

110TH CONGRESS
2D SESSION

H. R. 6893

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

IN THE HOUSE OF REPRESENTATIVES

SEPTEMBER 15, 2008

Mr. McDERMOTT (for himself and Mr. WELLER of Illinois) introduced the following bill; which was referred to the Committee on Ways and Means

A BILL

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

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Fostering Connections
5 to Success and Increasing Adoptions Act of 2008”.

6 **SEC. 2. TABLE OF CONTENTS.**

7 The table of contents of this Act is as follows:

- Sec. 1. Short title.
- Sec. 2. Table of contents.

TITLE I—CONNECTING AND SUPPORTING RELATIVE CAREGIVERS

- Sec. 101. Kinship guardianship assistance payments for children.
- Sec. 102. Family connection grants.
- Sec. 103. Notification of relatives.
- Sec. 104. Licensing standards for relatives.
- Sec. 105. Authority for comparisons and disclosures of information in the Federal Parent Locator Service for child welfare, foster care, and adoption assistance program purposes.

TITLE II—IMPROVING OUTCOMES FOR CHILDREN IN FOSTER CARE

- Sec. 201. State option for children in foster care, and certain children in an adoptive or guardianship placement, after attaining age 18.
- Sec. 202. Transition plan for children aging out of foster care.
- Sec. 203. Short-term training for child welfare agencies, relative guardians, and court personnel.
- Sec. 204. Educational stability.
- Sec. 205. Health oversight and coordination plan.
- Sec. 206. Sibling placement.

TITLE III—TRIBAL FOSTER CARE AND ADOPTION ACCESS

- Sec. 301. Equitable access for foster care and adoption services for Indian children in tribal areas.
- Sec. 302. Technical assistance and implementation.

TITLE IV—IMPROVEMENT OF INCENTIVES FOR ADOPTION

- Sec. 401. Adoption incentives program.
- Sec. 402. Promotion of adoption of children with special needs.
- Sec. 403. Information on adoption tax credit.

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

- Sec. 501. Clarification of uniform definition of child.
- Sec. 502. Investment of operating cash.
- Sec. 503. No Federal funding to unlawfully present individuals.

TITLE VI—EFFECTIVE DATE

- Sec. 601. Effective date.

1 **TITLE I—CONNECTING AND SUP-**
2 **PORTING RELATIVE CARE-**
3 **GIVERS**

4 **SEC. 101. KINSHIP GUARDIANSHIP ASSISTANCE PAYMENTS**
5 **FOR CHILDREN.**

6 (a) STATE PLAN OPTION.—Section 471(a) of the So-
7 cial Security Act (42 U.S.C. 671(a)) is amended—

8 (1) by striking “and” at the end of paragraph
9 (26);

10 (2) by striking the period at the end of para-
11 graph (27) and inserting “; and”; and

12 (3) by adding at the end the following:

13 “(28) at the option of the State, provides for
14 the State to enter into kinship guardianship assist-
15 ance agreements to provide kinship guardianship as-
16 sistance payments on behalf of children to grand-
17 parents and other relatives who have assumed legal
18 guardianship of the children for whom they have
19 cared as foster parents and for whom they have
20 committed to care on a permanent basis, as provided
21 in section 473(d).”.

22 (b) IN GENERAL.—Section 473 of such Act (42
23 U.S.C. 673) is amended by adding at the end the fol-
24 lowing:

1 “(d) KINSHIP GUARDIANSHIP ASSISTANCE PAY-
2 MENTS FOR CHILDREN.—

3 “(1) KINSHIP GUARDIANSHIP ASSISTANCE
4 AGREEMENT.—

5 “(A) IN GENERAL.—In order to receive
6 payments under section 474(a)(5), a State
7 shall—

8 “(i) negotiate and enter into a writ-
9 ten, binding kinship guardianship assist-
10 ance agreement with the prospective rel-
11 ative guardian of a child who meets the re-
12 quirements of this paragraph; and

13 “(ii) provide the prospective relative
14 guardian with a copy of the agreement.

15 “(B) MINIMUM REQUIREMENTS.—The
16 agreement shall specify, at a minimum—

17 “(i) the amount of, and manner in
18 which, each kinship guardianship assist-
19 ance payment will be provided under the
20 agreement, and the manner in which the
21 payment may be adjusted periodically, in
22 consultation with the relative guardian,
23 based on the circumstances of the relative
24 guardian and the needs of the child;

1 “(ii) the additional services and assist-
2 ance that the child and relative guardian
3 will be eligible for under the agreement;

4 “(iii) the procedure by which the rel-
5 ative guardian may apply for additional
6 services as needed; and

7 “(iv) subject to subparagraph (D),
8 that the State will pay the total cost of
9 nonrecurring expenses associated with ob-
10 taining legal guardianship of the child, to
11 the extent the total cost does not exceed
12 \$2,000.

13 “(C) INTERSTATE APPLICABILITY.—The
14 agreement shall provide that the agreement
15 shall remain in effect without regard to the
16 State residency of the relative guardian.

17 “(D) NO EFFECT ON FEDERAL REIM-
18 BURSEMENT.—Nothing in subparagraph (B)(iv)
19 shall be construed as affecting the ability of the
20 State to obtain reimbursement from the Fed-
21 eral Government for costs described in that
22 subparagraph.

23 “(2) LIMITATIONS ON AMOUNT OF KINSHIP
24 GUARDIANSHIP ASSISTANCE PAYMENT.—A kinship
25 guardianship assistance payment on behalf of a child

1 shall not exceed the foster care maintenance pay-
2 ment which would have been paid on behalf of the
3 child if the child had remained in a foster family
4 home.

5 “(3) CHILD’S ELIGIBILITY FOR A KINSHIP
6 GUARDIANSHIP ASSISTANCE PAYMENT.—

7 “(A) IN GENERAL.—A child is eligible for
8 a kinship guardianship assistance payment
9 under this subsection if the State agency deter-
10 mines the following:

11 “(i) The child has been—

12 “(I) removed from his or her
13 home pursuant to a voluntary place-
14 ment agreement or as a result of a ju-
15 dicial determination to the effect that
16 continuation in the home would be
17 contrary to the welfare of the child;
18 and

19 “(II) eligible for foster care
20 maintenance payments under section
21 472 while residing for at least 6 con-
22 secutive months in the home of the
23 prospective relative guardian.

1 “(ii) Being returned home or adopted
2 are not appropriate permanency options
3 for the child.

4 “(iii) The child demonstrates a strong
5 attachment to the prospective relative
6 guardian and the relative guardian has a
7 strong commitment to caring permanently
8 for the child.

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

13 “(B) TREATMENT OF SIBLINGS.—With re-
14 spect to a child described in subparagraph (A)
15 whose sibling or siblings are not so described—

16 “(i) the child and any sibling of the
17 child may be placed in the same kinship
18 guardianship arrangement, in accordance
19 with section 471(a)(31), if the State agen-
20 cy and the relative agree on the appro-
21 priateness of the arrangement for the sib-
22 lings; and

23 “(ii) kinship guardianship assistance
24 payments may be paid on behalf of each
25 sibling so placed.”.

1 (c) CONFORMING AMENDMENTS.—

2 (1) ELIGIBILITY FOR ADOPTION ASSISTANCE
3 PAYMENTS.—Section 473(a)(2) of such Act (42
4 U.S.C. 673(a)(2)) is amended by adding at the end
5 the following:

6 “(D) In determining the eligibility for adoption
7 assistance payments of a child in a legal guardian-
8 ship arrangement described in section 471(a)(28),
9 the placement of the child with the relative guardian
10 involved and any kinship guardianship assistance
11 payments made on behalf of the child shall be con-
12 sidered never to have been made.”.

13 (2) STATE PLAN REQUIREMENT.—

14 (A) IN GENERAL.—Section 471(a)(20) of
15 such Act (42 U.S.C. 671(a)(20)) is amended—

16 (i) by adding “and” at the end of sub-
17 paragraph (C); and

18 (ii) by adding at the end the fol-
19 lowing:

20 “(D) provides procedures for criminal
21 records checks, including fingerprint-based
22 checks of national crime information databases
23 (as defined in section 534(e)(3)(A) of title 28,
24 United States Code), on any relative guardian,
25 and for checks described in subparagraph (C)

1 of this paragraph on any relative guardian and
2 any other adult living in the home of any rel-
3 ative guardian, before the relative guardian may
4 receive kinship guardianship assistance pay-
5 ments on behalf of the child under the State
6 plan under this part;”.

7 (B) REDESIGNATION OF NEW PROVISION
8 AFTER AMENDMENT MADE BY PRIOR LAW
9 TAKES EFFECT.—

10 (i) IN GENERAL.—Section 471(a)(20)
11 of the Social Security Act (42 U.S.C.
12 671(a)(20)) is amended—

13 (I) in subparagraph (D), by
14 striking “(C)” and inserting “(B)”;
15 and

16 (II) by redesignating subpara-
17 graph (D) as subparagraph (C).

18 (ii) EFFECTIVE DATE.—The amend-
19 ments made by clause (i) shall take effect
20 immediately after the amendments made
21 by section 152 of Public Law 109–248
22 take effect.

23 (3) PAYMENTS TO STATES.—Section 474(a) of
24 such Act (42 U.S.C. 674(a)) is amended—

1 (A) by striking the period at the end and
2 inserting “; plus”; and

3 (B) by adding at the end the following:

4 “(5) an amount equal to the percentage by
5 which the expenditures referred to in paragraph (2)
6 of this subsection are reimbursed of the total
7 amount expended during such quarter as kinship
8 guardianship assistance payments under section
9 473(d) pursuant to kinship guardianship assistance
10 agreements.”.

11 (4) CASE PLAN REQUIREMENTS.—Section
12 475(1) of such Act (42 U.S.C. 675(1)) is amended
13 by adding at the end the following:

14 “(F) In the case of a child with respect to
15 whom the permanency plan is placement with a
16 relative and receipt of kinship guardianship as-
17 sistance payments under section 473(d), a de-
18 scription of—

19 “(i) the steps that the agency has
20 taken to determine that it is not appro-
21 priate for the child to be returned home or
22 adopted;

23 “(ii) the reasons for any separation of
24 siblings during placement;

1 “(iii) the reasons why a permanent
2 placement with a fit and willing relative
3 through a kinship guardianship assistance
4 arrangement is in the child’s best interests;

5 “(iv) the ways in which the child
6 meets the eligibility requirements for a kin-
7 ship guardianship assistance payment;

8 “(v) the efforts the agency has made
9 to discuss adoption by the child’s relative
10 foster parent as a more permanent alter-
11 native to legal guardianship and, in the
12 case of a relative foster parent who has
13 chosen not to pursue adoption, documenta-
14 tion of the reasons therefor; and

15 “(vi) the efforts made by the State
16 agency to discuss with the child’s parent or
17 parents the kinship guardianship assist-
18 ance arrangement, or the reasons why the
19 efforts were not made.”.

20 (5) SECTION HEADING AMENDMENT.—The sec-
21 tion heading for section 473 of such Act (42 U.S.C.
22 673) is amended by inserting “AND GUARDIANSHIP”
23 after “ADOPTION”.

1 (d) CONTINUED SERVICES UNDER WAIVER.—Sec-
2 tion 474 of such Act (42 U.S.C. 674) is amended by add-
3 ing at the end the following:

4 “(g) For purposes of this part, after the termination
5 of a demonstration project relating to guardianship con-
6 ducted by a State under section 1130, the expenditures
7 of the State for the provision, to children who, as of Sep-
8 tember 30, 2008, were receiving assistance or services
9 under the project, of the same assistance and services
10 under the same terms and conditions that applied during
11 the conduct of the project, are deemed to be expenditures
12 under the State plan approved under this part.”.

13 (e) ELIGIBILITY FOR INDEPENDENT LIVING SERV-
14 ICES AND EDUCATION AND TRAINING VOUCHERS FOR
15 CHILDREN WHO EXIT FOSTER CARE FOR RELATIVE
16 GUARDIANSHIP OR ADOPTION AFTER AGE 16.—

17 (1) INDEPENDENT LIVING SERVICES.—Section
18 477(a) of such Act (42 U.S.C. 677(a)) is amended—

19 (A) by striking “and” at the end of para-
20 graph (5);

21 (B) by striking the period at the end of
22 paragraph (6) and inserting “; and”; and

23 (C) by adding at the end the following:

24 “(7) to provide the services referred to in this
25 subsection to children who, after attaining 16 years

1 of age, have left foster care for kinship guardianship
2 or adoption.”.

3 (2) EDUCATION AND TRAINING VOUCHERS.—
4 Section 477(i)(2) of such Act (42 U.S.C. 677(i)(2))
5 is amended by striking “adopted from foster care
6 after attaining age 16” and inserting “who, after at-
7 taining 16 years of age, are adopted from, or enter
8 kinship guardianship from, foster care”.

9 (f) CATEGORICAL ELIGIBILITY FOR MEDICAID.—Sec-
10 tion 473(b)(3) of such Act (42 U.S.C. 673(b)(3)) is
11 amended—

12 (1) in subparagraph (A)(ii), by striking “or” at
13 the end;

14 (2) in subparagraph (B), by striking the period
15 and inserting “, or”; and

16 (3) by adding at the end the following:

17 “(C) with respect to whom kinship guardianship
18 assistance payments are being made pursuant to
19 subsection (d).”.

20 **SEC. 102. FAMILY CONNECTION GRANTS.**

21 (a) IN GENERAL.—Part B of title IV of the Social
22 Security Act (42 U.S.C. 620–629i) is amended by insert-
23 ing after section 426 the following:

1 **“SEC. 427. FAMILY CONNECTION GRANTS.**

2 “(a) IN GENERAL.—The Secretary of Health and
3 Human Services may make matching grants to State,
4 local, or tribal child welfare agencies, and private non-
5 profit organizations that have experience in working with
6 foster children or children in kinship care arrangements,
7 for the purpose of helping children who are in, or at risk
8 of entering, foster care reconnect with family members
9 through the implementation of—

10 “(1) a kinship navigator program to assist kin-
11 ship caregivers in learning about, finding, and using
12 programs and services to meet the needs of the chil-
13 dren they are raising and their own needs, and to
14 promote effective partnerships among public and pri-
15 vate agencies to ensure kinship caregiver families are
16 served, which program—

17 “(A) shall be coordinated with other State
18 or local agencies that promote service coordina-
19 tion or provide information and referral serv-
20 ices, including the entities that provide 2–1–1
21 or 3–1–1 information systems where available,
22 to avoid duplication or fragmentation of serv-
23 ices to kinship care families;

24 “(B) shall be planned and operated in con-
25 sultation with kinship caregivers and organiza-
26 tions representing them, youth raised by kin-

1 ship caregivers, relevant government agencies,
2 and relevant community-based or faith-based
3 organizations;

4 “(C) shall establish information and refer-
5 ral systems that link (via toll-free access) kin-
6 ship caregivers, kinship support group
7 facilitators, and kinship service providers to—

8 “(i) each other;

9 “(ii) eligibility and enrollment infor-
10 mation for Federal, State, and local bene-
11 fits;

12 “(iii) relevant training to assist kin-
13 ship caregivers in caregiving and in obtain-
14 ing benefits and services; and

15 “(iv) relevant legal assistance and
16 help in obtaining legal services;

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

21 “(E) shall promote partnerships between
22 public and private agencies, including schools,
23 community based or faith-based organizations,
24 and relevant government agencies, to increase
25 their knowledge of the needs of kinship care

1 families to promote better services for those
2 families;

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

6 “(G) may support any other activities de-
7 signed to assist kinship caregivers in obtaining
8 benefits and services to improve their
9 caregiving;

10 “(2) intensive family-finding efforts that utilize
11 search technology to find biological family members
12 for children in the child welfare system, and once
13 identified, work to reestablish relationships and ex-
14 plore ways to find a permanent family placement for
15 the children;

16 “(3) family group decision-making meetings for
17 children in the child welfare system, that—

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

21 “(B) when appropriate, shall address do-
22 mestic violence issues in a safe manner and fa-
23 cilitate connecting children exposed to domestic
24 violence to appropriate services, including re-

1 connection with the abused parent when appro-
2 priate; or

3 “(4) residential family treatment programs
4 that—

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

8 “(B) provide, on-site or by referral, sub-
9 stance abuse treatment services, children’s early
10 intervention services, family counseling, med-
11 ical, and mental health services, nursery and
12 pre-school, and other services that are designed
13 to provide comprehensive treatment that sup-
14 ports the family.

15 “(b) APPLICATIONS.—An entity desiring to receive a
16 matching grant under this section shall submit to the Sec-
17 retary an application, at such time, in such manner, and
18 containing such information as the Secretary may require,
19 including—

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

23 “(2) a description of the types of children and
24 families to be served, including how the children and
25 families will be identified and recruited, and an ini-

1 tial projection of the number of children and families
2 to be served;

3 “(3) if the entity is a private organization—

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

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

10 “(4) an assurance that the entity will cooperate
11 fully with any evaluation provided for by the Sec-
12 retary under this section.

13 “(c) LIMITATIONS.—

14 “(1) GRANT DURATION.—The Secretary may
15 award a grant under this section for a period of not
16 less than 1 year and not more than 3 years.

17 “(2) NUMBER OF NEW GRANTEEES PER YEAR.—
18 The Secretary may not award a grant under this
19 section to more than 30 new grantees each fiscal
20 year.

21 “(d) FEDERAL CONTRIBUTION.—The amount of a
22 grant payment to be made to a grantee under this section
23 during each year in the grant period shall be the following
24 percentage of the total expenditures proposed to be made

1 by the grantee in the application approved by the Sec-
2 retary under this section:

3 “(1) 75 percent, if the payment is for the 1st
4 or 2nd year of the grant period.

5 “(2) 50 percent, if the payment is for the 3rd
6 year of the grant period.

7 “(e) FORM OF GRANTEE CONTRIBUTION.—A grantee
8 under this section may provide not more than 50 percent
9 of the amount which the grantee is required to expend
10 to carry out the activities for which a grant is awarded
11 under this section in kind, fairly evaluated, including
12 plant, equipment, or services.

13 “(f) USE OF GRANT.—A grantee under this section
14 shall use the grant in accordance with the approved appli-
15 cation for the grant.

16 “(g) RESERVATIONS OF FUNDS.—

17 “(1) KINSHIP NAVIGATOR PROGRAMS.—The
18 Secretary shall reserve \$5,000,000 of the funds
19 made available under subsection (h) for each fiscal
20 year for grants to implement kinship navigator pro-
21 grams described in subsection (a)(1).

22 “(2) EVALUATION.—The Secretary shall reserve
23 3 percent of the funds made available under sub-
24 section (h) for each fiscal year for the conduct of a

1 rigorous evaluation of the activities funded with
2 grants under this section.

3 “(3) TECHNICAL ASSISTANCE.—The Secretary
4 may reserve 2 percent of the funds made available
5 under subsection (h) for each fiscal year to provide
6 technical assistance to recipients of grants under
7 this section.

8 “(h) APPROPRIATION.—Out of any money in the
9 Treasury of the United States not otherwise appropriated,
10 there are appropriated to the Secretary for purposes of
11 making grants under this section \$15,000,000 for each
12 of fiscal years 2009 through 2013.”.

13 (b) CONFORMING AMENDMENT.—Section 425 of
14 such Act (42 U.S.C. 625) is amended by inserting “(other
15 than sections 426, 427, and 429)” after “this subpart”.

16 (c) RENAMING OF PROGRAM.—The subpart heading
17 for subpart 1 of part B of title IV of such Act is amended
18 to read as follows:

19 **“Subpart 1—Stephanie Tubbs Jones Child Welfare**
20 **Services Program”.**

21 **SEC. 103. NOTIFICATION OF RELATIVES.**

22 Section 471(a) of the Social Security Act (42 U.S.C.
23 671(a)), as amended by section 101(a) of this Act, is
24 amended—

1 (1) by striking “and” at the end of paragraph
2 (27);

3 (2) by striking the period at the end of para-
4 graph (28) and inserting “; and”; and

5 (3) by adding at the end the following:

6 “(29) provides that, within 30 days after the
7 removal of a child from the custody of the parent or
8 parents of the child, the State shall exercise due dili-
9 gence to identify and provide notice to all adult
10 grandparents and other adult relatives of the child
11 (including any other adult relatives suggested by the
12 parents), subject to exceptions due to family or do-
13 mestic violence, that—

14 “(A) specifies that the child has been or is
15 being removed from the custody of the parent
16 or parents of the child;

17 “(B) explains the options the relative has
18 under Federal, State, and local law to partici-
19 pate in the care and placement of the child, in-
20 cluding any options that may be lost by failing
21 to respond to the notice;

22 “(C) describes the requirements under
23 paragraph (10) of this subsection to become a
24 foster family home and the additional services

1 and supports that are available for children
2 placed in such a home; and

3 “(D) if the State has elected the option to
4 make kinship guardianship assistance payments
5 under paragraph (28) of this subsection, de-
6 scribes how the relative guardian of the child
7 may subsequently enter into an agreement with
8 the State under section 473(d) to receive the
9 payments.”.

10 **SEC. 104. LICENSING STANDARDS FOR RELATIVES.**

11 (a) STATE PLAN AMENDMENT.—Section 471(a)(10)
12 of the Social Security Act (42 U.S.C. 671(a)(10)) is
13 amended—

14 (1) by striking “and provides” and inserting
15 “provides”; and

16 (2) by inserting before the semicolon the fol-
17 lowing: “, and provides that a waiver of any such
18 standard may be made only on a case-by-case basis
19 for non-safety standards (as determined by the
20 State) in relative foster family homes for specific
21 children in care”.

22 (b) REPORT.—Not later than 2 years after the date
23 of enactment of this Act, the Secretary of Health and
24 Human Services shall submit to the Committee on Ways
25 and Means of the House of Representatives and the Com-

1 mittee on Finance of the Senate a report that includes
2 the following:

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

8 (2) The frequency with which States grant
9 case-by-case waivers of non-safety licensing stand-
10 ards for relative foster family homes.

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

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

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

21 (6) Recommendations for administrative or leg-
22 islative actions that may increase the percentage of
23 relative foster family homes that are licensed while
24 ensuring the safety of children in foster care and im-
25 proving their permanence and well-being.

1 **SEC. 105. AUTHORITY FOR COMPARISONS AND DISCLO-**
 2 **SURES OF INFORMATION IN THE FEDERAL**
 3 **PARENT LOCATOR SERVICE FOR CHILD WEL-**
 4 **FARE, FOSTER CARE, AND ADOPTION ASSIST-**
 5 **ANCE PROGRAM PURPOSES.**

6 Section 453(j)(3) of the Social Security Act (42
 7 U.S.C. 653(j)) is amended, in the matter preceding sub-
 8 paragraph (A), by inserting “, part B, or part E” after
 9 “this part”.

10 **TITLE II—IMPROVING OUT-**
 11 **COMES FOR CHILDREN IN**
 12 **FOSTER CARE**

13 **SEC. 201. STATE OPTION FOR CHILDREN IN FOSTER CARE,**
 14 **AND CERTAIN CHILDREN IN AN ADOPTIVE OR**
 15 **GUARDIANSHIP PLACEMENT, AFTER ATTAIN-**
 16 **ING AGE 18.**

17 (a) DEFINITION OF CHILD.—Section 475 of the So-
 18 cial Security Act (42 U.S.C. 675) is amended by adding
 19 at the end the following:

20 “(8)(A) Subject to subparagraph (B), the term
 21 ‘child’ means an individual who has not attained 18
 22 years of age.

23 “(B) At the option of a State, the term shall
 24 include an individual—

25 “(i)(I) who is in foster care under the re-
 26 sponsibility of the State;

1 “(II) with respect to whom an adoption as-
2 sistance agreement is in effect under section
3 473 if the child had attained 16 years of age
4 before the agreement became effective; or

5 “(III) with respect to whom a kinship
6 guardianship assistance agreement is in effect
7 under section 473(d) if the child had attained
8 16 years of age before the agreement became
9 effective;

10 “(ii) who has attained 18 years of age;

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

13 “(iv) who is—

14 “(I) completing secondary education
15 or a program leading to an equivalent cre-
16 dential;

17 “(II) enrolled in an institution which
18 provides post-secondary or vocational edu-
19 cation;

20 “(III) participating in a program or
21 activity designed to promote, or remove
22 barriers to, employment;

23 “(IV) employed for at least 80 hours
24 per month; or

1 “(V) incapable of doing any of the ac-
2 tivities described in subclauses (I) through
3 (IV) due to a medical condition, which in-
4 capability is supported by regularly up-
5 dated information in the case plan of the
6 child.”.

7 (b) CONFORMING AMENDMENT TO DEFINITION OF
8 CHILD-CARE INSTITUTION.—Section 472(c)(2) of such
9 Act (42 U.S.C. 672(c)(2)) is amended by inserting “ex-
10 cept, in the case of a child who has attained 18 years of
11 age, the term shall include a supervised setting in which
12 the individual is living independently, in accordance with
13 such conditions as the Secretary shall establish in regula-
14 tions,” before “but”.

15 (c) CONFORMING AMENDMENTS TO AGE LIMITS AP-
16 PPLICABLE TO CHILDREN ELIGIBLE FOR ADOPTION AS-
17 SISTANCE OR KINSHIP GUARDIANSHIP ASSISTANCE.—
18 Section 473(a)(4) of such Act (42 U.S.C. 673(a)(4)) is
19 amended to read as follows:

20 “(4)(A) Notwithstanding any other provision of this
21 section, a payment may not be made pursuant to this sec-
22 tion to parents or relative guardians with respect to a
23 child—

24 “(i) who has attained—

1 “(I) 18 years of age, or such greater age
2 as the State may elect under section
3 475(8)(B)(iii); or

4 “(II) 21 years of age, if the State deter-
5 mines that the child has a mental or physical
6 handicap which warrants the continuation of
7 assistance;

8 “(ii) who has not attained 18 years of age, if
9 the State determines that the parents or relative
10 guardians, as the case may be, are no longer legally
11 responsible for the support of the child; or

12 “(iii) if the State determines that the child is
13 no longer receiving any support from the parents or
14 relative guardians, as the case may be.

15 “(B) Parents or relative guardians who have been re-
16 ceiving adoption assistance payments or kinship guardian-
17 ship assistance payments under this section shall keep the
18 State or local agency administering the program under
19 this section informed of circumstances which would, pur-
20 suant to this subsection, make them ineligible for the pay-
21 ments, or eligible for the payments in a different
22 amount.”.

23 (d) EFFECTIVE DATE.—The amendments made by
24 this section shall take effect on October 1, 2010.

1 **SEC. 202. TRANSITION PLAN FOR CHILDREN AGING OUT OF**
2 **FOSTER CARE.**

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

5 (1) in subparagraph (F)(ii), by striking “and”
6 at the end;

7 (2) in subparagraph (G), by striking the period
8 at the end and inserting “; and”; and

9 (3) by adding at the end the following:

10 “(H) during the 90-day period immediately
11 prior to the date on which the child will attain
12 18 years of age, or such greater age as the
13 State may elect under paragraph (8)(B)(iii),
14 whether during that period foster care mainte-
15 nance payments are being made on the child’s
16 behalf or the child is receiving benefits or serv-
17 ices under section 477, a caseworker on the
18 staff of the State agency, and, as appropriate,
19 other representatives of the child provide the
20 child with assistance and support in developing
21 a transition plan that is personalized at the di-
22 rection of the child, includes specific options on
23 housing, health insurance, education, local op-
24 portunities for mentors and continuing support
25 services, and work force supports and employ-

1 ment services, and is as detailed as the child
2 may elect.”.

3 **SEC. 203. SHORT-TERM TRAINING FOR CHILD WELFARE**
4 **AGENCIES, RELATIVE GUARDIANS, AND**
5 **COURT PERSONNEL.**

6 (a) IN GENERAL.—Section 474(a)(3)(B) of the So-
7 cial Security Act (42 U.S.C. 674(a)(3)(B)) is amended—

8 (1) by inserting “or relative guardians” after
9 “adoptive parents”;

10 (2) by striking “and the members” and insert-
11 ing “, the members”;

12 (3) by inserting “, or State-licensed or State-
13 approved child welfare agencies providing services,”
14 after “providing care”;

15 (4) by striking “foster and adopted” the 1st
16 place it appears;

17 (5) by inserting “and members of the staff of
18 abuse and neglect courts, agency attorneys, attor-
19 neys representing children or parents, guardians ad
20 litem, or other court-appointed special advocates rep-
21 resenting children in proceedings of such courts,”
22 after “part,”;

23 (6) by inserting “guardians,” before “staff
24 members,”;

1 (7) by striking “and institutions” and inserting
2 “institutions, attorneys, and advocates”; and

3 (8) by inserting “and children living with rel-
4 ative guardians” after “foster and adopted children”
5 the 2nd place it appears.

6 (b) PHASE-IN.—With respect to an expenditure de-
7 scribed in section 474(a)(3)(B) of the Social Security Act
8 by reason of an amendment made by subsection (a) of this
9 section, in lieu of the percentage set forth in such section
10 474(a)(3)(B), the percentage that shall apply is—

11 (1) 55 percent, if the expenditure is made in
12 fiscal year 2009;

13 (2) 60 percent, if the expenditure is made in
14 fiscal year 2010;

15 (3) 65 percent, if the expenditure is made in
16 fiscal year 2011; or

17 (4) 70 percent, if the expenditure is made in
18 fiscal year 2012.

19 **SEC. 204. EDUCATIONAL STABILITY.**

20 (a) IN GENERAL.—Section 475 of the Social Security
21 Act (42 U.S.C. 675), as amended by section 101(c)(4) of
22 this Act, is amended—

23 (1) in paragraph (1)—

24 (A) in subparagraph (C), by striking
25 clause (iv) and redesignating clauses (v)

1 through (viii) as clauses (iv) through (vii), re-
2 spectively; and

3 (B) by adding at the end the following:

4 “(G) A plan for ensuring the educational
5 stability of the child while in foster care, includ-
6 ing—

7 “(i) assurances that the placement of
8 the child in foster care takes into account
9 the appropriateness of the current edu-
10 cational setting and the proximity to the
11 school in which the child is enrolled at the
12 time of placement; and

13 “(ii)(I) an assurance that the State
14 agency has coordinated with appropriate
15 local educational agencies (as defined
16 under section 9101 of the Elementary and
17 Secondary Education Act of 1965) to en-
18 sure that the child remains in the school in
19 which the child is enrolled at the time of
20 placement; or

21 “(II) if remaining in such school is
22 not in the best interests of the child, assur-
23 ances by the State agency and the local
24 educational agencies to provide immediate
25 and appropriate enrollment in a new

1 school, with all of the educational records
2 of the child provided to the school.”; and
3 (2) in the 1st sentence of paragraph (4)(A)—
4 (A) by striking “and reasonable” and in-
5 serting “reasonable”; and
6 (B) by inserting “, and reasonable travel
7 for the child to remain in the school in which
8 the child is enrolled at the time of placement”
9 before the period.

10 (b) EDUCATIONAL ATTENDANCE REQUIREMENT.—
11 Section 471(a) of the Social Security Act (42 U.S.C.
12 671(a)), as amended by sections 101(a) and 103 of this
13 Act, is amended—

14 (1) by striking “and” at the end of paragraph
15 (28);

16 (2) by striking the period at the end of para-
17 graph (29) and inserting “; and”; and

18 (3) by adding at the end the following:

19 “(30) provides assurances that each child who
20 has attained the minimum age for compulsory school
21 attendance under State law and with respect to
22 whom there is eligibility for a payment under the
23 State plan is a full-time elementary or secondary
24 school student or has completed secondary school,
25 and for purposes of this paragraph, the term ‘ele-

1 elementary or secondary school student’ means, with
2 respect to a child, that the child is—

3 “(A) enrolled (or in the process of enroll-
4 ing) in an institution which provides elementary
5 or secondary education, as determined under
6 the law of the State or other jurisdiction in
7 which the institution is located;

8 “(B) instructed in elementary or secondary
9 education at home in accordance with a home
10 school law of the State or other jurisdiction in
11 which the home is located;

12 “(C) in an independent study elementary
13 or secondary education program in accordance
14 with the law of the State or other jurisdiction
15 in which the program is located, which is ad-
16 ministered by the local school or school district;
17 or

18 “(D) incapable of attending school on a
19 full-time basis due to the medical condition of
20 the child, which incapability is supported by
21 regularly updated information in the case plan
22 of the child.”.

23 **SEC. 205. HEALTH OVERSIGHT AND COORDINATION PLAN.**

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

1 “(15)(A) provides that the State will develop, in
2 coordination and collaboration with the State agency
3 referred to in paragraph (1) and the State agency
4 responsible for administering the State plan ap-
5 proved under title XIX, and in consultation with pe-
6 diatricians, other experts in health care, and experts
7 in and recipients of child welfare services, a plan for
8 the ongoing oversight and coordination of health
9 care services for any child in a foster care place-
10 ment, which shall ensure a coordinated strategy to
11 identify and respond to the health care needs of chil-
12 dren in foster care placements, including mental
13 health and dental health needs, and shall include an
14 outline of—

15 “(i) a schedule for initial and follow-up
16 health screenings that meet reasonable stand-
17 ards of medical practice;

18 “(ii) how health needs identified through
19 screenings will be monitored and treated;

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

1 “(iv) steps to ensure continuity of health
2 care services, which may include the establish-
3 ment of a medical home for every child in care;

4 “(v) the oversight of prescription medi-
5 cines; and

6 “(vi) how the State actively consults with
7 and involves physicians or other appropriate
8 medical or non-medical professionals in assess-
9 ing the health and well-being of children in fos-
10 ter care and in determining appropriate medical
11 treatment for the children; and

12 “(B) subparagraph (A) shall not be construed
13 to reduce or limit the responsibility of the State
14 agency responsible for administering the State plan
15 approved under title XIX to administer and provide
16 care and services for children with respect to whom
17 services are provided under the State plan developed
18 pursuant to this subpart;”.

19 **SEC. 206. SIBLING PLACEMENT.**

20 Section 471(a) of the Social Security Act (42 U.S.C.
21 671(a)), as amended by sections 101(a), 103, and 204(b)
22 of this Act, is amended—

23 (1) by striking “and” at the end of paragraph
24 (29);

1 (2) by striking the period at the end of para-
2 graph (30) and inserting “; and”; and

3 (3) by adding at the end the following:

4 “(31) provides that reasonable efforts shall be
5 made—

6 “(A) to place siblings removed from their
7 home in the same foster care, kinship guardian-
8 ship, or adoptive placement, unless the State
9 documents that such a joint placement would be
10 contrary to the safety or well-being of any of
11 the siblings; and

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

1 **TITLE III—TRIBAL FOSTER CARE**
2 **AND ADOPTION ACCESS**

3 **SEC. 301. EQUITABLE ACCESS FOR FOSTER CARE AND**
4 **ADOPTION SERVICES FOR INDIAN CHILDREN**
5 **IN TRIBAL AREAS.**

6 (a) AUTHORITY FOR DIRECT PAYMENT OF FEDERAL
7 TITLE IV–E FUNDS FOR PROGRAMS OPERATED BY IN-
8 DIAN TRIBAL ORGANIZATIONS.—

9 (1) IN GENERAL.—Part E of title IV of the So-
10 cial Security Act (42 U.S.C. 670 et seq.) is amended
11 by adding at the end the following:

12 **“SEC. 479B. PROGRAMS OPERATED BY INDIAN TRIBAL OR-**
13 **GANIZATIONS.**

14 “(a) DEFINITIONS OF INDIAN TRIBE; TRIBAL ORGA-
15 NIZATIONS.—In this section, the terms ‘Indian tribe’ and
16 ‘tribal organization’ have the meanings given those terms
17 in section 4 of the Indian Self-Determination and Edu-
18 cation Assistance Act (25 U.S.C. 450b).

19 “(b) AUTHORITY.—Except as otherwise provided in
20 this section, this part shall apply in the same manner as
21 this part applies to a State to an Indian tribe, tribal orga-
22 nization, or tribal consortium that elects to operate a pro-
23 gram under this part and has a plan approved by the Sec-
24 retary under section 471 in accordance with this section.

25 “(c) PLAN REQUIREMENTS.—

1 “(1) IN GENERAL.—An Indian tribe, tribal or-
2 ganization, or tribal consortium that elects to oper-
3 ate a program under this part shall include with its
4 plan submitted under section 471 the following:

5 “(A) FINANCIAL MANAGEMENT.—Evidence
6 demonstrating that the tribe, organization, or
7 consortium has not had any uncorrected signifi-
8 cant or material audit exceptions under Federal
9 grants or contracts that directly relate to the
10 administration of social services for the 3-year
11 period prior to the date on which the plan is
12 submitted.

13 “(B) SERVICE AREAS AND POPU-
14 LATIONS.—For purposes of complying with sec-
15 tion 471(a)(3), a description of the service area
16 or areas and populations to be served under the
17 plan and an assurance that the plan shall be in
18 effect in all service area or areas and for all
19 populations served by the tribe, organization, or
20 consortium.

21 “(C) ELIGIBILITY.—

22 “(i) IN GENERAL.—Subject to clause
23 (ii) of this subparagraph, an assurance
24 that the plan will provide—

1 “(I) foster care maintenance pay-
2 ments under section 472 only on be-
3 half of children who satisfy the eligi-
4 bility requirements of section 472(a);

5 “(II) adoption assistance pay-
6 ments under section 473 pursuant to
7 adoption assistance agreements only
8 on behalf of children who satisfy the
9 eligibility requirements for such pay-
10 ments under that section; and

11 “(III) at the option of the tribe,
12 organization, or consortium, kinship
13 guardianship assistance payments in
14 accordance with section 473(d) only
15 on behalf of children who meet the re-
16 quirements of section 473(d)(3).

17 “(ii) SATISFACTION OF FOSTER CARE
18 ELIGIBILITY REQUIREMENTS.—For pur-
19 poses of determining whether a child whose
20 placement and care are the responsibility
21 of an Indian tribe, tribal organization, or
22 tribal consortium with a plan approved
23 under section 471 in accordance with this
24 section satisfies the requirements of section
25 472(a), the following shall apply:

1 “(I) USE OF AFFIDAVITS, ETC.—
2 Only with respect to the first 12
3 months for which such plan is in ef-
4 fect, the requirement in paragraph (1)
5 of section 472(a) shall not be inter-
6 preted so as to prohibit the use of af-
7 fidavits or nunc pro tunc orders as
8 verification documents in support of
9 the reasonable efforts and contrary to
10 the welfare of the child judicial deter-
11 minations required under that para-
12 graph.

13 “(II) AFDC ELIGIBILITY RE-
14 QUIREMENT.—The State plan ap-
15 proved under section 402 (as in effect
16 on July 16, 1996) of the State in
17 which the child resides at the time of
18 removal from the home shall apply to
19 the determination of whether the child
20 satisfies section 472(a)(3).

21 “(D) OPTION TO CLAIM IN-KIND EXPENDI-
22 TURES FROM THIRD-PARTY SOURCES FOR NON-
23 FEDERAL SHARE OF ADMINISTRATIVE AND
24 TRAINING COSTS DURING INITIAL IMPLEMENTA-
25 TION PERIOD.—Only for fiscal year quarters be-

1 ginning after September 30, 2009, and before
2 October 1, 2014, a list of the in-kind expendi-
3 tures (which shall be fairly evaluated, and may
4 include plants, equipment, administration, or
5 services) and the third-party sources of such ex-
6 penditures that the tribe, organization, or con-
7 sortium may claim as part of the non-Federal
8 share of administrative or training expenditures
9 attributable to such quarters for purposes of re-
10 ceiving payments under section 474(a)(3). The
11 Secretary shall permit a tribe, organization, or
12 consortium to claim in-kind expenditures from
13 third party sources for such purposes during
14 such quarters subject to the following:

15 “(i) NO EFFECT ON AUTHORITY FOR
16 TRIBES, ORGANIZATIONS, OR CONSORTIA
17 TO CLAIM EXPENDITURES OR INDIRECT
18 COSTS TO THE SAME EXTENT AS
19 STATES.—Nothing in this subparagraph
20 shall be construed as preventing a tribe,
21 organization, or consortium from claiming
22 any expenditures or indirect costs for pur-
23 poses of receiving payments under section
24 474(a) that a State with a plan approved

1 under section 471(a) could claim for such
2 purposes.

3 “(ii) FISCAL YEAR 2010 OR 2011.—

4 “(I) EXPENDITURES OTHER
5 THAN FOR TRAINING.—With respect
6 to amounts expended during a fiscal
7 year quarter beginning after Sep-
8 tember 30, 2009, and before October
9 1, 2011, for which the tribe, organiza-
10 tion, or consortium is eligible for pay-
11 ments under subparagraph (C), (D),
12 or (E) of section 474(a)(3), not more
13 than 25 percent of such amounts may
14 consist of in-kind expenditures from
15 third-party sources specified in the list
16 required under this subparagraph to
17 be submitted with the plan.

18 “(II) TRAINING EXPENDI-
19 TURES.—With respect to amounts ex-
20 pended during a fiscal year quarter
21 beginning after September 30, 2009,
22 and before October 1, 2011, for which
23 the tribe, organization, or consortium
24 is eligible for payments under sub-
25 paragraph (A) or (B) of section

1 474(a)(3), not more than 12 percent
2 of such amounts may consist of in-
3 kind expenditures from third-party
4 sources that are specified in such list
5 and described in subclause (III).

6 “(III) SOURCES DESCRIBED.—
7 For purposes of subclause (II), the
8 sources described in this subclause are
9 the following:

10 “(aa) A State or local gov-
11 ernment.

12 “(bb) An Indian tribe, tribal
13 organization, or tribal consortium
14 other than the tribe, organiza-
15 tion, or consortium submitting
16 the plan.

17 “(cc) A public institution of
18 higher education.

19 “(dd) A Tribal College or
20 University (as defined in section
21 316 of the Higher Education Act
22 of 1965 (20 U.S.C. 1059c)).

23 “(ee) A private charitable
24 organization.

1 “(iii) FISCAL YEAR 2012, 2013, OR
2 2014.—

3 “(I) IN GENERAL.—Except as
4 provided in subclause (II) of this
5 clause and clause (v) of this subpara-
6 graph, with respect to amounts ex-
7 pended during any fiscal year quarter
8 beginning after September 30, 2011,
9 and before October 1, 2014, for which
10 the tribe, organization, or consortium
11 is eligible for payments under any
12 subparagraph of section 474(a)(3) of
13 this Act, the only in-kind expenditures
14 from third-party sources that may be
15 claimed by the tribe, organization, or
16 consortium for purposes of deter-
17 mining the non-Federal share of such
18 expenditures (without regard to
19 whether the expenditures are specified
20 on the list required under this sub-
21 paragraph to be submitted with the
22 plan) are in-kind expenditures that
23 are specified in regulations promul-
24 gated by the Secretary under section
25 301(e)(2) of the Fostering Connec-

1 tions to Success and Increasing Adop-
2 tions Act of 2008 and are from an ap-
3 plicable third-party source specified in
4 such regulations, and do not exceed
5 the applicable percentage for claiming
6 such in-kind expenditures specified in
7 the regulations.

8 “(II) TRANSITION PERIOD FOR
9 EARLY APPROVED TRIBES, ORGANIZA-
10 TIONS, OR CONSORTIA.—Subject to
11 clause (v), if the tribe, organization,
12 or consortium is an early approved
13 tribe, organization, or consortium (as
14 defined in subclause (III) of this
15 clause), the Secretary shall not re-
16 quire the tribe, organization, or con-
17 sortium to comply with such regula-
18 tions before October 1, 2013. Until
19 the earlier of the date such tribe, or-
20 ganization, or consortium comes into
21 compliance with such regulations or
22 October 1, 2013, the limitations on
23 the claiming of in-kind expenditures
24 from third-party sources under clause
25 (ii) shall continue to apply to such

1 tribe, organization, or consortium
2 (without regard to fiscal limitation)
3 for purposes of determining the non-
4 Federal share of amounts expended by
5 the tribe, organization, or consortium
6 during any fiscal year quarter that be-
7 gins after September 30, 2011, and
8 before such date of compliance or Oc-
9 tober 1, 2013, whichever is earlier.

10 “(III) DEFINITION OF EARLY AP-
11 PROVED TRIBE, ORGANIZATION, OR
12 CONSORTIUM.—For purposes of sub-
13 clause (II) of this clause, the term
14 ‘early approved tribe, organization, or
15 consortium’ means an Indian tribe,
16 tribal organization, or tribal consor-
17 tium that had a plan approved under
18 section 471 in accordance with this
19 section for any quarter of fiscal year
20 2010 or 2011.

21 “(iv) FISCAL YEAR 2015 AND THERE-
22 AFTER.—Subject to clause (v) of this sub-
23 paragraph, with respect to amounts ex-
24 pended during any fiscal year quarter be-
25 ginning after September 30, 2014, for

1 which the tribe, organization, or consor-
2 tium is eligible for payments under any
3 subparagraph of section 474(a)(3) of this
4 Act, in-kind expenditures from third-party
5 sources may be claimed for purposes of de-
6 termining the non-Federal share of ex-
7 penditures under any subparagraph of
8 such section 474(a)(3) only in accordance
9 with the regulations promulgated by the
10 Secretary under section 301(e)(2) of the
11 Fostering Connections to Success and In-
12 creasing Adoptions Act of 2008.

13 “(v) CONTINGENCY RULE.—If, at the
14 time expenditures are made for a fiscal
15 year quarter beginning after September
16 30, 2011, and before October 1, 2014, for
17 which a tribe, organization, or consortium
18 may receive payments for under section
19 474(a)(3) of this Act, no regulations re-
20 quired to be promulgated under section
21 301(e)(2) of the Fostering Connections to
22 Success and Increasing Adoptions Act of
23 2008 are in effect, and no legislation has
24 been enacted specifying otherwise—

1 “(I) in the case of any quarter of
2 fiscal year 2012, 2013, or 2014, the
3 limitations on claiming in-kind ex-
4 penditures from third-party sources
5 under clause (ii) of this subparagraph
6 shall apply (without regard to fiscal
7 limitation) for purposes of deter-
8 mining the non-Federal share of such
9 expenditures; and

10 “(II) in the case of any quarter
11 of fiscal year 2015 or any fiscal year
12 thereafter, no tribe, organization, or
13 consortium may claim in-kind expend-
14 itures from third-party sources for
15 purposes of determining the non-Fed-
16 eral share of such expenditures if a
17 State with a plan approved under sec-
18 tion 471(a) of this Act could not
19 claim in-kind expenditures from third-
20 party sources for such purposes.

21 “(2) CLARIFICATION OF TRIBAL AUTHORITY TO
22 ESTABLISH STANDARDS FOR TRIBAL FOSTER FAM-
23 ILY HOMES AND TRIBAL CHILD CARE INSTITU-
24 TIONS.—For purposes of complying with section
25 471(a)(10), an Indian tribe, tribal organization, or

1 tribal consortium shall establish and maintain a trib-
2 al authority or authorities which shall be responsible
3 for establishing and maintaining tribal standards for
4 tribal foster family homes and tribal child care insti-
5 tutions.

6 “(3) CONSORTIUM.—The participating Indian
7 tribes or tribal organizations of a tribal consortium
8 may develop and submit a single plan under section
9 471 that meets the requirements of this section.

10 “(d) DETERMINATION OF FEDERAL MEDICAL AS-
11 SISTANCE PERCENTAGE FOR FOSTER CARE MAINTEN-
12 NANCE AND ADOPTION ASSISTANCE PAYMENTS.—

13 “(1) PER CAPITA INCOME.—For purposes of de-
14 termining the Federal medical assistance percentage
15 applicable to an Indian tribe, a tribal organization,
16 or a tribal consortium under paragraphs (1), (2),
17 and (5) of section 474(a), the calculation of the per
18 capita income of the Indian tribe, tribal organiza-
19 tion, or tribal consortium shall be based upon the
20 service population of the Indian tribe, tribal organi-
21 zation, or tribal consortium, except that in no case
22 shall an Indian tribe, a tribal organization, or a trib-
23 al consortium receive less than the Federal medical
24 assistance percentage for any State in which the
25 tribe, organization, or consortium is located.

1 “(2) CONSIDERATION OF OTHER INFORMA-
2 TION.—Before making a calculation under para-
3 graph (1), the Secretary shall consider any informa-
4 tion submitted by an Indian tribe, a tribal organiza-
5 tion, or a tribal consortium that the Indian tribe,
6 tribal organization, or tribal consortium considers
7 relevant to making the calculation of the per capita
8 income of the Indian tribe, tribal organization, or
9 tribal consortium.

10 “(e) NONAPPLICATION TO COOPERATIVE AGREE-
11 MENTS AND CONTRACTS.—Any cooperative agreement or
12 contract entered into between an Indian tribe, a tribal or-
13 ganization, or a tribal consortium and a State for the ad-
14 ministration or payment of funds under this part that is
15 in effect as of the date of enactment of this section shall
16 remain in full force and effect, subject to the right of ei-
17 ther party to the agreement or contract to revoke or mod-
18 ify the agreement or contract pursuant to the terms of
19 the agreement or contract. Nothing in this section shall
20 be construed as affecting the authority for an Indian tribe,
21 a tribal organization, or a tribal consortium and a State
22 to enter into a cooperative agreement or contract for the
23 administration or payment of funds under this part.

24 “(f) JOHN H. CHAFEE FOSTER CARE INDEPEND-
25 ENCE PROGRAM.—Except as provided in section 477(j),

1 subsection (b) of this section shall not apply with respect
2 to the John H. Chafee Foster Care Independence Program
3 established under section 477 (or with respect to payments
4 made under section 474(a)(4) or grants made under sec-
5 tion 474(e)).

6 “(g) RULE OF CONSTRUCTION.—Nothing in this sec-
7 tion shall be construed as affecting the application of sec-
8 tion 472(h) to a child on whose behalf payments are paid
9 under section 472, or the application of section 473(b) to
10 a child on whose behalf payments are made under section
11 473 pursuant to an adoption assistance agreement or a
12 kinship guardianship assistance agreement, by an Indian
13 tribe, tribal organization, or tribal consortium that elects
14 to operate a foster care and adoption assistance program
15 in accordance with this section.”.

16 (2) CONFORMING AMENDMENTS.—Section
17 472(a)(2)(B) of such Act (42 U.S.C. 672(a)(2)(B))
18 is amended—

19 (A) in clause (i), by striking “or” at the
20 end;

21 (B) in clause (ii), by striking “and” at the
22 end and inserting “or”; and

23 (C) by adding at the end the following:

24 “(iii) an Indian tribe or a tribal orga-
25 nization (as defined in section 479B(a)) or

1 a tribal consortium that has a plan ap-
2 proved under section 471 in accordance
3 with section 479B; and”.

4 (b) AUTHORITY TO RECEIVE PORTION OF STATE AL-
5 LOTMENT AS PART OF AN AGREEMENT TO OPERATE THE
6 JOHN H. CHAFEE FOSTER CARE INDEPENDENCE PRO-
7 GRAM.—Section 477 of such Act (42 U.S.C. 677) is
8 amended by adding at the end the following:

9 “(j) AUTHORITY FOR AN INDIAN TRIBE, TRIBAL OR-
10 GANIZATION, OR TRIBAL CONSORTIUM TO RECEIVE AN
11 ALLOTMENT.—

12 “(1) IN GENERAL.—An Indian tribe, tribal or-
13 ganization, or tribal consortium with a plan ap-
14 proved under section 479B, or which is receiving
15 funding to provide foster care under this part pursu-
16 ant to a cooperative agreement or contract with a
17 State, may apply for an allotment out of any funds
18 authorized by paragraph (1) or (2) (or both) of sub-
19 section (h) of this section.

20 “(2) APPLICATION.—A tribe, organization, or
21 consortium desiring an allotment under paragraph
22 (1) of this subsection shall submit an application to
23 the Secretary to directly receive such allotment that
24 includes a plan which—

1 “(A) satisfies such requirements of para-
2 graphs (2) and (3) of subsection (b) as the Sec-
3 retary determines are appropriate;

4 “(B) contains a description of the tribe’s,
5 organization’s, or consortium’s consultation
6 process regarding the programs to be carried
7 out under the plan with each State for which a
8 portion of an allotment under subsection (c)
9 would be redirected to the tribe, organization,
10 or consortium; and

11 “(C) contains an explanation of the results
12 of such consultation, particularly with respect
13 to—

14 “(i) determining the eligibility for
15 benefits and services of Indian children to
16 be served under the programs to be carried
17 out under the plan; and

18 “(ii) the process for consulting with
19 the State in order to ensure the continuity
20 of benefits and services for such children
21 who will transition from receiving benefits
22 and services under programs carried out
23 under a State plan under subsection (b)(2)
24 to receiving benefits and services under

1 programs carried out under a plan under
2 this subsection.

3 “(3) PAYMENTS.—The Secretary shall pay an
4 Indian tribe, tribal organization, or tribal consortium
5 with an application and plan approved under this
6 subsection from the allotment determined for the
7 tribe, organization, or consortium under paragraph
8 (4) of this subsection in the same manner as is pro-
9 vided in section 474(a)(4) (and, where requested,
10 and if funds are appropriated, section 474(e)) with
11 respect to a State, or in such other manner as is de-
12 termined appropriate by the Secretary, except that
13 in no case shall an Indian tribe, a tribal organiza-
14 tion, or a tribal consortium receive a lesser propor-
15 tion of such funds than a State is authorized to re-
16 ceive under those sections.

17 “(4) ALLOTMENT.—From the amounts allotted
18 to a State under subsection (c) of this section for a
19 fiscal year, the Secretary shall allot to each Indian
20 tribe, tribal organization, or tribal consortium with
21 an application and plan approved under this sub-
22 section for that fiscal year an amount equal to the
23 tribal foster care ratio determined under paragraph
24 (5) of this subsection for the tribe, organization, or
25 consortium multiplied by the allotment amount of

1 the State within which the tribe, organization, or
2 consortium is located. The allotment determined
3 under this paragraph is deemed to be a part of the
4 allotment determined under section 477(c) for the
5 State in which the Indian tribe, tribal organization,
6 or tribal consortium is located.

7 “(5) TRIBAL FOSTER CARE RATIO.—For pur-
8 poses of paragraph (4), the tribal foster care ratio
9 means, with respect to an Indian tribe, tribal organi-
10 zation, or tribal consortium, the ratio of—

11 “(A) the number of children in foster care
12 under the responsibility of the Indian tribe,
13 tribal organization, or tribal consortium (either
14 directly or under supervision of the State), in
15 the most recent fiscal year for which the infor-
16 mation is available; to

17 “(B) the sum of—

18 “(i) the total number of children in
19 foster care under the responsibility of the
20 State within which the Indian tribe, tribal
21 organization, or tribal consortium is lo-
22 cated; and

23 “(ii) the total number of children in
24 foster care under the responsibility of all
25 Indian tribes, tribal organizations, or tribal

1 consortia in the State (either directly or
2 under supervision of the State) that have
3 a plan approved under this subsection.”.

4 (c) STATE AND TRIBAL COOPERATION.—

5 (1) STATE PLAN REQUIREMENT TO NEGOTIATE
6 IN GOOD FAITH.—

7 (A) IN GENERAL.—Section 471(a) of the
8 Social Security Act (42 U.S.C. 671(a)), as
9 amended by sections 101(a), 103, 204(b), and
10 206 of this Act, is amended—

11 (i) by striking “and” at the end of
12 paragraph (30);

13 (ii) by striking the period at the end
14 of paragraph (31) and inserting “; and”;
15 and

16 (iii) by adding at the end the fol-
17 lowing:

18 “(32) provides that the State will negotiate in
19 good faith with any Indian tribe, tribal organization
20 or tribal consortium in the State that requests to de-
21 velop an agreement with the State to administer all
22 or part of the program under this part on behalf of
23 Indian children who are under the authority of the
24 tribe, organization, or consortium, including foster
25 care maintenance payments on behalf of children

1 who are placed in State or tribally licensed foster
2 family homes, adoption assistance payments, and, if
3 the State has elected to provide such payments, kin-
4 ship guardianship assistance payments under section
5 473(d), and tribal access to resources for adminis-
6 tration, training, and data collection under this
7 part.”.

8 (B) CHAFEE PROGRAM CONFORMING
9 AMENDMENT.—Section 477(b)(3)(G) of such
10 Act (42 U.S.C. 677(b)(3)(G)) is amended—

11 (i) by striking “and that” and insert-
12 ing “that”; and

13 (ii) by striking the period at the end
14 and inserting “; and that the State will ne-
15 gotiate in good faith with any Indian tribe,
16 tribal organization, or tribal consortium in
17 the State that does not receive an allot-
18 ment under subsection (j)(4) for a fiscal
19 year and that requests to develop an agree-
20 ment with the State to administer, super-
21 vise, or oversee the programs to be carried
22 out under the plan with respect to the In-
23 dian children who are eligible for such pro-
24 grams and who are under the authority of
25 the tribe, organization, or consortium and

1 to receive from the State an appropriate
2 portion of the State allotment under sub-
3 section (c) for the cost of such administra-
4 tion, supervision, or oversight.”.

5 (2) APPLICATION OF TRIBAL FEDERAL MATCH-
6 ING RATE TO COOPERATIVE AGREEMENTS OR CON-
7 TRACTS BETWEEN STATE OR TRIBES.—Paragraphs
8 (1) and (2) of section 474(a) of such Act (42 U.S.C.
9 674(a)) are each amended by inserting “(or, with re-
10 spect to such payments made during such quarter
11 under a cooperative agreement or contract entered
12 into by the State and an Indian tribe, tribal organi-
13 zation, or tribal consortium for the administration or
14 payment of funds under this part, an amount equal
15 to the Federal medical assistance percentage that
16 would apply under section 479B(d) (in this para-
17 graph referred to as the ‘tribal FMAP’) if such In-
18 dian tribe, tribal organization, or tribal consortium
19 made such payments under a program operated
20 under that section, unless the tribal FMAP is less
21 than the Federal medical assistance percentage that
22 applies to the State)” before the semicolon.

23 (d) RULES OF CONSTRUCTION.—Nothing in the
24 amendments made by this section shall be construed as—

1 (1) authorization to terminate funding on be-
2 half of any Indian child receiving foster care mainte-
3 nance payments or adoption assistance payments on
4 the date of enactment of this Act and for which the
5 State receives Federal matching payments under
6 paragraph (1) or (2) of section 474(a) of the Social
7 Security Act (42 U.S.C. 674(a)), regardless of
8 whether a cooperative agreement or contract be-
9 tween the State and an Indian tribe, tribal organiza-
10 tion, or tribal consortium is in effect on such date
11 or an Indian tribe, tribal organization, or tribal con-
12 sortium elects subsequent to such date to operate a
13 program under section 479B of such Act (as added
14 by subsection (a) of this section); or

15 (2) affecting the responsibility of a State—

16 (A) as part of the plan approved under
17 section 471 of the Social Security Act (42
18 U.S.C. 671), to provide foster care maintenance
19 payments, adoption assistance payments, and if
20 the State elects, kinship guardianship assist-
21 ance payments, for Indian children who are eli-
22 gible for such payments and who are not other-
23 wise being served by an Indian tribe, tribal or-
24 ganization, or tribal consortium pursuant to a
25 program under such section 479B of such Act

1 or a cooperative agreement or contract entered
2 into between an Indian tribe, a tribal organiza-
3 tion, or a tribal consortium and a State for the
4 administration or payment of funds under part
5 E of title IV of such Act; or

6 (B) as part of the plan approved under
7 section 477 of such Act (42 U.S.C. 677) to ad-
8 minister, supervise, or oversee programs carried
9 out under that plan on behalf of Indian children
10 who are eligible for such programs if such chil-
11 dren are not otherwise being served by an In-
12 dian tribe, tribal organization, or tribal consor-
13 tium pursuant to an approved plan under sec-
14 tion 477(j) of such Act or a cooperative agree-
15 ment or contract entered into under section
16 477(b)(3)(G) of such Act.

17 (e) REGULATIONS.—

18 (1) IN GENERAL.—Except as provided in para-
19 graph (2) of this subsection, not later than 1 year
20 after the date of enactment of this section, the Sec-
21 retary of Health and Human Services, in consulta-
22 tion with Indian tribes, tribal organizations, tribal
23 consortia, and affected States, shall promulgate in-
24 terim final regulations to carry out this section and
25 the amendments made by this section. Such regula-

1 tions shall include procedures to ensure that a trans-
2 fer of responsibility for the placement and care of a
3 child under a State plan approved under section 471
4 of the Social Security Act to a tribal plan approved
5 under section 471 of such Act in accordance with
6 section 479B of such Act (as added by subsection
7 (a)(1) of this section) or to an Indian tribe, a tribal
8 organization, or a tribal consortium that has entered
9 into a cooperative agreement or contract with a
10 State for the administration or payment of funds
11 under part E of title IV of such Act does not affect
12 the eligibility of, provision of services for, or the
13 making of payments on behalf of, such children
14 under part E of title IV of such Act, or the eligi-
15 bility of such children for medical assistance under
16 title XIX of such Act.

17 (2) IN-KIND EXPENDITURES FROM THIRD-
18 PARTY SOURCES FOR PURPOSES OF DETERMINING
19 NON-FEDERAL SHARE OF ADMINISTRATIVE AND
20 TRAINING EXPENDITURES.—

21 (A) IN GENERAL.—Subject to subpara-
22 graph (B) of this paragraph, not later than
23 September 30, 2011, the Secretary of Health
24 and Human Services, in consultation with In-
25 dian tribes, tribal organizations, and tribal con-

1 sortia, shall promulgate interim final regula-
2 tions specifying the types of in-kind expendi-
3 tures, including plants, equipment, administra-
4 tion, and services, and the third-party sources
5 for such in-kind expenditures which may be
6 claimed by tribes, organizations, and consortia
7 with plans approved under section 471 of the
8 Social Security Act in accordance with section
9 479B of such Act, up to such percentages as
10 the Secretary, in such consultation shall specify
11 in such regulations, for purposes of determining
12 the non-Federal share of administrative and
13 training expenditures for which the tribes, orga-
14 nizations, and consortia may receive payments
15 for under any subparagraph of section
16 474(a)(3) of such Act.

17 (B) EFFECTIVE DATE.—In no event shall
18 the regulations required to be promulgated
19 under subparagraph (A) take effect prior to Oc-
20 tober 1, 2011.

21 (C) SENSE OF THE CONGRESS.—It is the
22 sense of the Congress that if the Secretary of
23 Health and Human Services fails to publish in
24 the Federal Register the regulations required
25 under subparagraph (A) of this paragraph, the

1 Congress should enact legislation specifying the
2 types of in-kind expenditures and the third-
3 party sources for such in-kind expenditures
4 which may be claimed by tribes, organizations,
5 and consortia with plans approved under sec-
6 tion 471 of the Social Security Act in accord-
7 ance with section 479B of such Act, up to spe-
8 cific percentages, for purposes of determining
9 the non-Federal share of administrative and
10 training expenditures for which the tribes, orga-
11 nizations, and consortia may receive payments
12 for under any subparagraph of section
13 474(a)(3) of such Act.

14 (f) **EFFECTIVE DATE.**—The amendments made by
15 subsections (a), (b), and (c) shall take effect on October
16 1, 2009, without regard to whether the regulations re-
17 quired under subsection (e)(1) have been promulgated by
18 such date.

19 **SEC. 302. TECHNICAL ASSISTANCE AND IMPLEMENTATION.**

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

22 “(c) **TECHNICAL ASSISTANCE AND IMPLEMENTATION**
23 **SERVICES FOR TRIBAL PROGRAMS.**—

24 “(1) **AUTHORITY.**—The Secretary shall provide
25 technical assistance and implementation services

1 that are dedicated to improving services and perma-
2 nency outcomes for Indian children and their fami-
3 lies through the provision of assistance described in
4 paragraph (2).

5 “(2) ASSISTANCE PROVIDED.—

6 “(A) IN GENERAL.—The technical assist-
7 ance and implementation services shall be to—

8 “(i) provide information, advice, edu-
9 cational materials, and technical assistance
10 to Indian tribes and tribal organizations
11 with respect to the types of services, ad-
12 ministrative functions, data collection, pro-
13 gram management, and reporting that are
14 required under State plans under part B
15 and this part;

16 “(ii) assist and provide technical as-
17 sistance to—

18 “(I) Indian tribes, tribal organi-
19 zations, and tribal consortia seeking
20 to operate a program under part B or
21 under this part through direct appli-
22 cation to the Secretary under section
23 479B; and

24 “(II) Indian tribes, tribal organi-
25 zations, tribal consortia, and States

1 seeking to develop cooperative agree-
2 ments to provide for payments under
3 this part or satisfy the requirements
4 of section 422(b)(9), 471(a)(32), or
5 477(b)(3)(G); and

6 “(iii) subject to subparagraph (B),
7 make one-time grants, to tribes, tribal or-
8 ganizations, or tribal consortia that are
9 seeking to develop, and intend, not later
10 than 24 months after receiving such a
11 grant to submit to the Secretary a plan
12 under section 471 to implement a program
13 under this part as authorized by section
14 479B, that shall—

15 “(I) not exceed \$300,000; and

16 “(II) be used for the cost of de-
17 veloping a plan under section 471 to
18 carry out a program under section
19 479B, including costs related to devel-
20 opment of necessary data collection
21 systems, a cost allocation plan, agency
22 and tribal court procedures necessary
23 to meet the case review system re-
24 quirements under section 475(5), or
25 any other costs attributable to meet-

1 ing any other requirement necessary
2 for approval of such a plan under this
3 part.

4 “(B) GRANT CONDITION.—

5 “(i) IN GENERAL.—As a condition of
6 being paid a grant under subparagraph
7 (A)(iii), a tribe, tribal organization, or trib-
8 al consortium shall agree to repay the total
9 amount of the grant awarded if the tribe,
10 tribal organization, or tribal consortium
11 fails to submit to the Secretary a plan
12 under section 471 to carry out a program
13 under section 479B by the end of the 24-
14 month period described in that subpara-
15 graph.

16 “(ii) EXCEPTION.—The Secretary
17 shall waive the requirement to repay a
18 grant imposed by clause (i) if the Sec-
19 retary determines that a tribe’s, tribal or-
20 ganization’s, or tribal consortium’s failure
21 to submit a plan within such period was
22 the result of circumstances beyond the con-
23 trol of the tribe, tribal organization, or
24 tribal consortium.

1 “(C) IMPLEMENTATION AUTHORITY.—The
2 Secretary may provide the technical assistance
3 and implementation services described in sub-
4 paragraph (A) either directly or through a
5 grant or contract with public or private organi-
6 zations knowledgeable and experienced in the
7 field of Indian tribal affairs and child welfare.

8 “(3) APPROPRIATION.—There is appropriated
9 to the Secretary, out of any money in the Treasury
10 of the United States not otherwise appropriated,
11 \$3,000,000 for fiscal year 2009 and each fiscal year
12 thereafter to carry out this subsection.”.

13 **TITLE IV—IMPROVEMENT OF**
14 **INCENTIVES FOR ADOPTION**

15 **SEC. 401. ADOPTION INCENTIVES PROGRAM.**

16 (a) 5-YEAR EXTENSION.—Section 473A of the Social
17 Security Act (42 U.S.C. 673b) is amended—

18 (1) in subsection (b)(4), by striking “in the
19 case of fiscal years 2001 through 2007,”;

20 (2) in subsection (b)(5), by striking “1998
21 through 2007” and inserting “2008 through 2012”;

22 (3) in subsection (c)(2), by striking “each of
23 fiscal years 2002 through 2007” and inserting “a
24 fiscal year”; and

1 (4) in each of subsections (h)(1)(D), and (h)(2),
2 by striking “2008” and inserting “2013”.

3 (b) UPDATING OF FISCAL YEAR USED IN DETER-
4 MINING BASE NUMBERS OF ADOPTIONS.—Section
5 473A(g) of such Act (42 U.S.C. 673b(g)) is amended—

6 (1) in paragraph (3), by striking “means” and
7 all that follows and inserting “means, with respect
8 to any fiscal year, the number of foster child adop-
9 tions in the State in fiscal year 2007.”;

10 (2) in paragraph (4)—

11 (A) by inserting “that are not older child
12 adoptions” before “for a State”; and

13 (B) by striking “means” and all that fol-
14 lows and inserting “means, with respect to any
15 fiscal year, the number of special needs adop-
16 tions that are not older child adoptions in the
17 State in fiscal year 2007.”; and

18 (3) in paragraph (5), by striking “means” and
19 all that follows and inserting “means, with respect
20 to any fiscal year, the number of older child adop-
21 tions in the State in fiscal year 2007.”.

22 (c) INCREASE IN INCENTIVE PAYMENTS FOR SPE-
23 CIAL NEEDS ADOPTIONS AND OLDER CHILD ADOP-
24 TIONS.—Section 473A(d)(1) of such Act (42 U.S.C.
25 673b(d)(1)) is amended—

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

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

5 (d) 24-MONTH AVAILABILITY OF PAYMENTS TO
6 STATES.—Section 473A(e) of such Act (42 U.S.C.
7 673b(e)) is amended—

8 (1) in the heading, by striking “2-YEAR” and
9 inserting “24-MONTH”; and

10 (2) by striking “through the end of the suc-
11 ceeding fiscal year” and inserting “for the 24-month
12 period beginning with the month in which the pay-
13 ments are made”.

14 (e) ADDITIONAL INCENTIVE PAYMENT FOR EXCEED-
15 ING THE HIGHEST EVER FOSTER CHILD ADOPTION
16 RATE.—

17 (1) IN GENERAL.—Section 473A(d) of such Act
18 (42 U.S.C. 673b(d)) is amended—

19 (A) in paragraph (1), in the matter pre-
20 ceeding subparagraph (A), by striking “para-
21 graph (2)” and inserting “paragraphs (2) and
22 (3)”;

23 (B) in paragraph (2), by striking “this sec-
24 tion” each place it appears and inserting “para-
25 graph (1)”;

1 (C) by adding at the end the following:

2 “(3) INCREASED INCENTIVE PAYMENT FOR EX-
3 CEEDING THE HIGHEST EVER FOSTER CHILD ADOP-
4 TION RATE.—

5 “(A) IN GENERAL.—If—

6 “(i) for fiscal year 2009 or any fiscal
7 year thereafter the total amount of adop-
8 tion incentive payments payable under
9 paragraph (1) of this subsection are less
10 than the amount appropriated under sub-
11 section (h) for the fiscal year; and

12 “(ii) a State’s foster child adoption
13 rate for that fiscal year exceeds the highest
14 ever foster child adoption rate determined
15 for the State,

16 then the adoption incentive payment otherwise
17 determined under paragraph (1) of this sub-
18 section for the State shall be increased, subject
19 to subparagraph (C) of this paragraph, by the
20 amount determined for the State under sub-
21 paragraph (B) of this paragraph.

22 “(B) AMOUNT OF INCREASE.—For pur-
23 poses of subparagraph (A), the amount deter-
24 mined under this subparagraph with respect to

1 a State and a fiscal year is the amount equal
2 to the product of—

3 “(i) \$1,000; and

4 “(ii) the excess of—

5 “(I) the number of foster child
6 adoptions in the State in the fiscal
7 year; over

8 “(II) the product (rounded to the
9 nearest whole number) of—

10 “(aa) the highest ever foster
11 child adoption rate determined
12 for the State; and

13 “(bb) the number of chil-
14 dren in foster care under the su-
15 pervision of the State on the last
16 day of the preceding fiscal year.

17 “(C) PRO RATA ADJUSTMENT IF INSUFFI-
18 CIENT FUNDS AVAILABLE.—For any fiscal year,
19 if the total amount of increases in adoption in-
20 centive payments otherwise payable under this
21 paragraph for a fiscal year exceeds the amount
22 available for such increases for the fiscal year,
23 the amount of the increase payable to each
24 State under this paragraph for the fiscal year
25 shall be—

1 “(i) the amount of the increase that
2 would otherwise be payable to the State
3 under this paragraph for the fiscal year;
4 multiplied by

5 “(ii) the percentage represented by
6 the amount so available for the fiscal year,
7 divided by the total amount of increases
8 otherwise payable under this paragraph for
9 the fiscal year.”.

10 (2) DEFINITIONS.—Section 473A(g) of such
11 Act (42 U.S.C. 673b(g)) is amended by adding at
12 the end the following:

13 “(7) HIGHEST EVER FOSTER CHILD ADOPTION
14 RATE.—The term ‘highest ever foster child adoption
15 rate’ means, with respect to any fiscal year, the
16 highest foster child adoption rate determined for any
17 fiscal year in the period that begins with fiscal year
18 2002 and ends with the preceding fiscal year.

19 “(8) FOSTER CHILD ADOPTION RATE.—The
20 term ‘foster child adoption rate’ means, with respect
21 to a State and a fiscal year, the percentage deter-
22 mined by dividing—

23 “(A) the number of foster child adoptions
24 finalized in the State during the fiscal year; by

1 “(B) the number of children in foster care
2 under the supervision of the State on the last
3 day of the preceding fiscal year.”.

4 (3) CONFORMING AMENDMENTS.—

5 (A) STATE ELIGIBILITY.—Section
6 473A(b)(2) of such Act (42 U.S.C. 673b(b)(2))
7 is amended—

8 (i) in subparagraph (A), by striking
9 “or” at the end;

10 (ii) in subparagraph (B), by adding
11 “or” at the end; and

12 (iii) by adding at the end the fol-
13 lowing:

14 “(C) the State’s foster child adoption rate for
15 the fiscal year exceeds the highest ever foster child
16 adoption rate determined for the State;”.

17 (B) DATA.—Section 473A(c)(2) of such
18 Act (42 U.S.C. 673b(c)(2)), as amended by
19 subsection (a)(3) of this section, is amended by
20 inserting “and the foster child adoption rate for
21 the State for the fiscal year,” after “during a
22 fiscal year,”.

1 **SEC. 402. PROMOTION OF ADOPTION OF CHILDREN WITH**
2 **SPECIAL NEEDS.**

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

6 (1) in subsection (a)—

7 (A) in paragraph (2)—

8 (i) in subparagraph (A)—

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

12 (II) in subitem (BB) of clause
13 (i)(I) (as so redesignated), by striking
14 “item (aa) of this subclause” and in-
15 serting “subitem (AA) of this item”;

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

19 (IV) by redesignating clauses (i)
20 and (ii) as subclauses (I) and (II), re-
21 spectively;

22 (V) by realigning the margins of
23 the items, subclauses, and clauses re-
24 designated by subclauses (I) through
25 (IV) accordingly;

1 (VI) by striking “if the child—”
2 and inserting “if—

3 “(i) in the case of a child who is not an applica-
4 ble child for the fiscal year (as defined in subsection
5 (e)), the child—”;

6 (VII) in subclause (II) of clause
7 (i) (as so redesignated)—

8 (aa) by striking “(c)” and
9 inserting “(c)(1)”; and

10 (bb) by striking the period
11 at the end and inserting “; or”;
12 and

13 (VIII) by adding at the end the
14 following:

15 “(ii) in the case of a child who is an applicable
16 child for the fiscal year (as so defined), the child—

17 “(I)(aa) at the time of initiation of adop-
18 tion proceedings was in the care of a public or
19 licensed private child placement agency or In-
20 dian tribal organization pursuant to—

21 “(AA) an involuntary removal of the
22 child from the home in accordance with a
23 judicial determination to the effect that
24 continuation in the home would be con-
25 trary to the welfare of the child; or

1 “(BB) a voluntary placement agree-
2 ment or voluntary relinquishment;

3 “(bb) meets all medical or disability re-
4 quirements of title XVI with respect to eligi-
5 bility for supplemental security income benefits;
6 or

7 “(cc) was residing in a foster family home
8 or child care institution with the child’s minor
9 parent, and the child’s minor parent was in
10 such foster family home or child care institution
11 pursuant to—

12 “(AA) an involuntary removal of the
13 child from the home in accordance with a
14 judicial determination to the effect that
15 continuation in the home would be con-
16 trary to the welfare of the child; or

17 “(BB) a voluntary placement agree-
18 ment or voluntary relinquishment; and

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

22 (ii) in subparagraph (C)—

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

1 (II) by redesignating subclauses
2 (I) and (II) of clause (iv) as items
3 (aa) and (bb), respectively;
4 (III) by redesignating clauses (i)
5 through (iv) as subclauses (I) through
6 (IV), respectively;
7 (IV) by realigning the margins of
8 the subclauses and clauses redesignated
9 by subclauses (I) through (III)
10 accordingly;
11 (V) by striking “if the child—”
12 and inserting “if—
13 “(i) in the case of a child who is not an applica-
14 ble child for the fiscal year (as defined in subsection
15 (e)), the child—”;
16 (VI) in clause (i)(I) (as so redesignated),
17 by striking “(A)(ii)” and inserting
18 “(A)(i)(II)”;
19 (VII) in clause (i)(IV) (as so redesignated)—
20
21 (aa) in the matter preceding
22 item (aa), by striking “(A)” and
23 inserting “(A)(i)”; and

1 (bb) by striking the period
2 at the end and inserting “; or”;
3 and
4 (VIII) by adding at the end the
5 following:

6 “(ii) in the case of a child who is an applicable
7 child for the fiscal year (as so defined), the child
8 meets the requirements of subparagraph (A)(ii)(II),
9 is determined eligible for adoption assistance pay-
10 ments under this part with respect to a prior adop-
11 tion (or who would have been determined eligible for
12 such payments had the Adoption and Safe Families
13 Act of 1997 been in effect at the time that such de-
14 termination would have been made), and is available
15 for adoption because the prior adoption has been
16 dissolved and the parental rights of the adoptive
17 parents have been terminated or because the child’s
18 adoptive parents have died.”; and

19 (B) by adding at the end the following:

20 “(7)(A) Notwithstanding any other provision of this
21 subsection, no payment may be made to parents with re-
22 spect to any applicable child for a fiscal year that—

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

1 “(ii) is not a citizen or resident of the United
2 States; and

3 “(iii) was adopted outside of the United States
4 or was brought into the United States for the pur-
5 pose of being adopted.

6 “(B) Subparagraph (A) shall not be construed as pro-
7 hibiting payments under this part for an applicable child
8 described in subparagraph (A) that is placed in foster care
9 subsequent to the failure, as determined by the State, of
10 the initial adoption of the child by the parents described
11 in subparagraph (A).

12 “(8) A State shall spend an amount equal to the
13 amount of savings (if any) in State expenditures under
14 this part resulting from the application of paragraph
15 (2)(A)(ii) to all applicable children for a fiscal year to pro-
16 vide to children or families any service (including post-
17 adoption services) that may be provided under this part
18 or part B.”;

19 (2) in subsection (c)—

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

23 (B) by striking “this section, a child shall
24 not be considered a child with special needs un-
25 less” and inserting “this section—

1 “(1) in the case of a child who is not an appli-
2 cable child for a fiscal year, the child shall not be
3 considered a child with special needs unless”; and

4 (C) in paragraph (1)(B), as so redesign-
5 nated, by striking the period at the end and in-
6 serting “; or”; and

7 (D) by adding at the end the following:

8 “(2) in the case of a child who is an applicable
9 child for a fiscal year, the child shall not be consid-
10 ered a child with special needs unless—

11 “(A) the State has determined, pursuant
12 to a criterion or criteria established by the
13 State, that the child cannot or should not be re-
14 turned to the home of his parents;

15 “(B)(i) the State has determined that
16 there exists with respect to the child a specific
17 factor or condition (such as ethnic background,
18 age, or membership in a minority or sibling
19 group, or the presence of factors such as med-
20 ical conditions or physical, mental, or emotional
21 handicaps) because of which it is reasonable to
22 conclude that the child cannot be placed with
23 adoptive parents without providing adoption as-
24 sistance under this section and medical assist-
25 ance under title XIX; or

1 “(ii) the child meets all medical or dis-
2 ability requirements of title XVI with respect to
3 eligibility for supplemental security income ben-
4 efits; and

5 “(C) the State has determined that, except
6 where it would be against the best interests of
7 the child because of such factors as the exist-
8 ence of significant emotional ties with prospec-
9 tive adoptive parents while in the care of the
10 parents as a foster child, a reasonable, but un-
11 successful, effort has been made to place the
12 child with appropriate adoptive parents without
13 providing adoption assistance under this section
14 or medical assistance under title XIX.”; and

15 (3) by adding at the end the following:

16 “(e) APPLICABLE CHILD DEFINED.—

17 “(1) ON THE BASIS OF AGE.—

18 “(A) IN GENERAL.—Subject to paragraphs
19 (2) and (3), in this section, the term ‘applicable
20 child’ means a child for whom an adoption as-
21 sistance agreement is entered into under this
22 section during any fiscal year described in sub-
23 paragraph (B) if the child attained the applica-
24 ble age for that fiscal year before the end of
25 that fiscal year.

1 “(B) APPLICABLE AGE.—For purposes of
 2 subparagraph (A), the applicable age for a fis-
 3 cal year is as follows:

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

4 “(2) EXCEPTION FOR DURATION IN CARE.—
 5 Notwithstanding paragraph (1) of this subsection,
 6 beginning with fiscal year 2010, such term shall in-
 7 clude a child of any age on the date on which an
 8 adoption assistance agreement is entered into on be-
 9 half of the child under this section if the child—

10 “(A) has been in foster care under the re-
 11 sponsibility of the State for at least 60 consecu-
 12 tive months; and

13 “(B) meets the requirements of subsection
 14 (a)(2)(A)(ii).

15 “(3) EXCEPTION FOR MEMBER OF A SIBLING
 16 GROUP.—Notwithstanding paragraphs (1) and (2) of
 17 this subsection, beginning with fiscal year 2010,
 18 such term shall include a child of any age on the
 19 date on which an adoption assistance agreement is

1 entered into on behalf of the child under this section
2 without regard to whether the child is described in
3 paragraph (2)(A) of this subsection if the child—

4 “(A) is a sibling of a child who is an appli-
5 cable child for the fiscal year under paragraph
6 (1) or (2) of this subsection;

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

10 “(C) meets the requirements of subsection
11 (a)(2)(A)(ii).”.

12 **SEC. 403. INFORMATION ON ADOPTION TAX CREDIT.**

13 Section 471(a) of the Social Security Act (42 U.S.C.
14 671(a)), as amended by sections 101(a), 103, 204(b), 206,
15 and 301(e)(1)(A) of this Act, is amended—

16 (1) by striking “and” at the end of paragraph
17 (31);

18 (2) by striking the period at the end of para-
19 graph (32) and inserting “; and”; and

20 (3) by adding at the end the following:

21 “(33) provides that the State will inform any
22 individual who is adopting, or whom the State is
23 made aware is considering adopting, a child who is
24 in foster care under the responsibility of the State
25 of the potential eligibility of the individual for a

1 Federal tax credit under section 23 of the Internal
2 Revenue Code of 1986.”.

3 **TITLE V—CLARIFICATION OF**
4 **UNIFORM DEFINITION OF**
5 **CHILD AND OTHER PROVI-**
6 **SIONS**

7 **SEC. 501. CLARIFICATION OF UNIFORM DEFINITION OF**
8 **CHILD.**

9 (a) CHILD MUST BE YOUNGER THAN CLAIMANT.—
10 Section 152(c)(3)(A) of the Internal Revenue Code of
11 1986 is amended by inserting “is younger than the tax-
12 payer claiming such individual as a qualifying child and”
13 after “such individual”.

14 (b) CHILD MUST BE UNMARRIED.—Section
15 152(c)(1) of such Code is amended by striking “and” at
16 the end of subparagraph (C), by striking the period at the
17 end of subparagraph (D) and inserting “, and”, and by
18 adding at the end the following new subparagraph:

19 “(E) who has not filed a joint return
20 (other than only for a claim of refund) with the
21 individual’s spouse under section 6013 for the
22 taxable year beginning in the calendar year in
23 which the taxable year of the taxpayer begins.”.

24 (c) RESTRICT QUALIFYING CHILD TAX BENEFITS TO
25 CHILD’S PARENT.—

1 (1) CHILD TAX CREDIT.—Section 24(a) of such
2 Code is amended by inserting “for which the tax-
3 payer is allowed a deduction under section 151”
4 after “of the taxpayer”.

5 (2) PERSONS OTHER THAN PARENTS CLAIMING
6 QUALIFYING CHILD.—

7 (A) IN GENERAL.—Section 152(c)(4) of
8 such Code is amended by adding at the end the
9 following new subparagraph:

10 “(C) NO PARENT CLAIMING QUALIFYING
11 CHILD.—If the parents of an individual may
12 claim such individual as a qualifying child but
13 no parent so claims the individual, such indi-
14 vidual may be claimed as the qualifying child of
15 another taxpayer but only if the adjusted gross
16 income of such taxpayer is higher than the
17 highest adjusted gross income of any parent of
18 the individual.”.

19 (B) CONFORMING AMENDMENTS.—

20 (i) Section 152(e)(4)(A) of such Code
21 is amended by striking “Except” through
22 “2 or more taxpayers” and inserting “Ex-
23 cept as provided in subparagraphs (B) and
24 (C), if (but for this paragraph) an indi-

1 vidual may be claimed as a qualifying child
2 by 2 or more taxpayers”.

3 (ii) The heading for section 152(c)(4)
4 of such Code is amended by striking
5 “CLAIMING” and inserting “WHO CAN
6 CLAIM THE SAME”.

7 (d) EFFECTIVE DATE.—The amendments made by
8 this section shall apply to taxable years beginning after
9 December 31, 2008.

10 **SEC. 502. INVESTMENT OF OPERATING CASH.**

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

13 **“§ 323. Investment of operating cash**

14 “(a) To manage United States cash, the Secretary
15 of the Treasury may invest any part of the operating cash
16 of the Treasury for not more than 90 days. The Secretary
17 may invest the operating cash of the Treasury in—

18 “(1) obligations of depositories maintaining
19 Treasury tax and loan accounts secured by pledged
20 collateral acceptable to the Secretary;

21 “(2) obligations of the United States Govern-
22 ment; and

23 “(3) repurchase agreements with parties accept-
24 able to the Secretary.

1 “(b) Subsection (a) of this section does not require
2 the Secretary to invest a cash balance held in a particular
3 account.

4 “(c) The Secretary shall consider the prevailing mar-
5 ket in prescribing rates of interest for investments under
6 subsection (a)(1) of this section.

7 “(d)(1) The Secretary of the Treasury shall submit
8 each fiscal year to the appropriate committees a report
9 detailing the investment of operating cash under sub-
10 section (a) for the preceding fiscal year. The report shall
11 describe the Secretary’s consideration of risks associated
12 with investments and the actions taken to manage such
13 risks.

14 “(2) For purposes of paragraph (1), the term ‘appro-
15 priate committees’ means the Committee on Ways and
16 Means of the House of Representatives and the Committee
17 on Finance of the Senate.”.

18 **SEC. 503. NO FEDERAL FUNDING TO UNLAWFULLY**
19 **PRESENT INDIVIDUALS.**

20 Nothing in this Act shall be construed to alter prohi-
21 bitions on Federal payments to individuals who are unlaw-
22 fully present in the United States.

1 **TITLE VI—EFFECTIVE DATE**

2 **SEC. 601. EFFECTIVE DATE.**

3 (a) IN GENERAL.—Except as otherwise provided in
4 this Act, each amendment made by this Act to part B or
5 E of title IV of the Social Security Act shall take effect
6 on the date of the enactment of this Act, and shall apply
7 to payments under the part amended for quarters begin-
8 ning on or after the effective date of the amendment.

9 (b) DELAY PERMITTED IF STATE LEGISLATION RE-
10 QUIRED.—In the case of a State plan approved under part
11 B or E of title IV of the Social Security Act which the
12 Secretary of Health and Human Services determines re-
13 quires State legislation (other than legislation appro-
14 priating funds) in order for the plan to meet the additional
15 requirements imposed by this Act, the State plan shall not
16 be regarded as failing to comply with the requirements of
17 such part solely on the basis of the failure of the plan
18 to meet such additional requirements before the 1st day
19 of the 1st calendar quarter beginning after the close of
20 the 1st regular session of the State legislature that ends
21 after the 1-year period beginning with the date of the en-
22 actment of this Act. For purposes of the preceding sen-
23 tence, in the case of a State that has a 2-year legislative

- 1 session, each year of the session is deemed to be a separate
- 2 regular session of the State legislature.

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