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Youth Provisions in the Supporting Foster Youth and Families through the Pandemic Act (Division X of P.L. 116-260)

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SUMMARY

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Adrienne L. Fernandes-Alcantara
Specialist in Social Policy

Youth Provisions in the Supporting Foster Youth and Families through the Pandemic Act (Division X of P.L. 116-260)

This report focuses on the youth provisions in the Supporting Foster Youth and Families through the Pandemic Act, enacted as Division X of the Consolidated Appropriations Act, FY2021 (P.L. 116-260). The act includes provisions that make temporary changes to child welfare and home visiting policies in response to the Coronavirus Disease 2019 (COVID-19) pandemic. The youth policies are intended to assist foster youth during the pandemic, including those who are no longer in care. Compared to their peers generally, current and former foster experience poor outcomes in education, employment, housing stability, and other markers of adulthood. Such challenges appear to be heightened because of the pandemic, as reported in news publications and surveys of youth.

The Division X provisions for current and former foster youth temporarily modify some policies in two programs—the Title IV-E Foster Care and Permanency program (hereinafter, Title IV-E Foster Care program) and the John H. Chafee Foster Care Program for Successful Transition to Adulthood (hereinafter, Chafee program)—authorized under Title IV-E of the Social Security Act (SSA) and administered by the U.S. Department of Health and Human Services (HHS). Division X does not amend Title IV-E of the SSA, but modifies policies within the programs for specified periods. Generally, this timeframe is between April 1, 2020, and September 30, 2021; however, some flexibilities applied as early as October 1, 2019, or continue as late as September 30, 2022. The provisions apply to jurisdictions that operate a Title IV-E Foster Care program under a Title IV-E plan approved by HHS. Currently, this includes the 50 states, the District of Columbia, Puerto Rico, the U.S. Virgin Islands, and selected Indian tribes (hereinafter, states, unless otherwise noted).

Foster care is a temporary living arrangement intended to ensure a child's safety and well-being until a permanent home with her or his family can be reestablished or newly established. States that operate a Title IV-E Foster Care program are entitled to federal reimbursement to cover their cost of providing foster care maintenance payments (shelter, food, and related costs) to children under age 18 who meet certain eligibility criteria. States may elect to seek partial federal reimbursement to provide extended foster care to youth up to ages 19, 20, and 21 who meet additional eligibility criteria related to education and employment. In response to the pandemic, Division X of P.L. 116-260 includes provisions about extending care and related protections that generally apply through September 30, 2021. Specifically, the act prohibits states from requiring a youth to leave foster care solely due to age; allows a youth to remain or become eligible for extended Title IV-E foster care if she or he would otherwise qualify except for the age or education and employment requirements; directs states to facilitate the voluntary reentry to foster care of youth who aged out of care since January 27, 2020; and provides protections that focus on the needs of older foster youth.

The Chafee program provides funds to states to assist them in offering supports for youth who experience foster care at age 14 or older, including former foster youth up to age 21 (or up to age 23 in certain states). The program seeks to address poor education, employment, and other outcomes experienced by many of these youth as they transition to adulthood. Under the Chafee Education and Training Voucher (ETV) program, states may provide a voucher—worth up to $5,000 each year or the cost of attendance (whichever is less)—for an eligible youth to attend an institution of higher education up to age 26. Division X of P.L. 116-260 appropriated an additional $400 million for FY2021 to the Chafee and ETV programs to assist current and former foster youth during the pandemic. With regard to the supplemental FY2021 appropriations, the act suspends the requirement for states to provide matching funds with their own dollars and restricts HHS when imposing financial penalties for states related to data collection. Among other changes, the law provides program flexibilities that include enabling Chafee funding to be used for extending foster care to youth who are not eligible for Title IV-E foster care; increasing the maximum age of eligibility to 27 for the Chafee and ETV programs; allowing states to use more

than 30% of their Chafee funds for housing nearly any Chafee-eligible youth; and altering the requirements around eligibility, use of funds, and amount of funding available to youth under the ETV program. Generally, these flexibilities are in place through September 30, 2021. Another flexibility, increasing the maximum annual amount of the ETV award to $12,000, extends through September 30, 2022.

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Introduction

Youth who experience foster care as teenagers often face challenges as they transition to adulthood. Compared to their peers generally, these youth often have poor outcomes in education, employment, housing stability, and other markers of adulthood.[1] Such challenges appear to be heighted during the Coronavirus Disease 2019 (COVID-19) pandemic, as reported in news publications and surveys of foster youth.[2]

The Consolidated Appropriations Act, FY2021—an omnibus bill that includes regular FY2021 appropriations and supplemental appropriations in response to the pandemic—was signed into law on December 27, 2020 as P.L. 116-260. The Supporting Foster Youth and Families through the Pandemic Act, included as Division X of that law, contains multiple provisions to address the needs of teens and young adults who have experienced foster care.[3] The law is primarily drawn from a bill of the same name (H.R. 7947), which was introduced in August 2020 by Representative Danny Davis, chairperson of the House Ways and Means Subcommittee on Worker and Family Support, with Representative Jackie Walorski, the ranking member of the subcommittee, as original co-sponsor.

This report focuses on two programs that pertain to young people ages 14 through 26 who have experienced foster care. The two programs are authorized under Title IV-E of the Social Security Act (SSA): the Title IV-E Foster Care and Permanency program (hereinafter, Foster Care program) and John H. Chafee Foster Care Program for Successful Transition to Adulthood (hereinafter, Chafee program).[4] Both programs are administered by the Children's Bureau (CB)—an agency within the U.S. Department of Health and Human Services (HHS), Administration for Children and Families (ACF).

This report begins with background on the experiences and needs of former foster youth before and during the COVID-19 pandemic, based on available research. It then provides an overview of the Foster Care program and Chafee program provisions in Division X. This is followed by more detailed background on, and the temporary changes to, both programs. Where applicable, the report discusses pandemic-related HHS guidance on the programs, both before and after enactment of Division X.

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[1] For further information, see CRS Report RL34499, *Youth Transitioning from Foster Care: Background and Federal Programs*.

[2] Megan Conn, "Pandemic Support for Foster Youth Still Delayed, Months After Federal Action," *The Imprint*, March 3, 2021, https://imprintnews.org/foster-care/pandemic-support-for-foster-youth-still-delayed-months-after-federal-action/52563; Foster Club, *The Impact of COVID-19 on Youth from Foster Care, A National Poll*, May 13, 2020; Foster Club, *Checking in on Young People from Foster Care as COVID-19 Continues: A National Poll*, December 22, 2020; Johanna K.P. Greeson et al., *The Experiences of Older Youth In & Aged Out of Foster Care During COVID-19*, Field Center, University of Pennsylvania, September 2020; Child Welfare League of America, "Town Hall for Older Foster Youth," March 19, 2020, https://www.cwla.org/virtual-town-hall-for-older-foster-youth/; and Raquel Wilson, "Surviving the Coronavirus Crisis Current & Former Foster Youth Speak Out, *The Imprint*, April 12, 2020, https://imprintnews.org/surviving-the-coronavirus-crisis.

[3] Division X also made changes to child welfare and home visiting policies that apply more broadly than just to older youth. For further information about Division X, see CRS Congressional Distribution Memorandum, *Child Welfare and Home Visiting Provisions in the Consolidated Appropriations Act, 2021* (P.L. 116-260), available to congressional clients upon request.

[4] The Title IV-E Foster Care program is authorized at Section 472 of the Social Security Act (SSA) and the Chafee program is authorized at Section 477 of the SSA.

Background

About 155,000 young people ages 14 through 20 spent at least one day in foster care during FY2019.[5] Of those who left care during that year, approximately 20,000 were emancipated. Emancipation is the formal court process by which foster youth who reach the age of majority are discharged from the state's responsibility; the phrase *aging out* is the common term for this process. Generally, emancipation means these youth reached a state's legal age of adulthood—usually 18—without having been reunited with their families or placed in new permanent families. Currently, approximately 186,000 young people ages 18 through 26 have left foster care through emancipation.[6]

Youth who spend their teenage years in foster care, including those who age out of care, often experience a range of difficulties as they transition into adulthood. Research has shown that young adults with foster care history are much *less likely* than their peers in the general population to have attended postsecondary education, ever held a job, be employed, be connected to work or school, or describe their general health as "excellent" or "very good" (among other outcomes). These differences generally hold true when youth are surveyed across multiple points in early adulthood.[7] Still, remaining in extended foster care appears to be a protective factor for young people. An HHS report to Congress in 2020 found that among a cohort of youth who had been in foster care at age 17, those who remained in care at ages 19 and 21 were less likely to become homeless, pregnant or parenting, or incarcerated.[8]

During the pandemic, young adults who are or were in foster care have reported heightened challenges. Surveys of these youth have signaled difficulties across multiple areas. Foster Club, an organization that provides peer support to foster youth, conducted online surveys of current and former foster youth in May 2020 and December 2020.[9] In terms of housing, nearly one-quarter of youth surveyed were forced to move or feared being forced to leave their current living situation due to the pandemic in May 2020. This increased to about four in ten youth by December 2020. In both surveys, just over half of youth said they had challenges with food security, such as having to skip a meal due to a lack of food, and 20% said they did not have someone (e.g., friend, family member, caseworker, etc.) they could rely on for financial or emotional supports. With respect to employment, about 65% of youth who had worked before the pandemic were no longer employed in May 2020; this figure decreased to 36% in December 2020.

Another survey of foster youth, taken during April 2020 by the University of Pennsylvania's Field Center, showed significant differences between youth depending on whether they were still

[5] Congressional Research Service (CRS) analysis of U.S. Department of Health and Human Services (HHS), Administration for Children and Families (ACF), Administration for Children, Youth and Families (ACYF), Children's Bureau (CB), *Adoption and Foster Care Analysis and Reporting System (AFCARS) #27 Preliminary FY2019 Estimates*.

[6] CRS analysis of HHS, ACF, ACYF, CB, *AFCARS #24 through #27, Preliminary FY2014 through FY2019 Estimates*.

[7] Mark E. Courtney et al., *Findings from the California Youth Transitions to Adulthood Study (CalYOUTH): Conditions of Youth at Age 23*, University of Chicago, Chapin Hall Center for Children, 2020; and Mark E. Courtney et al., *Midwest Evaluation of the Adult Functioning of Former Foster Youth: Outcomes at Age 26*, University of Chicago, Chapin Hall Center for Children, 2011.

[8] HHS, ACF, *National Youth in Transition Database [NYTD] Report to* Congress, February 2020. This analysis drew on AFCARS data from FY2014 and NYTD data from FY2018.

[9] Foster Club, *The Impact of COVID-19 on Youth from Foster Care, A National Poll*, May 13, 2020; Foster Club, *Checking in on Young People from Foster Care as COVID-19 Continues: A National Poll*, December 22, 2020. Both surveys included a non-random sample of at least 500 youth ages 18 through 24 in 43 states.

in foster care. Compared to their peers who were no longer in care, youth in care were less likely to report food insecurity, apply for public benefits during the pandemic, and report that the pandemic had a major impact on their financial stability.[10] (Because this survey was conducted approximately a year ago, during the early part of the pandemic, additional information would be needed to determine whether these differences have persisted through to the current period.)

Foster Care Program and Chafee Program Provisions in Division X

Division X seeks to address the myriad challenges that current and former foster youth are experiencing during the pandemic through temporary flexibilities in both the Foster Care program and Chafee program. The Foster Care program flexibilities are intended to provide housing and related supports to youth who would otherwise age out of foster care during the pandemic, while also ensuring that youth who have already aged out have the opportunity to return to care. The Chafee flexibilities aim to ensure that youth receive direct, immediate support to meet their subsistence, educational, social-emotional, and other needs. Division X does not amend the authorizing statutes for the Foster Care program or the Chafee program, but rather modifies some of the policies within these programs for specified periods, usually with an end date of September 30, 2021. The pandemic may extend beyond this time frame; the Biden Administration has signaled that the public health emergency will "likely" extend through calendar year 2021.[11]

Foster Care Program Changes

The Division X provisions generally apply to jurisdictions that operate a Foster Care program under a Title IV-E foster care and permanency plan approved by HHS. Currently, this includes the 50 states, the District of Columbia, Puerto Rico, the U.S. Virgin Islands, and selected Indian tribes (hereinafter, collectively referred to as states unless otherwise noted).[12] States that operate a Foster Care program are entitled to federal reimbursement to cover their cost of providing foster care (shelter, food, and other related costs) to children under age 18 who meet certain eligibility criteria. States may also seek federal reimbursement for part of the cost of providing extended foster care to youth up to ages 19, 20, or 21 provided these youth meet additional eligibility criteria related to education or employment. With regard to the Foster Care program, Division X

[10] Johanna K.P. Greeson et al., *The Experiences of Older Youth In & Aged Out of Foster Care During COVID-19*, Field Center, University of Pennsylvania, September 2020 This survey involved a non-random sample of nearly 300 youth ages 18 through 23 in 33 states. The study use statistical methods to examine the relationship between foster care (or other variables) and a negative impact of the pandemic.

[11] See letter from Norris W. Cochran IV, Acting Secretary of HHS, to governors, January 22, 2021, https://ccf.georgetown.edu/wp-content/uploads/2021/01/Public-Health-Emergency-Message-to-Governors.pdf. Some of the periods began on the date that HHS declared a public health emergency in response to the pandemic. On January 31, 2020, the HHS Secretary issued a "Determination that a Public Health Emergency Exists Nationwide as the Result of the 2019 Novel Coronavirus." The determination was made retroactive to January 27, 2020, and has been renewed multiple times, most recently on April 7, 2021, for an additional 90 days. See HHS, "Public Health Emergency Declarations," https://www.phe.gov/emergency/news/healthactions/phe/Pages/default.aspx.

[12] In addition to the 50 states, the District of Columbia, Puerto Rico, and the U.S. Virgin Islands, the territories of Guam and American Samoa are defined as states for purposes of Title IV of the SSA (see Section 1101(a)(1)). Therefore, both Guam and American Samoa are eligible to seek approval of a Title IV-E program plan, which would in turn make them eligible for Chafee and ETV funds. However, neither of those territories has done so. The Northern Mariana Islands is not defined as a state for purposes of Title IV and thus is not eligible for participation in the Title IV-E program, nor in the Chafee or ETV programs.

- prohibits states from requiring a youth to leave foster care solely due to age whether the disqualifying age for the youth was 18 or an older age, or whether a youth meets the eligibility criteria for the Foster Care program;
- allows youth to remain eligible for the Foster Care program if they would otherwise qualify except for the requirements pertaining to age or education and employment;
- directs states to facilitate the voluntary reentry to foster care of youth who aged out of care since the start of the COVID-19 public health emergency on January 27, 2020, through the end of the public health emergency or September 30, 2021, whichever comes first; and
- provides protections that focus on the safety, permanency, and well-being needs of foster youth.

These protections apply from December 27, 2020, through September 30, 2021, except, as noted above, for the requirement related to facilitating reentry to care for youth who aged out during the pandemic, which could expire sooner than September 30 if the public health emergency ends.

Chafee Program Changes

The Chafee program provides funds to states to assist them in offering material and other supports for youth who experience foster care at age 14 or older, including former foster youth up to age 21 (or age 23 in certain states).[13] The program includes the Chafee Education and Training Voucher (ETV) program, which annually funds vouchers of $5,000 or the cost of attendance (whichever is lower) for a Chafee-eligible youth to attend an institution of higher education.

Division X appropriates $400 million in additional FY2021 funding for the Chafee program, of which a minimum of $50 million is for the ETV program. States may use a part of the $400 million in supplemental funding for carrying out the Foster Care program requirements related to youth remaining in foster care beyond age 18 (or 21 in states that regularly extend care to that age), facilitating reentry of youth to foster care, and ensuring protections for older youth in care (effective after the date of enactment through September 30, 2021).[14] With regard to FY2021 supplemental funds, Division X waives the statutory requirement that states provide matching funds and directs HHS to disregard the supplemental funding allotments when calculating any financial penalties for states that do not meet certain data collection procedures. Further, Division X temporarily extends eligibility for the Chafee program to age 27 (effective October 1, 2020-September 30, 2021), provides flexibilities related to use of Chafee and ETV funds (varying time frames, but generally effective from December 27, 2020, through September 30, 2021), and increases the maximum ETV award from $5,000 to $12,000 annually (effective December 27, 2020-September 30, 2022). The **Appendix** summarizes the changes to the Chafee program and includes a table with FY2021 supplemental Chafee and ETV allocations by state.

[13] Youth in states that extend foster care to age 21 can be served under the Chafee program until age 23. Section 477(b)(3)(A) of the Social Security Act.

[14] In guidance, HHS has indicated that these Chafee funds are available for costs incurred "between December 27, 2020 and September 30, 2021." See, HHS, ACF, ACYF, CB, PI-21-04, March 9, 2021, p. 9.

HHS Guidance

Prior to enactment of Division, X, HHS-ACF used authority given to particular federal agencies under the Robert T. Stafford Disaster Relief and Emergency Assistance Act (hereinafter, Stafford Act) to provide certain flexibilities for extended foster care related to the COVID-19 pandemic. Flexibilities under the Foster Care program were described in guidance issued on April 27, May 8, and May 26 in 2020; and under the Chafee program in the April 27, 2020, guidance.[15] Among other things, the guidance gave all states the option to temporarily enable youth to remain eligible for the Foster Care program up to age 21. It also permitted states that did this (as well as those that regularly opted to extend care) to disregard the education/work requirement for youth in care beyond age 18.

HHS-ACF summarized provisions of Division X in an information memorandum issued on January 7, 2021; it provided program instructions related to implementation of Division X, including the youth provisions that apply to the Foster Care program and the Chafee and ETV programs, on March 9, 2021.[16] This latest guidance encourages child welfare agencies to engage with youth and young adults in carrying out these provisions, such as through meeting with existing youth advisory boards or similar affinity groups, which can assist in advising the agencies. Further, the guidance urges states to verify expeditiously a youth or young adult's former foster care history and to serve youth even if they were in foster care in another state.

The Foster Care Program: Housing and Other Supports

Division X makes several temporary changes to the Foster Care program, authorized under Title IV-E of the Social Security Act, to ensure current and former foster youth may continue to receive housing and other supports during the pandemic. This section provides brief background about the Foster Care program, discusses early guidance from HHS on the program (including how this guidance compares to the Division X provisions), and then outlines the temporary flexibilities enacted by Division X.

What is the Foster Care Program?

Children typically enter foster care after having experienced abuse and/or neglect by a parent.[17] Responsibility for the care and placement of these children is given to a state, usually by a court

[15] See (1) HHS, ACF, ACYF, CB, *Letter to Child Welfare Directors from Jerry Milner, Associate Commissioner of the Children's Bureau*, April 27, 2020 (hereinafter, "HHS, ACF, ACYF, CB, *Letter to Child Welfare Directors from Jerry Milner*, April 27, 2020"); (2) HHS, ACF, ACYF, CB, *Stafford Act Flexibility for Certain Title IV-E Requirements Related to Extended Title IV-E Eligibility, Licensing, and Foster Care Placements*, PI-20-10, May 8, 2020 (hereinafter, "HHS, ACF, ACYF, CB, PI-20-10, May 8, 2020"); and (3) HHS, ACF, ACYF, CB, *Letter to Child Welfare Directors from Jerry Milner, Associate Commissioner of the Children's Bureau*, May 26, 2020 (hereinafter, "HHS, ACF, ACYF, CB, *Letter to Child Welfare Directors from Jerry Milner*, May 26, 2020").

[16] HHS, ACF, ACYF, CB, *New Legislation – Public Law (P.L.) 116-260, Division X and Section 305 of Title III of Division CC of the Consolidated Appropriations Act, 2021, enacted December 27, 2020*; and HHS, ACF, ACYF, CB, *Guidance and Instruction Related to the Supporting Foster Youth and Families Through the Pandemic Act, Division X of the Consolidated Appropriations Act, 2021, enacted December 27, 2020*, PI-21-04, March 9, 2021 (hereinafter, "HHS, ACF, ACYF, CB, PI-21-04, March 9, 2021").

[17] For more information, see CRS Report R43458, *Child Welfare: An Overview of Federal Programs and Their Current Funding*.

but sometimes under a voluntary placement agreement. The state is required to work to reunite a child in foster care with the child's family, or, when this is not possible, to find a new permanent home for the child via adoption or legal guardianship.[18] However, some children in care may reach the state's age of majority, typically age 18, without achieving reunification or other permanency. Under the Foster Care program, states with an approved Title IV-E plan can seek federal reimbursement for a part of the cost of providing foster care to children who meet age and other eligibility factors, which are outlined in federal law.[19]

Title IV-E foster care assistance—referred to as *foster care maintenance payments*—covers the cost of food, shelter, and other related costs in a foster family home or childcare institution, which for youth age 18 or older may include an independent living setting. With regard to age, for a child to be eligible for maintenance payments, she or he must be less than 18 years old—or less than 21 years old in states that have amended their Title IV-E plans to provide assistance to an older age.[20] These youth must also participate in education, work, or work-related activities, or have a documented medical condition that prohibits such participation. States have flexibility in determining how they define these criteria and how they verify whether youth meet them.[21] By providing Title IV-E foster care funding, the federal government compels states to meet certain program requirements. Among other things, states must follow a set of case review procedures for each child in foster care, including developing a written case plan, periodically reviewing the child's status in foster care, and ensuring regular permanency hearings.[22]

Early HHS-ACF Guidance: Pandemic-Related Flexibilities Offered Under the Stafford Act for the Foster Care Program

On March 12, 2020, the Children's Bureau at HHS-ACF called attention to housing and other support needs of some former foster youth that resulted from campus closures due to COVID-19 public health emergencies.[23] On April 27 and May 26 of 2020, HHS-ACF reiterated guidance or authority to help youth reenter foster care, and it encouraged states to conduct outreach to youth who were no longer in foster care but may be eligible for extended foster care.[24]

Citing authority given to federal agencies administering federal assistance programs under the Stafford Act, HHS-ACF issued a program instruction on May 8, 2020, that outlined several options states could take to ensure youth in care who were approaching age 18, and former foster youth, could remain housed and supported during the pandemic.[25] These temporary flexibilities—

[18] Section 471(a)(15) of SSA.

[19] Section 474(a)(1) and Section 472(a) of the SSA. Other eligibility factors include the manner and reason for a child's removal from the home, the income of household from which the child was removed, and the child's placement in a licensed foster care setting, among others.

[20] Section 472(a)(1) and Section 475(8) of the SSA. A state may elect to set the upper age bound at a youth's 19th, 20th or 21st birthday.

[21] HHS, ACF, ACYF, CB, *Guidance on Fostering Connections to Success and Increasing Adoptions Act of 2008*, PI-10-11, July 9, 2010, pp. 3-4 (hereinafter, "HHS, ACF, ACYF, CB, PI-10-11, July 9, 2010.")

[22] Section 471(a)(16) and Section 475(5) of the SSA.

[23] HHS, ACF, ACYF, CB, *Letter to Child Welfare Directors from Jerry Milner, Associate Commissioner of the Children's Bureau,* March 12, 2020.

[24] HHS, ACF, ACYF, CB, *Letter to Child Welfare Directors from Jerry Milner,* April 27, 2020; and HHS, ACF, ACYF, CB, *Letter to Child Welfare Directors from Jerry Milner,* May 26, 2020.

[25] HHS, ACF, ACYF, CB, *Letter to Child Welfare Directors from Jerry Milner,* April 27, 2020; and HHS, ACF, ACYF, CB, *Letter to Child Welfare Directors from Jerry Milner,* May 26, 2020.

all of which are optional for a state—remain available during the time that a major disaster declaration related to the COVID-19 pandemic is declared in the state and to the extent that a state is unable to operate normally during the disaster period. [26] They include the following:

- *Temporary Extension of Foster Care:* Any state that has not formally amended its Title IV-E plan to extend Foster Care assistance to older youth may use a simple certification process to inform HHS that it will offer this assistance to eligible children up to age 21.[27] (A state seeking to continue extended care following the end of the major disaster declaration in the state must submit an amendment to its Title IV-E plan to do this.)
- *Waiving Selected Eligibility Requirements*: States offering extended Foster Care assistance, including those doing so temporarily, are allowed to waive the required Title IV-E education and work participation eligibility requirements if youth are unable to fulfill them because of the pandemic.

What is the difference between temporary Stafford Act flexibilities and Division X?

Division X provisions on extended foster care are discussed in greater detail in the next section; however, these provisions are related to, but different from, the option provided to states in the May 8, 2020, HHS-ACF program instruction. A primary distinction is that the Stafford Act flexibilities *allow* a state to extend foster care up to age 21 as long as a major disaster declaration is in effect for the state, whereas the Division X provisions *require* all states to extend care up to age 21 (or up to an older age, where applicable) through September 30, 2021. Further, the Stafford Act flexibilities allow states offering extended foster care assistance, including those doing so temporarily, to waive Title IV-E education and work participation eligibility requirements if youth are unable to fulfill them because of the pandemic. In contrast, the moratorium on aging-out policy enacted in Division X waives the education and work requirements for determining Foster Care program eligibility in all cases, and remains in place in all states through September 30, 2021.

Figure 1 provides context about the status of extended care available in states and tribes immediately before enactment of Division X, as of December 11, 2020.[28] The map shows the following:

- Overall, 32 states (including the District of Columbia) and 9 tribes had extended foster care through an amendment to their Title IV-E state plans.[29] An additional 5 states (Kentucky, Montana, Nevada, New Jersey, and New Mexico) had exercised the option provided by HHS to temporarily extend foster care pursuant

[26] Stafford Act major disaster declarations occur on a state-by-state or other locality/jurisdiction basis and may have different end dates. See, CRS Report R46326, *Stafford Act Declarations for COVID-19 FAQ*.

[27] HHS, ACF, ACYF, CB, PI-20-10, May 8, 2020. See also, HHS, ACF, ACYF, CB, *Letter to Child Welfare Directors from Jerry Milner*, May 26, 2020.

[28] This is based on Congressional Research Service (CRS) correspondence with HHS, ACF on December 11, 2020.

[29] These 32 states are AL, AR, AZ, CA, CO, CT, DC, FL, HI, IL, IN, LA, ME, MD, MA, MI, MN, NC, ND, NE, NH, NY, OH, OR, PA, RI, TN, TX, VA, WA, WI, and WV. The nine tribes are the Pascua Yaqui Tribe (AZ), Eastern Band of Cherokee (NC), Standing Rock Sioux Tribe (ND and SD), Navajo Nation (AZ, NM, UT), Keweenaw Bay Indian Community (MI), Penobscot Indian Nation (ME), Rosebud Sioux (SD), Mashpee Wampanoag Tribe (MA), and Tolowa Dee-ni' Nation (CA). This is based on CRS correspondence with HHS, ACF on December 11, 2020.

to their Stafford Act disaster declarations. Fourteen states had opted not to provide extended care, even on a temporary basis.[30]

- Most states that had extended foster care through a Title IV-E plan amendment (27 states and 1 tribe)[31] or under a Stafford Act declaration (5 states)[32] had also elected to use the Stafford Act authority provided by HHS to temporarily waive the education and employment conditions for remaining in extended care. In other words, youth do not need to be engaged in education or employment activities as a condition for remaining in care while a declaration disaster is in place within their respective states.

Although the Division X requirements for extending foster care expire on September 30, 2021, states may extend care under the temporary Stafford Act authorities if major disaster declarations remain in effect after that date. In addition, states with such declarations in place after September 30, 2021, may also waive the education and employment requirements associated with staying in extended care.

States that provide extended foster care through a permanent plan amendment will still be able to seek federal reimbursement for this extended care beyond September 30, 2021, but they will no longer be able to claim such support for youth who are age 21 or older. If a disaster declaration remains in place in the state, however, they may continue to waive the education and employment requirements so long as a youth's inability to meet those requirements is a result of the disaster declaration.

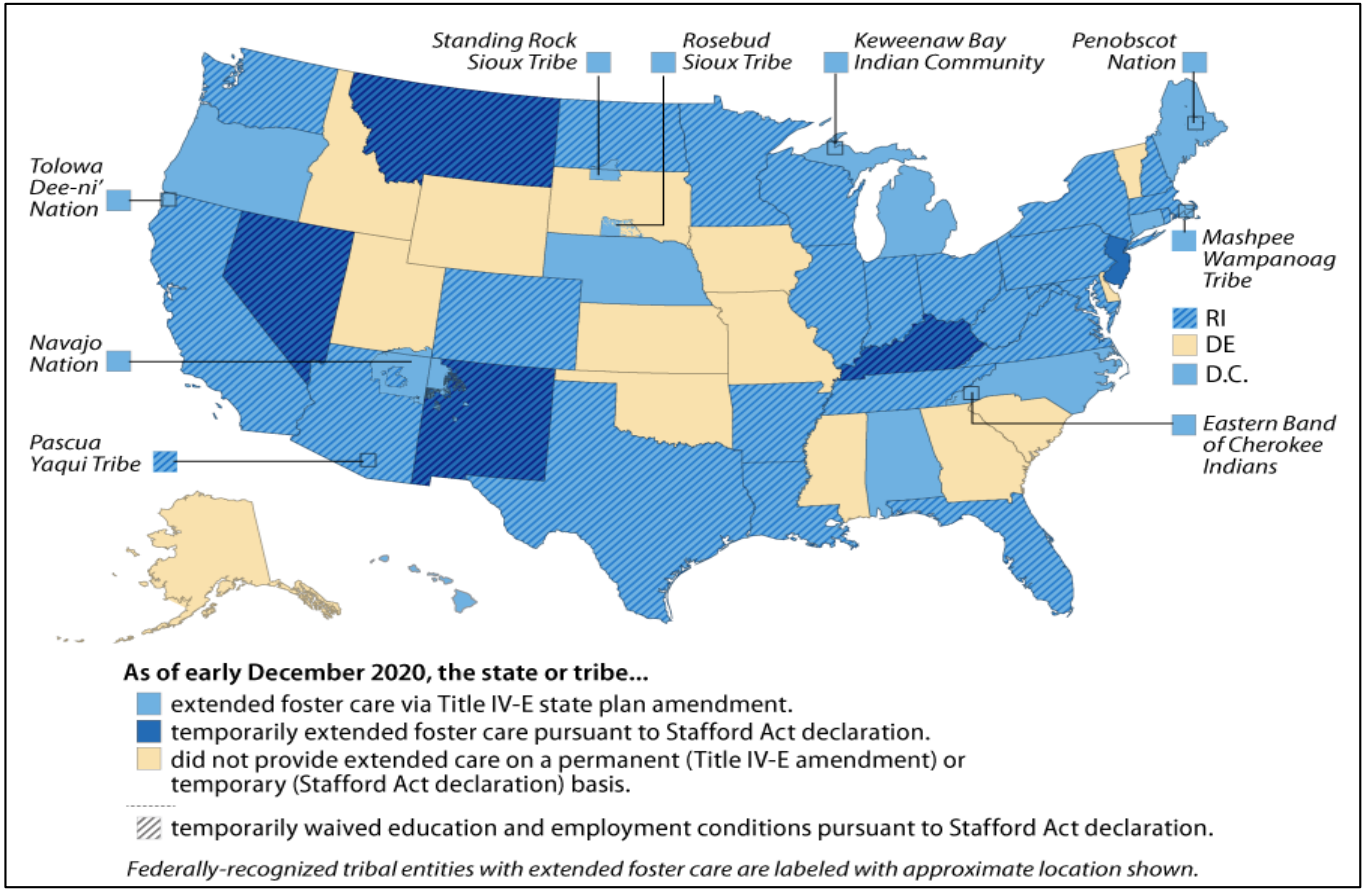
[30] These 14 states are AK, DE, GA, ID, IA, KS, MO, MS, OK, SC, SD, UT, VT, and WY. This is based on CRS correspondence with HHS, ACF on December 11, 2020.

[31] These 27 states are AR, AZ, CA, CO, FL, IL, IN, KY, LA, MD, MA, MN, MT, NV, NH, NM, NY, ND, OH, PA, RI, TN, TX, VA, WA, WV, and WI. This is based on CRS correspondence with HHS, ACF in early December 2020.

[32] The five states are KY, MT, NV, NJ, and NM.

Figure 1. Extension of Foster Care and Waiving of Education and Employment Conditions, by State

As of December 11, 2020, prior to enactment of the Supporting Foster Youth and Families through the Pandemic Act (Division X of P.L. 116-260)



Source: Based on Congressional Research Service (CRS) correspondence with the U.S. Department of Health and Human Services (HHS), Administration for Children and Families (ACF), December 11, 2020.

Division X Required Moratorium on Aging Out of Foster Care and Related Provisions

Section 4 of Division X temporarily prohibits states from requiring youth to leave foster care solely due to age, suspends eligibility rules related to work and education for older youth, requires states to conduct outreach to ensure youth who aged out of care during the pandemic may reenter foster care, and extends certain protections to youth remaining in or reentering care. These provisions apply to any state operating a Foster Care program, including those that did not extend foster care beyond a youth's 18th birthday prior to enactment of the law and those that did not elect to use Stafford Act flexibility to provide this extended care.[33] The Division X provisions that apply to the Foster Care program, mostly through September 30, 2021, include the following:

- *Temporary Moratorium on Aging Out:* Starting on the date of enactment (December 27, 2020), states are prohibited from requiring a youth to leave foster care due solely to their age (through September 30, 2021). This applies without regard to whether the disqualifying age for the youth is 18 or an older age.
- *Temporary Suspension of Work or Education Eligibility Requirements*: From December 27, 2020, through September 30, 2021, the Title IV-E eligibility requirements for older youth related to participation in education or work are suspended, allowing states to maintain Title IV-E eligibility for otherwise eligible youth.
- *Reentry into Foster Care*: Youth who left foster care due to age since the start of the COVID-19 public health emergency on January 27, 2020, are allowed to voluntarily reenter foster care through the end of the public health emergency or September 30, 2021, whichever comes first.
- *Required Notice to Youth Who Aged Out During the Pandemic*: States are required to provide a notice to each youth who was discharged from foster care due to age since January 27, 2020, to make the youth aware of the option to return to care through September 30, 2021; and are required to facilitate the voluntary return of any such youth to care.
- *Outreach to Youth*: States are required to conduct a public awareness campaign directed at youth who aged out of care at any time in FY2020 or FY2021—and are not yet 22 years old—to make these eligible youth aware of the option to return to foster care.[34]
- *Needs of Older Foster Youth*: States are directed to continue to ensure the safety, well-being, and permanence needs of older foster youth, including those who

[33] Division X applies the provisions in this section to any state operating a Title IV-E Foster Care program under an approved plan. Under Section 479B(b) of the SSA, requirements included in Title IV-E of the SSA must apply to tribes operating a Title IV-E program in the same manner as they apply to states (unless specific exception is given for tribes in Section 479B). Although provisions in Division X do not directly amend Title IV-E, they do address operation of a Title IV-E program and HHS interprets the provision to apply to tribes operating a Title IV-E plan. See HHS, ACF, ACYF, CB, PI-21-04, March 9, 2021.

[34] In its March 2021 guidance, HHS encourages child welfare agencies to reach out to other former foster youth who may now potentially be eligible for foster care or to receive other services, such as those that could be funded under the Chafee program. HHS, ACF, ACYF, CB, PI-21-04, March 9, 2021, p. 6.

remain in foster care *and* those who age out and then reenter foster care (presumably in effect from January 27, 2020, through September 30, 2021).[35]

- *Transition Plan and Permanent Connections*: States are directed to work with youth who remain in care at age 18—or the later age at which youth must leave care in the state as specified in the state's Title IV-E plan—to develop, or to review and revise, the youth's transition plan and to assist the youth with identifying adults who can offer meaningful, permanent connections (effective December 27, 2020-September 30, 2021).[36]

From the day after enactment[37] through the end of FY2021 (September 30, 2021), states may use a part of the $400 million in supplemental Chafee and ETV program funding (discussed subsequently) to carry out the Foster Care program requirements related to youth remaining in foster care, facilitating reentry of youth to foster care, and ensuring protections for older youth in care. However, the supplemental funds may only cover the cost of maintaining youth in foster care and providing protections for older youth if those youth are ineligible for Foster Care maintenance payments.[38] States are instructed to make "reasonable efforts" to determine Foster Care program eligibility when youth remain or return to foster care in response to the pandemic-related requirements.[39] Further, states must ensure that older youth who remain in or reenter care are not found ineligible because they fail to meet the age or education and employment conditions for extended Title IV-E foster care.

HHS-ACF Guidance on Implementation of the Moratorium on Aging Out

The March 2021 HHS-ACF guidance notes that there is not an upper age limit for remaining in or returning to care, and therefore these provisions can apply to youth age 21 or older.[40] The guidance also specifies that child welfare agencies could allow youth to remain in or reenter care without the agencies being given placement and care responsibilities. However, it notes that the agencies must provide monthly financial support to any youth remaining in or reentering foster care, along with age-appropriate supervision and case management services. It further notes that as agency placement and care responsibility are a condition of eligibility for the Foster Care program, the agency must not claim Title IV-E foster care reimbursement for such youth.[41]

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[35] The law specifies that this provision applies to youth who remain in foster care and youth who age out of foster care during "that period" but who reenter foster care as permitted under Section 4 of Division X. The reference to "that period" is not defined, but may refer to the start of the COVID-19 public health emergency on January 27, 2020, through September 30, 2021, or the last day of the COVID-19 public health emergency, whichever comes first.

[36] The transition plan requirements are at Section 475(5)(H) of the SSA. See prior discussion of these requirements.

[37] In its March 2021 guidance, HHS notes that Chafee funds can be used for Title IV-E costs, as specified in the law, from December 27, 2020, through September 30, 2021. See HHS, ACF, ACYF, CB, PI-21-04, March 9, 2021, p. 9.

[38] For example, youth age 18 or older who become or remain eligible for IV-E foster care payments based on the temporary waiver of age and education/work requirements of Division X may not be supported with the Chafee funds.

[39] As enacted, Division X does not specifically reference "reasonable efforts" for determining Title IV-E eligibility for youth who reenter care due to a state's efforts to notify youth who aged out of care during the pandemic of their option to reenter care, and their efforts to help those youth voluntarily return to care. However, HHS guidance specifies that such "reasonable efforts" must be made under these circumstances, though this term is not defined. See, HHS, ACF, ACYF, CB, PI-21-04, March 9, 2021, p. 4.

[40] HHS, ACF, ACYF, CB, PI-21-04, March 9, 2021, p. 4.

[41] HHS, ACF, ACYF, CB, PI-21-04, March 9, 2021, p. 4. Children in foster care are those children for whom the state or tribal agency operating a Title IV-E plan has been given responsibility for care and placement. See 45 C.F.R. §1355.20, definition of *foster care*. The regulatory definition of foster care includes the fact that the child is in the placement and care responsibility of the Title IV-E agency. However, PI-21-04 specifically notes that this aspect of the

With regard to Title IV-E foster care maintenance payments, the March 2021 HHS-ACF guidance notes that states may seek reimbursement on behalf of youth who are eligible for Title IV-E foster care except for the age or work and education requirements. Consistent with HHS-ACF guidance in July 2010, the March 2021 guidance specifies that these youth may reenter care through a voluntary placement agreement (which gives care and placement responsibility to the child welfare agency). In addition, a child welfare agency can determine which settings are allowable Title IV-E placement options for youth age 18 or older. As is true on a permanent basis, youth age 18 or older may be placed in supervised independent living settings that do not need to be licensed to provide foster care. The March 2021 guidance lists possible placement settings that include a foster family home or childcare institution providing foster care, such as host homes, college dormitories, shared housing, semi-supervised apartments, or supervised apartments.[42]

The Chafee Program: Services and Supports

Division X enacted temporary flexibilities under the Chafee program, authorized under Title IV-E of the Social Security Act, to provide immediate supports to meet the subsistence, education, employment, housing, social-emotional, and other needs of foster youth during the pandemic. This section provides brief background about the Chafee program and then discusses the temporary flexibilities enacted by Division X. Where applicable, this section addresses HHS pandemic-related guidance on the Chafee program before and after the law's enactment.

What is the Chafee Program?

The Chafee program provides funds to states to assist them in offering supportive services for youth who experience foster care at age 14 or older, including former foster youth up to age 21 (or up to age 23 in selected states).[43] The program seeks to address poor education, employment, and other outcomes experienced by many such foster youth as they transition to adulthood.

States are expected to use Chafee funds to provide a full range of services and supports intended to help current and former foster youth become successful adults, including using Educational and Training Voucher (ETV) funds to support Chafee-eligible youth in attending an institution of higher education for up to five years before reaching age 26.[44] Generally, all Chafee and ETV program funds are allotted to states primarily in proportion to each state's share of the total number of children in foster care nationally.[45] After this initial allotment is made, amounts for

regulatory definition need not apply to youth remaining in or reentering care under the Division X provisions. Allowing states to waive care and placement responsibilities for youth who may not be eligible for Title IV-E foster care maintenance payments appears to be a departure from this definition and current practice. See also, HHS, ACF, ACYF, CB, PI-10-11, July 9, 2010, pp. 5-7.

[42] See HHS, ACF, ACYF, CB, PI-21-04, March 9, 2021, pp. 5-6. These settings are consistent with those listed in HHS-ACF guidance from 2010. See HHS, ACF, ACYF, CB, PI-10-11, July 9, 2010, p. 9.

[43] Chafee and ETV program funding is available to states with an HHS-approved Chafee plan, provided they also have an HHS-approved Title IV-E foster care and permanency plan. Section 474(a)(4) and Section 477(h) of the SSA. Youth in states that extend foster care to age 21 can be served under the Chafee program until age 23. Section 477(b)(3)(A) of the Social Security Act.

[44] Section 477 of the SSA.

[45] Section 477(c) of the SSA describes allotments to states. Initial funding for ETVs is wholly allotted based on a state's share of the national foster care caseload (see Section 477(c)(3) of the SSA). Initial funding for regular Chafee funding is also awarded in this manner. However, if this allotment process results in any state receiving an allotment amount that is less than $500,000 (or, if greater, the amount of funding it received for FY1998 under the predecessor program to Chafee), then HHS-ACF must proportionately reduce funding to any state that exceeded those benchmarks

tribes are determined based on a tribe's share of children in foster care in the state in which the tribal children reside.[46] States have two fiscal years to spend their Chafee and ETV funds.[47] If a state does not apply for all of its allotment, the remaining funds may be redistributed among states that need these funds as determined by HHS. Further, HHS may reallocate funds that are not spent within the two-year period to states that apply for the funding.[48]

Chafee law authorizes $143 million annually in mandatory funding for the Chafee program and up to $60 million annually in discretionary funding for the ETV program.[49] P.L. 116-260 (in Division H) provides regular FY2021 appropriations totaling $186.3 million for the Chafee program ($143 million) and ETV program ($43.3 million).

Early HHS-ACF Guidance on Using the Chafee Program to Serve Youth During the Pandemic

HHS-ACF guidance issued prior to enactment of Division X addressed the use of Chafee funds in response to the COVID-19 pandemic. This guidance, from April 2020, noted that Chafee funding can be used to help youth receiving Chafee services with accessing a cell phone "if it will either facilitate participation in program services or enhance the effectiveness of the services in transitioning him/her to adulthood."[50]

The guidance also encourages states that extend care to age 21 to extend Chafee services to youth up to age 23 (as permitted under current law).[51] As of early December 2020, 21 states, the District of Columbia, and Puerto Rico provided such support to age 23.[52]

Division X Supplemental Funding and Flexibilities Under the Chafee Program

Section 3 of Division X appropriates $400 million in supplemental FY2021 Chafee program funding and makes temporary changes to certain Chafee and ETV program rules intended to enable states to better serve youth during the pandemic. These provisions do not amend Chafee

in order to permit each state to receive the minimum grant of $500,000 or the hold harmless award level. See Section 477(c)(1) of the SSA.

[46] Section 477(j)(1) of the SSA describes eligible tribes and tribal organizations as those able to directly operate a Title IV-E program (i.e., those with an HHS-ACF approved Title IV-E plan [under Section 479B]) or those indirectly operating some or all of a Title IV-E program (i.e., those that have an agreement or contract with a state to receive Title IV-E funds to do this work).

[47] Section 477(d)(5) of the SSA.

[48] Section 477(d)(4) of the SSA.

[49] Section 477(h)(1) and (h)(2) of the SSA. Chafee funding is annually appropriated (at the $143 million level, as authorized in the law) as part of the larger appropriations account referred to as "Foster Care and Permanency" for HHS-ACF. This account also funds mandatory Title IV-E foster care maintenance payments, adoption assistance, and guardianship assistance. Chafee ETV funding is provided as part of the HHS-ACF account providing discretionary funding for "Children and Families Services Programs." See U.S. Congress, House of Representatives, 116th Cong., 2nd sess., Explanatory Statement to Accompany Division H of the Further Consolidated Appropriations Act, 2021 (H.R. 133), which was enacted as P.L. 116-260.

[50] HHS, ACF, AYCF, CB, *Letter to Child Welfare Directors from Jerry Milner,* April 27, 2020.

[51] Section 477(b)(3)(B) of the SSA.

[52] This is based on CRS correspondence with HHS, ACF on December 11, 2020. These 23 states include CO, CT, DC, FL, IL, IN, IA, KY, MD, MA, MI, MN, MO, NE, ND, OR, PA, PR, UT, VT, VA, WA, and WV.

law but instead suspend regular program rules for varying periods of time (most of the provisions apply through September 30, 2021).

In addition to providing supplemental funding, the provisions in Section 3 allow states to make changes to the upper age of eligibility for the Chafee and ETV programs; use a larger share of Chafee funding to provide housing assistance to a broader group of youth; alter the requirements around eligibility, use of funds, and amount of funding available to youth under the ETV program; promote a focus on driving and transportation supports for certain Chafee-eligible youth; and spend funds to meet the Division X Title IV-E foster care requirements for youth who are not Title IV-E eligible. These provisions, and related HHS guidance, are discussed in the following sections. **Table A-1** summarizes the changes and the dates they are effective.

Eligibility for Chafee Services

Division X increases the maximum age for services or assistance under the Chafee and ETV programs to a youth's 27th birthday (effective October 1, 2019-September 30, 2021).

Under Chafee law, youth are eligible for Chafee program services and assistance if they have experienced foster care at age 14 or older, including those who have left foster care up to their 21st birthday and those who have left foster care at age 16 or older for kinship guardianship or adoption.[53] States that extend foster care to age 21 can provide Chafee services to a youth's 23rd birthday. Youth who are eligible for the Chafee program are also eligible to receive an ETV for five years, whether consecutive or not, until their 26th birthday.[54]

Housing Assistance

Division X permits a state to use more than 30% of its Chafee funds for room and board payments. It also allows this housing assistance to be made available to youth ages 18 through 26 who experienced foster care at age 14 or older and are otherwise eligible for Chafee-funded services. These flexibilities apply from April 1, 2020, through September 30, 2021.

By contrast, under Chafee law a state must certify that it will use no more than 30% of its allotment to provide room and board assistance.[55] This assistance may be offered only to youth who have aged out of foster care up to age 21 (or up to age 23 in states certified by HHS as providing extended foster care). A state must additionally certify that none of the amounts paid from its allotment will be expended on room or board for any child under age 18.[56]

Maintaining Eligibility for the ETV Program

Division X directs HHS to waive the ETV requirement that a youth must be enrolled or be making satisfactory progress toward completion of a postsecondary education or training program, if the youth is unable to do so because of the COVID-19 public health emergency. The act allows vouchers to be used to "maintain training and postsecondary education," including matriculation costs for students attending less than full-time or other expenses that are not part of the cost of attendance but help support youth in remaining enrolled. These provisions apply from April 1, 2020, through September 30, 2021. The act additionally specifies that the annual value of

[53] Section 477(a) of the SSA.

[54] Section 477(i)(3) of the SSA.

[55] Section 477(b)(3)(B) of the SSA.

[56] Section 477(b)(3)(C) of the SSA.

an ETV can be up to $12,000 or a youth's cost of attendance, whichever is lower, from December 27, 2020, through September 30, 2022.

By contrast, under Chafee law states may only allow youth participating in the ETV program to remain eligible until their 26th birthday, so long as the youth are enrolled in and making satisfactory progress toward completion of a postsecondary education or training program. These youth can receive the vouchers for up to five years, consecutive or not, until age 26.[57] As specified in Chafee law, an ETV may be provided to youth for the *cost of attendance* at an *institution of higher education,* as these terms are defined by the Higher Education Act (HEA).[58] The annual value of an ETV may be up to $5,000 or a youth's cost of attendance, whichever is lower.[59]

HHS-ACF Guidance on ETV Provisions in Division X (March 2021)

HHS-ACF guidance from March 2021 notes that the ETV funding and flexibilities in Division X are to assist youth who had been on track to attend, or were attending, an institution of higher education but had their education interrupted by the pandemic (and may include youth who were forced to pause their education due to financial challenges).[60] The temporary flexibilities apply to expenses paid for by regular FY2021 and FY2022 ETV appropriations and the supplemental FY2021 funds.

According to the guidance, expenses covered by the ETV funds do not necessarily have to relate to attending an institution of higher education, and can include items such as laptops or other technology necessary for virtual education, earphones, desks and chairs, printers and other supplies, and tools for internet access.[61] The guidance notes that Division X does not modify the current law requirement that youth may receive an ETV for five years at most, whether consecutive or not.[62] It appears possible that youth can use an ETV for living expenses if they are on a break from school due to the pandemic, and this could therefore limit the amount of time they are able to access an ETV to pay for their educational expenses in a future year.

Promoting Driving and Transportation Activities to Support Youth[63]

Division X adds requirements related to driving and transportation activities under the Chafee program. It provides that Chafee and ETV funds may be used to offer driving and transportation assistance to a youth age 15 or older who is in foster care or was formerly in care through age 26. (This minimum age is one year older than that under Chafee law, where a youth may be age 14 or older to qualify for the Chafee and ETV programs, and the maximum age of eligibility is consistent with the Division X change to eligibility for the programs.)

This driving and transportation assistance may be used to cover costs related to obtaining a driver's license and driving lawfully, such as vehicle insurance costs, driver's education classes,

[57] Section 477(i)(3) of the SSA.

[58] Section 477(i)(4) and (5) of the SSA. *Cost of attendance* is defined at 20 U.S.C. §1087ll and *institution of higher education* is defined at 20 U.S.C. §10002.

[59] Section 477(i)(4) of the SSA.

[60] HHS, ACF, ACYF, CB, PI-21-04, March 9, 2021, p 13.

[61] HHS, ACF, ACYF, CB, PI-21-04, March 9, 2021, p 14.

[62] HHS, ACF, ACYF, CB, PI-21-04, March 9, 2021, p 14.

[63] These provisions were contained in Division J of the Heroes Act (H.R. 925), as passed by the House on October 1, 2020.

testing fees, practice lessons, practice hours, license fees, roadside assistance, insurance deductible assistance, and assistance in purchasing an automobile. Division X specifies that eligible youth may receive up to $4,000 per year in support of driving and transportation activities. This assistance must not be counted for purposes of determining a youth's eligibility for, or the amount of, any other federal or federally supported assistance; however, the state must take appropriate steps to prevent duplication of federal or federally supported benefits. These provisions apply from April 1, 2020, through September 30, 2021.

Under current law, one of the purpose areas of the Chafee program is to support youth who have experienced foster care at age 14 or older in their transition to adulthood through "training and opportunities to practice daily living skills (such as financial literacy training and driving instruction)."[64] Accordingly, under regular program policy states can choose to use Chafee funding for driving instruction and related activities for eligible youth up to age 21 (or age 23 in states that extend foster care to age 21), but they are not compelled to do so.

HHS-ACF Guidance on Driving and Transportation Provisions in Division X (March 2021)

March 2021 HHS-ACF guidance specifies that driving and transportation expenses are ordinarily allowable under the Chafee program without a dollar limit for eligible youth up to age 21 (or age 23 in states that extend foster care). As noted, Division X extends this maximum age to 26 and puts a cap on the maximum amount of funding for these expenses.[65]

Funding for Title IV-E Foster Care Activities

Subject to certain restrictions, Division X permits states to use any of the FY2021 Chafee supplemental funding to meet costs incurred in meeting the law's temporary requirements for Title IV-E foster care. As noted previously, these costs are related to (1) maintaining youth in foster care who would have otherwise aged out of care and are ineligible for Title IV-E maintenance payments, (2) facilitating the reentry of youth into foster care, (3) conducting a public awareness campaign about reentering care, and (4) supporting the needs of older foster youth who are ineligible for Title IV-E maintenance payments. In using Chafee funds for these purposes, states must make "reasonable efforts" to determine whether a youth age 18 or older who remains in care, or returns to care, is Title IV-E eligible. The Chafee and ETV funding can be used for these Title IV-E activities carried out from the date after enactment[66] through September 30, 2021.

These uses of funds are distinct from the purposes of Chafee law to help eligible youth make the transition to adulthood.[67]

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[64] Section 477(a)(1) of the SSA. In addition, HHS has advised that transportation-related costs are allowed in the ETV program so long as they facilitate the youth's attendance at an institution of higher education. The guidance further notes that the state can use general Chafee funds for expenses related to a personal vehicle, such as a youth's car insurance or car repairs that are "reasonable and necessary for the youth to become independent or attend classes." See, HHS, ACF, ACYF, CB, *Child Welfare Policy Manual*, Section 3.5C, Question 4.

[65] HHS, ACF, ACYF, CB, PI-21-04, March 9, 2021, p. 11.

[66] In guidance, HHS has indicated that these Chafee funds are available for costs incurred "between December 27, 2020 and September 30, 2021." See, HHS, ACF, ACYF, CB, PI-21-04, March 9, 2021, p. 9.

[67] Section 477(a) of the SSA.

Supplemental Funding and Related Provisions

As noted, Division X appropriates $400.0 million in supplemental Chaffee funding (of which a minimum of $50 million must be reserved for ETVs). Combined with the regular FY2021 Chafee appropriations, this brings the total FY2021 Chafee funding to $586.3 million.

Division X includes several funding-related requirements that pertain to the supplemental FY2021 dollars:

- HHS is required to reserve 1.5% of the FY2021 Chafee supplemental funds for evaluation, technical assistance, performance measurement, and data collection activities. (This set-aside is consistent with current law.[68]) Of these funds, $500,000 must be set aside to provide technical assistance to a state implementing, or seeking to implement, a driving and transportation program for youth eligible under the Chafee program (discussed previously). HHS must ensure that the entity providing this assistance has demonstrated the capacity to (1) successfully administer activities in one or more states to provide driver's licenses to youth in foster care and (2) increase the number of foster youth who obtain a driver's license.
- HHS is directed to submit a report to Congress on the extent to which the 1.5% reservation from the supplemental funds (including the $500,000 set-aside) was used to provide technical assistance, monitor state performance and foster youth outcomes, and evaluate program effectiveness. The report must be submitted within six months after the end of the period in which funds were used for these purposes.
- HHS is directed to disregard the supplemental funding allotments when calculating any financial penalties for states that do not meet certain data collection procedures. As required under Chafee law, HHS must penalize any state not meeting the data collection requirements an amount from 1% to 5% of its annual Chafee fund allotment (in practice, this applies to funds for the Chafee program only).[69]
- With regard to the supplemental Chafee and ETV funds made available to support activities related to the COVID-19 pandemic, the HHS Secretary is prohibited from requiring any state to provide "proof of a direct connection to the pandemic" if doing so would be administratively burdensome or otherwise delay or impede the ability of the state to serve foster youth (effective April 1, 2020-September 30, 2021).
- The Chafee law matching requirement for the supplemental FY2021 funds is waived (the match is not waived for regularly appropriated FY2020 or FY2021 funds). Under Chafee law, a state must provide a 20% match (in-kind or cash) to receive its full federal Chafee and ETV allotments.[70]

As noted, states may use supplemental FY2021 Chafee and ETV funds for supports and services that are permissible under Chafee law as well as under the flexibilities provided in Division X. This includes serving a broader population of youth temporarily made eligible for the Chafee

[68] Section 477(g)(2) of the SSA.

[69] Section 477(e)(2) of the SSA. Pursuant to Section 477(f) of the SSA, HHS established a data collection and performance management system known as the National Youth in Transition Database (NYTD) to track the outcomes and services for teens and young adults in foster care and who have left foster care, up to age 21.

[70] Section 474(a)(4) and Section 474(e) of the SSA.

program, providing housing assistance and transportation assistance, and meeting the Title IV-E foster care requirements for youth who are ineligible for Title IV-E foster care maintenance payments.

Table A-2 shows the Chafee and ETV program supplemental state allotments for FY2021 as reported in the HHS-ACF March 2021 guidance. It appears that these funds are to be distributed based on the relative share of foster children in each state. While state allocations for regular FY2021 appropriations are not yet available and final allocation amounts could differ, it appears that HHS will apply current law requirements when distributing these funds.[71]

HHS-ACF Guidance on Funding Provisions in Division X (March 2021)

HHS-ACF noted in its March 2021 guidance that in addition to the supplemental FY2021 Chafee and ETV funds, states may use regular FY2020 and FY2021 funds that remain available through September 30, 2021, for costs related to the flexibilities in Division X.[72] Regular and supplemental FY2021 Chafee funding remains available for states to spend through the end of FY2022. However, beginning with October 1, 2021 (with limited exceptions tied to flexibilities that extend for a longer period) states must use all of that funding consistent with the regular program rules. Perhaps with this limitation in mind, the guidance encourages child welfare agencies to use a portion of the additional funds to "facilitate quick and streamlined access to direct financial support for youth who were or are in foster care" in creating opportunities for their economic, social, and educational success.[73]

Further, the guidance encourages child welfare agencies to ask youth and young adults about their needs, and work with youth in providing supports and services to meet those needs. Among the examples of supports and services that can be funded by the Chafee program are:

- targeted payments to allow youth to remain at home during the pandemic;
- living expenses (e.g., rent and groceries, back payments and fees);
- cell phones, cell phone plans, internet service, or other technological tools;
- respite care services and additional supports for pregnant or parenting youth;
- salaries of child welfare agency staff who administer emergency assistance to youth;
- hiring youth with lived experiences in child welfare to help fellow youth in care;
- medical expenses and personal protective equipment; and
- services and support to combat social isolation (e.g., gift boxes, cooking kits, puzzles).[74]

[71] Under Chafee law, Chafee and ETV funds are distributed to each state based on its proportion of the nation's children in foster care; however, a hold harmless requirement precludes any state from receiving less than the amount of Chafee program funds it received under the predecessor independent living program in FY1998 or $500,000, whichever is greater. There is no hold harmless provision for ETV funds. See Section 477(c)(2) of the SSA. Presumably, regular allocations are likely to be similar to FY2020 funding levels, which range from $500,000 (Delaware) to $15.4 million (California) for the Chafee program and $72,000 (District of Columbia) to $5.0 million (California) for the ETV program. These funding levels are available at HHS, ACF, *FY 2021 Justification of Estimates for Appropriations Committees*, pp. 215-216 (Chafee program) and pp. 326-327 (ETV program).

[72] HHS, ACF, ACYF, CB, PI-21-04, March 9, 2021, p. 10.

[73] HHS, ACF, ACYF, CB, PI-21-04, March 9, 2021, pp. 9-11.

[74] HHS, ACF, ACYF, CB, PI-21-04, March 9, 2021, pp. 10-11.

In providing these services and supports, HHS-ACF advised that child welfare agencies should consider what data and information they may need to determine whether such efforts are effective to ensure equity and transparency. According to the guidance, the additional funds must be tracked and accounted for separately from funds not used for Chafee flexibilities: child welfare agencies must report in their annual progress and services report (APSR) about the type of assistance provided to youth and the strategies they are using to engage youth.[75]

[75] This is an annual update to each child welfare agency's five year Child and Family Services Plan (CFSR) submitted to HHS. The next annual update is due to HHS by June 30, 2021. HHS, ACF, ACYF, CB, *June 30, 2021, submission of: (1) the second Annual Progress and Services Report (APSR) to the 2020-2024 Child and Family Services Plan (CFSP)*, PI-20-13, December 17, 2020.

Appendix. Flexibilities and Additional Funding for the Chafee Program and Education and Training Voucher (ETV) Program

Table A-1. Temporary Flexibilities for the Chafee and ETV Programs Under the Supporting Foster Youth and Families through the Pandemic Act (Division X of P.L. 116-260)

Provision	Description (and Division X section reference)	Effective Dates
Funding		
Supplemental Funding	Appropriates an additional $400 million for the Chafee and ETV programs, of which at least $50 million is for the ETV program. (This is in addition to $143 million for the Chafee program and $43.3 million for the ETV program provided through regular FY2021 appropriations in Division H of P.L. 116-260.) (Section 3(a)(1) and (2))	States have the ability to expend (obligate) FY2021 dollars in the year for which they are appropriated and the immediate succeeding year. Therefore, all of the supplemental dollars must be obligated by the last day of FY2022 (September 30, 2022). However, some of the supplemental funds may only be expended for certain activities through FY2021 (September 30, 2021). This includes Chafee costs associated with extending the age of eligibility, housing, ETVs, transportation, and Title IV-E foster care requirements for youth ineligible for Title IV-E maintenance payments.
No Nonfederal Matching Funds Required	States are not required to provide any nonfederal matching dollars to receive an allotment of the supplemental FY2021 funds provided for the Chafee and ETV programs. (Section 3(a)(4))	States are exempted from providing nonfederal matching dollars for the FY2021 supplemental funds, whether they expend them in FY2021 or FY2022. (The match is not waived for regularly appropriated FY2021 funds.)
Reservation of Funding for Evaluation and Other Activities	The U.S. Department of Health and Human Services (HHS) must reserve 1.5% of the supplemental FY2021 Chafee and ETV funds for evaluation, technical assistance, performance measurement, and data collection activities under the Chafee program. (Section 3(a)(3)(A))	This applies to supplemental funds for FY2021.
Funding for Evaluation and Other Activities Related to Driving and Transportation Activities	Of the FY2021 supplemental Chafee and ETV funds reserved for evaluation and related activities, $500,000 must be reserved to provide technical assistance to a state implementing, or seeking to implement, a driving and transportation program for youth eligible under the Chafee program. (Section 3(a)(3)((B))	This applies to supplemental funds for FY2021.
Report to Congress	HHS must provide a report to Congress on the extent to which (and the manner in which) the supplemental Chafee funds reserved for evaluation and related activities were used to provide technical assistance to state child welfare programs on driving and transportation assistance, monitor state performance and foster youth outcomes, and evaluate program effectiveness.	Within six months after the end of the period in which the funds were used for this technical assistance.

Provision	Description (and Division X section reference)	Effective Dates
National Youth in Transition Database (NYTD) Penalty	HHS may not include the supplemental FY2021 Chafee and ETV funds made available to states when calculating any financial penalties for states related to data collection for the National Youth in Transition Database (NYTD). (Section 3(a)(6))	This applies to supplemental funds for FY2021.
No Proof Required of a Direct Connection to the Pandemic	With regard to the supplemental FY2021 Chafee and ETV funds made available and used to support activities during the *COVID-19 public health emergency period*, HHS is prohibited from requiring any state to provide "proof of a direct connection to the pandemic" if doing so would be administratively burdensome or otherwise delay or impede the ability of the state to serve foster youth. (Section 3(c))	During the *COVID-19 public health emergency period*, defined in the law as April 1, 2020, through September 30, 2021.
Use of Supplemental Chafee Funds For Certain Costs Incurred in Responding to the Pandemic	Subject to certain restrictions, states may use any of the supplemental Chafee (including ETV) funding to cover the cost of some of the temporary requirements added by Division X, including (1) maintaining youth in foster care who would have otherwise aged out and are ineligible for Title IV-E maintenance payments; (2) facilitating reentry of youth to foster care, including by providing notice to those who aged out during the COVID-19 public health emergency (which began on January 27, 2020); (3) conducting a public awareness campaign about reentry for eligible youth; and (4) meeting the needs of older youth in foster care who are ineligible for Title IV-E maintenance payments, including reviewing and revising transition plans and helping youth identify adults who can offer meaningful permanent connections. (Section 4(d))	The additional Chafee and ETV funds are available to cover the temporary requirements if the costs are incurred "after the date of enactment" of the law[a] through September 30, 2021.
Eligibility		
Age of Eligibility for Chafee and ETV Programs	Increases the maximum age for services and assistance under the Chafee program (generally available from ages 14 to 21) and the ETV program (age 26) to a youth's 27th birthday. (Section 3(b))	FY2020-FY2021 (October 1, 2019-September 30, 2021)
Housing Costs and Flexibilities	Permits a state to use more than 30% of its Chafee funds for a fiscal year for room and board payments. Provides that this housing assistance may be available to any youth who is at least age 18 but not yet 27, experienced foster care at age 14 or later, and is otherwise eligible for services under the Chafee and ETV programs. This waives the Chafee statutory requirement that only up to 30% of funds may be used for housing youth age 18 or older who aged out of foster care. (Section 3(d)(3))	During the *COVID-19 public health emergency period*, defined in the law as April 1, 2020, through September 30, 2021.
ETV Program		
Eligibility	Directs HHS to allow states to waive the Chafee statutory requirement that a youth must be enrolled in, or making satisfactory progress toward completion of, a postsecondary education or training program, if the youth is unable to do so because of the COVID-19 public health emergency. (Section 3(d)(1))	During the *COVID-19 public health emergency period*, defined in the law as April 1, 2020, through September 30, 2021.

Provision	Description (and Division X section reference)	Effective Dates
Use of Funds	Allows vouchers to be used to "maintain training and postsecondary education," including matriculation costs for students attending less than full-time or other expenses that are not part of the cost of attendance but help support youth in remaining enrolled. (Section 3(d)(2))	During the *COVID-19 public health emergency period*, defined in the law as April 1, 2020, through September 30, 2021.
Funds Available	Changes the annual maximum value of an ETV to $12,000 (from $5,000) or a youth's cost of attendance, whichever is lower. (Section (a)(5))	From the date of the law's enactment (December 27, 2020) through FY2022 (September 30, 2022).
Driving and Transportation		
Use of Funds	Chafee and ETV funds may be used to provide driving and transportation assistance to a youth in, or formerly in, foster care who is otherwise eligible for Chafee services or ETVs. Youth are eligible if they are ages 15 through 26 years old. This driving and transportation assistance may be used to cover costs related to obtaining a driver's license and driving lawfully. (Section 3(d)(4)(A))	During the *COVID-19 public health emergency period,* defined in the law as April 1, 2020, through September 30, 2021.
Maximum Award	An eligible youth may receive up to $4,000 annually for driving and transportation assistance, and this assistance must be disregarded in determining eligibility for other federal or federally supported assistance, except states must take appropriate steps to avoid duplication. (Section 3(d)(4)(A))	During the *COVID-19 public health emergency period*, defined in the law as April 1, 2020, through September 30, 2021.

Source: Congressional Research Service (CRS) review of the Supporting Foster Youth and Families through the Pandemic Act, Division X of the Consolidated Appropriations Act, 2021 (P.L. 116-260); and 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 (CB), *Guidance and Instruction Related to the Supporting Foster Youth and Families through the Pandemic Act, Division X of the Consolidated Appropriations Act, 2021, enacted December 27, 2020*, PI-21-04, March 9, 2021.

a. In guidance, HHS has indicated that these Chafee funds are available for costs incurred "between December 27, 2020 and September 30, 2021." See HHS, ACF, ACYF, CB, PI-21-04, March 9, 2021, p. 9.

Table A-2. Supplemental FY2021 Chafee and ETV Program Allotments for States, Territories, and Tribes Provided Under the Supporting Foster Youth and Families through the Pandemic Act (Division X of P.L. 116-260)

State/Territory	Chafee Program Funding	ETV Program Funding	Total Funding
Alabama	$4,659,625	$ 677,271	$5,336,896
Alaska	2,319,740	337,172	2,656,912
Arizona	10,452,735	1,540,836	11,993,571
Arkansas	3,325,310	483,330	3,808,640
California	41,280,026	6,000,004	47,280,030
Colorado	4,302,679	625,389	4,928,068
Connecticut	3,491,294	507,455	3,998,749
Delaware	464,109	67,458	531,567
District of Columbia	541,461	78,701	620,162
Florida	19,791,518	2,876,674	22,668,192
Georgia	10,367,523	1,506,907	11,874,430
Hawaii	1,374,601	199,797	1,574,398
Idaho	1,411,666	205,184	1,616,850
Illinois	14,758,834	2,145,179	16,904,013
Indiana	13,139,286	1,909,780	15,049,066
Iowa	4,798,212	697,415	5,495,627
Kansas	6,475,743	941,241	7,416,984
Kentucky	7,370,957	1,071,360	8,442,317
Louisiana	3,157,715	458,970	3,616,685
Maine	1,688,842	245,471	1,934,313
Maryland	3,094,061	449,718	3,543,779
Massachusetts	7,946,259	1,154,979	9,101,238
Michigan	9,403,852	1,366,839	10,770,691
Minnesota	6,768,259	983,759	7,752,018
Mississippi	3,352,706	487,312	3,840,018
Missouri	10,220,877	1,485,593	11,706,470
Montana	2,978,840	432,971	3,411,811
Nebraska	2,796,128	406,414	3,202,542
Nevada	3,658,889	531,815	4,190,704
New Hampshire	987,038	143,465	1,130,503
New Jersey	3,569,451	518,816	4,088,267
New Mexico	1,874,163	272,407	2,146,570
New York	12,961,217	1,883,898	14,845,115

State/Territory	Chafee Program Funding	ETV Program Funding	Total Funding
North Carolina	9,042,878	1,314,372	10,357,250
North Dakota	1,210,229	175,905	1,386,134
Ohio	13,203,746	1,919,149	15,122,895
Oklahoma	6,692,519	972,750	7,665,269
Oregon	5,542,398	805,581	6,347,979
Pennsylvania	12,509,999	1,818,314	14,328,313
Puerto Rico	2,257,698	328,154	2,585,852
Rhode Island	1,772,639	257,651	2,030,290
South Carolina	3,642,774	529,473	4,172,247
South Dakota	1,374,601	199,797	1,574,398
Tennessee	7,485,372	1,087,990	8,573,362
Texas	25,322,153	3,680,546	29,002,699
Utah	2,004,694	291,380	2,296,074
Vermont	1,003,153	145,807	1,148,960
Virgin Islands	116,027	16,864	132,891
Virginia	3,968,295	576,787	4,545,082
Washington	8,752,957	1,272,232	10,025,189
West Virginia	5,856,961	851,303	6,708,264
Wisconsin	6,157,504	894,986	7,052,490
Wyoming	800,911	116,411	917,322
State and Territory Subtotal	*343,501,124*	*49,949,032*	*393,450,156*
Tribal Subtotal	*498,876*	*50,968*	*549,844*
Total	**$344,000,000**	**$ 50,000,000**	**$394,000,000**

Source: Congressional Research Service (CRS) review of 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 (CB), *Guidance and Instruction Related to the Supporting Foster Youth and Families through the Pandemic Act, Division X of the Consolidated Appropriations Act, 2021, enacted December 27, 2020*, PI-21-04, March 9, 2021, Attachments A and B.

Notes: A total of $400 million was provided in FY2021 supplemental Chafee and ETV funding. In addition to the $394 million provided to states, $6 million is available for evaluation, technical assistance, performance measurement, and data collection activities.

a. Tribes may apply to HHS-ACF to receive Chafee program and/or ETV program funds if they have an approved Title IV-E plan or a Title IV-E agreement with a state under which they provide foster care. A tribe's allotment of funding is taken out of funds initially allotted to the state based on the tribe's number of children in foster care out of all children in foster care in the state. Tribes that received supplemental FY2021 funding were those that received regular FY2021 Chafee program funds (seven tribes) or ETV program funds (six of those same tribes).

Author Information

Adrienne L. Fernandes-Alcantara
Specialist in Social Policy

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Amber Wilhelm, CRS Visual Information Specialist, prepared Figure 1.

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