DEPARTMENT OF HEALTH & HUMAN SERVICES

ADMINISTRATION FOR CHILDREN AND FAMILIES
370 L'Enfant Promenade, S.W.
Washington, D.C. 20447

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DATE: May 11, 2007

TO: State and Tribal IV-D Directors

FROM: Margot Bean MB
Commissioner, Office of Child Support Enforcement

SUBJECT: FFP for State Automated Systems Costs related to Service Agreements with Tribal IV-D Programs; Submitting Tribal IV-D cases for Federal Tax Refund Offset; and Submitting Requests to the Federal Parent Locator Service (FPLS) in Tribal IV-D

Currently, Tribal IV-D program regulations do not allow Tribes operating IV-D programs Federal funding to design, develop, or install automated systems. At this time, Federal Financial Participation (FFP) is available to Tribal IV-D programs for basic office automation and for maintenance and operation of existing State and Tribal automated data processing computer systems. We are in the process of developing a Tribal systems regulation that will set forth the process and options available to comprehensive Tribal IV-D grantees to automate the operation of their Tribal Child Support Enforcement programs.

We have recently received questions concerning the availability of FFP for costs incurred by a State IV-D program which enters into a service agreement with a Tribal IV-D program for access to and use of the State's automated system.

The Administration's FY 2008 budget includes legislative proposals to allow direct access to FPLS and Federal tax refund offset for Tribal IV-D programs. Some Tribal IV-D agencies have agreements with State IV-D agencies for use of the State automated system and we are concerned that the State may submit arrearages owed in a Tribal IV-D case for Federal tax refund offset and may submit names in a Tribal IV-D case to the FPLS. Therefore, we are issuing this policy clarification to ensure current Federal requirements for access to Federal tax refund offset and FPLS are met.

QUESTION 1: What State systems expenditures associated with a Tribal IV-D program using the State's automated system are eligible for FFP?

RESPONSE 1: The regulations at 45 CFR 304.20 outline the availability and rate of FFP in reasonable and necessary State IV-D program costs. The rules at §304.20(b) allow FFP in costs for services and activities pursuant to the approved State plan which are determined to be necessary expenditures properly attributable to the Child Support Enforcement program, including systems costs. Moreover, §302.36(a)(2) requires that a State extend the full range of services available under its plan to all Tribal IV-D programs. Therefore, a State may submit maintenance and operation costs of the State's automated system attributable to a comprehensive Tribal IV-D agency's use of the system through the Advance Planning Document approval process. State and Tribal IV-D agencies are reminded that Tribal IV-D programs are subject to the same safeguarding rules that apply to the State IV-D programs if they use the State's automated system.

QUESTION 2: May a State claim FFP for costs to modify its system to meet the needs of a Tribal IV-D program?

RESPONSE 2: A State may not claim FFP for costs to modify and enhance the State's system to meet the needs of a Tribal IV-D program. Section 454A of the Social Security Act (the Act) mandates that a State have in effect a "single statewide" system. The Act does not authorize FFP to design, develop or install, or operate multiple IV-D systems. Further, the regulations at 45 CFR 307.15 require that the Advance Planning Document submitted by a State for funding represent the sole system effort being undertaken by the State.

In determining whether an expenditure related to providing Tribal IV-D access is "minor" enough to meet the definition of Maintenance and Operation as opposed to system development or modification, the IV-D agencies are directed to the definition of Maintenance and Operation specified in OCSE AT-06-03 issued to States on August 11, 2006. While OCSE does not have a specific dollar threshold for determining cost reasonableness, OCSE will apply the OMB Circular A-87 rules on a case-by-case basis when considering a State's request for costs related to the use and minor modification of the State's automated CSE system under an intergovernmental agreement.

QUESTION 3: May a State and Tribal IV-D program enter into a service agreement under which the Tribal IV-D program reimburses the State for the costs associated with the Tribe's use of the State's automated system and the Tribal IV-D program submits such costs as part of its program expenditures?

RESPONSE 3: Yes, if the costs for allowing the Tribe to use the State's automated system are reasonable. The State must report the Tribal payments to the State as program income. A service agreement between a State and a Tribal IV-D program may not include costs to Tribal IV-D programs relating to the modification and enhancement of a State's automated system to meet the needs of a Tribal IV-D program, unless OCSE has

determined, as outlined above, that the cost of a minor modification meets the cost reasonableness standards of OMB Circular A-87.

QUESTION 4: What costs may a start-up Tribal grantee claim in order to prepare for automation?

RESPONSE 4: Start-up Tribal grantees may seek FFP for pre-conversion and data clean-up activities. Automation is not a requirement for a comprehensive Tribal IV-D program. The Tribal program may have a process that is manual, or uses basic office automation (word processing, databases, spreadsheets, email) to meet the initial requirements for a comprehensive Tribal IV-D program. Once the grant application for a comprehensive Tribal IV-D program is approved, the Tribe may request FFP for systems-related costs permitted under the Tribal IV-D regulations. For example, it would be an acceptable FFP activity to review hard copy files to ensure that mandatory and/or optional data elements on a case are complete and ready to be entered into a Tribal or Statewide CSE system in anticipation of the comprehensive program grant being approved.

QUESTION 5: What are the circumstances under which a State IV-D agency may submit arrearages owed in a Tribal IV-D case for Federal tax refund offset?

RESPONSE 5: A State may submit arrearages owed in Tribal IV-D cases for Federal tax refund offset if the following conditions are met:

1. The approved Tribal IV-D plan or plan amendment indicates that the Tribe has entered into a cooperative agreement with the State under §309.60(b) and (c) for the State to submit arrearages owed in Tribal IV-D cases for Federal tax refund offset. The Tribe must submit as part of its Tribal IV-D plan or plan amendment copies of any such agreement.

The regulations governing Tribal IV-D programs at §309.35(d) require that 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.

2. The cooperative agreement between the Tribe and State includes a statement that the Tribal IV-D program will comply with all safeguarding requirements with respect to Federal tax refund offset in accordance with §309.80, section 454(26) of the Act and the Internal Revenue Code 26 USC 6103, which prohibits the release of IRS information outside of the IV-D program.

3. The Tribal IV-D plan provides evidence that the Tribe's application for IV-D services under §309.65(a)(2) includes a statement that the applicant is applying for State IV-D services for purposes of submitting arrearages for Federal tax refund offset.

QUESTION 6: What are the responsibilities of States and Tribes if the above conditions are not currently being met?

RESPONSE 6: If there are instances in which a State is submitting arrearages owed in a Tribal IV-D case for Federal tax refund offset which do not meet the conditions set forth in Response 5, a State may not submit arrearages owed in Tribal IV-D cases for Federal tax refund offset. This applies to both new and existing cases.

A Tribal IV-D program must amend its plan to indicate that the Tribe has entered into a cooperative agreement as outlined above for the State to submit arrearages owed in Tribal IV-D cases and include a statement that the Tribal IV-D program will comply with all safeguarding requirements. The Tribal IV-D plan must also provide evidence that the application for IV-D services under §309.65(a)(2) includes a statement that the applicant is applying for State IV-D services for purposes of submitting arrearages for Federal tax refund offset.

QUESTION 7: May a State send the names of individuals that a Tribal IV-D program is attempting to locate to the FPLS for locate purposes and share that information with the Tribal IV-D program?

RESPONSE 7: Section 453(c)(3) of the Act defines an "authorized person" who may submit a request to the FPLS to include "an agent of a child ...." A Tribal IV-D agency would qualify as an "agent of a child" for cases being handled by the Tribal IV-D agency for purposes of submitting a request to the FPLS. The State will submit the location request to the FPLS through the State Parent Locator Service as a request from "an agent of a child." The State IV-D agency should code these locate requests as "LC" for "Locate Only."

As provided in AT-02-04, the following information will be made available in response to the request: SSN, address, wage and unemployment compensation amounts, employment benefits (e.g., health care coverage) and the employer's name, address, and employer identification number. Asset information from a source other than the IRS may also be provided, if available. The information made available as a result of the request is subject to use and disclosure by the Tribal IV-D agency only for child support enforcement purposes.

Inquiries should be directed to the appropriate Regional Office.

cc: ACF/OCSE Regional Program Managers