

# Child Welfare Policy Manual

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## Questions & Answers

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### 8.2D.3 TITLE IV-E, Adoption Assistance Program, Payments, Non-recurring expenses

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**1. Question: Please summarize the requirements for the nonrecurring expenses of adoption.**

**Answer:** The title IV-E agency must enter into an adoption assistance agreement prior to the finalization of the adoption and reimburse (up to \$2000, or at title IV-E agency option a lower limit) the nonrecurring adoption expenses incurred by any parent who adopts a child with special needs. The only eligibility criterion to be applied for reimbursement of the nonrecurring expenses of adoption is that the title IV-E agency determine that the child meets the definition of special needs, in accordance with section 473 (c) of the Act. A child does not have to be eligible for Aid to Families with Dependent Children, title IV-E foster care, or Supplemental Security Income in order for the adoptive parents to receive reimbursement for their nonrecurring adoption expenses. Nor does the child have to be under the responsibility for placement and care of the title IV-E agency in order for the adoptive parents to be reimbursed for the nonrecurring expenses of adoption.

The term "nonrecurring adoption expenses" is defined as the reasonable and necessary adoption fees, court costs, attorney fees and other expenses which are directly related to the legal adoption of a child with special needs, which are not incurred in violation of State/Tribal or Federal law, and which have not been reimbursed from other sources or funds. Federal financial participation is available at the matching rate of 50 percent for title IV-E agency expenditures up to \$2000 for each adoptive placement.

- **Source/Date:** ACYF-CB-PA-01-01 (1/23/01)
- **Legal and Related References:** Social Security Act - section 473(a)(6); 473(a)(1)(B)(i); 45 CFR 1356.41

**2. Question: Is it possible for the title IV-E agency to set maximum amounts on specific items within the category of nonrecurring expenses for which they will reimburse adoptive parents?**

**Answer:** No. The Tax Reform Act of 1986 (Public Law 99-514) amended title IV-E of the Act to require payments for the nonrecurring adoption expenses incurred by adopting parents in connection with the adoption of children with special needs. The only discretion is the

flexibility to set a reasonable lower maximum than the \$2000 for which Federal reimbursement is available at a 50% matching rate.

- **Source/Date:** ACYF-CB-PIQ-89-02 (5/23/89)
- **Legal and Related References:** Social Security Act - section 473; The Tax Reform Act of 1986 (P.L. 99-514)

**3. Question: Title IV-E agencies are required to reimburse up to \$2,000, or such lower amount as set by the title IV-E agency, for the non-recurring adoption expenses of parents who adopt children with special needs. The regulations define "non-recurring adoption expenses" as reasonable and necessary adoption fees, court costs, attorney fees and other expenses which are directly related to the legal adoption of a child with special needs. "Other expenses" were defined as the costs of adoption incurred by or on behalf of the parents and for which parents carry the burden of payment, such as the adoption study, including health and psychological examinations, supervision of the placement prior to adoption, transportation and the reasonable costs of lodging and food for the child and/or the adoptive parents when necessary to complete the adoption process. Would it be possible for a title IV-E agency to further limit the reimbursable areas within the allowable expense category? For instance, could reimbursement be limited to attorney fees only? Or, could a title IV-E agency elect not to reimburse adoption study fees and transportation costs?**

**Answer:** No. A title IV-E agency may not limit reimbursement for nonrecurring adoption expenses by category. Adoptive parents who apply for reimbursement of the non-recurring expenses of adoption must be reimbursed for any of the non-recurring adoption expenses described at 45 CFR 1356.41 (i) when they adopt a child with special needs as set forth in section 473 (c) of the Social Security Act.

- **Source/Date:** ACYF-CB-PIQ-89-02 (5/23/89)
- **Legal and Related References:** Social Security Act - section 473

**4. Question: Prospective adoptive parents sometimes have an attorney review the subsidy agreement to ensure that the parents' best interests are addressed. This private attorney review is in addition to the work of the title IV-E agency attorneys who prepare the subsidy paperwork. Are attorney fees and other expenses related to the review of the title IV-E adoption assistance agreement directly related to the legal adoption of a child with special needs and, therefore, allowable under title IV-E?**

**Answer:** Yes. If the adoptive parents who are adopting a child with special needs incur an attorney fee for review of the adoption subsidy agreement, the title IV-E agency may reimburse the adoptive parents for that expenditure, up to the \$2,000 limit, as a nonrecurring

expense of adoption. In addition, the title IV-E agency also may claim the costs of the agency attorney's review of the adoption assistance agreement as an administrative cost, consistent with the policy in the Child Welfare Policy Manual (CWPM), Section 8.1A, Q/A #1.

- **Source/Date:** 7/6/05; (03/03/2020)
- **Legal and Related References:** Social Security Act -- Section 473(a)(6) and 479B; 45 CFR 1356.41(i); CWPM, Section 8.1A, Q/A #1

**5. Question: Does the nonrecurring adoption expenses limit of \$2,000 (or lower at title IV-E agency option) apply per adoption episode or is it a lifetime limit?**

**Answer:** The nonrecurring adoption expenses limit is applied per adoption episode.

- **Source/Date:** 7/6/05
- **Legal and Related References:** Social Security Act -- Section 473(a)(1)(B)(i), 45 CFR 1356.41

**6. Question: Can the title IV-E agency claim Federal financial participation (FFP) for the nonrecurring expenses of adoption if the adoption is never finalized?**

**Answer:** Yes. The title IV-E agency may claim FFP for the nonrecurring expenses of adoption in accordance with the requirements set forth in 45 CFR 1356.41 if:

- there is a title IV-E agreement for the nonrecurring expenses of adoption between the adoptive parent(s) and the title IV-E agency; and
- the title IV-E agency determined that the child is a child with special needs in accordance with section 473(c) of the Social Security Act (the Act).

Consistent with section 473(a)(5) of the Act, payments may be made on behalf of a child in an adoptive placement prior to the finalization of adoption when all eligibility requirements in section 473 of the Act are met and there is a signed adoption assistance agreement between the title IV-E agency and the adoptive parent(s). The regulation at 45 CFR 1356.41(b) provides that the agreement for the nonrecurring expenses of adoption may be a separate document or a part of the agreement for either Federal or State/Tribal adoption assistance. In allowing adoption assistance payments to be made prior to the finalization of the adoption, the Department has never differentiated between payments for ongoing adoption assistance under such agreements and payments for the nonrecurring expenses for adoption. Further, nothing in statute or regulation prohibits reimbursement for the expenses incurred by adoptive families in circumstances where the adoption is not finalized.

- **Source/Date:** September 29, 2005; (03/03/2020)
- **Legal and Related References:** Social Security Act - Sections 473(a)(1)(B)(i), 473(a)(5), and 479B; 45 CFR 1356.41(b).