

funds due to a section 471(a)(18) violation in accordance with section 474(d)(1) and (2) of the Act.

(1) Title IV-E agencies that violate section 471(a)(18) with respect to a person or fail to implement or complete a corrective action plan as described in paragraph (c) of this section will be subject to a penalty. The penalty structure will follow section 474(d)(1) of the Act. Penalties will be levied for the quarter of the fiscal year in which the title IV-E agency is notified of its section 471(a)(18) violation, and for each succeeding quarter within that fiscal year until the title IV-E agency comes into compliance with section 471(a)(18). The reduction in title IV-E funds will be computed as follows:

(i) 2 percent of the title IV-E agency's title IV-E funds for the fiscal year quarter, as defined in paragraph (f) of this section, for the first finding of noncompliance in that fiscal year;

(ii) 3 percent of the title IV-E agency's title IV-E funds for the fiscal year quarter, as defined in paragraph (f) of this section, for the second finding of noncompliance in that fiscal year;

(iii) 5 percent of the title IV-E agency's title IV-E funds for the fiscal year quarter, as defined in paragraph (f) of this section, for the third or subsequent finding of noncompliance in that fiscal year.

(2) Any entity (other than the title IV-E agency) which violates section 471(a)(18) of the Act during a fiscal quarter must remit to the Secretary all title IV-E funds paid to it by the title IV-E agency in accordance with the procedures in paragraphs (g)(2) or (g)(4) of this section.

(3) No fiscal year payment to a title IV-E agency will be reduced by more than 5 percent of its title IV-E funds, as defined in paragraph (f) of this section, where the title IV-E agency has been determined to be out of compliance with section 471(a)(18) of the Act.

(4) The title IV-E agency or an entity, as applicable, will be liable for interest on the amount of funds reduced by the Department, in accordance with the provisions of 45 CFR 30.18.

(This requirement has been approved by the Office of Management and Budget under OMB Control Number 0970-0214. In accordance with the Paperwork

Reduction Act of 1995, an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.)

[65 FR 4082, Jan. 25, 2000, as amended at 66 FR 58676, Nov. 23, 2001; 77 FR 931, Jan. 6, 2012]

#### **§ 1355.39 Administrative and judicial review.**

A title IV-E agency determined not to be in substantial conformity with titles IV-B and IV-E plan requirements, or a title IV-E agency or an entity in violation of section 471(a)(18) of the Act:

(a) May appeal, pursuant to 45 CFR part 16, the final determination and any subsequent withholding of, or reduction in, funds to the HHS Departmental Appeals Board within 60 days after receipt of a notice of nonconformity described in § 1355.36(e)(1) of this part, or receipt of a notice of noncompliance by ACF as described in § 1355.38(a)(3) of this part; and

(b) Will have the opportunity to obtain judicial review of an adverse decision of the Departmental Appeals Board within 60 days after the title IV-E agency or entity receives notice of the decision by the Board. Appeals of adverse Department Appeals Board decisions must be made to the district court of the United States for the judicial district in which the principal or headquarters office of the agency responsible for administering the program is located.

(c) The procedure described in paragraphs (a) and (b) of this section will not apply to a finding that a title IV-E agency or an entity has been determined to be in violation of section 471(a)(18) which is based on a judicial decision.

[65 FR 4083, Jan. 25, 2000, as amended at 77 FR 932, Jan. 6, 2012]

#### **§ 1355.40 [Reserved]**

#### **§ 1355.41 Scope of the Adoption and Foster Care Analysis and Reporting System.**

(a) This section applies to state and tribal title IV-E agencies unless indicated for state title IV-E agencies only.