
**CONSIDERATIONS FOR INDIAN TRIBES, INDIAN TRIBAL
ORGANIZATIONS OR TRIBAL CONSORTIA SEEKING TO
OPERATE A TRIBAL TITLE IV-E PROGRAM**

**A Technical Assistance Document
of the
Children's Bureau**

**Administration on Children, Youth and Families
Administration for Children and Families,
U.S. Department of Health and Human Services**

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How to Use this Document.

The Fostering Connections to Success and Increasing Adoptions Act of 2008, Public Law 110-351, provides federally-recognized Indian Tribes, Indian Tribal Organizations and Consortia (Indian Tribes) with the option to submit a plan to the Administration for Children and Families to operate a title IV-E program directly. This document is designed as a technical assistance tool for Indian Tribes to use in considering how to plan for the resources, policies and procedures they will or may need to implement a direct title IV-E program.

The document lists a number of Federal requirements, explains some areas of agency discretion and then presents questions for Indian Tribes to consider in determining how to operate a title IV-E plan. Part I covers the general title IV-E requirements, then Part II and II cover provisions specific to the Foster Care Maintenance Payments, Adoption Assistance and Guardianship Assistance Programs. Finally, Part IV presents answers to some frequently asked questions (FAQs) that have been raised to the Children's Bureau.

This document does not cover all title IV-E and related requirements or policy answers and represents a simplified account of the actual requirements. Further, future regulations or policy may cause the information in this document to become outdated. It is incumbent upon the Indian Tribe to assure that it meets all of the required provisions as detailed in the title IV-E statute, regulations and official Children's Bureau policy. Questions should be directed to the Children's Bureau Regional Office Staff.

This document may be found at www.acf.hhs.gov/programs/cb

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Part I – General Title IV-E Requirements

Scope of the Title IV-E Program

The Title IV-E program has several different subcomponents, some of which are mandatory and others that are optional. See also the section on *Continuum of Child Welfare Services*, for mandatory components of a title IV-B, subpart 1 program and *Part IV Administration of the Program Q #4*.

- ❑ *Service Area and Population Designation.* It is mandatory for the Indian Tribe to establish the service area(s) and population(s) to be served under the title IV-E plan. The Indian Tribe must serve all eligible children within its identified service and population area(s), per section 479B(c)(1)(B) of the Social Security Act (the Act). There are no Federal requirements that limit the service area, (i.e. service areas are not limited to reservations or Indian lands) however Indian Tribes should take care to define a realistic service area and population and seek to resolve potential conflicts if its service areas and populations overlap with those of other Tribal governments.
- ❑ *Foster Care Maintenance Payments Program.* The foster care maintenance payments program is a mandatory component of an approvable title IV-E plan, per sections 471(a)(1) of the Act. The Indian Tribe is obligated to provide foster care maintenance payments on behalf of all children in the Indian Tribe’s service area who are eligible for the program up to the age of 18, with the exception of foster children already served by a State title IV-E program.
- ❑ *Adoption Assistance Program.* The adoption assistance payments program is a mandatory component of an approvable title IV-E plan, per sections 471(a)(1) of the Act. The Indian Tribe is obligated to provide adoption assistance on behalf of all children in the Indian Tribe’s service area who are eligible for the program, with the exception of adopted children already served by a State title IV-E program.
- ❑ *Optional Guardianship Assistance Program.* An Indian Tribal IV-E agency may choose to operate a guardianship assistance program as a component of the title IV-E plan per section 471(a)(28) of the Act. This component of the title IV-E program is optional. If the Indian Tribe chooses to implement this option, it must then provide kinship guardianship assistance payments on behalf of all children in the Indian Tribe’s service area and population who are eligible for the program, with the exception of children already served by a State title IV-E program.
- ❑ *Optional Title IV-E Extension for Youth Until Age 19, 20 or 21.* Beginning October 1, 2010, a Tribal IV-E agency can opt to extend assistance to eligible title IV-E recipients, under certain conditions, up to the age of 19, 20 or 21, as described in section 475(8)(B) of the Act. The Tribal IV-E agency can determine whether to extend assistance for each

program individually (foster care, adoption and guardianship, if applicable) and can determine the highest age of assistance up to 21 separately for each component.

Key Questions for Consideration:

- *Is the Indian Tribe's potential service area/population of a scale that warrants operating the title IV-E program directly?*
- *What resources are available or could be mobilized throughout the potential service area/population for children and families?*
- *What existing Federal or State financial resources currently available to a Tribe for child welfare purposes might be negatively or positively impacted by operating a title IV-E program?*
- *Would joining a consortium of other Indian Tribes be beneficial?*
- *Is directly operating both a federally prescribed foster care and adoption program consistent with Tribal objectives and values?*
- *How will any existing title IV-E agreement with a State be affected by operating a direct title IV-E program?*
- *Are there changes needed to the Indian Tribe's codes and regulations to ensure that title IV-E is available throughout the service area for all eligible children?*

Continuum of Child Welfare Services

Title IV-E is a program funded to cover a limited scope. However, the various provisions of title IV-B, subpart 1 and title IV-E require that the title IV-E agency have a continuum of child welfare services programs available to ensure all children's safety, permanency and well-being needs are attended to in out-of-home care. A continuum of child welfare services ranges from helping to prevent child abuse and neglect; responding to and investigating of allegations of abuse/neglect; providing intervention and treatment services to prevent a child's removal from home or providing temporary foster care if removal is necessary; and helping families reunite or helping children and youth achieve other permanency goals such as adoption, guardianship, and living with a relative; and providing post-permanency support.

- Preplacement Services Program.* An Indian Tribe must have a service program designed to help children remain at home safely who are at risk of removal, under the title IV-B, subpart 1 program in section 422(b)(8)(A)(iv) of the Act. Developing a comprehensive preplacement services program will also support an Indian Tribe's compliance with title IV-E requirements to make reasonable efforts to prevent placement of a child in foster care, per section 471(a)(15)(B)(i) of the Act. An Indian Tribe has the flexibility to design its own preplacement services program. Funding from title IV-B, subpart 1 funds (or title IV-B subpart 2 funds, if applicable) is available to support preplacement services. However, the title IV-E program does not fund child protective services investigations, treatments to resolve child or family issues and similar preplacement services.
- Reunification Services.* An Indian Tribe must have a service program designed to help children in foster care return home safely, under the title IV-B, subpart 1 program in

section 422(b)(8)(A)(iii)(I) of the Act. Developing a comprehensive reunification services program will also support an Indian Tribe's compliance with title IV-E requirements to make reasonable efforts to reunify families per section 471(a)(15)(B)(ii) of the Act. An Indian Tribe has the flexibility to design its own reunification services program and may use title IV-B, subpart 1 funds (or title IV-B subpart 2 funds, if applicable) to do so.

- ❑ *Other Permanency Services.* An Indian Tribe must have a service program designed to help children who cannot return home be placed for adoption, legal guardianship or other permanent placement, consistent with the title IV-B, subpart 1 program in section 422(b)(8)(A)(iii)(II) of the Act. Developing a comprehensive permanency services program will also support an Indian Tribe's compliance with title IV-E requirements to make reasonable efforts to achieve permanency, per sections 471(a)(15)(C), (E) and (F) of the Act. An Indian Tribe has the flexibility to design its own permanency services program and may use title IV-B, subpart 1 funds (or title IV-B subpart 2 funds, if applicable) to do so.

Key Questions for Consideration:

- *What is the continuum of child welfare services and supports needed for the community and how can they be provided or made accessible to children and families throughout the proposed service area?*
- *What financial resources other than title IV-B and IV-B are available or could be obtained to support the continuum of child welfare services?*
- *What kinds of community providers and agency staff are needed to implement a continuum of child welfare services?*

The Title IV-E Workforce and Caregivers

- ❑ *Caseworkers.* The title IV-E agency is required by 45 CFR 1357.15(t) to train staff as an ongoing activity related to child and family services policies, programs and practices. However, the title IV-E agency has discretion to set specific educational and/or training requirements for case workers within these broad parameters. Caseworkers are important to the operation of a title IV-E program as they develop and carry out plans for keeping families together, making placements, working towards permanency for a child and conduct other essential title IV-E activities. Caseworker time spent on title IV-E activities is an allowable administrative cost. The Indian Tribe will need to establish ways to identify the portion of worker time spent on activities that are directly related to the title IV-E program to claim them consistent with the law and regulations.
- ❑ *Training of Title IV-E Agency Staff.* Title IV-E agencies may receive Federal reimbursement at the 75% rate for short or long term training of persons who are employed or preparing for employment with the title IV-E agency and are working on title IV-E activities under certain conditions. Such training can include educational

programs that will lead to a baccalaureate or graduate degree, per section 474(a)(3)(A) of the Act, regulations at 45 CFR 235.63 - 235.66(a) and 45 CFR 1356.60(b).

- ❑ *Short-Term Training of Non-agency Staff, Resource Families and Certain Other Involved Individuals.* Title IV-E agencies may claim the costs of providing short-term training to: licensed/approved child placing agency staff (whether or not they work for the title IV-E agency); licensed/approved child care institution staff; current or prospective foster parents, adoptive parents and relative guardians; child abuse and neglect court staff; attorneys; court-appointed special advocates; and guardians ad litem who provide services to children receiving title IV-E assistance. The rate at which the title IV-E agency is reimbursed for these costs depends on who is being trained and when the training takes place. Training for foster parents, adoptive parents, and child care institution staff remain at a constant 75% reimbursement rate; while the training for the other trainee groups rises from 55% to 75% between FY 2009 and FY 2013 and continues at 75% thereafter (Public Law 110-351, section 203(b) and 474(a)(3)(B) of the Act).
- ❑ *Preparing Foster Parents.* Through the title IV-E plan, title IV-E agencies must certify that prospective foster parents are prepared adequately with the appropriate knowledge and skills to provide for the needs of the child prior to placement, and as necessary, after placement, per section 471(a)(24) of the Act. There are no specific Federal standards related to this provision, so the Indian Tribe has discretion to develop the training it believes appropriate.
- ❑ *Training Plans.* Federal regulations require that all training activities, included those funded under title IV-E, must be included in the Title IV-E agency's training plan for title IV-B (45 CFR 1356.60(b)(2)). Title IV-E agencies can be reimbursed under title IV-E for training costs only if the activities and costs are described and included in the title IV-B approved plan. Further, not all costs for training can be charged to the title IV-E program and the type and recipient of training affects the Federal reimbursement rate available.

Key Questions for Consideration:

- *What kind of qualifications will the Indian Tribe require of caseworkers and supervisors?*
- *What kinds of initial and ongoing training will the Indian Tribe offer to caseworkers, foster parents, adoptive parents and legal guardians to support implementation of the title IV-E program?*
- *What resources through institutions of higher learning, national organizations and other sources can the Indian Tribe use to support its training effort?*

Ensuring Children's Safety

In title IV-E, there are numerous provisions which require the agency to consider how children can be kept safe. Background check requirements for prospective foster and adoptive parents or guardians are just one avenue for doing so.

- ❑ *Criminal Background Checks.* The title IV-E plan must describe procedures for criminal background checks for prospective foster parents, adoptive parents and legal relative guardians (if applicable). The procedures must include fingerprint-based criminal record checks of the Federal Bureau of Investigations databases. Further, prospective foster and adoptive parents must not have been convicted in court of certain felonies (i.e., crimes against children or involving violence ever, and drug-related offenses and assault convictions within the past five years) (section 471(a)(20)(A) of the Act). Note that many States and the FBI charge user fees for performing criminal background checks.
- ❑ *Child Abuse and Neglect Registry Checks.* The title IV-E agency must check any child abuse and neglect registry maintained by a State/Indian Tribe in which the adults living in the home of a prospective foster or adoptive parent have resided in the preceding five years per section 471(a)(20)(B)(i) of the Act. If the Tribe has opted for the guardianship assistance payments program, the same registry checks are required of legal guardians (section 471(a)(20)(C)).
- ❑ *Reporting Suspected Child Maltreatment.* The title IV-E agency is obligated to report suspected child maltreatment to the appropriate authorities. Specifically instances of known or suspected instances of physical or mental injury, sexual abuse or exploitation, or negligent treatment or maltreatment which indicate that the child's health or welfare is threatened must be reported and the title IV-E agency is to provide information it has on the circumstances of such maltreatment (section 471(a)(9) of the Act). The title IV-E agency is not required by Federal law to be the responsible entity for investigating instances of suspected child abuse or neglect.

Key Questions for Consideration:

- *What resources and procedures are needed to obtain FBI criminal data and State/Tribal background and registry check information?*
- *Is maintaining a registry on child abuse and neglect desired and if one is established, what procedures will the Indian Tribe institute to keep information confidential but also allow other title IV-E agencies to obtain information from the registry?*
- *What are the procedures for reporting child maltreatment that comes to the attention of the title IV-E agency and providing information regarding such situations to the appropriate authorities?*

Aid to Families with Dependent Children (AFDC) and Medicaid

- ❑ *AFDC.* Eligibility for title IV-E foster care, adoption assistance (in part, until 2018) and guardianship, is based on the income and asset standards for the State's now-defunct AFDC program as it existed on July 16, 1996. The AFDC standards applicable to a child in a tribal IV-E program are those of the State in which the Indian child was living at the time of removal per section 479B(c)(ii)(II) of the Act. Each State's AFDC standards may be unique.
- ❑ *Medicaid.* Children who receive title IV-E foster care maintenance payments, adoption assistance or guardianship assistance are categorically eligible for Medicaid, per sections 472(h)(1) and 473(b)(1) and (3) of the Act. Tribal IV-E agencies may need to make arrangements with the States in which they are located and States in which children reside in order to establish sufficient procedures for obtaining Medicaid coverage for children.

Key Questions for Consideration:

- *How will the Indian Tribe obtain information on a State's 1996 AFDC plan?*
- *Is it practical to contract out the AFDC portion of a title IV-E eligibility determination to a State?*
- *How will the Indian Tribe manage applying multiple States' AFDC plan standards?*
- *How will the Indian Tribe work with State Medicaid agencies to ensure eligibility for children receiving title IV-E?*
- *What procedures are needed to ensure that Medicaid can continue when children move from one jurisdiction to the next?*

Civil Rights Protections, Fair Hearings and Confidentiality

- ❑ *Antidiscrimination in Foster and Adoptive Placements.* Title IV-E agencies and entities are prohibited from denying any person the opportunity to become an adoptive or foster parent, or delaying or denying the placement of a child for adoption or into foster care on the basis of race, color, or national origin of the person or child involved, consistent with section 471(a)(18) of the Act. Section 471(a)(18) of the Act does not affect how the Indian Child Welfare Act applies.
- ❑ *Other Nondiscrimination Provisions.* Agencies receiving Federal assistance must comply with Title VI of the Civil Rights Act of 1964, which protects persons from discrimination based on their race, color, or national origin in programs and activities that receive Federal financial assistance. Indian Tribes should seek guidance from the HHS Office of Civil Rights when dealing with issues of nondiscrimination.
- ❑ *Fair Hearings.* Indian Tribes must establish procedures for providing a fair hearing to any individual whose claim for benefits under the title IV-E program is denied or not

acted upon with reasonable promptness, per section 471(a)(12) of the Act and regulations at 45 CFR 205.10 and 45 CFR 1355.30. For instance, adoptive parents whose request for adoption assistance is denied may request a hearing to challenge the determination. The hearing process requires that the title IV-E agency advise recipients of their right to a hearing, that they may be represented by an authorized representative, and there must be timely notice of the date and place of the hearing.

- ❑ *Confidentiality.* Title IV-E agencies must establish safeguards to restrict the use and/or disclosure of information regarding children receiving title IV-E assistance. In particular, agencies are to limit the information so that it can be used only for the administration of the title IV-E or other federally assisted need-based programs, audits conducted by government agencies, research, court proceedings and for reporting abuse/neglect. (sections 471(a)(6) and 471(c) of the Act and 45 CFR 205.50)

Key Questions for Consideration:

- *What policies and practices should be instituted/modified to ensure that discrimination based on race, color or national origin does not occur?*
- *What procedures are needed to ensure that each beneficiary denied a title IV-E payment or service can request and receive a fair hearing? Which independent entity will hear such fair hearing requests?*
- *What rules are needed to ensure that certain information is kept confidential?*
- *What procedures are needed to ensure that essential information is shared when appropriate?*

Interjurisdictional Placements and Cooperation

- ❑ *Adoption Placements.* Title IV-E agencies must not deny or delay the placement of a child for adoption when an approved family is available outside of the jurisdiction with responsibility for handling the case of the child. Similarly title IV-E agencies are to afford a fair hearing with reasonable promptness to someone who alleges that an adoptive placement has been denied or delayed based on jurisdictional grounds (see section 471(a)(23) of the Act).
- ❑ *Interstate Placement Procedures.* A title IV-E agency must have a procedure for the orderly and timely interstate placement of children. Any procedure implemented in accordance with an interstate compact meets this requirement (see section 471(a)(25) of the Act). (Please note that the Interstate Compact for the Placement of Children is not administered by the HHS and questions should be directed to the Association of Administrators of the Interstate Compact on the Placement of Children Secretariat.)
- ❑ *Home Studies.* Title IV-E agencies are to conduct (themselves or through contract) and complete a home study of a home environment to address the extent to which placing a child in the home can meet the needs of the child within 60 days of receiving a request from another title IV-E agency. The agency must also treat incoming home study reports

as meetings its own home study requirements unless it determines on case-specific grounds that relying on the home study report would be contrary to the child's welfare (see section 471(a)(26) of the Act).

Key Questions for Consideration:

- *How can interjurisdictional requirements be met in light of Tribal sovereignty and exclusive jurisdiction provisions of ICWA and other requirements?*
- *What procedures are needed to establish interjurisdictional provisions and meet home study requirements?*

Alien Status/Citizenship

- Eligibility.* Federal title IV-E payments are available only to children who are U.S. citizens or who meet the definition of "qualified aliens" in the Personal Responsibility and Work Opportunity Reconciliation Act (section 403).
- Verification.* The title IV-E agency is required to verify the citizenship or immigration status of all children receiving title IV-E payments (63 FR 41658-41661, August 4, 1998). The agency's title IV-E plan must also describe the procedures that it will use to verify the citizenship or immigration status of all children in foster care regardless of whether they receive title IV-E payments (section 471(a)(27) of the Act). Title IV-E agencies are not required to verify citizenship status of foster or adoptive parents, unless the Indian Tribe is placing in their care a qualified alien child who entered the U.S. on or after August 22, 1996 and has resided in the U.S. for less than five years.
- Procedural Requirements.* There are no prescribed methods under title IV-E for verifying and documenting the citizenship or qualified alien status of a child. Indian Tribes are encouraged to follow procedures outlined in the Department of Justice's guidance issued in the *Federal Register* at 62 FR 61344 on November 17, 1997.

Key Questions for Consideration:

- *What kind of procedures will the Indian Tribe create to ensure that only U.S. citizens and qualified aliens receive title IV-E payments?*

Financial Procedures

The title IV-E program has complex rules for determining which costs may be claimed under the program, and which match rates apply. Also title IV-E agencies must follow Office of Management and Budget rules for charging only necessary and reasonable costs to the title IV-E program, and allocating allowable costs relative to the benefits received (2 CFR 225).

- Matching.* Matching funds typically consist of grantee-appropriated monies raised from non-federal revenue sources. For States and localities, matching funds are typically

government revenues. However, Indian Tribes may receive Federal funds under other authorities that allow their use as match for Federal programs, including the title IV-E program. Further, Indian Tribes are specifically authorized to use in-kind expenditures from some third-party sources as a source of match for administrative and training costs for certain fiscal years (479B(c)(1)(D) of the Act). Each Indian Tribe's IV-E plan must identify the anticipated third-party source of its matching funds.

- ❑ *Financial Reports.* The Indian Tribe must submit a financial report to ACF after each fiscal quarter showing actual title IV-E expenditures in order to justify reimbursement under the program. Each financial report also must include any necessary adjustments for additional claims or reduced claims for prior quarters. Semi-annually, the Tribal IV-E agency also must submit a projection of estimated expenditures for the current fiscal year and the subsequent two fiscal years. These forms are standardized (i.e., the ACF-IV-E-1) and also require that information be submitted regarding the number of children served by the program.
- ❑ *Cost Principles.* Cost principles are established by the Office of Management and Budget (OMB) and have general application across Federal programs. Individual Federal agencies may also prescribe how these principles apply to the agency's programs. The cost principles that are most applicable to title IV-E are codified in Federal regulations at 2 CFR 255 and 45 CFR 92.22(b). An agency's title IV-E plan must assure that it will comply with these cost principles.
- ❑ *Audits.* The Tribal IV-E agency must obtain periodic, independently conducted audits no less frequently than every three years, consistent with OMB's generally accepted audit guidelines. Before being approved to operate a title IV-E program, the Indian Tribe must submit evidence demonstrating that in the past three years it has not had any uncorrected significant or material audit exceptions under grants or contracts related to the delivery of social services, per section 479B(c)(1)(A) of the Act.
- ❑ *Rate Setting.* Title IV-E agencies are responsible for establishing their own rate structure for foster care maintenance payments, adoption assistance and guardianship assistance. Adoption assistance and guardianship assistance payments are to be individually negotiated with prospective adoptive parents/guardians, however, they cannot exceed the amount that the child would have received had he/she remained in a foster family home. Section 471(a)(11) of the Act requires that the title IV-E agency periodically review the rates established to assure their continuing appropriateness.

Key Questions for Consideration:

- *Which cash and in-kind third party sources are available for title IV-E purposes?*
- *What kind of staff skills are needed or available to understand, apply and adhere to the various financial rules?*
- *Which staffing resources are available to ensure that training plans, financial reports, etc. are kept updated and submitted as frequently as required and/or needed?*

- *What processes or information systems does the Tribe need to create or modify to document costs for Federal claims?*
- *How and at what level will Tribes establish rates for foster care maintenance payments, adoption subsidies to families that adopt special needs children or guardianship assistance payments to relative legal guardians?*

Data and Information Retention

- ❑ *“Statewide” Information System.* Title IV-B, subpart 1 requires a title IV-E agency to operate an information system from which can be readily determined the status, demographic characteristics, location, and goals for the placement of every child who is, or within the preceding 12 months was, in foster care (sec 422(b)(8)(A) of the Act).
- ❑ *Adoption and Foster Care Analysis and Reporting System (AFCARS).* Title IV-E agencies are required to report semi-annually to ACF information about each child in foster care as well as each child adopted during the reporting period, through the Adoption and Foster Care Analysis and Reporting System (AFCARS). Additional information will be forthcoming on how Indian Tribes can report AFCARS data.
- ❑ *Information System Option.* Title IV-E agencies may choose to use title IV-E funds, matched at the 50% rate for administrative costs, to develop an automated data system (i.e., a Statewide Automated Child Welfare Information System (SACWIS)). If a title IV-E agency chooses to implement such a system, it is expected to be a comprehensive automated case management tool that meets the needs of all staff (including social workers and their supervisors, whether employed by the Indian Tribe or contracted private providers) involved in foster care and adoption assistance case management. Depending upon ACF approval, title IV-E matching funds may be for costs such as development, implementation and operational of the automated system, as well as user-training services and equipment costs for staff (including private providers) to use the system.
- ❑ *Records Retention.* Title IV-E agencies are required to keep programmatic and financial information, supporting documents and statistical records related to title IV-E. These records must be retained until the later of three years from the final expenditure report or the resolution of any claim, audit or action taken on the record (45 CFR 92.42). HHS may request to review these records during its oversight activities.

Key Questions for Consideration:

- *How will the Indian Tribe use automation to keep records, track children in foster care and meet AFCARS data reporting requirements?*
- *What is the feasibility of implementing (resources and cost to develop and maintain) a comprehensive child welfare case management system (e.g., SACWIS).*
- *Are State systems accessible to the Indian Tribe and available for title IV-E reporting purposes?*

Coordination with Stakeholders and Partners

- ❑ *State Title IV-B/IV-E Agency.* Regulations require that Indian Tribes consult with and coordinate services with State title IV-B/IV-E agencies (45 CFR 1357(l) and (m)). This is particularly important around issues of Tribal service areas, transferring placement and care responsibility from State programs to Tribal IV-E programs, and AFDC eligibility determinations.
- ❑ *Medicaid/Title XIX Agency.* Children who receive title IV-E foster care maintenance payments, adoption assistance or guardianship assistance are categorically eligible for Medicaid, per sections 472(h)(1) and 473(b)(1) and (3) of the Act. Tribal IV-E agencies will need to establish procedures for ensuring that title IV-E recipients receive Medicaid through their State partners.
- ❑ *Child Support Enforcement.* Title IV-E agencies are required by section 471(a)(17) to secure an assignment of rights for the collection of child support from non-custodial parents, if appropriate, for a child receiving foster care maintenance payments. Additional information about child support referrals for title IV-E eligible children may be found at: <http://www.acf.hhs.gov/programs/cse/pol/IM/2007/im-07-06a.doc>.
- ❑ *Other Federally-Assisted Programs.* The title IV-E agency is to assure that the title IV-E programs are coordinated with State/local programs under title IV-A (Temporary Assistance for Needy Families), Title IV-B (Child Welfare Services and Promoting Safe and Stable Families), title XX (Social Services Block Grant) and any other appropriate provision of Federal law or public child and family services programs (sections 422(b)(2) and 471(a)(4) of the Act).

Key Questions for Consideration:

- *What relationships have already been established through the title IV-B planning process that can be built on?*
- *What other Federal/State/Tribal agencies that use Federal funds to support a similar population of children and families should be consulted (i.e., Social Services Block Grants, Temporary Assistance for Needy Families, Bureau of Indian Affairs, etc.)*

Program Goals, Standards and Oversight

- ❑ *Foster Care Goals.* Per section 471(a)(14) of the Act the title IV-E agency is to formulate for each fiscal year, a specific goal as to the maximum number of children (in absolute numbers or as a percentage of all children in foster care receiving assistance under a title IV-E program) who at any given time during the fiscal year will have been in foster care for over 24 months. The specific foster care goals must be incorporated into law by the legal means available for doing so (i.e., statute, regulation, etc.). The agency must also describe the steps that will be taken to achieve the specific goal established.

- ❑ *Standards.* The title IV-E agency must develop and implement standards to ensure that children in foster care placements in public or private agencies are provided quality services that protect the safety and health of the children (471(a)(22) of the Act). The agency must also have standards for the content and frequency of caseworker visits to children in foster care. At a minimum the standards must ensure monthly visits which are well-planned and focus on case planning and service delivery to ensure the safety, permanency and well-being of the children (sec 422(b)(17) of the Act).
- ❑ *Reports and Monitoring.* The title IV-E agency must monitor and conduct evaluations of activities carried out in the title IV-E program (section 471(a)(7) of the Act). Further, the agency must agree to comply with evaluations and reports required by HHS (section 471(a)(6) and 422(b)(6) of the Act).

Key Questions for Consideration:

- *What goals will the Tribe establish for the maximum number of children in foster care for 24 months and how will the Tribe incorporate those goals into law?*
- *What standards are necessary to ensure that children receive quality and frequent visits from their caseworkers?*
- *What standards will the Tribe establish to provide quality services to children in foster care that protect their health and safety?*
- *What types of evaluations will the Tribe initiate to assess title IV-E activities? What other types of quality assurance or improvement mechanisms can be implemented?*

Part II – Foster Care

Legal Processes for Placing Children in Foster Care

- ❑ *Involuntary Removals into Foster Care.* Title IV-E does not prescribe what agencies or which officials are authorized to remove children from their homes to qualify for title IV-E. This means that it is a matter of Tribal law, procedures or policy to determine the procedures for and the parties that can make a valid involuntary removal of a child from his home when that is necessary to protect the best interests of the child. However, in order to qualify for title IV-E maintenance payments per section 472 of the Act, there must be certain judicial determinations related to these removals and the title IV-E agency must have placement and care responsibility for the child (see below for more on placement and care responsibility and next section on judicial activities).
- ❑ *Voluntary Placements into Foster Care.* Under title IV-E, a voluntary placement is an out-of-home placement of a minor child by or with the participation of the title IV-E agency, after the child’s parents or legal guardians request the assistance of the agency and sign a voluntary placement agreement. A title IV-E agency may choose to enter into such agreements, as appropriate, as a program and practice alternative to court-ordered removals, but does not have to do so under title IV-E. To the extent that the title IV-E agency wishes to claim Federal reimbursement for voluntary placements, it must comply with section 472(e) through (g) of the Act and 45 CFR 1356.22, including obtaining judicial determinations that it is in the child’s best interest to continue foster care placement beyond 180 days should the child need to remain in care.
- ❑ *Placement and Care Responsibility.* The Tribal IV-E agency must have placement and care responsibility of the child to claim title IV-E foster care maintenance payments for the child. Placement and care responsibility can be established through a court order or a voluntary placement agreement. Placement and care responsibility may be held by the Tribal IV-E agency itself, or held by another public agency with which the Tribal IV-E agency has a title IV-E agreement, per section 472(a)(2)(B)(ii) of the Act. The term placement and care means that the title IV-E agency is legally accountable for the day-to-day care and protection of the child, including making placement and case planning decisions about the child. It does not necessarily equate with custody; custody can be given or shared with a private entity or a parent while the title IV-E agency maintains placement and care responsibility.

Key Questions for Consideration:

- *Does the Indian Tribe want to accept voluntary placement agreements and if so under what circumstances?*
- *How will the Indian Tribe assume placement and care responsibility?*

- *Will the Indian Tribe enter into agreements with other public agencies that will assume placement and care responsibility of children and meet the title IV-E requirements for those children?*

Judicial Activities

Working with courts is an essential part of a title IV-E agency's responsibility. The title IV-E program does not fund general court activities, but does require the title IV-E agency to obtain judicial determinations from the courts and oversight of title IV-E agency activities. See also the section on case planning and permanency decisions.

- ❑ *Contrary to the Welfare Judicial Determination.* For title IV-E foster care eligibility purposes, the title IV-E agency must obtain a judicial determination for a child that is involuntarily removed that it is contrary to the child's welfare to remain at home (section 472(a)(2)(A)(ii) of the Act). This judicial determination is also a part of the title IV-E adoption assistance and kinship guardianship assistance program eligibility criteria in some circumstances (sections 473(a)(2)(A)(i)(I)(aa)(AA), 473(a)(2)(A)(ii)(I)(aa)(AA) and 473(d)(3)(A)(i)(I) of the Act). To meet the eligibility criteria, the contrary to the welfare determination must be in the first court ruling that removes the child from the home. Federal law does not define a standard the court must apply in determining whether it is contrary to the welfare for the child to remain at home.
- ❑ *Reasonable Efforts to Prevent Removal.* For title IV-E foster care eligibility purposes, the title IV-E agency must obtain a judicial determination within 60 days of an involuntary removal that the agency performed reasonable efforts to prevent the foster care placement (section 471(a)(15)(B)(i) and 472(a)(2)(A)(ii) of the Act). Alternatively, the court may find reasonable efforts were not required in accordance with State/Tribal law defining aggravated circumstances, the parent's committal of a prohibited felony, or because the parent's rights to the child's sibling were terminated involuntarily (section 471(a)(15)(D)). Federal law does not define a standard the court must apply in determining whether an agency's efforts are reasonable.
- ❑ *Continuation of Voluntary Placement is in Child's Best Interests.* For Indian Tribes that choose to use voluntary placement agreements, a judicial determination that it is in the child's best interests to remain in foster care is required to extend title IV-E eligibility beyond the first 180 days of the child's placement (see sections 472(d) through (h)).
- ❑ *Reasonable Efforts to Finalize Permanency.* The Tribe is required to obtain a judicial determination that it has made reasonable efforts to finalize a permanency plan for a child who has been in the Tribe's placement and care within 12 months of the date the child is considered to have entered foster care in accordance with the definition in 45 CFR 1355.20 and every 12 months thereafter. This judicial finding is required for title IV-E foster care eligibility purposes. Federal law does not define a standard the court must apply in determining whether an agency's efforts are reasonable.

- ❑ *Documentation of Judicial Determinations Related to Title IV-E Eligibility.* The requirement to obtain judicial determinations were established in law to ensure that there is judicial oversight over agency decisions to remove children from their homes and achieve permanency and not a pro forma exercise to obtain Federal funding. Therefore, the title IV-E eligibility judicial determinations must be explicit and documented in a court order or transcript to be acceptable for title IV-E purposes. The judicial determinations must convey the meanings above but are not required to include the exact statutory or regulatory language of ‘contrary to the welfare’ or ‘reasonable efforts.’” Nunc pro tunc orders (or, “now for then” retrospective orders made at a later date than the actual proceedings) and affidavits stating that something occurred rather than court orders that indicate that certain findings were made are not acceptable for title IV-E purposes, except during the initial 12-month period for which the Indian Tribe’s title IV-E plan is approved.

Key Questions for Consideration:

- *Which aggravated circumstances will the Indian Tribe enact into law that can give a title IV-E agency the choice to forgo reasonable efforts in a particular case?*
- *What kinds of hearings will provide the forum for the judicial determinations to be made?*
- *Which members of the judiciary will make these findings?*
- *To what extent are physical courtrooms available and accessible for hearings?*
- *What scheduling and case tracking processes are needed to support timely judicial determinations?*
- *Are standardized court forms, petitions, and training necessary to support these findings?*
- *How can the courts and the title IV-E agency collaborate to ensure timely receipt of necessary agency petitions and court findings?*
- *Are financial resources (not title IV-E) available for any calculated increases in court work?*

Licensing Foster Family Homes and Child Care Institutions

Title IV-E agencies have discretion to develop their own licensing standards for foster family homes and child care institutions, within certain Federal parameters.

- ❑ *Licensing authority.* The Indian Tribe must establish a Tribal authority responsible for developing and maintaining Tribal licensing or approval standards for Tribal foster family homes and child care institutions, consistent with sections 471(a)(10) and 479(B)(c)(2) of the Act. At a minimum, licensing standards must cover admission policies, safety, sanitation, and protection of civil rights. In addition, these standards must be applied equally to any foster family home or child care institution receiving title IV-B and IV-E funds, with one exception. The exception permits a title IV-E agency to waive the application of a standard unrelated to safety for relatives. There are no federally prescribed standards for such homes or institutions, although the law requires standards to accord with recommended standards of national organizations.

- ❑ *Foster Family Homes.* Title IV-E agencies may claim title IV-E foster care maintenance payments for children placed in licensed or approved foster family homes, per sections 472(b)(1) and (c)(1) of the Act. Tribal licensing authorities may waive only non-safety related standards for relative foster family homes, on a case-by-case basis. It is up to the title IV-E agency, with oversight by the courts, to determine the appropriateness of a foster family home placement.
- ❑ *Child Care Institutions.* Indian Tribes may claim title IV-E foster care maintenance payments for children placed in licensed or approved child care institutions, per sections 472(b)(2) and (c)(2) of the Act. Such private institutions may be of any size, but public child care institutions are limited to accommodating 25 children if they are to receive title IV-E funds. Detention facilities, forestry camps, training schools or any other facilities intended primarily for the placement of adjudicated delinquents are not eligible for title IV-E funding. It is up to the Indian Tribe, with oversight by the courts, to determine the appropriateness of a child care institution placement.

Key Questions for Consideration:

- *Which entity will have the responsibility to establish standards and license tribal foster family homes and child care institutions?*
- *What kind of standards will the Indian Tribe establish for licensure and, if applicable, licensure renewals. What procedures will be in place to ensure equal application of those standards, and if appropriate, waivers of non-safety related standards for relatives?*
- *If the Tribe already has licensing standards, are any revisions necessary?*
- *How can the Indian Tribe ensure that title IV-E payments are not made to children placed in detention and other unallowable facilities?*

Case Planning and Permanency Decisions

A number of title IV-E plan requirements relate to ensuring procedures are in place to plan appropriately for a child's experience in foster care and for a return home or to other permanent living arrangements. These provisions are important procedural protections for all children in foster care and do not affect a child's title IV-E eligibility status.

- ❑ *Case Planning.* Case plans are to be developed with parental involvement within 60 days of a child entering foster care. The plans are to address a number of issues including a rationale for a placement being the most appropriate choice for the child, plans to transition to independent living for youth over 16, and health and education information, among other items. There is no federally prescribed format for case plans, although the content is specified in law and regulation. Specific statutory requirements regarding the content of the case plan may be found at section 475(1) of the Act.

- ❑ *Relatives.* The title IV-E plan must describe how the title IV-E agency will, within 30 days of each child’s removal from the home, exercise due diligence to identify and provide notice of the placement to all adult grandparents and other adult relatives of the child, subject to exceptions for family or domestic violence, per section 471(a)(29) of the Act. The title IV-E agency is to explain to these relatives how they can provide care for the child, including how to become a foster family home provider and if available, how to participate in the kinship guardianship assistance program. Further, the law requires the title IV-E agency to consider giving preference to adult relatives over nonrelative caregivers when making placement decisions, provided that the relative caregiver meets all relevant child protection standards (section 471(a)(19) of the Act). Relatives are also required to receive notice of court proceedings.
- ❑ *Periodic Review.* Each child in foster care is to have a periodic review at least every six months to determine the safety of the child, need for continued placement, compliance with the case plan, and progress towards achieving safe reunification or other permanent plan, and the likely date by which the child may be returned home or placed for adoption or legal guardianship per section 475(5) of the Act. This review can be conducted by a court or an administrative panel.
- ❑ *Siblings.* Reasonable efforts must be made to place siblings together. If siblings cannot be placed together or it is not in their best interests to be placed together, siblings should be provided with opportunities for frequent visitation or other ongoing interaction, per section 472(a)(31) of the Act. The title IV-E agency’s policies for sibling placement should be provided in the title IV-E plan.
- ❑ *School Enrollment.* The title IV-E plan must provide assurances that all children in foster care who are of school age are enrolled in school, or are in the process of being enrolled, per section 471(a)(29) of the Act.
- ❑ *Permanency Hearings.* Each child in foster care is to have a permanency hearing at least every 12 months which address a number of issues relative to the child’s planned care and permanency, per section 475(5) of the Act. As described above with respect to supporting procedures for judicial activities, Indian Tribes should consider judicial resources and tracking systems that will be needed to assure permanency hearings are held in a timely fashion and that judges have the information they need to make informed permanency decisions with respect to each child.
- ❑ *Termination of Parental Rights (TPR).* Section 475(5)(E) of the Act requires that a title IV-E agency file a petition for termination of parental rights for any child who has been in foster care for at least 15 of the previous 22 months, subject to certain exceptions. While we recognize that termination of parental rights and adoption may not be a part of an Indian Tribe's traditional belief system or legal code, there is no statutory authority to provide a general exemption for Indian tribal children from the requirement to file a petition for TPR. Federal law provides some examples of exceptions to filing TPR that can be used on a case by case basis, including such as the child is being care for by a

relative, the agency hasn't provided reasonable efforts to reunify the family consistent with the case plan, adoption is not appropriate for the child, or no legal grounds for TPR exist. What constitutes the legal grounds for TPR are at the Indian Tribe's discretion. See also the section on Customary Adoption, below.

Key Questions for Consideration:

- *What format will case planning, periodic reviews and permanency hearings take and which parties will be involved in each process?*
- *How will the Indian Tribe engage relatives so that they can serve as viable placement resources or permanent homes for children who cannot return to their own homes?*
- *How will the Indian Tribe partner with educational authorities and health agencies or practitioners to ensure that children's well-being needs are met?*
- *What legal codes or laws are needed to ensure that there are appropriate legal grounds for termination of parental rights and procedures in place for permanency hearings, case plans, and periodic reviews?*
- *How will the Tribe provide for notifications of court proceedings to foster parents, relatives and preadoptive parents and foster parents?*
- *How will the Tribe ensure that siblings are placed together, when appropriate, or visitation between siblings occurs when in the children's best interest?*

Part III – Adoption Assistance and Guardianship Assistance

Adoption Assistance

- ❑ *Discretion in Procedures for Finalization.* As noted above, title IV-E law strongly encourages the timely finalization of alternative permanency arrangements for children for whom returning home is not feasible. The Tribal IV-E agency has considerable discretion in determining the procedural requirements for the finalization of an adoption. In particular, it should be noted that allowable practice includes customary adoptions, in which legal and custodial ties to a new permanent family are created for a child through tribal law and customary practices without entirely severing relationships with birth parents and relatives.
- ❑ *Eligibility for Adoption Assistance.* The law includes specific criteria for a child’s eligibility for title IV-E adoption assistance program (section 473(a) of the Act). Although many of the provisions for eligibility are set in Federal law, the Indian Tribe may determine the specific factors or conditions because of which it is reasonable to conclude that the child warrants adoption assistance or medical assistance. This is one part of the special needs criteria (see 473(c) of the Act). The law suggests that these factors or conditions may include a child’s ethnic background, age or membership in a minority group, or the presence of medical conditions. It should be noted that AFDC-related eligibility criteria (related to the child’s birth family) are being phased out over the next several years in a manner that requires the title IV-E agency to determine whether a child is eligible based on either of two different sets of requirements until FY 2018.
- ❑ *Adoption Assistance Agreements.* The law specifies a number of topics that must be part of adoption assistance agreements, which may be found in section 475(3) of the Act and 45 CFR 1356.40(b). Adoption assistance agreements are legally binding documents entered into by the adoptive family and the title IV-E agency, which obligates the agency to continue paying adoption assistance until the child reaches the age of majority or the adoptive parents are no longer legally responsible for support of the child, or are no longer providing support to the child. The agreement once established remains in effect, and the agency remains responsible for making subsidy payments, when a family moves to another jurisdiction. An agreement must be in place prior to providing adoption assistance.
- ❑ *Adoption Assistance Payments.* The amount of subsidy to be paid on behalf of an adopted child, and indeed whether a payment is to be made at all, are subject to negotiations on a case-by-case basis between the IV-E agency and the adoptive family. Subsidy amounts cannot be subject to a means test and agencies are to take into consideration the circumstances of the family and needs of the child. The negotiated

subsidy may not exceed the amount the child would have received in a foster family home. Rates may be adjusted through negotiation and concurrence by the family.

- ❑ *Nonrecurring Adoption Expenses.* The Tribal IV-E agency must reimburse adoptive parents for nonrecurring adoption expenses incurred in establishing the adoption of a special needs child, up to \$2,000 per adoption. Regulations define "non-recurring adoption expenses" as reasonable and necessary adoption fees, court costs, attorney fees and other expenses which are directly related to the legal adoption of a child with special needs. "Other expenses" are defined as the costs of adoption incurred by or on behalf of the parents and for which parents carry the burden of payment, such as the adoption study, health and psychological examinations, supervision of the placement prior to adoption, transportation and the reasonable costs of lodging and food for the child and/or the adoptive parents when necessary to complete the adoption process.
- ❑ *Notification Regarding the Adoption Tax Credit.* The title IV-E agency is required to notify families that adopt children in its care of their potential eligibility for the federal adoption tax credit. The agency must provide in its title IV-E plan that adoptive parents will be provided this notification, per section 471(a)(33) of the Act.
- ❑ *Health Care for Children Ineligible for Adoption Assistance.* If the title IV-E agency enters into agreements for adoption subsidies for children with special needs for medical, mental health or rehabilitative care for children who are ineligible for Federal adoption subsidies under the title IV-E program, the law requires that the agency provide health insurance coverage for the child (section 471(a)(21) of the Act). The health coverage provided to such children must be equivalent to the health and mental health benefits provided for children under the Medicaid program.

Key Questions for Consideration:

- *What form will finalizing adoptions take in the Indian Tribe?*
- *What kind of factors or conditions of a child make it reasonable to conclude that a child cannot be placed for adoption without providing title IV-E adoption assistance or Medicaid?*
- *What are the typical one-time costs of legalizing an adoption and at what level will the Tribe reimburse families for these costs?*
- *What resources are available (not title IV-E) to provide pre- and post-adoption services to family that may need additional supports?*
- *How will the Tribe ensure that they will provide health insurance coverage to children with special health care needs who have non-Federal adoption subsidy agreements with the title IV-E agency?*

Guardianship Assistance

- ❑ *General.* As noted above, beginning in FY 2010, Tribal IV-E agencies may choose to offer a guardianship assistance program as part of its title IV-E plan per sections

471(a)(28) and 473(d) of the Act. If the Tribal IV-E agency intends to implement this option, this must be specified in a title IV-E plan submission or amendment.

- ❑ *Eligibility for Kinship Guardianship Assistance Payment (GAP).* The law includes specific criteria for a child's eligibility for the GAP (section 473(d) of the Act). In addition to other criteria, GAP is only available to children who were in foster care with a relative and were eligible to receive title IV-E foster care maintenance payments while residing for six (6) consecutive months in that relative's foster family home. To encourage keeping siblings together, the law permits siblings of an eligible child to qualify for GAP without independently meeting the eligibility criteria.
- ❑ *Kinship Guardianship Assistance Payments Agreements.* The law contains minimum specifications for what must be included in kinship guardianship assistance payments agreements, which may be found in section 473(d)(1) of the Act. Like adoption assistance agreements, these agreements do not change based on the family's residence and the agency that made the agreement remains responsible for fulfilling its terms.
- ❑ *Subsidies.* The amount of the guardianship subsidy to be paid on behalf of a guardian child, and indeed whether a payment is to be made at all, are subject to negotiations on a case-by-case basis between the title IV-E agency and the prospective family. Subsidy amounts may not exceed the amount the child would have received in a foster family home.
- ❑ *Nonrecurring Guardianship Expenses.* The Tribal IV-E agency must reimburse guardians of the expenses of legalizing the title IV-E guardianship, up to \$2,000 per child.

Key Questions for Consideration:

- *What resources are available to the Tribe to support a guardianship assistance program, if applicable?*
- *What are the typical one-time costs of legalizing a guardianship and at what level will the Indian Tribe reimburse families for these costs?*
- *What resources are available to provide additional services to guardianship families that may need help after permanency?*

Part IV - Frequently Asked Questions about Direct Title IV-E Funding for Indian Tribes

Administration of the Program

Q1. When is the beginning date of the title IV-E direct funding option for Indian Tribes? Is there a deadline by which title IV-E plans are due?

A. The option to operate the title IV-E program is available to Indian Tribes beginning October 1, 2009. If the Indian Tribe's title IV-E plan is approvable (i.e., meets all of the requirements for approval) the program can be effective no earlier than the 1st day of the fiscal year quarter in which the plan is submitted. The opportunity for an Indian Tribe to operate the title IV-E program is ongoing; there is no final date by which an Indian Tribe needs to submit a title IV-E plan to apply to operate a title IV-E program. Further, a Tribe may submit an amendment at any time to an approved plan for title IV-E foster care maintenance payments and adoption assistance to take advantage of the guardianship assistance program and the extension of assistance to youth ages 18 to 21

Q2. Is direct title IV-E funding for federally recognized Indian Tribes only?

A. Yes. The law makes direct title IV-E funding an option for any Indian Tribe, band, nation, or other organized group or community that is recognized as eligible for special programs and services provided by the United States to Indians because of their status as Indians. See 25 U.S.C. 450b. An Indian Tribal Organization, which is a recognized body of an Indian Tribe or a consortium of Indian Tribes or Tribal Organizations are also eligible to submit a title IV-E plan.

Q3. Can an Indian Tribe operate only one portion of title IV-E, such as administration and training only?

A. No. A title IV-E plan must provide for operation of both the title IV-E foster care maintenance payments and adoption assistance payments programs in full. Further, there is no ability for an agency to receive direct title IV-E funding of administrative and training funds if they are not also making available title IV-E foster care maintenance and adoption assistance payments on behalf of all eligible children. Indian Tribes are permitted, however, to contract out certain administrative activities and enter agreements that permit other public agencies to administer part of the title IV-E program for those children in its placement and care responsibility on the title IV-E agency's behalf.

Q4. Do Indian Tribes have to operate the title IV-B programs to operate a title IV-E program?

A. Yes, but only a title IV-B subpart 1 program. The title IV-E agency must be the same agency that is operating the title IV-B, subpart 1 program. There is no similar requirement in title IV-E related to the title IV-B, subpart 2 program.

Q5. How does title IV-E funding work?

A. Title IV-E funding is based on reimbursing a portion of the expenditures the title IV-E agency incurs on behalf of eligible children. Title IV-E funding is not a block grant and there are no advanced funds. The reimbursement rate depends on the type of expenditure: maintenance and subsidy payments are reimbursed at a State- or Tribe-specific rate (see FMAP question below); administrative and information system costs are reimbursed at a 50% rate; and, training costs are typically reimbursed at 75% (see section 474(a)(3) of the Act). Title IV-E agency claims for Federal reimbursement adjustments may be made up to two years after the expense is incurred. Awards of Federal funds are made on a quarterly basis.

Typically, the title IV-E agency can only seek reimbursement for expenses they paid with their own cash monies, although for Indian Tribes some administrative and training costs may be ‘in-kind’ funds from third party sources as indicated in section 479B of the Act. Indian Tribes may also use certain Indian Child Welfare Act funds, Indian Self Determination and Education Assistance Act funds and other funding sources that specifically authorize such Federal funds to be used as match for other Federal programs.

*Q6. What kinds of expenditures **may** be partially reimbursed under the title IV-E program?*

A. Allowable expenditures on behalf of eligible children include:

- Foster care maintenance payments (see included costs in the definition at 475(4)(A) of the Act and 45 CFR 1355.20), adoption assistance and guardianship subsidies (which can be spent as the adoptive parent/guardian see fit)
- The nonrecurring costs, such as the legal expenses, of finalizing an adoption or legal guardianship
- Title IV-E eligibility determinations and fair hearings
- Recruiting and approving/licensing foster family homes, group homes, adoptive parents, legal guardians and child care institutions. These costs may include the expenses of conducting background checks of these providers and providing items such as medical exams of the providers, smoke detectors, cribs and beds if needed to attain licensure or approval.
- Agency staff and attorney time, including contracted staff time spent preparing for and participating in court activities related to required title IV-E judicial determinations and hearings, including transporting children to the court hearings.
- Activities closely-related to placing the child, including notifying relatives of a child’s placement in foster care.
- Developing the child’s case plan or transition plan, including caseworker time spent assessing the child and family
- Case management and supervision
- Case reviews, including transporting children to case reviews
- Referral to and arranging of services, including transporting children to the services
- Establishing foster care, adoption or guardianship subsidy rates and negotiating subsidies

- Managing foster care payments and subsidies
- Costs related to title IV-E data collection and reporting
- Training of agency staff and other trainee groups assisting title IV-E children (see 474(a)(3)(A) and (B))
- Implementation and operation of a quality assurance system related to title IV-E functions and children
- Overhead or indirect costs related to managing the title IV-E program

This is not a complete list. Please refer to section 474 of the Act, regulations at 45 CFR 1356.60 and policy in the Child Welfare Policy Manual (CWPM) Section 8 for additional information on the kinds of costs that may be claimed.

*Q7. What kinds of expenditures **cannot** be reimbursed under the title IV-E program?*

A. Unallowable expenditures, regardless of whether they are on behalf of children eligible for title IV-E include:

- Child protective services investigations
- Activities of the court, even when working on title IV-E related judicial determinations
- Legal representation of children or parents, including guardians ad litem and court appointed special advocates
- Medical, mental health, or educational services and assessments
- Social services, including family-preservation or homemaker services, housing services, post-permanency counseling or services
- Chafee program expenditures and education and training vouchers
- Construction or renovation

This is not a complete list. Please refer to section 474 of the Act, regulations at 45 CFR 1356.60 and policy in CWPM Section 8 for additional information.

Q8. Can title IV-E funds be combined with self-governance funding/contracts or consolidated as an Indian employment and Training demonstration?

A. No to both. Title IV-E is not a program that is subject to the self-governance authority in the Indian Self-Determination and Education Assistance Act as amended. The Indian Employment, Training and Related Services Demonstration Act of 1992 relates to consolidation of employment and job training programs, and does not permit consolidation of the title IV-E program.

Q9. Will receipt of title IV-E funding affect the funding the Indian Tribe receives through the Bureau of Indian Affairs child assistance program?

A. Possibly. Indian Tribes are encouraged to talk to the Bureau of Indian Affairs (BIA) about the potential impact of title IV-E on BIA grant funds or any other funding received from other Federal sources.

Q10. Is additional funding available to increase Tribal capacity to operate a title IV-E plan?

A. The only available funding set-aside for capacity purposes is the title IV-E plan development grants of up to \$300,000 total per Indian tribe. The process to apply for ACF grants are announced via www.grants.gov. The funds for the plan development grants are permanently authorized, so we anticipate making such funds available in future years as well. By law, the title IV-E plan development funds may be used by Indian Tribes who will submit a title IV-E plan to ACF within 24 months of receiving the grant. The grant funds can be used to meet any costs necessary to secure approval of a Tribally-operated title IV-E plan, such as development of a data collection system, and establishing agency and court procedures to meet case review requirements. If the Tribe is unable to submit a title IV-E plan in the 24 month timeframe, the money must be returned per section 476(c)(2)(B) of the Act. Indian Tribes may find that other non-dedicated funds, such as title IV-B funds, may assist them in building their overall capacity to operate a title IV-E program.

Q11. Can an Indian Tribe have a direct funding program and a title IV-E agreement/contract?

A. Yes. The law allows an Indian Tribe to have both, however, it will be up to the Indian Tribe and the State to work out whether it is practical to have both, particularly for the same program component (i.e., for foster care maintenance payments). Further, the Indian Tribe may not claim the same cost for a child or administrative cost under both the title IV-E agreement/contract and a directly-funded plan.

Q12. What are the Chafee and Education and Training Vouchers Programs?

A. The John H. Chafee Foster Care Independence Program, referred to as *CFCIP* or *Chafee*, offers assistance to help current and former foster care youths achieve self-sufficiency. Chafee funds can support activities and programs such as help with education, employment, financial management, housing, emotional support and assured connections to caring adults for older youth in foster care as well as youth 18-21 who have aged out of the foster care system or achieved permanency through adoption or guardianship after age 16.

The Educational and Training Vouchers Program (ETV) for Youths Aging out of Foster Care provides resources specifically to meet the education and training needs of youth aging out of foster care or achieving permanency through adoption or guardianship after age 16. This program makes available vouchers of up to \$5,000 per year per youth for post secondary education and training for eligible youth.

A Tribe which operates a title IV-E program (for foster care and adoption assistance) directly or through an agreement with a State, may apply for Chafee and ETV program funding.

Q13. Are the application/approval processes the same for title IV-E and Chafee?

A. No. The application, approval, funding and requirements for each plan are different. Further guidance on applying for the Chafee and ETV programs will be contained in a program instruction on the Child and Family Services Plan process.

Q14. What are the parameters for establishing a Tribal service area?

A. Section 479B(c)(1)(B) of the Act requires a directly-funded Indian Tribe to describe the service area and population to be served for purposes of complying with section 471(a)(3) of the Act. There is nothing in the Social Security Act that expressly addresses how the Indian Tribe defines its service area or population. The Indian Tribe should keep in mind the following factors in considering its service area and population:

- An Indian Tribe that is directly providing title IV-E will be obligated to serve all children in its service area and population. Therefore, it may not be practical or feasible for an Indian Tribe to define a service area that extends beyond where the Indian Tribe has its resources.
- The service area is a factor in how the Federal medical assistance percentage is calculated. See section 479B(d) of the Act.
- The service area has to be within the United States.

Q15. Does operating a title IV-E program affect issues of jurisdiction in child custody cases?

A. No, nothing in the title IV-E program addresses the issue of which court (i.e., State or Tribal) has jurisdiction over a proceeding affecting the child's custody. Therefore Indian Tribes and States are to follow the jurisdiction provisions of the Indian Child Welfare Act, Public Law 83-280 and any other existing Federal, Tribal, State laws and/or Tribal/State agreements in effect that relate to jurisdiction.

Terminology

Q1. What is a title IV-E plan preprint and how is it used?

A. A title IV-E plan preprint is the document a State/Tribe submits to the Children's Bureau to seek approval of the title IV-E plan. The preprint is in a standardized format, but States/Indian Tribes may choose to use a different format that contains all of the same information. The State/Indian Tribe records in the preprint references to the laws and procedures in effect that correspond with the specified Federal requirement. All the corroborating documents referenced must also be submitted (electronically or in hardcopy) along with the plan. The references in the preprint may be to statutes, codes, Tribal resolutions, regulations or any other official policy, or procedures manuals that indicate how the title IV-E agency is complying with the title IV-E plan.

Q2. What is the difference between indirect costs and administrative costs?

A. Indirect costs are typically common overhead costs shared by various programs, such as administrative salaries and fringe benefits associated with overall financial and organizational administration, operation and maintenance costs for facilities and equipment, and payroll and procurement services. Administrative costs under the title IV-E program include indirect costs, but also eligibility determinations, referral to services, placement of the child, development of

the case plan, recruitment and licensing of resource homes, case management and supervision, and data collection and reporting, among other items (see 45 CFR 1356.60(c)). In some Federal grant programs, Indian Tribes negotiate with a Federal agency an indirect cost rate that is charged to the grants awarded by that agency. For the title IV-E program, title IV-E agencies have to identify the indirect costs and other administrative costs that will be allocated and claimed under the title IV-E program.

Q3. What is the Tribal FMAP?

A. *FMAP* stands for the Federal Medical Assistance Percentage, which is a rate calculated by HHS for each State based on a statutory formula under title XIX of the Social Security Act and used to determine the Federal share of costs for Medicaid, title IV-E and other Federal programs. For more information on the FMAP in general, see <http://aspe.hhs.gov/health/fmap.htm>. The *Tribal FMAP* is unique to the title IV-E program and is calculated by HHS using the statutory formula as a starting point, but also taking into consideration the Tribe's title IV-E service population and Tribally-submitted information on per capita income. A Tribal FMAP rate will be calculated for each Indian Tribe which directly operates a title IV-E program and those Indian Tribes who have an agreement/contract with a State to operate part of the title IV-E program. The Tribal FMAP rate is applied to expenditures for title IV-E foster care maintenance payments, adoption assistance payments and guardianship assistance payments and will be the higher of: 1) a calculated Tribal FMAP or, 2) the highest FMAP of any State in which the Indian Tribe is located.

Q4. What is the difference between reasonable efforts and active efforts?

A. *Reasonable efforts* refers to a provision in title IV-E that requires title IV-E agencies (States and Tribes) to make *reasonable efforts* to prevent removal of a child from home, to make *reasonable efforts* to reunify the child with the family once removal has occurred, or if return home is not the child's permanent plan, to make *reasonable efforts* to finalize the permanent placement of the child. Section 471(a)(15)(D) of the Act also lists certain circumstances in which *reasonable efforts* to prevent removal or reunify the child with the family are not required by Federal law. See also 45 CFR 1356.21(b). For a child to be eligible for title IV-E foster care maintenance payments, the agency must secure a judicial determination from a court that indicates whether the agency's efforts were reasonable or were not required.

Active efforts is a term used in a provision of the Indian Child Welfare Act of 1978 (ICWA). ICWA requires State agencies, among other things, to "satisfy the court that *active efforts* have been made" to provide services designed to prevent the breakup of the Indian family and that these efforts have been unsuccessful, in order to justify a foster care placement or terminate parental rights. Active efforts are not a requirement for a child's title IV-E eligibility. See also *Part II Judicial Actives*.

Additional Guidance

Q1. On what topics will technical assistance be available to Indian Tribes and how can Indian Tribes access those resources?

A. The Children's Bureau (CB) has a wealth of resources available on topics such as child maltreatment, permanency planning, child welfare data and technology, adoption, youth development, organizational improvement and much more. The CB Regional Office staff are primary technical assistance resources on meeting the requirements of the title IV-B and IV-E programs. Further, Regional Office staff can also refer an Indian Tribe to CB-contracted technical assistance sources. CB supports the Child Welfare Information Gateway, which provides access to information and resources on the continuum of child welfare sources and is accessible on the internet at www.childwelfare.gov. CB also supports several National Child Welfare Resource Centers, Quality Improvement Centers and other technical assistance resources. More information can be found online at <http://www.acf.hhs.gov/programs/cb/tta/index.htm>.

Q2. When will additional policy and regulations be developed on the title IV-E programs?

A. Existing regulations can be found in 45 CFR 1355 and 1356 relevant to the title IV-E program. Some of these regulations may have been superseded by Public Law 110-351. Information projecting when Federal regulations will be published is included in the Unified Agenda, which is published twice a year in the Spring and the Fall. (<http://www.gpoaccess.gov/ua/index.html>).