

## **FAQ for the Older Youth Provisions of DIVISION X of the Consolidated Appropriations Act, Supporting Foster Youth and Families Through the Pandemic Act**

*This FAQ was developed by the group of advocates identified at the bottom of this document. It does not represent the opinions of the Children’s Bureau or any governmental agency. We developed the FAQ based on legal research and our best thinking to support states in implementing the new federal law. We will continue to update the FAQ as more questions are submitted and as we receive more information. **This document was last edited on March 24, 2021.***

*If you would like to submit a question for the FAQ, please email your question to [oypr@fosterclub.com](mailto:oypr@fosterclub.com).*

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## I. Basics of the Law

### 1. What is the Consolidated Appropriations Act of 2021?

The Consolidated Appropriations Act, 2021 (H.R. 133) is a \$2.3 trillion spending bill that combines \$900 billion in stimulus relief for the COVID-19 pandemic with a \$1.4 trillion omnibus spending bill for the 2021 federal fiscal year. The full law can be found here: <https://www.congress.gov/116/bills/hr133/BILLS-116hr133enr.pdf>

### 2. Where do you find the older youth child welfare specific sections of the law?

Division X of the law contains HR 7947, Supporting Foster Youth and Families through the Pandemic Act. It can be found at page 1228 in the following electronic document:

<https://www.congress.gov/116/bills/hr133/BILLS-116hr133enr.pdf> HR 7947 includes the older youth provisions discussed in this FAQ in addition to several other provisions that are related to child welfare.

### 3. When do the provisions of Division X become law?

The provisions of Division X became law on December 27, 2020.

### 4. How long are the provisions of the law in effect?

This is a law that provides a response to the immediate needs presented by the COVID-19 public health emergency. **Most** provisions are in effect until September 30, 2021.

### 5. How does the law define the “COVID-19 Public Health Emergency”?

The law defines the COVID-19 Public Health Emergency as the public health emergency declared by the Secretary pursuant to section 319 of the Public Health Service Act, entitled “Determination that a Public Health Emergency Exists Nationwide as the Result of the 2019 Novel Coronavirus”. Sec. 2 (1)<sup>1</sup>. HHS Secretary Alex M. Azar first declared the existence of a public health emergency on January 27, 2020. The declaration was most recently renewed on January 21, 2021. The declaration can be found here: <https://www.phe.gov/emergency/news/healthactions/phe/Pages/covid19-07Jan2021.aspx>

### 6. How does the law define the “COVID-19 Public Health Emergency Period”?

The law defines this as the period beginning on April 1, 2020 and ending with September 30, 2021. Sec 2 (2).

### 7. What guidance documents have been put out by ACF on the older youth provisions of the Consolidated Appropriations Act?

The following guidance documents have been released by ACF:

- An [Information Memorandum](#) (Jan 15, 2021)
- A Program Instruction (March 9, 2021)

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<sup>1</sup> In this FAQ we will note the sections and subsections of Division X and the Program Instruction when they are relevant to an answer.

## II. Chafee Funding and Program Changes

### A. Funding Increase

#### 1. By how much did the Consolidated Appropriations Act increase Chafee funds by?

The law increased the Chafee allocation by \$400 million for fiscal year 2021, which ends on September 30, 2021. Of the \$400 million, the law states that at least \$50 million must be used for Education and Training Vouchers (ETV). See more about the ETV changes below. Sec. 3 (a)(1). In addition, under existing law, 1.5% of federal funds authorized for the Chafee program are reserved for evaluation.

#### 2. How much will each state get?

The Chafee supplemental allotments can be found [here](#).

#### 3. How much of the Chafee funds can be used for Education and Training Vouchers (ETV)?

The law states that the Children's Bureau must use at least \$50 million of the \$400 million allocation for ETVs. Sec. 3 (a)(2). State allotments for ETV can be found [here](#).

#### 4. Is there a state match requirement for the Chafee fund increase?

No. There is no state match for the additional ETV or Chafee funds. Sec 3 (a)(4).

#### 5. Will states need to submit a plan to receive their increased Chafee allocation?

At this time, we believe that states will **not** be required to submit a plan to receive their increased Chafee allocation.

### B. Expansion of Eligibility and Program Flexibility

#### 1. Who is eligible to receive Chafee services under the new law?

The age of eligibility for Chafee services under the new law is until a young person turns age 27. That means that states can continue to provide Chafee services to their Chafee-eligible youth through a young person's 26th year. Sec 3 (b).

States<sup>2</sup> have some flexibility regarding who they serve with Chafee services under existing federal law, the John H. Chafee Foster Care Program for Successful Transition to Adulthood, 42 U.S.C. § 677. Eligible young people include:

- Youth who have experienced foster care at age 14 or older.
- Youth who age out and are under age 21, or age 23 if the state has opted to extend Chafee services under the Family First Prevention Services Act.
- Youth who were adopted or entered guardianship at age 16 or older and are under age 21, or age 23 if the state has opted to extend Chafee services under the Family First Prevention Services Act.

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<sup>2</sup>In this document we will use the term States to refer to states, tribes and territories with IV-E plans. We understand that states, tribes, and territories are different and have different challenges and apologize for this simplification.

[42 U.S.C.A § 677\(a\)](#).

Note that pursuant to Family First Prevention Services Act, states already have the option to extend eligibility for Chafee aftercare to age 23 and to age 26 for ETV. States still have an option to extend aftercare to age 23 and can do so in an expedited fashion during the pandemic pursuant to the following [guidance from ACF](#).

**2. Do states have to serve young people with Chafee services through their 26th year under the new law?**

The Consolidated Appropriations Act does provide states the option to extend the age of Chafee eligibility to young people rather than mandating it. The law states that young people “may be eligible for services and assistance under [the Chafee Act] until the child attains 27 years of age.” Sec. 3 (b).

However, given that the supplemental Chafee funds were part of a federal emergency relief package, we believe that the intent of the law is that all states provide Chafee services to all young people in need during the pandemic through age 26. This age reflects the acknowledgement that the transition to adulthood lasts until a young person’s mid-20s, and that large numbers of young people who have experience in foster care and are in their mid- to late-20s are struggling during the pandemic, have a great need for support, and do not have easy access to support services. Many of these young people do not have the same support networks as their peers without child welfare experience. The increase in the Chafee allocation allows states to provide services to youth in this age group.

**3. If state law defines Chafee eligible youth a certain way that is different than this new law, how can states provide services to this larger eligibility group?**

The federal law expands the group of youth who are eligible for Chafee services and significantly increases the overall Chafee funding allotment. That is, the federal law provides states the opportunity to serve a broader group of young people than they currently serve so that states can be as responsive as possible during the pandemic.

**4. Does the state have to provide Chafee services for youth who were in foster care in other states?**

Yes. Consistent with current law, all states are obligated to provide Chafee aftercare services to Chafee-eligible youth who reside in their state and aged out of foster care in another state. The Children’s Bureau has stated that 42 U.S.C. § 677 (b)(3)(A): “requires States to certify that they will provide assistance and federally-funded Chafee Program services to youth who have aged out of foster care and have not attained 21 years of age (or 23 as applicable). It is irrelevant where the youth ‘aged out’ of foster care. The State in which the youth resides is responsible for services if the State provides the services needed by the youth.” [Child Welfare Policy Manual, Independent Living](#), 3.1 F, Question 3 (January 18, 2021). Under the new law, this obligation would continue. The Program Instruction reiterates this point: “Young adults are a highly mobile population. CB urges states to evaluate and determine the most expeditious way to verify a youth/young adult’s former foster care history. In this time of crisis, a youth’s state of origin should not preclude them from receiving critical services to prevent their homelessness and ability to connect to the social service system in the community where they now live.” PI, page 3.

**5. How long does the flexibility related to age last?**

This flexibility is in place from April 1, 2020 until September 30, 2021.

**6. Does the law remove the 30% cap on Chafee funds for housing?**

Yes. The law gives states the authority to spend more than 30% of its Chafee funds for housing. States can elect to do this without asking for a waiver from the Children’s Bureau. Sec 3 (d)(3)(A) (“a State may use...more than 30 percent of the amounts paid to the State from its allotment under section 477(c)(1) of such Act for a fiscal year, for room or board payments...”)

**7. Who is eligible for room and board assistance?**

Room and board may be provided to young people who are between the ages of 18 and 27 and who have experienced foster care at 14 years of age or older. Sec. 3 (d)(3)(B).

**8. How long do the flexibilities related to the age of eligibility and room and board last?**

These flexibilities began on April 1, 2020 and last until September 30, 2021.

**9. Do states or jurisdictions need to ask to take advantage of the flexibilities in the law?**

No. “There is no need for the agency to make a special request or to submit any documentation to make use of the flexibilities.” PI, page 10.

**10. Can states and jurisdictions take advantage of these flexibilities with their regular FY 2020 and 2021 Chafee funds in addition to our supplemental funds?**

Yes. The PI states that “[t]he following temporary flexibilities in the use of funds are applicable to grants issued under both the regular FYs 2020 and 2021 Chafee grant and the additional grant for the time periods specified. State and tribal agencies administering the Chafee program may make immediate use of these flexibilities using FY 2021 regular and additional Chafee grants as well as any FY 2020 Chafee grant funding that remains available for expenditure through September 30, 2021.” PI, page 10.

## C. Allowable Uses of Chafee Increase

**1. What can Chafee funds be used for?**

Chafee funds are very flexible. States can provide an array of support services, staffing, material support, and direct financial assistance. Chafee funds can be used for all the purposes outlined in current law. See e.g., [42 U.S.C. § 677](#) (a)(1) & (4) (“transitional services such as assistance in obtaining a high school diploma and post-secondary education, career exploration, vocational training, job placement and retention, training and opportunities to practice daily living skills (such as financial literacy training and driving instruction), substance abuse prevention, and preventive health activities (including smoking avoidance, nutrition education, and pregnancy prevention”); “financial, housing, counseling, employment, education, and other appropriate support and services”)

Because this law was passed to provide aid to young people to address their needs during the pandemic, spending should be targeted at meeting the needs that young people have identified as most urgent.

Specifically, provision of direct financial assistance to young people was the main intent of the Chafee increase. Young people also identified a great need for funds and support related to:

- housing;
- food;
- technology, and internet access; and
- help with navigating community-based and government services.

## 2. How do states find out what young people need?

States can directly engage with youth through text or email as well as convening virtual focus groups. States can also benefit from the following polls and research that have been produced during the pandemic, which show clear trends in need across the country.

### i. FosterClub Polls

#### [Poll 1: May 13, 2020](#)

Of the young people polled:

- Over half have lost employment and income.
- Nearly 1 in 5 report having run out of food.
- 43 percent lack stable housing and have a fear of homelessness.
- More than half lack contact with a trusted adult who can support them.

#### [Poll 2: Dec 22, 2020](#)

Of the young people polled, the following information was reported:

- **Housing Stability**
  - Forty-three percent of respondents were forced to move because of COVID-19.
  - 29 percent reported they have found stable housing now and 14 percent have still not found stable housing.
  - Many young people in this age group indicated that their housing was tied to their schooling, and worried where they will go if school shuts down again.
  - Approximately 31 percent of those still in foster care were told they can stay in their current placement compared with 3 percent of those no longer in care.
- **COVID-19 Status and Perceived Risks**
  - Approximately 67 percent of the 474 poll respondents had been tested for COVID-19, with 13 percent reporting they had tested positive for COVID-19 since the pandemic began.
  - Approximately 57 percent of the respondents reported being extremely worried that someone they care about would catch COVID-19.
- **Employment**
  - Approximately 66 percent reported that they were employed before the virus, compared with 45 percent having employment (full or part-time) now.
  - Only half of those who applied for unemployment received it.
- **Education**
  - Young people reported having difficulty focusing, challenges with virtual learning, and lack of access to computers or reliable WiFi.

- Some reported they needed to suspend their education plans in order to make money for necessities.
- **Stimulus Checks**
  - Just over half of the respondents said they received the stimulus check.
- **Food Insecurity**
  - Nearly 1 in 5 young people, or 19 percent of those questioned, reported they have run out of food.
- **Guidance from Adults**
  - Nearly one in 5 youth reported that they are entirely on their own, lacking connections that might help them endure this pandemic.

**ii. Survey by the Field Center, University of Pennsylvania : [The Experiences of Older Youth In & Aged Out of Foster Care During COVID-19](#) ( September 2020.)**

Of the young people surveyed:

- 55 percent were food insecure.
- Almost 50 percent saw a negative impact on employment.
- About 50 percent reported housing instability or homelessness.
- Almost 3 out of 4 experienced financial stresses. 2/3 saw major negative impacts on their education.

**iii. Think of Us COVID-19 Data Reports**

Check out Think of Us' COVID-19 Impact on Current and Former Foster Youth Data Report here: <https://www.thinkof-us.org/covid19-impact-on-current-and-former-foster-youth>

**3. What are some examples of how the increase in Chafee funds could be used?**

The Program Instruction provided the following examples of permissible uses of Chafee funds:

- Cost of implementing the provisions related to preventing aging out, re-entry and continuous obligations for youth who are not IV-E eligible.
- Cost of public awareness for the re-entry provisions.
- Provide unrestricted one-time or monthly direct financial assistance to youth/young adults to assist them in meeting their needs during the pandemic.
- Provide targeted payments and supports to allow youth/young adults to remain at home during the COVID-19 pandemic and public health emergency, when needed to ensure their health and well-being. Individuals requiring such assistance may include youth with medical conditions, pregnant or parenting youth, and youth who need to quarantine due to exposure to COVID-19.
- Assist youth in meeting living expenses, including rent, groceries, grocery or meal delivery, and utilities. Such assistance may include helping youth pay back payments and fees and/or paying for expenses for youth/young adults who need to stay home for extended periods of time.
- Purchase cell phones, tablets, laptops, internet service, cell phone plans or other technological tools for young people.
- Provide respite care services and additional support for parenting or pregnant youth.

- Help pay salaries of agency staff who administer and oversee emergency assistance for youth, including fiscal staff responsible for generating and issuing payments paid for the Chafee program.
- Partner with national and state organizations to assist young adults, including for activities relating to locating youth, outreach and marketing.
- Hire youth/ young adults with lived experience in child welfare to provide navigation services to fellow youth/young adults. Navigation services help to connect youth to services and support them as they apply for or engage in those services.
- Employ youth/young adults, at the agency level and/or as part of contractor staff, to provide outreach and support to fellow youth and young adults. This could include paid internships for youth/young adults to help prepare them to re-enter the job market.
- Assist youth in paying medical expenses, including COVID testing and treatment, if these expenses are not already covered by other health insurance or Medicaid.
- Purchase or reimburse youth for personal protective equipment (PPE), including cloth masks.
- Provide services and support to combat young peoples' social isolation during the pandemic. This could include sending gift boxes, cooking kits, puzzles, art and hobby supplies, or other interactive items to connect youth/ young adults.
- Provide outreach and offer any needed assistance to youth who experienced foster care after attaining age 14 and were subsequently reunified and to youth who exited foster care to adoption or guardianship after attaining age 16.
- In addition to conducting required public awareness campaign about the option for youth to re-enter foster care, use social media and other strategies to perform outreach to youth, young adults, and other community providers to make them aware of expanded Chafee funding and available supports.
- Expand contracts with service providers who are currently working with youth and young adults formerly in foster care to provide services through the agencies to which such youth are already connected (e.g., supportive housing providers and Runaway and Homeless Youth (RHY) grantees).
- Establish websites, hotlines, and other mechanisms to track and provide information on assistance requests.
- Costs Related to Driving: From April 1, 2020 through September 30, 2021, Chafee funds to be used to provide driving and transportation assistance to otherwise eligible youth from ages 15- 26. These costs may be related to obtaining a driver's license, vehicle insurance, driver's education classes and testing fees, practice lessons, practice hours, license fees, roadside assistance, deductible assistance, and assistance in purchasing an automobile. There is a cap of \$4000 per youth per year.

**PI, pages 11-12.**

#### **4. Can states use the funds for costs related to getting a driver's license and driving?**

Yes. The law specifically mentions that funds may be used to provide driving assistance to Chafee-eligible youth who have attained 15 years of age. Funds can be used for costs related to "obtaining a driver's license and driving lawfully in a State (such as vehicle insurance costs, driver's education class and testing fees, practice lessons, practice hours, license fees, roadside assistance, deductible assistance, and assistance in purchasing an automobile." Sec 3 (d)(4). States can provide young people up to \$4000 per year for this purpose. Sec 3. (d)(4).



**5. Is using Chafee funds for costs related to driving a newly permissible use? Can states continue to use Chafee funds for driving after September 30, 2021?**

Chafee funds have always been able to be used for costs related to driving. States and jurisdictions can continue to use Chafee funds for these costs after September 30, 2021. The one exception is the following: During the period of April 1, 2020-September 30, 2021, states and jurisdictions can only use up to \$4000 per youth in Chafee funds on costs related to driving for youth through their 26 year.

After, September 30, 2021, states and jurisdictions:

- Can use Chafee funds for costs related to driving for Chafee eligible youth up to age 21 or 23, depending on the state
- Will not have a cap on the amount of Chafee funds that can be used for a youth for this purpose.

PI, page 11.<sup>3</sup>

**6. The law mentions that the Children’s Bureau must reserve at least \$500,000 to provide technical assistance to states related to implementing a drivers and transportation program for youth in foster care. How can states access those funds or technical assistance?**

We are waiting for guidance on this provision, but encourage states to make requests for TA on this issue to the Children’s Bureau.

**7. Do states need to document how each expense made on behalf of (or for) a youth is related to the pandemic?**

The Program Instruction provides information about reporting requirements for Chafee and ETV funds. States and jurisdiction must:

- Include information on planned use of the additional Chafee and ETV funding in the FY 2022 Annual Progress and Services Report (APSR) due June 30, 2021.
- Include information on the actual use of funding in the FY 2023 APSR due June 30, 2022.

The PI adds that the information reported in the FY 2022 APSR should describe:

- The types of assistance to be or being provided to youth/young adults;
- The strategies the agency is using to engage youth/young adults
- The agency’s outreach efforts to foster parents, providers, schools, colleges, and the community to make them aware of the additional funding and types of Chafee and ETV support available;
- States may provide links to policies or other outreach materials as an attachment to the FY 2022 APSR.

PI, page 15.

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<sup>3</sup> “While driving and transportation expenses are ordinarily allowable under the Chafee program *without dollar limit* for eligible youth up to age 21 or 23, as elected by the state or tribe, under the provisions of Division X the services are also available to youth through age 26 during the period from April 1, 2020 – September 30, 2021. During that time period such expenses made for youth ages 15 - 26, whether paid from the regular or additional Chafee appropriation, are subject to the \$4,000 cap per year per youth.” PI, page 11 (emphasis added).

In addition to the detail provided in the PI, the law states that the Children’s Bureau “may not require any State to provide proof of a direct connection to the pandemic if doing so would be administratively burdensome or would otherwise delay or impede the ability of the State to serve foster youth.” Sec 3 (c). It is recommended that states follow suit in how they administer the program with respect to young people. States should not require burdensome documentation of need or condition use of funds on specific usages. Documenting need is not necessary, but when required by a state, documenting through self attestation or documentation in a case plan are appropriate methods.

## D. Timeline For Spending Chafee Funds

### **1. How long do states have to spend the increase in Chafee allocation under the new law?**

The additional Chafee and ETV funding provided under the new law is available for expenditures over a 2-year period from October 1, 2020 – September 30, 2022 and must be liquidated by December 30, 2022. PI, page 15.

While the period to expend funds last until September 30, 2022, many of the program flexibilities only last until September 30, 2021.

We encourage states to be actively planning and focus on meeting the immediate needs of young people during the pandemic.

### **2. What is the timeline for expending ETV funds?**

The timeline for expending ETV funds is the same as for Chafee funds, October 1, 2020 – September 30, 2022. Funds must be liquidated by December 30, 2022. PI, page 15.

Most of the ETV flexibilities end on September 30, 2021, however, the law does allow states to increase the individual award maximum to \$12,000 until the end of FY 2022. Sec 3. (a)(5).

### III. Education and Training Voucher

#### 1. How much is the increase in the ETV allocation to states?

The new law requires ACF to use at least \$50 million of the \$400 million Chafee allocation for ETV. Sec. 3 (a)(2). State allotments for ETV can be found [here](#).

#### 2. Has the maximum ETV award been increased under the new law?

Yes. For FY 2021 and 2022, the maximum ETV award is increased to \$12,000 per young person per year.

#### 3. Does the expansion of the age for eligibility for Chafee services apply to ETV?

Yes. From April 1, 2020-September 30, 2021, ETV eligibility may continue through a young person's 26 year.

#### 4. Can ETV funds be used for costs related to attendance at less than full time status?

Yes. The new law allows ETV funds to be used for costs related to attending and remaining enrolled in programs that are less than full time, including training and certification programs at eligible institutions that may be less than full or part time. Sec. 3(d)(2).

#### 5. Can ETV funds be used for costs that are not included in the Cost of Attendance?

Yes. The new law allows ETV funds to be used for expenses that are not part of the cost of attendance but would help support youth in remaining enrolled. Sec. 3 (d)(2).

Currently, the elements that are allowable in the cost of attendance are very broad, however, some ETV programs may be limiting the costs they will cover. This law reinforces for states that all costs allowable under COA rules should be funded by ETV.<sup>4</sup>

The Program Instruction provided the following examples of allowable uses of ETV funding as well:

- laptops or other technology necessary for virtual education;
- earbuds/earphones;
- desks, chairs and other items needed to create a learning space;
- supplies such as printer paper and ink; and
- tools for internet access (such as broadband internet access, cell phone data cards, routers and WIFI extenders).

PI, page 14.

#### 6. What other flexibilities were provided to the ETV program?

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<sup>4</sup> This includes, but is not limited to, tuition, room and board, books, supplies, transportation (including the costs of maintaining a vehicle), disability related expenses, and miscellaneous personal expenses. COA rules also allow for financial aid to be used for dependent care.

States can waive the following two requirements for ETV eligibility when they cannot be met due to factors related to the pandemic:

- Enrollment
- Making satisfactory progress towards completion (SAP)

Sec. 3(d).

**7. Will states need to document that the failure to meet SAP is related to the pandemic?**

The law does not provide detail on this. It is recommended that states develop a simple policy that allows for documentation of the challenges that the youth is facing in meeting the requirement, such as self-attestation, without requiring external sources of verification that may be burdensome.

**8. When do the ETV flexibilities end?**

All ETV program flexibilities last until September 30, 2021 except for the increased cap on individual Chafee awards to \$12,000. This cap lasts until September 30, 2022.

## IV. Preventing Youth from Aging Out and Re-entry

### A. Application of and Basics of the Law

#### 1. How does the law impact young people who age out during the pandemic or are aging out?

**For young people who age out under state law after the enactment of the Consolidated Appropriations Act on December 27, 2020**, states must continue to provide young people continued placement and services in foster care in their states even if the youth reaches the maximum age when foster care ends under state law. Sec. 4 (a) (“A State operating a program under part E of title IV of the Social Security Act may not require a child who is in foster care under the responsibility of the State to leave foster care solely by reason of the child’s age.”)

**For young people who have aged out under state law beginning on or after January 27, 2020**, states must provide notification and provide re-entry for those youth. See more on re-entry below.

#### 2. Does the requirement to provide extended services and re-entry apply to all states, tribes, and territories?

Yes. The law applies to all states that have a IV-E plan for foster care. Sec. 4 (a)(“A State operating a program under part E of title IV of the Social Security Act”). This includes:

- States that do not have any extended foster care program.
- States that have IV-E extended foster care programs.
- States that have a state funded extended foster care program.

PI, page 4.<sup>5</sup>

#### 3. Can states draw down IV-E maintenance payments for the cost of providing continued placement and services even if the young person has turned 21?

Yes. The new law allows IV-E reimbursement for otherwise eligible young people who reach age 21.

Specifically, the law states that a young person cannot be found ineligible for IV-E funds due to age. Sec. 4 (a) (“A child may not be found ineligible for foster care maintenance payments under section 472 of such Act solely due to the age of the child...”)

The PI also confirmed that there is no upper age limit for this provision.

PI, page 4.

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<sup>5</sup> “The Supporting Foster Youth and Families through the Pandemic Act establishes new temporary requirements that all title IV-E agencies must carry out to prevent youth from aging out of foster care and to facilitate re-entry into foster care. These requirements apply whether or not a title IV-E agency currently is approved to provide eligible youth age 18 or older title IV-E foster care maintenance payments under section 475(8)(B) of the Act and regardless of the current maximum age for foster care under the laws and policies of the state or tribe.”

**4. Can states with state-only extended care programs or no extended foster care program draw down IV-E funds for extended care during the term of the law?**

We read the federal guidance as saying that states that currently do not have IV-E plans for extended foster care will be allowed to draw down IV-E funds for the period when the law is in effect. The new law is time limited and temporarily requires that states continue foster care services to young people who want services. Through this mandate, we believe the law serves to temporarily amend the state's IV-E plan to allow states to draw down IV-E funds for young people who are otherwise IV-E eligible. If that is not the case, states are permitted to use their Chafee increase to pay for the cost of implementing the extended services and re-entry provisions.

We are asking ACF for clarification of this question. We encourage you to ask your ACF regional office as well.

**5. If a youth is eligible for extended services or re-entry and also for Chafee services such as housing, can they elect to take either one? (Can a youth opt to receive Chafee services and not re-enter or extend care?)**

We believe that the answer is yes. While the law requires the child welfare agency to provide extended services or re-entry to eligible youth, we believe that extending services or re-entry is an option available to a youth to take voluntarily. If a youth wants to extend services or re-enter, the state must allow them to do so. If they do not want to take those options, they can receive an array of Chafee services, including housing. The law permits young people to elect various ways to get assistance during the pandemic and we hope states and jurisdictions use the flexibility to serve youth in ways they choose.

**6. Are youth in extended care and who re-enter eligible for Chafee services?**

Yes. Just as now, youth in foster care and extended foster care are also Chafee eligible if they are age 14 or older.

**7. Can states provide direct financial assistance with Chafee funds to youth in foster care or extended foster care?**

Yes. Most youth in foster care who are age 14 or older are Chafee eligible and so may also be eligible for direct financial assistance with Chafee funds.

**8. Do states and jurisdictions need to meet the federal definition of foster care in carrying out the extended foster care and re-entry provisions?**

The Program Instruction states that "title IV-E agencies may use a definition of foster care that does not fully accord with the definition used for the purposes of title IV-E in 45 CFR 1355.20<sup>6</sup>. ...However, in order to claim FFP for title IV-E foster care maintenance payments, the definition of foster care at 45 CFR 1355.20 applies." PI, page 4-5. For example, a state or jurisdiction could provide placement and services to a young person without taking placement and care responsibility, however, because placement and care responsibility is required to meet the definition of "foster care," the agency could not draw down IV-E for that cost. However, if the youth is not IV-E eligible, the state may use Chafee funds for the costs of implementing the extended care and re-entry provisions.

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<sup>6</sup> Foster care means 24-hour substitute care for children placed away from their parents or guardians and for whom the title IV-E agency has placement and care responsibility. 45 CFR 1355.20.

**9. If a state enacted a moratorium on aging out prior to the enactment of the Consolidated Appropriations Act, can it seek IV-E reimbursement for eligible young people?**

The Program Instruction clarified that states can only “claim for title IV-E foster care maintenance payments and allowable associated in-placement administrative costs made or incurred from December 27, 2020 to September 30, 2021 on behalf of youth/young adults in foster care who otherwise would have been eligible for title IV-E except for the age or the education and employment conditions. There is no upper age limit for title IV-E eligibility during this time period (i.e., youth over age 21 could be eligible).” PI, page 6.

States that had moratoriums in place before December 27, 2020 are encouraged to reach out to their regional ACF offices and inquire about IV-E claiming before this date.

**10. Is there a state match for the IV-E funds that are used for extended services and re-entry?**

Yes. The law made no changes to the state match that is made for foster care maintenance under the state FMAP rate. However, the 6.2% FMAP increase from the CARES Act is still in place and would apply. This increase lasts through the quarter in which the COVID-19 public health emergency ends (beginning January 27, 2020 until April 20, 2021, subject to extension as the declaration is renewed at ninety day intervals.)

**11. Does the law require continued court jurisdiction to provide continued services?**

The law requires that the child welfare agency cannot terminate foster care services to a young person based on age. Even if state law does not provide continued jurisdiction of a youth at age 18 or 21, the child welfare agency still must provide the young person the option of continued foster care services.

**12. What are mechanisms by which a child welfare agency can provide continued services if there is not court jurisdiction?**

Child welfare agencies can enter into a voluntary agreement for placement and services with the young person who is age 18 or older and can continue to use case and transition plans to guide service delivery.

**13. Do young people need to meet the conditions of participation for extended foster care during the pandemic to be IV-E eligible?**

No. The law waives these requirements for IV-E eligibility and specifically states that a youth cannot be found ineligible for IV-E funds due to a failure to meet the participation requirements (school and work). Sec. 4(a) (“A child may not be found ineligible for foster care maintenance payments under section 472 of such Act solely due to the age of the child or the failure of the child to meet a condition of section 475(8)(B)(iv) of such Act before October 1, 2021.”)

**14. Are all the conditions for participation for extended foster care waived for IV-E eligibility until September 30, 2021?**

Yes. The law references 42 U.S.C.A. 675 (8)(B)(iv), which includes the following:

- completing secondary education or a program leading to an equivalent credential;
- enrolled in an institution which provides post-secondary or vocational education;
- participating in a program or activity designed to promote, or remove barriers to, employment;

- employed for at least 80 hours per month; or
- incapable of doing any of the activities described in subclauses (I) through (IV) due to a medical condition, which incapability is supported by regularly updated information in the case plan of the child.

### **11. Do states need to ask ACF to waive the participation (school and work) conditions?**

No. The law states that the participation requirements are irrelevant to IV-E eligibility during the pandemic.

### **12. Do states need to document that youth cannot meet the school and work requirements due to the pandemic?**

This is not a requirement in the new law.

## **B. Re-Entry**

### **1. What provisions does the law make for re-entry into foster care?**

The law requires that states permit any youth who left foster care due to age during the COVID-19 public health emergency to voluntarily re-enter foster care and facilitate re-entry into foster care. Sec. 4 (b). (The state “shall” permit and facilitate re-entry.)

### **2. Does the re-entry requirement apply to states that did not provide extended foster care prior to the pandemic?**

Yes. The law specifically states that this provision applies to all states and territories that have IV-E plans regardless of whether they have taken the option to provide IV-E extended foster care. Sec. 4 (b)(The law applies to all “State[s] operating a program under the State plan approved under part E of title IV of the Social Security Act (and without regard to whether the State has exercised the option provided by section 475(8)(B) of such Act to extend assistance under such part to older children.)”)

### **3. Who is eligible to re-enter?**

Youth are eligible to re-enter if they left care due to age “during the COVID-19 public health emergency,”<sup>7</sup> which the law defines as January 27, 2020 – April 20, 2021, subject to be extended. Sec. 4 (b).

### **4. Is there a notification and public awareness requirement for the re entry provision?**

The state must provide notice of the option to re-enter to each youth who was formally discharged from foster care during the COVID-19 public health emergency , which is defined in the law as from January 27, 2020 until September 30, 2021)

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<sup>7</sup> Under section 2 of the law, the “COVID–19 public health emergency” means the public health emergency declared by the Secretary pursuant to section 319 of the Public Health Service Act, entitled “Determination that a Public Health Emergency Exists Nationwide as the Result of the 2019 Novel Coronavirus.” This Declaration can be found here:

<https://www.phe.gov/emergency/news/healthactions/phe/Pages/2019-nCoV.aspx>. It has been renewed every 90 days since January 27, 2020 and is expected to be renewed again prior to April 20, 2021.



The state also must conduct a public awareness campaign about the option to voluntarily re-enter foster care for youth who have not attained 22 years of age, who aged out of foster care in fiscal year 2020 or fiscal year 2021, and who are otherwise eligible to return to foster care. Sec. 4(b). The PI also recommends that in “conducting the public awareness campaign, CB encourages title IV-E agencies to reach out not only to youth under age 22 who aged out of foster care in FYs 2020 and 2021, but to other youth formerly in foster care, if they now potentially would be eligible to return to foster care or receive other services from the agency.” PI, page 6.

### **5. What must a state do to provide re-entry?**

In addition to notifying youth, states must develop a process for and facilitate re-entry for eligible young people that is easy for young people to access and is able to respond quickly to their needs.

### **6. Are there examples of effective and youth friendly re-entry procedures?**

Yes. Because eligibility for extended services and re-entry only requires verification of former foster care status and age (the participation elements are not necessary for IV-E reimbursement), the re-entry process should be easy to operationalize. Here are few examples to consider:

- Identify point people at the agency to receive and process re-entry requests. Use individuals with lived experience in foster care if possible.
- Identify resource navigation and support people that young people seeking re-entry can receive support from.
- Use voluntary placement agreements to expedite access to services and placements.
- Identify appropriate placements in the current network, including the flexible “supervised setting in which an individual lives independently.”
- Develop a program to provide funds for a living arrangement along with supportive services as an option. (Many agencies will already have something in place through supervised independent living programs or Chafee room and board programs).

### **7. What should agencies do if they face delays in getting into courts to re-enter a young person into care?**

Agencies can use voluntary placement and/or service agreements to avoid court delays. States can also provide Chafee funds to meet immediate needs of young people if there is any delay in the re-entry process.

### **8. What should a state do to provide re-entry if it does not have extended foster care or continued jurisdiction?**

It is recommended that states develop agreements for services and supports that the young person enter into with the child welfare agency. The agreement would simply outline the supports, placement, and services to be provided.

### **9. Can states draw down IV-E funds for young people who re-enter foster care?**

Yes. “A child who re-enters care during the COVID–19 public health emergency period may not be found ineligible for foster care maintenance payments under section 472 of the Social Security Act solely due to age” or for a failure to meet the participation requirements. Sec. 4 (d)(2)(D).

Please note that this section of the law references the COVID–19 public health emergency *period*, which is defined at April 1, 2020-September 30, 2021.

## C. Ongoing Obligations and Additional Funding Provisions

### 1. Do the federal law requirements for permanency and transition planning apply to young people who extend care and re-enter pursuant to the new law?

Yes. The law requires that the safety, well-being, and permanency needs continue to be met for youth who continue placement in extended care or re-enter foster care. The law also requires that the obligation to transition plan and connect youth with supportive adults continue. Sec. 4(c).

### 2. Do states have an obligation to determine IV-E eligibility for youth in extended care or who re-enter pursuant to the new law?

Yes. The law requires that a state shall make reasonable efforts to ensure eligibility for foster care maintenance payments under section 672 of the Social Security Act. Sec 4 (d)(1)(C). As a reminder, states can redetermine a youth’s IV-E eligibility based on their own income at age 18 if they re-enter.

### 3. Can the increase in Chafee funds be used to pay for costs of extended services, re-entry, and meeting ongoing obligations to youth in foster care for youth who are not IV-E eligible?

Yes. The law allows states to use the increase in Chafee funds provided to states under the Consolidated Appropriations Act to meet costs incurred to implement the requirements to continue services, provide re-entry, and continue to meet existing obligations.

There are two exceptions to this provision:

- Chafee funds cannot be used for costs incurred before the enactment of the law on December 27, 2020.
- Chafee funds cannot be used for the cost of implementing the obligations in Sec 4. for youth who are IV-E eligible.

Sec 4 (d)(2).

**This FAQ is a product of the organizations listed below. Please feel free to send feedback of questions to: [oypr@fosterclub.com](mailto:oypr@fosterclub.com)**

**ACTION Ohio  
Children’s Advocacy Institute  
Children’s Law Center of California  
Children’s Rights  
Child Welfare League of America  
First Focus Campaign for Children  
Foster Care Alumni of America  
FosterClub  
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