

MEMORANDUM

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Subject: Federal Role in Adoption and Congressional Acts in Support of Permanency Through Adoption and Legal Guardianship

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

This memorandum discusses the federal role in adoption. It then outlines selected legislation approved by Congress in support of permanency through adoption and legal guardianship, and provides a more detailed time line of the legislation addressing the actions.

Background

Adoption of children is both a social and legal process. Through adoption a new family is created. While the legal process for adoption has a certain date of completion (legal finalization), the social process of becoming and remaining a family precedes and long follows that date.

More than 1.3 million adopted children (individuals under age 18) lived in U.S. households in 2024.¹ Roughly one-half of those children (670,000) are estimated to have been adopted with public child welfare agency involvement.² This typically means they spent time in foster care prior to their adoption. An additional estimated 100,000 (7.5% of all child adoptees in households) were born in a different country and came to the United States as part of an intercountry adoption.³ The remaining adopted

¹ U.S. Census Bureau, *Relationship to Householder for Children Under 18 Years in Households*, American Community Survey (ACS), 1-year estimates for 2024 (Table B09018). Adopted children living in institutions (e.g., residential treatment facilities) are not included in this count. Relationship information is as provided by the householder and individuals may understand the meaning of adoption differently (e.g., they may consider a child “adopted” based on community rather than legal standards). For more information about adoption data from the Census Bureau, see, Rose M. Kreider, *Nationally Representative Data on Adopted Children in the United States*, *Adoption Advocate, National Council for Adoption, October 2022*.

² Based on number of children adopted with public child welfare agency involvement who were counted as under the age of 18 on last day of FY2007-FY2024 (except that for FY2023 and FY2024 only information on public agency adoptions out of foster care were available). See U.S. Department of Health and Human Services (HHS), Administration for Children and Families (ACF), Administration on Children, Youth, and Families (ACYF), Children’s Bureau, *The AFCARS Report #s 15-30*, showing preliminary estimates for each of FY2007-FY2022 (<https://acf.gov/cb/research-data-technology/statistics-research/afcars-1993-archived-information>); data for FY2023 and FY2024, are based on CRS analysis of exits from foster care by age in AFCARS data files FC23AB,v.2s and FC24,v.2 as received from the National Data Archive on Child Abuse and Neglect (NDACN),

³ The Census Bureau ACS data do not count adopted children by type of adoption. An estimated number of children brought to this country via intercountry adoption and who were still under 18 years as of 2024 was determined by CRS using the count of adoptions (by age groups) posted on the U.S. Department of State, Intercountry Adoption webpage for FY2007 - FY2024. The posted data show age at adoption in multi-year age groups. Accordingly, the estimate is expected to be a rough approximation only. https://travel.state.gov/content/travel/en/Intercountry-Adoption/adopt_ref/adoption-statistics-esri.html

children (i.e., those not adopted with public child welfare agency involvement or via an intercountry adoption) were adopted domestically, including domestic infant or other private agency or independent adoptions and may also include some stepchild adoptions.⁴

Federal Role

Family law, including matters related to adoption, is traditionally considered the purview of state laws and, as such, is generally subject to the particular policies of the state where the prospective adoptive parents intend to reside with the adoptive child. At the same time, over more than half a century, federal law and funding has helped to shape the adoption landscape.⁵

The federal government’s policy interest in adoption—whether domestic or intercountry—has generally been animated by a concern for the well-being of children.⁶ However, the form of federal involvement, and the federal government’s authority to act, may vary by the type of adoption.

Intercountry Adoptions

Adoptions of children who are born outside of the United States are subject to the federal government’s *direct* regulation concerning who may immigrate to the country, along with its conditions for granting of visas to enter the country.⁷ Additionally, intercountry adoptions are subject to policies developed as part of the United States’ relations with foreign countries, including its participation in the Hague Convention on the Protection of Children and Cooperation in Respect of Intercountry Adoption (the “Hague Convention”).

The Hague Convention “provides a framework of safeguards for protecting children and families involved in intercountry adoption,” including to prevent the sale, trafficking, or abduction of children.⁸ After a multi-step process, the Hague Convention went into force in the United States on April 1, 2008.⁹ A key part of the Hague Convention’s safeguards is that certain “adoption services”—including identifying and arranging for a child’s adoption, securing consent for termination of parental rights and to adoption (from the child’s birthparents), performing background checks and home studies for prospective parents, and determining appropriateness of placements, among others—may only be performed by agencies or individuals meeting standards established by accrediting or approval entities selected by the U.S. Department of State.¹⁰ The Intercountry Adoption Universal Accreditation Act of 2012 (P.L. 112-276),

⁴ Data on these types of adoptions have not been regularly collected. The extent to which stepchildren are included in the number of adoptees living in U.S. households presumably rests in some part on whether the individual counted as the head of household is the step or biological parent of the child.

⁵ Madelyn Freundlich, “A Legal History of Adoption and Ongoing Legal Challenges,” in *Handbook of Adoption*, Thousand Oaks, CA: Sage Publications, 2007. Outside of legislated federal policy, this author notes, that the U.S. Supreme Court has provided some federal interpretations relevant to adoption. For example, identifying certain constitutional rights for birth parents.

⁶ The legislative history of federal tax benefits related to intercountry and domestic adoptions suggests, as well, a shared interest, in making adoption more affordable. CRS Report R44745, *Adoption Tax Benefits: An Overview*, by Brendan McDermott.

⁷ U.S. Citizenship and Immigration Services, Policy Manual, Volume 5 – Adoptions, Part A- Overview, Chapter 1, see “Legislative History”, <https://www.uscis.gov/index%20php/policy-manual/volume-5-part-a-chapter-1>.

⁸ Department of State, Hague Convention; Intercountry Adoption Act; Accreditation of Agencies; Approval of Persons, Final Rule, “Background,” *Federal Register*, February 15, 2006, p. 8064. See also, “Understanding the Hague Convention,” <https://travel.state.gov/content/travel/en/Intercountry-Adoption/Adoption-Process/understanding-the-hague-convention.html>

⁹ The United States signed the Hague Convention in 1994. In 2000, the Senate gave its “advice and consent” (to later ratification). Also in 2000, the Intercountry Adoption Act of 2000 (IAA, P.L. 106-279) was enacted outlining U.S. implementation of the Hague Convention. The Department of State (22 C.F.R. Parts 96-99) and Department of Homeland Security (8 C.F.R. Part 204, Subpart C) issued final regulations (2006-2007) detailing their roles in carrying out the Hague Convention and the IAA.

¹⁰ Section 3 of the Intercountry Adoption Act of 2000 (P.L. 106-279), defines “adoption services” for this purpose.

extends the same accreditation standards (and related protections) to intercountry adoptions involving children from countries that are not a part of the Hague Convention.¹¹

Federal administration of intercountry-related statute and regulation is carried out within the Department of State, and at the Department of Homeland Security, in the U.S. Citizenship and Immigration Services.

Domestic Adoptions - Public Agency-Involved

Federal policy affecting domestic adoptions is largely *indirect*. That is, it is premised on an offer of funds to public child welfare agencies and, should the state or tribe of that agency accept those funds, certain federal conditions must be met. For example, under Title IV-E of the Social Security Act (SSA) – which is the largest single source of dedicated federal child welfare funds to states— a state or tribe with an approved IV-E plan must enter into an *adoption assistance agreement* with the prospective adoptive parent(s) of each child the state determines meets *special needs*-eligibility criteria.¹² Further, under the same Title IV-E program, a state or tribe with an approved plan may opt to offer kinship guardianship assistance on behalf of eligible children who leave foster care for placement with a legal guardian, in which case it must enter into a *kinship guardianship agreement* with the prospective legal guardians of those children.¹³ Separately, as a condition of receiving certain child and family services funding authorized under Title IV-B of the Social Security Act, state child welfare agencies must assure that they will spend a portion of this grant funding for *adoption promotion and support services*.¹⁴

All 50 states, as well as the District of Columbia, Puerto Rico, and the U.S. Virgin Islands have approved plans under Title IV-E and Title IV-B of the SSA. As many as 21 tribes have approved Title IV-E plans¹⁵ and as many as 170 tribal entities have received funding under Title IV-B of the SSA in recent years. The public child welfare agencies in these jurisdictions administer Title IV-E and Title IV-B programs at the state, local, or tribal level, and many specific aspects of the program (e.g., what factors permit a court to *terminate parental rights* to a child, or what conditions indicate a child has *special needs*) are determined under state or tribal law or policy. At the federal level, the Title IV-E and Title IV-B programs are administered by the Children’s Bureau, an agency within the Department of Health and Human Services (HHS), Administration for Children and Families (ACF). The Children’s Bureau awards funding, provides oversight, and offers technical assistance to state and tribal agencies.

Domestic Adoptions – Private/Independent

Some domestic adoptions are carried out by independent adoption attorneys or via private agencies without any connection to the public child welfare agency. These adoptions include private domestic infant adoptions as well as any other private adoptions, including adoptions by stepparents. Generally, there is no clear federal role in these adoptions. States and tribes may, and do, set varying parameters for adoptions carried out in their courts, including access to adoption records, consent to adoptions, home

¹¹ See “The Universal Accreditation Act of 2012 becomes Law,” https://travel.state.gov/content/travel/en/Intercountry-Adoption/adopt_ref/the-universal-accreditation-act-of-2012-becomes-law.html. More than 100 countries participate in the Hague Convention. Among 1,172 intercountry adoptions in the United States during FY2024, close to 71% (831) were via Convention countries. See Department of State, *Fiscal Year 2024 Annual Report on Intercountry Adoption*, Table 1, “Incoming Adoptions by Country of Origin” https://travel.state.gov/content/travel/en/Intercountry-Adoption/adopt_ref/AnnualReports.html.

¹² Sections 471(a)(1) and 473(a)(1) of the Social Security Act (SSA).

¹³ Section 471(a)(28) and 473(d)(1) of the SSA.

¹⁴ Tribes are not required to use IV-B funds for *adoption promotion and support* (Section 432(b)(2) of the SSA). They may choose to do so, however, as well as for tribal customary adoptions and guardianships.

¹⁵ Of the 21 tribes with an approved IV-E plan, the Children’s Bureau reports that 14 are implementing or moving toward implementation of the program while the remainder have opted not to do so at this time, (<https://acf.gov/cb/grant-funding/tribes-approved-title-iv-e-plans>).

study requirements, post-adoption contract agreements, grounds for involuntary termination of parental rights, and many more.¹⁶ Notably, these state adoption policies apply, generally, to all types of adoptions in the state and, to the extent that they concern intercountry or domestic public-agency-involved-adoptions, must align with any applicable federal policies (for those adoptions).¹⁷

Special Provisions for Domestic Adoption of Native American Children

As described earlier, to the extent federal policy addresses solely domestic adoptions its requirements are made on an *indirect* basis (i.e., states agree to meet federal requirements as a condition of receiving certain funding). A significant exception, however, applies to any adoption of an *Indian child*¹⁸ when carried out in a state court. These adoptions are subject to direct federal policies included in the Indian Child Welfare Act (ICWA) of 1978 (P.L. 95-608), and follow from Congress's broad constitutional authority to legislate on tribal issues.¹⁹ Many of ICWA's policies, which set "minimum federal standards" for the removal of Indian children from their homes and their placement in foster and adoptive families,²⁰ must be carried out by state agencies, state courts, or other non-tribal actors.

Authorities related to ICWA are administered by the Bureau of Indian Affairs (BIA) within the Department of the Interior.²¹ At the same time, federal policies under Title IV-E and Title IV-B of the Social Security Act, which are administered within HHS, direct state child welfare agencies to consult with and/or cooperate with tribes, including with regard to meeting ICWA requirements.²²

Permanency for Children

As noted above, federal policy related to adoption has typically been animated by a concern for children's well-being. Permanency is generally considered critical to that well-being, and for most children is expected to be provided as part of their birth family. Adoption has long been considered a strong permanency option for children who cannot remain with their birth parent(s).

Children with permanency have stability in their living arrangements and continuity of family relationships and connections.²³ In the case of children living in their own homes, *permanency* can mean strengthening the capacity of a family to nurture and support their children. In the case of children who

¹⁶ See the "State Statutes Search" webpage of the HHS-funded Child Welfare Information Gateway, <https://www.childwelfare.gov/resources/states-territories-tribes/state-statutes>

¹⁷ For example, federal law requires specific background checks for prospective adoptive parents of children adopted from foster care, which must be applied in each state. Further, with regard to intercountry adoptions, federal policy stipulates certain eligibility requirements for U.S. citizens and spells out some home study and other requirements.

¹⁸ For purposes of the Indian Child Welfare Act (ICWA), an *Indian child* is defined to include an unmarried individual under age 18 who is a member of a federally recognized Indian tribe or who is eligible for such membership and is the biological child of member of an Indian tribe (25 U.S.C. §1903(4)).

¹⁹ CRS Report R48486, *Tribal Issues Overview, Resources, and Glossary: In Brief*, by Mariel J. Murray and Mainon A. Schwartz. See also, *Haaland v. Brackeen*, 599 U.S. 255, 263-64 (2023), in which the Supreme Court explained, "In the usual course, state courts apply state law when placing children in foster or adoptive homes. But when the child is an Indian, a federal statute [ICWA] governs."

²⁰ Section 2 of ICWA (25 U.S.C. §1902).

²¹ Department of Interior, Bureau of Indian Affairs, "Indian Child Welfare Act," <https://www.bia.gov/bia/ois/dhs/icwa>.

²² Sections 422(b)(9) and 471(a)(27) and (32), in Title IV-B and Title IV-E, respectively, of the SSA (42 U.S.C. §§ 622(b)(9) and 671(a)(27) and (32)). See also Section 429B of the SSA (42 U.S.C. § 628c), (enacted January 2025), which directs HHS, in consultation with tribal entities and states, to provide technical assistance to support effective implementation of the "federal standards" established in ICWA.

²³ See these *permanency* outcome indicators in the Child and Family Services Review (CFSR), 45 C.F.R. §1355.34(b)(1)(ii). For purposes of the CFSR, these indicators are used when reviewing case plans of children in foster care only.

are no longer living at home, planning for permanency typically begins with efforts to address the issues that resulted in the child's removal from the home, in order to enable a safe return to the home. These efforts might also entail locating relatives or kin who can help children establish relational permanency and maintain continuity of family for children. At the same time, when remaining or returning to a parent(s) is not possible or appropriate, planning for permanency typically involves seeking a "new" family for a child via adoption, or, in some instances, legal guardianship. Many times, this "new" adoptive or guardianship family may be a relative/kin or the child's foster parent. For example, during FY2025, among close to 43,400 children leaving foster care for adoption, the large majority were placed with a foster parent (42%), relative (33%) or other kin (10%).²⁴

Policies to Promote Permanency Through Adoption or Legal Guardianship

Across the past nearly five decades, Congress has taken numerous actions intended to help children for whom reuniting with parents is not possible or appropriate find new permanent families through adoption or legal guardianship. These efforts have focused on:

- Supporting efforts to eliminate or reduce barriers to special needs adoptions and increasing awareness and information about adoption, including through the enactment of the Adoption Opportunities program (1978).
- Defraying costs associated with finalizing an adoption, and providing ongoing financial support for special needs adoptions and certain legal guardianships, including enactment of open-ended entitlement funding for Title IV-E Adoption Assistance (1980), allowing states and tribes to opt to claim similar support for Title IV-E Kinship Guardianship Assistance (2008) and supporting tax benefits for families adopting domestically, or from another country (current provision enacted in 1996), made permanent for all qualifying types of adoptions (2012), with the credit made partially refundable, on a permanent basis (2025).
- Improving data collection and analysis related to adoptions and legal guardianships, including by directing development of the data system now known as the Adoption and Foster Care Analysis System (AFCARS) (1986), directing annual reports on intercountry adoptions (2000) and requiring additional data collection under AFCARS concerning children entering or re-entering foster care after a previously finalized adoption or legal guardianship (2014), including requiring an HHS analysis and report on this issue (2025).
- Expediting permanency for children in foster care and reducing the length of time to adoption, including via expedited permanency planning timelines, and other related changes (1997). As well as, prohibiting delay or denial of adoption or foster care placement based on "color-matching" policies, and, at the same time calling on states to carry out "diligent recruitment" efforts to ensure available adoptive and foster family homes that are racially and ethnically diverse (1994 and 1996).
- Awarding incentive payments to states that increase the frequency with which children appropriately leave foster care for adoption (1997) or legal guardianship (2008).

²⁴ HHS, ACF,ACYF, Children's Bureau, The AFCARS Dashboard, "National Exits to Adoption, FY2025," Child's Relationship to Adoptive Parent, https://tableau-public.acf.gov/views/afcars_dashboard_main_page/exits-relationship. Of the remaining exits to adoption in FY2025, 6% were placed for adoption with a non-relative with whom they did not have any of those prior relationships and information on the remaining 9% of children leaving foster care for adoption was missing/not reported. The dashboard also indicates exits of more than 17,700 children from foster care to legal guardianship during FY2025. However, information on the relationship of those children with their legal guardian was missing/not reported for 44% of those exits, https://tableau-public.acf.gov/views/afcars_dashboard_main_page/exits-relationship

- Reducing interstate or interjurisdictional barriers to adoption, including multiple efforts beginning with a call for model state legislation to reduce barriers to interstate adoptions (1978), requesting studies on the issue from GAO (1997) and HHS (2003), requiring timely interstate home study standards (2006), and requiring use of an electronic interstate case processing to expedite handling of interstate cases (no later than October 1, 2027) (2018).
- Ensuring the integrity of intercountry adoptions, through support of United States participation in the Hague Convention and passage of legislation outlining implementation of intercountry adoptions (2000) and extending certain safeguards included in the Hague Convention to all intercountry adoptions (whether or not the country where the child was born is participating in the Hague Convention) (2012).
- Calling for services, including post-adoption services, to support strong adoptive and guardianship families, including by seeking quality standards for services (1978), requiring states to spend a portion of their Promoting Safe and Stable Families (PSSF) program funds on adoption promotion and support services (1997), requiring states to reinvest certain savings to the state that are the result of expanded federal support for Title IV-E adoption assistance in post-adoption and post-guardianship services (2008, 2011, and 2014) and permitting states to claim open-ended entitlement funding via Title IV-E prevention services to support evidence-based services for children and their parents/kin caregivers in order to prevent the disruption of adoption or legal guardianship families (2018).

Timeline of Selected Legislation

Legislative actions focused on the goals discussed above are discussed below, in chronological order, each followed by the respective public law number and name. This list is not comprehensive, but is meant to highlight changes with ongoing impact on programs and policies. Notably, across the nearly 50 years of legislation, Congress often returned to a given goal to expand its efforts or to adjust the policy approach.

1978

Seeks to **eliminate barriers to adoption, especially for children with *special needs*** in order to provide “permanent and loving home environments for children who would benefit by adoption.”

Establishes the Adoption Opportunities program to promote quality standards for adoption services, create education and training programs related to adoption, support a national adoption exchange, and prepare and disseminate information and technical assistance on adoption.

Directs HHS to develop model legislation for reducing barriers to interstate adoption.

(Title II of P.L. 95-266, Child Abuse Prevention and Treatment and Adoption Reform Act of 1978)

Citing a duty to protect and preserve Indian tribes and noting the “alarmingly” high number of Indian children removed from their home by public and private nontribal entities, **requires state and other non-tribal actors to provide certain notice to tribes** on actions taken with regard to an Indian child and **sets certain minimum federal standards to govern adoptions and foster care placements of Indian children** when these actions are handled in state courts or by non-tribal actors. Among others, these include standards for removing children from, terminating parental rights of, and securing consent to adoption from, an Indian parent, and an order of preferences for adoptive and foster placement settings.

(P.L. 95-608, Indian Child Welfare Act)

1980

Moves pre-existing federal support for foster care to a new Title IV-E of the Social Security Act (SSA) and entitles each state with an approved Title IV-E plan to **federal support for part of the cost of providing ongoing adoption subsidies** on behalf of eligible children with *special needs*. Requires a state to enter into an *adoption assistance agreement* with prospective adoptive parents of each child meeting the special needs requirements and, within certain parameters, permits each state to determine the meaning of *special needs*.

Deems any special needs child receiving a Title IV-E adoption assistance payment as eligible for Medicaid.

(P.L. 96-272, Adoption Assistance and Child Welfare Act of 1980)

Special Needs in the Context of Adoption

For purpose of the Title IV-E program, a child is considered to have *special needs* if the state or tribe has determined all three of the following:

- The child “cannot or should not be returned home.”
- A reasonable, but unsuccessful, effort has been made to place the child without assistance, except where such an effort would not be in the best interests of the child, (e.g., if the child has a significant relationship with foster parent seeking to adopt), and
- The child has a specific condition or factor that, as determined by the state, make adoption without assistance unlikely; such factors may include (but are not limited to) the child’s—age, ethnic background, membership in a minority group, membership in a sibling group, medical condition, or physical, mental, or emotional disabilities.

Source: Section 473(c) of the SSA.

1986

Ensures **Medicaid eligibility in the state of residence** for any special needs child for whom a Title IV-E adoption assistance agreement is in place, without regard to whether that state is the same one that has entered into a Title IV-E adoption assistance agreement on the child’s behalf. Also, deems a special needs child who is eligible for ongoing Title IV-E adoption assistance as Medicaid eligible without regard to whether any ongoing subsidies are paid under the child’s adoption assistance agreement.

(Sections 9529 and 12305 of P.L. 99-272, Consolidated Omnibus Budget Reconciliation Act of 1985, enacted in April 1986)

Directs development of **federal regulations for collection of national foster care and adoption data** that uses uniform definitions and methods to gather comprehensive data that is “reliable and consistent” across time and jurisdictions. (A final regulation, issued in December 1993, details the Adoption and Foster Care Analysis Reporting System, AFCARS.)

Requires HHS to directly, or by contract, **establish a National Adoption Information Clearinghouse** to gather and disseminate information on special needs and infant adoptions.

(Sections 9442 and 9443 of P.L. 99-509, the Omnibus Budget Reconciliation Act (OBRA) of 1986)

Repeals a 1981 tax provision that allowed an itemized deduction (up to \$1,500) for “reasonable and necessary” costs of finalizing special needs adoption of a child receiving Title IV-E adoption assistance. And at the same time, requires states to make **Title IV-E payments to parents for the non-recurring (one-time) expenses** incurred in finalizing the adoption of a child meeting the Title IV-E special needs requirements.²⁵

(Section 135 of P.L. 99-514, Tax Reform Act of 1986)

²⁵ Regulations specify that this *non-recurring* Title IV-E assistance is available to pay one-half (50%) of the costs of finalizing a special needs adoption, up to a maximum of \$2,000, 45 C.F.R. §1356.41.

1994 & 1996

Prohibits any state agency or entity that is involved in foster care or adoption placements, and that receives federal assistance, from denying an individual the opportunity to be a foster or adoptive parent, or **delaying or denying a foster or adoptive placement due to race, color, or national origin** of the prospective parents or child involved.

Requires states to **carry out “diligent recruitment of potential foster and adoptive families that reflect the ethnic and racial diversity of children in the State** for whom foster and adoptive placements are needed.”

(Title V, Part E of P.L. 103-382, Howard Metzenbaum Multiethnic Placement Act (MEPA) of 1994, as amended by the “Interethnic Adoption Provisions” Section 1808 of P.L. 104-188, Small Business Job Protection Act of 1996)

1996

Establishes an **adoption tax credit** (and a related exclusion for employer-provided adoption benefits), **to offset qualifying costs of finalizing an adoption**. The credit and exclusion are— (1) **available for intercountry and domestic adoptions** (*except* domestic step-parent adoptions); (2) valued at a maximum of \$6,000 for qualifying costs related to a special-needs domestic adoption, and \$5,000 for all other adoptions (including all intercountry adoptions); and (3) subject to an income phase out (beginning at \$75,000 and fully phased out by \$115,000). The meaning of *special needs* adoption as included in the tax code generally matches the Title IV-E program definition (see shaded text box above) but stipulates as well that the child must be a citizen or resident of the United States.²⁶ For special needs domestic adoptions, the credit and exclusion are a permanent part of the tax code. For all other adoptions, the credit and exclusion were set to expire on December 31, 2001.

(Section 1807 of P.L. 104-188, Small Business Job Protection Act of 1996).

1997

Renews **focus on permanency planning** for children entering, or in, foster care, with special attention to **timely placement for adoption** when appropriate. Among other changes to the Title IV-E program—

- Requires states to hold an initial *permanency hearing* for a child within 12 (instead of 18) months of the child’s entry to foster care.
- With limited exceptions, requires a state to petition for termination of parental rights (TPR) in any case where a child has been in foster care for 15 of the past 22 months; or when a court has determined the child is an abandoned infant or has determined that the child’s parent has committed murder or voluntary manslaughter of another of child of the parent, has aided, abetted, attempted or conspired to do so, or has committed felony assault against the child or another child of the parent. Exceptions to this requirement apply— (1) if the state documents for the court a compelling reason why TPR is not in

²⁶ Although not a part of the definition of “special needs,” under the Title IV-E program no Title IV-E adoption assistance payments (whether made for non-recurring costs or as an ongoing subsidy) may be made for an adoption where the child involved (1) is not a citizen or resident of the United States and (2) was adopted outside of the United States or brought here for adoption. That prohibition was added to the law (Section 473(a)(7) of the SSA) in 2008 (P.L. 110-351) and applied to any adoption that was subject to the revised Title IV-E adoption assistance criteria included in that law. Those revised eligibility criteria were phased in between October 1, 2009 and July 1, 2024 (principally based on the age of the child being adopted) and, as they became applicable to more children, expanded eligibility for Title IV-E adoption assistance payments among children adopted from foster care/involved in domestic public child welfare agency-involved adoptions. However, before and during the phase in (if the new rules did not apply to the adoption), a child involved in an intercountry adoption that was determined by a state to meet the state’s special needs criteria, was eligible for a *non-recurring* Title IV-E adoption assistance payment. See preamble to the final rule on non-recurring adoption costs, *Federal Register*, December 14, 1988, p. 50216.

the child’s best interest, or (2) the state has not provided services to family consistent with the child’s case plan, or, (3) at state option, if the child is being cared for by kin.

- Establishes federal criminal records check requirements applicable to prospective foster or adoptive parents, which prohibit Title IV-E payments if the record check shows a felony conviction (at any time) for child abuse or neglect, spousal abuse, a crime against children, or certain other crimes of violence; further prohibits Title IV-E payments if the check shows a felony conviction (within the past five years) for physical assault, battery, or a drug-related offense. Permits states to opt out of this requirement via notice to HHS.
- Defines *legal guardianship* under Title IV-E as a “judicially created relationship between child and caretaker” that is “intended to be permanent and self-sustaining” as shown by the transfer to the caretaker (i.e., *legal guardian*) of the following parental rights to the child: protection; education; care, control and custody of the person; and decisionmaking.
- Adds provisions to prohibit delay or denial of a child’s placement for adoption when an approved family is available for the child in a jurisdiction that is outside the one handling the child’s placement; requires a fair hearing opportunity be given to an individual(s) whose allegation that a state has violated this prohibition is denied or not acted on by the state with *reasonable promptness*;²⁷ directs the U.S. General Accounting Office (since renamed the Government Accountability Office), GAO, to study and report to Congress on interjurisdictional delays and barriers to adoption placement.

Authorizes **financial incentives to states that increase adoptions of children out of foster care** under the newly created Adoption Incentives program.

Increases mandatory funding for the program now known as the MaryLee Allen Promoting Safe and Families (PSSF) program (Title IV-B, Subpart 2) and **requires states to spend a portion of those funds on adoption promotion and support services.**

(P.L. 105-89, *Adoption and Safe Families Act, ASFA*)

2000

Adopts a **framework for U.S. implementation of the Hague Convention**, including giving authority to the Department of State and the Department of Justice (later transferred to the Department of Homeland Security) to issue necessary regulations concerning intercountry adoptions.

Requires the State Department (with other appropriate agencies) to prepare an **annual report on intercountry adoption**, beginning one year after the Hague Convention is in force in the United States. [The Convention went into force in the United States as of April 1, 2008].

Amends Title IV-B, Subpart 1 of the SSA, to require **state child welfare agencies to describe activities carried out for children adopted from other countries**, including provision of adoption and post adoption services, and **to collect and report information on any children entering state foster care custody following the dissolution or disruption of an intercountry adoption.**

(P.L. 106-279, *Intercountry Adoption Act*)

Authorizes **funding for infant and special needs adoption awareness** (FY2001-FY2005), including support for—(1) grants to develop training on adoption/adoption referrals for staff of public or private

²⁷ ASFA, P.L. 105-89, made delay or denial of a placement for adoption across jurisdictional lines (when an approved family was available) and the related fair hearing requirement a condition of *all Title IV-E funding*. Title III of P.L. 105-200, the Child Support Performance and Incentive Act of 1998, repealed that penalty provision. At the same time, it made the prohibition and related fair hearing requirement a Title IV-E plan requirement (Section 471(a)(23) of the SSA) and directed a certain percentage of funds be withheld for any violations. These changes were made effective as if they had been enacted via ASFA in 1997.

nonprofit health centers serving pregnant women, and development of best practice guidelines on adoption counseling; and (2) grants for a national campaign to inform the public about the adoption of children with special needs.²⁸

(P.L. 106-310 of the Children's Health Act of 2000)

2001

Extends through 2010 the adoption tax credit and related exclusion for eligible domestic and intercountry adoptions (except that **application of the credit and exclusion for domestic special needs adoptions continues to be permanent**).

Increases the **maximum value of the credit and exclusion to \$10,000** per eligible adoption (including special needs adoptions) and **provides for that amount to be annually adjusted for inflation**.

For a *special-needs* adoption, permits a taxpayer to claim the maximum value of the credit or exclusion (inflation-adjusted), without regard to actual qualifying adoption costs.

Doubles the adjusted gross income (AGI) level at which the credit and exclusion begins to phase out to \$150,000, (with full phase out at \$190,000) and provides for this AGI level to be annually adjusted.

(P.L. 107-16, Economic Growth and Tax Relief Reconciliation Act of 2001)

2003

Directs HHS to make grants to public or private entities to carry out initiatives to improve efforts to eliminate barriers to placing children for adoption across state or other jurisdictional lines, including by expanding the capacity of adoption exchanges, and by developing uniform home study standards, relevant training for child welfare workers, models for cross-jurisdiction financing and for networking across state lines. Requires HHS to report to Congress on best practice models for interstate and intrastate adoptions.

(P.L. 108-36, Keeping Children and Families Safe Act of 2003)

Extends authorization for adoption incentive payments to states that increase adoptions out of foster care; adds **a new category of incentives tied to increases in adoption of older children** (age 9 years or older); makes other changes to update the incentive structure.

(P.L. 108-145, Adoption Promotion Act of 2003)

2006

Requires states to **establish timely interstate home study standards** for determining the safety and suitability of the placement of a child across state lines; the standards must require a response within 60 days or less to a requested interstate home study and, for the requesting state, a 14-day time frame to act on the information provided.

(P.L. 109-239, Safe and Timely Interstate Placement of Foster Children Act)

Requires states to conduct fingerprint-based checks of the national crime information database ("FBI check") and state child abuse and neglect registry checks for prospective foster and adoptive parents (including any state registry of each state where the prospective parent lived within the past five years). Generally, no later than FY2009, all states must comply with the federal criminal records checks (i.e., ends the "opt out" provision enacted in 1997) and, if IV-E payments are to be made, must not place a

²⁸ Annual funding authority for these activities was not extended beyond FY2005. However, Congress continued to appropriate funds from them through FY2010. Citing the authorities under the Adoption Opportunities program to do this same work, the Obama Administration requested that this funding be provided under that program authority. HHS, ACF *Justification of Estimates for the Appropriations Committees FY2011*, p. 133. Beginning with FY2011 funding, this appears to have occurred. In that year separate appropriations for Adoption Awareness (which had been about \$13 million/year) were not provided. However, funding for the Adoption Opportunities program increased from \$26 million in FY2010 to \$39 million in FY2011.

child with a prospective parent whose record check indicates specified felony convictions (as specified by ASFA in 1997).

(Section 152 of P.L. 109-248, Adam Walsh Child Protection and Safety Act of 2006)

2008

Expands eligibility for ongoing Title IV-E adoption assistance to include all domestic *special needs* adoptions by phasing out (FY2010-FY2018) income and other eligibility criteria tied to a prior law cash aid program rule. Requires states to spend any “savings” to the state from this increased federal IV-E adoption assistance on child welfare-related activities, “including post-adoption services.”

Entitles states and tribes to **federal support for part of the cost of providing ongoing Title IV-E kinship guardianship subsidies** on behalf of eligible children who leave foster care for permanent placement with a *legal relative guardian*. (States are not required to provide this assistance under their Title IV-E plan but may choose to do so).

Requires states to **make reasonable efforts to place siblings together**, whether for foster care, adoption, or legal guardianship.

Revises and extends the Adoption Incentives program to **double the amount of each incentive payment** a state may earn for increasing the number of older child adoptions, or adoptions of children with special needs who are under 9 years of age.

Requires states to provide **notice to any individual who is adopting a child out of foster care** (or who the state learns is considering such an adoption) of the individual’s **potential eligibility for the federal adoption tax credit**.

(P.L. 110-351 Fostering Connections to Success and Increasing Adoptions Act)

2010

Temporarily (2010 and 2011) allows the full amount of the adoption tax credit to be refundable and increases maximum adoption tax credit and exclusion.

(P.L. 111-148, Patient Protection and Affordable Care Act, ACA)

Allows the ACA modifications to the adoption tax credit to expire after 2011 and **for 2012 reverts the adoption tax credit and exclusion to the provisions that were enacted in 2001**.

(P.L. 111-312, Tax Relief, Unemployment Insurance Reauthorization, and Job Creation Act of 2010)

2012

Makes the **2001 adoption tax credit and exclusion provisions a permanent part of the tax code**.

(P.L. 112-240, American Taxpayer Relief Act of 2012)

2013

Effective July 14, 2014, **extends the safeguards around accreditation of adoption services providers to all intercountry adoptions** (i.e., without regard to whether the child is coming from a country that is a part of the Hague Convention).

(P.L. 112-276, Intercountry Adoption Universal Accreditation Act of 2012, enacted January 2013)

2014

Directs HHS to provide regulations for **the collection of data** from state child welfare agencies **concerning children who enter foster care after having previously been adopted** or placed in a legal guardianship (to “promote increased knowledge on how best to ensure strong, permanent families.”)

Extends and revises the Adoption Incentives program to **include incentive payments related to increasing permanency out of foster care via legal guardianship** and revises award categories to offer increased incentive payment amounts to states that appropriately move children ages 9 to 13, and separately, age 14 or older to permanent homes via adoption or guardianship. Changes the incentive structure to ensure all incentive awards are determined based on a state increasing its *rate* (rather than *number*) of adoptions or legal guardianships out of foster care (ensuring that states with declining foster care caseloads are not disadvantaged). Lengthens time frame in which states may spend these incentive awards to 36 (from 24) months.

Requires **states to spend no less than 20% of their adoption assistance savings on post-adoption or post-guardianship services** and at least 10% on services to support and sustain positive outcomes and permanency for children who might otherwise enter foster care. Makes the language for calculating adoption assistance savings more specific, requires each state to annually report to HHS on how it calculates the savings, the amount of any identified savings, and how they were used.

Provides that if the legal guardian of a child who is receiving IV-E kinship guardianship incentive payments dies or becomes incapacitated, the **child’s IV-E kinship guardianship assistance may continue with a successor guardian** so long as that guardian is earlier named in the IV-E kinship guardianship agreement created on the child’s behalf.

(P.L. 113-183, Preventing Sex Trafficking and Strengthening Families Act)

2018

Entitles states and tribes to federal support under the Title IV-E program for a part of the costs of **providing select, evidence-based services designed to prevent the need for a child to enter, or re-enter foster care**, including to “children whose adoption or guardianship arrangement is at risk of disruption or dissolution” (and their parents/kin caregivers). To receive this federal support, states and tribes must opt to provide the services under their Title IV-E program.

Requires states to revise their timely interstate home study standards (under the Title IV-E program) to **include the use of an electronic interstate case processing system** (no later than October 1, 2027) to increase the speed and efficiency in interstate sharing of documents necessary for the safe placement of a child, whether for adoption or foster care, across state lines.

Temporarily reverses (through July 1, 2024) **the final phase out of federal income test eligibility requirements for special needs adoptions** (impacting adoptions of special needs children who were less than two years of age by the end of the fiscal year in which the adoption assistance agreement for the child was signed).

Directs the U.S. **GAO to study and report on state compliance with the requirement that the state spend any adoption assistance savings** (resulting from expanded federal eligibility for Title IV-E adoption assistance) on child welfare purposes.

(Title VII, Division E of P.L. 115-123, Family First Prevention Services Act)

2025

No later than January 5, 2027, **HHS must prepare a report on children who enter foster care after the disruption or dissolution of an earlier finalized adoption or legal guardianship**, including the

incidence of this kind of entry to foster care and any associated factors, such as the age of the child, or whether or not any pre- and post-legal adoption services were provided. In addition, it is to provide state-by-state summary information on post-adoption and guardianship services available to families that adopt children out of foster care (including whether the services are evidence-based or informed) and funding sources used by each state to provide post-adoption or guardianship services.

(Section 116, P.L. 118-258, Supporting America's Children and Families)

Makes **up to \$5,000 of the adoption tax credit refundable**. This provision was effective with tax year 2025, when the maximum credit available for qualifying adoption costs was \$17,280. The amount that is refundable is to be annually adjusted for inflation and this adjustment also continues for the overall credit.

For purposes of the adoption tax credit, **permits an Indian tribal government** (instead of only a *state* government) **to make a special needs adoption determination**. Taxpayers who adopt a child with special needs may claim up to the maximum adoption credit without regard to the amount of any qualifying expenses.

(Sections 70402 and 70403, P.L. 119-21, One Big, Beautiful Bill Act)