

(4) If, as a result of a court finding, a title IV–E agency or entity is determined to be in violation of section 471(a)(18) of the Act, ACF will assess a penalty without further investigation. Once the title IV–E agency is notified (in writing) of the violation, its title IV–E funds will be reduced for the fiscal quarter in which the court finding was made and for each succeeding quarter within that fiscal year or until the title IV–E agency completes a corrective action plan and comes into compliance, whichever is sooner. Once an entity is notified (in writing) of the violation, the entity must remit to the Secretary all title IV–E funds paid to it by the title IV–E agency during the quarter in which the court finding was made.

(5) The maximum number of quarters that a title IV–E agency will have its title IV–E funds reduced due to a finding of a title IV–E agency’s failure to conform to section 471(a)(18) of the Act is limited to the number of quarters within the fiscal year in which a determination of nonconformity was made. However, an uncorrected violation may result in a subsequent review, another finding, and additional penalties.

(6) No penalty will be imposed for a court finding of a violation of section 471(a)(18) until the judgement is final and all appeals have been exhausted, declined, or the appeal period has expired.

(h) *Determination of the amount of reduction of Federal funds.* ACF will determine the reduction in title IV–E 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 non-compliance 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.

(b) An agency described in paragraph (a) of this section must report information on the characteristics and experiences of a child in the reporting populations described in §1355.42. The title IV-E agency must submit the information collected to ACF on a semi-annual basis in an out-of-home care data file and adoption assistance data file as required in §1355.43, pertaining to information described in §§1355.44 and 1355.45 and in a format according to ACF's specifications.

[81 FR 90569, Dec. 14, 2016, as amended at 85 FR 28424, May 12, 2020]

§ 1355.42 Reporting populations.

(a) *Out-of-home care reporting population.* (1) A title IV-E agency must re-

port a child of any age who is in out-of-home care for more than 24 hours. The out-of-home care reporting population includes a child in the following situations:

(i) A child in foster care as defined in §1355.20.

(ii) A child on whose behalf title IV-E foster care maintenance payments are made and who is under the placement and care responsibility of another public agency or an Indian tribe, tribal organization or consortium with which the title IV-E agency has an agreement pursuant to section 472(a)(2)(B)(ii) of the Act.

(iii) A child who runs away or whose whereabouts are unknown at the time the child is placed under the placement and care responsibility of the title IV-E agency.

(2) Once a child enters the out-of-home care reporting population, the child remains in the out-of-home care reporting population through the end of the report period in which the title IV-E agency's placement and care responsibility ends, or a child's title IV-E foster care maintenance payment pursuant to a title IV-E agreement per section 472(a)(2) of the Act ends, regardless of any subsequent living arrangement.

(b) *Adoption and guardianship assistance reporting population.* (1) The title IV-E agency must include in the adoption and guardianship assistance reporting population any child who is:

(i) In a finalized adoption under a title IV-E adoption assistance agreement pursuant to section 473(a) of the Act with the reporting title IV-E agency that is or was in effect at some point during the current report period; or

(ii) In a legal guardianship under a title IV-E guardianship assistance agreement pursuant to section 473(d) of the Act with the reporting title IV-E agency that is or was in effect at some point during the current report period.

(2) A child remains in the adoption or guardianship assistance reporting population through the end of the report period in which the title IV-E agreement ends or is terminated.

[81 FR 90569, Dec. 14, 2016]