OCSE-PIQ-75-01

December 24, 1975

Floyd Brandon
Acting Regional Director, OCSE

Acting Director
Office of Child Support Enforcement

Incentive Payments to Political Subdivisions

This is in response to your memorandum of October 10, 1975, in which you asked whether incentive payments with respect to child support collections used to reimburse assistance payments could be made to a political subdivision when the District Attorney is not the District Attorney for a particular county, but for several counties.

For incentive payments to be made pursuant to Section 458 of the Social Security Act, a political subdivision of a State must make for the State of which it is a political subdivision a collection of funds that are used to reimburse assistance payments. See OCSE-AT-75-5. In any situation where eligibility for an inventive payment is at issue, two questions must be resolved. First, is the entity making the collection recognized by the State as one of its political subdivision? Second is the collection actually made by the political subdivision? If both these questions are answered positively, then the political subdivision is eligible for an incentive payment.

With regard to the situation described in your October 10 memorandum, if the counties that the District Attorneys represent are recognized by State law as political subdivisions of the State, then the first requirement is met. There is no other Federal definition of "political subdivision" for this purpose.

The second question is whether the District Attorneys represent these counties and act on their behalf. In order to meet this requirement, the political subdivision must have certain minimum relationships with the District Attorney. The District Attorney must be elected by the residents of the political subdivision or subdivisions he represents, or be appointed by the government of the political subdivision.

Therefore, child support collections made by district Attorneys representing more than one county are eligible for incentive payments so long as the two requirements discussed herein are met.

John A. Svahn

OCSE-PIQ-76-01

February 6, 1976

William Toby
Acting Regional Director, OCSE

Acting Director
Office of Child Support Enforcement

New York State Plan - Confidentiality of Records

This is in response to your memoranda of December 19, 1975, and January 5, 1976, concerning the approvability of New York's plan under title IV-D of the Social Security Act as a result of Federal requirements for confidentiality of records.

As you know, confidentiality of records for the program of Aid to Families with Dependent Children is governed by section 402(a)(9) of the Social Security Act. Section 402(a)(9) was amended by P.L. 93-647 and subsequently by P.L. 94-88. These changes in the statute were reflected by appropriate amendments to the title IV-A regulation contained in 45 CFR 205.50.

Title IV-D of the Social Security Act does not contain a provision for confidentiality of records. However, considering the close relationship between the AFDC program under title IV-A and the child support program under title IV-D, and the substantial issues of public policy surrounding confidentiality of records, the Secretary exercised his authority under sections 452(1) and 454(13) of the Act and extended confidentiality requirement to the child support program. Initially this was accomplished by making 45 CFR 205.50 applicable to title IV-D. After P.L. 94-88 became effective, a separate regulation, applicable only to title IV-D, was promulgated as 45 CFR 302.18.

It should be noted that the confidentiality requirements of 45 CFR 302.18 apply only to records, maintained pursuant to the child support program, concerning applicants for, or recipients of, child support services. Such applicants and recipients may, of course, also be applicants for, or recipients of, Aid to Families with Dependent Children, but 45 CFR 302.18 does not prohibit release of information from AFDC records. Such release is governed by 45 CFR 205.50, which must be read in light of the Jenner amendment. The Jenner amendment permits public access to records of disbursements under public assistance programs.

In view of the previously described relationship between title IV-A and IV-D, we have concluded that the Jenner amendment is also applicable to records maintained pursuant to title IV-D, insofar as those records involve individuals who are recipients

of Aid to Families with Dependent Children.

With the foregoing as preface, the following are the questions you have raised and our response thereto:

1. May the New York plan be approved on the basis of the June 26 preprint without regard to the amended confidentiality requirements contained in the second preprint of November 10, which would be handled later as a compliance issue?

The New York plan may not be approved solely on the basis of the June 26 preprint, but must also include the amendment provided for in the November 10 preprint. The confidentiality provision contained in the November 10 preprint is based on a regulation that was effective on August 1, 1975, which had the effect of making the earlier IV-D confidentiality requirement non-existent. Therefore, the portion of the June 26 preprint concerning confidentiality is no longer valid.

2. Can the State plan be approved given the New York statute and regulation on disclosure and confidentiality.

Section 136 of the New York Social Welfare Law, entitled "Protection of public welfare records," requires disclosure of information in a manner inconsistent with 45 CFR 302.18. Although the statute seems clearly designed to apply only to public assistance records rather than child support records, paragraph 2 of the statute refers to "All communications and information relating to a person receiving public assistance or care obtained by any social services official..." This language appears sufficiently broad to include child support records involving a recipient of public assistance.

Part 357 of the State's Regulations, which was submitted by New York as its IV-D confidentiality requirement, also requires disclosure of information in a manner inconsistent with 45 CFR 302.18. This regulation was also designed to apply to public assistance records and does not appear to include child support records, even those involving recipients of public assistance.

Therefore, New York currently has a statute and regulation that does not comport with the requirements of CFR 45 CFR 302.18, and probably has no confidentiality provision at all with respect to records for individuals receiving child support services who are not recipients of public assistance.

Fortunately, New York appears to have ample authority to resolve this problem under State law that permits administrative action in order to avoid the loss of Federal funds. The State should exercise this authority to make Section 136 of their statute inapplicable to IV-D records and to adopt a new regulation

governing confidentiality of IV-D records (involving both recipients and non-recipients of public assistance) that meets the requirements of 45 CFR 302.18.

Please advise if we may be of further assistance.

Don I. Wortman

OCSE-PIQ-76-02

April 22, 1976

Mr. William Toby
Acting Regional Director, OCSE Region II

Acting Director
Office of Child Support Enforcement

Federal Financial Participation in Fraud
Prosecution and other Activities

This is in response to your memorandum of February 18, 1976. Your questions and our response thereto are as follows:

1. Are all fraud prosecutions pursuant to a cooperative agreement subject to 75 percent Federal reimbursement under 45 CFR 304.20?

45 CFR 302.34 provides that cooperative agreements with appropriate courts and law enforcement officials may include provisions for the investigation and prosecution of fraud directly related to paternity and child support. 45 CFR 304.21 (a)(1) provides that 75 percent reimbursement is available for the cost of activities specified in 304.20(b)(2)-(8) when performed by a law enforcement official pursuant to a written cooperative agreement. One of the activities so specified, at 45 CFR 304.20(b)(3)(v), is the investigation and prosecution of fraud related to child support. It should be noted that such investigation and prosecution is included under the subject of "establishment and enforcement of support obligations."

Based upon the previously cited regulations, the following limitations should be noted:

1. FFP is available for costs incurred in investigating or prosecuting certain types of fraud regardless of whether the costs are incurred by the IV-D agency or by a law enforcement official;

2. If the investigation or prosecution is performed by a law enforcement official such as the attorney general or district attorney, such activity must be specified in a written cooperative agreement;

3. Such activity must be included within a cooperative agreement which provides for other IV-D functions--i.e., the cooperative agreement may not be solely for the investigation and prosecution of fraud;

4. Such activity is limited to investigating and prosecuting

suspected fraud discovered during the establishment and enforcement of support obligations.

Subject to the foregoing limitations, the following are examples of situations which could be considered fraud that is directly related to child support:

1. In the process of establishing or enforcing a child support obligation, the IV-D agency or law enforcement officials discovers that the absent parent appears to be residing in the home of the AFDC recipient. Further investigation and prosecution would be reimbursable activity.

2. In the process of establishing or enforcing a child support obligation, the IV-D agency or law enforcement official discovers that there appears to be fewer children in the home that the AFDC recipient had reported to the welfare agency. Further investigation and prosecution would be a reimbursable activity.

3. In the process of establishing or enforcing a child support obligation, the IV-D agency or law enforcement official discovers that the AFDC recipient appears to be receiving child support directly from the absent parent that has not been reported to the welfare agency. Further investigation and prosecution would be reimbursable activity.

The following is an example of a situation which would not be considered directly related to child support:

In the process of establishing or enforcing a child support obligation, the IV-D agency or law enforcement official discovers what appears to be inordinate income or resources in the possession of the AFDC recipient. Further investigation and prosecution would not be reimbursable activity under title IV-D.

This memorandum does not reflect what Federal financial participation, if any, might be available under title IV-A of the Social Security Act for the investigation and prosecution of welfare fraud.

2. Are the normal responsibilities of a prosecutor's office, such as the prosecution of a desertion complaint, subject to reimbursement under title IV-A or IV-D?

As you know, the IV-D agency may enter into a cooperative agreement with a prosecutor's office for the purpose of establishing paternity and securing support. One of the methods under State law for securing support may be through the prosecution of a desertion complaint. If the IV-D agency has determined that the prosecution of desertion is an appropriate

method of enforcing support obligations, and that it will result in support collections, then the activity is reimbursable under title IV-D. The fact that this may be a normal responsibility of the prosecutor under State law does not preclude Federal financial participation under title IV-D, since the statute specifically authorizes cooperative agreement with law enforcement officials. We are not aware of any way such activity could be reimbursable under title IV-A.

Don I. Wortman

OCSE-PIQ-76-03

June 23, 1976

Mr. William Toby, Acting Regional Director
OCSE, Region II

Director
Office of Child Support Enforcement

Extent of IV-D Availability to Non-AFDC Applicants

This is in response to your memorandum of May 12, 1976, in which you raised the question whether the eligibility age limits of IV-A are applicable to the non-AFDC applicant for IV-D services and whether IV-D services are available to a non-AFDC custodial parent whose children are now above the age of majority.

Neither the applicable section of the Act, 454(6), nor the implementing regulations at 45 CFR 302.33 impose any restriction on services to non-AFDC applicants based on the age of the child for whom support is sought.

If the non-AFDC applicant is owed an obligation for child support, which is enforceable under State laws (i.e., is not barred by a statute of limitations), the IV-D agency must make available all of the appropriate services available under its State plan irrespective of the fact that the child for whom support is sought may no longer be a minor, or may be emancipated.

Similarly, where an AFDC caretaker has assigned child support obligation to the State agency, but due to the age of the children, is no longer receiving AFDC, the IV-D agency must still attempt to collect the past due support obligation.

Robert Fulton

OCSE-PIQ-76-04

July 30, 1976

The Honorable Alan Cranston
United States Senate
Washington, D.C. 20510

Dear Senator Cranston:

Thank you for your letter of July 7 on behalf of
concerning interpretations of "alimony" as used in Section 459, Part B, Public Law 93-647.

As you know, the garnishment provision of that statute merely provides another method of legally enforcing child support and/or alimony obligations as determined by a State court of competent jurisdiction.

It has been concluded that, as used in Section 459, the term "alimony" applies to monies awarded by a court of competent jurisdiction to be paid by a divorced spouse for the support of the other party to the dissolved marriage. In a State, such as California, which no longer uses the term "alimony", the term selected to represent payments awarded to a spouse can be substituted for "alimony" in Section 459. A court order for "alimony" (or the term used to represent alimony) can form the basis for garnishment of monies due a Federal employee or retiree if the entitlement to those monies is based on remuneration for employment.

A person seeking this remedy must obtain a garnishment order in the State in which he or she resides. It is up to the court issuing the order to determine what constitutes alimony (or the term used to represent it) and is therefore garnishable under this statute. A person who believes that a garnishment order is unjust may attempt to resolve the matter pursuing legal remedies in the State in which the court order was issued.

With regard to the above interpretation,
might be interested in reading a proposed Senate amendment (copy enclosed) to H.R. 14484. Although not enacted, the amendment would have clarified the garnishment provision of Section 459, including the definition of alimony. We anticipate that proposal or a similar one may be resubmitted in the future, since legislative clarification appears to be needed.

I hope that this information will be helpful to you in replying to your constituent.

Sincerely,

Robert Fulton

Director
Office of Child Support Enforcement

OCSE-PIQ-77-01

8 MAR 1977

Charles H. Post
TO: Acting Regional Representative
FROM: Deputy Director
Office of Child Support Enforcement

SUBJECT: Cooperative Agreements with Appropriate Courts and Law Enforcement Officials

This is in reply to your January 8th memorandum requesting clarification of the applicability of the IV-D State plan requirement for cooperative arrangements with appropriate courts and law enforcement officials (45 CFR 302.34).

In this particular case, the Mississippi State IV-D agency plans on hiring 18 staff attorneys for the purpose of providing child support enforcement services. Also, the State does not intend to enter into cooperative agreements with local prosecutors.

The question raised is whether the State IV-D program will be found to be in compliance with the State plan requirement that the State enter into cooperative arrangements with appropriate courts and law enforcement officials if no such agreements have been entered into with prosecutors.

Section 454(7) of the Social Security Act and 45 CFR 302.34 require a State to enter into cooperative arrangements with appropriate courts and law enforcement officials. Under this requirement, a State need only enter into cooperative arrangements if they are necessary to meet a specific IV-D program requirement or are necessary to insure that the State has an effective program.

Mississippi intends to provide child support services Statewide by hiring its own employees to provide legal services. If this enables the State to have an effective program, no cooperative agreement would appear to be necessary.

Louis B. Hays

OCSE-PIQ-77-02

8 MAR 1977

Mr. Edwin L Miller, Jr.
District Attorney
County of San Diego
County Courthouse
San Diego, California 92101
ATTN: R.F. Bradford

Dear Mr. Miller:

Thank you for your letter of January 25, 1977 requesting permission to microfilm purged and inactive files so that the originals can be destroyed.

In accordance with 45 CFR 302.15(b), certified microfilm copies of purged or inactive files that are required for audit and review purposes may be substituted under certain circumstances for the original documents. The IV-D agency must be able to demonstrate to the Office of Child Support Enforcement Regional Office that the use of microfilm copies is in the interest of efficiency and economy. The proposed microfilm system must permit the IV-D agency to determine the propriety of expenditures for which Federal Financial participation is claimed, and cannot hinder State IV-D supervision of the Family Support Division's Child support program. The proposed system must also be demonstrated to be adequate to permit the HEW Audit Agency and Office of Child Support Enforcement to discharge their responsibilities with respect to reviews of the manner in which the child support enforcement program is administered in the State.

Prior approval of the system must be obtained from the Office of Child Support Enforcement Regional Office. I recommend that you coordinate the approval process through the Support Enforcement Division of the Department of Benefit Payments.

Sincerely your

Louis B. Hays

Deputy Director
Office of Child Support
Enforcement

OCSE-PIQ-77-03

March 31, 1977

Mr. D. R. Landon, Chief
Welfare Division
Support Enforcement Program
Department of Human Resources
251 Jeanell Drive
Capital Complex
Carson City, NV 89710

Dear Mr. Landon:

Thank you for your letter of March 3, 1977, requesting clarification of the circumstances under which incentives may be paid on voluntary payments of child support.

Section 458(a) of the Social Security Act and 45 CFR 302.52(a) require that an incentive payment to a political subdivision be made when the political subdivision makes, for the State of which it is a political subdivision, the enforcement and collection assigned support rights. When a voluntary child support payment is surrendered to the District Attorney's office, clearly a collection has been made. No enforcement action has been taken prior to the time the collection is made because, by the nature of the case, none was needed; that is, as your letter said, this is a voluntary payment.

So long as the District Attorney maintains records of support paid and monitors the payment of these amounts to identify delinquent cases so that enforcement actions can be taken, the District Attorney's office would be eligible for incentive payments with respect to all collections made in the case being monitored.

Sincerely yours,

Louis B. Hays
Deputy Director
Office of Child Support Enforcement

OCSE-PIQ-77-04

April 13, 1977

Mr. Henry B. Hinton, Jr.
General Counsel
The Legal Aid Society of Louisville, Inc.
317 South Fifth Avenue
Louisville, Kentucky 40202

Dear Mr. Hinton:

This is in response to your letter of March 10, 1977. Under the Child Support Enforcement Program (Title IV-D of the Social Security Act) Federal financial participation (FFP) is not available to compensate court appointed attorneys who represent defendants in paternity proceedings.

Under the Federal Regulations, FFP is available only to reimburse States that are operating child support programs under approved State plans. The Federal government reimburses 75 percent of the State's approved expenditures in carrying out the program. To be matchable the expenditure must be reasonable, necessary to carry out the program and in accordance with the State's plan (45 CFR 304.20(b)).

It is the Department's position that the cost of providing an attorney to represent the defendant in a paternity action is not a necessary cost of establishing paternity and therefore such costs are not properly attributable to the Child Support Enforcement program.

I trust this will clarify the Federal position on the issue you raised.

Sincerely,

Louis B. Hays
Deputy Director
Office of Child Support Enforcement

OCSE-PIQ-77-05

May 16, 1977

Charles H. Post
Acting Regional Representative
Office of Child Support Enforcement
Region IV

Deputy Director
Office of Child Support Enforcement

Interstate Cooperation in Non-AFDC Cases

This is in response to your memo, dated January 20, 1977, which raises several issues involving interstate collection under IV-D.

The State of New Jersey is apparently requiring all interstate, non-AFDC, payees of support collected by New Jersey to file a New Jersey application for IV-D services. Undoubtedly this practice is to insure that New Jersey is eligible for FFP in the costs of all support collection activities within the State.

1. Is it mandatory for everyone who receives support to apply for IV-D services?

No. The Social Security Act imposes no such requirement. Conversely, the Act contains no prohibition against a State requiring that support collection and enforcement services will only be available under the State's IV-D plan and thereby make application to IV-D a prerequisite for such activities.

2. Is it necessary or appropriate for every Florida non-AFDC parent receiving support payments from New Jersey to file an application with New Jersey for IV-D services?

No. Assuming that New Jersey requires that continued collection of interstate support be under title IV-D, a non-resident custodial parent could make a IV-D application in New Jersey or in her State of residence. If the Florida custodial parent applied under Florida's IV-D plan and the case was referred to New Jersey as a IV-D case, New Jersey must provide enforcement services under the State plan requirement for interstate cooperation.

I trust this information will be helpful to you.

Louis B. Hays

OCSE-PIQ-77-06

May 20, 1977

Garth A. Youngberg
Regional Representative, OCSE
Region VIII

Deputy Director
Office of Child Support Enforcement

North Dakota Incentive Payments

This is in response to your request for clarification of the policy governing the payment of incentives pursuant to discussion which you had with Jack Sacchetti on April 8, 1977.

In North Dakota, four counties have entered into a contract which provides that Grand Forks County will establish a child support office for, and provide child support enforcement services in, the four contracting counties. Each county will pay its proportionate share of the non-Federal administrative costs. The Grand Forks office hires its own staff to perform IV-D enforcement activity. This includes some third year law students who represent this office in court under the supervision of the State's attorney who also provides legal services when criminal action is undertaken. The State's attorney, a local official, has also entered into a cooperative agreement with the State IV-D agency.

For the most part, child support collections are made by clerks of local courts pursuant to cooperative agreements with the State IV-D agency. In these cases, the clerks of court monitor the collections made to identify delinquent cases and make referrals for appropriate enforcement action. The Grand Forks office is responsible for receiving collections for and monitoring all other IV-D cases, identifying delinquent cases and taking appropriate enforcement action. In this situation, the counties under contract with Grand Forks would be eligible for incentive payments.

Generally, as long as the other requirements relating to the payment of incentives are met, incentives are payable to a political subdivision if the local IV-D agency which is part of the administrative structure of the political subdivision provides legal services to enforce support obligations either by hiring its own attorneys or contracting with private attorneys through a purchase of service agreement.

Louis B. Hays

OCSE-PIQ-77-07

June 6, 1977

Garth A. Youngberg
Regional Representative
Office of Child Support Enforcement
Region VIII

Deputy Director
Office of Child Support Enforcement

Fees for Non-AFDC Applicants

This is in response to your memorandum of May 3 requesting clarification of the regulatory requirements pertaining to the imposition of an application fee for services provided to individuals not otherwise eligible under the program (45 CFR 302.33 (b)(1) and (2).

The application fee for non-AFDC cases is not charged to the absent parent or parents, but rather to the applicant. Section 302.33(b) provides that the State may impose an application fee that would be charged those individuals who request IV-D services on behalf of non-AFDC recipients. Payment of this fee entitles the applicant to all the services that are required to effectuate the collection of child support. The application fee may not be based on the number of absent parents or the anticipated costs associated with the collection activities. The fee may be a flat dollar amount, not to exceed $20.00, or based on the income of the applicant but should not act as a barrier to those individuals in need of child support enforcement assistance.

Louis B. Hays

OCSE-PIQ-77-08

August 9, 1977

Mr. Joseph Steigman
OCSE Regional Representative
Region II

Deputy Director
Office of Child Support Enforcement

Obtaining and Enforcing Court Orders

This is in response to your memorandum of March 8, 1977, in which you asked the following questions:

1. Is a State which has no other form of legal process obliged to obtain a court order for every AFDC case, without exception, in which there is an assignment of support rights?

2. Is a State obliged to pursue all arrearages, without exception, with respect to such assignments?

As you know, section 454(4)(B) of the Act requires that the State plan provide that the State "will undertake...in the case of any child with respect to whom [an] assignment is effective, to secure support for such child..." Neither the statute nor its legislative history specifies the manner for carrying out this responsibility.

There is no specific reference in title IV-D of the Act to arrearages, although presumably "support" in section 454 includes both current and past amounts. The statement in section 456(a)(2) ("amounts collected...shall reduce, dollar-for-dollar, the amount of his obligation...") suggests the concept of arrearages. Again, however, there is no reference in the law or legislative history as to how a State must pursue its responsibilities for collecting arrearages.

We believe there is ample authority under the Act to prescribe standards under which States would neither be required to obtain a court order in every case nor pursue all arrearages. The States could fulfill their responsibilities under the State plan by reviewing all cases against an objective set of criteria and determining which should be pursued all the way to a court order. The criteria would probably have to measure the likelihood that a court order could be obtained, using guidelines such as whether the absent parent can be located, whether the absent parent is institutionalized, and whether the absent parent has any resources. This list is meant to be illustrative, not

exhaustive.

A similar procedure would seem to be appropriate for pursuing arrearages.

Although you have not specifically raised the question, it should be noted that the same principles apply to paternity cases. The statue also requires the States to undertake to establish the paternity of children born out of wedlock. We believe the law allows a State to fulfill its duty by reviewing all paternity cases against an objective set of criteria and determining which cases must be pursued to a court order establishing paternity. The type of criteria would seem to be different than that used for non-paternity cases. For example, the lack of putative father's resources would not seem to be a relevant consideration, since the goal of establishing paternity is not merely to secure support. More appropriate criteria would seem to be those related to the likelihood of legally proving paternity; for example, whether the mother was sexually active with more than one man near the time of conception.

Relevant regulations include the following:

-- 302.31, which essentially repeats the language of the Act with respect to establishing paternity and securing support:

-- 302.50(a), which provides that the legal obligation to support must be established either by court order or other legal process:

-- 303.4(a) and (b) which requires, as a standard of program operation, the IV-D agency to establish support obligations by establishing paternity when necessary and by using appropriate State statutes and legal processes;

-- 303.5, which requires, as a standard of program operation, that the IV-D agency "attempt" to establish paternity; and

-- 303.6, which requires, as a standard of program operation, that the IV-D agency, among other things, obtain arrearages.

It has been our view since the inception of the program that the statutory and regulatory scheme described above was sufficiently broad and flexible to allow States some discretion in determining which cases should be pursued all the way to a legal determination of paternity, all the way to a court order of support, and all the way in obtaining arrearages. To interpret the law and regulations otherwise would result in an impossible situation--similar to requiring a prosecutor to go to court on every single complaint referred to his office.

However, we have been advised by the Office of the General Counsel that they interpret the regulations as requiring the IV-D agency to establish the support obligation, in every case, either

through court order or other legal process. Therefore, in order to avoid misunderstanding or impractical requirements, we intend to propose, in the near future, regulations which will clarify the matter. The proposal will be designed to authorize specifically the IV-D agency to meet its statutory responsibility without going to court in every case and without pursuing every arrearage to the utmost. The proposal will also be designed to prevent the IV-D agency from escaping its responsibility to establish paternity and secure support in those cases in which it is reasonably possible to do so.

Louis B. Hays

CC: OCSE Regional Representatives

OCSE-PIQ-77-09

November 18, 1977

Joseph E. Steigman
Regional Representative
Office of Child Support Enforcement
Region II

Deputy Director
Office of Child Support Enforcement

Single and Separate Organizational Unit and the Financial Function

This is in response to your memorandum of October 28 regarding single and separate organizational unit and the performance of IV-D fiscal functions at the local level.

The single and separate organization unit issue is one that has not yet been resolved. We hope to resolve this issue during the meeting review and reconsideration of existing regulations.

Any Central Office statement on single and separate organizational unit will allow IV-D fiscal functions to be performed outside of the IV-D unit at the local level as long as the IV-D unit is responsible and accountable for the proper, efficient and effective conduct of such fiscal functions. The IV-D unit must also review and approve all financial reports prepared by any non-IV-D fiscal unit in order to insure the applicable program requirements are met.

Louis B. Hays

CC: Regional Representatives

OCSE-PIQ-77-10

December 14, 1977

Mr. Edwin H. Steinmann, Jr.
Supervisory Counsel
Office of Support Enforcement
Division of Family Services
Broadway State Office Building
Jefferson City, Missouri 65101

Dear Mr. Steinmann:

This letter is in response to your telegram of December 12, 1977, requesting the position of the Department of Health, Education and Welfare (which agency is charge with the administration of child support enforcement provisions of title IV-D of the Social Security Act) concerning the meaning of the assignment provision contained in 42 USC 602(a)(26)(A). Specifically, you asked what is required to be assigned arrearages only, or arrearages, current support and future support? You asked, further, whether any State submitted a State plan indicating therein that the State requires and assignment of arrearages only, and if not, whether the Department would have approved such plan if one had been submitted?

Section 602(a)(26)(A) reads as follows:

> "(26) provide that, as a condition of eligibility for aid, each applicant or recipient will be required -
> (A) to assign the State any rights to support from any other person such applicant may have (i) in his own behalf or in behalf of any other family member for whom the applicant is applying for or receiving aid, and (ii) which have accrued at the time such assignment is executed...."

It is our position that 42 USC 602(a)(26)(A) requires an assignment of <u>any</u> right to support that an applicant or recipient of Aid to Families with Dependent Children (AFDC) might have. This would include past, current, and future support rights. The Congress further specified that the assignment was to cover any other family member applying for assistance and any support rights that had accrued prior to the application for assistance.

The position that section 602(a)(26)(A) provides for a continuing assignment, is supported by the legislative history of Public Law 93-647 as contained in Senate Report 93-1356, 93rd Congress, 2nd Session, accompanying H.R. 17045. This report, on page 49, states that, "The assignment of support rights will continue as long as the family continues to receive assistance." This is because "The Committee believes that the most effective and systematic method for and AFDC family to obtain child support

from a deserting parent is the assignment of the family support rights to the State government for collection." (Senate Report 93-1356, page 49.)

We believe that this language clearly indicates that Congress, in exacting 42 USC 602(a)(26)(A), intended that the assignment executed by an applicant for or recipient of AFDC would be of a continuing nature and would cover current and future support rights as well as those that accrued prior to the execution of the assignment. If only accrued support rights were assigned at the time of application for AFDC, then every month recipients of AFDC would be required to execute new assignments so that support could be paid to the State IV-D agency. This would place an undue burden on AFDC recipient. It would also interfere with the on-going collection activity required by 42 USC 654(5) and 657. Thus, the assignment executed by the applicant for or recipient of AFDC must include support obligations that become due after the assignment is made.

All States, including Missouri, have approved State plans indicating that all support rights are assigned, including current and future support in addition to arrearages. No State has submitted a plan indicating an intention to require an assignment of arrearages only. If a State had submitted such a plan it would not have been approved because, in our view, it would conflict with the statute and would prevent the State from implementing its IV-D program in compliance with the applicable statutory requirements.

I trust this answers your inquiry. Please let me know if I may be of additional assistance to you.

Sincerely yours,

Louis B. Hays
Acting Director
Office of Child Support
Enforcement

OCSE-PIQ-77-11

21 DEC 1977

Mr. Deppish Kirkland III
Assistant District Attorney
Eastern Judicial Circuit
District Attorney's Office
Child Support Recovery Division
129 Abercorn Street
Savannah, Georgia 31401

Dear Mr. Kirkland:

I hope you will accept my apology for failing to respond to your letter of July 15, 1977. Although I remember reading it and agreeing with your concern, the letter was apparently misplaced in the rush of business and was never answered. I recently obtained another copy of your letter as a result of correspondence with Senator Talmadge.

As I said, I agree completely with your concerns about attempts to bring all URESA cases into the IV-D system in order to obtain Federal funding. Unfortunately, I feel there is little the Federal Government can do to remedy this situation. Failure of a law enforcement official to enforce a URESA action in the absence of a IV-D application may constitute a violation of his statutory duties. Such failure might also be considered a denial of equal protection. However, under present Federal law we do not believe we have the authority to require law enforcement officials to fulfill their URESA responsibilities outside of the IV-D program.

Our regional offices are aware of this problem and are attempting to work with the States to correct it on a voluntary basis. Since this is a matter usually under the jurisdiction of local officials, we will appreciate your efforts in contributing to the solution of this situation.

I sincerely appreciate your interest, and I again apologize for the delay in responding.

Sincerely yours,

Louis B. Hays
Acting Director
Office of Child Support Enforcement

OCSE-PIQ-78-01

9 FEB 1978

TO: Charles H. Post
Acting Regional Representative
Office of Child Support Enforcement
Region IV

FROM: Deputy Director
Office of Child Support Enforcement

SUBJECT: Georgia Contract with the State Law Department

This is in response to your memoranda of June 10 and September 29 requesting our determination of the nature of Georgia's memorandum of understanding with the State Law Department.

This office has reviewed the Georgia memorandum of understanding and has concluded that it is a cooperative agreement as provided for under 45 CFR 302.34. This type of agreement is to be used when a IV-D agency purchases services from State or local courts or law enforcement officials. The State of Georgia does not have the option of utilizing a cooperative agreement or a purchase of service agreement when entering into a contract with the State Attorney General. Under the IV-D program, Federal funds are only available to reimburse the costs incurred by courts or law enforcement officials when these costs are incurred pursuant to a cooperative agreement as required by 45 CFR 302.34. A purchase of service agreement is to be utilized when the IV-D agency enters into a contract to purchase services from other types of public and private agencies or individuals.

Since this is a cooperative agreement, FFP can only be claimed consistent with the requirements of, and subject to the limitations contained in 45 CFR 304.21. The State should be informed that FFP is not available for March because the agreement was not signed until after the beginning of the next calendar quarter.

In this instance, the State wishes to claim attorneys' salaries at a rate of $20-35 per hour. The attorneys are State employees, paid a fixed annual wage that can be converted to a fixed hourly rate. If the State claims reimbursement based on an hourly salary rate, it must be equivalent to the hourly costs (i.e. salary and fringe benefits) the State incurs in paying the employee. See section 455 of the Act. This rate must not fluctuate depending on the program serviced. See 45 CFR Part 74, Appendix C, Part II, B, 10, b.

Louis B. Hays

PIQ-7801 June 10, 1977

Mr. James B. Cardwell
Director, Office of Child Support Enforcement

TO: ATTN: Mr. Louis B. Hays, Deputy Director
Office of Child Support Enforcement

FROM: Charles H. Post
Acting Regional Representative

SUBJECT: Georgia Contract with State Attorney General

The State agency recently responded to a Regional Office request, dated May 11, 1977, for clarification relating to the type of arrangement made with the Attorney General's office for IV-D services.

The State agency response, dated May 16, 1977, advised that this was a purchase of service contract for the provision of support enforcement activities on both AFDC and non-eligible cases. This involves forty-two, part-time Special Assistant Attorneys General for services throughout the State for the quarters of January through June, 1977 at the cost of $50,000.

The Regional Office questions the validity of entering into a purchase of services contract when the other party is a law enforcement official according to the Federal Regulations for Federal financial participation, CFR 304.21 which delineates "Law Enforcement Officials."

We note the following question because the time limit for FFP under CFR 304.21 is more restrictive than under 45 CFR Part 74 which covers purchases of service contracts.

Question:

When a law enforcement agency is involved, does the State have the option to enter into a cooperative agreement or a purchase of services contract?

An early response will be appreciated.

OCSE-PIQ-78-02

22 FEB 1978

Garth Youngberg
Regional Representative
Office of Child Support Enforcement
Region VIII

Deputy Director
Office of Child Support Enforcement

Payment of Interstate Incentives when No Referral has been made by the IV-D Agency

This is in response to your telephone request of November 28 regarding the payment of incentives when collections are received from another State on behalf of an AFDC case for which an assignment has been taken but for which no referral for action has been made by the IV-D agency to the other State.

As you describe the problem, South Dakota has been asked by a District Attorney in California to pay incentives on child support collections from an absent parent residing in California and transmitted to South Dakota on behalf of an AFDC recipient family. The South Dakota manual of procedures currently restricts payment of interstate incentives to those URESA cases which have been referred to another State for action.

Nothing in law or regulation requires that the payment of incentives to another State may be contingent on an original referral by the State receiving the collection. Section 458 of the Act states that incentives shall be paid "when... one State makes, for another State, the enforcement and collection of the support rights assigned under section 402(a)(2b) (either within or outside of such State)..." In addition, for incentives to be paid, the collection must be made pursuant to the State plan. Our review of the South Dakota State plan and State regulations (Chapter 67:18:01:34-41) reveals no requirement that South Dakota must have referred the case to another State in order for that other State to be eligible for incentive payments.

Louis B. Hays

OCSE-PIQ-78-03

June 22, 1978

Mr. Charles Post
Acting Regional Representative
Office of Child Support Enforcement

Deputy Director
Office of Child Support Enforcement

The Allowability of Individual Membership in the National Reciprocal Family Support Enforcement Association

This is in response to a question raised by Carita Womack of you staff regarding limitations on FFP for individual memberships in the National Reciprocal Family Support enforcement Association (NRFSEA).

The State of Alabama is presently contemplating purchasing individual memberships in NRFSEA. It is presently possible to purchase either individual or general membership is $50.00. At this amount the annual cost of NRFSEA membership for District Attorneys and their legal staff in the State of Alabama will be $10,000 if all elect to join. When FFP is eventually provided for the administrative costs of Clerks of Court, their membership dues would also be reimbursable at the 75 percent rate, necessitating substantial Federal expenditures.

FFP is limited by §304.20(b) to services and activities which are determined by the Secretary to be necessary expenditures properly attributable to the Child Support Enforcement program (emphasis added). Individual memberships in an organization could well be properly attributable to the IV-D program if the benefits form such membership are related to the child support program. However, such costs do not seem to be necessary if the same benefits, i.e., membership, participation and education for District Attorneys and membership. Furthermore, 45 CFR part 74. Appendix C, part II B19 states that the cost of membership in civic, business, technical and professional organizations is allowable if, inter alia, the expenditure is for agency membership.

Therefore, Federal financial participation is limited to general membership in professional organizations such as NRFSEA.

Louis B. Hays

OCSE-PIQ-78-04

July 25, 1978

Arlus Johnston
Regional Representative
Office of Child Support Enforcement
Region VI

Deputy Director
Office of Child Support Enforcement

Role of IV-D when Child Receives SSI

This is in response to your inquiry of October 21, 1977 with regard to child support paid on behalf of a child receiving SSI but not AFDC whose caretaker relative is receiving AFDC.

We agree with your opinion that, since the custodial parent of the SSI recipient child is neither applying for nor receiving aid on behalf of that child pursuant to Section 402(a)(26)(A) and 45 CFR 232.11, any assignment of support rights would not be applicable to the SSI recipient child. Thus, the IV-D agency would only be authorized to act on behalf of that child and receive FFP for its activities if an application for non-AFDC child support services were filed.

The IV-A agency is not required to provide prompt notice to the IV-D agency pursuant to 402(a)(11) and 45 CFR 235.70, because the IV-A agency has not furnished AFDC with respect to the SSI recipient child.

If the IV-D agency collects child support in such a case pursuant to a non-AFDC application, the money is paid to the family with any appropriate recovery of costs. If support on behalf of the SSI recipient child is received by the IV-D agency without a non-AFDC application, the collection may not be distributed pursuant to Section 457 because there is no assignment covering the collection. We agree with your opinion that the collection would be paid to the family on behalf on the child and be considered income consistent with the policies applicable in determining benefits under the SSI program.

I would also like to point out that, while the rights of SSI recipients to support are not assigned under Section 402(a)(26), their rights to medical support may be assigned pursuant to Section 1912(a)(1)(A).

You have also expressed concern about the treatment of cases in which one of two or more AFDC recipient children becomes ineligible for AFDC and leaves the assistance unit. In such a case the rights of that child are no longer covered by an assignment and the IV-D agency may only receive FFP if there is a

non-AFDC application. The support rights of the child(ren) still in the assistance unit are, of course, assigned and must be referred to the IV-D agency and acted on. If the child leaving the assistance unit has the same absent parent as the child(ren) still on AFDC, any enforcement action taken by the IV-D agency on behalf of the AFDC recipients will, as a side effect, benefit the non-AFDC child. Because FFP is available for the provision of both AFDC and non-AFDC services, no attempt should be made to allocate IV-D costs between the two categories in this situation. If there is no application for non-AFDC IV-D services, costs must be pro-rated.

Any collection received from one obligor as support paid on behalf of children, some of whom are in the assistance unit and some of who are not, should be treated as follows. If the court or administrative order specifies amounts to be paid per child, the child support paid on behalf on non-AFDC recipients should be paid to the family and considered income consistent with the policies applicable in determining SSI benefits. The amounts paid on behalf of the AFDC recipients should be treated as IV-D collections. If the amount received is less than the monthly obligation or if the order does not specify amounts to be paid per child, the allocation of collections and distribution is left to State discretion.

Louis B. Hays

OCSE-PIQ-78-05

JUL 28 1979

Ms. Barbara B. Blum
Commissioner
New York State Department
of Social Services
40 North Pearl Street
Albany, New York 12243

Dear Ms. Blum:

I appreciate your letter of July 12, 1978, expressing concern over the OCSE Audit Division's procedures for exit conferences and the written audit reporting process. The Audit Division's procedures in these areas, as described in 45 CFR 305, do not necessarily parallel those of other Federal audit groups. As you are aware, the HEW Audit Agency procedures require exit conferences and interim audit reports at different time points within the audit process than that of the OCSE Audit Division. I would like to explain our audit process as required in 45 CFR 305.

45 CFR 305.12(b) states that an exit conference will be held prior to the conclusion of the audit field work. The purpose of this informal conference is to brief State IV-D officials on the audit field work completed to date and discuss any preliminary audit findings. The State officials should present, at the conference or shortly thereafter, any additional information they believe the auditors should consider prior to finalizing the preliminary audit findings.

The Audit Division hopes to verify at this informal exit whether the facts the auditors have gathered to date are accurate and complete. Hopefully, any areas warranting additional audit effort, because of incorrect or incomplete data, can be identified and/or resolved prior to reducing the tentative audit findings to writing.

After the informal conference and completion of the audit field work, 45 CFR 305.12(c) requires that an interim audit report be submitted to the State IV-D agency requesting written comments within 45 days. This report will consider any issues discussed at the informal exit or additional audit field work performed after the conference. The comments received from the State IV-D agency on the interim report will be considered and/or included in the final audit report.

The informal exit conference, as required by 305.12(b), will provide State officials an opportunity to discuss the audit results to date prior to reducing tentative audit findings to writing. This should result in a more accurate and complete

interim audit report, improve and expedite the audit reporting process, and effectively accomplish the Reporting Standards as promulgated by the Comptroller General of the United States in the "Standards for Audit of Governmental Organizations, Programs, Activities, and Functions" as required in 45 CFR 305.10(b).

Should you have any questions concerning the 0CSE audit process, please feel free to contact Mr. James B. Durnil, Director, OCSE Audit Division, on (202) 653-5385.

Sincerely yours,

Louis B. Hays
Deputy Director
Office of Child Support
Enforcement

OCSE-PIQ-78-06

To: Joseph E. Steigman AUG 14 1978
Regional Representative
Office of Child Support Enforcement
Region II

From: Deputy Director
Office of Child Support Enforcement

Subj: Maintenance of Separate IV-D Records

This is in response to your inquiry requesting clarification of law and regulations concerning separate maintenance of IV-D case records transmitted March 3, 1977.

According to Federal legislation, a State plan for child support must provide that the State will comply with such requirements and standards as the Secretary determines to be necessary to the establishment of an effective program (Section 454(13) of the Act). At 45 CFR 303.2 one such standard is prescribed with regard to the maintenance of case records. The IV-D agency must, immediately upon referral or application, establish a case record which will contain all information collected pertaining to the case. The case record for practical purposes must be interpreted to mean the case folder because of the requirement that the case record will contain information including several specified documents.

At 45 CFR 302.15(a)(1) the State is required to provide in its plan that the IV-D agency will maintain records necessary for the proper and efficient operation of the plan. Although that regulation does not specifically require that separate IV-A and IV-D records be maintained, in the opinion of the Office of General Counsel, it is well within your power to require maintenance of separate case records where such a requirement is, in your opinion, necessary for the efficient operation of the State plan. Therefore, if New Jersey's refusal to maintain separate IV-D records has an adverse impact on the program, it is within your discretion to require the maintenance of separate records. This opinion is further supported by the maintenance of case records requirements of 45 CFR 303.2.

Your compromise solution, allowing the State to maintain IV-A and IV-D case records in the same folder is acceptable only if, in your opinion, it does not have an adverse impact on the proper and efficient operation of the plan and provides for the necessary access to the IV-D case record by IV-D agency staff.

Louis B. Hays

OCSE-PIQ-78-07

August 16, 1978

Richard W. Lewis
Regional Representative
Region IX
Office of Child Support Enforcement

Deputy Director
Office of Child Support Enforcement

Assigned vs. Unassigned Arrearages

This is in response to your request of December 22, 1977 for clarification of the policy applicable to the distribution of arrearages once a family becomes ineligible for assistance.

Public Law 95-171, signed into law on November 12, 1977 (see IM-77-22), amended section 457(c) of the Act. These are the same amendment that were proposed in H.R. 7200. The amendment to section 457(c)(1) provides that amounts collected on the current month support obligation, in the first five months following ineligibility, shall be paid to the family. In addition amounts collected with respect to prior month support obligations shall be used to reimburse assistance with any excess paid to the family.

The amendment to section 457(c)(2) provides that collections made on the current month support obligation shall be paid to the family. The amendment and the statutory provision are silent concerning the disposition of amounts collected during this period on prior month support obligations; therefore, in distributing these amounts, the requirements of 45 CFR 302.51(f) must be met.

If an individual receiving services pursuant to section 457(c)(2) subsequently applies for services pursuant to section 454(6) and 45 CFR 302.33, the statute and regulations are silent concerning the disposition of collections made. However, the State continues to have an obligation to collect unpaid support with respect to the period during which the family was receiving assistance pursuant to 45 CFR 302.51(f). In this situation, the distribution of collections made on prior month support obligations is left to State discretion. However, States should treat collections made in all cases uniformly.

Louis B. Hays

OCSE-PIQ-78-08

Collection of Support Payments in Foreign Countries

NOV 8, 1978
Mr. J.E. Paulus, Supervisor
Child Support Division
Ashtabula County Department of Public Welfare
2036 Prospect Road
Ashtabula, Ohio 44004

Dear Mr. Paulus:

This is in response to your September 7 letter to the Office of the Attorney General. Please accept my apology for the delay in responding.

As you know, the Child Support Enforcement program is not enforceable in foreign countries. However, if the father owns any property or has bank accounts in the United States, it may be possible to attach these for child support. Also, if he is working for an American company abroad, which maintains its headquarters in the United States, it may be possible to attach his salary.

I hope this information is helpful to you.

Sincerely yours,

Louis B. Hays
Deputy Director
Office of Child Support
Enforcement

ASHTABULA COUNTY
DEPARTMENT OF PUBLIC WELFARE

September 7, 1978

Office of the Attorney General
10th Street & Pennsylvania Avenue, N.W.
Washington, D.C. 20530

Dear Sirs:

We have a situation involving a child who is receiving public assistance here and his father (who is not providing child support) is believed to be in the country of Iran. The child's father is a United States citizen.

If location of the child's father was successful, is there any feasible/legal method of collecting support payments in this situation?

Your prompt attention and reply would be appreciated. We wish to thank you in advance for your consideration in this matter.

Respectfully,

ASHTABULA COUNTY WELFARE DEPARTMENT

J. E. PAULUS, Supervisor
Child Support Division

JEP/krm

OCSE-PIQ-78-09

DEC 4 1978

To: Ira Goldstein DEC 4 1978
Director
Division of Policy, OFA

From: Deputy Director
Office of Child Support Enforcement

Subj: Good Cause Regulations - Your memo of November 27

I appreciate OFA's desire to avoid or minimize good cause implementation problems. Attaining this goal will benefit both the IV-A and IV-D programs. While undoubtedly some questions will arise concerning details of the regulation, I am primarily concerned with several major issues.

States that have not yet implemented good cause must be encouraged to do so as quickly as possible. As you know, the October 3, 1978 final regulations are to go into effect December 4, 1978. States that have not fully implemented the regulations will be particularly vulnerable to suits by those AFDC recipients who are required to cooperate but are not given the opportunity to claim good cause. Such a suit is likely to result in the State having its enforcement of the Section 402(a)(26)(B) cooperation requirement enjoined, which would then raise a compliance issue. Implementation of the good cause exception must be expedited as much as possible.

We believe there was some misunderstanding as to the application of the prior good cause regulation, and this might carryover to the new regulation. The good cause provision only applies as an exception to the statutory requirement that an AFDC applicant or recipient cooperate in establishing paternity and securing support (Section 402(a)(26)(B)). The good cause exception does not apply to the taking of an assignment required by Section 402(a)(26)(A) or to the IV-A agency providing prompt notice to the IV-D agency of the furnishing of aid required by Section 402(a)(11).

The regulations are designed to permit the States an option. They can either bring up the cooperation issue, including good cause, at the time of application, in which case the time frames provided for in the regulation would permit a good cause determination prior to an initial eligibility determination; or the States may avoid the good cause issue until the caretaker's cooperation is actually required and if her
cooperation is never needed a good cause issue will never

arise.

Once a good cause issue has arisen, the IV-A agency needs to base its determination on a fair application of the provisions of the regulations. Situations must be avoided where State policy or practice results in findings of good cause merely because the claim was made. Determinations that cooperation should be excused because good cause exists must only be made on the basis and under the conditions provided for by the regulations.

In order to insure that the good cause provisions are not being abused, both IV-A and IV-D regional staff should provide "early-warnings" in
the event that good cause claims or findings that good cause exists are being made in a disproportionate number of cases.

In addition, the Department is committed to carefully monitoring the operation of this provision. This will require the institution of a reporting system to gather accurate data in a timely manner. My staff is available to assist in the development of the reporting requirements.

I appreciate this opportunity to suggest these areas that present potential implementation problems. Successful operation of the good cause regulations will insure that applicants and recipients are not harmed by the support enforcement process and that the cooperation requirement is enforced in appropriate cases and at the same time does not result In disruption of either state IV-A or IV-D activities.

Louis B. Hays

OCSE-PIQ-79-01

January 2, 1979

Harvey Leroux
Acting Regional Representative
Office of Child Support Enforcement
Region VII

Deputy Director
Office of Child Support Enforcement

Availability of Services to Non-AFDC Applicants Who Have Legal But Not Physical Custody of Children

This is in response to your March 14 request for our guidance on applicable policy when an applicant for non-AFDC services has legal custody but not physical custody of the child to be supported.

I agree with your position that this program has no role in the resolution of "child snatching" cases. Nevertheless, the statute at 454(6) is quite clear that services under title IV-D shall be made available to any individual. There is no authority to deny services to these individuals when there is a genuine child support enforcement problem. As a practical matter, a IV-D agency might find it difficult to refuse an applicant, because the custodial parent may not inform the agency that the child is not with the legal custodian.

When a child support arrearage has accrued prior to the time the absent parent took physical custody of the child, action may be taken to enforce collection of that arrearage. When no such arrearage exists, the availability of mechanisms to enforce child support which was payable after the absent parent took the child from the custodial parent is a matter of State law. For example, if, under State law; individuals may maintain an action for non-support of a child without having to prove that they have physical custody of the child, then IV-D location services could be made available to these individuals in order to enable them to bring the non-support action. If under State law, the "child snatching" negates the obligation to support, no child support enforcement services may be provided under IV-D. This may not be interpreted to allow the IV-D agency to become involved in child custody cases which may follow the location of the absent parent.

Recent Congressional activity indicates that problems associated with "child snatching" by absent parents are

increasing and may well be dealt with at the Federal level. I believe this expression of legislative interest makes it even more difficult for us to totally ignore cases such as you describe.

OCSE-PIQ-79-02

January 11, 1979

Richard F. Marks
Coordinator
Child Support Enforcement Program
Milwaukee County Courthouse, Room 9
901 North 9th Street
Milwaukee, Wisconsin 53233

Dear Mr. Marks:

This is in response to your letter of October 24 requesting information on whether your draft amendment to the present Wisconsin State statute, allowing for the publication in newspapers of the names of persons who have contemptuously defaulted in paying child support, violates Federal child support laws or regulations.

While your letter is not specific about the source of names, we assume you would be using court records which are generally public. If information you propose to publish is a matter of public record we know of no Federal law or regulation prohibiting such publication. This office would have no concern in such publication unless State or local IV-D staff were involved.

Neither the Federal statute nor regulations address the issue of disclosure of information concerning absent parents. Nevertheless, as a matter of public policy we do not believe that any information from IV-D agencies about absent parents should be published. While a decision on the use of IV-D information is a prerogative of the State IV-D agency, we would remind you of the safeguarding procedures relative to information provided by the Federal Parent Locator Service. Furthermore, any release of information obtained through the Internal Revenue Service would result in criminal and civil penalties against supervisory personnel involved in such release.

We are unable to determine how this endeavor will benefit the IV-D program. In addition, we are alarmed that the publication of names of defaulters may unintentionally lead to the disclosure of information that would cause embarrassment to all family members.

We hope this information will be useful.

Sincerely yours,

Louis B. Hays
Deputy Director
Office of Child Support Enforcement

OCSE-PIQ-79-03

January 11, 1979

To: Garth A. Youngberg
Regional Representative, OCSE
Region VIII - Denver

From: Deputy Director
Office of Child Support Enforcement

Subject: A) Payment of Child Support Conditional Upon Visitation Rights
B) Assignment of Support Rights and Arrearages

This is in response to your memoranda of June 22 and 23, 1978, in which you requested our opinion on the questions set forth in this memorandum. The questions you submitted in your June 22 memo are identified with the letter A; those included in your June 23 memo, the letter B.

A1) Does a parent's refusal to comply with a court order, either by failing to send children to another State to visit an absent parent or to grant visitation if the absent parent comes to the State in which the children live, violate the cooperation requirement of the Social Security Act?

Neither the Social Security Act nor 45 CFR 232.12 direct an AFDC applicant to grant visitation rights as a cooperation requirement.

A2) Your second question is whether a State, because of the assignment of support rights, has an obligation to see that other conditions of a support order are met?

If by "other conditions of a support order" you mean visitation rights, our position is that if an AFDC recipient refuses to follow a court order, it is a matter that should be resolved by the court. Since compliance with visitation requirements of a court order is not a cooperation requirement we do not believe it is the duty of the IV-D or IV-A agency to require a client to grant visitation rights. If a judge conditions the payment of child support upon compliance with the visitation provisions of a court order, the State should appeal the decision or attempt to persuade the Judge to reverse the decision.

OCSE is currently planning to formulate a model brief to be used by IV-D attorneys to petition Judges to separate support from visitation rights. In this regard the IV-D

agency should also consider meeting with judges and court officials to emphasize the objectives of the IV-D program and the consequences of conditioning child support payments upon visitation rights.

B1) You requested an opinion as to who has the right to retain amounts collected which represent payment on arrearages when more than one State has been given an assignment of support rights.

As implied in your memorandum, the assignment of support rights held by Colorado remains in effect for any unpaid amounts covered under the assignment even after Colorado has terminated public assistance. The assignment given to California would cover the current child support due and any arrearages which accumulate during the period public assistance is being provided by California. Therefore, if the arrearage collected by Colorado is for the period during which its assignment was in effect, then Colorado has the right to retain the arrearage payments up to the total support obligation due, not to exceed the total amount of public assistance it has granted. Of course, a collection made by Colorado which represents payment on the current monthly support obligation must be sent in its entirety to California.

If the court orders a monthly payment on arrearages without specifying the State to which the arrearage is to be paid, or the period of time against which the payment should be applied, we believe that the States involved should come to an Agreement as to how the payment will be allocated.

Louis B. Hays

cc: Regions

OCSE-PIQ-79-04

January 16, 1979

Honorable Warren G. Magnuson
United States Senate
Washington, D.C. 20510

Dear Senator Magnuson:

This is in response to your request of October 20 for a report on the case presented to you by Richard D. Van Wagenen of the Association of Washington State Legal Services Programs. Mr. Van Wagenen was concerned about the situation of who is receiving child support through the State of Washington's Child Support Enforcement Agency.

was formerly an AFDC recipient. In December 1977, became ineligible for AFDC. At that time, there was a substantial child support debt owed to the State by the absent parent of children and substantial amounts of AFDC paid by the State for those children that had not been reimbursed.

The distribution of collections made for an individual who is no longer eligible for AFDC depends on the relationship that individual maintains with the State IV-D program. For the first five months beginning with the first month in which no AFDC payment is received by the family, the State of Washington has opted to continue to collect support from absent parents on behalf of former recipients of assistance as permitted by 42 U.S.C. 657 (c)(1). Any child support collections made pursuant to this provision must first be applied to satisfy the current month's support obligation (See 42 CFR 302.51(a) and (f)(4) and this amount is paid to the family. Any excess over the current month's support obligation must be used to reimburse any assistance payments that have not yet been reimbursed. (See 42 USC 657(c)). No fee can be charged for providing child support enforcement services pursuant to this section of the Social Security Act.

Services may also be provided to former AFDC recipients who authorize collection beyond the five month period, under 42 U.S.C. 657(c)(2). However, the State of Washington has chosen to forego this option. As a result, it is not applicable to the case.

Any time after an individual becomes ineligible for AFDC, he or she may apply for child support enforcement services under 42 U.S.C. 654(6). Any amounts collected would first be applied to satisfy the current month's support obligation and payments on the current month's support obligation would be sent to the family. Any excess would be applied to prior months' support obligation. If the individual receiving non-AFDC services under 654(6) formerly received AFDC and the State had not reimbursed this AFDC

debt as required by 45 CFR 302.51 (f), then both the recipient of child support enforcement services and the State may have a right to a Page 2 - Honorable Warren G. Magnuson

portion of collections made on prior month support obligations. Since the statute and the regulations are silent concerning the priority to be given to the parties who have a competing interest in any funds collected, OCSE has left the disposition of these arrearage collections to State option.

When making collections under 42 U.S.C. 654(6), a State may charge an application fee and deduct any costs incurred in excess of the fee from any collection made before paying that amount to the family. The State of Washington has elected to deduct costs from any recoveries made.

According to the facts presented in your letter, is receiving support enforcement services pursuant to 42 U.S.C. 646(6). Although collection services were available to her pursuant to section 657(c)(1) without application, applied for non-AFDC services during the month of December. Any collections made with respect to case must first be applied to satisfy the current month's support obligation and paid to her. Costs incurred in making this collection may be deducted from the amount to be paid to .

If an amount in excess of the current month's support obligation remains after collections are applied as described above, this amount shall be used to satisfy any prior month's support obligations. The State of Washington has an interest in these amounts to the extent that any past month's assistance payments have not been reimbursed. has an interest in these collections to the extent that has failed to receive current support payments since she ceased receiving AFDC. Since both parties, the State and , have an interest in these arrearage collections and since the statute and regulations are silent concerning their disposition, the disposition of these funds is left to State option.

Our Seattle Regional Office has been informed of the correct policy, as described in this memo, to be applied in case. This policy has also been communicated to the State of Washington. The Office of Child Support Enforcement will be working with the State to implement this policy as effectively as possible.

Sincerely yours,

Louis B. Hays
Deputy Director
Office of Child Support

Enforcement

OCSE-PIQ-79-05

January 16, 1979

The Honorable David F. Emery
House of Representatives
Washington D.C. 20515

Dear Mr. Emery:

This is in response to your request of December 21, 1978, for information concerning Federal law which regulates the qarnishment of child support. Federal law regarding garnishment for any purpose is found in the Consumer Credit Protection Act at 15 U.S.C. 1671 et seq. This law, originally enacted in 1970, was amended by Public Law 95-30 in 1977.

Prior to the 1977 amendments, there was no Federal limitation on the maximum portion of an individual's wages that might be garnished to satisfy a child support debt. The 1977 amendments established percentage limitations on the maximum portion of an individual's wages that may be garnished to satisfy such a debt. See 51 U.S.C. 1673(b). States must implement these Federal requirements by enacting State laws consistent with them. If a State law is more restrictive than the Federal limitation (the State only permits a smaller portion on an individual's wages to be garnished) the State would not be in violation of Federal law.

The proposal of Mr. Paradis, to use a percentage limitation instead of a flat dollar amount, is consistent with Federal law. However, it may require a change in Maine statutes to implement a percentage limitation on garnishments. I am not aware of the content of Maine law in this regard but there is certainly no Federal impediment to implementing Mr. Paradis' suggestion.

If you have any further questions on this matter, do not hesitate to contact Mr. John N. Sacchetti of the Office of the General Counsel at 643-2910. I have enclosed a copy of the relevant statute for your information.

Sincerely yours,

Louis B. Hays
Deputy Director
Office of Child Support Enforcement

Enclosure

OCSE-PIQ-79-06

To: Mr. Joseph E. Steigman January 31, 1991
Regional Representative, OCSE

From: Deputy Director

Subject: Federal Financial Participation for IV-D Staffing

This is in response to your memorandum of March 14, 1977 regarding Regional authority to restrict the availability of Federal Financial participation (FFP) in the IV-D program for staff employed by IV-D units or staff engaged in IV-D activities through a cooperative or purchase of service agreement. Please accept my apology for the delay in responding.

Under Section 454(13) of the Act, the State plan must provide that the State will comply with such requirements and standards as the Secretary determines necessary for the establishment of an effective program. Furthermore, 45 CFR 304.20 states that 75 percent FFP is available for necessary expenditures under the State plan It is our opinion and the opinion of the Office of General Counsel that, although the above citation gives no direct authority to limit the number of State IV-D staff per se, it gives clear authority for preventing States from making unnecessary expenditures. Thus, there is authority to prohibit a State from inflating the IV-D staff where the current staff is not operating efficiently and where there is evidence that the increased staff is largely a means to guarantee employment for individuals about to be displaced by cutbacks in other programs, unless the State pays such staff entirely from State and local funds.

In our judgement, a State can be required to justify an increase in staff as a necessary expenditure to show not only that there is a backlog, but also that the backlog was not the result of an inefficient program. An increase in staff could not be justified as a necessary expenditure if the current staff is inefficient and there is no evidence that such an increase would markedly improve the efficiency and productivity of the IV-D program.

Furthermore, although New York City cannot be informed that their IV-D staff must be limited to a set number of individuals, they can be informed that FFP will not be

available for any extraordinary increase in staff unless such an increase is justified as a necessary-expenditure.

The provisions of 45 CFR 304.21 and 304.22 subject expenditures incurred under cooperative and purchase of service agreements to the criteria of being "necessary" in order for these expenditures to be eligible for FFP. You may, therefore, point out to the State that FFP may be denied for expenditures incurred under these agreements if they are determined as being unnecessary.

Louis B. Hays

cc..Regional Representatives

OCSE-PIQ-79-07

February 13, 1979

To: Mr. Charles H. Post
Regional Representative, OCSE
Region IV - Atlanta

From: Deputy Director
Office of Child Support Enforcement

Subject: Use of Collection Agency to Collect Child Support Obligations

This is in reply to your memorandum of September 14, 1978, regarding the use of collection agencies for IV-D purposes. Since we have no information regarding the nature of the National Revenue Service's proposal to Georgia, we cannot answer specifically. Generally, any purchase of service contract must be let in accordance with the requirements of 45 CFR Part 74, especially subpart P, Procurement Standards.

Approval for a contract of this nature has already been given to another State, subject to the following criteria:

1. A fixed price contract with the commercial contractor whose normal practice is to bill based on a scheduled table of fees.

2. The object of the contract is the recovery of AFDC funds.

3. Other methods to make collections from delinquent parents have not been successful.

Your concern relative to the safeguarding provision of 45 CFR 302.18 and its effect on a contract of this nature is valid. While the restrictions on disclosing information imposed by this regulation do not preclude the utilization of collection agencies for IV-D purposes, there must be a provision in the contract with the collection agency that the contractor will adhere to the regulation. Furthermore, this provision must specify that any information provided by the IV-D agency to the collection agency will be used only to collect child support under the IV-D program and not in connection with any other debt the absent parent may owe which the contractor is engaged in collecting.

If Georgia wishes to let such a contract there must be documentation in the IV-D agency records that the expenditures incurred are necessary and reasonable, as required by 45 CFR 304.22. These expenditures would be eligible for FFP as

administrative costs of the child support enforcement program. Although the amounts claimed may be based on the collections made, the contractor may not deduct the costs from the collections. He is required to transmit the collection in its entirety along with a bill for the services rendered.

It should also be noted that Attachment 1.2A of the State Plan is required to contain a list of any IV-D functions which are performed outside the IV-D agency, with the name of the organization responsible for these functions. The Georgia IV-D State Plan should be amended accordingly.

Louis B. Hays

OCSE-PIQ-79-08

March 7, 1979

To: Daniel Fascione
Regional Representative
Region III

From: Deputy Director
Office of Child Support Enforcement

Subject: FFP for Costs Incurred Pursuant to a Cooperative Agreement

This memorandum is in response to the questions you raised regarding the date from which FFP can be claimed for costs incurred pursuant to a cooperative agreement.

As you know, the regulations at 45 CFR 304.21 provide that federal financial participation is available at the 75 percent rate for costs incurred pursuant to a cooperative agreement. "...as of the first day of a calendar quarter if the agreement is executed prior to the end of the quarter." The situations you presented and our response thereto are as follows:

Situation 1

All parties to an agreement sign that agreement during a quarter. The signed agreement states that the agreement will be effective at some future date either within the quarter in which the agreement was signed or in some later quarter. From what date may FFP be claimed pursuant to the agreement?

Response

If the effective date stated in the agreement is during the quarter in which the agreement is signed then FFP may be claimed from the first day of that quarter. If the effective date stated in the agreement is in some later quarter then FFP may be claimed as of the first day of the quarter in which the agreement is effective. For instance, an agreement is signed in quarter 1 with an effective date in quarter 2. FFP is available from the first day of quarter 2.

Situation 2

An agreement signed by all parties during a quarter made no mention of an effective date. The agreement is subsequently amended to provide for an effective date after the quarter in which the agreement was signed.

From what date may FFP be claimed pursuant to the agreement?

Response

FFP may be claimed from the first day of the quarter in which the amended agreement is effective. For instance, an agreement is signed in quarter 1 and is subsequently amended to have an effective date in quarter 2. FFP is available from the first day in quarter 2. However, in no case may a State receive FFP, pursuant to a cooperative agreement, for periods prior to the quarter in which the agreement was signed regardless of the effective date in the agreement. This would be contrary to 45 CFR 304.21.

Situation 3

One of the parties to an agreement signs it in one quarter. The final party to sign the agreement signs it in the following quarter. From what date may FFP be claimed pursuant to the agreement?

Response

FFP may only be claimed from the first day of the quarter in which the agreement is signed by all parties whose signatures are necessary to create a valid agreement under State statutes. For instance, one party signs the agreement in quarter 1, a second party to the agreement signs in quarter 2, and other parties sign the agreement in a subsequent quarter. FFP may be claimed from the first day of the quarter in which the signatures were obtained from all the parties necessary to create the binding agreement.

Louis B. Hays

OCSE-PIQ-79-09

DATE: March 26, 1979

TO: Arlus W. Johnston
Regional Representative
Region VI

FROM: Deputy Director
Office of Child Support Enforcement

SUBJECT: Letter From the Michigan IV-D Agency to the Oklahoma IV-D Agency

This is in reply to your memorandum of June 6, 1978, in which you requested our concurrence that Oklahoma is entitled to an incentive payment in an interstate transaction by virtue of its changing a court ordered payee from the AFDC caretaker relative to the Michigan IV-D agency. Please accept my apology for the delay in responding.

While Oklahoma's eligibility for the incentive is not based solely on its effecting a change in the court ordered payee, it is certainly the first step toward assuring that the collections resulting from its enforcement efforts will be paid to the Michigan IV-D agency which, in any case, has the legal right to these collections. If Oklahoma sends the support payment directly to the AFDC family and the payment is not turned over to the Michigan IV-D agency, there is no way in which an incentive payment can be made.

If the Oklahoma IV-D agency collects from the absent parent, takes the necessary steps to direct the collection to the appropriate IV-D entity in the State on whose behalf the collection is being made and meets all the criteria stated in 45 CFR 302.52, then it would be eligible for an incentive payment.

Louis B. Hays

OCSE-PIQ-79-10

March 29, 1979

To: Garth Youngberg
Regional Representative, OCSE
Region VIII

From: Deputy Director
Office of Child Support Enforcement

Subject: Treatment of Social Security, VA or Similar Type Benefits Received As Child Support

This is in response to your memoranda of December 4, 1976 and February 22, 1977, requesting clarification of the proper treatment of Social Security and VA benefits received as child support, and the obligation of the IV-D agency to pursue support from parents whose children are receiving these types of benefits. Please accept my apology for the delay in responding.

Section 207 of the Social Security Act specifically prohibits recipients of benefits under the Old Age, Survivors and Disability Insurance (OASDI) program from assigning or transferring their rights to these benefits. Similarly, Section 3101 o£ the Uniformed Services Act prohibits a recipient of benefits due under any law administered by the Veterans Administration from assigning these benefits. Therefore, a caretaker relative is prevented from assigning her or any other family member's rights to these types of benefits when applying for AFDC. In addition, the Social Security Administration and the Veteran's Administration cannot pay these benefits directly to the IV-D agency. In effect, then, these statutory benefits being paid directly to the family are retained by the caretaker relative and considered by IV-A in determining eligibility for, and the amount of, AFDC.

With regard to the pursuit of additional child support directly from an absent parent, the assignment of all legally assignable support rights given to the State allows the IV-D agency to pursue additional child support from an absent parent, or from any other individual legally liable for such support.

Louis B. Hays

OCSE-PIQ-79-11

DATE: April 5, 1979

TO: Charles H. Post
Regional Representative, OCSE
Region IV

FROM: Deputy Director
Office of Child Support Enforcement

SUBJECT: Date Used for Child Support Collections (45 CFR 302.51(a))

This is in reply to your memorandum of July 28, 1978 in which you requested our opinion as to whether the official date of the receipt of collections is the date the support payment is received at the IV-D agency or the date it is received at any collection point.

The date of the collection may be any of the three following dates so long as the State applies it consistently to all cases and transactions involving collections:

a) The date the collection is received at any legal collection point in the State. A legal collection point is the entity recognized under State law.

b) The date the collection is received by an entity operating pursuant to an agreement with the IV-D agency.

c) The date the collection is received by the IV-D agency in which distribution of the collection is accomplished.

Louis B. Hays

OCSE-PIQ-79-12

April 9, 1979

To: Joseph E. Steigman
Regional Representative, OCSE
Region II

From: Deputy Director
Office of Child Support Enforcement

Subject: Right of a IV-D Agency to Seek Child Support Arrearages Which Accrued Prior to the Effective Date of Title IV-D of the Social Security Act

In your memorandum of February 5, 1978, you requested our concurrence with an opinion expressed by your Regional Attorney regarding the above subject. Please accept my apology for the delay in responding.

Section 402(a) (26) of the Social Security Act and 45 CFR 232.11 provide that as a condition of eligibility, an applicant or recipient of AFDC must assign his rights to support (in his own behalf and in behalf of any other recipient/applicant family member) in the future as well as any rights which have accrued at the time such an assignment is executed.

It is our position that the assignment covers any support rights that are due for periods prior to the time when the assignment was made, and that States are required to attempt to collect support obligations owed for these periods and use the collections to reimburse assistance.

While your Regional Attorney explored the possibility that a legal challenge might be initiated against the collection of support rights owed for periods prior to the enactment of the IV-D legislation, we believe our interpretation clearly reflects Congressional intent and is consistent with the legislation. We, therefore, concur with your instructions for States to include under assignment, and pursue, arrearages incurred prior to Title IV-D enactment.

Louis B. Hays

May 1, 1979

To: Charles H. Post
Regional Representative, OCSE
Region IV

From: Deputy Director
Office of Child Support Enforcement

Subject: FFP for IV-D Related Travel Expenses of Judges

This is in response to your inquiry of March 6, 1979 regarding the availability of FFP for travel expenses of judges. It is our position that 45 CFR 304.21(a)(2) would include judges as court staff and the Secretary's proposed symposium as short term training. Thus, FFP would be available for judges' travel to the symposium if their attendance is reasonable and essential and if they are assigned on a full or part time basis to child support functions pursuant to a cooperative agreement.

With regard to judges' travel not related to training, your interpretation of 304.21(b) is correct. Nothing in the regulation prohibits FFP in costs of judges' travel related to IV-D activities so long as the travel does not involve the judicial determination process.

Louis B. Hays

cc: OCSE Regional Representatives

OCSE-PIQ-79-14

DATE: May 29, 1979

TO: Joseph E. Steigman
Regional Representative, OCSE

FROM: Deputy Director
Office of Child Support Enforcement

SUBJECT: Acceptance of Signed URESA Petitions as Applications for Non-AFDC IV-D Services.

This is in response to your request of September 5, 1978, for clarification of the OCSE policy with respect to a responding jurisdiction's acceptance of signed URESA petitions as applications from non-AFDC individuals for the purpose of obtaining FFP for work done on such cases. Specifically, you are concerned about the acceptance of URESA petitions as applications when the initiating State has requirements for accepting a non-AFDC case in addition to the mere filing of a petition.

Your understanding is correct. If the initiating State imposes additional requirements for its acceptance of a non-AFDC case for IV-D services, then the URESA petition alone will not serve as an application in the responding jurisdiction in order to qualify the case as IV-D. If the initiating State has adopted a policy of accepting other than a formal application (as provided by OCSE-AT-76-9), then the responding jurisdiction may treat the case as being IV-D when the URESA petition is signed by the custodial parent. Failing to meet the non-AFDC requirements set by the initiating State would disqualify the case for IV-D FFP in the responding jurisdiction.

Furthermore, even if the initiating State considers a URESA petition as an application for IV-D services, this petition must be initially filed with the IV-D agency, a unit of government operating pursuant to the IV-D State plan, or an agency operating pursuant to a cooperative agreement with the IV-D agency. For example, if a local court in the initiating State has responsibility for the URESA process under State law, but is not under cooperative agreement to perform this function on behalf of the IV-D program, then a URESA petition filed directly with this court by a non-AFDC individual would not be considered a IV-D application. The IV-D agency, in this situation, would not recognize the case as being part of the IV-D program.

As you know, we find the use of a formal application a far more effective way of accepting a case for IV-D services. In any event, the soon-to-be released interstate transaction instructions will help to alleviate this problem.

Louis B. Hays

OCSE-PIQ-79-15

May 31, 1979

Mr. John F. Booth, Jr.
Director
Child Support Programs
Department of Public Welfare
Harrisburg, Pennsylvania 17120

Dear Mr. Booth:

This is in reply to your letter of April 10, 1979 concerning reimbursement for costs of travel by plaintiffs in paternity actions.

There is no provision for grants to a plaintiff under the IV-D program and no FFP would be available for such an expenditure at the 75 percent level. The possibility of such a special grant being permissible under Title IV-A is doubtful, but you might wish to explore the matter with your State IV-A personnel.

It is possible that IV-D FFP might be available for actual travel expenses such as mileage or bus fares. However, such a possibility would have to be cleared with your Regional Representative, on a case by case basis, to allow for a determination as to the necessity of the expenditure under 45 CFR 304.20.

Any further questions you may have should be directed to Mr. Daniel Fascione in his capacity as my representative in Region III.

Sincerely yours,

Louis B. Hays
Deputy Director
Office of Child Support Enforcement

OCSE-PIQ-79-16

DATE: July 3, 1979

TO: Joseph E. Steigman
Regional Representative, OCSE
Region II

FROM: Deputy Director
Office of Child Support Enforcement

SUBJECT: Utilization of IV-D Services in Securing Child Support From Responsible Relatives Beyond The Absent Parent

This is in response to your memorandum dated May 31, 1977, and a follow-up memorandum dated January 22, 1979 in which you raised several questions regarding the need for the IV-D agency to pursue child support beyond the absent parent in those States where the law requires collateral relatives to be responsible for the support of children who become public charges. Please accept my apology for the delay in responding.

Although the Child Support Enforcement program is normally thought of only in the context of absent parents, the language of Section 454(4) (B) of the Social Security Act does provide for applicability to other legally liable individuals. Mandating the IV-A agency to provide prompt notice to IV-D whenever aid is furnished to a case because of desertion or abandonment does not prohibit IV-A from providing notice when aid is furnished due to other factors of eligibility. The language of the statute does allow the State to utilize its IV-D machinery in securing child support from individuals in addition to the absent parent who under State law are legally liable for such support. Under these circumstances, therefore, the IV-D agency should negotiate a referral procedure with the IV-A agency under which referral to IV-D would be made for action against parties who are liable for child support when there is a clear indication that the potential exists for securing such child support. The prompt notice requirement need not be met but notice to IV-D, in any event, can be effected.

Your specific question concerns the pursuit of child support from legally responsible relatives other than parents in a case where eligibility for AFDC is based on parental incapacity and the family is intact. An assignment of support rights is probably not legally required in the case of most intact families. Section 402(a)(26)(ii) provides for the assignment of support rights that have accrued at the time the assignment is

executed. In the normal case there would be no accrued support rights if the family is intact.



The policy issue presented here - that of requiring assignments in situations where collateral relatives are responsible under State law for the support of the child - has not been formally resolved. OCSE has taken the position that an assignment is legally required in this situation. However, since the assignment is a IV-A provision, the issue will be resolved by an Action Transmittal on this subject which we understand OFA is in the process of preparing. Absent a statement from OFA, we cannot definitively advise you on what course of action the States should pursue. We would suggest, nevertheless, that if a State's law requires certain other relatives to provide child support even if the family is intact, and the State has obtained an assignment of support rights from this intact family, then a referral to IV-D would be appropriate in order to pursue support from these relatives.

In any case, whether the State is obliged to obtain court orders against all responsible relatives until the obligation to the State resulting from AFDC payments is satisfied would seem to be a question of reasonableness. Each case should be evaluated based on the extent to which State law specifies those who are liable and, of course, the amount and availability of their resources, including those of the absent parent if there is one. We would expect the IV-D agency to exercise judgement in ascertaining whether it would be cost effective to pursue the various parties involved in attempting to recoup the most it can as reimbursement to the State for the cash assistance that has been granted.

Section 454(4) of the Act provides that any support payments received for a child with respect to whom an assignment is effective are to be paid to the State and distributed in accordance with Section 457. Therefore, support collect received from legally responsible relatives on behalf of a child who is part of an AFDC case would be subject to the procedures outlined in 45 CFR 302.51. As you point out, however, Federal Parent Locator services are only available in securing location information concerning an absent parent.

Louis B. Hays

Attachment

OCSE-PIQ-79-17

August 2, 1979

Attorneys Fees for Collections

Date: August 2, 1979

From: Thomas Hughes
Regional Representative, OCSE
Region I - Boston

To: Deputy Director
Office of Child Support Enforcement

Subj: Attorneys Fees for Collections

This memo responds to your telephone request for our views on Massachusetts's proposal to use private attorneys to collect arrearage amounts. The agreement between the State and the individual attorney would allow the attorney to keep, as his fee, 20% off the top of any amount he collects.

OCSE supports the use of private attorneys, under contract with the IV-D agency, to perform IV-D activities. We believe that if properly utilized, private attorneys can provide an effective and efficient means of collecting monies that otherwise would be ignored. You may want to suggest implementation of such a program on a pilot basis. In this way, the State can evaluate the process, results and costs before going Statewide. Further, the State should consider using the IRS for the collection of arrearages. It may be just as effective and more cost beneficial.

Federal regulations do prohibit the IV-D agency from paying for the services of private attorneys directly out of the amount collected. However, the fee can be based on the amount of the collection. What this means is that the IV-D agency must contract to pay the fee as an administrative cost, for which 75% FFP will be available. To implement this properly, the State should require the attorneys to forward to the IV-D agency the entire amount of the collection along with a monthly invoice derived from the monies collected. In doing this, amounts collected will be distributed pursuant to Section 457 and the attorney still gets his 20% fee. The attached draft material, which we will be using to issue a TEMPO on this subject, provides further guidance on contracting with private attorneys.

Louis B. Hays

Attachment

OCSE-PIQ-79-18

September 10, 1979

Barbara Henderson
Regional Representative
Region X

Deputy Director
Office of Child Support Enforcement

Safeguarding Information

This is in response to your memorandum of August 9, 1979, regarding the applicability of the safeguarding provisions in 45 CFR 302.18 to non-AFDC cases.

As you know, 45 CFR 302.10 places limitations on the use and disclosure of information concerning applicants and recipients of child support enforcement services. That regulation safeguards information maintained by Child Support Enforcement agencies concerning both AFDC and non-AFDC child support cases.

OCSE has never interpreted §302.18 to restrict the disclosure of "public records" by a public official even though the record may be created by, or result from, activities under the IV-D program. For example, records maintained by a court clerk concerning a IV-D case would be disclosable if the records were otherwise considered public.

Since Oregon's definition of public information includes everything that is not safeguarded, then it would appear that the information from non-AFDC case records should be disclosed only in accord with 45 CFR 302.18. However, some of the records in question, for example, those maintained by the clerk of court may actually be "public records" whose disclosure is not restricted by the Federal regulation. It appears that Oregon should carefully reexamine its disclosure policy and identify those classes of records which are safeguarded by 45 CFR 302.18 and those which are disclosable and by whom.

cc:

Louis B. Hays

OCSE-PIQ-79-19

cc: Jim Durnil

September 10, 1979

To: Charles H. Post
Regional Representative, OCSE
Region VI

From: Deputy Director
Office of Child Support Enforcement

Subject: Staffing Requirements in Sparsely Populated Geographical Areas

This is in response to your memorandum of February 5, 1979, concerning staffing requirements in sparsely populated geographic areas. I regret the delay in answering your question.

45 CFR 303.20(e) states that "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 (Social Security) Act."

"Caseworker", "assistance payments function" and "social services function", as applied here are further defined in 303.20(e)(1), (2) and (3). The definition contained in (e)(2) includes activities performed by caseworkers under Titles I, IV-A, X, XIV, and XVI, of the Act and State and local General Assistance programs. Subsection (e)(3) extends the prohibition to individuals providing services under Title XX of the Act. Thus in its full effect, 303.20(e) prohibits delegation of IV-D functions to caseworkers under Titles I, IV-A, X, XIV, XVI, or XX.

As you are aware, however, the second paragraph of sub-section (e) provides for the approval of alternate arrangements "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." This waiver applies to all those individuals who would otherwise be prohibited by this subsection from providing IV-D services.

With respect to those individuals under the Title XIX program, as no mention is currently made in 45 CFR 303.20(e) of either this program or its staff, the prohibition found in this section cannot presently be extended to include these individuals. However, we are in the process of

recodifying our regulations, and will consider extending the prohibition and the accompanying granting of waivers to include Title XIX employees.

Louis B. Hays

OCSE-PIQ-79-20

December 13, 1979

Regional Representatives

Deputy Director
Office of Child Support Enforcement

FFP for the Salaries of Court based Hearing Commissioners

As you know, current regulations at 45 CFR 304.21(B) prohibit FFP for compensation of judges and any costs incurred by courts in making judicial determination. The regulations do not specifically cover hearing commissioners or other quasi-judicial officials.

Current OCSE policy defines the costs of making judicial determinations narrowly so that they include only the salaries of judges and the costs incurred in the maintenance and operation of their courts.

Using this definition, OCSE is now making FFP available for compensation and other administrative costs of quasi-judicial officials such as masters, court commissioners or family court referees when the quasi-judicial officials make findings of fact or recommend a final decision to the judge for his approval. In such cases, the judge would be responsible for making the judicial determination and not the master, commissioner, or referee. This policy is being clarified in the first phase of OCSE's regulation rewrite which is currently in the clearance process.

Louis B. Hays

OCSE-PIQ-79-21

December 18, 1979

To: Regional Representatives
Office of Child Support Enforcement

From: Deputy Director
Office of Child Support Enforcement

Subject: Use of Credit Bureaus a Source of Information by IV-D Agencies - FTC Staff Opinions

Credit bureaus may serve as a source of information on the location, income, and assets of absent parents. A question has been raised about whether the IV-D agencies can obtain information from credit bureaus under the Fair Credit Reporting Act. To clarify the issue, OCSE requested an opinion from the Federal Trade Commission. OCSE has now received the staff opinion from the FTC which permits governmental agencies, under certain circumstances, to obtain information from credit bureaus. A copy of this opinion is enclosed for your information.

OCSE will soon publish a TEMPO to encourage the use of credit bureaus as a source of information on absent parents. For additional information on the use of credit bureaus please contact Mark Steinberg at 443-5106.

Louis B. Hays

Enclosure