

**MEMORANDUM**

December 16, 2019

**Subject:** Family First Transition Act (FFTA), as introduced (H.R. 4980/S. 2777): Certain Context and Description [includes revision to **Table A-1** from Nov. 25, 2019 version]

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

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As introduced on November 5, 2019, the Family First Transition Act (FFTA) would appropriate one-time flexible funding (\$500 million in FY2020) to assist states, territories, and tribes in implementing policy changes included in the 2018 legislation commonly known as the Family First Prevention Services Act (Family First) (Title VII, Div. E of P.L. 115-123). The bill would also temporarily adjust policy related to evidence-based standards used for certain foster care prevention activities. This would permit states to more easily access federal support for prevention services and programs (during FY2020-FY2023).

Separately, FFTA would appropriate additional funding (FY2020 and FY2021 only) for the 24 jurisdictions that as of September 30, 2019 operated child welfare demonstration projects (often called “waiver projects”). The Child and Family Services Improvement and Innovation Act (P.L. 112-34, enacted in 2011) required all waiver projects to terminate on this date. FFTA funding would temporarily ensure each of these jurisdictions a federal foster care funding floor as they move from receiving Title IV-E dollars under the terms of a waiver project to making traditional IV-E foster care funding claims while also implementing Family First policies.

FFTA was introduced simultaneously in the Senate (S. 2777) by Senator Chuck Grassley with Senator Ron Wyden, chair and ranking members of the Senate Finance Committee, respectively, and in the House (H.R. 4980) by Representative Danny Davis with Representative Jackie Walorski and 11 additional Representatives. Representatives Davis and Walorski are the chair and ranking member, respectively, of the House Ways and Means Subcommittee on Worker and Family Support.<sup>1,2</sup>

This memorandum includes a brief discussion of selected changes made by the Family First Act, and of the recently ended child welfare waiver projects, to provide context for FFTA. It then provides a section

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<sup>1</sup> See House Ways and Means Committee, Newsroom, “Bipartisan Bill to Support Transformation of Child Welfare Systems Introduced in House and Senate, Nov. 5, 2019 and Senate Finance Committee, Newsroom, “Bipartisan Bill to Support Transformation of Child Welfare Systems Introduced in House and Senate,” Nov. 5, 2019.

<sup>2</sup> FFTA is one of a number of bills introduced in this Congress that propose to assist states and tribes in implementing the multiple changes made by Family First and/or to address end of waiver projects. These include: State Flexibility for Family First Transition Act (S. 107), introduced by Sen. Marco Rubio with Sen. Dianne Feinstein; the Family First Transition Assistance Act (H.R. 3017), introduced by Rep. Brad Wenstrup; and the Family First Transition and Support Act, S. 1376, introduced by Sen. Sherrod Brown (with others) and H.R. 2702, introduced by Rep. Karen Bass, with Rep. Don Bacon (and others). Like FFTA, these bills generally propose temporary policy and funding changes, although S. 1376/H.R. 2702 would also make some permanent changes. Sens. Rubio, Feinstein and Brown, and Reps. Bass, Bacon and Wenstrup are co-sponsors of FFTA.

by section description of FFTA's provisions. Finally, **Appendix A** includes an overview of the prevention and placement setting provisions in Family First, including a table showing relevant effective dates for those provisions by state and tribe; **Appendix B** provides estimated allotments of certain funding that would be appropriated by FFTA.

## Context for FFTA

### Family First Enactment and Selected Policy Changes

The Family First Prevention Services Act (Family First) made amendments to nearly every child welfare program included in Title IV-E and Title IV-B of the Social Security Act (SSA). Title IV-E has for many years authorized funding for a part of the cost of providing foster care to eligible children and ongoing assistance to eligible children leaving foster care for adoption, or, more recently, for legal guardianship. Under current law, any “state,” (including the District of Columbia and territories), and any tribe with an approved Title IV-E plan is eligible for this Title IV-E support.<sup>3</sup> Separately Title IV-B of the SSA authorizes funding to states, territories, and tribes for a broad range of child welfare-related services for children and their families.<sup>4</sup>

Funding provided under Title IV-B is capped at the amount provide in statute and/or annual appropriations acts. Title IV-B funding in FY2019 was \$730 million.<sup>5</sup> By contrast, most funding provided under Title IV-E is “open-ended.” That means a state or tribe with an approved Title IV-E plan is entitled to federal funding for a specific share of all eligible program costs. In FY2017 (most recent year for which these data are available) states and tribes spent about \$14.9 billion for Title IV-E foster care (including waiver projects), adoption assistance, and kinship guardianship assistance of which \$8.0 billion (53.7%) represented the federal share of program costs and \$6.9 billion was state/tribal dollars.<sup>6</sup>

Family First extended program funding authorities in Title IV-B and made some relatively limited policy changes to those programs. However, the most far reaching Family First amendments are expected to be those made to the Title IV-E program.<sup>7</sup> Among other changes Family First amended Title IV-E of the Social Security Act to permit spending under the Title IV-E program for selected evidence-based services intended to allow children to remain safely at home or with kin, thus preventing their need to enter foster care. States and tribes are not required to use Title IV-E funds to provide prevention services but they may choose to do so by amending their Title IV-E plan to include a prevention component. The Congressional Budget Office (CBO) estimated this would increase federal spending under the Title IV-E program by

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<sup>3</sup> All 50 states, the District of Columbia, Puerto Rico and the U.S. Virgin Islands have an approved Title IV-E plan. References to “states” in this memorandum generally include all 53 of these jurisdictions. Tribes were authorized to receive direct Title IV-E funding beginning with FY2010. The number of tribes with an approved Title IV-E plan is 17, but not all of those tribes are implementing the program. See <https://www.acf.hhs.gov/cb/resource/tribes-with-approved-title-iv-e-plans>; and also Appendix A.

<sup>4</sup> For an overview of child welfare programs and funding, including programs in Title IV-B versus the Title IV-E program, see CRS In Focus IF10590, *Child Welfare: Purposes, Federal Programs, and Funding*, by Emilie Stoltzfus.

<sup>5</sup> The FY2019 Title IV-B funding level referenced includes all funds appropriated under Title IV-B authorizations; some of this funding was awarded competitively to entities other than state or tribal child welfare agencies.

<sup>6</sup> The Title IV-E funding amount discussed here reflects only open-ended Title IV-E funding. It does not include additional capped amounts provided under that part of the law for the Chafee program as well as for Adoption and Legal Guardianship Assistance Payments. FY2017 expenditure claims data for kinship guardianship assistance are not available; CRS substituted FY2016 data for these totals but does not expect this to have a significant effect on the numbers shown in the text.

<sup>7</sup> For a brief overview of Family First see CRS Insight IN10858, *Family First Prevention Services Act (FFPSA)*; or legislative history “Bipartisan Budget Act of 2018,” in Chapter 11, House Ways and Means Committee, *2018 Green Book*. For thumbnail section-by-section discussion of Family First see Table 7 in CRS Report R45126, *Bipartisan Budget Act of 2018 (P.L. 115-123): Brief Summary of Division E—The Advancing Chronic Care, Extenders, and Social Services (ACCESS) Act*.

\$1.480 billion across 10 years (FY2018-FY2027).<sup>8</sup> At the same time, Family First places certain new restrictions on use of Title IV-E program funds if a child in foster care is placed in a group (or congregate) care setting – rather than a foster family home. Principally, children in foster care cannot be eligible for Title IV-E maintenance (“room and board”) payments for more than 14 days unless they are in a foster family home or in one of a limited number of group settings that meet a specific treatment or other need of the child. CBO estimated this change would reduce federal Title IV-E spending by \$641 million across 10 years (FY2018-FY2027).<sup>9</sup> All states must comply with the placement setting requirements.

Although Family First was enacted in February 2018, the authority to use Title IV-E program funds for foster care prevention activities was not available before October 1, 2019 (at the earliest) and the placement setting restrictions were not effective until that date (or up to two years later, as chosen by a state or tribe). However, a state may not opt to use Title IV-E funds for prevention activities authorized by Family First before the date it chooses to make effective the placement setting restrictions that law added. As of the early November 2019, 40 states and two territories had elected to delay the effective dates of the placement setting restrictions by as little as three months to as much as two years.<sup>10</sup> (See **Appendix A** for jurisdictions listed by effective date, including those that have submitted Title IV-E prevention plans.)

## Child Welfare Demonstration (“Waiver”) Projects Ended

Beginning in the middle 1990s (P.L. 103-432), the U.S. Department of Health and Human Services (HHS) was authorized to waive certain requirements of the Title IV-E program in order to allow states to demonstrate innovative ways to achieve federal child welfare policy goals. Under a child welfare demonstration project, more often called a “waiver” project, states and tribes were generally required to maintain the same protections and supports of the regular Title IV-E foster care program. However, they were permitted to use Title IV-E funds to serve children and families who would not otherwise have been eligible – and to offer them services that wouldn’t otherwise have been eligible for Title IV-E support.<sup>11</sup> These projects were intended to test whether different program methods or services might achieve federal child welfare policy goals without adding to the costs incurred by the federal government. Accordingly, each project was required to include an independent evaluation and to be determined, by HHS, as “cost neutral” to the federal Treasury.<sup>12</sup>

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<sup>8</sup> CBO, “Estimated Direct Spending and Revenue Effects of Division E of Senate Amendment 1930, the Bipartisan Budget Act of 2018,” Feb. 8, 2018, p. 2. Beginning with FY2019, Family First also permits use of Title IV-E funds to support evidence-based kinship navigator programs and to provide room and board (maximum of 12 months) for children in foster care who are placed with their parents in a licensed, family-based residential facility providing treatment for substance use disorders. CBO did not estimate cost associated with the second change but estimated kinship navigator support would increase federal IV-E spending by \$126 million (FY2018-FY2027). See <https://www.cbo.gov/system/files/115th-congress-2017-2018/costestimate/divisione.pdf>.

<sup>9</sup> *Ibid.*, p. 2. Additionally, Family First limits federal spending under the Title IV-E program by temporarily reinstating an income test (for the youngest children) as an eligibility criteria for receipt of ongoing Title IV-E adoption assistance. The income test, which in past years applied in all determinations of IV-E adoption assistance eligibility, is tied to the income in a child’s home before he/she entered foster care. Family First requires the test be again applied (from January 1, 2018 through June 30, 2024) to children who will not reach their 2<sup>nd</sup> birthday by the last day of the fiscal year during which their adoptive parents entered into a Title IV-E adoption assistance agreement with the state/tribal child welfare agency. CBO estimated this change would reduce federal Title IV-E spending for adoption assistance by \$505 million (across FY2018-FY2027).

<sup>10</sup> Information received by CRS from HHS, ACF, Office of Legislative Affairs and Budget (OLAB) on November 15, 2019. Only jurisdictions with an approved Title IV-E plan may receive Title IV-E prevention funding directly from the federal government.

<sup>11</sup> Sec. 1130 of the SSA permitted HHS to waive federal child welfare requirements as part of approving a child welfare demonstration. However, it stipulated (Sec. 1130(b)) that HHS could not waive requirements concerning: (1) a child’s entitlement to a foster care maintenance payment, (2) provision of certain child protections (e.g., permanency planning and case review), and (3) data reporting requirements related to foster care and adoption.

<sup>12</sup> Sec. 1130(f) and (h) of the SSA.

The Child and Family Services Improvement and Innovation Act (P.L. 112-34) renewed authority for HHS to approve as many as 30 new waiver projects between FY2012-FY2014. However, it also stipulated no waiver project, regardless of the date of its original approval could be continued past September 30, 2019. On that date, waiver projects were active in 23 states and one tribe.<sup>13</sup>

## Implementation Challenges

States and tribes seeking to implement changes required by Family First may face challenges.

First, as noted already, the Title IV-E program is jointly financed by federal-state/tribal dollars. While the federal share of the program cost is “open-ended” – meaning the federal government is committed to paying a share of every eligible program cost – that federal support is only available for the specific activities described in the law and only if a state or tribe spends its own funds on these same eligible activities (and meets all the same conditions and requirements applicable to program costs supported with federal dollars). Thus, in addition to amending their IV-E plans to include prevention activities, states or tribes seeking to safely reduce the number of children entering foster care (by offering prevention services and programs with Title IV-E funding) must generally identify new or redirected state, tribal, or other non-federal resources to devote to prevention in order to “draw down” this new federal support.

At the same time, current Title IV-E requirements remain in place: States and tribes must continue to ensure the safety, permanence, and well-being of each child who remains in, or must enter, foster care. Additionally, in order to retain IV-E support for children in care for more than two weeks, the placement setting provisions in Family First requires states to place children in foster family homes or to meet new and higher standards for the use of group care. Accordingly, in addition to improving quality of group care, states and tribes may need to recruit, train, and support more foster family homes, including those able to meet specialized needs of children in non-group settings.

Under child welfare demonstration projects, often referred to as “waiver” projects, some states have already begun to reorganize their child welfare programs to reduce use of foster care placements (through provision of prevention services and supports) and to limit use of group care settings for children in foster care. However, waiver projects each of which were required to end on September 30, 2019, were highly varied both across and within states. Further waiver jurisdictions generally had more flexibility in what they could support under a waiver project than what is permitted in the traditional Title IV-E program, even after accounting for the changes made by Family First. To continue receiving substantial parts of their IV-E funding, jurisdictions with recently ended waiver projects must realign their programs to match the more prescribed parameters of the traditional Title IV-E program, including its Family First amendments.

Further, all states choosing to carry out Title IV-E-funded prevention activities face the challenge of ensuring that their prevention activities meet the evidence standards included in Family First to enable them to qualify for Title IV-E program support. As of late November, the Title IV-E Prevention Services Clearinghouse had rated a total of ten programs and services as meeting the required evidence standards.<sup>14</sup> The work of the Clearinghouse, which has been charged by the HHS with reviewing and

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<sup>13</sup> See “Summary of the Title IV-E Child Welfare Waiver Demonstrations,” prepared for HHS, ACF, ACYF, Children’s Bureau by James Bell Associates (August 2019), available at <https://www.acf.hhs.gov/sites/default/files/cb/2019waiversummary.pdf>.

<sup>14</sup> For information on programs reviewed, those being reviewed, and evidence standards applied go to the Title IV-E Prevention Services Clearinghouse website at <https://preventionservices.abtsites.com>. The list of currently approved prevention services or programs includes seven programs or services found to be well-supported, one identified as supported, and two as promising. Four additional programs reviewed by the clearinghouse were rated as “does not currently meet criteria.” However, just one of those was a prevention program and the remaining three were kinship navigator programs.

rating each of the prevention activities supported with Title IV-E, is ongoing, and more programs are expected to be found to meet the Family First evidence standards. However, no specific timeframe for listing rating of additional programs by the Clearinghouse. (In apparent recognition of the difficulty states faced in designing prevention services program with a limited number of approved programs, HHS notified states in July 2019 that they may claim “transitional” Title IV-E support for prevention programs or services not yet reviewed by the Title IV-E Prevention Services Clearinghouse but for which the state can document necessary evidence standards are met.<sup>15</sup>)

This list represents some but not all of the implementation challenges that states and tribes may confront as they work to comply with the changes to federal child welfare policy enacted in Family First.

## Description of Bill by Section

The Family First Transition Act (FFTA) seeks to address challenges to Family First implementation primarily by (1) offering one-time flexible funding for all states, (2) ensuring jurisdictions with recently ended waiver projects a floor on their federal Title IV-E foster care funding (FY2020 and FY2021 only), and (3) temporarily loosening restrictions on the level of evidence a program or services must have demonstrated in order to receive full Title IV-E support. A section-by section description follows.

### Section 1 – Short Title

The act is titled the “Family First Transition Act” (FFTA).

### Section 2 – Evidence Standard Transition

As amended by Family First, a state may receive federal IV-E funding for a part of its cost of providing selected services and programs that prevent the need for children to enter foster care. However, to be funded the services must meet evidence standards described in the law as “promising,” “supported,” or “well-supported.” Further, no less than 50% of the state’s Title IV-E prevention spending must be for programs or services meeting the “well-supported” evidence criteria.

FFTA would temporarily allow states to spend Title IV-E dollars for a greater share of prevention activities that meet only the “promising,” or “supported” levels of evidence. Specifically it would provide that for each of FY2020 and FY2021, a state may spend IV-E dollars for prevention activities that meet any one of the levels of evidence criteria (“promising,” “supported,” or “well-supported”). During FY2022 and FY2023, FFTA would require no less than 50% of a state’s IV-E prevention spending be for programs or services meeting either the “supported” or “well-supported” program criteria. Finally, beginning with FY2024, the law would revert to the provision as added by Family First: No less than 50% of a state’s Title IV-E prevention spending program must be for “well-supported” programs and services.

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<sup>15</sup> As described in the July 2019 program instructions, if one state successfully documents that a program meets the required evidence standards, then any other state may include that prevention program/service in its five-year Title IV-E prevention plan, so long as the plan is submitted to HHS by October 1, 2021. Further, once such a five-year plan is approved, a state may claim IV-E transitional payments for that prevention activity for the length of the approved plan or until the activity is rated by the Title IV-E Prevention Services Clearinghouse. At that point, if the clearinghouse rating is in agreement with the prior state rating, no change is necessary. If it is different (i.e., program/service is found to meet a lower level of evidence or not to meet any of the evidence standards), Title IV-E payments related to that program/service must be made consistent with the Title IV-E Prevention Services Clearinghouse rating no later than the beginning of the second federal fiscal year quarter that follows the quarter in which the clearinghouse issued the rating. Accordingly, a lower evidence level rating by the Clearinghouse, or a Clearinghouse finding of not enough evidence to determine a rating, could reduce a state’s IV-E prevention funding going forward. See HHS, ACF, ACFY-CB-PI-06, July 18, 2019 at <https://www.acf.hhs.gov/sites/default/files/cb/pi1906.pdf>.

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## Section 3 – Enhanced Funding for Transition Activities

### *Transition Funding for All States, Territories and Tribes*

States have long received capped funding for child and family services under grant programs included in Title IV-B of the Social Security Act. Funds provided under one or both of these programs (the Stephanie Tubbs Jones Child Welfare Services (CWS) program and the Promoting Safe and Stable Families (PSSF) program) may be used for a wide gamut of child welfare purposes, including for services (1) to support and strengthen biological, foster, adoptive and kin families; (2) to carry out child protection work to both determine and ensure children’s safety; (3) that offer or permit crisis intervention, family preservation and/or family reunification; (4) that promote and support adoptions; and (5) to enhance the professional development and quality of child welfare workers, including training.<sup>16</sup>

FFTA would appropriate \$500 million for state, territories, and tribes. The funds may be used flexibly for any purpose allowed under Title IV-B of the Social Security Act, as well as for activities directly related to implementing Family First and for any activity previously funded under a state or tribe’s Title IV-E waiver project. The use of these funds for former waiver project activities is permitted “to reduce any adverse fiscal impacts as jurisdictions transition” from waiver projects to the traditional Title IV-E program as amended by Family First.

Of this \$500 million in funding, 3% (\$15 million) is to be first distributed among tribes (based on each tribe’s share of the total tribal child population among all applying tribes); the remaining 97% (\$485 million) is to be distributed to states and territories (based on the formula used for initial allotment of CWS program funding). (See **Appendix B** for estimated allotment amounts.)

The \$500 million would be appropriated on a one-time basis (in FY2020), but HHS would have until the end of FY2021 to distribute the funds.<sup>17</sup> States, territories, and tribes would not be required to supply any non-federal (matching) funds to receive this money. However, they would not be permitted to count spending of any of this federal transitional funding as non-federal “matching” dollars to access federal funds for any federal program. Additionally, they would need to comply with certain reporting requirements. (See **Section 4** discussion.)

### *Funding Certainty for States or Tribes with Recently Expired Waiver Projects*

Twenty-four child welfare demonstrations (waiver projects) were ended on September 30, 2019 as required by law.<sup>18</sup> Most of those projects had been implemented for between three and six years, although a handful were in place longer, including several for more than two decades. To ensure required cost neutrality, nearly all of the recently ended waiver projects had agreed to an overall cap of the amount of waiver project spending that could be reimbursed by the federal government under the Title IV-E foster care program.<sup>19</sup> With the end of the waiver projects all states must return to claiming federal support

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<sup>16</sup> The broad purposes of Title IV-B funding are described in Section 421 of the SSA (Stephanie Tubbs Jones Child Welfare Services (CWS), Subpart 1) and Section 430 of the SSA (Promoting Safe and Stable Families (PSSF), Subpart 2).

<sup>17</sup> FFTA does not appear to stipulate the amount of time a state would have to use this funding once it is received from HHS. However, the bill language may be subject to different interpretation and any final determination would be made by HHS as part of implementation. However, under general budget rules applicable to HHS accounts and, which might be expected to apply in the absence of other statutory instruction, states must spend money by the end of the fourth year following the year for which funds were provided. For example funds provided in FY2020 must be obligated by the last day of FY2024.

<sup>18</sup> These projects operated in all or parts of the following jurisdictions: AZ, AR, CA, CO, DC, FL, HI, IL, IN, KY, MD, NE, NV, NY, OH, OK, OR, PA, TN, UT, WA, WV, WI and the Port Gamble S’Klallam Tribe.

<sup>19</sup> These pre-negotiated caps were developed based on past spending under the program, and usually allowed for upward adjustments to the cap based on unexpected caseload increases, mandated changes in program costs, or other contingencies as

under the Title IV-E program in the traditional manner.<sup>20</sup> At the same time, they must meet new requirements of that program as added by Family First. Those changes offer some support for services intended to prevent a child's need to enter foster care as well as new policies intended to reduce unnecessary use of group or congregate care as a living arrangement for children in foster care. While these new Title IV-E policy purposes and aims significantly overlap with the purposes and aims of many waiver projects, there is not perfect alignment. Some waiver jurisdictions have predicted significant loss of federal Title IV-E funds as a result of the end of the waiver projects.<sup>21</sup>

FFTA appropriates funding that is intended to ensure each state or tribe that operated a waiver project as of the last day of FY2019, will receive *no less than* 90% of the maximum federal Title IV-E funding available to them under their waiver project in FY2020 and no less than 75% of that amount for FY2021.<sup>22</sup> States in which the waiver project was operated by, or in, distinct localities (e.g., in certain counties) must ensure that the funding is distributed to those localities in a manner that is proportionate to the localities loss of waiver funding. Additionally, the state would not be permitted to count spending of any of this federal transitional funding as non-federal "matching" dollars to access federal funds for any federal program and it must meet certain reporting requirements (described in **Section 4** below). Finally, funds paid out to a state under this authority must be spent by the end of the third year following the year for which they were appropriated. (For example, funds paid under this authority for FY2020, must be obligated by the state by the end of FY2023.)

#### **Section 4. Reporting on Enhanced Funding For Transition Activities**

Any state receiving funds appropriated via the FFTA would be required to submit a written report to HHS, in manner specified by the agency, on

- how the funds are used to implement Family First, including a separate statement with respect to each part of that law (e.g., support for prevention activities and kinship

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specified in the state's waiver agreement. In earlier years, cost-neutrality was usually tied to IV-E spending done by the state in areas, or for children, outside of the waiver project (as compared to within the waiver project) and might be tied to the project evaluation. For example, average funding for "treatment" group of children (or area) would be made equal to average spending for "control" children (or area). See also "Commonly Asked Questions About Cost Neutrality" [https://www.acf.hhs.gov/sites/default/files/cb/cost\\_neutrality\\_questions.pdf](https://www.acf.hhs.gov/sites/default/files/cb/cost_neutrality_questions.pdf).

<sup>20</sup> This includes spending Title IV-E dollars (federal and state) only on children meeting all IV-E foster care eligibility criteria, including an income test (tied to income of household child was removed from) and licensing requirements (tied to the foster care setting in which the child is placed) among other requirements. Nationally, fewer than half of all children in foster care are expected to meet these requirements, although that percentage varies by state.

<sup>21</sup> For examples: As of January 2019, Florida, which had operated a statewide IV-E waiver project since 2006, estimated that even after it made program changes to take better advantage of pre-Family First Title IV-E funding opportunities, the end of the waiver would reduce annual federal IV-E foster care funding to the state by as much as \$20 million. See "Florida's Path Forward: Post Title IV-E Waiver and the Family First Prevention Services Act (FFPSA) Training Video" <http://centervideo.forest.usf.edu/video/center/pathforward/start.html>. In California, the Title IV-E waiver project was operating in seven counties as of September 30, 2019, including for more than a decade in Los Angeles and Alameda counties and for five years or less in the remaining counties. In a February 2019 report, Los Angeles County Department of Child and Family Services (DCFS) predicted the end of the waiver would cause an annual funding reduction of \$180 million. However some of the other California waiver counties appeared more optimistic about their ability, over time, to transition the cost of waiver activities to traditional Title IV-E program costs and/or Title IV-E costs newly authorized by Family First. See California Well-Being Project, "Semi-Annual Progress Report, April 1, 2018-September 30, 2019, California Department of Social Services, February 2019, p. 10 (LA County), and for other examples, p. 15 (Sacramento County) and p. 21 (Santa Clara County).

<sup>22</sup> The amount of funding under a waiver project was typically based on specific traditional Title IV-E foster care program costs (e.g., maintenance payments for eligible children) identified for a state or other locality as money that could be spent for a broader range of purposes under the waiver but which must not exceed the amount the state or locality would receive absent the waiver. This FFTA funding guarantee relates to spending for those traditional Title IV-E activities that was included in that Title IV-E cost neutrality calculation. Any Title IV-E funding that was claimed outside of the waiver, whether for activities authorized prior to or after Family First, remains available outside of this specific funding guarantee.

navigator programs, ensuring appropriate placement settings for children in foster care, improvements to the Chafee program, and others);<sup>23</sup>

- all programs, services, or operation costs funded with the transition dollars, including the characteristics of children and families served with the funds; and
- any use of funds to continue activities previously supported via a child welfare waiver project, including the plan of the state to transition support for these activities to the regular Title IV-E program, or, if the expenditures are not eligible to be supported under that program, the reason this is the case and the funding sources the state plans to use to cover the costs of any needed activities.

Although the FFTA funding and this report language is provided independent of any current law program, FFTA stipulates that these reporting requirements must be treated as if they are a part of the current law reporting required under the PSSF state plan. This would effectively make this reporting on FFTA transition funding a condition of PSSF funding.

## Section 5. Definition of State

In FFTA the term “state” is expected to be read as if it includes each of the 50 states, five territories (American Samoa, Guam, Northern Mariana Islands, Puerto Rico, and the U.S. Virgin Islands) and federally recognized tribes, including tribal organizations.<sup>24</sup>

## Section 6. Renaming of Title IV-B, Subpart 2 of the Social Security Act

Title IV-B, Subpart 2 of the Social Security Act authorizes a range of child and family services which are collectively titled “Promoting Safe and Stable Families,” or PSSF. The FFTA would change the heading of this subpart to read the “MaryLee Allen Promoting Safe and Stable Families Program,” but would otherwise retain, unchanged, each of the activities of the subpart. Allen, who died in June, was well known among child welfare advocates and on Capitol Hill where for decades she pushed for programs and policies intended to better serve children and families.<sup>25</sup>

## Section 7. Effective Date

The effective date of FFTA would be February 9, 2019, the enactment date of the Bipartisan Budget Act of 2018. The provisions would be required to take effect as if they were included in that 2018 law.

## Section 8. Technical Correction

Section 8 of FFTA, corrects a technical drafting glitch to ensure that the provisions in Title VII, Division E of P.L. 115-123, are formally (in statute) titled the “Family First Prevention Services Act,” which is how the provisions are commonly referenced. Currently, the heading given for Title VII, Division E of the Bipartisan Budget Act of 2018 (P.L. 115-123) is the “Family First Prevention Services Act.” However, due to a drafting glitch, the short title of those Title VII provisions is incorrectly given as the “Bipartisan Budget Act of 2018” (see Sec. 50701 of P.L. 115-123).

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<sup>23</sup> There are seven parts of Family First, see Division E, Title VII of P.L. 115-123.

<sup>24</sup> The specific definition of “Indian tribe” and “tribal organization” intended is as given in Section 4 of the Indian Self-Determination and Education Assistance Act (ISDEA) [25 CFR 450b, which has been editorially reclassified as 25 CFR 5304].

<sup>25</sup> The 1978 report “Children Without Homes: An Examination of Public Responsibility to Children in Out-of-Home Care,” published by the Children’s Defense Fund and coauthored by MaryLee Allen, preceded the 1980 enactment of the Title IV-E program (P.L. 96-272). MaryLee Allen would go on to advocate on behalf of children and their families for decades and her counsel was sought as part of the enactment of every significant piece of child welfare policy since that time, up to and including Family First (Title VII, Division E of P.L. 115-123) See also John Kelly, “MaryLee Allen, Long Time Policy Director at Children’s Defense Fund, Has Passed Away at 74,” *The Chronicle of Social Change*, June 17, 2019.



## Appendix A. Prevention Services and Placement Provisions, Including Effective Dates by State

Family First requires states and tribes to meet new criteria related to foster care placement settings for children in foster care. Separately it permits states and tribes to spend Title IV-E funding on selected activities intended to prevent the need for children to enter foster care.

### Placement Setting Provisions

Family First redefines “foster family home” for the Title IV-E program to, among other things, ensure that no more than six children may be placed in foster care in a single home (exceptions to maintain siblings groups or for other specified reasons may apply).<sup>26</sup>

Further, it provides that a child may only be eligible for a Title IV-E foster care maintenance payment (roughly speaking a “room and board” payment provided to the foster caregiver) for a total of 14 days unless he or she is living in a licensed or approved foster family home or in one of a limited list of group care settings that meet an identified treatment or other unique need of the child. These are specified as – (1) a setting specializing in providing prenatal, postpartum or parenting supports for youth; (2) a setting providing high quality residential care and supportive services to children or youth identified as victims of, or at risk of, sex trafficking; (3) a supervised independent living setting (provided youth in care is at least 18 years of age) and; (4) a qualified residential treatment program (QRTP), provided assessments determine the program meets specific need of child and certain additional casework activities are carried out on the child’s behalf.<sup>27</sup> Prior to these Family First provisions, federal law provided relatively limited definitions of “foster family homes” and other group care settings for children in foster care (referred to as “child care institutions”). Further, an otherwise eligible child placed in either of those settings could receive Title IV-E foster care maintenance payments as long as he or she did not “age out” of foster care.<sup>28</sup>

Family First also requires that a state or tribe certify that it will not respond to Family First’s group care placement limitations for children in foster care by enacting or advancing policies or practices that result in a significant increase in youth placed in the state’s juvenile justice system.<sup>29</sup>

Each of these provisions related to placement settings for children in foster care was made effective as of October 1, 2019, *unless* a state or tribe had notified HHS before that date of its intent to delay that effective date. Specifically, any state or tribe was permitted by Family First to delay the effective date of those provisions for up to two years (i.e., until September 30, 2021). At the same time, the law provides that if a jurisdiction chooses to delay the effective date of those placement setting provisions it may not

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<sup>26</sup> The new definition retains the requirement that the home be state-licensed or approved to provide foster care but adds that it must be owned by an individual or family. A state may opt to place more than six children in a single foster family home if it does so to allow: (1) siblings to remain together; (2) a parenting youth to remain with his/ her child; (3) a family with special training of skills to provide care to a child with a severe disability; or (4) a child with an established meaningful relationship with the family to remain with the family. See Sec. 472(c)(1) of the SSA as amended by Sec. 50741 of P.L. 115-123.

<sup>27</sup> A QRTP is defined in detail at Sec. 472(k)(4) of the SSA, as added by Sec. 50741 of P.L. 115-123. If a child in foster care loses IV-E maintenance payment support solely due to the placement setting provisions added to Title IV-E by Family First, states may continue to claim support for Title IV-E administrative work carried out on a child’s behalf (e.g., case planning and review). See HHS, ACF, ACYF-CB-PI-18-07, July 9, 2018. Available at <https://www.acf.hhs.gov/cb/resource/pi1807>, p. 8.

<sup>28</sup> Secs. 472(c), 472(k), and 475A(c) of the SSA, as amended by Secs. 50741 and 50742 of P.L. 115-123. The placement setting provisions apply to children who enter (or re-enter) care on or after the effective date of those provisions in the state. They do not apply to children who previously entered care in that state, until or unless those children are moved to a different foster care placement setting, *or* if, after the effective date they leave and then subsequently re-enter foster care. See HHS, ACF, ACYF-CB-PI-18-07, July 9, 2018. Available at <https://www.acf.hhs.gov/cb/resource/pi1807>, pp. 8-9.

<sup>29</sup> Sec. 471(a)(37) of the SSA as added by Sec. 50741(d) of P.L. 115-123.

use Title IV-E funds to support foster care prevention programs and services before the first day on which the placement setting requirements described above are effective in the state.

As of the first part of November 2019, most, but not all, states, territories and tribes with an approved Title IV-E plan had chosen to take some delay in the effective date of the placement setting provisions. These delayed effective dates are shown in **Table A-1**, as they had been agreed to in the first part of November 2019. However, any jurisdiction may subsequently choose to revise the effective date – moving it up, or pushing it back, so long as the effective date is not later than September 30, 2021.

## New Support for Prevention Activities

In an effort to reduce the number of children who must enter foster care, Family First permits states and tribes to use Title IV-E program funds for provision of selected evidence-based services and programs, provided in a trauma-informed manner that can prevent the need for children to enter foster care. These Title IV-E prevention activities may include mental health and substance abuse prevention and treatment services, as well as skills-based programs for parents (e.g., home visiting), including family or individual counseling. The services and programs may be offered to, or on behalf of, any child determined by a state as at imminent risk of entering, or re-entering, foster care; to pregnant or parenting youth in foster care; and to the parents or kin caregivers of those children or youth. However, any prevention service or program offered must be specified in the child’s prevention plan (or case plan for pregnant or parenting youth in care). Further, it must be directly related to the safety, permanence, or well-being of the child or youth, and for children at risk of entering/re-entering care must also be designed to ensure the child can remain safely at home or with a kin caregiver.<sup>30</sup>

Between FY2020 and FY2026, the federal share of all Title IV-E prevention spending is 50%. Beginning with FY2027, the federal share of Title IV-E prevention services and programs is set at a state or tribe’s federal medical assistance percentage (FMAP), which is annually re-calculated and may range from 50%-83%) while the federal share of all Title IV-E administration and training costs related to IV-E prevention activities will remain at 50%.<sup>31</sup>

Unlike Title IV-E foster care support, there is no income test associated with eligibility for Title IV-E prevention activities and states may elect to provide the services in some or all parts of the state.<sup>32</sup> However, prevention activities supported with Title IV-E program dollars must meet general practice standards included in Family First as well as specific evidence standards that demonstrate the ability of a given service or program to improve relevant outcomes for children and families (e.g., improve family functioning or reduce parental substance use disorder.) Based in part on the amount of relevant well-designed research, and the amount of time a positive impact found by the research is sustained, a prevention activity may be rated as “well-supported,” “supported” or “promising.”<sup>33</sup> Family First

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<sup>30</sup> Sec. 471(e) and Sec. 475(13) of the SSA. See also, for state IV-E agencies, HHS, ACF, ACYF-CB-PI-18-9, Nov. 30, 2018 and, for tribal IV-E, agencies ACYF-CB-PI-18-10, Nov. 30, 2018. Title IV-E support is available for these prevention services for up to 12 months. However, a state may continue these services (in 12 month increments) so long as a child or youth is determined to continue to meet the eligibility criteria.

<sup>31</sup> The FMAP is also used in the Medicaid program. For more information see CRS Report R43847, *Medicaid’s Federal Medical Assistance Percentage (FMAP)*, by Alison Mitchell. Tribal FMAPs are defined for purposes of the Title IV-E program in Sec. 479B(d) of the SSA. For more information see, “Tribal FMAP” at <https://www.acf.hhs.gov/cb/resource/tribal-fmap>.

<sup>32</sup> For more information on Title IV-E eligibility requirements request a copy of Congressional Distribution memorandum, “The Title IV-E Income Test Included in the ‘Lookback,’” April 19, 2019, by Emilie Stoltzfus.

<sup>33</sup> See Title IV-E Prevention Services Clearinghouse, “Handbook of Standards and Procedures,” [https://preventionservices.abtsites.com/themes/ffc\\_theme/pdf/psc\\_handbook\\_v1\\_final\\_508\\_compliant.pdf](https://preventionservices.abtsites.com/themes/ffc_theme/pdf/psc_handbook_v1_final_508_compliant.pdf).

provides that no less than 50% of the state's Title IV-E prevention costs must stem from spending on programs or services meeting the well-supported level of evidence.<sup>34</sup>

Previously, outside of activities approved under a Title IV-E waiver project (authorized in certain states and tribes only) nearly all Title IV-E funding was available only *after* a state decided to place a child in foster care and no program funds were to be used for “social services provided to the child, the child’s family or foster family which provide counseling or treatment to ameliorate or remedy personal problems, behaviors or home conditions.”<sup>35</sup> Other than for pregnant or parenting youth in foster care, the Family First changes to the Title IV-E program continue to limit provision of “social services” to children who are not in foster care (i.e., they are available to children at imminent risk of entry or re-entry to foster care). Nonetheless, this change to the Title IV-E program by Family First represents a new opportunity for states and tribes to access federal support for provision of services intended to keep children safely at home, or with kin.

### Effective Dates of Placement Provisions and Prevention Services Funding

Any state or tribe that maintained October 1, 2019 as its effective date for the placement setting requirements discussed above and submitted an “approvable” Title IV-E prevention plan no later than December 31, 2019, is permitted to claim federal reimbursement for spending on Title IV-E prevention activities as of October 1, 2019. Any state or tribe opting for a later effective date for the placement setting provisions may claim Title IV-E prevention services support only on or after the date on which those placement setting provisions are effective. The last date on which a state may elect to make the placement setting provisions effective is September 30, 2021.

**Table A-1** below indicates effective dates for the Family First placement setting provisions by state and tribe (as of the first part of November 2019). It also indicates, states and tribes that had submitted a Title IV-E prevention plan as of the first part of November 2019. As of that date, DC’s prevention plan had been approved, while plans submitted by several other jurisdictions remained under review.

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<sup>34</sup> For tribes directly operating a Title IV-E program, the evidence standards may vary from those required for states. Specifically, Family First permits HHS to identify the requirements, including any evidence standards applicable to such a tribe that “permit the provision of [IV-E prevention] services and programs . . . that are adapted to the culture and context of the tribal communities served.” See Sec. 479B(b)(1)(E) of the Social Security Act. In November 2018, the HHS-Children’s Bureau issued guidance noting that the evidence standards for tribes with an approved IV-E plan do not need to meet those spelled out for states. At the same time it notes that this statutory flexibility does not extend to tribes providing IV-E foster care via an agreement with the state. Therefore Title IV-E prevention services funding used in those tribes may only be for services or programs that are consistent with the state’s Title IV-E prevention program and must meet its evidence standards. See HHS-ACF-ACYF-CB-PI-18-10, issued Nov. 30, 2018

<sup>35</sup> This prohibition is stated in regulations which describe scope of Title IV-E funding activities prior to changes made by Family First. See 45 CFR 1356.60 for this full discussion and 45 CFR 1356.60(c)(3) for the quoted matter.

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**Table A-1. Effective Date of New Family First Prevention Services Act (Family First) Placement Setting Requirements**

Jurisdictions with \* had submitted a Title IV-E prevention plan as of the first part of November 2019.

Effective Date	State or Territory	Tribe
October 1, 2019	Alaska, Arkansas,* District of Columbia,* Kansas, Kentucky,* Maryland,* Nebraska,* North Dakota, Utah*, Virginia, West Virginia	Aleut Community of St. Paul Island (AK)* Eastern Band of Cherokee Indians (NC) Mashpee Wampanoag Tribe (MA) Penobscot Indian Nation (ME) Port Gamble S'Klallam Tribe (WA)
December 31, 2019	Washington	none
January 31, 2020	Colorado	none
July 1, 2020	Iowa	none
September 29, 2020	Georgia, Pennsylvania	none
October 1, 2020	Delaware, Indiana	none
July 1, 2021	Minnesota, Tennessee	none
September 28, 2021	South Dakota	none
September 29, 2021	Alabama, Arizona, California, Connecticut, Florida, Hawaii, Idaho, Illinois, Louisiana, Maine, Massachusetts, Michigan, Mississippi, Missouri, Montana, Nevada, New Hampshire, New Jersey, New Mexico, New York, North Carolina, Ohio, Oklahoma, Oregon, Puerto Rico, Rhode Island, South Carolina, Texas, US Virgin Islands, Vermont, Wisconsin, Wyoming	Cherokee Nation (OK) Keweenaw Bay Indian Community (MI) Navajo Nation (AZ-NM-UT) Pascua Yaqui Tribe (AZ) Salt River Pima Maricopa Indian Community (AZ) Tolowa Dee-ni' Nation (CA)

**REVISION:** This table was revised by CRS on December 16, 2019 to show Alaska with an effective date of October 1, 2019 and to clarify the effective date of Alabama as September 29, 2021.

**Source:** Based on information received by CRS from U.S. Department of Health and Human Services (HHS), Administration for Children and Families (ACF), Office of Legislative Affairs and Budget (OLAB), Nov. 15, 2019.

**Notes:** A state or tribe that has chosen to delay the effective date of the Family First placement setting provisions may revise that effective date, allowing the provisions to become effective earlier, or later, as the state or tribe chooses. However, any revised effective date may not be later than September 30, 2019 and it must be chosen before the current (i.e., listed above) effective date.

## Appendix B. Estimated Allocation of \$500 Million

As introduced, FFTA would appropriate \$500 million in FY2020 (available for distribution through FY2021) to be used for “transition” funding.<sup>36</sup> After a 3% reservation of the mandatory funds for distribution to tribes (based on each tribe’s share of the under age 21 population among all tribes receiving funding), the remaining dollars are to be distributed to the 50 states, DC, and the five territories,<sup>37</sup> as follows: Each of these 56 jurisdictions would be allotted a base grant of \$70,000 with remaining funds distributed in proportion to each jurisdiction’s total share of the child (under age 21) population in the nation. However, the under age 21 population in each state is subject to a per capita income factor that effectively bolsters per child funding in states with lower per capita income, relative to the nation as a whole (and vice versa). (See **Table B-1** for estimated distribution.)

### Sequestration Not Applied in This Estimate

Under the Budget Control Act (BCA, P.L. 112-25), as amended, mandatory funding is subject to annual sequestration (in every year through FY2029), unless a specific exemption of the funding or program is given in the law.<sup>38</sup> Sequestration means a portion of any mandatory (and non-exempt) dollars appropriated are subsequently cancelled (sequestered). This cancellation of funds reduces the amount of mandatory funding distributed by a certain annually calculated amount that is designed to ensure that the deficit reduction goal set by the BCA is met. The Office of Management and Budget (OMB) is responsible for this calculation and for implementing the sequester.

For FY2020, OMB has reported that the sequester applicable to non-exempt, non-defense mandatory program funding – the type of funding that would be appropriated by FFTA as introduced – will be 5.9%.<sup>39</sup> Recent practice suggests, however, that once sequester amounts are calculated and published for a given year, the agency generally does not re-calculate the amounts based on subsequent changes in the level of mandatory appropriations for that year. Again, while the final decision on application of sequestration resides with OMB, in preparing the estimates in **Table B-1**, CRS did not assume any sequestration of the \$500 million in transition funding that would be appropriated by FFTA.

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<sup>36</sup> Funding would separately be appropriated to provide some funding certainty for jurisdictions operating a waiver project as of September 30, 2019. That additional funding is not included in the estimated allocations shown in this Appendix.

<sup>37</sup> These territories are American Samoa, Guam, Puerto Rico, the Northern Mariana Islands, and the U.S. Virgin Islands. While the Northern Mariana Islands is not specifically named in Section 423 of the Social Security Act (SSA) allotment procedures, like the other territories, it is defined in regulation as a “state” for purposes of Title IV-B of the SSA (45 C.F.R. 1355.20(a)) and receives an allotment under that section. Accordingly, for purposes of this table it is assumed to be eligible for any FFTA transition funding.

<sup>38</sup> See CRS Insight IN11148, *The Bipartisan Budget Act of 2019: Changes to the BCA and Debt Limit*, and “Annual Mandatory Spending Sequester,” in CRS Report R44874, *The Budget Control Act: Frequently Asked Questions*, by Grant A. Driessen and Megan S. Lynch.

<sup>39</sup> See *OMB Report to the Congress on the Joint Committee Reductions for Fiscal Year 2020*, March 18, 2019, p 6 of 17. [https://www.whitehouse.gov/wp-content/uploads/2019/03/2020\\_JC\\_Sequestration\\_Report\\_3-18-19.pdf#page=15](https://www.whitehouse.gov/wp-content/uploads/2019/03/2020_JC_Sequestration_Report_3-18-19.pdf#page=15).



**Table B-I. Estimated Distribution of \$500 Million in Transition Funding (FY2020) as Proposed by Family First Transition and Support Act (FFTA)**

Dollars in Millions

<b>State</b>	<b>Estimated allotments</b>
Alabama	\$8.393
Alaska	\$1.036
Arizona	\$12.389
Arkansas	\$5.383
California	\$52.765
Colorado	\$7.678
Connecticut	\$3.024
Delaware	\$1.384
District of Columbia	\$0.583
Florida	\$28.867
Georgia	\$18.578
Hawaii	\$1.998
Idaho	\$3.435
Illinois	\$17.878
Indiana	\$11.612
Iowa	\$4.984
Kansas	\$4.746
Kentucky	\$7.752
Louisiana	\$7.692
Maine	\$1.906
Maryland	\$7.147
Massachusetts	\$6.712
Michigan	\$15.783
Minnesota	\$7.802
Mississippi	\$5.792
Missouri	\$9.787
Montana	\$1.728
Nebraska	\$3.033
Nevada	\$4.848
New Hampshire	\$1.540
New Jersey	\$9.522
New Mexico	\$3.809
New York	\$21.369
North Carolina	\$17.113
North Dakota	\$0.996
Ohio	\$18.233
Oklahoma	\$6.547
Oregon	\$6.243
Pennsylvania	\$16.841
Rhode Island	\$1.422
South Carolina	\$8.637

<b>State</b>	<b>Estimated allotments</b>
South Dakota	\$1.468
Tennessee	\$10.804
Texas	\$47.322
Utah	\$6.933
Vermont	\$0.874
Virginia	\$10.960
Washington	\$9.734
West Virginia	\$2.965
Wisconsin	\$8.702
Wyoming	\$0.787
<b>Subtotal – 50 states &amp; DC</b>	<b>\$477.535</b>
<b>Territories</b>	
American Samoa	\$0.274
Guam	\$0.532
Northern Mariana Islands	\$0.217
Puerto Rico	\$6.134
Virgin Islands	\$0.307
<b>Subtotal - Territories</b>	<b>\$7.465</b>
<b>Tribes</b>	<b>\$15.000</b>
<b>TOTAL – 50 states, DC, five territories &amp; tribes</b>	<b>\$500.000</b>

**Source:** Table prepared by the Congressional Research Service (CRS). Estimates based on formula factors as used in distribution of FY2019 program funds and received from the U.S. Department of Health and Human Services (HHS), Administration for Children and Families (ACF), Office of Legislative Affairs and Budget (OLAB) in September 2019.

**Notes:** Actual distribution of funds are expected to vary based on updated formula factors (used in later distribution) and may also differ for other reasons, including but not limited to possible effect of sequestration.

The funding formula used for this estimated distribution is given in the Stephanie Tubbs Jones Child Welfare Services (CWS) program (Title IV-B, Subpart I of the Social Security Act, SSA). However, under the CWS program, funds to tribes are not reserved prior to the allotment of CWS funds. Instead, the allotment procedure is used as an “initial” distribution after which the U.S. Department of Health and Human Services (HHS), based on authority granted to it in Sec. 428 of the SSA, distributes funds to tribes out of those allotments (and based on the number of tribal children in the state’s overall child population). As introduced, FFTA stipulates that funds for tribes are to be reserved first – before distribution of transition funding to any state – and that the allotment subsequently made to each state and territory is the final award amount.

These estimated allotments do not account for funding that FFTA would additionally appropriate to ensure funding certainty for the 24 jurisdictions that were operating a waiver project as of September 30, 2019.