

<h1>ACF</h1> <p>Administration for Children and Families</p>	U.S. DEPARTMENT OF HEALTH AND HUMAN SERVICES Administration on Children, Youth and Families	
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TO: State, Tribal, and Territorial Agencies Administering or Supervising the Administration of Titles IV-E and IV-B of the Social Security Act, and State and Tribal Court Improvement Programs

SUBJECT: NEW LEGISLATION – Public Law (P.L.) 116-260, Division X and Section 305 of Title III of Division CC of the *Consolidated Appropriations Act, 2021*, enacted December 27, 2020

LEGAL AND RELATED REFERENCES: Titles IV-B and IV-E of the Social Security Act (the Act)

PURPOSE: To inform title IV-B and IV-E agencies and State and Tribal Court Improvement Programs of the enactment of Division X and Section 305 of Title III of Division CC of the *Consolidated Appropriations Act, 2021* and to provide basic information on the new law. Additional guidance on this law is forthcoming in Program Instructions.

BACKGROUND: The President signed the *Consolidated Appropriations Act, 2021*, P.L. 116-260, into law on December 27, 2020. In general, the law makes continuing appropriations for specified federal agencies and provides flexibilities and assistance in response to the COVID-19 pandemic and public health emergency¹. Division X of P.L. 116-260 provides supplemental appropriations for the John H. Chafee Foster Care Program for Successful Transition to Adulthood (Chafee) program, Education and Training Vouchers (ETV) program, the MaryLee Allen Promoting Safe and Stable Families Program, and the Court Improvement Program. Division X also temporarily increases Federal Financial Participation (FFP) for specific programs to 100%, includes temporary provisions related to foster care and Chafee programs for older youth, and includes the District of Columbia in the temporary Federal medical assistance percentage (FMAP) rate increase enacted in sec. 6008 of the *Family First Coronavirus Response Act* (P.L. 116-127). Sec. 305 of Title III of Division CC amends sec. 436 and 438 of the Act to

¹ “COVID-19 public health emergency” is defined in sec. 2(1) of Division X, P.L. 116-260 and began January 27, 2020 and was renewed effective January 21, 2021 for 90 days ([subject to be extended](#)).

extend the authorization of mandatory appropriations for title IV-B, subpart 2 and to change the structure of state CIP grants from three grants to one grant.

INFORMATION: A brief summary of the major child welfare provisions of Division X and sec. 305 of Title III of Division CC are as follows. Specific information regarding implementation is forthcoming.

Division X of P.L. 116-260: Supporting Foster Youth and Families through the Pandemic Act

Sec. 3. Continued Safe Operation of Child Welfare Programs and Support for Older Foster Youth

Chafee and ETV Supplemental Funding

- In addition to the regular appropriation for fiscal year (FY) 2021, appropriates \$400 million for FY 2021 in supplemental funding for Chafee programs, reserving a minimum of \$50 million for ETV (sec. 477(h) of the Act; sec. 3(a)(1) and (2) of Division X).
- The supplemental Chafee and ETV appropriation has a 100% federal match (normally this is 80%) (sec. 474(a)(4) and (e)(1) of the Act; sec. 3(a)(4) of Division X).
- Exempts the supplemental Chafee and ETV funding from the National Youth in Transition Database (NYTD) penalty calculations (sec. 477(c) and (e)(2); sec. 3(a)(6) of Division X).

Maximum ETV Award Amount

- Increases the maximum ETV award amount from \$5,000 to \$12,000 for the period from October 1, 2020 through September 30, 2022 (sec. 477(i)(4)(B) of the Act; sec. 3(a)(5) of Division X).

Maximum Age Limitation on Eligibility for Assistance

- Allows states and tribes to provide Chafee and ETV services and assistance to eligible youth until age 27 for FYs 2020 and 2021 (10/1/19-9/30/21) (sec. 3(b) of Division X).

Technical Assistance

- Sets aside 1.5% of supplemental funding (approximately \$6 million) for evaluations, technical assistance (TA), and data collection, from which at least \$500,000 must be reserved for TA to states implementing or seeking to implement a driving and transportation program for youth in foster care (sec. 477(g)(2) of the Act; sec. 3(a)(3)(A) and (B)(i) of Division X).

Programmatic Flexibilities Effective from April 1, 2020 through September 30, 2021

- Allows states and tribes to waive the requirement that a youth must be enrolled in a post-secondary education or training program or making satisfactory progress toward completing that program if a youth is unable to do so due to the COVID-19 public health emergency (sec. 477(i)(3) of the Act; sec. 3(d)(1) of Division X).
- Allows states and tribes to use ETV to help support youth to remain enrolled in a post-secondary education or training program, including expenses that are not part of the cost of attendance (sec. 3(d)(2) of Division X).
- *Authority to Waive Limitations on Percentage of Funds Used for Housing Assistance and Eligibility for Such Assistance:*

- Allows states and tribes to use more than 30% of its Chafee funds for room and board payments for a fiscal year (sec. 477(b)(3)(B) and (c)(1) of the Act; sec. 3(d)(3)(A) of Division X).
- Allows states and tribes to use Chafee room and board amounts for otherwise eligible youth who are aged 18-26 and experienced foster care at age 14 or older (sec. 3(d)(3)(B) of Division X).
- *Authority to Provide Driving and Transportation Assistance:*
 - Specifies that states and tribes may provide an otherwise eligible youth aged 15-26 with up to \$4,000 per year in Chafee funds for driving and transportation assistance (sec. 3(d)(4)(A) of Division X).
 - Assistance must be disregarded for determining the youth's eligibility for any other federal or federally supported assistance. States and tribes must take steps to prevent duplication of benefits (sec. 3(d)(4)(B) of Division X).

Sec. 4 Preventing Aging Out of Foster Care During the Pandemic

Addressing Aging Out of Foster Care During the Pandemic

- The title IV-E agency may not require a youth to leave foster care solely due to age before October 1, 2021. Also, the title IV-E agency may not find a youth ineligible for title IV-E foster care maintenance payments due to age or failure to meet the education and employment conditions before October 1, 2021 (sec. 475(8)(B) of the Act; sec. 4(a) of Division X).

Re-Entry to Foster Care for Youth Who Age Out During the Pandemic

- The title IV-E agency (regardless of whether the agency has extended title IV-E foster care under sec. 475(8)(B) of the Act) must:
 - Permit any youth who left foster care due to age during the COVID-19 public health emergency (defined in sec. 2 of Division X, renewed effective January 21, 2021 for 90 days, subject to be extended) to voluntarily re-enter foster care.
 - Provide notice of the option to reenter foster care to each youth who aged out during the COVID-19 public health emergency (defined in sec. 2 of Division X, renewed effective January 21, 2021 for 90 days, subject to be extended) (sec. 4(b)(2) of Division X);
 - The agency must conduct a public awareness campaign about the option of re-entry for youth who have not attained 22 years of age, who aged out of foster care in FYs 2020 or 2021, and who are otherwise eligible to return to foster care (sec. 4(b)(4) of Division X).

Protections for Youth in Foster Care

- The title IV-E agency must continue to ensure the safety, permanency, and well-being of older youth who remain in or who age out of foster care and re-enter foster care and continue transition planning (sec. 475(5)(H) of the Act; sec. 4(c) of Division X).

Authority to Use Supplemental Chafee Funding for Certain Costs

- Specifies that states and tribes may use the supplemental Chafee appropriation for certain costs incurred in meeting the requirements related to preventing youth from aging out of foster care, re-entry into foster care, and protections for youth in foster care. These costs must be incurred after enactment and before October 1, 2021 (sec. 4(d)(1) and (2)(A) of Division X).

- States and tribes must not use the supplemental Chafee appropriation for specified foster care costs identified in Division X for title IV-E eligible youth, including youth age 18 or older who are eligible due to a temporary waiver of the age or education/employment requirements (sec. 4(d)(2)(B) of Division X).
- Title IV-E agencies must make reasonable efforts to determine the title IV-E eligibility of each older youth who remains in or reenters foster care for the reasons specified in Division X (sec. 4(d)(2)(C) of Division X).
- Youth who re-enter foster care during the emergency period of April 1, 2020 and September 30, 2021 may not be determined ineligible for title IV-E foster care maintenance payments solely due to age or the education/employment conditions before October 1, 2021 (sec. 4(d)(2)(D) of Division X).
- Sec. 4 has no force or effect after September 30, 2021 (sec. 4(e) of Division X).

Sec. 5 Family First Prevention Services Program Pandemic Flexibility

- From April 1, 2020 through September 30, 2021, the FFP is 100% for the title IV-E prevention program, including for allowable service, administrative, and training costs (sec. 474(a)(6)(A)(i) and (B) of the Act; sec. 5 of Division X).

Sec. 6 Emergency Funding for the MaryLee Allen Promoting Safe and Stable Families (PSSF) Program

- Appropriates \$85 million in supplemental funding for FY 2021 for programs under title IV-B, subpart 2, in addition to any amounts otherwise appropriated (sec. 6(a) of Division X).
- Of this amount, \$75 million is for supplemental grants to states and tribes for the PSSF Program.
- Deems the FFP for the supplemental PSSF funds to be 100% (normally this is 75%) (sec. 434(a)(1) of the Act; sec. 6(b) of Division X).

Sec. 7 Court Improvement Program (CIP)

- Reserves \$10 million from the \$85 million in supplemental title IV-B, subpart 2 program funding, per sec. 6 of Division X, for CIP for FY 2021 (sec. 7(a) of Division X).
- Distribution of the supplemental CIP funds is as follows:
 - Reserves \$500,000 for Tribal court improvement from the \$10 million in supplemental CIP funding (sec. 7(b)(1)(A) of Division X).
 - Out of the remaining \$9.5 million in supplemental CIP funds, HHS must make a grant to the highest state court in each state that is approved to receive a basic CIP grant for FY 2021, in addition to CIP grants already made. Provides a formula for the supplemental state court grant awards, which is \$85,000 plus an amount based on the percentage of the state's population under age 21 (sec. 7(b)(1)(B), (2), and (3) of Division X).
 - There is no additional application required for state courts to receive the supplemental CIP funding (sec. 7(b)(3)(B) of Division X).
 - HHS may require grantees to report on information specific to the supplemental CIP grants (sec. 7(b)(3)(C) of Division X).
 - The 25% match for state courts does not apply to the supplemental grants (sec. 438(d) of the Act; sec. 7(b)(3)(E) of Division X).

- State courts must use the supplemental CIP grant to address needs stemming from the COVID-19 public health emergency, which may include technology investments, training for judges, and programs to help families address the case plan (sec. 7(c) of Division X).
- Amends sec. 438(c)(1) and (d) of the Act to extend the authority for CIP grants through FY 2022 (sec. 7(d) of Division X). Note that sec. 305 of Title III, Division CC of P.L. 116-260 amends sec. 436 and 438 of the Act to change the structure of the state CIP from three grants to one grant, beginning in FY 2022 (see page 6).

Sec. 8 Kinship Navigator Programs² Pandemic Flexibility

Inapplicability of Matching Funds Requirements

- From April 1, 2020 through September 30, 2021, the FFP is 100% for title IV-E Kinship Navigator Programs (sec. 474(a)(7) of the Act; sec. 8(a) of Division X).

Waiver of Evidence Standard

- From April 1, 2020 through September 30, 2021, waives the evidence based standard requirements in sec. 471(e)(4)(C) of the Act, but requires title IV-E agencies to provide an assurance that the title IV-E Kinship Navigator Program will be, or is in the process of being, evaluated for the purpose of building an evidence base to later determine whether the program meets the title IV-E evidence based standard requirements (sec. 8(b) of Division X).

Other Allowable Uses of Funds

- From April 1, 2020 through September 30, 2021, allows title IV-E Kinship Navigator Program funding to be used for specified activities, including evaluations and independent systematic reviews, short term support for kinship families for direct services or assistance, and technology for remote learning or other virtual activities. Funds may also be used to ensure that kinship caregivers have access to information and resources for testing and treatment for COVID-19, health care, legal assistance, and assistance with making alternative care plans for the children in their care (sec. 8(c) of Division X).

Territory Cap Exemption

- Exempts the supplemental title IV-E Kinship Navigator Program funds paid to the territories between April 1, 2020 and September 30, 2021 from the cap under sec. 1108(a)(1) of the Act (sec. 8(d) of Division X).

Sec. 9. Adjustment of Funding Certainty Baselines for Family First Transition Act Funding Certainty Grants

- Amends sec. 602(c)(2) of Division N of the *Further Consolidated Appropriations Act, 2020* (P.L. 116-94) to create a hold harmless provision so as not to penalize title IV-E agencies that were operating a title IV-E child welfare waiver demonstration program on September 30, 2019 for the temporary FMAP increases made due to the COVID-19 public health emergency when calculating baselines for Family First Transition Act funding certainty grants. This change necessitates a revision to the Funding Certainty Baseline table previously issued as Attachment A with Program Instruction [ACYF-CB-](#)

² Division H of P.L. 116-260 also appropriates funding under title IV-B, subpart 2 to make formula grants to title IV-E agencies for the development, enhancement, and evaluation of kinship navigator programs.

[PI-20-08](#). An Adjusted Qualifying Agency Funding Certainty Baselines table for FY 2020 is provided as Attachment B to this IM.

Sec. 11 Technical Correction to Temporary Increase of Medicaid FMAP

- Amends sec. 6008 of the *Family First Coronavirus Response Act* (P.L. 116-127) to include the District of Columbia in the temporary FMAP increase for periods beginning January 1, 2020, which is when the increase for other states took effect.

Sec. 305 of Title III, Division CC of P.L. 116-260: Extension of MaryLee Allen Promoting Safe and Stable Families Program and State Court Support

Title IV-B Extensions (effective October 1, 2021)

- Amends sec. 436(a) of the Act to extend the title IV-B, subpart 2 authorization for mandatory appropriations to FY 2022, from FY 2021 (sec. 305(a) of title III).
- Amends sec. 436(b)(4) and (5) of the Act to extend the authorizations for monthly caseworker visits funding and regional partnership grants to FY 2022, from FY 2021 (sec. 305(a) of title III).

CIP Amendments (effective October 1, 2021)

- Amends sec. 438(b) of the Act to merge the current three CIP grants into one grant for highest state courts. Requires at least 30% of funds to be used for collaboration and data sharing (sec. 305(b) of title III).
- Amends sec. 438(c)(1) and (2) of the Act to specify the formula for awarding state CIP grants, using a base amount of \$255,000 plus an amount based on the percentage of the state's population under age 21 (sec. 305(b) of title III).
- Continues the reservation for Tribal court improvement at \$1 million, per sec. 436(c)(3) of the Act (sec. 305(b) of title III).

INQUIRIES TO: [Children's Bureau Regional Program Managers](#)

/s/

Elizabeth Darling
Commissioner,
Administration on Children, Youth and
Families

Attachments:

A -- [P.L. 116-260, Division X](#) (begins page 1228 of Enrolled legislation) and [sec. 305, title III, Division CC](#) (begins page 1813 of Enrolled legislation)

B – Adjusted Qualifying Agency Funding Certainty Baselines Table

Disclaimer: Information Memoranda (IMs) provide information or recommendations to states, tribes, grantees, and others on a variety of child welfare issues. IMs do not establish requirements or supersede existing laws or official guidance.