

Child Welfare Policy Manual

Questions & Answers

4.2 MEPA/IEAP, Enforcement of Section 471 (a)(18) of the SSA

1. Question: What criteria will be used to determine if a violation of section 471(a)(18) of the Act has occurred?

Answer: We have not developed any specific "criteria" for determining if a violation of section 471(a)(18) of the Social Security Act (the Act) has occurred. We will determine on a case-by-case basis whether the title IV-E agency has delayed or denied a child's adoptive or foster care placement or denied a person the opportunity to become an adoptive or foster parent based on race, color, or national origin. It is impossible to define every situation and circumstance that would result in a civil rights violation. Thus, the ACF Regional office will review the specific facts of each case to determine if a title IV-E agency or entity is in violation of section 471(a)(18) or if a policy or practice is consistent with previously issued guidance.

- **Source/Date:** Preamble to the Final Rule (65 FR 4020) (1/25/00) (revised 07/14/10)
- **Legal and Related References:** Social Security Act - section 471 (a)(18); 45 CFR 1355.38

2. Question: Section 474(a) of the Social Security Act restricts the application of penalties for MEPA violations to one fiscal year. By what authority can ACF continue a penalty into the next fiscal year?

Answer: The regulations do not provide for a continuation of a penalty into the subsequent fiscal year if a title IV-E agency fails to come into compliance. ACF may and has the authority to initiate a full or partial review in a subsequent fiscal year for those title IV-E agencies that are in violation of section 471(a)(18) of the Act and have failed to complete corrective action to come into compliance. Thus, any statute, regulation, policy, procedure or practice that remains uncorrected from a previous fiscal year may result in a new finding of a violation of noncompliance with section 471(a)(18) of the Act. We will not disregard an uncorrected violation simply because a fiscal year has ended. It is part of the Department's oversight responsibility to ensure that all title IV-E agencies are in compliance with section 471(a)(18) of the Act at any given time and any uncorrected violation may be subject to a review at the beginning of a new fiscal year.

- **Source/Date:** Preamble to the Final Rule (65 FR 4020) (1/25/00) (revised 07/14/10)

- **Legal and Related References:** Social Security Act - section 471 (a)(18); 45 CFR 1355.38

3. Question: Does section 471(a)(18) of the Social Security Act (the Act) apply to a private international adoption agency that receives Federal funds, but not title IV-E funds?

Answer: No. Section 471(a)(18) of the Act is a title IV-E plan requirement. Therefore, private agencies that do not receive title IV-E funds are not subject to the title IV-E plan provisions, even if such agencies receive Federal funds from a source other than title IV-E and are involved in adoption or foster care placements of any type. However, these private agencies still must ensure that they do not violate Title VI of the Civil Rights Act of 1964 (Title VI) by delaying or denying a foster care or adoption placement decision on the basis of race, color or national origin (Section 1808(c) of Public Law 104-188). Title IV-E agencies should note that all entities, both public and private, that receive any Federal funds, regardless of the source, and regardless of whether those funds are used for child welfare purposes, must comply with title VI. Title VI broadly prohibits all federally funded entities from discriminating, denying benefits or excluding an individual from participating in an activity or program on the basis of race, color, or national origin. The U.S. Department for Health and Human Services Office for Civil Rights (OCR) enforces title VI. For more information on Title VI, please refer to the OCR Title VI fact sheet: <https://archive.hhs.gov/ocr/title6.html>.

- **Source/Date:** 12/31/07 (revised 07/14/10)
- **Legal and Related References:** Social Security Act section 471(a)(18); P.L. 104-188 section 1808(c)