

# Child Welfare Policy Manual

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## Questions & Answers

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### 8.2B TITLE IV-E, Adoption Assistance Program, Eligibility

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**1. Question: Please explain who is eligible for title IV-E adoption assistance for a child who is not an "applicable child".**

**Answer:** A title IV-E agency is required to enter into an adoption assistance agreement with the adoptive parents of a child with special needs (as defined in section 473(c) of the Social Security Act (the Act)) and provide adoption assistance if the child meets specific requirements. There are four ways that a child can be eligible for title IV-E adoption assistance:

1. Child is eligible for Aid to Families with Dependent Children (AFDC) and meets the definition of a child with special needs - Adoption assistance eligibility that is based on a child's AFDC eligibility (in accordance with the program rules in effect on July 16, 1996) is predicated on a child meeting the criteria for such at the time of removal. In addition, the title IV-E agency must determine that the child meets the definition of a child with special needs prior to finalization of the adoption.

The method of removal has the following implications for the AFDC-eligible child's eligibility for title IV-E adoption assistance: If the child is removed from the home pursuant to a judicial determination, such determination must indicate that it was contrary to the child's welfare to remain in the home; or if the child is removed from the home pursuant to a voluntary placement agreement, that child must actually receive title IV-E foster care payments to be eligible for title IV-E adoption assistance.

Children placed pursuant to a voluntary placement agreement under which a title IV-E foster care maintenance payment is not made are not eligible to receive title IV-E adoption assistance.

2. Child is eligible for Supplemental Security Income (SSI) benefits and meets the definition of a child with special needs - A child is eligible for adoption assistance if the child meets the requirements for title XVI SSI benefits and is determined by the title IV-E agency to be a child with special needs prior to the finalization of the adoption.

There are no additional criteria that a child must meet to be eligible for title IV-E adoption assistance when eligibility is based on a special needs child meeting SSI requirements. Specifically, how a child is removed from his or her home or whether the title IV-E agency

has responsibility for the child's placement and care is irrelevant in this situation.

Unlike AFDC eligibility that is determined by the title IV-E agency, only a designated Social Security Administration claims representative can determine SSI eligibility and provide the appropriate eligibility documentation to the title IV-E agency.

3. Child is eligible as a child of a minor parent and meets the definition of a child with special needs - A child is eligible for title IV-E adoption assistance in this circumstance if: prior to the finalization of the adoption, the child's parent was in foster care and received a title IV-E foster care maintenance payment that covered both the minor parent and the child of the minor parent and is determined by the title IV-E agency to meet the definition of a child with special needs.

There are no additional criteria that must be met in order for a child to be eligible for title IV-E adoption assistance if the child's eligibility is based on his or her minor parent's receipt of a foster care maintenance payment while placed with the minor parent in foster care. As with SSI, there is no requirement that a child must have been removed from home pursuant to a voluntary placement agreement or as a result of a judicial determination.

4. Child is eligible due to prior title IV-E adoption assistance eligibility and meets the definition of a child with special needs - In the situation where a child is adopted and receives title IV-E adoption assistance, but the adoption later dissolves or the adoptive parents die, a child may continue to be eligible for title IV-E adoption assistance in a subsequent adoption. The only determination that must be made by the title IV-E agency prior to the finalization of the subsequent adoption is whether the child is a child with special needs, consistent with the requirements in section 473(c) of the Act. Need and eligibility factors in section 473(a)(2) (A) of the Act must not be redetermined when such a child is subsequently adopted because the child is to be treated as though his or her circumstances are the same as those prior to his or her previous adoption. Since title IV-E adoption assistance eligibility need not be re-established in such subsequent adoptions, the manner of a child's removal from the adoptive home, including whether the child is voluntarily relinquished to an individual or private agency, is irrelevant.

\*Note: This Q/A was previously deleted on 10/25/2017 because at the time, the phase-in for the applicable child in section 473(e)(1)(B) of the Act was complete. P.L. 115-123 amended section 473(e)(1)(B) to extend the applicable child phase-in to FY 2025, effective 1/1/2018.

- **Source/Date:** ACYF-CB-PA-01-01 (1/23/01); 7/17/2006; (03/03/2020)
- **Legal and Related References:** Social Security Act - sections 473(a)(2), 473(c) and 479B; The Deficit Reduction Act of 2005

**2. Question: Does a child who is not an "applicable child" need to be continuously eligible for Aid to Families for Dependent Children (AFDC) during the period s/he is in foster care in order to be eligible for adoption assistance after the termination of**

## parental rights?

**Answer:** No. A child who is not an "applicable child" for whom eligibility for title IV-E adoption assistance payments is being established need not have been continuously eligible for AFDC during his or her tenure in foster care. The statute requires that the child be eligible for AFDC only at the time of the child's removal from the home (section 473(a)(2)(A)(i)(I)(aa) of the Social Security Act). Please see the Child Welfare Policy Manual at 8.2B for an explanation of all the eligibility criteria for the adoption assistance payments program.

\*Note: This Q/A was previously deleted on 10/25/2017 because at the time, the phase-in for the applicable child in section 473(e)(1)(B) of the Act was complete. P.L. 115-123 amended section 473(e)(1)(B) to extend the applicable child phase-in to FY 2025, effective 1/1/2018.

- **Source/Date:** 03/14/07; (03/03/2020)
- **Legal and Related References:** Social Security Act - section 473 and 479B

### 3. Question: Are children whose legal guardianships disrupt eligible for title IV-E adoption assistance?

(Deleted 10/25/2017)

### 4. Question: Is the title IV-E agency required to provide title IV-E adoption assistance to all eligible children on whose behalf it is requested?

**Answer:** Yes, if the child meets the criteria in section 473 of the Social Security Act (the Act). Section 473(a)(1)(A) of the Act specifies that each title IV-E agency "having a plan approved under this part **shall** [emphasis added] enter into adoption assistance agreements (as defined in section 475(3) of the Act) with the adoptive parents of children with special needs." Further, sections 473(a)(1)(B)(i) and (ii) of the Act require title IV-E agencies to make payments of nonrecurring adoption expenses incurred by or on behalf of parents in connection with the adoption of a child with special needs and/or adoption assistance payments on behalf of a child who meets the requirements of section 473(a)(2) of the Act.

- **Source/Date:** 04/24/07; (03/03/2020)
- **Legal and Related References:** Social Security Act - sections 473(a), 475(3), and 479B

### 5. Question: The statute requires that to be an "applicable child" based on the child's "duration in care" the child must have been in foster care for 60 consecutive months (see section 473(e)(2)(A) of the Social Security Act). Please provide additional guidance on calculating the 60 consecutive month period.

**Answer:** The 60 consecutive month period is any 60 consecutive months in foster care prior to the finalization of the adoption. The title IV-E agency may use any reasonable method of calculating the 60 consecutive month period, within the following parameters:

- The definition of "foster care" at 45 CFR 1355.20(a) applies in determining the 60 consecutive month provision and does not include detention facilities or psychiatric hospitals (see Child Welfare Policy Manual (CWPM) section 7.3 Q/A #1). Foster care is defined at 45 CFR 1355.20(a) as: 24-hour substitute care for children placed away from their parents or guardians and for whom the title IV-E agency has placement and care responsibility. This includes, but is not limited to, placements in foster family homes, foster homes of relatives, group homes, emergency shelters, residential facilities, child care institutions, and preadoptive homes. A child is in foster care in accordance with this definition regardless of whether the foster care facility is licensed and payments are made by the State, Tribal or local agency for the care of the child, whether adoption subsidy payments are being made prior to the finalization of an adoption, or whether there is Federal matching of any payments that are made.
- A child must be in foster care, as defined in 45 CFR 1355.20(a), for at least one day of a month.
- A runaway episode may count towards calculating the 60 consecutive month period if the title IV-E agency retains responsibility for the placement and care of the child during the runaway episode because a child in this situation is considered to be in foster care. See CWPM sections 8.3C.2 Q/A #3 and 1.2B.7.
- If a title IV-E agency considers a child who is on a trial home visit to be in foster care, then the trial home visit period may count towards calculating the 60 consecutive month period. See existing policy on trial home visits in the CWPM section 8.3C.5.
- \*Note: This Q/A was previously deleted on 10/25/2017 because at the time, the phase-in for the applicable child in section 473(e)(1)(B) of the Act was complete. P.L. 115-123 amended section 473(e)(1)(B) to extend the applicable child phase-in to FY 2025, effective 1/1/2018
- **Source/Date:** 2/24/2011; (03/03/2020)
- **Legal and Related References:** Social Security Act - Section 473(e)(2)(A) and 479B; 45 CFR 1355.20(a), Child Welfare Policy Manual sections 7.3 Q/A #1, 8.3C.5, 8.3C.2 Q/A #3 and 1.2B.7; ACYF-CB-PI-10-11

**6. Question: The Adoption Assistance eligibility criteria for an "applicable child" includes one pathway to title IV-E adoption assistance eligibility which requires that the child must be in the "care" of a public or licensed private child placement agency by way of a voluntary placement, voluntary relinquishment or a court-ordered removal with a judicial determination that remaining at home would be contrary to the child's welfare. Does "care" mean that a public or private agency must have placement and care responsibility for the child?**

**Answer:** No. Although the term "care" as it is used in 473(a)(2)(A)(ii)(I)(aa) of the Social Security Act (the Act) may imply that a public or private agency has placement and care responsibility for the child, it is not explicit. Therefore, in situations where any sort of care is being provided for an applicable child by a public or licensed private child placement agency or Indian tribal organization at the time the adoption proceedings are initiated, the requirements in section 473(a)(2)(A)(ii)(I)(aa) of the Act will be met.

- **Source/Date:** 5/04/11; (03/03/2020)
- **Legal and Related References:** Social Security Act - section 473(a)(2)(A)(ii)(I)(aa)

**7. Question: The Adoption Assistance eligibility criteria for an "applicable child" includes one pathway to title IV-E adoption assistance eligibility which requires that the child must be in the care of a public or licensed private child placement agency by way of a voluntary placement, voluntary relinquishment or a court-ordered removal with a judicial determination that remaining at home would be contrary to the child's welfare. When referring to a "licensed" private child placement agency, does this mean that the agency must be licensed by the State or Tribe entering into the adoption assistance agreement? Or is it required that the title IV-E agency provide a payment to an eligible child even if the agency was not licensed in the State or Tribe that is entering into the agreement?**

**Answer:** Section 473(a)(2)(A)(ii)(I)(aa) prescribes only that the child be in the care of "...a licensed private child placement agency or Indian tribal organization." So long as the child placement agency is licensed for title IV-E eligibility purposes it does not matter who licenses the agency.

- **Source/Date:** 5/04/11; (03/03/2020)
- **Legal and Related References:** Social Security Act - section 473(a)(2)(A)(ii)(I)(aa)

**8. Question: The statute authorizes title IV-E adoption assistance eligibility for siblings of an applicable child under certain circumstances. These circumstances include the following factors: 1) the child is a sibling of the applicable child for the fiscal year; 2) the sibling is to be placed in the same adoption placement as the applicable child sibling for the fiscal year; and 3) the sibling meets the eligibility requirements for the title IV-E adoption assistance program. In such situations, must the adoption for the sibling who is the applicable child be finalized prior to that of the child who may meet the criteria as a sibling of an applicable child for the sibling to be eligible for title IV-E adoption assistance?**

**Answer:** No. Under 473(e)(3) of the Social Security Act, there is no requirement for the applicable child to be adopted before that child's sibling. A child is considered an applicable child if he or she meets the following conditions:

(A) is a sibling of a child who is an applicable child for the fiscal year;

B) is to be placed in the same adoption placement as an applicable child for the fiscal year who is his/her sibling; and

(C) meets the adoption assistance eligibility requirements.

As such, a sibling could be eligible for adoption assistance if the sibling is adopted before the applicable child, as long as the sibling and applicable child are placed in the same adoption placement, and the sibling meets all other eligibility requirements.

\*Note: This Q/A was previously deleted on 10/25/2017 because at the time, the phase-in for the applicable child in section 473(e)(1)(B) of the Act was complete. P.L. 115-123 amended section 473(e)(1)(B) to extend the applicable child phase-in to FY 2025, effective 1/1/2018.

- **Source/Date:** 5/04/11; (03/03/2020)
- **Legal and Related References:** Social Security Act - section 473(e)(3) and 479B

**9. Question: Does a child who is a member of a sibling group have to meet the criteria in section 473(e)(3) of the Social Security Act (the Act) prior to finalization or prior to entering into the adoption assistance agreement to be considered an applicable child?**

**Answer:** A child who is a member of a sibling group must meet the criteria in section 473(e)(3) of the Act prior to finalization of the adoption to be considered an applicable child. Under 473(e)(3) of the Act, a sibling is considered to be an applicable child if he meets the following elements:

(A) is a sibling of a child who is an applicable child;

(B) is to be placed in the same adoption placement as an applicable child who is his/her sibling; and

(C) meets the adoption assistance eligibility requirements for an applicable child.

A child must meet these three elements prior to the finalization of the adoption. This is consistent with policy stated in the Child Welfare Policy Manual Section 8.2B12 Q/A #2 in which we stated that a child's eligibility for Supplemental Security Income benefits must be established prior to finalization of the adoption. It is also consistent with policy in ACYF-CB-PI-10-11 in which we stated that an applicable child is a child who has been in foster care under the responsibility of the title IV-E agency for any 60 consecutive months prior to the finalization of the adoption.

- **Source/Date:** 05/04/11
- **Legal and Related References:** Social Security Act § section 473(e)(3); Child Welfare Policy Manual Section 8.2B.12 Q/A#2; ACYF-CB-PI-10-11

**10. Question: Must a title IV-E agency that takes the option to extend the title IV-E programs to older youth ages 19, 20, or 21 per section 475(8)(B) of the Social Security Act provide title IV-E adoption assistance payments to the older youth who remain eligible when the adoption assistance agreements expires?**

**Answer:** Yes. A title IV-E agency must provide extended adoption assistance payments to an older youth when his adoption assistance agreement expires, if the youth remains eligible for the adoption assistance program. This includes youth under a title IV-E adoption assistance agreement in place prior to the agency taking the option to extend the title IVE programs.

- **Source/Date:** 05/04/11
- **Legal and Related References:** Social Security Act § sections 475(8)(B) and 473