

GAO

Report to the Chairman, Subcommittee
on Human Resources, Committee on
Ways and Means, House of
Representatives

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FOSTER CARE

States' Early Experiences Implementing the Adoption and Safe Families Act



**Health, Education, and
Human Services Division**

B-282539

December 22, 1999

The Honorable Nancy L. Johnson
Chairman, Subcommittee on Human Resources
Committee on Ways and Means
House of Representatives

Dear Madam Chairman:

The Adoption and Safe Families Act of 1997 (ASFA) (P.L. 105-89, 111 Stat. 2115), which amended the foster care provisions of the Social Security Act, was enacted in November 1997, prompting fundamental changes in the way our nation's foster care system is managed. Prior to the changes, some foster children languished in temporary, out-of-home care while prolonged attempts were made to reunite them with their biological families. Under the amended provisions, states are required to find these children a safe, permanent home more quickly. In particular, two key provisions affect those children who are unable to safely return home within a reasonable time.¹ First, the provision clarifying the circumstances under which states are not required to try to prevent a child's removal from home or to return a foster child home² allows states to forgo services to preserve or reunite the biological family.³ Second, the provision on terminating parental rights establishes a time frame for states to begin proceedings to terminate parental rights for certain foster children for whom adoption is appropriate.⁴ As a result of these two provisions, states must make the difficult decision between the need to preserve parental rights and the need to give the child the opportunity to live in a permanent home within a reasonable time.

Because states had to make major changes in laws, policies, procedures, and practices to comply with the act, you asked us to report on states' early efforts to implement these two provisions. In particular, you asked us to describe (1) how states have responded to ASFA regarding legal, administrative, and other changes that social workers may need to make in their day-to-day practice of handling child welfare cases; (2) the status of

¹The full text of these provisions, as amended by ASFA, appears in app. II.

²42 U.S.C. 671(a)(15)(D).

³Starting or continuing services to keep a family together may not be appropriate when doing so places the child's safety in jeopardy, such as when a parent has murdered another child. In these egregious circumstances, ASFA allows states to bypass services that must usually be provided to the biological family and more quickly find the child another permanent home.

⁴42 U.S.C. 675(5)(E).

states' implementation of the two provisions related to making timely permanency decisions for those foster children who are unable to safely return home; and (3) the actions the Department of Health and Human Services (HHS) has taken to assist states and monitor the implementation of these two provisions. To address these issues, we reviewed available nationwide data on state efforts to implement the new law. To obtain information about states' progress in implementing the two provisions, we administered a survey to all 50 states and the District of Columbia. We also interviewed federal, state, and local officials and other child welfare experts and visited the state child welfare agency and one county in each of three states with large foster care populations—California, Florida, and Missouri. We conducted our work between December 1998 and October 1999 in accordance with generally accepted government auditing standards. (A more detailed description of our scope and methodology appears in app. I.)

Results in Brief

In response to the passage of ASFA, states enacted their own enabling legislation and developed administrative policies and procedures. States also are making changes in social work practices to implement the two foster care provisions. By July 1999, all states had laws that mirrored the federal legislation or were more stringent than federal law; some states had legislation already in place before passage of ASFA. States also promulgated policies and regulations, initiated staff training, and took other administrative actions to implement changes to state law. Our work in three states indicates that some changes in social work practice occurred both before and after ASFA was enacted, such as concurrently rather than sequentially pursuing alternate permanency options for the child such as adoption.

Preliminary data suggest that some states have made progress in making more timely permanency decisions about children who cannot safely return home within a reasonable time; other states have lagged behind. In implementing the provision on not requiring efforts to prevent a child's removal from home or to return a foster child home, most states reported that the courts are considering whether efforts to preserve or reunite the family should be required when there are egregious circumstances. However, child welfare agency officials anticipate that few children will be affected by this provision because such cases are rare. Regarding the provision on terminating parental rights, 27 states were on schedule to meet the mandated timetable for reexamining cases and determining whether adoption would be appropriate for children already in foster care

when the law was enacted. In the 12 states that had data available on actions taken for individual children, the states had begun proceedings to terminate parental rights for over a third of the cases reexamined. These states also had exempted about 60 percent of the reexamined cases, having determined that adoption would be inappropriate. For almost all the exempted cases, there was a compelling reason why terminating parental rights was not in the child's best interests, or the child was under the care of a relative.

Since the passage of ASFA, HHS has continued or begun a number of actions to assist states and monitor implementation of these two foster care provisions. HHS' actions to help states include

- offering technical assistance on the states' statutory changes needed to implement the act;
- continuing to make available HHS' National Resource Centers to help state and local child welfare agencies change social work practices; and
- publishing instructions to guide states' administrative procedures.

To monitor state implementation of ASFA, HHS reviewed states' enabling legislation to ensure conformance with the federal law. To assess state progress in implementing the provision on terminating parental rights, HHS collected information from states such as the status of implementing the provision for children who were already in care when ASFA was enacted. HHS plans to use a new, results-oriented monitoring approach consisting of child and family services program reviews that focus on child outcomes related to safety, permanency, and well-being. Moreover, HHS intends to use this new approach to determine state compliance with the ASFA amendments and cover key elements of the provision on terminating parental rights. In that regard, HHS expects that its efforts to address issues specific to ASFA will provide compliance and program information to agency officials and policymakers.

Background

The foster care system has grown dramatically in the past 2 decades, with the number of children in foster care nearly doubling since the mid-1980s, to an estimated 520,000 children in 1998. More children entered foster care each year than exited. Children also spent a longer time in temporary out-of-home care; increasingly more children stayed in foster care for 5 years or longer. Concerns about children's long stays in foster care without being placed in a permanent home culminated in the passage of the Adoption and Safe Families Act of 1997, which emphasized the child

welfare system's goals of safety, permanency, and child and family well-being. Policymakers believed that child welfare practitioners had been misinterpreting the relationship between child safety and the requirement that states must make "reasonable efforts" to prevent removal from home or to return a child home.⁵ Long stays in foster care were often the result of well-intentioned practices to preserve the family through prolonged and extensive services, but without adequate consideration of the child's need for a permanent home. In these situations, adoption or an alternate permanent home was rarely considered until the child had been in out-of-home care for 18 months.⁶

Two key provisions, which were introduced by ASFA, particularly affect those children who are unable to safely return home within a reasonable time. First, states need not pursue efforts to prevent removal from home or to return a child home if a parent has already lost parental rights to that child's sibling; has committed specific types of felonies, including murder or voluntary manslaughter of the child's sibling; or has subjected the child to aggravated circumstances such as abandonment, torture, chronic abuse, and sexual abuse. In these egregious situations, the courts may determine that services to preserve or reunite the family—that is, the "reasonable efforts" requirement established in Public Law 96-272—are not required. Once the court makes such a determination, the state must begin within 30 days to find the child an alternate permanent home.

Second, states must begin the process of terminating parental rights by filing a petition with the courts if an infant has been abandoned; the parent committed any of the felonies included in the first provision; or the child has been in foster care 15 of the last 22 months. States may exempt children from this requirement if the child is placed with a relative; the state has not provided services needed to make the home safe for the child's return; or there is a compelling reason why filing a petition to terminate parental rights is not in the child's best interests. As states begin the process of terminating parental rights, they must also find the child a qualified adoptive family. Federal law requires states to apply this provision at 6-month intervals to one-third of all children who were in

⁵Established under the Adoption Assistance and Child Welfare Act of 1980 (P.L. 96-272), the term "reasonable efforts" is not defined in law or in federal regulations and has been interpreted in a wide variety of ways by states and the courts. According to HHS, services offered or provided to the family, such as family counseling, respite care, and substance abuse treatment, have often been considered to constitute reasonable efforts to prevent a child from being removed from home or to return a child home.

⁶HHS, *Adoption 2002: A Response to the Presidential Executive Memorandum on Adoption Issued on December 14, 1996* (Washington, D.C.: HHS, Feb. 1997). Prior to ASFA, courts decided on the child's permanency goal at the 18-month dispositional hearing. ASFA requires this hearing to occur within 12 months after the child enters foster care and calls it a "permanency" hearing.

foster care when ASFA was enacted until the state has completed its entire caseload. States must complete this process no later than 18 months after the state's first legislative session following passage of ASFA.⁷

State and local agencies have primary responsibility for the welfare of children in their state. Child welfare agencies respond to reports of abuse and neglect and may identify and provide social services needed by the family to keep it together. If the child's removal is warranted, however, the child is placed in foster care, which may include placement with a relative. Child welfare agencies then provide services to improve circumstances in the child's home and try to reunite the family. If a child cannot safely return home, the child welfare agency attempts to find an alternate permanent home, such as with relatives, an adoptive family, or a legal guardian. State courts review the child welfare agency's actions for individual children and their families. Court-appointed special advocates, guardians ad litem,⁸ or both, represent the child in court. Legal representatives for the parents and the child welfare agency also may participate in court hearings. At these hearings, a judge decides whether a child should be placed in foster care and, if so, for how long, and where the child will reside permanently. HHS administers the federal child welfare programs that help fund states' programs and services. In this capacity, HHS provides technical assistance to states, funds National Resource Centers,⁹ and monitors states' compliance with federal statutes and regulations.

⁷ASFA refers to the timetable for states to apply the provision on terminating parental rights as the "Transition Rules" (42 U.S.C. 625 note). To illustrate the timetable for children who were already in foster care when ASFA was enacted, suppose a state's first legislative session that began after ASFA was enacted ended on June 30, 1998. The state must then apply the provision to the first one-third of its caseload by Jan. 1, 1999, the second one-third by July 1, 1999, and the entire caseload by Jan. 1, 2000.

⁸Court-appointed special advocates are usually volunteers who are trained to assist the court and oversee a child's case. A guardian ad litem is an attorney or trained volunteer who represents the child in court, investigates the case, and monitors case progress.

⁹HHS contracts with various organizations around the country to function as National Resource Centers specializing in different areas of child welfare, such as permanency planning, organizational improvement, and youth development. The purpose of the resource centers is to provide training, technical assistance, and consultation to state and local child welfare agencies to help strengthen their capacity to integrate policy and practice and improve service delivery and child outcomes.

States Have Made Statutory and Administrative Changes; Social Work Practices Are Evolving

States have made legal and administrative changes to implement ASFA, including the two amendments on not requiring efforts to prevent a child's removal from home or to return a child home and on terminating parental rights. In addition, state child welfare agencies are moving to make changes in social work practices to implement these provisions. By July 1999, all states had laws to implement these two provisions. Some states already had statutes covering these issues, and other states enacted laws in response to ASFA. States also have promulgated policies and regulations, initiated staff training, and taken other administrative actions to implement changes to state law. Changes to social work practices were, in some locations, already under way before ASFA. Depending on their existing situations, child welfare agencies are beginning to make new or additional changes in practices to reflect new state laws and policies.

State Legislative Responses to Key Provisions Differed

States responded differently to the need for state legislation to implement the two key provisions introduced by ASFA. By July 1999, all states that did not already have laws consistent with ASFA had enacted such legislation. Nearly all states also passed new legislation related to both provisions. According to a National Conference of State Legislatures publication,¹⁰ most states' legislation essentially mirrored the language in federal law. However, some states exercised the discretion allowed under federal law and enacted laws that emphasized the safety of foster children to a greater degree than under ASFA. For example, several states shortened the time frame for initiating the process of terminating parental rights for foster children from the 15-month limit established by ASFA to 12 months. Still other states expanded the termination of parental rights requirement for abandoned infants to include all abandoned children. In contrast, relatively few states enacted additional circumstances beyond those in the federal law for when efforts to prevent removal of a child from home or to return a child home are not required.

The National Conference of State Legislatures also reported that several states required little or no legislative changes because existing state statutes already were consistent with one or both of the key provisions introduced by ASFA. For example, California had state laws in place stipulating the grounds—similar to those introduced by ASFA—under which services to reunite a family need not be provided; the state opted to add another reason related to child abductions to its legislation.¹¹ New

¹⁰Steve Christian, "1998 State Legislative Responses to the Adoption and Safe Families Act of 1997," State Legislative Report, 24(5) (Mar. 1999).

¹¹California Welfare and Institutions Code 361.5(b) (1999).

Jersey already had in statute the termination of parental rights requirement for abandoned children and most of the felonies listed in the federal law; new state legislation added the 15-month time limit and the remaining felonies. No state attempted to define in statute the compelling reasons why initiating proceedings to terminate parental rights would not be in a child's best interests. However, a few states' legislation provided examples of compelling reasons, such as when the children are juvenile delinquents, are older and do not want to be adopted, or have a permanency goal other than adoption.

Administrative Actions Taken to Implement State ASFA Legislation

According to two 1998 nationwide surveys,¹² state child welfare agencies were taking a variety of administrative actions to implement the federal legislation within the first year after ASFA was enacted. Most states had put new policies into effect or were in the process of promulgating regulations and policies. Many states had begun to train staff both within the child welfare agency—including managers, supervisors, and child welfare workers—and outside the agency, such as attorneys, judges, and guardians *ad litem*, on the statutory and policy changes. Moreover, some states were coordinating activities with the courts to reduce delays and streamline court procedures. Our nationwide survey and work in three states found that states are also exploring changes to their management information systems to track children's time in foster care and in relation to the time limits established by ASFA. At the time of our review, most states could not readily provide data on actions taken for children affected by either of the two key provisions.¹³ However, many states reported that they were in the process of modifying their systems to track such data.

In the three states we visited, additional administrative activities were under way, but not always in response to the legislative changes brought about by ASFA. Florida's child welfare agency planned to add 125 new attorneys, paralegal staff, and administrative staff statewide to meet anticipated workload increases resulting from the provision on terminating parental rights. In Missouri, the child welfare agency submitted a budget request for 160 additional workers in the three largest metropolitan areas. The impetus, however, was an ongoing effort to achieve a reduction in workers' caseloads in accordance with professional standards. Nevertheless, state officials expect the additional resources will

¹²Both the American Public Human Services Association and the Child Welfare League of America surveyed state child welfare agencies during the summer of 1998.

¹³Neither the act nor HHS required states to collect or report specific data related to either of the two provisions introduced by ASFA.

help the local offices to comply with the ASFA changes. Moreover, Missouri's child welfare agency did increase efforts to recruit as well as retain adoptive families in response to the requirement to concurrently begin efforts to find an adoptive family for a child while initiating the process to terminate parental rights. In contrast, California had already begun to focus attention on adoptive family recruitment and retention strategies in 1996 as a result of the Governor's Adoptions Initiative to increase the number of adoptions of foster children statewide.

Changes in Social Work Practices Are Ongoing

In two of the states we visited, some state-initiated changes to their child welfare systems predated ASFA and were consistent with the overall intent of the federal legislation. As a result, state and local child welfare agencies began to change social work practices before ASFA's enactment in these two states. For example, under the Governor's Adoptions Initiative in California, the state instituted a new process and procedures for child welfare workers to work toward reuniting the family while concurrently rather than sequentially pursuing alternate permanency options for the child such as adoption.¹⁴ This new social work practice model was viewed as one way to more quickly find a permanent home for foster children. In 1994, Missouri initiated a new process for its child welfare workers to expedite permanency decisions. This process launched a team approach to case management and decision-making whereby all the key decisionmakers—including the child welfare worker and supervisor, parents, foster care provider, guardian *ad litem*, and juvenile officer of the court—make up a family support team. This team completes the assessment of service needs and develops, monitors, reviews, and revises the case plan on a defined, periodic basis.

Despite earlier changes, child welfare workers will need to incorporate into day-to-day practice specific requirements established by ASFA and document these actions within established time frames. According to child welfare officials in the three states we visited, these procedural changes are in process. For example, Missouri completed expansion of its new child welfare process statewide in July 1999 and, in response to ASFA, modified the process to include concurrent planning to help meet mandated timelines. In practice, child welfare workers now must inform parents at each family support team meeting that they risk losing parental

¹⁴ASFA allows states to undertake efforts to place a child for adoption or with a legal guardian while concurrently pursuing efforts to preserve or reunite the family. Known as "concurrent planning," the use of this social work practice model appears to be expanding nationwide. According to the American Public Human Services Association's 1998 survey, at least 32 states were using concurrent planning as one way to move children more quickly into permanent homes.

rights if their child cannot safely return home after 15 months. In the county we visited in Florida, we found no changes in social work practice related to the provision on terminating parental rights; however, the child welfare agency's attorneys have begun to more proactively identify cases for which efforts to prevent removal from home or to return a child home may not be warranted. State and local agency officials in the three states also identified a need to modify or reinforce other social work practices to implement these two key provisions, such as focusing earlier on finding a child a permanent home and establishing effective working relationships with agency attorneys.

Early Observations Point to More Timely Permanency Decisions Since ASFA

Some states have made more timely permanency decisions since ASFA by deciding to forgo services to keep families together in egregious situations and by meeting mandated time frames to begin the process of terminating parental rights for some children who were already in foster care when ASFA was enacted. Other states lagged behind, were unable to report on actions taken, or both. In implementing the provision on not requiring efforts to prevent a child's removal from home or to return a child home, most states reported that the courts are considering this provision for the few children likely to be affected. Regarding the second provision on terminating parental rights, over a third of the children's cases reviewed in the 12 states that provided data have had proceedings initiated to terminate parental rights. As permitted under the law, these states also found that adoption was not appropriate for a substantial portion of the reviewed cases. In these cases, the reasons cited for exempting a child from this requirement were that the child had a compelling reason why moving to terminate parental rights was not in his or her best interests or the child was under the care of a relative.

Most States Consider the Provision to Not Require Efforts to Prevent Removal From Home or to Return a Child Home, but Few Children Likely Affected

Most states reported that, as the courts reviewed foster care cases, they considered the provision for when efforts to prevent removal from home or to return a child home are not required. However, only two states were able to report the number of children—zero and four children, respectively—who have been exempted from efforts to prevent removal from home or to return them home. Moreover, agency officials in the three states we visited believed that only a small percentage—estimated at 3 to 10 percent—of the caseload had the egregious characteristics that would warrant such a determination. In Contra Costa County, California, for example, state statute has had similar provisions in place since the 1980s. According to county officials, the most common circumstances for not

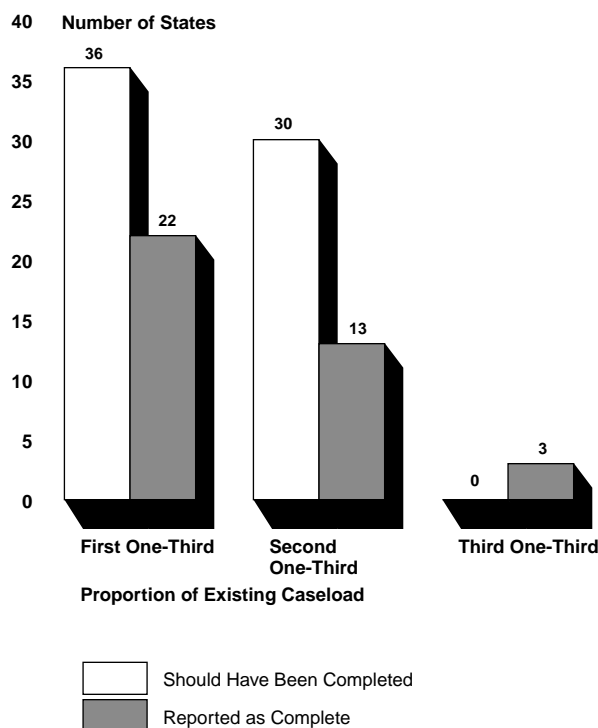
requiring reunification services include children who have siblings that had not reunited with their family or that had parental rights terminated, and children with chronically addicted parents who have made no effort to address their substance abuse and comply with their treatment plan.

States' Progress Varied on the Requirement to Reexamine Foster Care Caseload

Most states had begun the process of reexamining their caseload of foster children who were already in care when ASFA was enacted. For the children whose cases had been reviewed, the state was to either file a petition to begin the process of terminating parental rights or to document an exemption if adoption was inappropriate. We determined that the first states were required to complete these actions for their entire caseload by September 1999 and the last few states by December 2000. As of July 1999, states were at various stages of meeting their respective timetables as set by ASFA. Of the 47 states responding to our survey, we determined that 27 states were on or ahead of schedule, 14 states were not, 4 states' status was unknown because they had not tracked their progress, and 2 states did not provide sufficient information to determine progress.

States are required to complete the necessary actions, in 6-month intervals, for at least one-third of their caseload of foster children already in care when ASFA was enacted. When we compared the required completion dates for each phase—based on the date that the states' first legislative session following passage of ASFA ended—and the phases states reported as completed, we found that states generally made more progress in completing the first one-third phase than in completing the second phase, as illustrated in figure 1. Of the 47 states responding to our survey as of July 1999, 22 of the 36 states that needed to complete the first one-third phase reported that they had completed this much of their caseload. In addition, 13 of the 30 states that needed to complete the second one-third phase had met that requirement. No state was required to have finished all three phases at the time of our survey, but three states reported that they had completed the required actions for their entire caseload.

Figure 1: States' Progress in Completing the Three Phases of Foster Care Caseload Review, as of July 1999



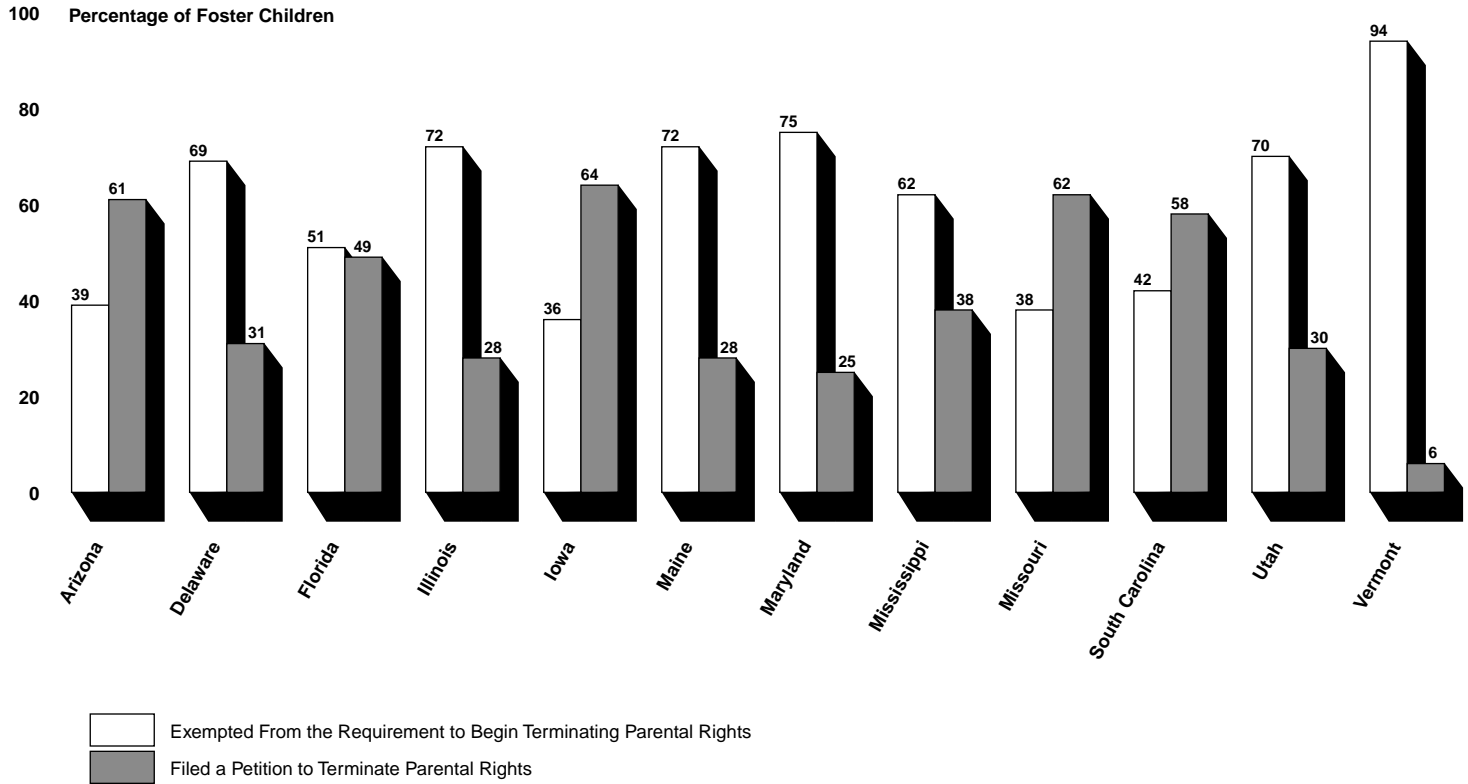
Note: Of the 47 responding states, 11 states did not have to complete any of the one-third phases as of July 1999 because their legislatures adjourned in late 1998 or 1999. Nevertheless, 4 of these 11 states reported completing at least the first phase.

Source: GAO survey, based on responses from 47 states.

Child welfare agencies reexamined the cases of children who were already in care when ASFA was enacted and began the process of terminating parental rights for some children. In the 12 states that reported data,¹⁵ over a third of the cases reviewed—or about 19,100 children—resulted in the state’s filing a petition to terminate parental rights. These states also said they exempted about 60 percent of the cases reviewed—or 32,300 children—after determining that adoption would be inappropriate. For the foster children reviewed, the percentages of children who had a petition filed or were being exempted varied across the 12 states, as shown in figure 2.

¹⁵At the time of our survey, most states could not readily provide data on the actions taken for individual children. Neither ASFA nor HHS required states to collect or report the data we requested, but many states reported that they were in the process of modifying their systems to provide such data in the future.

Figure 2: Results of Reviews for Foster Children in 12 States, as of March 1999



Source: GAO survey.

Reasons for Exempting Children

In the 12 states that had data available, about 70 percent of the cases of exempted children had a compelling reason why terminating parental rights was not in the child’s best interests. According to child welfare officials in the three states we visited and available data in Broward County, Florida, the most common compelling reasons for exempting children have been and will likely continue to be that

- the parents are in compliance with or nearing completion of the services outlined in the case plan and the family is expected to reunite imminently or within 30 days;
- the child is over a specified age (such as 12 years or older), does not want to be adopted, and has another permanency option; and

-
- the child suffers from severe emotional or behavioral problems or a developmental disability, and needs ongoing treatment in a residential setting or needs to be stabilized.

For about 30 percent of the exempted children in the 12 states that had data available, the states also reported exempting children who were under the care of a relative. According to child welfare officials in two of the counties we visited, their agencies chose to exempt all foster children who were in the care of relatives, after reviewing each case individually. Moreover, child welfare officials in the two respective states expected this generally to be the case throughout the state. Child welfare officials told us that a child in the care of relatives could still exit the foster care system through other permanency options. Several states have initiated or are experimenting with placing children permanently with their caregivers when they are relatives by using adoption and guardianship arrangements. Under the Governor's Adoptions Initiative in California, for example, birth parents can voluntarily relinquish their parental rights—which can be accomplished more quickly than involuntary termination of parental rights—and maintain ties to their children after adoption by relatives. In Illinois, the state is experimenting with offering relatives who are caregivers a subsidy when they either adopt the child or become the child's legal guardian.

The law provides a third type of exemption when the state has not provided the necessary services to make the home safe for the child's return. According to child welfare officials in the three states we visited, their agencies have so far exempted few, if any, children—and are unlikely to exempt children—for this reason. No children in Contra Costa County, California, no children in Broward County, Florida, and two children in Jackson County, Missouri, have been exempted for this reason. Moreover, child welfare officials in the three states did not expect to exempt children because services had not been provided. In two of the states, officials indicated that state law requires them to provide reunification services unless the court orders them not to. Nevertheless, agencies have not explicitly ruled out using this exemption.

HHS Has Assisted State Implementation of ASFA; Future Monitoring Efforts Are Under Development

HHS has taken action on a number of fronts to assist states and oversee the implementation of ASFA. HHS' actions to help states include providing technical assistance to states on the statutory changes; contracting with entities to function as National Resource Centers to help state and local child welfare agencies change social work practice; and issuing instructions to guide state administration of new requirements. HHS monitoring activities to date include assessing and certifying states' enabling legislation and collecting information about states' implementation of the provision on terminating parental rights. In the future, HHS plans to use a new, results-oriented monitoring approach to establish states' compliance with the amendments made by ASFA.

HHS Initiated Actions to Help States Implement ASFA

HHS regional staff and National Resource Centers provided technical assistance to states as they formulated new state statutes, determined their implementation schedule, and adapted social work practices. For example, all HHS regional offices held conferences on ASFA that included training on the act's requirements and timelines and information sharing among states. The National Resource Center for Permanency Planning at Hunter College in New York City responded to requests for assistance in calculating when state actions must be completed to implement the ASFA amendment on terminating parental rights and in applying concurrent planning to social work practice. The National Child Welfare Resource Center for Organizational Improvement at the University of Southern Maine also provided training and technical assistance to states on designing a concurrent planning system as well as interagency collaboration between the agency and the courts. Moreover, HHS contracted with the National Conference of State Legislatures to analyze states' legislative responses to ASFA and to assist states as they implement their new laws. To further assist states as they continue to implement the act, HHS disseminated in September 1999 guidelines to help states examine their existing statutes and current child welfare policy and practice. In October 1999, HHS funded a new National Resource Center on Child Welfare Services and Information Technology. This new center is to assist state and local child welfare agencies as well as family and juvenile courts in developing and improving information systems to better manage their programs, improve decision-making, and meet the goals of ASFA.

To guide states' implementation of the new law, HHS issued instructions in August 1998 on the timelines for states to comply with the provision on terminating parental rights. In particular, the instructions set out for states the methodology for determining the applicable effective dates, including

the requirement for states to phase-in over an 18-month period actions to terminate parental rights for those foster children who were already in care when ASFA was enacted.¹⁶ On September 18, 1998, HHS published proposed regulations that cover, among other issues, the two provisions established by ASFA on not requiring efforts to prevent removal from home or to return a child home and on terminating parental rights.¹⁷ At the time of our review, HHS planned to publish the final regulations by late December 1999.

HHS also provided guidance to and identified technical resources for states about continuing their efforts to improve court processes related to handling foster care and adoption proceedings. In addition to the two provisions related to making timely permanency decisions for foster children who are unable to safely return home, section 305(a) of ASFA reauthorized the State Court Improvement Program.¹⁸ Under this program, state courts collaborate with the other organizations and individuals involved in the lives of foster children—such as the state child welfare agency, attorneys, and guardians *ad litem*—to assess court processes and capacities and to implement reforms that address the courts' specific needs. In February 1999, HHS instructed state courts to comply with all the requirements established by ASFA as they implement system reforms.

HHS Will Use New, Results-Oriented Monitoring Approach

HHS has monitored states' efforts to make statutory changes that allow them to implement ASFA and has collected information about states' progress in implementing the provision on terminating parental rights. HHS tracked the status of states' enabling legislation to ensure that new state statutes were timely and conformed with all ASFA amendments. By October 1999, according to HHS officials, regional staff had certified enabling legislation for 43 states as conforming to the requirements established by ASFA. The remaining states were either under review or not in compliance with federal law but taking corrective action. To assess state implementation of the new provision on terminating parental rights, HHS directed states to provide descriptive information as part of their planning requirements for child welfare services. By June 1999, states had submitted information on the status of applying the provision to appropriate foster children. States also were to describe the capacity of

¹⁶The dates for applying the provision on terminating parental rights vary for each state. These dates depend on when the child entered foster care, how long the child has been in care, and when the state legislature was in session.

¹⁷63 Fed. Reg. 50,058.

¹⁸The State Court Improvement Program was initially established under section 13712 of the Omnibus Budget Reconciliation Act of 1993 (P.L. 103-66).

the state child welfare agency and judicial system to implement and meet the provision's requirement for children who have been in care for 15 of the last 22 months. To minimize the reporting burden on states at this early juncture, HHS did not require states to provide specific data and had no plans to aggregate information across states. Instead, according to HHS officials, having states provide descriptive information would enable regional staff to broadly assess their respective states' progress and identify areas that may warrant technical assistance or immediate attention.

HHS plans to use a new, results-oriented approach to monitor states' child welfare programs, including compliance with ASFA amendments.¹⁹ Under this approach, new child and family services reviews will focus on the results that these programs achieve. In the past, review procedures focused almost entirely on the accuracy and completeness of case files to determine whether required legal processes and protections were being carried out. The new monitoring approach will evaluate state programs in two areas—child and family outcomes related to child safety, permanency, and child and family well-being; and the characteristics of the state agency that directly affect its capacity to deliver services leading to improved outcomes. In addition, the program reviews will determine whether a state's foster care system complies with applicable federal laws, including the ASFA amendments.

While HHS plans to implement the new monitoring system in the near future, it has not conducted compliance reviews since 1994, except for testing the new program reviews in a limited number of states. Moreover, HHS has not monitored states' progress in meeting mandated timetables for applying the provision on terminating parental rights for children who were already in foster care when ASFA was enacted. According to HHS officials, more specific criteria and data collection requirements to assess states' compliance with the amendments will be incorporated into protocols for conducting the program reviews. The new monitoring system should go into effect 9 months after regulations are final, which is expected to occur in late December 1999. At that time, the process for addressing issues of noncompliance would entail giving states the opportunity to take corrective action within agreed-upon time frames. By the time the new monitoring system goes into effect, however, nearly all

¹⁹Section 203 of the Social Security Act Amendments of 1994 (P.L. 103-432) established requirements for HHS to develop a new child welfare review system to evaluate state programs and provide states with technical assistance and opportunities to take corrective action before financial penalties are assessed. Under the old review system, HHS relied on financial reviews and penalties as the exclusive form of enforcement.

states will likely have completed implementing the provision on terminating parental rights for foster children who were already in care when ASFA was enacted. For foster children who entered care after the passage of ASFA, HHS intends to use this new monitoring approach to cover key elements of this ASFA amendment. HHS' efforts to address issues specific to ASFA are expected to provide both compliance and program information to agency officials and policymakers.

Comments From HHS and State Agencies

We gave a draft of this report for comment to HHS and state child welfare agencies in the three states we visited. We received comments from HHS, California, Florida, and Missouri. HHS commented that our report confirms the work of the administration, HHS, and the states to implement the requirements established by ASFA. HHS also provided additional information on its efforts to assist states as they implement various aspects of ASFA. In particular, HHS said that the report should include a discussion of recent HHS-distributed guidelines as a technical assistance tool for state child welfare agencies and courts, national child welfare organizations, and child advocacy groups, which we have done. HHS also said that the report presumes that adoption is the only permanency option. While we believe that the provision on terminating parental rights emphasizes adoption, we have added information about other permanency options, where appropriate. HHS also provided technical comments, which we incorporated where appropriate. Appendix III contains HHS' comments.

In their comments, all three states agreed with our findings.

We are sending copies of this report to the Honorable Donna E. Shalala, Secretary of Health and Human Services; state child welfare directors; and other interested parties. We will make copies available to others on request.

If you or your staff have any questions about this report, please call me at (202) 512-7215. Other GAO contacts and staff acknowledgments are listed in appendix IV.

Sincerely yours,

A handwritten signature in black ink that reads "Cynthia M. Fagnoni". The signature is written in a cursive style with a large initial 'C'.

Cynthia M. Fagnoni
Director, Education, Workforce, and
Income Security Issues

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Abbreviations

ASFA	Adoption and Safe Families Act of 1997
HHS	Department of Health and Human Services

Scope and Methodology

To determine what legal, administrative, and social work practice changes states have made in response to ASFA, we reviewed nationwide information collected by national child welfare organizations and visited three states. In particular, we reviewed data and analyses compiled by the National Conference of State Legislatures on states' legislative responses to the two key provisions established by ASFA on not requiring efforts to prevent removal from home or to return a child home and on terminating parental rights. To identify administrative changes, we reviewed the results of two nationwide surveys conducted by the American Public Human Services Administration and the Child Welfare League of America, respectively, on states' early efforts to implement ASFA. We did not verify the data received from these three organizations. To gain insight into states' efforts to put statutory and administrative changes into practice, in June 1999 we attended the First National Roundtable on Implementing ASFA in Portland, Maine. In addition, we reviewed relevant literature and interviewed child welfare experts from the National Resource Centers and other national nonprofit organizations about implementation issues related to ASFA.

To obtain information about changes in social work practices as well as explore legal and procedural changes in greater detail, we visited the state child welfare agency and one county-level child welfare agency in each of three states—California, Florida, and Missouri. We selected these states because of their large populations of foster children in the federal title IV-E foster care program, their geographic location in different regions of the country, and their mix of state- and county-administered child welfare systems.²⁰ Moreover, because their legislatures met soon after the passage of ASFA, we expected these states to have had an opportunity to begin applying the provision on terminating parental rights for their foster children who were already in care when the law was enacted. In each state, we also selected one county that comprised a large share of the state's foster care population. In a county-administered state like California, counties have considerable autonomy to establish their own policies and procedures within broad state guidelines. In state-administered states such as Florida and Missouri, child welfare workers located in local county or district offices put state policies and procedures into day-to-day practice. We visited Contra Costa County in California, Broward County in Florida, and Jackson County in Missouri.

To determine the status of states' early implementation of the two key provisions, we surveyed all 50 states and the District of Columbia. The

²⁰California has a state-supervised, county-administered child welfare system; Florida has a state-administered system, but its local districts have considerable autonomy; and Missouri has a state-administered system.

survey focused on the number of affected children—particularly those who were already in foster care when the law was enacted—and related actions. We discussed development of the survey instrument with program managers and data analysts from several state child welfare agencies as well as senior officials at the National Resource Center for Permanency Planning at Hunter College in New York City. We also pretested the survey instrument in California and Missouri. In early June 1999, we sent a copy of the survey to the child welfare director in each of the 50 states and the District of Columbia. We received responses from 46 state agencies and the District of Columbia. We did not verify the information obtained through the survey, except that we contacted state respondents to clarify responses, as needed. In addition, we obtained more detailed and qualitative information from our state and county visits.

To determine states' progress in meeting mandated time frames for applying the provision on terminating parental rights for the caseload of foster children who were already in care when ASFA was enacted, we relied primarily on two data sources. First, from the National Conference of State Legislatures and state contacts, we identified the start date of each state's first legislative session that occurred after passage of the act. On the basis of these dates, we calculated the dates that states were required to complete each of the three mandated phases. Second, our survey on states' early implementation of the two provisions asked states to identify which phases they had completed and the respective completion dates.

We visited the three states—California, Florida, and Missouri—to obtain firsthand information about their implementation of the two key provisions established by ASFA. In each state, we interviewed state and county-level officials from the child welfare agency as well as the agency or office responsible for filing petitions to terminate parental rights. Depending on the state or county, representatives from these entities were within the child welfare agency, attorney general's office, or were juvenile officers of the court. We obtained information and reviewed relevant documents about the agencies' approach to implementing the two provisions; ongoing or existing initiatives to reform their child welfare systems; adoption recruitment and retention efforts; administrative changes related to capacity, management, and oversight activities; and early results. At the state level, we primarily focused on legal and administrative changes. At the local level, we also obtained information about local implementation of state-level changes and their views on the social work practice changes that had occurred or were needed.

Appendix I
Scope and Methodology

To identify actions HHS has taken to assist states and monitor implementation of the two provisions, we interviewed cognizant officials at HHS headquarters and at several regional offices. We also reviewed relevant reports, guidance, and proposed regulations.

Key Provisions of the Social Security Act as Amended by ASFA

This appendix provides excerpts from the United States Code on the two ASFA provisions addressed in this report (amended language is in bold lettering).

Provision on Not Requiring Efforts to Prevent Removal From or to Return a Child Home

Sec. 471 (42 U.S.C. 671). State plan for foster care and adoption assistance.

(a) Requisite features of State plan. In order for a State to be eligible for [federal payments for foster care and adoption assistance], it shall have a plan approved by the Secretary which—. . .

(15) provides that—

(A) in determining reasonable efforts to be made with respect to a child, as described in this paragraph, and in making such reasonable efforts, the child's health and safety shall be the paramount concern;

(B) except as provided in subparagraph (D), reasonable efforts shall be made to preserve and reunify families—

(i) prior to the placement of a child in foster care, to prevent or eliminate the need for removing the child from the child's home; and

(ii) to make it possible for a child to safely return to the child's home;

(C) if continuation of reasonable efforts of the type described in subparagraph (B) is determined to be inconsistent with the permanency plan for the child, reasonable efforts shall be made to place the child in a timely manner in accordance with the permanency plan, and to complete whatever steps are necessary to finalize the permanent placement of the child;

(D) reasonable efforts of the type described in subparagraph (B) shall not be required to be made with respect to a parent of a child if a court of competent jurisdiction has determined that—

(i) the parent has subjected the child to aggravated circumstances (as defined in State law, which definition may include but need not be limited to abandonment, torture, chronic abuse, and sexual abuse);

(ii) the parent has—

(I) committed murder (which would have been an offense under section 1111(a) of title 18, United States Code, if the offense had occurred in the special maritime or territorial jurisdiction of the United States) of another child of the parent;

(II) committed voluntary manslaughter (which would have been an offense under section 1112(a) of title 18, United States Code, if the offense had occurred in the special maritime or territorial jurisdiction of the United States) of another child of the parent;

(III) aided or abetted, attempted, conspired, or solicited to commit such a murder or such a voluntary manslaughter; or

(IV) committed a felony assault that results in serious bodily injury to the child or another child of the parent; or

(iii) the parental rights of the parent to a sibling have been terminated involuntarily;

(E) if reasonable efforts of the type described in subparagraph (B) are not made with respect to a child as a result of a determination made by a court of competent jurisdiction in accordance with subparagraph (D)—

(i) a permanency hearing (as described in section 475(5)(C)) shall be held for the child within 30 days after the determination; and

(ii) reasonable efforts shall be made to place the child in a timely manner in accordance with the permanency plan, and to complete whatever steps are necessary to finalize the permanent placement of the child; and

(F) reasonable efforts to place a child for adoption or with a legal guardian may be made concurrently with reasonable efforts of the type described in subparagraph (B);

(16) provides for . . . a case review system which meets the requirements in [the definitions section] with respect to each such child; . . .

Provision on Terminating Parental Rights

Sec. 475 (42 U.S.C. 675). Definitions.

As used in [the program providing federal payments for foster care and adoption assistance] or [child welfare services]; . . .

(5) The term “case review system” means a procedure for assuring that— . . .

(E) in the case of a child who has been in foster care under the responsibility of the State for 15 of the most recent 22 months, or, if a court of competent jurisdiction has determined a child to be an abandoned infant (as defined under State law) or has made a determination that the parent has committed murder of another child of the parent, committed voluntary manslaughter of another child of the parent, aided or abetted, attempted, conspired, or solicited to commit such a murder or such a voluntary manslaughter, or committed a felony assault that has resulted in serious bodily injury to the child or to another child of the parent, the State shall file a petition to terminate the parental rights of the child’s parents (or, if such a petition has been filed by another party, seek to be joined as a party to the petition), and, concurrently, to identify, recruit, process, and approve a qualified family for an adoption, unless—

(i) at the option of the State, the child is being cared for by a relative;

(ii) a State agency has documented in the case plan (which shall be available for court review) a compelling reason for determining that filing such a petition would not be in the best interests of the child; or

(iii) the State has not provided to the family of the child, consistent with the time period in the State case plan, such services as the State deems necessary for the safe return of the child to the child’s home, if reasonable efforts of the type described in section 471 (a) (15) (B) (ii) are required to be made with respect to the child; . . .

Comments From the Department of Health and Human Services



DEPARTMENT OF HEALTH & HUMAN SERVICES

Office of Inspector General

Washington, D.C. 20201

NOV 19 1999

Ms. Cynthia M. Fagnoni
Director, Education, Workforce,
and Income Security Issues
United States General
Accounting Office
Washington, D.C. 20548

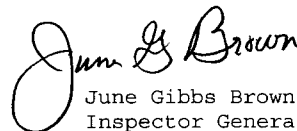
Dear Ms. Fagnoni:

Enclosed are the Department's comments on your draft report, "Foster Care: States' Early Experiences Implementing the Adoption and Safe Families Act." The comments represent the tentative position of the Department and are subject to reevaluation when the final version of this report is received.

The Department also provided extensive technical comments directly to your staff.

The Department appreciates the opportunity to comment on this draft report before its publication.

Sincerely,


June Gibbs Brown
Inspector General

Enclosure

The Office of Inspector General (OIG) is transmitting the Department's response to this draft report in our capacity as the Department's designated focal point and coordinator for General Accounting Office reports. The OIG has not conducted an independent assessment of these comments and therefore expresses no opinion on them.

**Appendix III
Comments From the Department of Health
and Human Services**

COMMENTS OF THE DEPARTMENT OF HEALTH AND HUMAN SERVICES ON THE
GENERAL ACCOUNTING OFFICE'S DRAFT REPORT, "FOSTER CARE:
STATES' EARLY EXPERIENCES IMPLEMENTING THE ADOPTION AND SAFE
FAMILIES ACT" (GAO/HEHS-00-1)

General Comments

The Department appreciates the opportunity to comment on the General Accounting Office's (GAO) draft report on States' early efforts to implement two provisions of the Adoption and Safe Families Act of 1997 (ASFA) related to making timely permanency decisions for foster care children who are unable to safely return home.

We are pleased that the GAO report confirms the work of the Administration, the Department, and the States and the efforts to implement the mandated provisions of ASFA. The implementation efforts of the groups involved in child welfare services at all levels has had, over the past 2 years, a profound effect on the safety, permanency and well-being of the children involved in State foster care systems.

During this time, the Department and the States have been able to strengthen the focus on timely permanency for foster care children. The result has been an increase in the number of adoptions nationwide. Over the 4-year period from Fiscal Year (FY) 1995 to FY 1998, adoptions increased by 38 percent, demonstrating that the President's Adoption 2002 goal is within reach. With continued implementation of ASFA, the adoption incentive program, and increased State attention to children's needs for safe and permanent homes, the number of adoptions nationwide is expected to continue to rise.

In addition, the Department has been effective in providing assistance to the States in the implementation of other aspects of the ASFA legislation:

The Department has helped to fund State child welfare programs and monitor State compliance with Federal statutes and regulations. In September 1998, the Department published a Notice of Proposed Rulemaking regulating many of the provisions contained in ASFA, and a final rule is expected to be published by the end of 1999.

We have supported the development of legislative guidelines governing permanence for children that have helped State legislatures enact new legislation required to put ASFA into effect. In addition, we awarded a contract to the National Conference of State Legislatures to provide technical assistance to States drafting the legislative requirements mandated by ASFA and to evaluate that State legislation. The result of these two efforts is that all States, the District of Columbia and Puerto Rico have passed ASFA legislation.

The Department has provided ongoing technical assistance to States through its regional offices and the National Resource Centers. In FY 1999, the Department funded the new

**Appendix III
Comments From the Department of Health
and Human Services**

Resource Center on Information Systems and Technology, which will assist States in collecting and using data useful in the implementation of the ASFA time lines and in case management.

The Department has used the Secretary's demonstration authority under ASFA to support 25 child welfare demonstration projects that are testing new ways of providing child welfare services.

These efforts are designed to serve as the building blocks needed to work toward changing policies, adjusting time frames, and revising specific areas in social work practice to facilitate more timely permanency decisions for children in foster care. They are already resulting in increased safety, permanence and well-being for children and families.

The following comments are provided to clarify issues and information contained in the report.

The report should include statutory citations and language. The report makes reference to "...two key provisions,...." but the pertinent statutory citations and statutory language are not contained in the report. The termination of parental rights provision is found at section 475(5)(E) of the Social Security Act (the Act) or 42 USC 675(5)(E). The reasonable efforts provision is found at section 471(a)(15) of the Act (42 USC 671(a)(15)).

Throughout the report, the discussion of "reasonable efforts" focuses principally on reasonable efforts to reunify. The statute requires that a State make "reasonable efforts" both to *prevent* (emphasis added) removal and to reunify child and family. As is indicated above, the statutory citation that governs "reasonable efforts" and its contents should be included in this report. Any discussion of "efforts" to preserve and/or reunify related to section 471(a)(15) should be preceded by the word "*reasonable*." We believe the report incorrectly presumes that adoption is the only permanency option.

The report does not consider the impact of a primary technical assistance tool recently distributed by the Department to State child welfare agencies, State courts, national child welfare organizations and child advocacy groups. The "*Guidelines for Public Policy and State Legislation Governing Permanence for Children*" (*Guidelines*) was disseminated in September 1999 to help States examine their existing statutes, and current child welfare policy and practice. Developed by an interdisciplinary expert work group composed of administrators, lawyers, judges, advocates, and child welfare workers, the *Guidelines* reflect the collective best thinking on current issues in child welfare law and practice. They highlight the relationship between policy and critical implementation issues, such as those presented by ASFA. The *Guidelines* were designed to identify law, policy, and practice to help achieve permanence for children, and to facilitate discussion among State legislators and other key stakeholders in the public policy arena, including program managers and public child welfare officials.

We believe the GAO report confirms the work of the Department, the Administration, and the

**Appendix III
Comments From the Department of Health
and Human Services**

States. However, the report does not provide detailed discussion of problem areas or recommendations to be addressed. As an informational document, we believe the report is loosely structured to provide an overview of the steps States have taken to begin implementing specific ASFA provisions, including actions taken for individual children and proceedings to terminate parental rights.

GAO Contacts and Staff Acknowledgments

GAO Contacts

David D. Bellis, (202) 512-7278
Karen E. Lyons, (916) 486-6442

Staff Acknowledgments

In addition to those named above, Kerry Gail Dunn, Rodina S. Tungol, Craig H. Winslow, Jon K. Ling, and Elizabeth Jarvis-Shean also made key contributions to this report.

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