



DEPARTMENT OF HUMAN SERVICES - DCFS FEDERAL FUNDS

SOCIAL SERVICES APPROPRIATIONS SUBCOMMITTEE
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ISSUE BRIEF

SUMMARY

When Legislators discuss policy changes to the Division of Child and Family Services (DCFS), the question frequently comes up as to the affect such policy changes may have on the receipt of federal funds. Table 2 in *Appendix B* provides a listing of the main requirements associated with the federal grants used by DCFS. *Appendix B* also provides estimates on the amount of funding that could be in jeopardy if DCFS were found to be out of compliance with the associated federal requirements. The brief also discusses the uncertain future of \$54 million DCFS receives in federal funding, the history of federal funding in DCFS, whether requirements associated with federal funds create perverse incentives, and the recent granting by the federal government to DCFS of a 'waiver' from normal federal rules. The brief also lays out the range of options Utah has in accepting federal funds: 1) accept the federal funds available and comply with the associated requirements, 2) seek to *waive* some or all of the federal grant requirements, or 3) partially or wholly restructure DCFS to fit within a lower funding level without the use of federal funds. No Legislative action is required in connection with this brief.

LEGISLATIVE ACTION

The brief is intended to provide background information only. No Legislative action is required.

FY 2014 DCFS REQUEST FOR AUTHORIZATION OF FEDERAL FUNDS

The Division of Child and Family Services anticipates total federal funds of \$54,913,800 for FY 2014. This represents 34 percent of the \$160,374,400 FY 2014 estimated DCFS budget. A brief description for each of these federal grants can be found in *Appendix A*.

UNCERTAIN FUTURE FOR FEDERAL GRANTS

"[F]ederal and state finances are closely intertwined, and federal tax increases and spending cuts will have consequences for states' budgets. There is a great deal of uncertainty about whether any or all of the policies in the fiscal cliff will be addressed temporarily or permanently, individually or as a package. . . . Federal grants to the states constitute about one third of total state revenues Sequestration [is] the practice of using mandatory spending reductions to balance the federal budget . . ." (*The Impact of the Fiscal Cliff on the States*, November, 2012, pp. 2-3, 7). In an update, the Pew Center on the States stated, "Congress averted the much-feared "fiscal cliff" late Tuesday (January 1), passing a legislative package that will be signed by President Obama. The deal answered a few burning questions for state governments, but many still linger. . . . By delaying but not addressing the automatic \$1.2 trillion in across-the-board spending cuts the cliff entailed, Congress left states with little clue about how much their share of federal revenue will shrink this year" (["Cliff" Deal Answers a Few Questions for States](#), *Stateline – the Daily News Service of the Pew Center on the States*, January 2, 2013).

DCFS FINANCING

For FY 2012, the latest completed year of operations, DCFS financing consisted primarily of state General Fund (63%), federal grants (33%), and other funding sources such as carryover funds and dedicated credits (4%). This is graphically shown in Figure 1 below:

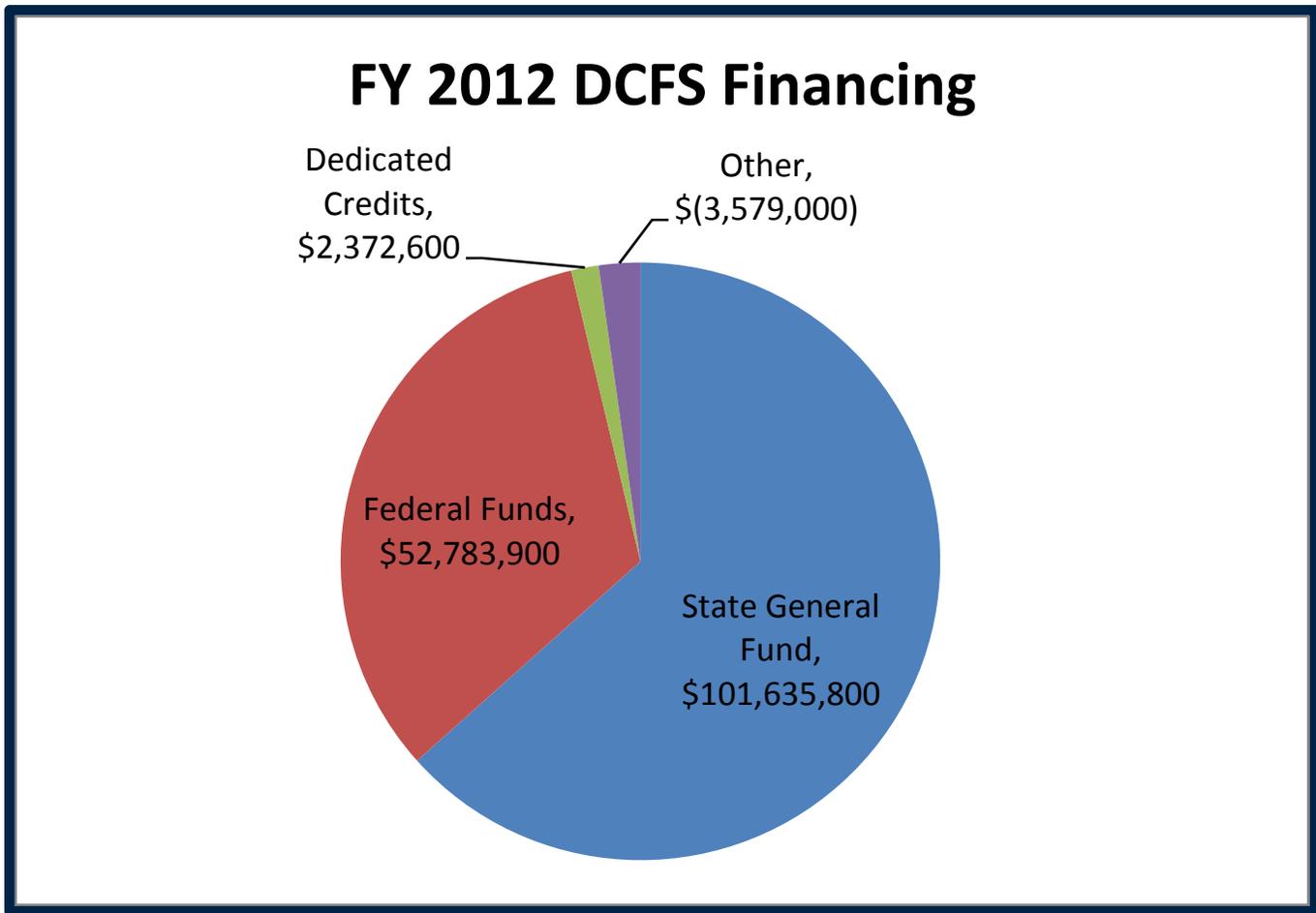


Figure 1

THE DAVID C. LAWSUIT, GROWTH IN THE DCFS BUDGET, AND THE ROLE OF FEDERAL FUNDS

Federal funds play a significant role in the state's child welfare efforts. As a percent of the total DCFS budget, federal funds have ranged from a low of 28 percent (FY2004 and FY 2008) to a high of 50 percent (FY 1994). In FY 2012, the most recent year of completed expenditures, federal funds made up 34 percent of the DCFS budget. The total DCFS budget grew by 213 percent between FY 1994 and FY 2012. This growth in budget correlates with the *David C.* class action lawsuit and its subsequent settlement. The *David C.* class action lawsuit was first filed in 1993 by the National Center for Youth Law (NCYL) on behalf of children who were in the legal custody of DCFS or who were known to DCFS as a result of a report of abuse or neglect. The lawsuit alleged that the state's treatment of these children violated federal and state law because they were placed in unsafe living conditions and not provided with the services and supports to which they were entitled. Governor Leavitt and the NCYL signed a settlement agreement, and the Court approved it, in August of 1994. Subsequent to August of 1994, the Court continued its involvement by overseeing implementation of the settlement. In January of 2009, the federal court dismissed with prejudice the *David C.* lawsuit. Utah responded during this period by significantly increasing its expenditures in an ongoing effort to improve its child welfare system. Although state funds were the major source in financing these increased costs, federal funds also played an important role (see Table 1).

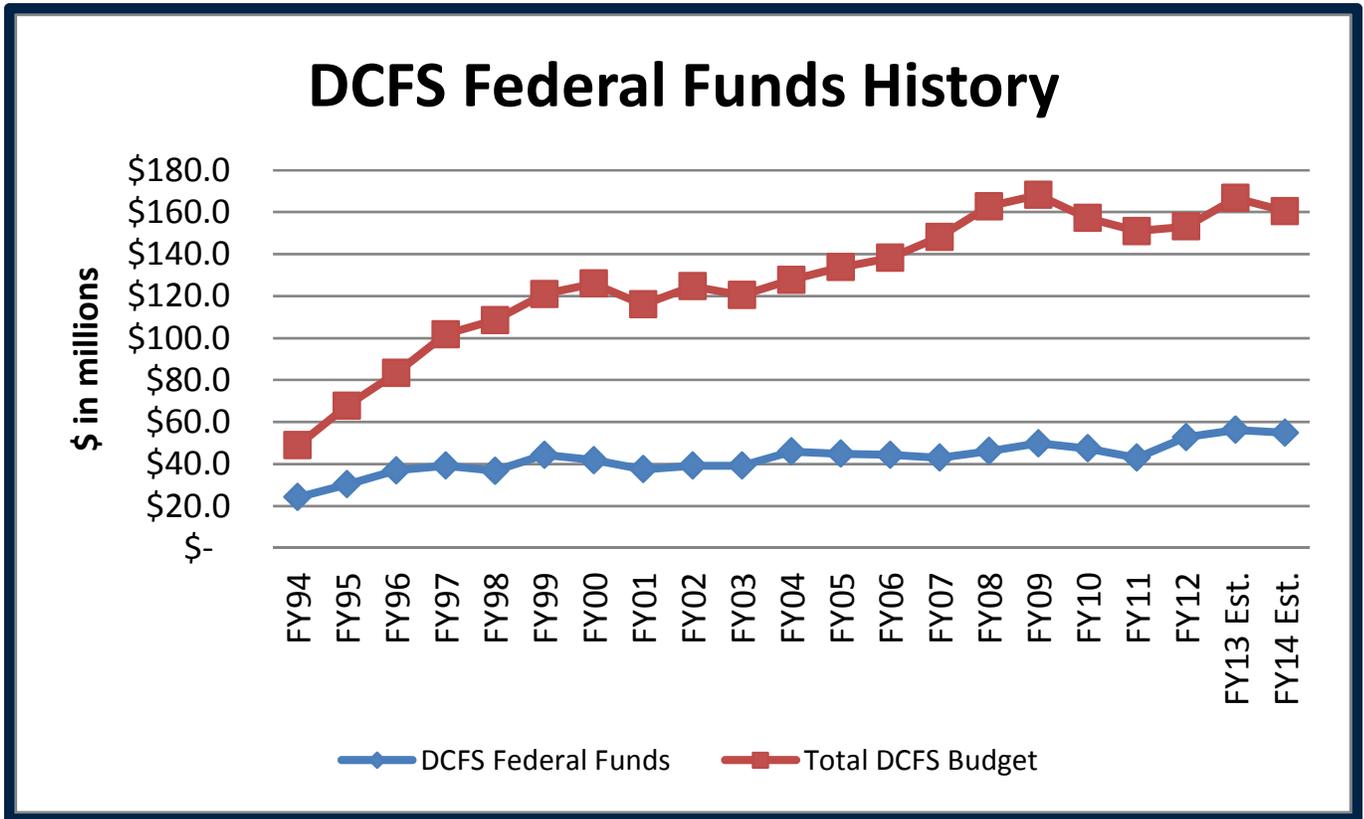


Table 1

ARE 'STRINGS' ATTACHED WHEN DCFS ACCEPTS FEDERAL FUNDS?

Currently, one third of DCFS's efforts are financed using federal funds. There are federal requirements associated with much of the federal funding DCFS receives. As an example, the largest source of federal DCFS funding is the *Title IV-E AFDC Foster Care* grant. This grant is estimated to be \$20,764,700 in FY 2013. A few of the requirements associated with this grant are:

- Requires States to make reasonable efforts to a) preserve and reunify families prior to the placement of a child in foster care, b) prevent or eliminate the need for removing the child from the child's home, c) make it possible for a child to safely return to the child's home, and d) place a child who is unable to return home in a timely manner. In making reasonable efforts, the child's health and safety will be of paramount concern. Judicial determinations regarding preventing removal must be made within 60 days from the date the child is removed and a judicial determination that reasonable efforts have been made to finalize the permanency plan must be made within 12 month of entry into custody (and every 12 months thereafter) [42 U.S.C. 671 (Section 471(a)(15)(A&B) and 472 (i)(2), 1356.21 (b)(1&2))].
- States are not required to make reasonable efforts if a court determines that:
 - The parent has subjected the child to abandonment, torture, chronic abuse, and sexual abuse
 - The parent has committed murder, voluntary manslaughter of another child of the parent, aided or abetted attempted or conspired in the murder of another child of the parent, or committed felony assault that results in serious bodily injury to the child or another child of the parent.
 - The parental rights of the parent to a sibling have been involuntarily terminated [42 U.S.C. 671 (Section 471(a)(15)(D))].
- Requires States to:
 - Conduct a permanency hearing for all children in States care within 12 months of entering care and no less than every 12 months thereafter.
 - Hold a permanency hearing within 30 days when a court determines that reasonable efforts to return the child home are not required.

- Safeguard parental rights related to removal of the child from the home, to a change of a child’s placement, and to determination of visiting privileges with the child. [42 U.S.C. 675 (Section 475 (5)(C) and 471 (a)(15)(E))]
- Provides that States will file for termination of parental rights when:
 - A child has been under the responsibility of the State for 15 of the most recent 22 months.
 - A child has been determined by a court to be an abandoned infant (completed within 60 days of being determined as abandoned).
 - A parent has been convicted of a felony listed in 42 U.S.C. 671 (Section 471(a)(15)(D)).
 - Exceptions may apply for compelling reasons not to file for TPR or if State has not provided sufficient services to parents [42 U.S.C. 675 (Section 475 (5)(E))].

For a more detailed listing of major requirements associated with federal grants received by DCFS, please see Table 2 in *Appendix B*.

DO FEDERAL FUNDS AND THEIR ASSOCIATED REQUIREMENTS CREATE PERVERSE INCENTIVES?

The largest source of federal funding DCFS receives is from the *Title IV-E Foster Care* grant. According to federal requirements associated with the grant, this funding cannot be used for reunification efforts or in-home services, but instead is primarily used to support out of home care options once a child has been removed from home. Some groups have charged that this creates a perverse incentive for DCFS given that the funding is available only to support children once they are removed from a home. Although DCFS, in its use of Title IV-E Foster Care funds, is following federal law and regulation regarding complying with the grant’s requirements, it does raise the question as to whether DCFS would make different placement decisions if the potential financing options were neutral regardless of where a child was placed. DCFS has reported that “the decision to remove a child from home due to danger from abuse and neglect and to place the child in foster care is made independent of any consideration of federal funding. Title IV-E funds only reimburse the division for a portion of the costs of the child's care while in foster care, and do not create an incentive for removing a child from home. The decision to remove is based on assessment of the child's safety and is reviewed by the courts for appropriateness.” The only option currently available to use the Title IV-E Foster Care grant funding for reunification and in-home efforts is to apply for and receive a federal waiver. Waivers are named as such because they authorize waiving certain specified requirements of a federal grant or program.

WHAT CHOICES DOES UTAH HAVE IN ACCEPTING FEDERAL FUNDS WITH THEIR REQUIREMENTS?

There are three general alternatives with regard to accepting federal funds with their accompanying requirements: 1) accept the federal funds available and comply with the requirements placed upon those funds by the federal government, 2) seek to ‘waive’ some or all of the federal grant requirements by applying for and receiving a waiver, or 3) either partially or wholly restructure DCFS to fit within a lower funding level resulting from non-compliance with the federal grant requirements. A listing of the federal grants used by DCFS along with a number of significant requirements associated with each grant can be found in Table 2 in *Appendix B*.

UTAH’S RECENT APPLICATION FOR AND APPROVAL OF A FEDERAL WAIVER

In May, 2012 the U.S. Department of Health and Human Services (HHS) released an information memorandum inviting child welfare agencies to submit proposals for Title IV-E demonstration projects. Section 1130 of the Social Security Act, as amended, provided “the Department of Health and Human Services with authority to approve up to ten child welfare waiver demonstration projects in each of FYs 2012 - 2014.” These demonstration projects involve “the waiver of certain requirements of titles IV-E and IV-B, the sections of the Act that govern the foster care, adoption assistance and optional kinship guardianship assistance programs.” (*Child Welfare Waiver Demonstration Projects*, Administration for Children and Families, May 14, 2012, Log No. ACYF-CB-IM-12005).

The ability for HHS to offer waivers had lapsed in the law. “NCSL successfully lobbied for the renewal of HHS’ authority to grant Title IV-E waivers in the “Child Welfare and Family Services Innovation Act” (P.L. 112-34). The Title IV-E waiver projects provide states with opportunities to use federal funds for innovative approaches in child welfare service delivery and financing” (NCSL e-mail *HHS Releases Title IV-E Waiver application requirements and deadline*, May 14, 2012).

In the summer of 2012, DCFS applied to be accepted as one of these Title IV-E demonstration projects operating under a waiver. In October, 2012, DCFS was granted a waiver allowing it to shift an estimated \$1,500,000 over five years from the foster care budget to in-home services. “The move fits with the department’s shifting focus on keeping more families together.” (*DCFS can use federal money for in-home services over foster care*, Lindsay Whitehurst, *Salt Lake Tribune*, October, 6, 2012).

APPENDIX A – BRIEF DESCRIPTIONS OF DCFS FEDERAL FUNDS

Child and Family Services:

- ***Title IV-B of the Social Security Act - Child Welfare Services – 93.645*** - provides funding for general child welfare services, such as: (a) protecting and promoting the welfare of children; (b) preventing the abuse, neglect, or exploitation of children; (c) supporting at-risk families through services that allow children to remain with their families or return to their families in a timely manner; (d) promoting the safety, permanence, and well-being of children in foster care and adoptive families; and (e) providing training, professional development, and support to ensure a well-qualified workforce.
- ***Title IV-E of the Social Security Act - Foster Care – 93.658*** - provides funding for (1) foster care maintenance to provide safe and stable out-of-home care for eligible children under the jurisdiction of the state child welfare agency until the children are returned home safely, placed with adoptive families, or placed in other planned arrangements for permanency; (2) training for public agency staff, foster parents and certain private agency staff; and (3) administrative costs to manage the program.
- ***Title IV-E of the Social Security Act – AFDC Adoption Assistance – 93.659*** - provides funding for (1) adoption subsidy costs for eligible children with special needs, primarily children adopted from foster care; (2) training for adoptive parents and public agency staff; and (3) administrative costs to manage the program.
- ***Promoting Safe and Stable Families – 93.556*** - (authorized through Title IV-B, Part II, of the federal Social Security Act) – provides funding for community-based family support programs, family preservation, time-limited family reunification activities, and adoption promotion and support services.
- ***Promoting Safe and Stable Families – Caseworker Visits – 93.556*** - provides funding to support monthly caseworker visits to children in foster care, with an emphasis on improving caseworker decision-making on safety, permanency, and well-being of foster children and on activities designed to increase retention, recruitment, and training of caseworkers.
- ***Family Violence Prevention Services Act – 93.671*** - provides funding for shelter and supportive services for victims of domestic violence and their dependents and for public awareness about domestic violence, including funding a statewide domestic violence hotline.
- ***Independent Living Program – 93.674*** - provides funding to help prepare older youth in foster care to transition to living successfully as an adult, and includes a small percentage of funding to support youth who have left foster care up to age 21 with one-time or time-limited resources to support them in successfully living on their own.
- ***Community Based Child Abuse Prevention – 93.669*** - provides funding to reduce child abuse and neglect by providing leadership in statewide prevention efforts and supporting community-based child abuse prevention and family support programs.
- ***Adoption Incentive Grant – 93.603*** - provides funding to qualified states that increased the number of foster child adoptions, special needs adoptions, and older child adoptions in a given year to support adoption of children who cannot safely return home from foster care and to strengthen state child welfare systems. Grant funds may be used for child welfare services that are allowable under Titles IV-E and IV-B of the Social Security Act. Adoption Incentive Grant Funds are provided to states that have qualified for funding due to an increase in the number of children from foster care, special needs adoptions, or adoptions of older children. These funds are provided to states that are performing well as a means to help strengthen their child welfare systems. Since the amount of funding is not predictable, the grant is generally not used to fund large, ongoing program activities. DCFS currently plans to use these funds to strengthen in-home programs and services, support efforts that will reduce the number of children in

foster care, provide post-adoption support for children with extreme needs, provide training on child welfare topics, provide technology resources for staff as recommended by legislative auditors, and provide additional resources for modernization of SAFE (the DCFS child welfare information system).

- **Child Abuse Prevention Treatment Act – 93.590** - provides funding for support and improvement of the state’s child protective services system.
- **Education and Training Voucher – 93.599** - provides financial support for post-secondary education and training for youth who have aged out of foster care at age 18 or older or who are adopted at age 16 or older.
- **Social Services Block Grant - Title XX of the Social Security Act – 93.667** - funds for support and delivery of social services.
- **TANF Transfer to Social Services Block Grant - 93.667** - Transfer of Temporary Assistance for Needy Families (TANF) funds to the Social Services Block Grant -- funds for support and delivery of social services.

APPENDIX B – DCFS – FEDERAL GRANTS AND SIGNIFICANT FEDERAL REQUIREMENTS OF GRANTS

Table 2:

