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1. Question: Please explain how the State agency should set rates for title IV-E adoption assistance payments.

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Answer: The amount of the adoption assistance payment cannot exceed the amount the child would have received if s/he had been in a foster family home, but otherwise must be determined through agreement between the adoptive parents and the State or local title IV-E agency. Unlike other public assistance programs in the Social Security Act, the title IV-E adoption assistance program is intended to encourage an action that will be a lifelong social benefit to certain children and not to meet short-term monetary needs during a crisis. Further, the adoptive parents' income is not relevant to the child's eligibility for the program.

Title IV-E adoption assistance is not based upon a standard schedule of itemized needs and countable income. Instead, the amount of the adoption assistance payment is determined through the discussion and negotiation process between the adoptive parents and a representative of the State agency based upon the needs of the child and the circumstances of the family. The payment that is agreed upon should combine with the parents' resources to cover the ordinary and special needs of the child projected over an extended period of time and should cover anticipated needs, e.g., child care. Anticipation and discussion of these needs are part of the negotiation of the amount of the adoption assistance payment.

- **Source/Date:** ACYF-CB-PA-01-01 (1/23/01)
- **Legal and Related References:** Social Security Act - section 473 (a) (3)

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2. Question: A State agency wants to include a list of specific circumstances in the adoption assistance agreement that would lead to an automatic reduction in the adoption subsidy amount if the State determines the circumstances occur. These circumstances could include an improvement in the condition of the child or the financial circumstances of the parent, the child's eligibility for other forms of assistance, or the child's re-entry into foster care. Is this practice allowable?

Answer: No. Once a child is adopted and determined to be eligible for title IV-E adoption assistance, the adoption assistance payments may not be automatically adjusted without the agreement of the adoptive parents for any reason other than an across-the-board reduction or increase in foster care maintenance rates. The statute requires that the adoption assistance payment "take into consideration the circumstances of the adopting parents and the needs of the child being adopted, and may be readjusted periodically, with the concurrence of the adopting parents depending upon changes in such circumstances (section 473(a)(3) of the Social Security Act)." A State would not be considering the unique circumstances of the child and parents by automatically adjusting the subsidy.

The State agency may describe in the agreement specific circumstances such as those articulated in the question, that may warrant a future re-negotiation and adjustment of the payment. Agreements that are not negotiated to the specific needs of the adoptive child and the circumstances of the family, however, are not permissible.

- **Source/Date:** ACYF-CB-PIQ-98-02 (9/03/98)
- **Legal and Related References:** Social Security Act - section 473 (a) (3)

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3. Question: Can the State median income adjusted to family size be used

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as a guide to establish consistency in determining amounts of payment?

Answer: No. The use of such guidelines is not appropriate to the process. During the negotiation of an adoption assistance agreement, it is important to keep in mind that the circumstances of the adopting parents and the needs of the child must be considered together. The overall ability of a singular family to incorporate an individual child into the household is the objective. Families with the same incomes or in similar circumstances will not necessarily agree on identical types or amounts of assistance. The uniqueness of each child/family situation may result in different amounts of payment. Consistency is not the goal.

- **Source/Date:** ACYF-CB-PIQ-90-02 (10/2/90)
- **Legal and Related References:** Social Security Act - sections 473

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4. Question: Is it permissible to adjust the amount of the adoption assistance payment after the adoption assistance agreement is signed?

Answer: Adoption assistance payments made on behalf of a child cannot exceed the amount the child would have received if s/he had been in a foster family home. Accordingly, a State may negotiate an adoption assistance agreement that automatically allows for adjustments to the adoption assistance payment when there is an increase in the foster care board rate. Alternatively, a State may renegotiate an adoption assistance agreement if the adoptive parents request an increase in payment due to a change in their circumstance and a higher foster care rate would have been paid on behalf of the child if the child had still been in foster care. As an example, a child is adopted and the adoption assistance agreement is negotiated for \$250 a month, the same amount the child had been receiving in foster care. If, two years later, the State's monthly foster care board rate is increased to \$400, the family can request that the adoption assistance agreement be renegotiated and receive up to \$400 for the child, since this is the amount the child would have received each month if s/he had continued to be in foster care.

- **Source/Date:** ACYF-CB-PA-01-01 (1/23/01)
- **Legal and Related References:** Social Security Act - section 473 (a) (3)

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5. Question: Some State's foster care rate structures are based on levels of care. How would such a structure impact the adoption assistance rates?

Answer: If a State's foster care payment schedule includes higher level-of-care rates that are paid across-the-board for certain children, the State may pay up to that amount in adoption assistance if that specific child would have received the higher level-of-care rate in foster care. In addition, if a State's foster care payment standard includes across-the-board higher foster care rates for working foster parents to pay for child care, or includes provisions for periodic across-the-board increases for such items as seasonal clothing, the adoption assistance agreement may include the higher rate. However, special allowances that may be made on behalf of an individual child in certain situations in foster care, such as child care or clothing allowances, are not permitted as an allowable additional reimbursement in the adoption assistance program. Special allowances for individual children that are over and above the State's foster care payment standard cannot be included in the amount negotiated in the adoption

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assistance agreement since the adoption assistance payment cannot exceed the foster care maintenance payment rate for the child.

- **Source/Date:** ACYF-CB-PA-01-01 (1/23/01)
- **Legal and Related References:** Social Security Act - section 473 (a) (3)

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6. Question: When the State agency enters into an adoption assistance agreement with a family from another State, which State's rate structure applies as the limit for the adoption assistance payment?

Answer: In situations where a child is placed by the State agency in one State with an adoptive family in another State, it is the placing State that would look at its own established foster care rate structure, as well as State law and policy governing its foster care and adoption assistance payments, to determine the amount of assistance available on behalf of the child. If the placing and paying State's law or policy allows flexibility to pay amounts based upon the foster care board rate in the State in which the child is placed for adoption, this practice would be allowable under title IV-E since the statutory requirement in section 473 (a)(3) of the Act would be met.

- **Source/Date:** ACYF-CB-PA-01-01 (1/23/01)
- **Legal and Related References:** Social Security Act - section 473 (a) (3)

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7. Question: May a State's policy limit the maximum adoption assistance payment for any family at a level lower than the maximum foster care maintenance payment a child would have received in a foster family home?

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Answer: Federal law and regulations do not prohibit a State from having a law or policy that limits the maximum adoption assistance payments to a level lower than the maintenance payment a child would have received in a foster family home. The law only prescribes that the adoption assistance payment can be no more than the foster care maintenance payment that the child would have received in a foster family home during the same time period (see section 473(a)(3) of the Social Security Act). Within these parameters, however, the State must negotiate the amount of the adoption assistance payment with the adoptive family taking into consideration the needs of the child and the circumstances of the family. Furthermore, from a practice standpoint establishing a lower ceiling within which the State and family may negotiate an adoption assistance payment may reduce the pool of adoptive parents available to provide permanent homes for children with special needs.

- **Source/Date:** 7/7/2006
- **Legal and Related References:** Social Security Act – section 473(a) (3)

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