B, Subpart 1) and foster care programs that were made as part of the same 1980 law that

created Title IV–E (P.L. 96–272) sought to reduce unnecessary entries to foster care and to ensure, primarily through case planning and review, that a child’s stay in foster care was temporary. In 1994 (P.L. 103–432), Congress authorized the U.S. Department of Health and Human Services (HHS) to waive requirements under Title IV–E or Title IV–B to enable States to demonstrate alternative ways of providing effective child welfare services to children and their families. Under this authority, as many as 12 States have, or are implementing, assisted guardianship programs that provide subsidies (using Title IV–E funds) to children who leave foster care for placement with legal (primarily relative) guardians. In 1996, PRWORA (P.L. 104–193) amended the Title IV–E foster care program to require that States “consider giving preference to an adult relative over a non-related caregiver when determining a placement for a child” in foster care—provided that the relative caregiver meets all relevant safety standards for the child’s protection. In 1997, the Adoption and Safe Families Act (ASFA, P.L. 105–89) again amended the Title IV–E foster care program to clearly establish that States must make safety the pre-eminent concern of all child welfare decision-making and it required them to take other actions intended to expedite a child’s placement in an appropriate permanent living arrangement. ASFA established that for any child for whom returning home was not appropriate, the State must seek to place the child with an adoptive family, a legal guardian, a “fit and willing” relative, or, if none of these options is in the child’s best interest, in another planned permanent living arrangement. As amended by ASFA, a “legal guardian” is defined in Title IV–E as the caretaker in a “legal guardianship,” which is defined as “a judicially created relationship between child and caretaker which is intended to be permanent and self-sustaining as evidenced by the transfer to the caretaker of the following parental rights with respect to the child: protection, education, care and control of the person, custody of the person, and decisionmaking.” After expanding and renewing the authority for HHS to grant new child welfare waivers, Congress permitted it to expire at the end of March 2006. However, States with previously approved waivers to operate demonstration programs may continue to operate under those waivers (generally for a limited time) and some States continued to provide assisted guardianship with Title IV–E dollars under this authority.

Adoption incentives

As part of encouraging States to find permanent homes for children in foster care who cannot return to their birth parents, ASFA (P.L. 105–89) established the Adoption Incentives program in Section 473A of the Social Security Act. The program provides a bonus to the State child welfare agency when it increases the number of children it places out of foster care and into adoptive families. States receive an enhanced bonus amount if the child is determined to have “special needs.” The Adoption Promotion Act of 2003 (P.L. 108–145) amended the program to provide separate bonuses to States for increasing the number of older children (age nine or above) who are placed out of foster care and into adoptive families.

Independent living

In recognition of research demonstrating the many unmet needs of youth who upon reaching the State age of majority are legally “emancipated” from foster care custody (typically at age 18), Congress, in 1986 (P.L. 99–272), authorized a new capped entitlement to States for provision of independent living services to such youth before their exit from foster care. Youth were eligible for these services if they were between the ages 16 to 18 and met all the Title IV–E foster care eligibility criteria. In 1988, P.L. 100–647 expanded independent living program eligibility to include funding for services to youth who did not meet the Title IV–E eligibility criteria and to permit States to provide services to youth for up to 6 months after their emancipation from foster care (P.L. 100–647). That same 1988 law also amended the Title IV–E foster care program to stipulate that, “where appropriate,” for any child in foster care who is at least age 16, the State must include in the child’s required case plan a written description of the “programs and services which will help such child prepare for the transition from foster care to independent living.” In 1990, P.L. 101–508 further provided that States could use these funds to offer services to youth who had emancipated from foster care until their 21st birthday. As research continued to demonstrate poor outcomes for children emancipating from foster care, the Chafee Foster Care Independence Act (P.L. 106–169) doubled the program’s annual entitlement to \$140 million and made other changes intended to ensure that State child welfare agencies and foster youth planned for and achieved independent living. As part of the Promoting Safe and Stable Families Amendments of 2001 (P.L. 107–133), Congress authorized discretionary funding for Education and Training Vouchers to enable youth who leave foster care without a permanent home (or those adopted from foster care at age 16 or older) to receive vouchers worth up to \$5,000 annually to attend college or an equivalent post-secondary education training program.

II. CHAIRMAN’S SUBSTITUTE TO S. 3038, THE “IMPROVED ADOPTION AND RELATIVE GUARDIANSHIP SUPPORT ACT OF 2008”

PROMOTING ADOPTION

Adoption incentives

The Committee finds that the Adoption Incentive Program has successfully increased the number of adoptions and should be extended and improved. The Committee bill includes an updated and improved extension of the Adoption Incentive Program through FY 2013.

Adoption Assistance

The Committee finds that more should be done to increase the number of adoptions out of foster care. Under current law, to qualify for Federal adoption assistance a child must meet the income eligibility requirement for the former Aid to Families with Dependent Children (AFDC). Since AFDC was eliminated in 1996 as part of the Personal Responsibility and Work Opportunity Act (PRWORA), commonly known as welfare reform, the Committee

finds that it is an inappropriate eligibility factor for Federal Adoption Assistance. Therefore, the Committee bill phases out the Aid to Families with Dependent Children (AFDC) income eligibility standard.

TRIBAL ACCESS

The Committee finds that tribes, tribal consortia, and tribal organizations may provide higher quality and more culturally appropriate care for Indian children. Therefore, the Committee bill allows qualified tribes, tribal consortia, and tribal organizations the authority to administer tribal foster care and adoption assistance programs for Indian children and to receive direct Federal funding for that purpose. To ensure the success of Federal administration and tribal implementation of this new authority the committee provides for the establishment of a child welfare resource center solely dedicated to improving outcomes for Indian children whether served by tribes or States.

GUARDIANSHIP

The Committee finds that child welfare waivers and several academic studies have demonstrated that children in guardianship and kinship placements tend to experience fewer placements and have school stability. The Committee finds that surveys also show that children are more likely to report liking their placement and wanting it to become their permanent placement. Children also are less likely to run away. The Committee finds that in addition to the benefits of a permanency option for children, a guardianship option for States would reduce administrative oversight and caseworker visits which would reduce Federal payments for States. The Committee notes that no child would be eligible for a Federal guardianship payment that is not currently eligible for the entitlement provided for under Title IV-E of the Social Security Act. Therefore, the Committee bill allows States to receive Federal reimbursement, at a level not to exceed the foster care maintenance payment, for children eligible for assistance under Title IV-E of the Social Security Act who are placed with a relative in a guardianship arrangement.

FOSTER CARE

The Committee finds that approximately 20,000 youth age out of foster care each year. The Committee notes that the Midwest Evaluation of the Adult Functioning of Former Foster Youth has tracked outcomes for a sample of youth. The Committee notes that the study has found that still being in care, as opposed to having left care, and having certain other characteristics (i.e., having aspirations to graduate from college, feeling close to at least one family member, and expressing satisfaction with their experience in foster care) more than doubled the odds of the teen working or being in school at age 19. Therefore the Committee bill will encourage States to continue support and assistance for youth up to age 21 for youth involved in education, training or employment. Youth with medical problems or disability can also stay in care. States will also be required to help youth prior to their emancipation to

develop a transition plan to outline options for education, training, housing, health care and the range of supports.

It is the view of the Committee that the Committee bill will promote the goals of permanency in a range of ways including adoption, guardianship and kinship care. The Committee finds that the Committee bill provides that for youth who do not gain permanency, States will be encouraged to continue support beyond age 18 to promote better outcomes on education, training and employment.

III. SECTION-BY-SECTION ANALYSIS

Committee Bill (S. 3038 as approved September 10, 2008)

TITLE I—EXTENSION AND IMPROVEMENT OF ADOPTION INCENTIVES

SECTION 101—EXTENSION OF ADOPTION INCENTIVES PROGRAM

5-year extension

CURRENT LAW

Provides that a State may be eligible for Adoption Incentive awards for increasing the number of children who are adopted out of foster care in each of FY1998–FY2007. Authorizes appropriations of \$43 million in each of FY2004–FY2008 to make those awards, and stipulates that funds appropriated for Adoption Incentives may not be expended after FY2008. As a condition of eligibility for these awards, in each of FY2001–FY2007, requires States to provide health insurance coverage to any child who has special needs (as determined by the State) and for whom the State has an adoption assistance agreement in place. Requires the U.S. Department of Health and Human Services (HHS) to use State-reported data to determine the number of incentive eligible adoptions that the State has finalized for each of FY2002–FY2007.

COMMITTEE BILL

The Committee Bill provides that States may be eligible for Adoption Incentive awards for adoptions finalized in each of FY2008–FY2012. The Committee Bill extends the funding authorization for the Adoption Incentive Program for five years (through FY2013) at the current annual authorization level (\$43 million) and provides that funds appropriated for Adoption Incentives may not be expended after FY2013. Further, the Committee Bill extends to each fiscal year the current State eligibility criteria regarding provision of health insurance for special needs adoptees and the requirement for HHS to determine the number of adoptions eligible under the program by State.

Additional incentive payment for exceeding the highest ever foster child adoption rate

CURRENT LAW

States may earn Adoption Incentive awards if they increase the number of children who are adopted out of foster care.

COMMITTEE BILL

In addition, the Committee Bill permits States to earn an Adoption Incentive award for an increase in their rate of foster child adoptions. Awards for an increase in the rate of these adoptions are made available in any year beginning with FY2009, provided that funds appropriated for Adoption Incentives exceed the amount needed to make any awards earned for increases in the number of adoptions.

Under the Committee Bill, a State's foster child adoption rate would be determined by dividing the number of foster child adoptions finalized in the State in a given fiscal year by the number of children in that State's foster care caseload on the last day of the previous year. (For example: If a State finalizes 150 adoptions in a given fiscal year and on the last day of the previous fiscal year it had 1,500 children in its foster care caseload, its foster child adoption rate for the given fiscal year is 10 percent.) A State earns an award if it achieves a foster child adoption rate that is above its "highest ever foster child adoption rate"—meaning the highest foster child adoption rate that the State achieved in any year beginning with FY1998 and before the award year. The amount of this award would be equal to \$1,000 multiplied by the number of adoptions that occurred as a result of the State exceeding its highest ever foster child adoption rate (and holding the foster care caseload constant). (For example: If the State in the example above had previously achieved a highest ever foster child adoption rate of 9 percent, then, when it achieved the rate of 10 percent, its award for this increased rate would be calculated as follows: Multiplying that highest rate (9 percent) by the 1,500 children in its caseload on the last day of the fiscal year prior to the award year, subtracting this number (135) from the actual number of foster child adoptions achieved in the award year (150) and multiplying the difference (15) by \$1,000 to determine the award amount of \$15,000.) The Committee Bill permits HHS to make pro rata adjustments to these amounts if funds appropriated are insufficient to cover the full awards earned.

Increase in incentive payments for special needs adoptions and older child adoptions

CURRENT LAW

A State earns Adoption Incentive awards for increasing the number of adoptions out of foster care in the following amounts: \$4,000 for each foster child adoption that is above its base number of adoptions in this category; \$4,000 for each adoption of a child from foster care who is age 9 or older that is above its base number of adoptions in this category; and (provided the State has also earned either a foster child or older child adoption award), \$2,000 for each special needs adoption of a child (who is under the age of 9) that is above its base number of adoptions in this category.

COMMITTEE BILL

The Committee Bill raises the award amount for each increase in older child adoption to \$8,000, and for adoption of a child with special needs (who is under age 9) to \$3,000. (The Committee Bill

maintains the current law award of \$4,000 for each increase in foster child adoptions overall.)

Updating of fiscal year used in determining base number of adoptions

CURRENT LAW

A State has a “base number” of adoptions for each category of adoptions under which it may earn an Adoption Incentive award—foster child adoptions, older child adoptions and adoptions of special needs children (who are under the age of 9). Those base numbers are equal to the number of adoptions the State finalized in each of those categories in FY2002 OR any year after that in which it achieved a higher number.

COMMITTEE BILL

The Committee Bill establishes the base number of adoptions as the number of adoptions achieved by a State in each Adoption Incentive category (foster child, older child, and special needs children under age 9) by that State in FY2007.

24-month availability of payments to states

CURRENT LAW

States may spend Adoption Incentive awards in the fiscal year for which they are awarded and in the following fiscal year.

COMMITTEE BILL

The Committee Bill gives States 24 months, beginning with the month in which the awards are made, to spend these funds.

SECTION 102—PROMOTION OF ADOPTION OF CHILDREN WITH SPECIAL NEEDS

Elimination of eligibility based on AFDC and SSI income standards

CURRENT LAW

A child who has “special needs” (as determined by each State) is eligible for Federal adoption assistance if the child meets the requirements of at least one of the following eligibility pathways:

(1) AFDC: The child was removed from the home of a parent or other relative under a voluntary placement agreement or because a judge found the home of the parent or other relative to be “contrary to the welfare” of that child, AND, if while living in that home, the child would have met all income, family structure, and other eligibility requirements necessary to be determined a “needy” child under the Aid to Families with Dependent Children (AFDC) program (as that program existed on July 16, 1996).

(2) SSI: The child meets all the eligibility criteria for Supplemental Security Income (SSI), including those related to income and medical/physical disability.

(3) Child of a minor parent: The child lives with his/her minor parent who is in foster care, and the minor parent meets either the AFDC or SSI eligibility criteria and is receiving Federal foster care

maintenance payments that includes funds to cover costs of the child.

COMMITTEE BILL

The Committee Bill removes all income and resource tests included in each of these eligibility pathways. Further, with regard to the child's removal from his/her home (under the current AFDC eligibility pathway) the Committee Bill requires a State to make the determination that continuation of the child in the home would be contrary to the safety or welfare of the child and permits the State to make this determination pursuant to its own criteria, which may or may not require this determination to be made by a judge.

Eligibility if initial adoption fails

CURRENT LAW

If a child was eligible for Federal adoption assistance in a previous adoption, ensures continued eligibility for this assistance in a subsequent adoption provided the child is determined by the State to have special needs and is available for adoption because the previous adoption was dissolved (with adoptive parents' rights terminated) or because the adoptive parents died. This provision was included in the Adoption and Safe Families Act and became effective for any child adopted on or after October 1, 1997.

COMMITTEE BILL

The Committee Bill extends this same provision to any child whose adoption occurred before the October 1, 1997 effective date of the Adoption and Safe Families Act and who would have been found eligible if the ASFA provision was enacted at that time.

Exception (related to intercountry adoption)

CURRENT LAW

Children adopted in another country, or who are brought to this country for the purposes of adoption (i.e., intercountry adoptees) may not be categorically excluded from Federal adoption assistance. However, they are generally found ineligible for monthly Federal adoption assistance because they do not meet the eligibility criteria for Federal adoption assistance. (For example, they can not meet the requirements of the prior law AFDC program, which was a domestic program and available only to children living in this country.) At the same time, the adoptive parents of an intercountry adoptee may claim reimbursement of non-recurring adoption expenses (up to \$2,000) if the State determines that the intercountry adoptee has special needs and the adoptive parents request the payment before the adoption is finalized.

COMMITTEE BILL

In general, the Committee Bill makes intercountry adoptees categorically ineligible for Federal adoption assistance of any kind—that is, they may not be eligible for monthly assistance payments nor for payment of non-recurring adoption expenses. However, an intercountry adoptee who the State determines to have special

needs and who is placed in foster care because the initial inter-country adoption failed (as determined by the State) may be eligible for Federal adoption assistance.

Requirement for use of State savings

CURRENT LAW

Not applicable.

COMMITTEE BILL

The Committee Bill provides that any State savings that may be achieved because of the expanded Federal eligibility for adoption assistance permitted by the Committee Bill must be spent on child welfare purposes.

Determination of a child with special needs

CURRENT LAW

A child is considered to have “special needs” if the State determines that: (1) the child cannot or should not be returned to his/her home; (2) because of a factor defined by the State and specific to the child—e.g., the child’s age, race/ethnicity, membership in a sibling group, physical, mental or emotional disabilities or medical conditions—he or she is unlikely to be adopted without provision of medical assistance or adoption assistance; and (3) it has made efforts (unless this is against the best interests of the child) to place the child for adoption without providing medical or adoption assistance on the child’s behalf, but these efforts have been unsuccessful.

COMMITTEE BILL

The Committee Bill provides that a State must consider any child who meets all the medical or disability requirements related to eligibility for SSI to be a child with special needs (provided that the State has also determined that the child cannot or should not be returned home and the State has tried unsuccessfully to place the child for adoption without medical or adoption assistance).

EFFECTIVE DATE

In general, the Committee Bill makes the provisions of this section, “Promotion of Adoption of Children with Special Needs,” effective with FY2013 and applicable only to adoption assistance agreements entered into on or after the first day of that fiscal year (October 1, 2012). However, the Committee Bill phases in earlier implementation of these amendments for children who have attained a certain age. Specifically, it stipulates that the amendments of the section apply beginning with the first day of FY2011 (October 1, 2010) for any adoption assistance agreement entered into during that year that is done on behalf of a child who is 12 years of age or older on the date the agreement is executed; and that it applies as of the first day of FY2012 (October 1, 2011) for any adoption assistance agreement entered into during that year that is done on behalf of a child who is 6 years of age or older on the date the agreement is executed.

TITLE II—SUPPORT FOR RELATIVE GUARDIANSHIP

SECTION 201—RELATIVE GUARDIANSHIP ASSISTANCE PAYMENTS FOR CHILDREN

Option for States to enhance and subsidize a relative guardianship program

CURRENT LAW

Under Title IV–E of the Social Security Act, States with an approved foster care and adoption assistance plan are entitled to receive Federal reimbursement for a part of the cost of providing foster care and adoption assistance to every eligible child.

COMMITTEE BILL

The Committee Bill provides that any State that elects to offer relative guardianship assistance under its Title IV–E foster care and adoption assistance plan is additionally entitled to Federal support for a part of the cost of providing this assistance on behalf of each eligible child.

Requirements

CURRENT LAW

No provision.

COMMITTEE BILL

Relative Guardianship Agreements: The Committee Bill provides that to receive this Federal support, a State must negotiate and enter into a written and binding agreement with the relative guardian of an eligible child that at a minimum, specifies: (1) the amount of each relative guardianship assistance payment and how it will be provided; (2) additional services and assistance that the child and relative guardian will be eligible for under the agreement; (3) the procedure the relative guardian may use to apply for additional services (if agreed to); and (4) that the State will pay up to \$2,000 of the non-recurring expenses associated with obtaining legal guardianship of the child.

Interstate Application: The Committee Bill provides that a relative guardianship assistance agreement must remain in effect regardless of the State in which the relative guardian resides.

Federal Reimbursement of Nonrecurring Expenses: The Committee Bill stipulates that the Federal government must pay one-half (50 percent) of a State's cost of covering nonrecurring guardianship expenses (up to \$2,000).

Relative Guardianship Assistance Payments: The Committee Bill provides that the amount of a child's relative guardianship assistance payment must be based on a consideration of the circumstances of the relative and the needs of the child, but must not be less than the amount the State would pay on behalf of the child if he or she was adopted, nor can it be more than the amount the State would pay on the child's behalf if the child remained in a foster family home. The amount of the relative guardianship assistance payment may be readjusted periodically, with the concurrence

of the relative guardian, depending upon changes in the circumstances of the relative guardian or the needs of the child.

Child's Eligibility for a Relative Guardianship Assistance Payment: Under the Committee Bill, a child is eligible for a Federal relative guardianship assistance payment if the State agency determines that: (1) in the month before the legal guardianship was established the child was in foster care and eligible for a Federal foster care maintenance payment; (2) being returned home or adopted are not appropriate permanency options for the child and, in the case of a child for whom removal from the home was associated primarily with parental substance abuse and addiction, that attempts to engage the family in residential, comprehensive family treatment programs are inappropriate or have been unsuccessful, or such programs are unavailable; (3) the child demonstrates a strong attachment to the relative guardian; (4) the relative guardian has a strong commitment to caring for the child and satisfies other requirements (specified below); and (5) if the child is age 14 or older, the child has been consulted about the relative guardianship arrangement.

Requirements for Relative Guardians: Under the Committee Bill, a relative guardian must: (1) be a grandparent or other relative of the child on whose behalf the relative guardianship assistance payment is being made; (2) have satisfied the same criminal background and child abuse and neglect registry checks that are required of prospective foster and adoptive parents of children on whose behalf Federal foster care or adoption assistance payments are made; (3) have met the State's licensing requirements for a foster family home; and (4) assume legal guardianship of the child and commit to caring for the child on a permanent basis.

Treatment of Siblings: The Committee Bill provides that a child who meets the eligibility requirements for Federal relative guardianship assistance payments must be placed in the same relative guardianship arrangement with any sibling(s), unless it can be shown that this is inappropriate, and, further that Federal relative guardianship assistance payments may be paid for each sibling placed in the same relative guardianship arrangement.

Payments to States

CURRENT LAW

States are entitled to receive Federal reimbursement of 75 percent of their cost of providing short-term training to eligible individuals (including current and prospective foster and adoptive parents and staff of certain child care institutions) provided those individuals care for children who are eligible for Federal foster care or adoption assistance.

Every State has a Federal Medical Assistance Percentage (FMAP) that is calculated annually and may range from 50 percent (for higher per capita income States) to 83 percent (for lower per capita income States).

COMMITTEE BILL

Under the Committee Bill, States are additionally entitled to Federal reimbursement of 75 percent of the cost of providing short-term training for current or prospective relative guardians, pro-

vided those relative guardians care for children receiving Federal foster care, relative guardianship assistance, or adoption assistance.

Under the Committee Bill, States are entitled to Federal reimbursement at their FMAP for the cost of providing relative guardianship assistance payments to eligible children.

Incentive payments for relative guardianship placement

CURRENT LAW

Funds are authorized to be appropriated for Adoption Incentives to States that increase the number of children adopted out of foster care.

COMMITTEE BILL

The Committee Bill requires HHS to make Relative Guardianship Incentive Awards in any fiscal year in which the funds appropriated for the Adoption Incentive program exceeds the amount needed to provide all adoption-related awards earned by the States under that program. In the first year that a State establishes a relative guardianship assistance program (under Title IV–E), the Committee Bill provides that the State’s relative guardianship incentive award is equal to the total number of relative guardianship assistance agreements it enters into during that year multiplied by \$1,000. In any succeeding year, the award amount is equal to \$1,000 multiplied by any increase in the number of relative guardianship assistance agreements that a State entered into that is above its “base number” of such agreements. A State’s base number of relative guardianship assistance agreements is equal to the highest number of those agreements it enters into in any year before the award year. HHS may make pro rata adjustments to these award amounts if funds appropriated are insufficient to cover the full awards earned.

Conforming amendment (use of funds)

CURRENT LAW

States may only spend Adoption Incentive awards for provision to children and families of any service (including post-adoption services) that is now authorized under Title IV–B (Child and Family Services) and Title IV–E (Foster Care and Adoption Assistance) of the Social Security Act.

COMMITTEE BILL

The Committee Bill maintains the current provisions for use of Adoption Incentive funds while explicitly adding that “relative navigator and support services” may also be funded by the awards.

Maintaining eligibility for adoption assistance and Medicaid

CURRENT LAW

Children who are eligible for adoption assistance or for Federal foster care maintenance payments are categorically eligible for Medicaid.

COMMITTEE BILL

Medicaid eligibility: The Committee Bill ensures that children who move to Federal relative guardianship assistance—all of whom must by definition have been eligible for Federal foster care assistance—maintain their eligibility for Medicaid.

Adoption Assistance eligibility: The Committee Bill separately provides that for purposes of determining a child's eligibility for Federal adoption assistance, any child who has received Federal relative guardianship assistance payments, and who is determined by the State to have special needs, must be eligible for Federal adoption assistance. The Committee Bill stipulates that the State must make payments of nonrecurring adoption expenses to the adoptive parents of such a child.

Eligibility for independent living services and education and training vouchers for children who exit foster care for relative guardianship or adoption after age 16

CURRENT LAW

Under the Chafee Foster Care Independence Program, States design and conduct independent living programs to help youth who are expected to remain in foster care until their 18th birthday, and those who have aged out of foster care (up to age 21) to transition to independent adulthood. Also authorizes Education and Training Vouchers for these same youth to attend college (or an equivalent level training program) and provides that any youth who is adopted from foster care after his/her 16th birthday is eligible for Education and Training Vouchers.

COMMITTEE BILL

The Committee Bill also permits States to design and provide Chafee independent living services for any youth who leaves foster care after his/her 16th birthday for adoption or relative guardianship. The Committee Bill further extends eligibility for Education and Training Vouchers to any youth who leaves foster care for relative guardianship after his/her 16th birthday.

Notice requirements

CURRENT LAW

Provides that a State must “consider” giving preference to an adult relative over a non-related caregiver when determining the placement of a child, if the adult relative meets State child protection standards.

COMMITTEE BILL

Notice to relatives of child's removal from parental custody: The Committee Bill additionally requires the State child welfare agency to “exercise due diligence” to identify any adult grandparents or other adult relatives of a child within 60 days of a child's removal from parental custody. It also requires the State to give these relatives notice of the imminent or recent removal of the child and to explain the relative's options to participate in the child's care and placement—including a description of State licensing requirements

and associated supports and benefits, and how to enter into a relative guardianship assistance agreement (provided the State has opted to provide this kind of assistance). The Committee Bill permits exceptions to this notice requirement due to family or domestic violence.

Notice to non-parent caregivers of children receiving TANF benefits: The Committee Bill also requires the State child welfare agency to give notice of these same care and placement options to any non-parent relative caretaker who, after an interaction with the child welfare agency, is providing a home for a child receiving Temporary Assistance to Needy Families (TANF) benefits.

TANF penalty for failure to provide notice

CURRENT LAW

Under the TANF block grant (Title IV–A of the Social Security Act), States are entitled to receive an annual grant for family assistance. The amount of this grant may be reduced if HHS determines that the State has failed to comply with certain Federal requirements related to the receipt and use of the funds. A State may avoid such a penalty if it can show reasonable cause for the non-compliance, or if it enters into a corrective compliance plan with HHS.

COMMITTEE BILL

The Committee Bill requires HHS to reduce the amount of a State's TANF grant if it determines that the State is not complying with the notice provisions for non-parent caretakers of children receiving TANF benefits. If a non-complying State cannot give reasonable cause or does not enter into a corrective compliance plan with HHS, the penalty amount must be based on the State's degree of noncompliance. However, it must be no less than 1 percent nor more than 3.5 percent of the State's total TANF family assistance grant.

Notice requirements (adoption tax credit)

CURRENT LAW

The Internal Revenue Code permits taxpayers who adopt a child to claim a tax credit for all qualifying adoption costs up to the maximum credit. (The maximum credit was equal to \$11,390 in tax year 2007.) It also provides that any taxpayer who adopts a child meeting the State's definition of "special needs" may claim the full credit amount (without having to show any qualifying costs).

COMMITTEE BILL

The Committee Bill requires States to provide information to prospective adoptive parents about their potential eligibility for the Federal adoption tax credit, including the fact that if they adopt a special needs child, they may receive the maximum credit without having to show any qualifying adoption costs.

Case plan requirements

CURRENT LAW

Every child in foster care must have a written case plan.

COMMITTEE BILL

The Committee Bill requires that if the permanency goal for a child in foster care is placement with a relative guardian who is to receive a Federal relative guardianship assistance payment on the child's behalf, that child's case plan must describe—(1) the steps the agency has taken to determine that it is not appropriate for the child to return home or be adopted; (2) the reasons why a permanent placement with a fit and willing relative through a relative guardianship assistance arrangement is in the child's best interests; (3) the ways in which the child meets the eligibility requirements for relative guardianship assistance payments; (4) the efforts the agency has made to discuss adoption by the child's relative guardian and, if the relative guardian chose not to pursue adoption, the reasons why this is so; and (5) the efforts made by the State agency to secure the consent of the child's parent(s) to the relative guardianship assistance arrangement (or the reason why those efforts were not made).

Requirement to conduct criminal records and child abuse and neglect registry checks

CURRENT LAW

States are required to conduct fingerprint-based FBI checks of prospective foster and adoptive parents and must also conduct child abuse registry checks of any prospective foster or adoptive parents, as well as any other adult living in the home. A State may not approve the placement of a child for whom Federal foster care or adoption assistance is claimed with any individual for whom the criminal record check reveals certain felony convictions.

COMMITTEE BILL

The Committee Bill would require these same criminal background checks, child abuse and neglect registry checks, and placement approval procedures for prospective relative guardians.

EFFECTIVE DATE

The Committee Bill makes the amendments in this section, "Relative Guardianship Assistance Payments for Children," effective on October 1, 2008, and applicable only to relative guardianship assistance agreements made on or after that date.

SECTION 202—DEMONSTRATION PROJECTS REGARDING LICENSING OF IMMEDIATE RELATIVE FOSTER PARENTS

CURRENT LAW

No provision.

COMMITTEE BILL

The Committee Bill requires HHS to establish not more than 10 demonstration projects (at least 2 in rural States, 1 in a State where counties primarily administer the Title IV–E foster care program, and 1 in a tribe that directly operates a Title IV–E foster care program) to determine the extent to which flexibility in the application of licensing standards for the homes of immediate relative foster parents results in improved well-being and permanency outcomes for children in foster care. A State (including any of the 50 States or the District of Columbia) or tribe selected to conduct such a demonstration (under the Title IV–E foster care program) may modify the extent to which the home of an immediate foster parent relative (grandparent, aunt, uncle or adult sibling) meets any of the State’s foster family home licensing standards that concern—(1) the number or size of bedrooms in the home (with appropriate safeguards for age and sex of the children); (2) the number of bathrooms in the home (with appropriate safeguards for age and sex of the children); and (3) the overall square footage of the home. The Committee Bill requires that the licensing demonstrations must begin no later than one year after the date of the bill’s enactment and must be conducted for two years. It also requires, that, not later than one year after completion of the projects, HHS must submit to the Senate Finance and House Ways and Means Committees a report that evaluates the impact of the projects on the well-being of children in foster care and on their permanency outcomes—which must be based on the State’s performance before the demonstration compared to its performance during the demonstration. The report must also include any recommendations for administrative or legislative action HHS determines to be appropriate.

SECTION 203—GRANTS TO CARRY OUT KINSHIP NAVIGATOR PROGRAMS

CURRENT LAW

No provision.

COMMITTEE BILL

The Committee Bill appropriates \$5 million in each of FY2009–FY2013 to fund competitive grants to (1) establish kinship navigator programs in States, large metropolitan areas and tribal areas; and (2) promote effective partnerships among public and private agencies to more effectively serve kinship care families. The Committee Bill requires grantees to use funds received under the grant program to establish information and referral systems that link kinship caregivers to the full range of supports available to them; conduct outreach activities in collaboration with other relevant organizations to link kinship care families to the kinship navigator program; prepare, distribute, and updating kinship care resource guides, websites or other relevant outreach materials; and promote partnerships between public and private agencies to help those agencies better meet the needs of kinship care families and to familiarize them with the special needs of those families. Additional activities that the Committee Bill permits grant funds to be used for include establishment and support of a “kinship care om-

budsman,” as well as, to provide support for “other activities” designed to assist caregivers in obtaining benefits and services and those intended to improve their care giving.

As provided by the Committee Bill, entities eligible to apply for kinship navigator grants are tribal organizations, and public or private agencies of a State, or those serving a large metropolitan area, that have experience addressing the needs of kinship caregivers or children. The Committee Bill requires entities seeking kinship navigator grant funds to include specific information in their grant application concerning planning for, providing, and reporting on services and activities under the kinship navigator program. It further stipulates that any grant funds received must not generally be used to provide direct services to children or their kinship caregivers. And also that not more than 50 percent of any non-Federal share of the program costs, may be provided by grantees in-kind and fairly evaluated (including plant, equipment, or services).

The Committee Bill provides that the kinship navigator grants are to be administered by the Administration for Children and Families (ACF) within the HHS and that in doing so ACF must periodically consult with the Administration on Aging (of HHS). In addition, the Committee Bill stipulates that ACF must use no less than 50 percent of the funds appropriated for kinship navigator programs to award grants to State agencies and, also requires ACF to give preference for grants to applicants that demonstrate the capacity to offer the full range of services and activities for which funds may be used. As part of a final report to ACF on services and activities funded by the grant, a grantee must describe to ACF its plans for continuing the kinship navigator program after the expiration of the Federal grant. ACF would be permitted to reserve up to 1 percent of any of the funds appropriated to provide technical assistance to grantees related to the purposes of the kinship navigator program. The Committee Bill establishes this grant authority and funding in a new Section 427 of the Social Security Act.

SECTION 204—AUTHORITY FOR COMPARISONS AND DISCLOSURES OF INFORMATION IN THE FEDERAL PARENT LOCATOR SERVICE FOR CHILD WELFARE, FOSTER CARE AND ADOPTION ASSISTANCE PURPOSES

CURRENT LAW

The Federal Parent Locator Service (FPLS) is a national computerized locator system that consists of the National Directory of New Hires and the Federal Child Support Case Registry. It also can provide access to certain information stored in other agencies including the Internal Revenue Service, the Social Security Administration, the Department of Veterans Affairs, the Department of Defense, the Federal Bureau of Investigation, the National Personnel Records Center and the State Employment Securities Agencies. HHS is required to compare information in the multiple components of the FPLS to find instances in which a comparison reveals a match to an individual, and to disclose such information (e.g., addresses and employer information) to the agencies that administer Child Support Enforcement (under Title IV-D) and the Temporary Assistance for Needy Families (TANF) block grant (under Title IV-A). HHS is permitted to make these comparisons to the extent, and

with the frequency, it determines to be effective in assisting States in administering those programs.

COMMITTEE BILL

The Committee Bill additionally requires HHS to provide this same assistance to State child welfare agencies (that administer programs under Title IV–B or Title IV–E).

TITLE III—TRIBAL FOSTER CARE AND ADOPTION ACCESS

SECTION 301—EQUITABLE ACCESS FOR FOSTER CARE AND ADOPTION SERVICES FOR INDIAN CHILDREN IN TRIBAL AREAS

Authority for direct payment of Federal Title IV–E funds for programs operated by Indian tribal organizations

CURRENT LAW

States with a Title IV–E foster care and adoption assistance plan that is approved by HHS are entitled to receive Federal reimbursement for eligible costs associated with operating those programs. Tribes are not permitted to submit such a plan to HHS and may not receive direct Federal funding under Title IV–E.

COMMITTEE BILL

The Committee Bill establishes direct access to tribes for Federal foster care and adoption assistance funding by permitting an Indian tribe, tribal organization, or tribal consortium to submit a Title IV–E foster care and adoption assistance plan to HHS for approval. The Committee Bill creates a new Section 479B of the Social Security Act, which sets out the following law with regard to the tribal foster care and adoption assistance programs:

Definitions

CURRENT LAW

The Indian Self Determination and Education Assistance Act (Section 4) defines an Indian tribe as any Federally recognized band, nation, or other organized group or community (including certain Alaska Native Villages or regional or village corporations) that is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians. And it defines a “tribal organization” as the recognized governing body of any Indian tribe.

COMMITTEE BILL

The Committee Bill defines “Indian tribe” and “tribal organization” as they are defined in the Indian Self Determination and Assistance Act.

Authority

CURRENT LAW

No provision.

COMMITTEE BILL

Unless explicitly spelled out differently in the tribal provisions of Title IV–E (which the Committee Bill creates in Section 479B), the Committee Bill makes all aspects of Title IV–E applicable to any Indian tribe, tribal organization, or tribal consortium, in the same manner as they apply to States, provided that the tribal entity is operating a Title IV–E foster care and adoption assistance program under a plan approved by HHS.

Plan requirements

CURRENT LAW

A State’s Title IV–E foster care and adoption assistance plan must meet numerous requirements, which are specified in Section 471 of the Social Security Act. Among these are requirements related to provision of foster care and adoption assistance to eligible children and Statewide operation of the program. Under Federal regulations States may not use affidavits or nunc pro tunc orders to retroactively establish that a child’s removal from his or her home was a result of a judicial determination that the home was “contrary to the welfare” of that child. Further, as part of seeking Federal reimbursement for the foster care and adoption assistance program, States are required by Federal regulation to have an HHS-approved cost allocation plan that details the costs that will be assigned to the program and how Federal reimbursement will be sought. States are not permitted to claim Title IV–E costs based on in-kind expenditures from third party sources.

COMMITTEE BILL

The Committee Bill requires an eligible tribal entity seeking to operate a Federal foster care and adoption assistance plan to submit a plan for approval to HHS that meets the requirements of Section 471 with the following modifications and addition.

Financial Management: An Indian tribe, tribal organization, or tribal consortium seeking to operate a foster care and adoption assistance program must include in its plan evidence that that it has not had any uncorrected significant or material audit exceptions under Federal grants or contracts that directly relate to the administration of social services for the 3-year period before the date on which it submits the plan.

Service Area: The tribal entity’s plan must also describe the service area or areas and populations to be served under that plan and include an assurance that the plan will be in effect in all those areas and for all populations to be served.

Eligibility: The tribal entity’s plan must include an assurance that it will make foster care maintenance payments, adoption assistance payments, and (at the option of the tribal entity) relative guardianship assistance payments only on behalf of children who meet the Federal eligibility requirements. The Committee Bill further specifies that the AFDC rules that apply for a child that will be served under a tribal plan are the same rules that applied in the State in which the child resided when he or she was removed from the home. Further, for only the first 12 months in which a tribal entity operates a Title IV–E foster care and adoption assist-

ance program under a plan approved by HHS, the tribe may use either affidavits or nunc pro tunc orders to retroactively verify that a child's removal from his/her home occurred because of a judge's determination that the home was contrary to the welfare of the child.

In-Kind Expenditure Claims: For FY2010 through FY2014 only, the tribal entity's plan must include a list of the in-kind expenditures and their third party sources that the tribal entity may claim for purposes of seeking Federal reimbursement of administrative costs under the foster care and adoption assistance plan, including training costs. The Committee Bill prohibits any interpretation of its tribal in-kind claiming rules that would prevent a tribal entity from making an in-kind expenditure claim that a State with an HHS-approved foster care and adoption assistance plan can make. After this stipulation, the Committee Bill establishes the following special rules related to in-kind expenditures from third party sources for tribal entities operating an HHS-approved foster care and adoption assistance plan: (1) For expenditures in FY2010 and FY2011, a tribal entity may claim not more than 25 percent of its total foster care and adoption assistance program administrative costs (excluding training costs) and not more than 12 percent of its total program training costs, as in-kind expenditures from third party sources. (2) For expenditures in FY2010 and FY2011, with regard to training costs only, the third party sources of the in-kind expenditures must be listed in the tribal entity's plan and those sources must be limited to one or more of the following entities: a State or local government, a tribal entity other than the one making the claim under Title IV-E, a public institution of higher education, a tribal college or university, and a private charitable organization. (3) In general, for expenditures in FY2012, FY2013, and FY2014, a tribal entity may only claim reimbursement for in-kind expenditures from third party sources in accordance with regulations promulgated by HHS and those regulations must specify the allowable third party sources and the applicable share of tribal program costs that may be made as in-kind expenditures of third party sources. However, a tribal entity with a foster care and adoption assistance program plan that was approved by HHS for FY2010 or FY2011 must not be required to comply with any regulations on this issue before the first day of FY2013. (4) If HHS does not produce regulations on tribal claiming of in-kind expenditures from third party sources by FY2013, and no legislation has been enacted specifying otherwise, then for FY2012, FY2013 and FY2014, the special rules that applied for FY2010 and FY2011 claims apply. However, beginning in FY2015, no claims for in-kind expenditures from third party sources may be made by any tribal entity (unless a State could make such a claim).

Clarification of tribal authority to establish standards for tribal foster family homes and tribal child care institutions

CURRENT LAW

Each State is required, as a part of its foster care and adoption assistance program, to designate or create an authority (or authorities) to establish standards for licensing or approving any foster

family homes or child care institution that receives Federal Title IV–E or Title IV–B funds for the care of a foster child.

COMMITTEE BILL

The Committee Bill clarifies that in complying with this requirement, the Indian tribe, tribal organization, or tribal consortium must establish a tribal authority (or authorities), which are responsible to maintain tribal standards for tribal foster family homes and tribal child care institutions.

Consortium

CURRENT LAW

No provision.

COMMITTEE BILL

The Committee Bill provides that participating Indian tribes or tribal organizations of a tribal consortium may develop and submit a single Title IV–E foster care and adoption assistance plan that meets the requirements for HHS approval.

Determination of Federal Medical Assistance Percentage for foster care maintenance and adoption assistance payments

CURRENT LAW

In general, each State has a Federal Medical Assistance Percentage (FMAP)—sometimes called the “Medicaid matching rate”—which is used to determine the share of a State’s eligible foster care maintenance and adoption assistance payments that will be reimbursed by the Federal Government. A State’s FMAP may range from 50 percent (for States with highest per capita income) to 83 percent (for States with lowest per capita income).

COMMITTEE BILL

The Committee Bill provides that the per capita income of the service population of a tribal entity operating a plan under Title IV–E must be used to determine that tribal entity’s Federal reimbursement rate (or FMAP) for foster care maintenance, adoption assistance, and relative guardianship assistance payments. However, in no case may the reimbursement rate of the tribal entity be less than the FMAP of any State in which it is located. Further, HHS must consider any information submitted by a tribal entity as relevant to the calculation of that tribal entity’s per capita income.

Non-application to cooperative agreements and contracts

CURRENT LAW

States that operate Title IV–E foster care and adoption assistance programs may enter into agreements with other public agencies to provide foster care to children. (As of March 2008, there were approximately 86 tribal-State Title IV–E agreements in effect, involving 11 States.)

COMMITTEE BILL

The Committee Bill provides that any cooperative agreement or contract entered into between a State and tribal entity for the administration of foster care and adoption assistance program, or payment of funds under Title IV–E, must remain in full force and effect upon enactment of the Committee Bill (subject to the right of either party to revoke or modify the agreement according to the terms of the agreement). The Committee Bill also prohibits any interpretation of its provisions of its section related to “Tribal Access to Foster Care and Adoption” that affects the authority of a tribal entity and a State to enter into a cooperative agreement or contract for the administration of foster care and adoption assistance program or payment of Title IV–E funds.

Rule of construction (application of Medicaid eligibility)

CURRENT LAW

Children who are eligible for assistance under the Title IV–E foster care and adoption assistance program are made categorically eligible for Medicaid.

COMMITTEE BILL

The Committee Bill ensures that categorical eligibility for Medicaid continues to be available to children who are eligible for a Federal foster care maintenance payment, adoption assistance payment, or relative guardianship assistance payment under a tribal entity’s Title IV–E foster care and adoption assistance plan approved by HHS.

Conforming amendment (eligibility of children under tribal care and placement)

CURRENT LAW

To be eligible to receive Federal foster care assistance, a child’s care and placement must be the responsibility of (1) the State child welfare agency, which administers the Title IV–E foster care and adoption assistance program, or (2) any other public agency with which the State child welfare agency has an agreement.

COMMITTEE BILL

The Committee Bill additionally permits eligibility for any child whose care and placement is the responsibility of an Indian tribe, tribal organization, or tribal consortium that has a Title IV–E foster care and adoption assistance plan approved by HHS.

John H. Chafee Foster Care Independence Program

CURRENT LAW

States receive a share of capped mandatory funding to provide independent living services to youth who are expected to remain in foster care until their 18th birthday and to youth who have emancipated from foster care (until their 21st birthday). They also receive a share of any discretionary appropriations provided for Education and Training Vouchers to support the postsecondary education (or comparable training) of older foster youth. A State must

apply to receive funding under the Chafee Foster Care Independence Program and must meet certain planning requirements and certifications as a part of the applications. HHS must pay to each State, the lesser of 80 percent of its Chafee Program cost (including those for Education and Training Vouchers) or the State's full allotment under these funding streams. A State's allotment of funds out of the mandatory Chafee funding (\$140 million annually) is based on its relative share of the national foster child population, except that no State may receive less than \$500,000 or the amount of funding they received for independent living services in FY1998. A State's allotment of any discretionary funding appropriated for Education and Training Vouchers (FY2008 funding = \$45 million) is based entirely on its relative share of the national foster care caseload.

COMMITTEE BILL

The Committee Bill provides that the Title IV-E provisions related to the Chafee Foster Care Independence Program (including the associated Education and Training Vouchers) do not apply to tribes except as described in the Committee Bill.

Application of Chafee Foster Care Independence Program to Tribes: An Indian tribe, tribal organization, or tribal consortium with a Title IV-E foster care and adoption assistance plan approved by HHS, or one that is receiving funding to provide foster care pursuant to a tribal-State Title IV-E agreement or contract, may apply directly to HHS for an allotment of Chafee Foster Care Independence Program funds and/or Education and Training Voucher funds. The tribal entity's application must include a plan for providing independent living services that satisfies the planning and certification requirements made of States that HHS determines appropriate for the tribal entity. In addition, the application must describe the tribal entity's consultation process with all relevant State(s). In particular, it must include the results of the consultation with regard to determining Indian children's eligibility for benefits and services under a tribal entity's program and the process for ensuring continuity of benefits and services for children who will transition from State-planned independent living benefits and services to tribal-planned independent living benefits and services.

Payment and Allotment: The Committee Bill requires HHS to make payments to each tribal entity with an approved application in the same manner that it makes these payments to States, unless the agency determines that another manner is more appropriate. (However, in no case may a tribal entity receive less than 80 percent of its program costs.) The allotment amount for each tribal entity is based on the share of children in the tribal entity's foster care population relative to the total number of children in foster care in the State (whether under the care and placement responsibility of the State or of any tribal entity in the State with an approved application for general Chafee independent living funds and/or Education and Training Voucher funds. (For example if there are 1,000 children in foster care in the State and 50 of those children are in the tribal entity's care and placement responsibility, then 5 percent of the State allotment of Chafee and/or Education and Training Voucher funds must be allotted to the tribal entity.) The Committee Bill provides that any allotment amount for a trib-

al entity under the general Chafee program and/or Education and Training Vouchers program must be considered a part of a State's allotment of those program funds.

State and tribal cooperation

CURRENT LAW

There is no foster care and adoption assistance State plan requirement (under Title IV–E) that a State and tribe must cooperate in the provision of services to eligible children. Under the Chafee Foster Care Independence Program, however, a State must certify that it has consulted with each Indian tribe located within its borders about its planned independent living programs, that efforts to coordinate the programs with these tribe(s) have been made, and that the benefits and services it provides under the programs will be made available to Indian children in the State on the same basis as to other children.

COMMITTEE BILL

The Committee Bill requires a State, as part of its Title IV–E foster care and adoption assistance plan, to provide that it will negotiate in good faith with any Indian tribe, tribal organization, or tribal consortium that asks to develop an agreement with the State under which (1) Federal (Title IV–E) payments would be available for children who are under tribal authority and who are placed for adoption, in foster family homes licensed by tribes, or with relative guardians; and (2) the tribe, organization, or consortium also has access to Federal Title IV–E resources for related program administration, training, and data costs.

In addition to the current certification related to Indian tribes, the Committee Bill requires a State as part of its application for Chafee Foster Care Independence Program funds to further certify that it will negotiate in good faith with any Indian tribe, tribal organization, or tribal consortium that does not receive a direct allotment of Federal funding under the program, but which seeks to develop an agreement of contract with the State to administer, supervise, or oversee Chafee independent living services for eligible children under tribal authority and to receive an appropriate portion of the State's allotment for this purpose.

Rule of construction

CURRENT LAW

No provision.

COMMITTEE BILL

The Committee Bill prohibits any interpretation of its provisions on "Tribal Foster Care and Adoption Access" that permits termination of funding to any Indian or Indian family receiving foster care or adoption assistance payments on a child's behalf, if those payments are being received as of the date of enactment of the bill and the State is claiming Federal reimbursement for a part of those payments. This rule of construction must remain true without regard to whether a cooperative agreement between the State and the tribe is in effect on the date of the bill's enactment or

whether the tribal entity chooses, after the date of enactment, to directly operate a Title IV–E foster care and adoption assistance program.

The Committee Bill further prohibits any interpretation of its Tribal Foster Care and Adoption Access provisions that affects the responsibility of a State as part of its Title IV–E foster care and adoption assistance plan to provide Federal foster care maintenance payments, adoption assistance payments, and if it elects, relative guardianship assistance payments, for Indian children who are eligible for such payments and who are not otherwise being served by a tribal entity (either pursuant to a cooperative agreement with the State or under an HHS-approved foster care and adoption assistance plan of the tribal entity). Neither may it be interpreted as affecting the responsibility of a State to administer, supervise or oversee independent living programs under the Chafee Foster Care Independence Program on behalf of eligible Indian children who are not otherwise being served by a tribal entity with an approved Chafee plan or under a cooperative agreement or contract with the State.

Regulations

CURRENT LAW

No provisions.

COMMITTEE BILL

General Regulations: Except with regard to the in-kind claiming provisions (see below), the Committee Bill requires HHS to consult with Indian tribes, tribal organizations, tribal consortia and affected States and, within one year of their enactment, to promulgate interim final regulations to carry out the Tribal Foster Care and Adoption Access provisions of the Committee Bill. These regulations must include procedures that ensure that a transfer of a child from State care and placement responsibility to tribal care and responsibility (whether under that tribal entity’s foster care and adoption assistance plan approved by HHS or via a cooperative agreement with a State) affects neither that child’s eligibility for Medicaid nor his or her eligibility for Federal payments or any services under Title IV–E.

Regulations for In-Kind Expenditures: Not later than September 30, 2010, the Committee Bill requires HHS, in consultation with Indian tribes, tribal organizations, and tribal consortia, to promulgate interim final regulations to specify the types of in-kind expenditures, and the third-party sources for such in-kind expenditures, that may be claimed by tribal entities operating an approved foster care and adoption assistance plan under Title IV–E. Those regulations must also specify the share of non-Federal Title IV–E funds that tribal entities may claim as in-kind expenditures from third-party sources for purposes of receiving Federal reimbursement of Title IV–E administrative costs, including training costs. The Committee Bill adds that the regulations regarding in-kind expenditures may not be in effect before the first day of FY2011 (October 1, 2010). Finally, the Committee Bill includes a “Sense of the Senate” that if HHS fails to formally publish these required regulations, Congress should enact legislation to specify the in-kind ex-

penditures from third-party sources, and the share of non-Federal program costs those expenditures may represent and that tribal entities operating an HHS-approved foster care and adoption assistance program may claim.

EFFECTIVE DATE

The Tribal Foster Care and Adoption Access section of the Committee Bill is effective as of the first day of FY2010 (October 1, 2009), without regard to whether the regulations required by the section have been promulgated by that date.

SECTION 302—GRANTS TO STATES THAT SUCCESSFULLY COLLABORATE WITH AND SUPPORT TRIBES TO IMPROVE PERMANENCY OUTCOMES FOR INDIAN CHILDREN

CURRENT LAW

States are required as part of their plan for Child Welfare Services (Title IV–B, subpart 1) to consult with tribal organizations and to describe the specific measures taken to comply with the Indian Child Welfare Act. Under the Chafee Foster Care Independence Program (Section 477), States must certify that they have consulted with and sought to cooperate with tribes in the provision of independent living services.

COMMITTEE BILL

Grant Authority and Definition of Indian Children: The Committee Bill creates a new Section 479C of the Social Security Act that requires HHS, in each of FY2010 through FY2014, to make grants to States that successfully collaborate with tribes to improve the services and permanency outcomes for Indian children and their families. For purposes of this grant, Indian children are defined as those children who are members of, enrolled in, or affiliated with a tribe, OR children who are eligible for membership, enrollment, or affiliation with a tribe.

Eligible States: The Committee Bill provides that any State seeking a Successful Collaboration and Tribal Support grant must submit to HHS the following (in the manner and form requested by the agency): (1) Evidence of collaboration by the State with Indian tribes, tribal organizations, or tribal consortia to plan for and ensure access to services and supports for Indian children and their families. At a minimum this must include evidence of consultation with tribal organizations and specific measures taken to comply with the Indian Child Welfare Act (as now required under Title IV–B), and evidence of the consultation and good faith negotiation efforts required under the State foster care and adoption assistance plan (as added by the Committee Bill) and the State application for the Chafee Foster Care Independence Program (as amended by the Committee Bill); (2) Evidence that the State has obtained from HHS, or is engaged in accessing technical assistance (including through the National Child Welfare Resource Center for Tribes, established in the Committee Bill) to improve services and permanency outcomes for Indian children and their families through improved identification of Indian children, increased recruitment of Indian foster family homes, and improved rates of family reunification, legal or relative guardianships, or adoptive homes; and (3)

Evidence of improved outcomes for Indian children and their families and any other data HHS may require for verification that an improvement, appropriate for Indian children and their families, has been achieved.

Amount of Grant: The Committee Bill provides that based on this evidence, every State found eligible by HHS for a Successful Collaboration and Tribal Support Grant (in a given grant year) must receive a portion of the total grant funding provided. And that the amount for each eligible State must be based on the number of Indian children in the State relative to the number of Indian children in all of the States found to be eligible for a Successful Collaboration and Tribal Support grant.

Appropriation: The Committee Bill appropriates \$5 million to HHS to make these grants in each of FY2010 through FY2014.

SECTION 303—ESTABLISHMENT OF NATIONAL CHILD WELFARE
RESOURCE CENTER FOR TRIBES

CURRENT LAW

No provision.

COMMITTEE BILL

The Committee Bill creates a new Section 479D of the Social Security Act that requires HHS to establish a National Child Welfare Resource Center for Tribes that is “specifically and exclusively” dedicated to meeting the needs of Indian tribes, tribal organizations, tribal consortia and States in improving services and permanency outcomes for Indian children and their families.

The Committee Bill provides that this resource center must—(1) provide information, advice, educational materials, and technical assistance to Indian tribes and tribal organizations regarding the types of services, administrative functions, data collection, program management, and reporting that are provided for under the child and family services programs of Title IV–B and the foster care and adoption assistance program of Title IV–E; (2) assist and provide technical information to tribes, organization or consortia seeking to operate programs under Title IV–B or Title IV–E; and (3) assist and provide technical assistance to those tribal entities and States seeking to develop cooperative agreements under Title IV–E or to meet the requirements (included in Title IV–B or Title IV–E) that are related to State and tribal consultation or good faith negotiations (as added by the Committee Bill).

The Committee Bill permits HHS to directly establish the National Child Welfare Resource Center for Tribes, or to establish it through a grant or contract with a public or private organization that is knowledgeable in the field of Indian tribal affairs and child welfare. The Committee Bill appropriates \$1 million in each of FY2009 through FY2013 for this resource center.

TITLE IV—SUPPORT FOR OLDER CHILDREN IN FOSTER CARE AND OTHER PROVISIONS

SECTION 401—STATE OPTION FOR CHILDREN IN FOSTER CARE OR IN AN ADOPTIVE OR RELATIVE GUARDIANSHIP PLACEMENT AFTER ATTAINING AGE 18

Definition of child

CURRENT LAW

There is no definition of “child” for purposes of the child welfare programs authorized under Title IV–E or Title IV–B of the Social Security Act. In general, a child may no longer be eligible for Federal foster care maintenance payments or adoption assistance payments once he or she has attained 18 years of age. However, in the case of a foster care maintenance payment, a child who at his or her 18th birthday is still a fulltime high school student (and who can reasonably be expected to complete this degree) may remain eligible until his or her 19th birthday. Further, in the case of a child on whose behalf adoption assistance payments are being made, if a State determines that the child has a “mental or physical handicap” that warrants continued assistance, it may continue to provide these payments until the child’s 21st birthday.

COMMITTEE BILL

The Committee Bill defines a child, for purposes of Title IV–E or Title IV–B, as an individual who has not reached his or her 18th birthday—except for certain individuals (as described in the following sentences). The Committee Bill permits States to define as a “child,”—and thus to provide Federal foster care maintenance payments, adoption assistance payments, and/or relative guardianship payments to—otherwise eligible individuals who have reached their 18th birthdays but who have not yet reached their 19th, 20th or 21st birthday (whichever highest age the State chooses). The Committee Bill provides, however that to be eligible for continued adoption assistance or relative guardianship assistance agreements under this definition, the child must have been adopted or placed in guardianship out of foster after reaching his/her 16th birthday. Further, to be defined as a “child” (and thus to remain eligible for Federal foster care maintenance, adoption assistance, or relative guardianship assistance payments) after reaching his or her 18th birthday, the individual must be—(1) completing high school; (2) enrolled in college (or equivalent vocational education); (3) participating in a program or activity designed to promote employment or remove barriers to employment; (4) employed at least 80 hours per month; or (5) determined by the State to be “particularly vulnerable” or “a high-risk individual.”

Conforming amendment to definition of child care institution

CURRENT LAW

To be eligible for Federal foster care maintenance payments, a child must be living in a foster family home or in a “child-care institution.”

COMMITTEE BILL

The Committee Bill amends the definition of “child care institution” to include—but only in the case of a child in foster care who is at least 18 years of age—a “supervised setting in which the individual is living independently” in accordance with the conditions that HHS must establish in regulation.

Conforming amendments to age limits applicable to children eligible for adoption assistance or relative guardianship

CURRENT LAW

Prohibits payment of Federal adoption assistance to any child who has reached age 18, unless the State determines that the assistance is warranted due to the child’s physical or mental handicap. Further prohibits payment of Federal adoption assistance on behalf of a child, if the State determines that the parents are no longer legally responsible for the child or the child is no longer receiving support from the parents. Parents who are receiving adoption assistance on behalf of a child are required to keep the State or local child welfare agency informed of circumstances that would make them ineligible to receive further adoption assistance on the child’s behalf or which would make them eligible to receive adoption assistance payments for the child in a different amount.

COMMITTEE BILL

In general, the Committee Bill restates all of these provisions so that they also apply to relative guardianship payments (or to relative guardians as applicable). However, consistent with the new definition of child, the Committee Bill also notes that a State may elect to provide adoption assistance and relative guardianship assistance payments to a child after his or her 18th birthday (and before his/her 21st birthday) consistent with the rules described above (see “Definition of Child”).

EFFECTIVE DATE

The Committee Bill makes the provisions related to the “State Option for Children in Foster Care or in Adoptive or Relative Guardianship After Attaining Age 18” effective with the first day of FY2011 (October 1, 2010).

SECTION 402—TRANSITION PLAN FOR CHILDREN AGING OUT OF FOSTER CARE

CURRENT LAW

A State is required to have in place a case review system for each child in foster care to, among other things, periodically review the child’s status in foster care and to develop and carry out a permanency plan for the child.

COMMITTEE BILL

The Committee Bill amends the definition of a case review system to require that—during the 90-day period immediately before a child legally emancipates (whether during that period the child is receiving a foster care maintenance payment, or benefits or serv-

ices under Section 477)—the child’s caseworker, and other representatives as appropriate, must help the child develop a personal transition plan. The plan must be as detailed as the child chooses and include specific options on housing, health insurance, education, local opportunities for mentoring, continuing support services, work force supports and employment services.

EFFECTIVE DATE

In general, the amendments made regarding a “Transition Plan for Children Aging Out of Foster Care” are effective on October 1, 2008. However HHS may delay required compliance for any State that it determines must enact legislation (other than legislation to appropriate funds) to meet this additional requirement.

SECTION 403—EDUCATIONAL STABILITY

Educational stability

CURRENT LAW

A State is required to maintain an individual written case plan for each child in foster care. Among other things, this case plan must include the child’s health and education records with an assurance that the child’s placement in foster care takes into account proximity to the school in which the child is enrolled at the time of the placement.

COMMITTEE BILL

The Committee Bill maintains all of these current law requirements but additionally requires the State child welfare agency to include in each child’s case plan an assurance that it has coordinated with local educational agencies to ensure that the child remains in the school where he/she is enrolled at the time of placement into foster care OR, if remaining in that school is not in the child’s best interests, assurances that the State child welfare agency and the local educational agencies provide immediate and appropriate enrollment in a new school, with all of the educational records of the child provided to that school.

Transportation to school of origin

CURRENT LAW

Under Title IV–E, States are entitled to receive Federal reimbursement at their Federal Medical Assistance Percentage (FMAP), which ranges from 50 percent in States with the highest per capita incomes to 83 percent in States with the lowest per capita income, for the cost of providing foster care maintenance payments on behalf of an eligible child. The definition of a “foster care maintenance payment” includes payments for “food, clothing, shelter, daily supervision, school supplies, a child’s personal incidentals, liability insurance with respect to a child, and reasonable travel to the child’s home for visitation.”

States are also entitled to receive Federal reimbursement of 50 percent of their costs related to the “proper and efficient” administration of their Title IV–E foster care program. (HHS has recently provided guidance to States indicating that transportation of a

child in foster care to and from his/her school of origin is a Title IV–E administrative function and, thus, that 50 percent of the costs of this transportation may be claimed as a Title IV–E administrative cost.

COMMITTEE BILL

The Committee Bill would amend the definition of “foster care maintenance payment” to permit States to claim reimbursement (for eligible children), at their FMAP, for the cost of “reasonable travel for the child to remain in the school in which the child is enrolled at the time of placement” in foster care.

Educational attendance

CURRENT LAW

The law requires each child on whose behalf Federal foster care maintenance payments or adoption assistance payments are made to meet certain Federal eligibility requirements.

COMMITTEE BILL

The Committee Bill adds a new condition of eligibility for Federal foster care maintenance payments, adoption assistance payments, or relative guardianship assistance payments (as authorized by the Committee Bill). The Committee Bill requires a State to provide assurances that each child who has reached the minimum age of compulsory school attendance in his/her State and who is receiving a foster care maintenance payment, adoption assistance payment, or relative guardianship payment is a full-time elementary or secondary school student, or has completed high school. The Committee Bill defines a full-time elementary or secondary school student to include a child who is enrolled at a secondary, or elementary school, or one who is receiving home school instruction or participating in independent study, provided that enrollment, home schooling or independent study is done in accordance with the law of the State or relevant jurisdiction. Finally, the Committee Bill defines a full-time elementary and secondary student to include children who are incapable of attending school on a full-time basis due to a medical condition, if this fact is supported by regularly updated information in the child’s required case plan.

EFFECTIVE DATE

The Committee Bill makes the provisions of the section on “Educational Stability” effective on the first day of FY2009 (October 1, 2008). However, HHS may delay required compliance for any State that it determines must enact legislation (other than legislation to appropriate funds) to meet this additional requirement.

TITLE V—REVENUE PROVISIONS

SECTION 501—CLARIFICATION OF UNIFORM DEFINITION OF CHILD

Child must be younger than claimant

CURRENT LAW

The Internal Revenue Code provides a uniform definition of “qualifying child for purposes of the dependency exemption, the child credit, the earned income credit, the dependent care credit, and head of household filing status. There are four basic criteria to determine if an individual is the qualifying child of a taxpayer: (1) the individual must have a specific relationship to the taxpayer (son, daughter, foster child, stepchild, brother, sister, stepbrother, stepsister, half brother, half sister, or descendant of any of them); (2) the individual must be less than 19 years of age at the end of the year, unless the individual is a full-time student, in which case the individual must be less than 24 at the end of the year; (3) the individual must have lived with the taxpayer for more than one-half the tax year; and (4) the individual must not have provided more than one-half of his or her own support for the tax year. There is no current law requirement that a qualifying child of a taxpayer be younger than the taxpayer.

COMMITTEE BILL

The Committee Bill provides that for an individual to be the qualifying child of a taxpayer, the child must (in addition to meeting the current law age requirements) be younger than the taxpayer.

Marital status of the child

CURRENT LAW

There is no requirement in the Internal Revenue Code that an individual be unmarried to be the qualifying child of a taxpayer.

COMMITTEE BILL

The Committee Bill provides that for an individual to be the qualifying child of a taxpayer, the individual must have not filed a joint tax return with another taxpayer, other than to file a refund claim.

Child credit available only if qualifying child is dependent of the taxpayer

CURRENT LAW

The Internal Revenue Code provides that a taxpayer may claim a child tax credit (of up to \$1,000) for each qualifying child of the taxpayer. There is no requirement that the qualifying child be a dependent of the taxpayer.

COMMITTEE BILL

The Committee Bill requires that for purposes of claiming the child tax credit a qualifying child must be a dependent of the taxpayer.

Persons other than parents claiming qualifying child

CURRENT LAW

Under the Internal Revenue Code, the following rules apply with regard to who may claim an individual as a qualifying child: (1) In cases where the individual is claimed as the qualifying child of two or more taxpayers, the individual is the qualifying child of the parent; (2) If both taxpayers claiming the individual as a qualifying child are the individual's parents, the individual is claimed as the qualifying child of the parent the individual resided with the longest during the tax year; (3) If the individual resided with both parents for the same amount of time, the individual is the qualifying child of the parent with the higher adjusted gross income; (4) If neither of the taxpayers claiming the individual as a qualifying child are the individual's parents, the individual is the qualifying child of the taxpayer with the highest adjusted gross income.

COMMITTEE BILL

The Committee Bill provides that for an individual to be claimed as the qualifying child of a taxpayer who is not the individual's parent, the taxpayer must have an adjusted gross income that is higher than the highest adjusted gross income of each of the individual's parents.

EFFECTIVE DATE

The Committee Bill makes the amendments in this section related to "Clarification of Uniform Definition of Child," effective with tax year 2009 (beginning after December 31, 2008).

SECTION 502—COLLECTION OF UNEMPLOYMENT COMPENSATION DEBTS RESULTING FROM FRAUD

Collection of unemployment compensation debts resulting from fraud

CURRENT LAW

Section 6402 of the Internal Revenue Code (I.R.C.) allows the Treasury Department to credit overpayments (and interest) against any liability with respect to an internal revenue tax on the part of the person who made the overpayment (subject to credits against estimated tax under certain circumstances. These circumstances are the following: to offset past-due child support payments that have been assigned to the State; collection of debts owed to Federal agencies; and collection of past-due and legally enforceable State income tax obligations).

COMMITTEE BILL

The Committee Bill allows the Treasury Department, under certain circumstances, to reduce any Federal income tax overpayments by the collection of covered State unemployment compensation (UC) debts if the debt is on account of fraud and to pay the State by the amount of such debts. The Treasury Department would notify the State of such person's name, taxpayer identification number, address, and the amount collected. The Treasury Department would also notify the person making such overpayment

that the overpayment had been reduced by an amount necessary to satisfy a covered unemployment compensation debt. If an offset is made to a joint return, the notice would include information related to the rights of a spouse of a person subject to such an offset.

The Committee Bill sets the priority order of the reductions as: internal revenue tax liability; past due child support; Federal agency debt; and, finally, the collection of past-due and legally enforceable State income tax obligations and covered UC debts on account of fraud. The reductions would occur before any such overpayment would be credited to future Federal internal revenue tax.

The Committee Bill requires that the reduction on account of UC debt apply only to those persons whose address shown on the Federal return is an address within the State seeking the offset.

The Committee Bill requires that States must:

- notify the individual of the debt by certified mail with return receipt;
- allow 60 days for the individual to present evidence that the individual does not have a legally enforceable debt that is due to fraud;
- consider the evidence presented by the individual; and
- satisfy such other conditions as the Treasury Department may prescribe to ensure that the determination is valid and that the State has made reasonable efforts to obtain payment of such covered UC debt.

The Committee Bill defines covered UC debt to be any of the following items: past-due debt for erroneous payment of UC due to fraud which has become final under the State's law and which remains uncollected; contributions due to the State's unemployment fund on account of fraud; and, any penalties and interest assessed on such debt.

The Committee Bill allows the Treasury Department to issue regulations on the time and manner for States to submit notices of UC debts due to fraud. These regulations would be authorized to include:

- the setting of a minimum amount of debt for the reduction procedure to be applied;
- a required fee paid to the Treasury for the cost of applying such reduction procedure and used to reimburse the appropriations account that bore the cost of applying such procedure; and
- a requirement that States submit notices of covered UC debt to the Treasury Department via the Labor Department in accordance with procedures established by the Labor Department where the procedures may require States to pay a fee to the Labor Department; those fees may be deducted from amounts collected and used to reimburse the appropriations account that bore the cost of collecting the notices of covered UC debt.

The Committee Bill requires that erroneous payments to the State must be promptly paid back to the Treasury.

Disclosure of certain information to States requesting refund offsets for legally enforceable State unemployment compensation debt resulting from fraud

CURRENT LAW

Paragraph (3) of section 6103(a) of the I.R.C. describes the confidentiality and disclosure of Federal tax returns and return information. Paragraph (3) of section 6103(a) requires returns and return information to be confidential. Among other items, Section 6103 authorizes the conditions under which authorized persons, employees, or officers (who are not Department of the Treasury officers or employees) may have access to Federal tax returns or return information.

COMMITTEE BILL

The Committee Bill allows the disclosure of information to officers and employees of the Department of Labor for purposes of facilitating the exchange of data in connection with a request made under its proposed changes in section 6402 of the I.R.C. The Committee Bill also allows access to the information to the Department of Labor's agents who maintain and provide technological support to the Department of Labor's Interstate Connection Network (ICON) solely for the purpose of providing such maintenance and support.

Expenditures from the State fund

CURRENT LAW

Paragraph (4) of section 3304(a) of the I.R.C requires that all money withdrawn from a State's account in the Federal Unemployment Trust Fund be used solely for the payment of UC benefits. Exceptions to this include sums erroneously paid into the fund and refunds paid in accordance with the provisions of section 3305(b). Other exceptions include (a) the amount of employee payments into the unemployment fund of a State used in the payment of cash benefits to individuals with respect to their disability, exclusive of administration expenses, (b) certain expenses incurred by the State for administration of its unemployment compensation law and public employment offices, (c) deduction of health insurance payments and for tax withholding, (d) repayment of overpayments as provided in section 303(g) of the Social Security Act, (e) payment for short-time compensation under a plan approved by the Secretary of Labor, and (f) the self-employed assistance program benefit.

COMMITTEE BILL

The Committee Bill authorizes that the fees from collecting covered UC debt be deducted and that the penalties and interest from the collections be transferred to the appropriate State fund into which the State would have deposited such amounts had the person owing the debt paid such amounts directly to the State. The remainder of the collected UC debt is deposited into the appropriate State account within the Federal Unemployment Trust Fund.

Conforming amendments

CURRENT LAW

Not applicable.

COMMITTEE BILL

The Committee Bill amends section 6402 of the I.R.C. to reflect the changes created by the Committee Bill.

EFFECTIVE DATE

The amendments made by the Committee Bill in the section, “Collection of Unemployment Compensation Debts Resulting From Fraud,” apply to refunds payable on or after the date of its enactment.

SECTION 503—INVESTMENT OF OPERATING CASH

CURRENT LAW

The Treasury Department is responsible for short-term management of excess Federal operating cash, which it can invest in short-term obligations of the United States government or collateralized obligations of certain financial institutions that maintain Federal Treasury tax and loan accounts. The Treasury Department is not permitted to require the sale of obligations by a particular person, dealer, or financial institution.

COMMITTEE BILL

In addition to the current investment options, the Committee Bill permits the Treasury Department to invest excess operating cash, for not more than 90 days, in repurchase agreements. The Committee Bill eliminates the provision that bars the Treasury Department from requiring the sale of obligations by a particular person, dealer, or financial institution. Finally, the Committee Bill requires the Treasury Department to submit to the Senate Finance and House Ways and Means Committees, for each fiscal year, a report detailing the investment of operating cash in obligations or repurchase agreements, the Department’s considerations of risks associated with those investments, and actions taken to manage those risks.

EFFECTIVE DATE

The Committee Bill makes the amendments in this section, “Investment of Operating Cash,” effective with the first day of FY2009 (October 1, 2008).

III. VOTE OF THE COMMITTEE

In compliance with paragraph 7(b) of rule XXVI of Standing Rules of the Senate, the following statements are made concerning the vote in the Committee’s consideration of the bill.

Motion to report the bill

The bill was ordered favorably reported by a unanimous voice vote on September 10, 2008. A quorum was present. No amendments were voted upon.

IV. REGULATORY IMPACT STATEMENT AND RELATED MATTERS

A. REGULATORY IMPACT

In accordance with paragraph 11(b) of rule XXVI of the Standing Rules of the Senate, the Committee makes the following statement concerning the regulatory impact of the “Improved Adoption Incentives and Relative Guardianship Support Act of 2008.”

IMPACT ON INDIVIDUALS AND BUSINESSES

This bill extends funding for adoption incentive awards; expands eligibility for Federal adoption assistance for children with special needs; establishes Federal support for States providing relative guardianship assistance; authorizes a demonstration project for States regarding the licensing of immediate relative foster family homes; appropriates funding for grants to support “Kinship Navigator” program.

The bill also gives the Department of Health and Human Services (DHHS) the Authority to use the Federal Parent Locator Service for child welfare purposes; authorizes tribes to apply for direct Federal funding under Title IV–E of the Social Security Act; appropriates funds to establish a national child welfare resource center for tribes and for grants to States that successfully collaborate with tribes to improve outcomes for Indian children. The bill provides States an option to continue Federal support for children in placement after age eighteen (18) but up to age twenty-one (21); and authorizes additional activities on behalf of children in or leaving foster care.

The bill clarifies the uniform definition of a child under the Internal Revenue Code. Authorizes collection of unemployment debts resulting from fraud and permits the Treasury Department to invest excess operating cash for not more than 90 days.

These provisions do not impose any additional paperwork or regulatory burden on individuals or businesses.

IMPACT ON PERSONAL PRIVACY

The bill provides for services to children and families. In the context of seeking assistance, families may be asked about personal circumstances. The bill should not increase the amount of personal information and paperwork required.

V. COST ESTIMATE

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, September 15, 2008.

Hon. MAX BAUCUS,
Chairman, Committee on Finance,
U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the attached table summarizing the effects on direct spending and revenues of S. 3038, the Improved Adoption Incentives and Relative Guardianship Support Act of 2008, as ordered reported by the Committee on Finance on September 10, 2008. CBO and the

Joint Committee on Taxation estimate that the effects of the bill on direct spending and revenues would reduce budget deficits by \$856 million over the 2009–2013 period and by \$7 million over the 2009–2018 period. In addition, enacting the bill would increase discretionary spending by an estimated \$175 million over the 2009–2013 period, subject to appropriation of the authorized amounts.

Pursuant to section 311 of S. Con. Res. 70, CBO estimates that changes in direct spending and revenues from enacting S. 3038 would cause an increase in the on-budget deficit greater than \$5 billion in at least one of the 10-year periods between 2018 and 2057.

CBO has reviewed the nontax provisions of the bill (titles I–IV and section 503) and determined that the bill would impose intergovernmental mandates as defined in the Unfunded Mandates Reform Act (UMRA) because it would increase the stringency of conditions of assistance under the Foster Care and Adoption Assistance Programs. CBO estimates, however, that the costs to States to comply with the mandates would not exceed the threshold established in UMRA (\$68 million in 2008, as adjusted by inflation). The nontax provisions contain no private-sector mandates as defined in UMRA.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Jonathan Morancy.

Sincerely,

PETER R. ORSZAG,
Director.

Attachment.

ESTIMATED EFFECTS ON DIRECT SPENDING AND REVENUES OF S. 3038, AS ORDERED REPORTED BY THE SENATE COMMITTEE ON FINANCE ON SEPTEMBER 10, 2008

	By fiscal year, in millions of dollars—											
	2009	2010	2011	2012	2013	2014	2015	2016	2017	2018	2009– 2013	2009– 2018
CHANGES IN DIRECT SPENDING												
Promotion of Adoption:												
Estimated Budget Authority	0	0	5	30	95	196	309	437	580	739	131	2,392
Estimated Outlays	0	0	5	27	88	184	295	421	562	719	120	2,302
Uniform Definition of a Child ¹												
Estimated Budget Authority	–6	–175	–167	–138	–142	–146	–150	–154	–159	–164	–628	–1,402
Estimated Outlays	–6	–175	–167	–138	–142	–146	–150	–154	–159	–164	–628	–1,402
Guardianship Assistance:												
Estimated Budget Authority	1	0	–7	–21	–40	–72	–116	–153	–191	–229	–67	–828
Estimated Outlays	1	0	–6	–19	–37	–67	–110	–147	–185	–223	–60	–791
Extend Programs to Age 21:												
Estimated Budget Authority	0	0	35	66	84	106	106	104	101	97	184	699
Estimated outlays	0	0	31	61	81	103	105	104	102	98	172	685
Unemployment Compensation Debts ¹												
Estimated Budget Authority	–11	–44	–58	–59	–59	–60	–60	–61	–62	–62	–231	–535
Estimated Outlays	–11	–44	–58	–59	–59	–60	–60	–61	–62	–62	–231	–535
Education:												
Estimated Budget Authority	–41	–42	–44	–46	–48	–50	–52	–54	–57	–60	–221	–494
Estimated Outlays	–34	–42	–44	–46	–48	–50	–52	–54	–57	–60	–214	–486
Tribal Foster Care:												
Estimated Budget Authority	1	8	10	15	19	27	33	44	53	56	54	266
Estimated Outlays	0	4	8	14	19	27	35	45	52	55	44	257
Family Caregivers:												
Estimated Budget Authority	9	14	13	9	8	1	1	0	0	0	53	55
Estimated Outlays	5	12	16	11	8	2	1	0	0	0	52	55
Investment of Operating Cash:												
Estimated Budget Authority	–10	–10	–10	–10	–10	–10	–10	–10	–10	–10	–50	–100
Estimated Outlays	–10	–10	–10	–10	–10	–10	–10	–10	–10	–10	–50	–100
Total Changes in Direct Spending:												
Estimated Budget Authority	–56	–249	–222	–155	–93	–7	60	153	255	368	–775	54
Estimated Outlays	–55	–255	–226	–159	–101	–17	56	145	243	354	–796	–15
CHANGES IN REVENUES												
Uniform Definition of a Child ¹	1	23	36	31	32	34	35	37	38	40	123	307

Unemployment Compensation Debts	0	— 1	— 8	— 20	— 34	— 44	— 50	— 52	— 53	— 53	— 63	— 315
Total Revenue Changes	1	22	28	11	— 2	— 10	— 15	— 15	— 15	— 13	60	— 8
NET BUDGETARY IMPACT ³												
Estimated Increase or Decrease (-) in Deficits ²	— 56	— 277	— 254	— 170	— 99	— 7	71	160	258	367	— 856	— 7

Note: Components may not sum to totals due to rounding.

¹ Estimates prepared by the Joint Committee on Taxation; all other provisions estimated by the Congressional Budget Office.

² Negative numbers reflect decreases in the deficit (or increases in the surplus); positive numbers reflect increases in the deficit (or decreases in the surplus).

³ In addition, enacting the bill would increase discretionary spending by an estimated \$175 million over the 2009–2013 period, subject to appropriation of the authorized amounts.

SOURCE: Congressional Budget Office and the Joint Committee on Taxation.

VI. CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

Pursuant to the requirements of paragraph 12 of rule XXVI of the Standing Rules of the Senate, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman):

SOCIAL SECURITY ACT

* * * * *

TITLE IV—GRANTS TO STATES FOR AID AND SERVICES TO NEEDY FAMILIES WITH CHILDREN AND FOR CHILD-WELFARE SERVICES

Part A—BLOCK GRANTS TO STATES FOR TEMPORARY ASSISTANCE FOR NEEDY FAMILIES

* * * * *

PENALTIES

SEC. 409. (a) IN GENERAL.—Subject to this section:

(1) USE OF GRANT IN VIOLATION OF THIS PART.—

* * * * *

(15) PENALTY FOR FAILURE TO ESTABLISH OR COMPLY WITH WORK PARTICIPATION VERIFICATION PROCEDURES.—

* * * * *

(16) *PENALTY FOR NONCOMPLIANCE WITH NOTICE REQUIREMENTS FOR RELATIVES UNDER PART E.*—

(A) *IN GENERAL.*—*If the Secretary determines that a State to which a grant is made under section 403 in a fiscal year has not exercised the due diligence required under section 471(a)(19)(C) during the fiscal year, the Secretary shall reduce the grant payable to the State under section 403(a)(1) for the immediately succeeding fiscal year by an amount equal to not less than 1 percent and not more than 3.5 percent of the State family assistance grant.*

(B) *PENALTY BASED ON SEVERITY OF FAILURE.*—*the Secretary shall impose reductions under subparagraph (A) with respect to a fiscal year based on the degree of non-compliance.*

Part B—CHILD AND FAMILY SERVICES

Subpart 1—Child Welfare Services

* * * * *

LIMITATIONS ON AUTHORIZATION OF APPROPRIATIONS

SEC. 425. To carry out this subpart (other than sections 426, 427, and 429), there are authorized to be appropriated to the Secretary

not more than \$325,000,000 for each of fiscal years 2007 through 2011.

* * * * *

SEC. 427. GRANTS TO CARRY OUT KINSHIP NAVIGATOR PROGRAMS.

(a) *PURPOSE.*—*The purposes of this section are—*

- (1) *to establish kinship navigator programs in States, large metropolitan areas, and tribal areas to assist kinship caregivers in navigating their way through programs and services, to help the caregivers learn about and obtain assistance to meet the needs of the children they are raising and their own needs; and*
- (2) *to promote effective partnerships among public and private agencies, including community-based and faith-based agencies, to help the agencies described in this paragraph more effectively and efficiently serve kinship care families and address the fragmentation that creates barriers to meeting the needs of those families.*

(b) *DEFINITIONS.*—*In this section:*

(1) *ASSISTANT SECRETARY.*—*The term “Assistant Secretary” means the Assistant Secretary for Children and Families of the Department of Health and Human Services.*

(2) *LARGE METROPOLITAN AREA.*—*The term “large metropolitan area” means a metropolitan statistical area, as defined by the Bureau of the Census, with a population of not less than 1,000,000.*

(3) *METROPOLITAN AGENCY.*—*The term “metropolitan agency” means an agency serving a large metropolitan area, or a county or political subdivision of a large metropolitan area.*

(4) *TRIBAL AREA.*—*The term “tribal area” means the area served by a tribal organization.*

(5) *TRIBAL ORGANIZATION.*—*The term “tribal organization”—*

(A) *has the meaning given that term in section 479B(a); and*

(B) *includes a consortium of tribal organizations described in subparagraph (A).*

(c) *GRANTS.*—

(1) *IN GENERAL.*—*The Assistant Secretary may make grants to eligible entities to pay for the Federal share (as determined by the Assistant Secretary) of the cost of carrying out kinship navigator programs.*

(2) *ELIGIBLE ENTITIES.*—*To be eligible to receive a grant under this section, an entity shall be a State agency, metropolitan agency, or tribal organization, with experience in—*

(A) *addressing the needs of kinship caregivers or children; and*

(B) *connecting the children or caregivers with appropriate services and assistance, such as services and assistance provided by—*

(i) *an area agency on aging under the Older Americans Act of 1965 (42 U.S.C. 3001 et seq.); or*

(ii) *an agency with jurisdiction over child welfare, income-based financial assistance, human services, or health matters, or a public entity that links family resource and support programs, for the State, large metropolitan area, or Indian tribe involved.*

(3) *ALLOCATION OF GRANTS.*—Of the funds made available for grants under this section for each fiscal year, the Assistant Secretary shall use not less than 50 percent to make grants to State agencies.

(d) *NON-FEDERAL SHARE.*—The non-Federal share of the cost may be provided in cash. Not more than 50 percent of the non-Federal share of the cost may be provided in kind, fairly evaluated, including plant, equipment, or services.

(e) *APPLICATIONS.*—

(1) *IN GENERAL.*—To be eligible to receive a grant under this section, an entity shall submit an application to the Assistant Secretary at such time, in such manner, and containing such information as the Assistant Secretary may require, including, at a minimum, the information described in paragraph (2).

(2) *CONTENTS.*—The application shall include the following:

(A) A description of the steps the entity will take during the first 6 months of the grant period to—

(i) identify gaps in services for kinship care families in the State, large metropolitan area, or tribal area to be served and the specific activities that are needed to bridge the gaps;

(ii) convene a group of partners to assist in the operation of the kinship navigator program funded through the grant;

(iii) utilize or develop relevant technology;

(iv) conduct outreach to kinship caregivers about the kinship navigator program; and

(v) develop a plan for reaching kinship caregivers, ensuring that the caregivers can access the kinship navigator program, and following up to ensure that the caregivers actually receive necessary services and supports.

(B) An assurance that the entity will provide at least the core activities specified in subparagraphs (A) and (B) of subsection (f)(2) for kinship care families through the kinship navigator program.

(C) A description of the activities the entity expects to offer over the grant period and the entity's initial projection of the number of children and kinship caregivers likely to be served.

(D) A description of how the entity will involve in the planning and operation of the kinship navigator program, on an ongoing basis—

(i) kinship caregivers;

(ii) youth raised or being raised by kinship caregivers;

(iii) representatives of kinship care support organizations;

(iv) relevant government agencies (including agencies with jurisdiction over matters relating to aging, mental health, mental retardation or developmental disabilities, substance abuse treatment, criminal justice, health, youth services, human services, education, income-based financial assistance, child welfare, child

custody, guardianship, adoption, or child support enforcement);

(v)(I) not-for-profit service providers, including community-based and faith-based agencies; and

(II) educational institutions; and

(vi) other State or local agencies or systems that promote service coordination or provide information and referral services, including the entities that provide the 2-1-1 or 3-1-1 information systems where applicable.

(E) A description of—

(i) how the entity will coordinate its activities with other State or local agencies or systems that promote service coordination or provide information and referral services for children, families, or older individuals, including the entities that provide the 2-1-1 or 3-1-1 information systems where applicable, so as to avoid duplication of services and the fragmentation of services that prevents kinship care families from getting the help the families need; and

(ii) how the entity will encourage regional cooperation among agencies, particularly agencies serving border communities that may cross jurisdictional lines, to ensure that kinship care families will get help.

(F) An assurance that the entity will report at least annually to the Assistant Secretary, in a manner prescribed by the Assistant Secretary, to ensure comparability of data across States, on—

(i) activities established with the funds made available through grants made under this section;

(ii) the numbers and ages of the children and caregivers assisted through the grants;

(iii) the types of the assistance provided;

(iv) the outcomes achieved with the assistance; and

(v) the barriers identified to meeting the needs of kinship care families and plans for addressing the barriers.

(G) An assurance that the entity, not later than 3 months after the end of the final year of the grant period, will submit a final report to the Administration for Children and Families that describes—

(i) the numbers and ages of the children and caregivers assisted through the grants;

(ii) the types of assistance provided;

(iii) the outcomes achieved with the assistance;

(iv) the barriers to meeting the needs of kinship care families that were addressed through the grants;

(v) the plans of the entity to continue the kinship navigator program after the grant period has ended;

(vi) lessons learned during the grant period; and

(vii) recommendations about the considerations that should be taken into account as the program carried out under this section is expanded throughout the United States.

(3) PREFERENCE.—In awarding grants under this section, the Assistant Secretary shall give preference to agencies or organi-

zations that can demonstrate that the agencies and organizations will offer the full array of activities described in subsection (f)(2).

(f) USE OF GRANT FUNDS.—

(1) IN GENERAL.—An entity that receives a grant under this title may use the funds made available through the grant directly, or through grants or contracts with other public or private agencies, including community-based or faith-based agencies, that have experience in connecting kinship caregivers with appropriate services and assistance.

(2) USE OF FUNDS.—An entity that receives a grant under this title may use the funds made available through the grant for activities that help to connect kinship caregivers with the services and assistance required to meet the needs of the children the caregivers are raising and their own needs, such as—

(A) establishing and maintaining information and referral systems that—

(i) assist, through toll free access that includes access to a live operator, kinship caregivers, kinship care service providers, kinship care support group facilitators, and others to learn about and link to—

(I) local kinship care service providers, support groups, respite care programs, and special services for incarcerated parents;

(II) eligibility and enrollment information for Federal, State, and local benefits, such as—

(aa) education (including preschool, elementary, secondary, postsecondary, and special education);

(bb) family support services, early intervention services, mental health services, substance abuse prevention and treatment services, services to address domestic violence problems, services to address HIV or AIDS, legal services, child support, housing assistance, and child care;

(cc) the disability insurance benefits program established under title II;

(dd) the program of block grants to States for temporary assistance for needy families established under part A;

(ee) the supplemental security income program established under title XVI;

(ff) the medicaid program established under title XIX;

(gg) the State children's health insurance program established under title XXI;

(hh) the program of Federal payments for foster care and adoption assistance established under part E, including the program of relative guardianship assistance payments for children established under section 473(d); and

(ii) the supplemental nutrition assistance program established under the Food and Nutrition Act of 2008 (7 U.S.C. 2011 et seq.);

(III) relevant training to assist kinship caregivers in obtaining benefits and services and performing their caregiving activities; and

(IV) relevant legal assistance and help in obtaining access to legal services, including access to legal aid service providers and statewide elder law hotlines;

(ii) provide outreach to kinship care families, in collaboration with schools, pediatric care clinics, kinship care organizations, senior citizen centers, agencies with jurisdiction over child welfare or human services, and others to link the families to the kinship navigator program and to services and assistance; and

(iii) establish, distribute, and regularly update kinship care resource guides, websites, or other relevant outreach materials;

(B) promoting partnerships between public and private agencies, including community-based and faith-based agencies—

(i) to help the agencies described in this paragraph more effectively and efficiently meet the needs of kinship care families; and

(ii) to familiarize the agencies about the special needs of kinship care families, policies that affect their eligibility for a range of education, health, mental health, social, child care, and child welfare services, income-based financial assistance, legal assistance, and other services and benefits, and the means for making policies more supportive of kinship care families;

(C) establishing and supporting a kinship care ombudsman who has the authority to actively intervene with State agency staff or service providers with which the State agency contracts to help ensure, through various appropriate means including working with individual families in an ongoing manner, that kinship caregivers get the services they need and for which they are eligible; and—

(D) supporting other activities that are designed to assist kinship caregivers in obtaining benefits, services, and activities designed to improve their caregiving.

(3) LIMITATION.—Except as provided in paragraph (2)(D), the entity may not use any of the funds made available through the grant for direct services to children in kinship care families or to kinship caregivers.

(g) ADMINISTRATION OF THE PROGRAM.—In administering the program carried out under this section, the Assistant Secretary for Children and Families shall periodically consult with the Assistant Secretary for Aging of the Department of Health and Human Services.

(h) RESERVATION.—The Assistant Secretary may reserve not more than 1 percent of the funds made available under this section for a fiscal year to provide technical assistance to the recipients of grants under this section related to the purposes of the grants.

(i) APPROPRIATION.—Out of any money in the Treasury of the United States not otherwise appropriated, there are appropriated to

the Secretary for purposes of making grants under this section, \$5,000,000 for each of fiscal years 2009 through 2013.

Part D—Child Support and Establishment of Paternity

* * * * *

FEDERAL PARENT LOCATOR SERVICE

SEC. 453. (a) ESTABLISHMENT; PURPOSE.—

* * * * *

(j) INFORMATION COMPARISONS AND OTHER DISCLOSURES.—

(1) * * *

* * * * *

(3) INFORMATION COMPARISONS AND DISCLOSURES OF INFORMATION IN ALL REGISTRIES FOR TITLE IV PROGRAM PURPOSES.— To the extent and with the frequency that the Secretary determines to be effective in assisting States to carry out their responsibilities under programs operated under this part, *part B*, *part E*, and programs funded under part A, the Secretary shall—

* * * * *

Part E—Federal Payments for Foster Care and Adoption Assistance

* * * * *

STATE PLAN FOR FOSTER CARE AND ADOPTION ASSISTANCE

SEC. 471. (a) In order for a State to be eligible for payments under this part, it shall have a plan approved by the Secretary which—

(1) provides (A) for foster care maintenance payments in accordance with section 472 and for adoption assistance in accordance with section 473; and

(B) *at the option of the State, provides for relative guardianship assistance payments in accordance with subsection (d) of section 473;*

* * * * *

(18) not later than January 1, 1997, provides that neither the State nor any other entity in the State that receives funds from the Federal Government and is involved in adoption or foster care placements may—

(A) deny to any person the opportunity to become an adoptive or a foster parent, on the basis of the race, color, or national origin of the person, or of the child, involved; or

(B) delay or deny the placement of a child for adoption or into foster care, on the basis of the race, color, or national origin of the adoptive or foster parent, or the child, involved;

(19) provides [that the State] “that—

“(A) *the State*”; and

(ii) *by adding at the end the following:*

(B) within 60 days of the removal of the child from the custody of the child's parent or parents, the State shall exercise due diligence to identify and provide notice to all adult grandparents and other adult relatives of the child (including any other adult relatives suggested by the parents), subject to exceptions due to family or domestic violence, that—

(i) specifies that the child has been or is being removed from the custody of the child's parent or parents;

(ii) explains the options the relative has under Federal, State, and local law to participate in the child's care and placement, including any options that may be lost by failing to respond to the notice;

(iii) describes the requirements under paragraph (10) to become a foster family home and the additional services and supports that are available for children placed in such a home; and

(iv) if the State has elected the option to make relative guardianship assistance payments under paragraph (1)(B), describes how the relative may enter into an agreement with the State under section 473(d) to receive such payments; and

(C) with respect to any minor child (excluding minor heads of households and their spouses) receiving assistance under the State program funded under part A (or under a State program funded with qualified State expenditures (as defined in section 409(a)(7)(B)(i)) who is in the care of a nonparent caretaker relative as a result of interaction with the State agency responsible for administering the program authorized under this part, and who does not have a parent in the home, the State shall provide the nonparent caretaker relative with notice that—

(i) explains the options the relative has under Federal, State, and local law to participate in the child's care and placement, including any options that may be lost by failing to respond to the notice;

(ii) describes the requirements under section 471(a)(10) to become a foster family home and the additional services and supports that are available for children placed in such a home; and

(iii) if the State has elected the option to make relative guardianship assistance payments under paragraph (1)(B), describes how the relative may enter into an agreement under section 473(d) with the State to receive such payments; shall consider giving preference to an adult relative over a non-related caregiver when determining a placement for a child, provided that the relative caregiver meets all relevant State child protection standards;

(20)(A) unless an election provided for in subparagraph (B) is made with respect to the State, provides procedures for criminal records checks, including fingerprint-based checks of national crime information databases (as defined in section 534(e)(3)(A) of title 28, United States Code), for any prospective

【foster or adoptive parent before the foster or adoptive parent may be finally approved for placement of a child regardless of whether foster care maintenance payments or adoption assistance payments】 *foster parent, adoptive parent, or relative guardian before the foster parent, adoptive parent, or relative guardian may be finally approved for placement of a child regardless of whether foster care maintenance payments, adoption assistance payments, or relative guardianship assistance payments* are to be made on behalf of the child under the State plan under this part, including procedures requiring that—

* * * * *

(26) provides that—

(A)(i) within 60 days after the State receives from another State a request to conduct a study of a home environment for purposes of assessing the safety and suitability of placing a child in the home, the State shall, directly or by contract—

* * * * *

(C) the State shall not impose any restriction on the ability of a State agency administering, or supervising the administration of, a State program operated under a State plan approved under this part to contract with a private agency for the conduct of a home study described in subparagraph (A); **【and】**

(27) provides that, with respect to any child in foster care under the responsibility of the State under this part or part B and without regard to whether foster care maintenance payments are made under section 472 on behalf of the child, the State has in effect procedures for verifying the citizenship or immigration status of the child**【.】**;

(28) *provides that the State will inform any individual who is adopting, or whom the State is made aware is considering adopting, a child who is in foster care under the responsibility of the State of the potential eligibility of the individual for a Federal tax credit under section 23 of the Internal Revenue Code of 1986 (without the need to document any adoption-related expenses, in the case of the adoption of a child with special needs (as defined in section 23(d)(3) of such Code);*

(29) *provides that the State will negotiate in good faith with any Indian tribe, tribal organization or tribal consortium in the State that requests to develop an agreement with the State to provide for payments under this part on behalf of Indian children who are under the authority of the tribe, organization, or consortium, including foster care maintenance payments on behalf of children who are placed in tribally licensed foster family homes, adoption assistance payments, and, if the State has elected to provide such payments, relative guardianship assistance payments, and tribal access to resources for administration, training, and data collection under this part; and*

(30) *provides assurances that each child who has attained the minimum age for compulsory school attendance under State law and with respect to whom there is eligibility for a payment under the State plan is a full-time elementary or secondary school student or has completed secondary school, and for pur-*

poses of this paragraph, the term “elementary or secondary school student” means, with respect to a child, that the child is—

(A) enrolled (or in the process of enrolling) in an institution which provides elementary or secondary education, as determined under the law of the State or other jurisdiction in which the institution is located;

(B) instructed in elementary or secondary education at home in accordance with a home school law of the State or other jurisdiction in which the home is located;

(C) in an independent study elementary or secondary education program in accordance with the law of the State or other jurisdiction in which the program is located, which is administered by the local school or school district; or

(D) incapable of attending school on a full-time basis due to the medical condition of the child, which incapability is supported by regularly updated information included in the case plan of the child.

* * * * *

FOSTER CARE MAINTENANCE PAYMENTS PROGRAM

SEC. 472. (a) IN GENERAL.—

(1) ELIGIBILITY.—Each State with a plan approved under this part shall make foster care maintenance payments on behalf of each child who has been removed from the home of a relative specified in section 406(a) (as in effect on July 16, 1996) into foster care if—

* * * * *

(2) REMOVAL AND FOSTER CARE PLACEMENT REQUIREMENTS.—The removal and foster care placement of a child meet the requirements of this paragraph if—

* * * * *

(B) the child’s placement and care are the responsibility of—

(i) the State agency administering the State plan approved under section 471; **[or]**

(ii) any other public agency with which the State agency administering or supervising the administration of the State plan has made an agreement which is in effect; **[and]** or

(iii) an Indian tribe or a tribal organization (as defined in section 479B(a)) or a tribal consortium that has a plan approved under section 471 in accordance with section 479B;

* * * * *

(c) For the purposes of this part, (1) the term “foster family home” means a foster family home for children which is licensed by the State in which it is situated or has been approved, by the agency of such State having responsibility for licensing homes of this type, as meeting the standards established for such licensing; and (2) the term “child-care institution” means a private child-care institution, or a public child-care institution which accommodates no more than twenty-five 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 the term shall not include detention facilities, forestry camps, training schools, or any other facility operated primarily for the detention of children who are determined to be delinquent, *except, in the case of a child who has attained 18 years of age, the term shall include a supervised setting in which the individual is living independently, in accordance with such conditions as the Secretary shall establish in regulations.*

* * * * *

ADOPTION ASSISTANCE PROGRAM

SEC. 473. (a)(1)(A) Each State having a plan approved under this part shall enter into adoption assistance agreements (as defined in section 475(3)) with the adoptive parents of children with special needs.

* * * * *

(2)(A) For purposes of paragraph (1)(B)(ii), a child meets the requirements of this paragraph if the child—

 【(i)(I)(aa) was removed from the home of a relative specified in section 406(a) (as in effect on July 16, 1996) and placed in foster care in accordance with a voluntary placement agreement with respect to which Federal payments are provided under section 474 (or section 403, as such section was in effect on July 16, 1996), or in accordance with a judicial determination to the effect that continuation in the home would be contrary to the welfare of the child; and

 【(bb) met the requirements of section 472(a)(3) with respect to the home referred to in item (aa) of this subclause

 【(II) meets all of the requirements of title XVI with respect to eligibility for supplemental security income benefits; or

 【(III) is a child whose costs in a foster family home or child-care institution are covered by the foster care maintenance payments being made with respect to the minor parent of the child as provided in section 475(4)(B); and

 【(ii) has been determined by the State, pursuant to subsection (c) of this section, to be a child with special needs.】

(i)(I) at the time of termination of parental rights was in the care of a public or licensed private child placement agency or Indian tribal organization pursuant to a voluntary placement agreement, relinquishment, or involuntary removal of the child from the home, and the State has determined, pursuant to criterion or criteria established by the State (which may, but need not, include a judicial determination), that continuation in the home would be contrary to the safety or welfare of such child;

(II) meets all medical or disability requirements of title XVI with respect to eligibility for supplemental security income benefits; or

(III) was residing in a foster family home or child care institution with the child's minor parent, provided that the child's minor parent was in such foster family home or child care institution pursuant to a voluntary placement agreement, relinquishment, or involuntary removal of the child from the home,

and the State has determined, pursuant to criterion or criteria established by the State (which may, but need not, include judicial determination), that continuation in the home would be contrary to the safety or welfare of such child; and

(ii) has been determined by the State, pursuant to subsection (c), to be a child with special needs.

(B) Section 472(a)(4) shall apply for purposes of subparagraph (A) of this paragraph, in any case in which the child is an alien described in such section.

[(C) A child shall be treated as meeting the requirements of this paragraph for the purpose of paragraph (1)(B)(ii) if the child—

[(i) meets the requirements of subparagraph (A)(ii);

[(ii) was determined eligible for adoption assistance payments under this part with respect to a prior adoption;

[(iii) is available for adoption because—

[(I) the prior adoption has been dissolved, and the parental rights of the adoptive parents have been terminated; or

[(II) the child's adoptive parents have died; and

[(iv) fails to meet the requirements of subparagraph (A) but would meet such requirements if—

[(I) the child were treated as if the child were in the same financial and other circumstances the child was in the last time the child was determined eligible for adoption assistance payments under this part; and

[(II) the prior adoption were treated as never having occurred.]]

(C) A child who meets the requirements of subparagraph (A)(ii), who was determined eligible for adoption assistance payments under this part with respect to a prior adoption (or who would have been determined eligible for such payments had the Adoption and Safe Families Act of 1997 been in effect at the time that such determination would have been made), and who is available for adoption because the prior adoption has been dissolved and the parental rights of the adoptive parents have been terminated or because the child's adoptive parents have died, shall be treated as meeting the requirements of this paragraph for purposes of paragraph (1)(B)(ii).

(3) The amount of the payments to be made in any case under clauses (i) and (ii) of paragraph (1)(B) shall be determined through agreement between the adoptive parents and the State or local agency administering the program under this section, which shall take into consideration the circumstances of the adopting parents and the needs of the child being adopted, and may be readjusted periodically, with the concurrence of the adopting parents (which may be specified in the adoption assistance agreement), depending upon changes in such circumstances. However, in no case may the amount of the adoption assistance payment made under clause (ii) of paragraph (1)(B) exceed the foster care maintenance payment which would have been paid during the period if the child with respect to whom the adoption assistance payment is made had been in a foster family home.

[(4) Notwithstanding the preceding paragraph, (A) no payment may be made to parents with respect to any child who has attained the age of eighteen (or, where the State determines that the child has a mental or physical handicap which warrants the continuation

of assistance, the age of twenty-one), and (B) no payment may be made to parents with respect to any child if the State determines that the parents are no longer legally responsible for the support of the child or if the State determines that the child is no longer receiving any support from such parents. Parents who have been receiving adoption assistance payments under this section shall keep the State or local agency administering the program under this section informed of circumstances which would, pursuant to this subsection, make them ineligible for such assistance payments, or eligible for assistance payments in a different amount.】

(4)(A) Notwithstanding any other provision of this section, a payment may not be made pursuant to this section to parents or relative guardians with respect to a child—

(i) who has attained—

(I) 18 years of age, or such greater age as the State may elect under section 475(8)(B)(iii); or

(II) 21 years of age, if the State determines that the child has a mental or physical handicap which warrants the continuation of assistance;

(ii) who has not attained 18 years of age, if the State determines that the parents or relative guardians, as the case may be, are no longer legally responsible for the support of the child; or

(iii) if the State determines that the child is no longer receiving any support from the parents or relative guardians, as the case may be.

(B) Parents or relative guardians who have been receiving adoption assistance payments or relative guardianship assistance payments under this section shall keep the State or local agency administering the program under this section informed of circumstances which would, pursuant to this subsection, make them ineligible for the payments, or eligible for the payments in a different amount.

(6)(A) For purposes of paragraph (1)(B)(i), the term “nonrecurring adoption expenses” means reasonable and necessary adoption fees, court costs, attorney fees, and other expenses which are directly related to the legal adoption of a child with special needs and which are not incurred in violation of State or Federal law.

(B) A State’s payment of nonrecurring adoption expenses under an adoption assistance agreement shall be treated as an expenditure made for the proper and efficient administration of the State plan for purposes of section 474(a)(3)(E).

(7)(A) Notwithstanding any other provision of this subsection, no payment may be made to parents with respect to any child that—

(i) would be considered a child with special needs under subsection (c);

(ii) is not a citizen or resident of the United States; and

(iii) was adopted outside of the United States or was brought into the United States for the purpose of being adopted.

(B) Subparagraph (A) shall not be construed as prohibiting payments under this part for a child described in subparagraph (A) that is placed in foster care subsequent to the failure, as determined by the State, of the initial adoption of such child by the parents described in such subparagraph.

(8) A State shall spend an amount equal to the amount of savings (if any) in State expenditures under this part resulting from the ap-

plication of paragraph (2) on and after the effective date of the amendments to such paragraph made by section 102(a) of the Improved Adoption Incentives and Relative Guardianship Support Act of 2008 to provide to children or families any service (including post-adoption services) that may be provided under this part or part B.

(9) A child on whose behalf relative guardianship assistance payments have been made under section 473(d) and who pursuant to subsection (c) has been determined to be a child with special needs, shall be eligible for adoption assistance as if no relative guardianship assistance agreement or payments had been made. The State shall make payments of nonrecurring adoption expenses under this section to the adoptive parents of such a child.

(b)(1) For purposes of title XIX, any child who is described in paragraph (3) is deemed to be a dependent child as defined in section 406 (as in effect as of July 16, 1996) and deemed to be a recipient of aid to families with dependent children under part A of this title (as so in effect) in the State where such child resides.

(2) For purposes of title XX, any child who is described in paragraph (3) is deemed to be a minor child in a needy family under a State program funded under part A of this title and deemed to be a recipient of assistance under such part.

(3) A child described in this paragraph is any child—

(A)(i) who is a child described in subsection (a)(2), and

(ii) with respect to whom an adoption assistance agreement is in effect under this section (whether or not adoption assistance payments are provided under the agreement or are being made under this section), including any such child who has been placed for adoption in accordance with applicable State and local law (whether or not an interlocutory or other judicial decree of adoption has been issued), **[or]**

(B) with respect to whom foster care maintenance payments are being made under section 472**[.]**, or

(C) *with respect to whom relative guardianship assistance payments are being made under subsection (d).*

(4) For purposes of paragraphs (1) and (2), a child whose costs in a foster family home or child-care institution are covered by the foster care maintenance payments being made with respect to the child's minor parent, as provided in section 475(4)(B), shall be considered a child with respect to whom foster care maintenance payments are being made under section 472.

[(c)] For purposes of this section, a child shall not be considered a child with special needs unless—

[(1)] the State has determined that the child cannot or should not be returned to the home of his parents; and

[(2)] the State had first determined (A) that there exists with respect to the child a specific factor or condition (such as his ethnic background, age, or membership in a minority or sibling group, or the presence of factors such as medical conditions or physical, mental, or emotional handicaps) because of which it is reasonable to conclude that such child cannot be placed with adoptive parents without providing adoption assistance under this section or medical assistance under title XIX, and (B) that, except where it would be against the best interests of the child because of such factors as the existence of significant emotional

ties with prospective adoptive parents while in the care of such parents as a foster child, a reasonable, but unsuccessful, effort has been made to place the child with appropriate adoptive parents without providing adoption assistance under this section or medical assistance under title XIX.】

(c) *For purposes of this section, a child shall not be considered a child with special needs unless—*

(1) *the State has determined, pursuant to a criterion or criteria established by the State (which may, but need not, include a judicial determination), that the child cannot or should not be returned to the home of his parents; and*

(2) *the State has determined—*

(A) *that there exists with respect to the child a specific factor or condition (such as ethnic background, age, or membership in a minority or sibling group, or the presence of factors such as medical conditions or physical, mental, or emotional handicaps) because of which it is reasonable to conclude that the child cannot be placed with adoptive parents without providing adoption assistance under this section and medical assistance under title XIX; and*

(B) *that except where it would be against the best interests of the child because of such factors as the existence of significant emotional ties with prospective adoptive parents while in the care of such parents as a foster child, a reasonable, but unsuccessful, effort has been made to place the child with appropriate adoptive parents without providing adoption assistance under this section or medical assistance under title XIX.*

A child who meets all medical or disability requirements of title XVI with respect to eligibility for supplemental security income benefits shall be deemed to be a child for whom the determination required by subparagraph (A) of paragraph (2) has been made.

(d) **RELATIVE GUARDIANSHIP ASSISTANCE PAYMENTS FOR CHILDREN.—**

(1) **RELATIVE GUARDIANSHIP ASSISTANCE AGREEMENT.—**

(A) **IN GENERAL—***In order to receive payments under section 474(a)(5), a State shall—*

(i) *negotiate and enter into a written, binding relative guardianship assistance agreement with the relative guardian of a child who meets the requirements of paragraph (3)(B); and*

(ii) *provide the relative guardian with a copy of the agreement.*

(B) **MINIMUM REQUIREMENTS.—***The agreement shall specify, at a minimum—*

(i) *the amount of, and manner in which, each relative guardianship assistance payment will be provided under the agreement;*

(ii) *the additional services and assistance that the child and relative guardian will be eligible for under the agreement;*

(iii) *the procedure by which the relative guardian may apply for additional services as needed, provided the agency and relative guardian agree on the additional services as specified in the agreement; and*

(iv) that the State will pay up to \$2,000 of non-recurring expenses associated with obtaining legal guardianship of the child.

(C) *INTERSTATE APPLICATION.*—The agreement shall provide that the agreement shall remain in effect without regard to the State residency of the relative guardian.

(D) *FEDERAL REIMBURSEMENT OF NON-RECURRING EXPENSES.*—A State's payment of nonrecurring guardianship expenses under a relative guardianship assistance agreement in accordance with subparagraph (B) (iv) shall be treated as a direct expenditure made for the proper and efficient administration of the State plan for purposes of section 474(a)(3)(E).

(2) *RELATIVE GUARDIANSHIP ASSISTANCE PAYMENT.*—

(A) *IN GENERAL.*—Subject to subparagraphs (B) and (C), the relative guardianship assistance payment shall be based on consideration of the circumstances of the relative guardian and the needs of the child.

(B) *MINIMUM AND MAXIMUM PAYMENT.*—A relative guardianship assistance payment shall not be less than the adoption assistance payment the State would have made on behalf of the child under an adoption assistance agreement entered into under subsection (a) and shall not exceed the foster care maintenance payment which would have been paid if the child had remained in a foster family home.

(C) *PERIODIC ADJUSTMENTS.*—A relative guardianship assistance payment may be readjusted periodically, with the concurrence of the relative guardian (which may be specified in the relative guardianship assistance agreement), depending upon changes in the circumstances of the relative guardian and the needs of the child.

(3) *CHILD'S ELIGIBILITY FOR A RELATIVE GUARDIANSHIP ASSISTANCE PAYMENT.*—

(A) *IN GENERAL.*—A child is eligible for a relative guardianship assistance payment under this subsection if the State agency determines the following:

(i) *The child—*

(I) has been removed from his or her home pursuant to a voluntary placement agreement or as a result of a judicial determination to the effect that continuation in the home would be contrary to the welfare of the child; and

(II) in the month prior to the establishment of the legal guardianship, is eligible for foster care maintenance payments under section 472.

(ii)(I) Being returned home or adopted are not appropriate permanency options for the child.

(II) In the case of a child who has been removed from the home for reasons primarily associated with parental substance abuse and addiction, attempts to engage the family in residential, comprehensive family treatment programs are inappropriate or have been unsuccessful or such programs are unavailable.

(iii) *The child demonstrates a strong attachment to the relative guardian and the relative guardian has a strong commitment to caring permanently for the child.*

(iv) *The relative guardian satisfies the requirements of subparagraph (B).*

(v) *With respect to a child who has attained 14 years of age, the child has been consulted regarding the relative guardianship arrangement.*

(B) *REQUIREMENTS FOR RELATIVE GUARDIANS.—A relative guardian satisfies the requirements of this subparagraph if the relative—*

(i) is the grandparent or other relative of a child on whose behalf relative guardianship assistance payments are to be made;

(ii) has satisfied the background checks required under section 471(a)(20);

(iii) has met the State's requirements established under section 471(a)(10) to be a foster family home; and

(iv) assumes legal guardianship of such child and commits to caring for the child on a permanent basis.

(C) *TREATMENT OF SIBLINGS.—With respect to a child described in subparagraph (A) whose sibling or siblings are not so described—*

(i) the child and any sibling of the child shall be placed in the same relative guardianship arrangement unless it can be demonstrated that it is inappropriate to do so; and

(ii) relative guardianship assistance payments may be paid for the child and each sibling so placed.

ADOPTION INCENTIVE PAYMENTS

SEC. 473A. (a) *GRANT AUTHORITY.—Subject to the availability of such amounts as may be provided in advance in appropriations Acts for this purpose, the Secretary shall make a grant to each State that is an incentive-eligible State for a fiscal year in an amount equal to the adoption incentive payment payable to the State under this section for the fiscal year, which shall be payable in the immediately succeeding fiscal year.*

(b) *INCENTIVE-ELIGIBLE STATE.—A State is an incentive-eligible State for a fiscal year if—*

(1) the State has a plan approved under this part for the fiscal year;

(2)(A) the number of foster child adoptions in the State during the fiscal year exceeds the base number of foster child adoptions for the State for the fiscal year; [or]

(B) the number of older child adoptions in the State during the fiscal year exceeds the base number of older child adoptions for the State for the fiscal year; or

(C) the State's foster child adoption rate for the fiscal year exceeds the highest ever foster child adoption rate determined for the State;

(3) the State is in compliance with subsection (c) for the fiscal year;

(4) **[in the case of fiscal years 2001 through 2007,]** the State provides health insurance coverage to any child with special needs (as determined under section 473(c)) for whom there is in effect an adoption assistance agreement between a State and an adoptive parent or parents; and

(5) the fiscal year is any of fiscal years **[1998 through 2007]. 2008 through 2012.**

(c) DATA REQUIREMENTS.—

(1) IN GENERAL.—A State is in compliance with this subsection for a fiscal year if the State has provided to the Secretary the data described in paragraph (2)—

(A) for fiscal years 1995 through 1997 (or, if the first fiscal year for which the State seeks a grant under this section is after fiscal year 1998, the fiscal year that precedes such first fiscal year); and

(B) for each succeeding fiscal year that precedes the fiscal year.

(2) DETERMINATION OF NUMBERS OF ADOPTIONS BASED ON AFCARS DATA.—The Secretary shall determine the numbers of foster child adoptions, of special needs adoptions that are not older child adoptions, and of older child adoptions in a State during **[each of fiscal years 2002 through 2007]** *a fiscal year, and the foster child adoption rate for the State for the fiscal year*, for purposes of this section, on the basis of data meeting the requirements of the system established pursuant to section 479, as reported by the State and approved by the Secretary by August 1 of the succeeding fiscal year.

(3) NO WAIVER OF AFCARS REQUIREMENTS.—This section shall not be construed to alter or affect any requirement of section 479 or of any regulation prescribed under such section with respect to reporting of data by States, or to waive any penalty for failure to comply with such a requirement.

(d) ADOPTION INCENTIVE PAYMENT—

(1) IN GENERAL.—Except as provided in **[paragraph (2)] paragraphs (2) and (3)**, the adoption incentive payment payable to a State for a fiscal year under this section shall be equal to the sum of—

(A) \$4,000, multiplied by the amount (if any) by which the number of foster child adoptions in the State during the fiscal year exceeds the base number of foster child adoptions for the State for the fiscal year;

(B) **[2,000]** *\$3,000* multiplied by the amount (if any) by which the number of special needs adoptions that are not older child adoptions in the State during the fiscal year exceeds the base number of special needs adoptions that are not older child adoptions for the State for the fiscal year; and

(C) **[4,000]** *\$8,000* multiplied by the amount (if any) by which the number of older child adoptions in the State during the fiscal year exceeds the base number of older child adoptions for the State for the fiscal year.

(2) PRO RATA ADJUSTMENT IF INSUFFICIENT FUNDS AVAILABLE.—For any fiscal year, if the total amount of adoption incentive payments otherwise payable under **[this section]** *paragraph (1)* for a fiscal year exceeds the amount appropriated

pursuant to subsection (h) for the fiscal year, the amount of the adoption incentive payment payable to each State under **[this section] paragraph (1)** for the fiscal year shall be—

(A) the amount of the adoption incentive payment that would otherwise be payable to the State under **[this section] paragraph (1)** for the fiscal year; multiplied by

(B) the percentage represented by the amount so appropriated for the fiscal year, divided by the total amount of adoption incentive payments otherwise payable under **[this section] paragraph (1)** for the fiscal year.

(3) *INCREASED INCENTIVE PAYMENT FOR EXCEEDING THE HIGHEST EVER FOSTER CHILD ADOPTION RATE.*—

(A) *IN GENERAL.*—If—

(i) *for fiscal year 2009 or any fiscal year thereafter the total amount of adoption incentive payments payable under paragraph (1) is less than the amount appropriated under subsection (h) for the fiscal year; and*

(ii) *a State's foster child adoption rate for that fiscal year exceeds the highest ever foster child adoption rate determined for the State,*

then the adoption incentive payment otherwise determined under paragraph (1) for the State shall be increased, subject to subparagraph (C), by the amount determined for the State under subparagraph (B).

(B) *AMOUNT OF INCREASE.*—*For purposes of subparagraph (A), the amount determined under this subparagraph with respect to a State and a fiscal year is the amount equal to the product of—*

(i) *\$1,000; and*

(ii) *the excess of—*

(I) *the number of foster child adoptions in the State in the fiscal year; over*

(II) *the product (rounded to the nearest whole number) of—*

(aa) *the highest ever foster child adoption rate determined for the State; and*

(bb) *the number of children in foster care under the supervision of the State on the last day of the preceding fiscal year.*

(C) *PRO RATA ADJUSTMENT IF INSUFFICIENT FUNDS AVAILABLE.*—*For any fiscal year, if the total amount of increases in adoption incentive payments otherwise payable under this paragraph for a fiscal year exceeds the amount available for such increases for the fiscal year, the amount of the increase payable to each State under this paragraph for the fiscal year shall be—*

(i) *the amount of the increase that would otherwise be payable to the State under this paragraph for the fiscal year; multiplied by*

(ii) *the percentage represented by the amount so available for the fiscal year, divided by the total amount of increases otherwise payable under this paragraph for the fiscal year.*

(e) **[2-YEAR] 24-month AVAILABILITY OF INCENTIVE PAYMENTS.**—Payments to a State under this section in a fiscal year shall remain available for use by the State **[through the end of the succeeding fiscal year]** *for a period of 24 months beginning with the month in which the payments are made.*

(f) **LIMITATIONS ON USE OF INCENTIVE PAYMENTS.**—A State shall not expend an amount paid to the State under this section except to provide to children or families any service (including post-adoption services *and relative navigator and support services*) that may be provided under part B or E. Amounts expended by a State in accordance with the preceding sentence shall be disregarded in determining State expenditures for purposes of Federal matching payments under sections 424, 434, and 474.

(g) **DEFINITIONS.**—As used in this section:

(1) **FOSTER CHILD ADOPTION.**—The term “foster child adoption” means the final adoption of a child who, at the time of adoptive placement, was in foster care under the supervision of the State.

(2) **SPECIAL NEEDS ADOPTION.**—The term “special needs adoption” means the final adoption of a child for whom an adoption assistance agreement is in effect under section 473.

(3) **BASE NUMBER OF FOSTER CHILD ADOPTIONS.**—The term “base number of foster child adoptions for a State” **[means—**

[(A) with respect to fiscal year 2003, the number of foster child adoptions in the State in fiscal year 2002; and

[(B) with respect to any subsequent fiscal year, the number of foster child adoptions in the State in the fiscal year for which the number is the greatest in the period that begins with fiscal year 2002 and ends with the fiscal year preceding that subsequent fiscal year.]

means, with respect to any fiscal year, the number of foster child adoptions in the State in fiscal year 2007.

(4) **BASE NUMBER OF SPECIAL NEEDS ADOPTIONS THAT ARE NOT OLDER CHILD ADOPTIONS.**—The term “base number of special needs adoptions *that are not older child adoptions* for a State” **[means—**

[(A) with respect to fiscal year 2003, the number of special needs adoptions that are not older child adoptions in the State in fiscal year 2002; and

[(B) with respect to any subsequent fiscal year, the number of special needs adoptions that are not older child adoptions in the State in the fiscal year for which the number is the greatest in the period that begins with fiscal year 2002 and ends with the fiscal year preceding that subsequent fiscal year.] *means, with respect to any fiscal year, the number of special needs adoptions that are not older child adoptions in the State in fiscal year 2007.*

(5) **Base number of older child adoptions.**—The term “base number of older child adoptions for a State” **[means—**

[(A) with respect to fiscal year 2003, the number of older child adoptions in the State in fiscal year 2002; and

[(B) with respect to any subsequent fiscal year, the number of older child adoptions in the State in the fiscal year for which the number is the greatest in the period

that begins with fiscal year 2002 and ends with the fiscal year preceding that subsequent fiscal year.】 *means, with respect to any fiscal year, the number of older child adoptions in the State in fiscal year 2007.*

(6) **OLDER CHILD ADOPTIONS.**—The term “older child adoptions” means the final adoption of a child who has attained 9 years of age if—

(A) at the time of the adoptive placement, the child was in foster care under the supervision of the State; or (B) an adoption assistance agreement was in effect under section 473 with respect to the child.

(7) **HIGHEST EVER FOSTER CHILD ADOPTION RATE.**—*The term “highest ever foster child adoption rate” means, with respect to any fiscal year, the highest foster child adoption rate determined for any fiscal year in the period that begins with fiscal year 1998 and ends with the preceding fiscal year.*

(8) **FOSTER CHILD ADOPTION RATE.**—*The term “foster child adoption rate” means, with respect to a State and a fiscal year, the percentage determined by dividing—*

(A) *the number of foster child adoptions finalized in the State during the fiscal year; by*

(B) *the number of children in foster care under the supervision of the State on the last day of the preceding fiscal year.*

(9) **BASE NUMBER OF RELATIVE GUARDIANSHIP ASSISTANCE AGREEMENTS.**—*The term “base number of relative guardianship assistance agreements” means, with respect to a fiscal year, the number of relative guardianship assistance agreements entered into under section 473(d) in the State in the fiscal year for which the number is the greatest in the period that begins with the first fiscal year in which the State establishes a relative guardianship assistance program under section 471(a)(1)(B) and ends with the preceding fiscal year.*

(h) **LIMITATIONS ON AUTHORIZATION OF APPROPRIATIONS.**—

(1) **IN GENERAL.**—For grants under subsection (a), there are authorized to be appropriated to the Secretary—

(A) \$20,000,000 for fiscal year 1999;

(B) \$43,000,000 for fiscal year 2000;

(C) \$20,000,000 for each of fiscal years 2001 through 2003, and

(D) \$43,000,000 for each of fiscal years 2004 through [2008] 2013

(2) **AVAILABILITY.**—Amounts appropriated under paragraph (1), or under any other law for grants under subsection (a), are authorized to remain available until expended, but not after fiscal year [2008] 2013.

* * * * *

(j) **INCENTIVE PAYMENTS FOR RELATIVE GUARDIANSHIP PLACEMENTS.**—

(1) **USE OF UNAWARDED ADOPTION INCENTIVE FUNDS TO MAKE RELATIVE GUARDIANSHIP INCENTIVE PAYMENTS.**—*If in any fiscal year the total amount of adoption incentive payments payable under subsection (d) are less than the amount appropriated under subsection (h) for the fiscal year, States that have established a relative guardianship assistance program under sec-*

tion 471(a)(1)(B) shall be awarded, in addition to any adoption incentive payments made to such States under subsection (d), relative guardianship incentive payments from the portion of such amount that is in excess of the total amount of adoption incentive payments to be made under such subsection for such fiscal year.

(2) *PAYMENT AMOUNT.*—Subject to paragraph (3), the relative guardianship incentive payment payable to a State for a fiscal year under this subsection shall be equal to—

(A) in the case of the first fiscal year in which the State establishes a relative guardianship assistance program under section 471(a)(1)(B), the product of \$1,000 and the number of relative guardianship assistance agreements entered into under section 473(d) in the State during that fiscal year; and

(B) in the case of any succeeding fiscal year, the product of \$1,000 and the amount (if any) by which the number of relative guardianship assistance agreements entered into under section 473(d) in the State for the fiscal year exceed the base number of relative guardianship assistance agreements in the State for the fiscal year.

(3) *PRO RATA ADJUSTMENT IF INSUFFICIENT FUNDS AVAILABLE.*—For any fiscal year, if the total amount of relative guardianship incentive payments otherwise payable under this subsection for a fiscal year exceeds the amount available for such payments for the fiscal year, the amount of the relative guardianship incentive payment payable to each State under this subsection for the fiscal year shall be—

(A) the amount of the relative guardianship incentive payment that would otherwise be payable to the State under this subsection for the fiscal year; multiplied by

(B) the percentage represented by the amount so available for the fiscal year, divided by the total amount of relative guardianship incentive payments otherwise payable under this section for the fiscal year.

* * * * *

PAYMENTS TO STATES; ALLOTMENTS TO STATES

SEC. 474. (a) For each quarter beginning after September 30, 1980, each State which has a plan approved under this part shall be entitled to a payment equal to the sum of—

* * * * *

(3) subject to section 472(i) an amount equal to the sum of the following proportions of the total amounts expended during such quarter as found necessary by the Secretary for the provision of child placement services and for the proper and efficient administration of the State plan—

* * * * *

(B) 75 percent of so much of such expenditures (including travel and per diem expenses) are for the short-term training of current or prospective [foster or adoptive parents and the members of the staff of State-licensed or State-approved child care institutions providing care to

foster and adopted children receiving assistance under this part, in ways that increase the ability of such current or prospective parents, staff members, and institutions to provide support and assistance to foster and adopted children,] *foster parents, adoptive parents, or relative guardians and the members of the staff of State-licensed or State-approved child care institutions providing care to foster children, adoptive children, or children living with a relative guardian, who are receiving assistance under this part, in ways that increase the ability of such current or prospective parents, relative guardians, staff members, and institutions to provide support and assistance to foster children, adoptive children, or children living with a relative guardian, whether incurred directly by the State or by contract,*

- * * * * *
- (4) an amount equal to the amount (if any) by which—
 (A) the lesser of—

- * * * * *
- (B) the total amount of any penalties assessed against the State under section 477(e) during the fiscal year in which the quarter occurs[.]; *plus*
 (5) *an amount equal to the Federal medical assistance percentage (as defined in section 1905(b)) of the total amount expended during such quarter as relative guardianship assistance payments under section 473(d) pursuant to relative guardianship assistance agreements.*

* * * * *

DEFINITIONS

SEC. 475. As used in this part or part B of this title:

- (1) The term “case plan” means a written document which includes at least the following:

* * * * *

(C) To the extent available and accessible, the health and education records of the child, including—

- (i) the names and addresses of the child’s health and educational providers;
- (ii) the child’s grade level performance;
- (iii) the child’s school record;
- [(iv)] assurances that the child’s placement in foster care takes into account proximity to the school in which the child is enrolled at the time of placement;
- [(v)](iv) a record of the child’s immunizations;
- [(vi)](v) the child’s known medical problems;
- [(vii)](vi) the child’s medications; and
- [(viii)](vii) any other relevant health and education information concerning the child determined to be appropriate by the State agency.

* * * * *

(F) *In the case of a child with respect to whom the permanency plan is placement with a relative and receipt of*

relative guardianship assistance payments under section 473(d), a description of—

(i) the steps that the agency has taken to determine that it is not appropriate for the child to be returned home or adopted;

(ii) the reasons why a permanent placement with a fit and willing relative through a relative guardianship assistance arrangement is in the child's best interests;

(iii) the ways in which the child meets the eligibility requirements for a relative guardianship assistance payment;

(iv) the efforts the agency has made to discuss adoption by the child's relative guardian who is to receive such payments as a more permanent alternative to legal guardianship and, in the case of such a relative guardian who has chosen not to pursue adoption, documentation of the reasons therefor; and

(v) the efforts made by the State agency to secure the consent of the child's parent or parents to the relative guardianship assistance arrangement, or the reasons why the efforts were not made.

(G) A plan for ensuring the educational stability of the child while in foster care, including—

(i) assurances that the placement of the child in foster care takes into account the appropriateness of the current educational setting and the proximity to the school in which the child is enrolled at the time of placement; and

(ii)(I) an assurance that the State agency has coordinated with appropriate local educational agencies (as defined under section 9101 of the Elementary and Secondary Education Act of 1965) to ensure that the child remains in the school in which the child is enrolled at the time of placement; or

(II) if remaining in such school is not in the best interests of the child, assurances by the State agency and the local educational agencies to provide immediate and appropriate enrollment in a new school, with all of the educational records of the child provided to the school.

(2) in the 1st sentence of paragraph (4)(A)—

* * * * *

(4)(A) The term "foster care maintenance payments" means payments to cover the cost of (and the cost of providing) food, clothing, shelter, daily supervision, school supplies, a child's personal incidentals, liability insurance with respect to a child, [and reasonable] *reasonable* travel to the child's home for visitation. In the case of institutional care, such term shall include the reasonable costs of administration and operation of such institution as are necessarily required to provide the items described in the preceding sentence, *and reasonable travel for the child to remain in the school in which the child is enrolled at the time of placement.*

* * * * *

(5) The term “case review system” means a procedure for assuring that—

(A) each child has a case plan designed to achieve placement in a safe setting that is the least restrictive (most family like) and most appropriate setting available and in close proximity to the parents’ home, consistent with the best interest and special needs of the child, which—

* * * * *

(F) a child shall be considered to have entered foster care on the earlier of—

(i) the date of the first judicial finding that the child has been subjected to child abuse or neglect; or

(ii) the date that is 60 days after the date on which the child is removed from the home; [and]

(G) the foster parents (if any) of a child and any preadoptive parent or relative providing care for the child are provided with notice of, and an opportunity to be heard in, any review or hearing to be held with respect to the child, except that this subparagraph shall not be construed to require that any foster parent, preadoptive parent, or relative providing care for the child be made a party to such a review or hearing solely on the basis of such notice and opportunity to be heard[.]; and

(H) *during the 90-day period immediately prior to the date of the legal emancipation of a child, whether during that period foster care maintenance payments are being made on the child’s behalf or the child is receiving benefits or services under section 477, a caseworker on the staff of the State agency, and, as appropriate, other representatives of the child provide the child with assistance and support in developing a transition plan that is personalized at the direction of the child, includes specific options on housing, health insurance, education, local opportunities for mentors and continuing support services, and work force supports and employment services, and is as detailed as the child may elect.*

* * * * *

(8)(A) *Subject to subparagraph (B), the term “child” means an individual who has not attained 18 years of age.*

(B) *At the option of a State, the term shall include an individual—*

(i) *(I) who is in foster care under the responsibility of the State;*

(ii) *with respect to whom an adoption assistance agreement is in effect under section 473 if the child had attained 16 years of age before the agreement became effective; or*

(iii) *with respect to whom a relative guardianship assistance agreement is in effect under section 473(d) if the child had attained 16 years of age before the agreement became effective;*

(ii) *who has attained 18 years of age;*

(iii) *who has not attained 19, 20, or 21 years of age, as the State may elect; and*

(iv) *who—*

(I) *is completing secondary education or a program leading to an equivalent credential;*

(II) *is enrolled in an institution which provides post-secondary or vocational education;*

(III) *is participating in a program or activity designed to promote, or remove barriers to, employment;*

(IV) *is employed for at least 80 hours per month;*
or

(V) *the State determines is particularly vulnerable or a high-risk individual.*

JOHN H. CHAFEE FOSTER CARE INDEPENDENCE PROGRAM

SEC. 477. (a) PURPOSE.—The purpose of this section is to provide States with flexible funding that will enable programs to be designed and conducted—

(1) to identify children who are likely to remain in foster care until 18 years of age and to help these children make the transition to self-sufficiency by providing services such as assistance in obtaining a high school diploma, career exploration, vocational training, job placement and retention, training in daily living skills, training in budgeting and financial management skills, substance abuse prevention, and preventive health activities (including smoking avoidance, nutrition education, and pregnancy prevention);

* * * * *

(5) to provide financial, housing, counseling, employment, education, and other appropriate support and services to former foster care recipients between 18 and 21 years of age to complement their own efforts to achieve self-sufficiency and to assure that program participants recognize and accept their personal responsibility for preparing for and then making the transition from adolescence to adulthood; [and]

(6) to make available vouchers for education and training, including postsecondary training and education, to youths who have aged out of foster care[.]; and

(7) *to provide the services referred to in this subsection to children who, after attaining 16 years of age, have left foster care for relative guardianship or adoption.*

(b) APPLICATIONS.—

(1) IN GENERAL.—A State may apply for funds from its allotment under subsection (c) for a period of five consecutive fiscal years by submitting to the Secretary, in writing, a plan that meets the requirements of paragraph (2) and the certifications required by paragraph (3) with respect to the plan.

* * * * *

(3) CERTIFICATIONS.—The certifications required by this paragraph with respect to a plan are the following:

(A) A certification by the chief executive officer of the State that the State will provide assistance and services to children who have left foster care because they have at-

tained 18 years of age, and who have not attained 21 years of age.

* * * * *

(G) A certification by the chief executive officer of the State that each Indian tribe in the State has been consulted about the programs to be carried out under the plan; that there have been efforts to coordinate the program with such tribes; **[and that]** *that* benefits and services under the programs will be made available to Indian children in the State on the same basis as to other children in the State**【.】**; *and that the State will negotiate in good faith with any Indian tribe, tribal organization, or tribal consortium in the State that does not receive an allotment under subsection (j)(4) for a fiscal year and that requests to develop an agreement with the State to administer, supervise, or oversee the programs to be carried out under the plan with respect to the Indian children who are eligible for such programs and who are under the authority of the tribe, organization, or consortium and to receive from the State an appropriate portion of the State allotment under subsection (c) for the cost of such administration, supervision, or oversight.*

* * * * *

(i) EDUCATIONAL AND TRAINING VOUCHERS.—The following conditions shall apply to a State educational and training voucher program under this section:

(1) Vouchers under the program may be available to youths otherwise eligible for services under the State program under this section.

(2) For purposes of the voucher program, youths adopted **【from foster care after attaining age 16】** *or entering relative guardianship from foster care after attaining 16 years of age* may be considered to be youths otherwise eligible for services under the State program under this section.

* * * * *

(j) AUTHORITY FOR AN INDIAN TRIBE, TRIBAL ORGANIZATION, OR TRIBAL CONSORTIUM TO RECEIVE AN ALLOTMENT.—

(1) IN GENERAL.—*An Indian tribe, tribal organization, or tribal consortium with a plan approved under section 479B, or which is receiving funding to provide foster care under this part pursuant to a cooperative agreement or contract with a State, may apply for an allotment out of any funds authorized by paragraph (1) or (2) (or both) of subsection (h).*

(2) APPLICATION.—*A tribe, organization, or consortium desiring an allotment under paragraph (1) shall submit an application to the Secretary to directly receive such allotment that includes a plan which—*

(A) *satisfies such requirements of paragraphs (2) and (3) of subsection (b) as the Secretary determines are appropriate;*

(B) *contains a description of the tribe's, organization's, or consortium's consultation process regarding the programs to be carried out under the plan with each State for which*

a portion of an allotment under subsection (c) would be re-directed to the tribe, organization, or consortium; and

(C) contains an explanation of the results of such consultation, particularly with respect to—

(i) determining the eligibility for benefits and services of Indian children to be served under the programs to be carried out under the plan; and

(ii) the process for consulting with the State in order to ensure the continuity of benefits and services for such children who will transition from receiving benefits and services under programs carried out under a State plan under subsection (b) (2) to receiving benefits and services under programs carried out under a plan under this subsection.

(3) PAYMENTS.—The Secretary shall pay an Indian tribe, tribal organization, or tribal consortium with an application and plan approved under this subsection from the allotment determined for the tribe, organization, or consortium under paragraph (4) in the same manner as is provided in section 474(a)(4) (and, where requested, and if funds are appropriated, section 474(e)) with respect to a State, or in such other manner as is determined appropriate by the Secretary, except that in no case shall an Indian tribe, a tribal organization, or a tribal consortium receive a lesser proportion of such funds than a State is authorized to receive under those sections.

(4) ALLOTMENT.—From the amounts allotted to a State under subsection (c) for a fiscal year, the Secretary shall allot to each Indian tribe, tribal organization, or tribal consortium with an application and plan approved under this subsection for that fiscal year an amount equal to the tribal foster care ratio determined under paragraph (5) for the tribe, organization, or consortium multiplied by the allotment amount of the State within which the tribe, organization, or consortium is located. The allotment determined under this paragraph is deemed to be a part of the allotment determined under section 477(c) for the State in which the Indian tribal organization, or tribal consortium is located.

(5) TRIBAL FOSTER CARE RATIO.—For purposes of paragraph (4), the tribal foster care ratio means, with respect to an Indian tribe, tribal organization, or tribal consortium, the ratio of—

(A) the number of children in foster care under the responsibility of the Indian tribe, tribal organization, or tribal consortium (either directly or under supervision of the State), in the most recent fiscal year for which the information is available; to

(B) the sum of—

(i) the total number of children in foster care under the responsibility of the State within which the Indian tribe, tribal organization, or tribal consortium is located; and

(ii) the total number of children in foster care under the responsibility of all Indian tribes, tribal organizations, or tribal consortia in the State (ei-

ther directly or under supervision of the State) that have a plan approved under this subsection.

* * * * *

SEC. 479A. ANNUAL REPORT.

The Secretary, in consultation with Governors, State legislatures, State and local public officials responsible for administering child welfare programs, and child welfare advocates, shall—

* * * * *

SEC. 479B. PROGRAMS OPERATED BY INDIAN TRIBAL ORGANIZATIONS.

(a) *DEFINITIONS OF INDIAN TRIBE; TRIBAL ORGANIZATIONS.*—In this section, the terms “Indian tribe” and “tribal organization” have the meanings given those terms in section 4 of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450b).

(b) *AUTHORITY.*—Except as otherwise provided in this section, this part shall apply in the same manner as this part applies to a State to an Indian tribe, tribal organization, or tribal consortium that elects to operate a program under this part and has a plan approved by the Secretary under section 471 in accordance with this section.

(c) *PLAN REQUIREMENTS.*—

(1) *IN GENERAL.*—An Indian tribe, tribal organization, or tribal consortium that elects to operate a program under this part shall include with its plan submitted under section 471 the following:

(A) *FINANCIAL MANAGEMENT.*—Evidence demonstrating that the tribe, organization, or consortium has not had any uncorrected significant or material audit exceptions under Federal grants or contracts that directly relate to the administration of social services for the 3-year period prior to the date on which the plan is submitted.

(B) *SERVICE AREAS AND POPULATIONS.*—For purposes of complying with section 471(a)(3), a description of the service area or areas and populations to be served under the plan and an assurance that the plan shall be in effect in all service area or areas and for all populations served by the tribe, organization, or consortium.

(C) *ELIGIBILITY.*—

(i) *IN GENERAL.*—Subject to clause (ii), an assurance that the plan will provide—

(I) foster care maintenance payments under section 472 only on behalf of children who satisfy the eligibility requirements of subsection (a) of that section;

(II) adoption assistance payments under section 473 pursuant to adoption assistance agreements only on behalf of children who satisfy the eligibility requirements for such payments under that section; and

(III) at the option of the tribe, organization, or consortium, relative guardianship assistance payments in accordance with section 473(d) only on behalf of children who meet the requirements of paragraph (3)(B) of that section.

(ii) *SATISFACTION OF FOSTER CARE ELIGIBILITY REQUIREMENTS.*—For purposes of determining whether a child whose placement and care are the responsibility of an Indian tribe, tribal organization, or tribal consortium with a plan approved under section 471 in accordance with this section satisfies the requirements of section 472(a), the following shall apply:

(I) *USE OF AFFIDAVITS, ETC.*—Only with respect to the first 12 months for which such plan is in effect, the requirement in paragraph (1) of section 472(a) shall not be interpreted so as to prohibit the use of affidavits or nunc pro tunc orders as verification documents in support of the reasonable efforts and contrary to the welfare of the child judicial determinations required under that paragraph.

(II) *AFDC ELIGIBILITY REQUIREMENT.*—The State plan approved under section 402 (as in effect on July 16, 1996) of the State in which the child resides at the time of removal from the home shall apply to the determination of whether the child satisfies paragraph (3) of section 472(a).

(D) *OPTION TO CLAIM IN-KIND EXPENDITURES FROM THIRD-PARTY SOURCES FOR NON-FEDERAL SHARE OF ADMINISTRATIVE AND TRAINING COSTS DURING INITIAL IMPLEMENTATION PERIOD.*—Only for fiscal year quarters beginning after September 30, 2009, and before October 1, 2014, a list of the in-kind expenditures (which shall be fairly evaluated, and may include plants, equipment, administration, or services) and the third-party sources of such expenditures that the tribe, organization, or consortium may claim as part of the non-Federal share of administrative or training expenditures attributable to such quarters for purposes of receiving payments under section 474(a)(3). The Secretary shall permit a tribe, organization, or consortium to claim in-kind expenditures from third party sources for such purposes during such quarters subject to the following:

(i) *NO EFFECT ON AUTHORITY FOR TRIBES, ORGANIZATIONS, OR CONSORTIA TO CLAIM IN-KIND EXPENDITURES TO THE SAME EXTENT STATES MAY CLAIM IN-KIND EXPENDITURES.*—Nothing in this subparagraph shall be construed as preventing a tribe, organization, or consortium from claiming any in-kind expenditures for purposes of receiving payments under section 474(a) that a State with a plan approved under section 471(a) could claim for such purposes.

(ii) *FISCAL YEAR 2010 OR 2011.*—

“(I) *EXPENDITURES OTHER THAN FOR TRAINING.*—With respect to amounts expended during a fiscal year quarter beginning after September 30, 2009, and before October 1, 2011, for which the tribe, organization, or consortium is eligible for payments under subparagraph (C), (D), or (E) of section 474(a)(3), not more than 25 percent of such amounts may consist of in-kind expenditures from

third-party sources specified in the list required under this subparagraph to be submitted with the plan.

(I) *TRAINING EXPENDITURES.*—*With respect to amounts expended during a fiscal year quarter beginning after September 30, 2009, and before October 1, 2011, for which the tribe, organization, or consortium is eligible for payments under subparagraph (A) or (B) of section 474(a)(3), not more than 12 percent of such amounts may consist of in-kind expenditures from third-party sources that are specified in such list and described in subclause (III).*

(III) *SOURCES DESCRIBED.*—*For purposes of subclause (II), the sources described in this subclause are the following:*

(aa) *A State or local government.*

(bb) *An Indian tribe, tribal organization, or tribal consortium other than the tribe, organization, or consortium submitting the plan.*

(cc) *A public institution of higher education.*

(dd) *A Tribal College or University (as defined in section 316 of the Higher Education Act of 1965 (20 U.S.C. 1059c)).*

(ee) *A private charitable organization.*

(iii) *FISCAL YEAR 2012, 2013, OR 2014.*—

(I) *IN GENERAL.*—*Except as provided in subclause (II) and clause (v), with respect to amounts expended during any fiscal year quarter beginning after September 30, 2011, and before October 1, 2014, for which the tribe, organization, or consortium is eligible for payments under any subparagraph of section 474(a)(3), the only in-kind expenditures from third-party sources that may be claimed by the tribe, organization, or consortium for purposes of determining the non-Federal share of such expenditures (without regard to whether the expenditures are specified on the list required under this subparagraph to be submitted with the plan) are in-kind expenditures that are specified in regulations promulgated by the Secretary under section 301(e)(2) of the Improved Adoption Incentives and Relative Guardianship Support Act of 2008 and are from an applicable third-party source specified in such regulations, and do not exceed the applicable percentage for claiming such in-kind expenditures specified in the regulations.*

(II) *TRANSITION PERIOD FOR EARLY APPROVED TRIBES, ORGANIZATIONS, OR CONSORTIA.*—*Subject to clause (v), if the tribe, organization, or consortium is an early approved tribe, organization, or consortium (as defined in subclause (III)), the Secretary shall not require the tribe, organization, or consortium to comply with such regulations before October 1, 2013. Until the earlier of the date such*

tribe, organization, or consortium comes into compliance with such regulations or October 1, 2013, the limitations on the claiming of in-kind expenditures from third-party sources under clause (ii) shall continue to apply to such tribe, organization, or consortium (without regard to fiscal limitation) for purposes of determining the non-Federal share of amounts expended by the tribe, organization, or consortium during any fiscal year quarter that begins after September 30, 2011, and before such date of compliance or October 1, 2013, whichever is earlier.

(III) **DEFINITION OF EARLY APPROVED TRIBE, ORGANIZATION, OR CONSORTIUM.**—For purposes of subclause (II), the term “early approved tribe, organization, or consortium” means an Indian tribe, tribal organization, or tribal consortium that had a plan approved under section 471 in accordance with this section for any quarter of fiscal year 2010 or 2011.

(iv) **FISCAL YEAR 2015 AND THEREAFTER.**—Subject to clause (v), with respect to amounts expended during any fiscal year quarter beginning after September 30, 2014, for which the tribe, organization, or consortium is eligible for payments under any subparagraph of section 474(a)(3), in-kind expenditures from third-party sources may be claimed for purposes of determining the non-Federal share of expenditures under any subparagraph of section 474(a)(3) only in accordance with the regulations promulgated by the Secretary under section 301(e)(2) of the Improved Adoption Incentives and Relative Guardianship Support Act of 2008.

(v) **CONTINGENCY RULE.**—If at the time expenditures are made for a fiscal year quarter beginning after September 30, 2011, and before October 1, 2014, for which a tribe, organization, or consortium may receive payments for under section 474(a)(3), no regulations required to be promulgated under section 301(e)(2) of the Improved Adoption Incentives and Relative Guardianship Support Act of 2008 are in effect, and no legislation has been enacted specifying otherwise—

(I) in the case of any quarter of fiscal year 2012, 2013, or 2014, the limitations on claiming in-kind expenditures from third-party sources under clause (ii) shall apply (without regard to fiscal limitation) for purposes of determining the non-Federal share of such expenditures; and

(II) in the case of any quarter of fiscal year 2015 or any fiscal year thereafter, no tribe, organization, or consortium may claim in-kind expenditures from third-party sources for purposes of determining the non-Federal share of such expenditures if a State with a plan approved under section 471(a) could not claim in-kind expenditures from third-party sources for such purposes.

(2) *CLARIFICATION OF TRIBAL AUTHORITY TO ESTABLISH STANDARDS FOR TRIBAL FOSTER FAMILY HOMES AND TRIBAL CHILD CARE INSTITUTIONS.*—For purposes of complying with section 471(a)(10), an Indian tribe, tribal organization, or tribal consortium shall establish and maintain a tribal authority or authorities which shall be responsible for establishing and maintaining tribal standards for tribal foster family homes and tribal child care institutions.

(3) *CONSORTIUM.*—The participating Indian tribes or tribal organizations of a tribal consortium may develop and submit a single plan under section 471 that meets the requirements of this section.

(d) *DETERMINATION OF FEDERAL MEDICAL ASSISTANCE PERCENTAGE FOR FOSTER CARE MAINTENANCE AND ADOPTION ASSISTANCE PAYMENTS.*—

(1) *PER CAPITA INCOME.*—For purposes of determining the Federal medical assistance percentage applicable to an Indian tribe, a tribal organization, or a tribal consortium under paragraphs (1), (2), and (5) of section 474(a), the calculation of the per capita income of the Indian tribe, tribal organization, or tribal consortium shall be based upon the service population of the Indian tribe, tribal organization, or tribal consortium, except that in no case shall an Indian tribe, a tribal organization, or a tribal consortium receive less than the Federal medical assistance percentage for any State in which the tribe, organization, or consortium is located.

(2) *CONSIDERATION OF OTHER INFORMATION.*—Before making a calculation under paragraph (1), the Secretary shall consider any information submitted by an Indian tribe, a tribal organization, or a tribal consortium that the Indian tribe, tribal organization, or tribal consortium considers relevant to making the calculation of the per capita income of the Indian tribe, tribal organization, or tribal consortium.

(e) *NONAPPLICATION TO COOPERATIVE AGREEMENTS AND CONTRACTS.*—Any cooperative agreement or contract entered into between an Indian tribe, a tribal organization, or a tribal consortium and a State for the administration or payment of funds under this part that is in effect as of the date of enactment of this section shall remain in full force and effect, subject to the right of either party to the agreement or contract to revoke or modify the agreement or contract pursuant to the terms of the agreement or contract. Nothing in this section shall be construed as affecting the authority for an Indian tribe, a tribal organization, or a tribal consortium and a State to enter into a cooperative agreement or contract for the administration or payment of funds under this part.

(f) *JOHN H. CHAFEE FOSTER CARE INDEPENDENCE PROGRAM.*—Except as provided in section 477(j), subsection (b) of this section shall not apply with respect to the John H. Chafee Foster Care Independence Program established under section 477 (or with respect to payments made under section 474(a)(4) or grants made under section 474(e)).

(g) *RULE OF CONSTRUCTION.*—Nothing in this section shall be construed as affecting the application of subsection (h) of section 472 to a child on whose behalf payments are paid under such section, or the application of subsection (b) of section 473 to a child on

whose behalf payments are made under that section pursuant to an adoption assistance agreement or a relative guardianship assistance agreement, by an Indian tribe, tribal organization, or tribal consortium that elects to operate a foster care and adoption assistance program in accordance with this section.

SEC. 479C. GRANTS TO STATES THAT SUCCESSFULLY COLLABORATE WITH AND SUPPORT TRIBES TO IMPROVE PERMANENCY OUTCOMES FOR INDIAN CHILDREN.

(a) **DEFINITIONS.**—*In this section:*

(1) **GRANT YEAR.**—*The term “grant year” means each of fiscal years 2010, 2011, 2012, 2013, and 2014.*

(2) **INDIAN CHILDREN.**—*The term “Indian children” means children who are members of, enrolled in, or affiliated with, or eligible for membership, enrollment, or affiliation with, an Indian tribe.*

(3) **INDIAN TRIBE, TRIBAL ORGANIZATION, TRIBAL CONSORTIUM.**—*The terms “Indian tribe, tribal organization, and tribal consortium” have the meaning given those terms in section 479B(a).*

(4) **STATE.**—*The term “State” means any of the 50 States or the District of Columbia with State plans approved under part B and this part that elect to apply for a grant under this section.*

(5) **SUCCESSFUL COLLABORATION AND TRIBAL SUPPORT STATE.**—*The term “Successful Collaboration and Tribal Support State” means, with respect to any grant year, a State that the Secretary determines has demonstrated significant evidence of successful collaboration and Tribal support (as determined under subsection (c)) for the fiscal year preceding the grant year.*

(b) **GRANTS.**—*The Secretary shall make a grant pursuant to this paragraph to each State for each grant year for which the Secretary determines that the State is a Successful Collaboration and Tribal Support State.*

(c) **SIGNIFICANT EVIDENCE OF SUCCESSFUL COLLABORATION AND TRIBAL SUPPORT.**—

(1) **IN GENERAL.**—*For purposes of subsection (a)(5), significant evidence of successful collaboration and Tribal support shall be demonstrated through submission by a State of the following evidence to the Secretary:*

(A) *Evidence of collaboration by the State with an Indian tribe, tribal organization, or tribal consortium to plan for and ensure access to services and supports for Indian children and their families which includes, at a minimum, evidence of the measures and activities required under sections 422(b)(9), 471(a)(29), and 477(b)(3)(G).*

(B) *Evidence that the State has obtained from the Secretary, or is engaged in accessing (including through the National Child Welfare Resource Center for Tribes established under section 479D), technical assistance to improve services and permanency outcomes for Indian children and their families, such as through improved identification of Indian children, increased recruitment of Indian foster family homes, and, consistent with the requirements of the Indian Child Welfare Act of 1978 (25 U.S.C. 1901 et seq.),*

improved rates of family reunification, legal or relative guardianships, or adoptive homes.

(C) Evidence of improved outcomes for Indian children and their families and such other data as the Secretary may require to verify that an improvement in outcomes appropriate for Indian children and their families have been achieved.

(2) *FORM AND MANNER.*—The Secretary shall establish the form and manner in which a State that elects to apply for a grant under this section shall submit the evidence described in each subparagraph of paragraph (1). To the extent practicable, the requirements for such evidence shall be consistent with data requirements under the Indian Child Welfare Act of 1978 (25 U.S.C. 1901 et seq.).

(d) *AMOUNT OF GRANT.*—The amount of the grant payable under this section to a Successful Collaboration and Tribal Support State for a grant year is equal to the product of—

(1) the amount appropriated under subsection (e) for that year; and

(2) the ratio of—

(A) the number of Indian children in the State (as determined for purposes of making payments under section 428; to

(B) the sum of the number of such children determined for all Successful Collaboration and Tribal Support States for the grant year.

(e) *APPROPRIATION.*—Out of any money in the Treasury of the United States not otherwise appropriated, there are appropriated to the Secretary for purposes of making payments under this section, \$5,000,000 for each of fiscal years 2010 through 2014.

SEC. 479D. NATIONAL CHILD WELFARE RESOURCE CENTER FOR TRIBES.

(a) *ESTABLISHMENT.*—The Secretary shall establish a National Child Welfare Resource Center for Tribes that is—

(1) specifically and exclusively dedicated to meeting the needs of Indian tribes, tribal organizations, (as defined in section 479B(a)), tribal consortia, and States in improving services and permanency outcomes for Indian children and their families through the provision of assistance described in subsection (b); and

(2) not part of any existing national child welfare resource center.

(b) *ASSISTANCE PROVIDED.*—

(1) *IN GENERAL.*—The National Child Welfare Resource Center for Tribes shall—

(A) provide information, advice, educational materials, and technical assistance to Indian tribes and tribal organizations with respect to the types of services, administrative functions, data collection, program management, and reporting that are provided for under State plans under part B and this part; and

(B) assist and provide technical assistance to—

(i) Indian tribes, tribal organizations, and tribal consortia seeking to operate a program under part B or

this part through direct application to the Secretary under section 479B; and

(ii) Indian tribes, tribal organizations, tribal consortia, and States seeking to develop cooperative agreements to provide for payments under this part or satisfy the requirements of section 422(b)(9), 471(a)(29), or 477(b)(3)(G).

(2) IMPLEMENTATION AUTHORITY.—The Secretary may provide the assistance described in paragraph (1) either directly or through a grant or contract with public or private organizations knowledgeable and experienced in the field of Indian tribal affairs and child welfare.

(c) APPROPRIATIONS.—There is appropriated to the Secretary, out of any money in the Treasury of the United States not otherwise appropriated, \$1,000,000 for each of fiscal years 2009 through 2013 to carry out this section.

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TITLE XI—GENERAL PROVISIONS, PEER REVIEW, AND ADMINISTRATIVE SIMPLIFICATION

* * * * *

EFFECT OF FAILURE TO CARRY OUT STATE PLAN

SEC. 1130A. In an action brought to enforce a provision of the Social Security Act, such provision is not to be deemed unenforceable because of its inclusion in a section of the Act requiring a State plan or specifying the required contents of a State plan. This section is not intended to limit or expand the grounds for determining the availability of private actions to enforce State plan requirements other than by overturning any such grounds applied in *Suter v. Artist M.*, 112 S. Ct. 1360 (1992), but not applied in prior Supreme Court decisions respecting such enforceability: *Provided, however*, That this section is not intended to alter the holding in *Suter v. Artist M.* that section 471(a)(15) of the Act is not enforceable in a private right of action.

SEC. 1130B. DEMONSTRATION PROJECTS REGARDING LICENSING OF IMMEDIATE RELATIVE FOSTER PARENTS.

(a) DEFINITIONS.—In this section:

(1) CHILDREN IN FOSTER CARE.—The term “children in foster care” means children who are placed in foster family homes receiving funds under part B or E of title IV.

(2) DEMONSTRATION PROJECTS.—The term “demonstration projects” means the projects conducted under this section.

(3) DIRECTLY FUNDED TRIBAL IV–E PROGRAM.—The term “directly funded tribal IV–E program” means a program established under section 479B by an Indian tribe, tribal organization, or tribal consortium (as defined in subsection (a) of such section).

(4) IMMEDIATE RELATIVE FOSTER PARENT.—The term “immediate relative foster parent” means, with respect to a child in

foster care, a foster parent of the child who is an adult sibling, grandparent, aunt, or uncle of the child.

(5) *STATE*.—The term “State” means any of the 50 States or the District of Columbia with a State plan approved under section 471(a).

(b) *ESTABLISHMENT*.—The Secretary shall establish not more than 10 demonstration projects to determine the extent to which flexibility in the application of certain licensing standards to foster family homes of immediate relative foster parents results in improved well-being and permanency outcomes for children in foster care.

(c) *REQUIREMENTS*.—

(1) *NUMBER OF PROJECTS*.—Of the demonstration projects conducted under this section, at least—

“(A) 2 projects shall be conducted in States with a large number of rural areas, as determined by the Secretary;

“(B) 1 project shall be conducted in a State in which the State plan under this part is administered by a political subdivision of the State; and

“(2) 1 project shall be conducted by a directly funded tribal IV-E program

(2) *APPLICATION TO CERTAIN LICENSING STANDARDS*.—For purposes of placing a child in foster care in the home of an immediate relative foster parent of the child, and determining whether the home satisfies standards established by a State or directly funded tribal IV-E program for purposes of complying with section 471(a)(10), a State or directly funded tribal IV-E program selected to conduct a demonstration project under this section may modify the extent to which the home is required to comply with any or all of the following standards in order to be a licensed foster family home for the child:

“(A) Standards relating to the number or size of bedrooms in the home, but only if the State or tribal program applies appropriate safeguards for age and gender.

“(B) Standards relating to the number of bathrooms in the home, but only if the State or tribal program applies appropriate safeguards for age and gender.

“(C) Standards relating to overall square footage of the home.

(3) *IMPLEMENTATION; DURATION*.—The demonstration projects shall—

“(A) begin not later than 1 year after the date of enactment of this section; and

“(B) be conducted for a 2-year period.

(d) *REPORT*.—Not later than 1 year after the date on which the projects are completed, the Secretary shall submit to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate a report that—

(1) evaluates, with respect to each State or directly funded tribal IV-E program conducting a project, the impact of the projects on the well-being of children in foster care and the extent to which the projects result in improved permanency outcomes for children in foster care, based on the past performance of the State (or, in the case of a directly funded tribal IV-E program, based on the past performance of each State in which the program is conducted); and

(2) *includes such recommendations for administrative or legislative action as the Secretary determines appropriate.*

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INTERNAL REVENUE CODE OF 1986

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Subtitle A—Income Taxes

CHAPTER 1—NORMAL TAXES AND SURTAXES

Subchapter A—Determination of Tax Liability

PART IV—CREDITS AGAINST TAX

Subpart A—Nonrefundable Personal Credits

* * * * *

SEC. 24. CHILD TAX CREDIT.

(a) ALLOWANCE OF CREDIT.—There shall be allowed as a credit against the tax imposed by this chapter for the taxable year with respect to each qualifying child of the taxpayer *for which the taxpayer is allowed a deduction under section 151* an amount equal to \$1,000.

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Subchapter B—Computation of Taxable Income

PART V—DEDUCTIONS FOR PERSONAL EXEMPTIONS

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SEC. 152. DEPENDENT DEFINED.

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(c) QUALIFYING CHILD.—For purposes of this section—

(1) IN GENERAL.—The term “qualifying child” means, with respect to any taxpayer for any taxable year, an individual—

(A) who bears a relationship to the taxpayer described in paragraph (2),

(B) who has the same principal place of abode as the taxpayer for more than one-half of such taxable year,

(C) who meets the age requirements of paragraph (3),
[and]

(D) who has not provided over one-half of such individual’s own support for the calendar year in which the taxable year of the taxpayer begins~~1~~, and

(E) *who has not filed a joint return (other than only for a claim of refund) with the individual’s spouse under section 6013 for the taxable year beginning in the calendar year in which the taxable year of the taxpayer begins.*

* * * * *

(2) RELATIONSHIP.—For purposes of paragraph (1)(A), an individual bears a relationship to the taxpayer described in this paragraph if such individual is—

(A) a child of the taxpayer or a descendant of such a child, or

(B) a brother, sister, stepbrother, or stepsister of the taxpayer or a descendant of any such relative.

(3) AGE REQUIREMENTS.—

(A) IN GENERAL.—For purposes of paragraph (1)(C), an individual meets the requirements of this paragraph if such individual *is younger than the taxpayer claiming such individual as a qualifying child and—*

* * * * *

(4) SPECIAL RULE RELATING TO 2 OR MORE **[CLAIMING]** WHO CAN CLAIM THE SAME QUALIFYING CHILD.—

(A) IN GENERAL.—**[Except as provided in subparagraph (B), if (but for this paragraph) an individual may be and is claimed as a qualifying child by 2 or more taxpayers]** *Except as provided in subparagraphs (B) and (C), if (but for this paragraph) an individual may be claimed as a qualifying child by 2 or more taxpayers* for a taxable year beginning in the same calendar year, such individual shall be treated as the qualifying child of taxpayer who is—

(i) a parent of the individual, or

* * * * *

(C) *NO PARENT CLAIMING QUALIFYING CHILD.—If the parents of an individual may claim such individual as a qualifying child but no parent so claims the individual, such individual may be claimed as the qualifying child of another taxpayer but only if the adjusted gross income of such taxpayer is higher than the highest adjusted gross income of any parent of the individual.*

Subtitle F—Procedure and Administration

CHAPTER 61—INFORMATION AND RETURNS

Subchapter B—Miscellaneous Provisions

* * * * *

SEC. 6103. CONFIDENTIALITY AND DISCLOSURE OF RETURNS AND RETURN INFORMATION

(a) GENERAL RULE.—Returns and return information shall be confidential, and except as authorized by this title—

(1) no officer or employee of the United States,

(2) no officer or employee of any State, any local law enforcement agency receiving information under subsection (i)(7)(A), any local child support enforcement agency, or any local agency administering a program listed in subsection (1)(7)(D) who has or had access to returns or return information under this section, and (3) no other person (or officer or employee thereof) who has or had access to returns or return information under subsection (e) (1)(D)(iii), paragraph (6), (10), (12), (16), (19), or (20) of subsection (1), paragraph (2) or (4)(B) of subsection (m), or subsection (n),

shall disclose any return or return information obtained by him in any manner in connection with his service as such an officer or an

employee or otherwise or under the provisions of this section. For purposes of this subsection, the term “officer or employee” includes a former officer or employee.

* * * * *

(10) Disclosure of certain information to agencies requesting a reduction under subsection **[(c), (d) or (e)]** *(c), (d), (e) or (f)* of section 6402.

(A) RETURN INFORMATION FROM INTERNAL REVENUE SERVICE.—The Secretary may, upon receiving a written request, disclose to officers and employees of any agency seeking a reduction under subsection **[(c), (d), or (e)]** *(c), (d), (e) or (f)* of section 6402, *to officers and employees of the Department of Labor for purposes of facilitating the exchange of data in connection with a request made under subsection (f)(5) of section 6402*, and to officers and employees of the Department of the Treasury.

(B)(i) RESTRICTION ON USE OF DISCLOSED INFORMATION.—Any officers and employees of an agency receiving return information under subparagraph (A) shall use such information only for the purposes of, and to the extent necessary in, establishing appropriate agency records, locating any person with respect to whom a reduction under subsection **[(c), (d), or (e)]** *(c), (d), (e) or (f)* of section 6402 is sought for purposes of collecting the debt with respect to which the reduction is sought, or in the defense of any litigation or administrative procedure ensuing from a reduction made under subsection **[(c), (d), or (e)]** *(c), (d), (e) or (f)* of section 6402.

(ii) Notwithstanding clause (i), return information disclosed to officers and employees of the Department of Labor may be accessed by agents who maintain and provide technological support to the Department of Labor’s Interstate Connection Network (ICON) solely for the purpose of providing such maintenance and support.

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(p) PROCEDURE AND RECORDKEEPING.—

(1) MANNER, TIME, AND PLACE OF INSPECTIONS.—

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(4) SAFEGUARDS.—Any Federal agency described in subsection (h)(2), (h)(5), (i)(1), (2), (3), (5), or (7), (j)(1), (2), or (5), (k)(8), (1)(1), (2), (3), (5), (10), (11), (13), (14), or (17) or (o)(1), the Government Accountability Office, the Congressional Budget Office, or any agency, body, or commission described in subsection (d), (i)(3)(B)(i) or 7(A)(ii), or (l)(6), (7), (8), (9), (12), (15), or (16) or any other person described in subsection **[(l)(16),]** *(l)(10), (16), (18), (19), or (20)* shall, as a condition for receiving returns or return information—

* * * * *

(F) UPON COMPLETION OF USE OF SUCH RETURNS OR RETURN INFORMATION.—

(i) in the case of an agency, body, or commission described in subsection (d), (i)(3)(B)(i), or (l)(6), (7), (8), (9), or (16), or any other person described in sub-

section **[(1)(16),]** *(l)(10), (16), (18), (19), or (20)* return to the Secretary such returns or return information (along with any copies made therefrom) or make such returns or return information undisclosable in any manner and furnish a written report to the Secretary describing such manner,

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(iii) in the case of the Department of Health and Human Services for purposes of subsection (m)(6), destroy all such return information upon completion of its use in providing the notification for which the information was obtained, so as to make such information undisclosable; except that the conditions of subparagraphs (A), (B), (C), (D), and (E) shall cease to apply with respect to any return or return information if, and to the extent that, such return or return information is disclosed in the course of any judicial or administrative proceeding and made a part of the public record thereof. If the Secretary determines that any such agency, body, or commission, including an agency or any other person described in subsection **[(1)(16),]** *(l)(10), (16), (18), (19), or (20)*, or the Government Accountability Office or the Congressional Budget Office, has failed to, or does not, meet the requirements of this paragraph, he may, after any proceedings for review established under paragraph (7), take such actions as are necessary to ensure such requirements are met, including refusing to disclose returns or return information to such agency, body, or commission, including an agency or any other person described in subsection **[(1)(16),]** *(l)(10), (16), (18), (19), or (20)*, or the Government Accountability Office or the Congressional Budget Office, until he determines that such requirements have been or will be met. In the case of any agency which receives any mailing address under paragraph (2), (4), (6), or (7) of subsection (m) and which discloses any such mailing address to any agent or which receives any information under paragraph (6)(A), (10), (12)(B), or (16) of subsection (l) and which discloses any such information to any agent, or any person including an agent described in subsection **[(1)(16),]** *(l)(10) or (16)* paragraph shall apply to such agency and each such agent or other person (except that, in the case of an agent, or any person 11 including an agent described in subsection **[(1)(16),]** *(l)(10) or (16)* any report to the Secretary or other action with respect to the Secretary shall be made or taken through such agency). For purposes of applying this paragraph in any case to which subsection (m)(6) applies, the term "return information" includes related blood donor records (as defined in section 1141(h)(2) of the Social Security Act).

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Subtitle C—Employment Taxes

CHAPTER 23—FEDERAL UNEMPLOYMENT TAX ACT

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SEC. 3304. APPROVAL OF STATE LAWS

(a) REQUIREMENTS.—The Secretary of Labor shall approve any State law submitted to him, within 30 days of such submission, which he finds provides that—

(1) all compensation is to be paid through public employment offices or such other agencies as the Secretary of Labor may approve;

* * * * *

(4) all money withdrawn from the unemployment fund of the State shall be used solely in the payment of unemployment compensation, exclusive of expenses of administration, and for refunds of sums erroneously paid into such fund and refunds paid in accordance with the provisions of section 3305(b); except that—

(A) an amount equal to the amount of employee payments into the unemployment fund of a State may be used in the payment of cash benefits to individuals with respect to their disability, exclusive of expenses of administration;

* * * * *

(E) amounts may be withdrawn for the payment of short-time compensation under a plan approved by the Secretary of Labor; **[and]**

(F) amounts may be withdrawn for the payment of allowances under a self-employment assistance program (as defined in section 3306(t); *and*

(G) *with respect to amounts of covered unemployment compensation debt (as defined in section 6402(f)(4)) collected under section 6402(f)—*

(i) amounts may be deducted to pay any fees authorized under such section; and

(ii) the penalties and interest described in section 6402(f)(4)(B) may be transferred to the appropriate State fund into which the State would have deposited such amounts had the person owing the debt paid such amounts directly to the State;

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Subtitle F—Procedure and Administration

CHAPTER 65—ABATEMENTS, CREDITS, AND REFUNDS

Subchapter A—Procedure in General

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SEC. 6402. AUTHORITY TO MAKE CREDITS OR REFUNDS.

(a) GENERAL RULE.—In the case of any overpayment, the Secretary, within the applicable period of limitations, may credit the amount of such overpayment, including any interest allowed there-

on, against any liability in respect of an internal revenue tax on the part of the person who made the overpayment and shall, subject to subsections **[(c), (d), and (e)]** *(c), (d), (e), and (f)* refund any balance to such person.

(b) CREDITS AGAINST ESTIMATED TAX.—

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(d) COLLECTION OF DEBTS OWED TO FEDERAL AGENCIES.—

(1) IN GENERAL.—

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(2) PRIORITIES FOR OFFSET.—Any overpayment by a person shall be reduced pursuant to this subsection after such overpayment is reduced pursuant to subsection (c) with respect to past-due support collected pursuant to an assignment under section 402(a)(26) (!1) of the Social Security Act **[and before such overpayment is reduced pursuant to subsection (e)]** *and before such overpayment is reduced pursuant to subsections (e) and (f)* and before such overpayment is credited to the future liability for tax of such person pursuant to subsection (b). If the Secretary receives notice from a Federal agency or agencies of more than one debt subject to paragraph (1) that is owed by a person to such agency or agencies, any overpayment by such person shall be applied against such debts in the order in which such debts accrued.

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(e) COLLECTION OF PAST-DUE, LEGALLY ENFORCEABLE STATE INCOME TAX OBLIGATIONS.—

(1) IN GENERAL.—

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(3) PRIORITIES FOR OFFSET.—Any overpayment by a person shall be reduced pursuant to this subsection—

(A) after such overpayment is reduced pursuant to—

(i) subsection (a) with respect to any liability for any internal revenue tax on the part of the person who made the overpayment;

(ii) subsection (c) with respect to past-due support; and

(iii) subsection (d) with respect to any past-due, legally enforceable debt owed to a Federal agency; and

(B) before such overpayment is credited to the future liability for any Federal internal revenue tax of such person pursuant to subsection (b).

If the Secretary receives notice from one or more agencies of the State of more than one debt subject to paragraph (1) *or subsection (f)* that is owed by such person to such an agency, any overpayment by such person shall be applied against such debts accrued.

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(f) COLLECTION OF UNEMPLOYMENT COMPENSATION DEBTS RESULTING FROM FRAUD.—

(1) IN GENERAL. *Upon receiving notice from any State that a named person owes a covered unemployment compensation debt to such State, the Secretary shall, under such conditions as may be prescribed by the Secretary—*

(A) reduce the amount of any overpayment payable to such person by the amount of such covered unemployment compensation debt;

(B) pay the amount by which such overpayment is reduced under subparagraph (A) to such State and notify such State of such person's name, taxpayer identification number, address, and the amount collected; and

(C) notify the person making such overpayment that the overpayment has been reduced by an amount necessary to satisfy a covered unemployment compensation debt.

If an offset is made pursuant to a joint return, the notice under subparagraph (C) shall include information related to the rights of a spouse of a person subject to such an offset.

(2) **PRIORITIES FOR OFFSET.**—Any overpayment by a person shall be reduced pursuant to this subsection—

(A) after such overpayment is reduced pursuant to—

(i) subsection (a) with respect to any liability for any internal revenue tax on the part of the person who made the overpayment;

(ii) subsection (c) with respect to past-due support; and

(iii) subsection (d) with respect to any past-due, legally enforceable debt owed to a Federal agency; and

(B) before such overpayment is credited to the future liability for any Federal internal revenue tax of such person pursuant to subsection (b).

If the Secretary receives notice from a State or States of more than one debt subject to paragraph (1) or subsection (e) that is owed by a person to such State or States, any overpayment by such person shall be applied against such debts in the order in which such debts accrued.

(3) **OFFSET PERMITTED ONLY AGAINST RESIDENTS OF STATE SEEKING OFFSET.**—Paragraph (1) shall apply to an overpayment by any person for a taxable year only if the address shown on the Federal return for such taxable year of the overpayment is an address within the State seeking the offset.

(4) **NOTICE; CONSIDERATION OF EVIDENCE.**—No State may take action under this subsection until such State—

(A) notifies by certified mail with return receipt the person owing the covered unemployment compensation debt that the State proposes to take action pursuant to this section;

(B) provides such person at least 60 days to present evidence that all or part of such liability is not legally enforceable or due to fraud;

(C) considers any evidence presented by such person and determines that an amount of such debt is legally enforceable and due to fraud; and

(D) satisfies such other conditions as the Secretary may prescribe to ensure that the determination made under subparagraph (C) is valid and that the State has made reasonable efforts to obtain payment of such covered unemployment compensation debt.

(5) **COVERED UNEMPLOYMENT COMPENSATION DEBT.**—For purposes of this subsection, the term “covered unemployment com-

pensation debt” means a debt which resulted from a judgment rendered by a court of competent jurisdiction and which is no longer subject to judicial review in an amount equal to—

(A) a past-due debt for erroneous payment of unemployment compensation due to fraud which has become final under the law of a State certified by the Secretary of Labor pursuant to section 3304 and which remains uncollected;

(B) contributions due to the unemployment fund of a State for which the State has determined the person to be liable due to fraud; and

(C) any penalties and interest assessed on such debt.

(6) REGULATIONS.—

(A) IN GENERAL.—The Secretary may issue regulations prescribing the time and manner in which States must submit notices of covered unemployment compensation debt and the necessary information that must be contained in or accompany such notices. The regulations may specify the minimum amount of debt to which the reduction procedure established by paragraph (1) may be applied.

(B) FEE PAYABLE TO SECRETARY.—The regulations may require States to pay a fee to the Secretary, which may be deducted from amounts collected, to reimburse the Secretary for the cost of applying such procedure. Any fee paid to the Secretary pursuant to the preceding sentence shall be used to reimburse appropriations which bore all or part of the cost of applying such procedure.

(C) SUBMISSION OF NOTICES THROUGH SECRETARY OF LABOR.—The regulations may include a requirement that States submit notices of covered unemployment compensation debt to the Secretary via the Secretary of Labor in accordance with procedures established by the Secretary of Labor. Such procedures may require States to pay a fee to the Secretary of Labor to reimburse the Secretary of Labor for the costs of applying this subsection. Any such fee shall be established in consultation with the Secretary of the Treasury. Any fee paid to the Secretary of Labor may be deducted from amounts collected and shall be used to reimburse the appropriation account which bore all or part of the cost of applying this subsection.

(7) ERRONEOUS PAYMENT TO STATE.—Any State receiving notice from the Secretary that an erroneous payment has been made to such State under paragraph (1) shall pay promptly to the Secretary, in accordance with such regulations as the Secretary may prescribe, an amount equal to the amount of such erroneous payment (without regard to whether any other amounts payable to such State under such paragraph have been paid to such State).

[(f)](g) REVIEW OF REDUCTIONS.—No court of the United States shall have jurisdiction to hear any action, whether legal or equitable, brought to restrain or review a reduction authorized by subsection **[(c), (d), or (e)](c), (d), (e), or (f)**. No such reduction shall be subject to review by the Secretary in an administrative proceeding. No action brought against the United States to recover the amount of any such reduction shall be considered to be a suit for refund of tax. This subsection does not preclude any legal, equi-

table, or administrative action against the Federal agency or State to which the amount of such reduction was paid or any such action against the Commissioner of Social Security which is otherwise available with respect to recoveries of overpayments of benefits under section 204 of the Social Security Act.

[(g)](h) FEDERAL AGENCY.—For purposes of this section, the term “Federal agency” means a department, agency, or instrumentality of the United States, and includes a Government corporation (as such term is defined in section 103 of title 5, United States Code).

[(h)](i) TREATMENT OF PAYMENTS TO STATES.—The Secretary may provide that, for purposes of determining interest, the payment of any amount withheld under [subsection (c) or (e)]*subsection (c), (e), or (f)* to a State shall be treated as a payment to the persons making the overpayment.

[(i)](j) CROSS REFERENCE.—For procedures relating to agency notification of the Secretary, see section 3721 of title 31, United States Code.

[(j)](k) REFUNDS TO CERTAIN FIDUCIARIES OF INSOLVENT MEMBERS OF AFFILIATED GROUPS.—Notwithstanding any other provision of law, in the case of an insolvent corporation which is a member of an affiliated group of corporations filing a consolidated return for any taxable year and which is subject to a statutory or court-appointed fiduciary, the Secretary may by regulation provide that any refund for such taxable year may be paid on behalf of such insolvent corporation to such fiduciary to the extent that the Secretary determines that the refund is attributable to losses or credits of such insolvent corporation.

[(k)](l) EXPLANATION OF REASON FOR REFUND DISALLOWANCE.—In the case of a disallowance of a claim for refund, the Secretary shall provide the taxpayer with an explanation for such disallowance.

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TITLE 31—MONEY AND FINANCE

SUBTITLE I—GENERAL

CHAPTER 3—DEPARTMENT OF THE TREASURY

SUBCHAPTER II—ADMINISTRATIVE

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[(SEC. 323. INVESTMENT OF OPERATING CASH

[(a) To manage United States cash, the Secretary of the Treasury may invest any part of the operating cash of the Treasury for not more than 90 days. Investments may be made in obligations of—

- [(1) depositories maintaining Treasury tax and loan accounts secured by pledged collateral acceptable to the Secretary; and
- [(2) the United States Government.

(b) Subsection (a) of this section does not—

- [(1) require the Secretary to invest a cash balance held in a particular account; or

[(2) permit the Secretary to require the sale of obligations by a particular person, dealer, or financial institution.

[(c) The Secretary shall consider the prevailing market in prescribing rates of interest for investments under subsection (a)(1) of this section.]

SEC. 323. INVESTMENT OF OPERATING CASH

(a) To manage United States cash, the Secretary of the Treasury may invest any part of the operating cash of the Treasury for not more than 90 days. The Secretary may invest the operating cash of the Treasury in—

(1) obligations of depositories maintaining Treasury tax and loan accounts secured by pledged collateral acceptable to the Secretary;

(2) obligations of the United States Government; and

(3) repurchase agreements with parties acceptable to the Secretary.

(b) Subsection (a) of this section does not require the Secretary to invest a cash balance held in a particular account.

(c) The Secretary shall consider the prevailing market in prescribing rates of interest for investments under subsection (a)(1) of this section.

(d)(1) The Secretary of the Treasury shall submit each fiscal year to the appropriate committees a report detailing the investment of operating cash under subsection

(a) for the preceding fiscal year. The report shall describe the Secretary's consideration of risks associated with investments and the actions taken to manage such risks.

(2) For purposes of paragraph (1), the term "appropriate committees" means the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate."

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