



Continued State Flexibility to Assist Older Foster Youth Act

October 27, 2021

Older youth in, or leaving, foster care during the COVID-19 pandemic face especially [tough housing, job, and other prospects](#). The Continued State Flexibility to Assist Older Foster Youth Act (H.R. 5661), introduced on October 21, 2021, by Representative Danny Davis with Representative Jackie Walorski, would extend certain temporary flexibilities granted to states under the Supporting Foster Youth and Families Through the Pandemic Act (Division X of P.L. 116-260) (see [CRS Report R46770](#)).

Chafee Funding and Flexibilities Extended

For FY2021, the John H. Chafee Foster Care Program for Successful Transition to Adulthood (Chafee Program, including Education and Training Vouchers (ETVs)) received \$586 million in federal appropriations. This amount included \$186 million in regular Chafee/ETV funds and \$400 million in additional COVID-19-related funding (provided via Division X of P.L. 116-260). All this FY2021 funding is available for states to spend in FY2021 or FY2022. However, [under Division X, states were permitted to use those Chafee/ETV funds for additional purposes](#) only through September 30, 2021.

H.R. 5661 would reinstate, through FY2022 (unless otherwise noted), certain of the flexibilities provided in Division X. Among these, it would permit

- youth who were formerly in foster care (generally at age 14 or older) to be eligible for Chafee program services up to age 27 (as opposed to 21 under current law, or 23 in some states);
- states to spend as much of their Chafee allotment on housing (i.e., “room and board payments”) as they choose (the current law maximum is 30%) and to offer this assistance to any youth who had been in foster care at age 14 or older and is at least 18 but not yet 27;
- an ETV to be used to enable youth to remain enrolled in postsecondary school or training even if the expense would not normally be considered a *cost of attendance* (current law limits use of ETVs to items defined in [Section 472 of the Higher Education Act](#) as for the *cost of attendance*); and

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- youth participating in the ETV program to continue to receive a voucher even if they are unable due to the [COVID-19 public health emergency](#) to remain enrolled in a postsecondary education or training program or to make satisfactory progress toward completing that education or program (flexibility available through December 31, 2021, only).

Maintaining Youth in Foster Care

Division X of P.L. 116-260 suspended, through September 30, 2021, the Title IV-E eligibility criteria related to age and participation in work/education activities. H.R. 5661 would not extend this provision. As of October 1, 2021, youth 18 or older may be eligible for Title IV-E foster care support only if they are under 19 and completing secondary school, or, in states that elect to provide extended Title IV-E assistance, if they are under 21. They must also meet work/education conditions. [States may opt at any time to amend their Title IV-E plans to use those program funds to serve otherwise eligible youth in care up to age 21](#). Additionally, under the Stafford Act ([42 U.S.C. §5141](#)), the U.S. Department of Health and Human Services (HHS), Administration for Children and Families (ACF) permits states—during the period in which a major disaster declaration due to COVID-19 is made in the state—to temporarily extend Title IV-E foster care up to age 21. A state providing extended care may also use Stafford Act flexibility—if a major disaster declaration remains in place in the state and provided the requirement cannot be met due to the COVID-19 emergency—to waive or modify the Title IV-E work/education requirements applicable to Title IV-E foster care eligibility (see [PI-20-10](#)). (As of late October 2021, each state continued to have a [Stafford Act major disaster declaration](#) due to COVID-19.)

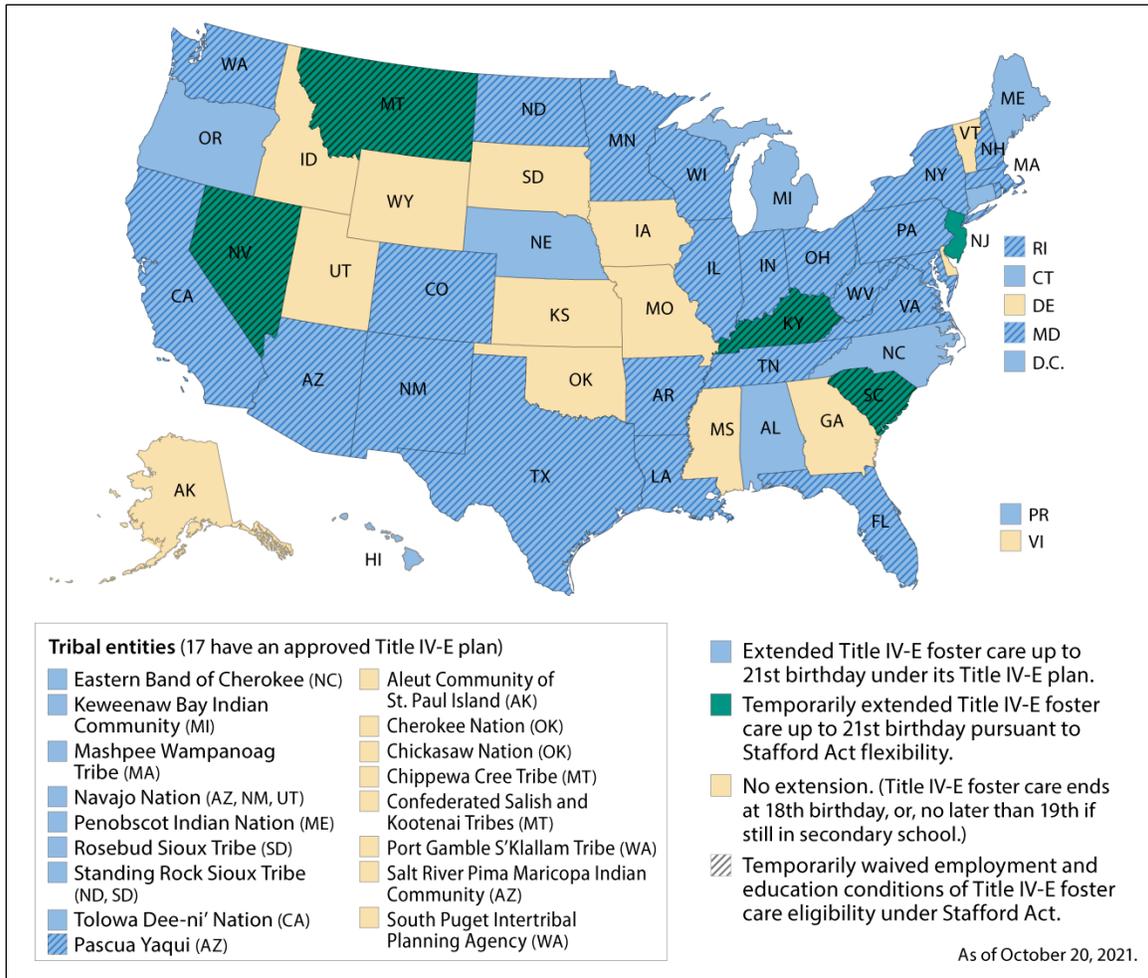
H.R. 5661 would also permit states, through the end of FY2022, to use the additional Chafee funding provided to them via Division X to provide Title IV-E foster care support for any youth who remains in care after turning 18 and is not otherwise eligible. Also through September 30, 2022, states could continue to use Division X’s additional Chafee funds to assist youth in re-entering foster care, including by providing notice of the ability for youth who age out during the [COVID-19 public health emergency](#) (i.e., January 27, 2020, through mid-January 2022, [subject to extension](#)) to re-enter care.

Funds Used to Date

Based on data from HHS-ACF, some \$242 million (out of \$350 million) in additional Chafee funding, and \$22 million (out of \$50 million) in additional ETV funding, [provided via Division X](#), had not been reported as obligated by the [state or tribe to which it was allotted](#) (as of September 30, 2021). However, those amounts may change, as states and tribes have until October 31, 2021, to report FY2021 obligations of additional Chafee/ETV funds. As of September 30, 2021, states differed markedly in the share of the additional funds they had obligated. A large majority (45, including the District of Columbia [DC], Puerto Rico [PR], and the Virgin Islands [USVI]) reported having drawn down less than 50% of the additional Chafee funds provided to them via Division X. Meanwhile, eight states reported spending more than 50% of those additional Chafee dollars, including one that reported spending 100%. The draw down pattern was similar for the additional ETV funds: one state reported spending 100%, seven states spent between 51% and 89%, and the remaining states spent less than 50%.

Figure 1 shows state and tribal Title IV-E agencies that extend Title IV-E assistance to youth after their 18th birthday. Among states (including DC, PR, and the USVI) 34 extended this assistance under their Title IV-E plans, 5 were using temporary Stafford Act authority, and 14 did not provide extended Title IV-E assistance. Among the 39 states (including DC and PR) providing Title IV-E assistance to youth after their 18th birthday, 28 were using Stafford Act authority to temporarily waive work/education conditions.

Figure I. Extension of Foster Care and Waiving of Employment and Education Conditions



Source: Prepared by CRS based on correspondence with HHS-ACF.

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