



**MEMORANDUM**

May 24, 2019

**Subject:** Family First Transition and Support Act of 2019, as introduced

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

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This memorandum provides an overview and section-by-section discussion of the Family First Transition and Support Act of 2019 (S. 1376/H.R. 2702), as introduced. S. 1376 was introduced in the Senate on May 8, 2019 by Senator Sherrod Brown, with Senators Debbie Stabenow, Amy Klobuchar and Kirsten Gillibrand. H.R. 2702, an identical bill, was introduced in the House on May 14, 2019 by Representative Karen Bass with Representatives Don Bacon, Brenda Lawrence, Debra Haaland, and James Langevin.

## Overview

As introduced, the Family First Transition and Support Act (FFTSA) would do the following.

- Expand federal support to state child welfare agencies by removing the income test and certain other criteria in place for children entering or in foster care, who are placed in foster family homes.
- Increase mandatory funding for the Promoting Safe and Stable Families (PSSF) program by \$320 million (from \$345 million to \$665 million).<sup>1</sup> These new funds would be used to –
  - provide an additional \$179 million in flexible support (to states and territories) for services to strengthen and support families, including specific funding for kinship placement support services;
  - provide increased support to tribes for these same services (by raising the annual reservation of mandatory PSSF funds for this purpose from about 3% or around \$9 million to 4.5% or about \$30 million);
  - double mandatory PSSF funding annually reserved for the Court Improvement Program (CIP) (from \$30 million to \$60 million);<sup>2</sup>

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<sup>1</sup> The PSSF program is included in Title IV-B, Subpart 2 of the Social Security Act. Under the provisions of the Budget Control Act (P.L. 112-25, as amended), mandatory PSSF funding is subject to sequestration in every year through FY2027. That sequestration percentage (i.e., the amount of appropriated funding that is rescinded) varies, but in past years has ranged between 5% -7%. All of the mandatory PSSF funding levels discussed in this memorandum refer to amounts prior to any sequestration.

<sup>2</sup> This proposed increase in CIP funding matches the level of increase requested for this program as part of the Trump Administration's FY2020 budget request. The Administration describes the requested increase as needed to modernize and

- increase mandatory PSSF funding annually reserved (through FY2021) for Regional Partnership Grants (RPGs) (from \$20 million to \$60 million) providing more resources for communities and states to aid children and families affected by substance use disorder;<sup>3</sup>
  - increase mandatory PSSF funding annually reserved (through FY2021) for Monthly Caseworker Visit grants (from \$20 million to \$50 million) to allow new uses of these grants related to supporting and training caseworkers;
  - raise mandatory PSSF funding reserved for research, evaluation and technical assistance (from \$6 million to \$26 million) to permit new support for state-directed research projects and to support efforts to accelerate the identification of evidence-based foster care prevention programs.
- Provide temporary support (\$75 million in each of FY2020 and FY2021) to assist states, territories, and tribes in enhancing and improving all types of foster care settings and to make additional changes intended to assist states in complying with new placement setting requirements, and accessing new prevention funds authorized under the Title IV-E program as amended by the Family First Prevention Services Act (FFPSA).<sup>4</sup>
  - Consolidate the three Court Improvement Program (CIP) grants into a single grant in a manner that would permit their continued use for all current purposes and is intended to ensure that all of the program's mandatory funding is understood as a part of the PSSF program baseline.
  - Make additional changes to ensure greater access to child and family services funding for tribes, including smaller population tribes.

The PSSF program and the Title IV-E program are administered at the federal level by the Children's Bureau, an agency within the U.S. Department of Health and Human Services (HHS). Following is a section by section description of FFTSA provisions.

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expand the CIP to include training to address the "ongoing opioid crisis" and its impact on children and families as well as to ensure the capacity of courts to meet new requirements for child welfare proceedings, including those enacted as part of the Family First Prevention Services Act (FFPSA). See U.S. Department of Health and Human Services (HHS), Administration for Children and Families (ACF), *Justification of Estimates for Appropriations Committee*, p. 274.

<sup>3</sup> This proposal to increase mandatory funding for RPGs matches the Trump Administration's FY2020 budget request for this program. The Administration notes that results from previous RPG projects show enrollment in the program reduced risk of foster care placement, increased permanency including through reuniting parents and children, and reduced rates of child maltreatment. There are around 31 RPG grantees in 22 states and the additional funding for RPGs, the Administration notes, will allow more grantees, to "address the impact of opioid abuse on children, families and communities." HHS, ACF, *Justification of Estimates for Appropriations Committee*, p. 270 and p. 274.

<sup>4</sup> The Title IV-E program is formally titled the Foster Care, Prevention and Permanency Program and is located in Title IV-E of the Social Security Act. Most of the changes made by FFPSA related to where children in foster care may be placed (if the state intends to seek IV-E support for their care) and authorization of support under IV-E for services to prevent the need to place children in care are set to become effective on October 1, 2019 (or, at state option as late as October 1, 2021).

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# Title I Eliminating Barriers to Providing Child Welfare Services for Children in Need

## Eliminate the “Lookback” Eligibility Provisions for Title IV-E Foster Care (Sec. 101)

FFTSA would expand the number of children eligible for federal Title IV-E foster care support by removing, for children placed in foster family homes, the IV-E eligibility criteria that concern income and other characteristics of the home from which the child was removed. Those eligibility requirements are sometimes referred to as the “lookback provisions” because they require states to “look back” to, and apply the income test and other eligibility criteria previously used in the cash aid program known as Aid to Families with Dependent Children (AFDC). That program was repealed in 1996 (P.L. 104-193). However, for purposes of determining a child’s eligibility for Title IV-E foster care support states must apply certain AFDC income tests and other requirements as they existed on July 16, 1996 (i.e., just prior to the program’s repeal).<sup>5</sup>

FFTSA would retain the “lookback” eligibility criteria for children placed in non-foster family home settings. It would also continue to require that all children in foster care meet multiple other existing Title IV-E eligibility requirements. Those other criteria stipulate that

- responsibility for the child’s care and placement must be given to the state or tribal agency operating a Title IV-E program under an approved plan (or to another public agency under contract with the state Title IV-E agency);
- the child is under 18 years of age (or, if the state has taken the option to extend care to older age, under age 21 and meets additional education, work-related, or medical exemption requirements);
- the child is a U.S. citizen or a “qualified alien;”<sup>6</sup>
- the child was removed from his/her home pursuant to a voluntary placement agreement or, if on an involuntary basis, pursuant to a judicial determination that the home was “contrary to the welfare” of the child, and subject to additional court determinations that reasonable efforts to prevent the child’s removal from the home were made, and that timely efforts to achieve permanency for the child are being made;<sup>7</sup> and
- the child is placed in a licensed (1) foster family home (and the foster parents have met certain background checks), (2) a “child care institution” licensed or approved by the state to provide foster care, or (3) a licensed residential family-based treatment facility for substance abuse (provided the child is placed there with a parent and other facility and case plan requirements are met).

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<sup>5</sup> For more information on the lookback provisions and to see a table showing income limits by states, request a copy of CRS Congressional Distribution Memorandum, “The Title IV-E Income Test Included in the ‘Lookback,’” April 19, 2019, by Emilie Stoltzfus.

<sup>6</sup> These requirements are not included in child welfare law but follow from the Personal Responsibility and Work Opportunity Reconciliation Act (PRWORA). The definition of “qualified alien” as provided in PRWORA is at 8 U.S.C. 1641.

<sup>7</sup> The large majority of children enter foster care involuntarily. Under federal law (and in most states) 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, “reasonable efforts” to prevent removal and reasonable efforts to achieve permanency for the child 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. Sec. 474(e)(f) and (g) of the SSA.

## Lookback Provisions

Additionally under current law, in order to be eligible for Title IV-E support, children placed in foster family homes or child care institutions that provide foster care must meet certain income, asset and other tests taken from the prior law AFDC program.<sup>8</sup> Specifically, a child must be removed from the home of a parent or other relative; the child must be found to have been “deprived” of parental care or support in that home;<sup>9</sup> the assets of the family in that home must be less than \$10,000; and the income of the family in that home must not exceed the family “need standard” established by the state (as in effect on July 16, 1996) for purposes of determining eligibility for cash aid under the AFDC program.

For purposes of Title IV-E foster care eligibility the relevant AFDC need standard (i.e., income test), varies by state and by family size. However, these need standards represented a low income level in 1996 and states have not been permitted to adjust them for inflation. Accordingly, in 1996 when the AFDC program was repealed, the median state income test (for a family of three) represented 60% of the federal poverty guidelines. By 2019, the median for that same AFDC income test represented 36% of the federal poverty guideline.<sup>10</sup>

## Effective Date of Lookback Removal

States are required under current law to provide foster care maintenance payments to any child who meets the Title IV-E eligibility criteria. FFTSA would provide that the lookback provisions need not be applied to determine the Title IV-E eligibility of children placed in foster family homes beginning on October 1, 2019. Further it stipulates that the change in eligibility criteria applies to children entering care on or after that date as well as the children who are already in care as of that date. Accordingly states would be required to ensure that any newly eligible children are receiving a foster care maintenance payment.

## Reinvestment of Savings

FFTSA would require that, beginning with FY2021, a state must spend an amount equal to any reduction in non-federal state spending for foster care – due to the broadening of federal Title IV-E foster care eligibility – on services for children and their families authorized in Title IV-B and Title IV-E of the Social Security Act. The state would be required to use this re-directed spending to supplement, not supplant existing federal or non-federal spending under Title IV-B or Title IV-E. Additionally, a state in which the Title IV-E program is administered by political subdivisions (e.g., counties) would need to ensure that any savings are distributed among those political subdivisions.

Each state would be required to calculate the amount of savings in state spending that occurred due to the expanded eligibility for federal Title IV-E foster care support. The calculation would need to be done according to methodology established by the HHS Secretary or via an alternative method developed by the state and approved by the HHS Secretary. Additionally, each state would be required to annually report on how it calculates any savings, any amount saved and, how any savings are spent. Further if the Title IV-E program is administered by political subdivisions (e.g., counties) of a state, the state must

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<sup>8</sup> As of October 1, 2018, FFPSA permits children in foster care to be placed with their parent in a licensed family-based residential treatment facility for substance abuse, provided this is recommended in the child’s case plan and the facility incorporates certain parenting and other services in its treatment program. As provided by FFPSA, children placed in this foster care setting may be eligible for Title IV-E support (for up to 12 months) without meeting the AFDC-related or “lookback” provisions.

<sup>9</sup> Finding that a child is “deprived” under AFDC rules generally means there is only one parent in the household who is able to provide care and support for the child. It is not a finding of child maltreatment. A child living in a two-parent household who has been maltreated by one or both parents would not be considered “deprived” under AFDC rules (unless one of the parents was disabled in a way that made him/her unable to care for the child or was determined to be an unemployed primary wage earner).

<sup>10</sup> CRS Congressional Distribution Memorandum, “The Title IV-E Income Test Included in the ‘Lookback,’” April 19, 2019, by Emilie Stoltzfus.

report the proportion spent by each such subdivision. The HHS Secretary would be required to make information reported by states regarding this reinvestment of savings available on the HHS website.

## **Increased Mandatory Funding for the Promoting Safe and Stable Families (PSSF) Program (Sec. 102)**

FFTSA would increase mandatory funding authorized under the Promoting Safe and Stable Families Program (PSSF, Title IV-B, Subpart 2 of the Social Security Act, SSA) to \$665 million (from current law \$345 million).

Under current law, PSSF mandatory funding is allotted by formula to states and territories to support the provision of four categories of services to children and families: family support, family preservation, family reunification, and adoption promotion and support. In addition, a part of this mandatory funding is reserved to support tribal child and family services, for the Court Improvement Program (CIP), Regional Partnership Grants (RPGs), and Monthly Caseworker visit (MCV) grants, and for research, evaluation and training related to PSSF programs and purposes. As described in succeeding sections of this memorandum, FFTSA would generally increase funding for each of these current law activities and would sometimes expand activities that they may support.

Under current law, PSSF mandatory funding is currently authorized through FY2021. FFTSA does not extend the date of that funding authorization. However, assuming the PSSF program is continued (i.e., its funding authority is later extended beyond FY2021), the higher mandatory PSSF funding level authorized by FFTSA might be expected to continue beyond that year (i.e., this higher level of funding might be assumed as part of “baseline” spending in years beyond FY2021).<sup>11</sup>

## **Adding Kinship Placement Support Services to the PSSF Program (Sec. 103)**

Under current law, PSSF funding is provided to states, territories and tribes for the support of four broadly defined categories of child and family services: family support, family preservation, family reunification, and adoption promotion and support. States must spend a “significant” portion of this PSSF funding on each of those service categories. FFTSA would define a fifth service category – kinship placement support services – and would require that states spend a “significant” portion of the PSSF funding for these services as well. Specifically, “kinship placement support services” would be defined to mean services and activities provided on behalf of children and youth in kinship care arrangements who are in, or at risk of, foster care placement, including

- Crisis stabilization services for a family in order to facilitate kinship placements and prevent the entry of children into foster care, including transportation, assistance with housing and utility payments, access to adequate health care, child care assistance, and establishment of a kinship placement crisis stabilization fund to make direct cash payments to kin caregivers for immediate needs of children placed with them;
- Family finding efforts that use search technology to find biological family members of children in, or at risk of entering, foster care;
- Re-establishing family relationships and supporting family group decision-making; and
- Other assistance or services related to strengthening and supporting kinship families to improve the well-being of children and their kin caregivers, including, if requested, assistance in becoming a licensed foster family home.

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<sup>11</sup> No formal Congressional Budget Office (CBO) score has been made of FFTSA. This description by CRS reflects how mandatory funding authority under the PSSF program has operated in previous years.

## **Maintenance of Effort**

Under current law states must ensure that they do not use federal PSSF funding to supplant federal or non-federal spending for PSSF-related activities that existed prior to the creation of the program (i.e., they must not spend less on these activities than they did in FY1992). FFTSA would amend this provision to add that, a state must not spend less on kinship placement support services in FY2020 and each subsequent year than it spent for them in FY2019. States would be required to report to HHS, at the time, and in the manner and format requested by that agency, on their compliance with this spending requirement.

## **Inclusion in Ongoing PSSF Program for Child and Family Services**

FFTSA would make other conforming amendments to the PSSF program to ensure the ongoing inclusion of kinship placement support services in the PSSF program. It would include as a PSSF program purpose “support for kinship placements to maintain family connections while ensuring the safety and well-being of children and youth and the well-being of kin caregivers,” and it would require states to annually include a description of its PSSF spending on kinship placement support services as part of its report on spending in all PSSF service categories.

The additional PSSF funding for child and family services would be distributed to states and territories in the same manner as under current law (which is primarily based on a state’s share of the national number children receiving Supplemental Nutrition Assistance Payments (SNAP)). As is the case in current law, states and tribes would be expected to provide at least \$1 in non-federal PSSF program spending for every \$3 received under the PSSF program (including the increased support provided by FFTSA for existing PSSF services as well as for kinship placement support services.) States may elect to receive less than their full allotment of PSSF funding, and, if they do, the HHS Secretary must re-allot those funds to other states, territories, or tribes.

## **Using Family Preservation Services to Stabilize Families in Crisis (Sec. 104)**

Under current statute, family preservation is defined for purposes of the PSSF program as services for children and their families at risk or in crisis, including pre-placement programs that are designed to keep children safe in their own homes, and programs designed to reunite children and families or to find children new homes when returning home isn’t possible. More specifically these services may include parenting skills programs, follow up care for children returning home from foster care, respite care for parents or caregivers, and infant safe haven programs.

FFTSA would clarify that PSSF spending on family preservation services includes case management services designed to stabilize families in crisis such as transportation, assistance with housing and utility payments and access to adequate health care. (This is currently provided for in regulation but not in statute.)

## **More Funding and Training for Caseworker Development (Sec. 105)**

Under current law, \$20 million in mandatory PSSF funding must be reserved each year (through FY2021) for grants to states and territories to improve the quality of monthly caseworker visits with children in foster care. The funds must be used to support improved caseworker decision-making with regard to safety, permanency and well-being of children in foster care, and for activities to increase retention, recruitment, and training of caseworkers.

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FFTSA would increase the annual reservation of mandatory PSSF funds for Monthly Caseworker Visit (MCV) grants (through FY2021) to \$50 million and would provide for additional uses of funds. These include activities to identify and reduce the impact of “vicarious” (sometimes called “secondary”) trauma on caseworkers and training or other activities that informs caseworkers of best practices for working with families that include a parent, child, or other member who has a behavioral health issue or a substance use disorder. States would be required to annually report to HHS the amount of MCV grant funding used each year to address these new grant purposes.

## **Funding for Evaluation and Identification of Evidence-Based Prevention Practices (Sec. 106)**

Under current law \$6 million in mandatory PSSF funding must be reserved each year to support research, evaluation, training, and technical assistance projects related to the PSSF program or its purposes. The FFTSA would increase that annual reservation to \$26 million. Of that funding, \$6 million would remain available for currently authorized or required activities while the remaining \$20 million would be for newly described purposes. Of this amount \$5 million would be directed to HHS for activities related to speeding up the identification and approval of prevention services or programs that meet the evidence requirements for Title IV-E support under the Family First Prevention Services Act (FFPSA), for developing and sustaining a high quality child welfare workforce, and for related administrative costs. Separately, \$15 million would be provided to HHS to allow the Secretary to make competitive grants to states, territories, or tribes to carry out one or more of the following state-directed projects:

- Research and evaluation on culturally appropriate interventions to strengthen families and prevent the need for children and youth to re-enter foster care;
- Development of programs and activities that meet the promising, supported, or well-supported practice requirements specified in FFPSA;
- Development and evaluation of kinship navigator programs, including determining if a new or existing program is or may with modifications meet the promising, supported or well-supported practice requirements specified in FFPSA; and
- Development or implementation of programs or activities to do one or more of the following: (1) combat intergenerational poverty; (2) prevent youth from re-entering care or from aging out of care; (3) improve the quality of services to birth parents and relatives of children and youth in or at risk of entering foster care; (4) increase community engagement and decisionmaking in child protection services; (5) improve service delivery and community response for youth victims of labor or sex trafficking; and (6) support children, youth, and families of color and others who are disproportionately served by child welfare.

To receive these competitive grant funds, a state, territory, or tribe would need to agree to carry out this work in collaboration with a non-profit organization or educational institution and would be required to submit an application to the HHS Secretary at the time, in the manner, and containing such information, as the Secretary requires. Additionally the state would be required to carry out an evaluation of the activities funded with the grant (or to participate in an evaluation of the activities conducted by the Secretary) and to submit a report to HHS on the evaluation results.

## **Increased Funding for Regional Partnership Grants (Sec. 107)**

Under current law, \$20 million in mandatory PSSF funding must be reserved (each year through FY2021) for support of Regional Partnership Grants (RPGs) to improve outcomes of children and families affected

by substance use disorder in each year (through FY2021). FFTSA would increase this reservation of funding to \$60 million in each year (through FY2021).

## **Title II Support for Meeting the Requirements of the Family First Prevention Services Act**

### **Delay of 50 Percent Well-Supported Prevention Practices Requirement (Sec. 201)**

Under the Family First Prevention Services (FFPSA) states may opt (no sooner than October 1, 2019) to support specified foster care prevention services and programs under its Title IV-E program, including trauma-informed mental health and substance use disorder treatment services and parenting skills programs. Funding may be available for these services under Title IV-E only if providing them to a child or his/her parent or kin caregiver will prevent the need for the child to enter foster care, or if they meet the specific needs of a pregnant or parenting youth in foster care. And, further, only if the services are provided in a trauma-informed manner and meet certain evidence-based practices standards, which are detailed in the law as “promising,” “supported,” or “well-supported.” The federal share of support (“match”) for eligible Title IV-E prevention services is authorized at 50% (for FY2020 - FY2026). In other words, for every \$1 dollar in state prevention spending under Title IV-E, the federal government will reimburse the state 50 cents or half of its Title IV-E prevention services costs. However, the federal match of this state spending is available only to the extent that at least half (50%) of the state’s Title IV-E prevention dollars were used to fund “well-supported” prevention programs or services.

FFTSA would retain all of these provisions, including the requirement that prevention spending may only be federally supported if it meets the promising, supported, or well-supported practice standards described in Title IV-E (as amended by FFPSA). However, it would temporarily lift the requirement that no less than 50% of the Title IV-E prevention services a state provides must meet the well-supported practice criteria. Specifically, FFTSA would lift this requirement through FY2026. As of FY2027, that restriction would again apply. However, as provided in Title IV-E (as amended by FFPSA), as of FY2027 the share of federal support for state Title IV-E prevention spending is changed from 50% in all states to the state’s federal medical assistance percentage (also referred to as FMAP or Medicaid matching rate). In most (but not all) states this rate is greater than 50%.<sup>12</sup>

### **Temporary Additional Funding for Foster Parent Recruitment and to Increase Quality Family and Residential Care Settings (Sec. 202)**

The Family First Prevention Services Act (FFPSA) seeks to reduce the use of group or congregate care for children in foster care and at the same time to improve the quality of care provided to children in foster care who are in group settings. As of October 1, 2019 (or at state option, no later than October 1, 2021), FFPSA places a time limit on Title IV-E foster care maintenance payment support for most children in foster care who are placed in settings other than a foster family home.<sup>13</sup> Specifically, a child

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<sup>12</sup> The FMAP is annually re-calculated according to a method defined in the Medicaid program. It may range from 50% to 83%. A state with higher per capita income (relative to the national per capita income) has a lower FMAP while a state with lower per capita income have higher FMAPs. See CRS Report R43847, *Medicaid’s Federal Medical Assistance Percentage (FMAP)*, by Alison Mitchell.

<sup>13</sup> If a state opts to delay the effective date of the provisions related to eligible Title IV-E foster care placement settings, it must delay for the same amount of time the use of Title IV-E program funds for foster care prevention activities.



who is not placed in a foster family home (or with a parent in a family-based residential substance abuse treatment facility), is eligible for Title IV-E foster care maintenance payment support for a maximum of 14 days *unless* he/she is placed in one of the following “specified settings” that meets a particular need of the child:

- A setting that specializes in providing prenatal, postpartum, or parenting supports for youth;
- A supervised independent living setting (provided the youth is at least 18 years of age);
- A setting providing high-quality residential care and supportive services to children and youth who have been found to be, or are at risk of becoming, victims of sex trafficking; or
- A qualified residential treatment program (QRTP) (provided additional assessment and documentation requirements are met).

### Temporary Additional Funding

To help states meet the goal of improved care, including by reduced use of general group or congregate care, FFTSA would appropriate \$75 million for each of two years (FY2020 and FY2021) to provide states, territories and tribes with additional support to --

- Recruit, train and retain foster parents, particularly those caring for special populations such as sibling groups, children or youth with special physical or behavioral health needs, infants prenatally exposed to substances, medically fragile children, older youth and others;
- Improve the capacity of the state, territory, or tribe to offer (1) therapeutic or treatment foster family homes with well-supported and well-training caregivers; (2) licensed residential family-based treatment facilities for substance abuse; and (3) QRTPs and other specified group settings where (under FFPSA’s placement setting provisions) children or youth may be eligible for Title IV-E foster care maintenance payment support for more than 14 days, including for costs related to accreditation, licensing, placement transition support, and specialized caregiver training; and
- Improve the ongoing coordination and oversight of state, territory and tribe health oversight requirements (included in current law Section 422(b)(15) of the Social Security Act), which require the state to have in place protocols and other measures to ensure the physical and mental health needs of each child in foster care are identified and met, including through improved health data sharing and coordination, consultation with pediatric medical experts and employment or contracting with medical directors having expertise in child physical and mental health, child development and child trauma.

### Distribution and Other Rules

In each year (FY2020 and FY2021), 3% of the appropriated temporary funds (\$2.25 million) must be reserved for formula grants to tribes with an approved PSSF plan and the remaining funds are to be distributed among states and territories with an approved PSSF plan. These funds are to be allotted to each of those states, territories and tribes in the same manner as funding for the overall PSSF program is distributed, except that *no non-federal matching funds would be required to receive these temporary program funds*. Further, the funds would be available for expenditure until the end of the third fiscal year after they are awarded (i.e., FY2020 funding would be available for use through the end of FY2023, and FY2021 funding through the end of FY2024).

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At the same time, no more than 10% of these temporary program funds would be permitted to be spent for program administration, and a state or tribe receiving an allotment of these temporary funds must submit a report to the HHS Secretary on activities carried out with the funding. The HHS Secretary is permitted to stipulate what the report must contain and the time and manner of its submittal and it may modify these report requirements for any tribe or tribal entity (based on its resources, needs and other circumstances).

### **Overpayment Grace Period for Waiver States with County-Administered Programs (Sec. 203)**

Twenty-two states, the District of Columbia and one tribe are currently implementing an approved Title IV-E child welfare waiver project. Under these waiver projects a state (or county within a state) may use Title IV-E funding to support programs and/or individuals that would not otherwise be eligible for Title IV-E support. Section 1130(d) of the Social Security Act stipulates that all Title IV-E waiver projects must end as of September 30, 2019. In some of these jurisdictions, the waiver is carried out in only some political subdivisions (e.g., counties) of the state.

The intent of this section of FFTSA is to ensure that counties administering a Title IV-E waiver project may continue to receive Title IV-E funding (through the state Title IV-E agency) in the amount the county estimates it will expend under the Title IV-E program and without regard to whether it has submitted all of the invoices a state might otherwise require. Further, it would stipulate that if this process results in an overpayment of federal Title IV-E support to the state during FY2020 and FY2021, the HHS Secretary would need to agree to defer repayment of that overpayment until a date on or after October 1, 2021, and on the basis of agreement reached between the state and the HHS Secretary.

### **Pre-Approval Authority for Programs with Promising Supported, or Well-Supported Practices (Sec. 204)**

Under the Title IV-E program (as amended by FFPSA), the HHS Secretary is required to prepare guidance for states concerning how to implement foster care prevention services in their Title IV-E programs. This guidance (to be updated as needed) must include a pre-approved list of prevention service and kinship navigator programs that can be supported with IV-E dollars.

FFTSA would clarify that if a program or service meets the promising, supported or well-supported criteria provided in the law, it is eligible for Title IV-E support without regard to whether it is shown on the pre-approved list of programs.

## **Title III Miscellaneous Provisions**

### **Additional Resources for the Child Welfare Court Improvement Program (Sec. 301)**

The Court Improvement Program (CIP) offers formula grants to the highest court in each state or territory with an approved Title IV-E plan to enable the court to (1) assess and make improvements to how courts in the state handle child abuse and neglect proceedings; (2) ensure the safety, permanency and well-being of children involved in those proceedings is handled in a timely and complete manner; and (3) provide for the training of judges, attorneys and other legal personnel. Funding for tribal court improvement is available on a competitive basis and may be awarded to any tribe that has a court that handles child welfare proceedings, including those with or without an approved Title IV-E plan.

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FFTSA would double mandatory PSSF funding for the CIP overall (increasing it from \$30 million to \$60 million annually), increase the amount of those funds made available for tribal court improvement (from \$1 million to \$5 million) and would consolidate the CIP funding into a single grant (instead of the current three). This grant consolidation is intended to address a technical issue related to how the Congressional Budget Office (CBO) treats the CIP when determining expected federal spending. It is expected to ensure that all, rather than just one-third, of the mandatory CIP funding remains a part of the “baseline.”<sup>14</sup>

### **Grant Consolidation**

Currently each of the 50 states, the District of Columbia, Puerto Rico, and the U.S. Virgin Islands have approved Title IV-E plans and thus the highest court in each of those jurisdiction may apply to annually receive up to three CIP grants. These grants are described as – “basic grants” (concerning assessing and making improvements to court handling of child welfare proceedings), “data grants” (concerning better data collection and data sharing to improve the timeliness of court work in ensuring children’s safety, permanency and well-being), and “training grants” (concerning training judges, and other legal personnel on carrying out child welfare proceedings, including cross-training collaboration with the child welfare agency). A court submits a single application, indicating which of the three grants it is applying for (typically each eligible court applies for all three).<sup>15</sup>

FFTSA would consolidate these grants into a single award while maintaining all of the current law purposes. A state court could use the consolidated grant funding flexibly on any of the three purposes. However, it must agree (as part of its application for the funding) to spend no less than 30% of the grant to collaborate and jointly plan for the collection and sharing of data needed to improve case tracking and produce safe and timely results for children. Additionally, it must assure in its application that at least a portion of the grant will be used for cross training initiatives jointly planned and carried out with the child welfare agency. (Under current law state courts must make similar assurances as a condition of receiving “data” and “training” grants.)

### **Funding Reserved for CIP Overall and for Tribal court improvement**

Under current law, \$30 million of mandatory PSSF funding must be reserved in each year for support of the Court Improvement Program, and of this sum \$29 million is provided for “state” CIP grants and \$1 million is reserved for competitively awarded tribal CIP grants. FFTSA would increase the total reservation of CIP support (out of PSSF mandatory funding) to \$60 million in every year and would provide that \$55 million of that funding is for formula grants to “state” highest courts and \$5 million is for competitive awards to support the tribal court improvement program.

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<sup>14</sup> No formal CBO score has been made of the FFTSA. The description here reflects CRS’s understanding of the intent of the FFTSA language. Further as CRS understands this now, under current law, CBO sees each of the three formula CIP grants as a separate program based on how and when these different grants were authorized. Accordingly, and based on this legislative history, it includes one of the formula grants, as well as the tribal court improvement funds (total annual funding of \$10 million in mandatory dollars) in the ongoing (expected) PSSF baseline spending. This means it may be extended or reauthorized without a new “score” or costs. However, CBO understands two of the formula CIP grants (which were initially supported with separately appropriated funds (i.e., not reserved out of PSSF mandatory dollars) as outside of the expected or baseline spending. This means that they must be “paid for” at each reauthorization.

<sup>15</sup> In any given year during the past decade the highest courts in no more than four states took fewer than all three grants. Beginning with FY2014, with one exception the highest court in each eligible state has taken all three CIP grants in each year. The exception, North Dakota’s court, declined all three CIP grants in both FY2017 and FY2018 due to state fiscal issues but was expected to again receive this funding in FY2019.

## **Distribution and Required Match of State CIP**

Under current law, each state highest court receives a base allotment of \$85,000 for each of the CIP grants it receives. The remainder of the grant funding is then distributed based on the share of individuals under the age of 21 living in the state or territory of the court successfully applying for the grant (out of all individuals under 21 in jurisdictions of applying courts). Additionally, to receive its full allotment, a state highest court must ensure \$1 in non-federal CIP spending for every \$3 in federal CIP funding it is awarded (i.e., the federal share or “match” in the CIP program is 75%).

FFTSA would maintain each of these provisions. However, because a state would receive all of the CIP formula funding in a single grant (rather than three) the base award for that single grant would be \$255,000 (i.e., \$85,000 x 3).

## **Additional Resources and Improvements for Tribal Child Welfare Programs (Sec. 302)**

FFTSA would increase the share of funds reserved to support tribes in providing child and family services from close to 3% (\$9.2 million) of the current mandatory PSSF funding level to 4.5% (\$29.9 million) of the full mandatory PSSF funding it would authorize.

### **Use of Funds**

Under current law, tribes must use these funds to support the same categories of PSSF services for which states are provided funding (family support, family preservation, family reunification, and adoption promotion and support). However, unlike states, they are not required to spend a significant portion of PSSF funding in each category. Under FFTSA, this would remain the same. Additionally, like states, tribes would also be able to spend their PSSF dollars on the “kinship placement support services.” Further, FFTSA would explicitly permit tribes to use PSSF funding to facilitate and support tribal or customary adoptions.

### **Distribution**

Under current law PSSF funding reserved for tribes is distributed based on a tribal or tribal consortia’s share of the total number of children among all tribes with an approved PSSF plan. However, the HHS Secretary may not approve the plan of a tribe/tribal consortia if the amount of funds that would be awarded under this process totals less than \$10,000. This provision means that smaller population tribes may be ineligible for PSSF funding. FFTSA would strike this requirement for PSSF plan approval. It would instead require that out of the tribal PSSF reservation, the HHS Secretary must first award \$10,000 to each tribe or tribal entity with an approved plan with the remaining tribal PSSF fund distributed based on the share of children living in each of these same tribal entities. (Tribes applying together, as a consortia would receive an amount equal to the sum of allotments that would be made for each tribe in the consortia.)

### **Application and Reporting Requirements**

Under current law the HHS Secretary may exempt a tribe or tribal consortia from the requirement that it assure it spends no more than 10% of the PSSF funding on program administration and/or that it spend significant portions of its grant funding on each of the four categories of child and family services defined in PSSF, if the Secretary determines the requirements would be inappropriate for the tribe or tribal consortia, taking into account the resources, needs and other circumstances.

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Under FFTSA, the HHS Secretary would, under the same circumstance, be permitted to exempt a tribe from certain planning and reporting requirements related to provision of child and family services under Title IV-B of the Social Security Act (including those specified in the PSSF state plan or otherwise required under Title IV-B). Additionally, the HHS Secretary would be required to exempt a tribe or tribal consortia from the specific PSSF planning and reporting requirements in any year for which the PSSF grant received by that tribal entity is less than \$50,000. In these instances, the tribe or tribal consortia may provide relevant program information in a streamlined form.

### **Cost-sharing and Other Requirements under the Stephanie Tubbs Jones Child Welfare Services (CWS) Program**

Under the CWS program (Title IV-B, Subpart 1) tribes may receive a direct award of federal funds for support of a broad range of child welfare services to children and their families. Tribes are required to provide at least \$1 in non-federal resources for every \$3 in federal CWS funds they receive. Federal regulation provides that tribes may count cash, donated funds, or non-public third party in-kind contributions as non-federal resources. FFTSA would additionally provide that for purposes of the CWS program non-federal resources may include in-kind expenditures made by the tribe.

A tribe receiving CWS funds must ensure that it spends no more than 10% of the funds on administration. FFTSA would specify that in place of that percentage limit on administrative costs a tribal organization may substitute the weighted average of its indirect cost rates (as in effect under Office of Management Budget guidance).

### **Effective Date (Sec. 303)**

In general the provisions of FFTSA are effective on October 1, 2019.

However, if the HHS Secretary determines that a state must enact legislation (other than appropriations) in order for any plan of a state under Title IV-B or Title IV-E of the Social Security Act to meet an additional requirement or requirement added to the law by FFTSA, the state must be allowed additional time to comply with the requirement(s). Specifically, the state must have until the first day of the first calendar quarter that begins after the end of the first state legislative session that began after the date of enactment of FFTSA.

Additionally, any tribal entity that the HHS Secretary determines needs additional time to take actions necessary to comply with the amendments of FFTSA must be afforded the additional time (in an amount determined necessary by HHS Secretary).