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Implementation of New Requirements

Q 1. How does the Final Rule impact tribal IV-D programs that are currently funded under the Interim Final Rule?

A 1. For tribes operating a tribal IV-D program under the Interim Final Rule, 45 CFR part 310 will apply until no later than October 1, 2004. Tribes operating IV-D programs under 45 CFR part 310 must submit amended tribal plan documentation that shows that the tribal IV-D program is in compliance with the final regulations (45 CFR part 309) no later than December 31, 2004. See AT-04-03, *Program Instruction—Required Changes to Tribal IV-D Plans: Checklist*, dated May 13, 2004.

Q 2. What if a tribe that is currently funded under the Interim Final Rule is unable to comply with the new requirements or submit an appropriate plan amendment by December 31, 2004?

A 2. Pursuant to §309.50, if the tribe fails to submit a new plan or the submitted plan amendment is disapproved, no funding under title IV-D of the Act will be allowed until a new plan amendment certifying compliance with 45 CFR part 309 is submitted and approved.

Q 3. When are the regulations effective for new tribes applying for Federal funding for IV-D programs?

A 3. As of the date of publication, March 30, 2004.

Eligibility

Q 4. May a tribe apply for and receive Federal funding for a IV-D program under Public Law 93-638 or Public Law 102-477?

A 4. No. The IV-D program is not conducted by the Federal government for the benefit of Indians and Alaskan Villages or a national Indian education program as defined by P.L. 93-638. Nor is it a program under P.L. 102-477 that would integrate with other tribal employment, training and related services that the tribe provides to reduce joblessness in Indian communities and serve tribally-determined goals consistent with the policy of self-determination.

Q 5. May a tribe that has previously received or is currently receiving a Special Improvement Project (SIP) grant, or funding for child support activities through an Administration for Native Americans (ANA) grant, apply for IV-D Federal funding?

A 5. Yes. Nothing in the Final Rule prevents a tribe that is receiving funding from another Federal grant for child support activities from applying for direct Federal funding for a IV-D program. However, tribes must ensure that child support activities are properly accounted for and charged to the appropriate grant. Tribes must also satisfy all tribal program requirements of the IV-D statute and regulations.

Q 6. To meet the 100-child rule, is a tribe limited to enrolled tribal children?

A 6. No. Sections 309.10(a) and 309.65(a)(1) provide that there must be 100 children, under the age of majority as defined by the tribe, who are subject to the jurisdiction of the tribal court or administrative agency for child support purposes. This may include Indian children who are not members of the applying tribe but who reside on the reservation, and non-Indians who reside on the reservation. Children of employees of the tribe and its tribal enterprises or privately-owned tribal business on the reservation who reside either on or off reservation may also be included, provided they are subject to the jurisdiction of the tribal court or administrative agency.

Q 7. May a tribe request a waiver of the 100-child requirement under §309.10?

A 7. Yes. Pursuant to §309.10(c)(1) if a tribe with less then the minimum number of children can demonstrate, to the satisfaction of the Secretary, the capacity to operate a child support enforcement program by providing documentation that establishes that the tribe otherwise complies with the program requirements, has the administrative capacity to support the program and that the program will otherwise be cost effective, a waiver may be granted. Two or more tribes may also enter into consortia to meet the 100-child requirement.

Q 8. May a waiver request of the 100-child rule under §309.10 be submitted prior to the application for funding?

A 8. No. Under §309.10(c)(1)(i), a tribe must demonstrate that the tribe otherwise complies with the requirements established in subpart C – "Tribal IV-D Plan Requirements". Additionally, §309.10(c)(2) requires that a tribe must demonstrate that it can provide the services required under 45 CFR part 309 in a cost-effective manner. OCSE would not be able to make these determinations without reviewing the tribal plan and therefore a request for waiver of the 100-child rule must be submitted with the application and tribal plan. If the tribe is applying for start-up funding, the tribe may not be performing all the functions required under subpart C. However, §309.10(c)(1)(ii) requires a tribe to demonstrate that it has the administrative capacity to support a child support program.

Q 9. If a tribe applies for a waiver of the requirement to have a minimum of 100 children, who will determine if the tribal program will be "cost-effective" and how will this be determined?

A 9. Based upon the information that must be submitted pursuant to §309.10(c)(1), OCSE and the Administration for Children and Families (ACF) Division of Grants Management will review a request for a waiver of the requirement to have a minimum of 100 children. Cost effectiveness will be determined by factors such as the administrative cost to fund the program (necessary staff, supplies, equipment needed to operate a comprehensive IV-D program) and the projected amount of child support to be collected by the IV-D program, as well as comparison to the cost-effectiveness of existing tribal IV-D programs.

Q 10. Must a tribe include a Tribal Council resolution with its application for funding?

A 10. No. Section 309.20(a) requires that the authorized representative of the tribe or tribal organization must sign and submit the tribal IV-D program application. However, although not required, a signed resolution from the tribe is helpful to OCSE when making a determination of whether or not the tribe has authorized the application.

Applications for Start-up Funding

Q 11. May a tribe receive start-up funding under §309.65(b) to gather information on the National IV-D program in order to make a determination of whether or not the tribe wants to pursue Federal funding for a tribal IV-D program?

A 11. No. Start-up funding may not to be used as an exploratory grant. Tribes should give careful consideration to the tribal IV-D program requirements before submitting an application. Start-up funding is appropriate for tribes that intend to run a comprehensive IV-D program within two years of applying for the start-up funding. The application for funding must demonstrate the tribe's commitment to meet all the program requirements and provide details and sufficient information to support the application.

Q 12. May start-up funding be used by a tribe to educate itself, and better understand the intricacies of tribal IV-D program functions that it is not currently providing?

A 12. Yes. Provided a tribe has a clear intent and commitment to develop a comprehensive IV-D program, a tribe that is not currently providing a service that is required for comprehensive tribal IV-D program funding may use start-up funding to assist the tribe in making a determination on how it wants to implement the requirement.

Q 13. May a tribe use start-up funding to review the child support activities the tribe is already performing, determine what activities it is not performing and determine the steps it will take to meet requirements the tribe currently does not meet and bring all the activities under a single agency?

A 13. No. Before applying for start-up funding, a tribe must analyze existing laws, procedures and services that are already being provided by the tribe, determine services that are not being provided, and develop a Program Development Plan (PDP) that includes the steps and timeframes for meeting the requirements that are not currently being met. Steps may include seeking revisions to existing laws and procedures that do not currently meet Federal requirements. This pre-application analysis is critical to ensure a tribe knows what must be done to receive Federal funding for a tribal IV-D program within two years. However, the tribe may amend the specifics of those laws, procedures and services, and how best to structure the IV-D program with start-up funding. Provided the tribe has a clear intent and includes the steps and timeframe to develop a comprehensive IV-D program, tribes may use tribal IV-D program start-up funding to explore the numerous options available to tribes when developing a specific component of a comprehensive IV-D program.

Q 14. How detailed must a tribal plan for start-up funding be?

A 14. A tribe must submit all required documentation of laws and procedures and a PDP detailing actions and timeframes to be taken to meet each of the requirements of §309.65(a) and related regulatory requirements that the tribe does not currently meet. The PDP must demonstrate, to the satisfaction of the Secretary, that the tribe will have a comprehensive IV-D program meeting the Final Rule requirements within the two-year start-up funding timeframe.

The tribe's application and PDP must demonstrate that the tribe or tribal organization has the capacity to operate, and will have in place, a tribal IV-D program within a reasonable, specified period of time, not to exceed two years. The PDP must detail the specific steps a tribe will take to come into compliance with the Federal requirements and the timeframe associated with each step. The plan should include a description of how the tribe anticipates performing the functions, the process the tribe will follow to achieve the functions, the milestones the organization will use to mark the progress and the schedule for meeting the timeframes. This may include such things as by which date the tribe will develop and enact codes, establish the tribal IV-D agency, enter into any service

agreements or contracts with other IV-D agencies or private entities, and hire and train staff.

Q 15. If a tribe's application for start-up funding is denied, may a tribe reapply for start-up funding?

A 15. Yes. If an application for start-up funding is denied, a tribe may reapply at any time, once it has remedied the circumstances that led to disapproval of the application.

Application Review

Q 16. What are the timelines for the Federal review of tribal start-up applications and applications for comprehensive tribal IV-D program funding?

A 16. Pursuant to §309.35, for both tribal start-up funding and comprehensive tribal IV-D program funding applications, the Secretary has 90 days from the date the application is received, to determine if additional information is required or if the application will be approved or disapproved. If additional information is required, the Secretary will request additional information from the tribe and will take action to approve or disapprove the application within 45 days of the day the response to the request for additional information is received.

Q 17. If the Secretary requests additional information from a tribe in order to make a determination on the tribe's application for funding, when must a tribe respond to that request?

A 17. There is no timeframe within which a tribe must respond to a request for additional information from the Secretary; however, no further evaluation of the tribe's application will occur until the requested information is received. Pursuant to §309.35(b), upon receipt of the response for additional information of the tribe, the Secretary has 45 days to take action on the application.

Q 18. What is the difference between a letter requesting more information from a tribe and a letter disapproving a tribe's application for funding?

A 18. A letter requesting more information from a tribe is sent after OCSE has reviewed a tribal application and determined that it does not have enough information to make a determination on whether to approve or deny the application. A written notice of disapproval of an application is sent pursuant to §309.40(b)(1) and will include the specific reason(s) for disapproval of the application.

Delegation of Tribal IV-D Agency Functions and Cooperative Agreements

Q 19. May a tribe delegate functions of the tribal IV-D program to a private contractor?

A 19. Yes. Pursuant to §309.60(c), a tribe may delegate functions of the tribal IV-D program to another tribe, a state, or another agency or entity pursuant to a cooperative arrangement, contract or tribal resolution, but the tribal IV-D agency retains ultimate responsibility for meeting the IV-D plan requirements. Tribes may enter into agreements with any entity, including contracts with a private vendor, to carry out the functions required in the tribal IV-D plan. The tribe is responsible for submitting copies and appending to the IV-D plan any agreements, contracts or tribal resolutions between the tribal IV-D agency and a tribe, state or other agency or entity.

Q 20. May a tribe enter into an agreement with a state IV-D program to obtain services that the tribal IV-D program may need to meet the requirements of 45 CFR part 309?

A 20. Yes. Pursuant to §309.60(c), a tribe may delegate any of the functions of the tribal IV-D program to another tribe, a state or another agency or entity pursuant to a cooperative arrangement, contract or tribal resolution. However, the tribal IV-D agency is ultimately responsible for securing compliance with the requirements of the tribal IV-D program by such tribe, state, agency or entity. The tribe is also responsible for submitting copies and appending to the IV-D plan any agreements, contracts or tribal resolutions between the tribal IV-D agency and a tribe, state or other agency or entity.

Q 21. How do cooperative agreements between a state IV-D program and tribal IV-D program differ from a cooperative agreement under Section 454(33) of the Act between a state and a tribe that is not receiving IV-D funding?

A 21. Cooperative agreements under Section 454(33) of the Act are between a state IV-D program and a tribe. The tribe performs agreed-upon activities and the state IV-D program reimburses the tribe for these activities. These cooperative agreements are under a state IV-D program and tribes must follow the state IV-D program requirements within the scope of cooperative agreement responsibilities. The state is ultimately responsible for the operation of its IV-D program and ensuring all requirements are met. More detailed information about cooperative agreements under Section 454(33) of the Act may be found in Action Transmittal OCSE-AT-98-21, *Implementing Section 454(33) of the Social Security Act, Cooperative Agreements between Indian Tribes and State Agencies operating a State Child Support Enforcement Program Under Title IV-D of the Act*.

If a tribal IV-D program enters into a cooperative agreement with a state under Section 455(f) of the Act for the state to perform service the state must meet tribal IV-D requirements applicable to the actions taken pursuant to the cooperative agreement. The tribe is ultimately responsible for the operation of its' IV-D program and ensuring all requirements are met.

Q 22. How does a cooperative agreement between a state IV-D program and a tribe change once the tribe receives Federal funding for a comprehensive IV-D program?

A 22. Once a tribe receives funding to operate a IV-D program, the existing cooperative agreement under Section 454(33) of the Act may become unnecessary because the tribe would be operating a IV-D program in accordance with Section 455(f) of the Act and the regulations at 45 CFR part 309.

Jurisdiction and Tribal Courts or Administrative Hearing Bodies

Q 23. Does the Federal government determine a tribe's jurisdiction?

A 23. No. Pursuant to §309.65(a)(1) and §309.70, a tribe must include in its plan a description of the population subject to the jurisdiction of the tribal court or administrative agency for child support enforcement purposes. A tribe must also have at least 100 children under the age of majority that are subject to its tribal court or administrative agency, in accordance with Section 309.10.

Q 24. If a tribe asserts jurisdiction over all members and its members reside in numerous states, must the tribe have a tribal IV-D office in every state in which its members reside?

A 24. No. It is not necessary for a tribe to have an office in every state in which tribal members reside. As noted, a tribe does need to demonstrate that it has jurisdiction of at least 100 children under the age of majority for child support enforcement purposes, no matter where the children live. A tribe is also required to provide evidence of its capacity to operate a child support enforcement program and, accordingly, offices which are reasonably accessible to all tribal families served would be essential. In addition, a tribal IV-D program must comply with §309.65(a)(2) by accepting all applications for IV-D services from tribal members, and all other applicants, and promptly providing all IV-D services required by law and regulation.

Q 25. Must a tribe have a judicial system to apply for start-up or comprehensive IV-D funding?

A 25. A tribe must have either a judicial or administrative system to hear, establish and enforce child support orders. It may be necessary to make adjustments to an existing court system or to develop an administrative process under the start-up phase of a tribal IV-D program. However, when a tribe applies for funding to operate a comprehensive tribal IV-D program, it must demonstrate that the judicial or administrative process is sufficient to establish and enforce child support orders.

Q 26. Does the tribe have to adopt the same due process rights for prisoners as the State process?

A 26. No. The Indian Civil Rights Act of 1968 (ICRA) prohibits tribes and tribal governments from enacting or enforcing laws that violate certain individual rights. It is similar to the Bill of Rights in the United States Constitution and extends similar protections against actions taken by tribes and tribal governments. Congress adopted the ICRA to ensure that tribal governments respect basic rights of Indians and non-Indians.

The ICRA specifically requires that tribes will not deny to any person within its jurisdiction the equal protection of its laws or deprive any person of liberty or property without due process of law.

Q 27. Is a tribe required to provide translators for individuals involved in a case, and if so, is this an expense that may be paid by the IV-D program?

A 27. There is no specific law that requires tribes to provide translators for individuals involved in IV-D cases. However, as a practical matter it would be difficult to provide appropriate due process without providing a translator in those cases in which one is required. This would be an allowable expense for the IV-D program.

Paternity

Q 28. In a contested paternity case, must a tribe provide for genetic testing if current tribal law does not address genetic testing?

A 28. Yes. The requirements for genetic testing are found at §309.100(a)(3) and state: "In a contested paternity case, (unless otherwise barred by Tribal law) require the child and all other parties to submit to genetic tests upon the request of any such party..." Tribal law must explicitly provide for genetic testing. However, there may be specific circumstances, such as a child being born during a marriage, that under tribal law or custom create a presumption of paternity which may not subsequently be challenged. "Otherwise barred by Tribal law" is intended to cover such situations where either by action of one or both of the parties or the application of tribal law, or both, paternity has already been conclusively determined and may not be reconsidered.

Q 29. Does the requirement of §309.100(a)(2) for tribes to "provide an alleged father the opportunity to voluntarily acknowledge paternity" mean that tribes must comply with state voluntary acknowledgement processes?

A 29. No. Tribes must provide an alleged father an opportunity to voluntarily acknowledge paternity in accordance with the tribe's established procedures if paternity has not been established already. Tribes are not required to do so in compliance with state processes but would be required to recognize a voluntary acknowledgement previously established in accordance with state processes.

Q 30. Must a tribe allow paternity disestablishment?

A 30. No. The Final Rule does not address paternity disestablishment.

Q 31. Must a tribe accept a default paternity issued by a state for enrollment purposes?

A 31. No. It is not the intent of the Final Rule to have any affect on enrollment procedures. Although the tribal courts and IV-D agency must honor default paternity orders from other jurisdictions for establishment and enforcement of child support

obligations that meet the requirements under the Full Faith and Credit for Child Support Orders Act, there is no requirement that default paternity orders be recognized for enrollment purposes.

Child Support Guidelines

Q 32. Is income received by tribal members from per capita payments and treaty rights or payments that are made to individual Indians by the Bureau of Indian Affairs (BIA) considered income for child support purposes?

A 32. It is up to each individual tribe. The regulation at section 309.110(a) requires that the tribal IV-D plan must include provisions for income withholding. Section 309.05 defines "income" as any periodic form of payment due to an individual regardless of source, except that a tribe may expressly decide to exclude per capita, trust or Individual Indian Money (IIM) payments. However, a tribe may choose to include per capita payments, treaty rights or payments made to individuals. If a tribe chooses to include per capita payments in its definition of income, then that money would be considered income for child support purposes.

We previously issued PIQ-82-07, *Procedures for Obtaining Access to Indian Trust Funds Subject to 25 U.S.C. 410*, in which we responded to a question concerning access to Indian trust funds to meet court-ordered child support obligations. Under section 410, only the Secretary of the Interior can approve access to trust funds for payment of any debts or claim against Indians. The Bureau of Indian Affairs indicated that a blanket waiver of 25 USC 410 funds would have little or no effect on child support collections from Indian parents because the lands in question have been subdivided through heirship and current income-producing land holdings of individuals of child bearing age are very small.

However, a IV-D agency may petition the tribal court to secure support payments for Indian children. If the noncustodial parent is entitled to trust funds which are subject to section 410, the tribal court may apply to BIA for a waiver to allow access to any income derived from that entitlement to meet the monthly support and/or arrearage payments.

Use of In-kind Payments for Support Obligations

Q 33. If a tribal order states the cash value of an in-kind obligation, must the state reduce the assigned support amount by the cash value if the payment is made in kind?

A 33. No. Section 309.105(a) prohibits the use of in-kind support payments to satisfy support obligations assigned to a state. In response to concerns raised by states, section 309.105(a)(3)(iii) mandates that non-cash payments will not be permitted to satisfy assigned obligations. The intent of this requirement was to address assignment under state TANF programs.

Q 34. May a support obligation be satisfied with in-kind support if the assignment of rights is to a tribal TANF program as a condition of receipt of tribal TANF?

A 34. Yes. Under tribal TANF regulations, tribes are not required to request an assignment of child support as a condition of receiving tribal TANF or to collect assigned support to reimburse tribal TANF payments to a family. Nothing in the tribal TANF or IV-D regulations prevents a tribal TANF program from accepting in-kind support as a method by which repayment of tribal TANF, or tribal TANF arrearages, can be made.

Q 35. If in-kind support is authorized to satisfy child support obligations, may the tribal Court Judge use his/her discretion in determining the amount and/or type of in-kind support?

A 35. A tribal plan must establish one set of child support guidelines by law or action of tribunal for setting and modifying child support obligations amounts. If a tribe intends to allow in-kind support to satisfy child support obligations, pursuant to §309.105(a)(3)(ii), the tribe must describe in its tribal plan and guidelines the type(s) of non-cash support that will be permitted to satisfy the support obligation and tribal support orders allowing non-cash support must also state the specific dollar amount of the support obligation. Section 309.105(a)(6) requires the application of guidelines unless there is a written finding or a specific finding on the record of the tribunal that the application of the guidelines would be unjust or inappropriate in a particular case in accordance with criteria established by the tribe. Therefore, in a particular case, a tribal judge could deviate from the types of in-kind support allowed in the tribe's guidelines and include a justification for the deviation.

Information Sharing

Q 36. May state IV-D programs provide child support case information to tribal IV-D programs for child support purposes?

A 36. Yes. 45 CFR section 302.36, as amended in 2004, requires state IV-D programs to extend their full range of available services to all tribal IV-D programs, including promptly opening a case where appropriate. This is now a state plan requirement. State child support enforcement regulations at 45 CFR 307.13(a)(1) continue to require state IV-D agencies to have written policies concerning the sharing of child support case information to the extent necessary to carry out the state IV-D program. In accordance with section 302.36(a)(2), a state's written policies must now include the manner in which all state IV-D information will be available to be shared with tribal IV-D programs, as needed. With protective policies in place, a state IV-D agency may share data with a tribal IV-D program to the extent necessary for working a state IV-D or tribal IV-D case. (See Q/A 55 also.)

Q 37. May a state IV-D program share child support information and data with a tribe that is not receiving Federal funding to operate a IV-D program but provides child support services for the tribe?

A 37. No. However, a state IV-D program may share information that is directly related to performing the functions of the IV-D program with a non-IV-D Tribal Child Support Enforcement program if the state has a cooperative agreement with the tribe to perform certain state IV-D functions, the data is necessary to perform those functions, and the tribe, through the cooperative agreement, is bound by the same confidentiality rules that apply to state IV-D programs. Pursuant to OCSE's Action Transmittal, AT-98-21, a state may enter into a cooperative agreement with a tribe. Within the cooperative agreement, states must ensure that the tribe agrees to comply with Federal and state law and regulations on safeguarding and confidentiality (OCSE Policy documents are available at http://www.acf.dhhs.gov/programs/cse/poldoc.htm).

Q 38. Is custodial and noncustodial parent address information that has been provided by the custodial or non-custodial parent, confidential information that the tribal IV-D program must safeguard?

A 38. There is no specific prohibition in the Final Rule on releasing address information that is provided by a custodial or noncustodial parent, with two exceptions. Section 309.80(b)(3) prohibits the release of information on the whereabouts of one party or the child to another party against whom a protective order with respect to the former party or the child has been entered. Section 309.80(b)(3) includes the same prohibition of information release if the tribe has reason to believe that the release of the information to that person may result in physical or emotional harm to the party or child.

Income Withholding

Q 39. Must a tribal IV-D program implement income withholding in all new cases or cases in which there is not a 30-day delinquency?

A 39. Yes, with two exceptions. Pursuant to §309.110(h)(1) and (2), a tribal IV-D program is not required to implement income withholding if either the custodial or noncustodial parent demonstrates, and the tribunal enters a finding, that there is good cause not to require income withholding; or a signed written agreement is reached between the noncustodial and custodial parent, which provides for an alternative arrangement, and is reviewed and entered into the record by the tribunal.

Q 40. If there is more than one income withholding order, may a tribe withhold income for only those cases that originate from a tribal court?

A 40. No. The Full Faith and Credit for Child Support Orders Act (FFCCSOA), 28 USC 1738B, requires tribes to enforce child support orders made by a court which had appropriate jurisdiction and afforded the parties a reasonable opportunity to be heard. This would include enforcement of the provision contained in most child support orders providing for income withholding. Pursuant to §309.110(m), if there is a request for services from a state or another tribe, the tribal IV-D agency must allocate withheld

amounts across multiple withholding orders to ensure that in no case shall allocation result in a withholding for one of the support obligations not being implemented.

Q 41. May a tribal IV-D agency use its own income withholding form provided it contains the same information that is included on the standard Federal income withholding form?

A 41. No. Section 309.110(l) requires a tribal IV-D agency to initiate income withholding by sending the noncustodial parent's employer a notice using the standard Federal income withholding form.

Q 42. How will a tribal employer be able to determine that a standard Federal income withholding order has been properly processed by the tribal court and/or IV-D program?

A 42. There are a several places on the current standard Federal income withholding form where the tribal court or IV-D program can indicate, for tribal employers, a contact person the employer may call with any questions.

OCSE recently issued Action Transmittal AT-04-05, *Revised Federal Order/Notice to Withhold Income for Child Support and Notice of an Order to Withhold Income for Child Support* dated July 15, 2004. The revisions to the Order/Notice reflect the mandate for use of the form by tribes and provide instructions on processing the orders/notices and determining the Consumer Credit Protection Act withholding limits. Throughout the form and instructions, modifications were made to include tribal child support enforcement requirements. We also note in the AT that tribal child support enforcement communities have income withholding laws that may differ from state laws.

The revised Order/Notice was reorganized to provide space for tribunal/court information (i.e., stamps) in addition to the tribunal/court case number. The signature lines were revised and the individual signing the Order/Notice must indicate what type of entity (government or non-government) he or she represents. Tribes may place their own tribal court stamp in the area for court information and place the program or court name underneath the signature line on the last page. This Action Transmittal, as well as the form and instructions may be found at:
http://www.acf.dhhs.gov/programs/cse/poldoc.htm.

Q 43. Must a tribal IV-D agency serve income withholding orders sent from other state and tribal IV-D programs on employers subject to the tribes' jurisdiction?

A 43. Yes. Pursuant to §309.110(n) the tribal IV-D agency is responsible for receiving and processing income withholding orders received from states, tribes and other entities, and ensuring orders are properly and promptly served on employers within the tribe's jurisdiction. The tribe may, if tribal law and/or procedures necessitate, process the order through its court or administrative process before serving the employer with the order.

Q 44. If the obligor is non-Indian and working for a tribal employer, must the tribal employer comply with a state income withholding order that is served directly upon the tribal employer?

A 44. No. If a state does not have jurisdiction over the tribal employer, then a state income withholding order must be processed through the tribal IV-D agency for full faith and credit pursuant to FFCCSOA prior to being served on the tribal employer. As stated earlier, pursuant to §309.110(n) a tribal IV-D agency is responsible for receiving and processing income withholding orders received from states, tribes and other entities, and ensuring orders are properly and promptly served on employers within the tribe's jurisdiction. However, there may be instances in which a tribe enters into an agreement with a state or another tribe allowing direct income withholding orders. Please see PIQ-Tribal-04-01, *Direct Income Withholding when Employers are Subject to a Tribe's Jurisdiction, Providing Tribal IV-D Services and Access to State Data.* This PIQ-Tribal may be found at: http://www.acf.dhhs.gov/programs/cse/poldoc.htm.

Q 45. How does Public Law 83-280, *Issues and Concerns for Victims of Crime in Indian Country*, (commonly referred to as Public Law 280) affect state income withholding orders served on tribal employers?

A 45. Public Law 280 was enacted in 1953 and the affected states received criminal and civil jurisdiction over Indians on reservations. There are six mandatory Public Law 280 states (California, Minnesota, Nebraska, Oregon, Wisconsin, and Alaska) and ten optional Public Law 280 states (Nevada, Florida, Idaho, Iowa, Washington, South Dakota, Montana, North Dakota, Arizona and Utah).

The law provides that a state can exert jurisdiction over *individual* tribal members. This jurisdiction is concurrent with the tribe's. Public Law 280 does not extend to jurisdiction over tribal employers. Unless otherwise agreed upon between a state and a tribe, and the state has no jurisdiction over the tribal employer, tribal employers are not required to honor state income withholding orders that are served directly upon tribal employers. Please see PIQ-Tribal-04-01, *Direct Income Withholding when Employers are Subject to a Tribe's Jurisdiction, Providing Tribal IV-D Services and Access to State Data.* This PIQ-Tribal may be found at: http://www.acf.dhhs.gov/programs/cse/poldoc.htm.

Q 46. If a state income withholding order is served directly on a tribal employer over whom the state has no jurisdiction (bypassing the tribal IV-D agency) and the tribal employer fails to respond to the income withholding order, may the tribal employer be held liable for the amounts of money that should have been withheld during the time that the tribal employer refused to recognize the direct state income withholding order?

A 46. No. In accordance with section 309.110(n), the tribal agency is responsible for receiving and processing income withholding orders from states, tribes and other entities and ensuring orders are properly and promptly served on employers within the tribe's jurisdiction. OCSE strongly encourages tribal IV-D agencies to work closely with tribal employers to ensure that orders are processed in accordance with the regulations and

children receive the support they are due. Once an order is served properly and promptly, in accordance with section 309.110(g), under tribal law, if an employer fails to withhold income in accordance with the provisions of the income withholding order, the employer will be liable for the accumulated amount the employer should have withheld from the noncustodial parent's income.

Q 47. What can a tribal IV-D agency do if it serves a standard Federal income withholding order on an employer doing business in a state and that employer refuses to comply with the income withholding order?

A 47. The Uniform Interstate Family Support Act (UIFSA) requires state employers to comply with direct income withholding orders received from other states. UIFSA defines "state" to include Indian tribes. All states have enacted UIFSA. Tribes have not been required to adopt UIFSA, but may apply its uniform rules for enforcing income withholding orders, thereby making use of the protections and advantages afforded to them under UIFSA and the regulations. Additionally, failure by state employers to comply with income withholding orders can result in sanctions under state law as mandated by 45 CFR §303.100(e). Lastly, a tribal IV-D agency may request assistance from the state in which the employer operates should the employer fail to respond.

Q 48. If a tribe is not receiving Federal funding for a IV-D program, must the tribe process income withholding orders in a particular manner?

A 48. No. Tribes that do not receive Federal funding for a tribal IV-D program are not required to comply with the income withholding or any other provisions of the Final Rule. Tribal law or the Tribal Court would determine how income withholding orders are processed. However, FFCCSOA applies to all tribes and requires tribes to enforce child support orders made by a court or administrative agency which had appropriate jurisdiction and afforded the parties a reasonable opportunity to be heard. This would include enforcement of orders providing for income withholding.

Distribution

Q 49. If a tribe has questions about the distribution scheme required under §309.115, whom should they contact?

A 49. Questions on the distribution scheme under §309.115 should be addressed to the tribal IV-D Program Specialist for the tribe's Federal Regional Office. OCSE is developing training on tribal IV-D program distribution requirements which should be available in 2005.

Q 50. Is there a timeframe within which a tribal IV-D program must distribute child support payments that are received from tribal employers or others?

A 50. No. There is no specific timeframe within which a tribal IV-D program must disburse child support payments that are received from tribal employers or others.

However, section 309.115(a) requires that a tribal IV-D program distribute child support payments in a timely manner.

Q 51. Is the chart on page 16664 of the Federal Register publication of the final rule accurate?

A 51. No. The chart below corrects the errors in the chart which was published in the Federal Register on March 30, 2004. The corrected language is underlined.

Tribal IV-D Case Type	Case 1	Case 2	Case 3	Case 4	Case 5	Case 6	Case 7	Case 8	Case 9
Current Tribal TANF case w/assignment			X		X				
Current Tribal TANF case w/o assignment		X						X	
Never Tribal TANF case	X		X			X			
Former Tribal TANF w/assignment							X		X
Request for services from State IV-D agency			X		X			X	X
No request for services from State IV-D agency	X	X		X		X	X		
Request for services from another Tribal IV-D agency						X			
No request for services from another Tribal IV-D agency	X	X	X	X	X		X	X	X

Distribution: The Tribal IV-D agency:

Cases 1 and 2: Must send all collections to the family.

Case 3: Must send all collections to the State IV-D agency for distribution under section 457 of the Act.*

Case 4: May retain collections up to the total amount of Tribal TANF paid to the family, then must send excess collections to the family.

Case 5: May retain collections up to the total amount of Tribal TANF paid to the family, then must send excess collections to the State IV-D agency for distribution under section 457 of the Act.*

Case 6: Must send all collections to the other Tribal IV-D agency for distribution under §309.115.

Case 7: Must send current support and any arrearages owed to the family to the family, may retain excess collections up to the total amount of Tribal TANF paid to the family, and must send any excess collections to the family.

Case 8: Must send all collections to the State IV-D agency for distribution under section 457 of the Act.*

Case 9: Must send all collections to the State IV-D agency for distribution under section 457 of the Act. *

*For cases 3, 5, 8 & 9: The Tribal IV-D agency may, rather than send collections to the State IV-D agency for distribution, contact the State IV-D agency to determine appropriate distribution, and distribute the collections as directed. Note: For cases 3, 5, 8, & 9, if there were a request for services from a Tribal IV-D agency instead of one from a State IV-D agency, the Tribal IV-D agency may, rather than send collections to the Tribal IV-D agency for distribution, contact the Tribal IV-D agency to determine appropriate distribution, and distribute the collections as directed.

Intergovernmental Cooperation

Q 52. What constitutes a request for assistance from a tribal or state IV-D program?

A 52. There is no mandated format for how a tribe or state requests assistance from another state or tribal IV-D agency. A request for assistance may be made in writing, through electronic referral (when tribes are receiving system services in a state system) or any other reasonable means. A voluntary form that may be useful for both states and tribes when making referrals is attached to this AT.

Q 53. Are tribal IV-D programs required to enforce state medical support obligations?

A 53. If a tribe is requested to enforce a child support order that contains provisions for cash medical support and/or health care coverage, such an order is entitled to full faith and credit provided the underlying order meets the requirements of FFCCSOA. There is no requirement at this time for tribal child support orders to include medical support. Indian Health Service healthcare services are considered to satisfy health insurance requirements if they are available to the child (See OCSE PIQ-93-07 and PIQ-94-07 for further information at http://www.acf.dhhs.gov/programs/cse/poldoc.htm).

Q 54. Do tribes and states have to assist each other with collections for obligations other than TANF and medical support, for example, in foster-care cases, or for court or legal fees?

A 54. Pursuant to §309.120, a tribal IV-D agency must extend the full range of services available under its IV-D plan to respond to all requests from and cooperate with, state and other tribal IV-D agencies, and recognize child support orders issued by other tribes and tribal organizations, and by states, in accordance with the requirements of the Full Faith and Credit for Child Support Order Act. FFCCSOA defines "child support order" to mean a judgment, decree, or order of a court requiring the payment of child support in periodic amounts or in a lump sum, and includes a permanent or temporary order, and an initial order or modification of an order. To the extent that support of such orders includes fees or interest, they must be enforced. However, court costs and legal fees are not considered to be child support. As long as there is an order for child support (or one can be established), it does not matter whether the request involves a foster care case.

Pursuant to §302.36, a state must extend the full range of services available under its IV-D plan to tribal IV-D programs.

Q 55. May a state IV-D program perform a locate-only service, or any other CSE service for a tribal IV-D program without having a written agreement with that tribal IV-D program?

A 55. Yes. Pursuant to §309.120 of the Final Rule for Tribes and the state requirements in §302.36, both state and tribal IV-D programs must extend the full range of services available under their IV-D plan to other IV-D agencies upon request. No agreement is required under Federal regulations. However, a close working relationship between state and tribal IV-D programs is essential to ensure both sides have a clear understanding of how a case will be worked. (See Q/A 36 also.)

Q 56. What is an appropriate role for state IV-D programs in assisting tribes during the start-up phase of a tribal IV-D program?

A 56. The appropriateness and level of interaction between a state and tribal IV-D program will need to be determined between the individual tribe and state. Based upon OCSE's Tribal/State Cooperation workgroup meetings, there does not appear to be a "one-size fits all" approach that can be taken. Some tribes will want, and some states will be able to provide, any training, education, or assistance that is needed. Some tribes will not request or need assistance from a state, and some tribes will want assistance but the state may not be able to provide the requested assistance.

The Tribal/State workgroup also agreed that it is critical that tribes and states interact and cooperate and, at a minimum, key state and tribal IV-D staff should exchange contact information. Tribes are not required to have any type of agreement, written or unwritten, with a state, in order to receive Federal funding for IV-D programs.

Q 57. May state or tribal IV-D programs charge another IV-D program for child support enforcement services in response to an intergovernmental request for assistance or for a request for limited services, for example locate-only services?

A 57. No. States must provide services in intergovernmental cases in accordance with section 303.7(d). While not explicitly addressed in the regulation, we believe a parallel requirement for tribes is appropriate. Section 309.120 includes no provision for assessing charges or fees for intergovernmental cases. Tribal IV-D programs may not charge another IV-D program for child support enforcement services in response to an intergovernmental request for assistance.

Q 58. May a tribal court or other entity that is not part of the tribal IV-D program charge the state IV-D program fees or costs for services provided?

A 58. Yes. A tribal court or other entity that is not part of the tribal IV-D program may charge fees or other costs for services provided.

Performance Measures

Q 59. Is a tribal IV-D program subject to the same performance measures and standards as state IV-D programs?

A 59. No. Section 309.65(a)(14) requires that a tribe submit tribally-determined performance targets for paternity establishment, support order establishment, amount of current support collected, amount of past due support to be collected and any other performance measures a tribe may want to submit. Tribes determine their own performance targets for each required measure and report the level of performance.

Q 60. Section 309.65(a)(14) provides for "any other performance measures" a tribe may want to submit. What are appropriate "other performance measures" that a tribe may report?

A 60. Based upon experience with the existing nine tribal IV-D programs, OCSE recognizes that tribes may have program priorities outside the performance measures listed in §309.65(a)(14). Any performance measure that is reasonably related to the functions of the IV-D program is acceptable.

Tribal TANF

Q 61. Must a tribal or state IV-D program take affirmative action to determine if another state or tribe has paid TANF on behalf of a family?

A 61. No. There is no Federal law or regulation that requires a state or tribe to affirmatively determine if another state or tribe has paid TANF to a family. However, most state and tribal application processes include inquiries into past receipt of TANF benefits.

Q 62. If a tribe does not require assignment of support rights as a condition of receipt of tribal TANF and all payments are passed through to the family, will this reduce the family's eligibility for the TANF grant?

A 62. It depends on the tribe's TANF eligibility requirements. Pursuant to §286.75(a)(1), tribes have the flexibility to define eligibility criteria for the receipt of TANF as well as what may be considered as income to the family. A family may still be eligible for TANF, even with the receipt of child support, if the tribe chooses to exclude child support payments from their definition of income. If the tribe counts child support payments as income under its tribal TANF rules, a family's TANF eligibility may be affected.

Q 63. If a tribal TANF program overpays tribal TANF to a family that is receiving, or has received tribal TANF, can the tribal TANF program retain child support payments to reimburse the TANF overpayment?

A 63. Child support collections must be distributed as support in accordance with Federal requirements. If there is an assignment to the tribe of support rights as a condition of receipt of tribal TANF, the tribe may retain assigned support payments, up to the total amount of tribal TANF paid to a family receiving tribal TANF.

Q 64. What are the distribution requirements for a tribal TANF program when the tribe does not have a tribal IV-D Program?

A 64. Section 286.155(b)(1) requires tribal TANF programs to have procedures for ensuring that child support collections in excess of the amount of tribal TANF assistance received by the family will not be retained by the tribe.