

... because every child needs a permanent, loving, and culturally sensitive family

# Implementing the Adoption Assistance Provisions of the Fostering Connections Act

## Introduction

On October 7, 2008 the Fostering Connections to Success and Increasing Adoptions Act (Fostering Connections Act or the Act) was signed into law, ushering in some of the most significant improvements to the child welfare system in more than a decade. The Act is intended to enhance the availability of services and supports to strengthen kinship and adoptive families. It also includes new resources and requirements for child welfare agencies to better meet the needs of children and families in the child welfare system.

For the adoption community, the Fostering Connections Act fixes a longstanding problem—referred to as the AFDC link—with the federal adoption assistance program. By removing this link, Congress has taken an important step toward ensuring that all children have the best possible chance of finding their forever families.

This issue brief summarizes the following:

- the problems of the AFDC adoption assistance link;
- the new provision that removes the AFDC link; and
- what the child welfare community needs to do to take advantage of the law's Maintenance of Effort provision (MoE), which requires states to continue their investments in child welfare services.

## History of the AFDC Link

Since 1980, eligibility for Title IV-E foster care and adoption assistance was, for most children, linked to eligibility for the Aid to Families with Dependent Children (AFDC) program. To receive federal foster care or adoption assistance, the foster child's birth parents had to be eligible for the AFDC program, a welfare program eliminated in 1996. Even though AFDC was replaced with Temporary Assistance to Needy Families (TANF), the link to AFDC for child welfare eligibility remained intact. The limitation

of federal support to children who were part of very poor birth families created two harmful consequences:

- Because the link was tied to 1996 levels, fewer and fewer children were eligible for federal foster care and adoption assistance over time. According to The Pew Charitable Trusts, approximately 5,000 foster children lose their Title IV-E eligibility each year, which by extension makes fewer children eligible for federal adoption assistance.<sup>1</sup>
- Certain states choose to operate a separate state adoption assistance program for children who were not federally eligible. Having different programs is administratively inefficient, and some state programs provide less support to children than the federal program. State-only programs are also more vulnerable to state budget cuts.

It made little sense to base eligibility for adoption assistance on the income of a parent whose rights had been terminated, and it was unfair to children in need of permanent families to operate often unequal programs. By 2008, the AFDC link was criticized by virtually every constituency group in the child welfare community, and Congress acted to gradually extend federal adoption assistance support.

## The Adoption Assistance De-link Provision

Congress chose to phase in expanded IV-E eligibility over a number of years, rather than making all children eligible right away. Congress also included a Maintenance of Effort (MoE) requirement to ensure that as federal support increases, state funds previously spent on state adoption assistance programs will remain in the child welfare system.

<sup>1</sup> Pew Charitable Trusts. *Time for Reform: Fix the Foster Care Look Back*. Washington, D.C., 2007.

## Transition to Full Federal Eligibility

Beginning federal fiscal year (FY) 2010, which starts October 1, 2009, newly adopted children who have been in foster care for at least 60 consecutive months and or who are 16 or older will be eligible for IV-E adoption assistance as long as they meet their state's definition of special needs and meet other requirements for IV-E eligibility.<sup>2</sup> Children placed with siblings who qualify due to age or length of time in care will also be IV-E eligible.

As shown below, eligibility will be phased in by age over the next nine years. Children become eligible if they turn the listed age any time during the fiscal year.

Federal Fiscal Year	Age of Eligibility
2010	16 and older
2011	14 and older
2012	12 and older
2013	10 and older
2014	8 and older
2015	6 and older
2016	4 and older
2017	2 and older
2018	all children

By 2018, newly adopted children of all ages who meet the other IV-E eligibility requirements will be eligible for federal adoption assistance. For these children, states will be responsible for only the federal adoption assistance match.

## Maintenance of Effort Requirement

As federal adoption assistance eligibility expands, states will save money that would have been spent on state-only adoption assistance programs. To ensure that these funds address unmet child welfare needs, the Fostering Connections Act included a Maintenance of Effort (MoE) requirement, mandating that funds saved be invested in Title IV-B or IV-E child welfare services. Typically, the federal government monitors MoE requirements by having states report on how state funds are being reinvested. However, federal regulations have not been released so it is unclear how the Department of Health and Human Services will monitor this provision.

<sup>2</sup> While most children are deemed ineligible for IV-E due to birth parents' income, some are ineligible because any of the following required judicial determinations were not made by the set timelines: (1) for court-ordered placements, that the initial placement in care was in the child's best interests *and* that reasonable efforts to prevent placement were made or are not required to be made; (2) for voluntary placements, within 180 days, that the placement is in the best interest of the child or that remaining in the home is contrary to the child's welfare; (3) for all placements, that reasonable efforts to finalize the permanency plan were made (and updated every year).

## Planning for State Implementation

The savings from de-link will begin to accrue in FY 2010, and state administrators, policymakers, and advocates can begin to prepare for implementation now by:

1. collecting data needed to project the number of children who will be newly eligible for the federal program and estimating the state savings that will result;
2. planning for how MoE dollars should be reinvested into child welfare services to further improve permanency outcomes.

## Projection Data: Key Questions to Consider

To determine how much money states will save and thus have to re-invest, administrators and advocates can answer the following questions:

1. **How many children with special needs are in the non-IV-E state adoption assistance program due to their birth parents' income, and what is the state cost?** By examining the children in the existing state-only adoption assistance program, states can get a baseline for the federal support they will receive and the approximate amount of state resources that can be reinvested into child welfare. States that are covering large numbers of children in state-only adoption assistance programs can expect that, by the year 2018, they will have significant funds to reinvest in child welfare programs and services.
2. **What are the ages of children currently funded through the state-only adoption assistance program because of income ineligibility?** By looking at age data, states can see how quickly the MoE dollars will be available as younger children gain federal eligibility.
3. **How many waiting children of what age are not IV-E eligible due to their birth parents' income?** States can examine the caseload of children whose parental rights have been terminated who have not yet been adopted, which will help them gauge the impact of the new federal de-link provision. Siblings of older children who will be eligible can also be counted.
4. **How many waiting children who are not IV-E eligible have been in care for 60 continuous months?** If adopted, children who have been in care for 60 continuous months (and their siblings) will be eligible in FY 2010 regardless of age, so this figure will also help states gauge the impact of the legislation.
5. **What other variables might affect the amount of MoE funding available?** Variables include whether children receive a special adoption subsidy rate, the length of time they will receive adoption assistance, and the state's federal matching rate.

## Using Data to Estimate MoE

The sample calculations on the next page are meant to illustrate the type of data states will need to collect, and how that data translates into MoE funds. Administrators and advocates can use their own state data to approximate the number of children affected and MoE dollars that the state can reinvest. Appendices 1 to 3 use 2007 data\* from the Adoption and Foster Care Analysis Reporting System (AFCARS), including the state's IV-E penetration rate for waiting and adopted children, the IV-E status of children who have been waiting for 60 months or more, and the number of older non-IV-E children. The data may help states estimate future reinvestment income.

Advocates should check with their state for more up-to-date data to fine-tune the estimate of how much the state will save with the de-link provision. To complete their own version of the savings chart, advocates and administrators would need the following data points:

- number of children waiting to be adopted
- number of children waiting to be adopted who are not/will not be IV-E eligible due to birth parent income
- number of non-IV-E children who will turn 16 during FY 2010 and the number who turn 14 in FY 2011
- number of non-IV-E who are younger than 16 (and 14 for FY 2011) but who have been in care longer than 60 consecutive months
- number of siblings of the above two categories of children who will be placed together
- percentage of children 16+ (and 14+ for FY 2011) who are typically adopted (or the ratio of the number of waiting children 16+ to the number of adopted children 16+)
- percentage of children in care 60+ months who are adopted (or the ratio of the number of these longer waiting children to the number of longer waiting children who are adopted)
- average monthly adoption subsidy payment for older and longer waiting children

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\* Please note that this data is included only to help estimate each state's individual situation. Data varies greatly from year to year, and a state's circumstances may have changed from 2007 to the present. Waiting child data is from the Foster Care File as of September 30, 2007, and adoption data is from the Adoption File for the year of 2007. The two data sources have some differences so comparisons between the two data files are not perfect.

Children listed as IV-E are those for whom a IV-E payment was made. All other children (including those for whom data is missing or no payment was made during the given time period) are listed as not IV-E. Some of these may be otherwise IV-E eligible.

- the age at which the state stops paying adoption assistance (18, 19, 20, or 21)

Final estimates will depend upon the number of children who are actually adopted and whether or not these children have siblings who also become eligible, both of which are more difficult to estimate. To help determine how many children will be adopted, states can examine the percentage of children in the state-only program who have been adopted in the past. Of course, the percentage could be higher if those states that currently have a differential between their state and federal subsidy programs make the benefits equal and thus increase incentives to adopt children who had been non-IV-E. Similarly, if states invest further in recruitment and post-placement support they might increase the overall number of children, particularly older children, adopted from care.

The state estimate might be understated if the following is true for the state:

- Some children who are adopted would have received a specialized adoption assistance rate that would have been paid with state funding.
- Youth who turned 18 receive extended adoption assistance as permitted by the Act.
- The state's Federal Medical Assistance Percentage (FMAP) is higher than 60 percent.
- New children become eligible to be adopted because their parental rights are terminated.

This estimate might be overstated if the state's FMAP is under 60 percent, or if a large percentage of children are non-IV-E eligible for reasons other than birth family income.

In any case, savings will grow exponentially as younger children become eligible and previously adopted children continue to receive support until they age out of the adoption assistance program at 18 or older, if permitted in the state.

## Other Cost Savings

In addition, there are both immediate and long-term cost savings to the state as a result of children being adopted from foster care. In the short term, states are likely to save foster care administrative dollars and court costs for children who are adopted. Research shows that adoption from foster care saves money over maintaining a child in care. One estimate of the cost savings for the 50,000 children adopted from foster care each year shows government savings ranging from \$3.3 billion to \$6.3 billion, depending on the subsidy rate provided in the state.<sup>3</sup>

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<sup>3</sup> Barth, Richard Lee, Chung Kwon; Wildfire, Judith; and Guo, Shenyang. A Comparison of the Governmental Costs of Long-Term Foster Care and Adoption. *Social Service Review*, University of Chicago (March 2006).

## Sample State Estimate of Savings: Fiscal Years 2010 and 2011

	FY 2010	FY 2011
Number of children waiting to be adopted	1,000	950
Number of waiting children w/special needs who are not IV-E eligible due to income <i>(assumes 50% of waiting children are not IV-E eligible*)</i>	500	475
<b>Of the previously non-IV-E waiting children:</b>		
Number newly eligible by age (16+ for 2010; 14+ for 2011) <i>(assumes 10% of non-IV-E waiting children in 2010 and 20% in 2011*)</i>	50	95
Number in care 60 months or longer but not in above age group <i>(assumes 16% of all waiting children have been in care 60 months or more; 75% of those children are &lt;16 and 50% are &lt;14)</i>	60	38
Number of siblings of the above two categories not otherwise eligible by age or time in care	30	35
<b>Total number of children newly eligible</b> <i>(total of above three numbers)</i>	<b>140</b>	<b>168</b>
Percentage of newly eligible children adopted <i>(national data shows roughly 11% of older children and 23% of longer-waiting children are adopted*; for siblings we estimated 15%)</i>	18%	20%
<b>Total adopted</b> <i>(percentage multiplied by number eligible)</i>	25	34
<b>Annual cost of adoption assistance</b> <i>(\$600/mo or \$7,200/yr per child adopted)**</i>	<b>\$180,000</b>	<b>\$244,800</b>
<b>Savings to state for the year</b> <i>(based on federal share of 66% FMAP in FY 2010*** and 60% FMAP in FY 2011)</i>	<b>\$118,800</b>	<b>\$146,880</b>
<b>Percentage of the above savings continued into next year for those youth still receiving adoption assistance****</b> <i>(assumes 15% of those 16+ turned 18 in 2011, and no longer receive subsidy)</i>		<b>\$91,800</b>
<b>TOTAL SAVINGS TO STATE OVER TWO YEARS = \$357,480</b>		

\*These percentages are based on national estimates derived from 2007 AFCARS data.

\*\*Amounts will vary based on the state's average monthly adoption subsidy payment.

\*\*\*FMAP increased by 6 percent through American Recovery and Reinvestment Act

\*\*\*\*A portion of each year's savings is carried forward as long as those children continue to receive adoption assistance.  
In states that continue assistance beyond age 18, more savings will be carried over.



Additional research shows that one dollar spent on adoption yields three dollars in public and private benefits.<sup>4</sup> Finding children in foster care permanent adoptive families can also help states avoid the cost of bad outcomes associated with children aging out of foster care with no permanent family, including homelessness, unemployment, and incarceration.<sup>5P</sup>

## MoE Reinvestment: Key Questions to Consider

States can begin planning the types of services and activities to be funded through state MoE reinvestment. The following questions can help guide states through this process:

1. **Who should participate in decisions about how to reinvest MoE funds?** States should have an inclusive process to get feedback on the types of services and activities that will strengthen the child welfare system. NACAC believes that in order to make the best use of these funds, states should involve state and local administrators, private agencies under contract with the state, parents, and youth.
2. **What child welfare services need further investment through MoE dollars?** States can explore which programs and services are currently underfunded. States will need to decide if they should increase funding for existing underfunded programs or start new programs. NACAC believes that the following services are good investments to further promote permanency for children in foster care:
  - Post-permanency services to keep adoptive and guardian families together. These might include adoption-competent mental health programs, counseling, respite care, support groups, resource and referral programs, recreational activities for youth, and much more.
  - Reunification after-care services for children who have been reunited with their families. These might include in-home support services plus flexible funding for concrete needs such as food, housing assistance, utilities, clothing, child care assistance, respite care, job training, and much more.
  - Adoption recruitment activities to facilitate the adoption of children from foster care, including targeted recruitment, pre-adoption counseling, timely

completion of home studies, and legal support to finalize adoptions.

3. **What will the federal guidance say about when states must spend MoE dollars?** Given the relatively slow pace by which the adoption de-link provision is being phased in, most states will require a few years of implementation until MoE dollars have reached a meaningful level. The federal government has not yet said whether states can accumulate MoE funding until they can make significant investments into other parts of the child welfare system or if they have to spend MoE funds as they are saved. NACAC encourages states, policymakers, and others to advocate for a reasonable timeframe for implementation of the MoE requirement.

## Conclusion

The Fostering Connections Act fixed what the Senate Finance Committee described as “an inappropriate eligibility factor for Federal Adoption Assistance.” State and local child welfare agencies will now be able to guarantee greater equity and efficiency in their adoption assistance programs. State administrators, advocates, and policymakers can plan for these federal changes and consider how they will spend their MoE dollars. By investing carefully, they can truly make a difference for children and families.

State child welfare stakeholders can also use the opportunity to explore other critical areas that need improvement. Depending upon the state, these might include increasing adoption subsidy rates to be equal to what children would have received in foster care, providing services and supports to adoptive families, and targeting recruitment for children of color and older youth.

States should certainly take this chance to eliminate any separate state adoption assistance program they may have and to equalize benefits for children, regardless of funding stream. Given that the vast majority of children will now be IV-E eligible, it makes little sense to operate a separate program simply for the children who do not meet the judicial determinations identified in the footnote on page 2.

While de-link and MoE reinvestment can help achieve some of these improvements, it cannot support them all. Research shows that adoptions from foster care save money. Even in these difficult economic times, states can build on the knowledge that in the long run, adoption support is a wise financial investment. By steering continued local, state, federal, and private funds into promoting permanency through adoption, it is vulnerable children and youth who stand to gain.

<sup>4</sup> Hansen, Mary. *The Value of Adoption*. Department of Economics Working Paper Series, No. 2006-15, American University, December 2006.

<sup>5</sup> Pew Charitable Trusts & Jim Casey Youth Opportunities Initiative. *Time for Reform: Aging Out and On Their Own*, Washington, D.C., 2007.

## Appendix 1

### Waiting and Adopted Foster Children by IV-E Payment Status 2007 AFCARS Data

	Children Waiting to Be Adopted			Children Adopted		
	IV-E	Non-IV-E	% Non-IV-E	IV-E	Non-IV-E	% Non-IV-E
Alabama	765	1,055	58%	177	172	49%
Alaska	288	489	63%	188	66	26%
Arizona	1,299	1,193	48%	1,270	347	21%
Arkansas	499	281	36%	268	136	34%
California	13,347	7,485	36%	5,742	1,390	19%
Colorado	754	1,008	57%	467	617	57%
Connecticut	900	594	40%	406	296	42%
Delaware	66	245	79%	32	86	73%
District of Columbia	334	226	40%	89	63	41%
Florida	4,011	3,813	49%	1,627	1,453	47%
Georgia	1,007	1,155	53%	671	599	47%
Hawaii	427	306	42%	219	46	17%
Idaho	373	220	37%	148	39	21%
Illinois	2,462	1,945	44%	insufficient data		
Indiana	1,606	1,605	50%	1,017	279	22%
Iowa	463	835	64%	536	524	49%
Kansas	684	1,128	62%	514	279	35%
Kentucky	1,364	761	36%	667	22	3%
Louisiana	654	483	42%	274	154	36%
Maine	268	347	56%	194	135	41%
Maryland	insufficient data			28	175	86%
Massachusetts	1,445	1,423	50%	415	380	48%
Michigan	1,611	4,505	74%	1,590	1,027	39%
Minnesota	705	821	54%	313	229	42%
Mississippi	327	571	64%	242	53	18%
Missouri	1,262	1,296	51%	740	228	24%
Montana	231	366	61%	194	52	21%
Nebraska	187	618	77%	151	349	70%
Nevada	1,049	884	46%	380	86	18%
New Hampshire	116	128	52%	123	18	13%
New Jersey	1,251	2,943	70%	942	277	23%
New Mexico	599	364	38%	306	49	14%
New York	4,676	2,983	39%	1,674	814	33%
North Carolina	1,493	1,602	52%	1,002	519	34%
North Dakota	110	227	67%	73	52	42%
Ohio	2,804	978	26%	1,633	106	6%
Oklahoma	2,726	1,902	41%	821	430	34%
Oregon	1,309	1,218	48%	804	212	21%
Pennsylvania	2,344	1,035	31%	1,526	414	21%
Puerto Rico	71	1,180	94%	49	110	69%
Rhode Island	136	263	66%	149	90	38%
South Carolina	718	1,061	60%	200	205	51%
South Dakota	183	269	60%	112	47	30%
Tennessee	886	736	45%	350	864	71%
Texas	7,529	6,023	44%	2,815	1,207	30%
Utah	285	286	50%	187	267	59%
Vermont	153	104	40%	146	53	27%
Virginia	1,129	688	38%	384	197	34%
Washington	1,300	1,537	54%	1,204	91	7%
West Virginia	467	805	63%	328	75	19%
Wisconsin	671	573	46%	599	135	18%
Wyoming	23	128	85%	37	36	49%
Total	69,367	64,451	48%	34,023	17,227	34%

## Appendix 2

### Waiting Children Who Have Been in Care for 60 Months or Longer by IV-E Status 2007 AFCARS Data

	Waiting Children in Care >60 Mo		
	IV-E	Non-IV-E	%Non- IV-E
Alabama	170	370	69%
Alaska	13	62	83%
Arizona	90	71	44%
Arkansas	93	55	37%
California	1,646	694	30%
Colorado	106	157	60%
Connecticut	201	105	34%
Delaware	1	35	97%
District of Columbia	85	84	50%
Florida	893	573	39%
Georgia	195	251	56%
Hawaii	56	58	51%
Idaho	27	27	50%
Illinois	653	434	40%
Indiana	195	210	52%
Iowa	49	99	67%
Kansas	133	198	60%
Kentucky	177	107	38%
Louisiana	176	91	34%
Maine	84	83	50%
Maryland	insufficient data		
Massachusetts	227	248	52%
Michigan	182	872	83%
Minnesota	112	136	55%
Mississippi	51	79	61%
Missouri	263	243	48%
Montana	48	122	72%
Nebraska	22	98	82%
Nevada	59	76	56%
New Hampshire	20	41	67%
New Jersey	162	528	77%
New Mexico	15	25	63%
New York	1,526	1,355	47%
North Carolina	221	275	55%
North Dakota	22	14	39%
Ohio	632	190	23%
Oklahoma	276	230	45%
Oregon	143	236	62%
Pennsylvania	282	173	38%
Puerto Rico	8	636	99%
Rhode Island	16	55	77%
South Carolina	169	165	49%
South Dakota	32	58	64%
Tennessee	111	78	41%
Texas	1,095	661	38%
Utah	27	43	61%
Vermont	23	21	48
Virginia	197	127	39%
Washington	180	1	1%
West Virginia	32	78	71%
Wisconsin	78	139	64%
Wyoming	3	18	86%
Total	11,277	10,785	49%

### Appendix 3

#### Non-IV-E Foster Children 16 and Older and 14 and Older 2007 AFCARS Data

	Non-IV-E Children Waiting to Be Adopted				Non-IV-E Children Adopted			
	No. 16+	% 16+	No. 14+	% 14+	No. 16+	% 16+	No. 14+	% 14+
Alabama	169	16%	299	28%	5	3%	9	5%
Alaska	41	8%	89	18%	5	8%	7	11%
Arizona	38	3%	127	11%	14	4%	36	10%
Arkansas	32	11%	77	27%	2	1%	5	4%
California	342	5%	783	10%	57	4%	118	8%
Colorado	98	10%	222	22%	20	3%	36	6%
Connecticut	7	1%	86	14%	9	3%	18	6%
Delaware	23	9%	46	19%	0	0%	0	0%
District of Columbia	18	8%	65	29%	3	5%	5	8%
Florida	365	10%	761	20%	43	3%	91	6%
Georgia	97	8%	242	21%	17	3%	37	6%
Hawaii	83	27%	133	43%	1	2%	6	13%
Idaho	27	12%	53	24%	2	5%	5	13%
Illinois	32	2%	200	10%	insufficient data			
Indiana	158	10%	337	21%	7	3%	22	8%
Iowa	81	10%	158	19%	12	2%	31	6%
Kansas	112	10%	295	26%	15	5%	32	11%
Kentucky	127	17%	264	35%	1	5%	2	9%
Louisiana	56	12%	118	24%	3	2%	8	5%
Maine	41	12%	97	28%	11	8%	19	14%
Maryland	insufficient data				4	2%	15	9%
Massachusetts	62	4%	185	13%	6	2%	19	5%
Michigan	573	13%	1,297	29%	30	3%	86	8%
Minnesota	137	17%	246	30%	13	6%	26	11%
Mississippi	50	9%	121	21%	1	2%	1	2%
Missouri	130	10%	351	27%	21	9%	37	16%
Montana	81	22%	145	40%	2	4%	4	8%
Nebraska	55	9%	151	24%	8	2%	29	8%
Nevada	10	1%	58	7%	4	5%	7	8%
New Hampshire	16	13%	38	30%	4	22%	7	39%
New Jersey	267	9%	605	21%	15	5%	30	11%
New Mexico	29	8%	82	23%	3	6%	9	18%
New York	476	16%	1,018	34%	71	9%	125	15%
North Carolina	199	12%	388	24%	16	3%	43	8%
North Dakota	10	4%	21	9%	2	4%	4	8%
Ohio	149	15%	287	29%	16	15%	22	21%
Oklahoma	174	9%	456	24%	18	4%	38	9%
Oregon	64	5%	146	12%	3	1%	12	6%
Pennsylvania	112	11%	244	24%	15	4%	25	6%
Puerto Rico	37	3%	129	11%	3	3%	7	6%
Rhode Island	26	10%	76	29%	8	9%	15	17%
South Carolina	65	6%	190	18%	5	2%	17	8%
South Dakota	36	13%	68	25%	2	4%	3	6%
Tennessee	207	28%	330	45%	78	9%	167	19%
Texas	367	6%	910	15%	20	2%	60	5%
Utah	35	12%	69	24%	9	3%	13	5%
Vermont	16	15%	30	29%	1	2%	3	6%
Virginia	66	10%	158	23%	5	3%	23	12%
Washington	165	11%	309	20%	3	3%	6	7%
West Virginia	80	10%	174	22%	1	1%	4	5%
Wisconsin	72	13%	133	23%	4	3%	13	10%
Wyoming	12	9%	26	20%	0	0%	0	0%
Total	5,847	9%	13,181	20%	651	4%	1,446	8%