

CHAPTER III—OFFICE OF CHILD SUPPORT
ENFORCEMENT (CHILD SUPPORT
ENFORCEMENT PROGRAM), ADMINISTRATION
FOR CHILDREN AND FAMILIES, DEPARTMENT
OF HEALTH AND HUMAN SERVICES

EDITORIAL NOTE: Nomenclature changes to chapter III appear at 66 FR 39452, July 31, 2001.

<i>Part</i>		<i>Page</i>
300	[Reserved]	
301	State plan approval and grant procedures	215
302	State plan requirements	220
303	Standards for program operations	235
304	Federal financial participation	264
305	Program performance measures, standards, financial incentives, and penalties	272
306	[Reserved]	
307	Computerized support enforcement systems	284
308	Annual State self-assessment review and report	296
309	Tribal child support enforcement (IV-D) program ..	301
310	Comprehensive tribal child support enforcement (CSE) programs	319
311-399	[Reserved]	

PART 300 [RESERVED]

PART 301—STATE PLAN APPROVAL AND GRANT PROCEDURES

- Sec.
- 301.0 Scope and applicability of this part.
- 301.1 General definitions.
- 301.10 State plan.
- 301.11 State plan; format.
- 301.12 Submittal of State plan for Governor's review.
- 301.13 Approval of State plans and amendments.
- 301.14 Administrative review of certain administrative decisions.
- 301.15 Grants.
- 301.16 Withholding of advance funds for not reporting.

AUTHORITY: 42 U.S.C. 651 through 658, 660, 664, 666, 667, 1301, and 1302.

SOURCE: 40 FR 27157, June 26, 1975, unless otherwise noted.

§301.0 Scope and applicability of this part.

This part deals with the administration of title IV-D of the Social Security Act by the Federal Government including actions on the State plan and amendments thereto and review of such actions; grants under the approved plan; review and audit of State and local expenditures; and reconsideration of disallowances of expenditures for Federal financial participation.

§301.1 General definitions.

When used in this chapter, unless the context otherwise indicates:

Act means the Social Security Act, and the title referred to is title IV-D of that Act.

Applicable matching rate means the rate of Federal funding of State IV-D programs' administrative costs for the appropriate fiscal year. The applicable matching rate for FY 1990 and thereafter is 66 percent.

Assigned support obligation means, unless otherwise specified, any support obligation which has been assigned to the State under section 408(a)(3) of the Act or section 471(a)(17) of the Act, or any medical support obligation or payment for medical care from any third party which has been assigned to the State under 42 CFR 433.146.

Assignment means, unless otherwise specified, any assignment of rights to

support under section 408(a)(3) of the Act or section 471(a)(17) of the Act, or any assignment of rights to medical support and to payment for medical care from any third party under 42 CFR 433.146.

Birthing hospital means a hospital that has an obstetric care unit or provides obstetric services, or a birthing center associated with a hospital. A birthing center is a facility outside a hospital that provides maternity services.

Central registry means a single unit or office within the State IV-D agency which receives, disseminates and has oversight responsibility for processing incoming interstate IV-D cases, including UIFSA petitions and requests for wage withholding in IV-D cases and, at the option of the State, intrastate IV-D cases.

Department means the Department of Health and Human Services.

Director means the Director, Office of Child Support Enforcement, who is the Secretary's designee to administer the Child Support Enforcement program under title IV-D.

Federal PLS means the Parent Locator Service operated by the Office of Child Support Enforcement pursuant to section 452(a)(9) of the Act.

IV-D Agency means the single and separate organizational unit in the State that has the responsibility for administering or supervising the administration of the State plan under title IV-D of the Act.

Medicaid means medical assistance provided under a State plan approved under title XIX of the Act.

Medicaid agency means the single State agency that has the responsibility for the administration of, or supervising the administration of, the State plan under title XIX of the Act.

Non-IV-A Medicaid recipient means any individual who has been determined eligible for or is receiving Medicaid under title XIX of the Act but is not receiving, nor deemed to be receiving, title IV-A under title IV-A of the Act.

Office means the Office of Child Support Enforcement which is the separate organizational unit within the Department with the responsibility for the

§ 301.10

administration of the program under this title.

Overdue support means a delinquency pursuant to an obligation determined under a court order, or an order of an administrative process established under State law, for support and maintenance of a minor child, which is owed to or on behalf of the child, or for the noncustodial parent's spouse (or former spouse) with whom the child is living, but only if a support obligation has been established with respect to the spouse and the support obligation established with respect to the child is being enforced under State's IV-D plan. At the option of the State, overdue support may include amounts which otherwise meet the definition in the previous sentence but which are owed to or on behalf of a child who is not a minor child. The option to include support owed to children who are not minors applies independently to the procedures required under §302.70 of this chapter.

Past-due support means the amount of support determined under a court order or an order of an administrative process established under State law for support and maintenance of a child or of a child and the parent with whom the child is living, which has not been paid. For purposes of referral for Federal income tax refund offset of support due an individual who is receiving services under §302.33 of this chapter, *past-due support* means support owed to or on behalf of a qualified child, or a qualified child and the parent with whom the child is living if the same support order includes support for the child and the parent.

Political subdivision means a legal entity of the State as defined by the State, including a legal entity of the political subdivision so defined, such as a Prosecuting or District Attorney or a Friend of the Court.

Procedures means a written set of instructions which describe in detail the step by step actions to be taken by child support enforcement personnel in the performance of a specific function under the State's IV-D plan. The IV-D agency may issue general instructions on one or more functions, and delegate responsibility for the detailed procedures to the office, agency, or political

45 CFR Ch. III (10-1-04 Edition)

subdivision actually performing the function.

Qualified child means a child who is a minor or who, while a minor, was determined to be disabled under title II or XVI of the Act, and for whom a support order is in effect.

Regional Office and *Central Office* refer to the Regional Offices and the Central Office of the Office of Child Support Enforcement, respectively.

Secretary means the Secretary of Health and Human Services.

Spousal support means a legally enforceable obligation assessed against an individual for the support of a spouse or former spouse who is living with a child or children for whom the individual also owes support.

State means the several States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam and American Samoa.

The *State plan* means the State plan for child and spousal support under section 454 of the Act.

State PLS means the service established by the IV-D agency pursuant to section 454(8) of the Act to locate parents.

[47 FR 57280, Dec. 23, 1982, as amended at 50 FR 19647, May 9, 1985; 50 FR 23958, June 7, 1985; 50 FR 31719, Aug. 6, 1985; 53 FR 5256, Feb. 22, 1988; 54 FR 32308, Aug. 4, 1989; 56 FR 8002, Feb. 26, 1991; 57 FR 30429, July 9, 1992; 58 FR 41437, Aug. 4, 1993; 59 FR 66249, Dec. 23, 1994; 61 FR 67240, Dec. 20, 1996; 64 FR 6247, Feb. 9, 1999; 68 FR 25303, May 12, 2003]

§ 301.10 State plan.

The State plan is a comprehensive statement submitted by the IV-D agency describing the nature and scope of its program and giving assurance that it will be administered in conformity with the specific requirements stipulated in title IV-D, the regulations in Subtitle A and this chapter of this title, and other applicable official issuances of the Department. The State plan contains all information necessary for the Office to determine whether the plan can be approved, as a basis for Federal financial participation in the State program.

§ 301.11 State plan; format.

The State plan must be submitted to the Office in the format and containing

the information prescribed by the Office, and within time limits set in implementing instructions issued by the Office. Such time limits will be adequate for proper preparation of plans and submittal in accordance with the requirements for State Governors' review (see § 301.12 of this chapter).

(Approved by the Office of Management and Budget under control number 0960-0253)

[40 FR 27147, June 26, 1975, as amended at 51 FR 37730, Oct. 24, 1986]

§ 301.12 Submittal of State plan for Governor's review.

The State plan must be submitted to the State Governor for his review and comments, and the State plan must provide that the Governor will be given opportunity to review State plan amendments and long-range program planning projections or other periodic reports thereon. This requirement does not apply to periodic statistical or budget and other fiscal reports. Under this requirement, the Office of the Governor will be afforded a specified period in which to review the material. Any comments made will be transmitted to the Office with the documents.

(Approved by the Office of Management and Budget under control number 0960-0253)

[40 FR 27147, June 26, 1975, as amended at 51 FR 37730, Oct. 24, 1986]

§ 301.13 Approval of State plans and amendments.

The State plan consists of written documents furnished by the State to cover its Child Support Enforcement program under title IV-D of the Act. After approval of the original plan by the Office, all relevant changes, required by new statutes, rules, regulations, interpretations, and court decisions, are required to be submitted currently so that the Office may determine whether the plan continues to meet Federal requirements and policies.

(a) *Submittal.* State plans and revisions of the plans are submitted first to the State governor or his designee for review in accordance with § 301.12, and then to the regional office. The States are encouraged to obtain consultation of the regional staff when a plan is in process of preparation or revision.

(b) *Review.* The Office of Child Support Enforcement in the regional offices is responsible for review of State plans and amendments. It also initiates discussion with the IV-D agency on clarification of significant aspects of the plan which come to its attention in the course of this review. State plan material on which the regional staff has questions concerning the application of Federal policy is referred with recommendations as required to the Office of Child Support Enforcement in the central office for technical assistance. Comments and suggestions, including those of consultants in specified areas, may be prepared by the central office for use by the regional staff in negotiations with the IV-D agency.

(c) *Action.* The Regional Office exercises delegated authority to take affirmative action on the State plan and amendments thereto on the basis of policy statements or precedents previously approved by the Director. The Director retains authority for determining that proposed plan material is not approvable, or that a previously approved plan no longer meets the requirements for approval, except that a final determination of disapproval may not be made without prior consultation and discussion by the Director with the Secretary. The Regional Office or the Director formally notifies the IV-D agency of the actions taken on the State plan or revisions thereto.

(d) *Basis for approval.* Determinations as to whether the State plan (including plan amendments and administrative practice under the plan) originally meets or continues to meet the requirements for approval are based on relevant Federal statutes and regulations. Guidelines are furnished to assist in the interpretation of the regulations.

(e) *Prompt approval of the State plan.* The determination as to whether the State plan submitted for approval conforms to the requirements for approval under the Act and regulations issued pursuant thereto shall be made promptly and not later than the 90th day following the date on which the plan submittal is received in the regional office, unless the Regional Office has secured from the IV-D agency

§ 301.14

a written agreement to extend that period.

(f) *Prompt approval of plan amendments.* Any amendment of an approved State plan may, at the option of the State, be considered as a submission of a new State plan. If the State requests that such amendments be so considered, the determination as to its conformity with the requirements for approval shall be made promptly and not later than the 90th day following the date on which such a request is received in the Regional Office with respect to an amendment that has been received in such office, unless the Regional Commissioner has secured from the State agency a written agreement to extend that period.

(g) *Effective date.* The effective date of a new plan may not be earlier than the first day of the calendar quarter in which an approvable plan is submitted.

(Approved by the Office of Management and Budget under control number 0960-0253)

[40 FR 27147, June 26, 1975, as amended at 51 FR 37730, Oct. 24, 1986]

§ 301.14 Administrative review of certain administrative decisions.

Any State dissatisfied with a determination of the Director pursuant to § 301.13 (e) or (f) with respect to any plan or amendment may, within 60 days after the date of receipt of notification of such determination, file a petition with the Regional Office asking the Director for reconsideration of the issue of whether such plan or amendment conforms to the requirements for approval under the Act and pertinent Federal requirements. Within 30 days after receipt of such a petition, the Director shall notify the State of the time and place at which the hearing for the purpose of reconsidering such issue will be held. Such hearing shall be held not less than 30 days nor more than 60 days after the date notice of such hearing is furnished to the State, unless the Director and the State agree in writing on another time. The hearing procedures contained in 45 CFR part 213 applicable to § 201.4 of this title shall apply to reconsiderations brought under this section. A determination affirming, modifying, or reversing the Director's original decision will be made within 60 days of the conclusion

45 CFR Ch. III (10-1-04 Edition)

of the hearing. Action pursuant to an initial determination by the Director described in such § 301.1 (e) or (f) that a plan or amendment is not approvable shall not be stayed pending the reconsideration, but in the event that the Director subsequently determines that his original decision was incorrect he shall certify restitution forthwith in a lump sum of any funds incorrectly withheld or otherwise denied.

§ 301.15 Grants.

To States with approved plans, a grant is made each quarter for expenditures under the plan for the administration of the Child Support Enforcement program. The determination as to the amount of a grant to be made to a State is based upon documents submitted by the IV-D agency containing information required under the Act and such other pertinent facts as may be found necessary.

(a) *Form and manner of submittal—*

(1) *Time and place.* An estimate for a grant for each quarterly period must be forwarded to the Regional Office 45 days prior to the period of the estimate. It includes a certification of State funds and a justification statement in support of the estimate. A statement of quarterly expenditures and any necessary supporting schedules must be forwarded to the Department of Health and Human Services, Administration for Children and Families, Office of Program Support, Division of Formula, Entitlement and Block Grants, 370 L'Enfant Promenade, S.W., Washington, DC 20447, not later than 30 days after the end of the quarter.

(2) *Description of forms.* "State Agency Expenditure Projection—Quarterly Projection by Program" represents the IV-D agency's estimate of the total amount and the Federal share of expenditures for the administration of the title IV-D program for the quarter. From this estimate the State and Federal shares of the total expenditures are computed. The State's computed share of total estimated expenditures is the amount of State and local funds necessary for the quarter. The Federal share is the basis for the funds to be advanced for the quarter. The agency

must also certify, on this form or otherwise, the amount of State funds (exclusive of any balance of advances received from the Federal Government) actually on hand and available for expenditure; this certification must be signed by the executive officer of the IV-D agency submitting the estimate or a person officially designated by him, or by a fiscal officer of the State if required by State law or regulation. (A form "Certificate of Availability of State Funds for Assistance and Administration during Quarter" is available for submitting this information, but its use is optional.) If the amount of State funds (or State and local funds if localities participate in the program), shown as available for expenditures is not sufficient to cover the State's proportionate share of the amount estimated to be expended, the certification must contain a statement showing the source from which the amount of the deficiency is expected to be derived and the time when this amount is expected to be made available.

(3) The IV-D agency must also submit a quarterly statement of expenditures for the title IV-D program. This is an accounting statement of the disposition of the Federal funds granted for past periods and provides the basis for making the adjustments necessary when the State's estimate for any prior quarter was greater or less than the amount the State actually expended in that quarter. The statement of expenditures also shows the share of the Federal Government in any recoupment, from whatever source, of expenditures claimed in any prior period, and also in expenditures not properly subject to Federal financial participation which are acknowledged by the IV-D agency or have been revealed in the course of an audit.

(b) *Review.* The State's estimate is analyzed by the regional office and is forwarded with recommendations as required to the central office. The central office reviews the State's estimate, other relevant information, and any adjustments to be made for prior periods, and computes the grant.

(c) *Grant award.* The grant award computation form shows the amount of the estimate for the ensuing quarter, and the amounts by which the estimate

is reduced or increased because of over- or under-estimate for the prior quarter and for other adjustments. This form is transmitted to the IV-D agency to draw the amount of the grant award as needed, to meet the Federal share of disbursements. The draw is through a commercial bank and the Federal Reserve system against a continuing letter of credit certified to the Secretary of the Treasury in favor of the State payee. A notice of the amount of the grant award is sent to the State Central Information Reception Agency in accord with section 201 of the Intergovernmental Cooperation Act of 1968.

(d) *Letter of credit payment system.* The letter of credit system for payment of advances of Federal funds was established pursuant to Treasury Department regulations. (Circular No. 1075), published in the FEDERAL REGISTER on July 11, 1967 (32 FR 10201). The HHS "Instructions to Recipient Organizations for Use of Letter of Credit" was transmitted to all grantees by memorandum from the Assistant Secretary-Comptroller on January 15, 1968.

(e) *General administrative requirements.* With the following exceptions, the provisions of part 74 of this title, establishing uniform administrative requirements and cost principles, shall apply to all grants made to States under this part:

45 CFR PART 74

45 CFR 74.23 Cost Sharing or Matching.

45 CFR 74.52 Financial Reporting.

(Approved by the Office of Management and Budget under control numbers 0960-0239 and 0960-0235)

[40 FR 27147, June 26, 1975, as amended at 51 FR 37731, Oct. 24, 1986; 61 FR 67240, Dec. 20, 1996]

§ 301.16 Withholding of advance funds for not reporting.

(a) No advance for any quarter will be made unless full and complete reports on expenditures and collections, as required by §§ 301.15 and 302.15 of this chapter, respectively, have been submitted to the Office by the IV-D agency for all quarters with the exception of the two quarters immediately preceding the quarter for which the advance is to be made.

Pt. 302

45 CFR Ch. III (10–1–04 Edition)

(b) For purposes of this section, a report is full and complete if:

(1) All line items of information are reported in accordance with OCSE instructions; and

(2) The report contains all applicable information available to the State and appropriate for inclusion in the report for the quarter being reported and prior quarters.

(Collection reporting form approved by the Office of Management and Budget under control number 0960–0238 and expenditure reporting form approved under control number 0960–0235)

[47 FR 8570, Mar. 1, 1982]

PART 302—STATE PLAN REQUIREMENTS

Sec.

- 302.0 Scope of this part.
- 302.1 Definitions.
- 302.10 Statewide operations.
- 302.11 State financial participation.
- 302.12 Single and separate organizational unit.
- 302.13 Plan amendments.
- 302.14 Fiscal policies and accountability.
- 302.15 Reports and maintenance of records.
- 302.17 Inclusion of State statutes.
- 302.19 Bonding of employees.
- 302.20 Separation of cash handling and accounting functions.
- 302.30 Publicizing the availability of support enforcement services.
- 302.31 Establishing paternity and securing support.
- 302.32 Collection and disbursement of support payments by the IV–D Agency.
- 302.33 Service to individuals not receiving title IV–A or title IV–E foster care assistance.
- 302.34 Cooperative arrangements.
- 302.35 State parent locator service.
- 302.36 Provisions of services in interstate and intergovernmental IV–D cases.
- 302.37 [Reserved]
- 302.38 Payments to the family.
- 302.39 Standards for program operation.
- 302.40 [Reserved]
- 302.50 Assignment of rights to support.
- 302.51 Distribution of support collections.
- 302.52 Distribution of support collected in Title IV–E foster care maintenance cases.
- 302.54 Notice of collection of assigned support.
- 302.55 Incentive payments to States and political subdivisions.
- 302.56 Guidelines for setting child support awards.
- 302.60 Collection of past-due support from Federal tax refunds.

302.65 Withholding of unemployment compensation.

302.70 Required State laws.

302.75 Procedures for the imposition of late payment fees on noncustodial parents who owe overdue support.

302.80 Medical support enforcement.

302.85 Mandatory computerized support enforcement system.

AUTHORITY: 42 U.S.C. 651 through 658, 660, 664, 666, 667, 1302, 1396a(a)(25), 1396b(d)(2), 1396b(o), 1396b(p), 1396(k).

SOURCE: 40 FR 27159, June 26, 1975, unless otherwise noted.

EDITORIAL NOTE: Nomenclature changes to part 302 appear at 64 FR 6247, Feb. 9, 1999.

§ 302.0 Scope of this part.

This part defines the State plan provisions required for an approved plan under title IV–D of the Act.

§ 302.1 Definitions.

The definitions found in § 301.1 of this chapter also are applicable to this part.

§ 302.10 Statewide operations.

The State plan shall provide that:

(a) It will be in operation on a statewide basis in accordance with equitable standards for administration that are mandatory throughout the State;

(b) If administered by a political subdivision of the State, the plan will be mandatory on such political subdivision;

(c) The IV–D agency will assure that the plan is continuously in operation in all appropriate offices or agencies through:

(1) Methods for informing staff of State policies, standards, procedures and instructions; and

(2) Regular planned examination and evaluation of operations in local offices by regularly assigned State staff, including regular visits by such staff; and through reports, controls, or other necessary methods.

§ 302.11 State financial participation.

The State plan shall provide that the State will participate financially in the program.

§ 302.12 Single and separate organizational unit.

(a) The State plan shall provide for the establishment or designation of a

single and separate organizational unit to administer the IV-D plan. Such unit is referred to as the IV-D agency. Under this requirement:

(1) The IV-D agency may be:

(i) Located in any other agency of the State; or,

(ii) Established as a new agency of the State.

(2) The IV-D agency shall be responsible and accountable for the operation of the IV-D program. Except as provided in §303.20 of this part, the agency need not perform all the functions of the IV-D program so long as it insures that all these functions are being carried out properly, efficiently, and effectively;

(3) If the IV-D agency delegates any of the functions of the IV-D program to any other State or local agency or official, or any official with whom a cooperative agreement as described in §302.34 has been entered into or purchases services from any person or private agency pursuant to §304.22 of this part, the IV-D agency shall have responsibility for securing compliance with the requirements of the State plan by such agency or officials.

(b) The State plan shall describe the structure of the IV-D agency and the distribution of responsibilities among the major divisions within the unit, and if it is located within another agency, show its place in such agency. If any of the IV-D program functions are to be performed outside of the IV-D agency then these functions shall be listed with the name of the organization responsible for performing them.

(Approved by the Office of Management and Budget under control number 0960-0253)

[40 FR 27159, June 26, 1975, as amended at 51 FR 37731, Oct. 24, 1986; 64 FR 6247, Feb. 9, 1999]

§ 302.13 Plan amendments.

(a) The State plan shall provide that the plan will be amended whenever necessary to reflect new or revised Federal statutes or regulations, or material change in any phase of State law, organization, policy of IV-D agency operation.

(b) *Federal financial participation.* Except where otherwise provided, Federal financial participation is available in the additional expenditures resulting

from an amended provision of the State plan as of the first day of the calendar quarter in which an approvable amendment is submitted or the date on which the amended provision becomes effective in the State, whichever is later.

(Approved by the Office of Management and Budget under control number 0960-0253)

[40 FR 27159, June 26, 1975, as amended at 51 FR 37731, Oct. 24, 1986]

§ 302.14 Fiscal policies and accountability.

The State plan shall provide that the IV-D agency, in discharging its fiscal accountability, will maintain an accounting system and supporting fiscal records adequate to assure that claims for Federal funds are in accord with applicable Federal requirements. The retention and custodial requirements for these records are prescribed in 45 CFR part 74.

§ 302.15 Reports and maintenance of records.

The State plan shall provide that:

(a) The IV-D agency will maintain records necessary for the proper and efficient operation of the plan, including records regarding:

(1) Applications pursuant to §302.33 for support services available under the State plan;

(2) Location of noncustodial parents, actions to establish paternity and obtain and enforce support, and the costs incurred in such actions;

(3) Amount and sources of support collections and the distribution of these collections;

(4) Any fees charged or paid for support enforcement services;

(5) Any other administrative costs;

(6) Any other information required by the Office; and

(7) Statistical, fiscal, and other records necessary for reporting and accountability required by the Secretary. The retention and custodial requirements for these records are prescribed in 45 CFR part 74.

(b) The IV-D agency will make such reports in such form and containing such information, as the Secretary may from time to time require, and comply with such provisions as he may

§ 302.17

from time to time find necessary to assure the correctness and verification of such reports.

(Approved by the Office of Management and Budget under control numbers 0960-0154, 0960-0226 and 0960-0238)

[40 FR 27159, June 26, 1975, as amended at 47 FR 57281, Dec. 23, 1982; 48 FR 51917, Nov. 15, 1983; 51 FR 37731, Oct. 24, 1986; 61 FR 67240, Dec. 20, 1996]

§ 302.17 Inclusion of State statutes.

The State plan shall provide a copy of State statutes, or regulations promulgated pursuant to such statutes and having the force of law (including citations of such statutes and regulations), that provide procedures to determine the paternity of a child born out of wedlock, to establish the child support obligation of a responsible parent, and to enforce a support obligation, including spousal support if appropriate.

(Approved by the Office of Management and Budget under control numbers 0960-0253 and 0960-0385)

[50 FR 19647, May 9, 1985, as amended at 51 FR 37731, Oct. 24, 1986]

§ 302.19 Bonding of employees.

The State plan shall provide that the following requirements and criteria to bond employees are in effect:

(a) *IV-D responsibility.* The IV-D agency will insure that every person, who has access to or control over funds collected under the child support enforcement program, is covered by a bond against loss resulting from employee dishonesty.

(b) *Scope.* The requirement in paragraph (a) of this section applies to every person who, as a regular part of his or her employment, receives, disburses, handles or has access to support collections, which includes:

(1) IV-D agency employees and employees of any other State or local agency to which IV-D functions have been delegated.

(2) Employees of a court or law enforcement official performing under a cooperative agreement with the IV-D agency.

(3) Employees of any private or governmental entity from which the IV-D agency purchases services.

45 CFR Ch. III (10-1-04 Edition)

(c) *Bond.* The bond will be for an amount which the State IV-D agency deems adequate to indemnify the State IV-D program for loss resulting from employee dishonesty.

(d) *Self-bonding System.* A State or political subdivision may comply with the requirement in paragraph (a) of this section:

(1) By means of a self-bonding system established under State law or,

(2) In the case of a political subdivision, by means of a self-bonding system approved by the State IV-D agency.

(e) *IV-D liability.* The requirements of this section do not reduce or limit the ultimate liability of the IV-D agency for losses of support collections from the State's IV-D program.

[44 FR 28803, May 17, 1979; 44 FR 45137, Aug. 1, 1979, as amended at 47 FR 57281, Dec. 23, 1982]

§ 302.20 Separation of cash handling and accounting functions.

The State plan shall provide that the following requirements and criteria to separate the cash handling and accounting functions are in effect.

(a) *IV-D responsibility.* The IV-D agency will maintain methods of administration designed to assure that persons responsible for handling cash receipts of support do not participate in accounting or operating functions which would permit them to conceal in the accounting records the misuse of support receipts. Such methods of administration shall follow generally recognized accounting standards.

(b) *Scope.* The requirement in paragraph (a) of this section applies to persons who participate in the collection, accounting or operating functions which include:

(1) IV-D agency employees and employees of any other State or local agency to which IV-D functions have been delegated.

(2) Employees of a court or law enforcement official performing under a cooperative agreement with the IV-D agency.

(3) Employees of any private or governmental entity from which the IV-D agency purchases services.

(c) *Exception.* The Regional Office may grant a waiver to sparsely populated geographical areas, where the requirements in paragraph (a) of this section would necessitate the hiring of unreasonable numbers of additional staff. The IV-D agency must document such administrative infeasibility and provide an alternative system of controls that reasonably insures that support collections will not be misused.

[44 FR 28803, May 17, 1979, as amended at 47 FR 57281, Dec. 23, 1982]

§ 302.30 Publicizing the availability of support enforcement services.

Effective October 1, 1985, the State plan shall provide that the State will publicize regularly and frequently the availability of support enforcement services under the plan through public service announcements. Publicity must include information on any application fees which may be imposed for such services and a telephone number or postal address where further information may be obtained.

(Approved by the Office of Management and Budget under control number 0960-0385)

[50 FR 19647, May 9, 1985, as amended at 51 FR 37731, Oct. 24, 1986]

§ 302.31 Establishing paternity and securing support.

The State plan shall provide that:

(a) The IV-D agency will undertake:

(1) In the case of a child born out of wedlock with respect to whom an assignment as defined in § 301.1 of this chapter is effective, to establish the paternity of such child; and

(2) In the case of any individual with respect to whom an assignment as defined in § 301.1 of this chapter is effective, to secure support for a child or children from any person who is legally liable for such support, using State laws regarding intrastate and interstate establishment and enforcement of support obligations. Effective October 1, 1985, this includes securing support for a spouse or former spouse who is living with the child or children, but only if a support obligation has been established for that spouse and the child support obligation is being enforced under the title IV-D State plan.

(3) When assigned medical support payments are received and retained by a non-IV-A Medicaid recipient, the IV-D agency shall notify the Medicaid agency whenever it discovers that directly received medical support payments are being, or have been, retained.

(b) Upon receiving notice of a claim of good cause for failure to cooperate, the IV-D agency will suspend all activities to establish paternity or secure support until notified of a final determination by the appropriate agency.

(c) The IV-D agency will not undertake to establish paternity or secure support in any case for which it has received notice that there has been a finding of good cause unless there has been a determination that support enforcement may proceed without the participation of the caretaker or other relative. If there has been such a determination, the IV-D agency will undertake to establish paternity or secure support but may not involve the caretaker or other relative in such undertaking.

(Approved by the Office of Management and Budget under control numbers 0960-0385 and 0970-0107)

[50 FR 19647, May 9, 1985, as amended at 51 FR 25526, July 15, 1986; 51 FR 37731, Oct. 24, 1986; 56 FR 8003, Feb. 26, 1991; 64 FR 6247, Feb. 9, 1999; 68 FR 25303, May 12, 2003]

§ 302.32 Collection and disbursement of support payments by the IV-D Agency.

The State plan shall provide that effective October 1, 1998 (or October 1, 1999, for States which paid support through courts on August 22, 1996,):

(a) In any case in which support payments are collected for a recipient of aid under the State's title IV-A plan with respect to whom an assignment under section 408(a)(3) of the Act is effective, such payments shall be made to the State disbursement unit and shall not be paid directly to the family.

(b) Timeframes for disbursement of support payments by State disbursement unit (SDU) under section 454B of the Act.

(1) In interstate IV-D cases, amounts collected by the responding State on behalf of the initiating State must be

§ 302.33

forwarded to the initiating State within 2 business days of the date of receipt by the SDU in the responding State, in accordance with § 303.7(c)(7)(iv).

(2) Amounts collected by the IV-D agency on behalf of recipients of aid under the State's title IV-A or IV-E plan for whom an assignment under sections 408(a)(3) or 471(a)(17) of the Act is effective shall be disbursed by the SDU within the following timeframes:

(i) Except as specified under paragraph (b)(2)(iv) of this section, if the SDU sends payment to the family (other than payments sent to the family from the State share of assigned support collections), the SDU must send these payments within 2 business days of the end of the month in which the payment was received by the SDU. Any payment passed through to the family from the State share of assigned support collections must be sent to the family within 2 business days of the date of receipt by the SDU.

(ii) Except as specified under paragraph (b)(2)(iv) of this section, when the SDU sends collections to the family for the month after the month the family becomes ineligible for title IV-A, the SDU must send collections to the family within 2 business days of the date of receipt by the SDU.

(iii) Except as specified under paragraph (b)(2)(iv) of this section, when the SDU sends collections to the IV-E foster care agency under § 302.52(b)(2) and (4) of this part, the SDU must send collections to the IV-E agency within 15 business days of the end of the month in which the support was received by the SDU.

(iv) Collections as a result of Federal income tax refund offset paid to the family under section 457(a)(2)(iv) of the Act or distributed in title IV-E foster care cases under § 302.52(b)(4) of this part, must be sent to the IV-A family or IV-E agency, as appropriate, within 30 calendar days of the date of initial receipt by the IV-D agency, unless State law requires a post-offset appeal process and an appeal is filed timely, in which case the SDU must send any payment to the IV-A family or IV-E agency within 15 calendar days of the date the appeal is resolved.

(3)(i) Except as provided under paragraph (b)(3)(ii) of this section, amounts

45 CFR Ch. III (10-1-04 Edition)

collected on behalf of individuals receiving services under § 302.33 of this part shall be disbursed by the SDU pursuant to section 457 of the Act, within 2 business days of receipt by the SDU.

(ii) Collections due the family under section 457(a)(2)(iv) of the Act as a result of Federal income tax refund offset must be sent to the family within 30 calendar days of the date of initial receipt in the IV-D agency, except:

(A) If State law requires a post-offset appeal process and an appeal is timely filed, in which case the SDU must send any payment to the family within 15 calendar days of the date the appeal is resolved; or

(B) As provided in § 303.72(h)(5) of this chapter.

[64 FR 6247, Feb. 9, 1999, as amended at 68 FR 25303, May 12, 2003]

§ 302.33 Services to individuals not receiving title IV-A or title IV-E foster care assistance.

(a) *Availability of Services.* (1) The State plan must provide that the services established under the plan shall be made available to any individual who:

(i) Files an application for the services with the IV-D agency. In an interstate case, only the initiating State may require an application under this section; or

(ii) Is a non-IV-A Medicaid recipient; or

(iii) Has been receiving IV-D services and is no longer eligible for assistance under the title IV-A, IV-E foster care, and Medicaid program.

(2) The State may not require an application, other request for services or an application fee from any individual who is eligible to receive services under paragraphs (a)(1)(ii) and (iii) of this section. If an individual receiving services under paragraph (a)(1)(iii) of this section refuses services in response to a notice under paragraph (a)(4) of this section, and subsequently requests services, that individual must file an application and pay an application fee.

(3) The State may not charge fees or recover costs from any individual who is eligible to receive services under paragraph (a)(1)(ii) of this section.

(4) Whenever a family is no longer eligible for assistance under the State's

title IV-A, IV-E foster care, and Medicaid programs, the IV-D agency must notify the family, within five working days of the notification of ineligibility, that IV-D services will be continued unless the IV-D agency is notified to the contrary by the family. The notice must inform the family of the consequences of continuing to receive IV-D services, including the available services and the State's fees, cost recovery and distribution policies.

(5) The State must provide all appropriate IV-D services, in addition to IV-D services related to securing medical support, to all individuals who are eligible to receive services under paragraph (a)(1)(ii) of this section unless the individual notifies the State that only IV-D services related to securing medical support are wanted.

(b) *Definitions.* For purposes of this section:

Applicant's income means the disposable income available for the applicant's use under State law.

(c) *Application fee.* (1) Beginning October 1, 1985, the State plan must provide that an application fee will be charged for each individual who applies for services under this section. Under this paragraph:

(i) The State shall collect the application fee from the individual applying for IV-D services or pay the application fee out of State funds.

(ii) The State may recover the application fee from the noncustodial parent who owes a support obligation to a non-IV-A family on whose behalf the IV-D agency is providing services and repay it to the applicant or itself.

(iii) State funds used to pay an application fee are not program expenditures under the State plan but are program income under § 304.50 of this chapter.

(iv) Any application fee charged must be uniformly applied on a statewide basis and must be:

(A) A flat dollar amount not to exceed \$25 (or such higher or lower amount as the Secretary may determine to be appropriate for any fiscal year to reflect increases or decreases in administrative costs); or

(B) An amount based on a fee schedule not to exceed the flat dollar amount specified in paragraph

(c)(2)(iv)(A) of this section. The fee schedule must be based on the applicant's income.

(v) The State may allow the jurisdiction that collects support for the State under this part to retain any application fee collected under this section.

(2) In an interstate case, the application fee is charged by the State where the individual applies for services under this section.

(d) *Recovery of costs.* (1) The State may elect in its State plan to recover any costs incurred in excess of any fees collected to cover administrative costs under the IV-D State plan. A State which elects to recover costs shall collect on a case by case basis either excess actual or standardized costs:

(i) From the individual who owes a support obligation to a non-IV-A family on whose behalf the IV-D agency is providing services under this section; or

(ii) From the individual who is receiving IV-D services under paragraph (a)(1) (i) or (iii) of this section, either directly or from the support collected on behalf of the individual, but only if the State has in effect a procedure for informing all individuals authorized within the State to establish an obligation for support that the State will recover costs from the individual receiving IV-D services under paragraphs (a)(1) (i) and (iii) of this section.

(2) A State that recovers standardized costs under paragraph (d)(1) of this section shall develop a written methodology to determine standardized costs which are as close to actual costs as is possible. This methodology must be made available to any individual upon request.

(3) The IV-D agency shall not treat any amount collected from the individual as a recovery of costs under paragraph (d)(1)(i) of this section except amounts which exceed the current support owed by the individual under the obligation.

(4) If a State elects to recover costs under paragraph (d)(1)(ii) of this section, the IV-D agency may attempt to seek reimbursement from the individual who owes a support obligation for any costs paid by the individual who is receiving IV-D services and pay

§ 302.34

all amounts reimbursed to the individual who is receiving IV-D services.

(5) If a State elects to recover costs under this section, the IV-D agency must notify, consistent with the option selected, either the individual who is receiving IV-D services under paragraphs (a)(1) (i) or (iii) of this section, or the individual who owes a support obligation that such recovery will be made. In an interstate case, the IV-D agency where the case originated must notify the individual receiving IV-D services of the States that recover costs.

(6) The IV-D agency must notify the IV-D agencies in all other States if it recovers costs from the individual receiving IV-D services.

(Approved by the Office of Management and Budget under control numbers 0960-0253, 0960-0385, 0960-0402, and 0970-0107)

[49 FR 36772, Sept. 19, 1984, as amended at 50 FR 19648, May 9, 1985; 51 FR 37731, Oct. 24, 1986; 56 FR 8003, Feb. 26, 1991; 61 FR 67240, Dec. 20, 1996]

§ 302.34 Cooperative arrangements.

The State plan shall provide that the State will enter into written agreements for cooperative arrangements under §303.107 with appropriate courts, law enforcement officials, Indian tribes or tribal organizations. Such arrangements may be entered into with a single official covering more than one court, official, or agency, if the single official has the legal authority to enter into arrangements on behalf of the courts, officials, or agencies. Such arrangements shall contain provisions for providing courts and law enforcement officials with pertinent information needed in locating noncustodial parents, establishing paternity and securing support, to the extent that such information is relevant to the duties to be performed pursuant to the arrangement. They shall also provide for assistance to the IV-D agency in carrying out the program, and may relate to any other matters of common concern. Under matters of common concern, such arrangements may include provisions for the investigation and prosecution of fraud directly related to paternity and child and spousal support, and provisions to reimburse

45 CFR Ch. III (10-1-04 Edition)

courts and law enforcement officials for their assistance.

[54 FR 30222, July 19, 1989, as amended at 61 FR 67240, Dec. 20, 1996; 64 FR 6248, Feb. 9, 1999]

§ 302.35 State parent locator service.

The State plan shall provide as follows:

(a) The IV-D agency shall establish a State PLS using:

(1) All relevant sources of information and records available in the State, and in other States as appropriate; and

(2) The Federal PLS of the Department of Health and Human Services.

(b)(1) The IV-D agency shall establish a central State PLS office and may also designate additional IV-D offices within the State to submit requests to the Federal PLS.

(2) To designate more than two additional IV-D offices within the State, the IV-D agency must obtain written approval from the Office.

(c) The State PLS shall only accept requests to use the Federal PLS from:

(1) Any State or local agency or official seeking to collect child and spousal support obligations under the State plan;

(2) A court that has authority to issue an order or to serve as the initiating court in an action to seek an order against a noncustodial parent for the support and maintenance of a child, or any agent of such court;

(3) The resident parent, legal guardian, attorney, or agent of a child who is not receiving aid under title IV-A of the Act; and

(4) Authorized persons as defined in §303.15 of this chapter if an agreement is in effect under §303.15 to use the Federal PLS in connection with parental kidnapping or child custody or visitation cases.

(5) A State agency that is administering a program operated under a State plan under subpart 1 of part B, or a State plan approved under subpart 2 of part B or under part E.

(d) The State PLS shall, subject to the privacy safeguards required under section 454(26) of the Act, disclose only the information described in sections 453 and 463 of the Act to the authorized

persons specified in such sections for the purposes specified in such sections.

[46 FR 54556, Nov. 3, 1981, as amended at 47 FR 57281, Dec. 23, 1982; 50 FR 19648, May 9, 1985; 64 FR 6248, Feb. 9, 1999; 68 FR 25303, May 12, 2003]

§ 302.36 Provision of services in interstate and intergovernmental IV-D cases.

(a) The State plan shall provide that:

(1) The State will extend the full range of services available under its IV-D plan to any other State in accordance with the requirements set forth in § 303.7 of this chapter; and

(2) The State will extend the full range of services available under its IV-D plan to all Tribal IV-D programs, including promptly opening a case where appropriate.

(b) The State plan shall provide that the State will establish a central registry for interstate IV-D cases in accordance with the requirements set forth in § 303.7(a) of this chapter.

[53 FR 5256, Feb. 22, 1988, as amended at 61 FR 67240, Dec. 20, 1996; 69 FR 16672, Mar. 30, 2004]

§ 302.37 [Reserved]

§ 302.38 Payments to the family.

The State plan shall provide that any payment required to be made under §§ 302.32 and 302.51 of this part to a family will be made to the resident parent, legal guardian, or caretaker relative having custody of or responsibility for the child or children.

§ 302.39 Standards for program operation.

The State plan shall provide that the IV-D agency will comply with the standards for program operation and the organizational and staffing requirements prescribed by part 303 of this chapter.

[41 FR 55348, Dec. 20, 1976]

§ 302.40 [Reserved]

§ 302.50 Assignment of rights to support.

The State plan shall provide as follows:

(a) An assignment of support rights, as defined in § 301.1 of this chapter, con-

stitutes an obligation owed to the State by the individual responsible for providing such support. Such obligation shall be established by:

(1) Order of a court of competent jurisdiction or of an administrative process; or

(2) Except for obligations assigned under 42 CFR 433.146, other legal process as established by State laws, such as a legally enforceable and binding agreement.

(b) The amount of the obligation described in paragraph (a) of this section shall be:

(1) The amount specified in the order of a court of competent jurisdiction or administrative process which covers the assigned support rights.

(2) If there is no court or administrative order, an amount determined in writing by the IV-D agency as part of the legal process referred to in paragraph (a)(2) of this section in accordance with the requirements of § 302.56.

(c) The obligation described in paragraph (a) of this section shall be deemed for collection purposes to be collectible under all applicable State and local processes.

(d) Any amounts which represent support payments collected from an individual responsible for providing support under the State plan shall reduce, dollar for dollar, the amount of his obligation under this section.

(e) No portion of any amounts collected which represent an assigned support obligation defined under § 301.1 of this chapter may be used to satisfy a medical support obligation unless the court or administrative order designates a specific dollar amount for medical purposes.

[64 FR 6248, Feb. 9, 1999, as amended at 68 FR 25303, May 12, 2003]

§ 302.51 Distribution of support collections.

The State plan shall provide as follows:

(a)(1) For purposes of distribution in a IV-D case, amounts collected, except as provided under paragraph (a)(3) of this section, shall be treated first as payment on the required support obligation for the month in which the support was collected and if any amounts are collected which are in excess of

§ 302.52

45 CFR Ch. III (10-1-04 Edition)

such amount, these excess amounts shall be treated as amounts which represent payment on the required support obligation for previous months.

(2) In title IV-A and title IV-E foster care cases in which conversion to a monthly amount is necessary because support is ordered to be paid other than monthly, the IV-D agency may round off the converted amount to whole dollar amount for the purpose of distribution under this section and §302.52 of this part.

(3) Amounts collected through Federal income tax refund offset must be distributed as arrearages in accordance with §303.72(h) of this chapter, and section 457(a)(2)(B)(iv) of the Act.

(4)(i) Effective October 1, 1998 (or October 1, 1999 if applicable) except with respect to those collections addressed under paragraph (a)(3) of this section and except as specified under paragraph (a)(4)(ii) of this section, with respect to amounts collected and distributed under title IV-D of the Act, the date of collection for distribution purposes in all IV-D cases is the date of receipt in the State disbursement unit established under section 454B of the Act.

(ii) If current support is withheld by an employer in the month when due, and received by the State in a month other than the month when due, the date of withholding may be deemed to be the date of collection.

(iii) When the date of collection pursuant to this subparagraph is deemed to be the date the wage or other income was withheld, and the employer fails to report the date of withholding, the IV-D agency must reconstruct that date by contacting the employer or comparing actual amounts collected with the pay schedule specified in the court or administrative order.

(b) If an amount collected as support represents payment on the required support obligation for future months, the amount shall be applied to such future months. However, no such amounts shall be applied to future months unless amounts have been collected which fully satisfy the support obligation assigned under section 403(a)(8) of the Act for the current month and all past months.

(c)(1) The amounts collected by the IV-D agency which represent specific dollar amounts designated in the support order for medical purposes that have been assigned to the State under 42 CFR 433.146 shall be forwarded to the Medicaid agency for distribution under 42 CFR 433.154.

(2) When a family ceases receiving assistance under the State's title XIX plan, the assignment of medical support rights under section 1912 of the Act terminates, except for the amount of any unpaid medical support obligation that has accrued under such assignment. The IV-D agency shall attempt to collect any unpaid specific dollar amounts designated in the support order for medical purposes. Under this requirement, any medical support collection made by the IV-D agency under this paragraph shall be forwarded to the Medicaid agency for distribution under 42 CFR 433.154.

[64 FR 6248, Feb. 9, 1999, as amended at 68 FR 25303, May 12, 2003]

§302.52 Distribution of support collected in Title IV-E foster care maintenance cases.

Effective October 1, 1984, the State plan shall provide as follows:

(a) For purposes of distribution under this section, amounts collected in foster care maintenance cases shall be treated in accordance with the provisions of §302.51(a) of this part.

(b) The amounts collected as support by the IV-D agency under the State plan on behalf of children for whom the State is making foster care maintenance payments under the title IV-E State plan and for whom an assignment under section 471(a)(17) of the Act is effective shall be distributed as follows:

(1) Any amount that is collected in a month which represents payment on the required support obligation for that month shall be retained by the State to reimburse itself for foster care maintenance payments. Of that amount retained by the State as reimbursement for that month's foster care maintenance payment, the State IV-D agency shall determine the Federal government's share so that the State may reimburse the Federal government

to the extent of its participation in financing of the foster care maintenance payment.

(2) If the amount collected is in excess of the monthly amount of the foster care maintenance payment but not more than the monthly support obligation, the State must pay the excess to the State agency responsible for supervising the child's placement and care under section 472(a)(2) of the Act. The State agency must use the money in the manner it determines will serve the best interests of the child including:

(i) Setting aside amounts for the child's future needs; or

(ii) Making all or part of the amount available to the person responsible for meeting the child's daily needs to be used for the child's benefit.

(3) If the amount collected exceeds the amount required to be distributed under paragraphs (b) (1) and (2) of this section, but not the total unreimbursed foster care maintenance payments provided under title IV-E or unreimbursed assistance payments provided under title IV-A, the State shall retain the excess to reimburse itself for these payments. If past assistance or foster care maintenance payments are greater than the total support obligation owed, the maximum amount the State may retain as reimbursement for such payments is the amount of such obligation. If amounts are collected which represent the required support obligation for periods prior to the first month in which the family received assistance under the State's title IV-A plan or foster care maintenance payments under the State's title IV-E plan, such amounts may be retained by the State to reimburse the difference between such support obligation and such payments. Of the amounts retained by the State, the State IV-D agency shall determine the Federal government's share of the amount so that the State may reimburse the Federal government to the extent of its participation in financing the assistance payments and foster care maintenance payments.

(4) Any balance shall be paid to the State agency responsible for supervising the child's placement and care and shall be used to serve the best in-

terests of the child as specified in paragraph (b)(2) of this section.

(5) If an amount collected as support represents payment on the required support obligation for future months, the amount shall be applied to those future months. However, no amounts shall be applied to future months unless amounts have been collected which fully satisfy the support obligation assigned under sections 408(a)(3) and 471(a)(17) of the Act for the current month and all past months.

(c) When a State ceases making foster care maintenance payments under the State's title IV-E State plan, the assignment of support rights under section 471(a)(17) of the Act terminates except for the amount of any unpaid support that has accrued under the assignment. The IV-D agency shall attempt to collect such unpaid support. Under this requirement, any collection made by the State under this paragraph must be distributed in accordance with paragraph (b)(3) of this section.

(Approved by the Office of Management and Budget under control number 0960-0385)

[50 FR 19648, May 9, 1985, as amended at 50 FR 31719, Aug. 6, 1985; 51 FR 37731, Oct. 24, 1986; 64 FR 6249, Feb. 9, 1999]

§ 302.54 Notice of collection of assigned support.

(a) Effective January 1, 1993, the State plan shall provide that the State has in effect procedures for issuing notices of collections as follows:

(1) The IV-D agency must provide a monthly notice of the amount of support payments collected for each month to individuals who have assigned rights to support under section 408(a)(3) of the Act, unless no collection is made in the month, the assignment is no longer in effect and there are no longer any assigned arrearages, or the conditions in paragraph (b) of this section are met.

(2) The monthly notice must list separately payments collected from each noncustodial parent when more than one noncustodial parent owes support to the family and must indicate the amount of current support collected, the amount of arrearages collected and the amount of support collected which was paid to the family.

§ 302.55

(b)(1) The Office may grant a waiver to permit a State to provide quarterly, rather than monthly, notices, if the State:

(i) Until September 30, 1997, does not have an automated system that performs child support enforcement activities consistent with §302.85 or has an automated system that is unable to generate monthly notices; or

(ii) Uses a toll-free automated voice response system which provides the information required under paragraph (a) of this section.

(2) A quarterly notice must be provided in accordance with conditions set forth in paragraph (a)(1) of this section and such notice must contain the information set forth in paragraph (a)(2) of this section.

[57 FR 30681, July 10, 1992, as amended at 61 FR 67241, Dec. 20, 1996; 64 FR 6249, Feb. 9, 1999; 68 FR 25303, May 12, 2003]

§302.55 Incentive payments to States and political subdivisions.

Effective October 1, 1985, in order for the State to be eligible to receive any incentive payments under §304.12 and part 305 of this chapter, the State plan shall provide that, if one or more political subdivisions of the State participate in the costs of carrying out the activities under the State plan during any period, each such subdivision shall be entitled to receive an appropriate share of any incentive payments made to the State for such period, as determined by the State in accordance with §303.52 of this chapter, taking into account the efficiency and effectiveness of the political subdivision in carrying out the activities under the State plan.

(Approved by the Office of Management and Budget under control number 0960-0385)

[50 FR 19649, May 9, 1985; 50 FR 23958, June 7, 1985, as amended at 51 FR 37731, Oct. 24, 1986; 54 FR 32309, Aug. 4, 1989; 65 FR 82208, Dec. 27, 2000]

§302.56 Guidelines for setting child support awards.

(a) Effective October 13, 1989, as a condition of approval of its State plan, the State shall establish one set of guidelines by law or by judicial or administrative action for setting and modifying child support award amounts within the State.

45 CFR Ch. III (10-1-04 Edition)

(b) The State shall have procedures for making the guidelines available to all persons in the State whose duty it is to set child support award amounts.

(c) The guidelines established under paragraph (a) of this section must at a minimum:

(1) Take into consideration all earnings and income of the noncustodial parent;

(2) Be based on specific descriptive and numeric criteria and result in a computation of the support obligation; and

(3) Provide for the child(ren)'s health care needs, through health insurance coverage or other means.

(d) The State must include a copy of the guidelines in its State plan.

(e) The State must review, and revise, if appropriate, the guidelines established under paragraph (a) of this section at least once every four years to ensure that their application results in the determination of appropriate child support award amounts.

(f) Effective October 13, 1989, the State must provide that there shall be a rebuttable presumption, in any judicial or administrative proceeding for the award of child support, that the amount of the award which would result from the application of the guidelines established under paragraph (a) of this section is the correct amount of child support to be awarded.

(g) A written finding or specific finding on the record of a judicial or administrative proceeding for the award of child support that the application of the guidelines established under paragraph (a) of this section would be unjust or inappropriate in a particular case shall be sufficient to rebut the presumption in that case, as determined under criteria established by the State. Such criteria must take into consideration the best interests of the child. Findings that rebut the guidelines shall state the amount of support that would have been required under the guidelines and include a justification of why the order varies from the guidelines.

(h) As part of the review of a State's guidelines required under paragraph (e) of this section, a State must consider economic data on the cost of raising

children and analyze case data, gathered through sampling or other methods, on the application of, and deviations from, the guidelines. The analysis of the data must be used in the State's review of the guidelines to ensure that deviations from the guidelines are limited.

(Approved by the Office of Management and Budget under control number 0960-0385)

[50 FR 19649, May 9, 1985; 50 FR 23958, June 7, 1985, as amended at 51 FR 37731, Oct. 24, 1986; 56 FR 22354, May 15, 1991]

§ 302.60 Collection of past-due support from Federal tax refunds.

The State plan shall provide that:

(a) The IV-D agency has in effect procedures necessary to obtain payment of past-due support from Federal tax refunds as set forth in section 464 of the Act, § 303.72 of this chapter, and regulations of the Internal Revenue Service at 26 CFR 304.6402-1; and

(b) The IV-D agency shall take the steps necessary to implement and use these procedures.

(Approved by the Office of Management and Budget under control number 0960-0253)

[47 FR 7428, Feb. 19, 1982]

§ 302.65 Withholding of unemployment compensation.

The State plan shall provide that the requirements of this section are met.

(a) *Definitions.* When used in this section:

Legal process means a writ, order, summons or other similar process in the nature of a garnishment, which is issued by a court of competent jurisdiction or by an authorized official pursuant to an order of such court or pursuant to State or local law.

State employment security agency or *SESA* means the State agency charged with the administration of the State unemployment compensation laws in accordance with title III of the Act.

Unemployment compensation means any compensation payable under State unemployment compensation law (including amounts payable in accordance with agreements under any Federal unemployment compensation law). It includes extended benefits, unemployment compensation for Federal employees, unemployment compensation

for ex-servicemen, trade readjustment allowances, disaster unemployment assistance, and payments under the Redwood National Park Expansion Act.

(b) *Agreement.* The State IV-D agency shall enter into a written agreement with the SESA in its State for the purpose of withholding unemployment compensation from individuals with unmet support obligations being enforced by the IV-D agency. The IV-D agency shall agree only to a withholding program that it expects to be cost-effective and to reimbursement for the SESA's actual, incremental costs of providing services to the IV-D agency.

(c) *Functions to be performed by the IV-D agency.* The IV-D agency shall:

(1) Determine periodically from information provided by the SESA under section 508 of the Unemployment Compensation Amendments of 1976 whether individuals applying for or receiving unemployment compensation owe support obligations that are being enforced by the IV-D agency.

(2) Enforce unmet support obligations by arranging for the withholding of unemployment compensation based on a voluntary agreement with the individual who owes the support, or in appropriate cases which meet the case selection criteria established under paragraph (c)(3), through legal process pursuant to State or local law. If a voluntary agreement is obtained, the IV-D agency must give the SESA a copy of the voluntary agreement.

(3) Establish and use written criteria for selecting cases to pursue via the withholding of unemployment compensation for support purposes. These criteria must be designed to insure maximum case selection and minimal discretion in the selection process.

(4) Provide a receipt at least annually to an individual who requests a receipt for the support paid via the withholding of unemployment compensation, if receipts are not provided through other means.

(5) Maintain direct contact with the SESA in its State:

(i) By processing cases through the SESA in its own State or through IV-D agencies in other States; and

(ii) By receiving all amounts withheld by the SESA in its own State and

§ 302.70

45 CFR Ch. III (10–1–04 Edition)

forwarding any amounts withheld on behalf of IV-D agencies in other States to those agencies.

(6) Reimburse the administrative costs incurred by the SESA that are actual, incremental costs attributable to the process of withholding unemployment compensation for support purposes insofar as these costs have been agreed upon by the SESA and the IV-D agency.

(7) Review and document, at least annually, program operations, including case selection criteria established under paragraph (c)(3), and costs of the withholding process versus the amounts collected and, as necessary, modify procedures and renegotiate the services provided by the SESA to improve program and cost effectiveness.

[49 FR 8927, Mar. 9, 1984, as amended at 68 FR 25303, May 12, 2003]

§ 302.70 Required State laws.

(a) *Required Laws.* The State plan shall provide that, in accordance with sections 454(20) and 466 of the Act and part 303 of this chapter, the State has in effect laws providing for, and has implemented procedures to improve, program effectiveness:

(1) Procedures for carrying out a program of withholding under which new or existing support orders are subject to the State law governing withholding so that a portion of the noncustodial parent's wages may be withheld, in accordance with the requirements set forth in § 303.100 of this chapter;

(2) Expedited processes to establish paternity and to establish and enforce child support orders having the same force and effect as those established through full judicial process, in accordance with the requirements set forth in § 303.101 of this chapter;

(3) Procedures for obtaining overdue support from State income tax refunds on behalf of individuals receiving IV-D services, in accordance with the requirements set forth in § 303.102 of this chapter;

(4) Procedures for the imposition of liens against the real and personal property of noncustodial parents who owe overdue support;

(5)(i) Procedures for the establishment of paternity for any child at least to the child's 18th birthday, including

any child for whom paternity has not yet been established and any child for whom a paternity action was previously dismissed under a statute of limitations of less than 18 years; and

(ii) Effective November 1, 1989, procedures under which the State is required (except in cases where the individual involved has been found under section 454(29) of the Act to have good cause for refusing to cooperate or if, in accordance with § 303.5(b) of this chapter the IV-D agency has determined that it would not be in the best interest of the child to establish paternity in a case involving incest or forcible rape, or in any case in which legal proceedings for adoption are pending) to require the child and all other parties in a contested paternity case to submit to genetic tests upon the request of any such party, in accordance with § 303.5 (d) and (e) of this chapter.

(iii) Procedures for a simple civil process for voluntarily acknowledging paternity under which the State must provide that, before a mother and putative father can sign a voluntary acknowledgment of paternity, the mother and the putative father must be given notice, orally or through video or audio equipment, and in writing, of the alternatives to, the legal consequences of, and the rights (including any rights, if a parent is a minor, due to minority status) and responsibilities of acknowledging paternity, and ensure that due process safeguards are afforded. Such procedures must include:

(A) A hospital-based program in accordance with § 303.5(g) for the voluntary acknowledgment of paternity during the period immediately before or after the birth of a child to an unmarried mother, and a requirement that all public and private birthing hospitals participate in the hospital-based program defined in § 303.5(g)(2); and

(B) A process for voluntary acknowledgment of paternity in hospitals, State birth record agencies, and in other entities designated by the State and participating in the State's voluntary paternity establishment program; and

(C) A requirement that the procedures governing hospital-based programs and State birth record agencies

must also apply to other entities designated by the State and participating in the State's voluntary paternity establishment program, including the use of the same notice provisions, the same materials, the same evaluation methods, and the same training for the personnel of these other entities providing voluntary paternity establishment services.

(iv) Procedures under which the voluntary acknowledgment of paternity creates a rebuttable or, at the option of the State, conclusive presumption of paternity, and under which such voluntary acknowledgment is admissible as evidence of paternity;

(v) Procedures which provide that any objection to genetic testing results must be made in writing within a specified number of days before any hearing at which such results may be introduced into evidence; and if no objection is made, a written report of the test results is admissible as evidence of paternity without the need for foundation testimony or other proof of authenticity or accuracy;

(vi) Procedures which create a rebuttable or, at the option of the State, conclusive presumption of paternity upon genetic testing results indicating a threshold probability of the alleged father being the father of the child;

(vii) Procedures under which a voluntary acknowledgment must be recognized as a basis for seeking a support order without requiring any further proceedings to establish paternity; and

(viii) Procedures requiring a default order to be entered in a paternity case upon a showing that process was served on the defendant in accordance with State law, that the defendant failed to respond to service in accordance with State procedures, and any additional showing required by State law.

(6) Procedures which require that a noncustodial parent give security, post a bond, or give some other guarantee to secure payment of support, in accordance with the procedures set forth in §303.104 of this chapter;

(7) Procedures for making information regarding the amount of overdue support owed by a noncustodial parent available to consumer reporting agencies;

(8) Procedures under which all child support orders which are issued or modified in the State will include provision for withholding from income, in order to assure that withholding as a means of collecting child support is available if arrearages occur without the necessity of filing an application for services under §302.33 of this part, in accordance with §303.100(i) of this chapter;

(9) Procedures which require that any payment or installment of support under any child support order, whether ordered through the State judicial system or through the expedited processes required by paragraph (a)(2) of this section, is (on and after the date it is due):

(i) A judgment by operation of law, with the full force, effect, and attributes of a judgment of the State, including the ability to be enforced;

(ii) Entitled as a judgment to full faith and credit in such State and in any other State; and

(iii) Not subject to retroactive modification by such State or by any other State, except as provided in §303.106(b).

(10) Procedures for the review and adjustment of child support orders:

(i) Effective on October 13, 1990 until October 12, 1993, in accordance with the requirements of §303.8 (a) and (b) of this chapter; and

(ii) Effective October 13, 1993, or an earlier date the State may select, in accordance with the requirements of §303.8 (a) and (c) through (f) of this chapter.

(11) Procedures under which the State must give full faith and credit to a determination of paternity made by any other State, whether established through voluntary acknowledgment or through administrative or judicial processes.

(b) A State need not apply a procedure required under paragraphs (a) (3), (4), (6) and (7) of this section in an individual case if the State determines that it is not appropriate using guidelines generally available to the public which take into account the payment record of the noncustodial parent, the availability of other remedies, and other relevant considerations. The guidelines may not determine a majority of cases in which no other remedy is being used to be inappropriate.

§ 302.75

45 CFR Ch. III (10–1–04 Edition)

(c) State laws enacted under this section must give States sufficient authority to comply with the requirements of §§ 303.100 through 303.102 and § 303.104 of this chapter.

(d)(1) *Exemption.* A State may apply for an exemption from any of the requirements of section 466 of the Act by the submittal of a request for exemption to the appropriate Regional Office.

(2) *Basis for granting exemption.* The Secretary will grant a State, or political subdivision in the case of section 466(a)(2) of the Act, an exemption from any of the requirements of paragraph (a) of this section for a period not to exceed three years if the State demonstrates that compliance would not increase the effectiveness and efficiency of its Child Support Enforcement program. Demonstration of the program's efficiency and effectiveness must be shown by actual, or, if actual is not available, estimated data pertaining to caseloads, processing times, administrative costs, and average support collections or such other actual or estimated data as the Office may request. The State must demonstrate to the satisfaction of the Secretary that the program's effectiveness would not improve by using these procedures. Disapproval of a request for exemption is not subject to appeal.

(3) *Review of exemption.* The exemption is subject to continuing review by the Secretary and may be terminated upon a change in circumstances or reduced effectiveness in the State or political subdivision, if the State cannot demonstrate that the changed circumstances continue to warrant an exemption in accordance with this section.

(4) *Request for extension.* The State must request an extension of the exemption by submitting current data in accordance with paragraph (d)(2) of this section 90 days prior to the end of the exemption period granted under paragraph (d)(2) of this section.

(5) *When an exemption is revoked or an extension is denied.* If the Secretary revokes an exemption or does not grant an extension of an exemption, the State must enact the appropriate laws and procedures to implement the mandatory practice by the beginning of the fourth month after the end of the first

regular, special, budget or other session of the State's legislature which ends after the date the exemption is revoked or the extension is denied. If no State law is necessary, the State must establish and be using the procedure by the beginning of the fourth month after the date the exemption is revoked.

(Approved by the Office of Management and Budget under control number 0960–0385)

[50 FR 19649, May 9, 1985, as amended at 51 FR 37731, Oct. 24, 1986; 54 FR 15764, Apr. 19, 1989; 56 FR 8004, Feb. 26, 1991; 56 FR 22354, May 15, 1991; 57 FR 30681, July 10, 1992; 57 FR 61581, Dec. 28, 1992; 59 FR 66249, Dec. 23, 1994; 64 FR 6249, Feb. 9, 1999; 64 FR 11809, Mar. 10, 1999; 68 FR 25303, May 12, 2003; 68 FR 53052, Sept. 9, 2003]

§ 302.75 Procedures for the imposition of late payment fees on noncustodial parents who owe overdue support.

(a) Effective September 1, 1984, the State plan may provide for imposition of late payment fees on noncustodial parents who owe overdue support.

(b) If a State opts to impose late payment fees—

(1) The late payment fee must be uniformly applied in an amount not less than 3 percent nor more than 6 percent of overdue support.

(2) The fee shall accrue as arrearages accumulate and shall not be reduced upon partial payment of arrears. The fee may be collected only after the full amount of overdue support is paid and any requirements under State law for notice to the noncustodial parent have been met.

(3) The collection of the fee must not directly or indirectly reduce the amount of current or overdue support paid to the individual to whom it is owed.

(4) The late payment fee must be imposed in cases where there has been an assignment under section 408(a)(3) of the Act or section 471(a)(17) of the Act or the IV-D agency is providing services under § 302.33 of this chapter.

(5) The State may allow fees collected to be retained by the jurisdiction making the collection.

(6) The State must reduce its expenditures claimed under the Child Support

Enforcement program by any fees collected under this section in accordance with §304.50 of this chapter.

(Approved by the Office of Management and Budget under control number 0960-0385)

[50 FR 19650, May 9, 1985, as amended at 51 FR 37731, Oct. 24, 1986; 56 FR 8004, Feb. 26, 1991; 64 FR 6249, Feb. 9, 1999; 68 FR 25303, May 12, 2003]

§302.80 Medical support enforcement.

(a) The State plan may provide that the IV-D agency will secure and enforce medical support obligations under a cooperative agreement between the IV-D agency and the State Medicaid agency.

(b) The State plan must provide that the IV-D agency shall secure medical support information and establish and enforce medical support obligations in accordance with the requirements contained in §§303.30 and 303.31 of this chapter.

(Approved by the Office of Management and Budget under control number 0960-0420)

[50 FR 41894, Oct. 16, 1985, as amended at 51 FR 37731, Oct. 24, 1986; 54 FR 32309, Aug. 4, 1989; 61 FR 67241, Dec. 20, 1996; 64 FR 6249, Feb. 9, 1999]

§302.85 Mandatory computerized support enforcement system.

(a) *General.* The State plan shall provide that the State will have in effect a computerized support enforcement system:

(1) By October 1, 1997, which meets all the requirements of Title IV-D of the Act which were enacted on or before the date of enactment of the Family Support Act of 1988, Pub. L. 100-485, in accordance with §§307.5 and 307.10 of this chapter and the OCSE guideline entitled "Automated Systems for Child Support Enforcement: A Guide for States." This guide is available from the Child Support Information Systems Division, Office of State Systems, ACF, 370 L'Enfant Promenade, SW., Washington, DC 20447; and

(2) By October 1, 2000, which meets all the requirements of title IV-D of the Act enacted on or before the date of enactment of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Pub. L. 104-193, in accordance with §§307.5 and 307.11 of this

chapter and the OCSE guideline referenced in paragraph (a)(1) of this section.

(b) *Waiver*—(1) *Request for waiver.* The State may apply for a waiver of any condition for initial approval of an APD in §307.15(b) of this chapter, or any system functional requirement in §307.10 of this chapter, by the submission of a request for waiver under §307.5 of this chapter.

(2) *Basis for granting waiver.* The Secretary will grant a State a waiver if a State demonstrates that it has an alternative approach to APD requirements or an alternative system configuration, as defined in §307.1 of this chapter, that enables the State, in accordance with part 305 of this chapter, to be in substantial compliance with all other requirements of this chapter; and either:

(i) The waiver request meets the criteria set forth in section 1115(c)(1), (2) and (3) of the Act; or

(ii) The State provides written assurances that steps will be taken to otherwise improve the State's Child Support Enforcement program.

[57 FR 47002, Oct. 14, 1992, as amended at 61 FR 67241, Dec. 20, 1996; 63 FR 44814, Aug. 21, 1998]

PART 303—STANDARDS FOR PROGRAM OPERATIONS

Sec.	
303.0	Scope and applicability of this part.
303.1	Definitions.
303.2	Establishment of cases and maintenance of case records.
303.3	Location of noncustodial parents.
303.4	Establishment of support obligation.
303.5	Establishment of paternity.
303.6	Enforcement of support obligations.
303.7	Provision of services in interstate IV-D cases.
303.8	Review and adjustment of child support orders.
303.10	[Reserved]
303.11	Case closure criteria.
303.15	Agreements to use the Federal Parent Locator Service (PLS) in parental kidnapping and child custody or visitation cases.
303.20	Minimum organizational and staffing requirements.
303.30	Securing medical support information.
303.31	Securing and enforcing medical support obligations.
303.32	National Medical Support Notice.

§ 303.0

45 CFR Ch. III (10–1–04 Edition)

- 303.35 Administrative complaint procedure.
- 303.52 Pass-through of incentives to political subdivisions.
- 303.69 Requests by agents or attorneys of the United States for information from the Federal Parent Locator Service (FPLS).
- 303.70 Requests by the State Parent Locator Service (SPLS) for information from the Federal Parent Locator Service (FPLS).
- 303.71 Requests for full collection services by the Secretary of the Treasury.
- 303.72 Requests for collection of past-due support by Federal tax refund offset.
- 303.73 Applications to use the courts of the United States to enforce court orders.
- 303.100 Procedures for income withholding.
- 303.101 Expedited processes.
- 303.102 Collection of overdue support by State income tax refund offset.
- 303.104 Procedures for posting security, bond or guarantee to secure payment of overdue support.
- 303.106 Procedures to prohibit retroactive modification of child support arrearages.
- 303.107 Requirements for cooperative arrangements.
- 303.108 Quarterly wage and unemployment compensation claims reporting to the National Directory of New Hires.
- 303.109 Procedures for State monitoring, evaluation and reporting on programs funded by Grants to States for Access and Visitation Programs.

AUTHORITY: 42 U.S.C. 651 through 658, 660, 663, 664, 666, 667, 1302, 1396a(a)(25), 1396b(d)(2), 1396b(c), 1396b(p) and 1396(k).

EDITORIAL NOTE: Nomenclature changes to part 303 appear at 64 FR 6249, Feb. 9, 1999.

SOURCE: 40 FR 27164, June 26, 1975, unless otherwise noted.

§ 303.0 Scope and applicability of this part.

This part prescribes:

- (a) The minimum organizational and staffing requirements the State IV-D agency must meet in carrying out the IV-D program, and
- (b) The standards for program operation which the IV-D agency must meet.

[41 FR 55348, Dec. 20, 1976, as amended at 54 FR 32309, Aug 4, 1989]

§ 303.1 Definitions.

The definitions found in § 301.1 of this chapter also are applicable to this part.

§ 303.2 Establishment of cases and maintenance of case records.

- (a) The IV-D agency must:

- (1) Make applications for child support services readily accessible to the public;

- (2) When an individual requests an application or IV-D services, provide an application to the individual on the day the individual makes a request in person or send an application to the individual within no more than 5 working days of a written or telephone request. Information describing available services, the individual's rights and responsibilities, and the State's fees, cost recovery and distribution policies must accompany all applications for services and must be provided to title IV-A, Medicaid and title IV-E foster care applicants or recipients within no more than 5 working days of referral to the IV-D agency; and

- (3) Accept an application as filed on the day it and the application fee are received. An application is a written document provided by the State which indicates that the individual is applying for child support enforcement services under the State's title IV-D program and is signed by the individual applying for IV-D services.

- (b) For all cases referred to the IV-D agency or applying for services under § 302.33 of this chapter, the IV-D agency must, within no more than 20 calendar days of receipt of referral of a case or filing of an application for services under § 302.33, open a case by establishing a case record and, based on an assessment of the case to determine necessary action:

- (1) Solicit necessary and relevant information from the custodial parent and other relevant sources and initiate verification of information, if appropriate; and

- (2) If there is inadequate location information to proceed with the case, request additional information or refer the case for further location attempts, as specified in § 303.3.

- (c) The case record must be supplemented with all information and documents pertaining to the case, as well as all relevant facts, dates, actions taken, contacts made and results in a case.

[54 FR 32309, Aug. 4, 1989]

§ 303.3 Location of noncustodial parents.

(a) *Definition.* *Location* means information concerning the physical whereabouts of the noncustodial parent, or the noncustodial parent's employer(s), other sources of income or assets, as appropriate, which is sufficient and necessary to take the next appropriate action in a case.

(b) For all cases referred to the IV-D agency or applying for services under § 302.33 of this chapter, the IV-D agency must attempt to locate all noncustodial parents or sources of income and/or assets when location is necessary to take necessary action. Under this standard, the IV-D agency must:

(1) Use appropriate location sources such as the Federal PLS; interstate location networks; local officials and employees administering public assistance, general assistance, medical assistance, food stamps and social services (whether such individuals are employed by the State or a political subdivision); relatives and friends of the noncustodial parent; current or past employers; the local telephone company; the U.S. Postal Service; financial references; unions; fraternal organizations; and police, parole, and probation records if appropriate; and State agencies and departments, as authorized by State law, including those departments which maintain records of public assistance, wages and employment, unemployment insurance, income taxation, driver's licenses, vehicle registration, and criminal records and other sources;

(2) Establish working relationships with all appropriate agencies in order to utilize locate resources effectively;

(3) Within no more than 75 calendar days of determining that location is necessary, access all appropriate location sources, including transmitting appropriate cases to the Federal PLS, and ensure that location information is sufficient to take the next appropriate action in a case;

(4) Refer appropriate cases to the IV-D agency of any other State, in accordance with the requirements of § 303.7 of this part. The IV-D agency of such other State shall follow the procedures in paragraphs (b)(1) through (b)(3) of this section for such cases, as nec-

essary, except that the responding State is not required to access the Federal PLS under paragraph (b)(3) of this section;

(5) Repeat location attempts in cases in which previous attempts to locate noncustodial parents or sources of income and/or assets have failed, but adequate identifying and other information exists to meet requirements for submittal for location, either quarterly or immediately upon receipt of new information which may aid in location, whichever occurs sooner. Quarterly attempts may be limited to automated sources but must include accessing State employment security files. Repeated attempts because of new information which may aid in location must meet the requirements of paragraph (b)(3) of this section; and

(c) The State must establish guidelines defining diligent efforts to serve process. These guidelines must include periodically repeating service of process attempts in cases in which previous attempts to serve process have failed, but adequate identifying and other information exists to attempt service of process.

[54 FR 32310, Aug. 4, 1989, as amended at 55 FR 25840, June 25, 1990; 57 FR 28110, June 24, 1992; 57 FR 31235, July 14, 1992; 64 FR 6249, Feb. 9, 1999]

§ 303.4 Establishment of support obligations.

For all cases referred to the IV-D agency or applying under § 302.33 of this chapter, the IV-D Agency must:

(a) When necessary, establish paternity pursuant to the standards of § 303.5;

(b) Utilize appropriate State statutes and legal processes in establishing the support obligation pursuant to § 302.50 of this chapter.

(c) Periodically review and adjust child support orders, as appropriate, in accordance with § 303.8.

(d) Within 90 calendar days of locating the alleged father or noncustodial parent, regardless of whether paternity has been established, establish an order for support or complete service of process necessary to commence proceedings to establish a support order and, if necessary, paternity (or document unsuccessful attempts to serve process, in

§ 303.5

accordance with the State's guidelines defining diligent efforts under § 303.3(c)).

(e) If the court or administrative authority dismisses a petition for a support order without prejudice, the IV-D agency must, at the time of dismissal, examine the reasons for dismissal and determine when it would be appropriate to seek an order in the future, and seek a support order at that time.

(f) Seek a support order based on a voluntary acknowledgment in accordance with § 302.70(a)(5)(vii).

[40 FR 27164, June 26, 1975, as amended at 50 FR 19650, May 9, 1985; 54 FR 32310, Aug. 4, 1989; 57 FR 30681, July 10, 1992; 59 FR 66250, Dec. 23, 1994]

§ 303.5 Establishment of paternity.

(a) For all cases referred to the IV-D agency or applying for services under § 302.33 of this chapter in which paternity has not been established, the IV-D agency must, as appropriate:

(1) Provide an alleged father the opportunity to voluntarily acknowledge paternity in accordance with § 302.70(a)(5)(iii); and

(2) Attempt to establish paternity by legal process established under State law.

(b) The IV-D agency need not attempt to establish paternity in any case involving incest or forcible rape, or in any case in which legal proceedings for adoption are pending, if, in the opinion of the IV-D agency, it would not be in the best interests of the child to establish paternity.

(c) The IV-D agency must identify and use through competitive procurement laboratories which perform, at reasonable cost, legally and medically acceptable genetic tests which tend to identify the father or exclude the alleged father. The IV-D agency must make available a list of such laboratories to appropriate courts and law enforcement officials, and to the public upon request.

(d)(1) Upon request of any party in a contested paternity case in accordance with section 466(a)(5)(B) of the Act, and subject to the provisions of paragraph (b) of this section, the IV-D agency shall require all parties to submit to genetic tests unless, in the case of an individual receiving aid under the

45 CFR Ch. III (10-1-04 Edition)

State's title IV-A, IV-E or XIX plan, or those recipients of the food stamp program, as defined under section 3(h) of the Food Stamp Act of 1977 who are required to cooperate with the child support program, there has been a determination of good cause for refusal to cooperate under section 454(29) of the Act.

(2) A contested paternity case is any action in which the issue of paternity may be raised under State law and one party denies paternity.

(e)(1) Except as provided in paragraph (e)(3) of this section, the IV-D agency may charge any individual who is not a recipient of aid under the State's title IV-A or XIX plan a reasonable fee for performing genetic tests.

(2) Any fee charged must be reasonable so as not to discourage those in need of paternity establishment services from seeking them and may not exceed the actual costs of the genetic tests.

(3) If paternity is established and genetic tests were ordered by the IV-D agency, the IV-D agency must pay the costs of such tests, subject to recoupment (if the agency elects) from the alleged father who denied paternity. If a party contests the results of an original test, the IV-D agency shall obtain additional tests but shall require the contestant to pay for the costs of any such additional testing in advance.

(4) The IV-D agency must use any amount collected under paragraphs (e)(1) and (3) of this section that exceeds the costs of performing genetic tests to reimburse any fee paid under paragraph (e)(1) of this chapter.

(f) The IV-D agency must seek entry of a default order by the court or administrative authority in a paternity case by showing that process has been served on the defendant in accordance with State law, that the defendant has failed to respond to service in accordance with State procedures, and any additional showing required by State law, in accordance with § 302.70(a)(5)(viii).

(g) *Voluntary paternity establishment programs.* (1) The State must establish, in cooperation with hospitals, State

birth record agencies, and other entities designated by the State and participating in the State's voluntary paternity establishment program, a program for voluntary paternity establishment services.

(i) The hospital-based portion of the voluntary paternity establishment services program must be operational in all private and public birthing hospitals statewide and must provide voluntary paternity establishment services focusing on the period immediately before and after the birth of a child born out-of-wedlock.

(ii) The voluntary paternity establishment services program must also be available at the State birth record agencies, and at other entities designated by the State and participating in the State's voluntary paternity establishment program. These entities may include the following types of entities:

(A) Public health clinics (including Supplementary Feeding Program for Women, Infants, and Children (WIC) and Maternal and Child Health (MCH) clinics), and private health care providers (including obstetricians, gynecologists, pediatricians, and midwives);

(B) Agencies providing assistance or services under Title IV-A of the Act, agencies providing food stamp eligibility service, and agencies providing child support enforcement (IV-D) services;

(C) Head Start and child care agencies (including child care information and referral providers), and individual child care providers;

(D) Community Action Agencies and Community Action Programs;

(E) Secondary education schools (particularly those that have parenthood education curricula);

(F) Legal Aid agencies, and private attorneys; and

(G) Any similar public or private health, welfare or social services organization.

(2) The hospitals, State birth record agencies, and other entities designated by the State and participating in the State's voluntary paternity establishment program must, at a minimum:

(i) Provide to both the mother and alleged father:

(A) Written materials about paternity establishment,

(B) The forms necessary to voluntarily acknowledge paternity,

(C) Notice, orally or through video or audio equipment, and in writing, of the alternatives to, the legal consequences of, and the rights (including any rights, if a parent is a minor, due to minority status) and responsibilities or acknowledging paternity, and

(D) The opportunity to speak with staff, either by telephone or in person, who are trained to clarify information and answer questions about paternity establishment;

(ii) Provide the mother and alleged father the opportunity to voluntarily acknowledge paternity;

(iii) Afford due process safeguards; and

(iv) File signed original of voluntary acknowledgments or adjudications of paternity with the State registry of birth records (or a copy if the signed original is filed with another designated entity) for comparison with information in the State case registry.

(3) The hospitals, State birth record agencies, and other entities designated by the State and participating in the State's voluntary paternity establishment program need not provide services specified in paragraph (g)(2) of this section in cases where the mother or alleged father is a minor or a legal action is already pending, if the provision of such services is precluded by State law.

(4) The State must require that a voluntary acknowledgment be signed by both parents, and that the parents' signatures be authenticated by a notary or witness(es).

(5) The State must provide to all hospitals, State birth record agencies, and other entities designated by the State and participating in the State's voluntary paternity establishment program:

(i) Written materials about paternity establishment,

(ii) Form necessary to voluntarily acknowledge paternity, and

(iii) Copies of a written description of the alternatives to, the legal consequences of, and the rights (including any rights, if a parent is a minor, due

§ 303.6

to minority status) and responsibilities of acknowledging paternity.

(6) The State must provide training, guidance, and written instructions regarding voluntary acknowledgment of paternity, as necessary to operate the voluntary paternity establishment services in the hospitals, State birth record agencies, and other entities designated by the State and participating in the State's voluntary paternity establishment program.

(7) The State must assess each hospital, State birth record agency, local birth record agency designated by the State, and other entity participating in the State's voluntary paternity establishment program that are providing voluntary paternity establishment services on at least an annual basis.

(8) Hospitals, State birth record agencies, and other entities designated by the State and participating in the State's voluntary paternity establishment program must forward completed voluntary acknowledgments or copies to the entity designated by the State. If any entity other than the State registry of birth records is designated by the State, a copy must be filed with the State registry of birth records, in accordance with § 303.5(g)(2)(iv). Under State procedures, the designated entity must be responsible for promptly recording identifying information about the acknowledgments with a statewide database, and the IV-D agency must have timely access to whatever identifying information and documentation it needs to determine in accordance with § 303.5(h) if an acknowledgment has been recorded and to seek a support order on the basis of a recorded acknowledgment in accordance with § 303.4(f).

(h) In IV-D cases needing paternity establishment, the IV-D agency must determine if identifying information about a voluntary acknowledgment has been recorded in the statewide database in accordance with § 303.5(g)(8).

[40 FR 27164, June 26, 1975, as amended at 50 FR 19650, May 9, 1985; 54 FR 32310, Aug. 4, 1989; 56 FR 22354, May 15, 1991; 59 FR 66250, Dec. 23, 1994; 64 FR 6249, Feb. 9, 1999; 64 FR 11809, Mar. 10, 1999]

45 CFR Ch. III (10-1-04 Edition)

§ 303.6 Enforcement of support obligations.

For all cases referred to the IV-D agency or applying for services under § 302.33 in which the obligation to support and the amount of the obligation have been established, the IV-D agency must maintain and use an effective system for:

(a) Monitoring compliance with the support obligation;

(b) Identifying on the date the parent fails to make payments in an amount equal to the support payable for one month, or on an earlier date in accordance with State law, those cases in which there is a failure to comply with the support obligation; and

(c) Enforcing the obligation by:

(1) Initiating income withholding, in accordance with § 303.100;

(2) Taking any appropriate enforcement action (except income withholding and Federal and State income tax refund offset) unless service of process is necessary, within no more than 30 calendar days of identifying a delinquency or other support-related non-compliance with the order or the location of the noncustodial parent, whichever occurs later. If service of process is necessary prior to taking an enforcement action, service must be completed (or unsuccessful attempts to serve process must be documented in accordance with the State's guidelines defining diligent efforts under § 303.3(c)), and enforcement action taken if process is served, within no later than 60 calendar days of identifying a delinquency or other support-related non-compliance with the order, or the location of the noncustodial parent, whichever occurs later;

(3) Submitting once a year all cases which meet the certification requirements under § 303.102 of this part and State guidelines developed under § 302.70(b) of this title for State income tax refund offset, and which meet the certification requirements under § 303.72 of this part for Federal income tax refund offset; and

(4) In cases in which enforcement attempts have been unsuccessful, at the time an attempt to enforce fails, examining the reason the enforcement attempt failed and determining when it

would be appropriate to take an enforcement action in the future, and taking an enforcement action in accordance with the requirements of this section at that time.

[54 FR 32310, Aug. 4, 1989, as amended at 55 FR 25840, June 25, 1990]

§ 303.7 Provision of services in interstate IV-D cases.

(a) *Interstate central registry.* (1) The State IV-D agency must establish an interstate central registry responsible for receiving, distributing and responding to inquiries on all incoming interstate IV-D cases.

(2) Within 10 working days of receipt of an interstate IV-D case from an initiating State, the central registry must:

(i) Ensure that the documentation submitted with the case has been reviewed to determine completeness;

(ii) Forward the case for necessary action either to the State PLS for location services or to the appropriate agency for processing;

(iii) Acknowledge receipt of the case and ensure that any missing documentation has been requested from the initiating State; and

(iv) Inform the IV-D agency in the initiating State where the case was sent for action.

(3) If the documentation received with a case is inadequate and cannot be remedied by the central registry without the assistance of the initiating State, the central registry must forward the case for any action which can be taken pending necessary action by the initiating State.

(4) The central registry must respond to inquiries from other States within 5 working days of receipt of the request for a case status review.

(b) *Initiating State IV-D agency responsibilities.* The IV-D agency must:

(1) Use its long arm statute to establish paternity, when appropriate.

(2) Except as provided in paragraph (b)(1) of this section, within 20 calendar days of determining that the noncustodial parent is in another State, and, if appropriate, receipt of any necessary information needed to process the case, refer any interstate IV-D case to the responding State's interstate central registry for action, including requests

for location, document verification, administrative reviews in Federal income tax refund offset cases, income withholding, and State income tax refund offset in IV-D cases.

(3) Provide the IV-D agency in the responding State sufficient, accurate information to act on the case by submitting with each case any necessary documentation and Federally-approved interstate forms. The State may use computer-generated replicas in the same format and containing the same information in place of the Federal forms.

(4) Provide the IV-D agency or central registry in the responding State with any requested additional information or notify the responding State when the information will be provided within 30 calendar days of receipt of the request for information by submitting an updated form, or a computer-generated replica in the same format and containing the same information, and any necessary additional documentation.

(5) Notify the IV-D agency in the responding State within 10 working days of receipt of new information on a case by submitting an updated form and any necessary additional documentation.

(6) Send a request for review of a child support order to another State within 20 calendar days of determining that a request for review of the order should be sent to the other State and of receipt of information from the requestor necessary to conduct the review in accordance with § 303.8 of this part.

(c) *Responding State IV-D agency responsibilities.* (1) The IV-D agency must establish and use procedures for managing its interstate IV-D caseload which ensure provision of necessary services and include maintenance of case records in accordance with § 303.2 of this part.

(2) The IV-D agency must periodically review program performance on interstate IV-D cases to evaluate the effectiveness of the procedures established under this section.

(3) The State must ensure that the organizational structure and staff of

§ 303.7

45 CFR Ch. III (10–1–04 Edition)

the IV-D agency are adequate to provide for the administration or supervision of the following support enforcement functions specified in § 303.20(c) of this part for its interstate IV-D caseload: Intake; establishment of paternity and the legal obligation to support; location; financial assessment; establishment of the amount of child support; collection; monitoring; enforcement and investigation.

(4) Within 75 calendar days of receipt of an Interstate Child Support Enforcement Transmittal Form, and documentation from its interstate central registry, the IV-D agency must:

(i) Provide location services in accordance with § 303.3 of this part if the request is for location services or the form or documentation does not include adequate location information on the noncustodial parent;

(ii) If unable to proceed with the case because of inadequate documentation, notify the IV-D agency in the initiating State of the necessary additions or corrections to the form or documentation.

(iii) If the documentation received with a case is inadequate and cannot be remedied by the responding IV-D agency without the assistance of the initiating State, the IV-D agency must process the interstate IV-D case to the extent possible pending necessary action by the initiating State.

(5) Within 10 working days of locating the noncustodial parent in a different jurisdiction within the State, the IV-D agency must forward the form and documentation to the appropriate jurisdiction and notify the initiating State and central registry of its action.

(6) Within 10 working days of locating the noncustodial parent in a different State, the IV-D agency must—

(i) Return the form and documentation, including the new location, to the initiating State, or, if directed by the initiating State, forward the form and documentation to the central registry in the State where the noncustodial parent has been located; and

(ii) Notify the central registry where the case has been sent.

(7) The IV-D agency must provide any necessary services as it would in intrastate IV-D cases by:

(i) Establishing paternity in accordance with § 303.5 of this part and attempting to obtain a judgment for costs should paternity be established;

(ii) Establishing a child support obligation in accordance with §§ 303.4, 303.31 and 303.101 of this part;

(iii) Processing and enforcing orders referred by another State, whether pursuant to the Uniform Interstate Family Support Act or other legal processes, using appropriate remedies applied in its own cases in accordance with §§ 303.6, 303.31, 303.100 through 303.102, and 303.104 of this part; and

(iv) Collecting and monitoring any support payments from the noncustodial parent and forwarding payments to the location specified by the IV-D agency in the initiating State. The IV-D agency must include sufficient information to identify the case, indicate the date of collection as defined under § 302.51(a) of this chapter, and include the responding State's identifying code as defined in the Federal Information Processing Standards Publication (FIPS) issued by the National Bureau of Standards or the Worldwide Geographic Location Codes issued by the General Services Administration.

(v) Reviewing and adjusting child support orders upon request in accordance with § 303.8 of this part.

(8) The IV-D agency must provide timely notice to the IV-D agency in the initiating State in advance of any formal hearings which may result in establishment or adjustment of an order.

(9) The IV-D agency must notify the IV-D agency in the initiating State within 10 working days of receipt of new information on a case by submitting an updated form or a computer-generated replica in the same format and containing the same information.

(10) The IV-D agency must notify the interstate central registry in the responding State when a case is closed.

(d) *Payment and recovery of costs in interstate IV-D cases.* (1) Except as provided in paragraphs (2) and (4), the IV-D agency in the responding State must pay the costs it incurs in processing interstate IV-D cases.

(2) The IV-D agency in the initiating State must pay for the costs of genetic

testing in actions to establish paternity.

(3) If paternity is established in the responding State, the IV-D agency must attempt to obtain a judgment for the costs of genetic testing ordered by the IV-D agency from the alleged father who denied paternity. If the costs of initial or additional genetic testing are recovered, the responding State must reimburse the initiating State.

(4) Each IV-D agency may recover its costs of providing services in interstate non-IV-A cases in accordance with § 302.33(d) of this chapter.

(5) The IV-D agency in the responding State must identify any fees or costs deducted from support payments when forwarding payments to the IV-D agency in the initiating State in accordance with § 303.7(c)(7)(iv) of this section.

(Approved by the Office of Management and Budget under control number 0970-0085)

[53 FR 5257, Feb. 22, 1988, as amended at 53 FR 18987, May 26, 1988; 53 FR 21645, June 9, 1988; 53 FR 27518, July 21, 1988; 54 FR 32311, Aug. 4, 1989; 55 FR 25840, June 25, 1990; 56 FR 22355, May 15, 1991; 57 FR 30681, July 10, 1992; 57 FR 61581, Dec. 28, 1992; 64 FR 6250, Feb. 9, 1999; 68 FR 25303, May 12, 2003]

§ 303.8 Review and adjustment of child support orders.

(a) Definition. For purposes of this section, *Parent* includes any custodial parent or noncustodial parent (or for purposes of requesting a review, any other person or entity who may have standing to request an adjustment to the child support order).

(b) Required procedures. Pursuant to section 466(a)(10) of the Act, when providing services under this chapter:

(1) The State must have procedures under which, every 3 years (or such shorter cycle as the State may determine), upon the request of either parent, or, if there is an assignment under part A, upon the request of the State agency under the State plan or of either parent, the State shall with respect to a support order being enforced under this part, taking into account the best interests of the child involved:

(i) Review and, if appropriate, adjust the order in accordance with the guidelines established pursuant to section 467(a) of the Act if the amount of the

child support award under the order differs from the amount that would be awarded in accordance with the guidelines;

(ii) Apply a cost-of-living adjustment to the order in accordance with a formula developed by the State; or

(iii) Use automated methods (including automated comparisons with wage or State income tax data) to identify orders eligible for review, conduct the review, identify orders eligible for adjustment, and apply the appropriate adjustment to the orders eligible for adjustment under any threshold that may be established by the State.

(2) If the State elects to conduct the review under paragraph (b)(1)(ii) or (iii) of this section, the State must have procedures which permit either party to contest the adjustment, within 30 days after the date of the notice of the adjustment, by making a request for review and, if appropriate, adjustment of the order in accordance with the child support guidelines established pursuant to section 467(a) of the Act.

(3) If the State conducts a guideline review under paragraph (b)(1)(i) of this section:

(i) *Review* means an objective evaluation, conducted through a proceeding before a court, quasi-judicial process, or administrative body or agency, of information necessary for application of the State's guidelines for support to determine:

(A) The appropriate support award amount; and

(B) The need to provide for the child's health care needs in the order through health insurance coverage or other means.

(ii) *Adjustment* applies only to the child support provisions of the order, and means:

(A) An upward or downward change in the amount of child support based upon an application of State guidelines for setting and adjusting child support awards; and/or

(B) Provision for the child's health care needs, through health insurance coverage or other means.

(4) The State must have procedures which provide that any adjustment under paragraph (b)(1)(i) of this section shall be made without a requirement

§ 303.10

for proof or showing of a change in circumstances.

(5) The State must have procedures under which, in the case of a request for a review, and if appropriate, an adjustment outside the 3-year cycle (or such shorter cycle as the State may determine) under paragraph (b)(1) of this section, the State shall review and, if the requesting party demonstrates a substantial change in circumstances, adjust the order in accordance with the guidelines established pursuant to section 467(a) of the Act.

(6) The State must provide notice not less than once every 3 years to the parents subject to the order informing the parents of their right to request the State to review and, if appropriate, adjust the order consistent with this section. The notice must specify the place and manner in which the request should be made. The initial notice may be included in the order.

(c) Standard for adequate grounds. The State may establish a reasonable quantitative standard based upon either a fixed dollar amount or percentage, or both, as a basis for determining whether an inconsistency between the existent child support award amount and the amount of support determined as a result of a review using automated methods under paragraph (b)(1)(iii) of this section is adequate grounds for petitioning for adjustment of the order.

(d) Health care needs must be adequate basis. The need to provide for the child's health care needs in the order, through health insurance or other means, must be an adequate basis under State law to initiate an adjustment of an order, regardless of whether an adjustment in the amount of child support is necessary. In no event shall the eligibility for or receipt of Medicaid be considered to meet the need to provide for the child's health care needs in the order.

(e) Timeframes for review and adjustment. Within 180 calendar days of receiving a request for a review or locating the non-requesting parent, whichever occurs later, a State must: Conduct a review of the order and adjust the order or determine that the order should not be adjusted, in accordance with this section.

45 CFR Ch. III (10-1-04 Edition)

(f) Interstate review and adjustment. (1) In interstate cases, the State with legal authority to adjust the order must conduct the review and adjust the order pursuant to this section.

(2) The applicable laws and procedures for review and adjustment of child support orders, including the State guidelines for setting child support awards, established in accordance with §302.56 of this chapter, are those of the State in which the review and adjustment, or determination that there be no adjustment, takes place.

[68 FR 25303, May 12, 2003]

§ 303.10 [Reserved]

§ 303.11 Case closure criteria.

(a) The IV-D agency shall establish a system for case closure.

(b) In order to be eligible for closure, the case must meet at least one of the following criteria:

(1) There is no longer a current support order and arrearages are under \$500 or unenforceable under State law;

(2) The noncustodial parent or putative father is deceased and no further action, including a levy against the estate, can be taken;

(3) Paternity cannot be established because:

(i) The child is at least 18 years old and action to establish paternity is barred by a statute of limitations which meets the requirements of §302.70(a)(5) of this chapter;

(ii) A genetic test or a court or administrative process has excluded the putative father and no other putative father can be identified; or

(iii) In accordance with §303.5(b) of this part, the IV-D agency has determined that it would not be in the best interests of the child to establish paternity in a case involving incest or forcible rape, or in any case where legal proceedings for adoption are pending;

(iv) The identity of the biological father is unknown and cannot be identified after diligent efforts, including at least one interview by the IV-D agency with the recipient of services;

(4) The noncustodial parent's location is unknown, and the State has made diligent efforts using multiple sources, in accordance with §303.3, all

of which have been unsuccessful, to locate the noncustodial parent:

(i) Over a three-year period when there is sufficient information to initiate an automated locate effort, or

(ii) Over a one-year period when there is not sufficient information to initiate an automated locate effort;

(5) The noncustodial parent cannot pay support for the duration of the child's minority because the parent has been institutionalized in a psychiatric facility, is incarcerated with no chance for parole, or has a medically-verified total and permanent disability with no evidence of support potential. The State must also determine that no income or assets are available to the noncustodial parent which could be levied or attached for support;

(6) The noncustodial parent is a citizen of, and lives in, a foreign country, does not work for the Federal government or a company with headquarters or offices in the United States, and has no reachable domestic income or assets; and the State has been unable to establish reciprocity with the country;

(7) The IV-D agency has provided location-only services as requested under §302.35(c)(3) of this chapter;

(8) The non-IV-A recipient of services requests closure of a case and there is no assignment to the State of medical support under 42 CFR 433.146 or of arrearages which accrued under a support order;

(9) There has been a finding by the responsible State agency of good cause or other exceptions to cooperation with the IV-D agency and the State or local IV-A, IV-D, IV-E, Medicaid or food stamp agency has determined that support enforcement may not proceed without risk of harm to the child or caretaker relative;

(10) In a non-IV-A case receiving services under §302.33(a)(1) (i) or (iii), the IV-D agency is unable to contact the recipient of services within a 60 calendar day period despite an attempt of at least one letter sent by first class mail to the last known address;

(11) In a non-IV-A case receiving services under §302.33(a)(1) (i) or (iii), the IV-D agency documents the circumstances of the recipient of services's noncooperation and an action by the recipient of services is es-

sential for the next step in providing IV-D services.

(12) The IV-D agency documents failure by the initiating State to take an action which is essential for the next step in providing services.

(c) In cases meeting the criteria in paragraphs (b) (1) through (6) and (10) through (12) of this section, the State must notify the recipient of services, or in an interstate case meeting the criteria for closure under (b)(12), the initiating State, in writing 60 calendar days prior to closure of the case of the State's intent to close the case. The case must be kept open if the recipient of services or the initiating State supplies information in response to the notice which could lead to the establishment of paternity or a support order or enforcement of an order, or, in the instance of paragraph (b)(10) of this section, if contact is reestablished with the recipient of services. If the case is closed, the former recipient of services may request at a later date that the case be reopened if there is a change in circumstances which could lead to the establishment of paternity or a support order or enforcement of an order by completing a new application for IV-D services and paying any applicable application fee.

(d) The IV-D agency must retain all records for cases closed pursuant to this section for a minimum of three years, in accordance with 45 CFR part 74.

[54 FR 32311, Aug. 4, 1989, as amended at 56 FR 8004, Feb. 26, 1991; 64 FR 11817, 11818, Mar. 10, 1999]

§ 303.15 Agreements to use the Federal Parent Locator Service (PLS) in parental kidnapping and child custody or visitation cases.

(a) *Definitions.* The following definitions apply to this section:

(1) *Authorized person* means the following:

(i) Any agent or attorney of any State having an agreement under this section, who has the duty or authority under the laws of the State to enforce a child custody or visitation determination;

§ 303.15

45 CFR Ch. III (10-1-04 Edition)

(ii) Any court having jurisdiction to make or enforce a child custody or visitation determination, or any agent of the court; or

(iii) Any agent or attorney of the United States, or of a State having an agreement under this section, who has the duty or authority to investigate, enforce, or bring a prosecution with respect to the unlawful taking or restraint of a child.

(2) *Custody or visitation determination* means a judgment, decree, or other order of a court providing for custody or visitation of a child, and includes permanent and temporary orders, and initial orders and modifications.

(b) A State shall enter into an agreement with the Office that meets the requirements of section 463 of the Act and this section of the regulations so that the State IV-D agency may request information from the Federal PLS for the purpose of:

(1) Enforcing any State or Federal law with respect to the unlawful taking or restraint of a child; or

(2) Making or enforcing a child custody or visitation determination.

(c) An agreement under section 463 of the Act must contain the following provisions:

(1) The Director will provide the State IV-D agency with the most recent home address and place of employment of a parent or child if the information is requested for the purposes specified in paragraph (b) of this section.

(2) The State shall make requests for information under the agreement only for the purposes specified in paragraph (b) of this section.

(3) The State shall make requests to the Federal PLS through the State PLS established under §302.35 of this chapter.

(4) The State shall submit requests in the standard format and exchange media normally available to or used by the State PLS.

(5) The State shall identify requests in a manner prescribed by the Office in instructions so that requests can be distinguished from other types of requests submitted to the Federal PLS.

(6) The State shall impose, collect and account for fees to offset the costs

to the State and the Office incurred in processing requests.

(7) The State shall periodically transmit the fees collected to cover the costs to the Federal PLS of processing requests. Fees shall be transmitted in the amount and in the manner prescribed by the Office in instructions.

(8) The State shall adopt policies and procedures to ensure that information shall be used and disclosed solely for the purposes specified in paragraph (b) of this section. Under this requirement, the State shall:

(i) Restrict access to the information to authorized persons whose duties or responsibilities require access in connection with child custody and parental kidnapping cases;

(ii) Store the information during nonduty hours, or when not in use, in a locked container within a secure area that is safe from access by unauthorized persons;

(iii) Process the information under the immediate supervision and control of authorized personnel, in a manner which will protect the confidentiality of the information, and in such a way that unauthorized persons cannot retrieve the information by computer, remote terminal, or other means;

(iv) Brief all employees who will have access to the data on security procedures and instructions;

(v) Send the information directly to the requestor and make no other use of the information;

(vi) After the information is sent to the requestor, destroy any confidential records and information related to the request.

(d)(1) An agreement under section 463 of the Act must be signed by the Governor of the State or the Governor's designee.

(2) The agreement must also be signed by the Attorney General of the State who must certify that the signing State official has the authority under State law to commit the State to the agreement.

[46 FR 54557, Nov. 3, 1981, as amended at 64 FR 6250, Feb. 9, 1999; 68 FR 25304, May 12, 2003]

§ 303.20 Minimum organizational and staffing requirements.

(a) The organizational structure of the IV-D agency (see §302.12) provides for administration or supervision of all the functions for which it is responsible under the State plan, is appropriate to the size and scope of the program in the State, and contains clearly established lines for administrative and supervisory authority.

(b) There is an organizational structure and sufficient staff to fulfill the following required State level functions:

(1) The establishment and administration of the State plan.

(2) Formal evaluation of the quality, efficiency, effectiveness, and scope of services provided under the plan.

(3) Coordination of activities pursuant to, and assurance of compliance with, the requirements of the State's Uniform Interstate Family Support Act for cases pursuant to a State plan.

(4) Requests to the DHHS Office of Child Support Enforcement for use of the Federal Parent Locator Service, the U.S. District Courts, and Secretary of the U.S. Treasury collection procedures.

(5) Preparation and submission of reports required by the Office.

(6) Financial control of the operation of the plan.

(7) Operation of the State Parent Locator Service as required under §302.35 of this chapter.

(c) There is an organizational structure and sufficient resources at the State and local level to meet the performance and time standards contained in this part and to provide for the administration or supervision of the following support enforcement functions:

(1) *Intake*. Activities associated with initial support case opening.

(2) *Establishing the legal obligation to support*. Activities related to determining the noncustodial parent's legal obligation to support his or her dependent children, including paternity determination when necessary.

(3) *Locate*. Activities associated with locating a noncustodial parent.

(4) *Financial assessment*. Activities related to determining a noncustodial parent's ability to provide support.

(5) *Establishment of the amount of support*. Activities related to determining a noncustodial parent's child support obligation, including methods and terms of payment.

(6) *Collection*. Activities related to monitoring payment activities and processing cash flow.

(7) *Enforcement*. Activities to enforce collection of support, including income withholding and other available enforcement techniques.

(8) *Investigation*. Activities related to investigation necessary to accomplish the functions of this paragraph.

(d) The functions referred to in paragraphs (b) (1), (2) and (6) of this section may not be delegated by the IV-D agency. The functions referred to in paragraph (b)(5) of this section may be delegated to the extent necessary to report on activities delegated by the IV-D agency.

(e) No functions under the State plan may be delegated by the IV-D agency if such functions are to be performed by caseworkers who are also performing the assistance payments or social services functions under title IV-A or XX of the Act.

In the case of a sparsely populated geographic area, upon justification by the IV-D agency documenting a lack of administrative feasibility in not utilizing staff of the IV-A agency, the Office may approve alternate arrangements that include sufficient reporting and cost allocation methods that will assure compliance with Federal requirements and proper claims for Federal financial participation. Under this provision:

(1) *Caseworker* means any person who has decision-making authority over individual cases on a day-to-day basis and includes, but is not limited to such designations as intake worker, eligibility technician, caseworker, and social worker.

(2) The *assistance payments function* means activities related to determination of eligibility for, and amount of financial assistance under the approved State plan under title I, IV-A, X, XIV, or XVI, State Supplemental income payments under title XVI of the Act, and State or local General Assistance programs. It includes the complete

§ 303.30

process of determining initial and continuing eligibility for financial and medical assistance and commodities distribution or food stamps.

(3) The *social services function* means those activities included in the approved State plan and carried out pursuant to title XX of the Act. It includes determination of eligibility for, and delivery of services to, families and individuals under the approved State plan or under title XX of the Act.

(f) There are the following types of staff in sufficient numbers to achieve the standards for an effective program prescribed in this part:

(1) Attorneys or prosecutors to represent the agency in court or administrative proceedings with respect to the establishment and enforcement of orders of paternity and support, and

(2) Other personnel such as legal, interviewer, investigative, accounting, clerical, and other supportive staff.

(g) If it is determined as a result of an audit conducted under part 305 of this chapter that a State is not in substantial compliance with the requirements of title IV-D of the Act, the Secretary will evaluate whether inadequate resources was a major contributing factor and, if necessary, may set resource standards for the State.

[40 FR 27164, June 26, 1975, as amended at 47 FR 57282, Dec. 23, 1982; 54 FR 32312, Aug. 4, 1989; 64 FR 6250, Feb. 9, 1999; 68 FR 25304, May 12, 2003]

§ 303.30 Securing medical support information.

(a) If the IV-A or IV-E agency does not provide the information specified in this paragraph to the Medicaid agency and if the information is available or can be obtained in a IV-D case for which an assignment as defined under §301.1 of this chapter is in effect, the IV-D agency shall obtain the following information on the case:

(1) Title IV-A case number, title IV-E foster care case number, Medicaid number or the individual's social security number;

(2) Name of noncustodial parent;

(3) Social security number of noncustodial parent;

(4) Name and social security number of child(ren);

45 CFR Ch. III (10-1-04 Edition)

(5) Home address of noncustodial parent;

(6) Name and address of noncustodial parent's place of employment;

(7) Whether the noncustodial parent has a health insurance policy and, if so, the policy name(s) and number(s) and name(s) of person(s) covered.

(b) The IV-D agency shall provide the information obtained under paragraph (a) of this section to the Medicaid agency in a timely manner by the most efficient and cost-effective means available, using manual or automated systems.

(Approved by the Office of Management and Budget under control numbers 0960-0420 and 0970-0107)

[50 FR 41895, Oct. 15, 1985, as amended at 51 FR 37732, Oct. 24, 1986. Redesignated at 54 FR 32312, Aug. 4, 1989; 56 FR 8004, Feb. 26, 1991; 64 FR 6250, Feb. 9, 1999]

§ 303.31 Securing and enforcing medical support obligations.

(a) For purposes of this section:

(1) Health insurance is considered reasonable in cost if it is employment-related or other group health insurance, regardless of service delivery mechanism.

(2) Health insurance includes fee for service, health maintenance organization, preferred provider organization, and other types of coverage under which medical services could be provided to the dependent child(ren) of a noncustodial parent.

(b) With respect to cases for which there is an assignment as defined in §301.1 of this chapter in effect, the IV-D agency shall:

(1) Unless the custodial parent and child(ren) have satisfactory health insurance other than Medicaid, petition the court or administrative authority to include health insurance that is available to the noncustodial parent at reasonable cost in new or modified court or administrative orders for support.

(2) Petition the court or administrative authority to include medical support as required under paragraph (b)(1) of this section whether or not—

(i) Health insurance at reasonable cost is actually available to the noncustodial parent at the time the order is entered; or

(ii) Modification of current coverage to include the child(ren) in question is immediately possible.

(3) Establish written criteria to identify cases not included under paragraphs (b)(1) and (b)(2) of this section where there is a high potential for obtaining medical support based on—

(i) Evidence that health insurance may be available to the noncustodial parent at a reasonable cost, and

(ii) Facts, as defined by State law, regulation, procedure, or other directive, which are sufficient to warrant modification of the existing support order to include health insurance coverage for a dependent child(ren).

(4) Petition the court or administrative authority to modify support orders for cases identified in paragraph (b)(3) of this section to include medical support in the form of health insurance coverage.

(5) Provide the custodial parent with information pertaining to the health insurance policy which has been secured for the dependent child(ren) pursuant to an order obtained under this section.

(6) Inform the Medicaid agency when a new or modified court or administrative order for child support includes medical support and provide the information referred to in §303.30(a) of this part to the Medicaid agency when the information is available.

(7) If health insurance is available to the noncustodial parent at reasonable cost and has not been obtained at the time the order is entered, take steps to enforce the health insurance coverage required by the support order and provide the Medicaid agency with the information referred to in §303.30(a) of this part.

(8) Periodically communicate with the Medicaid agency to determine if there have been lapses in health insurance coverage for Medicaid applicants and recipients.

(9) Request employers and other groups offering health insurance coverage that is being enforced by the IV-D agency to notify the IV-D agency of lapses in coverage.

(c) The IV-D agency shall inform an individual who is eligible for services under §302.33 of this chapter that medical support enforcement services will

be provided and shall provide the services specified in paragraph (b) of this section.

(Approved by the Office of Management and Budget under control numbers 0960-0420 and 0970-0107)

[50 FR 41895, Oct. 15, 1985, as amended at 51 FR 37732, Oct. 24, 1986. Redesignated at 54 FR 32312, Aug. 4, 1989, and amended at 56 FR 8004, Feb. 26, 1991; 61 FR 67241, Dec. 20, 1996; 64 FR 6250, Feb. 9, 1999; 68 FR 25304, May 12, 2003]

§ 303.32 National Medical Support Notice.

(a) *Mandatory State laws.* States must have laws, in accordance with section 466(a)(19) of the Act, requiring procedures specified under paragraph (c) of this section for the use, where appropriate, of the National Medical Support Notice (NMSN), to enforce the provision of health care coverage for children of noncustodial parents who are required to provide health care coverage through an employment-related group health plan pursuant to a child support order and for whom the employer is known to the State agency.

(b) *Exception.* States are not required to use the NMSN in cases with court or administrative orders that stipulate alternative health care coverage to employer-based coverage.

(c) *Mandatory procedures.* The State must have in effect and use procedures under which:

(1) The State agency must use the NMSN to transfer notice of the provision for health care coverage of the child(ren) to employers.

(2) The State agency must transfer the NMSN to the employer within two business days after the date of entry of an employee who is an obligor in a IV-D case in the State Directory of New Hires.

(3) Employers must transfer the NMSN to the appropriate group health plan providing any such health care coverage for which the child(ren) is eligible (excluding the severable Notice to Withhold for Health Care Coverage directing the employer to withhold any mandatory employee contributions to the plan) within twenty business days after the date of the NMSN.

(4) Employers must withhold any obligation of the employee for employee contributions necessary for coverage of

§ 303.35

the child(ren) and send any amount withheld directly to the plan.

(5) Employees may contest the withholding based on a mistake of fact. If the employee contests such withholding, the employer must initiate withholding until such time as the employer receives notice that the contest is resolved.

(6) Employers must notify the State agency promptly whenever the non-custodial parent's employment is terminated in the same manner as required for income withholding cases in accordance with §303.100(e)(1)(x) of this part.

(7) The State agency must promptly notify the employer when there is no longer a current order for medical support in effect for which the IV-D agency is responsible.

(8) The State agency, in consultation with the custodial parent, must promptly select from available plan options when the plan administrator reports that there is more than one option available under the plan.

(d) *Effective date.* This section is effective October 1, 2001, or, if later, the effective date of State laws described in paragraph (a) of this section. Such State laws must be effective no later than the close of the first day of the first calendar quarter that begins after the close of the first regular session of the State legislature that begins after October 1, 2001. For States with 2-year legislative sessions, each year of such session would be regarded as a separate regular session.

[65 FR 82165, Dec. 27, 2000]

§ 303.35 Administrative complaint procedure.

(a) Each State must have in place an administrative complaint procedure, defined by the State, in place to allow individuals the opportunity to request an administrative review, and take appropriate action when there is evidence that an error has occurred or an action should have been taken on their case. This includes both individuals in the State and individuals from other States.

(b) A State need not establish a formal hearing process but must have clear procedures in place. The State must notify individuals of the proce-

45 CFR Ch. III (10-1-04 Edition)

dures, make them available for recipients of IV-D services to use when requesting such a review, and use them for notifying recipients of the results of the review and any actions taken.

[65 FR 82208, Dec. 27, 2000]

§ 303.52 Pass-through of incentives to political subdivisions.

The State must calculate and promptly pay incentives to political subdivisions as follows:

(a) The State IV-D agency must develop a standard methodology for passing through an appropriate share of its incentive payment to those political subdivisions of the State that participate in the costs of the program, taking into account the efficiency and effectiveness of the activities carried out under the State plan by those political subdivisions. In order to reward efficiency and effectiveness, the methodology also may provide for payment of incentives to other political subdivisions of the State that administer the program.

(b) To ensure that the standard methodology developed by the State reflects local participation, the State IV-D agency must submit a draft methodology to participating political subdivisions for review and comment or use the rulemaking process available under State law to receive local input.

[54 FR 32312, Aug. 4, 1989]

§ 303.69 Requests by agents or attorneys of the United States for information from the Federal Parent Locator Service (PLS).

(a) Agents or attorneys of the United States may request information directly from the Federal PLS in connection with a parental kidnapping or child custody case. (See §303.15(a) of this part for a definition of persons authorized to request the information.)

(b) All requests under this section shall be made in the manner and form prescribed by the Office.

(c) All requests under this section shall contain the information specified in §303.70(c) of this part.

(d) All requests under this section shall be accompanied by a statement, signed by the agent or attorney of the

United States, attesting to the following:

(1) The request is being made solely to locate an individual in connection with a parental kidnapping or child custody case.

(2) Any information obtained through the Federal PLS shall be treated as confidential, shall be used solely for the purpose for which it was obtained and shall be safeguarded.

(e) A fee may be charged to cover the costs of processing requests for information. A separate fee may be charged to cover costs of searching for a social security number before processing a request for location information.

(Approved by the Office of Management and Budget under control number 0960-0258)

[48 FR 38645, Aug. 25, 1983, as amended at 51 FR 37731, Oct. 24, 1986]

§ 303.70 Requests by the State Parent Locator Service (SPLS) for information from the Federal Parent Locator Service (FPLS).

(a) Only the central State PLS office, and any additional IV-D offices designated under § 302.35(b), may submit requests for information to the Federal PLS.

(b) All requests shall be made in the manner and form prescribed by the Office.

(c) All requests shall contain the following information:

(1) The parent's name;

(2) The parent's social security number (SSN). If the SSN is unknown, the IV-D agency must make every reasonable effort to ascertain the individual's SSN before submitting the request to the Federal PLS;

(3) Whether the individual is or has been a member of the armed services, if known;

(4) Whether the individual is receiving, or has received, any Federal compensation or benefits, if known; and

(5) Any other information prescribed by the Office.

(d) All requests shall be accompanied by a statement, signed by the director of the IV-D agency or his or her designee, attesting to the following:

(1) The request is being made to obtain information or to facilitate the discovery of any individual in accordance with section 453(a)(2) of the Act

for the purpose of establishing parentage or establishing, setting the amount of, modifying, or enforcing child support obligations, or for determining who has or may have parental rights with respect to a child, or in accordance with section 453(a)(3) of the Act for enforcing a Federal or State law with respect to the unlawful taking or restraint of a child, or for making or enforcing a child custody or visitation determination as defined in section 463(d)(1) of the Act.

(2) Any information obtained through the Federal PLS shall be treated as confidential and shall be safeguarded under the requirements of sections 453(b), 453(l), 454(8), 454(17), 454(26), and 463(c) of the Act and instructions issued by the Office.

(e)(1) The IV-D agency shall pay the fees required under:

(i) Section 453(e)(2) of the Act;

(ii) Section 454(17) of the Act in parental kidnapping and child custody or visitation cases;

(iii) Section 453(k)(3) of the Act.

(2)(i) The IV-D agency may charge an individual requesting information, or pay without charging the individual, the fee required under sections 453(e)(2), 453(k)(3) or 454(17) of the Act except that the IV-D agency shall charge an individual specified in section 453(c)(3) of the Act the fee required under section 453(e)(2) of the Act.

(ii) The State may recover the fee required under section 453(e)(2) of the Act from the noncustodial parent who owes a support obligation to a family on whose behalf the IV-D agency is providing services and repay it to the individual requesting information or itself.

(iii) State funds used to pay the fee under section 453(e)(2) of the Act are not program expenditures under the State plan but are program income under § 304.50 of this chapter.

(3) The fees required under sections 453(e)(2), 453(k)(3) and 454(17) of the Act shall be reasonable and as close to actual costs as possible so as not to discourage use of the FPLS by authorized individuals.

(4)(i) For costs of processing requests for information under sections 453(e)(2) and 454(17) of the Act, and furnishing information under section 453(k)(3) of the Act, the Federal government will

§ 303.71

45 CFR Ch. III (10–1–04 Edition)

charge the IV-D agency periodically. A fee will be charged for submitting a case to the FPLS for information.

(ii) If a State fails to pay the appropriate fees charged by the Office under this section, the services provided by the FPLS in cases subject to the fees may be suspended until payment is received.

(iii) Fees shall be transmitted in the amount and manner prescribed by the Office in instructions.

(Approved by the Office of Management and Budget under control number 0960-0165)

[46 FR 54557, Nov. 3, 1981, as amended at 47 FR 24719, June 8, 1982; 47 FR 57282, Dec. 23, 1982; 51 FR 37731, Oct. 24, 1986; 57 FR 28110, June 24, 1992; 64 FR 6250, 6251, Feb. 9, 1999; 68 FR 25304, May 12, 2003]

§ 303.71 Requests for full collection services by the Secretary of the Treasury.

(a) *Definition. State collection mechanisms* means a comprehensive set of written procedures developed and used to maximize effective collection action within the State.

(b) *Families eligible.* Subject to the criteria and procedures in this section, the IV-D agency may request the Secretary to certify the amount of a child support obligation to the Secretary of the Treasury for collection under section 6305 of the Internal Revenue Code of 1986. Requests may be made on behalf of families who make assignments as defined in § 301.1 of this chapter and on behalf of families receiving services under § 302.33.

(c) *Cases eligible.* For a case to be eligible for certification to the Secretary of the Treasury:

(1) There shall be a court or administrative order for support;

(2) The amount to be collected under the support order shall be at least \$750 in arrears;

(3) At least six months shall have elapsed since the last request for referral of the case to the Secretary of the Treasury;

(4) The IV-D agency, the client, or the client's representative shall have made reasonable efforts to collect the support through the State's own collection mechanisms. The agency need not repeat actions taken by the client or client's representative that the agency

determines to be comparable to the State's collection mechanisms.

(5) Only the State that has taken an assignment as defined in § 301.1 of this chapter or an application or referral under § 302.33 of this chapter may request Secretary of the U.S. Treasury collection services on behalf of a given case.

(d) *Procedures for submitting requests.*
(1) The IV-D agency shall submit requests for certification to the regional office in the manner and form prescribed by the Office.

(2) The Director of the State IV-D agency (or designee) shall sign requests for collection by the Secretary of the Treasury.

(e) *Criteria for acceptable requests.* The IV-D agency shall ensure that each request contains:

(1) Sufficient information to identify the debtor, including:

(i) The individual's name;

(ii) The individual's social security number;

(iii) The individual's address and place of employment, including the source of this information and the date it was last verified.

(2) A copy of all court or administrative orders for support;

(3)(i) The amount owed under the support orders;

(ii) A statement of whether the amount is in lieu of, or in addition to, amounts previously referred to Secretary of the U.S. Treasury for collection;

(4)(i) A statement that the agency, the client, or the client's representative has made reasonable efforts to collect the amount owed using the State's own collection mechanisms or mechanisms that are comparable;

(ii) A description of the actions taken, why they failed, and why further State action would be unproductive;

(5) The dates of any previous requests for referral of the case to the Secretary of the Treasury;

(6) A statement that the agency agrees to reimburse the Secretary of the Treasury for the costs of collection; and

(7)(i) A statement that the agency has reason to believe that the debtor has assets that the Secretary of the

Treasury might levy to collect the support; and

(ii) A statement of the nature and location of the assets, if known.

(f) *Review of requests by the Office.* (1) The Regional Office will review each request to determine whether it meets the requirements of this section.

(2) If a request meets all requirements, the Regional Office will promptly certify and transmit the request with a copy of all supporting documentation to the Secretary of the Treasury. At the same time, the Regional Office will notify the IV-D agency in writing of the transmittal.

(3)(i) If a request does not meet all requirements, the Regional Office will attempt to correct the request in consultation with the IV-D agency.

(ii) If the request cannot be corrected through consultation, the Regional Office will return it to the agency with an explanation of why the request was not certified.

(g) *Notification of changes in case status.* (1) The IV-D agency shall immediately notify the Regional Office of the following changes in case status:

(i) A change in the amount due;

(ii) A change in the nature or location of assets;

(iii) A change in the address of the debtor.

(2) The Regional Office will transmit the revised information to the Secretary of the Treasury.

(Approved by the Office of Management and Budget under control number 0960-0281)

[47 FR 16030, Apr. 14, 1982; 48 FR 7179, Feb. 18, 1983, as amended at 51 FR 37731, Oct. 24, 1986; 56 FR 8004, Feb. 26, 1991; 64 FR 6251, Feb. 9, 1999]

§ 303.72 Requests for collection of past-due support by Federal tax refund offset.

(a) *Past-due support qualifying for offset.* Past-due support as defined in § 301.1 of this chapter qualifies for offset if:

(1) There has been an assignment of the support rights under section 408(a)(3) of the Act or section 471(a)(17) of the Act to the State making the request for offset or the IV-D agency is providing services under § 302.33 of this chapter.

(2) For support that has been assigned to the State under section 408(a)(3) of the Act or section 471(a)(17) of the Act, the amount of the support is not less than \$150. The State may combine assigned support amounts from the same obligor in multiple cases to reach \$150. Amounts under this paragraph may not be combined with amounts under paragraph (a)(3) of this section to reach the minimum amounts required under this paragraph or under paragraph (a)(3) of this section.

(3) For support owed in cases where the IV-D agency is providing IV-D services under § 302.33 of this chapter:

(i) The support is owed to or on behalf of a qualified child, or a qualified child and the parent with whom the child is living if the same support order includes support for the child and the parent.

(ii) The amount of support is not less than \$500. The State may combine support amounts from the same obligor in multiple cases where the IV-D agency is providing IV-D services under § 302.33 of this chapter to reach \$500. Amounts under this paragraph may not be combined with amounts under paragraph (a)(2) of this section to reach the minimum amounts required under this paragraph or under paragraph (a)(2) of this section.

(iii) At State option, the amount has accrued since the State IV-D agency began to enforce the support order; and

(iv) The State has checked its records to determine if a title IV-A or foster care maintenance assigned arrearage exists with respect to the non-IV-A individual or family.

(4) The IV-D agency has in its records:

(i) A copy of the order and any modifications upon which the amount referred is based which specify the date of issuance and amount of support;

(ii) A copy of the payment record, or, if there is no payment record, an affidavit signed by the custodial parent attesting to the amount of support owed; and

(iii) In non-IV-A cases, the custodial parent's current address.

(5) Before submittal, the State IV-D agency has verified the accuracy of the name and social security number of the noncustodial parent and the accuracy

of the past-due support amount. If the State IV-D agency has verified this information previously, it need not reverify it.

(6) A notification of liability for past-due support has been received by the Secretary of the U.S. Treasury as prescribed by paragraph (c)(2) of this section.

(b) *Notification to OCSE of liability for past-due support.* (1) A State IV-D agency shall submit a notification or (notifications) of liability for past-due support to the Office according to the timeframes and in the manner specified by the Office in instructions.

(2) To the extent specified by the Office in instructions, the notification of liability for past-due support shall contain with respect to each:

(i) The name of the taxpayer who owes the past-due support;

(ii) The social security number of that taxpayer;

(iii) The amount of past-due support owed;

(iv) The State codes as contained in the Federal Information Processing Standards (FIPS) publication of the National Bureau of Standards and also promulgated by the General Services Administration in Worldwide Geographical Location Codes; and

(v) Whether the past-due support is due an individual who applied for services under § 302.33 of this chapter.

(3) The notification of liability for past-due support may contain with respect to each delinquency the taxpayer's IV-D identifier.

(c) *Review of requests by the Office.* (1) The Deputy Director will review each request to determine whether it meets the requirements of this section.

(2) If a request meets all requirements, the Deputy Director will transmit the request to the Secretary of the U.S. Treasury and will notify the State IV-D agency of the transmittal.

(3) If a request does not meet all requirements, the Deputy Director will attempt to correct the request in consultation with the State IV-D agency.

(4) If a request cannot be corrected through consultation, the Deputy Director will return it to the State IV-D agency with an explanation of why the request could not be transmitted to the Secretary of the U.S. Treasury.

(d) *Notification of changes in case status.* (1) The State referring past-due support of offset must, in interstate situations, notify any other State involved in enforcing the support order when it submits an interstate case for offset and when it receives the offset amount from the Secretary of the U.S. Treasury.

(2) The State IV-D agency shall within time frames established by the Office in instructions, notify the Deputy Director of any deletion of an amount referred for collection by Federal tax offset or any decrease in the amount if the decrease is significant according to the guidelines developed by the State. The notification shall contain the information specified in paragraph (b) of this section.

(e) *Notices of offset—(1) Advance.* The State IV-D agency, or the Office, if the State requests and the Office agrees, shall send a written advance notice to inform a noncustodial parent that the amount of his or her past-due support will be referred to the Secretary of the U.S. Treasury for collection by Federal tax refund offset. The notice must inform noncustodial parents:

(i) Of their right to contest the State's determination that past-due support is owed or the amount of past-due support;

(ii) Of their right to an administrative review by the submitting State or at the noncustodial parent's request the State with the order upon which the referral for offset is based;

(iii) Of the procedures and timeframe for contacting the IV-D agency in the submitting State to request administrative review; and

(iv) That, in the case of a joint return, the Secretary of the U.S. Treasury will notify the noncustodial parent's spouse at the time of offset regarding the steps to take to protect the share of the refund which may be payable to that spouse. If the IV-D agency sends the notice, it must meet the conditions specified by the Office in instructions.

(2) *At offset.* The Secretary of the U.S. Treasury will notify the noncustodial parent that the offset has been made. The Secretary of the U.S. Treasury will also notify any individual who filed a

joint return with the noncustodial parent of the steps to take in order to secure a proper share of the refund.

(f) *Procedures for contesting in intrastate cases.* (1) Upon receipt of a complaint from a noncustodial parent in response to the advance notice required in paragraph (e)(1) of this section or concerning a tax refund which has already been offset, the IV-D agency must send a notice to the noncustodial parent and, in non-IV-A cases the custodial parent, of the time and place of the administrative review of the complaint and conduct the review to determine the validity of the complaint.

(2) If the complaint concerns a joint tax refund that has not yet been offset, the IV-D agency must inform the noncustodial parent that the Secretary of the U.S. Treasury will notify the noncustodial parent's spouse at the time of offset regarding the steps to take to secure his or her proper share of the refund. If the complaint concerns a joint tax refund which has already been offset, the IV-D agency must refer the noncustodial parent to the Secretary of the U.S. Treasury.

(3) If the administrative review results in a deletion of, or decrease in, the amount referred for offset, the IV-D agency must notify OCSE within time frames established by the Office and include the information specified in paragraph (b) of this section.

(4) If, as a result of the administrative review, an amount which has already been offset is found to have exceeded the amount of past-due support owed, the IV-D agency must take steps to refund the excess amount to the noncustodial parent promptly.

(g) *Procedures for contesting in interstate cases.* (1) If the noncustodial parent requests an administrative review in the submitting State, the IV-D agency must meet the requirements in paragraph (f) of this section.

(2) If the complaint cannot be resolved by the submitting State and the noncustodial parent requests an administrative review in the State with the order upon which the referral for offset is based, the submitting State must notify the State with the order of the request for an administrative review and provide that State with all necessary information, including the information

listed under paragraph (a)(4) of this section, within 10 days of the noncustodial parent's request for an administrative review.

(3) The State with the order must send a notice to the noncustodial parent and, in non-IV-A cases the custodial parent, of the time and place of the administrative review, conduct the review and make a decision within 45 days of receipt of the notice and information from the submitting State.

(4) If the administrative review results in a deletion of, or change in, the amount referred for offset, the State with the order must notify the submitting State within time frames established by the Office and include the information specified in paragraph (b) of this section. The submitting State must then notify the Office within timeframes established by the Office and include the information specified in paragraph (b) of this section.

(5) Upon resolution of a complaint after an offset has been made, the State with the order must notify the submitting State of its decision promptly.

(6) When an administrative review is conducted in the State with the order, the submitting State is bound by the decision made by the State with the order.

(7) Based on the decision of the State with the order, the IV-D agency in the submitting State must take steps to refund any excess amount to the noncustodial parent promptly.

(8) In computing the arrearage collection performance level under §305.2(a)(4) of this chapter, if the case is referred to the State with the order for an administrative review, the collections made as a result of Federal tax refund offset will be treated as having been collected in full by both the submitting State and the State with the order.

(h) *Distribution of collections.* (1) Collections received by the IV-D agency as a result of refund offset to satisfy title IV-A or non-IV-A past-due support shall be distributed as past-due support as required in accordance with section 457 of the Act.

(2) Collections received by the IV-D agency in foster care maintenance cases shall be distributed as past-due

§ 303.73

45 CFR Ch. III (10–1–04 Edition)

support under § 302.52(b) (3) and (4) of this chapter.

(3) The IV–D agency must inform individuals receiving services under § 302.33 of this chapter in advance that amounts offset will be applied to satisfy any past-due support which has been assigned to the State and submitted for Federal tax refund offset.

(4) If the amount collected is in excess of the amounts required to be distributed under section 457 of the Act, the IV–D agency must repay the excess to the noncustodial parent whose refund was offset or to the parties filing a joint return within a reasonable period in accordance with State law.

(5) In cases where the Secretary of the U.S. Treasury, through OCSE, notifies the State that an offset is being made to satisfy non-IV-A past-due support from a refund based on a joint return, the State may delay distribution until notified that the unobligated spouse's proper share of the refund has been paid or for a period not to exceed six months from notification of offset, whichever is earlier.

(6) Collections from offset may be applied only to cases that were being enforced by the IV–D agency at the time the advance notice described in paragraph (e)(1) of this section was sent.

(i) *Payment of fee.* (1) A refund offset fee, in such amount as the Secretary of the U.S. Treasury and the Secretary of Health and Human Services have agreed to be sufficient to reimburse the Department of Treasury for the full cost of the offset procedure, shall be deducted from the offset amount and credited to the Department of Treasury appropriations which bore all or part of the costs involved in making the collection. The full amount offset must be credited against the obligor's payment record. The fee which the Secretary of the U.S. Treasury may impose with respect to non-IV-A submittals shall not exceed \$25 per submittal.

(2) The State IV–D agency may charge an individual who is receiving services under § 302.33(a)(1) (i) or (iii) of this chapter a fee not to exceed \$25 for submitting past-due support for Federal tax refund offset. The State must inform the individual in advance of the amount of any fee charged.

(3) Any State which requests the Office to send the advance written notice under paragraph (e)(1) of this section will be charged a fee, in an amount established by the Office in instructions, for printing and mailing of pre-offset notices. This fee shall be credited to the Health and Human Services appropriations which bore all or part of the costs involved in making the collection.

(j) Each State involved in a referral of past-due support for offset must comply with instructions issued by the Office.

(Approved by the Office of Management and Budget under control number 0960–0385)

[50 FR 19651, May 9, 1985; 50 FR 31719, Aug. 6, 1985, as amended at 51 FR 37731, Oct. 24, 1986; 53 FR 47710, Nov. 25, 1988; 54 FR 32312, Aug. 4, 1989; 56 FR 8005, Feb. 26, 1991; 58 FR 41437, Aug. 4, 1993; 64 FR 6251, Feb. 9, 1999; 68 FR 25304, May 12, 2003; 68 FR 37980, June 26, 2003; 68 FR 53052, Sept. 9, 2003]

§ 303.73 Applications to use the courts of the United States to enforce court orders.

The IV–D agency may apply to the Secretary for permission to use a United States district court to enforce a support order of a court of competent jurisdiction against a noncustodial parent who is present in another State if the IV–D agency can furnish evidence in accordance with instructions issued by the office.

[61 FR 67241, Dec. 20, 1996, as amended at 68 FR 25304, May 12, 2003]

§ 303.100 Procedures for income withholding.

(a) *General withholding requirements.*

(1) The State must ensure that in the case of each noncustodial parent against whom a support order is or has been issued or modified in the State, and is being enforced under the State plan, so much of his or her income as defined in sections 466(b)(1) and (8) of the Act must be withheld, in accordance with this section, as is necessary to comply with the order.

(2) In addition to the amount to be withheld to pay the current month's obligation, the amount to be withheld must include an amount to be applied toward liquidation of overdue support.

(3) The total amount to be withheld under paragraphs (a)(1), (a)(2) and, if applicable, (f)(1)(iii) of this section may not exceed the maximum amount permitted under section 303(b) of the Consumer Credit Protection Act (15 U.S.C. 1673(b)).

(4) In the case of a support order being enforced under the State plan, the withholding must occur without the need for any amendment to the support order involved or any other action by the court or entity that issued it other than that required or permitted under this section.

(5) If there is more than one notice for withholding against a single noncustodial parent, the State must allocate amounts available for withholding giving priority to current support up to the limits imposed under section 303(b) of the Consumer Credit Protection Act (15 U.S.C. 1673(b)). The State must establish procedures for allocation of support among families, but in no case shall the allocation result in a withholding for one of the support obligations not being implemented.

(6) The withholding must be carried out in full compliance with all procedural due process requirements of the State.

(7) The State must have procedures for promptly terminating withholding:

(i) In all cases, when there is no longer a current order for support and all arrearages have been satisfied; or,

(ii) At State option, when the noncustodial parent requests termination and withholding has not been terminated previously and subsequently initiated, and the noncustodial parent meets the conditions for an alternative arrangement set forth under paragraph (b)(3) of this section.

(8) The State must have procedures for promptly refunding to noncustodial parents amounts which have been improperly withheld.

(9) Support orders issued or modified in IV-D cases must include a provision requiring the noncustodial parent to keep the IV-D agency informed of the name and address of his or her current employer, whether the noncustodial parent has access to health insurance coverage at reasonable cost and, if so, the health insurance policy information.

(b) *Immediate withholding on IV-D cases.* (1) In the case of a support order being enforced under this part that is issued or modified on or after November 1, 1990, the income of a noncustodial parent shall be subject to withholding, regardless of whether support payments by such parent are in arrears, on the effective date of the order, except that such income shall not be subject to withholding under this paragraph in any case where:

(i) Either the noncustodial or custodial parent demonstrates, and the court or administrative authority finds, that there is good cause not to require immediate withholding; or

(ii) A written agreement is reached between the absent and custodial parent, and, at State option, the State in IV-D cases in which there is an assignment of support rights to the State, which provides for an alternative arrangement.

(2) For the purposes of this paragraph, any finding that there is good cause not to require immediate withholding must be based on at least:

(i) A written determination that, and explanation by the court or administrative authority of why, implementing immediate income withholding would not be in the best interests of the child; and

(ii) Proof of timely payment of previously ordered support in cases involving the modification of support orders.

(3) For purposes of this paragraph, "written agreement" means a written alternative arrangement signed by both the custodial and noncustodial parent, and, at State option, by the State in IV-D cases in which there is an assignment of support rights to the State, and reviewed and entered in the record by the court or administrative authority.

(c) *Initiated withholding in IV-D cases.* In the case of income not subject to immediate withholding under paragraph (b) of this section, including cases subject to a finding of good cause or to a written agreement:

(1) The income of the noncustodial parent shall become subject to the withholding on the date on which the payments which the noncustodial parent has failed to make under a support order are at least equal to the support

§ 303.100

45 CFR Ch. III (10-1-04 Edition)

payable for one month or, if earlier, and without regard to whether there is an arrearage, the earliest of:

(i) The date on which the noncustodial parent requests that withholding begin;

(ii) The date on which the custodial parent requests that withholding begin, if the State determines, in accordance with such procedures and standards as it may establish, that the request should be approved; or

(iii) Such earlier date as State law or procedure may provide.

(2) The only basis for contesting a withholding under this paragraph is a mistake of fact, which for purposes of this paragraph means an error in the amount of current or overdue support or in the identity of the alleged noncustodial parent.

(d) *Notice to the noncustodial parent in cases of initiated withholding.* The State must send a notice to the noncustodial parent regarding the initiated withholding. The notice must inform the noncustodial parent:

(1) That the withholding has commenced;

(2) Of the amount of overdue support that is owed, if any, and the amount of wages that will be withheld;

(3) That the provision for withholding applies to any current or subsequent employer or period of employment;

(4) Of the procedures available for contesting the withholding and that the only basis for contesting the withholding is a mistake of fact;

(5) Of the information provided to the employer, pursuant to paragraph (e) of this section.

(e) *Notice to the employer for immediate and initiated withholding.* (1) To initiate withholding, the State must send the noncustodial parent's employer a notice using the standard Federal format which includes the following:

(i) The amount to be withheld from the noncustodial parent's income, and a statement that the amount actually withheld for support and other purposes, including the fee specified under paragraph (e)(1)(iii) of this section, may not be in excess of the maximum amounts permitted under section 303(b) of the Consumer Credit Protection Act (15 U.S.C. 1673(b));

(ii) That the employer must send the amount to the SDU within 7 business days of the date the noncustodial parent is paid, and must report to the SDU the date on which the amount was withheld from the noncustodial parent's income;

(iii) That, in addition to the amount withheld for support, the employer may deduct a fee established by the State for administrative costs incurred for each withholding, if the State permits a fee to be deducted;

(iv) That the withholding is binding upon the employer until further notice by the State;

(v) That the employer is subject to a fine to be determined under State law for discharging a noncustodial parent from employment, refusing to employ, or taking disciplinary action against any noncustodial parent because of the withholding;

(vi) That, if the employer fails to withhold income in accordance with the provisions of the notice, the employer is liable for the accumulated amount the employer should have withheld from the noncustodial parent's income;

(vii) That the withholding under this section shall have priority over any other legal process under State law against the same income;

(viii) That the employer may combine withheld amounts from noncustodial parents' income in a single payment to each appropriate agency requesting withholding and separately identify the portion of the single payment which is attributable to each individual noncustodial parent;

(ix) That the employer must withhold from the noncustodial parent's income the amount specified in the notice and pay such amount to the State disbursement unit within 7 business days after the date the income would have been paid to the noncustodial parent.

(x) That the employer must notify the State promptly when the noncustodial parent terminates employment and provide the noncustodial parent's last known address and the name and address of the noncustodial parent's new employer, if known.

(2) In the case of an immediate withholding under paragraph (b) of this section, the State must issue the notice to the employer specified in paragraph (e)(1) of this section within 2 business days of the date the State's computerized support enforcement system receives notice of income and income source from a court, another State, an employer, the Federal Parent Locator Service, or another source recognized by the State, or the date information regarding a newly hired employee is entered into the State Directory of New Hires, or if information is not received by the State's computerized support enforcement system or its State Directory of New Hires, within 15 calendar days of the date the support order is received if the employer's address is known on that date, or, if the address is unknown on that date, within 2 business days of the date the State's computerized support enforcement system receives notice of income and income source from a court, another State, an employer, the Federal Parent Locator Service, or another source recognized by the State, or the date information regarding a newly hired employee is entered into the State Directory of New Hires, or if information is not received by the State's computerized support enforcement system or its State Directory of New Hires, within 15 calendar days of locating the employer's address.

(3) In the case of initiated withholding, the State must send the notice to the employer required under paragraph (e)(1) of this section within 2 business days of the date the State's computerized support enforcement system receives notice of income and income source from a court, another State, an employer, the Federal Parent Locator Service, or another source recognized by the State, or the date information regarding a newly hired employee is entered into the State Directory of New Hires, or if information is not received by the State's computerized support enforcement system or its State Directory of New Hires, within 15 calendar days of the date specified in paragraph (c)(1) of this section if the employer's address is known on that date, or, within 2 business days of the date the State's computerized support

enforcement system receives notice of income and income source from a court, another State, an employer, the Federal Parent Locator Service, or another source recognized by the State, or the date information regarding a newly hired employee is entered into the State Directory of New Hires, or if information is not received by the State's computerized support enforcement system or its State Directory of New Hires, within 15 calendar days of locating the employer's address.

(4) If the noncustodial parent changes employment within the State when a withholding is in effect, the State must notify the noncustodial parent's new employer, in accordance with the requirements of paragraph (e)(1) of this section, that the withholding is binding on the new employer.

(f) *Interstate withholding.*

(1) The State law must require employers to comply with a withholding notice issued by any State.

(2) When an out-of-State IV-D agency requests direct withholding, the employer must be required to withhold funds as directed in the notice but to apply the income withholding laws of the noncustodial parent's principal place of employment to determine:

(i) The employer's fee for processing the withholding notice;

(ii) The maximum amount that may be withheld from the noncustodial parent's income;

(iii) The time periods to implement the withholding notice and to remit the withheld income;

(iv) The priorities for withholding and allocating income withheld for multiple child support obligees; and

(v) Any withholding term or conditions not specified in the withholding order.

(3) In other than direct withholding actions:

(i) A State may require registration for orders from other States for purposes of enforcement through withholding only if registration is for the sole purpose of obtaining jurisdiction for enforcement of the order; does not confer jurisdiction on the court or agency for any other purpose (such as modification of the underlying or original support order or resolution of custody or visitation disputes); and does

§ 303.101

45 CFR Ch. III (10–1–04 Edition)

not delay implementation of withholding beyond the timeframes established in paragraphs (e)(2) and (e)(3) of this section.

(ii) Within 20 calendar days of a determination that withholding is required in a particular case, and, if appropriate, receipt of any information necessary to carry out withholding, the initiating State must notify the IV-D agency of the State in which the noncustodial parent is employed to implement interstate withholding. The notice must contain all information necessary to carry out the withholding, including the amount requested to be withheld, a copy of the support order and a statement of arrearages, if appropriate. If necessary, the State where the support order is entered must provide the information necessary to carry out the withholding within 30 calendar days of receipt of a request for information by the initiating State.

(iii) The State in which the noncustodial parent is employed must implement withholding in accordance with this section upon receipt of the notice from the initiating State required in paragraph (f)(3)(ii) of this section.

(iv) The State in which the noncustodial parent is employed must notify the State in which the custodial parent is receiving services when the noncustodial parent is no longer employed in the State and provide the name and address of the noncustodial parent and new employer, if known.

(4) The withholding must be carried out in full compliance with all procedural due process requirements of the State in which the noncustodial parent is employed.

(5) Except with respect to when withholding must be implemented which is controlled by the State where the support order was entered, the law and procedures of the State in which the noncustodial parent is employed shall apply.

(g) *Provision for withholding in all child support orders.* Child support orders issued or modified in the State whether or not being enforced under the State IV-D plan must have a provision for withholding of income. This requirement does not alter the requirement governing all IV-D cases in paragraph (a)(4) of this section that en-

forcement under the State plan must proceed without the need for a withholding provision in the order.

[57 FR 30682, July 10, 1992, as amended at 64 FR 6251, 6252, Feb. 9, 1999; 68 FR 25304, May 12, 2003]

§ 303.101 Expedited processes.

(a) *Definition.* *Expedited processes* means administrative and judicial procedures (including IV-D agency procedures) required under section 466(a)(2) and (c) of the Act;

(b) *Basic requirement.* (1) The State must have in effect and use, in interstate and intrastate cases, expedited processes as specified under this section to establish paternity and to establish, modify, and enforce support orders.

(2) Under expedited processes:

(i) In IV-D cases needing support order establishment, regardless of whether paternity has been established, action to establish support orders must be completed from the date of service of process to the time of disposition within the following timeframes: (A) 75 percent in 6 months; and (B) 90 percent in 12 months.

(ii) In IV-D cases where a support order has been established, actions to enforce the support order must be taken within the timeframes specified in §§ 303.6(c)(2) and 303.100;

(iii) For purposes of the timeframe at § 303.101(b)(2)(i), in cases where the IV-D agency uses long-arm jurisdiction and disposition occurs within 12 months of service of process on the alleged father or noncustodial parent, the case may be counted as a success within the 6 month tier of the timeframe, regardless of when disposition occurs in the 12 month period following service of process.

(iv) Disposition, as used in paragraphs (b)(2)(i) and (iii) of this section, means the date on which a support order is officially established and/or recorded or the action is dismissed.

(c) *Safeguards.* Under expedited processes:

(1) Paternities and orders established by means other than full judicial process must have the same force and effect under State law as paternities and orders established by full judicial process within the State;

(2) The due process rights of the parties involved must be protected;

(3) The parties must be provided a copy of the voluntary acknowledgment of paternity, paternity determination, and/or support order;

(4) Action taken may be reviewed under the State's generally applicable administrative or judicial procedures.

(d) *Functions.* The functions performed by presiding officers under expedited processes must include at minimum:

(1) Taking testimony and establishing a record;

(2) Evaluating evidence and making recommendations or decisions to establish paternity and to establish and enforce orders;

(3) Accepting voluntary acknowledgment of paternity or support liability and stipulated agreements setting the amount of support to be paid;

(4) Entering default orders upon a showing that process has been served on the defendant in accordance with State law, that the defendant failed to respond to service in accordance with State procedures, and any additional showing required by State law; and

(5) Ordering genetic tests in contested paternity cases in accordance with § 303.5(d)(1).

(e) *Exemption for political subdivisions.* A State may request an exemption from any of the requirements of this section for a political subdivision on the basis of the effectiveness and timeliness of paternity establishment, support order issuance or enforcement within the political subdivision in accordance with the provisions of § 302.70(d) of this chapter.

(Approved by the Office of Management and Budget under control number 0960-0385)

[50 FR 19655, May 9, 1985, as amended at 50 FR 23958, June 7, 1985; 59 FR 66251, Dec. 23, 1994; 64 FR 6252, Feb. 9, 1999; 68 FR 25305, May 12, 2003]

§ 303.102 Collection of overdue support by State income tax refund offset.

(a) *Overdue support qualifying for offset.* Overdue support qualifies for State income tax refund offset if:

(1) There has been an assignment of the support obligation under section 408(a)(3) of the Act or section 471(a)(17)

of the Act or the IV-D agency is providing services under § 302.33 of this chapter, and

(2) The State does not determine, using guidelines it must develop which are generally available to the public, that the case is inappropriate for application of this procedure.

(b) *Accuracy of amounts referred for offset.* The IV-D agency must establish procedures to ensure that:

(1) Amounts referred for offset have been verified and are accurate; and

(2) The appropriate State office or agency is notified of any significant reductions in (including an elimination of) an amount referred for collection by State income tax refund offset.

(c) *Procedures for contesting offset and for reimbursing excess amounts offset.* (1) The State must establish procedures, which are in full compliance with the State's procedural due process requirements, for a noncustodial parent to use to contest the referral of overdue support for State income tax refund offset.

(2) If the offset amount is found to be in error or to exceed the amount of overdue support, the State IV-D agency must take steps to refund the excess amount in accordance with procedures that include a mechanism for promptly reimbursing the noncustodial parent.

(3) The State must establish procedures for ensuring that in the event of a joint return, the noncustodial parent's spouse can apply for a share of the refund, if appropriate, in accordance with State law.

(d) *Notice to custodial parent.* The IV-D agency must inform individuals receiving services under § 302.33 of this chapter, in advance that, for cases in which medical support rights have been assigned under 42 CFR 433.146, and amounts are collected which represent specific dollar amounts designated in the support order for medical purposes, amounts offset will be distributed under § 302.51(c) of this chapter.

(e) *Advance notice to noncustodial parent.* The State must send a written advance notice to inform the noncustodial parent of the referral for State income tax refund offset and of the opportunity to contest the referral.

(f) *Fee for certain cases.* The State IV-D agency may charge an individual who is receiving services under

§ 303.104

§ 302.33(a)(1) (i) or (iii) of this chapter a reasonable fee to cover the cost of collecting past-due support using State tax refund offset. The State must inform the individual in advance of the amount of any fee charged.

(g) Distribution of collections. (1) The State must distribute collections received as a result of State income tax refund offset:

(i) In accordance with section 457 of the Act and §§ 302.51 and 302.52 of this chapter; and

(ii) For cases in which medical support rights have been assigned under 42 CFR 433.146, and amounts are collected which represent specific dollar amounts designated in the support order for medical purposes, under § 302.51(c) of this chapter.

(2) If the amount collected is in excess of the amounts required to be distributed under paragraph (g)(1) of this section, the IV-D agency must repay the excess to the noncustodial parent whose State income tax refund was offset within a reasonable period in accordance with State law.

(3) The State must credit amounts offset on individual payment records.

(h) *Information to the IV-D agency.* The State agency responsible for processing the State tax refund offset must notify the State IV-D agency of the noncustodial parent's home address and social security number or numbers. The State IV-D agency must provide this information to any other State involved in enforcing the support order.

(Approved by the Office of Management and Budget under control number 0960-0385)

[50 FR 19655, May 9, 1985; 50 FR 31720, Aug. 6, 1985, as amended at 51 FR 37731, Oct. 24, 1986; 54 FR 32312, Aug. 4, 1989; 56 FR 8005, Feb. 26, 1991; 64 FR 6252, Feb. 9, 1999; 68 FR 25305, May 12, 2003]

§ 303.104 Procedures for posting security, bond or guarantee to secure payment of overdue support.

(a) The State shall have in effect and use procedures which require that non-custodial parents post security, bond or give some other guarantee to secure payment of overdue support.

(b) The State must provide advance notice to the noncustodial parent regarding the delinquency of the support payment and the requirement of post-

45 CFR Ch. III (10-1-04 Edition)

ing security, bond or guarantee, and inform the noncustodial parent of his or her rights and the methods available for contesting the impending action, in full compliance with the State's procedural due process requirements.

(c) The State must develop guidelines which are generally available to the public to determine whether the case is inappropriate for application of this procedure.

(Approved by the Office of Management and Budget under control number 0960-0385)

[50 FR 19656, May 9, 1985, as amended at 51 FR 37731, Oct. 24, 1986]

§ 303.106 Procedures to prohibit retroactive modification of child support arrearages.

(a) The State shall have in effect and use procedures which require that any payment or installment of support under any child support order is, on and after the date it is due:

(1) A judgment by operation of law, with the full force, effect, and attributes of a judgment of the State, including the ability to be enforced;

(2) Entitled as a judgment to full faith and credit in such State and in any other State; and

(3) Not subject to retroactive modification by such State or by any other State except as provided in paragraph (b) of this section.

(b) The procedures referred to in paragraph (a)(3) of this section may permit modification with respect to any period during which there is pending a petition for modification, but only from the date that notice of such petition has been given, either directly or through the appropriate agent, to the obligee or (where the obligee is the petitioner) to the obligor.

[54 FR 15764, Apr. 19, 1989]

§ 303.107 Requirements for cooperative arrangements.

The State must ensure that all cooperative arrangements:

(a) Contain a clear description of the specific duties, functions and responsibilities of each party;

(b) Specify clear and definite standards of performance which meet Federal requirements;

(c) Specify that the parties will comply with title IV-D of the Act, implementing Federal regulations and any other applicable Federal regulations and requirements;

(d) Specify the financial arrangements including budget estimates, covered expenditures, methods of determining costs, procedures for billing the IV-D agency, and any relevant Federal and State reimbursement requirements and limitations;

(e) Specify the kind of records that must be maintained and the appropriate Federal, State and local reporting and safeguarding requirements; and

(f) Specify the dates on which the arrangement begins and ends, any conditions for revision or renewal, and the circumstances under which the arrangement may be terminated.

[54 FR 30223, July 19, 1989]

§ 303.108 Quarterly wage and unemployment compensation claims reporting to the National Directory of New Hires.

(a) *What definitions apply to quarterly wage and unemployment compensation claims reporting?* When used in this section:

(1) *Reporting period* means time elapsed during a calendar quarter, e.g. January-March, April-June, July-September, October-December.

(2) *Wage information* means:

(i) The name of the employee;

(ii) The social security number of the employee;

(iii) The aggregate wages of the employee during the reporting period; and

(iv) The name, address (and optionally, any second address for wage withholding purposes), and Federal employer identification number of an employer reporting wages.

(3) *Unemployment compensation or claim information* means:

(i) Whether an individual is receiving, has received or has applied for unemployment compensation;

(ii) The individual's name and current (or most recent) home address;

(iii) The individual's social security number; and

(iv) The aggregate gross amount of compensation the claimant received during the reporting quarter.

(b) *What data must be transmitted to the National Directory of New Hires?*

The State shall disclose quarterly, to the National Directory of New Hires, wage and claim information as defined in paragraph (a) of this section that is collected pursuant to a State's unemployment compensation program referenced in Title III of the Act or pursuant to section 1137 of the Act.

(c) *What time frames apply for reporting quarterly wage and unemployment compensation claims data?*

The State shall report wage information for the reporting period no later than the end of the fourth month following the reporting period. The State shall report claim information for the reporting period no later than the end of the first month following the reporting period.

(d) *What reporting formats will be used for reporting data?*

The State must use standardized formats established by the Secretary of Health and Human Services for reporting wage and claim information.

[63 FR 36190, July 2, 1998; 68 FR 62161, Oct. 31, 2003]

§ 303.109 Procedures for State monitoring, evaluation and reporting on programs funded by Grants to States for Access and Visitation Programs.

(a) *Monitoring.* The State must monitor all programs funded under Grants to States for Access and Visitation Programs to ensure that the programs are providing services authorized in section 469B(a) of the Act, are being conducted in an effective and efficient manner, are complying with Federal evaluation and reporting requirements, and contain safeguards to insure the safety of parents and children.

(b) *Evaluation.* The State:

(1) May evaluate all programs funded under Grants to States for Access and Visitation Programs;

(2) Must assist in the evaluation of significant or promising projects as determined by the Secretary;

(c) *Reporting.* The State must:

(1) Report a detailed description of each program funded, providing the following information, as appropriate: service providers and administrators, service area (rural/urban), population

served (income, race, marital status), program goals, application or referral process (including referral sources), voluntary or mandatory nature of the programs, types of activities, and length and features of a completed program;

(2) Report data including: the number of applicants/referrals for each program, the total number of participating individuals, and the number of persons who have completed program requirements by authorized activities (mediation—voluntary and mandatory, counseling, education, development of parenting plans, visitation enforcement—including monitoring, supervision and neutral drop-off and pickup) and development of guidelines for visitation and alternative custody arrangements; and

(3) Report the information required in paragraphs (c)(1) and (c)(2) of this section annually, at such time, and in such form, as the Secretary may require.

[64 FR 15136, Mar. 30, 1999]

PART 304—FEDERAL FINANCIAL PARTICIPATION

Sec.

- 304.10 General administrative requirements.
- 304.11 Effect of State rules.
- 304.12 Incentive payments.
- 304.15 Cost allocation.
- 304.20 Availability and rate of Federal financial participation.
- 304.21 Federal financial participation in the costs of cooperative arrangements with courts and law enforcement officials.
- 304.22 Federal financial participation in purchased support enforcement services.
- 304.23 Expenditures for which Federal financial participation is not available.
- 304.24 Equipment—Federal financial participation.
- 304.25 Treatment of expenditures; due date.
- 304.26 Determination of Federal share of collections.
- 304.27 [Reserved]
- 304.29 Applicability of other regulations.
- 304.30 Public sources of State's share.
- 304.40 Repayment of Federal funds by installments.
- 304.50 Treatment of program income.
- 304.95 [Reserved]

AUTHORITY: 42 U.S.C. 651 through 655, 657, 1302, 1396a(a)(25), 1396b(d)(2), 1396b(o), 1396b(p), and 1396(k).

EDITORIAL NOTE: Nomenclature changes to part 304 appear at 64 FR 6252, Feb. 9, 1999.

SOURCE: 40 FR 27166, June 26, 1975, unless otherwise noted.

§ 304.10 General administrative requirements.

As a condition for Federal financial participation, the provisions of part 74 of this title (with the exception of 45 CFR 74.23, Cost Sharing or Matching and 45 CFR 74.52, Financial Reporting) establishing uniform administrative requirements and cost principles shall apply to all grants made to States under this part.

[40 FR 27166, June 26, 1975, as amended at 61 FR 67241, Dec. 20, 1996]

§ 304.11 Effect of State rules.

Subject to the provisions and limitations of title IV-D of the Act and chapter III, Federal financial participation will be available in expenditures made under the State plan (including the administration thereof) in accordance with applicable State laws, rules, regulations, and standards governing expenditures by State and local child support enforcement agencies.

§ 304.12 Incentive payments.

(a) *Definitions.* For the purposes of this section:

Non-title IV-A collections means support collections, on behalf of individuals receiving services under this title, satisfying a support obligation which has not been assigned under section 408(a)(3) of the Act or section 471(a)(17) of the Act, including collections treated in accordance with paragraph (b)(4)(ii) of this section.

Title IV-A collections means support collections satisfying an assigned support obligation under section 408(a)(3) of the Act or section 471(a)(17) of the Act, including collections treated in accordance with paragraph (b)(4)(ii) of this section.

Total IV-D administrative costs means total IV-D administrative expenditures claimed by a State in a specified fiscal year adjusted in accordance with paragraphs (b)(4)(iii), (b)(4)(iv) and (b)(4)(v) of this section.

(b) *Incentive payments to States.* Effective October 1, 1985, the Office shall compute incentive payments for States

for a fiscal year in recognition of title IV-A collections and of non-title IV-A collections.

(1) A portion of a State's incentive payment shall be computed as a percentage of the State's title IV-A collections, and a portion of the incentive payment shall be computed as a percentage of its non-title IV-A collections. The percentages are determined separately for title IV-A and non-title IV-A portions of the incentive. The percentages are based on the ratio of the State's title IV-A collections to the State's total administrative costs and the State's non-title IV-A collections to the State's total administrative costs in accordance with the following schedule:

Ratio of collections to total IV-D administrative costs	Percent of collection paid as an incentive
Less than 1.4	6.0
At least 1.4	6.5
At least 1.6	7.0
At least 1.8	7.5
At least 2.0	8.0
At least 2.2	8.5
At least 2.4	9.0
At least 2.6	9.5
At least 2.8	10.0

(2) The ratios of the State's title IV-A and non-title IV-A collections to total IV-D administrative costs will be truncated at one decimal place.

(3) The portion of the incentive payment paid to a State for a fiscal year in recognition of its non-title IV-A collections is limited to the percentage of the portion of the incentive payment paid for that fiscal year in recognition of its title IV-A collections, as follows:

- (i) 100 percent in fiscal years 1986 and 1987;
- (ii) 105 percent in fiscal year 1988;
- (iii) 110 percent in fiscal year 1989; and
- (iv) 115 percent in fiscal year 1990 and thereafter.

(4) In calculating the amount of incentive payments, the following conditions apply:

(i) Only those title IV-A and non-title IV-A collections distributed and expenditures claimed by the State in the fiscal year shall be used to determine the incentive payment payable for that fiscal year;

(ii) Support collected by one State on behalf of individuals receiving IV-D services in another State shall be treated as having been collected in full by each State;

(iii) Fees paid by individuals, recovered costs, and program income such as interest earned on collections shall be deducted from total IV-D administrative costs;

(iv) At the option of the State, laboratory costs incurred in determining paternity may be excluded from total IV-D administrative costs; and

(v) Effective January 1, 1990, amounts expended by the State in carrying out a special project under section 455(e) of the Act shall not be included in the State's total IV-D administrative costs.

(vi) Costs of demonstration projects for evaluating model procedures for reviewing child support awards under section 103(e) of Public Law 100-485 shall not be included in the State's total IV-D administrative costs.

(c) *Payment of incentives.* (1) The Office will estimate the total incentive payment that each State will receive for the upcoming fiscal year.

(2) Each State will include one-quarter of the estimated total payment in its quarterly collection report which will reduce the amount that would otherwise be paid to the Federal government to reimburse its share of assistance payments under §§ 302.51 and 302.52 of this chapter.

(3) Following the end of a fiscal year, the Office will calculate the actual incentive payment the State should have received based on the reports submitted for that fiscal year. If adjustments to the estimate made under paragraph (c)(1) of this section are necessary, the State's IV-A grant award will be reduced or increased because of over- or under-estimates for prior quarters and for other adjustments.

(4) For FY 1985, the Office will calculate a State's incentive payment based on title IV-A collections retained by the State and paid to the family under § 302.51(b)(1) of this chapter.

(5) For FY 1986 and 1987, a State will receive the higher of the amount due it under the incentive system and Federal matching rate in effect as of FY 1986 or

§ 304.15

80 percent of what it would have received under the incentive system and Federal matching rate in effect during FY 1985.

[54 FR 32312, Aug. 4, 1989, as amended at 56 FR 8005, Feb. 26, 1991; 64 FR 6252, Feb. 9, 1999]

§ 304.15 Cost allocation.

A State agency in support of its claims under title IV-D of the Social Security Act must have an approved cost allocation plan on file with the Department in accordance with the requirements contained in Subpart E of 45 CFR part 95. Subpart E also sets forth the effect on FFP if the requirements contained in that subpart are not met.

[47 FR 17509, Apr. 23, 1982]

§ 304.20 Availability and rate of Federal financial participation.

(a) Federal financial participation at the applicable matching rate is available for:

(1) Necessary expenditures under the State title IV-D plan for the support enforcement services and activities specified in this section and §304.21 provided to individuals from whom an assignment of support rights as defined in §301.1 of this chapter has been obtained;

(2) Parent locator services for individuals eligible pursuant to §302.33 of this title;

(3) Paternity and support services under the State plan for individuals eligible pursuant to §302.33 of this chapter.

(b) Services and activities for which Federal financial participation will be available shall be those made pursuant to the approved title IV-D State plan which are determined by the Secretary to be necessary expenditures properly attributable to the Child Support Enforcement program, except any expenditure incurred in providing location services to individuals listed in §302.35(c)(4) of this title, including the following:

(1) The administration of the State Child Support Enforcement program, including but not limited to the following:

(i) The establishment and administration of the State plan;

45 CFR Ch. III (10-1-04 Edition)

(ii) Monitoring the progress of program development and operations and evaluating the quality, efficiency, effectiveness and scope of support enforcement services available in each political subdivision;

(iii) The establishment of all necessary agreements with other State and local agencies or private providers for the provision of services in support of support enforcement in accordance with the Procurement Standards found in 45 CFR 74.40 et seq. These agreements may include:

(A) Necessary administrative agreements for support services;

(B) Utilization of State and local information resources;

(C) Cooperation with courts and law enforcement officials, and Indian Tribes or Tribal organizations pursuant to §302.34 of this chapter;

(iv) Securing compliance with the requirements of the State plan in operations under any agreements;

(v) The development and maintenance of systems for fiscal and program records and reports required to be made to the Office based on these records;

(vi) The development of a cost allocation system pursuant to §304.15 of this chapter;

(vii) The financial control of the State plan including the administration of Federal grants pursuant to §301.15 of this chapter;

(viii) The establishment of agreements with agencies administering the State's title IV-A and IV-E plans in order to establish criteria for:

(A) Referral of cases to the IV-D agency;

(B) Reporting on a timely basis information necessary to the determination and redetermination of eligibility and amount of assistance payments;

(C) The procedures to be used to transfer collections from the IV-D agency to the IV-A or IV-E agency before or after the distribution described in §302.51 or §302.52, respectively, of this chapter.

(ix) The establishment of agreements with Medicaid agencies necessary to carry out required IV-D activities and to establish criteria for:

(A) Referring cases to the IV-D agency;

(B) Reporting on a timely basis information necessary for the determination and redetermination of eligibility for Medicaid;

(C) Transferring collections from the IV-D agency to the Medicaid agency in accordance with §302.51(c) of this chapter.

(2) The establishment of paternity including:

(i) Reasonable attempts to determine the identity of the child's father such as:

(A) Investigation;

(B) The development of evidence including the use of the polygraph and genetic tests;

(C) Pre-trial discovery;

(ii) Court or other actions to establish paternity pursuant to procedures established under State statutes or regulations having the effect of law;

(iii) Identifying competent laboratories that perform genetic tests as described in §303.5(c) of this chapter and making a list of those laboratories available;

(iv) Referral of cases to the IV-D agency of another State to establish paternity when appropriate;

(v) Cooperation with other States in determining paternity;

(vi) Payments up to \$20 to hospitals, State birth record agencies, and other entities designated by the State and participating in the State's voluntary paternity establishment program, under §303.5(g) of this chapter, for each voluntary acknowledgment obtained pursuant to an agreement with the IV-D agency;

(vii) Developing and providing to hospitals, State birth record agencies, and other entities designated by the State and participating in the State's voluntary paternity establishment program, under §303.5(g) of this chapter, written and audiovisual materials about paternity establishment and forms necessary to voluntarily acknowledge paternity; and

(viii) Reasonable and essential short-term training associated with the State's program of voluntary paternity establishment services under §303.5(g).

(3) The establishment and enforcement of support obligations including:

(i) Investigation, the development of evidence and when appropriate, bringing court actions;

(ii) Determination of the amount of the child support obligation including developing the information needed for a financial assessment;

(iii) Referral of cases to the IV-D agency of another State to establish a child support obligation when appropriate;

(iv) Enforcement of a support obligation including those activities associated with collections and the enforcement of court orders, such as contempt citations, issuance of warrants, investigation, income withholding and processing, and the obtaining and enforcing of court-ordered support through civil or criminal proceedings either in the State that granted the order or in another State;

(v) Investigation and prosecution of fraud related to child and spousal support.

(4) The collection and distribution of support payments including:

(i) An effective system for making collections of established support obligations and identifying delinquent cases and attempting to collect support from these cases;

(ii) Referral of cases to the IV-D agency of another State for collection when appropriate;

(iii) Making collections for another State;

(iv) The distribution of funds as required by this chapter;

(v) Making the IV-A agency aware of the amounts collected and distributed to the family for the purposes of determining eligibility for, and amount of, assistance under the State title IV-A plan;

(vi) Making the Medicaid agency aware of amounts collected and distributed to the family for the purposes of determining eligibility for assistance under the State XIX plan.

(5) The establishment and operation of the State parent locator service including:

(i) Utilization of appropriate State and local locate sources to locate non-custodial parents;

(ii) Utilization of the Federal Parent Locator Service;

§ 304.21

(iii) Collection of the fee pursuant to § 303.70(e) of this chapter;

(iv) Referral of requests for location of a noncustodial parent to the IV-D agency of another State;

(v) Cooperation with another State in locating a noncustodial parent;

(6) Activities related to requests for certification of collection of support delinquencies by the Secretary of the Treasury pursuant to § 303.71 of this chapter.

(7) Activities related to requests for utilization of the United States district courts pursuant to § 303.73 of this chapter.

(8) Establishing and maintaining case records as required by § 303.2 of this chapter.

(9) The operation of systems that meet the conditions of § 307.35(a) of this chapter; and

(10) Systems approved in accordance with 45 CFR part 95, subpart F. (See § 307.35(b) of this chapter.)

(11) Required medical support activities as specified in §§ 303.30 and 303.31 of this chapter.

(c) Until September 30, 1997, Federal financial participation is available at the 90 percent rate for the planning design, development, installation and enhancement of computerized support enforcement systems that meet the requirements in § 307.30(a) of this chapter.

(d) Federal financial participation at the 90 percent rate is available for laboratory costs incurred in determining paternity on or after October 1, 1988, including the costs of obtaining and transporting blood and other samples of genetic material, repeated testing when necessary, analysis of test results, and the costs for expert witnesses in a paternity determination proceeding, but only if the expert witness costs are included as part of the genetic testing contract.

[40 FR 27166, June 26, 1975, as amended at 46 FR 1276, Jan. 6, 1981; 47 FR 24719, June 8, 1982; 47 FR 57282, Dec. 23, 1982; 49 FR 33263, Aug. 22, 1984; 50 FR 19656, May 9, 1985; 50 FR 41894, Oct. 16, 1985; 54 FR 32313, Aug. 4, 1989; 56 FR 8005, Feb. 26, 1991; 56 FR 22355, May 15, 1991; 57 FR 47002, Oct. 14, 1992; 59 FR 66251, Dec. 23, 1994; 61 FR 67241, Dec. 20, 1996; 63 FR 44814, Aug. 21, 1998; 64 FR 6252, Feb. 9, 1999; 64 FR 11810, Mar. 10, 1999; 68 FR 25305, May 12, 2003]

45 CFR Ch. III (10-1-04 Edition)

§ 304.21 Federal financial participation in the costs of cooperative arrangements with courts and law enforcement officials.

(a) *General.* Subject to the conditions and limitations specified in this part, Federal financial participation (FFP) at the applicable matching rate is available in the costs of cooperative agreements with appropriate courts and law enforcement officials in accordance with the requirements of § 302.34 of this chapter. *Law enforcement officials* means district attorneys, attorneys general, and similar public attorneys and prosecutors and their staff. When performed under written agreement, costs of the following activities are subject to reimbursement:

(1) The activities, including administration of such activities, specified in § 304.20(b)(2) through (8) of this chapter;

(2) Reasonable and essential short term training of court and law enforcement staff assigned on a full or part time basis to support enforcement functions under the cooperative agreement.

(b) *Limitations.* Federal financial participation is not available in:

(1) Service of process and court filing fees unless the court or law enforcement agency would normally be required to pay the cost of such fees;

(2) Costs of compensation (salary and fringe benefits) of judges;

(3) Costs of travel and training related to the judicial determination process incurred by judges;

(4) Office-related costs, such as space, equipment, furnishings and supplies, incurred by judges;

(5) Compensation (salary and fringe benefits), travel and training, and office-related costs incurred by administrative and support staffs of judges;

(6) Costs of cooperative arrangements that do not meet the requirements of § 303.107 of this chapter.

(c) *Methods of determining costs.* The State IV-D agency has discretion with respect to the method of calculating eligible expenditures by courts and law enforcement officials under cooperative agreements. However, any method used must account for specific costs incurred on behalf of cases receiving services under the IV-D State plan.

(d) *When agreements take effect.* FFP is available in IV-D costs incurred as of the first day of the calendar quarter in which a cooperative agreement or amendment is signed by parties sufficient to create a contractual arrangement under State law.

[47 FR 53017, Nov. 24, 1982, as amended at 47 FR 57284, Dec. 23, 1982; 50 FR 19656, May 9, 1985; 54 FR 30223, July 19, 1989; 64 FR 6252, Feb. 9, 1999]

§ 304.22 Federal financial participation in purchased support enforcement services.

Federal financial participation is available at the applicable matching rate for the purchase of support enforcement services as provided for in the State plan to the extent that payment for such purchased services is in accordance with rates of payment established by the State which do not exceed the amounts reasonable and necessary to assure quality of such service and in the case of such services purchased from other public agencies, the cost reasonably assignable to such services. The determination that the amounts are reasonable and necessary and that the costs are reasonably assignable must be fully documented in the IV-D agency records. Support enforcement services which may be purchased with Federal financial participation are those for which Federal financial participation is otherwise available under § 304.20 and which are included under the approved State plan.

[40 FR 27166, June 26, 1975, as amended at 47 FR 57282, Dec. 23, 1982; 50 FR 19656, May 9, 1985]

§ 304.23 Expenditures for which Federal financial participation is not available.

Federal financial participation at the applicable matching rate is not available for:

(a) Activities related to administering title I, IV-A, X, XIV, XVI, XIX or XX of the Act.

(b) Purchased support enforcement services which are not secured in accordance with § 304.22.

(c) Construction and major renovations.

(d) Education and training programs and educational services except direct cost of short term training provided to IV-D agency staff or pursuant to §§ 304.20(b)(2)(viii) and 304.21.

(e) Any expenditures which have been reimbursed by fees collected as required by this chapter.

(f) Any costs of caseworkers as described in § 303.20(e) of this part.

(g) Medical support enforcement activities performed under cooperative agreements in accordance with §§ 303.30 and 303.31 of this chapter.

(h) Any expenditures made to carry out an agreement under § 303.15 of this chapter.

(i) Any expenditures for jailing of parents in child support enforcement cases.

(j) The costs of counsel for indigent defendants in IV-D actions.

(k) The costs of guardians ad litem in IV-D actions.

[46 FR 54559, Nov. 3, 1981, as amended at 47 FR 57282, Dec. 23, 1982; 50 FR 41894, Oct. 16, 1985; 52 FR 32132, Aug. 26, 1987; 54 FR 32313, Aug. 4, 1989; 57 FR 54525, Nov. 19, 1992; 59 FR 66251, Dec. 23, 1994; 61 FR 67241, Dec. 20, 1996]

§ 304.24 Equipment—Federal financial participation.

Claims for Federal financial participation in the cost of equipment under the Child Support Enforcement Program are to be determined in accordance with subpart G of 45 CFR part 95. Requirements concerning the management and disposition of equipment under the Child Support Enforcement Program are also prescribed in subpart G of 45 CFR part 95.

[47 FR 41576, Sept. 21, 1982]

§ 304.25 Treatment of expenditures; due date.

(a) *Treatment of expenditures.* Expenditures are considered to be made on the date on which the cash disbursements occur or the date to which allocated in accordance with part 74 of this title. In the case of local administration, the date of disbursements by the local agency governs. In the case of purchase of services from another public agency, the date of disbursements by such other public agency governs. Different rules may be applied with respect to a

§ 304.26

State, either generally or for particular classes of expenditures only upon justification by the State to the Office of Child Support Enforcement and approval by the Office.

(b) *Due date for expenditure statements.* The due date for the submission of the quarterly statement of expenditures under § 301.15 of this chapter is 30 days after the end of the quarter.

[42 FR 26427, May 24, 1977]

§ 304.26 Determination of Federal share of collections.

(a) From the amounts of support collected by the State and retained as reimbursement for title IV-A payments and foster care maintenance payments under title IV-E, the State shall reimburse the Federal government the Federal share of the support collections. In computing the Federal share of support collections for assistance payments made under titles IV-A and IV-E, the State shall use the Federal medical assistance percentage in effect for the fiscal year in which the amount is distributed. The Federal medical assistance percentage is:

(1) 75 percent for Puerto Rico, the Virgin Islands, Guam, and American Samoa; and

(2) As defined in section 1905(b) of the Act as in effect on September 30, 1995, for any other State.

(b) If an incentive payment is made to a jurisdiction under § 304.12 of this chapter for the enforcement and collection of support obligations, the payment shall be made from the Federal share of collections computed in paragraph (a) of this section.

(c) If a hold harmless payment is made to a jurisdiction pursuant to section 457(d) of the Act, the payment shall be made from the remaining Federal share of collections following the incentive payment made in paragraph (b) of this section.

[64 FR 6252, Feb. 9, 1999, as amended at 68 FR 25305, May 12, 2003]

§ 304.27 [Reserved]

§ 304.29 Applicability of other regulations.

Sections 201.14 and 201.15 of chapter II of title 45 of the Code of Federal Regulations, which establish procedures for

45 CFR Ch. III (10-1-04 Edition)

disallowance, deferral and reconsideration of claims for expenditures submitted by the States, shall apply to all expenditures claimed for FFP under title IV-D of the Act. For purposes of applying those provisions under title IV-D, *Service* shall read *Office* which refers to the Office of Child Support Enforcement; *Administrator* shall read *Director* which refers to the Director, Office of Child Support Enforcement; *Deputy Administrator* shall read *Deputy Director* which refers to the Deputy Director, Office of Child Support Enforcement; *Regional Commissioner* shall read *Regional Administrator* which refers to the Regional Administrator of the Administration for Children and Families; and *State* shall refer to the State IV-D agency.

[42 FR 3843, Jan. 21, 1977, as amended at 64 FR 6253, Feb. 9, 1999]

§ 304.30 Public sources of State's share.

(a) Public funds, other than those derived from private resources, used by the IV-D agency for its child support enforcement program may be considered as the State's share in claiming Federal reimbursement where such funds are:

(1) Appropriated directly to the IV-D agency; or

(2) Funds of another public agency which are:

(i) Transferred to the IV-D agency and are under its administrative control; or

(ii) Certified by the contributing public agency as representing expenditures under the State's IV-D plan, subject to the limitations of this part.

(b) Public funds used by the IV-D agency for its child support enforcement program may not be considered as the State's share in claiming Federal reimbursement where such funds are:

(1) Federal funds, unless authorized by Federal law to be used to match other Federal funds;

(2) Used to match other Federal funds.

[41 FR 7105, Feb. 17, 1976]

§ 304.40 Repayment of Federal funds by installments.

(a) *Basic conditions.* When a State has been reimbursed Federal funds for expenditures claimed under title IV-D, which is later determined to be unallowable for Federal financial participation, the State may make repayment of such Federal funds in installments provided:

(1) The amount of the repayment exceeds 2½ percent of the estimated annual State share of expenditures for the IV-D program as set forth in paragraph (b) of this section; and

(2) The State has notified the OCSE Regional Office in writing of its intent to make installment repayments. Such notice must be given prior to the time repayment of the total was otherwise due.

(b) *Criteria governing installment repayments.* (1) The number of quarters over which the repayment of the total unallowable expenditures will be made will be determined by the percentage the total of such repayment is of the estimated State share of the annual expenditures for the IV-D program as follows:

Total repayment amount as percentage of State share of annual expenditures for the IV-D program	Number of quarters to make repayment
2.5 percent or less	1
Greater than 2.5, but not greater than 5	2
Greater than 5, but not greater than 7.5	3
Greater than 7.5, but not greater than 10	4
Greater than 10, but not greater than 15	5
Greater than 15, but not greater than 20	6
Greater than 20, but not greater than 25	7
Greater than 25, but not greater than 30	8
Greater than 30, but not greater than 47.5	9
Greater than 47.5, but not greater than 65	10
Greater than 65, but not greater than 82.5	11
Greater than 82.5, but not greater than 100	12

The quarterly repayment amounts for each of the quarters in the repayment schedule shall not be less than the following percentages of estimated State share of the annual expenditures for the program against which the recovery is made.

For each of the following quarters	Repayment installment may not be less than these percentages
1 to 4	2.5

For each of the following quarters	Repayment installment may not be less than these percentages
5 to 8	5.0
9 to 12	17.5

If the State chooses to repay amounts representing higher percentages during the early quarters, any corresponding reduction in required minimum percentages would be applied first to the last scheduled payment, then to the next to the last payment, and so forth as necessary.

(2) The latest required financial reports submitted by the State shall be used to estimate the State's share of annual expenditures for the IV-D program. That estimated share shall be the sum of the State's share of the estimates for four quarters, beginning with the quarter in which the first installment is to be paid.

(3) In case of termination of the program, the actual State share—rather than the estimate—shall be used for determining whether the amount of the repayment exceeds 2½ percent of the annual State share for the IV-D program. The annual State share in these cases will be determined using payments computable for Federal funding as reported for the program by the State on its Quarterly Report of Expenditures and Estimates submitted for the last four quarters preceding the date on which the program was terminated.

(4) Repayment shall be accomplished through adjustment in the quarterly grants over the period covered by the repayment schedule.

(5) The amount of the repayment for purpose of paragraphs (a) and (b) of this section may not include any amount previously approved for installment repayment.

(6) The repayment schedule may be extended beyond 12 quarterly installments if the total repayment amount exceeds 100% of the estimated State share of annual expenditures.

In these circumstances, the criteria in paragraphs (b) (1) and (2) or (3) of this section, as appropriate, shall be followed for repayment of the amount equal to 100% of the annual State

§ 304.50

share. The remaining amount of the repayment shall be in quarterly amounts not less than those for the 9th through 12th quarters.

(7) The amount of a retroactive claim to be paid a State will be offset against any amounts to be, or already being, repaid by the State in installments, under the same title of the Social Security Act. Under this provision the State may choose to:

(i) Suspend payments until the retroactive claim due the State has, in fact, been offset; or

(ii) Continue payments until the reduced amount of its debt (remaining after the offset), has been paid in full. This second option would result in a shorter payment period.

A retroactive claim for the purpose of this regulation is a claim applicable to any period ending 12 months or more prior to the beginning of the quarter in which the payment is to be made by the Service.

[42 FR 28885, June 6, 1977, as amended at 52 FR 273, Jan. 5, 1987; 64 FR 6253, Feb. 9, 1999; 68 FR 25305, May 12, 2003]

§ 304.50 Treatment of program income.

The IV-D agency must exclude from its quarterly expenditure claims an amount equal to:

(a) All fees which are collected during the quarter under the title IV-D State plan; and

(b) All interest and other income earned during the quarter resulting from services provided under the IV-D State plan.

[49 FR 36772, Sept. 19, 1984]

§ 304.95 [Reserved]

PART 305—PROGRAM PERFORMANCE MEASURES, STANDARDS, FINANCIAL INCENTIVES, AND PENALTIES

Sec.

- 305.0 Scope.
- 305.1 Definitions.
- 305.2 Performance measures.
- 305.31 Amount of incentive payment.
- 305.32 Requirements applicable to calculations.
- 305.33 Determination of applicable percentages based on performance levels.
- 305.34 Payment of incentives.

45 CFR Ch. III (10–1–04 Edition)

- 305.35 Reinvestment.
- 305.36 Incentive phase-in.
- 305.40 Penalty performance measures and levels.
- 305.42 Penalty phase-in.
- 305.60 Types and scope of Federal audits.
- 305.61 Penalty for failure to meet IV-D requirements.
- 305.62 Disregard of a failure which is of a technical nature.
- 305.63 Standards for determining substantial compliance with IV-D requirements.
- 305.64 Audit procedures and State comments.
- 305.65 State cooperation in the audit.
- 305.66 Notice, corrective action year, and imposition of penalty.

AUTHORITY: 42 U.S.C. 609(a)(8), 652(a)(4) and (g), 658A and 1302.

SOURCE: At 65 FR 82208, Dec. 27, 2000, unless otherwise noted.

§ 305.0 Scope.

This part implements the incentive system requirements as described in section 458A (to be redesignated as section 458 effective October 1, 2001) of the Act and the penalty provisions as required in sections 409(a)(8) and 452(g) of the Act. This part also implements Federal audit requirements under sections 409(a)(8) and 452(a)(4) of the Act. Sections 305.0 through 305.2 contain general provisions applicable to this part. Sections 305.31 through 305.36 of this part describe the incentive system. Sections 305.40 through 305.42 and §§ 305.60 through 305.66 describe the penalty and audit processes.

§ 305.1 Definitions.

The definitions found in § 301.1 of this chapter are also applicable to this part. In addition, for purposes of this part:

(a) The term *IV-D case* means a parent (mother, father, or putative father) who is now or eventually may be obligated under law for the support of a child or children receiving services under the title IV-D program. A parent is a separate IV-D case for each family with a dependent child or children that the parent may be obligated to support. If both parents are absent and liable or potentially liable for support of a child or children receiving services under the IV-D program, each parent is considered a separate IV-D case. In counting cases for the purposes of this part, States may exclude cases closed under § 303.11 and cases over which the

State has no jurisdiction. Lack of jurisdiction cases are those in which a non-custodial parent resides in the civil jurisdictional boundaries of another country or federally recognized Indian Tribe and no income or assets of this individual are located or derived from outside that jurisdiction and the State has no other means through which to enforce the order.

(b) The term *Current Assistance collections* means collections received and distributed on behalf of individuals whose rights to support are required to be assigned to the State under title IV-A of the Act, under title IV-E of the Act, or under title XIX of the Act. In addition, a referral to the State's IV-D agency must have been made.

(c) The term *Former Assistance collections* means collections received and distributed on behalf of individuals whose rights to support were formerly required to be assigned to the State under title IV-A (TANF or Aid to Families with Dependent Children, AFDC), title IV-E (Foster Care), or title XIX (Medicaid) of the Act.

(d) The term *Never Assistance/Other collections* means all other collections received and distributed on behalf of individuals who are receiving child support enforcement services under title IV-D of the Act.

(e) The term *total IV-D dollars expended* means total IV-D administrative expenditures claimed by a State in a specified fiscal year adjusted in accordance with § 305.32 of this part.

(f) The term *Consumer Price Index or CPI* means the last Consumer Price Index for all-urban consumers published by the Department of Labor. The CPI for a fiscal year is the average of the Consumer Price Index for the 12-month period ending on September 30 of the fiscal year.

(g) The term *State incentive payment share for a fiscal year* means the incentive base amount for the State for the fiscal year divided by the sum of the incentive base amounts for all of the States for the fiscal year.

(h) The term *incentive base amount for a fiscal year* means the sum of the State's performance level percentages (determined in accordance with § 305.33) multiplied by the State's cor-

responding maximum incentive base on each of the following measures:

(1) The paternity establishment performance level;

(2) The support order performance level;

(3) The current collections performance level;

(4) The arrears collections performance level; and

(5) the cost-effectiveness performance level.

(i) The term *reliable data*, means the most recent data available which are found by the Secretary to be reliable and is a state that exists when data are sufficiently complete and error free to be convincing for their purpose and context. State data must meet a 95 percent standard of reliability effective beginning in fiscal year 2001. This is with the recognition that data may contain errors as long as they are not of a magnitude that would cause a reasonable person, aware of the errors, to doubt a finding or conclusion based on the data.

(j) The term *complete data* means all reporting elements from OCSE reporting forms, necessary to compute a State's performance levels, incentive base amount, and maximum incentive base amount, have been provided within timeframes established in instructions to these forms and § 305.32(f) of this part.

§ 305.2 Performance measures.

(a) The child support incentive system measures State performance levels in five program areas:

Paternity establishment; support order establishment; current collections; arrearage collections; and cost-effectiveness. The penalty system measures State performance in three of these areas: Paternity establishment; establishment of support orders; and current collections.

(1) *Paternity Establishment Performance Level*. States have the choice of being evaluated on one of the following two measures for their paternity establishment percentage (commonly known as the PEP). The count of children shall not include any child who is a dependent by reason of the death of a parent (unless paternity is established for that child). It shall also not include

§ 305.2

45 CFR Ch. III (10-1-04 Edition)

any child whose parent is found to have good cause for refusing to cooperate with the State agency in establishing paternity, or for whom the State agency determines it is against the best interest of the child to pursue paternity issues.

(i) *IV-D Paternity Establishment Percentage* means the ratio that the total number of children in the IV-D caseload in the fiscal year (or, at the option

of the State, as of the end of the fiscal year) who have been born out-of-wedlock and for whom paternity has been established or acknowledged, bears to the total number of children in the IV-D caseload as of the end of the preceding fiscal year who were born out-of-wedlock. The equation to compute the measure is as follows (expressed as a percent):

$$\frac{\text{Total \# of Children in IV - D Caseload in the Fiscal Year or, at the option of the State, as of the end of the Fiscal Year who were Born Out - of - Wedlock with Paternity Established or Acknowledged}}{\text{Total \# of Children in IV - D Caseload as of the end of the preceding Fiscal Year who were Born Out - of - Wedlock}}$$

(ii) *Statewide Paternity Establishment Percentage* means the ratio that the total number of minor children who have been born out-of-wedlock and for whom paternity has been established or acknowledged during the fiscal year,

bears to the total number of children born out-of-wedlock during the preceding fiscal year. The equation to compute the measure is as follows (expressed as a percent):

$$\frac{\text{Total \# of Minor Children who have been Born Out - of - Wedlock and for Whom Paternity has been Established or Acknowledged During the Fiscal Year}}{\text{Total \# of Children Born Out of Wedlock During the Preceding Fiscal Year}}$$

(2) *Support Order Establishment Performance Level*. This measure requires a determination of whether or not there is a support order for each case. These support orders include all types of legally enforceable orders, such as court,

default, and administrative. Since the measure is a case count at a point-in-time, modifications to an order do not affect the count. The equation to compute the measure is as follows (expressed as a percent):

$$\frac{\text{Number of IV - D Cases with Support Orders During the Fiscal Year}}{\text{Total Number of IV - D Cases During the Fiscal Year}}$$

(3) *Current Collections Performance Level*. Current support is money applied to current support obligations and does not include payment plans for payment towards arrears. If included, voluntary collections must be included in both

the numerator and the denominator. This measure is computed monthly and the total of all months is reported at the end of the year. The equation to compute the measure is as follows (expressed as a percent):

$$\frac{\text{Number Dollars Collected for Current Support in IV - D Cases}}{\text{Total Dollars Owed for Current Support in IV - D Cases}}$$

(4) *Arrearage Collection Performance Level.* This measure includes those cases where all of the past-due support was disbursed to the family, or retained by the State because all the support was assigned to the State. If some of the past-due support was assigned to

the State and some was to be disbursed to the family, only those cases where some of the support actually went to the family can be included. The equation to compute the measure is as follows (expressed as a percent):

$$\frac{\text{Total number of eligible IV - D cases paying toward arrears}}{\text{Total number of IV - D cases with arrears due}}$$

(5) *Cost-Effectiveness Performance Level.* Interstate incoming and outgoing distributed collections will be included for both the initiating and the

responding State in this measure. The equation to compute this measure is as follows (expressed as a ratio):

$$\frac{\text{Total IV - D Dollars Collected}}{\text{Total IV - D Dollars Expended}}$$

(b) For incentive purposes, the measures will be weighted in the following manner. Each State will earn five scores based on performance on each of the five measures. Each of the first three measures (paternity establishment, order establishment, and current collections) earn 100 percent of the collections base as defined in §305.31(e) of this part. The last two measures (collections on arrears and cost-effectiveness) earn a maximum of 75 percent of the collections base as defined in §305.31(e) of this part.

§ 305.31 Amount of incentive payment.

(a) The incentive payment for a State for a fiscal year is equal to the incentive payment pool for the fiscal year, multiplied by the State incentive payment share for the fiscal year.

- (b) The incentive payment pool is:
- (1) \$422,000,000 for fiscal year 2000;
 - (2) \$429,000,000 for fiscal year 2001;
 - (3) \$450,000,000 for fiscal year 2002;
 - (4) \$461,000,000 for fiscal year 2003;
 - (5) \$454,000,000 for fiscal year 2004;
 - (6) \$446,000,000 for fiscal year 2005;

- (7) \$458,000,000 for fiscal year 2006;
- (8) \$471,000,000 for fiscal year 2007;
- (9) \$483,000,000 for fiscal year 2008; and
- (10) For any succeeding fiscal year, the amount of the incentive payment pool for the fiscal year that precedes such succeeding fiscal year multiplied by the percentage (if any) by which the CPI for such preceding fiscal year exceeds the CPI for the second preceding fiscal year. In other words, for each fiscal year following fiscal year 2008, the incentive payment pool will be multiplied by the percentage increase in the CPI between the two preceding years. For example, if the CPI increases by 1 percent between fiscal years 2007 and 2008, then the incentive pool for fiscal year 2009 would be a 1 percent increase over the \$483,000,000 incentive payment pool for fiscal year 2008, or \$487,830,000.

(c) The State incentive payment share for a fiscal year is the incentive base amount for the State for the fiscal year divided by the sum of the incentive base amounts for all of the States for the fiscal year.

§ 305.32

45 CFR Ch. III (10–1–04 Edition)

(d) A State's maximum incentive base amount for a fiscal year is the State's collections base for the fiscal year for the paternity establishment, support order, and current collections performance measures and 75 percent of the State's collections base for the fiscal year for the arrearage collections and cost-effectiveness performance measures.

(e) A State's maximum incentive base amount for a State for a fiscal year is zero, unless a Federal audit performed under § 305.60 of this part determines that the data submitted by the State for the fiscal year and used to determine the performance level involved are complete and reliable.

(f) A State's collections base for a fiscal year is equal to: two times the sum of the total amount of support collected for Current Assistance cases plus two times the total amount of support collected in Former Assistance cases, plus the total amount of support collected in Never Assistance/other cases during the fiscal year, that is: $2(\text{Current Assistance collections} + \text{Former Assistance collections}) + \text{all other collections}$.

§ 305.32 Requirements applicable to calculations.

In calculating the amount of incentive payments or penalties, the following conditions apply:

(a) Each measure is based on data submitted for the Federal fiscal year. The Federal fiscal year runs from October 1st of one year through September 30th of the following year.

(b) Only those Current Assistance, Former Assistance and Never Assistance/other collections disbursed and those expenditures claimed by the State in the fiscal year will be used to determine the incentive payment payable for that fiscal year;

(c) Support collected by one State at the request of another State will be treated as having been collected in full by each State;

(d) Amounts expended by the State in carrying out a special project under section 455(e) of the Act will be excluded from the State's total IV-D dollars expended in computing incentive payments;

(e) Fees paid by individuals, recovered costs, and program income such as interest earned on collections will be deducted from total IV-D dollars expended; and

(f) States must submit data used to determine incentives and penalties following instructions and formats as required by HHS on Office of Management and Budget (OMB) approved reporting instruments. Data necessary to calculate performance for incentives and penalties for a fiscal year must be submitted to the Office of Child Support Enforcement by December 31st, the end of the first quarter after the end of the fiscal year. Only data submitted as of December 31st will be used to determine the State's performance for the prior fiscal year and the amount of incentive payments due the States.

§ 305.33 Determination of applicable percentages based on performance levels.

(a) A State's paternity establishment performance level for a fiscal year is, at the option of the State, the IV-D paternity establishment percentage or the Statewide paternity establishment percentage determined under § 305.2 of this part. The applicable percentage for each level of a State's paternity establishment performance can be found in table 1 of this part, except as provided in paragraph (b) of this section.

(b) If the State's paternity establishment performance level for a fiscal year is less than 50 percent, but exceeds its paternity establishment performance level for the immediately preceding fiscal year by at least 10 percentage points, then the State's applicable percentage for the paternity establishment performance level is 50 percent.

(c) A State's support order establishment performance level for a fiscal year is the percentage of the total number of cases where there is a support order determined under §§ 305.2 and 305.32 of this part. The applicable percentage for each level of a State's support order establishment performance can be found on table 1 of this part, except as provided in paragraph (d) of this section.

(d) If the State's support order establishment performance level for a fiscal year is less than 50 percent, but exceeds the State's support order establishment performance level for the immediately preceding fiscal year by at least 5 percentage points, then the State's applicable percentage is 50 percent.

TABLE 1—IF THE PATERNITY ESTABLISHMENT OR SUPPORT ORDER ESTABLISHMENT PERFORMANCE LEVEL IS:

(Use this table to determine the applicable percentage levels for the paternity establishment and support order establishment performance measures.)

At least: (percent)	But less than: (percent)	The applicable percentage is:
80	100
79	80	98
78	79	96
77	78	94
76	77	92
75	76	90
74	75	88
73	74	86
72	73	84
71	72	82
70	71	80
69	70	79
68	69	78
67	68	77
66	67	76
65	66	75
64	65	74
63	64	73
62	63	72
61	62	71
60	61	70
59	60	69
58	59	68
57	58	67
56	57	66
55	56	65
54	55	64
53	54	63
52	53	62
51	52	61
50	51	60
0	50	0

(e) A State's current collections performance level for a fiscal year is equal to the total amount of current support collected during the fiscal year divided by the total amount of current support owed during the fiscal year in all IV-D cases, determined under §§305.2 and 305.32 of this part. The applicable percentage with respect to a State's current collections performance level can be found on table 2, except as provided in paragraph (f) of this section.

(f) If the State's current collections performance level for a fiscal year is less than 40 percent but exceeds the current collections performance level

of the State for the immediately preceding fiscal year by at least 5 percentage points, then the State's applicable percentage is 50 percent.

(g) A State's arrearage collections performance level for a fiscal year is equal to the total number of IV-D cases in which payments of past-due child support were received and distributed during the fiscal year, divided by the total number of IV-D cases in which there was past-due child support owed, as determined under §§305.2 and 305.32 of this part. The applicable percentage with respect to a State's arrearage collections performance level can be found on table 2 except as provided in paragraph (h) of this section.

(h) If the State's arrearage collections performance level for a fiscal year is less than 40 percent but exceeds the arrearage collections performance level for the immediately preceding fiscal year by at least 5 percentage points, then the State's applicable percentage is 50 percent.

TABLE 2—IF THE CURRENT COLLECTIONS OR ARREARAGE COLLECTIONS PERFORMANCE LEVEL IS:

(Use this table to determine the percentage levels for the current collections and arrearage collections performance measures.)

At least (percent)	But less than: (percent)	The appli- cable per- centage is: (percent)
80	100
79	80	98
78	79	96
77	78	94
76	77	92
75	76	90
74	75	88
73	74	86
72	73	84
71	72	82
70	71	80
69	70	79
68	69	78
67	68	77
66	67	76
65	66	75
64	65	74
63	64	73
62	63	72
61	62	71
60	61	70
59	60	69
58	59	68
57	58	67
56	57	66
55	56	65
54	55	64
53	54	63
52	53	62

§ 305.34

TABLE 2—IF THE CURRENT COLLECTIONS OR ARREARAGE COLLECTIONS PERFORMANCE LEVEL IS:—Continued

(Use this table to determine the percentage levels for the current collections and arrearage collections performance measures.)

At least (percent)	But less than: (percent)	The applicable percentage is: (percent)
51	52	61
50	51	60
49	50	59
48	49	58
47	48	57
46	47	56
45	46	55
44	45	54
43	55	53
42	43	52
41	42	51
40	41	50
0	40	0

(i) A State's cost-effectiveness performance level for a fiscal year is equal to the total amount of IV-D support collected and disbursed or retained, as applicable during the fiscal year, divided by the total amount expended during the fiscal year, as determined under §§305.2 and 305.32 of this part. The applicable percentage with respect to a State's cost-effectiveness performance level can be found on table 3.

TABLE 3—IF THE COST-EFFECTIVENESS PERFORMANCE LEVEL IS:

(Use this table to determine the percentage level for the cost-effectiveness performance measure.)

At least:	But less than:	The app. % is
5.00	100
4.50	4.99	90
4.00	4.50	80
3.50	4.00	70
3.00	3.50	60
2.50	3.00	50
2.00	2.50	40
0.00	2.00	0

§ 305.34 Payment of incentives.

(a) Each State must report one-fourth of its estimated annual incentive payment on each of its four quarterly collections' reports for a fiscal year. When combined with the amounts claimed on each of the State's four quarterly expenditure reports, the portion of the annual estimated incentive payment as reported each quarter will be included in the calculation of the

next quarterly grant awarded to the State under title IV-D of the Act.

(b) Following the end of each fiscal year, HHS will calculate the State's annual incentive payment, using the actual collection and expenditure data and the performance data submitted by December 31st by the State and other States for that fiscal year. A positive or negative grant will then be awarded to the State under title IV-D of the Act to reconcile an actual annual incentive payment that has been calculated to be greater or lesser, respectively, than the annual incentive payment estimated prior to the beginning of the fiscal year.

(c) Payment of incentives is contingent on a State's data being determined complete and reliable by Federal auditors.

§ 305.35 Reinvestment.

(a) A State must expend the full amount of incentive payments received under this part to supplement, and not supplant, other funds used by the State to carry out IV-D program activities or funds for other activities approved by the Secretary which may contribute to improving the effectiveness or efficiency of the State's IV-D program, including cost-effective contracts with local agencies, whether or not the expenditures for the activity are eligible for reimbursement under this part.

(b) In those States in which incentive payments are passed through to political subdivisions or localities, such payments must be used in accordance with this section.

(c) State IV-D expenditures may not be reduced as a result of the receipt and reinvestment of incentive payments.

(d) A base amount will be determined by subtracting the amount of incentive funds received and reinvested in the State IV-D program for fiscal year 1998 from the total amount expended by the State in the IV-D program during the same period. Alternatively, States have an option of using the average amount of the previous three fiscal years (1996, 1997, and 1998) as a base amount. This base amount of State spending must be maintained in future years. Incentive payments under this

part must be used in addition to, and not in lieu of, the base amount.

(e) Requests for approval of expending incentives on activities not currently eligible for funding under the IV-D program, but which would benefit the IV-D program, must be submitted in accordance with instructions issued by the Commissioner of the Office of Child Support Enforcement.

§ 305.36 Incentive phase-in.

The incentive system under this part will be phased-in over a three-year period during which both the old system and the new system will be used to determine the amount a State will receive. For fiscal year 2000, a State will receive two-thirds of what it would have received under the incentive formula set forth in §304.12 of this chapter, and one-third of what it would receive under the formula set forth under this part. In fiscal year 2001, a State will receive one-third of what it would have received under the incentive formula set forth under §304.12 of this chapter and two-thirds of what it would receive under the formula under

this part. In fiscal year 2002, the formula set forth under this part will be fully implemented and would be used to determine all incentive amounts.

§ 305.40 Penalty performance measures and levels.

(a) There are three performance measures for which States must achieve certain levels of performance in order to avoid being penalized for poor performance. These measures are the paternity establishment, support order establishment, and current collections measures set forth in §305.2 of this part. The levels the State must meet are:

(1) *The paternity establishment percentage* which is required under section 452(g) of the Act for penalty purposes. States have the option of using either the IV-D paternity establishment percentage or the statewide paternity establishment percentage defined in §305.2 of this part. Table 4 shows the level of performance at which a State will be subject to a penalty under the paternity establishment measure.

TABLE 4—STATUTORY PENALTY PERFORMANCE STANDARDS FOR PATERNITY ESTABLISHMENT
(Use this table to determine the level of performance for the paternity establishment measure that will incur a penalty.)

PEP	Increase required over previous year's PEP	Penalty FOR FIRST FAILURE if increase not met
90% or more	None	No Penalty.
75% to 89%	2%	1-2% TANF Funds.
50% to 74%	3%	1-2% TANF Funds.
45% to 49%	4%	1-2% TANF Funds.
40% to 44%	5%	1-2% TANF Funds.
39% or less	6%	1-2% TANF Funds.

(2) The support order establishment performance measure is set forth in §305.2 of this part. For purposes of the penalty with respect to this measure, there is a threshold of 40 percent, below which a State will be penalized unless an increase of 5 percent over the previous year is achieved—which will qualify it for an incentive. Perform-

ance in the 40 percent to 49 percent range with no significant increase will not be penalized but neither will it qualify for an incentive payment. Table 5 shows at which level of performance a State will incur a penalty under the child support order establishment measure.

TABLE 5—PERFORMANCE STANDARDS FOR ORDER ESTABLISHMENT
(Use this table to determine the level of performance for the order establishment measure that will incur a penalty.)

Performance level	Increase over previous year	Incentive/Penalty
50% or more	no increase over previous year required	Incentive.
40% to 49%	w/5% increase over previous year	Incentive.
	w/out 5% increase	No Incentive/No Penalty.
Less than 40%	w/5% increase over previous year	Incentive.

TABLE 5—PERFORMANCE STANDARDS FOR ORDER ESTABLISHMENT—Continued
(Use this table to determine the level of performance for the order establishment measure that will incur a penalty.)

Performance level	Increase over previous year	Incentive/Penalty
	w/out 5% increase	Penalty equal to 1-2% of TANF funds for the first failure, 2-3% for second failure, and so forth, up to a maximum of 5% of TANF funds.

(3) The *current collections* performance measure is set forth in §305.2 of this part. There is a threshold of 35 percent below which a State will be penalized unless an increase of 5 percent over the previous year is achieved (that qualifies it for an incentive). Performance

in the 35 percent to 40 percent range with no significant increase will not be penalized but neither will it qualify for an incentive payment. Table 6 shows at which level of performance the State will incur a penalty under the current collections measure.

TABLE 6—PERFORMANCE STANDARDS FOR CURRENT COLLECTIONS
(Use this table to determine the level of performance for the current collections measure that will incur a penalty.)

Performance level	Increase over previous year	Incentive/Penalty
40% or more	no increase over previous year required	Incentive.
35% to 39%	w/5% increase over previous year	Incentive.
	w/out 5% increase	No Incentive/No Penalty.
less than 35%	w/5% increase over previous year	Incentive.
	w/out 5% increase	Penalty equal to 1-2% of TANF funds for the first failure, 2-3% for second failure, and so forth, up to a maximum of 5% of TANF funds.

(b) The provisions listed under §305.32 of this part also apply to the penalty performance measures.

§305.42 Penalty phase-in.

States are subject to the performance penalties described in §305.40 based on data reported for FY 2001. Data reported for FY 2000 will be used as a base year to determine improvements in performance during FY 2001. There will be an automatic one-year corrective action period before any penalty is assessed. The penalties will be assessed and then suspended during the corrective action period.

§305.60 Types and scope of Federal audits.

(a) OCSE will conduct audits, at least once every three years (or more frequently if the State fails to meet performance standards and reliability of data requirements) to assess the completeness, authenticity, reliability, accuracy and security of data and the systems used to process the data in calculating performance indicators under this part;

(b) Also, OCSE will conduct audits to determine the adequacy of financial management of the State IV-D program, including assessments of:

(1) Whether funds to carry out the State program are being appropriately expended, and are properly and fully accounted for; and

(2) Whether collections and disbursements of support payments are carried out correctly and are fully accounted for; and

(c) OCSE will conduct audits for such other purposes as the Secretary may find necessary.

(1) These audits include audits to determine if the State is substantially complying with one or more of the requirements of the IV-D program (with the exception of the requirements of section 454(24) of the Act relating to statewide-automated systems and section 454(27)(A) and (B)(i) relating to the State Disbursement Unit) as defined in §305.63 of this part. Other audits will be conducted at the discretion of OCSE.

(2) Audits to determine substantial compliance will be initiated based on substantiated evidence of a failure by

the State to meet IV-D program requirements. Evidence, which could warrant an audit to determine substantial compliance, includes:

(i) The results of two or more State self-reviews conducted under section 454(15)(A) of the Act which: Show evidence of sustained poor performance; or indicate that the State has not corrected deficiencies identified in previous self-assessments, or that those deficiencies are determined to seriously impact the performance of the State's program; or

(ii) Evidence of a State program's systemic failure to provide adequate services under the program through a pattern of non-compliance over time.

(d) OCSE will conduct audits of the State's IV-D program through inspection, inquiries, observation, and confirmation and in accordance with standards promulgated by the Comptroller General of the United States in "Government Auditing Standards."

§ 305.61 Penalty for failure to meet IV-D requirements.

(a) A State will be subject to a financial penalty and the amounts otherwise payable to the State under title IV-A of the Act will be reduced in accordance with § 305.66:

(1) If on the basis of:

(i) Data submitted by the State or the results of an audit conducted under § 305.60 of this part, the State's program failed to achieve the paternity establishment percentages, as defined in section 452(g)(2) of the Act and § 305.40 of this part, or to meet the support order establishment and current collections performance measures as set forth in § 305.40 of this part; or

(ii) The results of an audit under § 305.60 of this part, the State did not submit complete and reliable data, as defined in § 305.1 of the part; or

(iii) The results of an audit under § 305.60 of this part, the State failed to substantially comply with one or more of the requirements of the IV-D program, as defined in § 305.63; and

(2) With respect to the immediately succeeding fiscal year, the State failed to take sufficient corrective action to achieve the appropriate performance levels or compliance or the data sub-

mitted by the State are still incomplete and unreliable.

(b) The reductions under paragraph (c) of this section will be made for quarters following the end of the corrective action year and will continue until the end of the first quarter throughout which the State, as appropriate:

(1) Has achieved the paternity establishment percentages, the order establishment or the current collections performance measures set forth in § 305.40 of this part;

(2) Is in substantial compliance with IV-D requirements as defined in § 305.63 of this part; or

(3) Has submitted data that are determined to be complete and reliable.

(c) The payments for a fiscal year under title IV-A of the Act will be reduced by the following percentages:

(1) One to two percent for the first finding under paragraph (a) of this section;

(2) Two to three percent for the second consecutive finding; and

(3) Not less than three percent and not more than 5 percent for the third or a subsequent consecutive finding.

(d) The reduction will be made in accordance with the provisions of 45 CFR 262.1(b)-(e) and 262.7.

§ 305.62 Disregard of a failure which is of a technical nature.

A State subject to a penalty under § 305.61(a)(1)(ii) or (iii) of this part may be determined, as appropriate, to have submitted adequate data or to have achieved substantial compliance with one or more IV-D requirements, as defined in § 305.63 of this part, if the Secretary determines that the incompleteness or unreliability of the data, or the noncompliance with one or more of the IV-D requirements, is of a technical nature which does not adversely affect the performance of the State's IV-D program or does not adversely affect the determination of the level of the State's paternity establishment or other performance measures percentages.

§ 305.63 Standards for determining substantial compliance with IV-D requirements.

For the purposes of a determination under § 305.61(a)(1)(iii) of this part, in order to be found to be in substantial compliance with one or more of the IV-D requirements as a result of an audit conducted under § 305.60 of this part, a State must meet the standards set forth below for each specific IV-D State plan requirement or requirements being audited and contained in parts 302 and 303 of this chapter, measured as follows:

(a) The State must meet the requirements under the following areas:

(1) Statewide operations, § 302.10 of this chapter;

(2) Reports and maintenance of records, § 302.15(a) of this chapter;

(3) Separation of cash handling and accounting functions, § 302.20 of this chapter; and

(4) Notice of collection of assigned support, § 302.54 of this chapter.

(b) The State must provide services required under the following areas in at least 90 percent of the cases reviewed:

(1) Establishment of cases, § 303.2(a) of this chapter; and

(2) Case closure criteria, § 303.11 of this chapter.

(c) The State must provide services required under the following areas in at least 75 percent of the cases reviewed:

(1) Collection and distribution of support payments, including: collection and distribution of support payments by the IV-D agency under § 302.32(b) of this chapter; distribution of support collections under § 302.51 of this chapter; and distribution of support collected in title IV-E foster care maintenance cases under § 302.52 of this chapter;

(2) Establishment of paternity and support orders, including: Establishment of a case under § 303.2(b) of this chapter; services to individuals not receiving TANF or title IV-E foster care assistance, under § 302.33(a)(1) through (4) of this chapter; provision of services in interstate IV-D cases under § 303.7(a), (b) and (c)(1) through (6) and (c)(8) through (10) of this chapter; location of non-custodial parents under

§ 303.3 of this chapter; establishment of paternity under § 303.5(a) and (f) of this chapter; guidelines for setting child support awards under § 302.56 of this chapter; and establishment of support obligations under § 303.4(d), (e) and (f) of this chapter;

(3) Enforcement of support obligations, including, in all appropriate cases: establishment of a case under § 303.2(b) of this chapter; services to individuals not receiving TANF or title IV-E foster care assistance, under § 302.33(a)(1) through (4) of this chapter; provision of services in interstate IV-D cases under § 303.7(a), (b) and (c)(1) through (6) and (c)(8) through (10) of this chapter; location of non-custodial parents under § 303.3 of this chapter; enforcement of support obligations under § 303.6 of this chapter and State laws enacted under section 466 of the Act, including submitting once a year all appropriate cases in accordance with § 303.6(c)(3) of this chapter to State and Federal income tax refund offset; and wage withholding under § 303.100 of this chapter. In cases in which wage withholding cannot be implemented or is not available and the non-custodial parent has been located, States must use or attempt to use at least one enforcement technique available under State law in addition to Federal and State tax refund offset, in accordance with State laws and procedures and applicable State guidelines developed under § 302.70(b) of this chapter;

(4) Review and adjustment of child support orders, including: Establishment of a case under § 303.2(b) of this chapter; services to individuals not receiving TANF or title IV-E foster care assistance, under § 302.33(a)(1) through (4) of this chapter; provision of services in interstate IV-D cases under § 303.7(a), (b) and (c)(1) through (6) and (c)(8) through (10) of this chapter; location of non-custodial parents under § 303.3 of this chapter; guidelines for setting child support awards under § 302.56 of this chapter; and review and adjustment of support obligations under § 303.8 of this chapter; and

(5) Medical support, including: establishment of a case under § 303.2(b) of this chapter; services to individuals not receiving TANF or title IV-E foster care assistance, under § 302.33(a)(1)

through (4) of this chapter; provision of services in interstate IV-D cases under §303.7(a), (b) and (c)(1) through (6) and (c)(8) through (10) of this chapter; location of non-custodial parents under §303.3 of this chapter; securing medical support information under §303.30 of this chapter; and securing and enforcing medical support obligations under §303.31 of this chapter; and

(6) Disbursement of support payments in accordance with the timeframes in section 454B of the Act and §302.32 of this chapter.

(d) With respect to the 75 percent standard in paragraph (b) of this section:

(1) Notwithstanding timeframes for establishment of cases in §303.2(b) of this chapter; provision of services in interstate IV-D cases under §303.7(a), (b) and (c)(4) through (6), (c)(8) and (9) of this chapter; location and support order establishment under §303.3(b)(3) and (5), and §303.4(d) of this chapter, if a support order needs to be established in a case and an order is established during the audit period in accordance with the State's guidelines for setting child support awards, the State will be considered to have taken appropriate action in that case for audit purposes.

(2) Notwithstanding timeframes for establishment of cases in §303.2(b) of this chapter; provision of services in interstate IV-D cases under §303.7(a), (b) and (c)(4) through (6), and (c)(8) and (9) of this chapter; and location and review and adjustment of support orders contained in §303.3(b)(3) and (5), and §303.8 of this chapter, if a particular case has been reviewed and meets the conditions for adjustment under State laws and procedures and §303.8 of this chapter, and the order is adjusted, or a determination is made, as a result of a review, during the audit period, that an adjustment is not needed, in accordance with the State's guidelines for setting child support awards, the State will be considered to have taken appropriate action in that case for audit purposes.

(3) Notwithstanding timeframes for establishment of cases in §303.2(b) of this chapter; provision of services in interstate IV-D cases under §303.7 (a), (b) and (c) (4) through (6), and (c)(8) and (9) of this chapter; and location and

wage withholding in §303.3(b) (3) and (5), and §303.100 of this chapter, if wage withholding is appropriate in a particular case and wage withholding is implemented and wages are withheld during the audit period, the State will be considered to have taken appropriate action in that case for audit purposes.

(4) Notwithstanding timeframes for establishment of cases in §303.2(b) of this chapter; provision of services in interstate IV-D cases under §303.7 (a), (b) and (c) (4) through (6), and (c)(8) and (9) of this chapter; and location and enforcement of support obligations in §303.3(b) (3) and (5), and §303.6 of this chapter, if wage withholding is not appropriate in a particular case, and the State uses at least one enforcement technique available under State law, in addition to Federal and State income tax refund offset, which results in a collection received during the audit period, the State will be considered to have taken appropriate action in the case for audit purposes.

(e) The State must meet the requirements for expedited processes under §303.101(b)(2)(i) and (iii), and (e) of this chapter.

§305.64 Audit procedures and State comments.

(a) Prior to the start of the actual audit, Federal auditors will hold an audit entrance conference with the IV-D agency. At that conference, the auditors will explain how the audit will be performed and make any necessary arrangements.

(b) At the conclusion of audit fieldwork, Federal auditors will afford the State IV-D agency an opportunity for an audit exit conference at which time preliminary audit findings will be discussed and the IV-D agency may present any additional matter it believes should be considered in the audit findings.

(c) After the exit conference, Federal auditors will prepare and send to the IV-D agency a copy of their interim report on the results of the audit. Within a specified timeframe from the date the report was sent by certified mail, the IV-D agency may submit written comments on any part of the report which the IV-D agency believes is in

§ 305.65

error. The auditors will note such comments and incorporate any response into the final audit report.

§ 305.65 State cooperation in audit.

(a) Each State shall make available to the Federal auditors such records or other supporting documentation (electronic and manual) as the audit staff may request, including records to support the data as submitted on the Federal statistical and financial reports that will be used to calculate the State's performance. The State shall also make available personnel associated with the State's IV-D program to provide information that the audit staff may find necessary in order to conduct or complete the audit.

(b) States must provide evidence to Office that their data are complete and reliable as defined in § 305.2 of this part.

(c) Failure to comply with the requirements of this section with respect to audits conducted to determine compliance with IV-D requirements under § 305.60 of this part, may necessitate a finding that the State has failed to comply with the particular criteria being audited.

§ 305.66 Notice, corrective action year, and imposition of penalty.

(a) If a State is found by the Secretary to be subject to a penalty as described in § 305.61 of this part, the OCSE will notify the State in writing of such finding.

(b) The notice will:

(1) Explain the deficiency or deficiencies which result in the State being subject to a penalty, indicate the amount of the potential penalty, and give reasons for the finding; and

(2) Specify that the penalty will be assessed in accordance with the provisions of 45 CFR 262.1(b) through (e) and 262.7 if the State is found to have failed to correct the deficiency or deficiencies cited in the notice during the automatic corrective action year (i.e., the succeeding fiscal year following the year with respect to which the deficiency occurred.)

(c) The penalty under § 305.61 of this part will be assessed if the Secretary determines that the State has not corrected the deficiency or deficiencies

45 CFR Ch. III (10-1-04 Edition)

cited in the notice by the end of the corrective action year.

(d) Only one corrective action period is provided to a State with respect to a given deficiency where consecutive findings of noncompliance are made with respect to that deficiency. In the case of a State against which the penalty is assessed and which failed to correct the deficiency or deficiencies cited in the notice by the end of the corrective action year, the penalty will be effective for any quarter after the end of the corrective action year and ends for the first full quarter throughout which the State IV-D program is determined to have corrected the deficiency or deficiencies cited in the notice.

(e) A consecutive finding occurs only when the State does not meet the same criterion or criteria cited in the notice in paragraph (a) of this section.

PART 306 [RESERVED]

PART 307—COMPUTERIZED SUPPORT ENFORCEMENT SYSTEMS

Sec.

307.0 Scope of this part.

307.1 Definitions.

307.5 Mandatory computerized support enforcement systems.

307.10 Functional requirements for computerized support enforcement systems in operation by October 1, 1997.

307.11 Functional requirements for computerized support enforcement systems in operation by October 1, 2000.

307.13 Security and confidentiality for computerized support enforcement systems in operation after October 1, 1997.

307.15 Approval of advance planning documents for computerized support enforcement systems.

307.20 Submittal of advance planning documents for computerized support enforcement systems.

307.25 Review and certification of computerized support enforcement systems.

307.30 Federal financial participation at the 90 percent rate for statewide computerized support enforcement systems.

307.31 Federal financial participation at the 80 percent rate for computerized support enforcement systems.

307.35 Federal financial participation at the applicable matching rate for computerized support enforcement systems.

307.40 Suspension of approval of advance planning documents for computerized support enforcement systems.

AUTHORITY: 42 U.S.C. 652 through 658, 664, 666 through 669A, and 1302.

SOURCE: 49 FR 33260, Aug. 22, 1984, unless otherwise noted.

§ 307.0 Scope of this part.

This part implements sections 452(d) and (e), 454(16) and (24), 454A, and 455(a)(1)(A) and (B), and (a)(3)(A) of the Act which prescribe:

(a) The requirement for computerized support enforcement systems;

(b) The functional requirements that a statewide computerized support enforcement system must meet;

(c) Security and confidentiality requirements for computerized support enforcement systems;

(d) The criteria the Office must determine exist prior to approving an advance planning document (APD);

(e) The requirements and procedures for the submittal of an APD;

(f) The requirement for continuous review of each approved statewide computerized support enforcement system;

(g) The availability of FFP at the 90 percent rate;

(h) The availability of FFP at the applicable matching rate; and

(i) The conditions under which the Office will suspend approval of an APD.

[57 FR 47002, Oct. 14, 1992, as amended at 63 FR 44814, Aug. 21, 1998]

§ 307.1 Definitions.

(a) *Alternative approach to APD requirements* means that the State has developed an APD that does not meet all conditions for APD approval in § 307.15(b) resulting in the need for a waiver under § 307.5.

(b) *Business day* means a day on which State offices are open for business.

(c) *Alternative system* means the separate manual and/or automated processes that perform one or more of the required functions separately from the base system and that interfaces with the base system to ensure that the State can meet all requirements for purposes of the audit prescribed in section 403(h) of the Act. These separate processes may involve geographic areas, such as counties; administrative jurisdictions, such as courts; or separate means by which the State meets particular program requirements, e.g.,

collection of support for non-IV-A cases.

(d) *Alternative system configuration* means an alternative to a comprehensive computerized support enforcement system. It includes a base system with electronic linkages to an alternative system(s), which is not part of the State's computerized support enforcement project (i.e., not the State's sole system effort), but which is necessary to meet the functional requirements of the statewide, comprehensive computerized support enforcement system under § 307.10, or § 307.11.

(e) *Base system* means the hardware, operational software, applications software and electronic linkages in an alternative system configuration which allow the State to monitor, account for and control all support enforcement services and activities under the State plan.

(f) *Certification* means approval of an operational computerized support enforcement system based on a determination that the system has an efficient and effective design and is comprehensive, except where a waiver applies.

(g) *Comprehensive* means that a computerized support enforcement system meets the requirements prescribed in § 307.10, or § 307.11 of this part, as further defined in the OCSE guideline entitled "Automated Systems for Child Support Enforcement: A Guide for States."

(h) *Computerized support enforcement system* means a comprehensive, statewide system or an alternative system configuration which encompasses all political subdivisions within the State and which effectively and efficiently;

(1) Introduces, processes, accounts for and monitors data used by the Child Support Enforcement program in carrying out activities under the State plan; and

(2) Produces utilization and management information about support enforcement services as required by the State IV-D agency and Federal government for program administration and audit purposes.

(i) *Planning* means: (1) The preliminary project activity to determine the requirements necessitating the project, the activities to be undertaken, and

§ 307.5

the resources required to complete the project;

(2) The preparation of an APD;

(3) The preparation of a detailed project plan describing when and how the computer system will be designed or transferred and adapted; and

(4) The preparation of a detailed implementation plan describing specific training, testing, and conversion plans to install the computer system.

(j) The following terms are defined at 45 CFR part 95, subpart F, in §95.605:

“Advance Planning Document”;

“Annually Updated APD”;

“Design” or “System Design”;

“Development”;

“Enhancement”;

“Implementation Advance Planning Document”;

“Initial APD”;

“Installation”;

“Operation”;

“Planning Advance Planning Document”;

“Requirements Analysis”; and

“Software”.

(k) The definitions found in §301.1 of this chapter are also applicable to this part.

[57 FR 47002, Oct. 14, 1992, as amended at 63 FR 44814, Aug. 21, 1998; 68 FR 25305, May 12, 2003]

§ 307.5 Mandatory computerized support enforcement systems.

(a) *Basic requirement.* (1) By October 1, 1997, each State must have in effect an operational computerized support enforcement system, which meets Federal requirements under §302.85(a)(1) of this chapter. OCSE will review each system to certify that these requirements are met; and

(2) By October 1, 2000, each State must have in effect an operational computerized support enforcement system, which meets Federal requirements under §302.85(a)(2) of this chapter. OCSE will review each system to certify that these requirements are met.

(b) *Waiver option.* A State may apply for a waiver of any functional requirement in §307.10, or §307.11 by presenting a plan for an alternative system configuration, or a waiver of any conditions for APD approval in §307.15(b) by presenting an alternative approach.

45 CFR Ch. III (10–1–04 Edition)

Waiver requests must be submitted and approved as part of the State’s APD or APD update.

(c) *Conditions for waiver.* The Secretary may grant a State a waiver if:

(1) The State demonstrates that it has an alternative approach to the APD requirements or an alternative system configuration that enables the State, in accordance with part 305 of this chapter, to be in substantial compliance with the other requirements of this chapter; and either:

(2) The waiver request meets the criteria set forth in section 1115(c) (1), (2) and (3) of the Act; or

(3) The State provides written assurance that steps will be taken to otherwise improve the State’s Child Support Enforcement program.

(d) *APD submittal requirements for alternative system configuration.* APDs submitted by States which include requests for waiver for an alternative system configuration must, in addition to meeting conditions of §307.15(b):

(1) Describe the State’s base system;

(2) Include a detailed description of the separate automated or manual processes the State plans to use and how they will interface with the base system;

(3) Provide documentation that the alternative system configuration will enable the State to be in substantial compliance with title IV–D of the Act in accordance with section 403(h) of the Act and implementing regulations. In addition, if the State is subject to a Notice under §305.99 of this part that it did not substantially comply with one or more of the requirements of title IV–D of the Act, at the time a waiver request is submitted, the State must:

(i) Demonstrate that the deficiency is not related to or caused by the performance of the system; or

(ii) Specify the corrective action taken to modify the system if the system contributed to the deficiency.

(e) *APD submittal requirements for alternative approach.* APDs submitted by States which include requests for waiver of conditions for APD approval in §307.15(b) must demonstrate why meeting the conditions is unnecessary or inappropriate.

(f) *Review of waiver requests.* (1) The Office will review waiver requests to

assure that all necessary information is provided, that all processes provide for effective and efficient program operation, and that the conditions for waiver in paragraph (d) of this section are met.

(2) When a waiver is approved, it becomes part of the State's approved APD. A waiver is subject to the APD suspension provisions in §307.40.

(3) When a waiver is disapproved, the APD will be disapproved. The APD disapproval is a final administrative decision and is not subject to administrative appeal.

(g) *FFP limitations.* (1) The provisions of §§307.30 and 307.35 apply to requests for FFP for costs of computerized support enforcement systems.

(2) FFP for alternative system configurations is further limited as follows:

(i) FFP is available at the enhanced matching rate for development of the base system and for hardware, operational system software, and electronic linkages with the separate components of an alternative system configuration.

(ii) FFP is available at the applicable matching rate for minor alterations to the separate automated or manual processes that are part of an alternative system configuration and for operating costs including hardware, operational software and applications software of a computerized support enforcement system.

(iii) FFP is not available for developing new systems or making major changes and enhancements to separate automated or manual processes so that alternative system configurations meet conditions for waiver.

[57 FR 47003, Oct. 14, 1992, as amended at 61 FR 67241, Dec. 20, 1996; 63 FR 44814, Aug. 21, 1998]

§307.10 Functional requirements for computerized support enforcement systems in operation by October 1, 1997.

At a minimum, each State's computerized support enforcement system established under the title IV-D State plan at §302.85(a)(1) of this chapter must:

(a) Be planned, designed, developed, installed or enhanced in accordance

with an initial and annually updated APD approved under §307.15; and

(b) Control, account for, and monitor all the factors in the support collection and paternity determination processes under the State plan. At a minimum this must include:

(1) Maintaining identifying information such as social security numbers, names, dates of birth, home addresses and mailing addresses (including postal zip codes) on individuals against whom support obligations are sought to be established or enforced and on individuals to whom support obligations are owed, and other data as required by the Office;

(2) Periodically verifying the information on individuals referred to in paragraph (b)(1) of this section with Federal, State and local agencies, both intrastate and interstate;

(3) Maintaining data necessary to meet Federal Reporting Requirements on a timely basis as prescribed by the Office;

(4) Maintaining information pertaining to:

(i) Delinquency and enforcement activities;

(ii) Intrastate, interstate and Federal location of absent parents;

(iii) The establishment of paternity; and

(iv) The establishment of support obligations;

(5) Collecting and distributing both intrastate and interstate support payments;

(6) Computing and distributing incentive payments to political subdivisions which share in the cost of funding the program and to other political subdivisions based on efficiency and effectiveness if the State has chosen to pay such incentives;

(7) Maintaining accounts receivable on all amounts owed, collected, and distributed;

(8) Maintaining costs of all services rendered, either directly or by interfacing with State financial management and expenditure information;

(9) Accepting electronic case referrals and update information from the State's title IV-A program and using that information to identify and manage support enforcement cases;

§ 307.11

45 CFR Ch. III (10–1–04 Edition)

(10) Transmitting information electronically to provide data to the State's TANF system so that the IV-A agency can determine (and report back to the IV-D system) whether a collection of support causes a change in eligibility for, or the amount of aid under, the IV-A program;

(11) Providing security to prevent unauthorized access to, or use of, the data in the system;

(12) Providing management information on all IV-D cases under the State plan from initial referral or application through collection and enforcement;

(13) Providing electronic data exchange with the State Medicaid system to provide for case referral and the transfer of the medical support information specified in 45 CFR 303.30 and 303.31;

(14) Using automated processes to assist the State in meeting State plan requirements under part 302 of this chapter and Standards for program operations under part 303 of this chapter, including but not limited to:

(i) The automated maintenance and monitoring of accurate records of support payments;

(ii) Providing automated maintenance of case records for purposes of the management and tracking requirements in §303.2 of this chapter;

(iii) Providing title IV-D case workers with on-line access to automated sources of absent parent employer and wage information maintained by the State when available, by establishing an electronic link or by obtaining an extract of the data base and placing it on-line for access throughout the State;

(iv) Providing locate capability by automatically referring cases electronically to locate sources within the State (such as State motor vehicle department, State department of revenue, and other State agencies), and to the Federal Parent Locator Service and utilizing electronic linkages to receive return locate information and place the information on-line to title IV-D case workers throughout the State;

(v) Providing capability for electronic funds transfer for purposes of income withholding and interstate collections;

(vi) Integrating all processing of interstate cases with the computerized support enforcement system, including the central registry; and

(15) Providing automated processes to enable the Office to monitor State operations and assess program performance through the audit conducted under section 452(a) of the Act.

[57 FR 47003, Oct. 14, 1992, as amended at 63 FR 44815, Aug. 21, 1998; 68 FR 25305, May 12, 2003]

§307.11 Functional requirements for computerized support enforcement systems in operation by October 1, 2000.

At a minimum, each State's computerized support enforcement system established and operated under the title IV-D State plan at §302.85(a)(2) of this chapter must:

(a) Be planned, designed, developed, installed or enhanced, and operated in accordance with an initial and annually updated APD approved under §307.15 of this part;

(b) Control, account for, and monitor all the factors in the support collection and paternity determination processes under the State plan. At a minimum, this includes the following:

(1) The activities described in §307.10, except paragraphs (b)(3), (8) and (11); and

(2) The capability to perform the following tasks with the frequency and in the manner required under, or by this chapter:

(i) Program requirements. Performing such functions as the Secretary may specify related to management of the State IV-D program under this chapter including:

(A) Controlling and accounting for the use of Federal, State and local funds in carrying out the program either directly, through an auxiliary system or through an interface with State financial management and expenditure information; and

(B) Maintaining the data necessary to meet Federal reporting requirements under this chapter in a timely basis as prescribed by the Office;

(ii) Calculation of Performance Indicators. Enabling the Secretary to determine the incentive payments and

penalty adjustments required by sections 452(g) and 458 of the Act by:

(A) Using automated processes to:

(1) Maintain the requisite data on State performance for paternity establishment and child support enforcement activities in the State; and

(2) Calculate the paternity establishment percentage for the State for each fiscal year;

(B) Having in place system controls to ensure the completeness, and reliability of, and ready access to, the data described in paragraph (b)(2)(i)(A)(1) of this section, and the accuracy of the calculation described in paragraph (b)(2)(i)(A)(2) of this section; and

(iii) System Controls: Having systems controls (e.g., passwords or blocking of fields) to ensure strict adherence to the policies described in Sec. 307.13(a); and

(3) Activities described in the Act that were added by the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Pub. L. 104-193, not otherwise addressed in this part.

(c) Collection and Disbursement of Support Payments. To the maximum extent feasible, assist and facilitate the collection and disbursement of support payments through the State disbursement unit operated under section 454B of the Act through the performance of functions which, at a minimum, include the following:

(1) Transmission of orders and notices to employers and other debtors for the withholding of income:

(i) Within 2 business days after receipt of notice of income, and the income source subject to withholding from a court, another State, an employer, the Federal Parent Locator Service, or another source recognized by the State; and

(ii) Using uniform formats prescribed by the Secretary;

(2) Ongoing monitoring to promptly identify failures to make timely payment of support; and

(3) Automatic use of enforcement procedures, including procedures under section 466(c) of the Act if payments are not timely;

(d) Expedited Administrative Procedures. To the maximum extent feasible, be used to implement the expe-

ditied administrative procedures required by section 466(c) of the Act.

(e) State case registry. Have a State case registry that meets the requirements of this paragraph.

(1) Definitions. When used in this paragraph and paragraph (f) of this section, the following definitions shall apply.

(i) Participant means an individual who owes or is owed a duty of support, imposed or impossible by law, or with respect to or on behalf of whom a duty of support is sought to be established, or who is an individual connected to an order of support or a child support case being enforced.

(ii) Participant type means the custodial party, non-custodial parent, putative father, or child, associated with a case or support order contained in the State or Federal case registry.

(iii) locate request type refers to the purpose of the request for additional matching services on information sent to the Federal case registry, for example, a IV-D locate (paternity or support establishment or support enforcement), parental kidnapping or custody and visitation.

(iv) locate source type refers to the external sources a locate submitter desires the information sent to the Federal case registry to also be matched against.

(2) The State case registry shall contain a record of:

(i) Every IV-D case receiving child support enforcement services under an approved State plan; and

(ii) Every support order established or modified in the State on or after October 1, 1998.

(3) Standardized data elements shall be included for each participant. These data elements shall include:

(i) Names;

(ii) Social security numbers;

(iii) Dates of birth;

(iv) Case identification numbers;

(v) Other uniform identification numbers;

(vi) Data elements required under paragraph (f)(1) of this section necessary for the operation of the Federal case registry;

(vii) Issuing State of an order; and

(viii) Any other information that the Secretary may require.

§ 307.11

45 CFR Ch. III (10-1-04 Edition)

(4) The record required under paragraph (e)(2) of this section shall include information for every case in the State case registry receiving services under an approved State plan that has a support order in effect. The information must include:

(i) The amount of monthly (or other frequency) support owed under the order;

(ii) Other amounts due or overdue under the order including arrearages, interest or late payment penalties and fees;

(iii) Any amounts described in paragraph (e)(4) (i) and (ii) of this section that have been collected;

(iv) The distribution of such collected amounts;

(v) The birth date and, beginning no later than October 1, 1999, the name and social security number of any child for whom the order requires the provision of support; and

(vi) The amount of any lien imposed in accordance with section 466(a)(4) of the Act to enforce the order.

(5) Establish and update, maintain, and regularly monitor case records in the State case registry for cases receiving services under the State plan. To ensure information on an established IV-D case is up to date, the State should regularly update the system to make changes to the status of a case, the participants of a case, and the data contained in the case record. This includes the following:

(i) Information on administrative and judicial orders related to paternity and support;

(ii) Information obtained from comparisons with Federal, State or local sources of information;

(iii) Information on support collections and distributions; and

(iv) Any other relevant information.

(6) States may link local case registries of support orders through an automated information network in meeting paragraph (e)(2)(ii) of this section provided that all other requirements of this paragraph are met.

(f) Information Comparisons and other Disclosures of Information. Extract information, at such times and in such standardized format or formats, as may be required by the Secretary, for purposes of sharing and comparing

with, and receiving information from, other data bases and information comparison services, to obtain or provide information necessary to enable the State, other States, the Office or other Federal agencies to carry out this chapter. As applicable, these comparisons and disclosures must comply with the requirements of section 6103 of the Internal Revenue Code of 1986 and the requirements of section 453 of the Act. The comparisons and sharing of information include:

(1) Effective October 1, 1998, (or for the child data, not later than October 1, 1999) furnishing the following information to the Federal case registry on participants in cases receiving services under the State plan and in support orders established or modified on or after October 1, 1998, and providing updates of such information within five (5) business days of receipt by the IV-D agency of new or changed, information, including information which would necessitate adding or removing a Family Violence indicator and notices of the expiration of support orders:

(i) State Federal Information Processing Standard (FIPS) code and optionally, county code;

(ii) State case identification number;

(iii) State member identification number;

(iv) Case type (IV-D, non-IV-D);

(v) Social security number and any necessary alternative social security numbers;

(vi) Name, including first, middle, last name and any necessary alternative names;

(vii) Sex (optional);

(viii) Date of birth;

(ix) Participant type (custodial party, non-custodial parent, putative father, child);

(x) Family violence indicator (domestic violence or child abuse);

(xi) Indication of an order;

(xii) Locate request type (optional);

(xiii) Locate source (optional); and

(xiv) Any other information of the Secretary may require.

(2) Requesting or exchanging information with the Federal parent locator service for the purposes specified in section 453 of the Act;

(3) Exchanging information with State agencies, both within and outside

of the State, administering programs under titles IV-A and XIX of the Act, as necessary to perform State agency responsibilities under this chapter and under such programs; and

(4) Exchanging information with other agencies of the State, and agencies of other States, and interstate information networks, as necessary and appropriate, to assist the State and other States in carrying out the purposes of this chapter.

[63 FR 44815, Aug. 21, 1998]

§ 307.13 Security and confidentiality for computerized support enforcement systems in operation after October 1, 1997.

The State IV-D agency shall:

(a) *Information integrity and security.* Have safeguards on the integrity, accuracy, completeness of, access to, and use of data in the computerized support enforcement system. These safeguards shall include written policies concerning access to data by IV-D agency personnel, and the sharing of data with other persons to:

(1) Permit access to and use of data to the extent necessary to carry out the State IV-D program under this chapter; and

(2) Specify the data which may be used for particular IV-D program purposes, and the personnel permitted access to such data; and

(3) Permit access to and use of data for purposes of exchanging information with State agencies administering programs under titles IV-A and XIX of the Act to the extent necessary to carry out State agency responsibilities under such programs in accordance with section 454A(f)(3) of the Act.

(b) *Monitoring of access.* Monitor routine access to and use of the computerized support enforcement system through methods such as audit trails and feedback mechanisms to guard against, and promptly identify unauthorized access or use;

(c) *Training and information.* Have procedures to ensure that all personnel, including State and local staff and contractors, who may have access to or be required to use confidential program data in the computerized support enforcement system are:

(1) Informed of applicable requirements and penalties, including those in section 6103 of the Internal Revenue Service Code and section 453 of the Act; and

(2) Adequately trained in security procedures; and

(d) *Penalties.* Have administrative penalties, including dismissal from employment, for unauthorized access to, disclosure or use of confidential information.

[63 FR 44816, Aug. 21, 1998]

§ 307.15 Approval of advance planning documents for computerized support enforcement systems.

(a) *Approval of an APD.* The Office shall not approve the APD and annually updated APD unless the document, when implemented, will carry out the requirements of § 307.10, or § 307.11 of this part. Conditions for APD approval are specified in this section.

(b) *Conditions for initial approval.* In order to be approvable, an APD for a statewide computerized support enforcement system described under § 307.10, or § 307.11 must meet the following requirements:

(1) The APD must represent the sole systems effort being undertaken by the State in accordance with § 307.10, or § 307.11. If the State is requesting a waiver under § 302.85 of this chapter, the APD must specify the conditions for which waiver is requested;

(2) The APD must specify how the objectives of the computerized support enforcement system in § 307.10, or § 307.11 will be carried out throughout the State; this includes a projection of how the proposed system will meet the functional requirements of § 307.10, or § 307.11 and how the single State system will encompass all political subdivisions in the State by October 1, 1997, or October 1, 2000 respectively.

(3) The APD must assure the feasibility of the proposed effort and provide for the conduct of a requirements analysis study which address all system components within the State and includes consideration of the program mission, functions, organization, services and constraints related to the computerized support enforcement system;

§ 307.15

45 CFR Ch. III (10–1–04 Edition)

(4) The APD must indicate how the results of the requirements analysis study will be incorporated into the proposed system design, development, installation or enhancement;

(5) The APD must contain a description of each component within the proposed computerized support enforcement system as required by § 307.10, or § 307.11 and must describe information flows, input data, and output reports and uses;

(6) The APD must describe the security requirements to be employed in the proposed computerized support enforcement system;

(7) The APD must describe the intra-state and interstate interfaces set forth in § 307.10, or § 307.11 to be employed in the proposed computerized support enforcement system;

(8) The APD must describe the projected resource requirements for staff, hardware, and other needs and the resources available or expected to be available to meet the requirements;

(9) The APD must contain a proposed budget and schedule of life-cycle milestones relative to the size, complexity and cost of the project which at a minimum address requirements analysis, program design, procurement and project management; and, a description of estimated expenditures by category and amount for:

(i) Items that are eligible for funding at the enhanced matching rate, and

(ii) Items related to developing and operating the system that are eligible for Federal funding at the applicable matching rate;

(10) The APD must contain an implementation plan and backup procedures to handle possible failures in system planning, design, development, installation or enhancement.

(i) These backup procedures must include provision for independent validation and verification (IV&V) analysis of a State's system development effort in the case of States:

(A) That do not have in place a state-wide automated child support enforcement system that meets the requirements of the FSA of 1988;

(B) States which fail to meet a critical milestone, as identified in their APDs;

(C) States which fail to timely and completely submit APD updates;

(D) States whose APD indicates the need for a total system redesign;

(E) States developing systems under waivers pursuant to section 452(d)(3) of the Social Security Act; or,

(F) States whose system development efforts we determine are at risk of failure, significant delay, or significant cost overrun.

(ii) Independent validation and verification efforts must be conducted by an entity that is independent from the State (unless the State receives an exception from OCSE) and the entity selected must:

(A) Develop a project workplan. The plan must be provided directly to OCSE at the same time it is given to the State.

(B) Review and make recommendations on both the management of the project, both State and vendor, and the technical aspects of the project. The IV&V provider must provide the results of its analysis directly to OCSE at the same time it reports to the State.

(C) Consult with all stakeholders and assess the user involvement and buy-in regarding system functionality and the system's ability to meet program needs.

(D) Conduct an analysis of past project performance sufficient to identify and make recommendations for improvement.

(E) Provide risk management assessment and capacity planning services.

(F) Develop performance metrics which allow tracking project completion against milestones set by the State.

(iii) The RFP and contract for selecting the IV&V provider (or similar documents if IV&V services are provided by other State agencies) must include the experience and skills of the key personnel proposed for the IV&V analysis and specify by name the key personnel who actually will work on the project and must be submitted to OCSE for prior approval.

(11) The APD must describe each system considered during planning including the advantages of selecting the proposed solution. If a transfer system is not selected as the proposed solution, a transfer system must be among those

systems considered. If a system that is already in place in the State could be enhanced to meet the requirements for a computerized support enforcement system, that system must be among the solutions considered;

(12) The APD must contain a cost benefit analysis of the proposed computerized support enforcement system and all alternatives considered that describes the proposed improvements to the IV-D program in both qualitative and quantitative terms;

(13) The APD must specify the basis for determining direct and indirect costs of the computerized support enforcement system during development and operation, including the methodology for determining costs of planning, design, development, installation or enhancement that are eligible for 90 percent Federal funding versus costs of development and operations that are eligible for Federal funding at the applicable matching rate;

(14) The APD must contain a statement indicating the period of time the State expects to use the proposed computerized support enforcement system; and

(15) The APD must include any waiver requested in accordance with § 307.5 of this chapter.

(c) *Conditions for approval of annual update.* The APD for a computerized support enforcement system described under § 307.10, or § 307.11 must be updated annually. In order to be approvable, the annual update of an APD for a computerized support enforcement system described under § 307.10 must meet only those requirements of paragraph (b) of this section that are prescribed by instructions issued by the Office.

(Approved by the Office of Management and Budget under control number 0960-0343)

[49 FR 33260, Aug. 22, 1984, as amended at 51 FR 37732, Oct. 24, 1986; 55 FR 4379, Feb. 7, 1990; 57 FR 47004, Oct. 14, 1992; 61 FR 67241, Dec. 20, 1996; 63 FR 44816, Aug. 21, 1998]

§ 307.20 Submittal of advance planning documents for computerized support enforcement systems.

The State IV-D agency must submit an APD for a computerized support enforcement system, approved and signed by the State IV-D Director and the ap-

propriate State official, in accordance with the submission process prescribed in 45 CFR part 95, subpart F.

[55 FR 4379, Feb. 7, 1990, as amended at 57 FR 47005, Oct. 14, 1992]

§ 307.25 Review and certification of computerized support enforcement systems.

The Office will review, assess and inspect the planning, design, development, installation, enhancement and operation of computerized support enforcement systems developed under § 307.10, or § 307.11 to determine the extent to which such systems:

(a) Meet the requirements found in § 307.15; and

(b) Can be certified as meeting the requirements described in § 307.10 and in the OCSE guideline entitled "Automated Systems for Child Support Enforcement: A Guide for States".

[57 FR 47005, Oct. 14, 1992, as amended at 63 FR 44817, Aug. 21, 1998]

§ 307.30 Federal financial participation at the 90 percent rate for state-wide computerized support enforcement systems.

(a) *Conditions that must be met for FFP.* During the Federal fiscal years 1996, and 1997, Federal financial participation is available at the 90 percent rate in expenditures for the planning, design, development, installation or enhancement of a computerized support enforcement system as described in §§ 307.5 and 307.10 limited to the amount in an advance planning document, or APDU submitted on or before September 30, 1995, and approved by OCSE if:

(1) The Office has approved an APD in accordance with § 307.15 of this part;

(2) The system meets the requirements specified in § 307.10;

(3) The Office determines that the expenditures incurred are consistent with the approved APD;

(4) The Office determines that the computerized support enforcement system or alternative system configuration is designed effectively and efficiently and will improve the management and administration of the State IV-D plan;

(5) The State IV-D agency agrees in writing to use the system for a period

§ 307.31

45 CFR Ch. III (10–1–04 Edition)

of time which is consistent with the APD approved by the Office; and

(6) The State or local government has ownership rights in software, software modifications and associated documentation that is designed, developed, installed, or enhanced with 90 percent FFP under this section subject to the Department of Health and Human Services license specified in paragraph (c) of this section.

(b) *Federal financial participation in the costs of hardware and proprietary software.* (1) Until September 30, 1997, FFP at the 90 percent rate is available in expenditures for the rental or purchase of hardware for the planning, design, development, installation or enhancement of a computerized support enforcement system as described in § 307.10 in accordance with the limitation in paragraph (a) of this section.

(2) Until September 30, 1997, FFP at the 90 percent rate is available for expenditures for the rental or purchase of proprietary operating/vendor software necessary for the operation of hardware during the planning, design, development, installation or enhancement of a computerized support enforcement system in accordance with the limitation in paragraph (a) of this section, and the OCSE guideline entitled “Automated Systems for Child Support Enforcement: A Guide for States.” FFP at the 90 percent rate is not available for proprietary application software developed specifically for a computerized support enforcement system. § 307.35 of this part regarding reimbursement at the applicable matching rate.)

(c) *HHS rights to software.* The Department of Health and Human Services reserves a royalty-free, non-exclusive and irrevocable license to reproduce, publish or otherwise use, and to authorize others to use for Federal government purposes, software, software modifications, and documentation developed under § 307.10. This license would permit the Department to authorize the use of software, software modifications and documentation developed under § 307.10 in another project or activity funded by the Federal government.

(d) *Consequences of suspension of the APD.* If the Office suspends approval of

an APD in accordance with § 307.40 of this part during the planning design, development, installation, enhancement or operation of the system:

(1) The Office shall disallow FFP as of the date the State failed to comply substantially with the approved APD; and

(2) FFP at the 90 and applicable matching rates is not available in any expenditures incurred under the APD after the date of the suspension until the date the Office determines that the State has taken the actions specified in the notice of suspension described in § 307.40(a)(2) of this part. The Office will notify the State in writing upon making such a determination. (See § 307.35(b) regarding reimbursement for disallowed expenditures under part 95, subpart F of this title.)

[49 FR 33260, Aug. 22, 1984, as amended at 50 FR 19657, May 9, 1985; 55 FR 4379, Feb. 7, 1990; 57 FR 47005, Oct. 14, 1992; 63 FR 44817, Aug. 21, 1998]

§ 307.31 Federal financial participation at the 80 percent rate for computerized support enforcement systems.

(a) *Conditions that must be met for 80 percent FFP.* Until September 30, 2001, Federal financial participation is available at the 80 percent rate to States, Territories and systems defined in 42 U.S.C. 655(a)(3)(B)(iii) [455(a)(3)(B)(iii) of the Act] (hereafter referred to as “States”) for expenditures for the planning, design, development, installation, or enhancement of a computerized support enforcement system meeting the requirements as described in §§ 307.5 and 307.10 or 42 U.S.C. § 654(16) [454(16) of the Act], if:

(1) The Office has approved an APD in accordance with § 307.15;

(2) The Office determines that the system meets the requirements specified in § 307.10, or 42 U.S.C. 654(16) [454(16) of the Act];

(3) The Office determines that the expenditures incurred are consistent with the approved APD;

(4) The Office determines that the computerized support enforcement system is designed effectively and efficiently and will improve the management and administration of the State IV-D plan;

(5) The State IV-D agency agrees in writing to use the system for a period of time which is consistent with the APD approved by the Office; and

(6) The State or local government has ownership rights in software, software modifications and associated documentation that is designed, developed, installed or enhanced under this section subject to the Department of Health and Human Services license specified in paragraph (c) of this section.

(b) *Federal financial participation in the costs of hardware and proprietary software.*

(1) Until September 30, 2001, FFP at the 80 percent rate is available for expenditures for the rental or purchase of hardware for the planning, design, development, installation, or enhancement of a computerized support enforcement system as described in §307.10 or 42 U.S.C. 654(16) [454(16) of the Act].

(2) Until September 30, 2001, FFP at the 80 percent rate is available for the rental or purchase of proprietary operating/vendor software necessary for the operation of hardware during the planning, design, development, installation, enhancement or operation of a computerized support enforcement system in accordance with the OCSE guideline entitled "Automated Systems for Child Support Enforcement: A Guide for States." FFP at the 80 percent rate is not available for proprietary application software developed specifically for a computerized support enforcement system. (See §307.35 regarding reimbursement at the applicable matching rate.)

(c) *HHS rights to software.* The Department of Health and Human Services reserves a royalty-free, non-exclusive and irrevocable license to reproduce, publish or otherwise use, and to authorize others to use for Federal government purposes, software, software modifications, and documentation developed under §307.10 or 42 U.S.C. 654(16) [454(16) of the Act]. This license would permit the Department to authorize the use of software, software modifications and documentation developed under §307.10 or 42 U.S.C. 654(16) [454(16) of the Act] in another

project or activity funded by the Federal government.

(d) *Consequences of suspension of the APD.* If the Office suspends approval of an APD in accordance with §307.40 during the planning, design, development, installation, enhancement or operation of the system:

(1) The Office shall disallow FFP as of the date the State failed to comply substantially with the approved APD; and

(2) FFP at the 80 percent and applicable matching rates is not available in any expenditure incurred under the APD after the date of the suspension until the date the Office determines that the State has taken the actions specified in the notice of suspension described in §307.40(a). The Office will notify the State in writing upon making such a determination.

(e) *Limitation on 80 percent funding.* Federal financial participation at the 80 percent rate may not exceed \$400,000,000 in the aggregate for fiscal years 1996 through 2001.

(f) *Allocation formula.* Payments at the 80 percent rate to individual States, Territories and systems defined in 42 U.S.C. 655(a)(3)(B)(iii) [455(a)(3)(B)(iii) of the Act] (hereafter referred to as "States") will be equal to the sum of:

(1) A base amount of \$2,000,000; and

(2) An additional amount defined as the Allocation Factor computed as follows:

(i) Allocation Factor—an average of the Caseload and Census Factors which yields the percentage that is used to calculate a State's allocation of the funds available, less amounts set aside pursuant to paragraph (f)(1) of this section.

(ii) Caseload Factor—a ratio of the six-year average IV-D caseload as reported by a State for fiscal years 1990 through 1995 to the total six-year average IV-D caseload in all States for the same period;

(iii) Census Factor—a ratio of the number of children in a State with one parent living elsewhere as reported in the 1992 Current Population Survey—Child Support Supplement to the total number of such children in all States.

[63 FR 44405, Aug. 19, 1998]

§ 307.35

§ 307.35 Federal financial participation at the applicable matching rate for computerized support enforcement systems.

Federal financial participation at the applicable matching rate is available only in computerized support enforcement systems expenditures for:

(a) The operation of a system that meets the requirements specified in § 307.10, or § 307.11 if the conditions for APD approval in §§ 307.5 and 307.15 are met; or

(b) Systems approved in accordance with part 95, subpart F of this title. This may include expenditures for a system which were disallowed by the Office because the system failed to comply substantially with an APD approved under § 307.15.

[49 FR 33260, Aug. 22, 1984, as amended at 50 FR 19658, May 9, 1985; 57 FR 47005, Oct. 14, 1992; 63 FR 44817, Aug. 21, 1998]

§ 307.40 Suspension of approval of advance planning documents for computerized support enforcement systems.

(a) *Suspension of approval.* The Office will suspend approval of the APD for a computerized support enforcement system approved and developed under § 307.10, or § 307.11 as of the date that the system ceases to comply substantially with the criteria, requirements, and other provisions in the APD, including conditions in § 307.15(b) and the requirements in § 307.10 or § 307.11 of this part covered under a waiver granted in accordance with § 307.5. Federal funding will be disallowed as described in § 307.30(d) and § 307.31(d).

(b) *Duration of suspension.* The suspension of approval of an APD under paragraph (a) shall remain in effect until the Office determines that actions required for Federal funding in the future, as specified in the notice of suspension, have been taken and the Office so notifies the State.

[49 FR 33260, Aug. 22, 1984, as amended at 57 FR 47005, Oct. 14, 1992; 63 FR 44405, Aug. 19, 1998; 63 FR 44817, Aug. 21, 1998]

PART 308—ANNUAL STATE SELF-ASSESSMENT REVIEW AND REPORT

Sec.
308.0 Scope.

45 CFR Ch. III (10–1–04 Edition)

308.1 Self-assessment implementation methodology.

308.2 Required program compliance criteria.

308.3 Optional program areas of review.

AUTHORITY: 42 U.S.C. 654(15)(A) and 1302.

SOURCE: 65 FR 77750, Dec. 12, 2000, unless otherwise noted.

§ 308.0 Scope.

This part establishes standards and criteria for the State self-assessment review and report process required under section 454(15)(A) of the Act.

§ 308.1 Self-assessment implementation methodology.

(a) The IV–D agency must ensure the review meets Federal requirements and must maintain responsibility for and control of the results produced and contents of the annual report.

(b) *Sampling.* A State must either review all of its cases or conduct sampling which meets the following conditions:

(1) The sampling methodology maintains a minimum confidence level of 90 percent for each criterion;

(2) The State selects statistically valid samples of cases from the IV–D program universe of cases; and

(3) The State establishes a procedure for the design of samples and assures that no portions of the IV–D case universe are omitted from the sample selection process.

(c) *Scope of review.* A State must conduct an annual review covering all of the required criteria in Sec. 308.2.

(d) *Review period.* Each review period must cover a 12-month period. The first review period shall begin no later than 12 months after the effective date of the final rule and subsequent reviews shall each cover the same 12-month period thereafter.

(e) *Reporting.* (1) The State must provide a report of the results of the self-assessment review to the appropriate OCSE Regional Office, with a copy to the Commissioner of OCSE, no later than 6 months after the end of the review period.

(2) The report must include, but is not limited to:

(i) An executive summary, including a summary of the mandatory program criteria findings;

- (ii) A description of optional program areas covered by the review;
- (iii) A description of sampling methodology used, if applicable;
- (iv) The results of the self-assessment reviews; and
- (v) A description of the corrective actions proposed and/or taken.

§ 308.2 Required program compliance criteria.

(a) *Case closure.* (1) The State must have and use procedures for case closure pursuant to Sec. 303.11 of this chapter in at least 90 percent of the closed cases reviewed.

(2) If a IV-D case was closed during the review period, the State must determine whether the case met requirements pursuant to § 303.11 of this chapter.

(b) *Establishment of paternity and support order.* The State must have and use procedures required in this paragraph in at least 75 percent of the cases reviewed.

(1) If an order for support is required and established during the review period, the case meets the requirements, notwithstanding the timeframes for: establishment of cases as specified in Sec. 303.2(b) of this chapter; provision of services in interstate IV-D cases per § 303.7(a), (b), (c)(4) through (6), and (c) (8) and (9) of this chapter; and location and support order establishment under §§ 303.3(b)(3) and (5), and 303.4(d) of this chapter.

(2) If an order was required, but not established during the review period, the State must determine the last required action and determine whether the action was taken within the appropriate timeframe. The following is a list of possible last actions:

(i) Opening a case within 20 days pursuant to § 303.2(b) of this chapter;

(ii) If location activities are necessary, using all appropriate sources within 75 days pursuant to § 303.3(b)(3) of this chapter. This includes all the following locate sources as appropriate: custodial parent, Federal and State Parent Locator Services, U.S. Postal Service, State employment security agency, employment data, Department of Motor Vehicles, and credit bureaus;

(iii) Repeating location attempts quarterly and when new information is

received in accordance with § 303.3(b)(5) of this chapter;

(iv) Establishing an order or completing service of process necessary to commence proceedings to establish a support order, or if applicable, paternity, within 90 days of locating the non-custodial parent, or documenting unsuccessful attempts to serve process in accordance with the State's guidelines defining diligent efforts pursuant to §§ 303.3(c) and 303.4(d) of this chapter.

(c) *Enforcement of orders.* A State must have and use procedures required under this paragraph in at least 75 percent of the cases reviewed. Enforcement cases include cases in which ongoing income withholding is in place as well as cases in which new or repeated enforcement actions were required during the review period.

(1) If income withholding was appropriate and a withholding collection was received during the last quarter of the review period and the case was submitted for Federal and State income tax refund offset, if appropriate, the case meets the requirements of § 303.6(c)(3) of this chapter, notwithstanding the timeframes for: establishment of cases in § 303.2(b) of this chapter; provision of services in interstate IV-D cases under § 303.7(a), (b), (c)(4) through (6), and (c) (8) and (9) of this chapter; and location and income withholding in §§ 303.3(b)(3) and (5), and 303.100 of this chapter.

(2) If income withholding was not appropriate, and a collection was received during the review period, and the case was submitted for Federal and State income tax refund offset, if appropriate, then the case meets the requirements of § 303.6(c)(3) of this chapter, notwithstanding the timeframes for: establishment of cases in § 303.2(b) of this chapter; provision of services in interstate IV-D cases under § 303.7(a), (b), (c)(4) through (6) and (c) (8) and (9) of this chapter; and location and enforcement of support obligations in §§ 303.3(b)(3) and (5), and 303.6 of this chapter.

(3) If an order needed enforcement during the review period, but income was not withheld or other collections were not received (when income withholding could not be implemented), the State must determine the last required

§ 308.2

45 CFR Ch. III (10–1–04 Edition)

action and determine whether the action was taken within the appropriate timeframes. The following is a list of possible last required actions:

(i) If location activities are necessary, using all appropriate location sources within 75 days pursuant to Sec. 303.3(b)(3) of this chapter. Location sources include: custodial parent, Federal and State Parent Locator Services, U.S. Postal Service, State employment security agency, Department of motor vehicles, and credit bureaus;

(ii) Repeating attempts to locate quarterly and when new information is received pursuant to §303.3(b)(5) of this chapter;

(iii) If there is no immediate income withholding order, initiating income withholding upon identifying a delinquency equal to one month's arrears, in accordance with Sec. 303.100(c) of this chapter;

(iv) If immediate income withholding is ordered, sending a notice to the employer directing the employer to withhold from the income of the employee an amount equal to the monthly (or other periodic) support obligation (including any past due support obligation) of the employee, within:

(A) Two business days after the date information regarding a newly hired employee is entered into the State Directory of New Hires and in which an information comparison conducted under section 453A(f) of the Act reveals a match;

(B) Two business days after receipt of notice of, and the income source subject to withholding from a court, another State, an employer, the FPLS or another source recognized by the State.

(v) If income withholding is not appropriate or cannot be implemented, taking an appropriate enforcement action (other than Federal and State income tax refund offset), unless service of process is necessary, within no more than 30 days of identifying a delinquency or identifying the location of the non-custodial parent, whichever occurs later in accordance with §303.6(c)(2) of this chapter;

(vi) If income withholding is not appropriate or cannot be implemented and service of process is needed, taking an appropriate enforcement action

(other than Federal and State income tax refund offset), within no more than 60 days of identifying a delinquency or locating the non-custodial parent, whichever occurs later, or documenting unsuccessful attempts to serve process in accordance with the State's guidelines for defining diligent efforts and §303.6(c)(2) of this chapter;

(vii) If the case has arrearages, submitting the case for Federal and State income tax refund offset during the review period, if appropriate, in accordance with §§303.72, 303.102 and 303.6(c)(3) of this chapter.

(d) *Disbursement of collections.* A State must have and use procedures required in this paragraph in at least 75 percent of the cases reviewed. With respect to the last payment received for each case:

(1) States must determine whether disbursement of collection was made within two business days after receipt by the State Disbursement Unit from the employer or other source of periodic income in accordance with section 457(a) of the Act, if sufficient information identifying the payee is provided pursuant to section 454B(c) of the Act.

(2) States may delay the distribution of collections toward arrearages until resolution of any timely appeals with respect to such arrearages pursuant to section 454B(c)(2) of the Act.

(e) Securing and enforcing medical support orders. A State must have and use procedures required under this paragraph in at least 75 percent of the cases reviewed. A State must:

(1) Determine whether all support orders established during the review period included medical support. If not, determine whether medical support was included in the petition for support to the court or administrative authority pursuant to sec. 466(a)(19) of the Act and §303.31(b)(1) of this chapter.

(2) If a requirement for medical support is included in the order, determine whether steps were taken to determine if reasonable health insurance was available pursuant to Sec. 303.31(a)(1) and (b)(7) of this chapter.

(3) If reasonable health insurance was available, but not obtained, determine whether steps were taken to enforce the order pursuant to §303.31(b)(7) of this chapter.

(4) Determine whether the IV-D agency informed the Medicaid agency that coverage had been obtained when health insurance was obtained during the review period pursuant to §303.31(b)(6) of this chapter.

(5) Determine whether the custodial parent was provided with information regarding the policy when health insurance was obtained pursuant to §303.31(b)(5) of this chapter.

(6) Determine whether the State requested employers providing health coverage to inform the State of lapses in coverage pursuant to §303.31(b)(9) of this chapter.

(7) Determine whether the State transferred notice of the health care provision to a new employer when a noncustodial parent was ordered to provide health insurance coverage and changed employment and the new employer provides health care coverage.

(f) *Review and adjustment of orders.* A State must have and use procedures required under this paragraph in at least 75 percent of the cases reviewed.

(1) If a case has been reviewed and meets the conditions for adjustment under State laws and procedures and §303.8 of this chapter and the order is adjusted or a determination is made as a result of a review during the self-assessment period that an adjustment is not needed in accordance with the State's guidelines for setting child support awards, the State will be considered to have taken appropriate action in that case, notwithstanding the timeframes for: establishment of cases in §303.2(b) of this chapter; provision of services in interstate IV-D cases under §303.7(a), (b), (c)(4) through (6), and (c)(8) and (9) of this chapter; and location and review and adjustment of support orders contained in §§303.3(b)(3) and (5), and 303.8 of this chapter.

(2) If a case has not been reviewed, the State must determine the last required action and determine whether the action was taken within the appropriate timeframe. The following is a list of possible last required actions:

(i) If location is necessary to conduct a review, using all appropriate location sources within 75 days of opening the case pursuant to §303.3(b)(3) of this chapter. Location sources include: custodial parent, Federal and State Par-

ent Locator Services, U.S. Postal Service, State employment security agency, unemployment data, Department of Motor Vehicles, and credit bureaus;

(ii) Repeating location attempts quarterly and when new information is received pursuant to §303.3(b)(5) of this chapter;

(iii) Within 180 calendar days of receiving a request for a review or locating the non-requesting parent, whichever occurs later, conducting a review of the order and adjusting the order or determining that the order should not be adjusted pursuant to sec. 303.8(e) of this chapter;

(iv) If an adjustment was made during the review period using cost of living or automated methods, giving both parties 30 days to contest any adjustment to that support order pursuant to sec. 466(a)(10)(A)(ii) of the Act.

(3) The State must provide the custodial and non-custodial parents notices, not less often than once every three years, informing them of their right to request the State to review and, if appropriate, adjust the order. The first notice may be included in the order pursuant to sec. 466(a)(10)(C) of the Act.

(g) *Interstate services.* A State must have and use procedures required under this paragraph in at least 75 percent of the cases reviewed. For all interstate cases requiring services during the review period, determine the last required action and determine whether the action was taken during the appropriate timeframe:

(1) Initiating interstate cases:

(i) Except when using the State's long-arm statute for establishing paternity, if referral is appropriate, within 20 calendar days of determining that the non-custodial parent is in another State and, if appropriate, receipt of any necessary information needed to process the case, referring that case to the responding State's interstate central registry for action pursuant to §303.7(b)(2) of this chapter.

(ii) If additional information is requested, providing the responding State's central registry with requested additional information within 30 calendar days of the request pursuant to §303.7(b)(4) of this chapter.

(iii) Upon receipt of new information on a case, notifying the responding

§ 308.3

State of that information within 10 working days pursuant to §303.7(b)(5) of this chapter.

(iv) Within 20 calendar days after receiving a request for review and adjustment pursuant to §303.7(b)(6) of this chapter.

(2) Responding interstate cases:

(i) Within 10 working days of receipt of an interstate IV-D case, the central registry reviewing submitted documentation for completeness, forwarding the case to the State Parent Locator Service (PLS) for locate or to the appropriate agency for processing, acknowledging receipt of the case and requesting any missing documentation from the initiating State, and informing the IV-D agency in the initiating State where the case was sent for action, pursuant to §303.7(a)(2) of this chapter.

(ii) The Central registry responding to inquiries from other States within five working days of a receipt of request for case status review pursuant to §303.7(a)(4) of this chapter.

(iii) Within 10 days of locating the non-custodial parent in a different jurisdiction or State, forwarding the case in accordance with Federal requirements pursuant to §§303.7(c)(5) and (6) of this chapter.

(iv) Within two business days of receipt of collections, forwarding any support payments to the initiating State pursuant to sec. 454B(c)(1) of the Act.

(v) Within 10 working days of receipt of new information notifying the initiating State of that new information pursuant to §303.7(c)(9) of this chapter.

(h) *Expedited processes.* The State must have and use procedures required under this paragraph in the amounts specified in this paragraph in the cases reviewed for the expedited processes criterion.

(1) In IV-D cases needing support orders established, regardless of whether paternity has been established, action to establish support orders must be completed from the date of service of process to the time of disposition within the following timeframes pursuant to Sec. 303.101(b)(2)(i) of this chapter:

- (i) 75 percent in 6 months; and
- (ii) 90 percent in 12 months.

45 CFR Ch. III (10-1-04 Edition)

(2) States may count as a success for the 6-month standard cases where the IV-D agency uses long-arm jurisdiction and disposition occurs within 12 months of service of process on the alleged father or non-custodial parent.

§ 308.3 Optional program areas of review.

(a) *Program direction.* A State may include a program direction review in its self-assessment for the purpose of analyzing the relationships between case results relating to program compliance areas, and performance and program outcome indicators. This review is an opportunity for States to demonstrate how they are trying to manage their resources to achieve the best performance possible. A program direction analysis could describe the following:

- (1) Initiatives that resulted in improved and achievable performance accompanied with supporting data;
- (2) Barriers impeding progress; and
- (3) Efforts to improve performance.

(b) *Program service enhancement.* A State may include a program service enhancement report in its self-assessment that describes initiatives put into practice that improved program performance and customer service. This is an opportunity for States to promote their programs and innovative activities. Some examples of innovative activities that States may elect to discuss in the report include:

- (1) Steps taken to make the program more efficient and effective;
- (2) Efforts to improve client services;
- (3) Demonstration projects testing creative new ways of doing business;
- (4) Collaborative efforts being taken with partners and customers;
- (5) Innovative practices which have resulted in improved program performance;
- (6) Actions taken to improve public image;
- (7) Access/visitation projects initiated to improve non-custodial parents' involvement with the children and;
- (8) Efforts to engage non-custodial parents who owe overdue child support to pay that support or engage in work activities, such as subsidized employment, work experience, or job search.

(c) A State may provide any of the optional information in paragraphs (a)

and (b) of this section in narrative form.

PART 309—TRIBAL CHILD SUPPORT ENFORCEMENT (IV-D) PROGRAM

Subpart A—Tribal IV-D Program: General Provisions

Sec.

- 309.01 What does this part cover?
- 309.05 What definitions apply to this part?
- 309.10 Who is eligible to apply for and receive Federal funding to operate a Tribal IV-D program?

Subpart B—Tribal IV-D Program Application Procedures

- 309.15 What is a Tribal IV-D program application?
- 309.16 What rules apply to start-up funding?
- 309.20 Who submits a Tribal IV-D program application and where?
- 309.35 What are the procedures for review of a Tribal IV-D program application, plan or plan amendment?
- 309.40 What is the basis for disapproval of a Tribal IV-D program application, plan or plan amendment?
- 309.45 When and how may a Tribe or Tribal organization request reconsideration of a disapproval action?
- 309.50 What are the consequences of disapproval of a Tribal IV-D program application, plan or plan amendment?

Subpart C—Tribal IV-D Plan Requirements

- 309.55 What does this subpart cover?
- 309.60 Who is responsible for administration of the Tribal IV-D program under the Tribal IV-D plan?
- 309.65 What must a Tribe or Tribal organization include in a Tribal IV-D plan in order to demonstrate capacity to operate a Tribal IV-D program?
- 309.70 What provisions governing jurisdiction must a Tribe or Tribal organization include in a Tribal IV-D plan?
- 309.75 What administrative and management procedures must a Tribe or Tribal organization include in a Tribal IV-D plan?
- 309.80 What safeguarding procedures must a Tribe or Tribal organization include in a Tribal IV-D plan?
- 309.85 What records must a Tribe or Tribal organization agree to maintain in a Tribal IV-D plan?
- 309.90 What governing Tribal law or regulations must a Tribe or Tribal organization include in a Tribal IV-D plan?
- 309.95 What procedures governing the location of custodial and noncustodial parents must a Tribe or Tribal organization include in a Tribal IV-D plan?

- 309.100 What procedures for the establishment of paternity must a Tribe or Tribal organization include in a Tribal IV-D plan?
- 309.105 What procedures governing child support guidelines must a Tribe or Tribal organization include in a Tribal IV-D plan?
- 309.110 What procedures governing income withholding must a Tribe or Tribal organization include in a Tribal IV-D plan?
- 309.115 What procedures governing the distribution of child support must a Tribe or Tribal organization include in a Tribal IV-D plan?
- 309.120 What intergovernmental procedures must a Tribe or Tribal organization include in a Tribal IV-D plan?

Subpart D—Tribal IV-D Program Funding

- 309.125 On what basis is Federal funding of Tribal IV-D programs determined?
- 309.130 How will Tribal IV-D programs be funded and what forms are required?
- 309.135 What requirements apply to funding, obligating and liquidating Federal title IV-D grant funds?
- 309.145 What costs are allowable for Tribal IV-D programs carried out under § 309.65(a) of this part?
- 309.150 What start-up costs are allowable for Tribal IV-D programs carried out under § 309.65(b) of this part?
- 309.155 What uses of Tribal IV-D program funds are not allowable?

Subpart E—Accountability and Monitoring

- 309.160 How will OCSE determine if Tribal IV-D program funds are appropriately expended?
- 309.165 What recourse does a Tribe or Tribal organization have to dispute a determination to disallow Tribal IV-D program expenditures?

Subpart F—Statistical and Narrative Reporting Requirements

- 309.170 What statistical and narrative reporting requirements apply to Tribal IV-D programs?

AUTHORITY: 42 U.S.C. 655(f), 1302.

SOURCE: 69 FR 16672, Mar. 30, 2004, unless otherwise noted.

Subpart A—Tribal IV-D Program: General Provisions

§ 309.01 What does this part cover?

(a) The regulations in this part prescribe the rules for implementing section 455(f) of the Social Security Act.

§ 309.05

45 CFR Ch. III (10–1–04 Edition)

Section 455(f) of the Act authorizes direct grants to Indian Tribes and Tribal organizations to operate child support enforcement programs.

(b) These regulations establish the requirements that must be met by Indian Tribes and Tribal organizations to be eligible for grants under section 455(f) of the Act. They establish requirements for: Tribal IV-D plan and application content; submission, approval, and amendment; program funding; program operation; uses of funds; accountability; reporting; and other program requirements and procedures.

§ 309.05 What definitions apply to this part?

The following definitions apply to this part:

IV-D services are the services that are authorized or required for the establishment of paternity, establishment, modification, and enforcement of support orders, and location of noncustodial parents under title IV-D of the Act, this rule, the Tribal IV-D plan and program instructions issued by the Department.

ACF means the Administration for Children and Families, U.S. Department of Health and Human Services.

Act means the Social Security Act, unless otherwise specified.

Assistant Secretary means the Assistant Secretary for Children and Families, Department of Health and Human Services.

Central office means the Office of Child Support Enforcement.

Child support order and *child support obligation* mean a judgment, decree, or order, whether temporary, final or subject to modification, issued by a court of competent jurisdiction, tribunal or an administrative agency for the support and maintenance of a child, including a child who has attained the age of majority under the law of the issuing jurisdiction, or of the parent with whom the child is living, which provides for monetary support, health care, arrearages, or reimbursement, and which may include related costs and fees, interest and penalties, income withholding, attorneys' fees, and other relief.

The *Department* means the U.S. Department of Health and Human Services.

Income means 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.

Indian means a person who is a member of an Indian Tribe.

Indian Tribe and *Tribe* mean any Indian or Alaska Native Tribe, band, nation, pueblo, village, or community that the Secretary of the Interior acknowledges to exist as an Indian Tribe and includes in the list of Federally-recognized Indian Tribal governments as published in the FEDERAL REGISTER pursuant to 25 U.S.C. 479a-1.

Location means information concerning the physical whereabouts of the noncustodial parent, or the noncustodial parent's employer(s), and other sources of income or assets, as appropriate, which is sufficient and necessary to take the next appropriate action in a case.

Non-cash support is support provided to a family in the nature of goods and/or services, rather than in cash, but which, nonetheless, has a certain and specific dollar value.

Notice of Disapproval refers to the written notification from the Department that the Tribal IV-D application, IV-D plan, or plan amendment fails to meet the requirements for approval under applicable Federal statutes and regulations.

OCSE refers to the Federal Office of Child Support Enforcement.

Program development plan means a document detailing the specific steps a Tribe or Tribal organization will take to come into compliance with the requirements of § 309.65(a), and the timeframe associated with each step.

Regional office refers to one of the regional offices of the Administration for Children and Families.

Secretary means the Secretary of the Department of Health and Human Services or designee.

TANF means the Temporary Assistance for Needy Families program as found at section 401 *et seq.* of the Social Security Act (42 U.S.C. 601 *et seq.*).

Title IV-D refers to the title of the Social Security Act that authorizes the Child Support Enforcement Program, including the Tribal Child Support Enforcement Program.

Tribal IV-D agency means the organizational unit in the Tribe or Tribal organization that has the authority for administering or supervising the Tribal IV-D program under section 455(f) of the Act.

Tribal custom means unwritten law having the force and effect of law within a particular Tribe.

Tribal organization means any legally established organization of Indian Tribes which is sanctioned or chartered as a single governing body representing two or more Indian Tribes.

§ 309.10 Who is eligible to apply for and receive Federal funding to operate a Tribal IV-D program?

The following Tribes or Tribal organizations are eligible to apply to receive Federal funding to operate a Tribal IV-D program meeting the requirements of this part:

(a) An Indian Tribe with at least 100 children under the age of majority as defined by Tribal law or code, in the population subject to the jurisdiction of the Tribal court or administrative agency.

(b) A Tribal organization that has been designated by two or more Indian Tribes to operate a Tribal IV-D program on their behalf, with a total of at least 100 children under the age of majority as defined by Tribal laws or codes, in the population of the Tribes subject to the jurisdiction of the Tribal court (or courts) or administrative agency (or agencies).

(c) A Tribe or Tribal organization that can demonstrate to the satisfaction of the Secretary the capacity to operate a child support enforcement program and provide justification for operating a program with less than the minimum number of children may be granted a waiver of paragraph (a) or (b) of this section as appropriate.

(1) A Tribe or Tribal organization's request for waiver of paragraph (a) or (b) of this section must include documentation sufficient to demonstrate that meeting the requirement is not

necessary. Such documentation must state:

(i) That the Tribe or Tribal organization otherwise complies with the requirements established in subpart C of these regulations;

(ii) That the Tribe or Tribal organization has the administrative capacity to support operation of a child support program under the requirements of this part;

(iii) That the Tribal IV-D program will be cost effective; and

(iv) The number of children under the jurisdiction of the Tribe or Tribal organization.

(2) A Tribe or Tribal organization's request for a waiver may be approved if the Tribe or Tribal organization demonstrates to the satisfaction of the Secretary that it can provide the services required under 45 CFR part 309 in a cost effective manner even though the population subject to Tribal jurisdiction includes fewer than 100 children.

Subpart B—Tribal IV-D Program Application Procedures

§ 309.15 What is a Tribal IV-D program application?

(a) *Initial application.* The initial application for funding under § 309.65(a) may be submitted at any time. The initial application must include:

(1) Standard Form (SF) 424, "Application for Federal Assistance;"

(2) SF 424A, "Budget Information—Non-Construction Programs," including the following information:

(i) A quarter-by-quarter estimate of expenditures for the funding period; and

(ii) Notification of whether the Tribe or Tribal organization is requesting funds for indirect costs and if so, an election of a method under paragraph (a)(3) of this section to calculate estimated indirect costs; and

(iii) A narrative justification for each cost category on the form; and either:

(iv) A statement that the Tribe or Tribal organization has or will have the non-Federal share of program expenditures available, as required; or

(v) A request for a waiver of the non-Federal share in accordance with § 309.130(e), if appropriate.

(3) If the Tribe or Tribal organization requests funding for indirect costs, estimated indirect costs may be submitted either by:

(i) Including documentation of the dollar amount of indirect costs allocable to the IV-D program; or

(ii) Submission of its current indirect cost rate negotiated with the Department of Interior and the estimated amount of indirect costs calculated using the negotiated cost rate.

(4) The Tribal IV-D plan. The initial application must include a comprehensive statement identifying how the Tribe or Tribal organization is meeting the requirements of subpart C of this part and that describes the capacity of the Tribe or Tribal organization to operate a IV-D program which meets the objectives of title IV-D of the Act, including establishment of paternity, establishment, modification, and enforcement of support orders, and location of noncustodial parents.

(b) *Additional application requirement for Tribal organizations.* The initial and subsequent annual budget submissions of a Tribal organization must document that each participating Tribe authorizes the Tribal organization to operate a Tribal IV-D program on its behalf.

(c) *Annual budget submission.* Following the initial funding period, the Tribe or Tribal organization operating a IV-D program must submit annually Form SF 424A, including all the necessary accompanying information and documentation described in paragraphs (a)(2) and (a)(3) of this section.

(d) *Plan Amendments.* Plan amendments must be submitted in accordance with the requirements of § 309.35(e).

§ 309.16 What rules apply to start-up funding?

(a) The application for start-up funding under § 309.65(b) must include:

(1) Standard Form (SF) 424, “Application for Federal Assistance”;

(2) SF 424A, “Budget Information—Non-Construction Programs,” including the following information:

(i) A quarter-by-quarter estimate of expenditures for the start-up period;

(ii) Notification of whether the Tribe or Tribal organization is requesting

funds for indirect costs and, if so, an election of a method to calculate estimated indirect costs under paragraph (a)(3) of this section; and

(iii) A narrative justification for each cost category on the form;

(3) If the Tribe or Tribal organization requests funding for indirect costs as part of its application for Federal start-up funds, estimated indirect costs may be submitted either by:

(i) Including documentation of the dollar amount of indirect costs allocable to the IV-D program including the methodology used to arrive at these amounts; or

(ii) Submission of its current indirect cost rate negotiated with the Department of Interior and the amount of estimated indirect costs using that rate.

(iii) The amount of indirect costs must be included within the limit of \$500,000 specified in paragraph (c) of this section.

(4) With respect to each requirement in § 309.65(a) that the Tribe or Tribal organization currently meets, a description of how the Tribe or Tribal organization satisfies the requirement; and

(5) With respect to each requirement in § 309.65(a) that the Tribe or Tribal organization does not currently meet, a program development plan which demonstrates to the satisfaction of the Secretary that the Tribe or Tribal organization has the capacity and will have in place a Tribal IV-D program that will meet the requirements outlined in § 309.65(a), within a reasonable, specific period of time, not to exceed two years. The Secretary must approve the program development plan. Disapproval of a program development plan is not subject to administrative appeal.

(b) The process for approval and disapproval of applications for start-up funding under this section is found in §§ 309.35, 309.40, 309.45, and 309.50. A disapproval of an application for start-up funding is not subject to administrative appeal.

(c) Federal funding for start-up costs is limited to \$500,000, which must be obligated and liquidated within two years after the first day of the quarter after the start-up application was approved. In extraordinary circumstances, the

Secretary will consider a request to extend the period of time during which start-up funding will be available and/or to increase the amount of start-up funding provided. Denial of a request to extend the time during which start-up funding will be available or for an increase in the amount of start-up funding is not subject to administrative appeal.

(1) The Secretary may grant a no-cost extension of time if the Tribe or Tribal organization demonstrates to the satisfaction of the Secretary that the extension will result in satisfaction of each requirement established in § 309.65(a) by the grantee and completion of the program development plan required under § 309.65(b)(2).

(2) The Secretary may grant an increase in the amount of Federal start-up funding provided beyond the limit specified at paragraph (c) of this section and § 309.150 if—

(i) The Tribe or Tribal organization demonstrates to the satisfaction of the Secretary that a specific amount of additional funds for a specific purpose or purposes will result in satisfaction of the requirements specified in § 309.65(a) which the Tribe or Tribal organization otherwise will be unable to meet; and

(ii) The Tribe or Tribal organization demonstrates to the satisfaction of the Secretary that it has satisfied every applicable reporting requirement.

(d) If a Tribe or Tribal organization receives start-up funding based on submission and approval of a Tribal IV-D application which includes a program development plan under § 309.65(b), a progress report that describes accomplishments to date in carrying out the plan must be submitted with the next annual refunding request.

§ 309.20 Who submits a Tribal IV-D program application and where?

(a) The authorized representative of the Tribe or Tribal organization must sign and submit the Tribal IV-D program application.

(b) Applications must be submitted to the Office of Child Support Enforcement, Attention: Tribal Child Support Enforcement Program, 370 L'Enfant Promenade, SW., Washington, DC 20447, with a copy to the appropriate regional office.

§ 309.35 What are the procedures for review of a Tribal IV-D program application, plan or plan amendment?

(a) The Secretary will promptly review a Tribal IV-D program application, plan or plan amendment to determine whether it conforms to the requirements of the Act and these regulations. Not later than the 90th day following the date on which the Tribal IV-D application, plan or plan amendment is received by the Secretary, action will be taken unless additional information is needed. If additional information is needed from the Tribe or Tribal organization, the Secretary will promptly notify the Tribe or Tribal organization.

(b) The Secretary will take action on the application, plan or plan amendment within 45 days of receipt of any additional information requested from the Tribe or Tribal organization.

(c) Determinations as to whether the Tribal IV-D plan, including plan amendments, originally meets or continues to meet the requirements for approval are based on applicable Federal statutes, regulations and instructions applicable to Tribal IV-D programs. Guidance may be furnished to assist in the interpretation of the regulations.

(d) After approval of the original Tribal IV-D program application, all relevant changes required by new Federal statutes, rules, regulations, and Department interpretations are required to be submitted so that the Secretary may determine whether the plan continues to meet Federal requirements and policies.

(e) If a Tribe or Tribal organization intends to make any substantial or material change in any aspect of the Tribal IV-D program, a Tribal IV-D plan amendment must be submitted at the earliest reasonable time for approval under this section. The plan amendment must describe and, as appropriate, document the changes the Tribe or Tribal organization proposes to make to its IV-D plan, consistent with the requirements of applicable statutes and regulations.

(f) The effective date of a plan or plan amendment may not be earlier than the first day of the fiscal quarter in which an approvable plan or plan amendment is submitted.

§ 309.40 What is the basis for disapproval of a Tribal IV-D program application, plan or plan amendment?

(a) A IV-D application, plan, or plan amendment will be disapproved if:

(1) The Secretary determines that the application, plan, or plan amendment fails to meet or no longer meets one or more of the requirements set forth in this part or any other applicable Federal regulations, statutes and implementing instructions;

(2) The Secretary determines that required Tribal laws, code, regulations, and procedures are not in effect; and/or

(3) The Secretary determines that the application, plan, or plan amendment is not complete, after the Tribe or Tribal organization has had the opportunity to submit the necessary information.

(b)(1) Except as provided in paragraph (b)(2) of this section and § 309.45(h) of this part, a written Notice of Disapproval of the Tribal IV-D program application, plan, or plan amendment, as applicable, will be sent to the Tribe or Tribal organization upon the determination that any of the conditions of paragraph (a) of this section apply. The Notice of Disapproval will include the specific reason(s) for disapproval.

(2) Where the Secretary believes an approved Tribal IV-D plan should be disapproved, he will notify the Tribe of his intent to disapprove the plan.

(c) If the application, plan or plan amendment is incomplete and fails to provide enough information to make a determination to approve or disapprove, the Secretary will request the necessary information.

§ 309.45 When and how may a Tribe or Tribal organization request reconsideration of a disapproval action?

(a) Except as specified under paragraphs (g) and (h) of this section, a Tribe or Tribal organization may request reconsideration of the disapproval of a Tribal IV-D application, plan or plan amendment by filing a written Request for Reconsideration to the Secretary within 60 days of the date of the Notice of Disapproval.

(b) The Request for Reconsideration must include:

(1) All documentation that the Tribe or Tribal organization believes is relevant and supportive of its application, plan or plan amendment; and

(2) A written response to each ground for disapproval identified in the Notice of Disapproval, indicating why the Tribe or Tribal organization believes its application, plan or plan amendment conforms to the requirements for approval specified in applicable Federal statutes, regulations and office issuances; and

(3) Whether or not the Tribe or Tribal organization requests a meeting or conference call with the Secretary.

(c) After receiving a Request for Reconsideration that includes a request for a conference call or meeting, OCSE will determine whether to hold a conference call or a meeting with the Tribe or Tribal organization to discuss the reasons for disapproval of the application, plan, or plan amendment as well as the Tribe or Tribal organization's response. The Secretary will notify the Tribe or Tribal organization of the date and time of the conference call or meeting.

(d) A conference call or meeting under § 309.45(c) shall be held not less than 30 days nor more than 60 days after the date the notice of such call or meeting is furnished to the Tribe or Tribal organization, unless both parties agree in writing to another time.

(e) The Secretary will make a written determination affirming, modifying, or reversing disapproval of a Tribal IV-D program application, plan, or plan amendment within 60 days after the conference call or meeting is held, or within 60 days after the request for reconsideration that does not include a request for a meeting. This determination shall be the final decision of the Secretary.

(f) The Secretary's determination that a Tribal IV-D application, new plan or plan amendment is not approvable remains in effect pending the reconsideration under this part.

(g) Disapproval of start-up funding, a request for waiver of the 100-child rule, and a request for waiver of the non-Federal Tribal share is not subject to administrative appeal.

(h) Where the Secretary believes an approved Tribal IV-D plan should be

disapproved, he will notify the Tribe of his intent to disapprove the plan. If the Tribe waives its right to reconsideration under this section, the Tribe may request a pre-decision hearing with 60 days of the date of the Notice of Intent to Disapprove the plan. The hearing will utilize the procedures at 45 CFR part 213.

§ 309.50 What are the consequences of disapproval of a Tribal IV-D program application, plan or plan amendment?

(a) If an application or plan submitted pursuant to § 309.15 is disapproved, the Tribe or Tribal organization will receive no funding under § 309.65(a) or this part until a new application or plan is submitted and approved.

(b) If a IV-D plan amendment is disapproved, there is no funding for the activity proposed in the plan amendment.

(c) A Tribe or Tribal organization whose application, plan or plan amendment has been disapproved may re-apply at any time.

Subpart C—Tribal IV-D Plan Requirements

§ 309.55 What does this subpart cover?

This subpart defines the Tribal IV-D plan provisions that are required to demonstrate that a Tribe or Tribal organization has the capacity to operate a child support enforcement program meeting the objectives of title IV-D of the Act and these regulations, including establishment of paternity, establishment, modification, and enforcement of support orders, and location of noncustodial parents.

§ 309.60 Who is responsible for administration of the Tribal IV-D program under the Tribal IV-D plan?

(a) Under the Tribal IV-D plan, the Tribe or Tribal organization shall establish or designate an agency to administer the Tribal IV-D plan. That agency shall be referred to as the Tribal IV-D agency.

(b) The Tribe or Tribal organization is responsible and accountable for the operation of the Tribal IV-D program. Except where otherwise provided in

this part, the Tribal IV-D agency need not perform all the functions of the Tribal IV-D program, so long as the Tribe or Tribal organization ensures that all approved functions are carried out properly, efficiently and effectively.

(c) If the Tribe or Tribal organization delegates any of the functions of the Tribal IV-D program to another Tribe, a State, and/or another agency or entity pursuant to a cooperative arrangement, contract, or Tribal resolution, the Tribe or Tribal organization is responsible for securing compliance with the requirements of the Tribal IV-D plan by such Tribe, State, agency or entity. The Tribe or Tribal organization is responsible for submitting copies and appending to the Tribal IV-D plan any agreements, contracts, or Tribal resolutions between the Tribal IV-D agency and a Tribe, State, other agency or entity.

§ 309.65 What must a Tribe or Tribal organization include in a Tribal IV-D plan in order to demonstrate capacity to operate a Tribal IV-D program?

(a) A Tribe or Tribal organization demonstrates capacity to operate a Tribal IV-D program meeting the objectives of title IV-D of the Act and these regulations by submission of a Tribal IV-D plan which contains the required elements listed in paragraphs (a)(1) through (14) of this section:

(1) A description of the population subject to the jurisdiction of the Tribal court or administrative agency for child support purposes as specified under § 309.70;

(2) Evidence that the Tribe or Tribal organization has in place procedures for accepting all applications for IV-D services and promptly providing IV-D services required by law and regulation;

(3) Assurance that the due process rights of the individuals involved will be protected in all activities of the Tribal IV-D program, including establishment of paternity, and establishment, modification, and enforcement of support orders;

(4) Administrative and management procedures as specified under § 309.75;

(5) Safeguarding procedures as specified under § 309.80;

§ 309.70

(6) Assurance that the Tribe or Tribal organization will maintain records as specified under § 309.85;

(7) Copies of all applicable Tribal laws and regulations as specified under § 309.90;

(8) Procedures for the location of noncustodial parents as specified under § 309.95;

(9) Procedures for the establishment of paternity as specified under § 309.100;

(10) Guidelines for the establishment and modification of child support obligations as specified under § 309.105;

(11) Procedures for income withholding as specified under § 309.110;

(12) Procedures for the distribution of child support collections as specified under § 309.115;

(13) Procedures for intergovernmental case processing as specified under § 309.120; and

(14) Tribally-determined performance targets for paternity establishment, support order establishment, amount of current support to be collected, amount of past due support to be collected, and any other performance measures a Tribe or Tribal organization may want to submit.

(b) If a Tribe or Tribal organization currently is unable to satisfy any or all of the requirements specified in paragraph (a) of this section:

(1) It may demonstrate capacity to operate a Tribal IV-D program meeting the objectives of title IV-D of the Act and these regulations by submission of an application for start-up funding as required by § 309.16(a) of this part.

(2) The Secretary may cease start-up funding to a Tribe or Tribal organization if that Tribe or Tribal organization fails to satisfy one or more provisions or milestones described in its program development plan within the timeframe specified in such plan.

§ 309.70 What provisions governing jurisdiction must a Tribe or Tribal organization include in a Tribal IV-D plan?

A Tribe or Tribal organization must include in its Tribal IV-D plan a description of the population subject to the jurisdiction of the Tribal court or administrative agency for child support enforcement purposes and certify that there are at least 100 children under the age of majority in the popu-

45 CFR Ch. III (10–1–04 Edition)

lation subject to the jurisdiction of the Tribe in accordance with § 309.10 of this part and subject to § 309.10(c).

§ 309.75 What administrative and management procedures must a Tribe or Tribal organization include in a Tribal IV-D plan?

A Tribe or Tribal organization must include in its Tribal IV-D plan the administrative and management provisions contained in this section:

(a) A description of the structure of the IV-D agency and the distribution of responsibilities within the agency.

(b) Evidence that all Federal funds and amounts collected by the Tribal IV-D agency are protected against loss. Tribes and Tribal organizations may comply with this paragraph by submitting documentation that establishes that every person who receives, disburses, handles, or has access to or control over funds collected under the Tribal IV-D program is covered by a bond or insurance sufficient to cover all losses.

(c) Procedures under which notices of support collected, itemized by month of collection, are provided to families receiving services under the Tribal IV-D program at least once a year. In addition, a notice must be provided at any time to either the custodial or noncustodial parent upon request.

(d) A certification that for each year during which the Tribe or Tribal organization receives or expends funds pursuant to section 455(f) of the Act and this part, it shall comply with the provisions of chapter 75 of Title 31 of the United States Code (the Single Audit Act of 1984, Pub. L. 98-502, as amended) and OMB Circular A-133.

(e) If the Tribe or Tribal organization intends to charge an application fee or recover costs in excess of the fee, the Tribal IV-D plan must provide that:

(1) The application fee must be uniformly applied by the Tribe or Tribal organization and must be:

(i) A flat amount not to exceed \$25.00; or

(ii) An amount based on a fee schedule not to exceed \$25.00.

(2) The Tribal IV-D agency may not charge an application fee in an inter-governmental case referred to the Tribal IV-D agency for services under § 309.120.

(3) No application fee may be charged to an individual receiving services under titles IV-A, IV-E foster care maintenance assistance, or XIX (Medicaid) of the Act.

(4) The Tribal IV-D agency must exclude from its quarterly expenditure claims an amount equal to all fees which are collected and costs recovered during the quarter.

§ 309.80 What safeguarding procedures must a Tribe or Tribal organization include in a Tribal IV-D plan?

A Tribe or Tribal organization must include in its Tribal IV-D plan safeguarding provisions in accordance with this section:

(a) Procedures under which the use or disclosure of personal information received by or maintained by the Tribal IV-D agency is limited to purposes directly connected with the administration of the Tribal IV-D program, or titles IV-A and XIX with the administration of other programs or purposes prescribed by the Secretary in regulations.

(b) Procedures for safeguards that are applicable to all confidential information handled by the Tribal IV-D agency and that are designed to protect the privacy rights of the parties, including:

(1) Safeguards against unauthorized use or disclosure of information relating to proceedings or actions to establish paternity, or to establish, modify or enforce support;

(2) Prohibitions against 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;

(3) Prohibitions against the release of information on the whereabouts of one party or the child to another person 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; and

(4) Procedures in accordance with any specific safeguarding regulations

applicable to Tribal IV-D programs promulgated by the Secretary.

(c) Procedures under which sanctions must be imposed for the unauthorized use or disclosure of information covered by paragraphs (a) and (b) of this section.

§ 309.85 What records must a Tribe or Tribal organization agree to maintain in a Tribal IV-D plan?

A Tribal IV-D plan must provide that:

(a) The Tribal IV-D agency will maintain records necessary for the proper and efficient operation of the program, including records regarding:

(1) Applications for child support services;

(2) Efforts to locate noncustodial parents;

(3) Actions taken to establish paternity and obtain and enforce support;

(4) Amounts owed, arrearages, amounts and sources of support collections, and the distribution of such collections;

(5) IV-D program expenditures;

(6) Any fees charged and collected, if applicable; and

(7) Statistical, fiscal, and other records necessary for reporting and accountability required by the Secretary.

(b) The Tribal IV-D agency will comply with the retention and access requirements at 45 CFR 74.53, including the requirement that records be retained for at least three years.

§ 309.90 What governing Tribal law or regulations must a Tribe or Tribal organization include in a Tribal IV-D plan?

(a) A Tribe or Tribal organization must include in its Tribal IV-D plan Tribal law, code, regulations, and/or other evidence that provides for:

(1) Establishment of paternity for any child up to and including at least 18 years of age;

(2) Establishment and modification of child support obligations;

(3) Enforcement of child support obligations, including requirements that Tribal employers comply with income withholding as required under § 309.110; and

(4) Location of custodial and non-custodial parents.

§ 309.95

(b) In the absence of written laws and regulations, a Tribe or Tribal organization may provide in its plan detailed descriptions of any Tribal custom or common law with the force and effect of law which enables the Tribe or Tribal organization to satisfy the requirements in paragraph (a) of this section.

§ 309.95 What procedures governing the location of custodial and noncustodial parents must a Tribe or Tribal organization include in a Tribal IV-D plan?

A Tribe or Tribal organization must include in its Tribal IV-D plan the provisions governing the location of custodial and noncustodial parents and their assets set forth in this section.

(a) The Tribal IV-D agency must attempt to locate custodial or noncustodial parents or sources of income and/or assets when location is required to take necessary action in a case; and

(b) The Tribal IV-D agency must use all sources of information and records reasonably available to the Tribe or Tribal organization to locate custodial or noncustodial parents and their sources of income and assets.

§ 309.100 What procedures for the establishment of paternity must a Tribe or Tribal organization include in a Tribal IV-D plan?

(a) A Tribe or Tribal organization must include in its Tribal IV-D plan the procedures for the establishment of paternity included in this section. The Tribe must include in its Tribal IV-D plan procedures under which the Tribal IV-D agency will:

(1) Attempt to establish paternity by the process established under Tribal law, code, and/or custom in accordance with this section;

(2) Provide an alleged father the opportunity to voluntarily acknowledge paternity; and

(3) 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, if the request is supported by a sworn statement by the party—

(i) Alleging paternity, and setting forth facts establishing a reasonable possibility of the requisite sexual contact between parties; or

(ii) Denying paternity, and setting forth facts establishing a reasonable possibility of the nonexistence of sexual contact between the parties.

(b) The Tribal IV-D agency need not attempt to establish paternity in any case involving incest or forcible rape, or in any case in which legal proceedings for adoption are pending, if, in the opinion of the Tribal IV-D agency, it would not be in the best interests of the child to establish paternity.

(c) When genetic testing is used to establish paternity, the Tribal IV-D agency must identify and use accredited laboratories which perform, at reasonable cost, legally and medically-acceptable genetic tests which intend to identify the father or exclude the alleged father.

(d) Establishment of paternity under this section has no effect on Tribal enrollment or membership.

§ 309.105 What procedures governing child support guidelines must a Tribe or Tribal organization include in a Tribal IV-D plan?

(a) A Tribal IV-D plan must: (1) Establish one set of child support guidelines by law or action of the tribunal for setting and modifying child support obligation amounts;

(2) Include a copy of child support guidelines governing the establishment and modification of child support obligations;

(3) Indicate whether non-cash payments will be permitted to satisfy support obligations, and if so;

(i) Require that Tribal support orders allowing non-cash payments also state the specific dollar amount of the support obligation; and

(ii) Describe the type(s) of non-cash support that will be permitted to satisfy the underlying specific dollar amount of the support order; and

(iii) Provide that non-cash payments will not be permitted to satisfy assigned support obligations;

(4) Indicate that child support guidelines will be reviewed and revised, if appropriate, at least once every four years;

(5) Provide that there shall be a rebuttable presumption, in any proceeding for the award of child support, that the amount of the award that would result from the application of

the guidelines established consistent with this section is the correct amount of child support to be awarded; and

(6) Provide for the application of the 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 or Tribal organization. Such criteria must take into consideration the needs of the child. Findings that rebut the guidelines must state the amount of support that would have been required under the guidelines and include a justification of why the order varies from the guidelines.

(b) The guidelines established under paragraph (a) of this section must at a minimum:

(1) Take into account the needs of the child and the earnings and income of the noncustodial parent; and

(2) Be based on specific descriptive and numeric criteria and result in a computation of the support obligation.

§ 309.110 What procedures governing income withholding must a Tribe or Tribal organization include in a Tribal IV-D plan?

A Tribe or Tribal organization must include in its Tribal IV-D plan copies of Tribal laws providing for income withholding in accordance with this section.

(a) In the case of each noncustodial parent against whom a support order is or has been issued or modified under the Tribal IV-D plan, or is being enforced under such plan, so much of his or her income, as defined in § 309.05, must be withheld as is necessary to comply with the order.

(b) In addition to the amount to be withheld to pay the current month's obligation, the amount withheld must include an amount to be applied toward liquidation of any overdue support.

(c) The total amount to be withheld under paragraphs (a) and (b) of this section may not exceed the maximum amount permitted under section 303(b) of the Consumer Credit Protection Act (15 U.S.C. 1673(b)), but may be set at a lower amount.

(d) Income withholding must be carried out in compliance with the proce-

dural due process requirements established by the Tribe or Tribal organization.

(e) The Tribal IV-D agency will promptly refund amounts which have been improperly withheld.

(f) The Tribal IV-D agency will promptly terminate income withholding in cases where there is no longer a current order for support and all arrearages have been satisfied.

(g) If the employer fails to withhold income in accordance with the provision 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.

(h) Income shall not be subject to withholding in any case where:

(1) Either the custodial or noncustodial parent demonstrates, and the tribunal enters a finding, that there is good cause not to require income withholding; or

(2) 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.

(i) Where immediate income withholding is not in place, the income of the noncustodial parent shall become subject to withholding, at the earliest, on the date on which the payments which the noncustodial parent has failed to make under a Tribal support order are at least equal to the support payable for one month.

(j) The only basis for contesting a withholding is a mistake of fact, which for purposes of this paragraph, means an error in the amount of current or overdue support or in the identity of the alleged noncustodial parent.

(k) Tribal law must provide that the employer is subject to a fine to be determined under Tribal law for discharging a noncustodial parent from employment, refusing to employ, or taking disciplinary action against any noncustodial parent because of the withholding.

(l) To initiate income withholding, the Tribal IV-D agency must send the noncustodial parent's employer a notice using the standard Federal income withholding form.

§ 309.115

45 CFR Ch. III (10–1–04 Edition)

(m) 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.

(n) The Tribal IV-D 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.

§ 309.115 What procedures governing the distribution of child support must a Tribe or Tribal organization include in a Tribal IV-D plan?

A Tribe or Tribal organization must specify in its Tribal IV-D plan procedures for the distribution of child support collections in each Tribal IV-D case, in accordance with this section.

(a) *General Rule:* The Tribal IV-D agency must, in a timely manner:

(1) Apply collections first to satisfy current support obligations, except as provided in paragraph (e) of this section; and

(2) Pay all support collections to the family unless the family is currently receiving or formerly received assistance from the Tribal TANF program and there is an assignment of support rights to the Tribe's TANF agency, or the Tribal IV-D agency has received a request for assistance in collecting support on behalf of the family from a State or Tribal IV-D agency.

(b) *Current Receipt of Tribal TANF:* If the family is currently receiving assistance from the Tribal TANF program and has assigned support rights to the Tribe and:

(1) There is no request for assistance in collecting support on behalf of the family from a State or Tribal IV-D agency under § 309.120 of this part, the Tribal IV-D agency may retain collections on behalf of the family, not to exceed the total amount of Tribal TANF paid to the family. Any remaining collections must be paid to the family.

(2) There is a request for assistance in collecting support on behalf of the family from a State or Tribal IV-D agency under § 9.120 of this part, the Tribal IV-D agency may retain collections, not to exceed the total amount

of Tribal TANF paid to the family. Except as provided in paragraph (f) of this section, the Tribal IV-D agency must send any remaining collections, as appropriate, to the requesting State IV-D agency for distribution under section 457 of the Act and 45 CFR 302.51 or 302.52, or to the requesting Tribal IV-D agency for distribution in accordance with this section.

(c) *Former Receipt of Tribal TANF:* If the family formerly received assistance from the Tribal TANF program and there is an assignment of support rights to the Tribe and:

(1) There is no request for assistance in collecting support from a State or Tribal IV-D agency under § 309.120 of this part, the Tribal IV-D agency must pay current support and any arrearages owed to the family to the family and may then retain any excess collections, not to exceed the total amount of Tribal TANF paid to the family. Any remaining collections must be paid to the family.

(2) There is a request for assistance in collecting support from a State or Tribal IV-D agency under § 309.120 of this part, the Tribal IV-D agency must send all support collected, as appropriate, to the requesting State IV-D agency for distribution under section 457 of the Act or 45 CFR 302.51 or 303.52, or to the requesting Tribal IV-D agency for distribution under this section, except as provided in paragraph (f) of this section.

(d) *Requests for Assistance from State or Tribal IV-D Agency:* If there is no assignment of support rights to the Tribe as a condition of receipt of Tribal TANF and the Tribal IV-D agency has received a request for assistance in collecting support on behalf of the family from a State or another Tribal IV-D agency under § 309.120 of this part, the Tribal IV-D agency must send all support collected to either the State IV-D agency for distribution in accordance with section 457 of the Act and 45 CFR 302.51 and 302.52, or to the Tribal IV-D agency for distribution under this section, as appropriate, except as provided in paragraph (f) of this section.

(e) *Federal Income Tax Refund Offset Collections:* Any collections received

based on Federal income tax refund offset under section 464 of the Act and distributed by the Tribal IV-D agency must be applied to satisfy child support arrearages.

(f) *Option to Contact Requesting Agency for Appropriate Distribution:* Rather than send collections to a State or another Tribal IV-D agency for distribution as required under §309.115 (b)(2), (c)(2) and (d), a Tribal IV-D agency may contact the requesting State IV-D agency to determine appropriate distribution under section 457 of the Act, or the other Tribal IV-D agency to determine appropriate distribution under this section, and distribute collections as directed by the other agency.

§ 309.120 What intergovernmental procedures must a Tribe or Tribal organization include in a Tribal IV-D plan?

A Tribe or Tribal organization must specify in its Tribal IV-D plan:

(a) That the Tribal IV-D agency will 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

(b) That the Tribe or Tribal organization will recognize child support orders issued by other Tribes and Tribal organizations, and by States, in accordance with the requirements under the Full Faith and Credit for Child Support Orders Act, 28 U.S.C. 1738B.

Subpart D—Tribal IV-D Program Funding

§ 309.125 On what basis is Federal funding of Tribal IV-D programs determined?

Federal funding of Tribal IV-D programs is based on information contained in the Tribal IV-D application. The application must include a proposed budget and a description of the nature and scope of the Tribal IV-D program and must give assurance that the program will be administered in conformity with applicable requirements of title IV-D of the Act, regulations contained in this part, and other official issuances of the Department that specifically state applicability to Tribal IV-D programs.

§ 309.130 How will Tribal IV-D programs be funded and what forms are required?

(a) *General mechanism.* (1) Tribes and Tribal organizations with approved Tribal plans under title IV-D will receive Federal grant funds in an amount equal to the percentage specified in paragraph (c) of this section of the total amount of approved and allowable expenditures under the plan for the administration of the Tribal child support enforcement program.

(2) Tribes and Tribal organizations eligible for grants of less than \$1 million per 12-month funding period will receive a single annual award. Tribes and Tribal organizations eligible for grants of \$1 million or more per 12-month funding period will receive four equal quarterly awards.

(b) *Financial Form Submittal Requirements.* Tribes and Tribal organizations receiving Federal funding under this part are required to submit the following financial forms, and such other forms as the Secretary may designate, to OCSE:

(1) Standard Form (SF) 424, "Application for Federal Assistance," to be submitted with the initial grant application for funding under §309.65(a) and (b) (60 days prior to the start of the funding period);

(2) SF 424A, "Budget Information—Non-Construction Programs," to be submitted annually, no later than August 1 (60 days prior to the start of the funding period) in accordance with §309.15(a)(2) of this part. With each submission, the following information must be included:

(i) A quarter-by-quarter estimate of expenditures for the funding period; and

(ii) Notification of whether the Tribe or Tribal organization is requesting funds for indirect costs and an election of a method to calculate estimated indirect costs; and

(iii) A narrative justification for each cost category on the form; and for funding under §309.65(a) either:

(iv) A statement certifying that the Tribe or Tribal organization has or will have the non-Federal share of program expenditures available, as required, or

§ 309.130

45 CFR Ch. III (10–1–04 Edition)

(v) A request for a waiver of the non-Federal share in accordance with paragraph (e) of this section;

(3) SF 269A, “Financial Status Report (Short Form),” to be submitted quarterly within 30 days after the end of each of the first three quarters of the funding period and within 30 days after the end of each of the first three quarters of the liquidation period. The final report for each period is due within 90 days after the end the fourth quarter of both the funding and the liquidation period; and

(4) Form OCSE-34A, “Quarterly Report of Collections” to be submitted within 30 days after the end of the first three quarters and 90 days after the end of the fourth quarter.

(c) *Federal share of program expenditures.* (1) During the period of start-up funding specified in § 309.16, a Tribe or Tribal organization will receive Federal grant funds equal to 100 percent of approved and allowable expenditures made during that period. Federal start-up funds are limited to a total of \$500,000.

(2) During a 3-year period, beginning with the first day of the first quarter of the funding grant specified under § 309.135(a)(2), a Tribe or Tribal organization will receive Federal grant funds equal to 90 percent of the total amount of approved and allowable expenditures made during that period for the administration of the Tribal child support enforcement program.

(3) For all periods following the 3-year period specified in paragraph (c)(2) of this section, a Tribe or Tribal organization will receive Federal grant funds equal to 80 percent of the total amount of approved and allowable expenditures made for the administration of the Tribal child support enforcement program.

(d) *Non-Federal share of program expenditures.* Each Tribe or Tribal organization that operates a child support enforcement program under title IV-D and § 309.65(a), unless the Secretary has granted a waiver pursuant to § 309.130(e), must provide the non-Federal share of funding, equal to:

(1) 10 percent of approved and allowable expenditures during the 3-year period specified in paragraph (c)(2) of this section or;

(2) 20 percent of approved and allowable expenditures during the subsequent periods specified in paragraph (c)(3) of this section.

(3) The non-Federal share of program expenditures must be provided either with cash or with in-kind contributions and must meet the requirements found in 45 CFR 74.23.

(e) *Waiver of non-Federal share of program expenditures.* (1) Under certain circumstances, the Secretary may grant a temporary waiver of part or all of the non-Federal share of expenditures.

(i) If a Tribe or Tribal organization anticipates that it will be temporarily unable to contribute part or all of the non-Federal share of funding under paragraph (d) of this section, it must submit a written request that this requirement be temporarily waived. A request for a waiver of part or all of the non-Federal share must be sent to ACF, included with the submission of SF 424A, no later than 60 days prior to the start of the funding period for which the waiver is being requested, except as provided in paragraph (e)(1)(ii) of this section. An untimely or incomplete request will not be considered.

(ii) If, after the start of the funding period, an emergency situation such as a hurricane or flood occurs such that the grantee would need to request a waiver of the non-Federal costs, it may do so. The request for a waiver must be submitted in accordance with the procedures specified in paragraphs (e)(2), (3) and (4) of this section. Any waiver request other than one submitted with the initial application must be submitted as soon as the adverse effect of the emergency situation giving rise to the request is known to the grantee.

(2) A request for a waiver of part or all of the non-Federal share must include the following:

(i) A statement of the amount of the non-Federal share that the Tribe is requesting be waived;

(ii) A narrative statement describing the circumstances and justification for the waiver request;

(iii) Portions of the Tribal budget for the funding period sufficient to demonstrate that any funding shortfall is not limited to the Tribal IV-D program

and that any uncommitted Tribal reserve funds are insufficient to meet the non-Federal funding requirement;

(iv) Copies of any additional financial documents in support of the request;

(v) A detailed description of the attempts made to secure the necessary funds and in-kind contributions from other sources and the results of those attempts, including copies of all relevant correspondence; and

(vi) Any other documentation or other information that the Secretary may require to make this determination.

(3) The Tribe or Tribal organization must demonstrate to the satisfaction of the Secretary that it temporarily lacks resources to provide the non-Federal share. In its request for a temporary waiver, the Tribe or Tribal organization must be able to demonstrate that it:

(i) Lacks sufficient resources to provide the required non-Federal share of costs;

(ii) Has made reasonable, but unsuccessful, efforts to obtain non-Federal share contributions; and

(iii) Has provided all required information requested by the Secretary.

(4) All statements in support of a waiver request must be supported by evidence including, but not limited to, a description of how the Tribe or Tribal organization's circumstances relate to its capacity to provide child support enforcement services. The following statements will be considered insufficient to merit a waiver under this section without documentary evidence satisfactory to the Secretary:

(i) Funds have been committed to other budget items;

(ii) A high rate of unemployment;

(iii) A generally poor economic condition;

(iv) A lack of or a decline in revenue from gaming, fishing, timber, mineral rights and other similar revenue sources;

(v) A small or declining tax base; and

(vi) Little or no economic development.

(5)(i) If approved, a temporary waiver submitted under either paragraph (e)(1)(i) or (ii) of this section will expire on the last day of the funding period for which it was approved and is sub-

ject to review at any time during the funding period and may be revoked, if changing circumstances warrant.

(ii) Unless the Tribe receives a written approval of its waiver request, the funding requirements stated in paragraph (d) of this section remain in effect.

(iii) If the request for a waiver is denied, the denial is not subject to administrative appeal.

(f) *Increase in approved budget.* (1) A Tribe or Tribal organization may request an increase in the approved amount of its current budget by submitting a revised SF 424A to ACF and explaining why it needs the additional funds. The Tribe or Tribal organization should submit this request at least 60 days before additional funds are needed, to allow the Secretary adequate time to review the estimates and issue a revised grant award, if appropriate.

(2) If the change in Tribal IV-D budget estimate results from a change in the Tribal IV-D plan, the Tribe or Tribal organization must submit a plan amendment in accordance with § 309.35(e) of this part, a revised SF 424 and a revised SF 424A with its request for additional funding. The effective date of a plan amendment may not be earlier than the first day of the fiscal quarter in which an approvable plan is submitted in accordance with § 309.35(f) of this part. The Secretary must approve the plan amendment before approving any additional funding.

(3) Any approved increase in the Tribal IV-D budget will necessarily result in a proportional increase in the non-Federal share, unless a waiver of the non-Federal share has been granted.

(g) *Obtaining Federal funds.* Tribes and Tribal organizations will obtain Federal funds on a draw down basis from the Department's Payment Management System on a letter of credit system for payment of advances of Federal funds.

(h) *Grant administration requirements.* The provisions of part 74 of this title, establishing uniform administrative requirements and cost principles, shall apply to all grants made to Tribes and Tribal organizations under this part.

§ 309.135 What requirements apply to funding, obligating and liquidating Federal title IV–D grant funds?

(a) *Funding period.* (1) *Ongoing funding.* Federal title IV–D grant funds will be awarded to Tribes and Tribal organizations for use during a 12-month period equivalent to the Federal fiscal year of October 1 through September 30.

(2) *Initial grant.* A Tribe or Tribal organization may request that its initial IV–D grant be awarded for a funding period of less than one year (but at least six months) or more than one year (but not to exceed 17 months) to enable its program funding cycle to coincide with the funding period specified in paragraph (a)(1) of this section.

(b) *Obligation period.* A Tribe or Tribal organization must obligate its Federal title IV–D grant funds no later than the last day of the funding period for which they were awarded. Any of these funds remaining unobligated after that date must be returned to the Department.

(c) *Liquidation period.* A Tribe or Tribal organization must liquidate the Federal title IV–D grant funds obligated during the obligation period specified in paragraph (b) of this section no later than the last day of the 12-month period immediately following the obligation period. Any of these funds remaining unliquidated after that date must be returned to the Department.

(d) *Funding reductions.* As required under § 309.130(b)(3), a Tribe or Tribal organization will report quarterly on Form SF 269A the amount of Federal title IV–D grant funds that have been obligated and liquidated and the amounts that remain unobligated and unliquidated at the end of each fiscal quarter during the obligation and liquidation periods. The Department will reduce the amount of the Tribe or Tribal organization's Federal title IV–D grant funds for the funding period by any amount reported as remaining unobligated on the report following the last day of the obligation period. The Department will further reduce the amount of the Tribe or Tribal organization's Federal title IV–D grant funds for the funding period by any amount reported as remaining unliquidated on

the report following the last day of the liquidation period.

(e) *Extension requests.* A Tribe or Tribal organization may submit a written request for an extension of the deadline for liquidating Federal title IV–D grant funds. Such a request must be sent to ACF, to the attention of the Federal grants officer named on the most recent grant award. The request must be submitted as soon as it is clear that such an extension will be needed; any request received after the end of the liquidation period will not be considered. The request must include a detailed explanation of the extenuating circumstances or other reasons for the request and must state the date by which the Tribe anticipates all obligated funds will be liquidated. Unless the Tribe receives a written approval of its request, the deadline stated in paragraph (c) of this section remains in effect.

§ 309.145 What costs are allowable for Tribal IV–D programs carried out under § 309.65(a) of this part?

Federal funds are available for costs of operating a Tribal IV–D program under an approved Tribal IV–D application carried out under § 309.65(a) of this part, provided that such costs are determined by the Secretary to be reasonable, necessary, and allocable to the program. Allowable activities and costs include:

(a) Administration of the Tribal IV–D program, including but not limited to the following:

(1) Establishment and administration of the Tribal IV–D plan;

(2) Monitoring the progress of program development and operations, and evaluating the quality, efficiency, effectiveness, and scope of available support enforcement services;

(3) Establishment of all necessary agreements with other Tribal, State, and local agencies or private providers for the provision of child support enforcement services in accordance with Procurement Standards found in 45 CFR part 74. These agreements may include:

(i) Necessary administrative agreements for support services;

(ii) Use of Tribal, Federal, State, and local information resources;

- (iii) Cooperation with courts and law enforcement officials;
- (iv) Securing compliance with the requirements of the Tribal IV-D program plan in operations under any agreements;
- (v) Development and maintenance of systems for fiscal and program records and reports required to be made to OCSE based on these records; and
- (vi) Development of cost allocation systems.
- (b) Establishment of paternity, including:
 - (1) Establishment of paternity in accordance with Tribal law codes, and/or custom in accordance with § 309.100 of this part, as outlined in the approved Tribal IV-D plan;
 - (2) Reasonable attempts to determine the identity of a child's father, such as:
 - (i) Investigation;
 - (ii) Development of evidence, including the use of genetic testing performed by accredited laboratories; and
 - (iii) Pre-trial discovery;
 - (3) Actions taken by a tribunal to establish paternity pursuant to procedures established by Tribal law, and/or codes or custom in accordance with § 309.100 of this part;
 - (4) Identifying accredited laboratories that perform genetic tests (as appropriate); and
 - (5) Referrals of cases to another Tribal IV-D agency or to a State to establish paternity when appropriate.
- (c) Establishment, modification, and enforcement of support obligations, including:
 - (1) Investigation, development of evidence and, when appropriate, court or administrative actions;
 - (2) Determination of the amount of the support obligation (including determination of income and allowable non-cash support under Tribal IV-D guidelines, if appropriate);
 - (3) Enforcement of a support obligation, including those activities associated with collections and the enforcement of court orders, administrative orders, warrants, income withholding, criminal proceedings, and prosecution of fraud related to child support; and
 - (4) Investigation and prosecution of fraud related to child and spousal support cases receiving services under the IV-D plan.
- (d) Collection and disbursement of support payments, including:
 - (1) Establishment and operation of an effective system for making collections and identifying delinquent cases and collecting from them;
 - (2) Referral or transfer of cases to another Tribal IV-D agency or to a State IV-D program when appropriate; and
 - (3) Services provided for another Tribal IV-D program or for a State IV-D program.
- (e) Establishment and operation of a Tribal Parent Locator Service (TPLS) or agreements for referral of cases to a State PLS, another Tribal PLS, or the Federal PLS for location purposes.
- (f) Activities related to requests to State IV-D programs for enforcement services for the Federal Income Tax Refund Offset.
- (g) Establishing and maintaining case records.
- (h) Automated data processing computer systems for:
 - (1) Planning efforts in the identification, evaluation, and selection of a new or replacement automated data processing computer system solution addressing the program requirements defined in a Tribal plan;
 - (2) Operation and maintenance of existing Tribal automated data processing computer systems;
 - (3) Procurement, installation, operation and maintenance of essential office automation capability;
 - (4) Establishment of intergovernmental agreements with States and Tribes for use of an existing automated data processing computer system necessary to support Tribal IV-D program operations; and
 - (5) Other automation and automated data processing computer system costs in accordance with instructions and guidance issued by the Secretary.
- (i) Staffing and equipment that are directly related to operating a Tribal IV-D program.
- (j) The portion of salaries and expenses of a Tribe's chief executive and staff that is directly attributable to managing and operating a Tribal IV-D program.
- (k) The portion of salaries and expenses of tribunals and staff that is directly related to required Tribal IV-D program activities.

§ 309.150

(l) Service of process.

(m) Training on a short-term basis that is directly related to operating a Tribal IV-D program.

(n) Costs associated with obtaining technical assistance that are directly related to operating a IV-D program, from non-Federal third-party sources, including other Tribes, Tribal organizations, State agencies, and private organizations, and costs associated with providing such technical assistance to public entities.

(o) Any other costs that are determined to be reasonable, necessary, and allocable to the Tribal IV-D program in accordance with the cost principles in OMB Circular A-87. The total amount that may be claimed under the Tribal IV-D grant are allowable direct costs, plus the allocable portion of allowable indirect costs, minus any applicable credits.

(1) All claimed costs must be adequately documented; and

(2) A cost is allocable if the goods or services involved are assignable to the grant according to the relative benefit received. Any cost that is allocable to one Federal award may not be charged to other Federal awards to overcome funding deficiencies, or for any other reason.

§ 309.150 What start-up costs are allowable for Tribal IV-D programs carried out under § 309.65(b) of this part?

Federal funds are available for costs of developing a Tribal IV-D program, provided that such costs are reasonable, necessary, and allocable to the program. Federal funding for Tribal IV-D program development under § 309.65(b) may not exceed a total of \$500,000, unless additional funding is provided pursuant to § 309.16(c). Allowable start-up costs and activities include:

(a) Planning for the initial development and implementation of a Tribal IV-D program;

(b) Developing Tribal IV-D laws, codes, guidelines, systems, and procedures;

(c) Recruiting, hiring, and training Tribal IV-D program staff; and

(d) Any other reasonable, necessary, and allocable costs with a direct cor-

45 CFR Ch. III (10-1-04 Edition)

relation to the initial development of a Tribal IV-D program, consistent with the cost principles in OMB Circular A-87, and approved by the Secretary.

§ 309.155 What uses of Tribal IV-D program funds are not allowable?

Federal IV-D funds may not be used for:

(a) Activities related to administering other programs, including those under the Social Security Act;

(b) Construction and major renovations;

(c) Any expenditures that have been reimbursed by fees or costs collected, including any fee collected from a State;

(d) Expenditures for jailing of parents in Tribal IV-D cases;

(e) The cost of legal counsel for indigent defendants in Tribal IV-D program actions;

(f) The cost of guardians ad litem in Tribal IV-D cases; and

(g) All other costs that are not reasonable, necessary, and allocable to Tribal IV-D programs, under the cost principles in OMB Circular A-87.

Subpart E—Accountability and Monitoring

§ 309.160 How will OCSE determine if Tribal IV-D program funds are appropriately expended?

OCSE will rely on audits required by OMB Circular A-133, "Audits of States, Local Governments, and Non-Profit Organizations" and 45 CFR part 74. The Department has determined that this program is to be audited as a major program in accordance with section 215(c) of the circular. The Department may supplement the required audits through reviews or audits conducted by its own staff.

§ 309.165 What recourse does a Tribe or Tribal organization have to dispute a determination to disallow Tribal IV-D program expenditures?

If a Tribe or Tribal organization disputes a decision to disallow Tribal IV-D program expenditures, the grant appeals procedures outlined in 45 CFR part 16 are applicable.

Subpart F—Statistical and Narrative Reporting Requirements

§ 309.170 What statistical and narrative reporting requirements apply to Tribal IV-D programs?

(a) Tribes and Tribal organizations operating a Tribal IV-D program must submit to OCSE the *Child Support Enforcement Program: Quarterly Report of Collections* (Form OCSE-34A). The reports for each of the first three quarters of the funding period are due 30 days after the end of each quarterly reporting period. The report for the fourth quarter is due 90 days after the end of the fourth quarter of each funding period.

(b) Tribes and Tribal organizations must submit the following information and statistics for Tribal IV-D program activity and caseload for each annual funding period:

(1) Total number of cases and, of the total number of cases, the number that are State or Tribal TANF cases and the number that are non-TANF cases;

(2) Total number of out-of-wedlock births in the previous year and total number of paternities established or acknowledged;

(3) Total number of cases and the total number of cases with a support order;

(4) Total amount of current support due and collected;

(5) Total amount of past-due support owed and total collected;

(6) A narrative report on activities, accomplishments, and progress of the program, including success in reaching the performance targets established by the Tribe or Tribal organization;

(7) Total costs claimed;

(8) Total amount of fees and costs recovered; and

(9) Total amount of laboratory paternity establishment costs.

(c) A Tribe or Tribal organization must submit Tribal IV-D program statistical and narrative reports required by paragraph (b) of this section no later than 90 days after the end of each funding period.

PART 310—COMPREHENSIVE TRIBAL CHILD SUPPORT ENFORCEMENT (CSE) PROGRAMS

Subpart A—Tribal CSE Program: General Provisions

Sec.

310.1 What does this part cover?

310.5 What definitions apply to this part?

310.10 Who is eligible to apply for Federal funding to operate a Tribal CSE program?

Subpart B—Tribal CSE Program Application Procedures

310.15 What is a Tribal CSE program application?

310.20 Who submits a Tribal CSE program application?

310.25 When must a Tribe or Tribal organization submit a Tribal CSE program application?

310.30 Where does the Tribe or Tribal organization submit the application?

310.35 What are the procedures for approval or disapproval of Tribal CSE program applications and plan amendment(s)?

310.40 What is the basis for disapproval of a Tribal CSE program application or plan amendment(s)?

310.45 How may a Tribe or Tribal organization request a reconsideration of a disapproval action?

310.50 What are the consequences of disapproval of a Tribal CSE program application or plan amendment?

Subpart C—Tribal CSE Plan Requirements

310.55 What does this subpart cover?

310.60 Who is ultimately responsible for administration of the Tribal CSE program under the Tribal CSE plan?

310.65 What must a Tribe or Tribal organization include in a Tribal CSE plan in order to demonstrate capacity to operate a Tribal CSE program?

310.70 What provisions governing jurisdiction must a Tribe or Tribal organization include in a Tribal CSE plan?

310.75 What administrative and management procedures must a Tribe or Tribal organization include in a Tribal CSE plan?

310.80 What safeguarding procedures must a Tribe or Tribal organization include in a Tribal CSE plan?

310.85 What reports and maintenance of records procedures must a Tribe or Tribal organization include in a Tribal CSE plan?

310.90 What governing Tribal law or regulations must a Tribe or Tribal organization include in a Tribal CSE plan?

§ 310.1

- 310.95 What procedures governing the location of noncustodial parents must a Tribe or Tribal organization include in a Tribal CSE plan?
- 310.100 What procedures for the establishment of paternity must a Tribe or Tribal organization include in a Tribal CSE plan?
- 310.105 What procedures governing guidelines for the establishment and modification of child support obligations must a Tribe or Tribal organization include in a Tribal CSE plan?
- 310.110 What procedures governing income withholding must a Tribe or Tribal organization include in a Tribal CSE plan?
- 310.115 What procedures governing the distribution of child support must a Tribe or Tribal organization include in a Tribal CSE plan?
- 310.120 What intergovernmental procedures must a Tribe or Tribal organization include in a Tribal CSE plan?

Subpart D—Tribal CSE Program Funding

- 310.125 On what basis is Federal funding in Tribal CSE programs determined?
- 310.130 How will Tribal CSE programs be funded?
- 310.135 How long do Tribes and Tribal organizations have to obligate and spend CSE grant funds?
- 310.140 What are the financial reporting requirements?
- 310.145 What costs are allowable charges to Tribal CSE programs carried out under § 310.65(a) of this part?
- 310.150 [Reserved]
- 310.155 What uses of Tribal CSE program funds are not allowable?

Subpart E—Accountability and Monitoring

- 310.160 How will OCSE determine if Tribal CSE program funds are appropriately expended?
- 310.165 What recourse does a Tribe or Tribal organization have to dispute a determination to disallow Tribal CSE program expenditures?

Subpart F—Statistical and Narrative Reporting Requirements

- 310.170 What statistical and narrative reporting requirements apply to Tribal CSE programs?
- 310.175 When are statistical and narrative reports due?

Subpart G—Interim Funding of Operational Tribal CSE Programs

- 310.180 Who is eligible to apply to receive interim funding under this part?
- 310.185 What is the application and approval process for Tribes and Tribal organiza-

45 CFR Ch. III (10–1–04 Edition)

- tions with operational Tribal CSE programs applying for interim funding?
- 310.190 What requirements apply to programs operated with interim funding?

AUTHORITY: 42 U.S.C. 655(f), 1302.

SOURCE: 65 FR 50790, Aug. 21, 2000, unless otherwise noted.

§ 310.1 What does this part cover?

(a) The regulations in this part prescribe the rules for implementing section 455(f) of the Social Security Act through interim funding for Indian Tribes and Tribal organizations that currently operate comprehensive Tribal child support enforcement programs. Section 455(f) authorizes direct grants to Indian Tribes and Tribal organizations to operate CSE programs.

(b) These regulations establish the requirements that must be met by Indian Tribes and Tribal organizations currently operating comprehensive Tribal CSE programs to be eligible for grants under section 455(f). They establish requirements for: Tribal CSE plan and application content, submission, approval, and amendment; program funding; program operation; uses of funds; accountability; reporting; interim funding; and other program requirements and procedures.

(c) The regulations in this part apply only to grants for periods prior to October 1, 2004.

[65 FR 50790, Aug. 21, 2000, as amended at 69 FR 16682, Mar. 30, 2004]

§ 310.5 What definitions apply to this part?

The following definitions apply to this part:

ACF means the Administration for Children and Families, Department of Health and Human Services.

Act means the Social Security Act, unless otherwise specified.

Assistant Secretary means the Assistant Secretary for Children and Families, Department of Health and Human Services.

Central office means the central office of the Office of Child Support Enforcement.

CSE services are the services that are required for establishment of paternity, establishment, modification, and

enforcement of support orders, and location of noncustodial parents as required in title IV-D of the Act, this rule, and the Tribal CSE plan. In some situations, the appropriate service may be for a Tribe or Tribal organization to refer an applicant for CSE services to another Tribal CSE agency or a State IV-D agency.

Child support order and child support obligation mean a judgment, decree, or order, whether temporary, final or subject to modification, issued by a court or an administrative agency of competent jurisdiction, for the support and maintenance of a child, including a child who has attained the age of majority under the law of the issuing jurisdiction, or of the parent with whom the child is living, which provides for monetary support, health care, arrearages, or reimbursement, and which may include related costs and fees, interest and penalties, income withholding, attorneys' fees, and other relief.

The Department means the Department of Health and Human Services.

Indian means a person who is a member of an Indian Tribe.

Indian Tribe and Tribe mean any Indian or Alaska Native Tribe, band, nation, pueblo, village, or community that the Secretary of the Interior acknowledges to exist as an Indian Tribe and includes in the list of Federally recognized Indian Tribal governments as published in the FEDERAL REGISTER pursuant to 25 U.S.C. 479a-1.

Location means information concerning the physical whereabouts of the noncustodial parent, or the noncustodial parent's employer(s), and other sources of income or assets, as appropriate, which is sufficient and necessary to take the next appropriate action in a case.

Regional office refers to one of the regional offices of the Administration for Children and Families.

Secretary means the Secretary of the Department of Health and Human Services.

Title IV-D refers to the title of the Social Security Act that authorizes the Child Support Enforcement Program, including the Tribal Child Support Enforcement Program.

Tribal CSE agency means the organizational unit in the Tribe or Tribal organization that has the delegated authority for administering or supervising the Tribal CSE program under section 455(f) of the Act.

Tribal organization means the recognized governing body of any Indian Tribe as defined in this part; any legally established organization of Indians which is controlled, sanctioned, or chartered by such governing body or which is democratically elected by the adult members of the Indian community to be served by such organization and which includes the maximum participation of Indians in all phases of its activities: Provided, That in any case where a contract is let or grant made to an organization to perform services benefitting one or more Indian Tribes, the approval of each such Indian Tribe shall be a prerequisite to the letting or making of such contract or grant.

§310.10 Who is eligible to apply for Federal funding to operate a Tribal CSE program?

The following are eligible to apply to receive Federal funding to operate a Tribal CSE program meeting the requirements of this part:

(a) An Indian Tribe meeting the requirements of §310.180 of this part, with at least 100 children under the age of majority as defined by Tribal law or code, in the population subject to the jurisdiction of the Tribal court or administrative agency.

(b) A Tribal organization meeting the requirements of §310.180 of this part, that demonstrates the authorization of one or more Indian Tribes to operate a Tribal CSE program on their behalf, with a total of at least 100 children under the age of majority as defined by Tribal law or code, in the population of the Tribe(s) that is subject to the jurisdiction of the Tribal court (or courts) or administrative agency (or agencies).

Subpart B—Tribal CSE Program Application Procedures

§310.15 What is a Tribal CSE program application?

(a) *Initial application.* The initial application must include:

§ 310.20

(1) Standard application forms SF 424, Application for Federal Assistance, and SF 424A, Budget Information—Non-Construction Programs; and

(2) A Tribal CSE plan—a comprehensive statement meeting the requirements of subpart C of this part that describes the capacity of the Tribe or Tribal organization to operate a CSE program meeting the objectives of title IV-D of the Act, including establishment of paternity, establishment, modification, and enforcement of support orders, and location of noncustodial parents.

(b) *Annual refunding applications.* (1) Annual refunding applications must include standard application forms SF 424, Application for Federal Assistance, and SF 424A, Budget Information—Non-Construction Programs. As appropriate, annual refunding applications also may include amendment(s) to the Tribal CSE plan.

(2) [Reserved]

(c) *Additional application requirement for Tribal organizations.* The application of a Tribal organization must adequately demonstrate that each participating Tribe authorizes the Tribal organization to operate a Tribal CSE program on its behalf.

§ 310.20 Who submits a Tribal CSE program application?

The authorized representative of the Tribe or Tribal organization must sign and submit the Tribal CSE program application.

§ 310.25 When must a Tribe or Tribal organization submit a Tribal CSE program application?

(a) The initial application consisting of the Tribal CSE program plan that meets the requirements under subpart C of this part, and the application and budget information forms (SF 424, Application for Federal Assistance, and SF 424A, Budget Information—Non-Construction Programs) may be submitted at any time.

(b) Subsequent refunding applications containing only SF 424, Application for Federal Assistance, and SF 424A, Budget Information—Non-Construction Programs, must be submitted annually at least 60 days before the beginning of the next budget period if the

45 CFR Ch. III (10–1–04 Edition)

Tribe or Tribal organization wishes to receive its funding on time.

(c) If a Tribe or Tribal organization intends to make any substantial or material change in any aspect of the Tribal CSE program:

(1) A Tribal CSE plan amendment must be submitted at the earliest reasonable time for approval under § 310.35. The plan amendment must describe and, as appropriate, document the changes the Tribe or Tribal organization proposes to make to its CSE plan, consistent with the requirements under § 310.65.

(2) Any amendment of an approved Tribal CSE plan may, at the option of the Tribe or Tribal organization, be considered as a submission of a new Tribal CSE plan. If the Tribe or Tribal organization requests that such amendments be so considered, they must be submitted no less than 90 days before the proposed effective date of the new plan.

(d) [Reserved]

(e) The effective date of a plan amendment may not be earlier than the first day of the calendar quarter in which an approvable plan is submitted.

§ 310.30 Where does the Tribe or Tribal organization submit the application?

Applications must be submitted to the central office of the Office of Child Support Enforcement, Attention: Tribal Child Support Enforcement Program, 370 L'Enfant Promenade, SW, Washington, DC 20447, with a copy to the appropriate regional office.

§ 310.35 What are the procedures for approval or disapproval of Tribal CSE program applications and plan amendment(s)?

(a) The Secretary of the Department of Health and Human Services or designee will determine whether the Tribal CSE program application or Tribal CSE plan amendment submitted for approval conforms to the requirements of approval under the Act and these regulations not later than the 90th day following the date on which the Tribal CSE application or Tribal CSE plan amendment is received by the Secretary or designee, unless additional information is needed from the Tribe or Tribal organization. The Secretary

or designee will notify the Tribe or Tribal organization if additional time or information is required to determine whether the application or plan amendment may be approved.

(b) The Secretary or designee will approve the application or determine that the application will be disapproved within 45 days of receipt of any additional information requested from the Tribe or Tribal organization.

§310.40 What is the basis for disapproval of a Tribal CSE program application or plan amendment(s)?

(a) An application or plan amendment will be disapproved if:

(1) The Secretary or designee determines that the application or plan amendment fails to meet one or more of the requirements set forth in this part;

(2) The Secretary or designee determines that the laws, code, regulations, and procedures described in the application or plan amendment will not achieve the outcomes consistent with the objectives of title IV—D including: ensuring access to services; paternity establishment; support order establishment; basing child support orders on the noncustodial parent's ability to pay; collecting support; making timely and accurate payments to families; protecting due process rights; and protecting security of data;

(3) The Secretary or designee determines that the application or plan amendment is not complete (after the Tribe or Tribal organization has had the opportunity to submit the necessary information); or

(4) The Secretary or designee determines that the requested funding is not reasonable and necessary (after the Tribe or Tribal organization has had the opportunity to make appropriate adjustments).

(b) A written Notice of Disapproval of the Tribal CSE program application or plan amendment will be sent to the Tribe or Tribal organization upon the determination that any of the conditions of §310.40(a) apply. The Notice of Disapproval will include the specific reason(s) for disapproval.

§310.45 How may a Tribe or Tribal organization request a reconsideration of a disapproval action?

(a) A Tribe or Tribal organization may request reconsideration of disapproval of a Tribal CSE application or amendment by filing a written Request for Reconsideration to the Secretary or designee within 60 days of the date of the Notice of Disapproval.

(b) The Request for Reconsideration must include:

(1) All documentation that the Tribe or Tribal organization believes is relevant and supportive of its application or plan amendment; and

(2) A written response to each ground for disapproval identified in the Notice of Disapproval, indicating why the Tribe or Tribal organization believes its application or plan amendment conforms to the requirements for approval specified at §310.65 and subpart C of this part.

(c) After receiving a Request for Reconsideration, the Secretary or designee will hold a conference call or, at the Department's discretion, a meeting with the Tribe or Tribal organization as part of the reconsideration, to discuss the reasons for the Department's disapproval of the application or plan amendment, and the Tribe or Tribal organization's response. Within 30 days after receipt of a Request for Reconsideration, the Secretary or designee will notify the Tribe or Tribal organization of the date and time the conference call or meeting will be held.

(d) A conference call or meeting under §310.45(c) shall be held not less than 30 days nor more than 60 days after the date the notice of such call or meeting is furnished to the Tribe or Tribal organization, unless the Tribe or Tribal organization agrees in writing to another time.

(e) The Secretary or designee will make a written determination affirming, modifying, or reversing disapproval of a Tribal CSE program application or plan amendment within 60 days after the conference call or meeting is held. This determination upon reconsideration shall be the final decision of the Secretary.

§ 310.50

45 CFR Ch. III (10–1–04 Edition)

(f) The Secretary or designee's initial determination that a Tribal CSE application or plan amendment is not approvable remains in effect pending the reconsideration under this part.

§ 310.50 What are the consequences of disapproval of a Tribal CSE program application or plan amendment?

(a) If an application submitted pursuant to § 310.25 is disapproved, the Tribe or Tribal organization can receive no funding under section 455(f) of the Act or this part until a new application is submitted and approved.

(b) If a plan amendment is disapproved, there is no funding for the activity proposed in the plan amendment.

(c) A Tribe or Tribal organization whose application or plan amendment has been disapproved may reapply at any time, once it has remedied the circumstances that led to disapproval of the application or amendment.

Subpart C—Tribal CSE Plan Requirements

§ 310.55 What does this subpart cover?

This subpart defines the Tribal CSE plan provisions which are required and which demonstrate that a Tribe or Tribal organization has the capacity to operate a child support enforcement program meeting the objectives of title IV-D of the Act, including establishment of paternity, establishment, modification, and enforcement of support orders, and location of noncustodial parents.

§ 310.60 Who is ultimately responsible for administration of the Tribal CSE program under the Tribal CSE plan?

(a) Under the Tribal CSE plan, the Tribe or Tribal organization shall establish or designate an agency to administer the Tribal CSE plan. That agency shall be referred to as the Tribal CSE agency.

(b) The Tribe or Tribal organization is responsible and accountable for the operation of the Tribal CSE program. Except where otherwise provided in this part, the Tribal CSE agency need not perform all the functions of the

Tribal CSE program, so long as the Tribe or Tribal organization ensures that all approved functions are carried out properly, efficiently, and effectively.

(c) If the Tribe or Tribal organization delegates any of the functions of the Tribal CSE program to another Tribe, a State, and/or another agency pursuant to a cooperative arrangement, contract, or Tribal resolution, the Tribe or Tribal organization is responsible for securing compliance with the requirements of the Tribal CSE plan by such Tribe, State, or agency. The Tribe or Tribal organization is responsible for submitting copies and appending to the Tribal CSE plan any agreements, contracts, or Tribal resolutions between the Tribal CSE agency and a Tribe, State, or other agency.

§ 310.65 What must a Tribe or Tribal organization include in a Tribal CSE plan in order to demonstrate capacity to operate a Tribal CSE program?

(a) A Tribe or Tribal organization demonstrates capacity to operate a Tribal CSE program meeting the objectives of title IV-D of the Act by submission of a Tribal CSE plan which meets the requirements listed in paragraphs (a)(1) through (14) of this section:

(1) Describes the population subject to the jurisdiction of the Tribal court or administrative agency for child support purposes as specified under § 310.70;

(2) Evidence that the Tribe or Tribal organization has in place procedures for accepting all applications for CSE services and providing appropriate CSE services, including referral to appropriate agencies;

(3) Assurance that the due process rights of the individuals involved will be protected in all activities of the Tribal CSE program, including establishment of paternity, and establishment, modification, and enforcement of support orders;

(4) Administrative and management procedures as specified under § 310.75;

(5) Safeguarding procedures as specified under § 310.80;

(6) Assurance that the Tribe or Tribal organization will maintain records as specified under § 310.85;

(7) Copies of all applicable Tribal laws and regulations as specified under § 310.90;

(8) Procedures for the location of noncustodial parents as specified under § 310.95;

(9) Procedures for the establishment of paternity as specified under § 310.100;

(10) Guidelines for the establishment and modification of child support obligations as specified under § 310.105;

(11) Procedures for income withholding as specified under § 310.110;

(12) Procedures for the distribution of child support collections as specified under § 310.115;

(13) Procedures for intergovernmental case processing as specified under § 310.120; and

(14) Reasonable performance targets for paternity establishment, support order establishment, amount of current support to be collected, and amount of past due support to be collected.

(b)-(c) [Reserved]

(d) No later than two years from the implementation of a Tribal CSE program meeting the requirements specified in paragraph (a) of this section, or no later than two years after the Secretary or designee issues guidance outlining the necessary procedures to comply with paragraphs (d)(1) through (5) of this section, whichever is later, a Tribal CSE plan must include the following:

(1) Procedures for requiring employers operating in the jurisdiction of the Tribe to report information about newly hired employees to the Tribal CSE agency in accordance with instructions issued by the Secretary or designee;

(2) Procedures for requiring employers operating in the jurisdiction of the Tribe to report wage information on a quarterly basis to the Tribal CSE agency in accordance with instructions issued by the Secretary or designee;

(3) Procedures under which the Tribal CSE agency reports new hire and quarterly wage information to the National Directory of New Hires in accordance with instructions issued by the Secretary or designee;

(4) Procedures under which the Tribal CSE agency submits CSE cases to the Federal Case Registry in accordance

with instructions issued by the Secretary or designee; and

(5) Procedures for submitting CSE cases to the Federal Income Tax Refund Offset Program in accordance with instructions issued by the Secretary or designee.

(e) In the CSE plan included in its initial application and in any plan amendment submitted as a new plan, a Tribe or Tribal organization must certify that, as of the date the plan or plan amendment is submitted to the Department, there are at least 100 children under the age of majority as defined by Tribal law or code, in the population of the Tribe, or of the Tribe(s) authorizing the Tribal organization to operate a CSE program on their behalf, that is subject to the jurisdiction of the Tribal court (or courts) or administrative agency (or agencies).

§ 310.70 What provisions governing jurisdiction must a Tribe or Tribal organization include in a Tribal CSE plan?

A Tribe or Tribal organization demonstrates capacity to operate a Tribal CSE program meeting the objectives of title IV-D of the Act when its Tribal CSE plan includes a description of the population subject to the jurisdiction of the Tribal court or administrative agency for child support enforcement purposes.

§ 310.75 What administrative and management procedures must a Tribe or Tribal organization include in a Tribal CSE plan?

A Tribe or Tribal organization demonstrates capacity to operate a Tribal CSE program meeting the objectives of title IV-D of the Act when its Tribal CSE plan includes the following minimum administrative and management provisions, and the Secretary or designee determines that these provisions are adequate to enable the Tribe or Tribal organization to operate an effective and efficient Tribal CSE program and otherwise comply with Federal requirements:

(a) A description of the structure of the agency and the distribution of responsibilities within the agency.

(b) Procedures under which applications for Tribal CSE services are made available to the public upon request.

§310.80

(c) Procedures under which the Tribal CSE agency must promptly open a case by establishing a case record and determining necessary action.

(d) Procedures to control the use of and to account for Federal funds and amounts collected on behalf of custodial parents, including assurances that the following requirements and criteria to bond employees are in effect:

(1) Procedures under which the Tribal CSE agency will ensure that every person who has access to or control over funds collected under the Tribal CSE program is covered by a bond against loss resulting from employee dishonesty;

(2) The requirement in paragraph (d) of this section applies to every person who, as a regular part of his or her employment, receives, disburses, handles, or has access to support collections;

(3) The requirements of this section do not reduce or limit the ultimate liability of the Tribe or Tribal organization for losses of support collections from the Tribal CSE agency's program; and

(4) A Tribe may comply with the requirements of paragraph (d) of this section by means of self-bonding established under Tribal law and approved by the Secretary or designee.

(e) Procedures under which notice of the amount of any support collected for each month is provided to families receiving services under the Tribal CSE plan and to the noncustodial parent upon request. Families receiving services must receive such notice on a quarterly basis.

(f) Certification that for each year during which the Tribe or Tribal organization receives or expends funds pursuant to section 455(f) of the Act and this part, it shall comply with the provisions of chapter 75 of Title 31 of the United States Code (the Single Audit Act of 1984, Public Law 98-502, as amended) and OMB Circular A-133.

§310.80 What safeguarding procedures must a Tribe or Tribal organization include in a Tribal CSE plan?

A Tribe or Tribal organization demonstrates capacity to operate a Tribal CSE program meeting the objectives of title IV-D of the Act when its Tribal CSE plan includes safeguarding provi-

45 CFR Ch. III (10-1-04 Edition)

sions consistent with the following and approved by the Secretary or designee:

(a) Procedures under which the use or disclosure of information concerning applicants or recipients of child support enforcement services is limited to purposes directly connected with the administration of the Tribal CSE program or with other programs or purposes prescribed by the Secretary or designee.

(b) Procedures consistent with safeguarding provisions in sections 453 and 454 of the Act and regulations promulgated pursuant to section 464 of the Act and which conform to any specific rules or instructions issued by the Secretary or designee to assure that requests for and disclosure and use of information obtained from the Federal Parent Locator Service and the Federal Tax Refund Offset Program are limited only to individuals and entities authorized under these sections of the Act for the purposes authorized under these sections.

(c) Procedures under which sanctions must be imposed for the unauthorized disclosure of information concerning applicants and recipients of child support enforcement services as outlined in paragraphs (a) and (b) of this section.

§310.85 What reports and maintenance of records procedures must a Tribe or Tribal organization include in a Tribal CSE plan?

(a) A Tribe or Tribal organization demonstrates capacity to operate a Tribal CSE program meeting the objectives of title IV-D of the Act when its Tribal CSE plan includes procedures for maintaining records necessary for proper and efficient operation of the program, including:

(1) Applications for support services;

(2) Records on location of noncustodial parents;

(3) Records on actions taken to establish paternity and obtain and enforce support;

(4) Records on amounts and sources of support collections and the distribution of such collections;

(5) Records on other costs; and

(6) Statistical, fiscal, and other records necessary for reporting and accountability required by the Secretary or designee.

(b) The retention and access requirements for these records are prescribed at 45 CFR 92.42.

§ 310.90 What governing Tribal law or regulations must a Tribe or Tribal organization include in a Tribal CSE plan?

A Tribe or Tribal organization demonstrates capacity to operate a Tribal CSE program meeting the objectives of title IV-D of the Act when its Tribal CSE plan includes Tribal law, code, regulations, and/or other evidence that provides specific procedures that result in:

(a) Establishment of paternity for any child up to and including at least 18 years of age;

(b) Establishment and modification of child support obligations;

(c) Enforcing child support obligations, including requirements that Tribal employers comply with income withholding as required under § 310.110; and

(d) In the absence of specific laws and regulations, a Tribe or Tribal organization may satisfy this requirement for locating noncustodial parents by providing in its plan detailed descriptions of such procedures which the Secretary or designee determines are adequate to enable the Tribe or Tribal organization to meet the performance targets approved by the Secretary or designee.

§ 310.95 What procedures governing the location of noncustodial parents must a Tribe or Tribal organization include in a Tribal CSE plan?

A Tribe or Tribal organization demonstrates capacity to operate a Tribal CSE program meeting the objectives of title IV-D of the Act when its Tribal CSE plan includes the following provisions governing the location of noncustodial parents:

(a) In all appropriate cases, the Tribal CSE agency must attempt to locate noncustodial parents or sources of income and/or assets when location is required to take necessary action in a case; and

(b) All sources of information and records reasonably available to the

Tribe or Tribal organization must be used to locate noncustodial parents.

§ 310.100 What procedures for the establishment of paternity must a Tribe or Tribal organization include in a Tribal CSE plan?

(a) A Tribe or Tribal organization demonstrates capacity to operate a Tribal CSE program meeting the objectives of title IV-D of the Act when its Tribal CSE plan includes the procedures that result in the establishment of paternity included in this section. For cases in which paternity has not been established, the Tribe must include in its Tribal CSE plan the procedures under which the Tribal CSE agency will:

(1) Attempt to establish paternity by the process established under Tribal law, code, and/or custom; and

(2) Provide an alleged father the opportunity to voluntarily acknowledge paternity.

(b) The Tribal CSE agency need not attempt to establish paternity in any case involving incest or forcible rape, or in any case in which legal proceedings for adoption are pending, if, in the opinion of the Tribal CSE agency, it would not be in the best interests of the child to establish paternity.

(c) When genetic testing is used to establish paternity, the Tribal CSE agency must identify and use accredited laboratories which perform, at reasonable cost, legally and medically acceptable genetic tests which tend to identify the father or exclude the alleged father.

§ 310.105 What procedures governing guidelines for the establishment and modification of child support obligations must a Tribe or Tribal organization include in a Tribal CSE plan?

(a) A Tribe or Tribal organization demonstrates capacity to operate a Tribal CSE program meeting the objectives of title IV-D of the Act when its Tribal CSE plan:

(1) Establishes one set of child support guidelines by law or by judicial or administrative action for setting and modifying child support obligation amounts;

(2) Includes a copy of child support guidelines governing the establishment

§310.110

45 CFR Ch. III (10-1-04 Edition)

and modification of child support obligations; and

(3) Indicates whether in-kind or non-cash payments of support will be permitted and if so, describes the type(s) of in-kind (non-cash) support that will be permitted and how such in-kind (non-cash) payments will be converted into cash equivalents if necessary.

(b) The guidelines established under paragraph (a) of this section must at a minimum:

(1) Take into account the needs of the child and the earnings and income of the noncustodial parent; and

(2) Be based on specific descriptive and numeric criteria and result in a computation of the support obligation.

(c) The Tribe or Tribal organization must ensure that child support guidelines are reviewed at least every three years.

(d) The Tribe or Tribal organization must provide that there shall be a rebuttable presumption, in any judicial or administrative proceeding for the award of child support, that the amount of the award that would result from the application of the guidelines established under paragraph (a) of this section is the correct amount of child support to be awarded.

(e) A written finding or specific finding on the record of a judicial or administrative proceeding for the award of child support that the application of the guidelines established under paragraph (a) of this section would be unjust or inappropriate in a particular case shall be sufficient to rebut the presumption in that case, as determined under criteria established by the Tribe or Tribal organization. Such criteria must take into consideration the best interests of the child. Findings that rebut the guidelines must state the amount of support that would have been required under the guidelines and include a justification of why the order varies from the guidelines.

§310.110 What procedures governing income withholding must a Tribe or Tribal organization include in a Tribal CSE plan?

(a) A Tribe or Tribal organization demonstrates capacity to operate a Tribal CSE program meeting the objectives of title IV-D of the Act when its

Tribal CSE plan includes copies of Tribal laws and regulations providing for income withholding under which:

(1) In the case of each noncustodial parent against whom a support order is or has been issued or modified under the Tribal CSE plan, or is being enforced under such plan, so much of his or her income as defined in section 466(b)(8) of the Act must be withheld as is necessary to comply with the order.

(2) In addition to the amount to be withheld to pay the current month's obligation, the amount withheld must include an amount to be applied toward liquidation of any overdue support.

(3) The total amount to be withheld under paragraphs (a)(1) and (2) of this section may not exceed the maximum amount permitted under section 303(b) of the Consumer Credit Protection Act (15 U.S.C. 1673(b)).

(4) All income withholding must be carried out in compliance with all procedural due process requirements of the Tribe or Tribal organization.

(5) The Tribal CSE agency must have procedures for promptly refunding amounts which have been improperly withheld.

(6) The Tribal CSE agency must have procedures for promptly terminating income withholding in cases where there is no longer a current order for support and all arrearages have been satisfied.

(b) To initiate income withholding, the Tribal CSE agency must send the noncustodial parent's employer a notice using the standard Federal form that includes the following:

(1) The amount to be withheld;

(2) A requirement that the employer must send the amount to the Tribal CSE agency within 7 business days of the date the noncustodial parent is paid;

(3) A requirement that the employer must report to the Tribal CSE agency the date on which the amount was withheld from the noncustodial parent's income;

(4) A requirement that, in addition to the amount to be withheld for support, the employer may deduct a fee established by the Tribe for the employer's administrative costs incurred for each withholding, if the Tribe permits a fee to be deducted;

(5) A requirement that the withholding is binding upon the employer until further notice by the Tribe;

(6) A requirement that, if the employer fails to withhold income in accordance with the provision of the notice, the employer is liable for the accumulated amount the employer should have withheld from the noncustodial parent's income; and

(7) A requirement that the employer must notify the Tribe promptly when the noncustodial parent terminates employment and provide the noncustodial parent's last known address and the name and address of the noncustodial parent's new employer, if known.

(c) The income of the noncustodial parent shall become subject to withholding, at the latest, on the date on which the payments which the noncustodial parent has failed to make under a support order are at least equal to the support payable for one month.

(d) The only basis for contesting a withholding under this section is a mistake of fact, which for purposes of this paragraph means an error in the amount of current or overdue support or in the identity of the alleged noncustodial parent.

(e) The provisions of this section do not apply to that portion of a child support order that may be satisfied in kind.

(f) Tribal law must provide that the employer is subject to a fine to be determined under Tribal law for discharging a noncustodial parent from employment, refusing to employ, or taking disciplinary action against any noncustodial parent because of the withholding.

§ 310.115 What procedures governing the distribution of child support must a Tribe or Tribal organization include in a Tribal CSE plan?

A Tribe or Tribal organization demonstrates capacity to operate a Tribal CSE program meeting the objectives of title IV-D of the Act when its Tribal CSE plan includes the following requirements:

(a) In cases where families receiving services from the Tribal CSE program are receiving Temporary Assistance for Needy Families (TANF) assistance from the State, collected child support

must be distributed consistent with section 457(a)(1) of the Act;

(b) In cases where families receiving services from the Tribal CSE program are receiving TANF assistance from a Tribal TANF program and formerly received assistance under a State program funded under title IV-A, child support arrearage collections must be distributed consistent with section 457(a)(2) of the Act;

(c) In cases where families receiving services from the Tribal CSE program are receiving TANF assistance from a Tribal TANF program and have assigned their rights to child support to the Tribe, collected child support up to the amount of Tribal TANF assistance received by the family may be retained by the Tribe, and any collected child support in excess of the amount of Tribal TANF assistance received by the family must be paid to the family;

(d) In cases where families receiving services from the Tribal CSE program formerly received Tribal TANF assistance and assigned their right to child support to the Tribe, collected child support above current support may be retained by the Tribe as reimbursement for past Tribal TANF assistance payments made to the family for which the Tribe has not been reimbursed, and any collected child support in excess of the amount of unreimbursed Tribal TANF assistance received by the family must be paid to the family; and

(e) In cases where families receiving services from the Tribal CSE program never received assistance under a State or Tribal program funded under title IV-A, all collected child support must be paid to the family.

§ 310.120 What intergovernmental procedures must a Tribe or Tribal organization include in a Tribal CSE plan?

A Tribe or Tribal organization demonstrates capacity to operate a Tribal CSE program meeting the objectives of title IV-D of the Act when its Tribal CSE plan includes:

(a) Procedures that provide that the Tribal CSE agency will cooperate with States and other Tribal CSE agencies to provide CSE services in accordance with instructions and requirements

§ 310.125

issued by the Secretary or designee; and

(b) Assurances that the Tribe or Tribal organization will recognize child support orders issued by other Tribes and Tribal organizations, and by States, in accordance with the requirements under 28 U.S.C. 1738B, the Full Faith and Credit for Child Support Orders Act.

Subpart D—Tribal CSE Program Funding

§ 310.125 On what basis is Federal funding in Tribal CSE programs determined?

Federal funding of Tribal CSE programs is based on information contained in the Tribal CSE application, which includes a proposed budget, a description of the nature and scope of the Tribal CSE program and which gives assurance that it will be administered in conformity with applicable requirements of title IV-D, regulations contained in this part, and other official issuances of the Department.

§ 310.130 How will Tribal CSE programs be funded?

(a) *General mechanism.* Tribal CSE programs will be funded on an annual basis. At or just before the beginning of a Tribal grantee's program year, OCSE will issue a grant award to the Tribe or Tribal organization to operate its Tribal CSE program for the following 12-month budget period.

(b) *Special provision for initial grant.* A Tribe or Tribal organization may request that its initial Tribal CSE grant award be for a period of less than a year (but at least six months) or more than an year (but not to exceed 17 months) to enable its program funding cycle to coincide with its desired annual funding cycle.

(c) *Determination of Tribal funding amounts.* The Secretary or designee will determine the amount of funds that a Tribe or Tribal organization needs to pay reasonable, necessary, and allocable costs to operate its Tribal CSE program, based on information supplied by the Tribe or Tribal organization on Standard Form 424 (Application for Federal Assistance), Standard Form 424A (Budget Information " Non-Con-

45 CFR Ch. III (10–1–04 Edition)

struction Programs), and the Tribe or Tribal organization's CSE plan, as reviewed and approved by the Secretary or designee. The Secretary or designee will review the grantee's request, ask for additional information as necessary, and negotiate any appropriate adjustments with the grantee.

(d) *Federal and non-Federal shares.* (1)(i) During the first three years in which a Tribe or Tribal organization operates a full CSE program under § 310.65(a) of this part, the amount of the Federal grant will not exceed 90 percent of the total approved budget of the assisted program, unless the Secretary or designee has granted a waiver pursuant to paragraph (d)(2) of this section. After a Tribe or Tribal organization has operated a full CSE program under § 310.65(a) of this part for three years, the amount of the Federal grant will not exceed 80 percent of the total approved budget of the assisted program, unless the Secretary or designee has granted a waiver pursuant to paragraph (d)(2) of this section.

(ii) During the first three years in which a Tribe or Tribal organization operates a full CSE program under § 310.65(a) of this part, the Tribe or Tribal organization must contribute to its Tribal CSE program a non-Federal (Tribal) matching share of at least 10 percent of the total approved budget of the assisted program, unless the Secretary or designee has granted a waiver pursuant to paragraph (d)(2) of this section. After a Tribe or Tribal organization has operated a full CSE program under § 310.65(a) of this part for three years, the Tribe or Tribal organization must contribute to its Tribal CSE program a non-Federal (Tribal) matching share of at least 20 percent of the total approved budget of the assisted program, unless the Secretary or designee has granted a waiver pursuant to paragraph (d)(2) of this section. The non-Federal share may be provided in cash and/or in kind, fairly valued, by the Tribe or Tribal organization and/or by a third party, in accordance with the requirements of 45 CFR 92.24 and this part.

(iii) Donations of funds, and in-kind contributions of property and services valued at fair market value, from a

third party to a Tribe or Tribal organization, may satisfy the non-Federal share requirement. The non-Federal share requirement may not be satisfied by:

(A) Donations for which the donor receives or expects to receive a financial or economic benefit;

(B) Donations intended as consideration for any benefit received from the Tribe or Tribal organization;

(C) Donations whose costs ultimately will be borne by another Federal grant; or

(D) Any other donation which the Secretary or designee determines to benefit the donor in a manner inconsistent with 45 CFR part 92.

(2)(i) A Tribe or Tribal organization that lacks sufficient resources to provide a 10 or 20 percent non-Federal matching share may request a waiver of part or all of the non-Federal share.

(ii) Requests for waiver of part or all of the non-Federal matching share must be included with initial applications for funding, refunding applications, and budget amendment requests, and must contain the following:

(A) A statement that the Tribe or Tribal organization lacks the available resources to meet the 10 or 20 percent non-Federal matching share;

(B) A statement of the amount of the non-Federal share that the Tribe or Tribal organization requests the Secretary or designee to waive;

(C) A statement of the reasons that the Tribe or Tribal organization is unable to meet the non-Federal share requirement; and

(D) Documentation that reasonable efforts to obtain the non-Federal share have been unsuccessful.

(iii) The Secretary or designee may require submission of additional information and documentation as necessary. The Secretary or designee will grant a waiver of all or part of the non-Federal matching share, as appropriate, if he or she determines that a waiver request demonstrates that the Tribe or Tribal organization lacks sufficient resources to provide the non-Federal share, has made reasonable but unsuccessful efforts to obtain non-Federal share contributions, and has provided all required information. Waiver of all or part of the non-Federal share

shall apply only to the budget period for which application was made.

(e) *Increase in approved budget.* A Tribal CSE grantee may request an adjustment to increase the approved level of its current budget by submitting Standard Form 424 (Application for Federal Assistance) and Standard Form 424A (Budget Information “ Non-Construction Programs), and explaining why it needs to increase its budget. The Tribe or Tribal organization should submit this request at least 60 days before additional funds are needed, in order to allow the Secretary or designee adequate time to review the estimates and issue a revised grant award as appropriate. Requests for changes to budget levels are subject to approval by the Secretary or designee. If the change in a grantee’s budget estimate results from a change in the grantee’s CSE plan, the grantee also needs to submit a plan amendment in accordance with §310.25(c) of this part, with its request for additional funding. The effective date of a plan amendment may not be earlier than the first day of the calendar quarter in which an approvable plan is submitted in accordance with §310.25(e). The Secretary or designee will review the grantee’s request, ask for additional information as necessary, and negotiate any appropriate adjustments with the grantee. The Secretary or designee must approve the plan amendment before approving any additional funding.

(f) *Obtaining Federal funds.* Tribes and Tribal organizations will obtain Federal funds on a draw down basis from the Department’s Payment Management System.

(g) Grant administration requirements. The Tribal CSE program is subject to the grant administration regulations under 45 CFR part 92.

§310.135 How long do Tribes and Tribal organizations have to obligate and spend CSE grant funds?

(a) A Tribe or Tribal organization must obligate its CSE grant funds by the end of the budget period for which they were awarded. Any funds that remain unobligated at the end of the budget period for which they were

§ 310.140

awarded must be returned to the Department. A Tribe or Tribal organization must estimate in its refunding application any amounts that may be unobligated at the end of the current budget period. In its fourth quarter financial report for a budget period, a Tribe or Tribal organization must indicate the exact amount of any funds that remained unobligated at the end of that budget period. The Department will reduce the amount of the Tribe or Tribal organization's grant award for the budget period for which any unobligated funds were awarded by the amount that remained unobligated at the end of this budget period.

(b) A Tribe or Tribal organization must liquidate obligations by the last day of the 12-month period following the budget period for which the funds were awarded and the Tribe or Tribal organization obligated the funds, unless the Department grants an exemption and extends the time period for liquidation. Funds that remain unliquidated after the time period for liquidation has expired must be returned to the Department. Tribes and Tribal organizations may request an exemption to this rule based on extenuating circumstances. A request for an exemption must be sent to the OCSE grants officer listed on the most recent grant award and must be made before the end of the time period for liquidation; such requests are subject to approval by the Department. If any funds remain unliquidated at the end of the maximum time period for liquidation, the Department will reduce the amount of the Tribe or Tribal organization's grant award for the budget period for which any unliquidated funds were awarded, by the amount that remains unliquidated at the end of the liquidation period. Repeated failure by a Tribe or Tribal organization to liquidate obligations in a timely way would result in the Department's reexamination of the program budget development process and could result in action to address financial systems deficiencies.

§ 310.140 What are the financial reporting requirements?

(a) A Tribe or Tribal organization operating a Tribal CSE program must submit a Financial Status Report,

45 CFR Ch. III (10-1-04 Edition)

Standard Form 269, quarterly. The Financial Status Reports for each of the first three quarters of the budget period are due 30 days after the end of each quarterly reporting period. The Financial Status Report for the fourth quarter is due 90 days after the end of the fourth quarter of each budget period.

(b) A Tribe or Tribal organization operating a Tribal CSE program must submit the "Child Support Enforcement Program: Quarterly Report of Collections" (Form OCSE-34A), or such other report as the Secretary or designee may prescribe, quarterly. The reports for each of the first three quarters of the budget period are due 30 days after the end of each quarterly reporting period. The report for the fourth quarter is due 90 days after the end of the fourth quarter of each budget period.

(c) A Tribe or Tribal organization operating a Tribal CSE program must submit a report on the liquidation of its CSE obligations, using the Financial Status Report, Standard Form 269. The liquidation report is due 30 days after the end of the maximum period for liquidation of obligations, or 30 days after all grant funds are liquidated, whichever is earlier.

(d) The Secretary or designee will consider requiring less frequent financial reporting for Tribal CSE agencies that submit the required financial reports timely and accurately, and establish adequate financial systems and effective program operations under the Tribal CSE program.

§ 310.145 What costs are allowable charges to Tribal CSE programs carried out under § 310.65(a) of this part?

Federal funds are available for direct costs of operating a Tribal CSE program under an approved Tribal CSE application carried out under § 310.65(a) of this part, provided that such costs are determined by the Secretary or designee to be reasonable, necessary, and allocable to the program. Federal funds are also available for indirect costs, where applicable, at the appropriate negotiated indirect cost rate. Allowable activities and costs include:

(a) Support enforcement services provided to eligible individuals, including: parent locator services; paternity establishment; and support order establishment, modification, and enforcement services;

(b) Administration of the Tribal CSE program, including but not limited to the following:

(1) Establishment and administration of the Tribal CSE program plan;

(2) Monitoring the progress of program development and operations, and evaluating the quality, efficiency, effectiveness, and scope of available support enforcement services;

(3) Establishment of all necessary agreements with other Tribal, State, and local agencies or private providers for the provision of child support enforcement services in accordance with Procurement Standards found in 45 CFR 92.36. These agreements may include:

(i) Necessary administrative agreements for support services;

(ii) Use of Tribal, Federal, State, and local information resources;

(iii) Cooperation with courts and law enforcement officials;

(iv) Securing compliance with the requirements of the Tribal CSE program plan in operations under any agreements;

(v) Development and maintenance of systems for fiscal and program records and reports required to be made to OCSE based on these records; and

(vi) Development of cost allocation systems;

(c) Establishment of paternity, including:

(1) Establishment of paternity in accordance with Tribal codes or custom as outlined in the approved Tribal CSE program plan;

(2) Reasonable attempts to determine the identity of a child's father, such as:

(i) Investigation;

(ii) Development of evidence including the use of genetic testing performed by accredited laboratories; and

(iii) Pre-trial discovery;

(3) Court or administrative or other actions to establish paternity pursuant to procedures established by Tribal codes or custom as outlined in the approved Tribal CSE program plan;

(4) Identifying accredited laboratories that perform genetic tests (as appropriate); and

(5) Referrals of cases to another Tribal CSE agency or to a State to establish paternity when appropriate;

(d) Establishment, modification, and enforcement of support obligations including:

(1) Investigation, development of evidence and, when appropriate, court or administrative actions;

(2) Determination of the amount of the support obligation (including determination of income and allowable in-kind support under Tribal CSE guidelines, if appropriate);

(3) Enforcement of a support obligation including those activities associated with collections and the enforcement of court orders, administrative orders, warrants, income withholding, criminal proceedings, and prosecution of fraud related to child support; and

(4) Investigation and prosecution of fraud related to child and spousal support;

(e) Collection and disbursement of support payments, including:

(1) Establishment and operation of an effective system for making collections and identifying delinquent cases and collecting from them;

(2) Referral of cases to another Tribal CSE agency or to a State CSE program for collection when appropriate; and

(3) Making collections for another Tribal CSE program or for a State CSE program;

(f) Establishment and operation of a Tribal Parent Locator Service (TPLS) or agreements for referral of cases to a State PLS, another Tribal PLS, or the Federal PLS for location purposes;

(g) Activities related to requests to State CSE programs for certification of collection for Federal Income Tax Refund Offset;

(h) Establishing and maintaining case records;

(i) Planning, design, development, installation, enhancement, and operation of CSE computer systems;

(j) Staffing and equipment that are directly related to operating a Tribal CSE program;

(k) The portion of salaries and expenses of a Tribe's chief executive and staff that is directly attributable to

§ 310.150

managing and operating a Tribal CSE program;

(l) The portion of salaries and expenses of Tribal judges and staff that is directly related to Tribal CSE program activities;

(m) Service of process;

(n) Training on a short-term basis that is directly related to operating a Tribal CSE program;

(o) Costs associated with obtaining technical assistance that are directly related to operating a CSE program, from outside sources, including Tribes, Tribal organizations, State agencies, and private organizations, and costs associated with providing such technical assistance to public entities; and

(p) Any other reasonable, necessary, and allocable costs with a direct correlation to a Tribal CSE program, consistent with the cost principles in OMB Circular A-87.

§ 310.150 [Reserved]

§ 310.155 What uses of Tribal CSE program funds are not allowable?

Federal Tribal CSE funds may not be used for:

(a) Services provided or fees paid by other Federal agencies, or by programs funded by other Federal agencies;

(b) Construction and major renovations;

(c) Any expenditures that have been reimbursed by fees collected;

(d) Expenditures for jailing of parents in Tribal CSE program cases;

(e) The cost of legal counsel for indigent defendants in Tribal CSE program actions;

(f) The cost of guardians ad litem; and

(g) All other costs that are not reasonable, necessary, and allocable in Tribal CSE programs, under the costs principles in OMB Circular A-87.

Subpart E—Accountability and Monitoring

§ 310.160 How will OCSE determine if Tribal CSE program funds are appropriately expended?

OCSE will rely on audits required by OMB Circular A-133, “Audits of States, Local Governments, and Non-Profit Organizations” and other provisions of 45

45 CFR Ch. III (10–1–04 Edition)

CFR 92.26. The Department has determined that this program is to be audited as a major program in accordance with section 215(c) of the circular. The Department may supplement the required audits through reviews or audits conducted by its own staff.

§ 310.165 What recourse does a Tribe or Tribal organization have to dispute a determination to disallow Tribal CSE program expenditures?

If a Tribe or Tribal organization disputes a decision to disallow Tribal CSE program expenditures, the grant appeals procedures outlined in 45 CFR part 16 are applicable under this part.

Subpart F—Statistical and Narrative Reporting Requirements

§ 310.170 What statistical and narrative reporting requirements apply to Tribal CSE programs?

Tribes and Tribal organizations must submit the following information and statistics for Tribal CSE program activity and caseload for each budget period:

(a) Total number of cases and, of the total number of cases, the number that are TANF cases and the number that are non-TANF cases;

(b) Total number of paternities needed and number of paternities established;

(c) Total number of support orders needed and the total number of orders established;

(d) Total amount of current support due and collected;

(e) Total amount of past-due support owed and total collected;

(f) A narrative report on activities, accomplishments, and progress of the program;

(g) Total costs claimed;

(h) Total amount of fees and costs recovered;

(i) Total amount of automated data processing (ADP) costs; and

(j) Total amount of laboratory paternity establishment costs.

§ 310.175 When are statistical and narrative reports due?

A Tribe or Tribal organization must submit Tribal CSE program statistical and narrative reports no later than 90

days after the end of each budget period.

Subpart G—Interim Funding of Operational Tribal CSE Programs

§ 310.180 Who is eligible to apply to receive interim funding under this part?

A Tribe or Tribal organization currently satisfying the requirements in this part, and currently operating a comprehensive Tribal CSE program that includes establishment of paternity, establishment, modification, and enforcement of support orders, and location of absent parents, may apply for and upon approval, receive direct funding under this part.

§ 310.185 What is the application and approval process for Tribes and Tribal organizations with operational Tribal CSE programs applying for interim funding?

(a) In order to receive interim funding under this part, a Tribe or Tribal organization with an operational comprehensive Tribal CSE program must meet the requirements under this part and demonstrate that the operational comprehensive program exists, through submittal of:

(1) A cooperative agreement with a State IV-D agency under section 454(33) of the Act that demonstrates that the Tribe or Tribal organization currently

operates a comprehensive Tribal CSE program including establishment of paternity, establishment, modification, and enforcement of support orders, and location of absent parents, and meeting the requirements of section 455(f) of the Act and this part; or

(2) Evidence that demonstrates that the Tribe or Tribal organization currently operates a comprehensive Tribal CSE program including establishment of paternity, establishment, modification, and enforcement of support orders, and location of absent parents, and meeting the requirements of section 455(f) of the Act and this part, directly or through agreement, contract, or resolution with another entity. Evidence includes copies of Tribal CSE codes, program procedures, agreements or contracts, and program statistics.

(b) The Secretary or designee will determine whether the Tribe or Tribal organization meets the requirements under this part and adequately demonstrates that the operational comprehensive CSE program exists.

§ 310.190 What requirements apply to programs operated with interim funding?

Tribes and Tribal organizations that receive interim funding must meet all requirements under this part.

PARTS 311–399 [RESERVED]