ACF Administration for Children and Families	U.S. DEPARTMENT OF HEALTH AND HUMAN SERVICES Administration on Children, Youth and Families	
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	4. Key Words: Interjurisdictional Adoption Violations	

PROGRAM INSTRUCTION

TO: State Agencies, Tribes, Tribal Organizations, and Territories Administering or Supervising Titles IV-B and IV-E of the Social Security Act

SUBJECT: Interjurisdictional Adoption Violations

LEGAL AND RELATED REFERENCES: Sections 471(a)(12), 471(a)(23), 474(d) and 422(b)(12) of the Social Security Act; and 45 CFR Parts 1355.32(d) and 1355.38

PURPOSE: The purpose of this Program Instruction (PI) is to provide instruction to States and other entities that receive title IV-E funds about the requirements related to interjurisdictional adoption in sections 471(a)(23)(A) and (B) of the Social Security Act (the Act), and the penalty and corrective action provisions (section 474(d)(1) of the Act). The PI also will provide guidance on the distinction between the section 471(a)(23) provision and the section 422(b)(12) provision of the Act on the effective use of cross-jurisdictional resources that is subject to the Child and Families Services Reviews (CFSRs).

BACKGROUND: As originally enacted, the Adoption and Safe Families Act (ASFA) of 1997 amended section 474 of the Act by adding paragraph (e), which made a State ineligible for any title IV-E payment if the Secretary of Health and Human Services finds that the State has:

(1) denied or delayed the placement of a child for adoption when an approved family is available outside of the jurisdiction with responsibility for handling the case of the child; or (2) failed to grant an opportunity for a fair hearing, as described in section 471(a)(12), to an individual whose allegation of a violation of paragraph (1) is denied by the State or not acted upon with reasonable promptness.

The Child Support Performance and Incentive Act of 1998 (P.L. 105-200) was enacted on July 16, 1998. This law repealed the penalty structure in section 474(e) of the Act and made the requirements formerly at 474(e)(1) and (2) title IV-E State plan requirements (sections 471(a)(23)(A) and (B)). P.L. 105-200 also amended section 474(d) of the Act to include a new reduced penalty structure for violations of the "deny or delay" and "fair hearing" provisions at section 471(a)(23)(A) and (B) of the Act.

Under this penalty structure, the State has six months to successfully complete a corrective action plan for systemic violations or the Administration for Children and Families (ACF) will apply the penalty in section 474(d)(1) of the Act. If, however, there is a violation against an individual, there is no provision for corrective action.

INSTRUCTION:

Systemic Violations of Section 471(a)(23) of the Act

The regulations at 45 CFR 1355.32(d) regarding partial reviews of State plan requirements that are outside the scope of a CSFR apply to the interjurisdictional adoption provisions in section 471(a)(23)(A) and (B) of the Act. If a potential systemic violation of these provisions concerning a State's statute, regulation, policy, procedure or practice comes to the attention of ACF, we will institute a partial review consistent with the provisions of 45 CFR 1355.32(d). The regulations at 45 CFR 1355.32(d) allow ACF to conduct a partial review appropriate to the nature of the concern. Accordingly, if it comes to the attention of the ACF Regional Office, through a CFSR or otherwise, that a State may not be in compliance with the interjurisdictional provisions at section 471(a)(23)(A) or (B) of the Act, the Regional Administrator will send a letter to the State:

- informing the State of how ACF became aware of the potential violation;
- describing the reasons for which the State appears to be in violation of 471(a)(23) of the Act; and
- giving the State an opportunity to provide additional information (per the partial review regulatory provision at 45 CFR 1355.32(d)(1)) to show that it is in compliance with section 471(a)(23).

If the information from the State does not confirm that the State is in compliance with section 471(a)(23) of the Act, or the State does not submit additional information, the Regional Office may require further review in order to make a final determination of compliance. This review could include an on-site review, a request for additional information, or both, depending upon the particular situation.

Based on the findings of the partial review, ACF will determine if a violation of section 471(a)(23) has occurred. A section 471(a)(23) systemic violation occurs if a State maintains any statute, regulation, policy, procedure or practice that on its face:

- allows the denial or delay of a child's placement for adoption when an approved family outside the jurisdiction is available; or
- fails to grant an opportunity for a fair hearing to any individual who alleges that the placement of a child has been denied or delayed when there is an approved family outside the jurisdiction who is willing to adopt the child.

If, as a result of the partial review, ACF finds the State to be out of compliance with section 471(a)(23) of the Act because of a systemic violation, the State must develop a corrective action plan.

Corrective action plans: If ACF finds that the State committed a systemic violation of section 471(a)(23) of the Act, the State must develop and submit a corrective action plan within 30 days of receiving written notification from ACF of the violation. Once the ACF Regional Office approves the plan, the State must successfully complete the corrective action and come into compliance with section 471(a)(23) of the Act within six months. If the State fails to successfully complete the corrective action and come into compliance within six months, ACF will impose a penalty in accordance with the *Determination of the Penalty* section below.

Contents of a corrective action plan: A corrective action plan must--

- identify the issues to be addressed;
- set forth the steps for taking corrective action;
- identify any technical assistance needs and Federal and non-Federal sources of technical assistance which will be used to complete the action steps; and,
- specify dates for completing each action step. The date will be no later than six months from the date ACF approves the corrective action plan.

If the State does not submit a revised corrective action plan according to the above requirements, funds will be reduced pursuant to the guidelines outlined in the determination of the penalty section below.

Evaluation of corrective action plan: ACF will evaluate the implementation of the corrective action plan and notify the State in writing of its success or failure to complete the plan. If the State fails to successfully complete the corrective action plan and come into compliance, ACF will calculate the amount of reduction in the State's title IV-E payment and include this information in the notification of noncompliance. If the State is successful, ACF will take no further action.

Determination of the penalty: State agencies that do not complete a corrective action plan and come into compliance, as described above, will be subject to a penalty in accordance with section 474(d)(1) of the Act. ACF will levy penalties for the quarter of the fiscal year in which the State is notified of its section 471(a)(23) violation, **and for each succeeding quarter within that fiscal year until the State comes into compliance** with section 471(a)(23) of the Act. The reduction in title IV-E funds will be computed as follows:

- 2 percent of the amount of title IV-E funds claimed by the State for the fiscal year quarter in which the first finding of noncompliance was made;
- 3 percent of the amount of title IV-E funds claimed by the State for the fiscal year quarter in which the second finding of noncompliance was made;
- 5 percent of the amount of title IV-E funds claimed by the State for the fiscal year quarter in which the third or subsequent finding of noncompliance was made.

No fiscal year payment to a State will be reduced by more than 5 percent where the State is determined to be out of compliance with section 471(a)(23) of the Act. The maximum number of quarters that ACF will reduce a State's title IV-E funds due to the State's nonconformity with

section 471(a)(23) of the Act is limited to the number of quarters left within the fiscal year in which a determination of nonconformity is made. However, an uncorrected violation may result in a subsequent review, another finding, and additional penalties in the subsequent fiscal year(s). The State agency will be liable for interest on the amount of funds reduced by ACF, in accordance with the provisions of 45 CFR 30.13.

Individual Violation of Section 471(a)(23) of the Act

If an individual believes that the State has denied or delayed a child's adoptive placement where there is an approved family outside the jurisdiction, s/he can request a fair hearing from the State agency to determine whether there has been a violation of this provision. This hearing is not necessarily a remedy for the individual regarding the placement decision made by the State, but rather to determine if the State violated the provisions of section 471(a)(23) of the Act. The State must promptly provide a fair hearing in accordance with section 471(a)(12) of the Act, whether the allegation is against the State itself or an entity in the State that receives title IV-E funds.

If the fair hearing officer finds that there has been a violation of section 471(a)(23) of the Act, the State must notify the appropriate ACF Regional Office of the findings within 60 days of the decision. If the State wishes to exhaust additional legal remedies in the State, then the result must be submitted to ACF within 30 days of the final decision upholding the fair hearing officer's findings. ACF will then adopt the final finding from the State and will notify the State, in writing. A section 471(a)(23) violation has occurred if there is a finding that the State has:

- denied or delayed the adoptive placement of a child in an adoptive home when there is an approved family outside the jurisdiction with responsibility for handling the case; or
- failed to grant an opportunity for a fair hearing to any individual who alleges a violation of the deny/delay provision above.

Compliance with the Indian Child Welfare Act of 1978 does not constitute a violation of section 471(a)(23).

Reduction of title IV-E funds: ACF will reduce title IV-E funds in the specified amounts noted in the *Determination of the Penalty* section of this issuance if ACF finds there has been an individual violation of section 471(a)(23) of the Act by the State. There is no provision for corrective action in cases of individual violations, but a final finding will not be made until the State agency has exhausted all the legal remedies available to it in the State, should it choose to do so. ACF will reduce a State's title IV-E funds for the fiscal quarter in which the State received notification of its violation.

Any entity (other than the State agency) that receives title IV-E funds and violates section 471(a)(23) of the Act during a fiscal quarter with respect to any person must, upon notification by ACF, 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.

The State agency, or entity as applicable, will be liable for interest on the amount of funds reduced by ACF, in accordance with the provisions of 45 CFR 30.13.

Distinction Between the Section 422(b)(12) Provision that is within the Scope of the CFSRs and the Section 471(a)(23)(A) and (B) Provisions that are not

Section 422(b)(12) of the Act requires that the State assure in its title IV-B Child Welfare Services State plan that it will develop plans for the effective use of cross-jurisdictional resources to facilitate timely adoptive or permanent placements for waiting children. This State plan requirement is subject to review in the CFSRs through the Statewide assessment, stakeholder interviews and case record reviews. If, during the review, ACF determines that the State does not plan for and use cross-jurisdictional resources to facilitate timely adoptions or permanent placements for waiting children, ACF will address it in the report back to the State and it will be subject to inclusion in the State's PIP.

If a CFSR reveals that a State has policies, procedures, or practices in place that delay or deny the placement of children with approved families outside the jurisdiction, that information would indicate a possible violation of section 471(a)(23) of the Act and would be subject to the partial review provisions in 45 CFR 1355.32(d). When a potential violation of section 471(a)(23) of the Act is noted during a CFSR, ACF will not report it as a finding in the CFSR report to the State, nor will the State be required to address it in the PIP. Instead, ACF will note it in the cover letter used to transmit the CFSR report to the State and subsequently address it as a separate issue consistent with the guidance in this Program Instruction.

This policy applies to all jurisdictions that are outside the geographic area of the agency with responsibility for handling the case of the child. Thus, interjurisdictional violations can occur across city, county, and State lines.

INQUIRIES TO: ACF Regional Offices, Regions I – X

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Commissioner,
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