

DIVISION OF CHILDREN AND FAMILY SERVICES
ADMINISTRATIVE MEMO #14-2010

Replaces 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 (CFS)
Department of Health and Human Services (DHHS)

Date: December 30, 2010

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 OR Ruth Grosse, Business Analyst,
Children and Family Services, Policy Section at (402)471-
7785 or ruth.grosse@nebraska.gov

Purpose: The purpose of this memo is to provide updated instructions for implementation of changes that expand eligibility of children eligible for Federal Adoption Subsidy between their 18th and 19th birthdays to provide instructions for implementation of the category of "Applicable Child."

Background: 390 NAC 6-003.02 and 479 NAC 8-001.02B1b list eligibility criteria for Federal Subsidized Adoption. Approximately a year ago, in December of 2009, Administrative Memo #12-2009 was issued with new information about eligibility, based on the Federal Fostering Connections Act of 2008. Since that time, the Children's Bureau has provided additional guidance, and additional

provisions of the Act have become effective. Therefore, Administrative Memo #14-2010 is being issued to provide updated information and policy.

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 DHHS:

1. Be a ward of DHHS or one of the federally-recognized tribes; or be in the custody of a private licensed adoption agency 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 17 or younger, or if age 18, meet one of the criteria in letters a through e below:

DHHS has not required reviews of Federal Subsidized Adoption cases. However, this expansion of eligibility after the child's 18th birthday will require a review, to insure that one of the criteria below (a through e) is met. Three months prior to the child's 18th birthday, the assigned worker must send DHHS designated review form to the adoptive parent(s). If the review form is not returned within one month of the child's 18th birthday, the worker must attempt to contact the adoptive parent(s) again, by letter and/or phone or whatever method is appropriate, to obtain the information. If no response is received, or if the child does not meet the eligibility criteria below (a through e), the worker must change the subsidy from federal to state, beginning with the month following the child's 18th birthday.

Action on N-FOCUS: When a child reaching the age of 18 remains eligible for Federal Adoption Assistance, using the criteria below (a through e), the worker is not to run budget in N-FOCUS. If budget is run, N-FOCUS will determine the child ineligible for Federal Adoption Assistance.

- a. The child is completing secondary education or a program leading to an equivalent credential;

“Completing” means that the child is enrolled and has a reasonable plan for receipt of a high school diploma or its equivalent. In Nebraska, an individual who completes a GED program receives a diploma. If the child lives in another state, that state’s definition of “equivalent credential” will be used.

- b. The child is enrolled in an institution that provides post-secondary or vocational education;

The program may be part-time or full-time. Enrollment is considered to be continued through normal periods of class attendance, vacation, and recess, unless the student graduates, drops out, is suspended or expelled, or is not registered for the next normal school term, excluding summer school. A student otherwise enrolled and on a semester, summer, or other break is considered to be enrolled. Eligibility continues for up to 90 days if the child must temporarily leave school because of illness, injury, or a situation that is beyond the child’s control.

- c. The child is participating in a program or activity designed to promote, or remove barriers to, employment;

Programs or activities meeting this criterion include such things as Job Corps or classes on resume writing, interview skills, or use of computer technology or literacy.

- d. The child is employed for at least 80 hours per month; or

The child can be employed part-time or full-time, at one or more places of employment, as long as the employment is for 80 or more hours per month.

- e. The child is incapable of doing any of the above described activities (in a. through d.), due to a medical condition.

“Medical” includes both physical and mental health conditions. A determination that this criterion applies requires a statement from an appropriate qualified professional that the child is incapable of any of the activities listed above in letter a through letter d. The statement must be applicable to the child’s ability between the 18th and 19th birthdays. Usually, the medical statement obtained for initial subsidy eligibility will not be sufficient for this purpose.

The existence of a Supplemental Security Income determination might not assure that a child meets this criterion, because the child might be disabled but still capable of one of the activities listed above in letters a through d.

3. Be a citizen or legal resident of the United States;

4. Be a child who cannot be placed for adoption without assistance because of one or more of the following factors or conditions:
 - a) Age: Eight (8) years of age or older;
 - b) Membership in a sibling group of three or more to be placed together; or
 - c) Behavioral, emotional, physical, or mental disability, as 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 Licensed Mental Health Practitioner [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 SSI eligible in his or her own right (as opposed to receiving SSI due to a parent's disability) meets this criterion;
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 DHHS;
- 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.

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 begin on Page 9 of this memo.

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 DHHS:

1. Be age 14 before October 1, 2010, or turn age 14 at some time between October 1, 2010, and September 30, 2011; 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 month period is any 60 consecutive months prior to filing the adoption petition.

As of October 1, 2011, the age will become 12; as of October 1, 2012, the age will become 10. The age decreases by 2 years annually until 2018. See Appendix A for additional details.

2. Be a ward of DHHS or a 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;

3. Be age 17 or younger, or if age 18, meet one of the following criteria:

DHHS has not required reviews of Federal Subsidized Adoption cases. However, this expansion of eligibility after the child's 18th birthday will require a review to insure that one of the criteria listed below (a through e) is met. Three months prior to the child's 18th birthday, the assigned worker must send the DHHS-designated review form to the adoptive parent(s). If the review form is not returned within one month of the child's 18th birthday, the worker must attempt to contact the adoptive parent(s) again, by letter and/or phone or whatever method is appropriate, to obtain the information. If no response is received, or if the child does not meet the eligibility criteria below (a through e), the worker must change the subsidy from federal to state, beginning with the month following the child's 18th birthday.

When a child reaching the age of 18 remains eligible for Federal Adoption Assistance, using the criteria below (a through e), the worker is not to run budget in N-FOCUS. If budget is run, N-FOCUS will determine the child ineligible for Federal Adoption Assistance.

- a. The child is completing secondary education or a program leading to an equivalent credential;

"Completing" means that the child is enrolled and has a reasonable plan for receipt of a high school diploma or its equivalent. In Nebraska, an individual who completes a GED program receives a diploma. If the child lives in another state, that state's definition of "equivalent credential" will be used.

- b. The child is enrolled in an institution that provides post-secondary or vocational education;

The program may be part-time or full-time. Enrollment is considered to be continued through normal periods of class attendance, vacation, and recess, unless the student graduates, drops out, is suspended or expelled, or is not registered for the next normal school term, excluding summer school. A student otherwise enrolled and on a semester, summer, or other break is considered to be enrolled. Eligibility continues for up to 90 days if the child must temporarily leave school because of illness, injury, or a situation that is beyond the child's control.

- c. The child is participating in a program or activity designed to promote, or remove barriers to, employment;

Programs or activities meeting this criterion include such things as Job Corps or classes on resume writing, interview skills, or use of computer technology or literacy.

- d. The child is employed for at least 80 hours per month; or

The child can be employed part-time or full-time, at one or more places of employment, as long as the employment is for 80 or more hours per month.

- e. The child is incapable of doing any of the above described activities due to a medical condition.

“Medical” includes both physical and mental health conditions. A determination that this criterion applies requires a statement from an appropriate qualified professional that the child is incapable of any of the activities listed above in letters a through d. The statement must be applicable to the child’s ability between the 18th and 19th birthdays. Usually, the medical statement obtained for initial subsidy eligibility will not be sufficient for this purpose.

The existence of an SSI determination might not assure that a child meets this criterion, because the child might be disabled but still capable of one of the activities listed above in letters a through d.

4. Be a citizen or legal resident of the United States;
5. Be a child who cannot be placed for adoption without assistance because of one or more of the following factors or conditions:
- a) Age: Eight (8) years of age or older;
 - b) Membership in a sibling group of three or more to be placed together; or
 - c) Behavioral, emotional, physical, or mental disability, as 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 Licensed Mental Health Practitioner [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 SSI eligible in his or her own right (as opposed to receiving SSI due to a parent's disability) meets this criterion;
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 step-parent 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," which is included as Appendix B. 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/Med program 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 ensure 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

APPENDIX B

**Adoption Assistance – Applicable Child Eligibility Determination
(Revised 12/2010)**

- 1) Child's Name: _____ Child's Date of Birth: _____ Master Case#: _____
- 2) Date of Petition to Adopt: _____
- 3) Is the child eligible per one of the following:
- a. Is the appropriate age as identified in Appendix A of Administrative Memo #14-2010? **OR:**
 - b. Has been in out of home care continuously for at least 60 consecutive months prior to the adoption petition being filed
- Yes No **If NO----STOP**
- 4) Citizen or legal Resident of United States: Yes No **If NO----STOP**
- 5) Specific Factors related to Child: **If none of these factors are yes ----STOP**
- a. Has documented 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 document from an appropriate qualified professional may be no older than six months. Yes No Date of the document: _____
 - b. Meets all medical or disability requirements for SSI: Yes No
 - c. Is a member of a sibling group of 3 or more being adopted together: Yes No
 - d. Is age 8 or older: Yes No
- 6) Eligible for IV-E Foster Care Payments at the filling of adoption petition. Yes No
- 7) Proof that child cannot or should not be returned to legal/biological parent(s):
- a. Parent(s) Relinquishment: **Fathers Date:** _____ **Mothers Date:** _____
 - b. Court Termination of Parental Rights: **Fathers Date:** _____ **Mothers Date:** _____
 - c. Other: _____ Must specify why child should not be returned.
- Note: Mandatory Consultation** is required with Margaret Bitz, Mary Dyer, or Ruth Grosse prior to adoption being finalized if c is the only factor.
- 8) Reasonable but unsuccessful efforts have been made to place the child without adoption assistance Check the box indicating the reasonable effort specific to the child:
- Registration of the child on established adoption exchange for at least 3 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 who might be able to adopt without subsidy
 - Decision of at least one family not to accept the child for adoption because of the child's special needs.

If no boxes in 8 are checked----STOP

Sibling of an Applicable Child

Does the sibling of a child previously determined as an applicable child meet the following eligibility requirements?

- 1) Is a ward of the Department or the Tribe at the time of filing of 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:
 Yes No **If No----STOP**
- 2) Be age 17 or younger, or age 18, meets one of the criteria listed in Admin Memo 14-2010 on page 6 specifically #3 a. through e.
 Yes NO **If No----STOP**
- 3) Is a citizen or legal Resident of United States:
 Yes No **If No----STOP**

Name of Sibling: _____
Name of Applicable Child: _____

Eligibility for an Applicable Child Previously Adopted and eligible for Federal Adoption Assistance

An Applicable Child previously adopted and was eligible for Federal Adoption Assistance in a prior adoption. The child must meet the eligibility requirements found in Admin Memo #14-2010 Number 3 through 7 found on pages 3-8. Child is available for adoption due to one of the following:

- 1) The adoption has dissolved, and the parental rights of the adoptive parent(s) have been terminated.
 - 2) The adoptive parents have died.
- Yes No

Eligibility for an Applicable Child with a Kinship Guardianship Assistance Payment

Child was receiving Title IV-E guardianship assistance payment. The child is currently placed with relative guardian and the guardianship has dissolved. The child is currently placed for adoption with relative guardian: Yes No

Name of child who received IV-E guardianship assistance payments: _____
Name of relative guardian who child is placed: _____