

Title IV-E Foster Care Eligibility

Program/Funding Description:

Title IV-E of the Social Security Act provides for federal funding for foster care maintenance and certain related administrative costs for children who meet the Title IV-E Foster Care eligibility requirements for initial determination and at re-determination. For social services districts to claim room and board payments under Title IV-E, the child's eligibility for the program must be established, documented and authorized pursuant to the instructions in this chapter, and the child must reside in a fully certified or approved foster boarding home or licensed facility.

While Title IV-E funding applies to foster care maintenance and administrative costs only (it may not be used for provision of social services), TANF-EAF funding may be used for care and maintenance for cases not eligible for Title IV-E, as well as for tuition for foster children and social services (i.e., counseling and therapy), provided as part of the foster care plan or provided to prevent or reduce the need for foster care for children not in foster care status.

All children in foster care except for non-qualified immigrants are categorically eligible for Medicaid and do not require a separate determination for Medicaid (MA) (Title XIX).

Required Steps in Determining Eligibility

Completing the *Initial Foster Child Eligibility Checklist (LDSS-4809 rev. 10/10)/Automated Eligibility Worksheet* is the first step in determining eligibility for Title IV-E Foster Care.

Complete a separate *Checklist* for each foster child. (See *Appendix A* for a sample copy of the *Checklist*.) Once a determination is made for the child, whether or not the child is found eligible, continue to review the case to determine the child's eligibility for Temporary Assistance to Needy Families-Emergency Assistance to Families (TANF-EAF).

Title IV-E Foster Care Requirements

To be eligible for Title IV-E Foster Care, the child must meet all eight initial eligibility requirements and each must be appropriately documented:

- Age
- Citizenship
- Legal Authority
- Contrary to the Welfare/Best Interests
- Reasonable Efforts to Prevent Removal
- Living with a Specified Relative
- Parental Deprivation
- AFDC Financial Eligibility

👉 Title IV-E may be claimed if and when it can be documented. Title IV-E may not be claimed until all eligibility requirements are satisfied!

Chapter One Part A: Title IV-E Foster Care Eligibility

These Title IV-E requirements are discussed below in the order that they appear on the *Initial Foster Child Eligibility Checklist (LDSS-4809 rev. 10/10)*. Included in the discussion are instructions for completing the *Checklist* in its entirety and detailed explanations for each requirement followed by the acceptable documentation. These instructions have been formatted to follow completion of the *Checklist*. (See *Appendix A* for a sample copy of the *Checklist*.)

⚡ Please note that for the Title IV-E Eligibility section of the form, there are designated lines immediately following the requirement to enter the source and location of documentation. These are in addition to Section V. Documentation of Eligibility. Entries are required in at least one of these two areas.

The symbol → indicates a direction to enter information. When necessary, the instructions are followed by an **Explanation** of the item and the **Documentation** required. Remember to complete a separate *Checklist* for each foster child. Each *Checklist* item is circumscribed in a box.

It is strongly recommended that the Checklist with the attached documentation be kept in a separate, identified section of the case record that is maintained for eligibility purposes. Please note that this case record is confidential and must be protected to prevent exposure of the child's information to anyone other than personnel authorized by law.

Section I. Case Information

- Enter the Case Name; Child's Name (Last, First, Middle Initial); Unit/Worker Number; Date of Birth (DOB); Child's Client Identification Number (CIN) (optional); and Case Number.
- Enter the Family Assistance (FA) or Safety Net (SN) Clearance Date.
- Check YES or NO regarding whether the child is a FA/SN Recipient.
- Check the Welfare Management System (WMS) Screen Print box if included in the case record.
- Check FA/SN Automated Budget Eligibility Logic (ABEL) Budget box, if included in the case record
- Enter the Supplemental Security Income (SSI) Clearance Date.
- Check YES or NO regarding whether the child is an SSI Recipient.

Explanation:

Use the most accurate data available for entering information. The Welfare Management System (WMS) Family Assistance/Safety Net (FA/SN) clearance (if available) contains reliable demographic data. See also court documents for date of birth. Receipt of Supplemental Security Income (SSI) can be checked on the State Data Exchange (SDX).

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If a foster child is receiving Family Assistance or Safety Net at the time of placement, notify Temporary Assistance to allow for the modification of the ABEL budget. Also notify Temporary Assistance when, based on information in the case record, a family member of any foster child is found to be improperly receiving Temporary Assistance.

Section II. Title IV-E Eligibility

- Enter the Court Petition Filed Date
- Enter the Date of Removal from the Home

Explanation:

The court petition filed date is the date the court petition was filed leading to or directing the child's removal from the home. This date is used to determine the month for which Aid to Families with Dependent Children (AFDC) eligibility (using July 1996 AFDC standards) must be established to meet initial Title IV-E eligibility.

The date of removal is the date of the child's removal from the home of the parent or specified relative who had legal custody or legal guardianship of the child. (See **Question 6**,

Explanation section for definition of physical and constructive removal.)

Foster Child Must Meet All Requirements Below for Title IV-E Eligibility: If any of the responses to Questions 1-8 are "NO," child is NOT Title IV-E eligible

1. **Age.** Was the child under the age of 18 on the date of the court order or the date the Voluntary Placement Agreement was signed?
 - Check YES if the child is under age 18 years.
 - Check NO if the child is age 18 or older. Child is not Title IV-E eligible. ☞ Go to **Section IV** and indicate ineligible for Title IV-E and TANF-EAF.

Explanation:

Under NYS State law, a child must be under age 18 to enter foster care. Effective November 11, 2010, certain categories of youth who had been in foster care may re-enter foster care after age 18 as a new foster care episode.¹

¹ Further instructions will be forthcoming

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Acceptable Documentation:

- Non-services WMS screen reflecting the child's date of birth
- Birth certificate²
- Baptismal certificate
- Hospital Records
- U.S. Passport
- Naturalization certificate
- Court records
- School records
- Family Assessment and Service Plan (FASP)/Progress notes that substantiate one of the above certificates was seen by the caseworker—should include the child's name, date of birth, parents' names and type of certificate or certificate number, if available

If the response to this question is YES, enter the source of documentation on the designated line. In addition, include a copy in the child's eligibility file and indicate on the designated line, where in the child's case file this documentation can be found.

2. Citizenship. Is the child a citizen of the United States or a qualified immigrant as defined under the federal PRWORA documentation requirements for citizenship or legal immigration status?

→ Check YES if the child is a U.S. citizen or a qualified immigrant.

→ Check NO if the child is not a U.S. citizen or a qualified immigrant. Child is not Title IV-E eligible. ☞ Go to **Section IV** and indicate child is ineligible for any funding.

Explanation:

A recipient of Title IV-E must be a citizen of the United States or a qualified immigrant as defined by the 1996 Personal Responsibility and Work Opportunity Reconciliation Act (PRWORA). This citizenship or qualified immigrant requirement is identical to the TANF-EAF and Title XX Below 200% programs; an answer of "NO" results in ineligibility for any federal funding except for certain emergency services including child protective and emergency medical services.

Citizenship or immigration status of any child in foster care must be verified regardless of whether Title IV-E Foster Care payments are made on their behalf. (See *Appendix B* for list of United States Citizen and Immigration Services [USCIS] documents).

² See *10-OCFS-INF-10* for details regarding birth certificates from Puerto Rico.

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Acceptable Documentation:

U.S. Citizen

- Birth certificate³
- U.S. Passport
- Court Records
- Naturalization certificate

Qualified Immigrant

- WMS Case Composition screen showing child receives Family Assistance (FA), Medical Assistance (MA),⁴ Home Energy Assistance Program (HEAP) or Food Stamps (FS)
- Documents from the United States Citizen and Immigration Services (USCIS)
- Court Records

See *Appendix B* for the *Immigration Status List*

Please note:

- You cannot rely on an individual's receipt of Safety Net Assistance as documentation of qualified immigrant status, as there are additional groups of immigrants who can qualify for Safety Net, which is a State program.
- All children in foster care except for non-qualified immigrants are categorically eligible for Medicaid and do not require a separate determination for Medicaid (MA) (Title XIX).

If the response to this question is YES, enter the source of documentation on the designated line. In addition, include a copy in the child's eligibility file and indicate on the designated line, where in the child's case file this documentation can be found.

³ See *10-OCFS-INF-10* for details regarding birth certificates from Puerto Rico.

⁴ **Medicaid Exception:** State and local Medicaid eligibility for otherwise eligible immigrants is not dependent on whether the immigrant is a qualified immigrant or non-qualified immigrant or the date on which the immigrant entered the U.S. as outlined in PRWORA. State and local Medicaid coverage cannot be denied if an otherwise eligible immigrant is permanently residing in the U.S. under Color or Law (PRUCOL) or is a lawfully admitted permanent resident. Also, federally funded Medicaid may be granted to otherwise eligible undocumented immigrants for emergency services only. Pregnant women are not required to document citizenship or immigration status in order to be eligible for Medicaid. These individuals can be identified on **upstate** WMS by category codes: **38** (Alien FP-Emergency Only); **37** (Alien FNP-Eligible MA-Does Not Meet PRWORA); and **76** (Legal Aliens-Eligible MA-Does Not Meet PRWORA). On **downstate** WMS, the individuals are identified by alien code **E** (Undocumented Aliens-Emergency MA Only) or State/federal charge codes: **60** (TANF Ineligible Alien) and **67** (Qualified Alien in the Five Year Ban for Medicaid/PRUCOL).

3. Legal Authority.

a) Was the child removed from the home of a parent or other specified relative as a result of a court order under FCA Articles 3 (JD), 7 (PINS), 10 (abuse/ neglect) or 10-C (destitute child)⁵, SSL 358-a (approval of a SSL 384 surrender), or SSL 384-b (deceased parents) and does the placement court order transfer care and custody or custody and guardianship to the Commissioner of the LDSS/ACS?

OR

b) Was a Voluntary Placement Agreement signed by a parent or legal guardian⁶ and the LDSS/ACS District Representative pursuant to SSL 384-a that grants care and custody to the Commissioner of the LDSS/ACS?

→ Check YES in box “i” if the placement court order gives care and custody or custody and guardianship to the Commissioner of the LDSS/ACS **or**

→ Check YES in box “ii” if the Voluntary Placement Agreement is signed by the parent or legal guardian and the Local District Representative

→ Enter the date of the court order/the date the Voluntary Placement Agreement was signed on the designated line

→ Enter the Docket # on the designated line

AND

☞ *Check the basis for legal custody box that applies (check only one box)*

FCA Article 3, FCA Article 7, FCA Article 10, FCA Article 10-C, SSL 358-a, SSL 384-a or SSL 384-b, as appropriate.

→ Check NO if none of the circumstances cited in items “a” or “b” apply to the child. Child is not Title IV-E eligible. ☞ **Go to Section III** to determine eligibility for TANF-EAF

Explanation:

All foster care placements require that legal custody (care and custody or custody and guardianship) be awarded to the Commissioner of the LDSS/ACS. Court documents (court order or court transcript) must indicate whether the child's legal custody (care and custody or custody and guardianship) is with the Commissioner of the LDSS/ACS. (If the Commissioner has not been awarded care and custody or custody and guardianship through a court order or a Voluntary Placement Agreement, return the case file to the Case Manager for follow up.)

⁵ See 12-OCFS-ADM-08 for details regarding the destitute child.

⁶ Legal guardians are appointed by court order and so designated. Persons awarded care and custody are not legal guardians.

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Requirements about court orders involving specific placements made by the court that affect eligibility for Title IV-E are addressed in *01-OCFS-LCM-09*. The LCM notes, in part, “Title IV-E requires, as a condition of eligibility, that a child's placement and care responsibility be vested either with the State agency, or another public agency with which the State has an agreement.” Federal case plan regulations and related federal policy provide that Title IV-E reimbursement is not available when a court orders a placement with a specific foster care provider without consideration of the Agency's recommendation regarding placement. This does not mean that the court must always concur with the Agency's recommendation in order for the child to be eligible for Title IV-E foster care payments. As long as the court hears the relevant testimony and/or receives a written report and works with all parties, including the agency with placement and care responsibility, to make appropriate placement decisions, payments will not be disallowed. The federal prohibition also does not apply to situations where the court merely names the child's placement in the court order as an endorsement or approval of the Agency's placement choice.

In response to the federal Adoption and Safe Families Act, the Office of Court Administration (OCA) amended the Uniform Rules of the Family Court, effective January 31, 2001. OCA court orders require that where the court order directs the placement of an adjudicated PINS or JD with a specific foster care provider, the order must also include language specifying that the court considered the Commissioner's position regarding the child's placement. (See link to *01-OCFS-LCM-09* in *Appendix C* for details).

For children whose care and custody have been placed voluntarily with LDSS/ACS, there must be a Voluntary Placement Agreement signed by the parent(s) or legally appointed guardian(s) and the social services district. If the child remains in foster care for more than 180 days, the court must determine within 180 days of the child's placement in foster care that continued placement is in the best interests of the child. Otherwise, Title IV-E eligibility ends at the 180th day.⁷

A Voluntary Placement Agreement signed by a person *other than* a parent or guardian of the child is not Title IV-E compliant nor is the placement eligible for Title IV-E reimbursement.

⁷ See Re-determination of Title IV-E eligibility section for details.

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Acceptable Documentation:

For court placed children:

- A court order (or court transcript) that places the child in the care and custody or the custody and guardianship of the Commissioner of the LDSS/ACS.

Please note the following:

- When determining the date of the court order use the hearing date located in the upper right hand corner of the court order, or if that is not so indicated, the date the order was signed by the judge.
- The federal Administration for Children and Families (ACF) prohibits the use of “*nunc pro tunc*” (meaning “now for then”) court orders that change the substance of a prior judicial determination or constitute a judicial determination not previously made to support Title IV-E eligibility, (i.e., a court order that grants the Commissioner legal authority prior to the placement/hearing date).

For children who are voluntarily placed:

- Voluntary Placement Agreement signed by the parent(s) or legally appointed guardian(s)⁸ and the authorized social services representative is good for the first 180 days.
- If the child remains in foster care for more than 180 days, a Voluntary Placement approved by Court Order (SSL-358-a) indicating that care and custody or custody and guardianship continues to be awarded to the Commissioner of the LDSS/ACS.⁹
- If other than the parent signs the Voluntary Placement Agreement, a court order (letters of guardianship) documenting that the person signing is the legal guardian.

New York law provides that court orders placing a child into foster care pursuant to Article 10 of the FCA (abuse/neglect) or Article 10-C of the FCA (destitute child)¹⁰ and court orders approving a Voluntary Placement Agreement must contain a date certain for the initial permanency hearing. This continues legal authority until a subsequent order is issued by the court under Article 10-A of the FCA.

 **Please note that for eligibility determination purposes only:** If the social services district had a reliable process in place where the court orders and determinations in those orders are summarized on a separate document for the purpose of informing casework staff of court events, you may use the information in the summary to complete the *Checklist*. This summary should be completed only by trained individuals who understand the contents of the court order have reviewed it and understand the requirements of Title IV-E eligibility. **In no event can the summary material be used to document Title IV-E eligibility for federal review purposes.**

⁸ Legal guardians are appointed by court order and so designated. Persons awarded care and custody are not legal guardians.

⁹ See Re-determination of Title IV-E Eligibility section for details.

¹⁰ See *12-OCFS-ADM-08* for details regarding the destitute child.

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If the response to this question (“a” or “b”) is YES, enter the source of documentation on the designated line. In addition, include a copy in the child’s eligibility file and indicate on the designated line, where in the child’s case file this documentation can be found.

4. Contrary to the Welfare/Best Interests. Does the initial court order sanctioning/directing removal of the child from the home of the child’s parent or other specified relative explicitly stipulate in the court order that the court made a case specific finding that continuation in the home would be “contrary to the welfare” of the child or that removal was in the “best interests” of the child?

For purposes of this section, the initial order means either:

a) An order of detention issued pursuant to Article 3 or 7 of the FCA that removed the child from his/her home where the child thereafter is placed into the care and custody of the Commissioner of the LDSS/ACS;

OR

b) The court order that removed the child from a parent/guardian or other specified relative who had legal custody of the child and that placed the child into the care and custody or custody and guardianship of the Commissioner of the LDSS/ACS.

 **Please note** the “contrary to the welfare or best interests” requirement noted above does not apply to a child placed into foster care by a Voluntary Placement Agreement entered into pursuant to SSL 384-a.¹¹

→ Check YES if the **initial** removal order explicitly indicates that the court made a case specific finding to the effect that continuation in the home would be contrary to the welfare of the child or that the removal was in the best interests of the child.

→ Check NO if none of the above legal circumstances apply to the child. Child is not Title IV-E eligible.  **Go to Section III** to determine eligibility for TANF-EAF.

¹¹ For a child placed in foster care by a Voluntary Placement Agreement pursuant to SSL 384-a, the court must review the child’s placement pursuant to SSL 358-a and make a determination within 180 days of placement that continued placement is in the best interests of the child.

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Explanation:

For children placed in foster care by court order under Article 3 (JD: Juvenile Delinquent), Article 7 (PINS: Person in Need of Supervision), Article 10 (abuse/neglect), or Article 10-C (destitute child)¹² of the FCA, or Social Services Law (SSL) 358-a (approval of voluntary surrender):

- There must be an explicit case-specific judicial determination in the **initial** removal order (which includes any detention or remand order issued by the court resulting in the child's removal) indicating that continuation in the home would be contrary to the welfare of the child or that removal is in the best interests of the child or that removal of the child is necessary to prevent imminent risk.
- A copy of the detention order must be obtained to document the “contrary to the welfare/best interests” determination for children placed into detention prior to placement into foster care. The court documents must demonstrate the basis for the court's determination.
- For children removed from the home of a parent and placed in the *direct legal custody* of a relative prior to placement into foster care, it is this **second** removal giving the LDSS/ACS custody that the court applies the “contrary to the welfare/best interests” determination and the home for which AFDC financial eligibility must be made. Since the first order places the child into the direct legal custody of the relative, it is not applicable to the Title IV-E foster care eligibility determination.
- A court order approving a placement under SSL 358-a made when a voluntary surrender agreement pursuant to SSL 384 is completed, can be considered a court-ordered placement for Title IV-E purposes. (Because a voluntary surrender for adoption agreement is not a voluntary placement agreement as defined by federal law, a surrender does not by itself constitute a basis for initial Title IV-E eligibility—a judicial determination of contrary to the welfare/best interests is still required.)
- The court order must show that the “contrary to the welfare/ best interests” determination was made on a case-specific basis. This may be met by reference in the court order to the documents or testimony upon which the court based its finding (i.e., the petition or testimony, etc.) or a brief statement of the facts upon which the court based its findings is also acceptable.
- Failure to secure such a determination renders the case ineligible for Title IV-E for the duration of the foster care episode.

¹² See 12-OCFS-ADM-08 for details regarding the destitute child.

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Coincide Rule:

Once a court order is issued with a judicial determination that remaining in the home is contrary to the child's welfare, or that removal is in the best interests of the child, in order to qualify for Title IV-E, the LDSS/ACS must actually remove the child at that time and place the child in foster care. Section 472(a)(2) of the Social Security Act predicates a child's receipt of Title IV-E funds on the child's removal from home as a result of either a Voluntary Placement Agreement or a judicial determination that to remain at home is contrary to the child's welfare or that removal is in the best interests of the child.

The judicial determination that results in the child's removal must coincide with (occur at the same time as) the Agency's action to physically or constructively remove the child unless the court order specifies an alternative time frame for removal as allowed for in the federal Departmental Appeals Board (DAB) decision #2017. (See the **Explanation** section under the *Living with a Specified Relative* requirement for definitions of "physical" and "constructive" removal.)

If a court makes a judicial determination that it is contrary to the child's welfare to remain at home or that removal is in the best interests of the child (without specifying an alternative time frame) and the child does in fact, remain at home and no removal occurs (absent a court order authorizing the child to remain at home), the requirement for removal is not met and the child is ineligible for Title IV-E for the duration of the foster care episode. If the child's safety is not at risk and a LDSS/ACS chooses to offer support services to the family in-home to prevent having to remove the child, it should do so. However, the LDSS/ACS cannot issue "blanket" removal orders in an attempt to guarantee Title IV-E eligibility in the event that the child has to be removed from the home at some point in the future.

Example → There have been situations where a hearing has been held but the child was not removed immediately because the LDSS/ACS needed time to find a foster care placement. These cases involved JD/PINS cases and there was no concern that the parents would harm the child. In such cases in order to satisfy the federal standards, there needs to be documentation (reflected in either a court order or court transcript) in the case record indicating that the court was aware of the need to delay the removal and it was approved.

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Acceptable Documentation:

In most cases, removal and placement will occur at the same time. For these cases:

- The **initial** court order sanctioning removal (the detention or remand or disposition order, whichever is first under Article 3 [JD], Article 7 [PINS], Article 10 [abuse/neglect], or Article 10-C [destitute child]¹³ of the FCA, or SSL 358-a [voluntary surrender only]) must contain a case-specific determination that:
 - Continuation in the home would be contrary to the welfare of the child **or**
 - Removal is in the best interests of the child **or**
 - Removal is necessary to prevent imminent risk.

In the instances below, removal and placement may occur at different times. Therefore for these situations, the following documentation is required to verify the “contrary to the welfare/best interests:”

- For children placed in detention prior to placement into foster care, a copy of the detention order must be secured and reviewed to document the “contrary to the welfare/best interests” determination. The court documents must demonstrate the basis for the court’s determination.
- For children initially removed from the home of a parent and placed in the *direct legal custody* of a relative prior to placement into foster care, the **second** removal order that gives the Commissioner of the LDSS/ACS custody and contains a case specific determination that continuation in the home of the relative is contrary to the welfare of the child or that removal is in the best interests of the child.

Please note the following:

- **For eligibility purposes only:** If the social services district has a reliable process in place in which the court orders and determinations in those orders are summarized on a separate document for the purpose of informing casework staff of court events, you may use the information in the summary in completing the *Checklist*. This summary material should be completed only by trained individuals who understand the contents of the court order, have reviewed it and understand the requirements of Title IV-E eligibility. **In no event can the summary material be used to document eligibility for federal review purposes.**

If the response to this question is YES, enter the source of documentation on the designated line. In addition, include a copy in the child’s eligibility file and indicate on the designated line, where in the child’s case file this documentation can be found.

¹³ See 12-OCFS-ADM-08 for details regarding the destitute child.

5. Reasonable Efforts to Prevent Removal. For placements made by a court order, is there a case specific determination by the court expressly stipulated in the court order issued within 60 days from the date the child was removed from the home of the child's parent or other specified relative to the effect that "reasonable efforts" to prevent removal were made, including a finding, where appropriate, that no efforts were reasonable, or that reasonable efforts were not required due to statutorily specified circumstances?

For purposes of this section, removal includes either:

a) Where the child was removed from his/her home pursuant to an order of detention issued in accordance with Articles 3 or 7 of the FCA where the child is thereafter placed into the care and custody of the Commissioner of the LDSS/ACS;

OR

b) Where the child was removed from the home of his/her parent/guardian or from another specified relative who had legal custody of the child and the child was then placed into the care and custody or custody and guardianship of the Commissioner of the LDSS/ACS.

→ Check YES if there is an appropriate court order dated within 60 days from the date the child was removed from the child's home and enter the date of the court order.

→ Check N/A (Not Applicable) if placement was by Voluntary Placement Agreement.

→ Check NO if there is not an appropriate court order dated within 60 days from the date the child was removed from his/her home with a determination as noted above. Child is not eligible for Title IV-E. ☞ **Go to Section III** to determine eligibility for TANF-EAF.

Explanation:

For children placed in foster care by a court order, the court must make an explicit case-specific judicial determination within 60 days of removal from the child's home to the effect that reasonable efforts were made to prevent removal, including that no efforts were reasonable, or that due to statutorily specified circumstances, reasonable efforts are not required. Failure to secure such a determination within the appropriate time frame renders the case ineligible for Title IV-E for the duration of the foster care episode.

Although such a finding need not be in the initial court order sanctioning removal, it **must** be reflected in a court determination made within 60 days of removal.

Acceptable Documentation:

- A court order which contains a brief statement of the facts upon which the court based its “**reasonable efforts were made to prevent removal**” finding is acceptable. Also acceptable is where the court makes a reasonable efforts finding and cross-references documentation, such as a petition or report, or testimony upon which the court based its finding.
- It is also acceptable, as part of a finding that reasonable efforts were made to prevent removal, for the court to find that “**no efforts were reasonable.**” A finding that no efforts are reasonable is not the same as finding that there are statutory circumstances whereby reasonable efforts are not required. It is important that the court order clearly reflects this distinction and contain a case specific determination of why in the particular case no efforts were reasonable. Such a finding may arise, for example, because of the imminent danger to the child. In such a case, no efforts to prevent removal are reasonable. This is not the same as a finding that reasonable efforts are not required and it is important that the two are clearly distinguished in the court order.
- Also acceptable for Title IV-E purposes is where the court makes a finding that “**reasonable efforts were not required.**” Because such a finding may only be made in certain limited situations, the court order must reference the basis for the court’s finding which may only include:
 - Aggravated circumstances, as defined in section 1012(j) of the FCA (i.e., a child has been severely or repeatedly abused or a child has been found to have been abused within five years after being returned home from a foster care placement due to a neglect finding; an infant five days old or less has been abandoned or the parent(s) have stated under oath that they will not engage in services necessary to eliminate the risk of abuse or neglect and there are no barriers to engagement in services)
 - Previous Termination of Parental Rights (TPR)
 - Conviction for certain categories of felonies (See section 1039-b of the FCA)
- If the first court finding is “**no reasonable efforts were made to prevent removal,**” and it is within 60 days of removal, determine why this finding was made. Make sure it was not confused with:
 - A finding that reasonable efforts were not required **or**
 - A finding that no efforts are reasonable.

If it is curable, go back to the court and obtain the appropriate finding of reasonable efforts within 60 days of the removal of the child from his/her home, as explained above.

 **Please Note:** a court order indicating that reasonable efforts were not made (even if it cross references documentation or contains a narrative on the basis of the court’s finding) does not meet the reasonable efforts requirement.

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If the response to this question is YES, enter what documentation the court specified was used to make its reasonable efforts determination on the designated line and the date of the order addressing the reasonable efforts. In addition, include a copy in the child's eligibility file and indicate on the designated line, where in the child's case file this documentation can be found.

6. Living with a Specified Relative. Was the child living in the home of a parent/specified relative who had legal custody in the month or in any of the six months before the month (the defined period), that the court petition was filed or the Voluntary Placement Agreement was signed?

→ Check YES if the child lived in the home of a specified relative at any time during the defined time period.

→ Enter the name of the relative with whom the child was living at removal and the relationship of that relative to the child on the designated lines.

→ Check the "Time condition met" box if the time condition is met but the specified relative and the relative foster parent are the same person or the physical removal and the legal removal are not from the same person. Child is not Title IV-E eligible. ☞ Go to **Section III, TANF-EAF Eligibility.**

→ Check NO if the child was not living in the home of a specified relative during the defined period. Child is not Title IV-E eligible. ☞ Go to **Section IV** and indicate ineligible for Title IV-E and TANF-EAF.

Explanation:

The child must have been living with and removed from the home of a parent or specified relative (i.e., relative within the fifth degree; for example, the child's father, mother, brother, sister, grandfather, great-grandfather, great-great-grandfather, grandmother, great-grandmother, great-great-grandmother, uncle, great uncle, great-great uncle, aunt, great aunt, great-great aunt, of whole or half blood; the child's first cousin, nephew, and niece, of whole or half blood; the child's stepfather, stepmother, stepsister, but no other step relative) and such relative had legal custody of the child in the month of removal, or in any of the six months before the month that the court petition or order to show cause, seeking the child's removal from the home was filed or the Voluntary Placement Agreement was signed. "Godparent" is not a relationship for purposes of Title IV-E eligibility if the godparent has no other relationship with the child as detailed above. See *Appendix B: Determining a Specified Relative.*

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Example: On January 1, 2010, a child is removed from the mother pursuant to Article 10 (abuse/neglect) of the FCA and legal custody is transferred to the grandmother (direct placement). On January 2, 2011, the grandmother advises the LDSS/ACS that she can no longer care for the child. The Family Court modifies the Article 10 order and the Commissioner of the LDSS/ACS is given legal custody of the child. The child is physically removed from the grandmother and placed in a certified or approved foster home. The grandmother is considered the specified relative because she had been given custody of the child and the child lived with her (the grandmother) within the last six months. The second removal date is the relevant date for Title IV-E eligibility purposes. In this case, the contrary to the welfare/best interests and reasonable efforts court findings would apply to the grandmother. The AFDC household would be the grandmother's and not the mother's for purposes of financial eligibility.

Removal Circumstances

The removal home is considered by the federal Administration for Children and Families (ACF) to be the home of the parent or the specified relative who had legal custody (or guardianship) of the child at the time of the removal. See "*Coincide Rule*" under the heading, "*Contrary to Welfare/Best Interests*" section above.

The defined period for this requirement is "in the month or in any of the six months before the month that the court petition or order to show cause, seeking the child's removal from the home was filed or the Voluntary Placement Agreement was signed."

• **Physical Removal**

If at the time of removal, a child is living with the parent or other specified relative who has legal custody of the child and the child is being physically removed from this home, this is the home to which the court applies the contrary to the welfare/best interests judicial determination and the home in which financial eligibility for AFDC must potentially be met. Historically, this was the only type of removal allowed for Title IV-E eligibility purposes.

• **Constructive Removal**

Constructive removal is where there is no physical removal; instead, there is a legal transfer (by court order or Voluntary Placement Agreement) of care and custody to the LDSS/ACS Commissioner. Constructive removal usually applies when a child remains with a relative who does not have legal custody and now becomes the foster parent. The child is not physically removed from the relative and legal custody is constructively removed from the parent who had legal custody prior to the removal. See *Example 2 – Constructive Removal* under the heading, *Removals that Meet the Living with a Specified Relative* and *Example 2* under the heading, *Removals that Do Not Meet the Living with a Specified Relative*.

Removals that **Meet the Living with a Specified Relative Requirement:**

- **Example 1 – Physical Removal:** Based on Child Protective Services (CPS) investigation findings, the LDSS/ACS petitions the court seeking the child's removal from the home of the mother. The child is physically removed from the mother's home due to an Article 10 (abuse/neglect) of the FCA. The child enters foster care on the same day directly from the mother's home. The child meets the requirement as s/he lived with the mother (who had legal custody at the time of removal) within the defined period (in the month of removal).
- **Example 2 - Physical Removal:** The child is born exhibiting symptoms of drug/alcohol withdrawal. The hospital makes a report to the State Central Register (SCR) alleging child maltreatment. Based on information developed pursuant to the Child Protective Services (CPS) investigation, the child is placed in foster care 10 days later. The child enters foster care directly from the hospital. Therefore, within the defined time period (less than six months), the child was living with a specified relative (the mother) so the child meets this Title IV-E requirement. (A newborn is considered to have been living in the home of his/her mother during the period of hospitalization or incarceration, regardless of the length of this stay.)

Please Note the following: An otherwise eligible child born to a woman who is a prison inmate or a patient in a hospital, and deprived of parental support and care would be eligible for Title IV-E Foster Care Program if removed from the "home of a relative" and placed in foster care in accordance with section 472 of the Social Security Act. This is true when the child is placed in foster care awaiting the mother's release or when parental rights are terminated directly after birth. The inability of the child to return to the mother during her prisoner or patient status (or for any other reason) has no bearing on the child's eligibility for Title IV-E Foster Care.

Eligibility for Title IV-E Foster Care maintenance payments program as defined in section 472(a) of the Social Security Act stipulates that a State shall make foster care maintenance payments on behalf of each child who has been removed from the home of a relative specified in section 406(a) (as in effect on July 16, 1996) if among other things, the child was AFDC eligible in the "home" of the specified relative from whom the child was legally removed.

The child born to a mother who was a hospital patient or a prison inmate would be considered to be living with the mother at the time of birth and if placed in foster care would be removed from the home of the relative (the mother) in accordance with section 472(a). The definition of "home" in 45 CFR 233.90(c)(1)(v)(B) is applicable to hospital or prison setting.

- **Example 3 – Physical Removal:** The child is removed from the home of a parent and placed in the *direct legal custody* of a relative prior to placement into foster care. A year later, the child is removed from the relative who had *direct legal custody*. The LDSS/ACS petitions the court within six months of the date the child lived with the relative. The LDSS/ACS removes the child from the relative's home and places the child in a certified or approved foster care home. The child meets the requirement for Title IV-E since s/he lived with a relative who had legal custody within six months of the date the LDSS/ACS petitioned the court and was physically removed from that relative's home. In this case, the contrary to the welfare/best interests and reasonable efforts court findings must apply to the relative who had *direct legal custody*. The AFDC household would be the relative's and not the parent's for purposes of financial eligibility.

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- **Example 1 - Constructive Removal:** The child lived with the mother and grandmother; the mother leaves the home. The grandmother contacts the LDSS/ACS four months later and the Agency petitions the court within six months of the date the child lived with the mother in the home. The LDSS/ACS approves the grandmother's home as a foster family home and the child continues to reside in that home in foster care status. The child meets this requirement for Title IV-E since he or she lived with the parent within six months of the LDSS/ACS petition to the court, and was constructively removed from the parent's custody (i.e., there was a paper removal of custody).
- **Example 2 - Constructive Removal:** The child lived for less than six months prior to the LDSS/ACS petition to the court for removal of the child with either a related or non-related caretaker who does not have legal custody of the child. The LDSS/ACS certifies or approves the home as a foster family home and the child continues to reside in that home in foster care status. The child meets this requirement for Title IV-E because s/he lived with the parent within six months of the LDSS/ACS petition to the court, and was constructively removed from the parent's custody (i.e., there was a paper removal of custody).

Removals that **Do Not Meet** the Living with a Specified Relative Requirement:

- **Example 1:** For seven months, the child lives with a related caretaker who does not have legal custody of the child before the caretaker contacts the LDSS/ACS to remove the child from his/her home. The Agency petitions the court and the court:
 - Removes custody from the parents; and
 - Makes a contrary to the welfare/best interests and reasonable efforts to prevent removal finding against the parents; and
 - Physically removes the child from the home of the related caretaker.

The child does not meet the living with a specified relative requirement (not Title IV-E eligible) because s/he had not lived with the parent or other specified relative who had legal custody of the child. Although the child was physically removed from the home of the related caretaker, that removal cannot be used to determine Title IV-E eligibility since the removal was not the result of a Voluntary Placement Agreement (caretaker did not have legal guardianship) nor was there a judicial determination, as required in section 472(a)(1) of the Social Security Act (caretaker requested the child be removed from his/her home). The constructive removal does not apply to this situation because it had been more than six months since the child lived with the parent from whom custody was removed.

- **Example 2:** The child lived with either a related or non-related caretaker who does not have legal custody of the child for more than six months prior to the LDSS/ACS petition to the court. The LDSS/ACS certifies or approves the home as a foster family home and the child remains in that home in foster care status. The child is ineligible for Title IV-E Foster Care because s/he had not lived with nor was s/he removed from a specified relative who had legal custody within six months of the LDSS/ACS petition to the court. The constructive removal does not apply to this situation because it had been more than six months since the child lived with the parent.

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- Example 3: The child lives with a legal guardian who is not a specified relative for six months prior to the LDSS/ACS petition to the court. The child is physically removed from the non-related legal guardian and placed in a different home which is a certified or approved foster home. The child does not meet this requirement because section 472(a)(3)(A) of the Social Security Act indicates among other things, that a child must be living with and removed from the home of a specified relative at the initiation of court proceedings.

Acceptable Documentation:

- Non-services WMS Clearance printout showing case composition and that the child was an active member in that case at the time of removal (Upstate only).
- Court petition indicating that the child had been living with a specified relative in the month of removal or in any of the six months before the month that the court petition or order to show cause, seeking the child's removal from the home was filed, or the date the Voluntary Placement Agreement was signed.
- FASP/Progress notes indicate the child had been living with a specified relative in the month of removal or in any of the six months before the month that the court petition or order to show cause, seeking the child's removal from the home was filed, or the date the Voluntary Placement Agreement was signed.
- FASP/Progress notes indicate the child had been living with a specified relative who is the representative payee for the child's case in the month of removal or in any of the six months before the month that the court petition or order to show cause, seeking the child's removal from the home was filed, or the date the Voluntary Placement Agreement was signed.

If the response to this question is YES, enter the source of documentation on the designated line. In addition, include a copy in the child's eligibility file and indicate on the designated line, where in the child's case file this documentation can be found.

7. Parental Deprivation. Was there parental deprivation for one or more of the following reasons? *Be sure to check all the reasons that apply.*

- Absence from the home
- Incapacity of parent (physical or mental)
- Unemployment/Underemployment
- Death of a parent

→ Check YES if during the month of removal, the child was deprived of parental support and care for one or more of the above reasons.

→ Check NO if during the month of removal, the child was not deprived of parental support and care for one or more of the above reasons. Child is not Title IV-E eligible. ☞ Go to **Section III** to determine eligibility for TANF-EAF.

Parental deprivation is part of the AFDC eligibility process and based on the home of the relative who has legal custody.

Explanation:

During the month of removal (using the date of the court petition leading to the child's removal from the home or the date the Voluntary Placement Agreement is signed by all parties), the child must be deprived of parental support or care because of one or more of the following reasons:

- There was an absent parent from the home of removal at the time of removal;
- At least one of the parents had a physical or mental incapacity at the time of removal;
- The parent (principal wage earner) is unemployed or underemployed at time of removal (the State Plan for Title IV-E defines the unemployed/underemployed parent deprivation requirement as having been met in cases where the income of the parent(s) is below the eligibility level for Medical Assistance. Any two parent household, which meets the medically needy income and resource provisions and which has identified one of the two parents as the principal wage earner, can be categorically eligible for AFDC-U.¹⁴ By definition, the income threshold for public assistance (AFDC) is below the Medical Assistance level);
- One or both parents are deceased at time of removal.

¹⁴ AFDC-U: Aid to Families with Dependent Children-Unemployed/Underemployed

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Acceptable Documentation:

All removals are evaluated based on the home of the relative who had legal custody. In the month of removal, the child must be deprived of parental care and support due to one or more of the following reasons:

Absence of parent from the home

- Referral to the Child Support Enforcement Unit indicating that at least one of the parents is absent from the removal home at the time of removal
- Court petition indicates at least one of the parents was absent from the removal home
- Official/court documentation verifying a legal separation or imprisonment
- FASP/Progress notes/Application for Services indicates that at least one parent is absent from the removal home at the time of removal

Incapacity of parent (physical or mental)

- State Data Exchange (SDX) screen prints indicating that at least one parent is in receipt of SSI
- Internal Aged/Disabled (A/D) unit information verifies that at least one parent is incapacitated
- Medical, mental health, treatment report containing diagnosis and relationship of diagnosis to limited parental functioning or ability to earn income for at least one parent
- Award letter verifying receipt of some form of disability income such as Supplemental Security Income (SSI), Social Security Disability (SSD), Workers' Compensation (WC), New York State Disability (NYSD) or Veterans' Benefits (VB) for one of the parents
- FASP/Progress notes indicate caseworker observed obvious physical handicap for at least one parent at time of removal

Unemployed/Underemployed parent

- Non-services WMS screen indicating that the family is in receipt of Temporary Assistance (TA) (Family Assistance [FA] or Safety Net [SN]) or Medicaid (MA) during the month of removal
- Resource File Integration (RFI)/CINTRAK report
- Award letter from the Department of Labor indicating receipt of Unemployment Insurance Benefits (UIB) or copy of the UIB check
- Wage stub or other proof of income indicating that the income of the parent is below the medically needy level
- Probation report or pre-sentencing report
- FASP/Progress notes documenting consistent information regarding the unemployment or underemployment of the parent(s)

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Death of a parent

- Death certificate
- Award letter indicating receipt of Survivors' Benefits or copy of Survivors' Benefit check
- Other legal document indicating parent is deceased such as court petitions or a court order
- Legal documentation indicating there is a court appointed guardian or a legal custodian due to death of the parent(s)
- FASP/Progress notes that substantiate a death certificate was seen by the caseworker

If the response to this question is YES, enter the source of documentation on the designated line. In addition, include a copy in the child's eligibility file and indicate on the designated line, where in the child's case file this documentation can be found.

8. AFDC Financial Eligibility. Would the child have been financially eligible for AFDC in accordance with program rules in effect on 7/16/96, based on the family's income and resources in the month that the Voluntary Placement Agreement was signed or the court petition was filed leading to the removal of the child?

→ Check YES if financial eligibility for AFDC as described above is met and documented.

→ Check NO if income is unknown or financial eligibility for AFDC as described above is not documented or if the calculation discloses a surplus. Child is not Title IV-E eligible. ☞ Go to **Section III** to determine eligibility for TANF-EAF.

Explanation:

The determination, as to whether the child would have been financially eligible for AFDC based on the program rules in effect on July 16, 1996 (commonly referred to as the "Look Back Date)," is made using the family's income and resources in the removal month. (The removal month is the month that the Voluntary Placement Agreement was signed or initiation of court proceedings [a court petition was filed or a court order was issued, whichever is earlier] leading to the removal of the child). The child must be potentially eligible for AFDC in the home to which the court applied the "contrary to the welfare/best interests" and reasonable efforts to prevent removal judicial determinations, which is also the home from which the child was physically or constructively removed. (See the **Explanation** section under the *Living with a Specified Relative* requirement for definition of "physical" and "constructive" removal.)

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Whose income is counted?

Count the income of the child's:

- Mother
- Father
- Step-parent
- Adoptive parent

Do not count the income of the child's:

- Alleged or putative father
- Grandparent, great grandparent
- Aunt or uncle
- Legal custodian or guardian
- Cousin or other family member
- Unrelated household member
- Income of sibling¹⁵

What income is counted?

Countable Income

- Wages/salary
- Tips from work
- Self-employment income
- Child support payments received
- Alimony received
- Interest payments
- Any other recurring income

Income that is **not** counted

- Temporary Assistance (Family Assistance & Safety Net)
- Food Stamps
- Earned income of a minor child who is a full time student
- Supplemental Security Income (SSI)
- Adoption subsidy/foster boarding home payments

The family's resources may include bank accounts, cars, stocks, etc. and may not exceed \$10,000.

If a child or parent is in receipt of Supplemental Security Income (SSI) at the time of removal from the home, the AFDC budget calculation should be done excluding both the SSI recipient as a household member and the SSI recipient's income. (This is known as the SSI "invisibility" rule.) If the family is found to be financially eligible for AFDC, the financial requirement of Title IV-E has been met.

When assessing the benefits of Title IV-E eligibility for children in receipt of SSI at the time of placement, keep in mind that the effect on foster care funding differs between the two programs. Although concurrent receipt of SSI and Title IV-E is allowed, the SSI benefit would be reduced dollar for dollar by the amount of the Title IV-E payment. Title IV-E provides 56.2%¹⁶ federal reimbursement for all costs for room and board, allowable administrative expenses and clothing.

The SSI benefit is a fixed amount. Therefore, social services districts should consider the overall Title IV-E reimbursement benefit as contrasted to the SSI income that can be used to offset room and board costs. Generally, whenever a child is placed in a group foster care program, Title IV-E will provide the greater funding as compared to SSI.

¹⁵Income of siblings is not counted in the Title IV-E budget calculation. If the sibling is under age 18 years, they are counted in the household count and if the sibling is age 18 and older, then the sibling is not counted for Title IV-E eligibility purposes.

¹⁶Subject to federal change

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In any case where the child is an immigrant disqualified under section 245A(h) or 210(f) of the federal Immigration and Nationality Act for receiving aid under New York State's approved Title IV-A State Plan in or for the month in which the Voluntary Placement Agreement was entered into or the court proceedings leading to placement were initiated, the child is considered to satisfy the requirements for AFDC eligibility with respect to that month, if the child would have satisfied such requirements but for the disqualification.

See Appendix B for a chart of current SSI award levels.

Acceptable Documentation:

The source of the parents, step-parents or adoptive parents' income at removal will determine the required documentation.

Unearned Income

Temporary Assistance (TA)/Medical Assistance (MA)/Food Stamps (FS)/ Supplemental Security Income (SSI)/ Social Security Disability (SSD)

- Copy of the WMS clearance (and budget summary) indicating the family was in receipt of TA, MA, FS or SSI on the month the:
 - Voluntary Placement Agreement was signed or
 - Court proceedings leading to the removal of the child were initiated
- State Data Exchange (SDX) screen print indicating receipt of SSI
- Current award letter from the Social Security Administration (SSA) indicating amount of SSI or SSD or copy of the SSI/SSD check

Child Support/Alimony

- Document from the Office of Child Support Enforcement indicating payments/receipt of child support
- Statement from Family Court indicating amount of alimony/child support received
- Statement from person paying support/alimony
- Cancelled support/alimony check

Unemployment Insurance Benefits (UIB)

- Resource Integrated File (RFI/CINTRAK) Report
- WMS report indicating receipt of UIB
- Department of Labor (DOL) screen with UIB information / work history
- Current award letter from the Department of Labor indicating amount and recipient of UIB
- Current UIB benefit check
- Official correspondence from the DOL

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Unearned Income (continued)

- Veterans (VA) Benefits
- Current award letter from the Veterans Administration indicating amount and recipient of VA benefits
 - Current Veterans Benefit check
 - Official correspondence from the Veterans Administration

- Interest Payments
- Bank statements

Earned Income

- Wages/salary/tips from work
- RFI/CINTRAK Report
 - Current wage stub
 - Pay envelopes
 - Employer letter/contact with employer
 - Letter from VA indicating receipt of Servicemen's Allotment if parent is on active military duty

- Self-employment
- Business records
 - Tax records

The documented countable income from one or more of the sources indicated above applied to a WMS scratchpad budget with a "Look Back Date" of July 16, 1996 is what will verify AFDC eligibility.

- The scratchpad WMS Automated Budget Eligibility Logic (ABEL) uses the July 1996 look back date to tally the household needs against the household income and calculates the deficit or surplus. (If you use the *Automated Eligibility Worksheet*, it will automatically calculate this for you.)
- The scratchpad budget/*Automated Eligibility Worksheet* must be printed and retained with a printed copy of the family's proof of income as part of the Title IV-E case record that is maintained for eligibility purposes.

If the response to this question is YES, enter the source of documentation on the designated line. In addition, include a copy in the child's eligibility file and indicate on the designated line, where in the child's case file this documentation can be found.

 For questions regarding Title IV-E foster care eligibility, send an email to a Title IV-E expert at: Title.IVE@ocfs.state.ny.us

9. Child Eligibility.

→ Check YES if all the answers to questions 1 through 8 are YES. Child is Title IV-E eligible. ☞ Go to **Section III** to determine if the child is also eligible for TANF-EAF.

→ Check NO if any of the responses to questions 1 through 8 are NO. Child is not eligible for Title IV-E. ☞ Go to **Section III** to determine eligibility for TANF-EAF.

Title IV-E Foster Care Eligibility Decision

If a child meets all eight of the above listed eligibility requirements and each is appropriately documented, the case is eligible for Title IV-E Foster Care. (See instructions for **Section IV. Eligibility Summary & signatures/Supervisor's Review** in the following pages for details.)

Please note that the home in which the child is placed must be fully certified or approved or the facility licensed prior to making any Title IV-E claims. Proceed to authorize the Title IV-E Foster Care on the Welfare Management System (WMS) and make appropriate entries in the associated child welfare systems to open the case, track case activities, authorize payment and check that appropriate program and administrative costs are reimbursed by the federal government. (These associated systems include CONNECTIONS, the Welfare Management System (WMS), the Child Care Review System (CCRS) and the Benefit Issuance and Control System (BICS).) Continue to review the case for TANF-EAF whether the child is Title IV-E eligible or not. (See *Chapter Two: TANF-EAF Eligibility* for details.)

Missing Documentation

If a child does not have all the appropriate documentation to verify all of the eight Title IV-E requirements when initially placed, Title IV-E eligibility should not be ruled out. In these instances, where Title IV-E eligibility remains under review because the required documentation is forthcoming, the case may be opened as a pending Title IV-E case which equates to FNP (federally non-participating).

Instructions for Pending Title IV-E

If the case cannot be fully documented for Title IV-E at the time of placement and the Title IV-E eligibility remains under review (case is missing documentation that is forthcoming), prepare the *Services Authorization* form (**LDSS-2970**) as follows:

- Enter eligibility code **01**
- Enter direct services code **08**
- Submit for data entry
- A new *Services Authorization* form (**LDSS-2970**) will be generated

Eligibility for Title IV-E may be established if and when it can be fully documented and retroactive entry in WMS should be made to reflect the changes in category as appropriate. It should be noted that retroactive claiming may only go back for a period of two years.

Chapter One Part A: Title IV-E Foster Care Eligibility

Retroactive Claiming

Once the missing documentation to fully verify Title IV-E eligibility is submitted or if a case is being corrected because it was mistakenly found ineligible for Title IV-E:

- Make a retroactive entry to change the FNP category to Title IV-E (eligibility code **02** – see below for details)
- Explain in the progress notes the change in category and/or if the case was previously coded incorrectly
- Be sure to identify the documentation obtained that now verifies Title IV-E eligibility
- Remember a retroactive entry in WMS can be made for up to two years

 **Please Note:** Title IV-E cannot be claimed until the first day of the month in which all Title IV-E eligibility criteria are met.

If the case cannot be fully documented for Title IV-E eligibility at the time of placement and the missing documentation is not forthcoming, the case is ineligible for Title IV-E. Continue to review the case for TANF-EAF. (See *Chapter Two: TANF-EAF Eligibility* for details.)

Medical Assistance Eligibility Decision

A child determined eligible for Title IV-E Foster Care is automatically/categorically eligible for Medical Assistance (MA). To provide Medical Assistance, enter all appropriate codes on WMS so that a non-services Medicaid case is opened for the child.¹⁷

Section III. TANF-EAF Eligibility

See *Chapter Two: TANF-EAF Eligibility* for instructions on completing this section.

Section IV. Eligibility Summary & Signatures/Supervisor's Review WMS Instructions

→ Check the first box in this section if the child is only eligible for Title IV-E and not eligible for TANF-EAF.

Prepare the *Services Authorization* form (**LDSS-2970**) as follows:

- Enter eligibility code **02**
- Enter direct services code **08**
- Select option "Y" in the 12 MONTH AUTH REQUESTED field to generate a 12 month authorization period (AUTH PERIOD FROM DATE plus 12 months) regardless of the Direct Services being authorized
- Submit for data entry/a new *Services Authorization* form (**LDSS-2970**) will be generated

¹⁷ Medical Assistance also extends to non-Title IV-E eligible foster children as long as they are U.S. citizens or meet satisfactory immigration status.

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→ Check the second box in this section if the child is only eligible for TANF-EAF (see *Chapter Two: TANF-EAF Eligibility* for details).

→ Check the third box in this section if the child is eligible for both Title IV-E and TANF-EAF (dual eligibility).

Prepare the *Services Authorization* form (**LDSS-2970**) as follows:

- Enter eligibility code **02**
- Enter direct services code **08** (foster care) – associated with foster care maintenance authorization (purchase of services codes **61, 62, 63**) under Title IV-E
- Enter direct services code **08E** (foster care-EAF) – associated with foster direct services that can only be claimed under TANF-EAF (e.g., tuition, counseling, etc.) –add “E” suffix to POS lines as needed
- Submit for data entry/a new *Services Authorization* form (**LDSS-2970**) will be generated

→ Check the fourth box in this section if the child is not eligible for Title IV-E or TANF-EAF but is eligible for other State (Foster Care Block Grant) funding.

Prepare the *Services Authorization* form (**LDSS-2970**) and enter one of the following codes, as appropriate:

- **06** – SSI Blind
- **07** – SSI Disabled
- **08** – MA
- **14** – IE (eligibility to be determined by income—non-categorical)
- Submit for data entry/a new *Services Authorization* form (**LDSS-2970**) will be generated

→ Check the fifth box in this section if the child is not eligible for any funding because the child is not a U.S. citizen or a qualified immigrant (costs for the case are not reimbursable **except** for child protective services, emergency medical services, non-residential domestic violence services and non-residential adult protective services). See *Appendix B* for definition of qualified immigrant as it pertains to Title IV-E in **ACYF-CB-PIQ-99-01: Qualified Aliens**.

Prepare the *Services Authorization* form (**LDSS-2970**) as follows:

- Enter eligibility code **14**
- Enter direct services code **08**
- Add the “N” suffix (for non-reimbursable) to direct services and POS lines (except for the emergency services noted.)
- Submit for data entry/a new *Services Authorization* form (**LDSS-2970**) will be generated

→ Sign and date the form in the designated area
→ Obtain the Supervisor’s signature and date

Proceed to review the case for TANF-EAF.

Foster Home Certification/Approval

In addition to the child's Title IV-E eligibility, the foster home in which the child is placed in New York State must be fully certified, approved or licensed according to New York State regulations. Title IV-E may only be claimed if the child is placed in one of these certified or approved homes. Certifications or approvals of foster homes must be entered in CONNECTIONS in FAD (Foster and Adoptive Home Development). If a child is placed out-of-state, the foster home in which the child is placed must be certified, approved or licensed in accordance with the laws of the state the foster care home is located.

- Assistance-related expenses, such as clothing for Title IV-E eligible children residing in settings other than Title IV-E eligible foster homes are not eligible for Title IV-E reimbursement. TANF-EAF reimbursement may be available if the case has been determined eligible for that program.
- A foster home certified or approved on an emergency basis is not a fully certified or approved foster home and therefore, not eligible for Title IV-E until it is fully certified or approved.
- If the foster home is waiting for certification, or approval or licensure, the case can be pending Title IV-E. (See *Title IV-E Eligibility Decision: WMS Instructions for Pending Title IV-E* section.)
- Once the home is fully certified or approved, the case may be claimed as Title IV-E back to the date of full certification or approval. Please check that for the period claimed as Title IV-E (for all certified or approved homes), the case file contains a copy of the following:
 - Connections Certificate to Board Children or Approval Letter
 - The BICS Vendor Data screen printout and
 - The Criminal History Review for all household members age 18 and over (fingerprinting) results letter and safety assessment where there was a result *other than* "no record found)" and SCR data base check results.¹⁸ If the results of the criminal history record check and/or the SCR data base check is that the applicant or a household member has a criminal history or an indicated SCR report(s):
 - Documentation in the CONNECTIONS Foster and Adoptive Home Development (FAD) record is required;
 - A safety assessment must be documented for criminal history records;
 - The appropriate field(s) in MED/CHRC and SCR Comments on the Household Member Detail tab **must be** completed that explains why the foster parent was appropriate for certification or approval despite the existence of these records for both a criminal history record and an indicated SCR report(s).

¹⁸ Mandatory disqualifiers include, foster parents (actual or prospective) convicted at anytime of a felony involving child abuse/neglect, spousal abuse, a crime against a child, including child pornography or a crime involving violence (i.e., rape, sexual assault or homicide, other than a crime involving a physical assault or battery). Foster parents (actual or prospective) convicted within five years of a felony for physical assault, battery or a drug-related offense.

Chapter One Part A: Title IV-E Foster Care Eligibility

Notes:

- The foster home's status as non-Title IV-E eligible does not affect the Title IV-E eligibility of the child. However, during the period s/he is placed in an ineligible foster home, Title IV-E reimbursement may **not** be claimed.
- Required placement/movement and legal activities must be recorded in CCRS to support the Automated Claiming System. See BICS-Services Manual for detailed instructions regarding CCRS entry.
- Congregate care facilities, including agency operated boarding homes, group homes and non-public institutions, as well as, facilities, operated by a public agency with a capacity of no more than 25 beds, must be licensed in order for Title IV-E to be claimed.

 For further clarification on out-of state placements, please refer to *08-OCFS-INF-04: Out of State Foster Care Homes Documentation of Licensure for Title IV-E Foster Care Eligibility*.

Re-entry into Foster Care (Youth Age 18 and Over)

Program/Funding Implications:

Chapter 342 of the Laws of 2010 permits a former foster youth who exited foster care on a final discharge status at age 18, 19 or 20 to re-enter foster care under certain circumstances, provided the youth is under the age of 21.¹⁹ The law gives youth aging out of foster care the opportunity to re-enter foster care when no reasonable alternative exists and the youth has had a final discharge from care due to:

- A failure to consent to a continuation of placement: or
- Discharge at age 18 or older to permanency (returned home, went to a relative's care, custody or guardianship, or was adopted) and that permanency arrangement has been disrupted or dissolved.

Chapter 342 applies to all categories of foster care children, including youth whose prior episode of care was initiated through a juvenile delinquency (JD) or person in need of supervision (PINS) proceeding under Article 3 or 7 of the Family Court Act, respectively, if such youth are otherwise eligible under Chapter 342. All provisions of Chapter 342 accordingly would apply to such youth who re-enter care, including the notice required when the youth leaves care due to failing to consent to a continuation of placement or being discharged to permanency.

The LDSS/ACS is required to provide notice to a youth who is aging out of foster care of his/her right to request that the LDSS/ACS petition the Family Court to return him/her to foster care, provided s/he is under age 21. In addition, the notice must inform the youth that s/he also may petition the court to return to foster care. The LDSS/ACS or youth petitioning the court must prove that no reasonable alternative to foster care exists.

Title IV-E reimbursement will be available for youth re-entering foster care after attaining the age of 18 if they meet the criteria on the *Re-entry into Foster Care for Youth Age 18 and Over Eligibility Checklist* (LDSS-4415 rev. 11/10).

Notification Requirement

The LDSS/ACS is required to tell the youth and provide written notification to all youth who are aging out of foster care due to a failure to consent to a continuation of placement or discharge to permanency of their right to apply to re-enter foster care. The notice must inform the youth that s/he also may petition the court to return to foster care. In addition, the notice must:

¹⁹ See 10-OCFS-ADM-02 for details.

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- Advise the youth that the application to return to foster care must be done within 24 months of the youth's first final discharge, provided the youth is under age 21;
- Inform the youth that re-entry into foster will only be available where the youth has no reasonable alternative to foster care and consents to enrollment in and attendance at an appropriate educational or vocational program, unless evidence is submitted that such enrollment or attendance is unnecessary or inappropriate, given the particular circumstances of the child; and
- Include the name and contact information of the youth's attorney.

In addition to the above, the LDSS/ACS must document the date the notice was provided in the youth's Transition Plan,²⁰ or in the event of an unplanned discharge, in the case record. The LDSS/ACS must make every effort to provide notice to the youth in person. If this is not possible, the notice must be sent to the youth's discharge address.

Required Preventive Services

The eligibility for preventive services of a youth requesting to re-enter care is the same as any other foster care youth under SSL section 409-a. The LDSS/ACS must provide preventive services to any youth requesting to re-enter foster care when providing the preventive services may avoid the youth returning to care. If a lack of adequate housing, for example, is a factor that will cause the re-entry of a youth into foster care, preventive services could include special cash grants in the form of rent subsidies, including rent arrears, or any other assistance, sufficient to obtain adequate housing. Chafee Independent Living Program funds are another option that can be used for making room and board payments.

The LDSS/ACS' efforts must be sufficient to obtain a reasonable efforts order if the child should subsequently enter foster care. Such order is necessary to claim and be reimbursed under Title IV-E.

Former foster care youth are only eligible to return to foster care if the motion to the court is filed within 24 months of the date of the first final discharge. Preventive service providers should evaluate youth before they reach the 24-month mark to determine if preventive services are meeting the needs of the youth or if it is in the best interest of the child to petition the court to return the child to foster care.

Documenting Court Proceedings

The LDSS/ACS, or a former foster care youth, may make a motion to the Family Court for the youth to re-enter foster care. The court motion must be filed within 24 months from the date of the first final discharge that occurred on or after the youth's 18th birthday providing the youth is under age 21. If the LDSS/ACS refuses to file a motion to return a youth to foster care, the youth has the right to file a motion with the court.

²⁰ To access the latest Transition Plan, go to http://www.ocfs.state.ny.us/main/forms/foster_care

1. The LDSS/ACS' Motion to the Court

The LDSS/ACS affidavit must show:

- The youth has no reasonable alternative to foster care;
- The youth consents to enrollment in and attendance at an appropriate educational or vocational program, unless evidence is submitted that such enrollment or attendance is unnecessary or inappropriate, given the circumstances of the child;
- Re-entry is in the “best interests” of the youth; and
- The youth consents to the re-entry into foster care.

2. Former Foster Care Youth Motion to the Court

An affidavit or other evidence provided to the court and the social services official must show:

- The requirements outlined in the above three bullets are met; and
- The LDSS/ACS consents to the re-entry of the youth, or if the LDSS/ACS refuses to consent to the re-entry of the youth and that refusal is unreasonable.

3. LDSS/ACS Refusal to Consent

The court can overrule the LDSS/ACS' refusal to consent to allow the youth to re-enter care. If the LDSS/ACS refuses to consent, the court shall determine that the refusal is unreasonable if:

- The youth has no reasonable alternative to foster care;
- The youth consents to enrollment in and attendance at an appropriate educational or vocational program, unless the court finds a compelling reason that such enrollment or attendance is unnecessary or inappropriate; and
- Re-entry into foster care is in the “best interests” of the youth.

4. Temporary Order to Return a Youth to Foster Care

If at any time during the pendency of the court proceedings, the court finds a compelling reason that it is in the “best interests” of the youth to return the youth to the care of the LDSS/ACS, the court may issue a temporary order.

Returning a Youth to Foster Care a Second Time

The court may grant only two separate re-entries to foster care. If the court has previously granted a motion to return a youth to foster care, the court must meet the requirements outlined previously in Section 1 or 2 above under the *Documenting Court Proceedings* heading, and:

- Determined that there is a compelling reason to return the youth to care; and
- Considered the youth's compliance with previous orders of the court, including the youth's previous participation in an appropriate educational or vocational program.

Title IV-E Foster Care Requirements

When it is in the best interest of the youth, the youth being returned to foster care following an interruption of care should be placed with the foster care parents with whom the youth was last placed, even if the placement exceeds the capacity of the foster home [SSL Section 398.6(n)]. The county of origin is responsible for placing the youth, regardless of the county the youth currently residing in or was previously placed in.

This law requires that all regular foster care requirements that apply to youth under age 18 also apply to youth over age 18. This includes but is not limited to: making the necessary case work contacts with the child, parents or relatives and caretaker,²¹ providing comprehensive medical and health services,²² and making assessments for parental support.²³

The permanency requirements for former foster care youth re-entering care are the same as for all foster care youth. After granting the motion to return a youth to foster care, the court will set a date for a permanency hearing no later than 30 days after the hearing in which the motion was granted.

Required Steps in Determining Eligibility

Completing the *Re-entry into Foster Care for Youth Age 18 and Over Eligibility Checklist (LDSS-4415 rev. 11/10)* is the first step in determining eligibility for youth ages 18, 19 and 20 re-entering foster care. Complete a separate *Checklist* for each youth. (See *Appendix A* for a sample copy of the *Checklist*.)

Notes:

- **No determination of TANF-EAF is to be made for any re-entry youth so that they are not at risk of using any portion of their five year time limit on temporary assistance.**
- **For youth re-entering foster care within six months of the previous episode, the contrary to the welfare/best interests and reasonable efforts findings from the initial placement order for that previous foster care episode will meet the criteria for the re-entry episode. To claim Title IV-E for a child who otherwise satisfies the other Title IV-E standards, the court order must be in place.**
- **The county of origin is responsible for payment if the child re-enters foster care regardless of the county the youth currently resides in or is placed in. If a youth returns to an agency requesting to re-enter foster care, the agency is required to notify the LDSS/ACS.**

²¹ See 18 NYCRR 441.21, Casework Contacts.

²² See 18 NYCRR 441.22, Health and Medical Services.

²³ See 18 NYCRR 422, Parental Support of Children Receiving Foster Care.

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- Youth whose prior episode of care was initiated through a JD (Article 3 of the FCA) or PINS (Article 7 of the FCA) proceeding are able to re-enter foster care after reaching age 18 if otherwise eligible under Chapter 342. The petition and supporting documentation must be filed and the court's order granted for such youth under Section 1091 of the FCA, as added by Chapter 342. Youth who are placed in the custody of OCFS including youth placed in voluntary agencies or OCFS facilities, are not eligible for re-entry under this law.

To be eligible for Title IV-E, the youth must meet all six eligibility requirements and each must be appropriately documented:

- Age
- Citizenship
- Legal Authority
- Contrary to the Welfare/Best Interests
- Reasonable Efforts
- AFDC Eligibility

👉 **Title IV-E may be claimed if and when it can be documented. Title IV-E may not be claimed until all eligibility requirements are satisfied!**

These Title IV-E requirements are discussed below in the order that they appear on the *Re-entry into Foster Care for Youth Age 18 and Over Eligibility Checklist (LDSS-4415 rev. 11/10)*. Included in the discussion are instructions for completing the *Checklist* in its entirety and detailed explanations for each requirement followed by the acceptable documentation. These instructions have been formatted to follow completion of the *Checklist*. (See *Appendix A* for a sample copy of the *Checklist*.)

👉 **Please note that there are designated lines immediately following the requirement to enter the source and location of documentation. Entries are required in these areas.**

The symbol → indicates a direction to enter information. When necessary, the instructions are followed by an **Explanation** of the item and the **Documentation** required. Remember to complete a separate *Checklist* for each youth (over age 18 and under age 21) re-entering foster care. Each *Checklist* item is circumscribed in a box.

It is strongly recommended that the Checklist with the attached documentation be kept in a separate, identified section of the case record that is maintained for eligibility purposes. Please note that this case record is confidential and must be protected to prevent exposure of the youth's information to anyone other than personnel authorized by law.

Section I. Case Information

- Enter the Case Name; Child's Name (Last, First, Middle Initial); Unit/Worker Number; Date of Birth (DOB); Child's Client Identification Number (CIN) (optional); and Case Number.
- Enter the Family Assistance (FA) or Safety Net (SN) Clearance Date.
- Check YES or NO regarding whether the child is a FA/SN Recipient.
- Check the Welfare Management System (WMS) Screen Print box if included in the case record.
- Check FA/SN Automated Budget Eligibility Logic (ABEL) Budget box, if included in the case record
- Enter the Supplemental Security Income (SSI) Clearance Date.
- Check YES or NO regarding whether the child is an SSI Recipient.

Explanation:

Use the most accurate data available for entering information. The Welfare Management System (WMS) Family Assistance/Safety Net (FA/SN) clearance (if available) contains reliable demographic data. See also court documents for date of birth. Receipt of Supplemental Security Income (SSI) can be checked on the State Data Exchange (SDX).

Section II. Title IV-E Eligibility

- Enter the Court Petition Filed Date **or** the Date of the Order to Show Cause
- Enter the Date of Re-entry into Foster Care

Explanation:

The court petition filed date is the date the court petition was filed and the date of the order to show cause is the date the order was signed that lead to or directed the youth to re-enter foster care. Remember, the court motion must be filed within 24 months from the date of the first final discharge that occurred on or after the youth's 18th birthday provided the youth is under age 21.

The date of re-entry into foster care is the date the youth re-enters foster care.

**Child Must Meet All Requirements Below for Title IV-E Eligibility:
If any of the responses to Questions 1-6 are “NO,” child is NOT Title IV-E eligible**

1. Age. Was the child between the ages of 18 and 21 when s/he re-entered foster care?

→ Check YES if the child is between the ages of 18 and 21 years.

→ Check NO if the child is not between the ages of 18 and 21 years. Child is not Title IV-E eligible. ☞ Go to **Question 7** and indicate ineligible for Title IV-E.

Explanation:

To be eligible for Title IV-E under Chapter 342 of the Laws of 2010, a child must be at least age 18 but less than age 21 and be re-entering foster care after a final previous discharge from foster care. If the child re-entering foster care is age 17 years or younger, please use the *Initial Foster Care Eligibility Checklist (LDSS-4809)/Automated Eligibility Checklist*.

Acceptable Documentation:

- Non-services WMS screen reflecting the child’s date of birth
- Birth certificate²⁴
- Baptismal certificate
- Hospital Records
- U.S. Passport
- Naturalization certificate
- Court records
- School records
- Family Assessment and Service Plan (FASP)/Progress notes that substantiate one of the above certificates was seen by the caseworker—should include the child’s name, date of birth, parents’ names and type of certificate or certificate number, if available

If the response to this question is YES, enter the source of documentation on the designated line. In addition, include a copy in the child’s eligibility file and indicate on the designated line, where in the child’s case file this documentation can be found.

2. Citizenship. Is the child a citizen of the United States or a qualified immigrant as defined under the federal PRWORA documentation requirements for citizenship or legal immigration status?

→ Check YES if the child is a U.S. citizen or a qualified immigrant.

→ Check NO if the child is not a U.S. citizen or a qualified immigrant. Child is not Title IV-E eligible. ☞ Go to **Question 7** and indicate child is ineligible for Title IV-E.

²⁴ See 10-OCFS-INF-10 for details regarding birth certificates from Puerto Rico.

Chapter One Part A: Title IV-E Foster Care Eligibility

Explanation:

A recipient of Title IV-E must be a citizen of the United States or a qualified immigrant as defined by the 1996 Personal Responsibility and Work Opportunity Reconciliation Act (PRWORA).

Citizenship or immigration status of any child in foster care must be verified regardless of whether Title IV-E Foster Care payments are made on their behalf. (See *Appendix B* for list of United States Citizen and Immigration Services [USCIS] documents).

Acceptable Documentation:

U.S. Citizen

- Birth certificate²⁵
- U.S. Passport
- Court Records
- Naturalization certificate

Qualified Immigrant

- WMS Case Composition screen showing child receives Family Assistance (FA), Medical Assistance (MA),²⁶ Home Energy Assistance Program (HEAP) or Food Stamps (FS)
- Documents from the United States Citizen and Immigration Services (USCIS)
- Court Records

See *Appendix B* for the *Immigration Status List*

 **Notes:** You cannot rely on an individual's receipt of Safety Net Assistance as documentation of qualified immigrant status, as there are additional groups of immigrants who can qualify for Safety Net, which is a State program.

All children in foster care except for non-qualified immigrants are categorically eligible for Medicaid and do not require a separate determination for Medicaid (MA) (Title XIX).

If the response to this question is YES, enter the source of documentation on the designated line. In addition, include a copy in the child's eligibility file and indicate on the designated line, where in the child's case file this documentation can be found.

²⁵ See *10-OCFS-INF-10* for details regarding birth certificates from Puerto Rico.

²⁶ **Medicaid Exception:** State and local Medicaid eligibility for otherwise eligible immigrants is not dependent on whether the immigrant is a qualified immigrant or non-qualified immigrant or the date on which the immigrant entered the U.S. as outlined in PRWORA. State and local Medicaid coverage cannot be denied if an otherwise eligible immigrant is permanently residing in the U.S. under Color or Law (PRUCOL) or is a lawfully admitted permanent resident. Also, federally funded Medicaid may be granted to otherwise eligible undocumented immigrants for emergency services only. Pregnant women are not required to document citizenship or immigration status in order to be eligible for Medicaid. These individuals can be identified on **upstate** WMS by category codes: **38** (Alien FP-Emergency Only); **37** (Alien FNP-Eligible MA-Does Not Meet PRWORA); and **76** (Legal Aliens-Eligible MA-Does Not Meet PRWORA). On **downstate** WMS, the individuals are identified by alien code **E** (Undocumented Aliens-Emergency MA Only) or State/federal charge codes: **60** (TANF Ineligible Alien) and **67** (Qualified Alien in the Five Year Ban for Medicaid/PRUCOL).

3. Legal Authority. Did the child re-enter foster care as a result of a court order pursuant to Article 10-B of the FCA and does the placement court order transfer custody to the Commissioner of the LDSS/ACS?

→ Enter the date the court order was signed on the designated line

→ Enter the Docket # on the designated line

→ Check YES if the placement court order directs the child back into foster care; **or**

→ Check NO if the placement court order does not direct the child back into foster care.

☞ Go to **Question 7** and indicate child is ineligible for Title IV-E.

Explanation:

Court-ordered Re-entry into Foster Care

A child who has attained the age of 18 may only re-enter foster care on a court order that directs him/her back into foster care. Such order returns the child to the custody of the Commissioner of the LDSS or ACS.

Acceptable Documentation:

- A court order (or court transcript) that places the child in the care and custody or the custody and guardianship of the Commissioner of the LDSS/ACS

If the response to this question is YES, enter the source of documentation on the designated line. In addition, include a copy in the child's eligibility file and indicate on the designated line, where in the child's case file this documentation can be found.

4. Contrary to the Welfare/Best Interests. Does the initial court order sanctioning/directing re-entry of the child into foster care explicitly state that the court made a finding to the effect that continuation in the current living situation would be “contrary to the welfare” of the child or that re-entry into foster care was in the “best interests” of the child; **OR** if the child is re-entering foster care within six months of final discharge from the previous foster care episode, was there a “contrary to the welfare/best interests” finding in that initial placement order?

→ Check YES if the court order sanctioning/directing re-entry into foster care indicates that continuation in the current living situation would be “contrary to the welfare” of the child;
or

→ Check YES if the court order sanctioning/directing re-entry into foster care indicates that re-entry into foster care is in the “best interests” of the child; **or**

→ Check YES if the child is re-entering foster care within six months of final discharge from a previous foster care episode and the initial placement order from the previous foster care episode contains this language;

→ Check NO if none of the above legal circumstances apply to the child. Child is not Title IV-E eligible. ☞ Go to **Question 7** and indicate child is ineligible for Title IV-E.

Explanation:

The court order sanctioning/directing the re-entry of the child into foster care must explicitly state that the court made a finding to the effect that continuation in the current living situation would be “contrary to the welfare” of the child or that re-entry into foster care was in the “best interests” of the child; **or** if the child is re-entering foster care within six months of final discharge from the previous episode of foster care there must be a “contrary to the welfare/best interests” finding issued by the court in that initial placement order.

Acceptable Documentation:

- A court order (or court transcript) of the court determination sanctioning re-entry into foster care that explicitly states it would be “contrary to the welfare” of the child to remain in the current living situation or it would be in the “best interests” of the child to return to foster care; **or**
- If the child is re-entering foster care within six months of final discharge from a previous foster care placement, a copy of the initial placement order issued by the court that contains the “contrary to the welfare/best interests” language.

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↳ **Note:** For eligibility purposes only: If the LDSS/ACS has a reliable process in place in which the court orders and determinations in those orders are summarized on a separate document for the purpose of informing casework staff of court events, you may use the information in the summary in completing the *Checklist*. This summary material should be completed only by trained individuals who understand the contents of the court order, have reviewed it and understand the requirements of Title IV-E eligibility. **In no event can the summary material be used to document eligibility for federal review purposes.**

If the response to this question is YES, enter the source of documentation on the designated line. In addition, include a copy in the child's eligibility file and indicate on the designated line, where in the child's case file this documentation can be found.

5. Reasonable Efforts. For a court order sanctioning/directing re-entry into foster care, is there a case specific determination by the court expressly stipulated in the court order issued within 60 days from the date the child re-entered foster care to the effect that the LDSS/ACS made "reasonable efforts" to prevent re-entry into foster care? Such finding may reflect that the LDSS/ACS made "reasonable efforts" to meet the child's needs prior to re-entry into foster care or that, where appropriate, no efforts were reasonable; **or** if the child is re-entering foster care within six months of final discharge from the previous foster care episode, was there a "reasonable efforts" finding by the court within 60 days from the date the child entered foster care in the previous foster care episode?

→ Check YES if the court issued an order within 60 days of the date the child re-entered foster care to the effect that the LDSS/ACS made "reasonable efforts" to prevent re-entry into foster care **or** to meet the child's needs prior to re-entry into foster care **or** that no efforts were reasonable; **or**

→ Check YES if the child is returning within six months of final discharge from the previous foster care episode and the court issued an order with a "reasonable efforts" finding within 60 days of the placement in the previous foster care episode;

→ Check NO if there is not an appropriate court order with such language. Child is not eligible for Title IV-E. ↪ Go to **Question 7** and indicate child is ineligible for Title IV-E.

Explanation:

For a court order sanctioning/directing re-entry into foster care, there must be a case specific determination by the court expressly stipulated in the court order, and issued within 60 days from the date the child re-entered foster care, that the LDSS/ACS made "reasonable efforts" to prevent re-entry into foster care. This finding may reflect that the LDSS/ACS made "reasonable efforts" to meet the child's need prior to re-entry into foster care or that, where appropriate, no efforts were reasonable; **or** if the child is re-entering foster care within six months of final discharge from the previous foster care episode, there must be a "reasonable efforts" finding issued by the court within 60 days from the date the child entered the previous foster care episode.

Chapter One Part A: Title IV-E Foster Care Eligibility

Trial Discharge

Trial discharge for youth between ages 18 and 21 may be extended at each scheduled permanency hearing, provided the youth consents to the extension. As in current regulation 18 NYCRR 430.12(f)(4) and the program instructions of the Administration for Children and Families ACYF-CB-PI-10-11 multiple trial discharges approved by the court are permitted consistent with the needs of the child.

↳ Note: If the child has been on a trial discharge status for more than six months and the court has not extended trial discharge status for the child, a new Title IV-E eligibility determination must be made upon re-entry into foster care.

Acceptable Documentation:

- A court order (or court transcript) issued within 60 days of the child re-entering foster care that states that the Title IV-E Agency made “**reasonable efforts**” to prevent re-entry into foster care, or the Agency made “**reasonable efforts**” to meet the youth’s needs prior to a return to foster care or where appropriate, that **no efforts were reasonable**; or
- With regard to the previous episode of foster care, if the child is re-entering foster care within six months of final discharge, a copy of the original placement order issued by the court that contains the “**reasonable efforts**” language or a court order which contains a brief statement of the facts upon which the court based its “reasonable efforts were made to prevent removal” finding is acceptable. Also acceptable is where the court makes a reasonable efforts finding and cross-references documentation, such as a petition or report, or testimony upon which the court based its finding

If the response to this question is YES, enter the source of documentation on the designated line. In addition, include a copy in the child’s eligibility file and indicate on the designated line, where in the child’s case file this documentation can be found.

6. AFDC Eligibility. Would the **child** have been financially eligible for AFDC based on the circumstances that existed in the **child’s** current living situation or the **child’s** income during the month the court proceedings were held based on the rules in effect as of July 16, 1996? (**Note:** Parental Deprivation and Living with Specified Relative criteria are deemed to have been met.)

→ Check YES if financial eligibility for AFDC as described above is met and documented.

→ Check NO if financial eligibility for AFDC as described above is not documented. Child is not Title IV-E eligible. ⚡ Go to **Question 7** and indicate child is ineligible for Title IV-E.

Explanation:

AFDC Program Criteria

A child/youth must have met the AFDC eligibility requirement per section 472(a)(3) of the Act at the time of removal from the home to be eligible for Title IV-E Foster Care. For a youth age 18 or older who is re-entering foster care after attaining age 18, consistent with the criteria above, AFDC eligibility is based on the youth without regard to the parents/legal guardians or others in the assistance unit in the home from which the youth was removed as a younger child (e.g., a child-only case).

Note: Based on guidance from the federal government where a youth re-enters foster care after the age of 18, the requirements for Parental Deprivation and Living with Specified Relative are deemed to have been met.

Acceptable Documentation:

- WMS screen printout
- ABEL Budget
- Pay stub for the child

If the response to this question is YES, enter the source of documentation on the designated line. In addition, include a copy in the child's eligibility file and indicate on the designated line, where in the child's case file this documentation can be found.

7. Child Eligibility.

- Check YES if all the answers to questions 1 through 6 are YES. Child is Title IV-E eligible.
- Check NO if any of the responses to questions 1 through 6 are NO. Child is not eligible for Title IV-E.

System Implications

CONNECTIONS

CONNECTIONS does not allow the tracking of a youth age 18 or older. CONNECTIONS' processing for this population requires the intervention of OCFS-IT/State staff.

To track a former foster care youth age 18, 19 or 20 years, you must:

- Add the child to the CONNECTIONS FSS/CWS stage if there is such a stage open and the child is not already part of that stage.
- Create an FSI and stage progress to a FSS/CWS stage if there is no CONNECTIONS FSS/CWS stage open. **DO NOT CREATE THE WMS APPLICATION.**

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- Send a request to the AppHelp mailbox (ocfs.sm.conn_app@ocfs.state.ny.us) with the following information:
 - Case and stage ID
 - Child's person ID (PID)
 - Program Choice (Preventive or Placement) and effective date of Program Choice
 - Permanency Planning Goal (PPG) and effective date of PPG

Once processing has been completed, you will be advised to either process the addition of the child to the existing WMS case or create the WMS application and process the WMS case opening.

For a child who left foster care at age 18 and at the time, was freed for adoption and who re-enters foster care, it is recommended that s/he be placed in a CWS stage and for purpose of the FASP, the "no caretaker" box be checked.

Welfare Management System (WMS)

Preventive Services and Foster Care POS lines can be authorized up to age 21 years. Please note that Foster Care cases cannot be opened in WMS independent of CONNECTIONS so follow the instructions above.

Child Care Review Services (CCRS)

Use the CCRS legal event codes below, as appropriate, to report the court proceedings of youth re-entering foster care:

- Type of Legal Event (Modifier A) codes:
 - **22** - Article 10-B + Re-entry to Foster Care
 - Requires a previous movement code **M990** (*Child Placement Ended*). The **L300** activity date must be greater than the activity date of the **M990**.
 - Use Modifier B/C equal to **42** (*Transfer Custody and Guardianship – SURRENDER OR TPR ONLY*) OR **44** (*Foster Care Placement to Continue*) will not be allowed if Modifier A is equal to **22**.
 - Use of **L300** with Modifier A equal to **22** requires a previous movement code **M990** (*Child Placement Ended*). The **L300** activity date must be greater than the activity of the **M990**.
 - **23** – Article 10-B + Permanency Hearing Review
 - Requires previous **L300** with MOD A **22**
- Applicable error messages for codes **22** and **23** are as follows:
 - **631** – Activity date must be greater than or equal to 18th birthday
 - **632** – Activity date must be less than 21st birthday
 - **633** – No discharge on file prior to legal activity-disallowed
 - **634** – No initial re-entry legal on file-legal activity-disallowed
 - **635** – Contra not allowed-review legal activities on file

Benefits Issuance Control System (BICS)

Appropriate claiming/reimbursement is dependent on system entered documentation that Legal Authority is in effect (**L300** w/MOD A **22/23**).

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Medical Assistance (MA)

All children who are in the care and custody of the Commissioner of the LDSS/ACS and who are U.S. citizens or have satisfactory immigration status are categorically eligible for Medicaid.

 **WMS and CCRS Coding Guides and GIS messages can be found at the OCFS website:**
<http://ocfs.state.nyenet/it/GeneralResources/GeneralResourcesDefault.asp>

For systems questions, please contact the AppHelp mailbox at:
ocfs.sm.conn_app@ocfs.state.ny.us or
Call OCFS IT Operations at 1-800-342-3727

Re-determination of Title IV-E Eligibility

Federal and State regulations require that eligibility for assistance and services be re-evaluated on a regular basis. The process of re-determining eligibility and reauthorizing the case in WMS is known as “Re-determination.” Re-determination of cases found to be Title IV-E (foster care) eligible must occur at a minimum of every 12 months. It is recommended that a re-determination be completed on the foster child’s 18th birthday and annually until the child turns age 21.

Required Steps in Re-determining Eligibility

Completing the *Re-determination of Title IV-E Eligibility Checklist (Foster Care) (LDSS-4810 rev. 10/10)* is the first step in re-determining eligibility for Title IV-E Foster Care (see *Appendix A* for a sample copy of the *Checklist*). Complete this form for:

- Foster care cases determined eligible for Title IV-E and requiring a 12-month re-determination of that category
- Foster care cases for which Title IV-E eligibility has been suspended because of a lapse in legal authority²⁷ or failure to secure a reasonable efforts determination on a 12 months basis as required by Title IV-E
- Child turning age 18 and annually thereafter.

Since a proper re-determination of eligibility depends on the outcome of the *initial* determination, always review the *Initial Foster Child Eligibility Checklist (LDSS-4809 rev. 10/10)/ Automated Eligibility Worksheet* before preparing the re-determination *Checklist*. During your review, make sure that all documentation for the initial determination is on file and take steps to obtain any missing documentation. Cases that are not fully documented cannot be continued as Title IV-E and other categories of eligibility such as TANF-EAF should be pursued, authorized and claimed, if appropriate.

Title IV-E Foster Care Re-determination Requirements²⁸

To continue to be eligible for Title IV-E Foster Care, the child must meet all three eligibility requirements and each must be appropriately documented:

- Age
- Legal Authority/Judicial Review
- Reasonable Efforts to Finalize Permanency

²⁷ New York State Law provides that court orders placing a child in foster care pursuant to Article 10 of the FCA (abuse/neglect), Article 10-C of the FCA (destitute child), and orders approving a Voluntary Placement Agreement must contain a date certain for the initial permanency hearing. This continues legal authority until a subsequent order is issued by the court under Article 10-A of the FCA.

²⁸ On April 1, 2010, AFDC eligibility re-determination was eliminated. A child who has been determined AFDC eligible under Title IV-E at removal is considered to meet the AFDC need and deprivation requirements throughout the foster care episode regardless of subsequent changes in income, resources and parental deprivation.

Chapter One Part A: Title IV-E Foster Care Eligibility

Below are the Title IV-E requirements discussed in the order that they appear on the *Re-determination of Title IV-E Eligibility Checklist (Foster Care)* (LDSS-4810 rev. 10/10). Included in the discussion are instructions for completing the *Checklist* in its entirety and detailed explanations for each requirement followed by the acceptable documentation. These instructions have been formatted to follow completion of the *Checklist*. (See *Appendix A* for a sample copy of the *Checklist*)

The symbol → indicates a direction to enter information. When necessary, the instructions are followed by an **Explanation** of the item and the **Documentation** required. Remember to complete a separate *Checklist* for each foster child being considered for continued Title IV-E eligibility. Each *Checklist* item is circumscribed in a box.

It is strongly recommended that the Checklist with the attached documentation be kept in a separate, identified section of the case record that is maintained for eligibility purposes. Please note that this case record is confidential and must be protected to prevent exposure of the child's information to anyone other than personnel authorized by law.

Section I. Case Information

→ Enter the Case Name; Child's Name (Last, First, Middle Initial); Unit/Worker Number; Date of Birth (DOB); Child's Client Identification Number (CIN) (optional); Date of (initial) Placement; and Case Number.

Explanation:

Use the most accurate data available for entering information. The Welfare Management System (WMS) Family Assistance/Safety Net (FA/SN) clearance (if available) contains reliable demographic data. See also court documents for date of birth. Receipt of Supplemental Security Income (SSI) can be checked on the State Data Exchange (SDX).

Section II. Re-determination of Title IV-E Eligibility

Foster Child Must Meet All Requirements Below for Continued Title IV-E Eligibility:

If any of the responses to Questions 1–3 are NO, the child is NOT Title IV-E Eligible

1. **Age.** a) Is the child under age 18?

OR

b) Is the child age 18 or older but under age 21, consents to remain in foster care and meets one of the eligibility re-determination criteria²⁹ listed below? *Check applicable criteria.*

- Completing secondary education or a program leading to an equivalent credential
- Enrolled in an institution which provides post-secondary or vocational education
- Participating in a program or activity designed to promote or remove barriers to employment
- Employed for at least 80 hours per month
- Incapable of doing any of the activities described above due to a medical condition, which incapability is supported by regularly updated written or recorded information in the case plan of the child

→ Check YES if the response to a) or b) is YES.

→ If the response to this question is YES, enter the source of documentation on the designated line. In addition, include a copy in the child's eligibility file and indicate on the designated line, where in the child's case file this documentation can be found.

→ Check NO if the child is age 21 or older or the child is age 18 or older and does not meet one of the re-determination criteria listed above. Child is not eligible for Title IV-E. ☞ Go to **Section III** and indicate ineligible for Title IV-E.

Explanation:

Title IV-E eligibility is limited to children under age 18 or if the child is age 18 or older but under age 21, consents to remain in foster care and continues to meet one of the educational, vocational employment or medical criteria noted above. A re-determination of Title IV-E eligibility must always be done when a child turns age 18, 19 and 20. The educational, vocational, employment or medical status of the child must be part of that review.³⁰

²⁹ See *10-OCFS-ADM-10*, Title IV-E Foster Care and Adoption to Age 21 and *GIS 10-#006* for details

³⁰ For foster children who were eligible for Title IV-E and lost such eligibility prior to October 1, 2010, solely due to reaching age 18 (or age 19, as applicable), and remained continuously in foster care (same foster care episode) and are otherwise Title IV-E eligible, i.e., there is no break in legal authority, and youth has not been on trial discharge for more than six months, Title IV-E eligibility is to be reinstated on October 1, 2010, provided however, that an updated re-determination is made and demonstrates that the youth remains eligible on all applicable factors, including an annual court order determination that reasonable efforts have been made to finalize the youth's permanency plan.

Acceptable Documentation:

Age (under age 18)

- Non-services WMS screen reflecting the child's date of birth
- Birth certificate³¹
- Baptismal certificate
- Hospital Records
- U.S. Passport
- Naturalization certificate
- Court records
- Family Assessment and Service Plan (FASP)/Progress notes substantiate that one of the above certificates was seen by the caseworker—should include the child's name, date of birth, parents' names and certificate number

Please check the eligibility case record as the documentation for this requirement may already be on file.

Age 18 and older

- Completing secondary education or a program leading to an equivalent credential, e.g., a youth age 18 & older is finishing high school or taking classes in preparation for a general equivalency diploma exam
- Enrolled in an institution which provides post-secondary or vocational education, e.g., a youth could be enrolled full-time or part-time in a university or trade school
- Participating in a program or activity designed to promote, or remove barriers to employment, e.g., a youth could be in Job Corps or attending classes on resume writing and interview skills
- Employed for at least 80 hours per month, e.g., a youth could be employed part-time or full-time, at one or more places of employment
- Name, location and type of school or program
- Grades
- Progress report
- Evaluation or other document from school or program that establishes youth attendance or enrollment
- Name, location, and type of institution
- Grades
- Progress report
- Evaluation or other document from institution that established youth attendance or enrollment
- Name, location and program or activity description
- Statement from program or activity that establishes youth participation
- Name of employer, company, agency or organization, location and nature of employment
- Statement from employer that establishes hours worked per month

³¹ See 10-OCFS-INF-10 for details regarding birth certificates from Puerto Rico.

Age 18 and older (continued)

- Incapable of doing any of the activities described above due to a medical condition, which incapability is supported by regularly updated written or recorded information in the case plan of the child
- The child's medical condition must be documented by a physician, a physician's assistant or a nurse practitioner under the supervision of a physician or a licensed psychologist

2. Legal Authority/Judicial Review. Is there a current court order that continues to award care and custody or custody and guardianship to the Commissioner of the LDSS/ACS?

OR

Is there a signed Voluntary Placement Agreement that has been reviewed and approved by the court? In the case of the voluntary placement pursuant to SSL 384-a, has the court reviewed the child's placement pursuant to SSL 358-a and made a determination within 180 days of the placement that continued placement would be in the best interests of the child? (If the court has NOT made such a determination within 180 days of placement, the case must NOT be authorized as Title IV-E foster care. Title IV-E claiming must cease. The case is not Title IV-E eligible for the duration of the foster care episode.)

☞ *Check the appropriate box for the basis of legal custody (check only one box)*
FCA Article 3, FCA Article 7, FCA Article 10, FCA Article 10-A, FCA Article 10-C, or Voluntary Placement Order (SSL 358-a, approving the Voluntary Placement Agreement, as appropriate)

→ Check YES if care and custody awarded to the Commissioner of the LDSS/ACS continues in effect under Article 3, 7, 10, 10-A, or 10-C of the FCA or SSL 358-a.

→ If the response to this question is YES, enter the source of documentation on the designated lines. In addition, include a copy in the child's eligibility file and indicate on the designated line, where in the child's case file this documentation can be found.

→ Enter the Date of the Court Order and the Docket Number on the designated lines.

→ Enter the Period that the court order covers for JD/PINS who are not completely freed pursuant to either Article 3 or 7, **OR** the period "from" date and the Date Certain of the next hearing for all other foster children on the designated lines.

→ Check NO if none of the above legal circumstance apply to the child. Child is not eligible for Title IV-E. ☞ Go to **Section III** and indicate ineligible for Title IV-E.

Chapter One Part A: Title IV-E Foster Care Eligibility

Explanation:

For a child placed as an abused or neglected child pursuant to Article 10 of the Family Court Act (FCA), or a child placed as a destitute child³² pursuant to Article 10-C of the FCA, or a child placed voluntarily pursuant to section 384-a of the Social Service Law (SSL) or any category of foster child who is completely legally freed for adoption, legal authority does not lapse for failure to secure an extension of placement order. Pursuant to Article 10-A of the FCA, as enacted by Chapter 3 of the Laws of 2005, effective December 21, 2005, the court retains ongoing jurisdiction and legal authority on the part of the LDSS/ACS (and OCFS for completely freed JDs) and legal authority remains in effect until a subsequent order from the court either discharges the child or transfers legal custody.

For court-placed children--Articles 3 (JD) and 7 (PINS) of the FCA who are not completely legally freed for adoption: An initial order (disposition or remand) or a subsequent order (extension of placement/permanency hearing) must be in effect throughout the child's placement. Except for the initial permanency hearing in certain Article 3 placements, extension of placement hearings are combined with permanency hearings and must be held within 12 months thereafter.³³ Cases not meeting this criterion lose Title IV-E eligibility at the end of the month that legal authority lapses and the case remains ineligible until legal authority is re-established. At that time, Title IV-E eligibility resumes as of the first day of the month in which legal authority is re-established as long as all other Title IV-E eligibility continue.

 **Please Note:** When determining the date of the court order, use the hearing date located in the upper right hand corner of the first page of the order, or if that is not available, the date the court order was signed by the judge.

³² See 12-OCFS-ADM-08 for details regarding the destitute child.

³³ Pursuant to New York State law, the date certain of the first permanency hearing is now included in all initial removal orders for children placed pursuant to Article 10 (abuse/neglect) of the FCA, Article 10-C (destitute child) of the FCA and in the SSL 358-a order approving the Voluntary Placement Agreement. The date certain for compliance with New York State standards for the initial permanency hearing must be no later than eight months from removal (date of removal plus 60 days plus six months). At the conclusion of each permanency hearing, a new date certain will be established for the next permanency hearing, which for compliance with New York State standards, must be commenced no later than six months from the conclusion of the previous permanency hearing. Each permanency hearing must be concluded within 30 days of the scheduled date certain for such permanency hearing. The failure to hold a permanency hearing by the date certain for a case subject to Article 10-A of the FCA does not result in the lapse of legal authority.

Chapter One Part A: Title IV-E Foster Care Eligibility

Acceptable Documentation:

Court Placements

- The most recent permanency hearing court order issued pursuant to Article 10-A of the FCA continuing the child in foster care for children who entered foster care pursuant to Article 10 (abuse/neglect) of the FCA, Article 10-C (destitute child)³⁴ of the FCA or a voluntarily surrender pursuant to section 384 of the SSL (with section 358-a of the SSL court order approving the voluntary placement), and for all children in foster care who are completely legally freed for adoption.
- The initial court order placing the child in the care and custody or custody and guardianship of the Commissioner of the LDSS/ACS for children in foster care who entered care pursuant to Article 10 of the FCA, Article 10-C³⁵ of the FCA or section 358-a of the SSL (voluntary surrender) and who have not had their initial permanency hearing.
- The court disposition under Articles 3 (JD) or 7 (PINS) of the FCA placing or continuing the child in foster care covering the foster care authorization period for children in foster care pursuant to Articles 3 or 7 of the FCA who are not completely legally freed for adoption.

OR

Voluntary Placements

- The most recent permanency hearing court order issued pursuant to Article 10-A of the FCA that retains legal authority with the LDSS/ACS Commissioner and approves continuation of the child in foster care; **or**
- The court order issued pursuant to section 358-a of the SSL with a determination made within 180 days of placement of the child in foster care, that continuation in foster care is in the best interests of the child;
- The court order issued pursuant to section 358-a of the SSL approving the Voluntary Placement Agreement with a determination made within 180 days of the placement of the child in foster care that continued foster care placement is in the best interests of the child when you don't have the court order approving the Voluntary Placement Agreement.

Do **not** use the Voluntary Placement Agreement as the document authorizing care and custody to the Commissioner of the LDSS/ACS if the placement has gone beyond the 180th day without a court determination that it is in the best interests of the child to remain in foster care.

³⁴ See 12-OCFS-ADM-08 for details regarding the destitute child.

³⁵ Ibid.

3. Reasonable Efforts to Finalize Permanency (Applicable to court-ordered removals only).

For court ordered placements, within 12 months of the date the child is considered to have entered foster care and every 12 months thereafter, is there a court determination made on a case specific basis and stipulated in the court order that reasonable efforts were made to finalize the child's permanency plan or to enable the child to safely return home?

- Check YES if there is a court order in effect and issued within the past 12 months since the last hearing with a reasonable efforts determination stipulating that the Agency made reasonable efforts to finalize the permanency plan or enable the child to safely return home.
- If the response to this question is YES, enter the source of documentation on the designated line. In addition, include a copy in the child's eligibility file and indicate on the designated line, where in the child's case file this documentation can be found.
- Enter the Date of the Court Order, the Docket # and the date of the Next Permanency Hearing on the designated lines.
- Check NO if no court order was issued within the past 12 months since the last reasonable efforts determination was made stipulating that the Agency made reasonable efforts to finalize the permanency plan or enable the child to safely return home. Child is not eligible for Title IV-E. ☞ Go to **Section III** and indicate ineligible for Title IV-E.

Explanation:

For a child removed on or after **March 27, 2000** to be Title IV-E eligible, the case must have an initial court determination that the Agency has made reasonable efforts to finalize the child's permanency plan for children in foster care no later than 12 months from the date the child is considered to have entered foster care.

The date a child is considered to have entered foster care is the earlier of the date of the fact finding of abuse or neglect pursuant to Article 10 of the FCA or the date that is 60 days after the child was removed from his/her home. However, for youth who have been placed in detention after the removal from the home pursuant to either Articles 3 (JD) or 7 (PINS) of FCA and the youth remains in detention for more than 60 days prior to placement in foster care (i.e., **M910** date in the Child Care Review System [CCRS]), the **M910** date is the date the child is considered to have entered foster care.

Irrespective of when the child was removed, a subsequent judicial determination that the Agency made reasonable efforts to finalize the child's permanency plan or to enable the child to safely return home must be made at least once every 12 months following the preceding determination.

Chapter One Part A: Title IV-E Foster Care Eligibility

Cases not meeting this criterion lose Title IV-E eligibility at the end of the month that the reasonable efforts determination is due and the case remains ineligible until this determination is made. Claiming for Title IV-E must cease. Title IV-E eligibility resumes as of the first day of the month in which the determination is made, as long as all other requirements for Title IV-E eligibility continue.

Acceptable Documentation:

- A court order issued pursuant to Article 10-A of the FCA that contains an explicit case-specific determination that reasonable efforts were made to enable the child to safely return home or if the permanency plan is not to return to his/her home, that reasonable efforts were made to finalize the child's permanency plan. A court order which contains a brief statement of the facts upon which the court based its "reasonable efforts were made to finalize the child's permanency plan" finding is acceptable. Also acceptable is where the court makes a reasonable efforts finding and cross-references documentation, such as a petition or report (i.e., FASP or Permanency Hearing Report, etc.) or testimony upon which the court based its finding. If the child's permanency goal is discharge to the child's parent, a finding of reasonable efforts to enable the child to safely return to his/her home supported by a statement of fact or comparable cross-reference to facts, documentation, testimony, etc. is also acceptable.
- A court finding that reasonable efforts were **not** made to finalize the child's permanency plan or safely return the child home does **not** satisfy Title IV-E eligibility requirements. The case will lose its eligibility for Title IV-E at the end of the month in which the reasonable efforts determination is due. Eligibility will resume on the first day of the month in which an acceptable reasonable efforts to finalize permanency or safely return the child home determination is made by the court.

 **Please Note:** When determining the date of the court order, use the hearing date located in the upper right hand corner of the first page of the order, or if that is not available, the date the court order was signed by the judge.

4. Child Eligibility.

(All above criteria must be met)

- Check YES if all the answers to questions 1 through 3 are YES. Child is Title IV-E eligible.
- Check NO if any of the responses to questions 1 through 3 are NO. Child is not eligible for Title IV-E.

Section III. Title IV-E Eligibility Summary & Signatures/Supervisor's Review
WMS Instructions

→ Check the first box in this section if the child meets all the Title IV-E re-determination eligibility documentation requirements: child remains eligible for Title IV-E.

Prepare the *Services Authorization* form (**LDSS-2970**) as follows:

- Enter eligibility code **02**
- Enter direct services code **08**
- Select option 'Y' in the 12 MONTH AUTH REQUESTED field to generate a 12-month authorization period (AUTH PERIOD FROM DATE, plus 12 months) regardless of the Direct Services being authorized)
- Submit for data entry/ a new *Services Authorization* form (**LDSS-2970**) will be generated

→ Check the second box in this section if the child fails to meet any of the Title IV-E re-determination requirements: Claiming for Title IV-E must cease.

Prepare the *Services Authorization* form (**LDSS-2970**) to discontinue the Title IV-E:

- Enter eligibility code **04** if previously determined eligible for TANF-EAF, otherwise:
- Enter one of the following eligibility codes, as appropriate:
 - Code **06** (SSI blind)
 - Code **07** (SSI disabled)
 - Code **08** (MA)
 - Code **14** (non-categorical-determined by income)
- Enter direct services code **08**
- Submit for data entry/a new *Services Authorization* form (**LDSS-2970**) will be generated

 **Reminder:** If a Title IV-E case loses eligibility at re-determination, the case may regain eligibility if the missing documentation is obtained. In these circumstances, the Title IV-E eligibility resumes as of the first day of the month in which all the Title IV-E eligibility requirements are met.

→ Sign and date the form in the designated lines
→ Obtain the Supervisor's signature and date

Preparation for Title IV-E Foster Care Eligibility Review (FCER)

The essential element for a federal review is preparation, i.e., securing and keeping required documents in the case record, where they can be easily and quickly located. If a case record or the required documentation cannot be produced in a Title IV-E eligibility review, the case will be found ineligible. For both state and federal foster care reviews, the child's case record including legal records and the foster care provider record(s) are required. It is strongly recommended that a separate eligibility file containing all supporting documentation for the eligibility decision be maintained for each Title IV-E eligible child. This readily makes available the Title IV-E documentation for local access and prepares the file for a federal review.

Following are suggestions on how a social services district can effectively prepare and the kinds of documentation which must be provided for a Title IV-E eligibility review.

- Designate a staff person who is familiar with the program requirements and knows where to go for the records, what type of documentation is required, and where to go for additional documentation, if needed. For example, if a court order needed to document Title IV-E eligibility is not found in the case record, the designated staff person should know other sources where legal documents can be found, such as the district's legal files or copies maintained by the court. In regard to legal authority, contrary to the welfare/best interests, and reasonable efforts, the only documentation accepted by federal reviewers are court orders and court transcripts.
- At the opening of a case, make sure that eligibility information is placed in a separate file, or maintained in a separate, identifiable section in a child's case record, and maintain the eligibility documentation on an ongoing basis. An eligibility folder should be kept in a secure location where the staff can readily retrieve materials. All eligibility documentation must be kept with the foster care case file. Care should be taken to keep the Title IV-E categorical documentation with the foster care case if the district establishes a folder separate from the parent's folder when the child is freed for adoption. All Title IV-E foster care cases must be available for review, including cases where foster children have been adopted.
- Keep closed records in locations where they can be easily tracked and accessed so that if selected for a federal review,³⁶ a district can retrieve them within a short time frame. Title IV-E eligibility reviews can require documentation of events that occurred many years ago since many of the issues related to Title IV-E eligibility refer to the time of the child's removal from the home and placement into foster care. Federal reviews have repeatedly requested that the entire case files be made available for the formal reviews.
- Documentation includes:
 - The initial and re-determination eligibility *Checklist* forms/*Automated Worksheets*.
 - Age documentation.
 - Citizenship: birth certificate or other proof of citizenship, or proof of qualified immigrant status.

³⁶ These same guidelines are applicable for state reviews.

Chapter One Part A: Title IV-E Foster Care Eligibility

- In describing the circumstances surrounding the child's removal for each foster care episode, the *Checklist* is not enough. The file must include documentation indicating:
 - When and from what home a child was removed
 - What was the household composition
 - The family's income and source; if income is zero, there must be an explanation of how the family survives, from progress notes or other sources
- The court petition leading to the removal, or the signed Voluntary Placement Agreement.
- The initial court order removing the child from the home (including any detention order proceeding foster care placement), or approving the removal, including the determination that continuation of the child in the home would be contrary to the welfare of the child or that the removal was in the child's best interests or that removal is necessary to prevent imminent risk.
- A court order dated within 60 days of the date the child was removed from his/her home, documenting the court's determination that the Agency made reasonable efforts to prevent removal, including that lack of such efforts was reasonable or that due to statutorily specified circumstances reasonable efforts are not required.

For placements **prior to 3/27/00**, the reasonable efforts finding must still be made but is not limited to within 60 days of removal from the home. The judicial determination may be made at any point in the foster care episode. However, Title IV-E foster care maintenance payments may not begin until the first month all eligibility requirements pertaining to the removal are satisfied.

- Applicable annual judicial determination on a case-specific basis by the court that the Agency has made reasonable efforts to finalize the permanency plan for the child, or to enable the child to safely return home (usually set forth in the Permanency Hearing order).
- Continuing legal authority for the entire placement period.
- Documentation of the parental deprivation reason(s) at time of removal.
- The July 16, 1996 AFDC look-back budget³⁷ for children placed after 10/31/97, and the supporting income documentation, either a copy of the FA/SN, MA, or FS budget that documents income for the family, if on assistance at the time of removal, or other income sources.
- Districts will also be required to provide payment information for all Title IV-E reimbursement payments since the initial placement.

³⁷ Districts using the automated *Eligibility Worksheet for Title IV-E, TANF-EAF, and Title XX Below 200%* should provide copies of that document.

Chapter One Part A: Title IV-E Foster Care Eligibility

To be acceptable, all documents must be complete and legible. If the photo copy is not legible, the Agency does not get the benefit of the doubt. Court orders or Voluntary Placement Agreements must be signed and dated. Documentation must be updated and maintained as new events affecting Title IV-E eligibility occur. (For more information on the specific documents required, see the *Eligibility Documentation Desk Aid* section in this manual.) For court related eligibility requirements, the only acceptable documentation is the court order or transcript of the applicable court determination.

Provider Eligibility

Federal Title IV-E eligibility review protocols require documentation that the foster home in which the child was placed be eligible for reimbursement. Therefore, in responding to a Title IV-E eligibility review, the home must be fully certified or approved. The provider eligibility must be fully established for the entire Period Under Review (PUR). If the child was in more than one setting for the PUR, the eligibility for each setting must be documented.

When the child is placed in a foster boarding home at any time during the PUR – either a foster home certified or approved by LDSS/ACS or a voluntary authorized agency (including a relative foster home) or certified by OCFS-- a copy of the certification or approval must be made available as well as the provider record establishing certain elements required under Title 18 NYCRR Part 443, including the criminal history background check results and SCR database check results.

For all placements during the PUR, locate any foster boarding home documents that certify or approve the home, including documentation of criminal history background check results for foster home providers and for household members aged 18 and older and the safety assessment where there was a result *other than* “no record found,” and the SCR data base check results.³⁸

 **Note:** Congregate care facilities, including agency operated boarding homes, group homes and non-public institutions, as well as, facilities, operated by a public agency with a capacity of no more than 25 beds, must be licensed in order for Title IV-E to be claimed.

 For further clarification on out-of-state placements, please refer to *08-OCFS-INF-04: Out of State Foster Care Homes Documentation of Licensure for Title IV-E Foster Care Eligibility*.

³⁸ If the results of the criminal history record check and/or the SCR data base check is that the applicant or a household member has a criminal history or an indicated SCR report(s):

- Documentation in the CONNECTIONS Foster and Adoptive Home Development (FAD) record is required;
- A safety assessment must be documented for criminal history records;
- The appropriate field(s) in MED/CHRC and SCR Comments on the Household Member Detail tab **must be** completed that explains why the foster parent was appropriate for certification or approval despite the existence of these records for both a criminal history record and an indicated SCR report(s).

Other Considerations

Once a case is identified for a review, whether state or federal:

- Identify child's information from his or her family case.
- Note the **PUR**. The information for a child's eligibility will be pertinent for the child's most recent admission in foster care **prior** to the PUR.
- Locate all information for the eligibility criteria cited above that pertain to the time the child was removed from the home and placed into foster care.
- Have the staff person or unit responsible for determining eligibility review for all necessary eligibility documentation.
- Send copies if a currently active case is being called to an off-site location for review.

Title IV-E Final Rule

Source: Federal Child Welfare Policy Manual

The Administration for Children and Families, U.S. Department of Health and Human Services <http://www.acf.hhs.gov/programs/cb/>

Question 1: Federal regulation at 45 CFR 1356.21(g)(3) specifies that Federal financial participation (FFP) for title IV-E foster care maintenance payments may not be claimed when a court orders a placement with a specific foster care provider. In situations where the court specifies the placement in a court order after hearing testimony from various sources, including the State IV-E agency, is FFP available? Is availability of FFP affected when the court disagrees with the agency's placement recommendation and specifies another placement in the order?

Answer 1: Title IV-E requires, as a condition of eligibility, that a child's placement and care responsibility be vested either with the State agency, or another public agency with which the State has an agreement. The purpose of the regulatory provision in question is to assure that the authority of the State title IV-E agency with placement and care responsibility for the child is not usurped. A "court-ordered" placement, as prohibited in the rule, involves the court taking placement and care responsibility away from the agency and assuming placement and care responsibility by choosing the child's placement without bona fide consideration of the agency's recommendation regarding placement. This does not mean that the court must always concur with the agency's recommendation in order for the child to be eligible for title IV-E foster care payments. As long as the court hears the relevant testimony and works with all parties, including the agency with placement and care responsibility, to make appropriate placement decisions, we will not disallow the payments. The prohibition in the rule also does not apply to situations where the court merely names the child's placement in the court order as an endorsement or approval of the agency's placement choice.

Question 2: Licenses for foster family homes and child-care institutions often go into effect or may lapse on a day other than the first or last day of the month. How should the State claim Federal financial participation (FFP) for a title IV-E eligible child who is placed in a foster family home or child-care institution that is licensed for a portion of a month?

Answer 2: If a foster family home or child-care institution is licensed for a portion of a month, the State may claim FFP for the entire month when an otherwise eligible child has resided in that home for the entire month. The State must prorate any claims when the otherwise eligible child has resided in the home or institution for a portion of the month.

Question 3: Can a State claim title IV-E reimbursement for an eligible child placed in a childcare institution that has a provisional license? Can the State claim title IV-E if the child care institution has a probationary license due to a violation of State procedures?

Answer 3: If a childcare institution is granted a provisional license or placed on probationary status due to its failure to fully satisfy all of the State's licensing standards, then children placed in such facility are not eligible for title IV-E foster care maintenance payments. The childcare institution becomes eligible for Federal financial participation when it comes into full compliance with the State's licensing standards.

Question 4: For what population of children must the section 422 protections be provided?

Answer 4: Section 422 of the Act requires that all of the protections set forth therein be provided to all children in foster care. “Foster care” is defined at 45 CFR 1355.20 as: 24-hour substitute care for all children placed away from their parents or guardians and for whom the State agency has placement and care responsibility. This includes but is not limited to foster family homes, foster homes of relatives, group homes, emergency shelters, residential facilities, child-care institutions, and pre-adoptive homes regardless of whether the foster care facility is licensed and whether payments are made by the State or local agency for the care of the child or whether there is Federal matching of any payments that are made.

Situations exist in which a child who, while s/he may have been removed from her/his home and placed in 24-hour substitute care, is not considered to be in “foster care” because of the nature of the facility in which s/he is placed. In accordance with the statute, we have not considered detention facilities, forestry camps, training schools, facilities that are primarily for the detention of children who are adjudicated delinquent, and facilities like medical or psychiatric hospitals as foster care placements (see ACYF-IM-88-22). Nothing in the new regulations changes this policy. Therefore, children placed in facilities of the type described earlier are not, by definition, in foster care and the State is not required to provide the protections to them while placed in such facilities.

Question 5: States often temporarily place children in facilities that are outside the scope of what is considered “foster care,” such as a detention facility or psychiatric hospital, with the intent of moving the child to a foster care placement at a later date. What is the “date the child is considered to have entered foster care” (the date used to satisfy the case review requirements at section 475(5) of the Social Security Act (the Act)) for such children?

Answer 5: If a child is initially placed in a facility that is not a foster family home or child-care institution, i.e., the child is not in “foster care,” and remains in such facility for more than 60 days, the date such child is considered to have entered foster care is the day that the child is placed in a foster family home or child-care institution. If, however, the child’s entry into foster care from such a setting occurs within 60 days of his or her removal from the home, States should determine the “clock” for satisfying the requirements of the case review system in accordance with section 475(5)(F) of the Act, i.e., the earlier of a judicial finding of abuse or neglect or 60 days from the date of removal.

Question 6: How is a child's IV-E eligibility and the timing for holding six-month periodic reviews and permanency hearings impacted by an interruption in a foster care episode, for example, a temporary placement in a detention facility or psychiatric hospital?

Answer 6: States have two options for addressing the scenario presented in this question: First, despite the interruption in foster care, the State may choose to treat the foster care placement as continuous if the original court order pertaining to the child's removal from the home is still in effect. If the State chooses to do so, the "clock" for holding six-month periodic reviews and permanency hearings would stop while the child is placed in a facility that is outside the scope of "foster care" because the State is not required to hold such reviews and hearings for children who are not in "foster care." The timing for holding six-month periodic reviews and permanency hearings would resume in accordance with the original schedule when the child returns to a foster care setting. The State must *re-determine* the child's eligibility for title IV-E upon his/her placement in a foster family home or childcare institution by verifying the child's need and deprivation.

Alternatively, the State may treat the placement in a facility that is outside the scope of foster care as a discharge from foster care. Obviously, if the child is discharged from foster care, the State is not required to hold six-month periodic reviews or permanency hearings for such child. The timing for holding such reviews and hearings begins anew when/if the child returns to foster care. The State must, however, *re-establish* the child's title IV-E eligibility, which includes obtaining the requisite judicial determinations.

Regardless of the option the State chooses, no Federal financial participation is available while the child is placed in a facility that is considered outside the scope of "foster care."

Question 7: Must the State hold six-month periodic reviews and permanency hearings for children on trial home visits?

Answer 7: Historically, this has been an area in which States have had some flexibility. If the State considered a child who is on a trial home visit to be "in foster care," then it was required to continue holding six-month periodic reviews and permanency hearings during that visit. If not, then the State was not required to hold such reviews or hearings. There is no change in policy at this time. If the trial home visit ends within the six months allotted in the regulations at 45 CFR §1356.21(e), then the foster care placement is considered continuous and the State should hold six-month periodic reviews and permanency hearings in accordance with the original schedule.

Question 8: Must the State hold six-month periodic reviews and permanency hearings for children who have run away?

Answer 8: If the State retains responsibility for the placement and care of the child during the runaway episode, it must continue to hold six-month periodic reviews and permanency hearings on the original schedule, even if the child has not been located.

Question 9: Must the State hold six-month periodic reviews and permanency hearings for children in foster care who are placed in unlicensed foster family homes?

Answer 9: Yes. The protections set forth at section 422(a)(10) of the Social Security Act apply to all children in foster care, regardless of a foster care provider's licensure.

Question 10: How should the State establish title IV-E eligibility for a child who is temporarily placed in a facility that is considered outside the scope of "foster care," such as a detention facility or psychiatric hospital, prior to his/her placement in foster care? When may the State begin to claim for such child if s/he is placed in foster care?

Answer 10: The State must comply with the title IV-E eligibility criteria as set forth in the statute at section 472(a) of the Social Security Act (the Act) and the implementing regulations at 45 CFR §§1356.21(b), (c), and (d). The State must establish the child's eligibility at removal (which includes meeting the AFDC eligibility requirements as in effect on July 16, 1996, and judicial determinations to the effect that the child's removal from the home was contrary to his/her welfare and that reasonable efforts were made to prevent such removal) even for children who are not initially placed in a foster care setting. Title IV-E is an entitlement program and, as such, no flexibility exists with respect to satisfying the requisite eligibility criteria. If such eligibility criteria are not satisfied within the time frames prescribed in the regulation, the child is ineligible for title IV-E funds.

When the child is transferred to a facility that meets the requirements of section 472(c) of the Act, Federal financial participation is available from the first day of placement in the month in which all Title IV-E eligibility requirements are met.

Question 11: Please explain the requirements with respect to title IV-E eligibility and the case review system at section 475(5) of the Social Security Act (the Act) for a child and his/her minor parent in foster care. Specifically, must the State have placement and care responsibility of both, is the child considered to be in foster care even if the State does not have placement and care responsibility, may the child continue to receive IV-E if the minor parent runs away, and may the State claim administrative costs for the child?

Answer 11: Section 475(4)(B) of the Act requires that foster care maintenance payments for a minor parent in foster care cover a child of such parent if the child is placed with the minor parent. Neither the statute nor regulations require the State to have placement and care responsibility of the child in order for such costs to be included in the minor parent's foster care maintenance payment. Good social work practice suggests that the minor parent's case plan include the needs of the child and that the child's needs and interests be addressed during the six-month periodic reviews and permanency hearings held on behalf of the minor parent. However, the State is not required to satisfy these requirements independently on behalf of the child because s/he has not been removed from her/his biological parent and; therefore, pursuant to Federal law and regulations, is not in foster care.

Chapter One Part A: Title IV-E Foster Care Eligibility

In cases where the State has placement and care responsibility for both the minor parent and child, and has placed them in different foster homes, title IV-E eligibility would have to be determined individually for each. Likewise, if a minor parent leaves the foster home and does not take the child, the child's eligibility for foster care then would be based upon his or her individual circumstances. In addition, the State would have to obtain responsibility for placement and care of the child through either a Voluntary Placement Agreement or a court order with the required judicial determinations. Once the child is placed separately from the minor parent, s/he is considered to be in foster care and the requirements of the case review system at section 475(5) of the Act apply.

When a child is placed with his/her minor parent, no administrative costs may be claimed on her/his behalf because s/he is not eligible for nor a recipient of title IV-E foster care maintenance payments. The State is merely increasing the amount of the title IV-E foster care maintenance payment made on behalf of the eligible minor parent to accommodate the board and care of the child. In situations where the eligibility of the minor parent and his/her infant is determined separately and the two are placed separately, the State may claim administrative costs for the child because s/he is eligible for and receiving title IV-E maintenance payments in her/his own right. Section 472(h) of the Act makes clear that a child whose costs are covered by the Title IV-E payment made with respect to the minor parent is a child with respect to whom foster care maintenance payments are made under Title IV-E and is thus eligible for medical assistance and social services under Titles XIX and XX.

Question 12: We understand that the timing for conducting the *initial* permanency hearing and six-month periodic review and for obtaining the *initial* judicial determination related to making reasonable efforts to finalize a permanency plan is based on the date the child is considered to have entered foster care. Are *subsequent* reviews/hearings and determinations to be held/obtained based on the date the child is considered to have entered foster care or within 12 months of the date the prior hearing or determination was actually held/obtained?

Answer 12: Either methodology referenced in the question is consistent with and would satisfy the regulatory requirements. We will, therefore, leave the methodology employed to the State's discretion. We strongly encourage States, however, to adopt and set forth in State policy one methodology for obtaining/holding the subsequent determinations/ hearings/reviews to ensure consistent application across the title IV-E caseload.

Question 13: Some States do not transcribe court hearings; rather, court clerks take “bench notes” during the course of a hearing. Are these “bench notes” acceptable for purposes of meeting the documentation requirements of 45 CFR §1356.21(d)?

Answer 13: No. Bench notes do not constitute acceptable documentation of judicial determinations. In accordance with the regulations, the only acceptable alternative documentation of judicial determinations, absent language in a court order, is a transcript of the court proceedings. We recommend that the State agency collaborate closely with the judicial system to assure that the necessary judicial determinations are made and appropriately recorded for children who must be removed from their homes.

Question 14: Often, courts do not specify time periods for trial home visits for children in foster care. If a court does not specify a time period, should we assume it cannot be longer than six months without having to re-establish eligibility for Title IV-E foster care payments?

Answer 14: Pursuant to 45 CFR 1356.21(e), six months is the outside limit for a trial home visit without having to re-establish Title IV-E eligibility if the child re-enters foster care, unless there is a court order extending the trial home placement beyond six months. If there is a court order extending the trial home visit beyond six months, and the trial home visit does not exceed the time frame in the court order, the child retains Title IV-E eligibility upon returning to foster care following the trial home visit.