

Ways and Means of the House of Representatives and the Committee on Finance of the Senate a progress report on the feasibility, timetable, and consultation process for conducting such a study. Not later than 15 months after such date of enactment, the Secretary shall submit to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate the final report on a performance-based incentive system. The report may include other recommendations for restructuring the program and payments under parts B and E of title IV of the Social Security Act.”

§ 679c. Programs operated by Indian tribal organizations

(a) Definitions of Indian tribe; tribal organizations

In this section, the terms “Indian tribe” and “tribal organization” have the meanings given those terms in section 5304 of title 25.

(b) Authority

Except as otherwise provided in this section, this part shall apply in the same manner as this part applies to a State to an Indian tribe, tribal organization, or tribal consortium that elects to operate a program under this part and has a plan approved by the Secretary under section 671 of this title in accordance with this section.

(c) Plan requirements

(I) In general

An Indian tribe, tribal organization, or tribal consortium that elects to operate a program under this part shall include with its plan submitted under section 671 of this title the following:

(A) Financial management

Evidence demonstrating that the tribe, organization, or consortium has not had any uncorrected significant or material audit exceptions under Federal grants or contracts that directly relate to the administration of social services for the 3-year period prior to the date on which the plan is submitted.

(B) Service areas and populations

For purposes of complying with section 671(a)(3) of this title, a description of the service area or areas and populations to be served under the plan and an assurance that the plan shall be in effect in all service area or areas and for all populations served by the tribe, organization, or consortium.

(C) Eligibility

(i) In general

Subject to clause (ii) of this subparagraph, an assurance that the plan will provide—

(I) foster care maintenance payments under section 672 of this title only on behalf of children who satisfy the eligibility requirements of section 672(a) of this title;

(II) adoption assistance payments under section 673 of this title pursuant to adoption assistance agreements only on behalf of children who satisfy the eligibility requirements for such payments under that section; and

(III) at the option of the tribe, organization, or consortium, kinship guardian-

ship assistance payments in accordance with section 673(d) of this title only on behalf of children who meet the requirements of section 673(d)(3) of this title.

(ii) Satisfaction of foster care eligibility requirements

For purposes of determining whether a child whose placement and care are the responsibility of an Indian tribe, tribal organization, or tribal consortium with a plan approved under section 671 of this title in accordance with this section satisfies the requirements of section 672(a) of this title, the following shall apply:

(I) Use of affidavits, etc.

Only with respect to the first 12 months for which such plan is in effect, the requirement in paragraph (1) of section 672(a) of this title shall not be interpreted so as to prohibit the use of affidavits or nunc pro tunc orders as verification documents in support of the reasonable efforts and contrary to the welfare of the child judicial determinations required under that paragraph.

(II) AFDC eligibility requirement

The State plan approved under section 602 of this title (as in effect on July 16, 1996) of the State in which the child resides at the time of removal from the home shall apply to the determination of whether the child satisfies section 672(a)(3) of this title.

(D) Option to claim in-kind expenditures from third-party sources for non-Federal share of administrative and training costs during initial implementation period

Only for fiscal year quarters beginning after September 30, 2009, and before October 1, 2014, a list of the in-kind expenditures (which shall be fairly evaluated, and may include plants, equipment, administration, or services) and the third-party sources of such expenditures that the tribe, organization, or consortium may claim as part of the non-Federal share of administrative or training expenditures attributable to such quarters for purposes of receiving payments under section 674(a)(3) of this title. The Secretary shall permit a tribe, organization, or consortium to claim in-kind expenditures from third party sources for such purposes during such quarters subject to the following:

(i) No effect on authority for tribes, organizations, or consortia to claim expenditures or indirect costs to the same extent as States

Nothing in this subparagraph shall be construed as preventing a tribe, organization, or consortium from claiming any expenditures or indirect costs for purposes of receiving payments under section 674(a) of this title that a State with a plan approved under section 671(a) of this title could claim for such purposes.

(ii) Fiscal year 2010 or 2011**(I) Expenditures other than for training**

With respect to amounts expended during a fiscal year quarter beginning after September 30, 2009, and before October 1, 2011, for which the tribe, organization, or consortium is eligible for payments under subparagraph (C), (D), or (E) of section 674(a)(3), not more than 25 percent of such amounts may consist of in-kind expenditures from third-party sources specified in the list required under this subparagraph to be submitted with the plan.

(II) Training expenditures

With respect to amounts expended during a fiscal year quarter beginning after September 30, 2009, and before October 1, 2011, for which the tribe, organization, or consortium is eligible for payments under subparagraph (A) or (B) of section 674(a)(3) of this title, not more than 12 percent of such amounts may consist of in-kind expenditures from third-party sources that are specified in such list and described in subclause (III).

(III) Sources described

For purposes of subclause (II), the sources described in this subclause are the following:

- (aa) A State or local government.
- (bb) An Indian tribe, tribal organization, or tribal consortium other than the tribe, organization, or consortium submitting the plan.
- (cc) A public institution of higher education.
- (dd) A Tribal College or University (as defined in section 1059c of title 20).
- (ee) A private charitable organization.

(iii) Fiscal year 2012, 2013, or 2014**(I) In general**

Except as provided in subclause (II) of this clause and clause (v) of this subparagraph, with respect to amounts expended during any fiscal year quarter beginning after September 30, 2011, and before October 1, 2014, for which the tribe, organization, or consortium is eligible for payments under any subparagraph of section 674(a)(3) of this title, the only in-kind expenditures from third-party sources that may be claimed by the tribe, organization, or consortium for purposes of determining the non-Federal share of such expenditures (without regard to whether the expenditures are specified on the list required under this subparagraph to be submitted with the plan) are in-kind expenditures that are specified in regulations promulgated by the Secretary under section 301(e)(2) of the Fostering Connections to Success and Increasing Adoptions Act of 2008 and are from an applicable third-party source specified in such regulations, and do not exceed the applicable percentage for claiming such

in-kind expenditures specified in the regulations.

(II) Transition period for early approved tribes, organizations, or consortia

Subject to clause (v), if the tribe, organization, or consortium is an early approved tribe, organization, or consortium (as defined in subclause (III) of this clause), the Secretary shall not require the tribe, organization, or consortium to comply with such regulations before October 1, 2013. Until the earlier of the date such tribe, organization, or consortium comes into compliance with such regulations or October 1, 2013, the limitations on the claiming of in-kind expenditures from third-party sources under clause (ii) shall continue to apply to such tribe, organization, or consortium (without regard to fiscal limitation) for purposes of determining the non-Federal share of amounts expended by the tribe, organization, or consortium during any fiscal year quarter that begins after September 30, 2011, and before such date of compliance or October 1, 2013, whichever is earlier.

(III) Definition of early approved tribe, organization, or consortium

For purposes of subclause (II) of this clause, the term “early approved tribe, organization, or consortium” means an Indian tribe, tribal organization, or tribal consortium that had a plan approved under section 671 of this title in accordance with this section for any quarter of fiscal year 2010 or 2011.

(iv) Fiscal year 2015 and thereafter

Subject to clause (v) of this subparagraph, with respect to amounts expended during any fiscal year quarter beginning after September 30, 2014, for which the tribe, organization, or consortium is eligible for payments under any subparagraph of section 674(a)(3) of this title, in-kind expenditures from third-party sources may be claimed for purposes of determining the non-Federal share of expenditures under any subparagraph of such section 674(a)(3) only in accordance with the regulations promulgated by the Secretary under section 301(e)(2) of the Fostering Connections to Success and Increasing Adoptions Act of 2008.

(v) Contingency rule

If, at the time expenditures are made for a fiscal year quarter beginning after September 30, 2011, and before October 1, 2014, for which a tribe, organization, or consortium may receive payments for¹ under section 674(a)(3) of this title, no regulations required to be promulgated under section 301(e)(2) of the Fostering Connections to Success and Increasing Adoptions Act of 2008 are in effect, and no legislation has been enacted specifying otherwise—

(I) in the case of any quarter of fiscal year 2012, 2013, or 2014, the limitations on

¹ So in original.

claiming in-kind expenditures from third-party sources under clause (ii) of this subparagraph shall apply (without regard to fiscal limitation) for purposes of determining the non-Federal share of such expenditures; and

(II) in the case of any quarter of fiscal year 2015 or any fiscal year thereafter, no tribe, organization, or consortium may claim in-kind expenditures from third-party sources for purposes of determining the non-Federal share of such expenditures if a State with a plan approved under section 671(a) of this title could not claim in-kind expenditures from third-party sources for such purposes.

(2) Clarification of tribal authority to establish standards for tribal foster family homes and tribal child care institutions

For purposes of complying with section 671(a)(10) of this title, an Indian tribe, tribal organization, or tribal consortium shall establish and maintain a tribal authority or authorities which shall be responsible for establishing and maintaining tribal standards for tribal foster family homes and tribal child care institutions.

(3) Consortium

The participating Indian tribes or tribal organizations of a tribal consortium may develop and submit a single plan under section 671 of this title that meets the requirements of this section.

(d) Determination of Federal medical assistance percentage for foster care maintenance and adoption assistance payments

(1) Per capita income

For purposes of determining the Federal medical assistance percentage applicable to an Indian tribe, a tribal organization, or a tribal consortium under paragraphs (1), (2), and (5) of section 674(a) of this title, the calculation of the per capita income of the Indian tribe, tribal organization, or tribal consortium shall be based upon the service population of the Indian tribe, tribal organization, or tribal consortium, except that in no case shall an Indian tribe, a tribal organization, or a tribal consortium receive less than the Federal medical assistance percentage for any State in which the tribe, organization, or consortium is located.

(2) Consideration of other information

Before making a calculation under paragraph (1), the Secretary shall consider any information submitted by an Indian tribe, a tribal organization, or a tribal consortium that the Indian tribe, tribal organization, or tribal consortium considers relevant to making the calculation of the per capita income of the Indian tribe, tribal organization, or tribal consortium.

(e) Nonapplication to cooperative agreements and contracts

Any cooperative agreement or contract entered into between an Indian tribe, a tribal organization, or a tribal consortium and a State for

the administration or payment of funds under this part that is in effect as of October 7, 2008, shall remain in full force and effect, subject to the right of either party to the agreement or contract to revoke or modify the agreement or contract pursuant to the terms of the agreement or contract. Nothing in this section shall be construed as affecting the authority for an Indian tribe, a tribal organization, or a tribal consortium and a State to enter into a cooperative agreement or contract for the administration or payment of funds under this part.

(f) John H. Chafee Foster Care Independence Program

Except as provided in section 677(j) of this title, subsection (b) of this section shall not apply with respect to the John H. Chafee Foster Care Independence Program established under section 677 of this title (or with respect to payments made under section 674(a)(4) of this title or grants made under section 674(e) of this title).

(g) Rule of construction

Nothing in this section shall be construed as affecting the application of section 672(h) of this title to a child on whose behalf payments are paid under section 672 of this title, or the application of section 673(b) of this title to a child on whose behalf payments are made under section 673 of this title pursuant to an adoption assistance agreement or a kinship guardianship assistance agreement, by an Indian tribe, tribal organization, or tribal consortium that elects to operate a foster care and adoption assistance program in accordance with this section.

(Aug. 14, 1935, ch. 531, title IV, §479B, as added Pub. L. 110-351, title III, §301(a)(1), Oct. 7, 2008, 122 Stat. 3962.)

REFERENCES IN TEXT

Section 301(e)(2) of the Fostering Connections to Success and Increasing Adoptions Act of 2008, referred to in subsec. (c)(1)(D)(iii)(I), (iv), (v), is section 301(e)(2) of Pub. L. 110-351, which is set out as a note under section 671 of this title.

EFFECTIVE DATE

Section effective Oct. 1, 2009, without regard to whether implementing regulations have been promulgated, see section 301(f) of Pub. L. 110-351, set out as an Effective Date of 2008 Amendment note under section 671 of this title.

Enactment of this section effective Oct. 7, 2008, except as otherwise provided, and applicable to payments under this part and part B of this subchapter for quarters beginning on or after effective date of enactment, with delay permitted if State legislation is required to meet additional requirements, see section 601 of Pub. L. 110-351, set out as an Effective Date of 2008 Amendment note under section 671 of this title.

CONSTRUCTION

For construction of section, see section 301(d) of Pub. L. 110-351, set out as a Construction of 2008 Amendment note under section 671 of this title.

PART F—JOB OPPORTUNITIES AND BASIC SKILLS TRAINING PROGRAM

§§ 681 to 687. Repealed. Pub. L. 104-193, title I, § 108(e), Aug. 22, 1996, 110 Stat. 2167

Section 681, act Aug. 14, 1935, ch. 531, title IV, §481, as added Oct. 13, 1988, Pub. L. 100-485, title II, §201(b), 102 Stat. 2360, related to purpose of part and definitions.