

**DIVISION OF CHILDREN AND FAMILY SERVICES  
ADMINISTRATIVE MEMO #12-2009**

**To:** Children and Family Services Specialists, Supervisors, and Administrators; Income Maintenance Workers and Supervisors; and Service Area Administrators

**From:** Edward H. Matney, Policy Section Administrator *Edward H. Matney*  
Division of Children and Family Services

**Approved by:** Todd L. Reckling, Director *Todd L. Reckling*  
Division of Children and Family Services  
Department of Health and Human Services

**Date:** December 18, 2009

**RE:** Fostering Connections Act of 2008- Federal Adoption Assistance (IV-E Subsidized Adoption)

**Effective:** Immediately  
**Duration:** Until revised or Regulations are issued

**Contact:** Mary Dyer, Program Specialist, Children and Family Services, Policy Section at (402)471-9331 or at mary.dyer@nebraska.gov

Purpose: The purpose of this memo is to provide instructions for implementation of changes for eligibility of children who currently would be eligible for Federal Adoption Subsidy and instructions for implementation of the new category of "Applicable Child."

Background: 390 NAC 6-003.02 and 479 NAC 8-001.02B1b list eligibility criteria for Federal Subsidized Adoption. The Fostering Connections Act clarifies some of the eligibility requirements for the population of children who currently would be determined eligible for Federal Subsidized Adoption. It also expands the population of children who will qualify for a Federal Adoption Subsidy by adding a category called the "Applicable Child." These are children who would have been eligible for State Subsidized Adoption but were unable to meet the eligibility requirements for Federal Adoption Assistance. Use of this new category will produce two results:

- Reduce state expenditures by allowing the claiming of federal funds for these adoption subsidies; and
- Provide the benefits available through Federal Adoption Subsidy to the children, e.g., being eligible for Medicaid in the state of residence.

Changes to N-FOCUS: N-FOCUS currently is not able to make eligibility determinations for "Applicable Children." Until changes can be made, it will be necessary to make these determinations manually, outside of N-FOCUS. Specific instructions for this process are found on Page 7 of this memo.

Training Opportunity: In order to assist field staff with implementation of this memo, three conference calls have been scheduled, on January 12, 13, and 19, at 10:00 AM Central Daylight Time. The agenda for all calls is the same, i.e., a review of the contents of this memo, and the opportunity for questions and answers. Participation on one of these calls is strongly urged for all CFS Specialists and Supervisors and Eligibility (Income Maintenance-FC) Workers and Supervisors who work with adoption assistance. In order to join the call, please dial the Conference Access Number of (888)820-1398, and then enter your Attendee Code of 8058364#.

### **ELIGIBILITY FOR A CHILD**

#### **NOT CONSIDERED TO BE AN "APPLICABLE CHILD"**

(These are the children who would have been eligible for Federal Adoption Assistance even without the newly-created category of "Applicable Child." Eligibility for them will continue to be determined through use of N-FOCUS.)

**Eligibility for A Child Who Does Not Meet the Definition of an Applicable Child:** To be eligible for Federal Adoption Assistance, a child must meet all of criteria in Numbers 1 through 7 below. Documentation for each criterion must be provided in the format or manner specified by the Department:

1. Be a ward of the Department, a private, licensed adoption agency, or one of the federally-recognized Tribes at the time of the filing of the petition for adoption, pursuant to a voluntary placement agreement or voluntary relinquishment of parental rights, or a judicial determination to the effect that continuation in the home would be contrary to the welfare of the child;

Note: if the child is a ward of a private, licensed adoption agency or a Tribe, the prospective adoptive parent must be referred to Mary Dyer, Adoption Specialist, who will process the application and make the determination of eligibility.

2. Be age 18 or younger, or if age 18, be disabled, as determined by the Department's Medical Review Team or an SSI determination;
3. Be a citizen or legal resident of the United States;
4. Be a child who has been determined to have a behavioral, emotional, physical, or mental disability, and it is reasonable to conclude that the child cannot be placed with an adoptive parent without adoption assistance and Medicaid. The disability must be documented by a recent report (less than six months old when the determination of eligibility form is approved by the CFS Specialist and Supervisor) from an appropriate, qualified professional (which could include but is not limited to a physician, psychiatrist, psychologist, or LMHP). This report must include diagnosis, severity of condition, and present and future care or treatment required or likely to be required. A child who has been determined to meet the medical or disability requirements for SSI meets this requirement without additional documentation; documentation of the SSI determination must be placed in the child's case file;

5. Be a child who, at the time of filing of the adoption petition, is eligible for IV-E Foster Care payments, with the exception that there is no requirement for a permanency review finding of reasonable efforts;
6. Be a child who cannot or should not be returned to the legal/biological parent(s). The following children are not eligible for a subsidized adoption, because they cannot meet this criterion:
  - a. A child being adopted by his/her biological or legal parent who has relinquished parental rights or had a termination of parental rights; or
  - b. A child being adopted by his/her stepparent when parental rights of either legal parent are intact; AND

Examples of acceptable documentation that a child cannot or should not be returned to the legal/biological parent include the parent's relinquishment or a court termination of parental rights.

7. Be a child for whom reasonable but unsuccessful efforts have been made to place the child without providing adoption assistance, except where it would be against the best interests of the child to move him or her, because of such factors as the existence of significant emotional ties with the prospective adoptive parents while in the care of the parents as a foster child.

Efforts to place without subsidy or documentation of best interest must be documented in the narrative on N-FOCUS. Actions or determinations that meet the requirement for efforts to place without subsidy, include but are not limited to:

- Registration of the child on an established adoption exchange for at least three months;
- Featuring the child in the media to recruit a family;
- Determination that the potential family is best able to meet the child's needs after consideration of other families;
- Determination that the potential family is the only one to consider because the child is attached to the family, and it would not be in the child's best interest to move her/him to another family that might be able to adopt without subsidy; or
- Decision of at least one family not to accept the child for adoption because of the child's special needs.

**Child of a Minor Parent:** A child who is not a ward is eligible for federal adoption assistance when:

- The child meets the criteria listed in Numbers 2 through 4 above; and
- The child's minor parent is a ward of the Department;
- A IV-E maintenance payment is being made in a foster family home or child-care institution on behalf of both the child and the child's minor parent.

**Eligibility for a Child Previously Adopted:** A child who is not an applicable child is eligible for Federal Adoption Assistance if she or he was eligible for Federal Adoption

Assistance in a prior adoption, meets the requirements in Numbers 2 through 7 above, and is available for adoption due to one of the following:

- That adoption has dissolved, and the parental rights of the adoptive parent(s) have been terminated by court action or voluntary relinquishment; or
- The adoptive parents have died.

**Eligibility for a Child With a Federal Kinship Guardianship Assistance Payment:** In determining eligibility for adoption assistance for a child who is receiving a Federally-funded Kinship Guardianship Assistance payment, the placement of the child with the relative guardian involved and any kinship guardianship assistance payments made on behalf of the child shall be considered never to have been made. Therefore, eligibility for the child is determined by looking back at the child and his or her circumstances at the time she or he was determined eligible for the kinship guardianship assistance program.

**Non-citizen Brought to the United States:** A child who is not a citizen or resident of the United States and was adopted in another country or brought to this country for the purpose of adoption is not eligible for federal subsidy of any kind, including an ongoing subsidy or non-recurring expenses.

### **APPLICABLE CHILD**

A child found not to be eligible for Federal Subsidized Adoption using the criteria in 390 NAC 6-003.02 or 479 NAC 8-001.02 can still be eligible for a Federal Subsidy, as an "Applicable Child" or the sibling of an "Applicable Child." Therefore, for any child determined ineligible for Federal Adoption Assistance on N-FOCUS, the following criteria must be applied, and, if the child meets these criteria, the child must be determined eligible.

**Definition of Applicable Child:** An "Applicable Child" is one who is or will be age 16 between October 1, 2009 and September 30, 2010, or who has been in out of home care continuously for at least 60 consecutive months preceding the adoption petition. (The age at which a child is considered to be an "Applicable Child" will decrease by two years in each subsequent Federal Fiscal Year, so that by October 1, 2018, all children who meet the additional eligibility requirements will become "Applicable Children." See Appendix A for a detailed chart.)

**Child's Eligibility:** To be eligible for Federal Adoption Assistance, the applicable child must meet all of criteria in Numbers 1 through 7 below. Documentation for each criterion must be provided in the format or manner specified by the Department:

1. Be age 16 before October 1, 2009, or turn age 16 at some time between October 1, 2009 and September 30, 2010; or have been in out of home care under the responsibility of the State or Tribal agency for at least 60 consecutive months preceding the filing of the adoption petition;

The 60 consecutive months is any 60 consecutive months prior to filing the adoption petition.

2. Be a ward of the Department or the Tribe at the time of the filing of the petition for adoption, pursuant to a voluntary placement agreement or voluntary relinquishment of parental rights, or a judicial determination to the effect that continuation in the home would be contrary to the welfare of the child;

If the child is a ward of a private, licensed adoption agency or a Tribe, the prospective adoptive parent must be referred to Mary Dyer, Adoption Specialist, who will process the application and make the determination of eligibility.

3. Be age 18 or younger;
4. Be a citizen or legal resident of the United States;
5. Be a child who has been determined to have a behavioral, emotional, physical, or mental disability, and it is reasonable to conclude that the child cannot be placed with an adoptive parent without adoption assistance and Medicaid. The disability must be documented by a recent report (less than six months old) from an appropriate, qualified professional (which could include but is not limited to a physician, psychiatrist, psychologist, or LMHP). This report must include diagnosis, severity of condition, and present and future care or treatment required or likely to be required. A child who has been determined to meet the medical or disability requirements for SSI meets this requirement without additional documentation;
6. The child cannot or should not be returned to the legal/biological parent(s). The following children are not eligible for a subsidized adoption, because they cannot meet this criterion:
  - a. A child being adopted by his/her biological or legal parent who has relinquished parental rights or had a termination of parental rights; or
  - b. A child being adopted by his/her stepparent when parental rights of either legal parent are intact; AND

Examples of acceptable documentation that a child cannot or should not be returned to the legal/biological parent include the parent's relinquishment or a court termination of parental rights.

7. Reasonable but unsuccessful efforts have been made to place the child without providing adoption assistance, except where it would be against the best interests of the child to move him or her, because of such factors as the existence of significant emotional ties with the prospective adoptive parents while in the care of the parents as a foster child.

Efforts to place without subsidy or documentation of best interest must be documented in the narrative on N-FOCUS. Actions or determinations that meet the requirement for efforts to place without subsidy, include but are not limited to:

- Registration of the child on an established adoption exchange for at least three months;

- Featuring the child in the media to recruit a family;
- Determination that the potential family is best able to meet the child's needs after consideration of other families;
- Determination that the potential family is the only one to consider because the child is attached to the family, and it would not be in the child's best interest to move her/him to another family that might be able to adopt without subsidy; or
- Decision of at least one family not to accept the child for adoption because of the child's special needs.

**Eligibility for the Sibling of an Applicable Child:** The sibling of an applicable child is eligible for Federal Adoption Assistance, if s/he meets the criteria in Numbers 2-4 above, and is being adopted by the same family, at the same time. There are no additional eligibility requirements.

**Eligibility for an Applicable Child Previously Adopted:** An applicable child is eligible for Federal Adoption Assistance if she or he was eligible for Federal Adoption Assistance in a prior adoption, meets the requirements in Numbers 3 through 7 above, and is available for adoption due to one of the following:

- The adoption has dissolved, and the parental rights of the adoptive parent(s) have been terminated; or
- The adoptive parents have died.

**Eligibility for an Applicable Child With a Federal Kinship Guardianship Assistance Payment:** In determining eligibility for Federal Adoption Assistance payments for a child who is in the kinship guardianship assistance program, the placement of the child with the relative guardian involved and any kinship guardianship assistance payments made on behalf of the child shall be considered never to have been made. Therefore, eligibility for the child is determined by looking back at the child and his or her circumstances at the time she or he was determined eligible for the kinship guardianship assistance program.

**Non-citizen Brought to the United States:** An applicable child who is not a citizen or resident of the United States and was adopted in another country or brought to this country for the purpose of adoption is not eligible for federal subsidy, including ongoing or non-recurring.

**Instructions for Eligibility Determination for Adoption Assistance**  
**(Subsidized Adoption)**

Prior to addition of the category of "Applicable Child," there were only two categories of eligibility for Adoption Assistance/Subsidized Adoption. The child was eligible for Federal Adoption Assistance (IV-E or Federal Adoption Subsidy) or for State Adoption Subsidy. When the required information was entered, N-FOCUS automatically determined the category for which the child was eligible. With the addition of "Applicable Child," a child who previously would have been determined eligible for Federal Adoption Assistance will continue to be eligible under that category. However, a child who was determined eligible for State Adoption Subsidy now might remain in that category, or might be eligible for Federal Adoption Assistance as an "Applicable Child." N-FOCUS will continue to make the determination of eligibility for Federal Adoption Assistance, using the previous requirements. However, it is not able at this time to distinguish between children who will be eligible for Federal Adoption Assistance as an "Applicable Child" and those who are not eligible for Federal Adoption Assistance at all and will be eligible only for State Subsidy. Changes will be made to N-FOCUS so that it can make this determination. Until those changes occur, it is necessary to do the work manually. Therefore, in order to open the Adoption Subsidy case for any child determined eligible for either a Federal or State Subsidy, the following steps must be followed.

**STEP ONE:** Apply the eligibility requirements that exist in N-FOCUS. (This step is not a change from what has been done in the past.) If N-FOCUS finds the child to be eligible for a Federal/IV-E Adoption Subsidy, you are done with eligibility determination. If N-FOCUS determines that the child is NOT eligible for a Federal/IV-E Adoption Subsidy, go to STEP TWO.

**STEP TWO:** Complete the Adoption Assistance Eligibility Determination Form. This form will be sent out to the field before January 1, 2010, and also will be available as a template.

- If the child does not meet all of these requirements, proceed to open the case as a State Adoption Subsidy case, i.e., SA/Med program case.
- If the child does meet all of the requirements, go to Step Three.

**STEP THREE:** As soon as possible after finalization of the adoption, send Ruth Grosse an e-mail notice and attach the completed Adoption Assistance Eligibility Determination Form. The e-mail must include:

1. Master Case number of the SA/Medical case;
2. Name of the child or children impacted;
3. The statement: "Attached is the child/children's Adoption Assistance Eligibility Determination Form."

**STEP FOUR:** Upon receipt of the e-mail, Ruth Grosse will review the information on the Form and be responsible to assure that changes are made to show the child's eligibility as Federal Adoption Assistance on N-FOCUS .

## APPENDIX A

Eligibility for Federal Adoption Assistance will be phased in by age over the next nine years. Children become eligible if they turn the listed age any time during the Federal Fiscal Year, which begins on October 1 and ends on September 30. By 2018, newly adopted children of all ages who meet the other IV-E eligibility requirements will be eligible for federal adoption assistance.

Federal Fiscal Year	Age of Eligibility
2010	16 and older
2011	14 and older
2012	12 and older
2013	10 and older
2014	8 and older
2015	6 and older
2016	4 and older
2017	2 and older
2018	All children