

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Administration for Children and Families

#### 45 CFR Part 1356

RIN 0970-AC89

#### Foster Care Legal Representation

**AGENCY:** Children's Bureau (CB), Administration on Children, Youth and Families (ACYF), Administration for Children and Families (ACF), Department of Health and Human Services (HHS).

**ACTION:** Final rule.

**SUMMARY:** This rule allows title IV-E agencies to claim Federal financial participation (FFP) for the administrative costs of: legal representation in foster care proceedings provided by an attorney representing the title IV-E agency or any other public agency (including an Indian tribe) which has an agreement in effect under which the other agency has placement and care responsibility of a title IV-E eligible child; independent legal representation provided by an attorney representing a child in title IV-E foster care, a child who is a candidate for title IV-E foster care (hereafter, referred to as a child "who is eligible for title IV-E foster care"), the child's parent(s), the child's relative caregiver(s), and the child's Indian custodian(s) in foster care and other civil legal proceedings as necessary to carry out the requirements in the title IV-E agency's title IV-E foster care plan; and legal representation provided by an attorney representing an Indian child's tribe, or representation of an Indian child's tribe provided by a non-attorney, when the child's tribe participates or intervenes in any state court proceeding for the foster care placement or termination of parental rights (TPR) of an Indian child who is in title IV-E foster care or an Indian child who is a candidate for title IV-E foster care.

**DATES:** This rule is effective on July 9, 2024.

**FOR FURTHER INFORMATION CONTACT:** Joe Bock, Children's Bureau, (202) 205-8618. Telecommunications Relay users may dial 711 first. Email inquiries to [cbcomments@acf.hhs.gov](mailto:cbcomments@acf.hhs.gov).

#### SUPPLEMENTARY INFORMATION:

##### Table of Contents

- I. Statutory Authority
- II. Background
- III. Overview of September 2023 NPRM Comments

#### IV. Section-by-Section Responses to Comments

#### V. Regulatory Process Matters

#### VI. Tribal Consultation Statement

### I. Statutory Authority

Section 474(a)(3) of the Social Security Act (the Act) authorizes Federal reimbursement for title IV-E foster care program administrative costs, which are defined as costs "found necessary by the Secretary for the provision of child placement services and for the proper and efficient administration of the State [title IV-E] plan." This authorization applies to an Indian tribe, tribal organization, or tribal consortium that has an approved title IV-E plan, in the same manner as it applies to states.

This rule is published under the authority granted to the Secretary of Health and Human Services (the Secretary) by section 1102 of the Act, 42 U.S.C. 1302. Section 1102 of the Act authorizes the Secretary to publish regulations, not inconsistent with the Act, as may be necessary for the efficient administration of the functions with which the Secretary is charged under the Act.

### II. Background

Many families that come to the attention of a child welfare agency are in the midst of or recovering from familial, health, housing, or economic challenges or crises. These obstacles can impede a family's ability to provide a safe and stable environment for their children.<sup>1</sup> Addressing these obstacles to restore a family's stability and safety and prevent a child from being removed from their home is critical to a child's well-being. This is because removal, even for a short period of time, exposes the child to a range of trauma and stress.<sup>2</sup> A child who is at risk of entering foster care has better outcomes when they remain safely at home compared to when they are placed into foster care.<sup>3</sup> Access to independent legal representation can help stabilize families, improve safety, and reduce the need for more formal child welfare system involvement, including foster

care.<sup>4</sup> For families with children that have been placed in foster care, independent legal representation can expedite reunification and improve permanency or help provide access to needed supports for youth transitioning out of the child welfare system.<sup>5</sup>

HHS regulations at 45 CFR 1356.60(c) detail cost-sharing requirements for the Federal and non-Federal share of title IV-E foster care program expenditures for the cost of administrative activities. A title IV-E agency may claim FFP at the rate of 50 percent for allowable title IV-E foster care administrative costs. A title IV-E agency may also claim FFP for allowable administrative costs incurred by any other public agency or tribe which has an agreement in effect under which the other agency has placement and care responsibility of a title IV-E eligible child pursuant to 472(a)(2)(B)(ii) of the Act. Another "public agency" is a child placing agency authorized by state/tribal law to operate services to children and families, with supervision by the title IV-E agency (Child Welfare Policy Manual section (CWPM) 8.1G #1). Examples of other public agencies may be found in section G of the CWPM and could include the state/tribal juvenile justice agency, a court, or state/tribal mental health agency. The regulation at § 1356.60(c)(2) provides examples of allowable title IV-E foster care administrative expenditures that are necessary for the administration of the title IV-E agency's plan, such as preparation for and participation in judicial determinations, referral to services, development of the case plan, case reviews, and case management and supervision.

ACF policy historically allowed title IV-E agencies to claim FFP for the foster care administrative costs of "preparation for and participation in judicial determinations" as described in § 1356.60(c)(2)(ii), only for the title IV-E agency's (and if applicable, the Indian tribe or other public agency's) legal representation. However, in 2019, ACF revised the policy to allow title IV-E agencies to also claim FFP for the administrative costs of independent

<sup>1</sup> Chandler CE, Austin AE, Shanahan ME. Association of Housing Stress With Child Maltreatment: A Systematic Review. *Trauma Violence Abuse*. 2022 Apr;23(2):639-659. doi: 10.1177/1524838020939136. Epub 2020 Jul 17. PMID: 32677550; PMCID: PMC7855012; ACYF-CB-IM-21-02, p.2; ACYF-CB-IM-21-06 p. 12.

<sup>2</sup> Sankaran, Vivek. "Using Preventive Legal Advocacy to Keep Children from Entering Foster Care." *Wm. Mitchell L. Rev.* 40, (3): 1036-1047, 2014.

<sup>3</sup> Joseph J. Doyle, Jr. "Causal Effects of Foster Care: An Instrumental Variables Approach." *Children and Youth Services Review* 35(7): 1143-1151, 2013.

<sup>4</sup> Sankaran, Vivek. "Using Preventive Legal Advocacy to Keep Children from Entering Foster Care." *Wm. Mitchell L. Rev.* 40, (3): 1036-1047, 2014.

<sup>5</sup> Gerber, Lucas A., Pang, Yuk C., Ross, Timothy, Guggenheim, Martin, Pecora, Peter J., & Miller, Joel. "Effects of an interdisciplinary approach to parental representation in child welfare." *Children and Youth Services Review*, Volume 102, 2019, Pages 42-55, ISSN 0190-7409, <https://doi.org/10.1016/j.childyouth.2019.04.022>; American Bar Association Center on Children and the Law & National Council of Juvenile and Family Court Judges. Supporting Early Legal Advocacy before Court Involvement in Child Welfare Cases (March 2021).

legal representation provided by attorneys representing children who are candidates for title IV–E foster care, children who are in title IV–E foster care, and the children’s parent(s) in all stages of foster care legal proceedings (CWPM 8.1B #30, 31, and 32). This policy was revised to ensure that reasonable efforts are made to prevent removal and finalize the permanency plan; and parents and youth are engaged in and complying with case plans. This policy change was well received and generated positive interest from title IV–E agencies and child welfare and legal partners. A “candidate” for title IV–E foster care is a child who is potentially eligible for title IV–E foster care maintenance payments and is at serious risk of removal from their home as evidenced by the title IV–E agency either pursuing the child’s removal from the home or making reasonable efforts to prevent such removal (section 472(i) of the Act). Further, the agency must document the child’s candidacy for title IV–E foster care maintenance payments through one of the three acceptable methods identified in the CWPM, such as a case plan (CWPM 8.1D #2), which we further explain in section IV of this final rule. A child is not considered a candidate for title IV–E foster care when the title IV–E agency has no formal involvement with the child or simply because the child has been described as “at risk” due to circumstances such as social or interpersonal problems or a dysfunctional home environment (CWPM 8.1D).

ACF published the September 2023 notice of proposed rulemaking (NPRM) proposing to codify and expand the policy in CWPM 8.1B #30, 31, and 32 (88 FR 66769, Sept. 28, 2023). Recent research, as described in the September 2023 NPRM, demonstrates that providing independent legal representation early in foster care proceedings and other civil legal proceedings can help prevent children from entering foster care, and for youth already in foster care it can improve the rate of reunification and result in more permanent outcomes for the child and the family. The NPRM proposed that providing independent legal representation to a child who is a candidate for or in title IV–E foster care, their parent(s), and their relative caregiver(s), to prepare for and participate in civil legal proceedings is an allowable administrative cost when necessary to carry out the requirements in the agency’s title IV–E foster care plan in accordance with section 471(a) of the Act.

For Indian children that have been placed in foster care and are subject to

the Indian Child Welfare Act (ICWA), and their families, early representation of an Indian child’s tribe in foster care proceedings promotes stability for the child by minimizing unnecessary separation of children and their parents, maximizing placements of the child with extended family and other preferred placements, and avoiding unintended consequences adverse to a child’s interests, such as loss of tribal membership and benefits.<sup>6</sup> ICWA was passed by Congress in 1978 to address the long history of failing “to recognize the essential tribal relations of Indian people and the cultural and social standards prevailing in Indian communities and families” (25 U.S.C. 1901(5)). ICWA protects the “best interests of Indian children and promotes the stability and security of Indian tribes and families by the establishment of minimum federal standards for the removal of Indian children from their families and the placement of such children in foster or adoptive homes which will reflect the unique values of Indian culture, and by providing for assistance to Indian tribes in the operation of child and family service programs” (25 U.S.C. 1902).<sup>7</sup>

As one tribal leader told Congress, tribes cannot long survive as “self-governing” communities if they cannot pass their “heritage” on to the next generation. *Holyfield* at 34 (citation omitted). Congress thus recognized that, by severing that connection to future generations, the breakup of Indian families threatens “the continued existence and integrity of Indian tribes.” 25 U.S.C. 1901(3). The Federal Government has an interest in ensuring that Indian tribes, vested with a statutory right to intervene in state foster care placement proceedings in accordance with 25 U.S.C. 1911(c), have legal representation to preserve and protect the continued existence and

<sup>6</sup> Frequently Asked Questions Bureau of Indian Affairs Final Rule: Indian Child Welfare Act (ICWA) Proceedings, June 17, 2016; ICWA Compliance Task Force Report to the California Attorney General’s Bureau of Children’s Justice, 2017.

<sup>7</sup> ICWA and its implementing regulations define “Indian child,” to mean any unmarried person who is under age eighteen and is either a member of an Indian tribe or is eligible for membership in an Indian tribe and is the biological child of a member of an Indian tribe (25 U.S.C. 1903(4)). An “Indian child’s tribe” means the Indian tribe in which an Indian child is a member or eligible for membership or, in the case of an Indian child who is a member of or eligible for membership in more than one tribe, the Indian tribe with which the Indian child has the more significant contacts (25 U.S.C. 1903(5)). An “Indian custodian” means any Indian person who has legal custody of an Indian child under tribal law or custom or under State law or to whom temporary physical care, custody, and control has been transferred by the parent of such child (25 U.S.C. 1903(6)).

integrity of Indian tribes. As the Supreme Court noted in a case interpreting ICWA, “Congress [ ] found that the breakup of Indian families harmed not only Indian children and their parents, but also their tribes.”<sup>8</sup>

The information provided by the tribe’s attorney provides the cultural and social standards of the child’s tribe that are necessary for the court to make essential determinations that reasonable efforts were made as required under the title IV–E plan. For example, the Act requires the court to determine whether the agency made reasonable efforts to finalize a permanency plan. The tribal attorney’s representation of the cultural and social standards for family connection, reunification and what permanency looks like in the child’s tribe, may be necessary to finalize the permanency plan for an Indian child. For another example, if adoption is the permanency plan for an Indian child, the tribal attorney can provide information on customary adoption, which ensures “the same stability and permanence of traditional adoption without terminating parental rights.”<sup>9</sup>

This final rule supports the goal of tribal self-governance by supporting Indian families, both by minimizing unnecessary separations of Indian children from their parents and by maximizing their placement with extended family, other tribal members, or other tribal families when they cannot remain with their parents.

#### *Equity Impact*

This final rule advances the Administration’s priority of equity for those historically underserved and adversely affected by persistent poverty and inequality (Executive Order 13985, *Advancing Racial Equity and Support for Underserved Communities Through the Federal Government* [Jan. 20, 2021]). Research documents the overrepresentation of certain racial and ethnic groups in foster care relative to their representation in the general population. African American and American Indian or Alaska Native children are at greater risk than other children of being placed in out-of-home care. They stay in foster care longer and have disparate outcomes. For example, they are less likely to reunify with their families.<sup>10</sup>

<sup>8</sup> *Mississippi Band of Choctaw Indians v. Holyfield*, 490 U.S. 30 at 33–34 (1989).

<sup>9</sup> *Del Norte Cnty. Dep’t of Health & Human Servs. v. Dylan N.* (In Re H.R.), 208 Cal. App 4th 751 (2012).

<sup>10</sup> Child Welfare Information Gateway (2021). Child welfare practice to address racial disproportionality and disparity. U.S. Department

Access to legal representation for an Indian child's tribe promotes equity for those historically and adversely affected by inequality by minimizing unnecessary separation of children and their parents, and by maximizing placements of the child with extended family, within the tribal community, and other preferred placements. Research also documents the overrepresentation of children and parents with disabilities in foster care relative to their representation in the general population. Parents with disabilities are more likely than nondisabled parents to have child welfare system involvement. Children with disabilities are institutionalized at higher rates and for longer periods of time. Children of parents with disabilities have higher out-of-home placements than other children. Studies have also found disabled parents have high rates of termination of parental rights (TPR).<sup>11</sup>

Access to independent legal representation early in a case may prevent children from entering foster care, including children of color, American Indian or Alaska Native children and children with disabilities who are disproportionately entering foster care. For children in foster care, it may increase the rate of reunification and provide a quicker timeframe for achieving permanency. For young adults aging out of foster care, such legal representation may provide access to services and supports needed to achieve permanency and long-term stability.

This final rule may also help low-income families adversely affected by persistent poverty who are struggling with unemployment, inadequate income, unstable housing, evictions or homelessness, and food insecurity when confronted with potential removal of a child from the home, or when a relative is caring for a child in their home. According to a 2017 study, 74 percent of low-income households experienced at least one civil legal problem in the previous year, including problems with health care, housing conditions, disability access, veterans' benefits, and domestic violence.<sup>12</sup> Of the low-income

households reporting civil legal problems, 92 percent received inadequate or no legal help.<sup>13</sup> Studies also show that when a child is removed from the home, having access to legal representation not only for child welfare proceedings but also for other civil legal issues earlier in a case can improve the rate of reunification, halve the amount of time needed to secure legal guardianship or adoption, and result in more permanent outcomes for the child and the family.<sup>14</sup> That means that parents without independent legal representation in child welfare proceedings and in other civil legal proceedings are at a disadvantage in having their children returned to them. Therefore, providing families adversely affected by poverty with independent legal representation in foster care and other civil legal proceedings necessary to carry out the requirements in the agency's title IV-E foster care plan may improve outcomes related to reunification and permanency.

### III. Overview of September 2023 NPRM Comments

We received 122 comments in response to the September 2023 NPRM. We reviewed and analyzed the public comments and considered them in finalizing this rule. The comments are available in the docket for this action on *Regulations.gov*. We received comments from four title IV-E child welfare agencies; 17 state and local government agencies; four American Indian/Native American tribes, tribal consortia, tribal organizations ("tribes") and entities representing tribal interests; 31 national advocacy, public interest, philanthropic and professional organizations (organizations); 26 providers of legal representation; and 40 individuals and anonymous commenters.

#### *General Comments in Support of the September 2023 NPRM*

*Summary of Comments on the Benefits of the Final Rule.* Of the 122 comments received, 106 commenters supported issuing a final rule with some suggestions and/or clarifications. All of the title IV-E agencies, tribes and organizations representing tribal interests, providers of legal representation, and state and local government agencies that commented supported issuing a final rule. All but

three of the organizations and most individual and anonymous commenters also supported issuing a final rule. We address suggestions and clarifications in section IV of this final rule. Overwhelmingly, commenters agreed that the rule as proposed would:

- Minimize barriers to access the support families need to prevent children from entering foster care.<sup>15</sup>
- For children who are in foster care, expedite permanency.<sup>16</sup>
- Support Indian families, both by minimizing unnecessary separations of Indian children from their parents and by maximizing their placement with extended family, other tribal members, or other tribal families when they cannot remain with their parents.

*Comments About the Equity Impact of the Rule.* Many commenters expressed that the proposal would advance equity for those historically underserved and adversely affected by persistent poverty and inequality. They noted that legal representation in civil proceedings: is critical to achieve equity; protects the rights of families and prevents inequities; promotes equity for LGBTQI+ youth who are overrepresented within the foster care system; and advances equity for parents, children, and families in diverse and historically underserved, disadvantaged, and marginalized identities.

#### *Comments Not in Support of the September 2023 NPRM*

Sixteen commenters opposed issuing a final rule. Thirteen individuals opposed issuing a final rule citing negative personal experiences with appointed attorneys, such as receiving ineffective or low-quality legal representation, conflicts of interests among attorneys representing other parties, and insufficient oversight or auditing of cases to ensure attorneys are handling family legal matters properly. Several individuals expressed the view that the purpose of this rule is to financially benefit attorneys. Three organizations opposed issuing a final rule cited to systemic issues with child welfare and family court systems, distrust of appointed attorneys, and lack of attorney oversight by the state.

<sup>15</sup> Sankaran, Vivek. "Using Preventive Legal Advocacy to Keep Children from Entering Foster Care." *Wm. Mitchell L. Rev.* 40, (3): 1036–1047, 2014.

<sup>16</sup> American Bar Association Center on Children and the Law & National Council of Juvenile and Family Court Judges. Supporting Early Legal Advocacy before Court Involvement in Child Welfare Cases (March 2021).

of Health and Human Services, Administration for Children and Families, Children's Bureau. <https://www.childwelfare.gov/pubs/issue-briefs/racial-disproportionality/>.

<sup>11</sup> Albert SM, Powell RM. Supporting disabled parents and their families: perspectives and recommendations from parents, attorneys, and child welfare professionals. *J Public Child Welf.* 2020;15(5):529. doi: 10.1080/15548732.2020.1751771. PMID: 37220548; PMCID: PMC10202498.

<sup>12</sup> Legal Services Corporation. 2022. The Justice Gap: The Unmet Civil Legal Needs of Low-income

Americans. Prepared by Mary C. <https://justicegap.lsc.gov/>.

<sup>13</sup> Id.

<sup>14</sup> Thornton, Elizabeth, & Gwin, Betsy. *High-Quality Legal Representation for Parents in Child Welfare Cases Results in Improved Outcomes for Families and Potential Cost Savings.* 46 *Fam. L. Q.* 139 (2012).

### Comments Outside the Scope of the Regulation

We received several comments outside the scope of this regulation, and therefore, we are not addressing those comments here. Some of these comments included requiring the final rule to endorse models of legal representation and include models for effective contracting and agency oversight of contracting and billing with legal providers. Commenters also recommended that the rule address cost-allocation requirements, which are governed by 45 CFR parts 75 and 95. Finally, some commenters suggested that the final rule require training to ensure quality legal representation by attorneys. This is outside the scope of this rule, which is optional for title IV–E agencies, and which does not govern requirements for attorney behavior, but rather provides requirements claiming FFP for administrative costs. However, as we stated in ACYF–CB–IM–21–06, we urge all state and tribal title IV–E agencies, courts, administrative offices of the courts, and Court Improvement Programs to work together to ensure that parents, children and youth, and child welfare agencies, receive high quality legal representation at all stages of child welfare proceedings, and to claim FFP for allowable training costs authorized under section 474(a)(3)(B) of the Act.

### Changes to the Final Rule

We made the following changes to the final rule which are further explained in Section-by-Section Response to Comments:

- Title IV–E agencies may claim FFP for the administrative costs of independent legal representation for Indian custodian(s) in foster care and other civil legal proceedings (§ 1356.60(c)(4)(ii)).
- Title IV–E agencies may claim the administrative cost of an attorney or non-attorney representing an Indian child's tribe when the child's tribe participates or intervenes in any state court proceeding for the foster care placement or (TPR) of an Indian child who is in title IV–E foster care or an Indian child who is a candidate for title IV–E foster care (§ 1356.60(c)(4)(iii)).

### IV. Section-by-Section Responses to Comments

We respond to the comments we received on the September 2023 NPRM in this section-by-section discussion.

#### Section 1356.60(c)(2)(xi)

Paragraph (c)(2)(xi) of the final rule references new paragraph (c)(4) and now reads: “Costs related to legal

representation described in paragraph (c)(4) of this section.”

*Comment:* One commenter suggested we add the word “civil” so that paragraph (c)(2)(xi) reads: “Costs related to *civil* legal representation described in paragraph (c)(4) of this section.”

*Response:* We did not make this change to the final rule. Paragraph (c)(2)(xi) explains that the costs that are allowable include both *foster care legal proceedings* and other civil legal proceedings.

#### Section 1356.60(c)(4)

Paragraph (c)(4) identifies allowable administrative costs of legal representation. Although some legal representation costs might be coverable under paragraph (c)(2)(ii) that allows a title IV–E agency to claim IV–E administrative funding for the costs of “preparation for and participation in judicial determinations,” new paragraph (c)(4) codifies and expands the list of allowable activities. New paragraph (c)(4) does not include the costs of agency caseworkers preparing for and participating in hearings, which are clearly within the scope of paragraph (c)(2)(ii), and so does not displace paragraph (c)(2)(ii).

*Comment:* Several comments from national organizations, legal providers, tribes and tribal organizations requested that the final rule explicitly incorporate the examples of allowable activities of professionals that support an attorney providing independent legal representation to prepare for and participate in foster care legal proceedings including paralegals, investigators, peer partners or social workers as identified in CWPM 8.1B #32 and the preamble of the September 2023 NPRM, as well as other professionals.

*Response:* We confirm that a title IV–E agency may claim title IV–E administrative costs for activities to the extent that they are necessary to support an attorney in providing independent legal representation. However, we decline to change the regulatory text because it is not possible to list all of the activities that may be claimed. We encourage title IV–E agencies to contact CB regional offices for assistance.

*Comment:* A few commenters requested that the final rule compel state and local child welfare agencies to access title IV–E FFP for the administrative cost of independent legal representation and to fund every eligible provider of legal representation.

*Response:* We did not make this change to the final rule. As we explained in the September 2023 NPRM, title IV–E does not provide authority to require agencies to provide

legal representation. This rule gives title IV–E agencies the flexibility to choose whether to claim FFP for allowable administrative costs of legal representation. This is because title IV–E agencies determine the allowable costs necessary to administer the title IV–E foster care program.

*Comment:* A few organizations and providers of legal representation suggested that ACF allow other public agencies, organizations, and individuals to access title IV–E funds directly from the Federal Government.

*Response:* This is not permitted by Federal law and therefore we did not make this change to the final rule. Title IV–E of the Act authorizes only state and tribal title IV–E agencies with an approved title IV–E foster care plan to claim FFP. However, title IV–E agencies may contract with public and private entities to perform administrative functions of the title IV–E foster care program. See CWPM 8.1E and G for more information.

#### Section 1356.60(c)(4)(i)

Section 1356.60(c)(4)(i) clarifies that a title IV–E agency may claim administrative costs for legal representation by an attorney representing the title IV–E agency or any other public agency, such as a tribe, that has an agreement with the title IV–E agency for placement and care responsibility of a title IV–E eligible child under section 472(a)(2)(B)(ii) of the Act in foster care proceedings.

*Comment:* Commenters noted that although the preamble to the September 2023 NPRM referred to “any other public agency or tribe,” the proposed regulatory text did not include the words “or tribe.” Commenters requested that ACF include tribes in the regulatory text.

*Response:* We agree with commenters, and accordingly have revised the regulation text to include tribes in order to clarify that a tribe may operate as the “other public agency” if it has an agreement with the state under section 472(a)(2)(B)(ii) of the Act. This revision to the regulation text does not change its meaning.

*Comment:* Many commenters requested that ACF clarify the meaning of “an agreement in effect under which the other agency has placement and care responsibility of a title IV–E eligible child pursuant to 472(a)(2)(B)(ii) of the Act” as it applies to tribes.

*Response:* Under this paragraph, a title IV–E agency may claim the FFP for the allowable administrative cost of an attorney providing legal representation of an Indian tribe in foster care legal proceedings only if the Indian tribe has

an agreement under which it takes placement and care responsibility of title IV–E eligible children in foster care and is operating all or part of the title IV–E program on behalf of the title IV–E agency (section 472(a)(2)(B) of the Act). More information on this topic can be found in CWPM 8.1G. We decline the recommendation to change the final regulatory text.

*Section 1356.60(c)(4)(ii)*

Section 1356.60(c)(4)(ii) permits a title IV–E agency to claim FFP for the administrative costs of independent legal representation provided by an attorney representing a child in title IV–E foster care, a child who is a candidate for title IV–E foster care, the child’s parent(s), the child’s relative caregiver(s), and the child’s Indian custodian(s) in foster care and other civil legal proceedings as necessary to carry out the requirements in the agency’s title IV–E foster care plan. Independent legal representation in civil proceedings includes facilitating, arranging, brokering, advocating, or otherwise linking clients with providers and services as identified in the child’s case plan pursuant to sections 422, 471(a)(16), and 475 of the Act.

*Comment:* Several title IV–E agencies and tribal organizations requested that the final rule add “Indian custodian” to the list of individuals for whom a title IV–E agency may claim FFP for the administrative costs of independent legal representation in foster care and other civil legal proceedings. This is because ICWA uses the term “Indian custodian” to describe Indian persons who have legal custody of a child under tribal law or custom or to whom temporary physical care, custody and control has been transferred by the parent of such child (25 U.S.C. 1903(6); 25 CFR 23.2). As one state commented, the term “Indian custodian” may be more “akin to a parent” but is not encompassed in the title IV–E definition of parent.<sup>17</sup> The NPRM explained that under title IV–E of the Act, the term “parent(s)” means a biological or adoptive parent(s) or legal guardian(s), as determined by applicable state or tribal law (section 475(2) of the Act). Commenters also noted that the ICWA protections that apply to Indian parents generally also apply to Indian custodians. Another commenter indicated that an Indian custodian may align with being a relative caregiver, but not in all instances.

*Response:* We agree with commenters that it is important for Indian custodians to have equitable access to legal representation, and therefore changed the final rule to include Indian

custodians so that title IV–E agencies have the option to claim FFP for independent legal representation of Indian custodians.

As we describe in section II, the Federal Government has an obligation to support the integrity of Indian tribes by minimizing unnecessary separations of Indian children from their parents and by maximizing their placement with extended family, other tribal members, or other tribal families when they cannot remain with their parents (25 U.S.C. 1901(3)). Title IV–E of the Act requires title IV–E agencies to make reasonable efforts to preserve and reunify families (42 U.S.C. 671(a)(15)(B) and (C)). This includes ensuring that Indian children remain with Indian custodians and reducing the need for more formal child welfare system involvement. Providing legal representation to Indian custodians of children in title IV–E foster care may minimize some of the barriers that prevent a child from being placed with an Indian custodian, enable more children to maintain family and tribal connections, stabilize placements and result in more permanent outcomes for the child and the family. Further, Indian custodians often have information essential to helping courts and title IV–E agencies preserve Indian families in the context of the long history of child custody proceedings “often fail[ing] to recognize the essential tribal relations of Indian people and the cultural and social standards prevailing in Indian communities and families” (25 U.S.C. 1901(5)).

*Comment:* Over 55 commenters from organizations and legal providers expressed concern about “independent legal representation” as described in the preamble. Some commenters interpreted the NPRM as proposing to allow the title IV–E agency to regulate the practice of law in a way that may be inconsistent with state statutes; court rules; and policies or guidelines of entities regulating attorney practice, including the entity’s ethical opinions and rules of professional responsibility. Other commenters thought the NPRM appeared to require the attorney to explain to the client that the title IV–E agency may be paying for the cost of legal representation and to ask the client for their consent. Commenters believe this does not align with how legal aid and public defender offices are funded and would be difficult to implement if an attorney was not aware of the source of funding for the legal representation.

*Response:* The NPRM proposed that the title IV–E agency may determine what “independent” means for the purpose of identifying allowable

administrative costs for which a title IV–E agency may claim FFP. Neither the NPRM nor this final rule suggest interpreting the term “independent” in a way that attempts to regulate attorneys or the practice of law. ACF has no authority in that area nor does the title IV–E agency, and therefore no changes were made to the final rule. To clarify, for purposes of the final rule, the term “independent” conveys that representation is not subject to control or influence by other parties, interested persons, nor the title IV–E agency.

The NPRM also suggested, but did not regulate, some minimum expectations for title IV–E agencies to consider when determining what “independent” should mean. For example, the NPRM suggested that agencies ensure the attorney providing legal representation does not have any concurrent conflicts of interest and that there is no interference with the lawyer’s professional judgement or relationship with the client. It also suggested, but did not require, that the term “independent” mean that an attorney does not accept compensation for representing a client from *someone* other than the client, unless the client gives informed consent.

*Comment:* Several commenters requested guidance on the amount and type of information that an attorney providing independent legal representation must share with the title IV–E agency to satisfy Federal audit, data, and claims reporting requirements. For example, a title IV–E agency explained that it needs to know the number and names of individuals receiving independent legal representation to ensure eligibility under this final rule. However, a few providers of legal representation expressed concern that a title IV–E agency may ask for too much information as a means to exert undue influence or direct such representation.

*Response:* We made no changes to the final rule. We would like to clarify that a title IV–E agency should, at a minimum, ensure a legal service provider shares information that is necessary for the title IV–E agency to comply with Federal program requirements and requirements for audits, data and financial reporting as determined necessary by the Secretary (section 471(a)(6) and (13) of the Act). See also 45 CFR part 75 (Uniform Administrative Requirements, Cost Principles, and Audit Requirements for HHS Awards); 45 CFR part 95, subpart E (Cost Allocation Plans). For example, this may include, but is not limited to information the title IV–E agency must report in the Form CB–496 “Title IV–E

Programs Quarterly Financial Report (Foster Care, Adoption Assistance, Guardianship Assistance, Prevention Services and Kinship Navigator Programs). Title IV–E agencies seeking guidance on allowable claiming practices for FFP should contact their CB regional office.

*Comment:* Many commenters asked ACF to adopt the definition of “candidate for title IV–E foster care” as used in section 475(13) of the Act, to allow title IV–E agencies to claim FFP for the cost of legal representation for children and families who participate in the title IV–E prevention service program.

*Response:* We made no changes to the final rule. Section 475(13) of the Act defines a candidate for foster care for the title IV–E Prevention Program under section 474(a)(6)(B)(i) of the Act. This is a different definition than a title IV–E foster care candidate under this final rule. Further, this final rule and the September 2023 NPRM proposed allowable administrative costs for legal representation under the title IV–E foster care program as authorized under section 474(a)(3) of the Act. Therefore, administrative costs for legal representation under the title IV–E prevention services program is outside the scope of this final rule.

*Comment:* Several commenters requested we clarify whether the final rule allows title IV–E agencies to claim FFP for the cost of independent legal representation to resolve a child’s or parent’s immigration status, including proceedings related to obtaining Special Immigrant Juvenile status, and address other immigration-related barriers that may inhibit successful permanency. Another commenter asked whether a title IV–E agency can claim FFP for the cost of independent legal representation to meet the needs of undocumented caregivers/parents in obtaining relief from deportation, noting that thousands of children have entered the child welfare system because of a parent’s deportation.

*Response:* We understand that immigration issues may lead to foster care placements and could pose barriers to successful reunification, placement, or permanency of a child in foster care. However, a child must be a U.S. citizen or “qualified immigrant” as defined in 8 U.S.C. 1641(b),<sup>18</sup> among other requirements, to be eligible for title IV–E foster care (Personal Responsibility Work Opportunity Reconciliation Act of 1996 (Public Law 104–193); 8 U.S.C. 1611; CWPM 8.4B). A title IV–E agency may claim independent legal

representation for title IV–E eligible children in any proceeding consistent with the requirements of this rule. However, a title IV–E agency may not claim FFP for the administrative cost of independent legal representation of children who are not U.S. citizens or qualified immigrants. A title IV–E agency may claim representation costs for parents of a title IV–E eligible child if such representation is needed to carry out the requirements in the agency’s title IV–E foster care plan in relation to the title IV–E eligible child.

*Comment:* A few commenters expressed concern about potential conflicts that may arise if a title IV–E agency claims FFP for independent legal representation of an eligible child’s relative caregiver. Some commenters recommended that we limit reimbursement available under title IV–E for relative caregivers to minimize the potential for a conflict between parents and relative caregivers noting specific concerns about relative caregiver representation in cases involving substance use disorders and also in Indian child welfare cases.

*Response:* While we appreciate the complex and potentially adverse interests of individuals involved in a child’s care, the title IV–E agency may choose whether and what type of independent legal representation to claim FFP for, as described in the final rule. To provide title IV–E agencies with flexibility, we decline to revise the regulatory text. As explained in this final rule and the September 2023 NPRM, we expect that attorneys providing legal representation do not have any concurrent conflicts of interest and that there is no interference with the lawyer’s professional judgement or relationship with the client. We expect that attorneys will practice law in a way that is consistent with state statutes; court rules; and the requirements of entities regulating attorney practice, including the entity’s ethical opinions and rules of professional responsibility.

*Comment:* A commenter requested we amend “civil legal proceedings” to include “administrative actions” necessary to carry out the requirements in the agency’s title IV–E foster care plan, because some civil legal issues involve proceedings which are deemed administrative rather than judicial in nature. Specifically, a few commenters asked whether a title IV–E agency may claim the cost of independent legal representation by an attorney in administrative actions for public benefit eligibility determinations, denials and appeals.

*Response:* In the September 2023 NPRM, we identified allowable civil

legal costs to include “securing public benefits when it is necessary to meet the plan requirement to make reasonable efforts to prevent the unnecessary removal of a child from the home or to finalize a case plan in support of a child’s permanency goal as required by section 471(a)(15) of the Act.” This may include certain public benefit eligibility determinations, denials and appeals that are administrative in nature, and they are considered civil legal proceedings for purposes of this rule. We are maintaining these provisions in this final rule, and as such decline to change the regulatory text.

*Comment:* Some legal representation providers and organizations made comments indicating a belief that a case plan is the only way to document a child’s candidacy for title IV–E foster care, and that a case plan may only be developed after a child enters foster care, thereby preventing the agency from claiming FFP for independent legal representation of a child who is not yet in title IV–E foster care.

*Response:* A case plan is one of several ways a title IV–E agency may document a child’s candidacy for title IV–E foster care and may be developed prior to a child entering foster care. The CWPM 8.1D #2 explains that there are three acceptable methods for documenting candidacy: (1) A defined case plan which clearly indicates that, absent effective preventive services, foster care is the planned arrangement for the child; (2) An eligibility determination form which has been completed to establish the child’s eligibility for title IV–E foster care maintenance payments; or (3) Evidence of court proceedings in relation to the removal of the child from the home, in the form of a petition to the court, a court order or a transcript of the court proceedings. This policy provides additional guidance that for purposes of documenting a child’s candidacy for title IV–E foster care, a case plan sets foster care as the goal for the child absent effective preventive services is an indication that the child is at serious risk of removal from their home because the title IV–E agency believes that a plan of action is needed to prevent that removal.

*Comment:* Over 50 organizations and legal providers asked whether a title IV–E agency may claim FFP for independent legal representation for either a child, parent or relative in various scenarios, including: prior to a petition being filed in court to remove a child from home, during the course of a CPS investigation, from the time a petition to remove a child from home is filed through the entire trajectory of the

<sup>18</sup> 8 U.S.C. 1641(b) refers to “qualified alien.”

case (including appeals), and for youth in extended foster care.

*Response:* We do not have enough information to be able to provide a definitive answer about the availability for FFP for independent legal representation in case specific scenarios. The allowability of the cost of independent legal representation is not determined based on the status of a petition to remove a child from home or a CPS investigation. A title IV–E agency may choose to claim FFP for allowable administrative costs of independent legal representation as authorized in this rule if:

- A title IV–E agency determined that the child is a candidate for or in title IV–E foster care (or is the parent, relative, or Indian custodian of such child);
- The independent legal representation is provided in a foster care or other civil legal proceeding;
- The title IV–E agency determined that independent legal representation is necessary to carry out the requirements in the agency’s title IV–E foster care plan; and
- The independent legal representation in civil legal proceedings is identified in the child’s case plan.

Current policy in CWPM 8.1D #2 provides further details about a child who is a candidate for title IV–E foster care that may be useful to these commenters asking about situations where children have not yet been placed in foster care. Specifically, policy clarifies that “a child may not be considered a candidate for [title IV–E] foster care solely because the title IV–E agency is involved with the child and his/her family. For the child to be considered a candidate for [title IV–E] foster care, the title IV–E agency’s involvement with the child and family must be for the specific purpose of either removing the child from the home or satisfying the reasonable efforts requirement with regard to preventing removal.” The policy also explains decisions made by the U.S. Department of Health and Human Services Department Appeals Board (DAB): “The fact that a child is the subject of [a child abuse/neglect report] falls far short of establishing that the child is at serious risk of placement in foster care and thus of becoming eligible for IV–E assistance . . . A candidate, in the opinion of the DAB is a child who is at serious risk of removal from his/her home because the title IV–E agency is either pursuing that removal or attempting to prevent it. A child cannot be considered a candidate for foster care when the title IV–E agency has no formal involvement with the child or simply because s/he has been described as ‘at risk’ due to

circumstances such as social/interpersonal problems or a dysfunctional home environment.” We recommend that if organizations and legal providers have questions about allowable costs for legal representation, they contact the title IV–E agency for more information. Title IV–E agencies may contact the CB regional office specialist for assistance.

*Section 1356.60(c)(4)(iii)*

Paragraph (c)(4)(iii) permits a title IV–E agency to claim FFP for administrative costs of legal representation provided by an attorney or representation provided by a non-attorney of a title IV–E eligible Indian child’s tribe (as defined in 25 U.S.C. 1903(5)), when the child’s tribe participates or intervenes in any state court proceeding for the foster care placement or TPR.

*Comment:* We received several comments on the proposal. A commenter noted that securing attorneys who are knowledgeable about ICWA and tribal customs can be very expensive. Comments indicated that smaller tribes may not have the funding resources to hire attorneys to represent the Indian child’s tribe’s interest in state court proceedings for the foster care placement of, or TPR to, an Indian child, and thus have historically allowed non-attorneys to represent the tribe. One commenter was supportive of the reimbursement of non-attorneys regardless of whether they are representing the tribe in a case or whether they are providing support to an attorney’s preparation for and participation in a case. Another commenter noted that early representation of an Indian child’s tribe in child welfare court proceedings can, among other things, facilitate placements in accordance with ICWA placement preference and believes that the expertise independent attorneys bring to foster care proceedings can be a determining factor in whether a family stays together, receives necessary services, or is timely reunified after family separation. Finally, a commenter expressed the view that allowing a tribe to select its own representative supports tribal sovereignty.

*Response:* We amended the final rule to allow a title IV–E agency to claim the administrative cost of an attorney providing legal representation or a non-attorney representing an Indian child’s tribe when the child’s tribe participates or intervenes in any state court proceeding for the foster care placement or TPR of an Indian child who is in title IV–E foster care or an Indian child who is a candidate for title IV–E foster care. ACF believes this change may result in

more Federal financial support for a title IV–E eligible Indian child’s tribe’s participation in state foster care and TPR proceedings, ensure that a tribe’s interest is preserved in placement recommendations, and honor tribal sovereignty and self-determination to identify a representative per the tribe’s wishes. We believe this change will result in minimal fiscal impact, if any, because the costs of a non-attorney representative will likely be less than for an attorney.

*Comment:* Several commenters encouraged ACF to allow title IV–E agencies to claim FFP for the administrative cost of representation for a title IV–E eligible Indian child’s tribe in state proceedings for foster care placement and TPR even if a tribe does not intervene in accordance with 25 U.S.C. 1911(c). Prior to intervention, a tribe may be involved at key decision points in the child’s case. Commenters explained that early in state proceedings for the foster care placement of an Indian child, the tribe’s representative works with the child welfare agency and state court to address the needs of the child, their family and the child’s tribe. One commenter expressed the view that limiting representation to situations where a tribe has intervened in a case restricts tribes’ sovereign decisions with respect to the best interest of tribal children.

*Response:* We agree with the commenters and revised the final rule to allow a title IV–E agency to claim administrative costs for representation of a title IV–E eligible Indian child’s tribe to participate in state court proceedings for foster care placement and termination of parental rights (TPR) when necessary for the proper and efficient administration of the IV–E foster care plan (42 U.S.C. 674(a)(3)). This modification means that a title IV–E agency may claim these administrative costs when the child’s tribe participates but does not intervene in a state court proceeding for foster care placement and TPR in accordance with 25 U.S.C. 1911(c).

As explained in section II, the Federal Government has an interest in ensuring that an Indian child’s tribe has legal representation to preserve and protect the continued existence and integrity of Indian tribes. As the Supreme Court noted in a case interpreting ICWA, “Congress [ ] found that the breakup of Indian families harmed not only Indian children and their parents, but also their tribes.” *Mississippi Band of Choctaw Indians v. Holyfield*, 490 U.S. 30 at 33–34 (1989). It is well documented that for Indian children who have been placed in foster care, and their families, early

representation of an Indian child's tribe in state foster care proceedings promotes stability for the child by minimizing unnecessary separation of children and their parents, and by maximizing placements of the child with extended family and other preferred placements (Frequently Asked Questions Bureau of Indian Affairs Final Rule: Indian Child Welfare Act (ICWA) Proceedings, June 17, 2016). As the commenters note, much of a tribe's representation occurs early in state court foster care proceedings without regard to whether a child's tribe intervenes.

However, the Department appreciates the opportunity to clarify that this change applies only when the title IV-E agency determines that representation for the Indian child's tribe to participate in the state court proceeding is necessary for the proper and efficient administration of the title IV-E foster care plan (42 U.S.C. 674(a)(3)). Prior to intervening, tribal attorneys or non-attorney representatives often participate in state court proceedings at key decision points and in judicial determinations that are required by the title IV-E foster care plan. For example, the Act requires the court to determine whether the agency made reasonable efforts to preserve and reunify families. The child's tribe's representation of the cultural and social standards for family connection, reunification and what permanency looks like in the child's tribe, may be necessary to finalize the permanency plan for an Indian child, regardless of whether the child's tribe has intervened.

We believe this change will not result in a fiscal impact. This is because the Adoption and Foster Care Analysis and Reporting System (AFCARS) data provides the number of title IV-E eligible children who identified as American Indian or Alaska Native, alone or in combination. In the September 2023 NPRM we assumed that this population of children is potentially subject to ICWA requirements in state court foster care placement and TPR. We further assumed that each such Indian child's tribe will intervene in such proceedings. Therefore, there will not be a fiscal impact regardless of whether an Indian child's tribe chooses to participate, rather than intervene, in the proceeding as allowed by this final rule.

*Comment:* Several commenters requested that a final rule ensure that tribal nations have authority to choose the attorney representing an Indian child's tribe in state court proceedings for the foster care placement of, or TPR to, an Indian child for which the title

IV-E agency is claiming FFP. The commenters explained the importance of each sovereign tribal nation selecting an attorney to represent an Indian child's tribe who is knowledgeable about the tribe's customs, membership requirements and benefits, culture, placement preferences, social services and other family supports, and is highly skilled in matters related to ICWA.

*Response:* We did not make changes to the final rule. The final rule provides an option for a title IV-E agency to claim FFP for the cost of an attorney to represent a title IV-E eligible Indian child's tribe and does not require that the title IV-E agency select that attorney. As the commenters noted, it is important that each sovereign tribal nation make that selection. This ensures that the tribe is represented by an attorney who is knowledgeable about the tribe's customs and other matters relevant in state court proceedings. However, a title IV-E agency may decide whether to contract with the attorney selected by a tribal nation.

*Comment:* Commenters suggested that the final rule require consultation between state title IV-E agencies and tribes to develop agreements for legal representation that are compatible with tribal governance structures.

*Response:* We did not change the final rule because it is the option of the title IV-E agency to claim title IV-E FFP for administrative costs as described in this final rule. However, we encourage title IV-E agencies that choose to claim title IV-E FFP for the cost of legal representation as described in this final rule to consult with tribes that are interested in developing agreements for this purpose.

## V. Regulatory Process Matters

### *Executive Orders 12866 and 13563*

Executive Orders 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health, and safety effects; distributive impacts; and equity). Executive Order 13563 is supplemental to, and reaffirms the principles, structures, and definitions governing regulatory review as established in Executive Order 12866, emphasizing the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. Based on ACF's estimates of the likely impacts associated with this rule, the Office of Management and Budget (OMB)

designated this rule as a significant regulatory action under section 3(f)(1) of Executive Order 12866, as amended by Executive Order 14094. The estimated cost and transfer impacts of this final rule are provided below (see the section titled "Accounting Statement").

### *Regulatory Flexibility Analysis*

The Regulatory Flexibility Act (RFA) (see 5 U.S.C. 605(b) as amended by the Small Business Regulatory Enforcement Fairness Act) requires Federal agencies to determine, to the extent feasible, a rule's impact on small entities, explore regulatory options for reducing any significant impact on a substantial number of such entities, and explain their regulatory approach. This rule does not affect small entities because it is applicable only to state and tribal title IV-E agencies. Therefore, a regulatory flexibility analysis is not required for this rule.

### *Unfunded Mandates Reform Act*

The Unfunded Mandates Reform Act of 1995 (UMRA) (Pub. L. 104-4) was enacted to avoid imposing unfunded Federal mandates on state, local, and tribal governments, or on the private sector. That threshold level is currently approximately \$183 million. This rule does not contain mandates that would impose spending costs on state, local, or tribal governments in the aggregate, or on the private sector, in excess of the threshold.

### *Congressional Review*

The Congressional Review Act (CRA) allows Congress to review major rules issued by Federal agencies before the rules take effect (see 5 U.S.C. 801(a)(1)(A)). The CRA defines a "major rule" as one that has resulted, or is likely to result, in (1) an annual effect on the economy of \$100 million or more; (2) a major increase in costs or prices for consumers; individual industries; Federal, State, or local government agencies; or geographic regions; or (3) significant adverse effects on competition, employment, investment, productivity, or innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic and export markets (see 5 U.S.C. Chapter 8). OMB's Office of Information and Regulatory Affairs has determined that this final rule does meet the criteria set forth in 5 U.S.C. 804(2).

### *Assessment of Federal Regulations and Policies on Families*

Section 654 of the Treasury and General Government Appropriations Act of 2000 requires Federal agencies to

determine whether a policy or regulation may negatively affect family well-being. If the agency determines a policy or regulation negatively affects family well-being, then the agency must prepare an impact assessment addressing seven criteria specified in the law. This regulation does not impose requirements on states or families. This rule will not have any impact on the autonomy or integrity of the family as an institution.

*Comment:* We received one comment on ACF's assessment, expressing the view that when the ACF proposes a regulation and also conducts the assessment, the result is bias that leads to no detailed study taking place. The commenter requested that ACF conduct a study that ensures a more thorough examination of the potential effects of the proposed rule on families by soliciting input from a diverse range of stakeholders and considering the comments received, especially those emphasizing the impact on family dynamics.

*Response:* As described in the September 2023 NPRM and above, independent research and data from existing legal programs demonstrate the benefits of providing independent legal representation. Providing representation early in foster care proceedings and other civil legal proceedings can help prevent children from entering foster care, and for youth already in foster care it can improve the rate of reunification and result in more permanent outcomes for the child and the family. We received no additional comments from the public expressing this concern. ACF's Assessment of Federal Regulations on Policy and Family is reviewed by the Secretary of HHS as well as the President's Office of Management and Budget, Office of Information and Regulatory Affairs, which reviews all significant Federal regulations from executive agencies.

#### *Executive Order 13132*

Executive Order 13132 prohibits an agency from publishing any rule that has federalism implications if the rule either imposes substantial direct compliance costs on state and local governments and is not required by statute, or the rule preempts state law, unless the agency meets the consultation and funding requirements of section 6 of the Executive order. This rule does not have federalism impact as defined in the Executive order. Shortly after publication of the NPRM, we held a briefing session with states and tribes and any other interested partners on the contents of the NPRM.

*Comment:* One commenter asked ACF to conduct a thorough re-assessment of the application of Executive Order 13132 because the definition of "independent legal representation" should be determined within their respective jurisdictions, rather than being subjected to Federal discretion.

*Response:* The final rule does not have any federalism implications and thus a re-assessment is not necessary. As discussed earlier, the final rule does not include any mandates or impose a regulatory definition of "independent legal representation". Therefore, Executive Order 13132 does not apply.

#### *Paperwork Reduction Act*

The Paperwork Reduction Act of 1995 (Pub. L. 104-13) seeks to minimize government-imposed burden from information collections on the public. In keeping with the notion that government information is a valuable asset, it also is intended to improve the practical utility, quality, and clarity of information collected, maintained, and disclosed.

The Paperwork Reduction Act defines "information" as any statement or estimate of fact or opinion, regardless of form or format, whether numerical, graphic, or narrative form, and whether oral or maintained on paper, electronic, or other media (5 CFR 1320.3(h)). This includes requests for information to be sent to the government, such as forms, written reports and surveys, recordkeeping requirements, and third-party or public disclosures (5 CFR 1320.3(c)). There is no burden to the Federal Government or to title IV-E agencies as a result of this final regulation. It is optional for a title IV-E agency to claim administrative costs. If the agency elects to do so, there are no new reporting requirements because the agency will continue to make administrative cost claims through the Form CB-496.

#### *Annualized Cost to the Federal Government*

*Total Projections to Implement Final Rule.* The estimate for the final rule was derived using fiscal year (FY) 2019 data from the Adoption and Foster Care Analysis and Reporting System (AFCARS) on the number of title IV-E eligible children who identified as American Indian or Alaska Native, alone or in combination, and FY 2021 claiming data from the Form CB-496 "Title IV-E Programs Quarterly Financial Report (Foster Care, Adoption Assistance, Guardianship Assistance, Prevention Services and Kinship Navigator Programs)." We did not use FY 2020 or 2021 data from AFCARS

because such data would likely reflect anomalies due to the COVID-19 public health emergency period.

ACF estimates that the Federal cost in the presence of the final rule over ten fiscal years (2024-2033) is estimated to be \$2,936,285,160. The combined total for Federal and agency costs over ten fiscal years is estimated to be \$5,872,570,319. (These estimates encompass all provisions being codified for the first time by this rule.) It is optional for a title IV-E agency to claim the administrative cost of providing independent legal representation in foster care and civil legal proceedings to eligible children, their parents, their relative caregivers, and their Indian custodians and for representation for an Indian child's tribe that participates or intervenes in state court proceedings for the foster care placement and TPR of an eligible child.

*Assumptions:* ACF made several assumptions when calculating the administrative costs for this final rule.

- FY 2021 title IV-E foster care administrative cost claims are used as the base year amounts for projection purposes in this final rule and were sourced from Form CB-496 FC part 1. These are actual claims, and not estimates. For the purposes of these burden estimates, we will use the phrase "candidates" to refer to the number of children claimed as title IV-E candidates and "IV-E FC" for children who are in title IV-E foster care, the two populations of children (and their parents, relative caregivers, and Indian custodians) to which the costs of this final rule apply.

- AFCARS data provides the number of title IV-E eligible children who identified as American Indian or Alaska Native, alone or in combination. In the September 2023 NPRM, we assumed that this population of children is potentially subject to ICWA requirements in state court proceedings for the foster care placement of, or TPR to, an Indian child. We further assumed that each such Indian child's tribe would intervene in state court proceedings for the foster care placement of, or TPR to, an Indian child. As described previously in this final rule, a child's tribe may choose to participate rather than intervene in state court proceedings.

- Title IV-E agencies may claim reimbursement for 50 percent of the administrative costs to provide legal representation in foster care proceedings, including those in which an Indian child's tribe has participated or intervened in state court proceedings for the foster care placement of, or TPR to, an Indian child, and civil

proceedings, and the title IV–E agency must pay its share with state or tribal funds. This non-Federal share will be an equal percentage of 50 percent because a title IV–E agency must match the same amount of funds for which it seeks Federal reimbursement.

- We assume an overall annual one percent caseload growth rate in the population of candidates for title IV–E foster care and IV–E FC for whom title IV–E administrative costs will be claimed in civil legal proceedings and in FC legal proceedings, including those in which an Indian child’s tribe has participated or intervened in state court for the foster care placement of, or TPR to, an Indian child. This is based on current title IV–E budgetary projections.

- We assume an annual FFP claims growth factor of 4.7 percent for FY 2024 and 2.3 percent from FY 2025 to FY 2033 for the administrative costs of independent legal representation in FC and in other civil legal proceedings. This is based on current title IV–E budgetary projections of the percentage of change in title IV–E administrative cost claims annually. We assume the calculated FY 2021 title IV–E foster care administration eligibility rate for children classified as American Indian or Alaska Native, alone or in combination, will remain unchanged for the ten FY (FYs 2024–2033) project period.

- An implementation level is used in the calculations for the chart below as an estimated projection for the growth in the number of children (either directly or on behalf of a parent, relative caregiver, or Indian custodian) receiving independent legal representation in foster care legal proceedings or civil legal proceedings. Similarly, an implementation level is used in the calculations for the chart below as an estimated projection for the growth in the number of children whose tribe is receiving legal representation by an attorney, or representation by a non-attorney, in state foster care placement and TPR legal proceedings. The implementation level is different for the cost estimates for foster care legal proceedings and civil legal proceedings, and state court foster care placement legal proceedings in which an Indian child’s tribe has participated or intervened as explained below:

- For independent legal representation in foster care legal proceedings, the implementation level is measured separately for children who are candidates and IV–E FC. The base year (FY 2021) implementation levels are calculated from Form CB–496 FC part 1 which identifies for each title IV–E agency on a quarterly basis the

average monthly number of children where independent legal representation for foster care proceedings is being provided for a candidate or IV–E FC. For FY 2021, the independent legal representation for foster care proceedings implementation level is 15.4 percent for IV–E FC and 7.9 percent for candidates. For FYs 2024–2033, the implementation levels are derived from the experience observed in the reported caseload data between FY 2020 and FY 2021 where a 24 percent growth rate occurred for children in title IV–E foster care. We assume that the growth rate will peak in this year and then gradually diminish as more title IV–E agencies take up the option to claim for these costs, and more children are receiving this representation.

- For legal representation by an Indian child’s tribe in state court proceedings for the foster care placement of, or TPR to, an Indian child, a single implementation level is measured for children who are candidates and in IV–E FC. The base year (FY 2021) implementation level is set at zero percent since Federal funding for this cost will not be available until this final rule is implemented by title IV–E agencies. Although there is no known data on the extent to which we anticipate title IV–E agencies will begin providing representation for an Indian child’s tribe to participate or intervene in state court proceedings for the foster care placement of, or TPR to, an Indian child, we anticipate that this administrative cost will be made available to five percent of potentially eligible children in FY 2024 and that most of the growth will occur in years two through five (FYs 2025–2028). In FY 2028 we anticipate 35 percent of potentially eligible tribes will receive legal representation. In subsequent FYs, the implementation growth rate will gradually diminish as more title IV–E agencies take up the option to claim for these costs, and thus there are more children on whose behalf a tribe is receiving this representation.

- For independent legal representation in civil legal proceedings, the implementation level presumes that administrative cost claims will be limited to those children on whose behalf independent legal representation in foster care legal proceedings are claimed. Not all children receiving legal representation in FC proceedings need representation related to civil matters because the reasons for child welfare involvement vary. Additionally, not all title IV–E agencies providing independent legal representation in foster care legal proceedings will opt to also provide

such legal representation in civil proceedings. We have no estimate for FY 2021 costs for legal representation in civil legal proceedings as these will be new costs as a result of this final rule. We assume that the proportion of children receiving legal representation for civil legal proceedings (for both candidates and IV–E FC) will be derived from among those receiving representation for foster care legal proceedings. We estimate that the civil legal proceedings title IV–E caseload will grow gradually each FY from 20 percent in FY 2024, to 45 percent in FY 2028 and up to 56 percent in FY 2033 of the children on whose behalf representation is also being provided for foster care legal proceedings. While there is a great deal of interest in providing legal representation in civil legal proceedings the projections take into account that, in most instances, new or revised protocols will need to be developed with various organizations to implement the final rule. There will also be a need to secure state or tribal funds for the non-Federal share of funding, which often requires legislative approvals.

#### Federal Cost Estimate for Independent Legal Representation in Foster Care Legal Proceedings

Here we describe the individual calculations by line that are in the following chart. All entries in the chart and the narrative below are rounded to the nearest whole number. The calculations to obtain these amounts, however, were performed without applying rounding to the involved factor(s).

*Line 1. National number of children (candidates and IV–E FC) receiving legal representation in foster care legal proceedings.* Line 1 of the table below provides that the actual number of children receiving independent legal representation in FC proceedings in FY 2021 (extrapolated into the future for the purpose of characterizing the analytic baseline) was 10,477 candidates and 26,092 IV–E FC. Line 1 also includes estimates of the annual number of children receiving independent legal representation in foster care proceedings in the following subsequent years: FYs 2024, 2025, 2026, 2028 and in 2033, the estimated number of children is 29,525 candidates and 73,530 IV–E FC.

*Line 2. National average FFP claim per child (candidates and IV–E FC) for independent legal representation in foster care proceedings.* Line 2 of the table below displays that in FY 2021, the actual average title IV–E administrative cost claim per child receiving independent legal

representation in foster care legal proceedings was \$742 for title IV–E candidates and \$2,709 for children in title IV–E foster care. We also provide estimates of the average title IV–E claim per child in the following subsequent years: FYs 2024, 2025, 2026, 2028 and in 2033 the per child average claim is estimated at \$3,481 (IV–E FC) and \$954 (candidates). We note that IV–E agencies will have an incentive to ensure that the attorneys’ fee costs that they submit for IV–E reimbursement are reasonable because the IV–E agency will be responsible for the 50% state share of the cost.

*Line 3. Average FFP claims for candidates and children in title IV–E foster care for independent legal representation in foster care legal proceedings.* Line 3 of the table below displays that in FY 2021, the actual FFP for children receiving independent legal representation in foster care legal proceedings was \$7,777,621 for candidates and \$70,689,345 for children in IV–E FC. We also provide estimates of the average annual claims for these children in the following subsequent years: FYs 2024, 2025, 2026, 2028 and in 2033 the estimated cost is \$28,160,009 (candidates) and \$255,941,062 (IV–E FC).

*Line 4. Total Federal costs for independent legal representation in foster care legal proceedings (candidates and IV–E FC).* Line 4 of the table below provides that the actual total FFP in FY 2021 was \$78,466,966, which is the sum of the costs of independent legal representation in foster care legal proceedings for candidates and IV–E FC. We also provide estimates of the total FFP for these costs in the following subsequent years: FYs 2024, 2025, 2026, 2028 and in 2033 the estimated annual cost is \$284,101,071. The estimates for these subsequent FYs were calculated by multiplying line 1 by line 2 for candidates and IV–E FC.

*Line 5. Non-Federal costs for independent legal representation in foster care legal proceedings.* Line 5 of the table below displays the total FY 2021 non-Federal costs of independent legal representation in foster care proceedings for candidates and IV–E FC was \$78,466,966. This number is the same as line 4 because the FFP rate used in these estimates is 50 percent, thus we estimate the costs for Federal and non-Federal to be the same. We also provide estimates of the total non-Federal costs of independent legal representation in foster care legal proceedings in the following subsequent years: FYs 2024, 2025, 2026, 2028 and in 2033 the estimated annual cost is \$284,101,071.

*Line 6. Total Federal and non-Federal costs of independent legal representation in foster care legal proceedings.* Line 6 of the table below is the sum of lines 4 and 5 for the total Federal and non-Federal costs of independent legal representation in foster care legal proceedings for candidates and IV–E FC. The total FY 2021 costs were \$156,933,932. We also provide estimates of these total Federal and non-Federal costs in the following subsequent years: FYs 2024, 2025, 2026, 2028 and in 2033 the estimated annual cost is \$568,202,142.

Federal Cost Estimate of Independent Legal Representation in Other Civil Legal Proceedings

*Line 7. Number of children (candidates and IV–E FC) receiving independent legal representation in civil legal proceedings.* Line 7 of the table below displays the estimated number of children who will receive independent legal representation in civil legal proceedings either directly, or on behalf of a parent, relative caregiver, or Indian custodian in FY 2024 as 10,137 children. There is no estimate for FY 2021 in the chart because these costs were not claimed; these will be new costs as a result of this final rule. We also provide estimates for subsequent years: FYs 2025, 2026, 2028 and in 2033 the estimated number of children is 63,482. This is based on the implementation level which is the percentage of children receiving independent legal representation in foster care legal proceedings who are projected to also receive independent legal representation in civil legal proceedings in the year.

*Line 8. National average title IV–E administrative cost claim per child for independent legal representation in civil legal proceedings.* Line 8 of the table below displays that in FY 2021, we assumed the average FFP claim per child (candidates and IV–E FC) receiving independent legal representation in civil proceedings to be \$1,262. We also provide estimates for these costs for the following subsequent years: FYs 2024, 2025, 2026, 2028 and in 2033, we estimate the average FFP claim per child to be \$1,621. These cost estimates were derived from data provided by the “Detroit Model” legal services program in which legal representation in civil issues for child welfare clients was calculated as an average yearly amount of \$2,524 gross (\$1,262 50 percent FFP title IV–E Federal share) per client. We used the Detroit model project because we do not have current title IV–E administrative cost claims reported on the Form CB–

496 for civil proceedings that we can use for an estimate of the cost of providing independent legal representation in civil legal proceedings in this rule. This is the only program model known to us providing civil legal representation in pre-petition cases for which average cost data is available, thus the only way for us to estimate these costs.<sup>19</sup> One commenter agreed that the working estimate of an administrative cost claim per child for independent legal representation in civil legal proceedings is plausible. Other commenters noted that the reasonableness of attorney fees may vary across counties, and depend on factors including geography, accessibility, cost of living, and local economies.

*Line 9. Federal costs of independent legal representation in civil legal proceedings.* Line 9 of the table below provides the estimated Federal administrative costs at 50 percent FFP for independent legal representation in civil legal proceedings for candidates and IV–E FC. These costs were calculated by multiplying the expected average monthly caseload (line 7) by the expected average annual claim per child (line 8). We provide estimated Federal costs of \$13,393,972 for FY 2024 and in subsequent years: FYs 2025, 2026, 2028 and in 2033 the estimated Federal cost is \$102,928,630.

*Line 10. Non-Federal costs of independent legal representation in civil legal proceedings.* Line 10 provides the estimated non-Federal share of administrative costs for independent legal representation in civil legal proceedings for candidates and IV–E FC, which is 50 percent of the total on line 11. This number is the same as line 9 because the FFP rate used in these estimates is 50 percent, thus we estimate the costs for Federal and non-Federal to be the same. We provide estimated non-Federal costs of \$13,393,972 beginning in FY 2024 and in subsequent FYs: 2025, 2026, 2028 and in 2033 the estimated non-Federal cost is \$102,928,630. There is no estimate for FY 2021 in the chart because these costs were not claimed; these will be new costs as a result of this final rule.

*Line 11. Total Federal and non-Federal cost of independent legal representation in civil legal proceedings.* Line 11 displays the annual estimated total (Federal + non-Federal) costs for independent legal representation for

<sup>19</sup> Detroit Center for Family Advocacy Pilot Evaluation report July 2009–June 2012; Sankaran, Vivek. Case Closed: Addressing Unmet Legal Needs and Stabilizing Families. M.L. Raimon, co-author. Center for the Study of Social Policy [2014] [Detroit model project].

candidates and IV–E FC in civil legal proceedings. This is the sum of lines 9 and 10. We estimate these total costs beginning in FY 2024 as \$26,787,943 and in subsequent FYs: 2025, 2026, 2028 and in 2033, the estimate is \$205,857,260. There is no estimate for FY 2021 in the chart because these costs were not claimed; these will be new costs as a result of this final rule.

*Line 12. Number of Indian children on whose behalf a tribe may receive representation in state foster care legal proceedings (candidates and IV–E FC).* Line 12 of the table below provides the estimated number of Indian children for whom legal representation may be received by their tribe in state FC proceedings. In FY 2021 (extrapolated into the future for the purpose of characterizing the analytic baseline) candidates and IV–E FC are not listed since this administrative cost was not available. We estimate that the total number, beginning in 2024 and subsequent FYs 2025, 2026, 2028 and 2033 is 3,342 for candidates and 7,814 for IV–E FC.

*Line 13. National average FFP claim per child (candidates and IV–E FC) for tribal representation in state foster care legal proceedings.* Line 13 of the table below provides the average title IV–E claim per child for the tribal representation in state foster care proceedings. In FY 2021 (extrapolated into the future for the purpose of characterizing the analytic), the average

title IV–E administrative cost claim per child receiving legal representation in state foster care legal proceedings was \$1,262 (estimated) for title IV–E candidates and \$2,709 (actual) for children in title IV–E foster care. We estimate the total per child claim for subsequent FYs 2024, 2025, 2026, 2028, and 2033 is \$1,621(candidates) and \$3,481 (IV–E FC).

*Line 14. Average FFP for IV–E FC and candidate itemized for tribal representation in state foster care legal proceedings.* Line 14 of the table below displays estimates for the average annual claims for children whose tribe is receiving legal representation in state foster care proceedings. In FY 2021, there was no actual FFP for children receiving tribal legal representation in such legal proceedings. For subsequent FYs 2024, 2025, 2026, 2028 and 2033 the estimated cost is \$5,419,446 (candidates) and \$27,200,314 (IV–E FC).

*Line 15. Total FFP for tribal representation in state foster care legal proceedings.* Line 15 of the table below provides the total FFP for tribal representation in state foster care legal proceedings by multiplying line 12 for candidates by line 13 for IV–E FC. For FY 2021 (base year), there was no actual FFP for children receiving tribal legal representation in state foster care legal proceedings. Estimates of the total annual FFP for these costs in FYs 2024, 2025, 2026, 2028 and 2033 is \$32,619,760.

*Line 16. Total non-Federal cost for tribal representation in state foster care legal proceedings.* Line 16 provides the estimated non-Federal share of administrative costs for tribal legal representation in state foster care legal proceedings for candidates and IV–E FC by multiplying line 1 by line 2, which is 50 percent of the total on line 17. This number is the same as line 15 because the FFP rate used in these estimates is 50 percent, therefore we estimate the costs for Federal and non-Federal to be the same. We provide estimated non-Federal costs of \$2,641,921 beginning in FY 2024 and in subsequent FYs 2025, 2026, 2028 and 2033, the estimated non-Federal cost is \$32,619,760. There is no estimate for FY 2021 in the chart because these costs were not claimed; these will be new costs as a result of this final rule.

*Line 17. Total cost for state foster care legal proceedings.* Line 17 displays the annual estimated total Federal and non-Federal costs for tribal representation for candidates and IV–E FC in state foster care legal proceedings. This is the sum of lines 15 and 16. We estimate these total costs beginning in FY 2024 as \$5,283,842 and in subsequent FYs 2025, 2026, 2028 and 2033, the estimate is \$65,239,520. There is no estimate for FY 2021 in the chart because these costs were not claimed; these will be new costs as a result of this final rule.

**BILLING CODE 4184–25–P**

Year	2021	2024	2025	2026	2028 (Year 5)	2033 (Year 10)
1. National number of children receiving legal representation in foster care legal proceedings (candidates and IV-E FC)	10,447 (candidates) 26,092 (IV-E FC)	13,201 (candidates) 32,876 (IV-E FC)	15,973 (candidates) 39,779 (IV-E FC)	19,328 (candidates) 48,133 (IV-E FC)	24,886 (candidates) 61,976 (IV-E FC)	29,525 (candidates) 73,530 (IV-E FC)
2. National average FFP claim per child (candidates and IV-E for foster care legal proceedings)	\$742 (candidates) \$2,709 (IV-E FC)	\$777 (candidates) \$2,837 (IV-E FC)	\$795 (candidates) \$2,902 (IV-E FC)	\$813 (candidates) \$2,969 (IV-E FC)	\$851 (candidates) \$3,107 (IV-E FC)	\$954 (candidates) \$3,481 (IV-E FC)
3. Average FFP for IV-E FC and candidate itemized for foster care legal proceedings	\$7,777,621 (candidates) \$70,689,345 (IV-E FC)	\$10,260,393 (candidates) \$93,254,798 (IV-E FC)	\$12,700,622 (candidates) \$ 115,433,586 (IV-E FC)	\$15,721,212 (candidates) \$142,887,156 (IV-E FC)	\$21,184,501 (candidates) \$192,541,977 (IV-E FC)	\$28,160,009 (candidates) \$255,941,062 (IV-E FC)
4. Total FFP (line 1 x line 2 for combined IV-E FC child and candidate) for foster care legal proceedings	\$78,466,966	\$103,515,191	\$128,134,209	\$158,608,368	\$213,726,479	\$284,101,071
5. Total non-Federal cost (line 1 x line 2 for combined IV-E FC and candidates) for foster care legal proceedings	\$78,466,966	\$103,515,191	\$128,134,209	\$158,608,368	\$213,726,479	\$284,101,071

6. Total cost for foster care legal proceedings (line 4 + line 5)	\$156,933,932	\$207,030,382	\$256,268,417	\$317,216,735	\$427,452,958	\$568,202,142
7. Number of children receiving legal representation in civil legal proceedings	N/A	10,137	18,398	25,972	42,997	63,482
8. National average FFP claim per child for civil legal proceedings	\$1,262	\$1,321	\$1,352a	\$1,383	\$1,447	\$1,621
9. Total FFP for civil legal proceedings (line 7 x line 8)	N/A	\$13,393,972	\$24,869,190	\$35,914,468	\$62,222,311	\$102,928,630
10. Total non-Federal costs for civil legal proceedings (line 7 x line 8)	N/A	\$13,393,972	\$24,869,190	\$35,914,468	\$62,222,311	\$102,928,630
11. Total Federal + non-Federal costs for civil legal proceedings (line 9 + line 10)	N/A	\$26,787,943	\$49,738,380	\$71,828,936	\$124,444,623	\$205,857,260
12. Number of children whose tribe may receive legal representation in state foster care legal proceedings (candidates)	N/A	332 (candidates) 777 (IV-E FC)	1,007 (candidates) 2,353 (IV-E FC)	1,694 (candidates) 3,961 (IV-E FC)	2,420 (candidates) 5,657 (IV-E FC)	3,342 (candidates) 7,814 (IV-E FC)

and IV-E FC)						
13. National average FFP claim per child (candidates and IV-E FC) for a tribe in state foster care legal proceedings	N/A	\$1,321 (candidates) \$ 2,837 (IV-E FC)	\$1,352 (candidates) \$ 2,902 (IV-E FC)	\$1,383 (candidates) \$ 2,969 (IV-E FC)	\$1,447 (candidates) \$ 3,107 (IV-E FC)	\$1,621 (candidates) \$ 3,481 (IV-E FC)
14. Average FFP for IV-E FC and candidate itemized for a tribe in state foster care legal proceedings	N/A	\$438,929 (candidates) \$2,202,993 (IV-E FC)	\$1,360,543 (candidates) \$6,828,594 (IV-E FC)	\$2,342,923 (candidates) \$11,759,180 (IV-E FC)	\$3,501,709 (candidates) \$17,575,152 (IV-E FC)	\$5,419,446 (candidates) \$27,200,314 (IV-E FC)
15. Total FFP (line 12 x line 13 for combined IV-E FC child and candidate) for a tribe in state foster care legal proceedings	N/A	\$2,641,921	\$8,189,137	\$14,102,103	\$21,076,861	\$32,619,760
16. Total non-Federal cost (line 12 x line 13 for combined IV-E FC and candidates) for a tribe in state foster care legal proceedings	N/A	\$2,641,921	\$8,189,137	\$14,102,103	\$21,076,861	\$32,619,760
17. Total cost for a tribe in state foster care legal proceedings (line 15 + line 16)	N/A	\$5,283,842	\$16,378,274	\$28,204,206	\$42,153,722	\$65,239,520

*Accounting Statement*

From a society-wide perspective, many of the effects estimated above are transfers from either the Federal Government or title IV-E agencies to

title IV-E participants. The table immediately below presents annualized estimates of the incremental FFP claims, reported as Federal budget transfers, and estimates of the incremental non-Federal share, reported as other

transfers, consistent with the yearly estimates reported in rows 4 and 5 (where applicable) and 9, 10, 15 and 16 in the table above. These estimates cover a 10-year time horizon and apply both a 7% and 3% discount rate.

<b>Estimates comparing against pre-existing operations (summarizing rows 9, 10, 15 and 16 in the table above):</b>				
Category	Primary Estimate (millions)	Units		
		Year Dollars	Discount Rate	Period Covered
Federal Budget Transfers (annualized)	\$76	2021	7%	10 years
Federal Budget Transfers (annualized)	\$80	2021	3%	10 years
From/To	From: Federal Government	To: children eligible for title IV-E foster care		
Other Transfers (annualized)	\$76	2021	7%	10 years
Other Transfers (annualized)	\$80	2021	3%	10 years
From/To	From: Title IV-E agencies	To: children eligible for title IV-E foster care		

<b>Estimates encompassing all provisions being codified for the first time (summarizing rows 4, 5, 9, 10, 15 and 16 in the table above):</b>				
Category	Primary Estimate (millions)	Units		
		Year Dollars	Discount Rate	Period Covered
Federal Budget Transfers (annualized)	\$274	2021	7%	10 years
Federal Budget Transfers (annualized)	\$285	2021	3%	10 years
From/To	From: Federal Government	To: children eligible for title IV-E foster care		
Other Transfers (annualized)	\$274	2021	7%	10 years
Other Transfers (annualized)	\$285	2021	3%	10 years
From/To	From: Title IV-E agencies	To: children eligible for title IV-E foster care		

**VI. Tribal Consultation Statement**

Executive Order 13175, *Consultation and Coordination with Indian Tribal Governments*, requires agencies to consult with Indian tribes when regulations have “substantial direct effects on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.” Similarly, ACF’s Tribal Consultation Policy says that consultation is triggered for a new rule adoption that significantly affects tribes, meaning the new rule adoption has substantial direct effects on one or more Indian tribes, on the amount or duration of ACF program funding, on the delivery of ACF programs or services to one or more Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes. This final rule does not meet either standard for consultation. Executive Order 13175 does not apply to this final rule because it does not impose any burden or cost on tribal title IV-E agencies, nor does it impact the relationship or distribution of power between the Federal Government and

Indian Tribes. Rather, it provides title IV-E agencies an option for claiming additional administrative costs for legal representation under title IV-E of the Act. Although not required for this final rule, ACF is committed to consulting with Indian tribes and tribal leadership to the extent practicable and permitted by law. ACF engaged in consultation with tribes and their leadership on the September 2023 NPRM as described below.

*Description of Consultation*

On September 29th, 2023, ACF issued a letter to tribal leaders announcing the date, purpose, virtual location, and registration information for tribal consultation and shared it widely through a variety of peer groups and email list-serves. Tribal Consultation was held via a Zoom teleconference call on October 30, 2023. A report of the tribal consultation may be found on the CB website at: <https://www.acf.hhs.gov/cb/report/tribal-consultation-nprms-legal-foster-care>. In summary, the consultation participants requested clarifications on allowable administrative costs, access to funding for legal representation provided early in a case, information the tribe will need

to report to the title IV-E agency for claiming costs, and additional funding for the cost of representation in state court proceedings for the foster care placement of, or TPR to, an Indian child, which we responded to in section IV. The participants also raised issues that are out of scope of the NPRM and more technical in nature, such as the types of agreements that must be in place to access Federal funding through the title IV-E agency. We would like to note that more information about agreements and contracts is available in CWPM 8.1E and G. ACF will work with title IV-E agencies and interested tribes to provide additional technical assistance on these issues.

Jeff Hild, Principal Deputy Assistant Secretary for the Administration for Children and Families, performing the delegable duties of the Assistant Secretary for Children and Families, approved this document on April 24, 2024.

**List of Subjects in 45 CFR Part 1356**

Administrative costs, Adoption assistance, Child welfare, Fiscal requirements (title IV-E), Grant programs—social programs, Statewide information systems.

(Catalog of Federal Domestic Assistance Program Number 93.658, Foster Care Maintenance; 93.659, Adoption Assistance; 93.645, Child Welfare Services—State Grants).

Dated: April 30, 2024.

**Xavier Becerra,**

*Secretary, Department of Health and Human Services.*

For the reasons set forth in the preamble, ACF amends 45 CFR part 1356 as follows:

## **PART 1356—REQUIREMENTS APPLICABLE TO TITLE IV–E**

■ 1. The authority citation for part 1356 continues to read as follows:

**Authority:** 42 U.S.C. 620 *et seq.*, 42 U.S.C. 670 *et seq.*, 42 U.S.C. 1302.

■ 2. Amend § 1356.60 by revising paragraphs (c)(2)(viii) through (x) and adding paragraphs (c)(2)(xi) and (c)(4) to read as follows:

### **§ 1356.60 Fiscal requirements (title IV–E).**

\* \* \* \* \*

(c) \* \* \*

(2) \* \* \*

(viii) Rate setting;

(ix) A proportionate share of related agency overhead;

(x) Costs related to data collection and reporting; and

(xi) Costs related to legal representation described in paragraph (c)(4) of this section.

\* \* \* \* \*

(4) The following are allowable administrative costs of legal representation:

(i) Legal representation in foster care proceedings provided by an attorney representing the title IV–E agency or any other public agency (including an Indian tribe) which has an agreement in effect under which the other agency has placement and care responsibility of a title IV–E eligible child pursuant to 472(a)(2)(B)(ii) of the Act;

(ii) Independent legal representation provided by an attorney representing a child in title IV–E foster care, a child who is a candidate for title IV–E foster care, the child’s parent(s), the child’s relative caregiver(s), and the child’s Indian custodian(s) in foster care and other civil legal proceedings as necessary to carry out the requirements in the agency’s title IV–E foster care plan. Independent legal representation in civil proceedings includes facilitating, arranging, brokering, advocating, or otherwise linking clients with providers and services as identified in the child’s case plan pursuant to sections 422, 471(a)(16), and 475 of the Act; and

(iii) Legal representation provided by an attorney representing an Indian child’s tribe (as defined by 25 U.S.C.1903(5)), or representation of an Indian child’s tribe provided by a non-attorney, when the child’s tribe participates or intervenes in any state court proceeding for the foster care placement or termination of parental rights of an Indian child who is in title IV–E foster care or an Indian child who is a candidate for title IV–E foster care.

\* \* \* \* \*

[FR Doc. 2024–09663 Filed 5–8–24; 4:15 pm]

**BILLING CODE 4184–25–P**

## **AGENCY FOR INTERNATIONAL DEVELOPMENT**

### **48 CFR Parts 727, 742, and 752**

**RIN 0412–AA90**

#### **USAID Acquisition Regulation: Planning, Collection, and Submission of Digital Information; Submission of Activity Monitoring, Evaluation, and Learning Plan to USAID; Correction**

**AGENCY:** U.S. Agency for International Development.

**ACTION:** Final rule; correction.

**SUMMARY:** On May 6, 2024, the United States Agency for International Development (USAID) published a final rule amending USAID’s Acquisition Regulation (AIDAR) that implements USAID requirements for managing digital information as a strategic asset to inform the planning, design, implementation, monitoring, and evaluation of the Agency’s foreign assistance programs. The rule contained two errors which this document is correcting.

**DATES:** Effective June 5, 2024.

**FOR FURTHER INFORMATION CONTACT:** Kelly Miskowski, USAID M/OAA/P, at 202–256–7378 or *policymailbox@usaid.gov* for clarification of content or information pertaining to status or publication schedules. All communications regarding this rule must cite AIDAR RIN No. 0412–AA90.

#### **SUPPLEMENTARY INFORMATION:**

##### **Correction**

In FR Doc. 2024–09373, appearing on page 37948 in the **Federal Register** of Monday, May 6, 2024, the following corrections are made:

■ 1. In the preamble on page 37948, in the first column, in **SUMMARY**, in the first sentence, add the word “is” after “(USAID)”.

## **727.7003 [Corrected]**

■ 2. On page 37961, in the first column, in § 727.7003, in paragraph (a), in the first sentence, remove the words “to USAID”.

**Jami J. Rodgers,**

*Chief Acquisition Officer.*

[FR Doc. 2024–10189 Filed 5–9–24; 8:45 am]

**BILLING CODE 6116–01–P**

## **DEPARTMENT OF COMMERCE**

### **National Oceanic and Atmospheric Administration**

#### **50 CFR Part 300**

[Docket No. 240506–0128; RTID 0648–XD634]

#### **Pacific Halibut Fisheries of the West Coast; Management Measures for the 2024 Area 2A Pacific Halibut Directed Commercial Fishery**

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Final rule.

**SUMMARY:** NMFS is implementing fishing periods and fishing period limits for the 2024 Pacific halibut non-tribal directed commercial fishery off the West Coast south of Point Chehalis, WA. This action establishes two fishing periods, June 25–27 and July 9–11, 2024. NMFS is also implementing vessel catch limits applicable to eight vessel size classes. These actions are intended to conserve Pacific halibut and provide fishing opportunity where available.

**DATES:** This rule is effective on June 25, 2024.

**FOR FURTHER INFORMATION CONTACT:** Heather Fitch, West Coast Region, NMFS, (360) 320–6549, *heather.fitch@noaa.gov*.

#### **SUPPLEMENTARY INFORMATION:**

##### **Background**

The Northern Pacific Halibut Act of 1982 (16 U.S.C. 773–773k) (Halibut Act), gives the Secretary of Commerce responsibility for implementing the provisions of the Convention between Canada and the United States for the Preservation of the Halibut Fishery of the North Pacific Ocean and Bering Sea (Convention), signed at Ottawa, Ontario, on March 2, 1953, as amended by a Protocol Amending the Convention (March 29, 1979).

The Secretary of State, with the concurrence of the Secretary of Commerce and on behalf of the United