

# Improved Adoption Incentives and Relative Guardianship Support Act of 2008

## Short Title:

### *Current Law*

No provision.

### *Chairman's Mark*

The Mark sets forth the title of the Act as the Improved Adoption Incentives and Relative Guardianship Support Act of 2008.

## TITLE I: EXTENSION AND IMPROVEMENT OF ADOPTION INCENTIVES

### *Section 101: Extension of Adoption Incentives Program*

#### 5-YEAR EXTENSION

##### *Current Law*

Provides that a State may be eligible for Adoption Incentive awards for increasing the number of children who are adopted out of foster care in each of FY1998-FY2007. Authorizes appropriations of \$43 million in each of FY2004-FY2008 to make those awards, and stipulates that funds appropriated for Adoption Incentives may not be expended after FY2008. As a condition of eligibility for these awards, in each of FY2001 – FY2007, requires States to provide health insurance coverage to any child who has special needs (as determined by the State) and for whom the State has an adoption assistance agreement in place. Requires the U.S. Department of Health and Human Services (HHS) to use State-reported data to determine the number of incentive eligible adoptions that the State has finalized for each of FY2002-FY2007.

##### *Chairman's Mark*

The Chairman's Mark provides that States may be eligible for Adoption Incentive awards for adoptions finalized in each of FY2008-FY2012. The Mark extends the funding authorization for the Adoption Incentives program for five years (through FY2013) at the current annual authorization level (\$43 million) and provides that funds appropriated for Adoption Incentives may not be expended after FY2013. Further, the Mark extends to each fiscal year the current State eligibility criteria regarding provision of health insurance for special needs adoptees and the requirement for HHS to determine the number of adoptions eligible under the program by State.

#### ADDITIONAL INCENTIVE PAYMENT FOR EXCEEDING THE HIGHEST EVER FOSTER CHILD ADOPTION RATE

##### *Current Law*

States may earn Adoption Incentive awards if they increase the *number* of children who are adopted out of foster care.

*Chairman's Mark*

In addition, the Chairman's Mark permits States to earn an Adoption Incentive award for an increase in their *rate* of foster child adoptions. Awards for an increase in the rate of these adoptions are made available in any year beginning with FY2009, provided that funds appropriated for Adoption Incentives exceed the amount needed to make any awards earned for increases in the number of adoptions.

Under the Chairman's Mark, a State's foster child adoption rate would be determined by dividing the number of foster child adoptions finalized in the State in a given fiscal year by the number of children in that State's foster care caseload on the last day of the previous year. (For example: If a State finalizes 150 adoptions in a given fiscal year and on the last day of the previous fiscal year it had 1,500 children in its foster care caseload, its foster child adoption rate for the given fiscal year is 10%.) A State earns an award if it achieves a foster child adoption rate that is above its "highest ever foster child adoption rate" – meaning the highest foster child adoption rate that the State achieved in any year beginning with FY1998 and before the award year. The amount of this award would be equal to \$1,000 multiplied by the number of adoptions that occurred as a result of the State exceeding its highest ever foster child adoption rate (and holding the foster care caseload constant). (For example: If the State in the example above had previously achieved a highest ever foster child adoption rate of 9%, then, when it achieved the rate of 10%, its award for this increased rate would be calculated as follows: Multiplying that highest rate (9%) by the 1,500 children in its caseload on the last day of the fiscal year prior to the award year, subtracting this number (135) from the actual number of foster child adoptions achieved in the award year (150) and multiplying the difference (15) by \$1,000 to determine the award amount of \$15,000.) The Mark permits HHS to make pro rata adjustments to these amounts if funds appropriated are insufficient to cover the full awards earned.

INCREASE IN INCENTIVE PAYMENTS FOR SPECIAL NEEDS ADOPTIONS AND OLDER CHILD ADOPTIONS

*Current Law*

A State earns Adoption Incentive awards for increasing the number of adoptions out of foster care in the following amounts: \$4,000 for each foster child adoption that is above its base number of adoptions in this category; \$4,000 for each adoption of a child from foster care who is age 9 or older that is above its base number of adoptions in this category; and (provided the State has also earned either a foster child or older child adoption award), \$2,000 for each special needs adoption of a child (who is under the age of nine) that is above its base number of adoptions in this category.

*Chairman's Mark*

The Chairman's Mark raises the award amount for each increase in older child adoption to \$8,000, and for adoption of a child with special needs (who is under age 9) to \$3,000. (The Mark maintains the current law award of \$4,000 for each increase in foster child adoptions overall.)

UPDATING OF FISCAL YEARS USED IN DETERMINING BASE NUMBER OF ADOPTIONS

*Current Law*

A State has a "base number" of adoptions for each category of adoptions under which it may earn an Adoption Incentive award – foster child adoptions, older child adoptions and adoptions of special needs children (who are under the age of 9). Those base numbers are equal to the number of adoptions the State finalized in each of those categories in FY2002 OR any year after that in which it achieved a higher number.

*Chairman's Mark*

The Chairman's Mark establishes the base number of adoptions as the number of adoptions achieved by a State in each Adoption Incentive category (foster child, older child, and special needs children under age 9) by that State in FY2007.

**24-MONTH AVAILABILITY OF PAYMENTS TO STATES**

*Current Law*

States may spend Adoption Incentive awards in the fiscal year for which they are awarded and in the following fiscal year.

*Chairman's Mark*

The Chairman's Mark gives States 24 months, beginning with the month in which the awards are made, to spend these funds.

***Section 102: Promotion of Adoption of Children with Special Needs***

**ELIMINATION OF ELIGIBILITY BASED ON AFDC AND SSI INCOME STANDARDS**

*Current Law*

A child who has "special needs" (as determined by each State) is eligible for Federal adoption assistance if the child meets the requirements of at least one of the following eligibility pathways:

1) AFDC: The child was removed from the home of a parent or other relative under a voluntary placement agreement or because a judge found the home of the parent or other relative to be "contrary to the welfare" of that child, AND, if while living in that home, the child would have met all income, family structure, and other eligibility requirements necessary to be determined a "needy" child under the Aid to Families with Dependent Children (AFDC) program (as that program existed on July 16, 1996).

2) SSI: The child meets all the eligibility criteria for Supplemental Security Income (SSI), including those related to income and medical/physical disability.

3) Child of a minor parent: The child lives with his/her minor parent who is in foster care, and the minor parent meets either the AFDC or SSI eligibility criteria and is receiving Federal foster care maintenance payments that includes funds to cover costs of the child.

*Chairman's Mark*

The Chairman's Mark removes all income and resource tests included in each of these eligibility pathways. Further, with regard to the child's removal from his/her home (under the current AFDC eligibility pathway) the Mark requires a State to make the determination that continuation of the child in the home would be contrary to the safety or welfare of the child and permits the State to make this determination pursuant to its own criteria, which may or may not require this determination to be made by a judge.

**ELIGIBILITY IF INITIAL ADOPTION FAILS**

*Current Law*

If a child was eligible for Federal adoption assistance in a previous adoption, ensures continued eligibility for this assistance in a subsequent adoption provided the child is determined by the State to have special needs and is available for adoption because the previous adoption was dissolved (with adoptive parents' rights terminated) or because the adoptive parents died. This provision was included in the Adoption and Safe Families Act and became effective for any child adopted on or after October 1, 1997.

*Chairman's Mark*

The Chairman's Mark extends this same provision to any child whose adoption occurred before the October 1, 1997 effective date of the Adoption and Safe Families Act and who would have been found eligible if the ASFA provision was enacted at that time.

#### EXCEPTION (related to intercountry adoption)

##### *Current Law*

Children adopted in another country, or who are brought to this country for the purposes of adoption (i.e., intercountry adoptees) may not be categorically excluded from Federal adoption assistance. However, they are generally found ineligible for *monthly* Federal adoption assistance because they do not meet the eligibility criteria for Federal adoption assistance. (For example, they can not meet the requirements of the prior law AFDC program, which was a domestic program and available only to children living in this country.) At the same time, the adoptive parents of an intercountry adoptee may claim reimbursement of non-recurring adoption expenses (up to \$2,000) if the State determines that the intercountry adoptee has special needs and the adoptive parents request the payment before the adoption is finalized.

##### *Chairman's Mark*

In general, the Chairman's Mark makes intercountry adoptees categorically ineligible for Federal adoption assistance of any kind – that is, they may not be eligible for monthly assistance payments nor for payment of non-recurring adoption expenses. However, an intercountry adoptee who the State determines to have special needs and who is placed in foster care because the initial intercountry adoption failed (as determined by the State) may be eligible for Federal adoption assistance.

#### REQUIREMENT FOR USE OF STATE SAVINGS

##### *Current Law*

Not applicable.

##### *Chairman's Mark*

The Chairman's Mark provides that any State savings that may be achieved because of the expanded Federal eligibility for adoption assistance permitted by the Mark must be spent on child welfare purposes.

#### DETERMINATION OF A CHILD WITH SPECIAL NEEDS

##### *Current Law*

A child is considered to have "special needs" if the State determines that: 1) the child cannot or should not be returned to his/her home; 2) because of a factor defined by the State and specific to the child – e.g., the child's age, race/ethnicity, membership in a sibling group, physical, mental or emotional disabilities or medical conditions – he or she is unlikely to be adopted without provision of medical assistance or adoption assistance; and 3) it has made efforts (unless this is against the best interests of the child) to place the child for adoption without providing medical or adoption assistance on the child's behalf, but these efforts have been unsuccessful.

##### *Chairman's Mark*

The Chairman's Mark provides that a State must consider any child who meets all the medical or disability requirements related to eligibility for SSI to be a child with special needs (provided that the State has also determined that the child cannot or should not be returned home and the State has tried unsuccessfully to place the child for adoption without medical or adoption assistance).

## EFFECTIVE DATE

### *Current Law*

Not applicable

### *Chairman's Mark*

In general, the Chairman's Mark makes the provisions of this section, "Promotion of Adoption of Children with Special Needs," effective with FY2013 and applicable only to adoption assistance agreements entered into on or after the first day of that fiscal year (October 1, 2012). However, the Mark phases in *earlier* implementation of these amendments for children who have attained a certain age. Specifically, it stipulates that the amendments of the section apply beginning with the first day of FY2011 (October 1, 2010) for any adoption assistance agreement entered into during that year that is done on behalf of a child who is 12 years of age or older on the date the agreement is executed; and that it applies as of the first day of FY2012 (October 1, 2011) for any adoption assistance agreement entered into during that year that is done on behalf of a child who is 6 years of age or older on the date the agreement is executed.

## TITLE II SUPPORT FOR RELATIVE GUARDIANSHIP

### *Section 201: Relative Guardianship Assistance Payments for Children*

## OPTION FOR STATES TO ENHANCE AND SUBSIDIZE A RELATIVE GUARDIANSHIP PROGRAM

### *Current Law*

Under Title IV-E of the Social Security Act, States with an approved foster care and adoption assistance plan are entitled to receive Federal reimbursement for a part of the cost of providing foster care and adoption assistance to every eligible child.

### *Chairman's Mark*

The Chairman's Mark provides that any State that elects to offer relative guardianship assistance under its Title IV-E foster care and adoption assistance plan is additionally entitled to Federal support for a part of the cost of providing this assistance on behalf of each eligible child.

## REQUIREMENTS

### *Current Law*

No provision.

### *Chairman's Mark*

#### Relative Guardianship Agreements

The Chairman's Mark provides that to receive this Federal support, a State must negotiate and enter into a written and binding agreement with the relative guardian of an eligible child that at a minimum, specifies: 1) the amount of each relative guardianship assistance payment and how it will be provided; 2) additional services and assistance that the child and relative guardian will be eligible for under the agreement; 3) the procedure the relative guardian may use to apply for additional services (if agreed to); and 4) that the State will pay up to \$2,000 of the non-recurring expenses associated with obtaining legal guardianship of the child.

### Interstate Application

The Chairman's Mark provides that a relative guardianship assistance agreement must remain in effect regardless of the State in which the relative guardian resides.

### Federal Reimbursement of Nonrecurring Expenses

The Chairman's Mark stipulates that the Federal government must pay one-half (50%) of a State's cost of covering nonrecurring guardianship expenses (up to \$2,000).

### Relative Guardianship Assistance Payments

The Chairman's Mark provides that the amount of a child's relative guardianship assistance payment must be based on a consideration of the circumstances of the relative and the needs of the child, but must not be less than the amount the State would pay on behalf of the child if he or she was adopted, nor can it be more than the amount the State would pay on the child's behalf if the child remained in a foster family home. The amount of the relative guardianship assistance payment may be readjusted periodically, with the concurrence of the relative guardian, depending upon changes in the circumstances of the relative guardian or the needs of the child.

### Child's Eligibility for a Relative Guardianship Assistance Payment

Under the Chairman's Mark, a child is eligible for a Federal relative guardianship assistance payment if the State agency determines that: 1) in the month before the legal guardianship was established the child was in foster care and eligible for a Federal foster care maintenance payment; 2) being returned home or adopted are not appropriate permanency options for the child and, in the case of a child for whom removal from the home was associated primarily with parental substance abuse and addiction, that attempts to engage the family in residential, comprehensive family treatment programs are inappropriate or have been unsuccessful, or such programs are unavailable; 3) the child demonstrates a strong attachment to the relative guardian; 4) the relative guardian has a strong commitment to caring for the child and satisfies other requirements (specified below); and 5) if the child is age 14 or older, the child has been consulted about the relative guardianship arrangement.

### Requirements for Relative Guardians

Under the Chairman's Mark, a relative guardian must: 1) be a grandparent or other relative of the child on whose behalf the relative guardianship assistance payment is being made; 2) have satisfied the same criminal background and child abuse and neglect registry checks that are required of prospective foster and adoptive parents of children on whose behalf Federal foster care or adoption assistance payments are made; 3) have met the State's licensing requirements for a foster family home; and 4) assume legal guardianship of the child and commit to caring for the child on a permanent basis.

### Treatment of Siblings

The Chairman's Mark provides that a child who meets the eligibility requirements for Federal relative guardianship assistance payments must be placed in the same relative guardianship arrangement with any sibling(s), unless it can be shown that this is inappropriate, and, further that Federal relative guardianship assistance payments may be paid for each sibling placed in the same relative guardianship arrangement.

## PAYMENTS TO STATES

### *Current Law*

States are entitled to receive Federal reimbursement of 75% of their cost of providing short-term training to eligible individuals (including current and prospective foster and adoptive parents and staff of certain child care institutions) provided those individuals care for children who are eligible for Federal foster care or adoption assistance.

Every State has a Federal Medical Assistance Percentage (FMAP) that is calculated annually and may range from 50% (for higher per capita income States) to 83% (for lower per capita income States).

### *Chairman's Mark*

Under the Chairman's Mark, States are additionally entitled to Federal reimbursement of 75% of the cost of providing short-term training for current or prospective relative guardians, provided those relative guardians care for children receiving Federal foster care, relative guardianship assistance, or adoption assistance.

Under the Chairman's Mark, States are entitled to Federal reimbursement at their FMAP for the cost of providing relative guardianship assistance payments to eligible children.

## INCENTIVE PAYMENTS FOR RELATIVE GUARDIANSHIP PLACEMENT

### *Current Law*

Funds are authorized to be appropriated for Adoption Incentives to States that increase the number of children adopted out of foster care.

### *Chairman's Mark*

The Chairman's Mark requires HHS to make Relative Guardianship Incentive Awards in any fiscal year in which the funds appropriated for the Adoption Incentive program exceeds the amount needed to provide all adoption-related awards earned by the States under that program. In the first year that a State establishes a relative guardianship assistance program (under Title IV-E), the Mark provides that the State's relative guardianship incentive award is equal to the total number of relative guardianship assistance agreements it enters into during that year multiplied by \$1,000. In any succeeding year, the award amount is equal to \$1,000 multiplied by any increase in the number of relative guardianship assistance agreements that a State entered into that is above its "base number" of such agreements. A State's base number of relative guardianship assistance agreements is equal to the highest number of those agreements it enters into in any year before the award year. HHS may make pro rata adjustments to these award amounts if funds appropriated are insufficient to cover the full awards earned.

## CONFORMING AMENDMENT (Use of funds)

### *Current Law*

States may only spend Adoption Incentive awards for provision to children and families of any service (including post-adoption services) that is now authorized under Title IV-B (Child and Family Services) and Title IV-E (Foster Care and Adoption Assistance) of the Social Security Act.

### *Chairman's Mark*

The Chairman's Mark maintains the current provisions for use of Adoption Incentive funds while explicitly adding that "relative navigator and support services" may also be funded by the awards.

## MAINTAINING ELIGIBILITY FOR ADOPTION ASSISTANCE AND MEDICAID

### *Current Law*

Children who are eligible for adoption assistance or for Federal foster care maintenance payments are categorically eligible for Medicaid.

### *Chairman's Mark*

Medicaid eligibility: The Chairman's Mark ensures that children who move to Federal relative guardianship assistance – all of whom must by definition have been eligible for Federal foster care assistance – maintain their eligibility for Medicaid.

Adoption Assistance eligibility: The Chairman's Mark separately provides that for purposes of determining a child's eligibility for Federal adoption assistance, any child who has received Federal relative guardianship assistance payments, and who is determined by the State to have special needs, must be eligible for Federal adoption assistance. The Mark stipulates that the State must make payments of nonrecurring adoption expenses to the adoptive parents of such a child.

## ELIGIBILITY FOR INDEPENDENT LIVING SERVICES AND EDUCATION AND TRAINING VOUCHERS FOR CHILDREN WHO EXIT FOSTER CARE FOR RELATIVE GUARDIANSHIP OR ADOPTION AFTER AGE 16

### *Current Law*

Under the Chafee Foster Care Independence Program, States design and conduct independent living programs to help youth who are expected to remain in foster care until their 18<sup>th</sup> birthday, and those who have aged out of foster care (up to age 21) to transition to independent adulthood. Also authorizes Education and Training Vouchers for these same youth to attend college (or an equivalent level training program) and provides that any youth who is adopted from foster care after his/her 16<sup>th</sup> birthday is eligible for Education and Training Vouchers.

### *Chairman's Mark*

The Chairman's Mark also permits States to design and provide Chafee independent living services for any youth who leaves foster care after his/her 16<sup>th</sup> birthday for adoption or relative guardianship. The Mark further extends eligibility for Education and Training Vouchers to any youth who leaves foster care for relative guardianship after his/her 16<sup>th</sup> birthday.

## NOTICE REQUIREMENTS

### *Current Law*

Provides that a State must “consider” giving preference to an adult relative over a non-related caregiver when determining the placement of a child, if the adult relative meets State child protection standards.

### *Chairman's Mark*

#### Notice to relatives of child's removal from parental custody

The Chairman's Mark additionally requires the State child welfare agency to “exercise due diligence” to identify any adult grandparents or other adult relatives of a child within 60 days of a child's removal from parental custody. It also requires the State to give these relatives notice of the imminent or recent removal of the child and to explain the relative's options to participate in the child's care and placement – including a description of State licensing requirements and associated supports and benefits, and how to enter into a relative guardianship assistance agreement (provided the State has opted to provide this kind of assistance). The Mark permits exceptions to this notice requirement due to family or domestic violence.

### Notice to non-parent caregivers of children receiving TANF benefits

The Chairman's Mark also requires the State child welfare agency to give notice of these same care and placement options to any non-parent relative caretaker who, after an interaction with the child welfare agency, is providing a home for a child receiving Temporary Assistance to Needy Families (TANF) benefits.

### TANF PENALTY FOR FAILURE TO PROVIDE NOTICE

#### *Current Law*

Under the TANF block grant (Title IV-A of the Social Security Act), States are entitled to receive an annual grant for family assistance. The amount of this grant may be reduced if HHS determines that the State has failed to comply with certain Federal requirements related to the receipt and use of the funds. A State may avoid such a penalty if it can show reasonable cause for the noncompliance, or if it enters into a corrective compliance plan with HHS.

#### *Chairman's Mark*

The Chairman's Mark requires HHS to reduce the amount of a State's TANF grant if it determines that the State is not complying with the notice provisions for non-parent caretakers of children receiving TANF benefits. If a non-complying State cannot give reasonable cause or does not enter into a corrective compliance plan with HHS, the penalty amount must be based on the State's degree of noncompliance. However, it must be no less than 1% nor more than 3.5% of the State's total TANF family assistance grant.

### NOTICE REQUIREMENTS (Adoption Tax Credit)

#### *Current Law*

The Internal Revenue Code permits taxpayers who adopt a child to claim a tax credit for all qualifying adoption costs up to the maximum credit. (The maximum credit was equal to \$11,390 in tax year 2007.) It also provides that any taxpayer who adopts a child meeting the State's definition of "special needs" may claim the full credit amount (without having to show any qualifying costs).

#### *Chairman's Mark*

The Chairman's Mark requires States to provide information to prospective adoptive parents about their potential eligibility for the Federal adoption tax credit, including the fact that if they adopt a special needs child, they may receive the maximum credit without having to show any qualifying adoption costs.

### CASE PLAN REQUIREMENTS

#### *Current Law*

Every child in foster care must have a written case plan.

#### *Chairman's Mark*

The Chairman's Mark requires that if the permanency goal for a child in foster care is placement with a relative guardian who is to receive a Federal relative guardianship assistance payment on the child's behalf, that child's case plan must describe – 1) the steps the agency has taken to determine that it is not appropriate for the child to return home or be adopted; 2) the reasons why a permanent placement with a fit and willing relative through a relative guardianship assistance arrangement is in the child's best interests; 3) the ways in which the child meets the eligibility requirements for relative guardianship assistance payments; 4) the efforts the agency has made to discuss adoption by the child's relative guardian and, if the relative guardian chose not to pursue adoption, the reasons why this is so; and 5) the efforts made by the State agency to

secure the consent of the child's parent(s) to the relative guardianship assistance arrangement (or the reason why those efforts were not made).

#### REQUIREMENT TO CONDUCT CRIMINAL RECORDS AND CHILD ABUSE AND NEGLECT REGISTRY CHECKS

##### *Current Law*

States are required to conduct fingerprint-based FBI checks of prospective foster and adoptive parents and must also conduct child abuse registry checks of any prospective foster or adoptive parents, as well as any other adult living in the home. A State may not approve the placement of a child for whom Federal foster care or adoption assistance is claimed with any individual for whom the criminal record check reveals certain felony convictions.

##### *Chairman's Mark*

The Chairman's Mark would require these same criminal background checks, child abuse and neglect registry checks, and placement approval procedures for prospective relative guardians.

#### EFFECTIVE DATE

##### *Current Law*

Not applicable.

##### *Chairman's Mark*

The Chairman's Mark makes the amendments in this section, "Relative Guardianship Assistance Payments for Children," effective on October 1, 2008, and applicable only to relative guardianship assistance agreements made on or after that date.

#### ***Section 202: Demonstration Projects Regard Licensing of Immediate Relative Foster Parents***

##### *Current Law*

The provisions included in Section 1130A of the Social Security Act were enacted in 1994 (P.L. 103-432) and are identical to the provisions of Section 1123 of the Social Security Act, which were also enacted in 1994 (P.L. 103-382).

##### *Chairman's Mark*

The Chairman's Mark replaces all of the duplicative current language at Section 1130A. The Mark inserts provisions that require HHS to establish not more than 10 demonstration projects (at least 2 in rural States, 1 in a State where counties primarily administer the Title IV-E foster care program, and 1 in a tribe that directly operates a Title IV-E foster care program) to determine the extent to which flexibility in the application of licensing standards for the homes of immediate relative foster parents results in improved well-being and permanency outcomes for children in foster care. A State (including any of the 50 States or the District of Columbia) or tribe selected to conduct such a demonstration may modify the extent to which the home of an immediate foster parent relative (grandparent, aunt, uncle or adult sibling) meets any of the State's foster family home licensing standards that concern – 1) the number or size of bedrooms in the home (with appropriate safeguards for age and sex of the children); 2) the number of bathrooms in the home (with appropriate safeguards for age and sex of the children); and 3) the overall square footage of the home. The Mark requires that the licensing demonstrations must begin no later than one year after the date of the bill's enactment and must be conducted for three years. It also requires, that, not later than one year after completion of the projects, HHS must submit to the Senate Finance and House Ways and Means Committees a report that evaluates the

impact of the projects on the well-being of children in foster care and on their permanency outcomes – which must be based on the State’s performance before the demonstration compared to its performance during the demonstration. The report must also include any recommendations for administrative or legislative action HHS determines to be appropriate.

### *Section 203: Grants to Carry out Kinship Navigator Programs*

#### *Current Law*

No provision.

#### *Chairman’s Mark*

The Chairman’s Mark appropriates \$5 million in each of FY2009-FY2013 to fund competitive grants to 1) establish kinship navigator programs in states, large metropolitan areas and tribal areas; and 2) promote effective partnerships among public and private agencies to more effectively serve kinship care families. The Mark requires grantees to use funds received under the grant program to establish information and referral systems that link kinship caregivers to the full range of supports available to them; conduct outreach activities in collaboration with other relevant organizations to link kinship care families to the kinship navigator program; prepare, distribute, and update kinship care resource guides, websites or other relevant outreach materials; and promote partnerships between public and private agencies to help those agencies better meet the needs of kinship care families and to familiarize them with the special needs of those families. Additional activities that the Mark *permits* grant funds to be used for include establishment and support of a “kinship care ombudsman,” as well as, to provide support for “other activities” designed to assist caregivers in obtaining benefits and services and those intended to improve their care giving.

As provided by the Mark, entities eligible to apply for kinship navigator grants are tribal organizations, and public or private agencies of a state, or those serving a large metropolitan area, that have experience addressing the needs of kinship caregivers or children. The Mark requires entities seeking kinship navigator grant funds to include specific information in their grant application concerning planning for, providing, and reporting on services and activities under the kinship navigator program. It further stipulates that any grant funds received must not generally be used to provide direct services to children or their kinship caregivers. And also that not more than 50% of any non-federal share of the program costs, may be provided by grantees in-kind and fairly evaluated (including plant, equipment, or services).

The Mark provides that the kinship navigator grants are to be administered by the Administration for Children and Families (ACF) within the HHS and that in doing so ACF must periodically consult with the Administration on Aging (of HHS). In addition, the Mark stipulates that ACF must use no less than 50% of the funds appropriated for kinship navigator programs to award grants to *state* agencies and, also requires ACF to give preference for grants to applicants that demonstrate the capacity to offer the full range of services and activities for which funds may be used. As part of a final report to ACF on services and activities funded by the grant, a grantee must describe to ACF its plans for continuing the kinship navigator program after the expiration of the federal grant. ACF would be permitted to reserve up to 1% of any of the funds appropriated to provide technical assistance to grantees related to the purposes of the kinship navigator program. The Mark establishes this grant authority and funding in a new Section 427 of the Social Security Act.

***Section 204. Authority for Comparisons and Disclosures of Information in the Federal Parent Locator Service for Child Welfare, Foster Care, and Adoption Assistance Purposes***

*Current Law*

The Federal Parent Locator Service (FPLS) is a national computerized locator system that consists of the National Directory of New Hires and the Federal Child Support Case Registry. It also can provide access to certain information stored in other agencies including the Internal Revenue Service, the Social Security Administration, the Department of Veterans Affairs, the Department of Defense the Federal Bureau of Investigation, the National Personnel Records Center and the State Employment Securities Agencies. HHS is required to compare information in the multiple components of the FPLS to find instances in which a comparison reveals a match to an individual, and to disclose such information (e.g., addresses and employer information) to the agencies that administer Child Support Enforcement (under Title IV-D) and the Temporary Assistance for Needy Families (TANF) block grant (under Title IV-A). HHS is permitted to make these comparisons to the extent, and with the frequency, it determines to be effective in assisting States in administering those programs.

*Chairman's Mark*

The Chairman's Mark additionally requires HHS to provide this same assistance to State child welfare agencies (that administer programs under Title IV-B or Title IV-E).

**TITLE III --- TRIBAL FOSTER CARE AND ADOPTION ACCESS**

***Section 301. Equitable Access for Foster Care and Adoption Services for Indian Children in Tribal Areas***

**AUTHORITY FOR DIRECT PAYMENT OF FEDERAL TITLE IV-E FUNDS FOR PROGRAMS OPERATED BY INDIAN TRIBAL ORGANIZATIONS**

*Current Law*

States with a Title IV-E foster care and adoption assistance plan that is approved by HHS are entitled to receive Federal reimbursement for eligible costs associated with operating those programs. Tribes are not permitted to submit such a plan to HHS and may not receive direct Federal funding under Title IV-E.

*Chairman's Mark*

The Chairman's Mark establishes direct access to tribes for Federal foster care and adoption assistance funding by permitting an Indian tribe, tribal organization, or tribal consortium to submit a Title IV-E foster care and adoption assistance plan to HHS for approval. The Mark creates a new Section 479B of the Social Security Act, which sets out the following law with regard to the tribal foster care and adoption assistance programs:

**DEFINITIONS**

*Current Law*

The Indian Self Determination and Education Assistance Act (Section 4) defines an Indian tribe as any federally recognized band, nation, or other organized group or community (including certain Alaska Native Villages or regional or village corporations) that is recognized as eligible for the special programs and services provided by the United States to Indians because of

their status as Indians. And it defines a “tribal organization” as the recognized governing body of any Indian tribe.

*Chairman’s Mark*

The Chairman’s Mark defines “Indian tribe” and “tribal organization” as they are defined in the Indian Self Determination and Assistance Act.

**AUTHORITY**

*Current Law*

No provision

*Chairman’s Mark*

Unless explicitly spelled out differently in the tribal provisions of Title IV-E (which the Mark creates in Section 479B), the Chairman’s Mark makes all aspects of Title IV-E applicable to any Indian tribe, tribal organization, or tribal consortium, in the same manner as they apply to States, provided that the tribal entity is operating a Title IV-E foster care and adoption assistance program under a plan approved by HHS.

**PLAN REQUIREMENTS**

*Current Law*

A State’s Title IV-E foster care and adoption assistance plan must meet numerous requirements, which are specified in Section 471 of the Social Security Act. Among these are requirements related to provision of foster care and adoption assistance to eligible children and statewide operation of the program. Under Federal regulations States may not use affidavits or *nunc pro tunc* orders to retroactively establish that a child’s removal from his or her home was a result of a judicial determination that the home was “contrary to the welfare” of that child. Further, as part of seeking Federal reimbursement for the foster care and adoption assistance program, States are required by Federal regulation to have an HHS-approved cost allocation plan that details the costs that will be assigned to the program and how Federal reimbursement will be sought. States are not permitted to claim Title IV-E costs based on in-kind expenditures from third party sources.

*Chairman’s Mark*

The Chairman’s Mark requires an eligible tribal entity seeking to operate a Federal foster care and adoption assistance plan to submit a plan for approval to HHS that meets the requirements of Section 471 with the following modifications and addition.

Financial Management: An Indian tribe, tribal organization, or tribal consortium seeking to operate a foster care and adoption assistance program must include in its plan evidence that that it has not had any uncorrected significant or material audit exceptions under Federal grants or contracts that directly relate to the administration of social services for the 3-year period before the date on which it submits the plan.

Service Area: The tribal entity’s plan must also describe the service area or areas and populations to be served under that plan and include an assurance that the plan will be in effect in all those areas and for all populations to be served.

Eligibility: The tribal entity’s plan must include an assurance that it will make foster care maintenance payments, adoption assistance payments, and (at the option of the tribal entity) relative guardianship assistance payments only on behalf of children who meet the Federal eligibility requirements. The Chairman’s Mark further specifies that the AFDC rules that apply

for a child that will be served under a tribal plan are the same rules that applied in the State in which the child resided when he or she was removed from the home. Further, for only the first 12 months in which a tribal entity operates a Title IV-E foster care and adoption assistance program under a plan approved by HHS, the tribe may use either affidavits or *nunc pro tunc* orders to retroactively verify that a child's removal from his/her home occurred because of a judge's determination that the home was contrary to the welfare of the child.

**In-Kind Expenditure Claims:** For FY2009 through FY2013 only, the tribal entity's plan must include a list of the in-kind expenditures and their third party sources that the tribal entity may claim for purposes of seeking Federal reimbursement of administrative costs under the foster care and adoption assistance plan, including training costs. The Chairman's Mark prohibits any interpretation of its tribal in-kind claiming rules that would prevent a tribal entity from making an in-kind expenditure claim that a State with an HHS-approved foster care and adoption assistance plan can make. After this stipulation, the Mark establishes the following special rules related to in-kind expenditures from third party sources for tribal entities operating an HHS-approved foster care and adoption assistance plan: 1) For expenditures in FY2009 and FY2010, a tribal entity may claim not more than 25% of its total foster care and adoption assistance program administrative costs (excluding training costs) and not more than 12% of its total program training costs, as in-kind expenditures from third party sources. 2) For expenditures in FY2009 and FY2010, with regard to training costs only, the third party sources of the in-kind expenditures must be listed in the tribal entity's plan and those sources must be limited to one or more of the following entities: a State or local government, a tribal entity other than the one making the claim under Title IV-E, a public institution of higher education, a tribal college or university, and a private charitable organization. 3) In general, for expenditures in FY2011, FY2012, and FY2013, a tribal entity may only claim reimbursement for in-kind expenditures from third party sources in accordance with regulations promulgated by HHS and those regulations must specify the allowable third party sources and the applicable share of tribal program costs that may be made as in-kind expenditures of third party sources. However, a tribal entity with a foster care and adoption assistance program plan that was approved by HHS for FY2009 or FY2010 must not be required to comply with any regulations on this issue before the first day of FY2012. 4) If HHS does not produce regulations on tribal claiming of in-kind expenditures from third party sources by FY2012, and no legislation has been enacted specifying otherwise, then for FY2011, FY2012 and FY2013, the special rules that applied for FY2009 and FY2010 claims apply. However, beginning in FY2014, no claims for in-kind expenditures from third party sources may be made by any tribal entity (unless a State could make such a claim).

## CLARIFICATION OF TRIBAL AUTHORITY TO ESTABLISH STANDARDS FOR TRIBAL FOSTER FAMILY HOMES AND TRIBAL CHILD CARE INSTITUTIONS

### *Current Law*

Each State is required, as a part of its foster care and adoption assistance program, to designate or create an authority (or authorities) to establish standards for licensing or approving any foster family homes or child care institution that receives Federal Title IV-E or Title IV-B funds for the care of a foster child.

### *Chairman's Mark*

The Chairman's Mark clarifies that in complying with this requirement, the Indian tribe, tribal organization, or tribal consortium must establish a tribal authority (or authorities), which are responsible to maintain tribal standards for tribal foster family homes and tribal child care institutions.

## CONSORTIUM

### *Current Law*

No provision.

### *Chairman's Mark*

The Chairman's Mark provides that participating Indian tribes or tribal organizations of a tribal consortium may develop and submit a single Title IV-E foster care and adoption assistance plan that meets the requirements for HHS approval.

## DETERMINATION OF FEDERAL MEDICAL ASSISTANCE PERCENTAGE FOR FOSTER CARE MAINTENANCE AND ADOPTION ASSISTANCE PAYMENTS

### *Current Law*

In general, each State has a Federal Medical Assistance Percentage (FMAP) – sometimes called the “Medicaid matching rate” – which is used to determine the share of a State's eligible foster care maintenance and adoption assistance payments that will be reimbursed by the Federal government. A State's FMAP may range from 50% (for States with highest per capita income) to 83% (for State's with lowest per capita income).

### *Chairman's Mark*

The Chairman's Mark provides that the per capita income of the service population of a tribal entity operating a plan under Title IV-E must be used to determine that tribal entity's Federal reimbursement rate (or FMAP) for foster care maintenance, adoption assistance, and relative guardianship assistance payments. However, in no case may the reimbursement rate of the tribal entity be less than the FMAP of any State in which it is located. Further, HHS must consider any information submitted by a tribal entity as relevant to the calculation of that tribal entity's per capita income.

## NON-APPLICATION TO COOPERATIVE AGREEMENTS AND CONTRACTS

### *Current Law*

States that operate Title IV-E foster care and adoption assistance programs may enter into agreements with other public agencies to provide foster care to children. (As of March 2008, there were approximately 86 tribal-State Title IV-E agreements in effect, involving 11 States.)

### *Chairman's Mark*

The Chairman's Mark provides that any cooperative agreement or contract entered into between a State and tribal entity for the administration of foster care and adoption assistance program, or payment of funds under Title IV-E, must remain in full force and effect upon enactment of the Mark (subject to the right of either party to revoke or modify the agreement according to the terms of the agreement). The Mark also prohibits any interpretation of its provisions of its section related to “Tribal Access to Foster Care and Adoption” that affects the authority of a tribal entity and a State to enter into a cooperative agreement or contract for the administration of foster care and adoption assistance program or payment of Title IV-E funds.

## RULE OF CONSTRUCTION (Application of Medicaid Eligibility)

### *Current Law*

Children who are eligible for assistance under the Title IV-E foster care and adoption assistance program are made categorically eligible for Medicaid.

*Chairman's Mark*

The Chairman's Mark ensures that categorical eligibility for Medicaid continues to be available to children who are eligible for a Federal foster care maintenance payment, adoption assistance payment, or relative guardianship assistance payment under a tribal entity's Title IV-E foster care and adoption assistance plan approved by HHS.

CONFORMING AMENDMENT (Eligibility of children under tribal care and placement)

*Current Law*

To be eligible to receive Federal foster care assistance, a child's care and placement must be the responsibility of 1) the State child welfare agency, which administers the Title IV-E foster care and adoption assistance program, or 2) any other public agency with which the State child welfare agency has an agreement.

*Chairman's Mark*

The Chairman's Mark additionally permits eligibility for any child whose care and placement is the responsibility of an Indian tribe, tribal organization, or tribal consortium that has a Title IV-E foster care and adoption assistance plan approved by HHS.

JOHN H. CHAFEE FOSTER CARE INDEPENDENCE PROGRAM

*Current Law*

States receive a share of capped mandatory funding to provide independent living services to youth who are expected to remain in foster care until their 18<sup>th</sup> birthday and to youth who have emancipated from foster care (until their 21<sup>st</sup> birthday). They also receive a share of any discretionary appropriations provided for Education and Training Vouchers to support the post-secondary education (or comparable training) of older foster youth. A State must apply to receive funding under the Chafee Foster Care Independence program and must meet certain planning requirements and certifications as a part of the applications. HHS must pay to each State, the lesser of 80% of its Chafee Program cost (including those for Education and Training Vouchers) or the State's full allotment under these funding streams. A State's allotment of funds out of the mandatory Chafee funding (\$140 million annually) is based on its relative share of the national foster child population, except that no State may receive less than \$500,000 or the amount of funding they received for independent living services in FY1998. A State's allotment of any discretionary funding appropriated for Education and Training Vouchers (FY2008 funding = \$45 million) is based entirely on its relative share of the national foster care caseload.

*Chairman's Mark*

The Chairman's Mark provides that the Title IV-E provisions related to the Chafee Foster Care Independence Program (including the associated Education and Training Vouchers) do not apply to tribes except as described in the Mark.

Application of Chafee Foster Care Independence Program to Tribes

An Indian tribe, tribal organization, or tribal consortium with a Title IV-E foster care and adoption assistance plan approved by HHS, or one that is receiving funding to provide foster care pursuant to a tribal-State Title IV-E agreement or contract, may apply directly to HHS for an allotment of Chafee Foster Care Independence Program funds and/or Education and Training Voucher funds. The tribal entity's application must include a plan for providing independent living services that satisfies the planning and certification requirements made of States that HHS determines appropriate for the tribal entity. In addition, the application must describe the tribal entity's consultation process with all relevant State(s). In particular, it must include the results of the consultation with regard to determining Indian children's eligibility for benefits and services under a tribal entity's program and the process for ensuring continuity of benefits and services for

children who will transition from State-planned independent living benefits and services to tribal-planned independent living benefits and services.

#### Payment and Allotment

The Chairman's Mark requires HHS to make payments to each tribal entity with an approved application in the same manner that it makes these payments to States, unless the agency determines that another manner is more appropriate. (However, in no case may a tribal entity receive less than 80% of its program costs.) The allotment amount for each tribal entity is based on the share of children in the tribal entity's foster care population relative to the total number of children in foster care in the State (whether under the care and placement responsibility of the State or of any tribal entity in the State with an approved application for general Chafee independent living funds and/or Education and Training Voucher funds. (For example if there are 1,000 children in foster care in the State and 50 of those children are in the tribal entity's care and placement responsibility, then 5% of the State allotment of Chafee and/or Education and Training Voucher funds must be allotted to the tribal entity.) The Mark provides that any allotment amount for a tribal entity under the general Chafee program and/or Education and Training Vouchers program must be considered a part of a State's allotment of those program funds.

### STATE AND TRIBAL COOPERATION

#### *Current Law*

There is no foster care and adoption assistance State plan requirement (under Title IV-E) that a State and tribe must cooperate in the provision of services to eligible children. Under the Chafee Foster Care Independence Program, however, a State must certify that it has consulted with each Indian tribe located within its borders about its planned independent living programs, that efforts to coordinate the programs with these tribe(s) have been made, and that the benefits and services it provides under the programs will be made available to Indian children in the State on the same basis as to other children.

#### *Chairman's Mark*

The Chairman's Mark requires a State, as part of its Title IV-E foster care and adoption assistance plan, to provide that it will negotiate in good faith with any Indian tribe, tribal organization, or tribal consortium that asks to develop an agreement with the State under which 1) Federal (Title IV-E) payments would be available for children who are under tribal authority and who are placed for adoption, in foster family homes licensed by tribes, or with relative guardians; and 2) the tribe, organization, or consortium also has access to Federal Title IV-E resources for related program administration, training, and data costs.

In addition to the current certification related to Indian tribes, the Chairman's Mark requires a State as part of its application for Chafee Foster Care Independence Program funds to further certify that it will negotiate in good faith with any Indian tribe, tribal organization, or tribal consortium that does not receive a direct allotment of Federal funding under the program, but which seeks to develop an agreement of contract with the State to administer, supervise, or oversee Chafee independent living services for eligible children under tribal authority and to receive an appropriate portion of the State's allotment for this purpose.

### RULE OF CONSTRUCTION

#### *Current Law*

No provision.

### *Chairman's Mark*

The Chairman's Mark prohibits any interpretation of its provisions on "Tribal Foster Care and Adoption Access" that permits termination of funding to any Indian or Indian family receiving foster care or adoption assistance payments on a child's behalf, if those payments are being received as of the date of enactment of the bill and the State is claiming Federal reimbursement for a part of those payments. This rule of construction must remain true without regard to whether a cooperative agreement between the State and the tribe is in effect on the date of the bill's enactment or whether the tribal entity chooses, after the date of enactment, to directly operate a Title IV-E foster care and adoption assistance program.

The Chairman's Mark further prohibits any interpretation of its Tribal Foster Care and Adoption Access provisions that affects the responsibility of a State as part of its Title IV-E foster care and adoption assistance plan to provide Federal foster care maintenance payments, adoption assistance payments, and if it elects, relative guardianship assistance payments, for Indian children who are eligible for such payments and who are not otherwise being served by a tribal entity (either pursuant to a cooperative agreement with the State or under an HHS-approved foster care and adoption assistance plan of the tribal entity). Neither may it be interpreted as affecting the responsibility of a State to administer, supervise or oversee independent living programs under the Chafee Foster Care Independence Program on behalf of eligible Indian children who are not otherwise being served by a tribal entity with an approved Chafee plan or under a cooperative agreement or contract with the State.

## REGULATIONS

### *Current Law*

No provisions.

### *Chairman's Mark*

#### General

Except with regard to the in-kind claiming provisions (see below), the Chairman's Mark requires HHS to consult with Indian tribes, tribal organizations, tribal consortia and affected States and, within one year of their enactment, to promulgate interim final regulations to carry out the Tribal Foster Care and Adoption Access provisions of the Mark. These regulations must include procedures that ensure that a transfer of a child from State care and placement responsibility to tribal care and responsibility (whether under that tribal entity's foster care and adoption assistance plan approved by HHS or via a cooperative agreement with a State) affects neither that child's eligibility for Medicaid nor his or her eligibility for Federal payments or any services under Title IV-E.

#### In-Kind Expenditures

Not later than September 30, 2010, the Chairman's Mark requires HHS, in consultation with Indian tribes, tribal organizations, and tribal consortia, to promulgate interim final regulations to specify the types of in-kind expenditures, and the third-party sources for such in-kind expenditures, that may be claimed by tribal entities operating an approved foster care and adoption assistance plan under Title IV-E. Those regulations must also specify the share of non-Federal Title IV-E funds that tribal entities may claim as in-kind expenditures from third-party sources for purposes of receiving Federal reimbursement of Title IV-E administrative costs, including training costs. The Mark adds that the regulations regarding in-kind expenditures may not be in effect before the first day of FY2011 (October 1, 2010). Finally, the Mark includes a "Sense of the Senate" that if HHS fails to formally publish these required regulations, Congress should enact legislation to specify the in-kind expenditures from third-party sources, and the

share of non-Federal program costs those expenditures may represent and that tribal entities operating an HHS-approved foster care and adoption assistance program may claim.

#### EFFECTIVE DATE

##### *Current Law*

Not applicable.

##### *Chairman's Mark*

The Tribal Foster Care and Adoption Access section of the Chairman's Mark is effective as of the first day of FY2009 (October 1, 2008), without regard to whether the regulations required by the section have been promulgated by that date.

### ***Section 302: Grants to States that Successfully Collaborate with and Support Tribes to Improve Permanency Outcomes for Indian Children***

##### *Current Law*

States are required as part of their plan for Child Welfare Services (Title IV-B, subpart 1) to consult with tribal organizations and to describe the specific measures taken to comply with the Indian Child Welfare Act. Under the Chafee Foster Care Independence Program (Section 477), States must certify that they have consulted with and sought to cooperate with tribes in the provision of independent living services.

##### *Chairman's Mark*

##### Grant Authority and Definition of Indian Children

The Chairman's Mark creates a new Section 479C of the Social Security Act that requires HHS, in each of FY2010 through FY2014, to make grants to States that successfully collaborate with tribes to improve the services and permanency outcomes for Indian children and their families. For purposes of this grant, Indian children are defined as those children who are members of, enrolled in, or affiliated with a tribe, OR children who are eligible for membership, enrollment, or affiliation with a tribe.

##### Eligible States

The Chairman's Mark provides that any State seeking a Successful Collaboration and Tribal Support grant must submit to HHS the following (in the manner and form requested by the agency):

1) Evidence of collaboration by the State with Indian tribes, tribal organizations, or tribal consortia to plan for and ensure access to services and supports for Indian children and their families. At a minimum this must include evidence of consultation with tribal organizations and specific measures taken to comply with the Indian Child Welfare Act (as now required under Title IV-B), and evidence of the consultation and good faith negotiation efforts required under the State foster care and adoption assistance plan (as added by the Chairman's Mark) and the State application for the Chafee Foster Care Independence Program (as amended by the Chairman's Mark);

2) Evidence that the State has obtained from HHS, or is engaged in accessing technical assistance (including through the National Child Welfare Resource Center for Tribes, established in the Mark) to improve services and permanency outcomes for Indian children and their families through improved identification of Indian children, increased recruitment of Indian foster family homes, and improved rates of family reunification, legal or relative guardianships, or adoptive homes; and

3) Evidence of improved outcomes for Indian children and their families and any other data HHS may require for verification that an improvement, appropriate for Indian children and their families, has been achieved.

#### Amount of Grant

The Chairman's Mark provides that based on this evidence, every State found eligible by HHS for a Successful Collaboration and Tribal Support Grant (in a given grant year) must receive a portion of the total grant funding provided. And that the amount for each eligible State must be based on the number of Indian children in the State relative to the number of Indian children in all of the States found to be eligible for a Successful Collaboration and Tribal Support grant.

#### Appropriation

The Chairman's Mark appropriates \$5 million to HHS to make these grants in each of FY2010 through FY2014.

### ***Section 303 Establishment of National Child Welfare Resource Center for Tribes***

#### *Current Law*

No provision.

#### *Chairman's Mark*

The Chairman's Mark creates a new Section 479D of the Social Security Act that requires HHS to establish a National Child Welfare Resource Center for Tribes that is "specifically and exclusively" dedicated to meeting the needs of Indian tribes and tribal organizations and improving services and permanency outcomes for Indian children and their families.

The Mark provides that this resource center must – 1) provide information, advice, educational materials, and technical assistance to Indian tribes and tribal organizations regarding the types of services, administrative functions, data collection, program management, and reporting that are provided for under the child and family services programs of Title IV-B and the foster care and adoption assistance program of Title IV-E; 2) assist and provide technical information to tribes, organization or consortia seeking to operate programs under Title IV-B or Title IV-E; and 3) assist and provide technical assistance to those tribal entities and States seeking to develop cooperative agreements under Title IV-E or to meet the requirements (included in Title IV-B or Title IV-E) that are related to State and tribal consultation or good faith negotiations (as added by the Mark).

The Mark permits HHS to directly establish the National Child Welfare Resource Center for Tribes, or to establish it through a grant or contract with a public or private organization that is knowledgeable in the field of Indian tribal affairs and child welfare. The Mark appropriates \$1 million in each of FY2009 through FY2013 for this resource center.

## TITLE IV --- SUPPORT FOR OLDER CHILDREN IN FOSTER CARE AND OTHER PROVISIONS

### *Section 401: State Option for Children in Foster Care or in an Adoptive or Relative Guardianship Placement After Attaining Age 18*

#### DEFINITION OF CHILD

##### *Current Law*

There is no definition of “child” for purposes of the child welfare programs authorized under Title IV-E or Title IV-B of the Social Security Act. In general, a child may no longer be eligible for Federal foster care maintenance payments or adoption assistance payments once he or she has attained 18 years of age. However, in the case of a foster care maintenance payment, a child who at his or her 18<sup>th</sup> birthday is still a fulltime high school student (and who can reasonably be expected to complete this degree) may remain eligible until his or her 19<sup>th</sup> birthday. Further, in the case of a child on whose behalf adoption assistance payments are being made, if a State determines that the child has a “mental or physical handicap” that warrants continued assistance, it may continue to provide these payments until the child’s 21<sup>st</sup> birthday.

##### *Chairman’s Mark*

The Chairman’s Mark defines a child, for purposes of Title IV-E or Title IV-B, as an individual who has not reached his or her 18<sup>th</sup> birthday -- *except* for certain individuals (as described in the following sentences). The Mark permits States to define as a “child,” – and thus to provide Federal foster care maintenance payments, adoption assistance payments, and/or relative guardianship payments to – otherwise eligible individuals who have reached their 18<sup>th</sup> birthdays but who have not yet reached their 19<sup>th</sup>, 20<sup>th</sup> or 21<sup>st</sup> birthday (whichever highest age the State chooses). The Mark provides, however that to be eligible for continued adoption assistance or relative guardianship assistance agreements under this definition, the child must have been adopted or placed in guardianship out of foster after reaching his/her 16<sup>th</sup> birthday. Further, to be defined as a “child” (and thus to remain eligible for Federal foster care maintenance, adoption assistance, or relative guardianship assistance payments) after reaching his or her 18<sup>th</sup> birthday, the individual must be – 1) completing high school; 2) enrolled in college (or equivalent vocational education); 3) participating in a program or activity designed to promote employment or remove barriers to employment; 4) employed at least 80 hours per month; or 5) determined by the State to be “particularly vulnerable” or “a high-risk individual.”

#### CONFORMING AMENDMENT TO DEFINITION OF CHILD-CARE INSTITUTION

##### *Current Law*

To be eligible for Federal foster care maintenance payments, a child must be living in a foster family home or in a “child-care institution.”

##### *Chairman’s Mark*

The Chairman’s Mark amends the definition of “child care institution” to include -- but only in the case of a child in foster care who is at least 18 years of age -- a “supervised setting in which the individual is living independently” in accordance with the conditions that HHS must establish in regulation.

CONFORMING AMENDMENTS TO AGE LIMITS APPLICABLE TO CHILDREN ELIGIBLE FOR ADOPTION ASSISTANCE OR RELATIVE GUARDIANSHIP ASSISTANCE

*Current Law*

Prohibits payment of Federal adoption assistance to any child who has reached age 18, unless the State determines that the assistance is warranted due to the child's physical or mental handicap. Further prohibits payment of Federal adoption assistance on behalf of a child, if the State determines that the parents are no longer legally responsible for the child or the child is no longer receiving support from the parents. Parents who are receiving adoption assistance on behalf of a child are required to keep the State or local child welfare agency informed of circumstances that would make them ineligible to receive further adoption assistance on the child's behalf or which would make them eligible to receive adoption assistance payments for the child in a different amount.

*Chairman's Mark*

In general, the Chairman's Mark restates all of these provisions so that they also apply to relative guardianship payments (or to relative guardians as applicable). However, consistent with the new definition of child, the Mark also notes that a State may elect to provide adoption assistance and relative guardianship assistance payments to a child after his or her 18<sup>th</sup> birthday (and before his/her 21<sup>st</sup> birthday) consistent with the rules described above (see "Definition of Child").

EFFECTIVE DATE

*Current Law*

Not applicable.

*Chairman's Mark*

The Chairman's Mark makes the provisions related to the "State Option for Children in Foster Care or in Adoptive or Relative Guardianship After Attaining Age 18" effective with the first day of FY2011 (October 1, 2010).

***Section 402: Transition Plan for Children Aging Out of Foster Care***

TRANSITION PLAN FOR CHILDREN AGING OUT OF FOSTER CARE

*Current Law*

A State is required to have in place a case review system for each child in foster care to, among other things, periodically review the child's status in foster care and to develop and carry out a permanency plan for the child.

*Chairman's Mark*

The Chairman's Mark amends the definition of a case review system to require that – during the 90-day period immediately before a child legally emancipates (whether during that period the child is receiving a foster care maintenance payment, or benefits or services under Section 477) – the child's caseworker, and other representatives as appropriate, must help the child develop a personal transition plan. The plan must be as detailed as the child chooses and include specific options on housing, health insurance, education, local opportunities for mentoring, continuing support services, work force supports and employment services.

## EFFECTIVE DATE

### *Current Law*

Not applicable.

### *Chairman's Mark*

In general, the amendments made regarding a "Transition Plan for Children Aging Out of Foster Care" are effective on October 1, 2008. However HHS may delay required compliance for any State that it determines must enact legislation (other than legislation to appropriate funds) to meet this additional requirement.

## ***Section 403: Educational Stability***

## EDUCATIONAL STABILITY

### *Current Law*

A State is required to maintain an individual written case plan for each child in foster care. Among other things, this case plan must include the child's health and education records with an assurance that the child's placement in foster care takes into account proximity to the school in which the child is enrolled at the time of the placement.

### *Chairman's Mark*

The Chairman's Mark maintains all of these current law requirements but additionally requires the State child welfare agency to include in each child's case plan an assurance that it has coordinated with local educational agencies to ensure that the child remains in the school where he/ she is enrolled at the time of placement into foster care OR, if remaining in that school is not in the child's best interests, assurances that the State child welfare agency and the local educational agencies provide immediate and appropriate enrollment in a new school, with all of the educational records of the child provided to that school.

## TRANSPORTATION TO SCHOOL OF ORIGIN

### *Current Law*

Under Title IV-E, States are entitled to receive federal reimbursement at their Federal Medical Assistance Percentage (FMAP), which ranges from 50% in States with the highest per capita incomes to 83% in States with the lowest per capita income, for the cost of providing foster care maintenance payments on behalf of an eligible child. The definition of a "foster care maintenance payment" includes payments for "food, clothing, shelter, daily supervision, school supplies, a child's personal incidentals, liability insurance with respect to a child, and reasonable travel to the child's home for visitation."

States are also entitled to receive federal reimbursement of 50% of their costs related to the "proper and efficient" administration of their Title IV-E foster care program. (HHS has recently provided guidance to States indicating that transportation of a child in foster care to and from his/her school of origin is a Title IV-E administrative function and, thus, that 50% of the costs of this transportation may be claimed as a Title IV-E administrative cost.

### *Chairman's Mark*

The Chairman's Mark would amend the definition of "foster care maintenance payment" to permit States to claim reimbursement (for eligible children), at their FMAP, for the cost of "reasonable travel for the child to remain in the school in which the child is enrolled at the time of placement" in foster care.

## EDUCATIONAL ATTENDANCE

### *Current Law*

The law requires each child on whose behalf federal foster care maintenance payments or adoption assistance payments are made to meet certain federal eligibility requirements.

### *Chairman's Mark*

The Chairman's Mark adds a new condition of eligibility for Federal foster care maintenance payments, adoption assistance payments, or relative guardianship assistance payments (as authorized by the Mark). The Mark requires a State to provide assurances that each child who has reached the minimum age of compulsory school attendance in his/her State and who is receiving a foster care maintenance payment, adoption assistance payment, or relative guardianship payment is a full-time elementary or secondary school student, or has completed high school. The Mark defines a full-time elementary or secondary school student to include a child who is enrolled at a secondary, or elementary school, or one who is receiving home school instruction or participating in independent study, provided that enrollment, home schooling or independent study is done in accordance with the law of the State or relevant jurisdiction. Finally, the Mark defines a full-time elementary and secondary student to include children who are incapable of attending school on a full-time basis due to a medical condition, if this fact is supported by regularly updated information in the child's required case plan.

## EFFECTIVE DATE

### *Current Law*

Not applicable.

### *Chairman's Mark*

The Chairman's Mark makes the provisions of the section on "Educational Stability" effective on the first day of FY2009 (October 1, 2008). However, HHS may delay required compliance for any State that it determines must enact legislation (other than legislation to appropriate funds) to meet this additional requirement.

## TITLE V – REVENUE PROVISIONS

### *Section 501: Clarification of Uniform Definition of Child<sup>1</sup>*

#### **Present Law**

#### **Uniform definition of qualifying child**

##### In general

Present law provides a uniform definition of qualifying child (the "uniform definition") for purposes of the dependency exemption, the child credit, the earned income credit, the dependent care credit, and head of household filing status. A taxpayer generally may claim an individual who does not meet the uniform definition (with respect to any taxpayer) as a dependent if the dependency requirements are satisfied. The uniform definition generally does not modify other parameters of each tax benefit (e.g., the earned income requirements of the earned income

---

<sup>1</sup> This description was prepared by the staff of the Joint Committee on Taxation.

credit) or the rules for determining whether individuals other than children of the taxpayer qualify for each tax benefit.

Under the uniform definition, in general, a child is a qualifying child of a taxpayer if the child satisfies each of three tests: (1) the child has the same principal place of abode as the taxpayer for more than one half the taxable year; (2) the child has a specified relationship to the taxpayer; and (3) the child has not yet attained a specified age. A tie-breaking rule applies if more than one taxpayer claims a child as a qualifying child.

The support and gross income tests for determining whether an individual is a dependent generally do not apply to a child who meets the requirements of the uniform definition.

#### Residency test

Under the uniform definition's residency test, a child must have the same principal place of abode as the taxpayer for more than one half of the taxable year. Temporary absences due to special circumstances, including absences due to illness, education, business, vacation, or military service, are not treated as absences.

#### Relationship test

In order to be a qualifying child, the child must be the taxpayer's son, daughter, stepson, stepdaughter, brother, sister, stepbrother, stepsister, or a descendant of any such individual. For purposes of determining whether an adopted child is treated as a child by blood, an adopted child means an individual who is legally adopted by the taxpayer, or an individual who is lawfully placed with the taxpayer for legal adoption by the taxpayer. A foster child who is placed with the taxpayer by an authorized placement agency or by judgment, decree, or other order of any court of competent jurisdiction is treated as the taxpayer's child.

#### Age test

The age test varies depending upon the tax benefit involved. In general, a child must be under age 19 (or under age 24 in the case of a full-time student) in order to be a qualifying child. In general, no age limit applies with respect to individuals who are totally and permanently disabled within the meaning of section 22(e)(3) at any time during the calendar year. A child must be under age 13 (if he or she is not disabled) for purposes of the dependent care credit, and under age 17 (whether or not disabled) for purposes of the child credit.

#### Children who support themselves

A child who provides over one half of his or her own support generally is not considered a qualifying child of another taxpayer. However, a child who provides over one half of his or her own support may constitute a qualifying child of another taxpayer for purposes of the earned income credit.

#### Tie-breaking rules

If a child would be a qualifying child with respect to more than one individual (e.g., a child lives with his or her mother and grandmother in the same residence) and more than one person claims a benefit with respect to that child, then the following "tie-breaking" rules apply. First, if only one of the individuals claiming the child as a qualifying child is the child's parent,

the child is deemed the qualifying child of the parent. Second, if both parents claim the child and the parents do not file a joint return, then the child is deemed a qualifying child first with respect to the parent with whom the child resides for the longest period of time, and second with respect to the parent with the highest adjusted gross income. Third, if the child's parents do not claim the child, then the child is deemed a qualifying child with respect to the claimant with the highest adjusted gross income.

#### Interaction with other rules

Taxpayers generally may claim an individual who does not meet the uniform definition with respect to any taxpayer as a dependent if the dependency requirements (including the gross income and support tests) are satisfied. Thus, for example, a taxpayer may claim a parent as a dependent if the taxpayer provides more than one half of the support of the parent and the parent's gross income is less than the personal exemption amount. As another example, a grandparent may claim a dependency exemption with respect to a grandson who does not reside with any taxpayer for over one half the year, if the grandparent provides more than one half of the support of the grandson and the grandson's gross income is less than the personal exemption amount.

#### Children of divorced or legally separated parents

In the case of divorced or legally separated parents, a custodial parent may release the claim to a dependency exemption and the child credit to a noncustodial parent. While the definition of qualifying child is generally uniform, this custodial waiver rule does not apply with respect to the earned income credit, head of household status, or the dependent care credit.

#### Other provisions

A taxpayer identification number for a child must be provided on the taxpayer's return. For purposes of the earned income credit, a qualifying child is required to have a social security number that is valid for employment in the United States (that is, the child must be a U.S. citizen, permanent resident, or have a certain type of temporary visa).

### **Dependency rules**

#### In general

An individual may be claimed as a taxpayer's dependent if such individual is a qualifying child or a qualifying relative of the taxpayer and meets certain other requirements. An individual is a taxpayer's qualifying relative if such individual (1) bears the appropriate relationship to the taxpayer; (2) has a gross income that does not exceed the personal exemption amount; (3) receives one-half of his or her support from the taxpayer; and (4) is not a qualifying child of the taxpayer. Generally, an individual bears the appropriate relationship to the taxpayer if the individual is the taxpayer's lineal descendent or ancestor, brother, sister, aunt, uncle, niece, or nephew. Some relations by marriage also qualify, including stepmothers, stepfathers, stepbrothers, stepsisters, sons-in-law, daughters-in-law, fathers-in-law, mothers-in-law, brothers-in-law, and sisters-in-law. In addition, an individual bears the appropriate relationship if the individual has the same principal place of abode as the taxpayer and is a member of the taxpayer's household.

### Dependents of dependents

Generally, if an individual is a dependent of a taxpayer for any taxable year, such individual is treated as having no dependents for such taxable year. Therefore, the individual is ineligible to claim:

- (1) head of household filing status;<sup>2</sup>
- (2) the dependent care credit;<sup>3</sup> or
- (3) a dependency exemption.<sup>4</sup>

### Married dependents

Generally, an individual filing a joint return with such individual's spouse is not treated as the dependent of a taxpayer. Therefore, the taxpayer is ineligible to claim the earned income credit or a dependency exemption with respect to such individual.

### Citizenship and residency

Children who are U.S. citizens or nationals living abroad or non-U.S. citizens or nationals living in Canada or Mexico may qualify as dependents. In addition, a legally adopted child who does not satisfy the residency or citizenship requirement may nevertheless qualify as a dependent if (1) the child's principal place of abode is the taxpayer's home and (2) the taxpayer is a citizen or national of the United States.

### **Earned income credit**

The earned income credit is a refundable tax credit available to certain lower-income individuals. Generally, the amount of an individual's allowable earned income credit is dependent on the individual's earned income, adjusted gross income, and the number of qualifying children.

An individual who is a qualifying child of another individual is not eligible to claim the earned income credit. Thus, in certain cases a taxpayer caring for a younger sibling in a home with no parents would be ineligible to claim the earned income credit based solely on the fact that the taxpayer is a qualifying child of the younger sibling if the taxpayer meets the age, relationship, and residency tests.

## **Description of Proposal**

### **Limit definition of qualifying child**

The proposal adds a new requirement to the uniform definition. Specifically, it provides that an individual who otherwise satisfies the uniform definition is not treated as a qualifying child unless he or she is either: (1) younger than the individual claiming him or her as a qualifying child or (2) permanently and totally disabled.

---

<sup>2</sup> Sec. 2.

<sup>3</sup> Sec. 21.

<sup>4</sup> Sec. 151.

The proposal also provides that an individual who is married and files a joint return (unless the return is filed only as a claim for a refund) will not be considered a qualifying child for child-related tax benefits, including the child tax credit.

### **Restrict qualifying child tax benefits to child's parent**

The proposal provides that if a parent may claim a particular qualifying child, no other individual may claim that child. There is one exception to this rule: if no parent claims the qualifying child, another individual may claim such child if such other individual (1) is otherwise eligible to claim the child and (2) has a higher adjusted gross income for the taxable year than any parent eligible to claim the child.

The proposal further provides that dependent filers are not eligible for child-related tax benefits.

### **Effective date**

The proposal is effective for taxable years beginning after December 31, 2008.

### ***Section 502: Collection of Unemployment Compensation Debts Resulting from Fraud***

#### **COLLECTION OF UNEMPLOYMENT COMPENSATION DEBTS RESULTING FROM FRAUD**

##### *Current Law*

Section 6402 of the Internal Revenue Code (I.R.C.) allows the Treasury Department to credit overpayments (and interest) against any liability with respect to an internal revenue tax on the part of the person who made the overpayment (subject to credits against estimated tax under certain circumstances. These circumstances are the following: to offset past-due child support payments that have been assigned to the State; collection of debts owed to Federal agencies; and collection of past-due and legally enforceable State income tax obligations).

##### *Chairman's Mark*

The Chairman's Mark allows the Treasury Department, under certain circumstances, to reduce any Federal income tax overpayments by the collection of covered State unemployment compensation (UC) debts if the debt is on account of fraud and to pay the State by the amount of such debts. The Treasury Department would notify the State of such person's name, taxpayer identification number, address, and the amount collected. The Treasury Department would also notify the person making such overpayment that the overpayment had been reduced by an amount necessary to satisfy a covered unemployment compensation debt. If an offset is made to a joint return, the notice would include information related to the rights of a spouse of a person subject to such an offset.

The Mark sets the priority order of the reductions as: internal revenue tax liability; past due child support; federal agency debt; and, finally, the collection of past-due and legally enforceable State income tax obligations and covered UC debts on account of fraud. The reductions would occur before any such overpayment would be credited to future Federal internal revenue tax.

The Mark requires that the reduction on account of UC debt apply only to those persons whose address shown on the Federal return is an address within the State seeking the offset.

The Mark requires that States must:

- notify the individual of the debt by certified mail with return receipt;
- allow 60 days for the individual to present evidence that the individual does not have a legally enforceable debt that is due to fraud;
- consider the evidence presented by the individual; and
- satisfy such other conditions as the Treasury Department may prescribe to ensure that the determination is valid and that the State has made reasonable efforts to obtain payment of such covered UC debt.

The Mark defines covered UC debt to be any of the following items: past-due debt for erroneous payment of UC due to fraud which has become final under the State's law and which remains uncollected; contributions due to the State's unemployment fund on account of fraud; and, any penalties and interest assessed on such debt.

The Mark allows the Treasury Department to issue regulations on the time and manner for States to submit notices of UC debts due to fraud. These regulations would be authorized to include:

- the setting of a minimum amount of debt for the reduction procedure to be applied;
- a required fee paid to the Treasury for the cost of applying such reduction procedure and used to reimburse the appropriations account that bore the cost of applying such procedure; and
- a requirement that States submit notices of covered UC debt to the Treasury Department via the Labor Department in accordance with procedures established by the Labor Department where the procedures may require States to pay a fee to the Labor Department; those fees may be deducted from amounts collected and used to reimburse the appropriations account that bore the cost of collecting the notices of covered UC debt.

The Mark requires that erroneous payments to the State must be promptly paid back to the Treasury.

#### DISCLOSURE OF CERTAIN INFORMATION TO STATES REQUESTING REFUND OFFSETS FOR LEGALLY ENFORCEABLE STATE UNEMPLOYMENT COMPENSATION DEBT RESULTING FROM FRAUD

##### *Current Law*

Paragraph (3) of section 6103(a) of the I.R.C. describes the confidentiality and disclosure of Federal tax returns and return information. Paragraph (3) of section 6103(a) requires returns and return information to be confidential. Among other items, Section 6103 authorizes the conditions under which authorized persons, employees, or officers (who are not Department of the Treasury officers or employees) may have access to federal tax returns or return information.

*Chairman's Mark*

The Chairman's Mark allows the disclosure of information to officers and employees of the Department of Labor for purposes of facilitating the exchange of data in connection with a request made under its proposed changes in section 6402 of the I.R.C. The Mark also allows access to the information to the Department of Labor's agents who maintain and provide technological support to the Department of Labor's Interstate Connection Network (ICON) solely for the purpose of providing such maintenance and support.

EXPENDITURES FROM THE STATE FUND

*Current Law*

Paragraph (4) of section 3304(a) of the I.R.C requires that all money withdrawn from a State's account in the federal Unemployment Trust Fund be used solely for the payment of UC benefits. Exceptions to this include sums erroneously paid into the fund and refunds paid in accordance with the provisions of section 3305(b). Other exceptions include (a) the amount of employee payments into the unemployment fund of a State used in the payment of cash benefits to individuals with respect to their disability, exclusive of administration expenses, (b) certain expenses incurred by the State for administration of its unemployment compensation law and public employment offices, (c) deduction of health insurance payments and for tax withholding, (d) repayment of overpayments as provided in section 303(g) of the Social Security Act, (e) payment for short-time compensation under a plan approved by the Secretary of Labor, and (f) the self-employed assistance program benefit.

*Chairman's Mark*

The Chairman's Mark authorizes that the fees from collecting covered UC debt be deducted and that the penalties and interest from the collections be transferred to the appropriate State fund into which the State would have deposited such amounts had the person owing the debt paid such amounts directly to the State. The remainder of the collected UC debt is deposited into the appropriate State account within the federal Unemployment Trust Fund.

CONFORMING AMENDMENTS

*Current Law*

Not applicable.

*Chairman's Mark*

The Chairman's Mark amends section 6402 of the I.R.C. to reflect the changes created by the Mark.

EFFECTIVE DATE

*Current Law*

Not applicable.

*Chairman's Mark*

The amendments made by the Chairman's Mark in the section, "Collection of Unemployment Compensation Debts Resulting From Fraud," apply to refunds payable on or after the date of its enactment.

### ***Section 503: Investment of Operating Cash***

#### *Current Law*

The Treasury Department is responsible for short-term management of excess Federal operating cash, which it can invest in short-term obligations of the United States government or collateralized obligations of certain financial institutions that maintain Federal Treasury tax and loan accounts. The Treasury Department is not permitted to require the sale of obligations by a particular person, dealer, or financial institution.

#### *Chairman's Mark*

In addition to the current investment options, the Chairman's Mark permits the Treasury Department to invest excess operating cash, for not more than 90 days, in repurchase agreements. The Mark eliminates the provision that bars the Treasury Department from requiring the sale of obligations by a particular person, dealer, or financial institution. Finally, the Mark requires the Treasury Department to submit to the Senate Finance and House Ways and Means Committees, for each fiscal year, a report detailing the investment of operating cash in obligations or repurchase agreements, the Department's considerations of risks associated with those investments, and actions taken to manage those risks.

#### **EFFECTIVE DATE**

##### *Current Law*

Not applicable.

##### *Chairman's Mark*

The Chairman's Mark makes the amendments in this section, "Investment of Operating Cash, effective with the first day of FY2009 (October 1, 2008).