

LEXSEE 110 PL 351

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PUBLIC LAW 110-351 [H.R. 6893]

OCT. 07, 2008

FOSTERING CONNECTIONS TO SUCCESS AND INCREASING ADOPTIONS ACT OF 2008

110 P.L. 351; 122 Stat. 3949; 2008 Enacted H.R. 6893; 110 Enacted H.R. 6893

BILL TRACKING REPORT: 110 Bill Tracking H.R. 6893

FULL TEXT VERSION(S) OF BILL: 110 H.R. 6893

An Act

To amend parts B and E of title IV of the Social Security Act to connect and support relative caregivers, improve outcomes for children in foster care, provide for tribal foster care and adoption access, improve incentives for adoption, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

[*1] SECTION 1. SHORT TITLE.

This Act may be cited as the "Fostering Connections to Success and Increasing Adoptions Act of 2008".

[*2] SEC. 2. TABLE OF CONTENTS.

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TITLE I--CONNECTING AND SUPPORTING RELATIVE CAREGIVERS

[*101] Sec. 101. KINSHIP GUARDIANSHIP ASSISTANCE PAYMENTS FOR CHILDREN.

(a) State Plan Option.--Section 471(a) of the Social Security Act (42 U.S.C. 671(a)) is amended--

(1) by striking "and" at the end of paragraph (26);

(2) by striking the period at the end of paragraph (27) and inserting "; and"; and

(3) by adding at the end the following:

"(28) at the option of the State, provides for the State to enter into kinship guardianship assistance agreements to provide kinship guardianship assistance payments on behalf of children to grandparents and other relatives who have assumed legal guardianship of the children for whom they have cared as foster parents and for whom they have committed to care on a permanent basis, as provided in section 473(d)."

(b) In General.--Section 473 of such Act (42 U.S.C. 673) is amended by adding at the end the following:

"(d) Kinship Guardianship Assistance Payments for Children.--

"(1) Kinship 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 kinship guardianship assistance agreement with the prospective relative guardian of a child who meets the requirements of this paragraph; and

"(ii) provide the prospective 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 kinship guardianship assistance payment will be provided under the agreement, and the manner in which the payment may be adjusted periodically, in consultation with the relative guardian, based on the circumstances of the relative guardian and the needs of the child;

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"(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; and

"(iv) subject to subparagraph (D), that the State will pay the total cost of nonrecurring expenses associated with obtaining legal guardianship of the child, to the extent the total cost does not exceed \$ 2,000.

"(C) Interstate applicability.--The agreement shall provide that the agreement shall remain in effect without regard to the State residency of the relative guardian.

"(D) No effect on federal reimbursement.--Nothing in subparagraph (B)(iv) shall be construed as affecting the ability of the State to obtain reimbursement from the Federal Government for costs described in that subparagraph.

"(2) Limitations on amount of kinship guardianship assistance payment.-- A kinship guardianship assistance payment on behalf of a child shall not exceed the foster care maintenance payment which would have been paid on behalf of the child if the child had remained in a foster family home.

"(3) Child's eligibility for a kinship guardianship assistance payment.----

"(A) In general.--A child is eligible for a kinship guardianship assistance payment under this subsection if the State agency determines the following:

"(i) The child has been--

"(I) 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) eligible for foster care maintenance payments under section 472 while residing for at least 6 consecutive months in the home of the prospective relative guardian.

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

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

"(iv) With respect to a child who has attained 14 years of age, the child has been consulted regarding the kinship guardianship arrangement.

"(B) 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 may be placed in the same kinship guardianship arrangement, in accordance with section 471(a)(31), if the State agency and the relative agree on the appropriateness of the arrangement for the siblings; and

"(ii) kinship guardianship assistance payments may be paid on behalf of each sibling so placed."

(c) Conforming Amendments.--

(1) Eligibility for adoption assistance payments.-- Section 473(a)(2) of such Act (42 U.S.C. 673(a)(2)) is amended by adding at the end the following:

"(D) In determining the eligibility for adoption assistance payments of a child in a legal guardianship

arrangement described in section 471(a)(28), the placement of the child with the relative guardian involved and any kinship guardianship assistance payments made on behalf of the child shall be considered never to have been made."

(2) State plan requirement.----

(A) In general.--Section 471(a)(20) of such Act (42 U.S.C. 671(a)(20)) is amended--

(i) by adding "and" at the end of subparagraph (C); and

(ii) by adding at the end the following:

"(D) 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), on any relative guardian, and for checks described in subparagraph (C) of this paragraph on any relative guardian and any other adult living in the home of any relative guardian, before the relative guardian may receive kinship guardianship assistance payments on behalf of the child under the State plan under this part;"

(B) Redesignation of new provision after amendment made by prior law takes effect.--

(i) In general.--Section 471(a)(20) of the Social Security Act (42 U.S.C. 671(a)(20)) is amended--

(I) in subparagraph (D), by striking "(C)" and inserting "(B)"; and

(II) by redesignating subparagraph (D) as subparagraph (C).

(ii) Effective date.--The amendments made by clause (i) shall take effect immediately after the amendments made by section 152 of Public Law 109-248 take effect.

(3) Payments to states.-- Section 474(a) of such Act (42 U.S.C. 674(a)) is amended--

(A) by striking the period at the end and inserting "; plus"; and

(B) by adding at the end the following:

"(5) an amount equal to the percentage by which the expenditures referred to in paragraph (2) of this subsection are reimbursed of the total amount expended during such quarter as kinship guardianship assistance payments under section 473(d) pursuant to kinship guardianship assistance agreements."

(4) Case plan requirements.-- Section 475(1) of such Act (42 U.S.C. 675(1)) is amended by adding at the end the following:

"(F) In the case of a child with respect to whom the permanency plan is placement with a relative and receipt of kinship 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 for any separation of siblings during placement;

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

"(iv) the ways in which the child meets the eligibility requirements for a kinship guardianship assistance payment;

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"(v) the efforts the agency has made to discuss adoption by the child's relative foster parent as a more permanent alternative to legal guardianship and, in the case of a relative foster parent who has chosen not to pursue adoption, documentation of the reasons therefor; and

"(vi) the efforts made by the State agency to discuss with the child's parent or parents the kinship guardianship assistance arrangement, or the reasons why the efforts were not made."

(5) Section heading amendment.-- The section heading for section 473 of such Act (42 U.S.C. 673) is amended by inserting "and guardianship" after "adoption".

(d) Continued Services Under Waiver.--Section 474 of such Act (42 U.S.C. 674) is amended by adding at the end the following:

"(g) For purposes of this part, after the termination of a demonstration project relating to guardianship conducted by a State under section 1130, the expenditures of the State for the provision, to children who, as of September 30, 2008, were receiving assistance or services under the project, of the same assistance and services under the same terms and conditions that applied during the conduct of the project, are deemed to be expenditures under the State plan approved under this part."

(e) Eligibility for Independent Living Services and Education and Training Vouchers for Children Who Exit Foster Care for Relative Guardianship or Adoption After Age 16.--

(1) Independent living services.-- Section 477(a) of such Act (42 U.S.C. 677(a)) is amended--

(A) by striking "and" at the end of paragraph (5);

(B) by striking the period at the end of paragraph (6) and inserting "; and"; and

(C) by adding at the end the following:

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

(2) Education and training vouchers.-- Section 477(i)(2) of such Act (42 U.S.C. 677(i)(2)) is amended by striking "adopted from foster care after attaining age 16" and inserting "who, after attaining 16 years of age, are adopted from, or enter kinship guardianship from, foster care".

(f) Categorical Eligibility for Medicaid.--Section 473(b)(3) of such Act (42 U.S.C. 673(b)(3)) is amended--

(1) in subparagraph (A)(ii), by striking "or" at the end;

(2) in subparagraph (B), by striking the period and inserting ", or"; and

(3) by adding at the end the following:

"(C) with respect to whom kinship guardianship assistance payments are being made pursuant to subsection (d)."

[*102] Sec. 102. FAMILY CONNECTION GRANTS.

(a) In General.--Part B of title IV of the Social Security Act (42 U.S.C. 620-629i) is amended by inserting after section 426 the following:

"Sec. 427. FAMILY CONNECTION GRANTS.

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"(a) In General.--The Secretary of Health and Human Services may make matching grants to State, local, or tribal child welfare agencies, and private nonprofit organizations that have experience in working with foster children or children in kinship care arrangements, for the purpose of helping children who are in, or at risk of entering, foster care reconnect with family members through the implementation of--

"(1) a kinship navigator program to assist kinship caregivers in learning about, finding, and using programs and services to meet the needs of the children they are raising and their own needs, and to promote effective partnerships among public and private agencies to ensure kinship caregiver families are served, which program--

"(A) shall be coordinated with other State or local agencies that promote service coordination or provide information and referral services, including the entities that provide 2-1-1 or 3-1-1 information systems where available, to avoid duplication or fragmentation of services to kinship care families;

"(B) shall be planned and operated in consultation with kinship caregivers and organizations representing them, youth raised by kinship caregivers, relevant government agencies, and relevant community-based or faith-based organizations;

"(C) shall establish information and referral systems that link (via toll-free access) kinship caregivers, kinship support group facilitators, and kinship service providers to--

"(i) each other;

"(ii) eligibility and enrollment information for Federal, State, and local benefits;

"(iii) relevant training to assist kinship caregivers in caregiving and in obtaining benefits and services; and

"(iv) relevant legal assistance and help in obtaining legal services;

"(D) shall provide outreach to kinship care families, including by establishing, distributing, and updating a kinship care website, or other relevant guides or outreach materials;

"(E) shall promote partnerships between public and private agencies, including schools, community based or faith-based organizations, and relevant government agencies, to increase their knowledge of the needs of kinship care families to promote better services for those families;

"(F) may establish and support a kinship care ombudsman with authority to intervene and help kinship caregivers access services; and

"(G) may support any other activities designed to assist kinship caregivers in obtaining benefits and services to improve their caregiving;

"(2) intensive family-finding efforts that utilize search technology to find biological family members for children in the child welfare system, and once identified, work to reestablish relationships and explore ways to find a permanent family placement for the children;

"(3) family group decision-making meetings for children in the child welfare system, that--

"(A) enable families to make decisions and develop plans that nurture children and protect them from abuse and neglect, and

"(B) when appropriate, shall address domestic violence issues in a safe manner and facilitate connecting children exposed to domestic violence to appropriate services, including reconnection with the abused parent when appropriate; or

"(4) residential family treatment programs that--

"(A) enable parents and their children to live in a safe environment for a period of not less than 6 months; and

"(B) provide, on-site or by referral, substance abuse treatment services, children's early intervention services, family counseling, medical, and mental health services, nursery and pre-school, and other services that are designed to provide comprehensive treatment that supports the family.

"(b) Applications.--An entity desiring to receive a matching grant under this section shall submit to the Secretary an application, at such time, in such manner, and containing such information as the Secretary may require, including--

"(1) a description of how the grant will be used to implement 1 or more of the activities described in subsection (a);

"(2) a description of the types of children and families to be served, including how the children and families will be identified and recruited, and an initial projection of the number of children and families to be served;

"(3) if the entity is a private organization--

"(A) documentation of support from the relevant local or State child welfare agency; or

"(B) a description of how the organization plans to coordinate its services and activities with those offered by the relevant local or State child welfare agency; and

"(4) an assurance that the entity will cooperate fully with any evaluation provided for by the Secretary under this section.

"(c) Limitations.--

"(1) Grant duration.-- The Secretary may award a grant under this section for a period of not less than 1 year and not more than 3 years.

"(2) Number of new grantees per year.-- The Secretary may not award a grant under this section to more than 30 new grantees each fiscal year.

"(d) Federal Contribution.--The amount of a grant payment to be made to a grantee under this section during each year in the grant period shall be the following percentage of the total expenditures proposed to be made by the grantee in the application approved by the Secretary under this section:

"(1) 75 percent, if the payment is for the 1st or 2nd year of the grant period.

"(2) 50 percent, if the payment is for the 3rd year of the grant period.

"(e) Form of Grantee Contribution.--A grantee under this section may provide not more than 50 percent of the amount which the grantee is required to expend to carry out the activities for which a grant is awarded under this section in kind, fairly evaluated, including plant, equipment, or services.

"(f) Use of Grant.--A grantee under this section shall use the grant in accordance with the approved application for the grant.

"(g) Reservations of Funds.--

"(1) Kinship navigator programs.-- The Secretary shall reserve \$ 5,000,000 of the funds made available under subsection (h) for each fiscal year for grants to implement kinship navigator programs described in subsection (a)(1).

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"(2) Evaluation.-- The Secretary shall reserve 3 percent of the funds made available under subsection (h) for each fiscal year for the conduct of a rigorous evaluation of the activities funded with grants under this section.

"(3) Technical assistance.-- The Secretary may reserve 2 percent of the funds made available under subsection (h) for each fiscal year to provide technical assistance to recipients of grants under this section.

"(h) 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 \$ 15,000,000 for each of fiscal years 2009 through 2013."

(b) Conforming Amendment.--Section 425 of such Act (42 U.S.C. 625) is amended by inserting "(other than sections 426, 427, and 429)" after "this subpart".

(c) Renaming of Program.--The subpart heading for subpart 1 of part B of title IV of such Act is amended to read as follows:

"Subpart 1--Stephanie Tubbs Jones Child Welfare Services Program".

[*103] Sec. 103. NOTIFICATION OF RELATIVES.

Section 471(a) of the Social Security Act (42 U.S.C. 671(a)), as amended by section 101(a) of this Act, is amended--

(1) by striking "and" at the end of paragraph (27);

(2) by striking the period at the end of paragraph (28) and inserting "; and"; and

(3) by adding at the end the following:

"(29) provides that, within 30 days after the removal of a child from the custody of the parent or parents of the child, 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--

"(A) specifies that the child has been or is being removed from the custody of the parent or parents of the child;

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

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

"(D) if the State has elected the option to make kinship guardianship assistance payments under paragraph (28) of this subsection, describes how the relative guardian of the child may subsequently enter into an agreement with the State under section 473(d) to receive the payments."

[*104] Sec. 104. LICENSING STANDARDS FOR RELATIVES.

(a) State Plan Amendment.--Section 471(a)(10) of the Social Security Act (42 U.S.C. 671(a)(10)) is amended--

(1) by striking "and provides" and inserting "provides"; and

(2) by inserting before the semicolon the following: ", and provides that a waiver of any such standard may be

made only on a case-by-case basis for non-safety standards (as determined by the State) in relative foster family homes for specific children in care".

(b) Report.--Not later than 2 years after the date of enactment of this Act, the Secretary of Health and Human Services 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 includes the following:

(1) Nationally and for each State, the number and percentage of children in foster care placed in licensed relative foster family homes and the number and percentage of such children placed in unlicensed relative foster family homes.

(2) The frequency with which States grant case-by-case waivers of non-safety licensing standards for relative foster family homes.

(3) The types of non-safety licensing standards waived.

(4) An assessment of how such case-by-case waivers of non-safety licensing standards have affected children in foster care, including their safety, permanency, and well-being.

(5) A review of any reasons why relative foster family homes may not be able to be licensed, despite State authority to grant such case-by-case waivers of non-safety licensing standards.

(6) Recommendations for administrative or legislative actions that may increase the percentage of relative foster family homes that are licensed while ensuring the safety of children in foster care and improving their permanence and well-being.

[*105] Sec. 105. AUTHORITY FOR COMPARISONS AND DISCLOSURES OF INFORMATION IN THE FEDERAL PARENT LOCATOR SERVICE FOR CHILD WELFARE, FOSTER CARE, AND ADOPTION ASSISTANCE PROGRAM PURPOSES.

Section 453(j)(3) of the Social Security Act (42 U.S.C. 653(j)) is amended, in the matter preceding subparagraph (A), by inserting ", part B, or part E" after "this part".

TITLE II--IMPROVING OUTCOMES FOR CHILDREN IN FOSTER CARE

[*201] Sec. 201. STATE OPTION FOR CHILDREN IN FOSTER CARE, AND CERTAIN CHILDREN IN AN ADOPTIVE OR GUARDIANSHIP PLACEMENT, AFTER ATTAINING AGE 18.

(a) Definition of Child.--Section 475 of the Social Security Act (42 U.S.C. 675) is amended by adding at the end the following:

"(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 kinship 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;

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

"(iv) who is--

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

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

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

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

"(V) incapable of doing any of the activities described in subclauses (I) through (IV) due to a medical condition, which incapability is supported by regularly updated information in the case plan of the child."

(b) Conforming Amendment to Definition of Child-Care Institution.--Section 472(c)(2) of such Act (42 U.S.C. 672(c)(2)) is amended by inserting "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," before "but".

(c) Conforming Amendments to Age Limits Applicable to Children Eligible for Adoption Assistance or Kinship Guardianship Assistance.--Section 473(a)(4) of such Act (42 U.S.C. 673(a)(4)) is amended to read as follows:

"(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 kinship 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."

(d) Effective Date.--The amendments made by this section shall take effect on October 1, 2010.

[*202] Sec. 202. TRANSITION PLAN FOR CHILDREN AGING OUT OF FOSTER CARE.

Section 475(5) of the Social Security Act (42 U.S.C. 675) is amended--

(1) in subparagraph (F)(ii), by striking "and" at the end;

(2) in subparagraph (G), by striking the period at the end and inserting "; and"; and

(3) by adding at the end the following:

"(H) during the 90-day period immediately prior to the date on which the child will attain 18 years of age, or such greater age as the State may elect under paragraph (8)(B)(iii), 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."

[*203] Sec. 203. SHORT-TERM TRAINING FOR CHILD WELFARE AGENCIES, RELATIVE GUARDIANS, AND COURT PERSONNEL.

(a) In General.--Section 474(a)(3)(B) of the Social Security Act (42 U.S.C. 674(a)(3)(B)) is amended--

(1) by inserting "or relative guardians" after "adoptive parents";

(2) by striking "and the members" and inserting ", the members";

(3) by inserting ", or State-licensed or State-approved child welfare agencies providing services," after "providing care";

(4) by striking "foster and adopted" the 1st place it appears;

(5) by inserting "and members of the staff of abuse and neglect courts, agency attorneys, attorneys representing children or parents, guardians ad litem, or other court-appointed special advocates representing children in proceedings of such courts," after "part,";

(6) by inserting "guardians," before "staff members,";

(7) by striking "and institutions" and inserting "institutions, attorneys, and advocates"; and

(8) by inserting "and children living with relative guardians" after "foster and adopted children" the 2nd place it appears.

(b) Phase-in.--With respect to an expenditure described in section 474(a)(3)(B) of the Social Security Act by reason of an amendment made by subsection (a) of this section, in lieu of the percentage set forth in such section 474(a)(3)(B), the percentage that shall apply is--

(1) 55 percent, if the expenditure is made in fiscal year 2009;

(2) 60 percent, if the expenditure is made in fiscal year 2010;

(3) 65 percent, if the expenditure is made in fiscal year 2011; or

(4) 70 percent, if the expenditure is made in fiscal year 2012.

[*204] Sec. 204. EDUCATIONAL STABILITY.

(a) In General.--Section 475 of the Social Security Act (42 U.S.C. 675), as amended by section 101(c)(4) of this Act, is amended--

(1) in paragraph (1)--

(A) in subparagraph (C), by striking clause (iv) and redesignating clauses (v) through (viii) as clauses (iv) through (vii), respectively; and

(B) by adding at the end the following:

"(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."; and

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

(A) by striking "and reasonable" and inserting "reasonable"; and

(B) by inserting ", and reasonable travel for the child to remain in the school in which the child is enrolled at the time of placement" before the period.

(b) Educational Attendance Requirement.--Section 471(a) of the Social Security Act (42 U.S.C. 671(a)), as amended by sections 101(a) and 103 of this Act, is amended--

(1) by striking "and" at the end of paragraph (28);

(2) by striking the period at the end of paragraph (29) and inserting "; and"; and

(3) by adding at the end the following:

"(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 purposes 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 in the case plan of the child.".

[*205] Sec. 205. HEALTH OVERSIGHT AND COORDINATION PLAN.

Section 422(b)(15) of the Social Security Act (42 U.S.C. 622(b)(15)) is amended to read as follows:

110 P.L. 351, *205; 122 Stat. 3949;
2008 Enacted H.R. 6893; 110 Enacted H.R. 6893

"(15)(A) provides that the State will develop, in coordination and collaboration with the State agency referred to in paragraph (1) and the State agency responsible for administering the State plan approved under title XIX, and in consultation with pediatricians, other experts in health care, and experts in and recipients of child welfare services, a plan for the ongoing oversight and coordination of health care services for any child in a foster care placement, which shall ensure a coordinated strategy to identify and respond to the health care needs of children in foster care placements, including mental health and dental health needs, and shall include an outline of--

"(i) a schedule for initial and follow-up health screenings that meet reasonable standards of medical practice;

"(ii) how health needs identified through screenings will be monitored and treated;

"(iii) how medical information for children in care will be updated and appropriately shared, which may include the development and implementation of an electronic health record;

"(iv) steps to ensure continuity of health care services, which may include the establishment of a medical home for every child in care;

"(v) the oversight of prescription medicines; and

"(vi) how the State actively consults with and involves physicians or other appropriate medical or non-medical professionals in assessing the health and well-being of children in foster care and in determining appropriate medical treatment for the children; and

"(B) subparagraph (A) shall not be construed to reduce or limit the responsibility of the State agency responsible for administering the State plan approved under title XIX to administer and provide care and services for children with respect to whom services are provided under the State plan developed pursuant to this subpart;"

[*206] Sec. 206. SIBLING PLACEMENT.

Section 471(a) of the Social Security Act (42 U.S.C. 671(a)), as amended by sections 101(a), 103, and 204(b) of this Act, is amended--

(1) by striking "and" at the end of paragraph (29);

(2) by striking the period at the end of paragraph (30) and inserting "; and"; and

(3) by adding at the end the following:

"(31) provides that reasonable efforts shall be made--

"(A) to place siblings removed from their home in the same foster care, kinship guardianship, or adoptive placement, unless the State documents that such a joint placement would be contrary to the safety or well-being of any of the siblings; and

"(B) in the case of siblings removed from their home who are not so jointly placed, to provide for frequent visitation or other ongoing interaction between the siblings, unless that State documents that frequent visitation or other ongoing interaction would be contrary to the safety or well-being of any of the siblings."

TITLE III--TRIBAL FOSTER CARE AND ADOPTION ACCESS

[*301] Sec. 301. EQUITABLE ACCESS FOR FOSTER CARE AND ADOPTION SERVICES FOR INDIAN CHILDREN IN TRIBAL AREAS.

110 P.L. 351, *301; 122 Stat. 3949;
2008 Enacted H.R. 6893; 110 Enacted H.R. 6893

(a) Authority for Direct Payment of Federal Title IV-E Funds for Programs Operated by Indian Tribal Organizations.--

(1) In general.-- Part E of title IV of the Social Security Act (42 U.S.C. 670 et seq.) is amended by adding at the end the following:

"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) of this subparagraph, 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 section 472(a);

"(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, kinship guardianship assistance payments in accordance with section 473(d) only on behalf of children who meet the requirements of section 473(d)(3).

"(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 section 472(a)(3).

"(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 expenditures or indirect costs to the same extent as states.--Nothing in this subparagraph shall be construed as preventing a tribe, organization, or consortium from claiming any expenditures or indirect costs 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.

"(II) 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) of this clause and clause (v) of this subparagraph, 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) of this Act, 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 Fostering Connections to Success and Increasing Adoptions 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) of this clause), 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) of this clause, 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) of this subparagraph, 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) of this Act, in-kind expenditures from third-party sources may be claimed for purposes of determining the non-Federal share of expenditures under any subparagraph of such section 474(a)(3) only in accordance with the regulations promulgated by the Secretary under section 301(e)(2) of the Fostering Connections to Success and Increasing Adoptions 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) of this Act, no regulations required to be promulgated under section 301(e)(2) of the Fostering Connections to Success and Increasing Adoptions 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) of this subparagraph 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) of this Act 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 section 472(h) to a child on whose behalf payments are paid under section 472, or the application of section 473(b) to a child on whose behalf payments are made under section 473 pursuant to an adoption assistance agreement or a kinship 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."

(2) Conforming amendments.-- Section 472(a)(2)(B) of such Act (42 U.S.C. 672(a)(2)(B)) is amended--

(A) in clause (i), by striking "or" at the end;

(B) in clause (ii), by striking "and" at the end and inserting "or"; and

(C) by adding at the end the following:

"(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; and".

(b) Authority to Receive Portion of State Allotment as Part of an Agreement to Operate the John H. Chafee Foster Care Independence Program.--Section 477 of such Act (42 U.S.C. 677) is amended by adding at the end the following:

"(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) of this section.

"(2) Application.-- A tribe, organization, or consortium desiring an allotment under paragraph (1) of this subsection 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 redirected 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) of this subsection 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) of this section 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) of this subsection 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 tribe, 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 (either directly or under supervision of the State) that have a plan approved under this subsection."

(c) State and Tribal Cooperation.--

(1) State plan requirement to negotiate in good faith.----

110 P.L. 351, *301; 122 Stat. 3949;
2008 Enacted H.R. 6893; 110 Enacted H.R. 6893

(A) In general.--Section 471(a) of the Social Security Act (42 U.S.C. 671(a)), as amended by sections 101(a), 103, 204(b), and 206 of this Act, is amended--

- (i) by striking "and" at the end of paragraph (30);
- (ii) by striking the period at the end of paragraph (31) and inserting "; and"; and
- (iii) by adding at the end the following:

"(32) 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 administer all or part of the program 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 State or tribally licensed foster family homes, adoption assistance payments, and, if the State has elected to provide such payments, kinship guardianship assistance payments under section 473(d), and tribal access to resources for administration, training, and data collection under this part."

(B) Chafee program conforming amendment.--Section 477(b)(3)(G) of such Act (42 U.S.C. 677(b)(3)(G)) is amended--

- (i) by striking "and that" and inserting "that"; and
- (ii) by striking the period at the end and inserting "; 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."

(2) Application of tribal federal matching rate to cooperative agreements or contracts between state or tribes.-- Paragraphs (1) and (2) of section 474(a) of such Act (42 U.S.C. 674(a)) are each amended by inserting "(or, with respect to such payments made during such quarter under a cooperative agreement or contract entered into by the State and an Indian tribe, tribal organization, or tribal consortium for the administration or payment of funds under this part, an amount equal to the Federal medical assistance percentage that would apply under section 479B(d) (in this paragraph referred to as the 'tribal FMAP') if such Indian tribe, tribal organization, or tribal consortium made such payments under a program operated under that section, unless the tribal FMAP is less than the Federal medical assistance percentage that applies to the State)" before the semicolon.

(d) Rules of Construction.--Nothing in the amendments made by this section shall be construed as--

- (1) authorization to terminate funding on behalf of any Indian child receiving foster care maintenance payments or adoption assistance payments on the date of enactment of this Act and for which the State receives Federal matching payments under paragraph (1) or (2) of section 474(a) of the Social Security Act (42 U.S.C. 674(a)), regardless of whether a cooperative agreement or contract between the State and an Indian tribe, tribal organization, or tribal consortium is in effect on such date or an Indian tribe, tribal organization, or tribal consortium elects subsequent to such date to operate a program under section 479B of such Act (as added by subsection (a) of this section); or
- (2) affecting the responsibility of a State--

(A) as part of the plan approved under section 471 of the Social Security Act (42 U.S.C. 671), to provide foster care maintenance payments, adoption assistance payments, and if the State elects, kinship guardianship assistance payments, for Indian children who are eligible for such payments and who are not otherwise being served by an Indian

110 P.L. 351, *301; 122 Stat. 3949;
2008 Enacted H.R. 6893; 110 Enacted H.R. 6893

tribe, tribal organization, or tribal consortium pursuant to a program under such section 479B of such Act or a 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 part E of title IV of such Act; or

(B) as part of the plan approved under section 477 of such Act (42 U.S.C. 677) to administer, supervise, or oversee programs carried out under that plan on behalf of Indian children who are eligible for such programs if such children are not otherwise being served by an Indian tribe, tribal organization, or tribal consortium pursuant to an approved plan under section 477(j) of such Act or a cooperative agreement or contract entered into under section 477(b)(3)(G) of such Act.

(e) Regulations.--

(1) In general.-- Except as provided in paragraph (2) of this subsection, not later than 1 year after the date of enactment of this section, the Secretary of Health and Human Services, in consultation with Indian tribes, tribal organizations, tribal consortia, and affected States, shall promulgate interim final regulations to carry out this section and the amendments made by this section. Such regulations shall include procedures to ensure that a transfer of responsibility for the placement and care of a child under a State plan approved under section 471 of the Social Security Act to a tribal plan approved under section 471 of such Act in accordance with section 479B of such Act (as added by subsection (a)(1) of this section) or to an Indian tribe, a tribal organization, or a tribal consortium that has entered into a cooperative agreement or contract with a State for the administration or payment of funds under part E of title IV of such Act does not affect the eligibility of, provision of services for, or the making of payments on behalf of, such children under part E of title IV of such Act, or the eligibility of such children for medical assistance under title XIX of such Act.

(2) In-kind expenditures from third-party sources for purposes of determining non-federal share of administrative and training expenditures.----

(A) In general.--Subject to subparagraph (B) of this paragraph, not later than September 30, 2011, the Secretary of Health and Human Services, in consultation with Indian tribes, tribal organizations, and tribal consortia, shall promulgate interim final regulations specifying the types of in-kind expenditures, including plants, equipment, administration, and services, and the third-party sources for such in-kind expenditures which may be claimed by tribes, organizations, and consortia with plans approved under section 471 of the Social Security Act in accordance with section 479B of such Act, up to such percentages as the Secretary, in such consultation shall specify in such regulations, for purposes of determining the non-Federal share of administrative and training expenditures for which the tribes, organizations, and consortia may receive payments for under any subparagraph of section 474(a)(3) of such Act.

(B) Effective date.--In no event shall the regulations required to be promulgated under subparagraph (A) take effect prior to October 1, 2011.

(C) Sense of the congress.--It is the sense of the Congress that if the Secretary of Health and Human Services fails to publish in the Federal Register the regulations required under subparagraph (A) of this paragraph, the Congress should enact legislation specifying the types of in-kind expenditures and the third-party sources for such in-kind expenditures which may be claimed by tribes, organizations, and consortia with plans approved under section 471 of the Social Security Act in accordance with section 479B of such Act, up to specific percentages, for purposes of determining the non-Federal share of administrative and training expenditures for which the tribes, organizations, and consortia may receive payments for under any subparagraph of section 474(a)(3) of such Act.

(f) Effective Date.--The amendments made by subsections (a), (b), and (c) shall take effect on October 1, 2009, without regard to whether the regulations required under subsection (e)(1) have been promulgated by such date.

[*302] Sec. 302. TECHNICAL ASSISTANCE AND IMPLEMENTATION.

110 P.L. 351, *302; 122 Stat. 3949;
2008 Enacted H.R. 6893; 110 Enacted H.R. 6893

Section 476 of the Social Security Act (42 U.S.C. 676) is amended by adding at the end the following:

"(c) Technical Assistance and Implementation Services for Tribal Programs.--

"(1) Authority.-- The Secretary shall provide technical assistance and implementation services that are dedicated to improving services and permanency outcomes for Indian children and their families through the provision of assistance described in paragraph (2).

"(2) Assistance provided.----

"(A) In general.--The technical assistance and implementation services shall be to--

"(i) 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 required under State plans under part B and this part;

"(ii) assist and provide technical assistance to--

"(I) Indian tribes, tribal organizations, and tribal consortia seeking to operate a program under part B or under 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)(32), or 477(b)(3)(G); and

"(iii) subject to subparagraph (B), make one-time grants, to tribes, tribal organizations, or tribal consortia that are seeking to develop, and intend, not later than 24 months after receiving such a grant to submit to the Secretary a plan under section 471 to implement a program under this part as authorized by section 479B, that shall--

"(I) not exceed \$ 300,000; and

"(II) be used for the cost of developing a plan under section 471 to carry out a program under section 479B, including costs related to development of necessary data collection systems, a cost allocation plan, agency and tribal court procedures necessary to meet the case review system requirements under section 475(5), or any other costs attributable to meeting any other requirement necessary for approval of such a plan under this part.

"(B) Grant condition.--

"(i) In general.--As a condition of being paid a grant under subparagraph (A)(iii), a tribe, tribal organization, or tribal consortium shall agree to repay the total amount of the grant awarded if the tribe, tribal organization, or tribal consortium fails to submit to the Secretary a plan under section 471 to carry out a program under section 479B by the end of the 24-month period described in that subparagraph.

"(ii) Exception.--The Secretary shall waive the requirement to repay a grant imposed by clause (i) if the Secretary determines that a tribe's, tribal organization's, or tribal consortium's failure to submit a plan within such period was the result of circumstances beyond the control of the tribe, tribal organization, or tribal consortium.

"(C) Implementation authority.--The Secretary may provide the technical assistance and implementation services described in subparagraph (A) 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.

"(3) Appropriation.-- There is appropriated to the Secretary, out of any money in the Treasury of the United States not otherwise appropriated, \$ 3,000,000 for fiscal year 2009 and each fiscal year thereafter to carry out this

subsection."

TITLE IV--IMPROVEMENT OF INCENTIVES FOR ADOPTION

[*401] Sec. 401. ADOPTION INCENTIVES PROGRAM.

(a) 5-Year Extension.--Section 473A of the Social Security Act (42 U.S.C. 673b) is amended--

- (1) in subsection (b)(4), by striking "in the case of fiscal years 2001 through 2007,";
- (2) in subsection (b)(5), by striking "1998 through 2007" and inserting "2008 through 2012";
- (3) in subsection (c)(2), by striking "each of fiscal years 2002 through 2007" and inserting "a fiscal year"; and
- (4) in each of subsections (h)(1)(D), and (h)(2), by striking "2008" and inserting "2013".

(b) Updating of Fiscal Year Used in Determining Base Numbers of Adoptions.--Section 473A(g) of such Act (42 U.S.C. 673b(g)) is amended--

(1) in paragraph (3), by striking "means" and all that follows and inserting "means, with respect to any fiscal year, the number of foster child adoptions in the State in fiscal year 2007.";

(2) in paragraph (4)--

(A) by inserting "that are not older child adoptions" before "for a State"; and

(B) by striking "means" and all that follows and inserting "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."; and

(3) in paragraph (5), by striking "means" and all that follows and inserting "means, with respect to any fiscal year, the number of older child adoptions in the State in fiscal year 2007.".

(c) Increase in Incentive Payments for Special Needs Adoptions and Older Child Adoptions.--Section 473A(d)(1) of such Act (42 U.S.C. 673b(d)(1)) is amended--

(1) in subparagraph (B), by striking "\$ 2,000" and inserting "\$ 4,000"; and

(2) in subparagraph (C), by striking "\$ 4,000" and inserting "\$ 8,000".

(d) 24-Month Availability of Payments to States.--Section 473A(e) of such Act (42 U.S.C. 673b(e)) is amended--

(1) in the heading, by striking "2-Year" and inserting "24-Month"; and

(2) by striking "through the end of the succeeding fiscal year" and inserting "for the 24-month period beginning with the month in which the payments are made".

(e) Additional Incentive Payment for Exceeding the Highest Ever Foster Child Adoption Rate.--

(1) In general.-- Section 473A(d) of such Act (42 U.S.C. 673b(d)) is amended--

(A) in paragraph (1), in the matter preceding subparagraph (A), by striking "paragraph (2)" and inserting "paragraphs (2) and (3)";

(B) in paragraph (2), by striking "this section" each place it appears and inserting "paragraph (1)"; and

110 P.L. 351, *401; 122 Stat. 3949;
2008 Enacted H.R. 6893; 110 Enacted H.R. 6893

(C) by adding at the end the following:

"(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) of this subsection are 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) of this subsection for the State shall be increased, subject to subparagraph (C) of this paragraph, by the amount determined for the State under subparagraph (B) of this paragraph.

"(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."

(2) Definitions.-- Section 473A(g) of such Act (42 U.S.C. 673b(g)) is amended by adding at the end the following:

"(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 2002 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."

(3) Conforming amendments.----

(A) State eligibility.--Section 473A(b)(2) of such Act (42 U.S.C. 673b(b)(2)) is amended--

- (i) in subparagraph (A), by striking "or" at the end;
- (ii) in subparagraph (B), by adding "or" at the end; and
- (iii) by adding at the end the following:

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

(B) Data.--Section 473A(c)(2) of such Act (42 U.S.C. 673b(c)(2)), as amended by subsection (a)(3) of this section, is amended by inserting "and the foster child adoption rate for the State for the fiscal year," after "during a fiscal year,".

[*402] Sec. 402. PROMOTION OF ADOPTION OF CHILDREN WITH SPECIAL NEEDS.

Section 473 of the Social Security Act (42 U.S.C. 673), as amended by section 101(b) of this Act, is amended--

(1) in subsection (a)--

(A) in paragraph (2)--

(i) in subparagraph (A)--

(I) by redesignating items (aa) and (bb) of clause (i)(I) as subitems (AA) and (BB), respectively;

(II) in subitem (BB) of clause (i)(I) (as so redesignated), by striking "item (aa) of this subclause" and inserting "subitem (AA) of this item";

(III) by redesignating subclauses (I) through (III) of clause (i) as items (aa) through (cc), respectively;

(IV) by redesignating clauses (i) and (ii) as subclauses (I) and (II), respectively;

(V) by realigning the margins of the items, subclauses, and clauses redesignated by subclauses (I) through (IV) accordingly;

(VI) by striking "if the child--" and inserting "if--

"(i) in the case of a child who is not an applicable child for the fiscal year (as defined in subsection (e)), the child--";

(VII) in subclause (II) of clause (i) (as so redesignated)--

(aa) by striking "(c)" and inserting "(c)(1)"; and

(bb) by striking the period at the end and inserting "; or"; and

(VIII) by adding at the end the following:

"(ii) in the case of a child who is an applicable child for the fiscal year (as so defined), the child--

"(I) (aa) at the time of initiation of adoption proceedings was in the care of a public or licensed private child placement agency or Indian tribal organization pursuant to-- "(AA) an involuntary removal of the child from the home in accordance with a judicial determination to the effect that continuation in the home would be contrary to the welfare of the child; or "(BB) a voluntary placement agreement or voluntary relinquishment;

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

"(cc) was residing in a foster family home or child care institution with the child's minor parent, and the child's minor parent was in such foster family home or child care institution pursuant to-- "(AA) an involuntary removal of the child from the home in accordance with a judicial determination to the effect that continuation in the home would be contrary to the welfare of the child; or "(BB) a voluntary placement agreement or voluntary relinquishment; and

"(II) has been determined by the State, pursuant to subsection (c)(2), to be a child with special needs."; and

(ii) in subparagraph (C)--

(I) by redesignating subclauses (I) and (II) of clause (iii) as items (aa) and (bb), respectively;

(II) by redesignating subclauses (I) and (II) of clause (iv) as items (aa) and (bb), respectively;

(III) by redesignating clauses (i) through (iv) as subclauses (I) through (IV), respectively;

(IV) by realigning the margins of the subclauses and clauses redesignated by subclauses (I) through (III) accordingly;

(V) by striking "if the child--" and inserting "if--

"(i) in the case of a child who is not an applicable child for the fiscal year (as defined in subsection (e)), the child--";

(VI) in clause (i)(I) (as so redesignated), by striking "(A)(ii)" and inserting "(A)(i)(II)";

(VII) in clause (i)(IV) (as so redesignated)--

(aa) in the matter preceding item (aa), by striking "(A)" and inserting "(A)(i)"; and

(bb) by striking the period at the end and inserting "; or"; and

(VIII) by adding at the end the following:

"(ii) in the case of a child who is an applicable child for the fiscal year (as so defined), the child meets the requirements of subparagraph (A)(ii)(II), is 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 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."; and

(B) by adding at the end the following:

"(7)(A) Notwithstanding any other provision of this subsection, no payment may be made to parents with respect to any applicable child for a fiscal year that--

110 P.L. 351, *402; 122 Stat. 3949;
2008 Enacted H.R. 6893; 110 Enacted H.R. 6893

"(i) would be considered a child with special needs under subsection (c)(2);

"(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 an applicable 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 the child by the parents described in subparagraph (A).

"(8) A State shall spend an amount equal to the amount of savings (if any) in State expenditures under this part resulting from the application of paragraph (2)(A)(ii) to all applicable children for a fiscal year to provide to children or families any service (including post-adoption services) that may be provided under this part or part B.";

(2) in subsection (c)--

(A) by redesignating paragraphs (1) and (2) as subparagraphs (A) and (B), respectively, and realigning the margins accordingly;

(B) by striking "this section, a child shall not be considered a child with special needs unless" and inserting "this section--

"(1) in the case of a child who is not an applicable child for a fiscal year, the child shall not be considered a child with special needs unless"; and

(C) in paragraph (1)(B), as so redesignated, by striking the period at the end and inserting "; or"; and

(D) by adding at the end the following:

"(2) in the case of a child who is an applicable child for a fiscal year, the child shall not be considered a child with special needs unless--

"(A) the State has determined, pursuant to a criterion or criteria established by the State, that the child cannot or should not be returned to the home of his parents;"(B)

(i) the State has determined 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; or

"(ii) the child meets all medical or disability requirements of title XVI with respect to eligibility for supplemental security income benefits; and

"(C) the State has determined 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 the 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."; and

(3) by adding at the end the following:

"(e) Applicable Child Defined.--

110 P.L. 351, *402; 122 Stat. 3949;
2008 Enacted H.R. 6893; 110 Enacted H.R. 6893

"(1) On the basis of age.---

"(A) In general.--Subject to paragraphs (2) and (3), in this section, the term 'applicable child' means a child for whom an adoption assistance agreement is entered into under this section during any fiscal year described in subparagraph (B) if the child attained the applicable age for that fiscal year before the end of that fiscal year.

"(B) Applicable age.--For purposes of subparagraph (A), the applicable age for a fiscal year is as follows:

"In the case of fiscal year:	The applicable age is:
<hr/>	
2010	16
2011	14
2012	12
2013	10
2014	8
2015	6
2016	4
2017	2
2018 or thereafter	any age.

"(2) Exception for duration in care.-- Notwithstanding paragraph (1) of this subsection, beginning with fiscal year 2010, such term shall include a child of any age on the date on which an adoption assistance agreement is entered into on behalf of the child under this section if the child--

"(A) has been in foster care under the responsibility of the State for at least 60 consecutive months; and

"(B) meets the requirements of subsection (a)(2)(A)(ii).

"(3) Exception for member of a sibling group.-- Notwithstanding paragraphs (1) and (2) of this subsection, beginning with fiscal year 2010, such term shall include a child of any age on the date on which an adoption assistance agreement is entered into on behalf of the child under this section without regard to whether the child is described in paragraph (2)(A) of this subsection if the child--

"(A) is a sibling of a child who is an applicable child for the fiscal year under paragraph (1) or (2) of this subsection;

"(B) is to be placed in the same adoption placement as an applicable child for the fiscal year who is their sibling; and

"(C) meets the requirements of subsection (a)(2)(A)(ii)."

[*403] Sec. 403. INFORMATION ON ADOPTION TAX CREDIT.

Section 471(a) of the Social Security Act (42 U.S.C. 671(a)), as amended by sections 101(a), 103, 204(b), 206, and 301(c)(1)(A) of this Act, is amended--

(1) by striking "and" at the end of paragraph (31);

(2) by striking the period at the end of paragraph (32) and inserting "; and"; and

(3) by adding at the end the following:

"(33) 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."

TITLE V--CLARIFICATION OF UNIFORM DEFINITION OF CHILD AND OTHER PROVISIONS

[*501] Sec. 501. CLARIFICATION OF UNIFORM DEFINITION OF CHILD.

(a) Child Must Be Younger Than Claimant.--Section 152(c)(3)(A) of the Internal Revenue Code of 1986 is amended by inserting "is younger than the taxpayer claiming such individual as a qualifying child and" after "such individual".

(b) Child Must Be Unmarried.--Section 152(c)(1) of such Code is amended by striking "and" at the end of subparagraph (C), by striking the period at the end of subparagraph (D) and inserting ", and", and by adding at the end the following new subparagraph:

"(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."

(c) Restrict Qualifying Child Tax Benefits to Child's Parent.--

(1) Child tax credit.-- Section 24(a) of such Code is amended by inserting "for which the taxpayer is allowed a deduction under section 151" after "of the taxpayer".

(2) Persons other than parents claiming qualifying child.----

(A) In general.--Section 152(c)(4) of such Code is amended by adding at the end the following new subparagraph:

"(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."

(B) Conforming amendments.--

(i) Section 152(c)(4)(A) of such Code is amended by striking "Except" through "2 or more taxpayers" and inserting "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".

(ii) The heading for section 152(c)(4) of such Code is amended by striking "claiming" and inserting "who can claim the same".

(d) Effective Date.--The amendments made by this section shall apply to taxable years beginning after December 31, 2008.

[*502] Sec. 502. INVESTMENT OF OPERATING CASH.

Section 323 of title 31, United States Code, is amended to read as follows:

"323. Investment of operating cash

110 P.L. 351, *502; 122 Stat. 3949;
2008 Enacted H.R. 6893; 110 Enacted H.R. 6893

"(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."

[*503] Sec. 503. NO FEDERAL FUNDING TO UNLAWFULLY PRESENT INDIVIDUALS.

Nothing in this Act shall be construed to alter prohibitions on Federal payments to individuals who are unlawfully present in the United States.

TITLE VI--EFFECTIVE DATE

[*601] Sec. 601. EFFECTIVE DATE.

(a) In General.--Except as otherwise provided in this Act, each amendment made by this Act to part B or E of title IV of the Social Security Act shall take effect on the date of the enactment of this Act, and shall apply to payments under the part amended for quarters beginning on or after the effective date of the amendment.

(b) Delay Permitted if State Legislation Required.--In the case of a State plan approved under part B or E of title IV of the Social Security Act which the Secretary of Health and Human Services determines requires State legislation (other than legislation appropriating funds) in order for the plan to meet the additional requirements imposed by this Act, the State plan shall not be regarded as failing to comply with the requirements of such part solely on the basis of the failure of the plan to meet such additional requirements before the 1st day of the 1st calendar quarter beginning after the close of the 1st regular session of the State legislature that ends after the 1-year period beginning with the date of the enactment of this Act. For purposes of the preceding sentence, in the case of a State that has a 2-year legislative session, each year of the session is deemed to be a separate regular session of the State legislature.

Speaker of the House of Representatives.

Vice President of the United States and President of the Senate.