

<h1>ACF</h1> <p>Administration for Children and Families</p>	U.S. DEPARTMENT OF HEALTH AND HUMAN SERVICES Administration on Children, Youth and Families	
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	<b>3. Originating Office:</b> Children's Bureau	
	<b>4. Key Words:</b> Adoption Assistance, Fostering Connections to Success and Increasing Adoptions Act of 2008	

### PROGRAM INSTRUCTION

- TO:** State, Tribal and Territorial Agencies Administering or Supervising the Administration of Title IV-E of the Social Security Act, Indian Tribes, Tribal Organizations and Tribal Consortia (Tribes)
- SUBJECT:** Changes to the Title IV-E Adoption Assistance Program - Fostering Connections to Success and Increasing Adoptions Act of 2008 (Public Law 110-351)
- LEGAL AND RELATED:** Title IV-E of the Social Security Act; Public Law (P.L.) 110-351 and ACYF-CB-PI-08-05
- PURPOSE:** The purpose of this Program Instruction (PI) is to provide State and Tribal title IV-E agencies (hereafter, "title IV-E agencies") with information regarding changes to the title IV-E adoption assistance eligibility requirements made by P.L. 110-351.
- BACKGROUND:** The Fostering Connections to Success and Increasing Adoptions Act of 2008 (P.L. 110-351), enacted on October 7, 2008, amended the eligibility requirements for the title IV-E adoption assistance program provided in section 473 of the Social Security Act (the Act). The revised eligibility criteria in section 473(a)(2)(A)(ii) of the Act will be phased in for specific children over an nine-year period beginning in Federal fiscal year (FFY) 2010, as we describe below. A child for whom the revised eligibility criteria apply is referred to in the law as an "applicable child." An applicable child, as defined in section 473(e) of the Act, is a child who meets the applicable age requirements, or a child who has been in foster care for at least 60 months, or a sibling to either such child if both are to have the same adoption placement. A child who is referred to in section 473 of the Act as "not an applicable child" is one for whom the revised eligibility criteria do not apply and to whom the eligibility requirements in place prior to October 1, 2009 apply.

## **INFORMATION: Adoption Assistance Eligibility Criteria for the Applicable Child**

Beginning in FFY 2010, a title IV-E agency must enter into an adoption assistance agreement with the prospective adoptive parents of any child who meets the criteria for an “applicable child” as defined in section 473(e) of the Act, as well as the revised eligibility criteria in section 473(a)(2)(A)(ii) of the Act. The title IV-E agency must provide adoption assistance to every child it determines is eligible, unless the prospective adoptive parents decline such assistance. Further, the title IV-E agency is prohibited from imposing additional eligibility requirements not contained in Federal law.

As part of determining eligibility for an “applicable child,” the title IV-E agency must determine that the child meets the following special needs criteria, as established in section 473(c)(2) of the Act:

- that the child cannot or should not be returned to the home of his parents, in accordance with criteria that the title IV-E agency has established;
- that there is a specific factor or condition (such as ethnic background, age, or membership in a minority or sibling group, or the presence of factors such as medical conditions or physical, mental, or emotional handicaps) because of which it is reasonable to conclude that the child cannot be placed with adoptive parents without providing adoption assistance under title IV-E and medical assistance under title XIX, **OR** that the child meets all of the medical or disability requirements for Supplemental Security Income (SSI). If a child meets all the medical or disability requirements for SSI, the criteria for the factor or condition element of the special needs determination will be met; and
- that a reasonable, but unsuccessful, effort has been made to place the child with adoptive parents without providing adoption assistance under title IV-E or medical assistance under title XIX. The only exception to this requirement is where it would be against the best interests of the child because of such factors as the existence of significant emotional ties with prospective adoptive parents while in the care of the parents as a foster child.

The title IV-E agency must also determine an “applicable child” with special needs meets one of the four following eligibility requirements:

- 1) **Child meets specific requirements at the initiation of adoption proceedings:** the child, at the time of the initiation of adoption proceedings, was in the care of a public or licensed private child placement agency or Indian tribal organization pursuant to:

- an involuntary removal in accordance with a judicial determination to the effect that it was contrary to the child's welfare to remain in the home; OR
  - a voluntary placement agreement or voluntary relinquishment. Thus, for an “applicable child,” there does not have to be a title IV-E payment made under a voluntary placement agreement.
- 2) **Child meets all medical and disability requirements of SSI:** the child meets all medical and disability requirements of title XVI with respect to eligibility for SSI benefits. An “applicable child” does not have to meet the needs-based requirements for SSI.
  - 3) **Child of a minor parent:** the child was residing in a foster family home or child care institution with his/her minor parent and the minor parent was removed from home pursuant to either: (1) an involuntary removal in accordance with a judicial determination to the effect that it was contrary to the child's welfare to remain in the home; or (2) a voluntary placement agreement or voluntary relinquishment.
  - 4) **Child was eligible in prior adoption:** the child was adopted and was determined eligible for title IV-E adoption assistance in a prior adoption (or would have been found eligible had the Adoption and Safe Families Act of 1997 been in effect at the time of the previous adoption), and is available for adoption because the prior adoption has been dissolved or the child’s adoptive parents have died. In such an instance, the child may retain eligibility for adoption assistance payments in a subsequent adoption. The title IV-E agency only needs to determine that the child is still a child with special needs for the child to be eligible for adoption assistance.

All other requirements in section 473(a) through (c) of the Act, the background check requirements in section 471(a)(20)(A) and (B) of the Act and 45 CFR 1356.30(b) and (c), the adoption assistance agreement requirements as defined in section 475(3) of the Act and regulations in 45 CFR 1356.40 and 1356.41 (to the extent that they are not superseded by the law) apply equally to both an applicable child and a non-applicable child.

### **Effective Dates of Adoption Assistance Eligibility Criteria for the Applicable Child**

Applicable Child – Age. The State must apply the “applicable child “ eligibility requirements to anyone who is an “applicable child” based on his or her age if the child has attained the applicable age, as indicated in section 473(e)(1)(B) of the Act, any time before the end of the Federal fiscal year during which the adoption assistance agreement is entered into. The applicable age for a child begins at 16 years old in FFY 2010 and decreases by two years for each fiscal year until a child

of any age meets the applicable age requirements in FFY 2018. Beginning October 1, 2017, the applicable child eligibility criteria will apply to children of all ages. See the chart provided below for an illustration of this process.

**FEDERAL FISCAL YEAR  
October 1 – September 30**

**HIGHEST AGE  
ATTAINED BY  
THE CHILD  
DURING FISCAL  
YEAR**

	2010	2011	2012	2013	2014	2015	2016	2017	2018
18+									
17									
16									
15									
14									
13									
12									
11									
10									
9									
8									
7									
6									
5									
4									
3									
2									
1									
0									

For example, the title IV-E agency enters into an adoption assistance agreement on behalf of a 15-year-old child on October 15, 2009. The child will turn 16 years old on January 3, 2010. Because the child turns 16 in FFY 2010, the applicable age during that fiscal year, the “applicable child” eligibility requirements apply. However, if the child in the same situation would turn 15 years old on October 5, 2009, s/he would not reach the applicable age before the end of the fiscal year (September 30, 2010). In that case, the child is “not an applicable child” and the eligibility criteria in section 473(a)(2)(A)(i) of the Act would apply.

Applicable Child – Time in Foster Care and Siblings. As of FFY 2010, the law also defines an “applicable child” to include: (1) a child who has been in foster care under the responsibility of the title IV-E agency for 60 consecutive months; or (2) a child who is a sibling of an applicable child by virtue of age or time in foster care and is placed in the same adoption arrangement as his/her sibling. A child under (1) and (2) above is not automatically eligible for title IV-E adoption assistance. In both situations, the title IV-E agency must apply the applicable child eligibility requirements, inclusive of the special needs criteria, as described in section 473(a)(2)(A)(ii) of the Act. The 60-consecutive-month period is any 60 consecutive months prior to the finalization of the adoption.

## **International Adoptions**

Effective in FFY 2010, the Act specifically prohibits the payment of an adoption assistance payment (including payments of non-recurring expenses under section 473(a)(1)(B)(i) of the Act) on behalf of an “applicable child” who is not a citizen or resident of the United States (U.S.) and was either adopted outside the U.S. or brought to the U.S. for the purpose of being adopted (see section 473(a)(7) of the Act). Existing policy for a “non-applicable” child continues at the Child Welfare Policy Manual Section 8.2B.6, Q/A #1.

**Title IV-E Agency Option to Extend the Duration of Title IV-E Adoption Assistance Payments after October 1, 2010 (Applicable Child AND Non-applicable Child)**. Beginning October 1, 2010, a title IV-E agency may extend the age that a child may receive adoption assistance payments and assistance up to age 19, 20 or 21 (at the title IV-E agency’s option) if the title IV-E adoption assistance agreement was entered into after the child turned age 16 and the child meets certain conditions. These conditions are that, once s/he reaches age 18, the child is: 1) completing secondary school (or equivalent); 2) enrolled in post-secondary or vocational school; 3) participating in a program or activity that promotes or removes barriers to employment; 4) employed 80 hours a month; or 5) determined incapable of any of the above due to a documented medical condition (section 475(8)(B)(iv) of the Act).

In addition to this option, the title IV-E agency remains able to provide adoption assistance payments up to age 21 to an “applicable” or “non-applicable child” when the agency determines that a child has a physical or mental handicap that warrants the continuation of assistance as provided for in section 473(a)(4)(A) of the Act.

## **Effect of title IV-E Guardianship Assistance Payments on Adoption Assistance Eligibility for both the Applicable Child AND Non-applicable Child**

In determining the child’s eligibility for adoption assistance of a child receiving title IV-E guardianship assistance payments, the placement of the child with the relative guardian and any kinship guardianship assistance payments made on behalf of the child shall be considered never to have been made (section 473(a)(1)(D) of the Act). Thus, if a child is later adopted, the title IV-E agency would apply the adoption assistance criteria for the child as if the guardianship had never occurred. This applies where the guardianship is dissolved and the child is later placed for adoption with the relative guardian or another individual.

**ACTIONS  
REQUIRED:**

Each title IV-E State agency must submit to ACF a revised Title IV-E Plan Pre-Print that reflects the statutory changes to the adoption assistance program as modified by P.L. 110-351. Tribal title IV-E agencies that elect to operate a title IV-E program must do so as well. Further guidance regarding the revised Title IV-E Plan Pre-Print will be issued at a later date.

**INQUIRIES:**

Children's Bureau Regional Program Managers (See Attachment A)

/s/

Maiso L. Bryant  
Acting Commissioner

Attachment A - Children's Bureau Regional Program Managers

## **ATTACHMENT A – Children’s Bureau Regional Program Managers**

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