

MEMORANDUM

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Subject: The Title IV-E Income Test Included in the “Lookback”

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This memorandum was prepared to enable distribution to more than one congressional office.

This memorandum provides information on the specific income tests that are used to determine eligibility for certain assistance provided under the Foster Care, Prevention and Permanency program (Title IV-E of the Social Security Act), referred to in this memorandum as the “Title IV-E program.” The income test used in the Title IV-E program is part of several eligibility criteria that remain relevant for the Title IV-E program and which were established under the former federal-state cash assistance program known as Aid to Families with Dependent Children (AFDC). That program was repealed by Congress in 1996 (P.L. 104-193) when it was replaced by the Temporary Assistance for Needy Families (TANF) block grant. However, under the Title IV-E program, states are required to *look back* to certain of the prior law AFDC eligibility provisions (as they were in effect on July 16, 1996) as part of establishing a child’s eligibility for federal foster care support under the Title IV-E program.

What is the Title IV-E Program?

Title IV-E of the Social Security Act authorizes the federal-state Foster Care, Prevention, and Permanency program. Under this program states are entitled to federal reimbursement for a part of the cost of providing foster care to children who, typically, due to abuse or neglect in their own homes, are removed from that home and placed in foster care. Separately, Title IV-E assistance is also available for eligible children leaving foster care for new permanent homes via adoption and, in states electing to provide this kind of IV-E support, legal guardianship. Further, the Family First Prevention Services Act (FFPSA, Div. E, Title VII of P.L. 115-123), amended the Title IV-E program to authorize support for certain evidence-based services to prevent the need for children to enter foster care. Eligibility rules for each of these IV-E components varies: The income test effectively applies in all Title IV-E kinship guardianship cases and also to a limited number of Title IV-E adoption assistance cases (through June 30, 2024 only). However, no income test will apply with regard to receipt of the newly authorized Title IV-E prevention services (available as of October 1, 2019 at the earliest).¹

¹ A child may only be eligible for Title IV-E kinship guardianship assistance if he or she was eligible to receive a Title IV-E foster care maintenance payment while living in foster care with his or her prospective relative guardian. Effectively this means the lookback provisions (including the income test) apply to these children. With regard to Title IV-E adoption assistance, the income test criteria has been mostly phased out. However, per FFPSA they remain applicable for the youngest children through June 30, 2024 (i.e., until that date they must be applied to children who are under two years of age on the last day of the fiscal year in which they are adopted). Please note that in both the guardianship, and the specified adoption assistance cases, the income test applies to the home the child was removed from before entering foster care (and at the time of that removal). They are not applied at the time the guardianship or adoption is finalized, nor do they apply to the guardianship or adoptive families.

The focus of this memorandum is on the eligibility requirements that apply to the foster care component of Title IV-E, including the income test.

Who is Eligible for Title IV-E Foster Care Support?

Children in foster care must meet certain eligibility requirements in order for a state to claim federal IV-E support for a part of the costs of providing them with a foster care maintenance payment (roughly speaking, a room and board payment made to the family or group/institution where the child is placed), for related caseworker activities on behalf of the child in foster care (e.g., permanency planning, including monthly caseworker visits), and for other program administration, including training, costs.

A child's eligibility for Title IV-E foster care maintenance payments is based on multiple criteria. First, responsibility for the child's care and placement must rest with the state or tribal child welfare (Title IV-E) agency. Additional eligibility criteria are related to –

- **the child's age** (he or she must be under age 18, or up to age 21 in states electing to extend Title IV-E assistance to an older age);
- **how and why the child was removed from the home** (e.g., for children involuntarily removed from the home a court must find that the home was “contrary to the welfare of the child” and that the state made “reasonable efforts” to prevent the child's removal);²
- **the placement setting and foster care provider for the child** (generally the foster care provider must have cleared a background check and, among other requirements, the setting must usually be licensed);³
- the Title IV-E agency's **timely and continued “reasonable efforts” to achieve permanency** for the child;
- **the child's citizenship or immigration status** (a child must be a citizen or a “qualified alien”); and
- **the income, assets and other characteristics of the home from which the child was removed** (i.e., the “lookback” provisions).

What are the Lookback Provisions?

Only the Title IV-E eligibility rules related to income, assets and other characteristics of the home from which the child was removed remain tied to the July 16, 1996 lookback date.⁴ More specifically those “look back” requirements provide that –

- the child must have been **removed from the home of a parent or of another person who is their relative** by blood, marriage, or adoption;

² Children may also enter foster care through a “voluntary placement agreement” entered into between the child's parent/legal guardian and the Title IV-E agency. In these cases the judicial findings related to the home being “contrary to the welfare” of the child and “reasonable efforts” to prevent removal do not need to be made. However, if the voluntary placement lasts more than 180 days a judge must find the placement in the child's best interest in order for the child to remain eligible for Title IV-E foster care support.

³ Children in foster care at age 18 or older may be placed in a supervised independent living, which may not always mean placement in a “licensed” setting. FFPSA adds additional requirements related to eligibility of placement settings. These requirements are effective as of October 1, 2019, or – in states electing to delay their application – no later than October 1, 2021.

⁴ Removing these “lookback” provisions is also sometimes referred to as “delinking” or “the delink” because it would remove the statutory link between the prior law AFDC program and the current law Title IV-E program.

- the child must have been found to be **deprived of parental care or support in that home** (due to death, continued absence, or medically verified physical or mental incapacity of a parent, or because of the unemployment of the principal wage earner);
- the child must have been **removed from a family with income that is below the specific state “need standard”** that was established by the state under the AFDC program, as in effect on July 16, 1996 (without adjustment for inflation and as determined using the income counting rules in effect under that program on that date); and
- the child must have been **removed from a family with assets of no more than \$10,000**, as determined using the asset counting rules under the AFDC program, as in effect on July 16, 1996.⁵

Is the Income Test the Same for All Families?

No. The income test varies by family size and by state. In addition, in some states, the need standard also varied based on locality or other factors specific to the family (e.g., did the family receive housing assistance).

May a State Alter How Income is Counted or Adjust the Amount for Inflation?

No. The income test must be applied in the Title IV-E program in the same manner as it was applied in the AFDC program as that program existed on July 16, 1996, and it may not be adjusted for inflation. Additionally, for purposes of Title IV-E, it must be applied to the home the child is removed from and in the month of that removal.⁶ Although the test must be done based on monthly income, **Table 1** also includes annualized income numbers (monthly income limit x 12) to enable easy comparison of the income test to the federal poverty guidelines.

In 1996 when the AFDC program was repealed, the median state income test represented 60% of the federal poverty guidelines. By 2019, that median AFDC income test represented 36% of the federal poverty guideline.

What is the Income Test in My State?

Table 1 provides monthly counted income standards for each state based on two family sizes, i.e., family of three and family of four. Generally, the monthly counted income standard equals a state’s AFDC “need standard,” which each state was required to develop under its AFDC plan. A state’s “need standard” represented a sum of money that the state determined was necessary to meet the basic subsistence needs of a family.

States were required to apply need standards uniformly in the state but they could choose to develop more than one standard in the state. For example, some states had one standard applicable to an urban region

⁵ The AFDC asset test was set at a maximum of \$1,000. For the Title IV-E program, this limit was changed to \$10,000 by the Foster Care Independence Act of 1999 (P.L. 106-179).

⁶ If a child leaves the unsafe home of his parents for the safe home of a relative, but the relative is unable to continue providing care for the child (meaning the child must enter foster care), the income test must still be applied to the home of the child’s parents (i.e., the unsafe home). In this kind of entry to foster care, the income determination must generally occur within 6 months of the child moving to the safe home of the relative (Sec. 472(a)(3)(A)(ii)(II) of the Social Security Act). However, under FFPSA, the determination may occur after a longer time period if the child was a Title IV-E “candidate” while living in the safe home of a relative (Sec. 471(e)(10)(B) of the Social Security Act).

and another applicable to rural areas. For purposes of **Table 1**, the need standard shown is generally the one that was applicable to the largest number of AFDC families in the state.

Table 1. AFDC Income Limits in Dollars and as a Share of the Federal Poverty Guideline

The AFDC income test is based on monthly income only. The annualized limit shown in this table (i.e., monthly limit x 12) is calculated solely for purposes of comparing the income test to the federal poverty guideline.

State ^b	Family of Three				Family of Four			
	Maximum Counted Income Limit ^a		Annualized Limit as a Share of the Federal Poverty Guidelines		Maximum Counted Income \$ Limit ^a		Annualized Limit as a Share of the Federal Poverty Guidelines	
	Monthly \$	Annualized \$	% 2019 FPG	% 1996 FPG	Monthly \$	Annualized \$	% 2019 FPG	% 1996 FPG
Alabama	\$673	\$8,076	38%	62%	\$793	\$9,516	37%	61%
Alaska	\$1,028	\$12,336	46%	76%	\$1,142	\$13,704	43%	70%
Arizona	\$964	\$11,568	54%	89%	\$1,162	\$13,944	54%	89%
Arkansas	\$705	\$8,460	40%	65%	\$850	\$10,200	40%	65%
California	\$723	\$8,676	41%	67%	\$858	\$10,296	40%	66%
Colorado	\$421	\$5,052	24%	39%	\$510	\$6,120	24%	39%
Connecticut	\$745	\$8,940	42%	69%	\$876	\$10,512	41%	67%
Delaware	\$338	\$4,056	19%	31%	\$407	\$4,884	19%	31%
District of Columbia	\$712	\$8,544	40%	66%	\$870	\$10,440	41%	67%
Florida	\$1,082	\$12,984	61%	100%	\$1,300	\$15,600	61%	100%
Georgia	\$424	\$5,088	24%	39%	\$500	\$6,000	23%	38%
Hawaii	\$1,140	\$13,680	56%	92%	\$1,375	\$16,500	56%	92%
Idaho	\$991	\$11,892	56%	92%	\$1,196	\$14,352	56%	92%
Illinois	\$963	\$11,556	54%	89%	\$1,058	\$12,696	49%	81%
Indiana	\$320	\$3,840	18%	30%	\$385	\$4,620	18%	30%
Iowa	\$849	\$10,188	48%	78%	\$986	\$11,832	46%	76%
Kansas	\$403	\$4,836	23%	37%	\$471	\$5,652	22%	36%
Kentucky	\$526	\$6,312	30%	49%	\$592	\$7,104	28%	46%
Louisiana	\$658	\$7,896	37%	61%	\$809	\$9,708	38%	62%
Maine	\$553	\$6,636	31%	51%	\$695	\$8,340	32%	53%
Maryland	\$517	\$6,204	29%	48%	\$623	\$7,476	29%	48%
Massachusetts	\$579	\$6,948	33%	54%	\$668	\$8,016	31%	51%
Michigan	\$551	\$6,612	31%	51%	\$676	\$8,112	32%	52%
Minnesota	\$532	\$6,384	30%	49%	\$621	\$7,452	29%	48%
Mississippi	\$368	\$4,416	21%	34%	\$443	\$5,316	21%	34%
Missouri	\$846	\$10,152	48%	78%	\$990	\$11,880	46%	76%
Montana	\$558	\$6,696	31%	52%	\$671	\$8,052	31%	52%
Nebraska	\$364	\$4,368	20%	34%	\$435	\$5,220	20%	33%
Nevada	\$699	\$8,388	39%	65%	\$819	\$9,828	38%	63%
New Hampshire	\$2,034	\$24,408	114%	188%	\$2,402	\$28,824	112%	185%
New Jersey	\$985	\$11,820	55%	91%	\$1,127	\$13,524	53%	87%
New Mexico	\$381	\$4,572	21%	35%	\$458	\$5,496	21%	35%
New York	\$577	\$6,924	32%	53%	\$687	\$8,244	32%	53%

State ^b	Family of Three				Family of Four			
	Maximum Counted Income Limit ^a		Annualized Limit as a Share of the Federal Poverty Guidelines		Maximum Counted Income \$ Limit ^a		Annualized Limit as a Share of the Federal Poverty Guidelines	
	Monthly \$	Annualized \$	% 2019 FPG	% 1996 FPG	Monthly \$	Annualized \$	% 2019 FPG	% 1996 FPG
North Carolina	\$544	\$6,528	31%	50%	\$594	\$7,128	28%	46%
North Dakota	\$431	\$5,172	24%	40%	\$517	\$6,204	24%	40%
Ohio	\$950	\$11,400	53%	88%	\$1,173	\$14,076	55%	90%
Oklahoma	\$645	\$7,740	36%	60%	\$798	\$9,576	37%	61%
Oregon	\$460	\$5,520	26%	43%	\$565	\$6,780	26%	43%
Pennsylvania	\$587	\$7,044	33%	54%	\$724	\$8,688	34%	56%
Rhode Island	\$554	\$6,648	31%	51%	\$632	\$7,584	29%	49%
South Carolina	\$524	\$6,288	29%	48%	\$631	\$7,572	29%	49%
South Dakota	\$507	\$6,084	29%	47%	\$563	\$6,756	26%	43%
Tennessee	\$677	\$8,124	38%	63%	\$697	\$8,364	32%	54%
Texas	\$751	\$9,012	42%	69%	\$903	\$10,836	42%	69%
Utah	\$568	\$6,816	32%	53%	\$665	\$7,980	31%	51%
Vermont	\$1,173	\$14,076	66%	108%	\$1,318	\$15,816	61%	101%
Virginia	\$322	\$3,864	18%	30%	\$386	\$4,632	18%	30%
Washington	\$1,252	\$15,024	70%	116%	\$1,472	\$17,664	69%	113%
West Virginia	\$991	\$11,892	56%	92%	\$1,196	\$14,352	56%	92%
Wisconsin	\$647	\$7,764	36%	60%	\$772	\$9,264	36%	59%
Wyoming	\$674	\$8,088	38%	62%	\$753	\$9,036	35%	58%
<i>Summary Statistics for the 50 states and the District of Columbia</i>								
Median	\$645	\$7,740	36%	60%	\$724	\$8,688	34%	56%
Average	\$695	\$8,345	39%	64%	\$820	\$9,839	38%	62%
Minimum	\$320	\$3,840	18%	30%	\$385	\$4,620	18%	30%
Maximum	\$2,034	\$24,408	114%	188%	\$2,402	\$28,824	112%	185%

Source: Table prepared by the Congressional Research Service (CRS).

Notes: The federal poverty amounts used in this table are as prepared by the U.S. Department of Health and Human Services (HHS), available at <https://aspe.hhs.gov/poverty-guidelines>. The monthly counted income limits shown in this table equal a state’s AFDC “need standard” as of July 1, 1996 and were compiled by HHS for *Overview of the AFDC Program Fiscal Year 1996* (unpublished). In addition to the “need standard” most states also developed a “payment standard” under their AFDC plan that was lower dollar amount than the “need standard.” The payment standard represented the income level at which an AFDC payment would be made to a family. The Title IV-E program, however, uses the “need standard” in all states.

- a. A state must apply a two-part income test to determine whether – in the month that the court proceeding to remove the child from the home is begun, or in the month that the voluntary placement agreement is signed – the child would have been considered needy under the state’s AFDC program. The first step is to determine that the gross income in the home from which the child is to be removed does not exceed 185% of the state’s “need standard.” Provided this test is met, the state must next determine that the countable income in the home of the child was 100% or less of that “need standard.” Generally, counted income of a family applying for AFDC included the family’s gross (earned and any unearned) income minus up to \$90 in wages, child care costs up to \$175 (or \$200 for child younger than age two) for an employed member of the assistance unit; and up to \$50 in child support.
- b. The territories of Puerto Rico, Guam, the Virgin Islands, and American Samoa are considered “states” for purposes of the Title IV-E program and may operate a Title IV-E program. Currently, only Puerto Rico and (as of FY2017) the Virgin Islands have approved Title IV-E plans allowing them to operate Title IV-E programs. The monthly counted income test applicable for a family of three is \$360 in Puerto Rico and \$300 in the Virgin Islands. For a family of four the applicable tests are \$408 and \$375, respectively.