

(2) Once ACF notifies a State, in writing, that it has committed a section 471(a)(18) violation with respect to a person, the State's title IV-E funds will be reduced for the fiscal quarter in which the State received such written notification and for each succeeding quarter within that fiscal year or until the State completes a corrective action plan and comes into compliance, whichever is earlier.

(3) For States that fail to complete a corrective action plan within 6 months, title IV-E funds will be reduced by ACF for the fiscal quarter in which the State received notification of its violation. The reduction will continue for each succeeding quarter within that fiscal year or until the State completes the corrective action plan and comes into compliance, whichever is earlier.

(4) If, as a result of a court finding, a State is determined to be in violation of section 471(a)(18) of the Act, ACF will assess a penalty without further investigation. Once the State 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 State completes a corrective action plan and comes into compliance, whichever is sooner.

(5) The maximum number of quarters that a State will have its title IV-E funds reduced due to a finding of a State'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 non-conformity 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) of the Act.

(1) State 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 State is notified of its section 471(a)(18) violation, and for each succeeding quarter within that fiscal year until the State 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 State'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 State'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 State'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 State agency) which violates section 471(a)(18) of the Act during a fiscal quarter with respect to any person must remit to the Secretary all title IV-E funds paid to it by the State during the quarter in which the entity is notified of its violation.

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

(4) The State agency or 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 30.13.

[65 FR 4082, Jan. 25, 2000]

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

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

(a) May appeal, pursuant to 45 CFR part 16, the final determination and

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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 State 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 State or 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]

**§ 1355.40 Foster care and adoption data collection.**

(a) *Scope of the data collection system.*

(1) Each State which administers or supervises the administration of titles IV-B and IV-E must implement a system that begins to collect data on October 1, 1994. The first transmission must be received in ACF no later than May 15, 1995. The data reporting system must meet the requirements of § 1355.40(b) and electronically report certain data regarding children in foster care and adoption. The foster care data elements are listed and defined in Appendix A to this part and the adoption data elements are listed and defined in Appendix B to this part.

(2) For the purposes of foster care reporting, each State's data transmission must include all children in foster care for whom the State title IV-B/IV-E agency has responsibility for placement, care, or supervision. This includes American Indian children covered under the assurances in section 422(b)(10) of the Act on the same basis as any other child. For children in care less than 30 days, only a core set of information will be required, as noted in

appendix A to this part. For children who enter foster care prior to October 1, 1995 and who are still in the system, core data elements will be required; in addition, States will also be required to report on the most recent case plan goal affecting those children. For children in out-of-State placement, the State placing the child and making the foster care payment submits and continually updates the data.

(3) For the purposes of adoption reporting, data are required to be transmitted by the State on all adopted children who were placed by the State title IV-B/IV-E agency, and on all adopted children for whom the State agency is providing adoption assistance (either ongoing or for nonrecurring expenses), care or services directly or by contract or agreement with other private or public agencies. Full adoption data as specified in appendix B to this part are required only for children adopted after the implementation date of October 1, 1994. For children adopted prior to October 1, 1994, who are continuing to receive title IV-E subsidies, aggregate data are to be reported. For a child adopted out-of-State, the State which placed the child submits the data.

(b) *Foster care and adoption reporting requirements.* (1) The State agency shall transmit semi-annually, within 45 days of the end of the reporting period (i.e., by May 15 and November 14), information on each child in foster care and each child adopted during the reporting period. The information to be reported consists of the data elements found in appendices A and B to this part. The data must be extracted from the data system as of the last day of the reporting period and must be submitted in electronic form as described in appendix C to this part and in record layouts as delineated in appendix D to this part.

(2) For foster care information, the child-specific data to be transmitted must reflect the data in the information system when the data are extracted. Dates of removal from the home and discharge from foster care must be entered in accordance with paragraph (d)(1) of this section. The date of the most recent periodic review (either administrative or court) must